

CITYWIDE ASSESSMENT OF OVERHEAD UTILITIES

CITY OF DANA POINT



October 25, 2022

NV|5

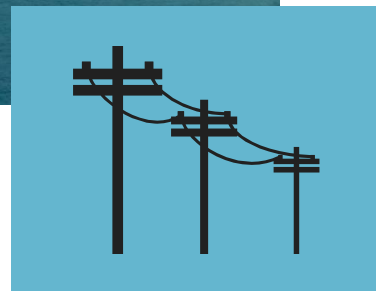




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Transmittal Letter

Date: October 25, 2022

To: Matthew Sinacori, Director of Public Works/City Engineer, City of Dana Point

From: Jeffrey M. Cooper, P.E., Senior Vice President, NV5

Subject: Citywide Assessment of Overhead Utilities

Dear Mr. Sinacori,

NV5 is pleased to submit this Final Citywide Assessment of Overhead Utilities to the City of Dana Point (City).

If you have any questions, please feel free to contact me by phone at (949) 585-0477 or by email at jeff.cooper@nv5.com.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Jeffrey M. Cooper", written over a horizontal line.

Jeffrey M. Cooper, P.E.
Senior Vice President, NV5



1. Scope of Work

NV5 prepared a Citywide Assessment of Overhead Utilities for the City that includes the following elements:

1. Maps showing the existing overhead utilities were prepared and are included herein.
2. Based upon the maps, a cost estimate was prepared to identify the cost to underground the existing overhead utilities. The cost estimate is separated into Rule 20A and 20B projects and/or Districts or areas of the City. The costs are based on recent construction bids from SDG&E and/or other cities with undergrounding projects.
3. Financial options for undergrounding overhead utilities are discussed for both Rule 20A and 20B type projects.
4. Attend meetings as needed.
5. This summary report was prepared, which includes the deliverables from tasks 1-4.
6. The City's undergrounding guidelines have been updated and includes a "short version" for the City's website.





2. MAPS IDENTIFYING AREA SERVED BY ABOVE GROUND UTILITY INFRASTRUCTURE

Figure 1 is an overview map showing the approximate locations of the above ground utilities within City limits. Figures 2-4 are maps depicting the locations of the Rule 20A projects, Rule 20B boundaries and Rule 20C projects. Overhead Utility information was provided by San Diego Gas & Electric (SDG&E) and field reviewed by NV5. Additional detailed maps are provided in Appendix A.

Rule 20A Projects (Major Roadways and Major Public Use Areas)

The following is the criteria for determining Rule 20A funded projects:

1. The undergrounding will avoid or eliminate an unusually heavy concentration of overhead utility facilities
2. The road or right-of-way occupied by the facilities is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic
3. The road or right-of-way adjoins or passes through a civic area, public recreation area, or an area of unusual scenic interest
4. The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Guidelines

Rule 20B Projects (Local Residential Streets)

Projects that do not qualify for Rule 20A funds and were not completed through property development are designated as Rule 20B projects. Rule 20B projects have traditionally been funded through the 1913 Act Assessment Districts.

Additional funding mechanisms reviewed include the following:

1. Enhanced Infrastructure Financing Districts (EIFD)
2. Utility User Tax
3. Mello-Roos CFD
4. Utility Surcharge

Rule 20C Projects (Areas that cannot be classified as Rule 20A or Rule 20B)

Rule 20C projects are projects that don't qualify for Rule 20A credits and do not fit well in Rule 20B type projects. Rule 20C undergroundings typically are privately funded or a part of a public project. In many cities, when land is redeveloped, owners are required to relocate the utilities underground, so Rule 20C is utilized in those situations. Rule 20C is by far the predominate mechanism for undergrounding overhead utilities in the State of California.



Figure 1 – Overall Overhead Utility Map

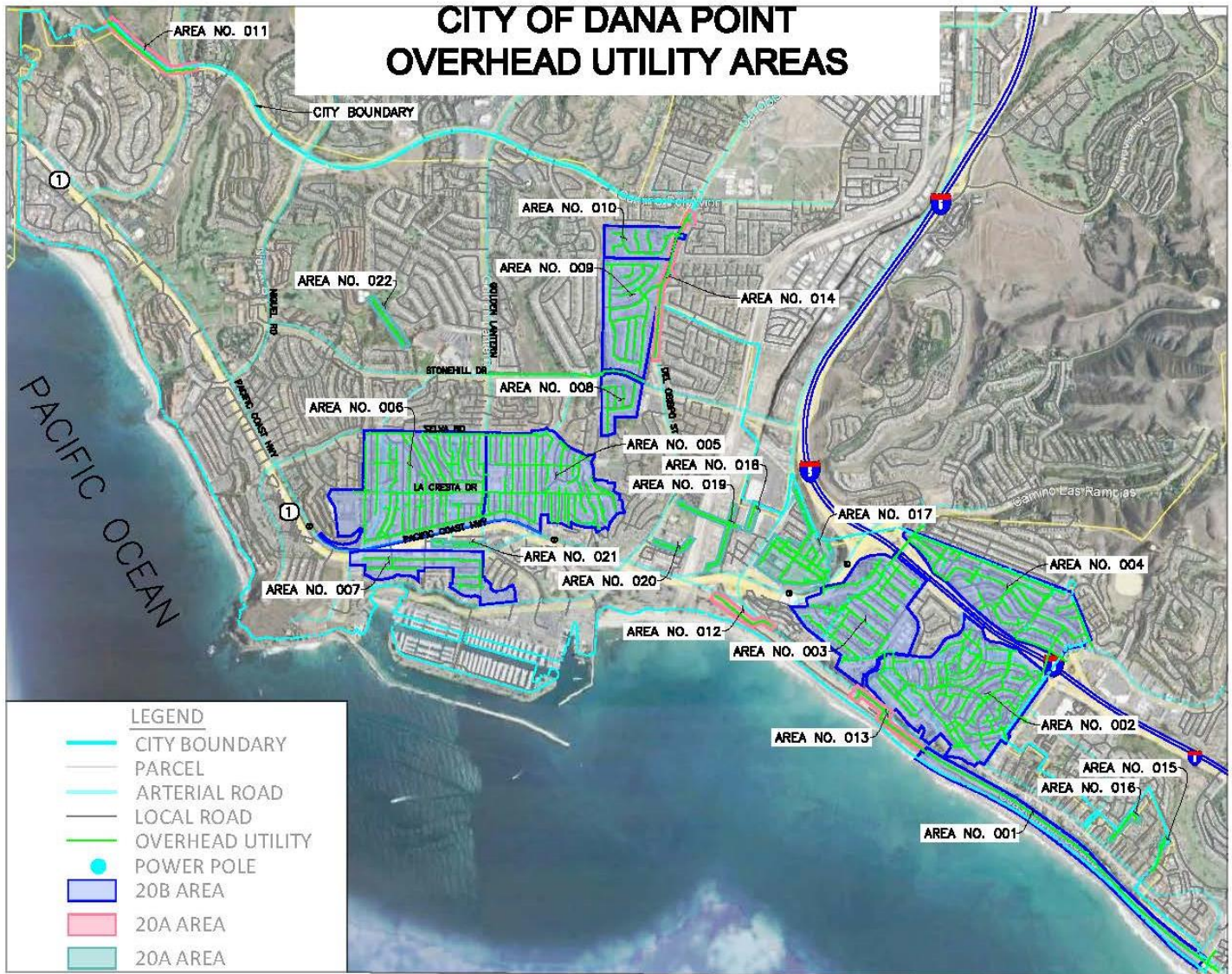
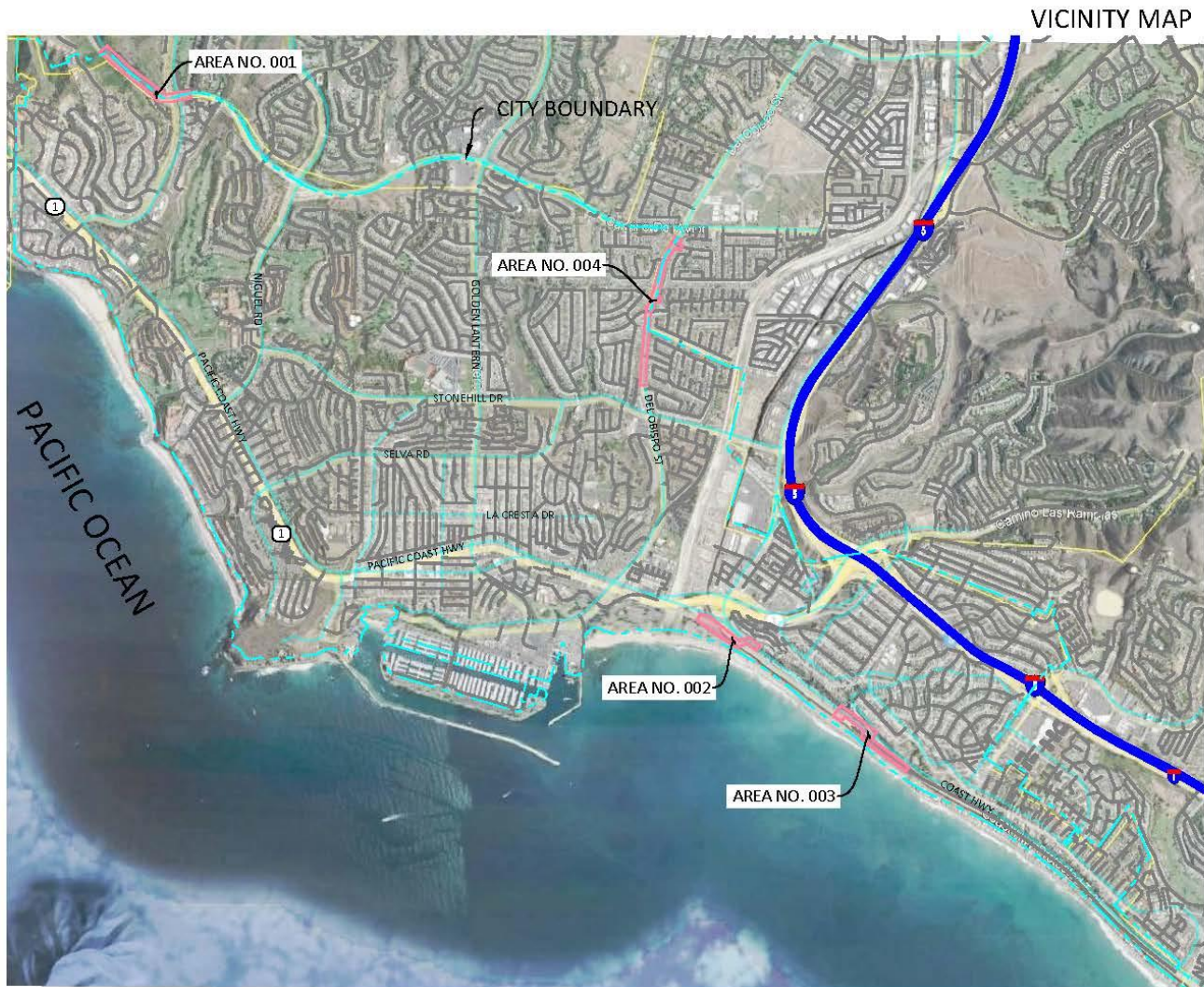




Figure 2
CITY OF DANA POINT
 RULE 20A
ABOVE GROUND UTILITY LOCATIONS



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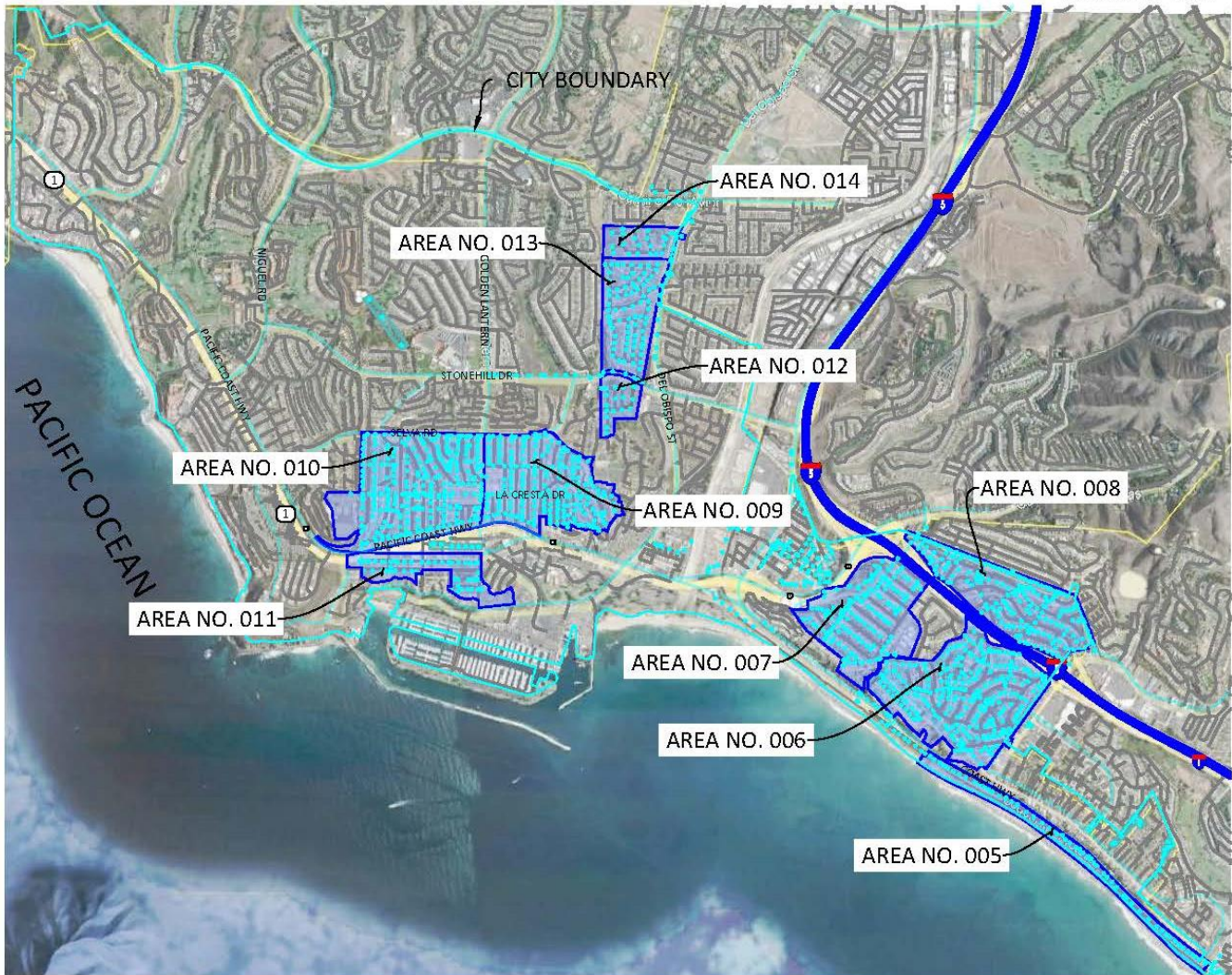
-  ARTERIAL STREETS
 -  STREETS
 -  CITY BOUNDARY
 -  ABOVE GROUND UTILITY LOCATIONS
- 
 N.T.S.



Figure 3
CITY OF DANA POINT
 RULE 20B
ABOVE GROUND UTILITY LOCATIONS

VICINITY MAP



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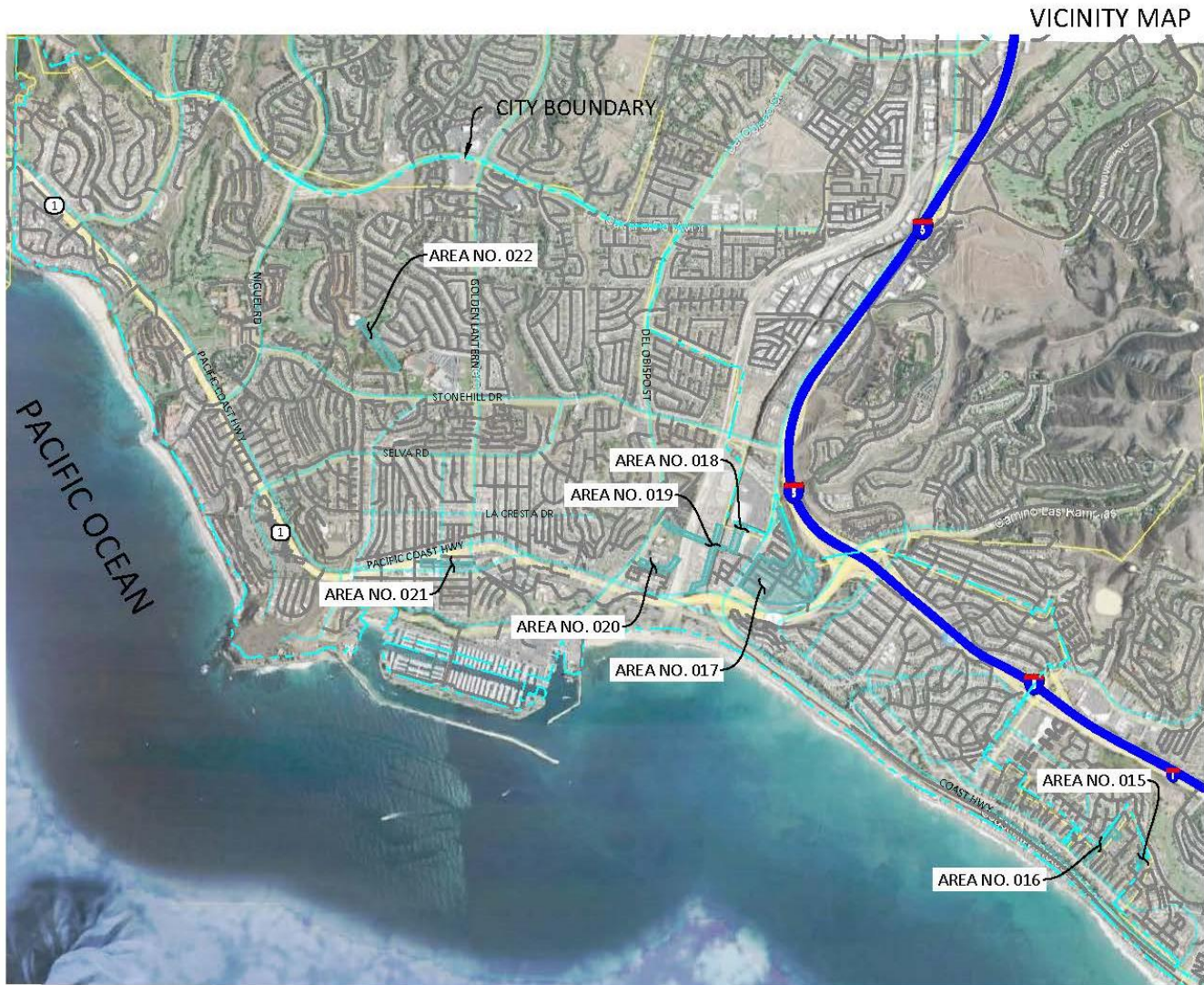
-  ARTERIAL STREETS
 -  STREETS
 -  CITY BOUNDARY
 -  ABOVE GROUND UTILITY LOCATIONS
- N.T.S.



Figure 4
CITY OF DANA POINT
 RULE 20C
ABOVE GROUND UTILITY LOCATIONS



PREPARED BY:



LEGEND

- ARTERIAL STREETS
- STREETS
- CITY BOUNDARY
- ABOVE GROUND UTILITY LOCATIONS



3. COST ESTIMATES FOR UNDERGROUNDING

The costs reflected in this citywide assessment of overhead utilities report are planning level costs covering a wide range of factors including, but not limited to, utility type (distribution versus transmission), existing terrain, soil conditions, distance, depth of road trenching, road resurfacing, construction methods, traffic control situations, public notifications, service run costs and service entrance reconfiguration costs.

Preliminary budget estimates for construction costs for the underground conversion were quantified on a linear foot basis with an approximate unit cost of \$1,111 per linear foot for distribution lines and approximately \$1,666.50 per linear foot for transmission lines, which were based on discussions with San Diego Gas & Electric Project Management staff and research of similar utility undergrounding projects performed by other public agencies within Southern California. Additionally, the cost to convert overhead service drops to underground varies from \$3,000 to \$10,000 per property and is based on a number of factors, including the distance from the mainline to the meter based on the property owner's home (the longer the distance, the greater the cost for trench excavation, backfill, conduit, pull tape, fittings, etc.) or whether the contractor is able to bury the line in a trench rather than having to bore under a driveway, retaining wall, fence, etc. Additional cost factors include ease of access, potential tree removals, tree trimming, and easement or right of way costs. (It should be noted that the costs of the underground conversion of service drops, the reconnection to the meters on private property to the new system including work on private property, is not reflected in the "total preliminary estimated cost" shown below).

A comparison summary of the Citywide Undergrounding Preliminary Opinion of Probable Costs for the various Rule 20 projects is provided in Table 2 on the next page and summarized below:

- Rule 20A total preliminary estimated cost = \$ 21 million +/-
- Rule 20B total preliminary estimated cost = \$ 364 million +/-
- Rule 20C total preliminary estimated cost = \$ 36 million +/-
- TOTAL PRELIMINARY ESTIMATE COST = \$ 421 million +/-

Furthermore, a detailed cost breakdown pertaining to each Rule 20 type is provided in Table 1. The estimated cost units are based on July 1, 2022 dollars. The breakdown of each total preliminary cost considered the following:

- Construction Cost for Underground Conversion (approximately \$1,111 per linear foot for distribution lines and approximately \$1,666.50 per linear foot for transmission lines)
- General Construction Items of Work (includes, but not limited to, mobilization / demobilization, traffic control, clearing and grubbing, shoring, trench safety, road trenching and resurfacing. Cost is approximately 20-25% of the Construction Cost of Underground Conversion)
- Engineering (Design and/or Assessment) & Construction Management / Inspection fees (cost is approximately 15% of the Construction Cost of Underground Conversion)
- 50% Contingency (planning level)



The total estimated cost per foot to underground the above ground utilities is recommended to be updated periodically by amendment to this assessment report to account for changes in the anticipated inflation costs of utility construction. Therefore, it is recommended that the funding programs established for implementation of the assessment report make provisions for the increased cost of deferred construction.

Inflation factors should be applied to reflect a specific year's total cost over the 2022 total cost.



Undergrounding Cost Estimates Table 1

AREA No.	AREA NAME	AREA DESIGNATION	PARCELS IN AREA	POWER POLES IN AREA	OH UTILITY LENGTH IN AREA (LF)	UNDERGROUNDING COST (\$1,111/LF)
001	Pacific Island Area	20A	N/A	6	2,333	\$ 2,591,963
002	Doheny Beach Area	20A	N/A	8	1,503	\$ 1,669,833
003	Coast Hwy Area	20A	N/A	20	2,547	\$ 2,829,717
004	Del Obispo Street Area	20A	N/A	15	3,574	\$ 3,970,714
20A AREA TOTAL					9,957	\$ 11,062,227
General Construction Items of work (25%)						\$ 2,765,557
Engineering Design, CM/Inspection Fees (15%)						\$ 1,659,334
Contingency (50%)						\$ 5,531,114
Total for 20A Area						\$ 21,018,231
005	Capistrano Beach Area	20B	215	59	8,265	\$ 9,182,415
006	Pines Area	20B	728	257	33,585	\$ 37,312,935
007	Palisades Area	20B	418	144	17,122	\$ 19,022,542
008	Sunset Area	20B	479	164	23,557	\$ 26,171,827
009	East Golden Lantern Area	20B	815	206	26,952	\$ 29,943,672
010	West Golden Lantern Area	20B	782	265	37,486	\$ 41,646,946
011	Dana Cover Area	20B	89	98	5,962	\$ 6,623,782
012	Big Sur Area	20B	65	18	3,366	\$ 3,739,626
013	Blue Fin Area	20B	240	74	12,246	\$ 13,605,306
014	WestBorne Area	20B	81	25	3,955	\$ 4,394,005
20B AREA TOTAL					172,496	\$ 191,643,056
General Construction Items of work (25%)						\$ 47,910,764
Engineering Design, CM/Inspection Fees (15%)						\$ 28,746,458
Contingency (50%)						\$ 95,821,528
Total for 20B Area						\$ 364,121,806
015	Del Gado Area	20C	N/A	4	398	\$ 442,178
016	Del Rey Area	20C	N/A	7	989	\$ 1,098,779
017	Capo Beach Area	20C	N/A	72	9,242	\$ 10,267,862
018	Capistrano Valley Plaza Area	20C	N/A	5	553	\$ 614,383
019	Del Obispo Area	20C	N/A	18	3,049	\$ 3,387,439
020	SCWD Sanitary Area	20C	N/A	7	931	\$ 1,034,341
021	North Del Prado Area	20C	N/A	8	789	\$ 876,579
022	Sea Canyon Park Area	20C	N/A	3	1,238	\$ 1,375,418
20C AREA TOTAL					17,189	\$ 19,096,979
General Construction Items of work (25%)						\$ 4,774,245
Engineering Design, CM/Inspection Fees (15%)						\$ 2,864,547
Contingency (50%)						\$ 9,548,490
Total for 20C Area						\$ 36,284,260
TOTAL			3,912	1,483	\$ 199,642	\$ 421,424,298



4. RULE 20A CREDITS, FUNDING APPROACHES FOR RULE 20B PROJECTS

RULE 20A CREDITS¹

The California Public Utilities Commission issued a decision that significantly revised the rules, established over 50 years ago, for funding the conversion of overhead power lines and other equipment to underground facilities at the request of cities and counties. Under the prior program, billions of dollars were collected from electricity ratepayers to be used for “undergrounding” at locations identified by cities and counties. This is commonly known as the Rule 20A program. Statewide, there is an estimated \$1.56 billion in funds collected by utilities, but not yet designated for Rule 20A projects.

The June 7 decision prohibits ratepayer funding for new projects after Dec. 31, 2022. In addition, it clarifies project eligibility criteria, bans the trading of Rule 20A work credits in secondary markets, and enhances Electric Rule 20A program oversight. Electric utilities are also directed to develop new Guidebooks, in collaboration with local governments and others, to govern undergrounding programs.

Inequitable Usage of Ratepayer Funds

While the CPUC found a handful of communities have completed ratepayer-funded projects worth hundreds of millions of dollars, it also discovered that 82 out of 503 communities did not complete a single project since 2005.

Outdated Program Eligibility Criteria

Electric Rule 20A was originally enacted for aesthetic purposes, which, according to the CPUC, is no longer the major concern of numerous communities. Many communities would like the Rule 20A program to factor in wildfire mitigation as well as other community safety needs in the project eligibility consideration. The decision deferred action on this issue to a future phase of the proceeding.

Flawed Work Credit System

The CPUC has identified several issues relating to the allocation of ratepayer-funded work credits to communities. Many communities never start projects due to insufficient credits and the ever-increasing project cost estimates. Additionally, the CPUC identified 58 communities that completed undergrounding projects using credits borrowed beyond the tariff-specified 5-year forward limit, effectively placing those communities in “work credit debt.” Lastly, the CPUC has found that some communities are selling, trading and donating their unused work credits to other communities using an unsanctioned secondary credit marketplace.

¹ CPUC Issues Funding Rule Change for Undergrounding Power Lines. (n.d.). BB&K Law.
<https://www.bbklaw.com/news-events/insights/2021/legal-alerts/06/cpuc-issues-funding-rule-change-for-undergrounding>



High Project Costs and Project Delays

One of the driving forces behind the rule change is that many communities have reported instances where project costs exceeded design cost estimates, as well as project timelines that span seven years or longer, which exceeds the Rule 20A five-year rule. Additionally, project costs have increased substantially.

Utility Abuses

An audit report found that PG&E improperly reallocated Rule 20A funds away from the program without documenting where the funds were spent. The audit report also found that, between 2007 and 2016, PG&E underspent \$123 million of Rule 20A-authorized budgets and that underspending resulted in project delays, which increased project costs. As a result, the CPUC is requiring all utilities to establish one-way balancing accounts specifically for Rule 20A program funding. The CPUC believes this will ensure that Rule 20A program funding is not used for any other purpose.

Moving Forward

This decision only involves Phase 1 of the process of revising the Rule 20A program. In Phase 2, the CPUC will consider: Whether to include wildfire safety and other emergency-related undergrounding in Rule 20A project eligibility criteria, whether to modify Rule 20A to support projects in underserved communities and whether to take additional steps to support the completion of active Rule 20A projects.

The information above was obtained by an article published by BB&K Law which is included in Appendix C.

RULE 20B FUNDING APPROACHES

These projects are those that do not qualify for Rule 20A funds and were not completed through property development also known as Rule 20C. Rule 20B projects have traditionally been funded through the 1913 Act Assessment Districts; a streamline approach is described in Section 2.

Other funding mechanisms include the following:

1. Enhanced Infrastructure Financing Districts (EIFD)
2. Utility User Tax
3. Mello-Roos CFD
4. Utility Surcharge (City of San Diego as an example)

1. Enhanced Infrastructure Financing Districts (EIFD)

SB 628 (Beall) authorizes the creation of a new governmental entity called an Enhanced Infrastructure Financing District (EIFD). One or more of these districts may be created within a city or county and used to finance the construction or rehabilitation of a wide variety of public infrastructure and private facilities.



An EIFD may fund these facilities and development with the property tax increment of those taxing agencies (cities, counties, special districts, but not schools) that consent. EIFD's are also authorized to combine tax increment funding with other permitted funding sources including:

- Property tax revenue distributed to a city, county or special district after payment of a successor agency's debts
- Revenues dedicated by a city or county to the EIFD from property tax corresponding to the increase in assessed valuation of taxable property attributed to those property tax shares received by a city or county pursuant to in lieu of Vehicle License Fees (VLF)
- Fee or assessment revenues derived from one of 10 specified existing sources
- Loans from a city, county or special district, that must be repaid at no more than the LAIF interest rate that is in effect on the date the loan is approved by the governing board of the city, county or special district making the loan

Facilities financed by an EIFD may include but are not limited to:

Public Infrastructure and Facilities:

- Highways, interchanges, ramps and bridges, arterial street, parking and transit facilities
- Sewage treatment, water reclamation plants and interceptor pipes
- Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles
- Facilities to collect and treat water for urban uses
- Flood control levees and dams, retention basins, and drainage canals
- Parks, recreational facilities, open space and libraries
- Brownfield restoration and other environmental mitigation. A district may use powers of the Polanco Redevelopment Act to remediate property
- Projects on a closed military base consistent with approved base reuse plans. Funds may also be used to repay loans made pursuant to Section 67851 to a military base reuse authority on or after the creation of the district

Private Facilities:

- Acquisition, construction and repair of industrial structures for private use
- Transit priority projects as defined under Section 21155 of the Public Resources Code
- Projects which implement a sustainable communities strategy
- Mixed-income housing developments (An EIFD may fund only those units dedicated to low or moderate income housing, and child care, after-school care and social services)
- Reimbursement of a developer located within the boundaries of a district for permit and other expenses incurred when constructing affordable housing pursuant to the Transit Priority Project Program under Section 65470 of the Government Code
- Facilities constructed to house providers of consumer goods and services
- Child care facilities



PROCESS FOR CREATING AN EIFD

SB 628 provides that a city or county that created a redevelopment agency may not create an EIFD or participate on the PFA until each of the following has occurred:

- The successor agency receives a finding of completion from Department of Finance (DOF)
- The city/county certifies to DOF that no former redevelopment agency assets are the subject of litigation involving the state, where the city, successor agency or designated local authority are a named plaintiff, have been or will be used to benefit any efforts on a EIFD until the legal process has concluded
- The State Controller has completed its review of agency-city/county asset transfers after January 1, 2011, pursuant to section 34167.5; and the successor agency has complied with the findings and orders of the State Controller stemming from those reviews.

ADOPTION OF INFRASTRUCTURE FINANCING PLAN

Once any certification associated with the dissolution of a former redevelopment agency is completed, the initiating city or county may establish one or more districts by resolution. Following that, the city or county directs the preparation of an infrastructure financing plan that includes the details of the public facilities and other forms of development that is proposed within the area of the district and how those facilities and development will be funded.

A variety of funding sources are available. The legislation envisions the main funding source will be property tax increment generated within the area encompassed by the EIFD. The preparation of an infrastructure financing plan will include discussions with other taxing entities (county, special districts) to determine whether they consent to transferring their share of the property tax increment or other eligible revenue to the EIFD for the purpose of financing facilities and development. Amounts contributed to the district by other taxing entities need not be the same for all taxing entities. There is flexibility for amounts contributed to vary and change over time.

Prior to approving a plan, the legislative body shall hold a public hearing with ample notice provisions to provide an opportunity for comments from landowners within the district, taxing agencies, and members of the public. Upon adoption, the plan is transferred to the Public Financing Authority (PFA) for implementation.

PROVISIONS AFFECTING ISSUING BONDS, LOAN AND AUDITS

The PFA may issue bonds payable from funds or properties of the district with 55% voter approval of either voters or landowners within the District. If at least 12 persons are registered to vote within the District, then the vote is by registered voters. If fewer than 12 persons are registered, then the vote is by landowners within the District. Each landowner has one vote for each acre or portion of an acre of land that s/he owns. A public agency is not considered a "landowner" unless all of the land in the district is owned by the public agency.

A city, county, or special district that contains territory within the District may loan money to the District to fund the activities described in the Plan at the Local Agency Investment Fund (LAIF) rate of interest in effect at the time of the loan.



Every two years after the issuance of bonds, the District must contract for an independent financial and performance audit conducted according to guidelines established by the Controller. A copy of the audit is provided to the Controller, DOF, and the Joint Legislative Budget Committee.²

2. Utility User Tax

The Utility User Tax (UUT) may be imposed by a city on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including cell phone and long distance), sanitation and cable television. A county may levy a UUT on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services in the unincorporated area.

The rate of the tax and the use of its revenues are determined by the local agency. The tax is levied by the city or county on the consumer of the utility services, collected by the utility as a part of its regular billing procedure, and then remitted to the city or county.

Most of the cities and counties with UUTs adopted the taxes prior to 1986 by vote of the city council (or in the case of a county UUT, the county board of supervisors). Any increase or extension of a local tax now requires voter approval. Statewide, city and county utility user taxes generate nearly \$2 billion per year.

Exemptions

State and federal government agencies, and gas and water used by utility companies to generate electricity are exempt from utility user taxes.

Cities and Counties with UUTs as of 1/1/2017				
	Cities	Counties	Total	Calif Population Covered
Total UUTs	157	4	161	54.0%
Telephone UUTs	149	4	153	49.5%
Electricity	156	4	160	52.7%
Gas	156	4	160	52.7%
Cable TV	90	1	91	22.8%
Water	85	1	86	24.7%
Sewer	14	1	15	2.7%
Garbage	12	0	12	1.3%
San Francisco is counted as a county				

² Information obtained from the California League of Cities



APPROVAL PROCESS

Proposition 218 requires a utility user tax to be approved by the voters of that jurisdiction. If it is a general tax, it requires a 50% approval and if it is a special tax, it requires a two-thirds approval.³

3. Mello-Roos CFD

In 1982, the Mello-Roos Community Facilities Act of 1982 (Government Code §53311-53368.3) was created to provide an alternate method of financing for needed improvements and services.

The Act allows any county, city, special district, school district or joint powers authority to establish a Mello-Roos Community Facilities District (a “CFD”) which allows for financing of public improvements and services. The services and improvements that Mello-Roos CFDs can finance include streets, sewer systems and other basic infrastructure, police protection, fire protection, ambulance services, schools, parks, libraries, museums and other cultural facilities. By law, the CFD is also entitled to recover expenses needed to form the CFD and administer the annual special taxes and bonded debt.

A CFD is created to finance public improvements and services when no other source of money is available. CFDs are normally formed in undeveloped areas and are used to build roads and install water and sewer systems so that new homes or commercial space can be built. CFDs are also used in older areas to finance new schools or other additions to the community.

A CFD is created by a sponsoring local government agency. The proposed district will include all properties that will benefit from the improvements to be constructed or the services to be provided. A CFD cannot be formed without a two-thirds majority vote of residents living within the proposed boundaries. Or, if there are fewer than 12 residents, the vote is instead conducted of current landowners. In many cases, that may be a single owner or developer.

Once approved, a Special Tax Lien is placed against each property in the CFD. Property owners then pay a Special Tax each year. If the project cost is high, municipal bonds will be sold by the CFD to provide the large amount of money initially needed to build the improvements or fund the services.

A CFD could be formed in zones for undergrounding overhead utilities, one as city wide tax for unfunded Rule 20A projects and another zone for just neighborhoods that have not yet undergrounded, Rule 20B.

4. Utility Surcharge – San Diego

This is a fee on utility bills enacted by a city council without approval of the voters. The local utility company collects the fees and then transfers the funds to the city. The City of San Diego charges a roughly 3.5 percent undergrounding surcharge on their combined electric and gas bill to customers on their local utility bill. SDG&E collects the fees for the City and then transfers the fees to the City. The City in turn places the funds in a utility undergrounding fund. These funds are utilized and pay for underground utility projects. More details are provided in the Appendix.

The City of San Diego has been sued over their fee collection program with SDG&E (Mahon v. City of San Diego). In this case, plaintiffs claimed that the surcharge was a tax. Plaintiffs further claimed that the

³ Information obtained from CaliforniaCityFinance.com



surcharge violated Proposition 218 because it was never approved by the electorate. Plaintiffs noted that the City had imposed more than 200 million dollars in charges pursuant to the Undergrounding Surcharge during the class period. Through this action, plaintiffs sought a refund of those amounts, among other forms of relief. The City moved for summary judgement, which the trial court granted on two grounds: (1) the Undergrounding Surcharge constitutes compensation for franchise rights and thus was not a tax; alternatively, (2) the Undergrounding Surcharge was a valid regulatory fee and not a tax. After review, the Court of Appeal concluded the trial court properly granted the City’s motion for summary on the ground that the Undergrounding Surcharge was compensation validly given in exchange for franchise rights and thus, was not a tax subject to voter approval.

Several of these options are feasible, and pros and cons are listed below:

EIFD	This mechanism was really designed for undeveloped properties that want to develop to pay for needed infrastructure to support development. Money is borrowed against the tax increment that is developed from the undeveloped property value to the developed property value. Since the proposed utility undergrounding work is proposed primarily on already developed land, the tax increment captured will be relatively small. This approach does not appear practicable for undergrounding overhead utilities in Dana Point.
Utility User Tax	This is a feasible mechanism to generate funds for undergrounding overhead utilities. Concerns would be that these are typically enacted City wide and would include a lot of properties that have their utilities already undergrounded if all facilities are included. If it is placed on the ballot as a general services usage, it requires a 50 percent registered voter approval. If it is for a special purpose, like an undergrounding overhead utilities program, it requires a two-thirds registered voter approval. A two-thirds registered voter approval is difficult to achieve particularly when half the City already has utilities that are undergrounded. This could be a viable option for a City wide vote for 20A and 20C projects not including 20B projects.
Mello-Roos CFD	This is a feasible mechanism to generate funds for undergrounding overhead utilities. A positive attribute is that the CFD could be prepared with 2 zones, one City wide for non-Rule 20B projects and then another zone for all Rule 20B type projects. The downside is that it requires a two-thirds voter approval to approve the CFD. This seems to be a viable option for funding City wide projects, Rule 20A and Rule 20C.
Utility Surcharge	This mechanism has been used successfully by the City of San Diego and SDG&E. This would be a viable method if SDG&E would agree to it.

The traditional 1913 Act assessment district is still a viable mechanism but it is often criticized for being a slow process, costly and property owner driven. The following are suggestions on how to save costs to the District and time:

1. Form the assessment district before preparing the Plans, Specifications and Estimates (PS&E).
2. Have the City bid undergrounding projects rather than SDG&E.
3. Develop a fund for soft costs and not charge the assessment district such as: Assessment Engineering, PS&E, Construction Management and Inspection for approved districts.



Currently, the largest amount of time is spent on preparing the PS&E. SDG&E will only allow their staff and select consultants to prepare the PS&E, which usually takes 1.5 to 2.0 years

Several additional examples of possible undergrounding projects, in addition to the area maps/estimates provided, that we were asked to evaluate include:

1. Blue Lantern, PCH to La Cresta
2. Blue Lantern, La Cresta to Selva
3. Dana Knolls Area
4. Santa Clara, Amber Lantern to Blue Lantern

These areas provide some context and scale when planning projects. See Appendix D for more information.



5. STREAMLINE ASSESSMENT DISTRICT FORMATION PROCESS – UTILITY UNDERGROUNDING GUIDE

There are two basic approaches to forming Undergrounding Utility Assessment Districts. One is to prepare complete plans and specifications and have construction bids in hand before forming the Assessment District; the other is to form the Assessment District and then prepare plans and specification and then get construction bids. Both processes are described on the next four pages, Design: Before District Formation and Design: After District Formation.

Both processes have pros and cons as described below:

Design: Before District Formation

Pros

- Advantage is costs are known before balloting and forming the District

Cons

- Plans, specifications (PS&E) and bidding process must be paid for up front before forming the District
- After paying the up front costs, the District could fail to be formed. The agency could lose the funds for the PS&E unless the proponents of the District pay up front the costs, rather than the agency, by placing a fund deposit with the agency.
- It can take two years to have the plans and specifications prepared and construction bids received and support for the District could change during this period

Design: After District Formation (Fast-track)

Pros

- Once the petition is approved, the City can immediately order the Engineer's Report, go to ballot and form the Assessment District
- Up front costs are significantly less and the time period to form the District is reduced to about 3-4 months. The agency can pay the up front costs or request that the proponents pay the up front costs by depositing funds with the agency.
- It is known whether you have an Assessment District before preparing plans and specifications and obtaining bids

Cons

- Disadvantage is the bids could come in higher than the estimated cost in the Engineer's Report causing a shortfall in assessment funds. This can be counter balanced by placing a larger contingency in the Cost Estimate.

Several cities are deploying the fast track system with considerable success. NV5 has formed three fast-tracked districts for the City of Newport Beach - Nos. 113, 117 and 124 - which received 71.54%, 52%, and 65.29% of weighted votes, respectively, in favor of forming the Districts; one for the City of Hermosa



Beach - Greenwich Village North - which received 65.28% of weighted votes in favor of forming the District; and one for the City of Torrance - Paseo de la Playa - which received 94.31% of weighted votes in favor of forming the District. These have all been done in the past four years. SDG&E charges a 43% overhead allocation for civil work. Civil work is typically 90% of the construction worth.

The City could employ both procedures allowing the proponents to help decide which method to utilize after explaining the pros and cons of each process.



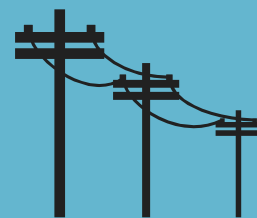
Step-by-Step Guide



UTILITY UNDERGROUNDING — A STEP-BY-STEP GUIDE



CITY OF DANA POINT
PUBLIC WORKS DEPARTMENT
(949) 248-3554





Utility Undergrounding – A Step-by-Step Guide

The options and steps for forming a utility undergrounding district are outlined below. Please note that due to City staffing limitations, the hiring of a Consultant to manage a utility undergrounding request is required. The City will participate in the process, but primarily in a management/oversight role. Interested property owners will be required to provide a deposit to pay for the cost of the Consultant.

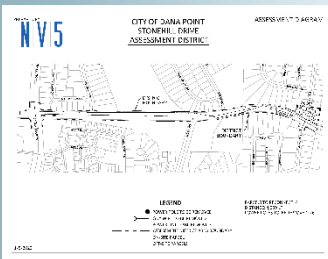
Option One – Fast Track

1. The process is **initiated** by an interested property owner, who acts as a liaison between the City, utility companies, and neighbors. The property owners who support undergrounding submit a letter to the City’s **Public Works Department** expressing their interest in forming an Underground Utility Assessment District. The letter should include a description of the proposed boundaries of the area to be undergrounded. Property owners are required to put down a \$10,000 deposit to cover Consultant costs.

2. Based on the **interest letter**, the City Consultant prepares a boundary map and submits it to the appropriate utility companies who review the map to ensure that the boundaries are logical and feasible. Once the district boundaries are accepted by all parties, the utility companies provide the City with a preliminary cost estimate for the design and construction of the undergrounding project.

3. The City Consultant then prepares a petition to be circulated by proponents to all affected property owners within the proposed district boundaries. The petition states the approximate amount that each property owner would pay if the property owners vote to form the district to accomplish the undergrounding project. In order for the process to continue, at least 60 percent of the property owners must sign and express support. This petition is a “show of support” and nonbinding. The City is neutral regarding City-owned parcels within the District.

4. Once the petition is certified by the Assessment Engineer, the City Engineer and the City Consultant will prepare a staff report requesting City Council approval to move forward. With Council approval, the Assessment Engineer will prepare an Engineer’s Report. This report documents the assessment that each property owner within the district would pay, should the district be approved. This report uses the preliminary estimated construction costs provided by the utility companies. If the district is formed, funds expended by the City on costs related to formation of the district will be recovered during the assessment process. If the district fails, the City’s funds will be lost.





5. The Engineer’s Report and Resolution of Intention are submitted to the City Council for approval and a public hearing is scheduled.

6. The Ballots are prepared with the assessment amount and sent to each property owner within the proposed district boundaries. Each property owner then votes for or against the formation of the district. Each vote is weighted or valued based upon the dollar value of each property owner’s proposed assessment.

7. All votes must be submitted to the City prior to the end of the scheduled public hearing. The district passes if the district received greater than 50% approval. **If the district passes, all property owners within the district will be responsible for the assessment amounts regardless of a property owner’s personal vote.**

Following approval by the property owners, the **detailed design** process begins. It usually involves the following steps:

- a. Base mapping
- b. Southern California Edison or San Diego Gas & Electric electrical design
- c. Telephone and cable design

The duration of each step varies depending on the number of underground districts in the queue, the size of the proposed district, and the complexity of the design. This phase could take more than two years to complete.

Once the project is fully designed, it will be bid with a contract awarded, and then constructed.

Option Two – Traditional Method

1. The process is **initiated** by an interested property owner, who acts as a liaison between the City, utility companies, and neighbors. The property owners who support undergrounding submit a letter to the City’s **Public Works Department** expressing their interest in forming an Underground Utility Assessment District. The letter should include a description of the proposed boundaries of the area to be undergrounded.

2. Based on the **interest letter**, the City Consultant prepares a boundary map and submits it to the appropriate utility companies who review the map to ensure that the boundaries are logical and feasible. Once the district boundaries are accepted by all parties, the utility companies provide the City with a preliminary cost estimate for the design and construction of the undergrounding project.

3. The City Consultant then prepares a petition to be circulated by proponents to all affected property owners within the proposed district boundaries. The petition states the approximate amount that each property owner would pay if





the property owners vote to form the district to accomplish the undergrounding project. In order for the process to continue, at least 60 percent of the property owners must sign and express support. This petition is a “show of support” and nonbinding. The City is neutral regarding City-owned parcels within the District.

4. Once the petition is certified by the Assessment Engineer, the City Engineer and the City Consultant will prepare a staff report requesting City Council approval for funds for design of the undergrounding project to be advanced from the City’s General Fund. If the district is formed, the advanced funds will be recovered during the assessment process. If the district fails, the funds will be lost.

5. The **design** process begins once the utility companies receive the design fee, which is the responsibility of the property owners. The process usually involves the following steps:

- a. Base mapping
- b. Southern California Edison or San Diego Gas & Electric electrical design
- c. Telephone and cable design

The duration of each step varies depending on the number of underground districts in the queue, the size of the proposed district, and the complexity of the design.

6. Once the design is complete and accepted by the City and utility companies, the utility companies provide a “guaranteed cost of construction.” The Assessment Engineer will use this guaranteed cost and all other costs incurred in the past and anticipated in the future to generate the Engineer’s Report. This report documents the assessment amount that each property owner within the district would be responsible for if the district is successful.

7. The completed design plans, Engineer’s Report, and Resolution of Intention are submitted to the City Council for approval and a public hearing is scheduled. An informal property owner meeting is held prior to the public hearing to explain the details of the proposed district.

8. Ballots are prepared with the assessment amount and sent to each property owner within the proposed district’s boundaries. Each owner votes for or against forming the district. Each vote is weighted based on the dollar value of each property owner’s proposed assessment.

9. All votes must be submitted to the City prior to the end of the scheduled public hearing. The district passes if the district received greater than 50% approval. **If the district passes, all property owners within the district will be responsible for the assessment amounts regardless of a property owner’s personal vote.**





Paying the Assessment and Final Steps

Regardless of whether a neighborhood chooses the standard or fast track method of assessment district formation, the property owners will have **two options to pay** for the assessment.

1. **30-Day Cash Payment Period:** Within 30 days after the close of the public hearing, the property owner has the option to pay the full or a portion of the assessment amount. The property owner will save approximately 8% on the portion of the assessment paid in cash. This 8% savings results from not selling bonds for the amount owed. Bonds will be sold for any unpaid portion of the assessment and a lien will be placed on the property until the bond is paid in full.
2. **Bond:** If the property owner elects to not pay during the 30-Day Cash Payment Period, bonds will be sold. Assessments will be placed on the property tax bill to be paid over a 20 to 25-year financing period. During that time, a lien will be placed on the property until the bond amount is paid in full. Bonds will incur a finance charge.

When construction of the main line underground infrastructure has been completed, all property owners will be notified that it is time to perform their private conversions.

Private conversions require property owners to hire a licensed electrician to connect the property's existing overhead connection to the underground infrastructure. The cost of the private conversion is **not covered** in the assessment amount. The assessment amount only covers work performed in the public right-of-way.

It is the property owner's responsibility to perform the conversion within the designated time frame. Delays caused by one property owner's private conversion, will cause delays to the whole district because overhead structures cannot be removed until all properties have completed their private conversions.

It is important to note that, from the initial letter to the last private conversion, the average process takes approximately seven years, depending on the size of district. The bond financing period information provided above is based on an average of past assessment districts and varies depending on current rates and the district's size.

For more information, please contact the City's Public Works Department at (949) 248-3554.

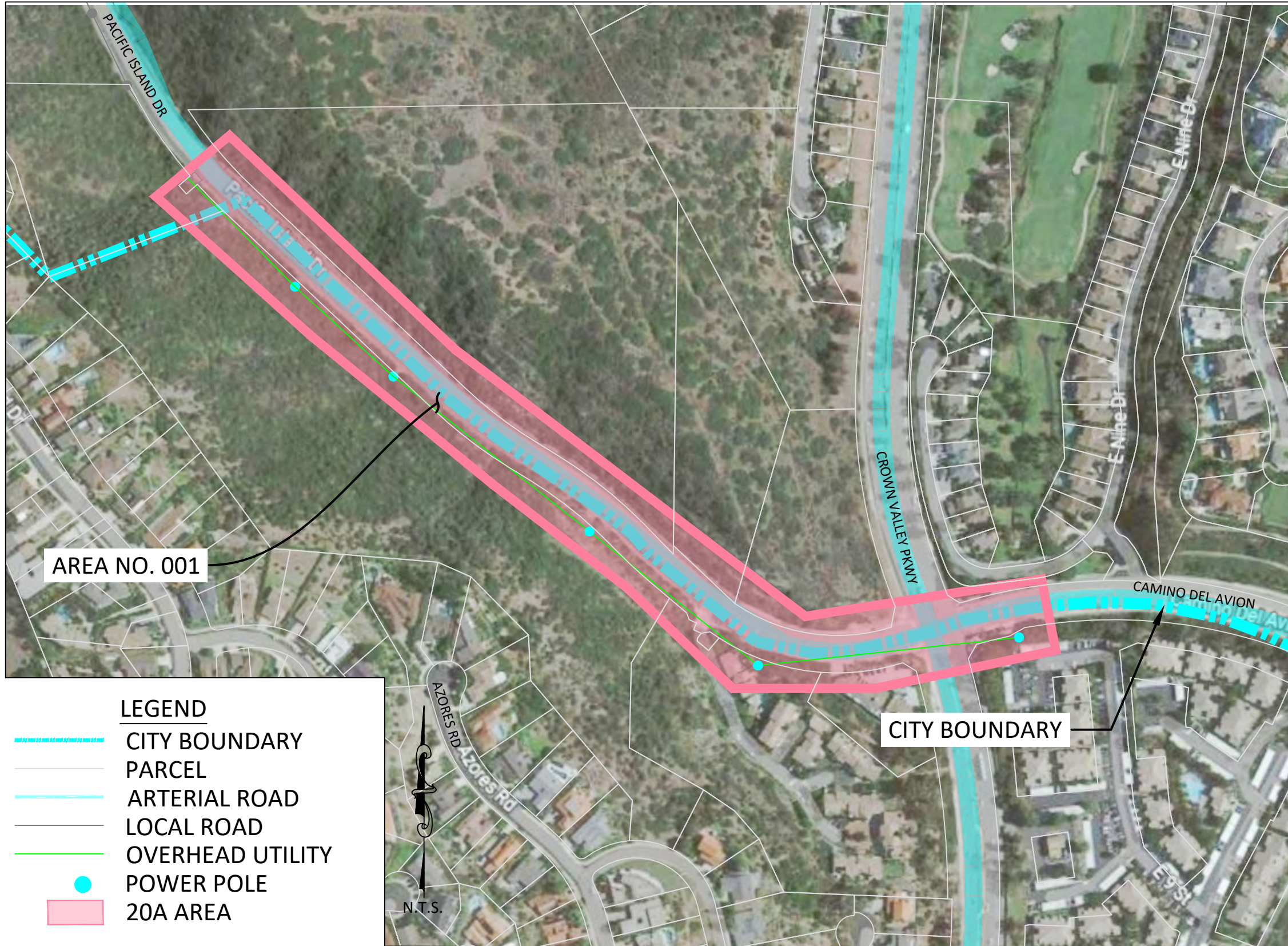




Appendix A – Rule 20A, 20B and 20C Detailed Maps



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: PACIFIC ISLAND AREA
 AREA NO: 001
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 2,333 LF
 POWER POLES TO BE REMOVED: 6
 UNDERGROUNDING COST: **\$4,924,730**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



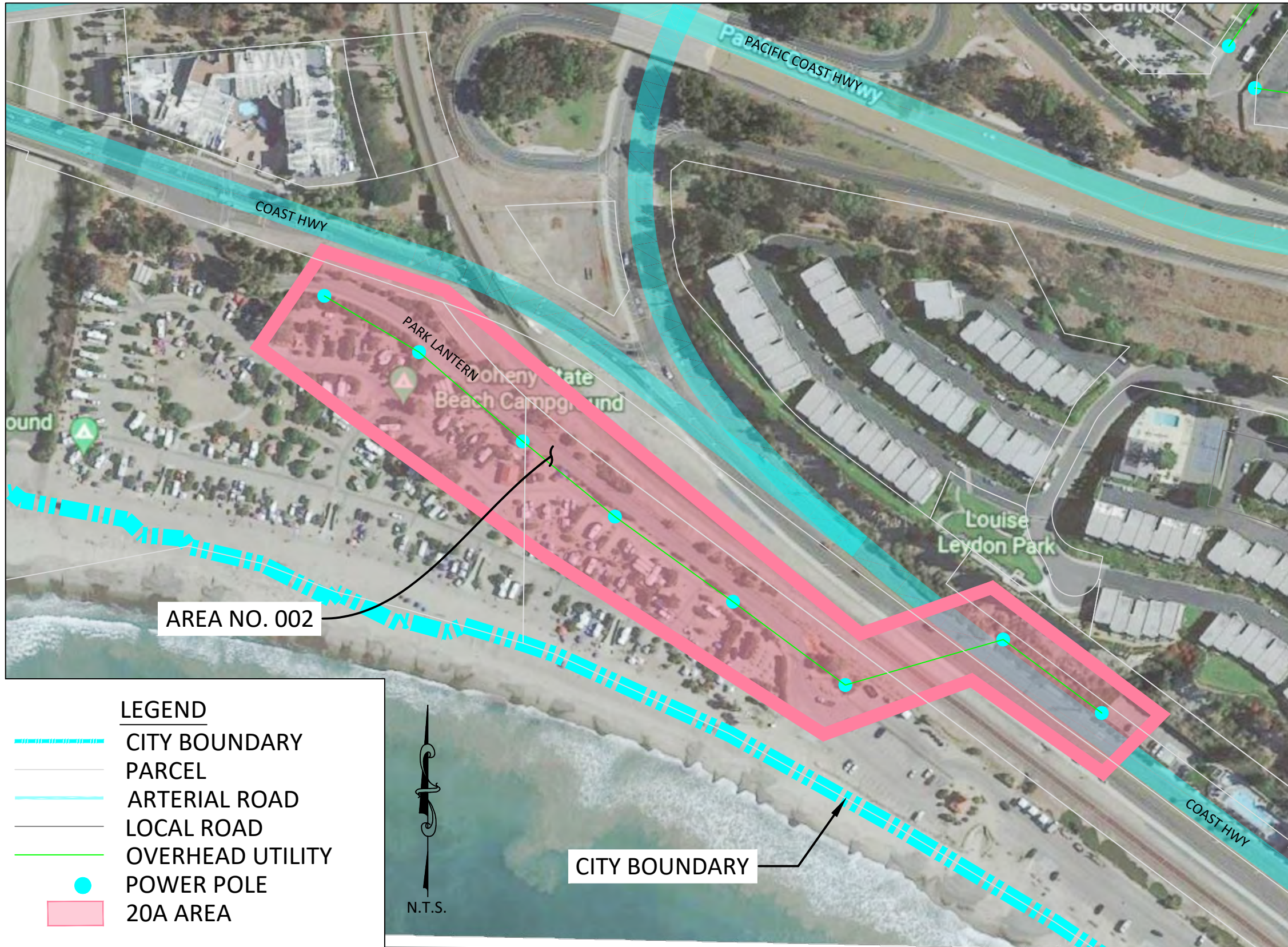
NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DOHENY BEACH AREA
 AREA NO: 002
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 1,503LF
 POWER POLES TO BE REMOVED: 8
 UNDERGROUNDING COST: **\$3,172,683**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



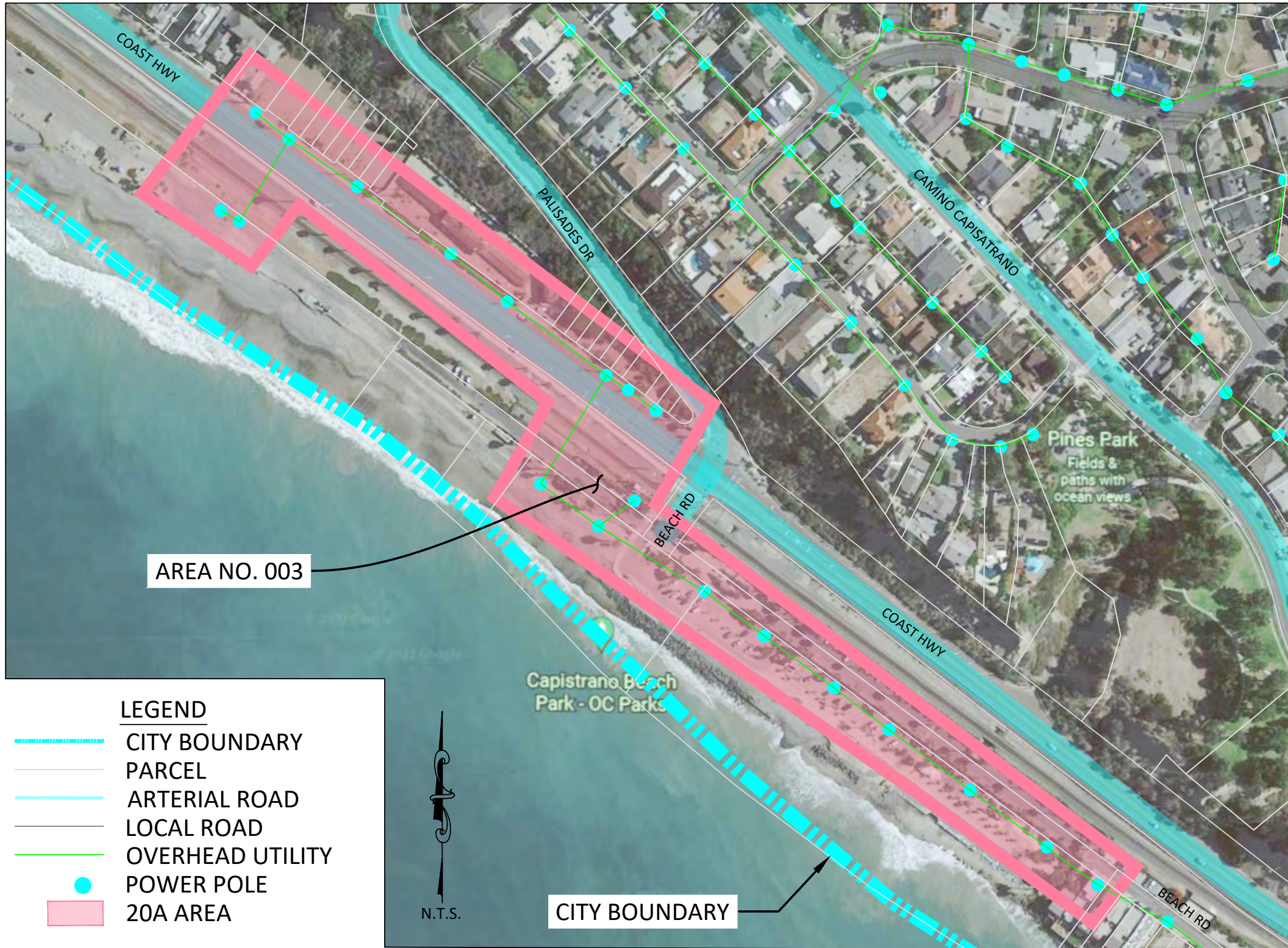
NV5, INC.

DATE:

09/07/2022










CITY OF DANA POINT



AREA NO. 003

CITY BOUNDARY

LEGEND

-  CITY BOUNDARY
-  PARCEL
-  ARTERIAL ROAD
-  LOCAL ROAD
-  OVERHEAD UTILITY
-  POWER POLE
-  20A AREA



VICINITY MAP

AREA INFORMATION:

NAME: COAST HWY AREA
 AREA NO: 003
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 2,547 LF
 POWER POLES TO BE REMOVED: 20
 UNDERGROUNDING COST: **\$5,376,462**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

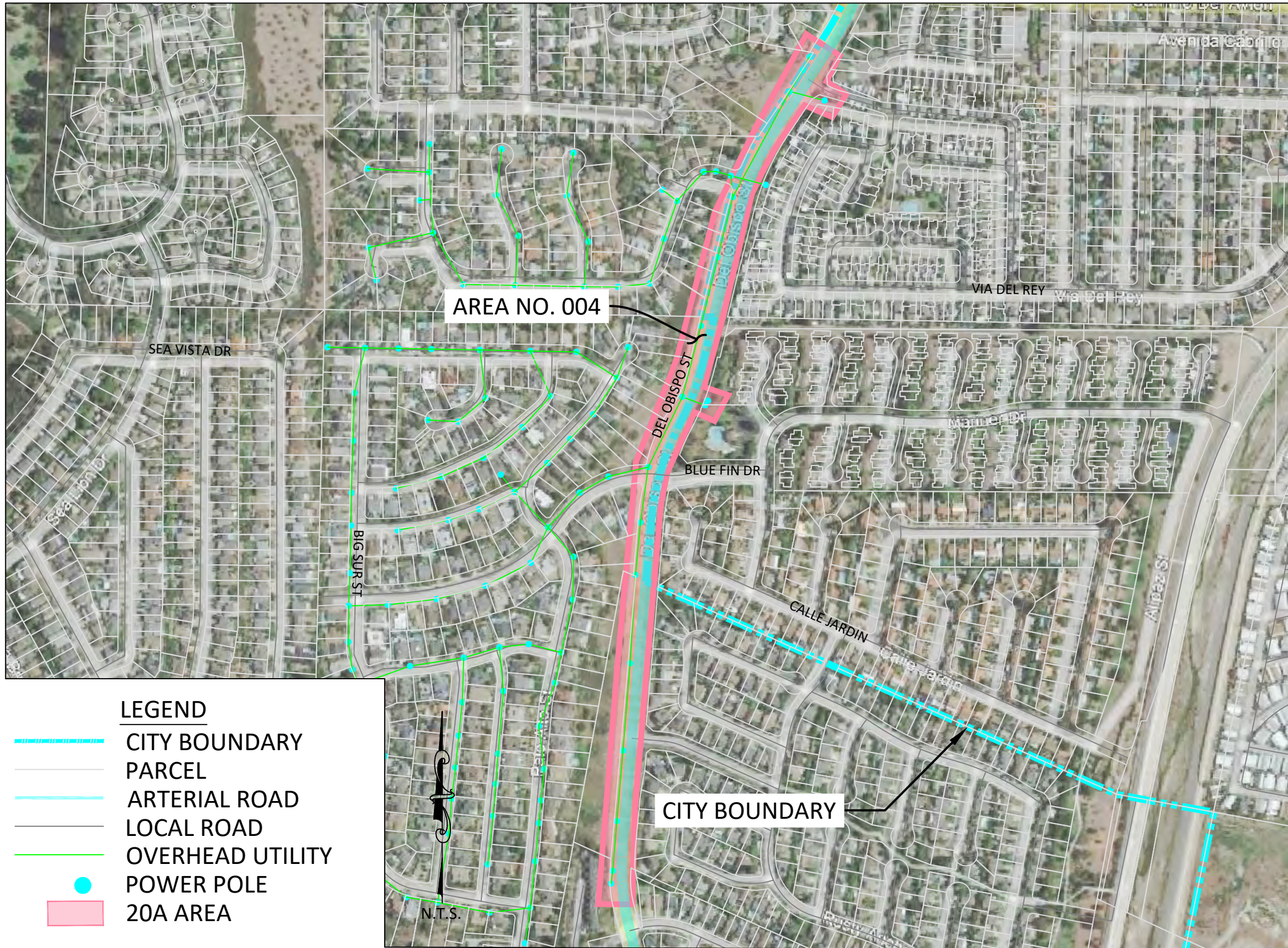









DATE:

09/07/2022



CITY OF DANA POINT



- LEGEND**
-  CITY BOUNDARY
 -  PARCEL
 -  ARTERIAL ROAD
 -  LOCAL ROAD
 -  OVERHEAD UTILITY
 -  POWER POLE
 -  20A AREA



VICINITY MAP

AREA INFORMATION:

NAME: DEL OBISPO STREET AREA
 AREA NO: 004
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 3,574 LF
 POWER POLES TO BE REMOVED: 15
 UNDERGROUNDING COST: **\$7,544,357**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: CAPISTRANO BEACHFRONT AREA
 AREA NO: 005
 DESIGNATION: RULE 20B
 PARCELS: 215
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 8,265 LF
 POWER POLES TO BE REMOVED: 59
 UNDERGROUNDING COST: **\$17,446,589**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



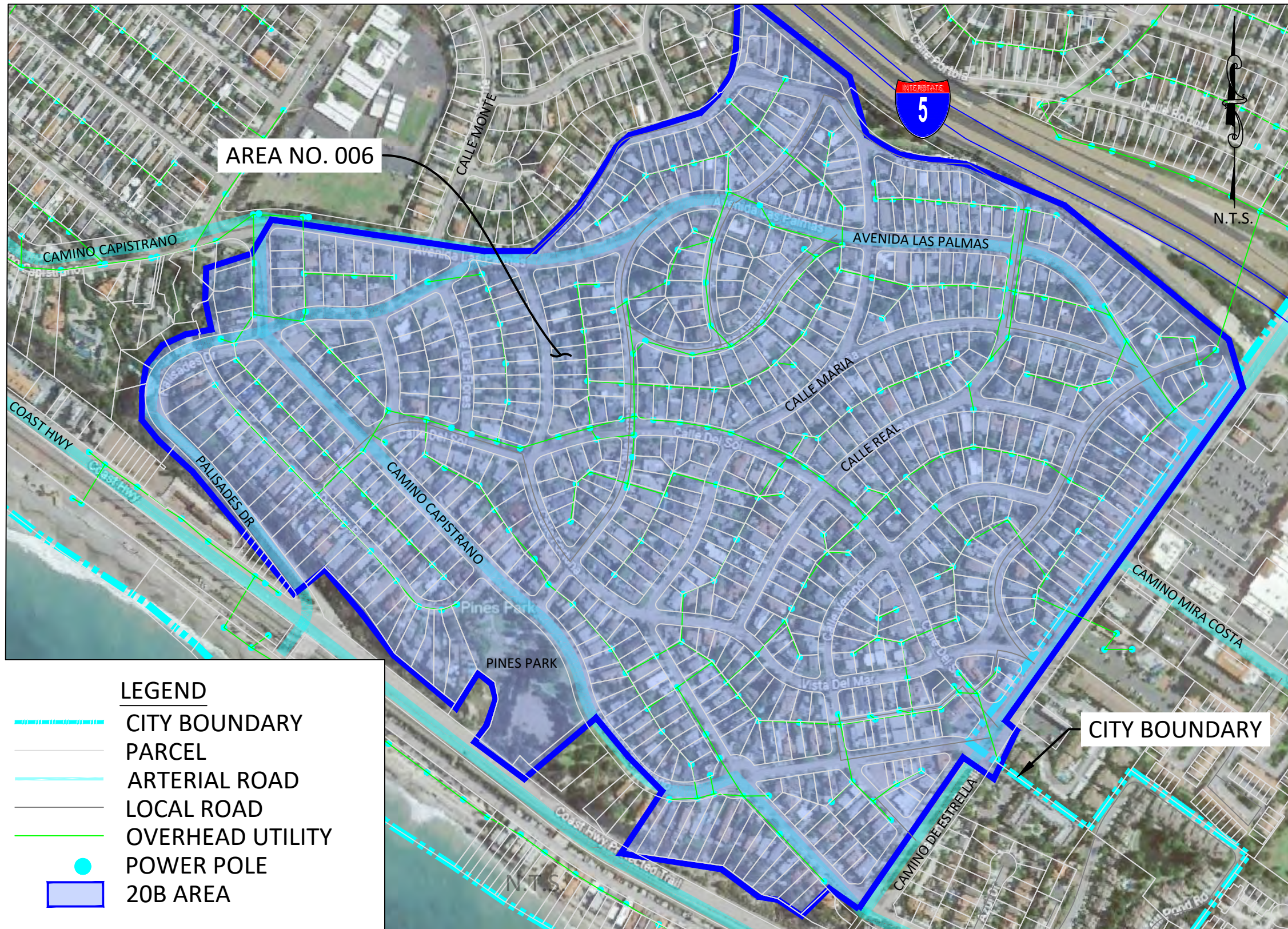
NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: PINES AREA
 AREA NO: 006
 DESIGNATION: RULE 20B
 PARCELS: 728
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 33,585 LF
 POWER POLES TO BE REMOVED: 257
 UNDERGROUNDING COST: **\$70,894,577**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



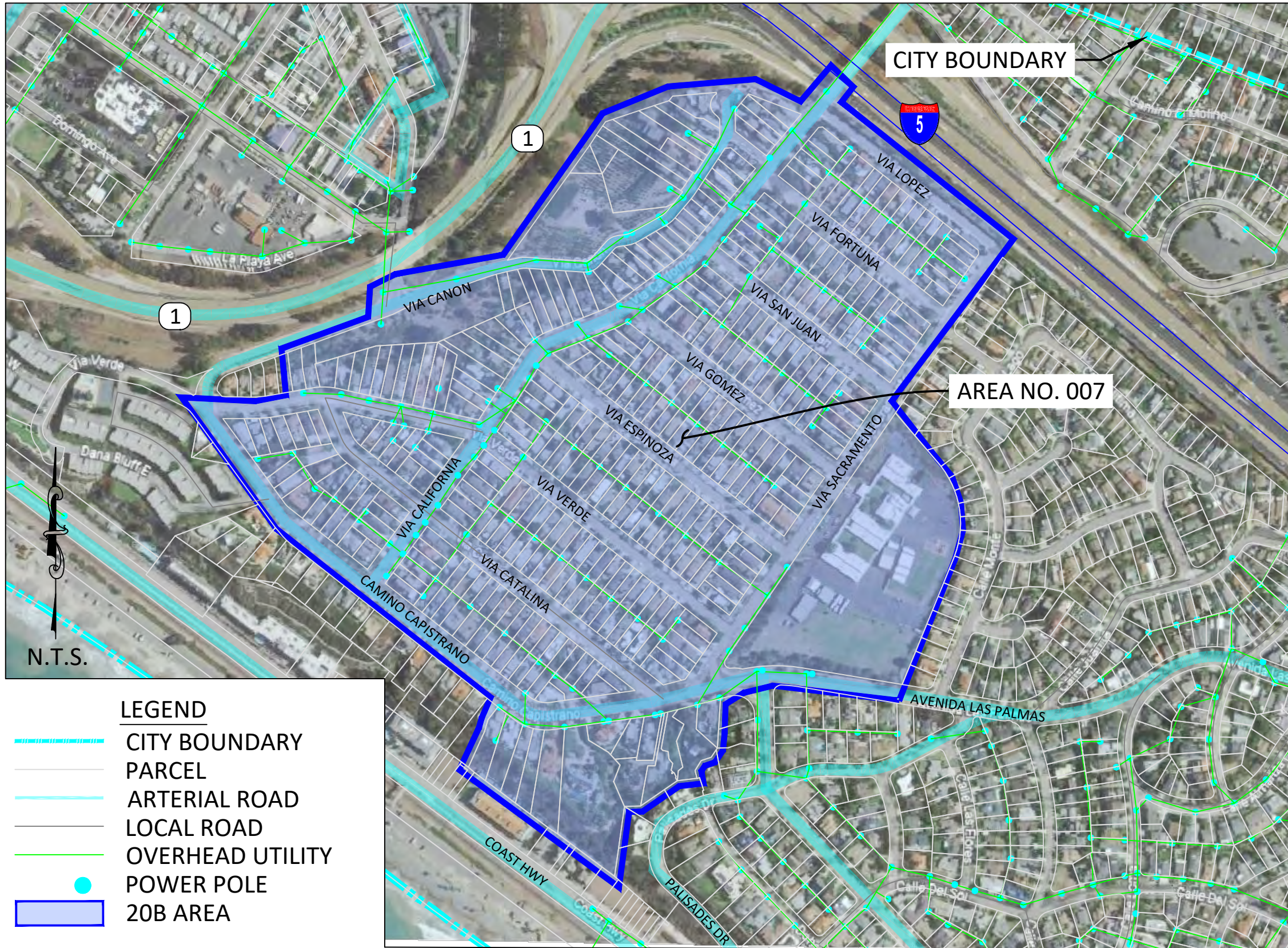
NV5, INC.

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09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: PALISADES AREA
 AREA NO: 007
 DESIGNATION: RULE 20B
 PARCELS: 418
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 17122 LF
 POWER POLES TO BE REMOVED: 144
 UNDERGROUNDING COST: **\$36,142,830**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

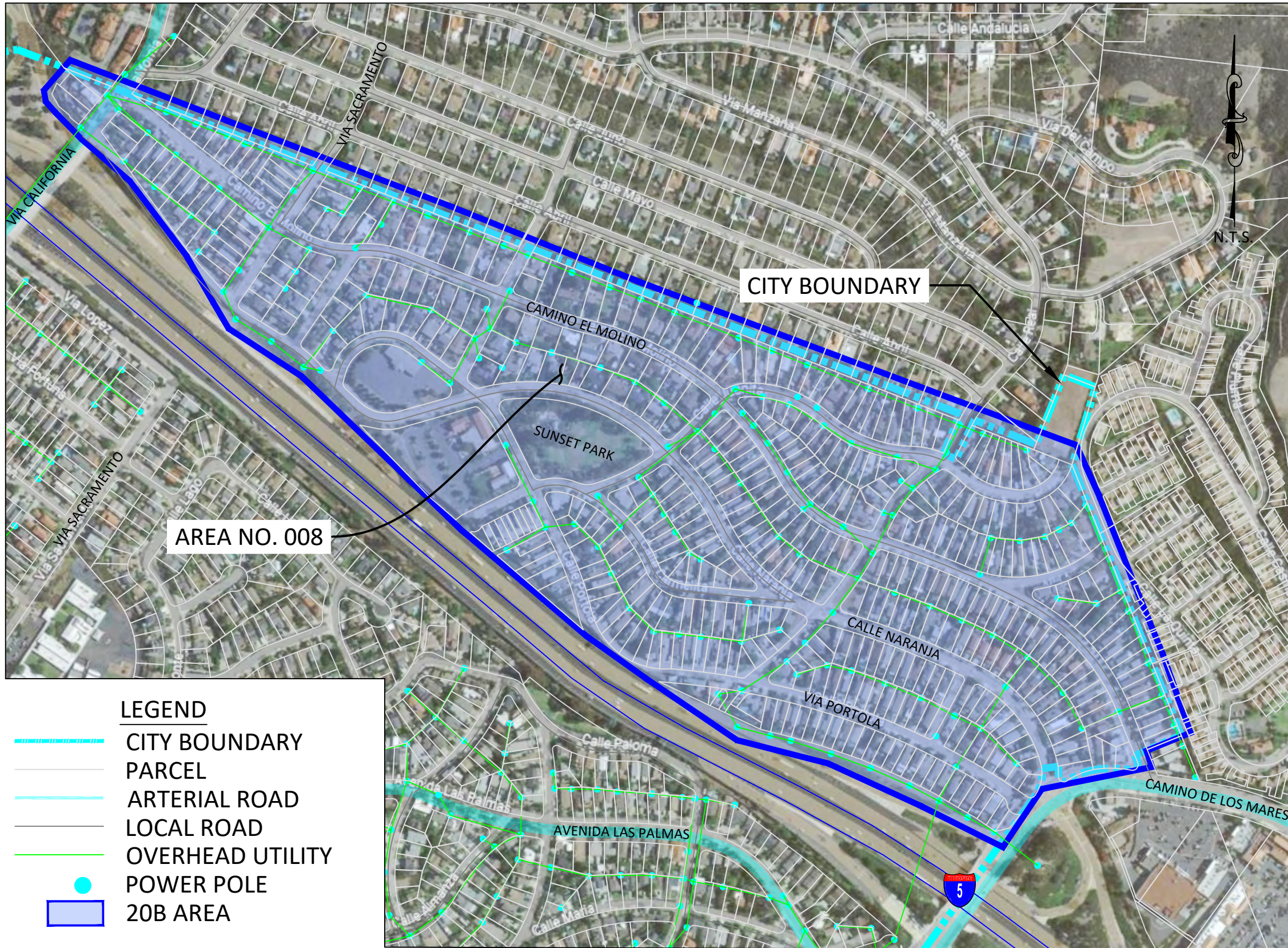


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09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: SUNSET AREA
 AREA NO: 008
 DESIGNATION: RULE 20B
 PARCELS: 479
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 23,557 LF
 POWER POLES TO BE REMOVED: 164
 UNDERGROUNDING COST: **\$49,726,471**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

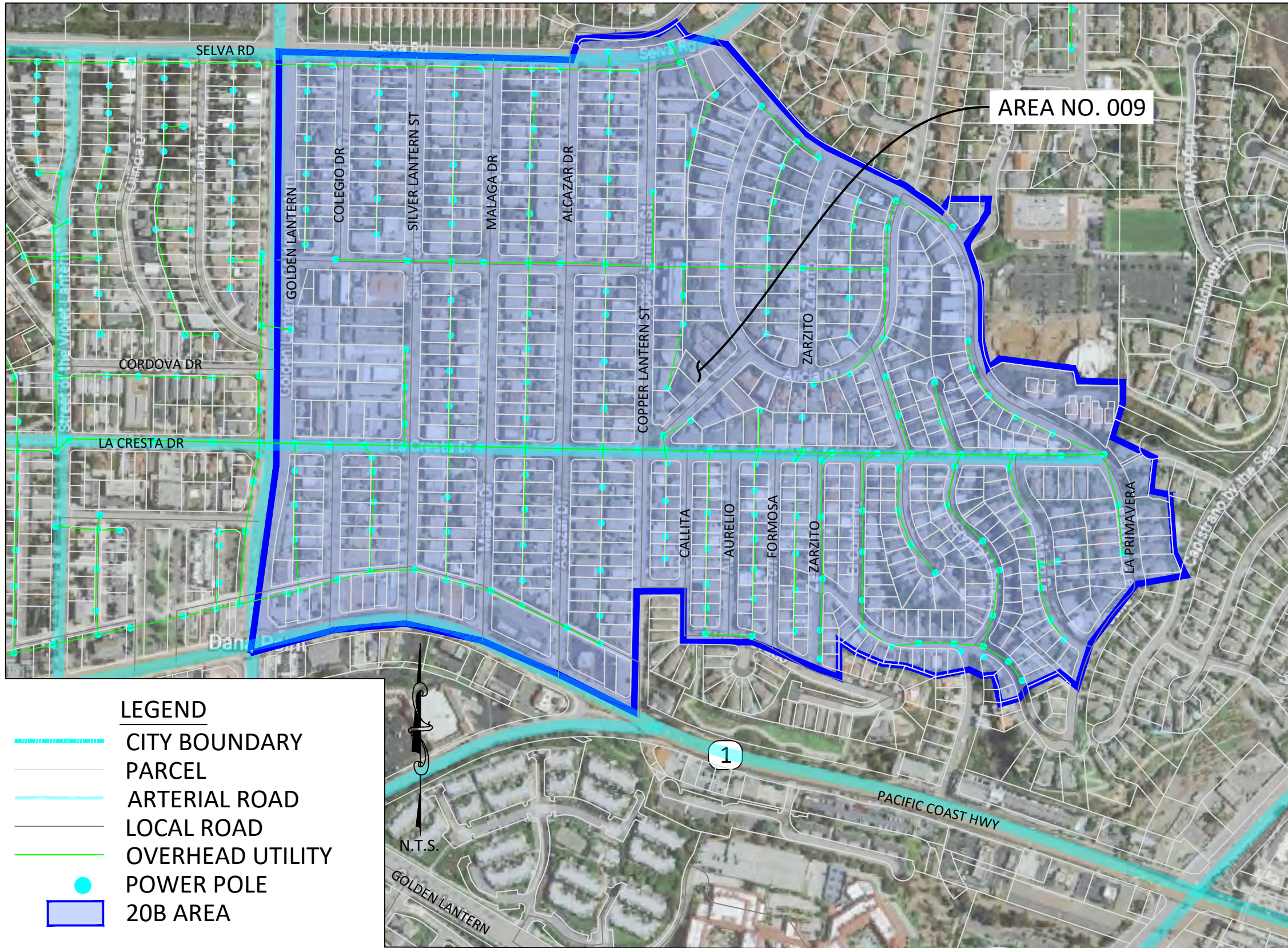
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LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20B AREA



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: EAST GOLDEN LANTERN AREA
 AREA NO: 009
 DESIGNATION: RULE 20B
 PARCELS: 815
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 26,952 LF
 POWER POLES TO BE REMOVED: 206
 UNDERGROUNDING COST: **\$56,892,977**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

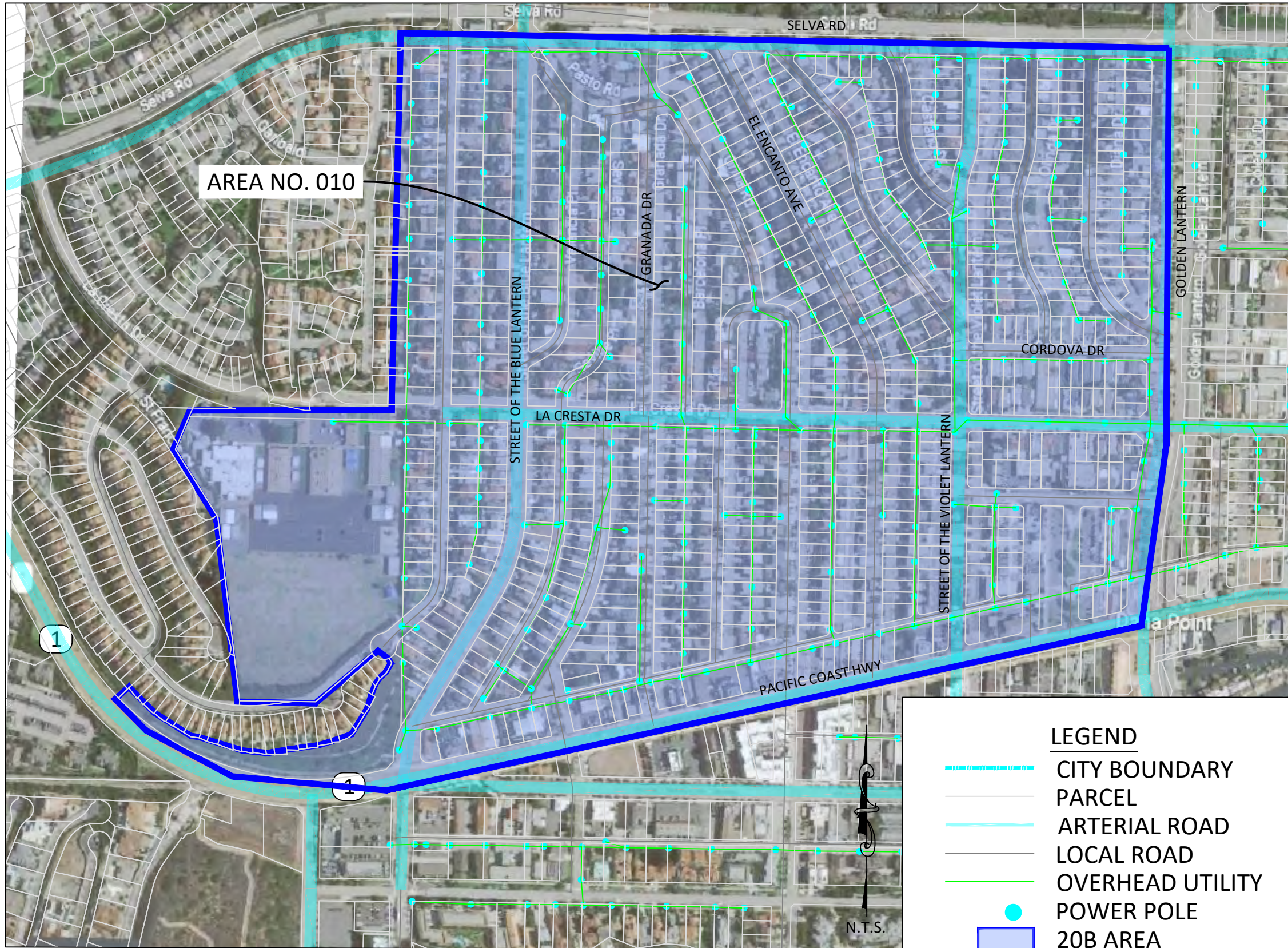
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LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20B AREA



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: WEST GOLDEN LANTERN AREA
 AREA NO: 010
 DESIGNATION: RULE 20B
 PARCELS: 782
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 37,486 LF
 POWER POLES TO BE REMOVED: 265
 UNDERGROUNDING COST: **\$79,129,197**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

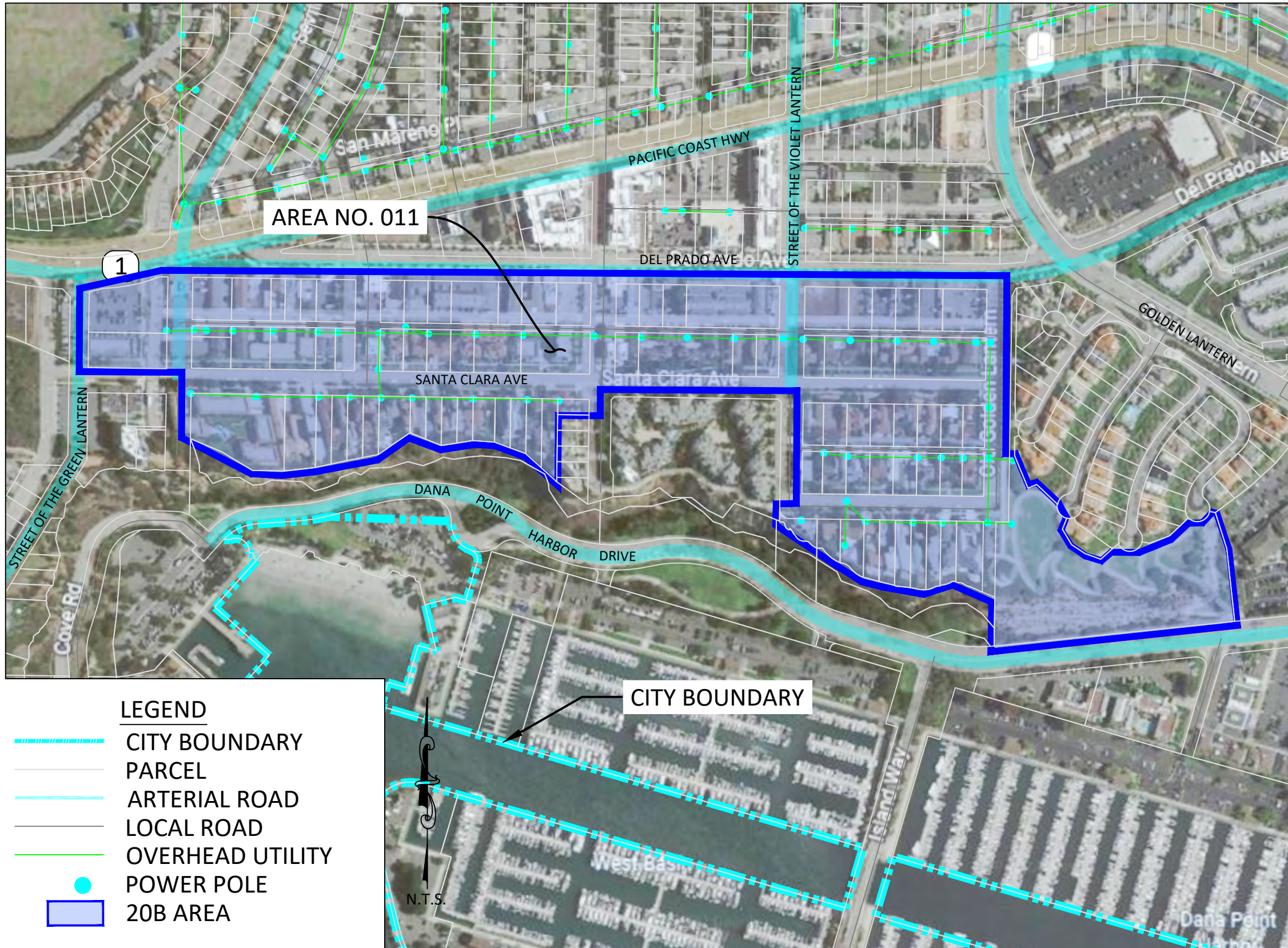


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09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DANA COVE AREA
 AREA NO: 011
 DESIGNATION: RULE 20B
 PARCELS: 89
 TOTAL LENGTH OF UNDERGROUND CONVERSION: 5,962 LF
 POWER POLES TO BE REMOVED: 98
 UNDERGROUNDING COST: **\$12,585,186**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



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CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: BIG SUR AREA
 AREA NO: 012
 DESIGNATION: RULE 20B
 PARCELS: 65
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 3,366 LF
 POWER POLES TO BE REMOVED: 18
 UNDERGROUNDING COST: **\$7,105,289**

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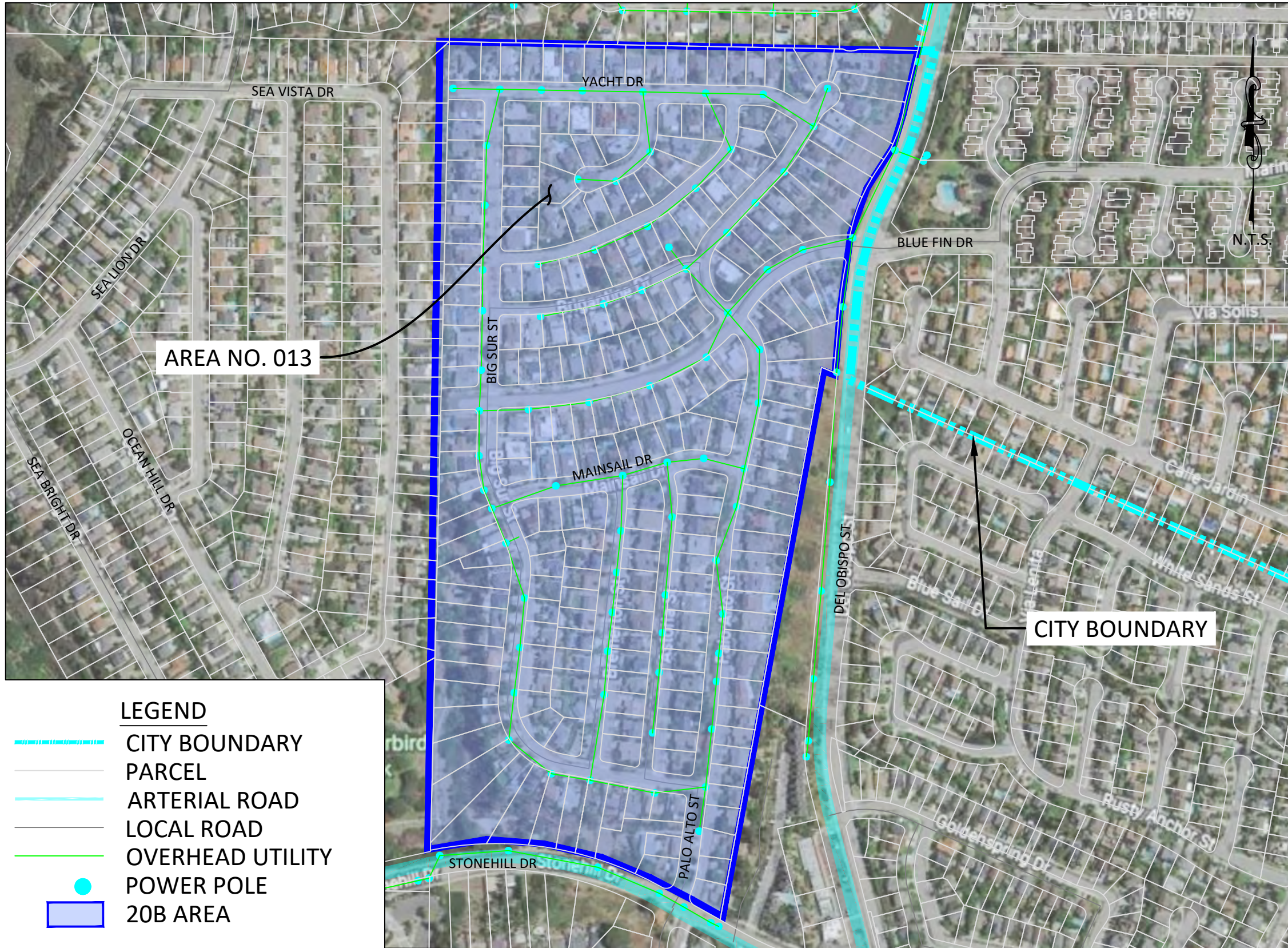
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LEGEND

-  CITY BOUNDARY
-  PARCEL
-  ARTERIAL ROAD
-  LOCAL ROAD
-  OVERHEAD UTILITY
-  POWER POLE
-  20B AREA



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: CAPISTRANO BEACHFRONT AREA
 AREA NO: 013
 DESIGNATION: RULE 20B
 PARCELS: 240
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 12,246 LF
 POWER POLES TO BE REMOVED: 74
 UNDERGROUNDING COST: **\$25,850,081**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



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DATE:

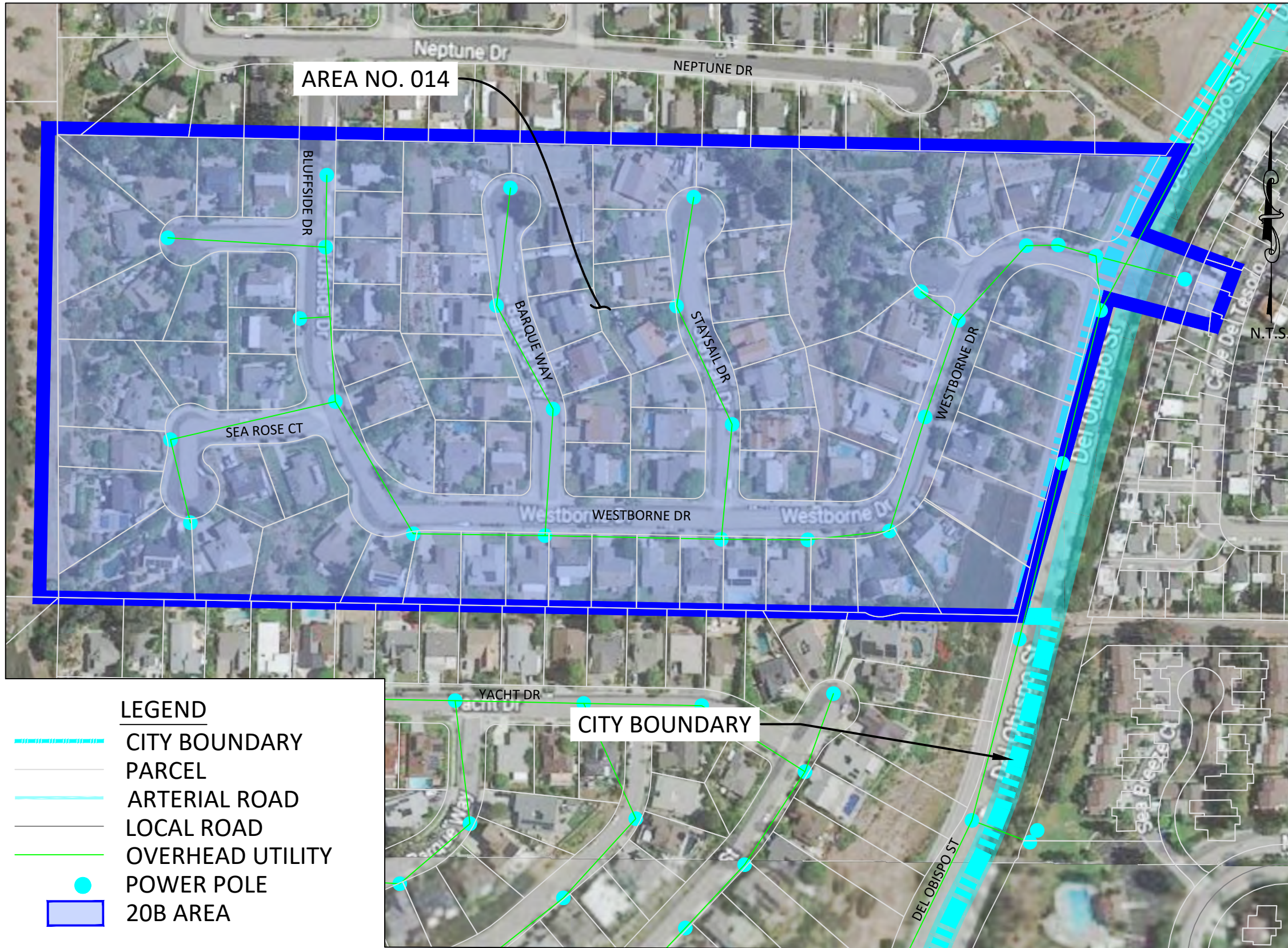
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LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20B AREA



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: WESTBORNE AREA
 AREA NO: 014
 DESIGNATION: RULE 20B
 PARCELS: 81
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 3,955 LF
 POWER POLES TO BE REMOVED: 25
 UNDERGROUNDING COST: **\$8,348,610**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022

- LEGEND**
- CITY BOUNDARY
 - PARCEL
 - ARTERIAL ROAD
 - LOCAL ROAD
 - OVERHEAD UTILITY
 - POWER POLE
 - 20B AREA

CITY BOUNDARY



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DEL GADO AREA
 AREA NO: 015
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 398 LF
 POWER POLES TO BE REMOVED: 4
 UNDERGROUNDING COST: **\$840,138**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

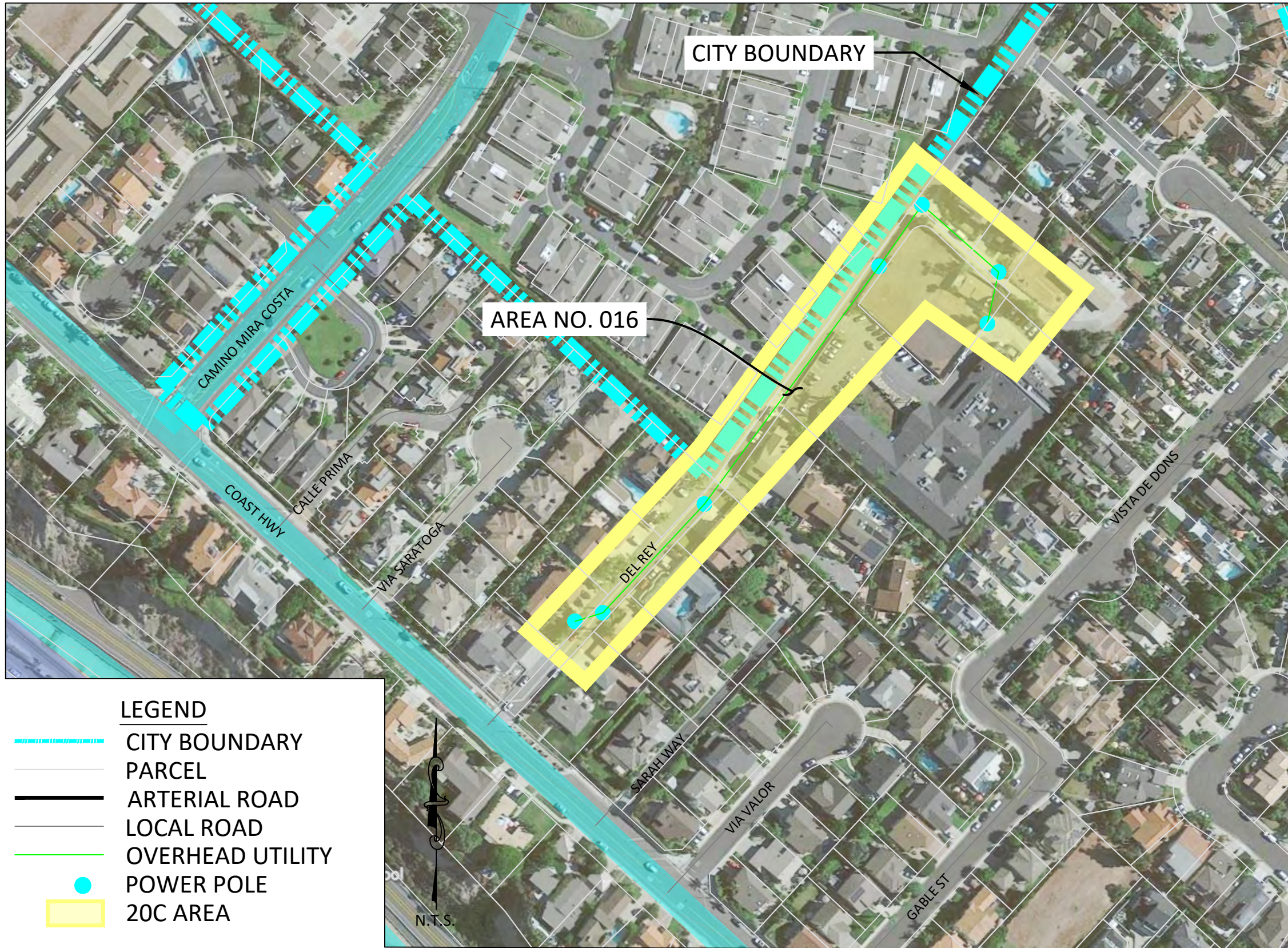


DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DEL REY AREA
 AREA NO: 016
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 989 LF
 POWER POLES TO BE REMOVED: 7
 UNDERGROUNDING COST: **\$2,087,680**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

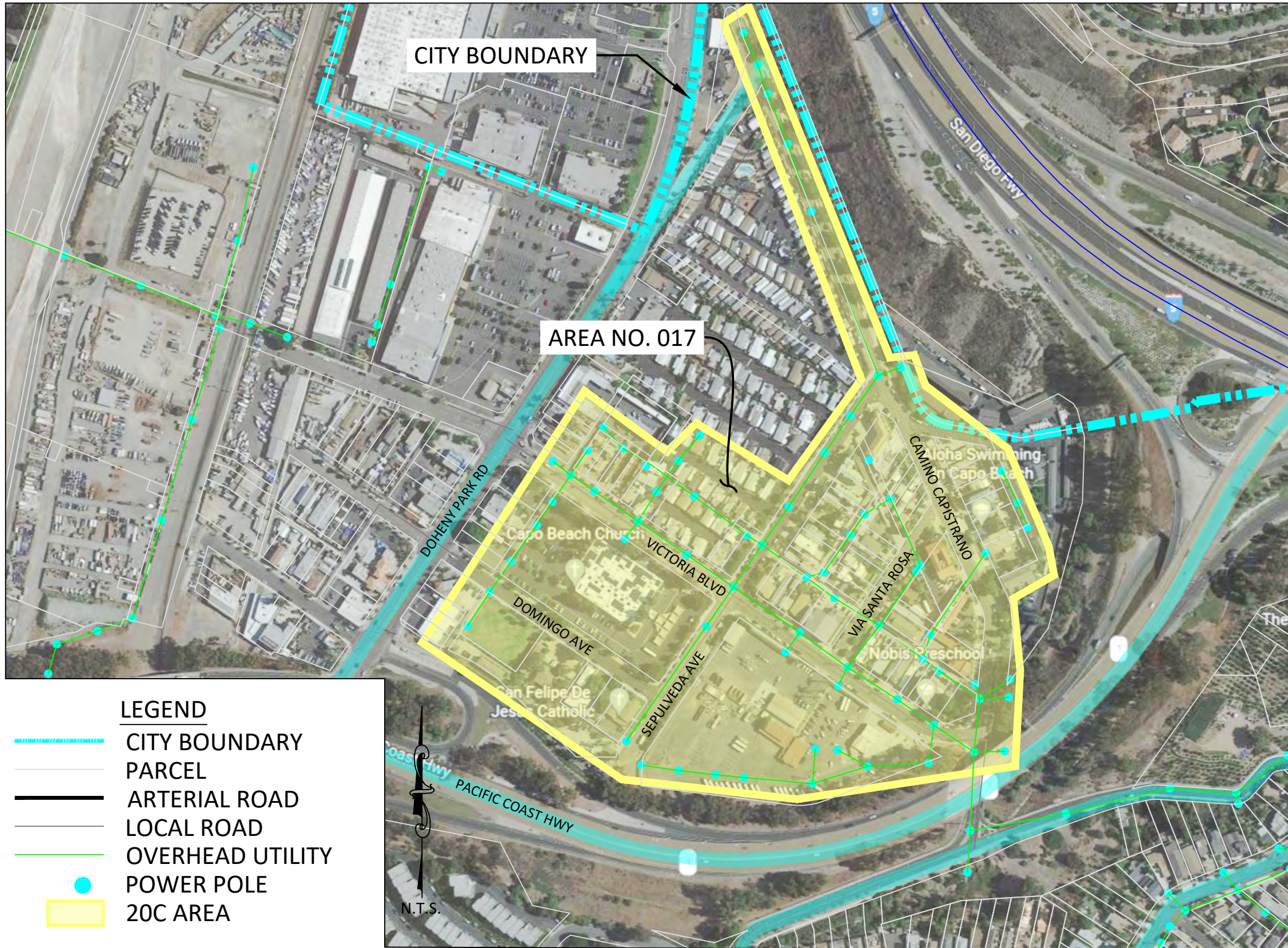


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09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: CAPO BEACH AREA
 AREA NO: 017
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 9,242 LF
 POWER POLES TO BE REMOVED: 72
 UNDERGROUNDING COST: **\$19,508,938**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



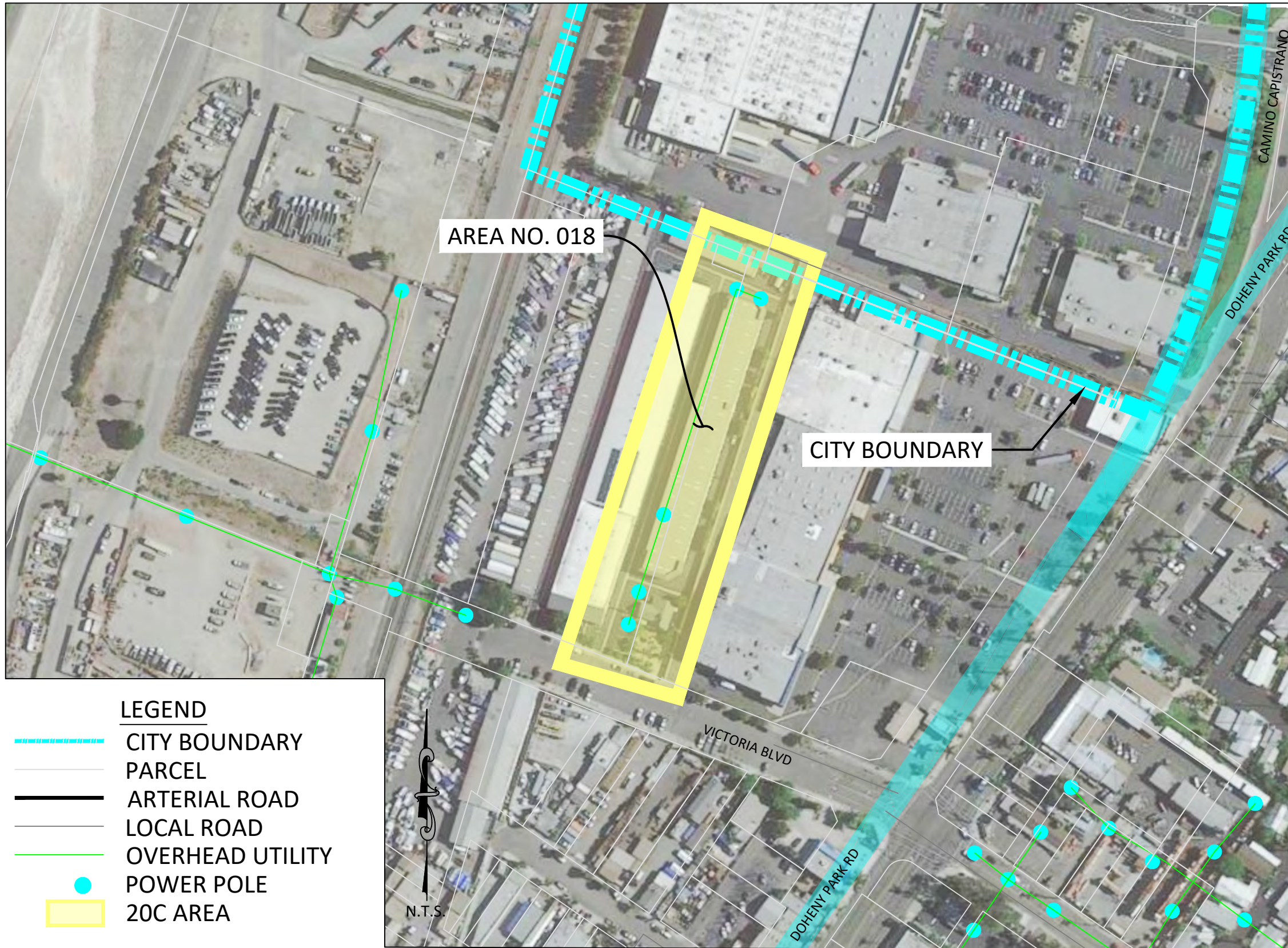
NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: CAPISTRANO VALLEY AREA
 AREA NO: 018
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 553 LF
 POWER POLES TO BE REMOVED: 5
 UNDERGROUNDING COST: \$1,167,328

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



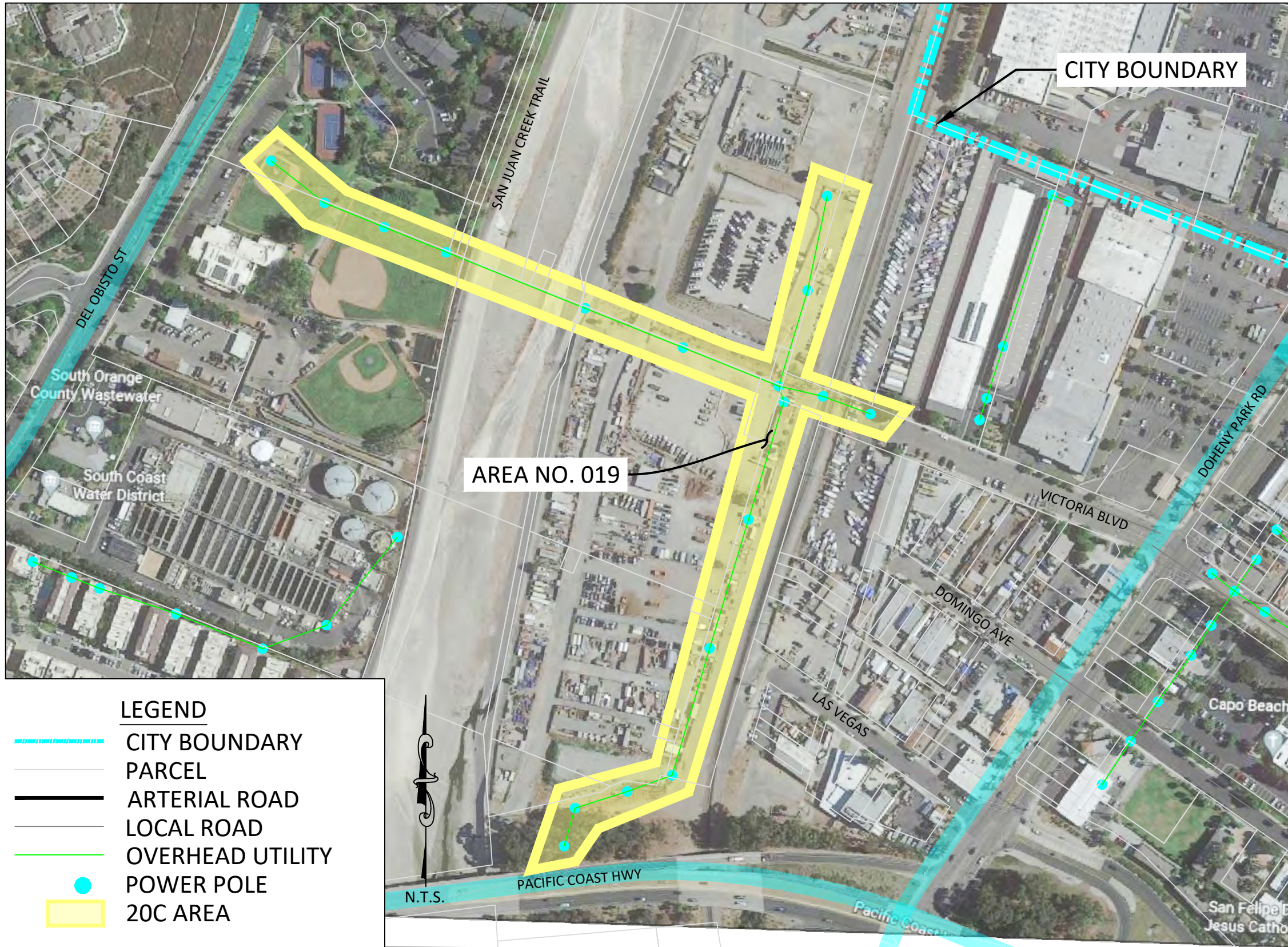
NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DEL OBISTO AREA
 AREA NO: 019
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 3,049 LF
 POWER POLES TO BE REMOVED: 18
 UNDERGROUNDING COST: **\$6,436,134**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: SCWD SANITARY AREA
 AREA NO: 020
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 931 LF
 POWER POLES TO BE REMOVED: 7
 UNDERGROUNDING COST: **\$1,965,248**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022

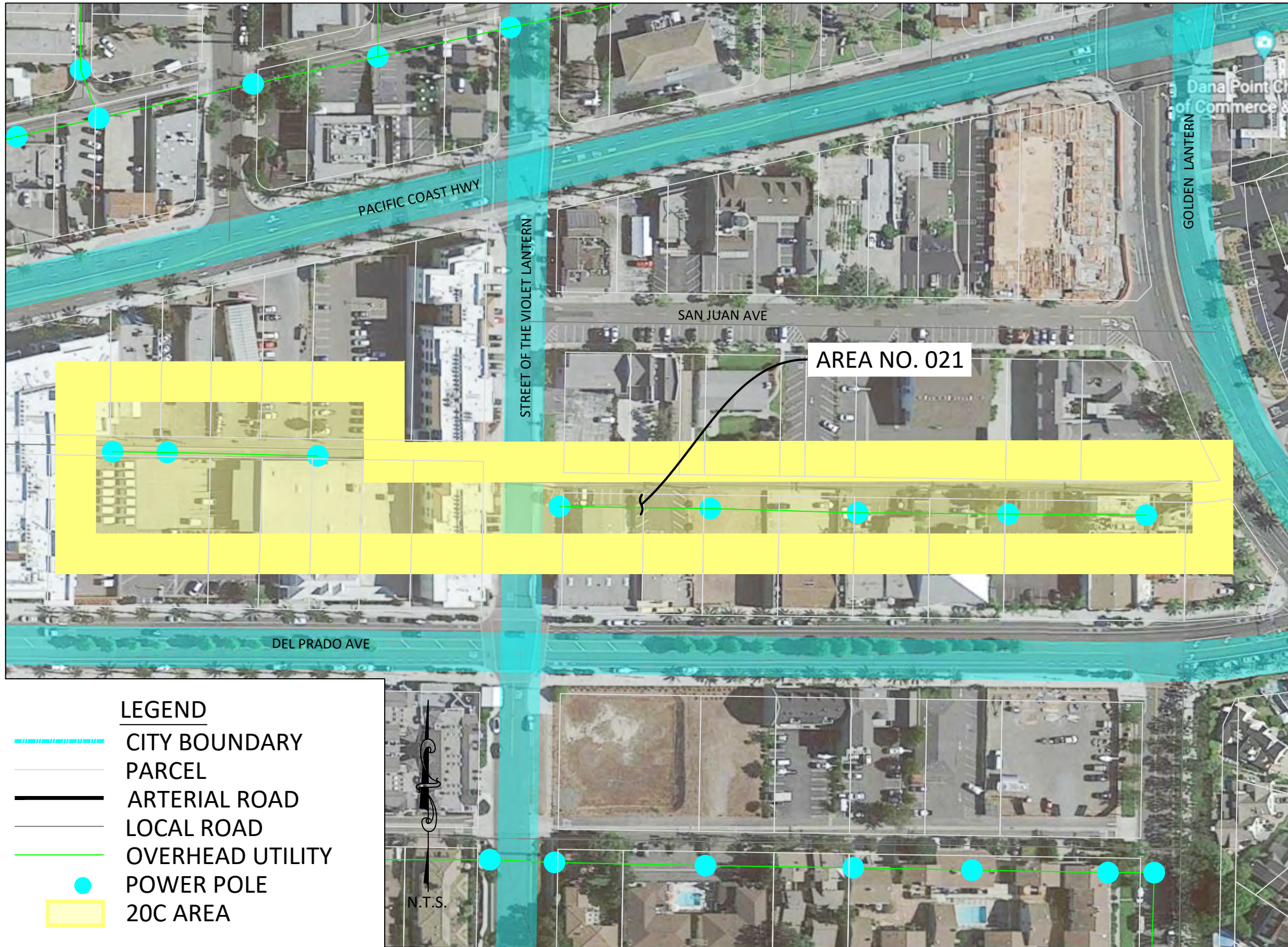
LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20C AREA

N.T.S.



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: NORTH DEL PRADO AREA
 AREA NO: 021
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 789 LF
 POWER POLES TO BE REMOVED: 8
 UNDERGROUNDING COST: **\$1,665,500**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: SEA CANYON PARK AREA
 AREA NO: 022
 DESIGNATION: RULE 20C
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 1,238 LF
 POWER POLES TO BE REMOVED: 3
 UNDERGROUNDING COST: **\$2,613,294**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



DATE:

09/07/2022



Appendix B – Surcharge



Receive free daily summaries of new opinions from the **California Courts of Appeal.**

Mahon v. City of San Diego

Justia Opinion Summary

Proposition 218, the Right to Vote on Taxes Act, generally required local governments obtain voter approval prior to imposing taxes. Plaintiffs Jess Willard Mahon, Jr. and Allan Randall brought this certified class action against the City of San Diego (City) claiming that the City violated Proposition 218 by imposing an illegal tax to fund the City's undergrounding program. Specifically, plaintiffs contended the City violated Proposition 218 through the adoption of an ordinance that amended a franchise agreement between the City and the San Diego Gas & Electric Company (SDG&E). The ordinance, together with a related memorandum of understanding, further specifies that part of the money to fund the undergrounding budget will be collected by SDG&E through a 3.53 percent surcharge on ratepayers in the City that will be remitted to the City for use on undergrounding (Undergrounding Surcharge). Plaintiffs claim that the surcharge is a tax. Plaintiffs further claim that the surcharge violates Proposition 218 because it was never approved by the electorate. Plaintiffs note that the City has imposed more than 200 million dollars in charges pursuant to the Undergrounding Surcharge during the class period. Through this action, plaintiffs seek a refund of those amounts, among other forms of relief. The City moved for summary judgment, which the trial court granted on two grounds: (1) the Undergrounding Surcharge constituted compensation for franchise rights and thus was not a tax; alternatively, (2) the Undergrounding Surcharge was a valid regulatory fee and not a tax. After review, the Court of Appeal concluded the trial court properly granted the City's motion for

summary on the ground that the Undergrounding Surcharge was compensation validly given in exchange for franchise rights and thus, was not a tax subject to voter approval.

Collapse Summary

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JESS WILLARD MAHON, JR., et al.,

Plaintiffs and Appellants,

v.

CITY OF SAN DIEGO,

Defendant and Respondent.

D074877

(Super. Ct. No. 37-2015-00014540
CU-MC-CTL)

APPEAL from a judgment of the Superior Court of San Diego County,
Judith F. Hayes, Judge. Affirmed.

Krause Kalfayan Benink & Slavens, Vincent D. Slavens, Eric J. Benink;
Huskinson Brown & Heidenreich, Paul E. Heidenreich and David W.T. Brown for
Plaintiffs and Appellants.

Mara W. Elliott, City Attorney; George F. Schaefer, Assistant City Attorney; s

FRANK W. EMMETT, City Attorney, GEORGE F. SCHMIDT, Assistant City Attorney, &

Meghan Ashley Wharton, Deputy City Attorney, for Defendant and Respondent.

**MEMORANDUM OF UNDERSTANDING
BETWEEN SAN DIEGO GAS & ELECTRIC COMPANY AND
THE CITY OF SAN DIEGO REGARDING IMPLEMENTATION OF SURCHARGE
UNDERGROUNDING PROGRAM**

THIS Memorandum of Understanding [MOU] is made and entered into between the City of San Diego, a municipal corporation [City], and San Diego Gas & Electric Company, a California corporation [SDG&E], [collectively, the “Parties”] regarding procedures for the implementation and administration of the surcharge-funded utilities undergrounding program in the City of San Diego.

WHEREAS, the City granted SDG&E a franchise to transmit and distribute electricity effective January 17, 1971 for a period of fifty years (Ordinance No. O-10466, adopted December 17, 1970) [Electric Franchise]; and

WHEREAS, the Parties executed the “Memorandum of Understanding Between San Diego Gas & Electric Company and the City of San Diego Regarding Implementation of Franchise of Underground Obligation” dated December 11, 2001 [Franchise Fee MOU], which, *inter alia*, established the percentage of the “Additional Electric Franchise Fee Surcharge” revenues (as that term is defined in the Franchise Fee MOU) that would be used to fund undergrounding expenses; and

WHEREAS, the Franchise Fee MOU provides that SDG&E shall pay all surcharge revenues directly to the City with the quarterly remittance of Franchise Fees and that the City will use 3.53% of the Additional Electric Franchise Fee Surcharge revenues [Surcharge Revenues] (as that term is defined in the Franchise Fee MOU) to fund expenses directly and exclusively related to replacing existing infrastructure related to electric undergrounding projects including, but not limited to, design, engineering, construction, City and SDG&E construction management, repaving streets, lateral connection to ratepayers and street lights;

WHEREAS, the Parties wish to modify the current procedure for implementing and administering surcharge-funded undergrounding projects;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

Section 1. The City shall direct SDG&E to perform undergrounding work by issuing a notice of work authorization [Notice] on a quarterly basis, specifying the total maximum compensation for which the City shall remit to SDG&E for the stated quarter for SDG&E undergrounding expenses as provided for in the Franchise Fee MOU.

Section 2. In accordance with the Franchise Fee MOU, the City shall use all Surcharge Revenues directly and exclusively towards replacing existing infrastructure related to

electric undergrounding projects and shall issue the Notice after taking into account all other required non-SDG&E costs, the most recent quarterly SDG&E revenue remittance, any previous and unused or carryover revenues, and after consultation with SDG&E.

Section 3. SDG&E shall invoice the City for the work performed pursuant to the Notice and agrees not to invoice the City in the specified quarter for an amount that exceeds the amount authorized by the Notice.

Section 4. This MOU addresses only the procedure by which the City authorizes undergrounding work and the process by which SDG&E will be paid, and does not affect or change other aspects of the program for undergrounding utilities in the City of San Diego, which are addressed in the Franchise Fee MOU.

IN WITNESS WHEREOF, this Memorandum of Understanding is executed by the City of San Diego, acting by and through its Chief Deputy of Operations for Public Works, pursuant to the Mayor's delegation of authority in San Diego Municipal Code section 22.3223 authorizing such execution, and by SDG&E.

SAN DIEGO GAS & ELECTRIC COMPANY

Dated: _____

By: _____
[Name]
[Title]

Approved as to form and legality:

Dated: _____

By: _____
[Name]
[Title]

THE CITY OF SAN DIEGO

Dated: _____

By: _____
Richard Haas
Chief Deputy of Operations, Public Works

Approved as to form and legality:
MICHAEL J. AGUIRRE, City Attorney

Dated: _____

By: _____
Jeremy Jung
Deputy City Attorney

Signed Copy



San Diego Gas & Electric

J. Steve Rahon
Director
Tariffs & Regulatory Accounts
8315 Century Park Ct.
San Diego, CA 92123-1550

Tel: 858.654.1773
Fax: 858.654.1788
srahon@SemptraUtilities.com

May 14, 2002

PUC 110
PUC 120

ADVICE LETTER 1407-E/1313-G
(U 902-M)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: INCREASE TO SAN DIEGO ELECTRIC & GAS FRANCHISE FEE DIFFERENTIALS

PURPOSE

San Diego Gas & Electric Company ("SDG&E") hereby requests approval from the California Public Utilities Commission ("Commission") to fully recover from its electric customers in the City of San Diego ("City") an increase in electric franchise fees payable to the City and to fully recover from its gas customers in the City an increase in gas franchise fees payable to the City. SDG&E proposes to recover the electric amount by increasing its existing 1.9% franchise fee differential surcharge line item on bills for all electric customers in the City to a 5.78% surcharge, and SDG&E proposes to recover the gas amount by increasing its existing 1.0% franchise fee differential surcharge line item on bills for all gas customers in the City to a 1.03% surcharge. These percentages are calculated assuming the Commission no later than November 1, 2002 approves this Advice Letter. Any delay beyond that date may cause the City to require an upward adjustment in the franchise fees payable to the City, and therefore in the requested surcharge increases.

This filing is being made in accordance with Ordering Paragraph 5 of Commission Decision (D.) 89-05-063 in OII 84-05-002, dated May 26, 1989 (32 Cal.P.U.C.2d 60), which adopted a procedure for filing a surcharge advice letter in instances where a local governmental entity has franchise fees exceeding the average franchise fees within the service territory of the utility. It is also consistent with the franchise fee differential surcharge that the Commission has imposed on SDG&E customers located in the City since 1970 (D.77879; 71 Cal.P.U.C. 486; October 27, 1970).

BACKGROUND

SDG&E has been paying the City an electric franchise fee equal to approximately 3% of its "gross receipts" from the sale of electricity within the corporate limits of the City, and an average of 1% to the other municipalities in its service territory. SDG&E has been paying the City a gas franchise fee equal to approximately 3% of its "gross receipts" from the sale of gas within the corporate limits of the City, and an average of 2% to the other municipalities in its service territory.

Pursuant to Section 4 of the 50-year gas and electric franchises granted to SDG&E in 1971 by the City, the Parties entered into over a year of negotiations to determine the applicable franchise fees for the last 20 years of the franchises. These negotiations resulted in the City Council adopting on January 28, 2002, amendments to the gas and electric franchises (Franchise Amendments and a Memorandum of Understanding, Attachments 1, 2 and 3 respectively, attached hereto and incorporated by this reference) continuing the 3% franchise fee percentage but changing the definition of "gross receipts". The definition of "gross receipts" is revised to include in the calculation the revenues collected from the City residents in the surcharges approved herein by the Commission, which increases the franchise fee revenues. In addition, the Franchise Amendments agree to the obligation set forth in Section 9 of the electric franchise to apply to the Commission for the funding of undergrounding projects in an amount equal to 4.5% of gross receipts. These changes result in an increase in the existing disparity between the level of franchise fees payable by SDG&E to the City and the average level of franchise fees paid by SDG&E to all municipalities in its service territory. Allocation of the increased franchise fee costs to only SDG&E customers located in the City is necessary to be consistent with Commission policy that this disparity be allocated to utility customers located in municipalities charging higher franchise fees.

SDG&E proposes an increase of 3.88% to its existing franchise fee rate surcharge to collect the additional revenues necessary to cover the increased franchise fees payable to the City for undergrounding and franchise fees. The surcharge revenues will be paid directly to the City, with 3.53% of the surcharge to be deposited into a separate account designated for electric undergrounding projects to be used exclusively for expenses directly related to electric undergrounding as set forth in City Council Policy on Underground Conversion of Utility Lines by Utility Company 600-08 (Attachment 4, attached hereto and incorporated herein by this reference).

The City is responding primarily to its residents who are concerned about the aesthetics of overhead wires and safety concerns. In addition, overhead wires are deemed to detract from the beauty of the City with impacts on tourism and residents. For these reasons, the City Council passed the Ordinance which provides for the implementation of an additional fee equal to 3.88% of its annual "gross receipts" to be collected from the City residents to primarily implement the undergrounding program specified in the electric franchise.

The additional fee imposed by the City is a significant increased expense for SDG&E, and should be fully recovered by SDG&E through surcharges on the bills of all SDG&E electric and gas customers located in the City. SDG&E proposes to increase the existing 1.9% electric franchise fee differential to 5.78% for all electric customers located in the City. Based on electric revenues for year 2002 this results in an additional amount of approximately \$36.5 million to be collected from the ratepayers located in the City during a full year of application in addition to the current approximate \$29 million paid to the City for the year 2000. This results in an increase of approximately \$3.00 to a typical residential customer's electric bill. The percentage increase would be the same for all classes of electric customers located in the City. SDG&E proposes to increase the existing 1.0% gas franchise fee differential to 1.03% for all gas customers located in the City. This represents approximately an additional \$79,500 to be collected during a full year of application based on the annual gas receipts in the City during 2000. This results in an increase of \$0.01 to a typical residential customer's gas bill. The percentage increase would be the same for all classes of gas customers located in the City.

The Franchise Amendments become effective once the Commission approves the increase in the surcharges proposed herein. Absent such approval of the Franchise Amendments, the Parties will pursue further negotiations or arbitration.

EFFECTIVE DATE

SDG&E respectfully requests that this Advice Letter become effective on June 23, 2002, which is 40 calendar days after the date filed.

PROTEST

Anyone may protest this Advice Letter to the Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received within 20 days of the date this Advice Letter was filed with the Commission. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

Energy Division – IMC Branch
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102

Copies should also be sent via e-mail to the attention of both Jerry Royer (jjr@cpuc.ca.gov) and Honesto Gatchallian (inj@cpuc.ca.gov) of the Energy Division. It is also requested that a copy of the protest be sent via both e-mail and facsimile to the address shown below on the same date it is mailed or delivered to the Commission.

Attn: James Frank
Tariffs Manager
San Diego Gas & Electric
8315 Century Park Court, CP22D
San Diego, CA 92123-1550
Facsimile No. (858) 654-1788
E-Mail: jfrank@SempraUtilities.com

NOTICE

In accordance with Section III-G of General Order 98-A a copy of this filing has been served on the utilities and interested parties shown on the attached list by providing them a copy hereof either electronically or via the U.S. mail, properly stamped and addressed.

Address changes should be directed to Merrie Lamb of SDG&E by facsimile at (858) 654-1788 or by e-mail to mlamb@SempraUtilities.com.


J. STEVE RAHON
Director - Tariffs & Regulatory Accounts

Enclosures
(cc list attached)

G.O. 96-A, Sec. III (G)
ADVICE LETTER FILING MAILING LIST
CC: (w/enclosures)

Public Utilities Commission	Kyocera America Inc
Director - ORA	LeBoeuf, Lamb, Green & MacRae
Thomas Lew - ORA	LLP
M. Pocta - ORA	LSW Engineers, California Inc.
J. Grieg - ORA	Luce, Forward, Hamilton
M.D. McNamara - ORA	& Scripps LLP
W. Franklin	ManageAmerica
W. Scott - ORA	Manatt, Phelps & Phillips
California Energy Commission	Modesto Irrigation District
Gail Budin-Gordon	Morrison & Foerster
Advantage Energy, LLC	MRW & Associates
Alcantar & Kahl	Naval Facilities Engineering
AMDAX	NCR Corp
American Energy Institute	New Energy, Inc, an AES Company
Anza Electric Cooperative	New West Energy
Arter & Hadden LLP	Onsite Energy Corporation
Barkovich & Yap, Inc.	O'Rourke & Company
Bartle Wells Associates	Pacific Gas & Electric
BENTEK Energy Technologies	Pacific Utility Audit
Burlington Resources	Poway Unified School District
California Farm Bureau Federation	R.M. Hairston Company
Calpine	Recon Research Corp
CCTA	Robinsons-May Dept. Stores
Children's Hospital & Health Center	Rohr, Inc.
City of Poway	San Diego Regional
City of San Diego	Energy Office
Commonwealth Energy Corp	School Project for Utility Rate
Crossborder Services	Reduction
CSC Energy Services	Scripps Health
Davis Wright Tremaine, LLP	Shute, Mihaly & Weinberger LLP
Dept of General Services	Sithe Energies
Dept of The Navy	Solar Turbines
Dept of Veteran Affairs	Sutherland, Asbill & Brennan LLP
Medical Center	Southern California Edison
Dynegy, Inc.	TRW
Ellison Schneider & Harris LLP	TURN, Michel Florio
Energy Law Group LLP	UCAN, Michael Shames
Energy Solutions	URM Group, Inc
Energy Strategies, Inc.	Utility Cost Management LLC
Enron Capital & Trade (2)	Utility Solutions Inc.
G.A. Koteen Associates, Inc	Utility Specialists, Southwest, Inc.
G.E. Goodrich Co	Vulcan Materials - CalMat Div.
Goodin, MacBride, Squeri,	Viterra Energy Services
Scholtz & Ritchie	Western Manufactured Housing
Green Mountain.Com Company	Communities Association
Henwood Energy Services	White & Case LLP
HMH Resources	
Interstate Gas Services, Inc.	
J.B.S. Energy	
Jones, Day, Reavis & Pogue	

G.O. 96-A, Sec. III (G)
ADVICE LETTER FILING MAILING LIST
CC: (w/enclosures)

Public Utilities Commission
Director - ORA
Thomas Lew - ORA
M. Pocta - ORA
J. Grieg - ORA
M.D. McNamara - ORA
W. Franklin
W. Scott - ORA
California Energy Commission
Gail Budin-Gordon
Advantage Energy, LLC
Alcantar & Kahl
AMDAX
American Energy Institute
Anza Electric Cooperative
Arter & Hadden LLP
Barkovich & Yap, Inc.
Bartle Wells Associates
BENTEK Energy Technologies
Burlington Resources
California Farm Bureau Federation
Calpine
CCTA
Children's Hospital & Health Center
City of Poway
City of San Diego
Commonwealth Energy Corp
Crossborder Services
CSC Energy Services
Davis Wright Tremaine, LLP
Dept of General Services
Dept of The Navy
Dept of Veteran Affairs
Medical Center
Dynegy, Inc.
Ellison Schneider & Harris LLP
Energy Law Group LLP
Energy Solutions
Energy Strategies, Inc.
Enron Capital & Trade (2)
G.A. Koteen Associates, Inc
G.E. Goodrich Co
Goodin, MacBride, Squeri,
Scholtz & Ritchie
Green Mountain.Com Company
Henwood Energy Services
HMH Resources
Interstate Gas Services, Inc.
J.B.S. Energy
Jones, Day, Reavis & Pogue
Kyocera America Inc
LeBoeuf, Lamb, Green & MacRae
LLP
LSW Engineers, California Inc.
Luce, Forward, Hamilton
& Scripps LLP
ManageAmerica
Manatt, Phelps & Phillips
Modesto Irrigation District
Morrison & Foerster
MRW & Associates
Naval Facilities Engineering
NCR Corp
New Energy, Inc, an AES Company
New West Energy
Onsite Energy Corporation
O'Rourke & Company
Pacific Gas & Electric
Pacific Utility Audit
Poway Unified School District
R.M. Hairston Company
Recon Research Corp
Robinsons-May Dept. Stores
Rohr, Inc.
San Diego Regional
Energy Office
School Project for Utility Rate
Reduction
Scripps Health
Shute, Mihaly & Weinberger LLP
Sithe Energies
Solar Turbines
Sutherland, Asbill & Brennan LLP
Southern California Edison
TRW
TURN, Michel Florio
UCAN, Michael Shames
URM Group, Inc
Utility Cost Management LLC
Utility Solutions Inc.
Utility Specialists, Southwest, Inc.
Vulcan Materials - CalMat Div.
Viterra Energy Services
Western Manufactured Housing
Communities Association
White & Case LLP

SAN DIEGO GAS & ELECTRIC COMPANY

ADVICE LETTER 1407-E/1313-G

ATTACHMENT LIST

Attachment

Document

- | | |
|---|------------------------------|
| 1 | Electric Franchise Amendment |
| 2 | Gas Franchise Amendment |
| 3 | Memorandum of Understanding |
| 4 | Council Policy 600-08 |

**Memorandum of Understanding
Between San Diego Gas & Electric Company and the City of San Diego
Regarding Implementation of Franchise of Underground Obligation**

This binding Memorandum of Understanding ("MOU") dated as of December 11, 2001 is entered into by and between the City of San Diego, a municipal corporation (the "City") and San Diego Gas & Electric Company ("SDG&E"), a California corporation (collectively the Parties"), and concerns the fifty year electric and gas franchises entered into by the Parties on January 17, 1971.

RECITALS

WHEREAS, SDG&E was granted a franchise to transmit and distribute electricity by the City effective January 17, 1971 for a period of fifty years (Ordinance No. O-10466, adopted December 17, 1970) ("Electric Franchise"); and

WHEREAS, SDG&E was granted a franchise to transmit and distribute gas by the City effective January 17, 1971 for a period of fifty years (Ordinance No. O-10465, adopted December 17, 1970) ("Gas Franchise"); and

WHEREAS, Section 4 of said Franchises provide that during the first thirty years of the Franchises term, SDG&E shall pay three percent of gross receipts as compensation for the right to use City rights-of-way, for such purposes ("Franchise Fee"); and

WHEREAS, Section 4 of said Franchises further provide that the City and SDG&E shall establish the Franchise Fee for the last twenty years by good faith negotiations or binding arbitration; and

WHEREAS, as a result of public hearings and good faith negotiation, the Parties have agreed that the Franchise Fees shall be three percent of "gross receipts" as defined which definition has been revised and set forth in Section 1 of the Franchises; and

WHEREAS, the Franchises were amended to extend the negotiation period to January 17, 2003 by Ordinances No. O-18957, No. O-18956, No.O-19026 and No. O-19027.

WHEREAS, in Decision No. 80234 dated July 11, 1972, the California Public Utilities Commission ("CPUC") approved SDG&E implementing an electric franchise fee surcharge of 1.9 percent ("Electric Franchise Fee Surcharge") and a gas franchise fee surcharge of 1.0 percent ("Gas Franchise Fee Surcharge") within the City to capture the difference between the City Franchise Fee and the average franchise fee within the SDG&E service territory; and

WHEREAS, the Parties have agreed that subject to CPUC approval gross receipts as defined in Section 1 of the Franchise shall include revenues from said Franchise Fee Surcharge, as well as other CPUC approved surcharges solely on the ratepayers within the City and as a result of such change, the Electric Franchise Fee Surcharge will be increased by .35% and the Gas Franchise Fee Surcharge shall be increased by .03%; and

WHEREAS, the Parties have agreed that subject to CPUC approval the funding for the obligations of SDG&E to underground its facilities as set forth in Section 9 ("Undergrounding Program"), of the Electric Franchise shall be structured as follows:

- (a) collecting a portion of the funds from ratepayers in base rates (1.15%) as approved by the CPUC;
- (b) with the remainder to be collected from ratepayers in the City through a CPUC approved surcharge (3.53%) which will be paid directly to the City;
- (c) for a total obligation of four and one-half percent (4.5%) of gross receipts plus .18% for 1/19th of 2001 allocation (which amount is included in the 3.53%); and

WHEREAS, the Parties have agreed that SDG&E shall be responsible unless and until the City decides to assume the obligation, for ensuring the expenditure of the portion of the allotted four and one-half percent (4.5%) over which it has control within two years of the allocation;

NOW, THEREFORE, the Parties now acknowledge and agree to perform the obligations set forth below as full resolution of all issues associated with the renegotiation provided for in Section 4 of the Franchises:

Section 1. The effective date of this MOU shall be as of the effective date of the adoption by the City Council of the Electric and Gas Franchise Amendments (Ordinance No. O-19030 and Ordinance No. O-19031) setting forth the payment terms for the remaining years of the Franchises which are attached hereto and incorporated herein as Attachment 1 and 2, respectively.

Section 2. In order to meet the City's objectives of increasing the current amount of undergrounding being done in the City above what was previously agreed to by the Parties and satisfy any obligation of SDG&E to apply to the CPUC to underground electric facilities in an amount provided in Section 9 of the Electric Franchise and changing the definition of Gross Receipts, SDG&E will support the City by submitting an Advice Letter to the CPUC asking to increase the Electric Franchise Fee Surcharge (the "Additional Electric Franchise Fee Surcharge") on the residents of the City from 1.9% to 5.78% conditioned upon the City using 3.53% of the Additional Electric Franchise Fee Surcharge solely for undergrounding projects within its geographic territory in conformance with the terms herein with the remainder of .35% to be an increase to the 1.9% Electric Franchise Fee Surcharge. Such Advice Letter shall also ask the CPUC to increase the Gas Franchise Fee Surcharge from 1.0% to 1.03%. The approval by the CPUC must include: (1) approval of the surcharge amounts set forth herein; (2)

authorization to increase the existing surcharges to the ratepayers in the City; and (3) approval to increase its authorized revenues by the amount of the increase in surcharge revenues collected and to provide a flow through of those revenues to the City. Such approval shall be made in terms and language acceptable to both Parties. SDG&E shall request such treatment through an Advice Letter filing which will be substantially in the form set forth in Attachment 3, attached hereto and incorporated herein by this reference.

Section 3. The commencement date for SDG&E to increase the surcharge to the electric and gas ratepayers in the City and be obligated to payment as contemplated herein shall be on the first day of the month following occurrences of both of the following events, receipt of: (1) approval of the Franchise Amendments by City Council; and (2) the effective date of the CPUC approval of the Advice Letter filed by SDG&E as set forth above.

Section 4. The City will actively support approval of each of the requests in the Advice Letter at the CPUC through written comments and appropriate advocacy in order to achieve the necessary CPUC approvals.

Section 5. SDG&E will seek authorization in its CPUC approved base rates for an amount of money equivalent to 1.15% of gross receipts (as defined in the Electric Franchise Amendment) for Rule 20 capital projects (currently approximately \$10 million per year) to fund all City requests for any Rule 20 A, B and/or C projects including all costs described herein. Any additional Rule 20 A, B or C projects or associated work done by SDG&E as described in the proposed City Council Policy on Underground Conversion of Utility Lines by Utility Company 600-08 (attached hereto as Attachment No. 4 and incorporated herein by this reference) will be funded from the revenue collected from the undergrounding portion of the Additional Electric Franchise Fee Surcharge.

Section 6. The franchise fees percentages for both the Gas and Electric Franchises shall remain at 3% for the remaining terms of the Franchises. Franchise Fees will be credited to payment of any City imposed right-of-way fees, or inspection, trenching, cutting or deterioration fees. The Gas Franchise Fee Surcharge shall be increased from 1% to 1.03%. This change reflects the increased revenues, which result from including revenues from the Gas Franchise Fee Surcharge in the definition of "gross receipts" for the Gas Franchise. The Electric Franchise Fee Surcharge will be calculated by using the percentage mutually agreed upon by the Parties to be 5.78%. This Surcharge includes the existing 1.9% Franchise Fee Surcharge plus the mutually agreed upon Additional Electric Franchise Fee Surcharge of 3.88% which captures the increased revenues which would result from collecting the Electric Franchise Fees on the Electric Franchise Fee Surcharge revenues collected from the City ratepayers within the City, an allocation for undergrounding projects and an allocation for undergrounding not completed in 2001 amortized over the remaining nineteen years of the Electric Franchise. In the event the Advice Letter is not approved by the CPUC in 2003 the percentage will be amended in the Advice Letter to seek to collect the revenue allocation for 2001 and 2002 amortized over the remaining eighteen years of the Electric Franchise, or as otherwise mutually agreed.

Section 7. The amount of the Additional Electric Franchise Fee Surcharge allocated to undergrounding and the amount for undergrounding embedded in rates requested from the CPUC shall total 4.5% of "gross receipts" as defined in Section 1(g) of the Amended Electric Franchise each year for the remaining term of the Electric Franchise as required in Section 9 thereof plus .18% for 1/19th of the 2001 allocation obligation, (which is included within the Additional Electric Franchise Fee).

Section 8. All surcharge revenues will be paid directly to the City with the quarterly remittance of Franchise Fees. The quarterly payment shall include an accounting of the amount of the payment which is attributed to the Gas Franchise Fee Surcharge, Electric Franchise Fee Surcharge and Additional Electric Franchise Fee Surcharge. The City will use 3.53% of the Additional Electric Franchise Fee Surcharge revenues to fund expenses directly and exclusively related to replacing existing infrastructure related to electric undergrounding projects including, but not limited to, design, engineering, construction, City and SDG&E construction management, repaving streets, lateral connection to ratepayers and street lights.

Section 9. The Parties agree that after the initial ramp up period of 2 years, each Party shall perform its obligation herein and work cooperatively to ensure compliance with the undergrounding obligations in Section 9(b) of the Electric Franchise Amendment attached hereto. The City shall appropriate undergrounding projects for a calendar year by June 30 of the prior year with the obligation that both Parties cooperate to ensure that the expenditure of that appropriation occurs by the end of the calendar year following the allocation year. Any obligations of SDG&E pursuant to Section 9(b) of the Electric Franchise Amendment through 2001 will be satisfied by fulfillment of the terms of this MOU, through the payment and collection of revenues to take place as described in Section 2.

Section 10. The City may contract with SDG&E, or other qualified contractors, to have additional undergrounding projects completed using the funds from the Additional Electric Franchise Fee Surcharge. Any such project must meet all federal, state, local, and CPUC laws, regulations and SDG&E safety and reliability standards and procedures. The City will compensate SDG&E for all reasonable charges and costs incurred, including but not limited to labor charges customarily charged to third parties such as associated overheads, subcontractors, materials, supplies, permits, and other directly related costs of any such projects.

Section 11. The work may be done by SDG&E employees and/or qualified subcontractors under the supervision of SDG&E. To the extent the work is not able to be performed by SDG&E employees, SDG&E will request quotes for work on these projects from at least three qualified contractors if available, in order to obtain competitive pricing. SDG&E shall approve the qualifications of any contractor prior to such contractor commencing any work to be performed on SDG&E facilities. SDG&E will manage the work to encourage diverse participation and award contracts to the low qualified responsible bidder who can meet the schedule requirements.

Section 12. SDG&E will make all business records directly relevant to the undergrounding program available to the City upon request, including records the City deems necessary to perform value engineering studies for planning and implementation of future projects and not for retroactive reviews. At least quarterly, at the written request of the City, SDG&E will provide a detailed analysis of expenditures and participate in any City Council meeting to report on the status of the undergrounding projects. SDG&E will maintain all business records that are necessary to determine the costs for the undergrounding program. The City shall have the right at any reasonable time to examine and audit such business records to verify the costs of the undergrounding program.

Section 13. The City and SDG&E will cooperate to develop and implement an Undergrounding Program to maximize the value of the undergrounding surcharge. Initially SDG&E shall act as lead utility over all electric line undergrounding projects including design, engineering and construction. In the event that the City wants to assume this responsibility it will provide a minimum of 24 months prior written notice. If the City assumes this responsibility, design plan check, inspection requirements and system energizing will still be required from SDG&E to assure compliance with SDG&E's engineering and construction standards and procedures. The Parties understand that it will take time for the City and SDG&E to initially acquire resources necessary to accomplish the level of projects contemplated herein.

Section 14. The City will determine and prioritize the projects. In the event the City fails to provide timely notice of projects or take any action which delays or impedes a project, the Parties will negotiate revised schedules and SDG&E will not be subject to fines or penalties.

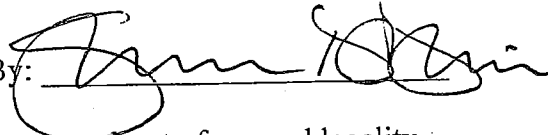
Section 15. The City will continue its current role of providing direction, in coordinating activities of all utilities through the Undergrounding Joint Utility Commission or other mechanisms established by the City. If requested by SDG&E, the City will coordinate with third parties, including other utilities, in order for SDG&E to be able to meet the scheduled milestones. Project delay due to action or inaction by third parties shall extend the scheduled milestones by the amount of time necessary to make up for the delay, without penalty to SDG&E.

Section 16. In the event the CPUC does not approve the Advice Letter filing in a manner acceptable to each Party or does not act on the Advice Letter filing on or before December 31, 2002, the Parties will mutually agree to either extend the negotiating period, or in the alternative either Party can require arbitration as provided in Section 4 of the Franchises. The Parties agree that SDG&E shall continue payment of Franchise Fees in the same amount and manner as calculated and paid in calendar year 2000 until the effective date of such acceptable CPUC approval or other finally agreed upon negotiated or arbitrated decision.

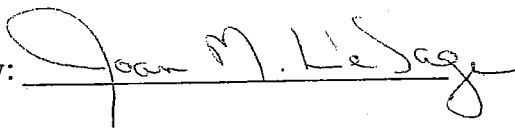
IN WITNESS WHEREOF, this MOU is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-295892 authorizing such execution, and by SDG&E.

Date: April 9, 2002

SDG&E, a California Corporation

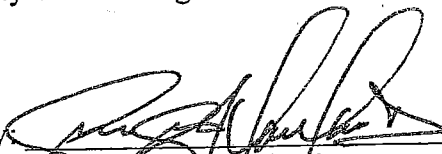
By: 

Approved as to form and legality

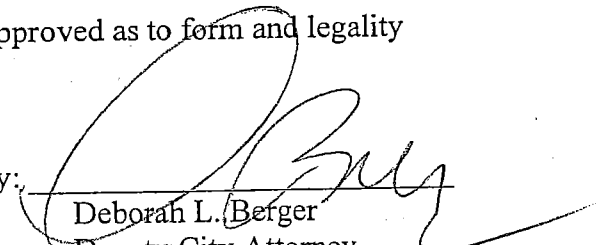
By: 

Date: _____

City of San Diego

By: 
George D. Loveland
Sr. Deputy City Manager

Approved as to form and legality

By: 
Deborah L. Berger
Deputy City Attorney



Appendix C – BB&K Article

[\(L\)](#)[Home \(L\)](#) > [Insights \(/news-events/insights\)](#) >[CPUC Issues Funding Rule Change for Undergrounding Power Lines \(/news-events/insights/2021/legal-alerts/06/cpuc-issues-funding-rule-change-for-undergrounding\)](#)

LEGAL ALERTS | JUN 17, 2021

CPUC Issues Funding Rule Change for Undergrounding Power Lines

Prohibitions and Other Requirements on Rule 20A Program



The California Public Utilities Commission issued a decision that significantly revised the rules, established over 50 years ago, for funding the conversion of overhead power lines and other equipment to underground facilities at the request of cities and counties. Under the prior program, billions of dollars were collected from electricity ratepayers to be used for “undergrounding” at locations identified by cities and counties. This is commonly known as the Rule 20A program. Statewide, there is an estimated \$1.56 billion in funds collected by utilities, but not yet designated for Rule 20A projects.

The June 7 decision prohibits ratepayer funding for new projects after Dec. 31, 2022. In addition, it clarifies project eligibility criteria, bans the trading of Rule 20A work credits in secondary markets, and enhances Electric Rule 20A program oversight. Electric utilities are also directed to develop new Guidebooks, in collaboration with local governments and others, to govern undergrounding programs.

Inequitable Usage of Ratepayer Funds

While the CPUC found a handful of communities have completed ratepayer-funded projects worth hundreds of millions of dollars, it also discovered that 82 out of 503 communities did not complete a single project since 2005.

Outdated Program Eligibility Criteria

Electric Rule 20A was originally enacted for aesthetic purposes, which, according to the CPUC, is no longer the major concern of numerous communities. Many communities would like the Rule 20A program to factor in wildfire mitigation as well as other community safety needs in the project eligibility consideration. The decision deferred action on this issue to a future phase of the proceeding.

Flawed Work Credit System

The CPUC has identified several issues relating to the allocation of ratepayer-funded work credits to communities. Many communities never start projects due to insufficient credits and the ever-increasing project cost estimates. Additionally, the CPUC identified 58 communities that completed undergrounding projects using credits borrowed beyond the tariff-specified 5-year forward limit, effectively placing those communities in “work credit debt.” Lastly, the CPUC has found that some communities are selling, trading and donating their unused work credits to other communities using an unsanctioned secondary credit marketplace.

High Project Costs and Project Delays

One of the driving forces behind the rule change is that many communities have reported instances where project costs exceeded design cost estimates, as well as project timelines that span seven years or longer, which exceeds the Rule 20A five-year rule. Additionally, project costs have increased substantially.

Utility Abuses

An audit report found that PG&E improperly reallocated Rule 20A funds away from the program without documenting where the funds were spent. The audit report also found that, between 2007 and 2016, PG&E underspent \$123 million of Rule 20A-authorized budgets and that underspending resulted in project delays, which increased project costs. As a result, the CPUC is requiring all utilities to establish one-way balancing accounts specifically for Rule 20A program funding. The CPUC believes this will ensure that Rule 20A program funding is not used for any other purpose.

Moving Forward

This decision only involves Phase 1 of the process of revising the Rule 20A program. In Phase 2, the CPUC will consider: Whether to include wildfire safety and other emergency-related undergrounding in Rule 20A project eligibility criteria, whether to modify Rule 20A to support projects in underserved communities and whether to take additional steps to support the completion of active Rule 20A projects.

Disclaimer: BB&K Legal Alerts are not intended as legal advice. Additional facts, facts specific to your situation or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information herein.

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Appendix D – Additional Detailed Maps & Estimates



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: DANA KNOLLS AREA
 DESIGNATION: RULE 20B
 PARCELS: 129
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 7,577 LF
 POWER POLES TO BE REMOVED: 44
 UNDERGROUNDING COST: **\$15,994,289**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:





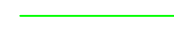




NV5, INC.

DATE:

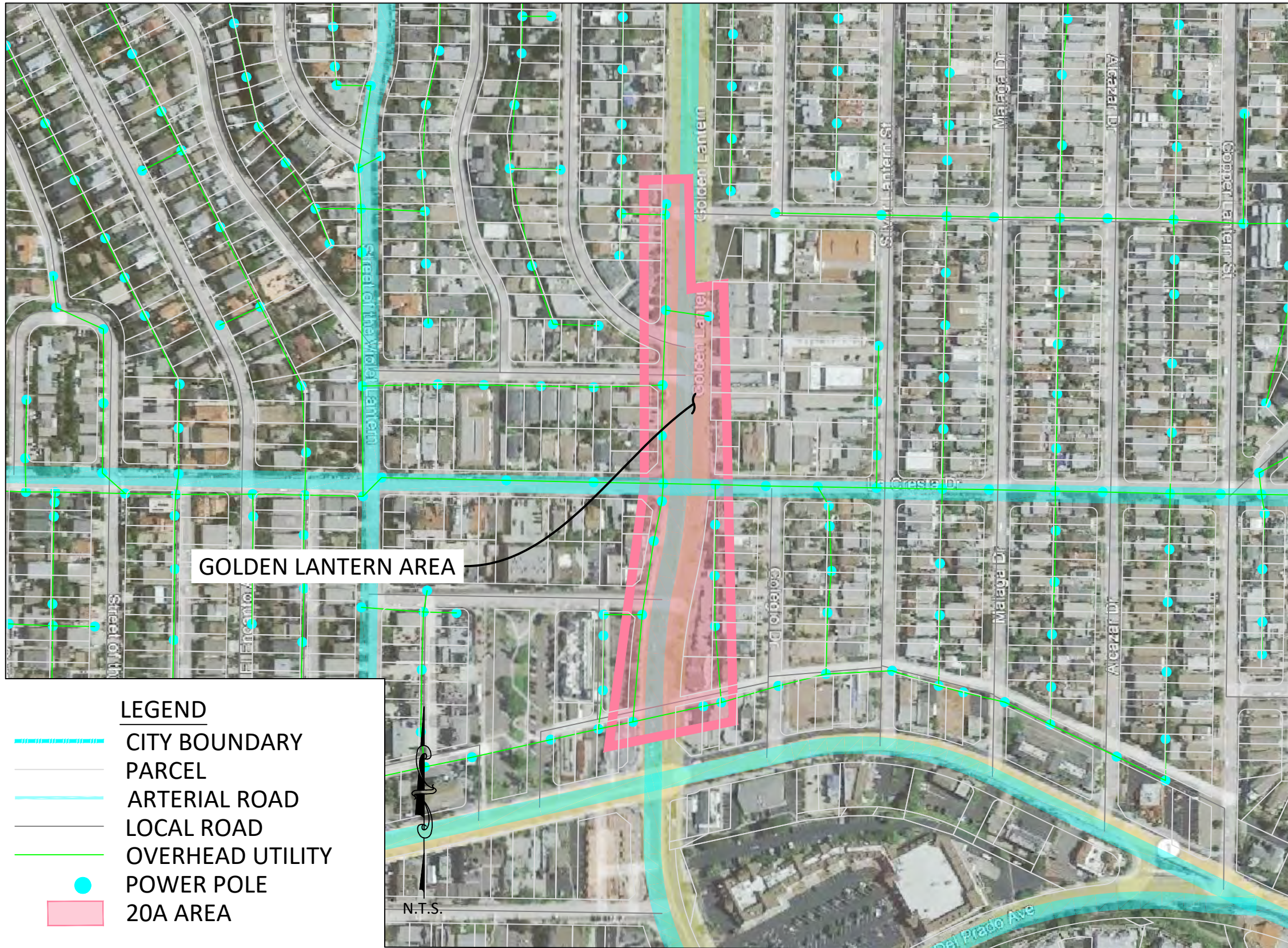
09/07/2022

LEGEND

-  CITY BOUNDARY
-  PARCEL
-  ARTERIAL ROAD
-  LOCAL ROAD
-  OVERHEAD UTILITY
-  POWER POLE
-  20B AREA



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: GOLDEN LANTERN AREA
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 2,969 LF
 POWER POLES TO BE REMOVED: 17
 UNDERGROUNDING COST: **\$6,267,262**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



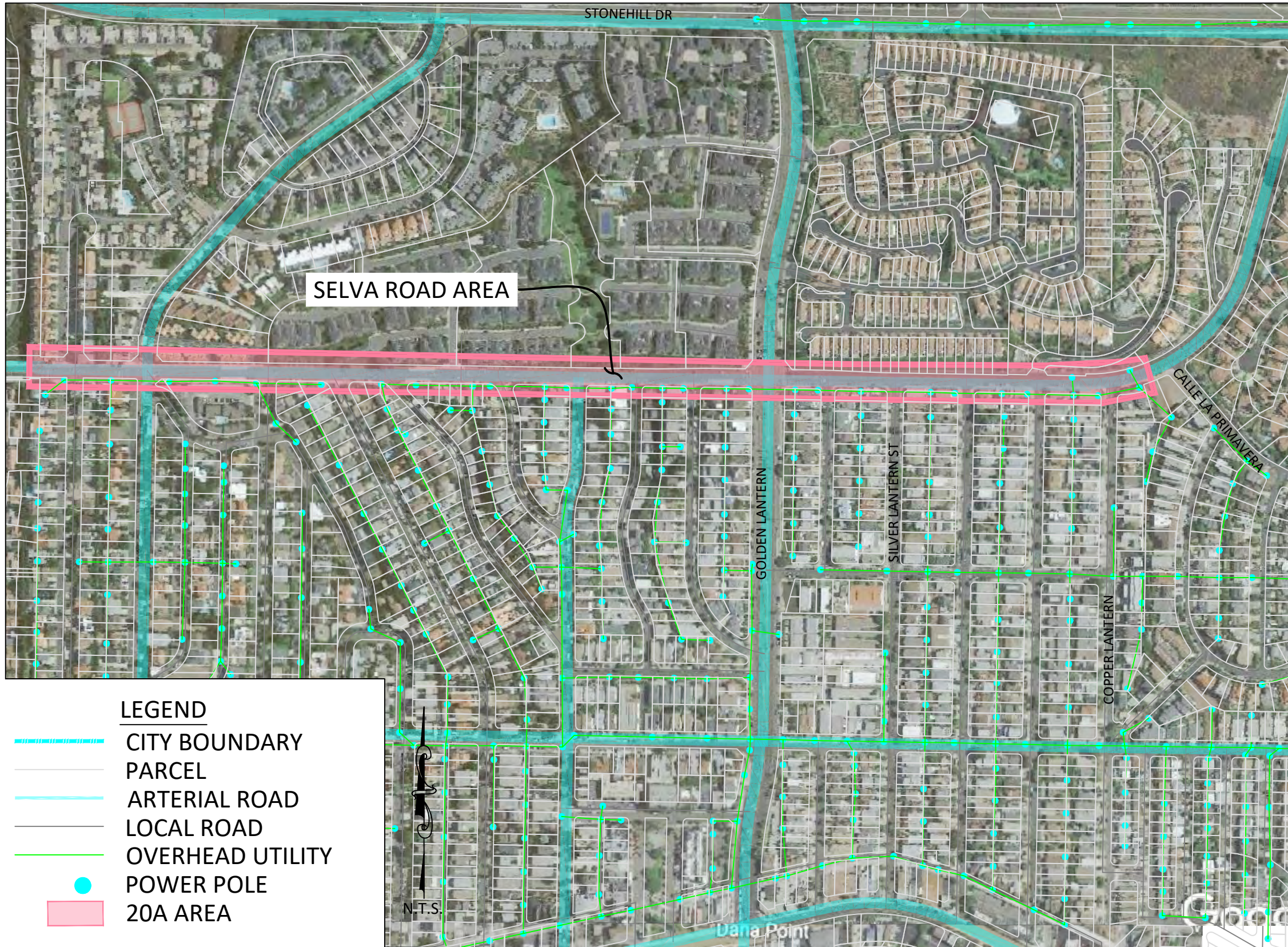
NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: SELVA RD AREA
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 3,875 LF
 POWER POLES TO BE REMOVED: 30
 UNDERGROUNDING COST: **\$8,177,627**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

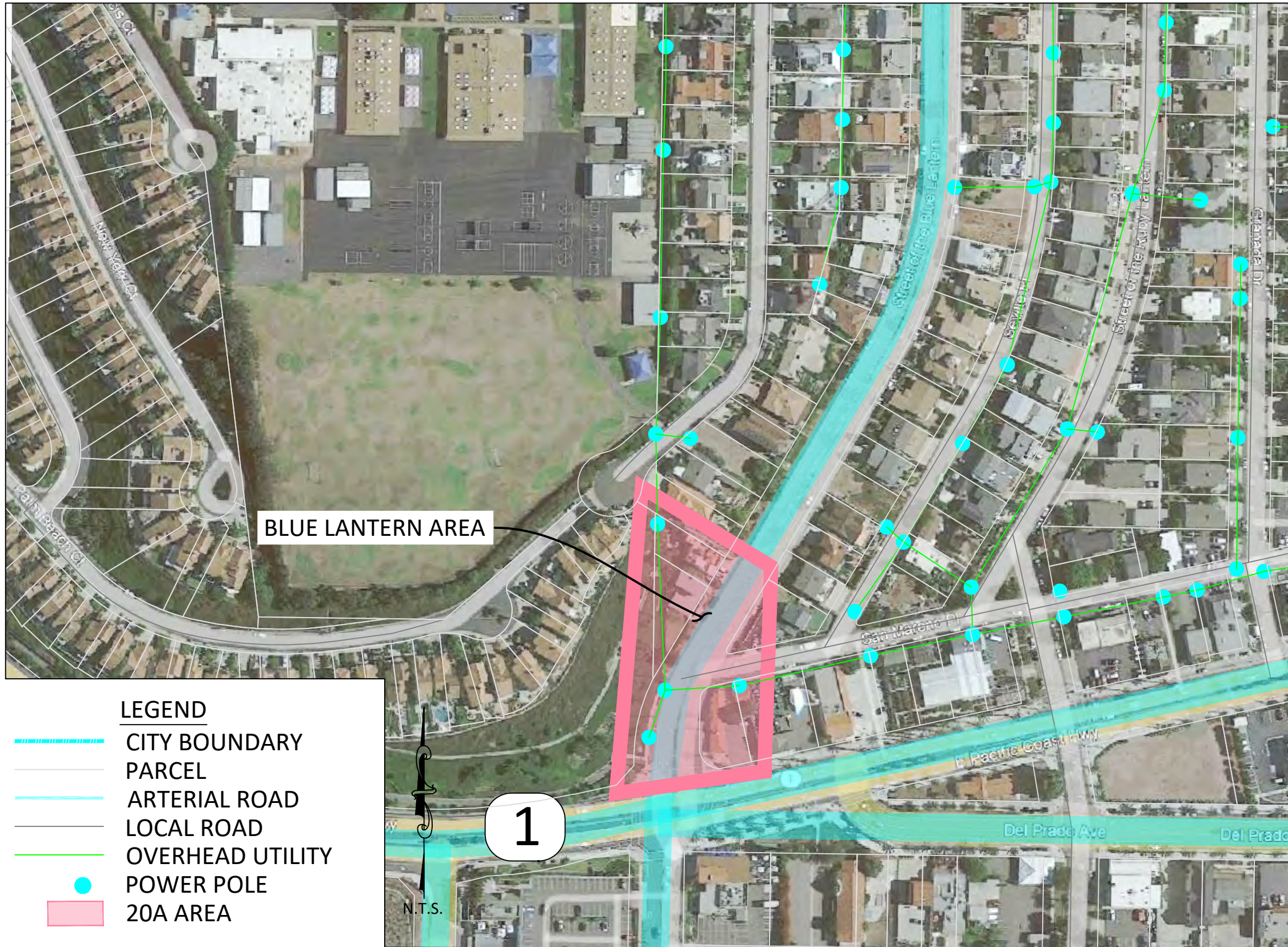


DATE:

09/07/2022



CITY OF DANA POINT



LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20A AREA



VICINITY MAP

AREA INFORMATION:

NAME: BLUE LANTERN AREA
 DESIGNATION: RULE 20A
 PARCELS: N/A
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 420 LF
 POWER POLES TO BE REMOVED: 4
 UNDERGROUNDING COST: **\$886,578**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: SANTA CLARA AREA
 DESIGNATION: RULE 20B
 PARCELS: 28
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 1,382 LF
 POWER POLES TO BE REMOVED: 10
 UNDERGROUNDING COST: **\$2,917,264**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022

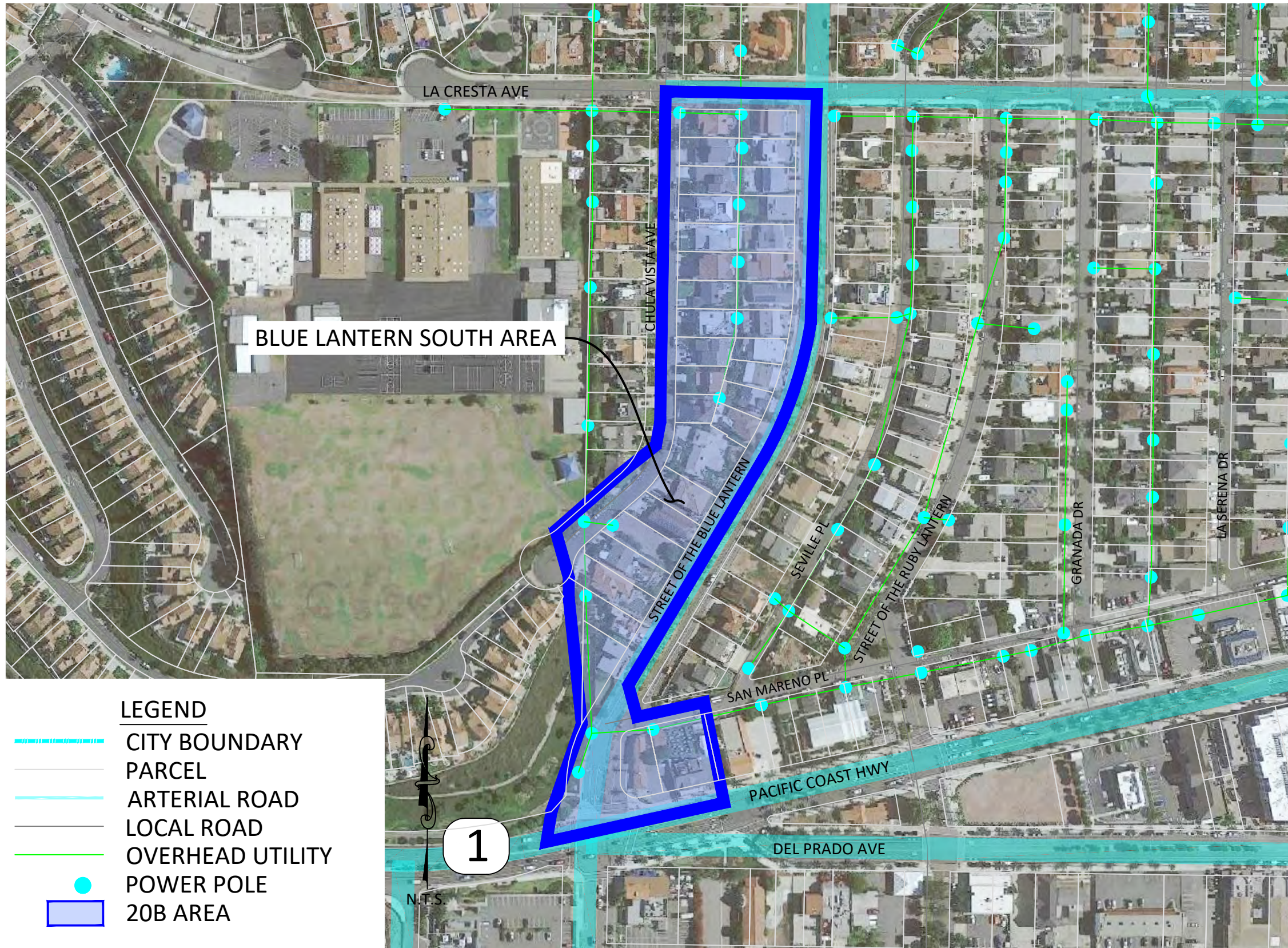
LEGEND

- CITY BOUNDARY
- PARCEL
- ARTERIAL ROAD
- LOCAL ROAD
- OVERHEAD UTILITY
- POWER POLE
- 20B AREA





CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: BLUE LANTERN - SOUTH AREA
 DESIGNATION: RULE 20B
 PARCELS: 33
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 1,211 LF
 POWER POLES TO BE REMOVED: 13
 UNDERGROUNDING COST: **\$2,556,300**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:

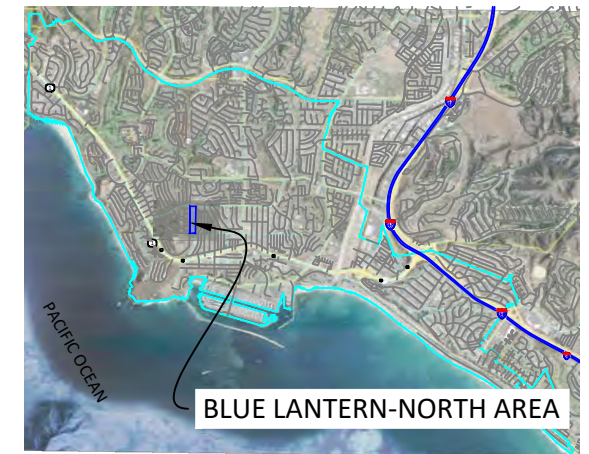
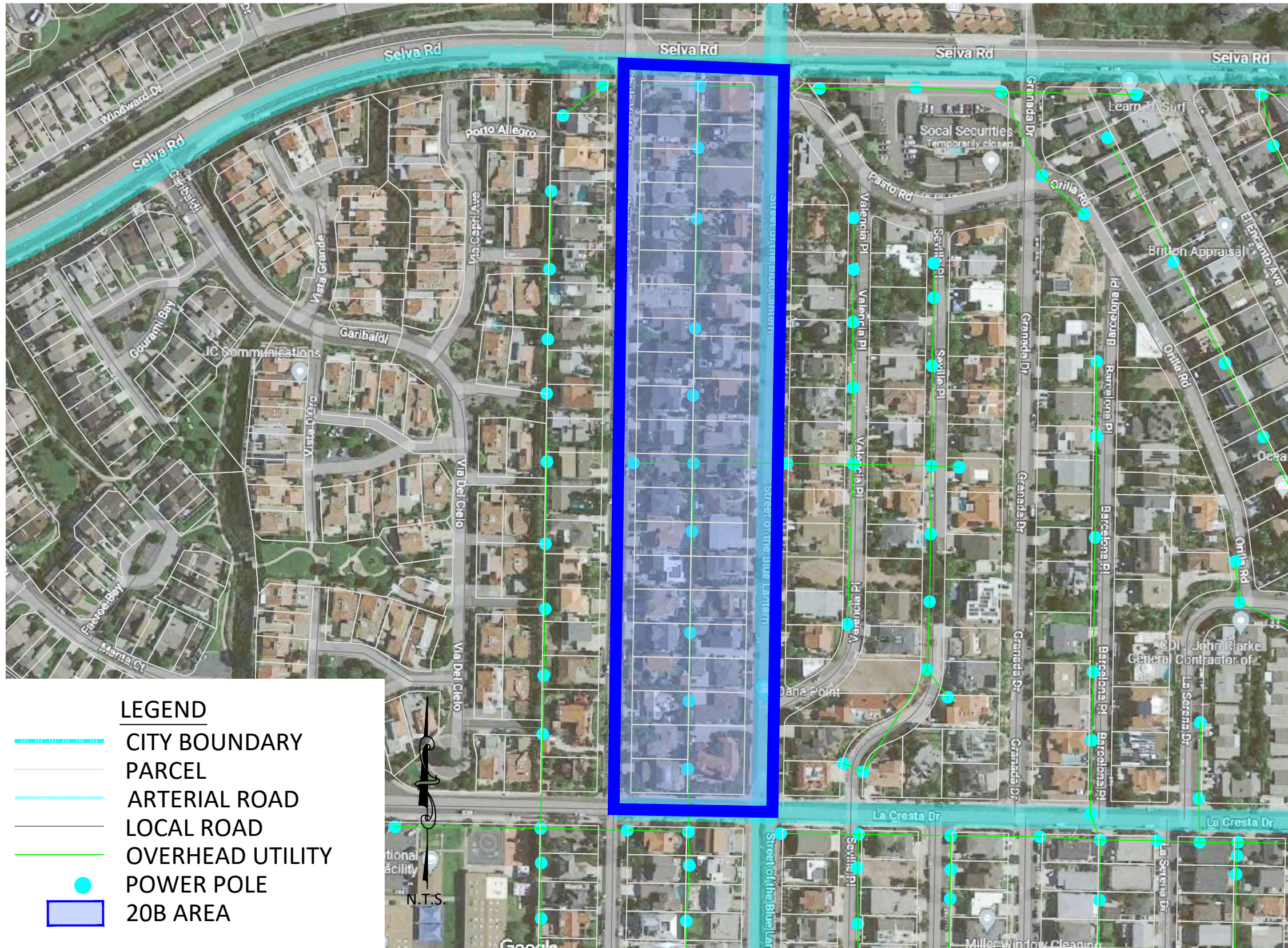


DATE:

09/07/2022



CITY OF DANA POINT



VICINITY MAP

AREA INFORMATION:

NAME: BLUE LANTERN - NORTH AREA
 DESIGNATION: RULE 20B
 PARCELS: 39
 TOTAL LENGTH OF UNDERGROUND
 CONVERSION: 1,977 LF
 POWER POLES TO BE REMOVED: 22
 UNDERGROUNDING COST: **\$4,173,249**

PREPARED FOR:



CITY OF DANA POINT

PREPARED BY:



NV5, INC.

DATE:

09/07/2022