

1 OFFICE OF THE CITY ATTORNEY
CITY OF NEWPORT BEACH
2 DAVID R. HUNT, SBN 110675
City Attorney
3 KYLE E. ROWEN, SBN 232351
Deputy City Attorney
4 3300 Newport Blvd.
Newport Beach, California 92658-8915
5 Telephone: (949) 644-3131
Facsimile: (949) 644-3139
6 Email: dhunt@newportbeachca.gov
Email: krowen@newportbeachca.gov
7

8 REMY, THOMAS, MOOSE and MANLEY, LLP
WHITMAN F. MANLEY, SBN 130972
9 JENNIFER S. HOLMAN, SBN 194681
455 Capitol Mall, Suite 210
10 Sacramento, California 95814
Telephone: (916) 443-2745
11 Facsimile: (916) 443-9017
Email: wmanley@rtmmlaw.com
12 Email: jholman@rtmmlaw.com

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

13 Attorneys for Respondents
CITY OF NEWPORT BEACH AND CITY OF NEWPORT BEACH CITY COUNCIL
14

15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

16 BANNING RANCH CONSERVANCY,)
Petitioners,) CASE No.: 30-2010-00365758-CU-WM-
17) CXC
v.)
18) **NOTICE OF ENTRY OF JUDGMENT**
CITY OF NEWPORT BEACH, CITY OF)
19 NEWPORT BEACH CITY COUNCIL, and)
DOES 1 – 10,)
20 Respondents.) Assigned for All Purposes to:
The Honorable Gail A. Andler
Department CX102
21)
NEWPORT BANNING RANCH, LLC; AERA)
22 ENERGY, LLC; CHEROKEE NEWPORT)
BEACH, LLC; and DOES 11 – 50,) Trial Date: March 14, 2011
23 Real Parties in Interest.) Complaint Filed: April 22, 2010
24)


25 ///
26 ///
27 //
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE IS HEREBY GIVEN that on June 9, 2011, the court in the above-captioned action entered its Judgment. A copy of the judgment is attached hereto as Exhibit "A"

Dated: June 10, 2011

REMY, THOMAS, MOOSE AND MANLEY, LLP

By: 
JENNIFER S. HOLMAN

Attorneys for RESPONDENTS
CITY OF NEWPORT BEACH and CITY OF NEWPORT
BEACH CITY COUNCIL

EXHIBIT A

JUDGMENT DENYING
PETITION FOR WRIT OF MANDATE

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
05/12/2011 at 03:00:50 PM
Clerk of the Superior Court
By Mark H Nordman, Deputy Clerk

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 09 2011

ALAN CARLSON, Clerk of the Court
M. White
BY M WHITE

240

1 OFFICE OF THE CITY ATTORNEY
2 CITY OF NEWPORT BEACH
3 DAVID R. HUNT, SBN 110675
4 City Attorney
5 KYLE E. ROWEN, SBN 232351
6 Deputy City Attorney
7 3300 Newport Blvd.
8 Newport Beach, California 92658-8915
9 Telephone: (949) 644-3131
10 Facsimile: (949) 644-3139
11 Email: dhunt@newportbeachca.gov
12 Email: krowen@newportbeachca.gov

8 REMY, THOMAS, MOOSE and MANLEY, LLP
9 WHITMAN F. MANLEY, SBN 130972
10 JENNIFER S. HOLMAN, SBN 194681
11 455 Capitol Mall, Suite 210
12 Sacramento, California 95814
13 Telephone: (916) 443-2745
14 Facsimile: (916) 443-9017
15 Email: wmanley@rtmmlaw.com
16 Email: jholman@rtmmlaw.com

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

13 Attorneys for Respondents
14 CITY OF NEWPORT BEACH AND CITY OF NEWPORT BEACH CITY COUNCIL

15 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
16 COUNTY OF ORANGE - CIVIL COMPLEX CENTER

16 BANNING RANCH CONSERVANCY,
17 Petitioner,

18 v.

19 CITY OF NEWPORT BEACH, CITY OF
20 NEWPORT BEACH CITY COUNCIL, and
21 DOES 1 - 10,
22 Respondents.

21 NEWPORT BANNING RANCH, LLC; AERA
22 ENERGY, LLC; CHEROKEE NEWPORT
23 BEACH, LLC; and DOES 11 - 50,
24 Real Parties in Interest.

CASE No.: 30-2010-00365758 CU-WM-
CXC

**PROPOSED JUDGMENT
DENYING PETITION FOR WRIT
OF MANDATE**

[Pub. Resources Code, § 21167.8;
California Rules of Court, rule
3.1590(i)]

Assigned for All Purposes to:
The Honorable Gail A. Andler
Department CX102

Trial Date: March 14, 2011

Complaint Filed: April 22, 2010

26 ///

27 ///

28

EXHIBIT A

[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court conducted a hearing on the Verified Petition for Writ of Mandate and Supplemental Petition for Writ of Mandate (the "Petitions") on March 14, 2011. Rachel B. Hooper, Amy J. Bricker, and Sarah Ann Clark appeared for Petitioner Banning Ranch Conservancy. Whitman F. Manley and Jennifer S. Holman appeared for Respondents City of Newport Beach et al. Susan K. Hori appeared for Real Parties in Interest Newport Banning Ranch, LLC; Aera Energy, LLC; and Cherokee Newport Beach, LLC. On May 5, 2011, the Court issued its ruling on the Petitions. A copy of the Court's ruling is attached at Exhibit A. For the reasons set forth in the Court's ruling:

1. The Petitions are denied;
2. Final judgment shall be, and hereby is, entered in favor of Respondents and Real Parties in Interest on all claims set forth in the Petitions; and
3. Respondents and Real Parties are the prevailing parties in this action and may recover their costs of suit from Petitioner pursuant to the timely filing of a memorandum of costs and the Court's ruling on any timely motion to strike or tax costs that may subsequently be filed in opposition by Petitioner.

IT IS SO ORDERED AND ADJUDGED.

Dated: JUN - 9 2011

Gail Andler

Honorable Gail A. Andler
Judge of the Superior Court

OK

THE PARTY ELECTRONICALLY FILING THIS DOCUMENT
IS TO BE DEEMED TO HAVE CONFORMED WITH ALL OF THE RULES

EXHIBIT A

**Court's Ruling
(Minute Order)**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 05/05/2011

TIME: 02:24:00 PM

DEPT: CX102

JUDICIAL OFFICER PRESIDING: Gail A. Andler
CLERK: Mary White
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: 30-2010-00365758-CU-WM-CXCCASE INIT.DATE: 04/22/2010
CASE TITLE: Banning Ranch Conservancy vs. City of Newport Beach
CASE CATEGORY: Civil - Unlimited. CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 71227585
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission now makes the following ruling:

Petitioner seeks to set aside the approvals by the City of Newport Beach ("City") in resolutions it adopted regarding the proposed Sunset Ridge Park and related access agreement. The proposed park lies on land which is partially owned by the City and partially owned by Newport Banning Ranch LLC ("NBR"). The City bought the property from Caltrans with the intent to build a park. Caltrans imposed scenic preservation restrictions and it limited access. The limited access required an access agreement with the neighboring property owner, NBR. The City's EIR review generally considered the impacts of the Park standing alone and also provided analysis of the cumulative effects of potential growth. Petitioners argue, among other things, that the Park is part of the proposed development for the neighboring NBR property and that the EIR for the Park has to also consider how the park and the proposed development together impact the environment.

The issue on review is for this Court to consider whether the City abused its discretion by either (1) failing to proceed in the matter provided by law; or (2) it reached a decision that is not supported by substantial evidence. An EIR is presumed adequate, and the party challenging it has the burden to show that it is not. The City's decision must only be supported by substantial evidence. The Court cannot set aside the decision of the City merely because an opposite conclusion would have been equally or more reasonable.

Several arguments have been advanced by Petitioners, both orally and in writing, urging the Court to set aside the approvals and grant the writ. However, the Court is not persuaded after reviewing the record that under the law Petitioners are entitled to the relief requested, and adopts the reasoning of counsel for

DATE: 05/06/2011
DEPT: CX102

MINUTE ORDER

Page 1
Calendar No.

EXHIBIT A

CASE TITLE: Banning Ranch Conservancy vs. City of
Newport Beach

CASE
30-2010-00365758-CU-WM-CXC

NO:

the City and Real Party in Interest. Preliminarily, the Court notes that the General Plan provides that even if the property was purchased with the designation to remain as "open space", the General Plan provided that the open space provided for the development of parks and other amenities to benefit the neighboring community. If the property was developed, the General Plan provided for limits on the type of development. Under either scenario, a road from 19th Street to Pacific Coast Highway was specifically provided for in the General Plan.

Addressing the arguments raised by Petitioners, substantial evidence supports the City's finding that the CEQA review could be limited to the Park itself. The Court finds that the EIR properly focused on the Park Project and that there was no improper "piece-mealing." Under a substantial evidence standard, the Court finds that the EIR adequately addressed the cumulative impacts as to traffic, biological impacts, noise, hazards, and land use. Substantial evidence supports a finding by the City that the effect of the Park is not cumulatively considerable, and even if it was, the cumulative effect was already considered and approved by the passage of the City's General Plan. There is substantial evidence to support the finding that there are no growth inducing impacts from the Park project. Substantial evidence support the City's biological EIR and mitigation proposals. There is substantial evidence in support of the City's findings related to jurisdiction and consistency with other land use agency requirements. The Court also denies the Writ based on the alleged failure to adequately consider alternatives. Petitioners have the burden to show an alternative is feasible and the failure of the Petitioner to discuss the evidence supporting the agency's analysis and to demonstrate why it is lacking is a concession under *Tracy First* that the evidence supports the analysis and is fatal to Petitioner's claim. The record reflects that the City considered Alternatives. There is substantial evidence to support a finding by the City that Alternative B was not feasible, as well as the infeasibility of the other alternatives stated in the EIR that would not call for the use of Bluff Road.

Thus, the Court finds there was substantial evidence to support the EIR and its proposed mitigation plans to reduce any serious impacts to an insignificant impact. The Court denies the writ of mandate in its entirety, based upon the applicable statutory and case law, after full consideration of the arguments of counsel and the administrative record.

Counsel for the City is directed to prepare the appropriate order and give notice.

Clerk to give notice to counsel for the city and counsel for the city is to give notice to all others.

It is so ordered.

GAIL A. ANDLER

Hon. Gail Andler

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 05-MAY-2011, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

DATE: 05/05/2011
DEPT: CX102

MINUTE ORDER

Page 2
Calendar No.

**CASE TITLE: Banning Ranch Conservancy vs. City of
Newport Beach**

**CASE
30-2010-00365758-CU-WM-CXC**

NO:

**SHUTE, MIHALY & WEINBERGER
AMY J BRICKER
SARA CLARK
RACHEL B HOOPER
396 HAYES STREET
SAN FRANCISCO, CA 94102**

**MANATT, PHELPS & PHILLIP, LLP
SUSAN K HORI
695 TOWN CENTER DR
FOURTEENTH FLOOR
COSTA MESA, CA 92626**

**REMY, THOMAS, MOOSE & MANLEY
JENNIFER S HOLMAN
WHITMAN F MANLEY
455 CAPITOL MALL, STE 210
SACRAMENTO, CA 95814**

**DATE: 05/05/2011
DEPT: CX102**

MINUTE ORDER

**Page 3
Calendar No.**

1 *Banning Ranch Conservancy v. City of Newport Beach et al.*
2 Orange County Superior Court Case No.: 30-2010-003665758-CU-WM-CXC

3 **PROOF OF SERVICE**

4 I am a citizen of the United States, employed in the City and County of Sacramento.
5 My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am
6 over the age of 18 years and not a party to the above-entitled action.

7 I am familiar with Remy, Thomas, Moose and Manley, LLP's practice whereby the
8 mail is sealed, given the appropriate postage and placed in a designated mail collection
9 area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each
10 day's business.


11 On May 12, 2011, I served the following:

12 **[PROPOSED] JUDGMENT DENYING**
13 **PETITION FOR WRIT OF MANDATE**

- 14 On the parties in this action by causing a true copy thereof to be placed in a sealed
15 envelope with postage thereon fully prepaid in the designated area for outgoing mail
16 addressed as follows; or
- 17 On the parties in this action by causing a true copy thereof to be delivered via
18 Federal Express to the following person(s) or their representative at the address(es)
19 listed below; or
- 20 On the parties in this action by causing a true copy thereof to be delivered by
21 facsimile machine number (916) 443-9017 to the following person(s) or their
22 representative at the address(es) and facsimile number(s) listed below; or
- 23 On the parties in this action by causing a true copy thereof to be hand-delivered to
24 the following person(s) or representative at the address(es) listed below; or
- 25 On the parties in this action by causing a true copy thereof to be electronically
26 delivered via the internet to the following person(s) or representative at the
27 electronic mail address(es) listed below:

28 **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct and that this
Proof of Service was executed this 12th day of May 2011, at Sacramento, California.


Valorie Wood

1 *Banning Ranch Conservancy v. City of Newport Beach et al.*
2 Orange County Superior Court Case No.: 30-2010-003665758-CU-WM-CXC

3 **SERVICE LIST**

4 Rachel G. Hooper
5 Amy J. Bricker
6 SHUTE, MIHALY & WEINBERGER LLP
7 396 Hayes Street
8 San Francisco, CA 94102
9 Phone: (415) 552-7272 (Amy ext. 236)
10 Fax: (415) 552-5816
11 Email: Hooper@smwlaw.com
12 Bricker@smwlaw.com

Attorneys for Petitioners
BANNING RANCH CONSERVANCY

U.S. MAIL and E-Mail

13 Susan K. Hori
14 Keli N. Osaki
15 MANATT PHELPS & PHILLIPS
16 695 Town Center Drive, 14th Floor
17 Costa Mesa, CA 92626
18 Phone: (714) 371-2500
19 Fax: (714) 371-2550
20 Phone: (714) 371-2528 (direct line Susan)
21 Fax: (714) 371-2571 (direct fax Susan)
22 Email: shori@manatt.com
23 kosaki@manatt.com

Attorneys for Real Parties in Interest
NEWPORT BANNING RANCH, LLC;
AERA ENERGY, LLC;
CHEROKEE NEWPORT BEACH, LLC

U.S. MAIL and E-Mail

28

PROOF OF SERVICE

3 **PROOF OF SERVICE**

4 I am a citizen of the United States, employed in the City and County of Sacramento.
5 My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am
6 over the age of 18 years and not a party to the above-entitled action.

7 I am familiar with Remy, Thomas, Moose and Manley, LLP's practice whereby the
8 mail is sealed, given the appropriate postage and placed in a designated mail collection
9 area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each
10 day's business.

11 On June 10, 2011, I served the following:

12 **NOTICE OF ENTRY OF JUDGMENT**

- 13 On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or
- 14 On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or
- 15 On the parties in this action by causing a true copy thereof to be delivered by facsimile machine number (916) 443-9017 to the following person(s) or their representative at the address(es) and facsimile number(s) listed below; or
- 16 On the parties in this action by causing a true copy thereof to be hand-delivered to the following person(s) or representative at the address(es) listed below; or
- 17 On the parties in this action by causing a true copy thereof to be electronically delivered via the internet to the following person(s) or representative at the electronic mail address(es) listed below:

18 **SEE ATTACHED SERVICE LIST**

19 I declare under penalty of perjury that the foregoing is true and correct and that this
20 Proof of Service was executed this 10th day of June 2011, at Sacramento, California.

21 _____
22 Valorie Wood

1 *Banning Ranch Conservancy v. City of Newport Beach et al.*
2 Orange County Superior Court Case No.: 30-2010-003665758-CU-WM-CXC

3 **SERVICE LIST**

4 Rachel G. Hooper *Attorneys for Petitioners*
5 Amy J. Bricker BANNING RANCH CONSERVANCY
6 SHUTE, MIHALY & WEINBERGER LLP
7 396 Hayes Street U.S. MAIL and E-Mail
8 San Francisco, CA 94102
9 Phone: (415) 552-7272 (Amy ext. 236)
10 Fax: (415) 552-5816
11 Email: Hooper@smwlaw.com
12 Bricker@smwlaw.com

13 Susan K. Hori *Attorneys for Real Parties in Interest*
14 Keli N. Osaki NEWPORT BANNING RANCH, LLC;
15 MANATT PHELPS & PHILLIPS AERA ENERGY, LLC;
16 695 Town Center Drive, 14th Floor CHEROKEE NEWPORT BEACH, LLC
17 Costa Mesa, CA 92626
18 Phone: (714) 371-2500 U.S. MAIL and E-Mail
19 Fax: (714) 371-2550
20 Phone: (714) 371-2528 (direct line Susan)
21 Fax: (714) 371-2571 (direct fax Susan)
22 Email: shori@manatt.com
23 kosaki@manatt.com