



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

June 12, 1997

Michael Stroud
Southwest Division
Naval Facilities Engineering Command
United States Navy
1220 Pacific Highway, Code 20
San Diego, California 92132-5190

Attn: Lynn Hornecker

Re: Biological Opinion on the Remediation Program at MCAS El Toro, Orange County,
California (1-6-97-F-14)

Dear Mr. Stroud:

This Biological Opinion responds to your request for formal consultation with the U. S. Fish and Wildlife Service (Service) pursuant to section 7 of the Endangered Species Act of 1973, as amended (Act). Your request was dated May 7, 1997, and received by us on May 7, 1997. At issue are the impacts that the remediation program may have on the federally listed threatened coastal California gnatcatcher (*Polioptila californica californica*) (gnatcatcher). Some of the actions discussed herein were emergency remediation actions and were coordinated with the Service under the procedures for emergency consultation. However, there has been sufficient time to determine and evaluate the effects of the continued remediation program to initiate formal consultation on the emergency actions and continuing actions.

This Biological Opinion was prepared using the following: 1) the Biological Assessment (BA) contained in your May 7, 1997 request for consultation; 2) information obtained and submitted during site visits and conversations during informal and formal consultation; and 3) information contained in our files or otherwise available to the Service.

BIOLOGICAL OPINION

It is the opinion of the Service that the proposed action is not likely to jeopardize the continued existence of the coastal California gnatcatcher. Critical habitat has not been proposed or designated for this species. Therefore, the proposed action will not destroy or result in adverse modification of proposed or designated critical habitat.

DESCRIPTION OF THE PROPOSED ACTION

On August 19, 1996, the Service responded to a request for concurrence on interim emergency remediation actions at MCAS El Toro, Orange County. The interim actions are part of the base Installation Restoration Program (IRP) and involve landfill remediation at two sites (site 2 and site 17) (see Figure 1). The primary interim project was the installation of a fence around the landfill sites. This fence was installed within existing road rights-of-way or firebreaks. Fence installation commenced after the nearby gnatcatchers had fledged. The other interim activities included the removal of surface and limited subsurface debris, limited grading of stream banks with placement of rip-rap along severely eroded sections to reduce erosion of landfill material, placement of debris collected from the stream channel at a central location at each landfill site, widening of access roads, and construction of staging areas and field office facilities along Magazine Road. The extent of impacts to gnatcatcher habitat was not known at the time, since the extent of the landfill problem was not known.

As part of the early coordination, the following measures were agreed upon to minimize the effect of the remediation activities on the gnatcatcher.

1. Prior to implementation of the emergency actions, the locations of activities shall be reviewed and concurred by the Service.
 - a. The landfill collection, staging areas, and field office facilities shall be located in previously disturbed areas away from occupied habitat.
 - b. The widening of the gravel roads shall avoid gnatcatcher habitat to the maximum extent possible.
2. Habitat disturbed by the removal of debris, placement of rip-rap, and/or the road widening shall be compensated for by revegetation/restoration of disturbed/cleaned sites at a ratio of two acres restored coastal sage scrub for each acre of habitat that is disturbed.
 - a. The restoration plan shall be developed as part of the formal consultation on the emergency remedy and subject to Service approval. If the final IRP precludes an adequate on-site restoration option, then off-site restoration shall be implemented.
3. The emergency activities shall be conducted outside the gnatcatcher breeding season (February 30 through August 30) to the maximum extent practicable.

On January, 27, 1997, during a site visit, additional measures were agreed upon and subsequently implemented. These measures are as follows:

4. The footprint for the surface water diversion channel will be reduced to a width 110 feet and cleared according to the August 19, 1997 measures. The vegetative matter cleared will be salvaged.
5. The channel was divided into three sections; section 1 will be realigned to reduce impacts to coastal sage scrub, section 2 construction can start since it is not within habitat nor reasonably near any gnatcatcher pairs, section 3 construction will commence upon completion of formal consultation.
6. The haul road will be located in an existing road.

At this time the emergencies are under control such that the final extent of the remediation projects are known. Though the final IRP solution (e.g. capping of the landfill) has not been determined, the proposed actions include further clean-up of debris at site 2 and site 17, slope stabilization at site 2, and a surface water diversion to prevent water from washing out the landfill at site 17. The total amount of habitat impacts are as follows: a maximum of 3.63 acres of coastal sage scrub may be disturbed at site 2; at site 17, a maximum of 3.88 acres of coastal sage scrub are temporarily impacted and 2.04 acres of coastal sage scrub may be permanently lost. An additional 0.20 acres of sage scrub was disturbed at site 17 from emergency removal actions. Depending on the final solution, these and the impacts from site 2 may be either permanent or temporary losses (e.g. if the landfill is capped they will be considered permanent).

Through informal consultation, the actions including the surface water diversion footprint were adjusted to minimize impacts to coastal sage scrub and the gnatcatcher, and work to date has followed the August 19, 1996 measures. Some of the debris was within coastal sage scrub, but the majority of the actions were and are in previously disturbed areas. Additionally, the surface water diversion construction will likely not avoid gnatcatcher breeding season and may directly harass the adjacent gnatcatchers. Construction to date followed the August 19, 1996 measures outlined above. The following conservation measures were formulated through site visits and communications with the Service for the minimization of impacts to gnatcatchers and will be implemented as part of the proposed action. Further details of the proposed project are contained in the Biological Assessment and Figure 2.

As part of the remediation program, the following conservation measures are proposed to minimize the effect of the project on the gnatcatcher (refer to the Biological Assessment for greater detail):

1. The Navy/Marine Corps will revegetate, on site, two acres to coastal sage scrub for every acre of gnatcatcher habitat permanently disturbed.

2. The Navy/Marine Corps will revegetate, with coastal sage scrub, the temporary impacts of gnatcatcher habitat disturbed.
3. A qualified biologist will monitor construction activities at least twice a week to ensure project remains within the footprint.
4. Impacts to coastal sage scrub and gnatcatchers will be avoided to the maximum extent possible.

EFFECTS OF THE PROPOSED ACTION ON LISTED OR PROPOSED SPECIES

Species Account

The coastal California gnatcatcher (*Polioptila californica californica*), a small gray songbird, is a resident of scrub dominated plant communities from southern Ventura County southward through Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California into Baja California, Mexico, to approximately 30 degrees North latitude near El Rosario (AOU 1957; Atwood 1980, 1990; Jones and Ramirez 1995). It is a recognized subspecies of the California gnatcatcher (*Polioptila californica*) and is endemic to coastal southern California and northwestern Baja California, Mexico (AOU 1983, 1989; Atwood 1980, 1988, 1990, 1991). The gnatcatcher is strongly associated with sage scrub in its various types and successional stages.

The majority of plant species found in sage scrub are low-growing, drought-deciduous shrubs and sub-shrubs, including California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), and sages (*Salvia mellifera*, *S. apiana*) (Holland 1986, Sawyer and Keeler-Wolf 1995). Other commonly occurring species include lemonadeberry (*Rhus integrifolia*), coast goldenbush (*Isocoma menziesii*), laurel sumac (*Malosma laurina*), boxthorn (*Lycium* spp.), cliff spurge (*Euphorbia misera*), and jojoba (*Simmondsia chinensis*). Succulent species, such as cacti (*Opuntia littoralis*, *O. prolifera*, *Ferocactus viridescens*), and *Dudleya* spp. are represented in maritime succulent and southern coastal bluff scrubs. Sage scrub often occurs in a patchy, or mosaic, distribution pattern throughout the range of the gnatcatcher. Gnatcatchers also use chaparral, grassland, and riparian plant communities where they occur adjacent to or intermixed with sage scrub. Although existing quantitative data may reveal relatively little about gnatcatcher use of these other habitats, these areas may be critical during certain times of year for dispersal or as foraging areas during inclement conditions (e.g., drought). Breeding territories also have been documented in non-sage scrub habitat (e.g., chaparral and grassland/ruderal habitat).

The gnatcatcher is primarily insectivorous and defends territories ranging in size from approximately 2 to 40 acres (Atwood 1990). Although gnatcatchers use a diverse range of plant species within sage scrub (Braden and Love 1995), quantitative data on population densities relative to vegetation sub-association types within sage scrub habitats are lacking. Information

suggests, however, that small-scale differences in plant composition and/or structure may help explain discontinuities in gnatcatcher occurrence (Raabe 1995; Weaver 1995). Spatial use requirements by gnatcatchers vary throughout the year with territorial behavior relaxing somewhat in the non-breeding season, allowing for an expansion in the size of the use area. These non-breeding areas are about 70 percent larger than breeding territories (Deeley 1995; Preston *et al.* 1996).

The breeding season of the gnatcatcher extends from about February 15 through August 30, with the peak of nesting activity occurring from mid-March through mid-May. Incubation takes 14 days. The young fledge at 8 to 13 days of age and are dependent upon their parents for as little as three to four weeks (ERCE 1990), but fledglings may associate with their parents for several months.

Mortality in territorial adults can best be inferred by rates of replacement of known individuals (e.g., banded birds), assuming these birds to be sedentary if mated. Sources of mortality for adults have not been well studied. Similar to other passerine species, gnatcatcher mortality is highest for the youngest age class, with much of this attributable to predation of young in nests. Juvenile birds are also more susceptible to predation. Braden, McKernan, and Powell (1995a) estimate annual adult mortality at 63 percent and juvenile mortality at 86 percent, based on re-sightings of color-banded birds in Riverside County. Nest mortality is likely increased by parasitism from brown-headed cowbirds.

Although considered locally common fewer than 50 years ago (Grinnell and Miller 1944), Atwood (1990) estimated that 1,811 to 2,291 pairs of gnatcatchers may still occur in the United States. The Service estimated that there could be as many as 2,898 pairs of gnatcatchers in southern California (58 *Federal Register* 16742). The documented decline of the gnatcatcher undoubtedly is the result of numerous factors, including habitat destruction, fragmentation, and modification, and nest depredation and brood parasitism by artificially high numbers of brown-headed cowbirds (58 *Federal Register* 16742). It is estimated that as much as 90 percent of coastal sage scrub vegetation has been lost as a result of development and land conversion (Westman 1981a, 1981b, Barbour and Major 1977), leaving coastal sage scrub as one of the most depleted habitat types in the United States (Kirkpatrick and Hutchinson 1977, Axelrod 1978, Klopatek *et al.* 1979, Westman 1987, O'Leary 1990).

The negative effects of fragmentation are increased exposure to threats along the habitat edge. Numerous nest predators such as opossums, raccoons, skunks, coyotes, ground squirrels, and various corvids thrive on edges. Also, brood parasitism by the brown-headed cowbird could be exacerbated by increased edge effects and likely reduce the reproductive potential of the gnatcatcher. Cowbird parasitism is one of the factors apparently limiting the distribution and potential expansion of gnatcatchers in Orange County and throughout its range. The available data reveal that 40% of the 10 gnatcatcher nests monitored in the Coyote Hills in Fullerton, California were parasitized by cowbirds (UNOCAL 1993) as were 31% (54) of 176 gnatcatcher

nests monitored in Riverside County study sites during the 1992-1993 breeding seasons (G. Braden, pers. comm.).

Range wide the numbers of gnatcatchers continue to decline since its listing in 1993 as a result of continuous permitted and unauthorized habitat loss. Mitigation for permitted loss of coastal sage scrub has usually only resulted in preservation, study, and management of existing coastal sage scrub. In addition, there have been attempts to create and restore coastal sage scrub habitat. There is no evidence to date to suggest that the numbers of birds have increased as a result of efforts. Nonetheless, some coastal sage scrub restoration has proven successful and may benefit the species.

Adult gnatcatchers exhibit strong site tenacity. Therefore, displacement of adult gnatcatchers due to development projects does not guarantee birds will simply move into the surrounding habitat. In addition, these existing habitat areas may already be occupied by other gnatcatchers.

The gnatcatcher was listed as threatened on March 25, 1993, under the Endangered Species Act of 1973, as amended (Act). The final rule for this action was published in the *Federal Register* on March 30, 1993 (58 *Federal Register* 16742). On December 10, 1993, pursuant to section 4(d) of the Act, the Service defined specific conditions associated with certain land use activities under which incidental take of gnatcatchers and their habitat would not be a violation of section 9 of the Act (58 *Federal Register* 65088).

Based on data collected since the time of its listing as a threatened species, the Service's current estimate of the total number of gnatcatchers in the United States is 2,898 pairs, after subtracting out all gnatcatcher pairs authorized for take under Habitat Loss Permits, approved NCCPs and HCPs, and through section 7 consultations (USFWS 1996). The increased number of gnatcatchers is believed to be a result of surveys occurring within previously unsurveyed areas and increased numbers of birds due to variations in productivity of sage scrub in response to climatic conditions. This should not be construed to represent an increase in the overall gnatcatcher population. Overall, the amount of coastal sage scrub available to gnatcatchers has decreased during this period due to habitat loss resulting from permit issuance. The overall average gnatcatcher population through time will probably be less with a decreased amount of habitat within which annual fluctuations of populations can occur.

Gnatcatchers are consistently found in high densities in CSS found near the coast and at low elevation. This is particularly noticeable in Orange County, where there is a relatively quick transition between the flatter, coastal areas, and the steeper, more mountainous portions of the county in the Santa Ana Mountains. The existing information on the abundance and distribution of the gnatcatcher in Orange County was supplemented by field surveys conducted as part of the NCCP planning effort. The Service estimates the current population gnatcatchers in Orange County to be 643 pairs (USFWS 1996). However, the ability to estimate population levels is constrained by inconsistent survey methodologies and survey efforts exclusively designed to detect species presence or absence.

MCAS El Toro is estimated to have 426.6 acres of coastal sage scrub and 92 pairs of gnatcatchers, making it is the densest population in Orange County. Site 2 and site 17 respectively contain 28 acres and 103 acres of coastal sage scrub. The proposed restoration and both site 2 and 17 are within the proposed conservation area to be administered by the Bureau of Land Management upon closure of MCAS El Toro.

Analysis of Impacts

The on-going landfill remediation may result in the maximum loss of 3.63 acres of coastal sage scrub at site 2 and maximum loss of 5.92 acres of coastal sage scrub at site 17. An additional 0.20 acres was disturbed at site 17 from emergency debris removal. The coastal sage scrub at site 17 is used by eight pairs of gnatcatchers, the habitat loss affects two of those pairs. The coastal sage scrub at site 2 is used by two pairs, the habitat loss affects both of those pairs. Construction noise and activity for the surface water diversion (besides habitat impacts included in the total above) also may disturb the breeding behavior of all eight of the pairs.

Adherence to the August 19, 1996, and January 27, 1997, conservation measures has allowed for avoidance of the clearing of actual nest shrubs and overall reduction of habitat disturbance or loss. Nevertheless, gnatcatcher foraging and rearing behaviors would be altered by the habitat loss. Most of the pairs at site 2 and 17 appear to have some tolerance for some activity, one pair continually nests adjacent to Magazine Road, and the site 17 birds still occupy the area despite use of the haul roads. However, due to the limited availability of coastal sage scrub in the near vicinity, these pairs may have no choice but to be exposed to such disturbances and the added proposed construction activity may exceed the gnatcatcher's tolerance level. In any case, other than the extent of habitat impacts, it is difficult to assess the extent the remediation actions may disturb nesting behavior. The proposed conservation measures are intended to and likely will minimize effects of the emergency and proposed actions, including compensating for the loss of coastal sage scrub and minimizing disturbance during the breeding season.

CUMULATIVE EFFECTS

Cumulative effects are those impacts of future non-Federal (State, local government, or private) activities on endangered or threatened species or critical habitats that are reasonably certain to occur during the Federal action subject to consultation. Future Federal actions are subject to the consultation requirements established in section 7 of the Act and, therefore, are not considered cumulative to the proposed project.

A few patches of coastal sage scrub occur around the orange groves to the south and more habitat occurs east of the Foothills Transportation Corridor. Urban development has likely restricted the MCAS El Toro gnatcatcher population mainly to the coastal sage scrub on base. Potential adjacent activities include potential expansion of the Orange County Detention Center and urban development of the south side of the base, adjacent to the proposed reserve area and the remediation sites. To the east is the on-going construction of Foothills Transportation

Corridor and further adjacent urbanization. Cumulatively, these actions continue to restrict this population to the habitat at MCAS El Toro thereby increasing the sensitivity of this population to habitat loss on base. The proposed conservation measures, implemented as part of the action, have resulted or will result in minimization of impacts to this population.

SUMMARY

After reviewing the current status of the gnatcatcher, the environmental baseline for the action, the effects of the remediation program and cumulative effects, it is the Service's biological opinion that the remediation program, as proposed, is not likely to jeopardize the continued existence of the gnatcatcher. Critical habitat has not been designated for this species, therefore, none will be affected.

We base this conclusion on the following considerations:

1. The number of gnatcatchers that may be taken is a small proportion of the total population on MCAS El Toro. Two of the pairs that may be harassed have successfully fledged a clutch this year. It is not anticipated that these gnatcatchers will be injured or killed.
2. The Navy/Marine Corps has coordinated with the Service on minimization of impacts to gnatcatchers due to the emergency remediation activities.
3. The proposed conservation measures compensate for the effects due to habitat loss and minimize that loss to the maximum extent possible.

INCIDENTAL TAKE

Section 9 of the Act prohibits the take of listed species without special exemption. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under the terms of section 7(b)(4) and 7(o)(2) of the Act, taking of listed species that is incidental to and not intended as part of the Navy/Marine Corps action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the Incidental Take Statement. The Terms and Conditions described below are nondiscretionary, and must be undertaken by the Navy/Marine Corps.

The measures described below are non-discretionary, and must be implemented by the Navy/Marine Corps in order for the exemption in section 7(o)(2) to apply. The Navy/Marine Corps has a continuing duty to regulate the activity covered by this incidental take statement. If

the Navy/Marine Corps (1) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

On August 19, 1996, the Service provided the Navy/Marine Corps with the above described measures (see description of proposed project) for minimizing take of gnatcatchers due to the emergency action. As the Navy/Marine Corps has implemented those measures in its response to the emergency, the requirements for exemption from the taking provisions of section 9 have been met. These actions include installation of the perimeter fence, clearing of debris, and work associated with the surface water diversion. Most actions avoided impacts to gnatcatchers, however, some coastal sage scrub was cleared as a result of the emergency remediation activities. Further and continuing actions are discussed in this biological opinion and the following incidental take statement.

For continued activities, the Service anticipates that two pairs of gnatcatchers at site 17 and two pairs of gnatcatchers at site 2 may be taken in the form of harassment due to indirect effects of noise and activities and direct continued impacts to habitat as a result of the remediation project. Six additional pairs of gnatcatchers may be taken in the form of harassment due to indirect impacts from noise and activities as a result of the remediation project. The effect of take would be a minor disruption of breeding and foraging behavior and the potential for nest failure. The total maximum amount of coastal sage scrub habitat impacts are 6.12 acres for site 17 and 3.63 acres for site 2. Therefore, the extent of take due to harassment within that area is limited to that amount of disturbance.

This incidental take statement does not authorize the take of gnatcatchers through injury or death. Additionally, this incidental take statement applies only to the proposed remediation actions and does not preclude the necessity of the Navy/Marine Corps to consult on the final IRP solution to the landfill. If, during the course of the action, the amount and extent of incidental take has reached the level established herein, the Navy/Marine Corps shall immediately notify the Service in writing. If the incidental take limit is exceeded, the Navy/Marine Corps must immediately cease the activity resulting in the take, and reinitiate consultation with the Service to avoid further violation of section 9 of the Act. The Navy/Marine Corps should provide an explanation of the causes of the taking.

Reasonable and Prudent Measures

The following Reasonable and Prudent Measures are necessary and appropriate to minimize the impact of the incidental take to gnatcatchers.

1. The Navy/Marine Corps will minimize impacts to gnatcatcher habitat to the greatest extent possible.

2. The Navy/Marine Corps will minimize disturbance during gnatcatcher breeding season to the greatest extent possible.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the Act, The Navy/Marine Corps must comply with the following Terms and Conditions, which implement the Reasonable and Prudent Measures described above. These Terms and Conditions are non-discretionary.

1. The following Terms and Conditions will implement Reasonable and Prudent Measure number one:
 - 1.1 The Navy/Marine Corps will continue to follow the August 19, 1996, and January 27, 1997, measures, except for construction of the surface water diversion channel as provided for in this biological opinion.
 - 1.2 The Navy/Marine Corps will continue to flag and monitor the extent of activities to ensure that it does not exceed the total maximum impact (6.12 acres for site 17 and 3.63 acres for site 2). The monitor will be a qualified biologist with experience with gnatcatcher ecology.
 - 1.3 The Navy/Marine Corps will submit habitat monitoring reports to the Service every week during the gnatcatcher breeding season (February 30 through August 30) and monthly during the non-breeding season for the term of the remediation activities.
 - 1.4 The Navy/Marine Corps will submit a revegetation plan for the remediation project for Service approval within four months of issuance of this biological opinion. The minimum components of the revegetation plan are: 1) mapped locations and extent of areas to be vegetated, 2) the plant palette specifying species to be used in seed, cuttings, and potted applications, 3) success criteria, and 4) follow up monitoring and remediation measures to ensure success. Revegetation for the remediation project will commence within one year of commencement of this biological opinion.
2. The following Terms and Conditions will implement Reasonable and Prudent Measure number two:
 - 2.1 The Navy/Marine Corps will continue to follow the August 19, 1996 and January 27, 1997 measures, except for construction of the surface water diversion channel as provided for in this biological opinion. This term and condition may be fulfilled concurrently to term and condition number 1.1.
 - 2.2 The Navy/Marine Corps will continue to flag and monitor the extent of activities to ensure that it does not exceed the total maximum impact. Monitoring will include

nesting activity, timing, and location. The monitor will be a qualified biologist with experience with gnatcatcher ecology. This term and condition may be fulfilled concurrently to term and condition number 1.2.

- 2.3 The Navy/Marine Corps will submit gnatcatcher behavior monitoring reports to the Service every week during the gnatcatcher breeding season. This term and condition may be fulfilled concurrently to term and condition number 1.3.
- 2.4 The Navy/Marine Corps will limit, to the maximum extent practicable, loud activities (60 decibels) from the construction of the surface diversion channel to after 11 a.m. If this is not practicable, temporary sound barriers will be used on the edges of the surface water diversion construction area if the noise level exceeds 60 decibels.

Disposition of Sick, Injured, or Dead Specimens

Any dead gnatcatcher(s) that appear to be the result of an unusual die-off or high-level that may be associated with this project must be reported to the Service within one (1) working day of discovery. Notification shall include the date, time, and location of the dead animal(s), and any other pertinent information. The location where the dead animal(s) was/where found should be marked in an appropriate manner and photographed. The dead animal(s) should be immediately placed and sealed in an appropriate sized glass jar and refrigerated. The contact persons are Senior Resident Agent Larry Farrington of the Service's Law Enforcement Division (310/297-0062) or Marjorie Nelson (760/431-9440).

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation Recommendations are Service suggestions regarding discretionary Navy/Marine Corps activities to minimize or avoid adverse effects of a proposed action or regarding the development of information concerning the conservation of listed species. The recommendations provided here do not necessarily represent complete fulfillment of the Navy/Marine Corps's responsibility for these species, pursuant to section 7(a)(1) of the Act.

1. The Navy/Marine Corps should continue to coordinate with the Service regarding the restoration and management of the conservation area at MCAS El Toro .

For the Service to be kept informed of actions that either minimize or avoid adverse effects or that benefit listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

CONCLUSION

This concludes the formal consultation on the remediation program. As required by 50 CFR 402.16, reinitiation of formal consultation is required if: 1) the amount or extent of incidental take limit is exceeded; 2) if new information becomes available that reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; 3) if the action is subsequently modified in a manner that causes an effect to listed species or critical habitat not considered in this opinion; or 4) if a new species is listed or critical habitat designated that may be affected by the action. We would appreciate notification of your final decision on this matter. Any questions or comments should be directed to Marjorie Nelson of my staff at (760) 431-9440.

Sincerely,

A handwritten signature in black ink that reads "Gail C. Kobetich". The signature is written in a cursive style with a large initial "G".

Gail C. Kobetich
Field Supervisor

cc: Dawn Lawson (SWDIV)

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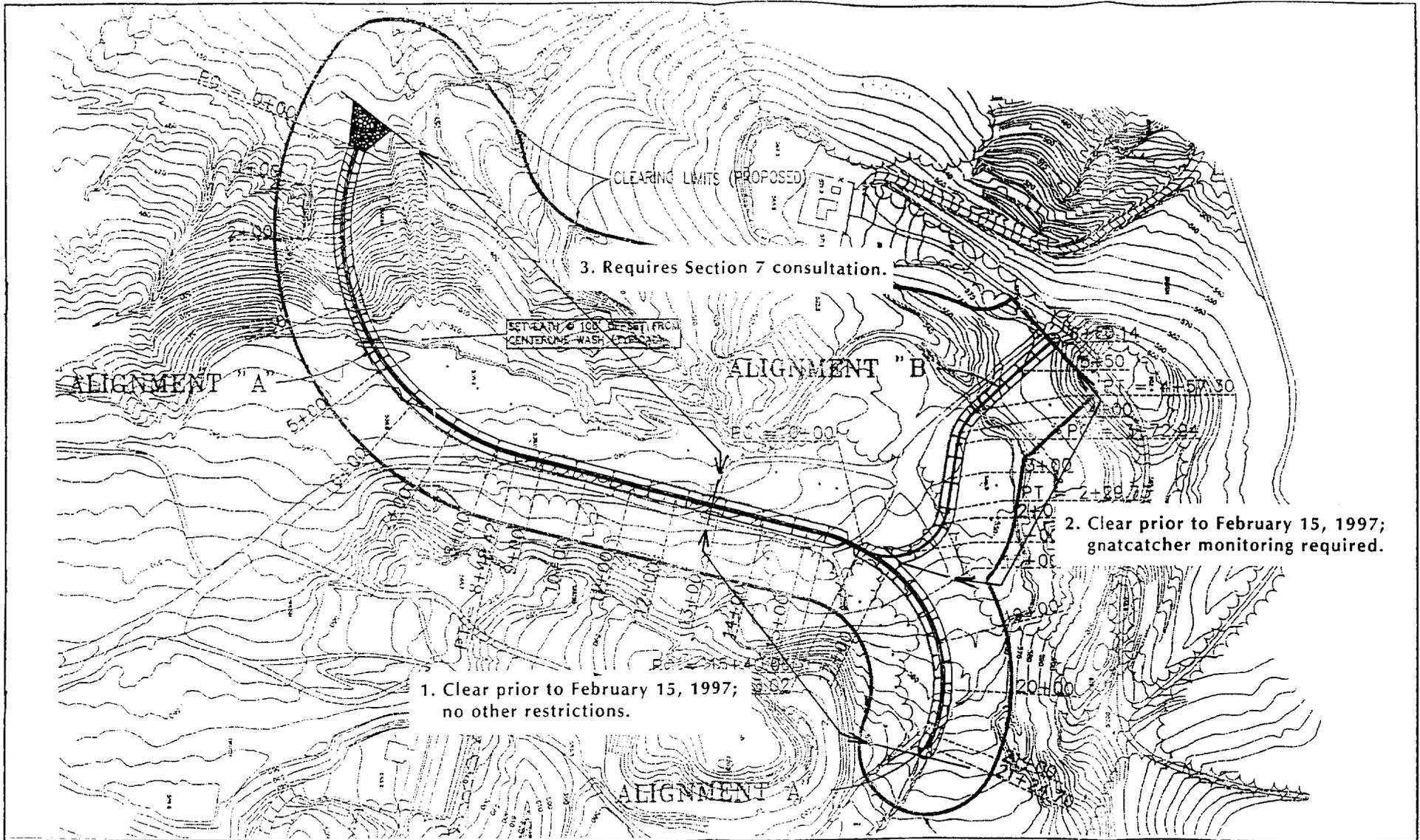
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Construction Constraints

MCAS EL TORO LANDFILL PROJECT

