

Comment Letter O21b

Alford, Patrick

**From:** Bruce Bartram [b.bartram@verizon.net]  
**Sent:** Wednesday, October 26, 2011 10:54 AM  
**To:** Alford, Patrick  
**Cc:** robb@hamiltonbiological.com; knelson@web-conferencing-central.com; steve.banningranch@hotmail.com; margaret.royall@gmail.com; dobehave@earthlink.net; mamalili@pacbell.net; skyking965@earthlink.net; hbalig@yahoo.com; dodgeva@sbcglobal.net; rhschnur@aol.com; janeolinger@cox.net; rjmj1937@verizon.net; kristenbender0@gmail.com; wre2lef@sbcglobal.net; nagemot@pacbell.net; malawrence@bcc.edu; valsanto@yahoo.com; nicolai@nicolaiglazer.com; malawrence@prodigy.net; beth@suply.com; sandyfazio@gmail.com; applelib@aol.com; tevishill@aol.com; dennis.mchale@pcm-inc.org; greenp1@cox.net; cblack949@hotmail.com; jimmosher@yahoo.com; pcmalkemus@gmail.com; ropc@sbcglobal.net; frapper@hotmail.com; paularms@socal.rr.com; evenkeel4@sbcglobal.net; jimcassidy52@earthlink.net; ginnylombardi@yahoo.com; mikepowell@ca.rr.com; cheryl.johnston@hbcscd.k12.ca.us; a71673.1300@netzero.net; jamesquigg@yahoo.com; winifree@earthlink.net; cmcevoy@dusd.net; techcowboy@ca.rr.com; blush1996@aol.com; davesutherland4@gmail.com; bnerhus@gmail.com; jp\_seque@msn.com; powell.michael@aaa-calif.com; p.martz@cox.net; bmlserv@juno.com; jon\_crawford@hurley.com; norbpuff@sbcglobal.net; j\_shunda@yahoo.com; slgenis@stanfordalumni.org; christopherbunyan@yahoo.com; medjkraus@yahoo.com; sharon.boles@roadrunner.com; dardentrade@yahoo.com; alfredgcruz@sbcglobal.net; terry@tdpowell.com; shokobennett@gmail.com; swellmel4@juno.com; stephaniepa@socal.rr.com; susantheresalee@msn.com; jtmansfield@ca.rr.com; mtabbert15@gmail.com; mezzohiker@msn.com; dkoken@hmausa.com; terryrmwelsh@hotmail.com; jenniferfrutig@aol.com  
**Subject:** Newport Banning Ranch DEIR Comment II  
**Attachments:** NB General Plan Banning Ranch Development Constraints.pdf; NBR DEIR Master Development Plan.pdf; USFWS CAGN Critical Habitat.jpg; USFWS NBR Fairy Shrimp Map.pdf; NBR DEIR Vernal Pool Interpretive Area.pdf; NBR DEIR Comment Letter I 101411.pdf

October 26, 2011

Sent via US Mail and email

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
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Newport Beach, CA 92658-8915

Re: Newport Banning Ranch DEIR Comment II

Dear Mr. Alford:

The Newport Banning Ranch DEIR claims the Newport Banning Ranch Project (NBR) is consistent with the City of Newport Beach's General Plan Land Use Element regarding Banning Ranch. Specifically, Land Use Goal LU 6.4 which states: "If acquisition (of Banning Ranch) is not successful, a high-quality residential community with supporting uses that provides revenue to restore and protect wetlands and important habitats."  
The NBR DEIR then states that the proposed residential units, retail commercial uses and overnight accommodations to be constructed are consistent with the following NB General Plan Land Use Policies:

"LU 6.4.2 Residential

Accommodate a maximum of 1,375 residential units, which shall consist of a mix of single-family detached, attached, and multi-family units to provide a range of choices and prices for residents.

LU 6.4.3 Retail Commercial

Accommodate a maximum of 75,000 square feet of retail commercial uses that shall be oriented to serve the needs of local and nearby residents.

LU 6.4.4 Overnight Accommodations

Accommodate a maximum 75 rooms in a small boutique hotel, "bed and breakfast," or other overnight accommodations."

However, on Pg. 3-75 of the Newport Beach General Plan Land Use Element it is stated that the above Banning Ranch development capacities "represent general development capacity estimates, with the property's ultimate development footprint and capacity determined through required federal and state regulatory environmental permitting processes and a planned community development plan approved by the City of Newport Beach."

On Pgs. 3-66-3-76 the Newport Beach General Plan Land Use Element discusses Banning Ranch. On Pgs. 3-67-3-70 the development constraints affecting Banning Ranch are discussed. These included the presence of "habitat and species" in areas likely to require "resource permitting" with "the actual acreage subject to environmental permitting will be determined in subsequent studies to be conducted in accordance with state and federal regulations." Additionally, on Pg 3-70 additional development constraints affecting Banning Ranch including bluff areas "forming a important visual backdrop from West Coast Highway....arroyos with riparian habitats and ....bluff face geology...highly erodible and has experienced sliding over the years. Figure LU 17 illustrates these constraints."

On Pg. 77 of the Newport Beach General Plan Land Use Element concludes its discussion of Banning Ranch with "LU 6.5.6 Coordination with State and Federal Agencies." This section states:

"Work with appropriate state and federal agencies to identify wetlands and wildlife habitats to be preserved and/or restored and those on which development will be permitted." (Emphasis added).

Attached is Figure LU17 from the City of Newport Beach General Plan which illustrates Banning Ranch Building Constraints. As you can see, Banning Ranch is listed as totaling 518 acres, with "development constraints" equaling 302 acres with the remaining 216 acres as "total buildable area." This diagram is stated to have been prepared on "3/24/06." As noted above in the General Plan "the ultimate development footprint and capacity determined through required federal and state regulatory environmental permitting processes..." Thus, LU17's conclusion of 216 acres of buildable area on Banning Ranch was preliminary only, subject to actions by state and federal environmental regulatory agencies.

Next attached, is NBR DEIR Exhibit 3-15 the Master Development Plan for the project. As noted noted above, the NBR Project calls for the construction of the maximum number of "residential units" (1,375), the maximum square feet number of "retail commercial" (75,000), and the maximum number of "overnight accommodations" (75 rooms) allowed under the General Plan which was adopted in 2006. A visual comparison of LU17 and Exhibit 3-15 reveals the NBR project "builds" in every area of Banning Ranch not "constrained" under the General Plan LU17. Nowhere in the NBR DEIR is LU17 mentioned or referenced in any way. In any event, the conclusion the NBR DEIR wishes the public to draw is that no federal or state environmental regulatory actions have occurred since 2006 that have affected the "development constraints" on Banning Ranch and reduced the lawful "buildable area" for any NBR project on the property. In fact, as shown below there have been multiple state and federal agency environmental regulatory actions affecting the "buildable area" on Banning Ranch since the General Plan was adopted in 2006.

Next attached is my NBR DEIR Comment I emailed and mailed October 14, 2011 to you. I incorporate by reference here the comments contained therein. In brief, as you can see the comment references environmental regulatory actions concerning Banning Ranch by the state and federal agencies specifically, the California Coastal Commission and the United States Fish and Wildlife Service. As discussed in the 10/14/11 comment on April 14, 2011 hearing, the Coastal Commission approved Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02 against the Newport Banning Ranch property owners and the City of Newport Beach (owners of adjacent property - site of the proposed Sunset Ridge Park).

That order, among other things, required both the NBR and the City to restore habitat on the subject properties by planting coastal sage scrub vegetation native to Orange County that will provide foraging and breeding habitat for the coastal

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<p>California gnatcatcher. As part of the Consent Orders the City and NBR agreed that for purposes of the enforcement action the restored constituted environmentally sensitive habitat areas (ESHA) as defined by the Coastal Act (Public Resources Code 30000 et seq.) and subject to special protections under Public Resources Code 30240.</p>	<p>3 cont.</p>
<p>In addition, as part the CCC Staff Report prepared for April 14, 2011 hearing was the Memorandum prepared for the Coastal Commission by Dr. Jonna Engels dated March 31, 2011. The Memorandum concerns "Newport Banning Ranch NOV (Notice of Violation) Subject Development ESHA Determination. On Pg. 7 of the Memorandum, Dr Engels indicates that the United States Fish and Wildlife Service (USFWS) in 2007 "designated <u>all of Newport Banning Ranch as critical habitat for the California gnatcatcher</u>", a federally protected endangered species under Endangered Species Act. The Memorandum further states that [I]n designating Newport Banning Ranch Ranch as critical habitat, the USFWS noted that the area was occupied by gnatcatchers at the time of the listing and at the time of designation of critical habitat and the area "contains all of the features essential to the conservation of the coastal California gnatcatcher." A copy of the California Gnatcatcher Critical Habitat Map designating both Newport Banning Ranch and the City's Sunset Ridge Park properties is attached for your review.</p> <p>In addition to above environmental regulatory actions by the Coastal Commission and the USFWS affecting "building area" on Banning Ranch is the 2007 USFWS action designating 15 acres of Banning Ranch as critical habitat for the San Diego Fairy Shrimp, a federal protected endangered species.</p> <p>The following is a weblink to a page in the Federal Register which contains federal regulations promulgated by federal agencies:<a href="http://www.federalregister.gov/articles/2007/12/12/07-5972/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-the-san-diego#p-25">http://www.federalregister.gov/articles/2007/12/12/07-5972/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-the-san-diego#p-25</a>. The webpage announces a rule by the USFWS effective January 11, 2008 as follows:</p> <p>"We, the U.S. Fish and Wildlife Service (Service), are designating revised final critical habitat for the San Diego fairy shrimp (<i>Branchinecta sandiegonensis</i>) under the Endangered Species Act of 1973, as amended (Act). Approximately 3,082 acres (ac) (1,248 hectares (ha)) of habitat in Orange and San Diego counties, California, are being designated as critical habitat for the San Diego fairy shrimp. This revised final designation constitutes a reduction of 943 ac (382 ha) from the 2000 designation of critical habitat for the San Diego fairy shrimp."</p> <p>One of the areas designated as critical habitat is Newport-Banning Ranch. It states:</p> <p><b>"Subunit 1C: Newport-Banning Ranch</b></p> <p>We are designating subunit 1C as critical habitat for the San Diego fairy shrimp. <u>Subunit 1C consists of 15 ac (6 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. It is located south of the Santa Ana River, 2 mi (3 km) inland from the coast. Subunit 1C consists of privately owned land.</u> (Emphasis added)</p> <p>The vernal pool complex at Newport-Banning Ranch is one of only five known vernal pool complexes containing the San Diego fairy shrimp in Orange County. This vernal pool complex and the vernal pool complex at Fairview Park (subunit 1B) represent the only remaining examples of coastal vernal pools in Orange County. Subunit 1C is closed to recreational use; however, this area has been degraded by past activities and may face future impacts from the development of this site and/or its watershed. <u>The PCEs(primary constituent elements) in this critical habitat subunit may require special management considerations or protection to address threats from development activities and nonnative species that may negatively impact the San Diego fairy shrimp, its PCEs, and its habitat.</u>" (Emphasis added)</p> <p>The map -Subunit 1C- depicting the 15 acres of Banning Ranch designated as critical habitat is attached. As you can see, it's a huge chunk of NBR. A review of the Biological Resources Section 4.6 of NBR DEIR reveals no mention of this USFWS critical habitat designation. In fact, on Pg 4.6-34 Table 4.6-5 lists only "0.500 total acres" as "pools/ponded areas supporting San Diego Fairy Shrimp on the Project Site." Further, on Pgs. 4.6-69-70 the NBR DEIR discusses vernal pools occupied by the San Diego fairy shrimp. It concludes by talking about a Mitigation Measure involving "the restoration and preservation of a 3.58-acre vernal pool complex..." A copy of NBR DEIR Exhibit 4.8-8 "Nature Center &amp; Vernal Pool Interpretive Area Development Plan" is attached. As you can see, when comparing the USFWS critical habitat map with the NBR DEIR Vernal Pool Exhibit reveals the proposed "pool" to be north of the USFWS 15 acres critical habitat.</p>	<p>4</p>

Instead, the USFWS 15 acres appears to encompass all of the "North Family Village" development shown on the NBR Master Development Plan Exhibit 3-15.

Again, no mention anywhere in the NBR DEIR appears regarding the Coastal Commission Restoration Order and/or the USFWS designations of Banning Ranch as critical habitat for the California Gnatcatcher and San Diego Fairy Shrimp, both federally protected endangered species. Thus, no discussion occurs in the NBR DEIR concerning how these "federal and state" environmental regulatory actions affect the "buildable area" permissible on Banning Ranch under the General Plan. In addition, NBR DEIR's non-disclosure of the Coastal Commission and USFWS actions regarding Banning Ranch show a clear violation of Newport Beach General Plan Land Use Element "LU 6.5.6 Coordination with State and Federal Agencies" discussed above. Once again, the section states:

"Work with appropriate state and federal agencies to identify wetlands and wildlife habitats (on Banning Ranch) to be preserved and/or restored and those on which development will be permitted." (Emphasis added).

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Lastly, it should be noted the while the NBR DEIR contains no discussion concerning the USFWS actions the NBR Biological Technical Report contains two brief references concerning its action regarding the San Diego Fairy Shrimp and the California Gnatcatcher. The Biological Technical Report is part of the NBR Appendices and is posted online only with no "hard copy" circulated and available for public review. In any event, on Pg. 50 of the Biological Technical Report it is briefly stated:

"On December 12, 2007, the USFWS published a final rule designating 3,082 acres of land as critical habitat for the San Diego fairy shrimp in San Diego and Orange Counties (USFWS 2007b). The Project site is located in final critical habitat Unit 1, Subunit C for San Diego fairy shrimp."

And on Pg. 67 of the Biological Technical Report it is briefly stated:

"On December 19, 2007, USFWS published a Final Rule revising critical habitat for the coastal California gnatcatcher. The revised critical habitat designates 197,303 acres of land in Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego Counties (USFWS 2007a). The Project site is within the revised critical habitat (Unit 7) for this species."

No description concerning how much of Banning Ranch is designated as critical habitat is disclosed in either entry. So instead of honest disclosure and discussion of the USFWS actions in the NBR DEIR are these buried references located on line only in the NBR DEIR Appendices. In NBR DEIR Section 2.2.1 "Standards of Adequacy Under CEQA" it is stated in pertinent part:

"The courts have not looked for perfection but for adequacy (in an EIR), and good faith effort at full disclosure." (Emphasis added).

In conclusion, the omissions in the NBR DEIR listed in this and my 10/14/11 comment demonstrate a complete lack of a "good faith effort at full disclosure" of the environmental impacts of the NBR Project.

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Very truly yours,

Bruce Bartram

2 Seaside

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Newport Beach, CA 92663



**Letter O21b Bruce Bartram**  
October 26, 2011

### **Response 1**

The comment is noted. The purpose of the Newport Banning Ranch EIR is to address the potential environmental impacts associated with the Applicant's development proposal. Section 3.14 of the Draft EIR Project Description identifies the discretionary actions required by the lead agency and responsible and trustee agencies necessary to allow for Project implementation.

### **Response 2**

Please refer to the response to Comment 1. The Draft EIR evaluates the potential environmental impacts of the proposed Project compared to existing conditions at the time the Notice of Preparation was prepared in 2009.

### **Response 3**

Please refer to Please refer to Topical Response: Coastal Commission Consent Orders, Topical Response: Sunset Ridge Park, and Topical Response: ESHA, and the responses to Letter 021a.

### **Response 4**

The Draft EIR and Biological Technical Report identify the presence of Critical Habitat for both the coastal California gnatcatcher and the San Diego fairy shrimp on the Project site. Page 4.6-35 of the Draft EIR states that "The Project site is within designated critical habitat for the coastal California gnatcatcher." The commenter states that the Draft EIR fails to identify "how much of Banning Ranch is designated as critical habitat." As a point of clarification, the entirety of the Project site is within designated Critical Habitat.

Specific to the San Diego fairy shrimp, the following text can be found on page 50 of the Biological Technical Report:

On December 12, 2007, the USFWS published a final rule designating 3,082 acres of land as critical habitat for the San Diego fairy shrimp in San Diego and Orange Counties (USFWS 2007b). The Project site is located in final critical habitat Unit 1, Subunit C for San Diego fairy shrimp.

Based on GIS calculations, Subunit C is 15.39 acres. Of the 15.39 acres, 1.76 acres occurs off the Project site. The remaining 13.63 acres of Subunit C is within the approximately 401-acre Project site. This acreage represents approximately 3.4 percent of the Project site which would not be considered a "huge chunk of NBR" as described by the commenter.

It is important to note that an area designated as Critical Habitat for any species listed by the U.S. Fish and Wildlife Service (USFWS) is not the same as an area occupied by the species. An example of this can be found in the evaluation of vegetation types within the 13.63 acres of Critical Habitat of Subunit C. A total of 4.19 of the 13.63 acres contain dirt/gravel/asphalt roads, oil operation facilities, or ornamental vegetation. This represents approximately 31 percent of Subunit C on site that does not support the Primary Constituent Elements (PCEs). The USFWS has acknowledged that some areas of Critical Habitat contain non-PCEs, "Where possible, the boundaries of final critical habitat have been refined to remove lands containing features such

as roads, buildings, and other infrastructure that do not contain the PCEs; however, it was not possible to exclude all such areas from the designation”<sup>19</sup>.

Please also refer to Topical Response: ESHA and Topical Response: Vernal Pools.

The Draft EIR includes a discussion of Critical Habitat relative to the regulatory process of the Federal Endangered Species Act. Page 4.6-97 of the Draft EIR states that “impacts on listed species and critical habitat would require independent authorization pursuant to the FESA.”

The commenter’s opinion regarding the accuracy of information regarding Critical Habitat for both the gnatcatcher and fairy shrimp is noted.

## **Response 6**

The opinions of the commenter are noted.

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<sup>19</sup> <http://www.gpo.gov/fdsys/pkg/FR-2007-12-12/pdf/07-5972.pdf#page=1>

Comment Letter O21c

Alford, Patrick

**From:** Bruce Bartram [b.bartram@verizon.net]  
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**Subject:** Newport Banning Ranch DEIR Comment III  
**Attachments:** NBR DEIR Master Development Plan.pdf; Ticonderoga Agreement.pdf

November 4, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915

Re: Newport Banning Ranch DEIR Comment III

Dear Mr. Alford:

California courts have long considered separate activities as one project under the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.) and required them to be reviewed together where the second activity is a reasonably foreseeable consequence of the first activity. *Sierra Club v. West Side Irrigation District* (2005) 128 Cal. App. 4th 690; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263.

As shown in the attached Newport Banning Ranch draft environmental impact report (NBR DEIR) Master Development Plan Exhibit 3-15 and discussed in the NBR DEIR Executive Summary Pg. 1-3, the NBR Project calls for the construction of the Bluff Road system, which, in part, consists of Bluff Rd., a north-south, four-lane divided road extending from West Coast Highway to 15th Street and North Bluff Rd. a four-lane divided road transitioning to two lane undivided road extending between 15th Street and 19th Street. Shown in NBR DEIR Surrounding Land Uses Exhibit 3-5 and discussed in NBR DEIR Section 3 Project Description on Pg. 3-5 as east of the NBR Project site are the condominium developments of the Newport Crest and Seawind Newport. Not discussed is the private road Ticonderoga Street, an undivided street with one lane in each direction which connects the Newport Crest and Seawind complexes to Superior Avenue.

Attached is the "Agreement for Ticonderoga Street" entered into between the City of Newport Beach (City) and the Newport Crest Homeowners Association (Association) on September 19, 1984 and recorded with the Orange County Recorder on September 26, 1984. As you can see, on Pg 2 Section 5 of the Agreement it is expressly stated:

"The Association shall allow Ticonderoga Street to be extended westerly and connect with 15th Street at such time as as 15th Street and Bluff Road are constructed to connect to Coast Highway." (Emphasis added)

Extension of Ticonderoga Street to connect with 15th Street is clearly a "foreseeable consequence" of the NBR Project's intention to construct Bluff Rd., and connect it with both 15th Street and West Coast Highway. As such under California Law cited above this "activity" must be reviewed under CEQA together with the NBR Project for their collective potential environmental impacts. Yet nowhere in the NBR DEIR is the Ticonderoga Street extension mentioned or discussed.

In NBR DEIR Transportation and Circulation Section 4.9 the environmental impacts due to the NBR Project are discussed. Once again, no mention of the Ticonderoga extension is made. On Pg. 4.9-29 Threshold 4.9-1 is asked in determination of the NBR Project's traffic impacts:

"Would the project cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume -to-capacity ratio on streets, or congestion at intersections)?"

On Pg. 4.9-13 of the NBR DEIR Traffic and Circulation Section Bluff Road is described as classified under the City of Newport Beach General Plan Circulation Element as "Primary from West Coast Highway to 19th Street." In turn, on Pg. 4.9-11 Superior Avenue is described as "a four lane divided north-south Primary Arterial in the vicinity of West Coast Highway."

The City of Newport Beach General Plan Circulation Element on Pg. 7-5 defines a Primary arterial highway as "usually a four-lane divided roadway. A Primary arterial is designed to accommodate a daily capacity ranging from 30,000 to 45,000 with a typical daily capacity of 34,000 VPD (vehicles per day)." Also, on Pg. 7-5 a "Commuter Roadway" is defined as a "two-to-four-lane, unrestricted access roadway with a daily capacity ranging from 7,000 to 11,000 with a typical daily capacity of 10,000 VPD. It differs from a local street in its ability to handle through traffic movements between arterials." (Emphasis added)

From the above, the extension of Ticonderoga to connect with Bluff Rd. (a Primary Arterial Highway) which Ticonderoga in turn already connects with Superior Avenue (a Primary Arterial Highway) amounts to Ticonderoga's conversion into a "Commuter Roadway" all as a "foreseeable consequence" of the NBR Project. With this connection to both Bluff Rd. and Superior Avenue (both Primary Highways) Ticonderoga Street under the General Plan as a Commuter Roadway can expect a typical daily capacity of 10,000 vehicles per day through the Newport Crest and Seawind Newport condominium complexes. Thus, from a private local street Ticonderoga faces conversion into a Commuter Roadway without a determination of "its ability to handle traffic movements between arterials" contained in the NBR DEIR. (Emphasis added)

As a resident of Seawind Newport resident whose home directly faces Ticonderoga Street I will not speculate here as to what kind of environmental hell the addition of 10,000 vehicles per day will bring me and my neighbors (i.e., noise, air quality, safety, et. al.). This, if and/or when NBR Project's construction of Bluff Rd. happens and, pursuant to the Ticonderoga Agreement, the extension occurs. However, the environmental impacts of the Ticonderoga extension need to be analyzed under CEQA before it occurs. The Ticonderoga extension, a foreseeable consequence of the NBR Project, by itself fulfills NBR DEIR Threshold 4.9-1 above regarding significant traffic impacts. NBR DEIR failure to mention, let alone discuss, the Ticonderoga extension renders it deficient both under CEQA and the Newport Beach General Plan.

Very truly yours,

Bruce Bartram  
2 Seaside Circle  
Newport Beach, CA 92663

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cont.

**Letter O21c Bruce Bartram**  
November 4, 2011

**Response 1**

On May 14, 1984, the City Council of the City of Newport Beach adopted Resolution No. 84-38, which vacated Ticonderoga Street. As part of the recitals adopting the resolution, the City Council of the City of Newport Beach found that Ticonderoga Street “is unnecessary to present or prospective public use.” While a condition of the vacation does allow Ticonderoga Street to be extended and connected to 15<sup>th</sup> Street at such time 15<sup>th</sup> Street and Bluff Road are connected, such an extension is neither proposed by the Project nor provided for in the Master Plan of Streets and Highways of the Circulation Element of the City of Newport Beach General Plan. There is no evidence in the record suggesting that an extension of Ticonderoga Street to 15<sup>th</sup> Street is proposed, contemplated, desired, or necessary. Therefore, an extension of Ticonderoga Street to 15<sup>th</sup> Street is speculative and not a reasonably foreseeable consequence of the Project.



Comment Letter O21d

Alford, Patrick

**From:** Bruce Bartram [b.bartram@verizon.net]  
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**Cc:** robb@hamiltonbiological.com; knelson@web-conferencing-central.com; steve.banningranch@hotmail.com; margaret.royall@gmail.com; dobehave@earthlink.net; mamalili@pacbell.net; skyking965@earthlink.net; hbalig@yahoo.com; dodgeva@sbcglobal.net; rhschnur@aol.com; janeolinger@cox.net; rjmj1937@verizon.net; kristenbender0@gmail.com; wre2lef@sbcglobal.net; nagemot@pacbell.net; malawrence@bcc.edu; valsanto@yahoo.com; nicolai@nicolaiglazer.com; malawrence@prodigy.net; beth@suply.com; sandyfazio@gmail.com; applelib@aol.com; tevishill@aol.com; dennis.mchale@pcm-inc.org; greenp1@cox.net; cblack949@hotmail.com; jimmosher@yahoo.com; pcmalkemus@gmail.com; ropc@sbcglobal.net; frapper@hotmail.com; paularms@socal.rr.com; evenkeel4@sbcglobal.net; jimcassidy52@earthlink.net; ginnylombardi@yahoo.com; mikepowell@ca.rr.com; cheryl.johnston@hbcsl.k12.ca.us; a71673.1300@netzero.net; jamesquigg@yahoo.com; winifree@earthlink.net; cmcevoy@dusd.net; techcowboy@ca.rr.com; blush1996@aol.com; davesutherland4@gmail.com; bnerhus@gmail.com; jp\_seque@msn.com; powell.michael@aaa-calif.com; p.martz@cox.net; bmlserv@juno.com; jon\_crawford@hurley.com; norbpuff@sbcglobal.net; j\_shunda@yahoo.com; slgenis@stanfordalumni.org; christopherbunyan@yahoo.com; medjkraus@yahoo.com; sharon.boles@roadrunner.com; dardentrade@yahoo.com; alfredgcruz@sbcglobal.net; terry@tdpowell.com; shokobennett@gmail.com; swellmel4@juno.com; stephaniepa@socal.rr.com; susantheresalee@msn.com; jtmansfield@ca.rr.com; mtabbert15@gmail.com; mezzohiker@msn.com; dkoken@hmausa.com; terryrmwelsh@hotmail.com; jenniferfrutig@aol.com  
**Subject:** Newport Banning Ranch DEIR Comment IV  
**Attachments:** Caltrans Sunset Ridge Park Comment.pdf; NBR DEIR Traffic Study Area.pdf; NBR DEIR State Highway LOS.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

November 7, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915

Re: Newport Banning Ranch DEIR Comment IV

Dear Mr. Alford:

On Pgs. 1-5-1.6 of the Newport Banning Ranch (NBR) draft Environmental Impact Report (DEIR) Executive Summary Section 1.0 it is stated that among the State Agencies involve in "Project Implementation" approvals, permits and/or actions is the California Department of Transportation (Caltrans). According to the Executive Summary the NBR Project requires from Caltrans:

"Encroachment Permit for activities in Caltrans' rights-of-way, including modification of the reinforced concrete box under West Coast Highway and construction of the pedestrian and bicycle bridge."

The Executive Summary and, indeed, the entire NBR DEIR completely ignores state legislation which has authorized the transfer of jurisdiction of West Coast Highway from Jamboree Road north to the Santa Ana. This includes the proposed Bluff Road entrance to the NBR Project from West Coast Highway. Specifically, Streets & Highways Code 301.3 enacted in 2009 and codified in 2010 states:

**"Section: 301.3**

<p>(a) The (California Transportation Commission) commission may relinquish to the City of Newport Beach the portion of Route 1 that is located between Jamboree Road and the Santa Ana River, within the city limits of the City of Newport Beach, upon terms and conditions the commission finds to be in the best interests of the state.</p> <p>(b) A relinquishment under this section shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.</p> <p>(c) On and after the effective date of the relinquishment, both of the following shall occur:</p> <p>(1) The portion of Route 1 relinquished under this section shall cease to be a state highway.</p> <p>(2) The portion of Route 1 relinquished under this section shall be ineligible for future adoption under Section 81.</p> <p>(d) The City of Newport Beach shall ensure the continuity of traffic flow on the relinquished portions of Route 1, including, but not limited to, any traffic signal progression.</p> <p>(e) For those portions of Route 1 that are relinquished, the City of Newport Beach shall maintain within its jurisdiction signs directing motorists to the continuation of Route 1."</p> <p>As stated in Streets &amp; Highways Code 301.3(c)(1) after the date of relinquishment the portion of West Coast Highway concerning the NBR Project "shall cease to be a state highway." Any permits involving construction of a pedestrian and bicycle bridge shall come from the City of Newport Beach. The significance of this change of control over West Coast Highway is best illustrated by the issue between Caltrans and the City which occurred over the traffic signal proposed at the park entrance road for the City's Sunset Ridge Project. The DEIR for Newport Banning Ranch indicates that the project would include the widening of the access road proposed for Sunset Ridge Park.</p>	1 cont.
<p>At any rate, during the review of the Sunset Ridge Park under the California Environmental Quality Act (CEQA) Caltrans as a responsible agency objected to the installation of the traffic signal at the West Coast Highway entrance to Sunset Ridge Park. Attached is Caltrans' Sunset Ridge Park CEQA comment letter dated December 9, 2009. In it Caltrans specifically objects to the installation of the traffic signal on grounds it would "<u>seriously disrupt progressive traffic flow.</u>" (Emphasis added)</p>	2
<p>With the change of jurisdiction from Caltrans to the City of the pertinent section of West Coast Highway, the City will be free to install the traffic signal to serve both its Park and the NBR regardless of the traffic consequences on West Coast Highway. This "position" of the City was confirmed by Councilman Rosansky in a conversation with members of the Banning Ranch Conservancy. When asked about Caltrans' objection if or when the City obtained jurisdiction Councilman Rosansky stated City would probably not follow Caltrans recommendation and that the City would try to place the stoplight on West Coast Highway.</p>	3
<p>The transfer of control from Caltrans to the City of Newport Beach over West Coast Highway renders misleading the use in the NBR DEIR Transportation and Circulation Section 9. of Caltrans "methodology" to judge NBR Project traffic impacts on that section of State Highway 1 -West Coast Highway-that is the subject of the transfer under Streets &amp; Highways Code 301.3. NBR DEIR Exhibit 4.9-3 shows the "Traffic Study Area" the subject of Section 9. The Exhibit depicts all intersections on West Coast Highway beginning with Bayshore Dr. in the south to Orange St. in the north with Newport Blvd. and Superior Ave. included in between as part of the "Study Area." Attached is a copy of Exhibit 4.9-3 for your review. Thus on Pg. 4.9-9 the NBR DEIR states:</p> <p>"Caltrans requires the use of the HCM intersection methodology to analyze the operation of signalized intersections <u>on a State Highway controlled by Caltrans</u> (Caltrans Guide for the Preparation of Traffic Impact Studies dated December 2002)...Therefore, traffic study intersections on State Highway facilities are also analyzed using the HCM intersection analysis methodology."</p> <p>Under Streets &amp; Highways Code 301.3 the NBR DEIR "Traffic Study Areas" of West Coast Highway described above will no longer be a "State Highway." Caltrans "HCM" methodology is <u>not</u> required to measure NBR Project traffic impacts on</p>	4

those sections of West Coast Highway involved. Instead, City of Newport Beach "standards" regarding traffic impacts is the only criteria that might be required to review the NBR Project. In the City of Newport Beach General Plan Circulation Element on Pgs. 7-5-7-6 it is stated:

"Intersections that do not perform well are a major constraint to the efficient operation of the circulation system, and the traffic study focuses on the level of service at primary intersections in Newport Beach. Generalized definitions of level of service are as follows:

- **LOS "A"**-Minimal delay (less than 10 seconds on average) is experienced.
- **LOS "B"** -Vehicles at signalized intersections experience between 10 and 20 seconds of. delay on average, while vehicles on the side street STOP controlled approaches at unsignalized intersections experience between 10 and 15 seconds of average delay.
- **LOS "C"**-Delays at signalized intersections range from 20 to 35 seconds and from 15 to 25 seconds for side street / STOP controlled traffic at unsignalized intersections.
- **LOS "D"**-Delays at signalized intersections range from 35 to 55 seconds and from 25 to 35 seconds for side street / STOP controlled approaches at unsignalized intersections.
- **LOS "E"**-Delays at signalized intersections range from 55 to 80 seconds on average, while delays for side street / STOP controlled traffic at unsignalized intersections range from 35 to 50 seconds.
- **LOS "F"**-All vehicles at signalized intersections can be expected to wait through more than a single signal cycle with average delays in excess of 80 seconds, while delays to side street / STOP controlled approaches at unsignalized intersections will exceed 50 seconds on average." (Emphasis added)

Further on Pg. 7-6, the City of Newport Beach discusses its application of the above "levels of service" to judge intersection performance. It is stated:

"The City of Newport Beach has traditionally set LOS "D" as its goal for intersection performance, whenever possible. At the same time, the City has recognized that achieving this goal in every case would require a circulation system with oversized elements to accommodate summer beach traffic or regional through traffic. The City has chosen to provide a circulation system that is sized to meet the needs of residents and local businesses and respects the character of Newport Beach. This Circulation Element continues that longstanding practice. The vast majority of intersections in Newport Beach will continue to function at or better than LOS "D" with implementation of the improvements included in this Element, and policy establishes LOS "D" as the standard for most intersections. LOS "E" is the established standard for a limited number of intersections discussed below." (Emphasis added)

By contrast, on Pg. 4.9-9 of the NBR DEIR Transportation and Circulation Section Table 4.9-3 identifies the levels of service description for State Highway facilities using HCM methodology. It states:

**"TABLE 4.9-3**

**STATE HIGHWAY FACILITIES LEVEL OF SERVICE DESCRIPTIONS**

**Level of Service Description**

- A**.....Excellent - No vehicle waits longer than one red light and no approach phase is fully used .
- B**..... Very Good - An occasional approach phase is fully utilized; drivers begin to feel somewhat restricted within groups of vehicles.
- C**.....Good - Occasionally drivers may have to wait through more than one red light; backups may develop behind turning vehicles
- D**.....Fair - Delays may be substantial during portions of the rush hours, but enough lower volume periods occur to permit clearing of developing lines, preventing excessive back-ups.
- E**.....Poor- Represents the most vehicles that the intersection approaches can accommodate; may be long lines if waiting vehicles through several signal cycles.
- F**.....Failure - Back-ups from nearby locations or on cross streets may restrict or prevent movement of vehicles out of the intersection approaches. Tremendous delays with increasing queue lengths."

Further, on Pg. 4.9-9 it is stated:

4  
cont.

"The EIR Traffic Impact Analysis assumes a significant Project impact at a State Highway study intersection when the addition of project-generated trips causes the study intersection's peak LOS to change from acceptable operations (LOS A, B, or C) to deficient operations (LOS D, E or F)." (Emphasis added) A copy of Pg. 4.9-9 is attached for your review.

From the above, it is clear that the City General Plan's LOS standard of "D" or better at most Newport Beach intersections with LOS standard "E" at a "limited number of intersections" shows the City's willingness to accept "deficient operations" (LOS D or E) for intersections under Caltrans HCM criteria. Worse, the City's intention to install a traffic signal at the West Coast Highway-Bluff Rd. entrance to the NBR Project and the City's Sunset Ridge Park despite Caltrans' objection that the signal's installation will "seriously disrupt progressive traffic flow" shows the City's likely willingness to accept a Caltrans LOS "F" "Failure" standard on West Coast Highway intersections. This once jurisdiction to West Coast Highway is transferred to the City under Streets & Highways Code 301.3 as discussed above.

4  
cont.

In short, from the above the City of Newport Beach will be able to do what it wants regarding traffic intersection "levels of service" on West Coast Highway once Streets & Highways Code 301.3 is implemented. None of this appears in the NBR DEIR. Nothing regarding the jurisdiction transfer under Streets & Highways Code 301.3; nothing regarding the differences between the Caltrans' HCM LOS standards and the City of Newport Beach General Plan's intersection LOS "standards"; and nothing regarding Caltrans' objection to the installation of a traffic signal at the West Coast Highway-Bluff Rd. entrance to the NBR Project and the City's Sunset Ridge Park.

As I have said before, in NBR DEIR Section 2.2.1 "Standards of Adequacy Under CEQA" it is stated in pertinent part:

"The courts have not looked for perfection but for adequacy (in an EIR), and good faith effort at full disclosure." (Emphasis added).

5

In conclusion, the omissions in the NBR DEIR described above demonstrate a complete lack of a "good faith effort at full disclosure" of the environmental impacts of the NBR Project.

Very truly yours,

Bruce Bartram

2 Seaside

Circle

Newport Beach, CA 92663

**Letter O21d Bruce Bartram**  
November 7, 2011

**Response 1**

The possibility that the control of the intersections along West Coast Highway within the study area would eventually be transferred to the City of Newport Beach is acknowledged. The Draft EIR traffic impact study provides an analysis of all study intersections using the ICU methodology in accordance with the study parameters of the City in which the intersection is located. In addition, any intersection that is currently located on a State Highway and under the jurisdiction of Caltrans was analyzed using the HCM methodology, as required by Caltrans. The results of both sets of analysis were presented, and mitigation was identified for a significant Project impact at any intersection, under either methodology. Therefore, the Project impact analysis addresses the project impact and the mitigation responsibility for all intersections per that jurisdictions' level of service guidelines.

**Response 2**

Please refer to Letter S2 from Caltrans on the Newport Banning Ranch Draft EIR.

**Response 3**

Please refer to the response to Comment 1.

**Response 4**

Please refer to the response to Comment 1.

**Response 5**

The opinion of the commenter is noted.



Comment Letter O22a

**Alford, Patrick**

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**From:** bill bennett [shokobennett@gmail.com]  
**Sent:** Monday, November 07, 2011 6:50 PM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR

Mr Patrick Alford  
Planning Department  
City of Newport Beach

Dear Mr Alford,

I am writing concerning the Newport Banning Ranch DEIR and would like this email and your reply to become part of the record.

Coastline Community College is building a facility at the corner of Monrovia Ave and 15th Street in Newport Beach, directly adjacent to the proposed Banning Ranch development. The City of Newport Beach and the general public have know about the building of this facility for a long time. This satellite campus, located just one block from Carden Hall, will soon be in operation, certainly long before any development begins on Banning Ranch. This campus will house many more students and staff than Carden Hall, yet is not mentioned once in the NBR DEIR. The negative enviromental impacts upon this campus, its students and the learning process will be great. This issue should be thoroughly addressed in the NBR DEIR.

1

Bill Bennett  
10 Odyssey Court  
Newport Beach [949 642 8616](tel:9496428616)

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*Bill Bennett, Evergreen Realty, Irvine*  
[\(949\)642-8616](tel:9496428616) DRE# 01457608  
[shokobennett@gmail.com](mailto:shokobennett@gmail.com)

**Letter O22a Bill Bennett**  
November 7, 2011

**Response 1**

The Draft EIR addresses the proposed Project's compatibility with the Coast Community College District's Newport Beach Learning Center. Most specifically refer to Section 4.1, Land Use and Related Planning Programs, pages 4.1-36 and -37.

Comment Letter O22b

**Alford, Patrick**

**From:** bill bennett [shokobennett@gmail.com]  
**Sent:** Monday, November 07, 2011 6:52 PM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR

Mr Patrick Alford  
Planning Department  
City of Newport Beach

Dear Mr Alford,

I am writing concerning the Newport Banning Ranch DEIR and would like this comment and your reply to become part of the public record.

I am reviewing the DEIR for the Banning Ranch Development . I notice that every diagram displaying the proposed roadways shows the section of Bluff Road that connects 15th Street with West Coast Highway passing within twenty-five feet of the Newport Crest residential community. The EIR then states, in many sections, the high negative impact (noise, pollution, etc) the close proximity of this road will have on the residents of Newport Crest.

Why not move Bluff Road 100 feet to the west as it curves from 15th Street to the Coast Highway? This not only helps mitigate the environmental problems associated with the road for residents, it allows the road to follow the existing grade on the ranch property, making construction less costly.

Bill Bennett  
10 odyssey Court  
Newport Beach [949 642 8616](tel:9496428616)

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*Bill Bennett, Evergreen Realty, Irvine*  
[\(949\)642-8616](tel:9496428616) DRE# 01457608  
[shokobennett@gmail.com](mailto:shokobennett@gmail.com)

**Letter O22b Bill Bennett**  
November 7, 2011

**Response 1**

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment.

Comment Letter O22c

**Alford, Patrick**

**From:** bill bennett [shokobennett@gmail.com]  
**Sent:** Monday, November 07, 2011 6:53 PM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR

Mr Patrick Alford  
Planning Department  
City of Newport Beach,

Mr Alford,

I am writing concerning the Newport Banning Ranch DEIR. I would like this comment and your response to become part of the public record.

The four block length of East 17th Street is a very popular, highly used retail area in Costa Mesa. The NBR DEIR does not adequately address the impact of increased traffic or congestion upon this area with the addition of 1,375 new homes in the Banning Ranch development. Many new residents will be drawn to this relatively close, highly popular retail area. To suggest that the improvement of two intersections (17th and Orange and 17th and Santa Ana) and the addition of two bus pullouts, as stated in Section 4.9 of the DEIR, will compensate for the impact of the increased traffic is highly unlikely. Please address this issue.

Thank you,  
Bill Bennett  
10 Odyssey Court  
Newport Beach [949 642 8616](tel:9496428616)

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*Bill Bennett, Evergreen Realty, Irvine*  
[\(949\)642-8616](tel:9496428616) DRE# 01457608  
[shokobennett@gmail.com](mailto:shokobennett@gmail.com)



**Letter O22c Bill Bennett**  
November 7, 2011

**Response 1**

The residents of the proposed Project can be expected to patronize the commercial businesses in the commercial district of Costa Mesa, including the businesses along Newport Boulevard, 19<sup>th</sup> Street, and 17<sup>th</sup> Street. The Traffic Impact Analysis evaluated each of the arterial intersections along 17<sup>th</sup> Street east of Newport Boulevard. Mitigation measures were identified where the Project resulted in a significant impact – defined as either causing an intersection Level of Service to fall below the acceptable threshold, or contributing to an intersection already operating at an unacceptable level of service.

The City is unclear of the commenter's reference to improvements to the intersection of 17<sup>th</sup> Street at Orange, the intersection of 17<sup>th</sup> Street at Santa Ana, and the addition of two bus pullouts. The proposed Project would not impact these intersections and the identified improvements are not identified in the Draft EIR.

**Alford, Patrick**

**Comment Letter O22d**

**From:** bill bennett [shokobennett@gmail.com]  
**Sent:** Tuesday, November 08, 2011 3:19 PM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR

Mr. Patrick Alford  
Planning Department  
City of Newport Beach

Dear Mr Alford,

I am submitting the following comment and questions regarding the Newport Banning Ranch and wish to have this email and your response become part of the record.

In regard to the noise generated by the proposed Bluff Road and the entire Banning Ranch development and its impact on the residences of Newport Crest, the DEIR proposes to mitigate this problem (Section 4-12) by installing dual pane windows and doors on residences directly adjacent to the development (those, it is noted, that face west and north). My home has a southerly exposure yet is fairly close to the proposed Bluff Road and would definitely suffer a negative noise impact were the development of this road come to fruition. Am I not eligible for sound reducing windows and doors? What about those of us that prefer to leave our sliding doors open during pleasant afternoons? Are we then precluded from full time mitigation measures? And what about the proposed sound walls for second story balconies? Will they block our views? Will they block the summer breezes? Will they even be feasible or desirable?

Thank you,  
Bill Bennett  
10 Odyssey Court  
Newport Beach 949 642 8616

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*Bill Bennett, Evergreen Realty, Irvine*  
(949)642-8616 DRE# 01457608  
[shokobennett@gmail.com](mailto:shokobennett@gmail.com)

**Letter O22d Bill Bennett**  
November 8, 2011

**Response 1**

Based on the thresholds of significance set forth in the Draft EIR, the commenter's residence would not be impacted by significant noise levels.

**Comment Letter O23**

Attn: Patrick Alford Planning Manager  
City of Newport Beach Community Development Department Planning Division  
3300 Newport Blvd. Newport Beach, CA 92663  
(949) 644-3235 (949) 644-3229 (FAX) palford@newportbeachca.gov

From: Cindy Black

<p>I hereby object to approval of the project in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.</p> <p>On 6 November 2006, the City of Newport Beach adopted its updated General Plan and listed two designations for the Banning Ranch Site:</p> <p>Priority Alternative – Site to be made available for purchase as open space.</p> <p>Second Alternative – Site to have at least 50% preserved as open space, limited development to be permitted on the upper portion of the Site (residential, resort, commercial, and community parks).</p> <p>A considerably effort had been made on behalf of the City of Newport Beach to accomplish the second alternative for the Site. What efforts have been made to accomplish the <b>Priority</b> Alternative?</p>	1
<p>The lead agency for the Banning Ranch Project is the City of Newport Beach. Being such it is the determination of the City whether to approve or deny the Project. The City of Newport Beach operates 16 of the 90 operating oil well sites in the Project area and therefore is responsible for clean up of its abandoned well sites.</p>	2
<p>It appears the City of Newport Beach is shifting its responsibility, and incurred costs of abandonment/remediation, to the developer in exchange for approval of the Banning Ranch Project. The City will save great expense at handing over this burden of clean up and remediation to the developer. The City also looks to profit from the additional tax revenues produced by homeowners of the Project, as well as Hotel and tourist revenues.</p> <p>This creates a conflict of interest in respect to any unbiased decision-making regarding the Project. The City of Newport Beach as lead agency for this Project is not in the Public's best interest because it has much to gain in approval of the Banning Ranch Project. Government was designed to be fair and impartial. Whatever the City of Newport Beach's motives, being the lead agency is neither fair nor impartial government. The City of Newport Beach is the regulating agency for the Project. But, who is regulating the City of Newport Beach? Please explain how the City can make unbiased decisions when it has so much more to gain financially by approving the Banning Ranch Project.</p>	3

Section 4.3 GEOLOGY AND SOILS

Threshold 4.3-1 is a significant impact. The City of Newport Beach will:

*“Expose people or structures to potential substantial adverse effects including the risk of loss, injury or death from rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault.”*

The Project sits atop a major fault-The Newport Inglewood Fault. Mitigation measures do NOT eliminate this exposure.

4

Threshold 4.3-2 would result in significant impact if it would:

*“Expose people or structures to potential substantial adverse effects including the risk of loss, injury, or death involving strong seismic-related shaking.”*

**The Project sits atop a major fault-The Newport Inglewood Fault.** There is a fault there aptly named the ‘Banning Fault’.

Threshold 4.3-5 **It is considered a significant impact if the project “would result in substantial soil erosion or the loss of topsoil.”**

Removal of between 1 to 10 feet of topsoil would result in significant impact related to geology and soils. The proposed grading is of significant impact to the whole environment of the Banning Ranch area.

Removing the soil from the Bluff tops and placing soil in the arroyos is cause of great destruction, and significant impact, to both vitally important habitats.

The proposed **‘Permanent Impact’ grading** would result in approximately 213 acres of destroyed habitat. Refer to Exhibit 4.6-4 Project Impacts.

5

Additionally *“the incorporation of drainage elements to prevent ponding adjacent to, and runoff onto, any graded or natural slopes”* will cause the destruction of existing vernal pools in those areas.

**Refer to Order No. R8-2009-0030 (NPDES No. CAS 618030)**

*“This order requires the project proponents to first consider preventative and conservation techniques (e.g., preserve and protect natural features to the maximum extent practicable) prior to considering mitigative techniques (structural treatment, such as infiltration systems).”*

The two major arroyo’s described as having incised into the bluff as a result of surface flows and storm drainage over the bluff edge are the responsibility of the City of Newport Beach who is to ensure an adequate Drainage Area Management Plan, by order of both State and Federal Code Regulations Order No. R8-2009-0030.

6

In response to the City of Newport Beach’s ‘creation’ of unwarranted mitigation to reduce any possible impact subject to Threshold 4.3-6



Threshold 4.3-6 The project would result in significant impact if it would: <i>"Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse."</i>	6 cont.
4.3-9 <i>Liquefaction and Lateral Spreading</i>  What is the reasoning for the removal of colluvium and artificial fill on bluff top?	7
<b>Liquefaction does not apply to pockets of colluvium and artificial fill on bluff top.</b> "The liquefaction hazard <i>Zone of Required Investigation</i> boundaries are based on the presence of shallow (< 40 feet depth) historic groundwater in uncompacted sands and silts deposited during the last 15,000 years and sufficiently strong levels of earthquake shaking expected during the next 50 years." The Project site of approximately 254 acres is located atop the Newport Mesa, also referred to as the "Upland". 4.3-6 "The Upland is approximately 50-90 feet above the adjacent Santa Ana River floodplain." <b>This is well above soils predisposed to potential liquefaction hazard.</b> 4.3-10 "These areas are so far above the groundwater table they are not anticipated to reach saturation."	8
Additionally the soil composition of the Upland area consists of bedrock of the San Pedro Formation overlain by 40 to 50 feet of marine terrace deposits 4.3-18 "Soils in the Upland, except for existing colluvial deposits when subjected to saturated conditions, are too dense or too far above the water table for liquefaction and lateral spreading to occur". 4.3-9 "lateral spreading requires the existence of a continuous and laterally unconstrained liquefiable zone." <b>"Pockets" of colluvium and artificial fill do not qualify as "a continuous and laterally unconstrained liquefiable zone."</b>	9
The justification that has been given for removal of colluvial soil at the base of the Upland slopes is to provide a more compressible soil for the development. 4.3-10 Colluvial soils present at the base of the Upland slopes, in ravines and in arroyos are a combination of slope wash and talus deposits, generally identified as soft and porous when encountered during field trenching. These colluvial soils are considered moderately to highly compressible and would be removed and recompacted underneath development areas during grading.	10
<b>Removing colluvial soil in order to provide a compressible pad for the development does not justify destroying vital environmentally sensitive habitat.</b>  4.3-19 <i>Collapse/Compressible Soils</i> Appendix B Part 1 Corrective Grading (d) <i>Terrace Deposits</i> : The upper 3 to 5 feet of the soil horizon along with any locally compressible and/or porous zones within the terrace deposits should be removed and recompacted to provide uniform bearing conditions for proposed structures. Locally deeper removal zones may be extend to depths of 5 to 10 feet.	11

<p>Please refer to California Code Section 30107.5 Environmentally sensitive area. "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."</p>	<p>11 cont.</p>
<p>Section 4.5 HAZARDS AND HAZARDOUS MATERIALS</p> <p>Threshold 4.5-3 <i>Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</i></p> <p>Yes, there is potential that the Project could release toxic chemicals into the environment. There are two schools located within approximately ¼ mile of the Project site: Whittier Elementary School and Carden Hall.</p>	<p>12</p>
<p>4.5-18 Why has no "comprehensive final Remedial Action Plan for oilfield abandonment, clean-up, remediation, and consolidation" been presented? This should be addressed prior to approval of the Project.</p> <p>The Thresholds 4.5-1 thru 4.5-5 cannot be adequately addressed without a final Remediation Action Plan.</p>	<p>13</p>
<p><b>The City has failed to follow its own Land Use Plan:</b></p> <p>LU Policy 3.7: Natural Resource or Hazardous Areas <i>"Require that new development is located and designed to protect areas with high natural resource value and protect residents and visitors from threats to life or property."</i></p> <p><b>Section 30001 Legislative findings and declarations; ecological balance</b> The Legislature hereby finds and declares:</p> <p>(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.</p> <p>(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.</p> <p>(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.</p> <p>(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.</p> <p>(Amended by Ch. 1090, Stats. 1979.)</p>	<p>14</p>

The Project site is an Environmentally sensitive area

**Section 30107.5 Environmentally sensitive area**

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

The addition of urban environment on the Banning Ranch area will greatly impact the ecological balance of this natural coastal habitat. Pollutants from residential and commercial landscapes will affect water quality. The degradation of the water bodies is likely. The channeling of water proposed on the Project Site will disrupt the natural water percolation through the soil horizon affecting the ecological balance of the area.

Order No. R8-2009-0030 (NPDES No. CAS 618030)

The County of Orange, Orange County Flood Control District, and the Incorporated Cities of Orange County Areawide Urban Storm Water Runoff

"The pollutants from urbanized areas are also a significant threat to environmentally sensitive areas, such as waterbodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species), *areas of special biological significance (ASBSs)* and Clean Water Act Section 303(d) listed impaired waterbodies. The State Board is developing Special Protections for Storm Water and Non-point Source Discharges to ASBSs. *Where applicable, the permittees are expected to comply with these Special Protection requirements for the ASBSs.*"

**"L. NEW DEVELOPMENT/SIGNIFICANT REDEVELOPMENT – WQMP/LIP/LID**

<sup>20</sup>Low impact development is an approach to land development (or re-development) that works with nature to manage storm water as close to its source as possible by using structural and non-structural best management practices to reduce environmental impacts. "

"... *Urban development increases impervious surfaces and storm water runoff volume and velocity and decreases vegetated, pervious surface areas available for infiltration and evapotranspiration of storm water*".

14 cont.

**3.1 Existing Regulatory Oversight**

The actual oil field operations are governed by regulations of the California Department of Conservation, Department of Oil, Gas, and Geothermal Resources (DOGGR).The DOGGR has specific guidelines for the abandonment, or reabandonment if necessary, of oil wells.

Does the DOGGR require removal of pipe(s) on abandoned well sites?

15

**4.1 Phase II Environmental Assessment (EA)** [Geosyntec, 2001] with *field sampling conducted between May and August 2001*. This study was a comprehensive field investigation of the impacts from the historic oil operations.

More recently an updated Phase I Environmental Site Assessment (ESA) Report [Geosyntec, 2008] was completed as part of the development proposal studies.

<p>The study might have been comprehensive, but the report isn't. No map was included in the Phase II Environmental Assessment (EA) showing the areas where samples were collected.</p> <p>Can you provide this information?</p>	15 cont.
<p>It appears that this DEIR is more a compilation of previous analysts findings than current findings. The last comprehensive EA testing/sampling done at the Project Site was over a decade ago. Much can change in time.</p> <p><i>"The EA fieldwork was then completed in phases during 2001 and consisted of collecting and evaluating over 550 samples from 222 test pits/borings, 10 ground water monitoring wells, surface water, and soil gas sampling points [Geosyntec, 2001]."</i></p> <p><b>4.2</b> Only 7 of the 23 PECs investigated showed any significant hydrocarbon impacts beyond surface areas. During the soil evaluation, soil gas was observed (i.e., bubbling) in a lowland pond near PEC #02 – Main Site Tank Farm. Samples were collected using Tedlar bags. Analytical results indicated elevated methane concentrations (up to 73.2 percent).</p> <p>Some of the Agency for Toxic Substances and Disease Registry-ATSDR inhalation MRLs are derived in parts per million (ppm) and some in mg/m3. For use in this table all were converted into mg/m3</p> <p>MRLs are based on noncancer health effects only and are not based on a consideration of cancer effects. Inhalation MRLs are exposure concentrations expressed in units of parts per million (ppm) for gases and volatiles, or milligrams per cubic meter (mg/m<sup>3</sup>) for particles. Oral MRLs are expressed as daily human doses in units of milligrams per kilogram per day (mg/kg/day). Radiation MRLs are expressed as external exposures in units of millisieverts.</p> <p>Twenty-three (23) areas were identified as PECs in the Phase II Environmental Assessment (EA) [Geosyntec, 2001]. Since that time additional RECs have been identified, "a total of 27 on-site RECs, three historical RECs, and four off-site facilities as RECs."</p> <p>The public's safety is in question, which warrants more current testing and findings.</p> <p>As is, the Draft Environmental Report for the Banning Ranch Project is inadequate and misleading in regard to the declared significant impacts or lack thereof. Please consider the value of the land and all of its resource as open space to attract nature enthusiasts worldwide.</p>	16

**Letter O23     Cindy Black**  
November 7, 2011

**Response 1**

Section 7.0, Alternatives to the Proposed Project, of the Draft EIR addresses several alternatives to the Applicant's proposal including Alternative B: General Plan Open Space Designation. The acquisition process for purchase of the property for open space is addressed as a part of the analysis of Alternative B.

In July 2005, the City of Newport Beach contracted with a consultant to provide services in connection with the potential acquisition of the Project site as permanent open space. The Newport Beach City Council set the following as a priority for 2008 and 2009 "Conduct an appraisal of the Banning Ranch property and assess funding available for the purchase of the property for open space". In February 2008, the City Council appointed the Banning Ranch Appraisal and Acquisition Ad Hoc Committee to oversee the appraisal process for the Project site and the assessment of funding availability for its purchase as open space. In January 2009, the City Council authorized the City to request Measure "M" environmental mitigation funding to acquire the Project site and that request was submitted to Orange County Transportation Authority (OCTA). In August 2009, the City Council received the report on the feasibility of funding acquisition of the Project site for open space, which estimated the cost of property acquisition at \$138,000,000.00 to \$158,000,000.00. The City Council directed staff to continue exploring open space acquisition possibilities as the City moves forward with review of the property owner's development application and to continue to monitor funding opportunities and explore potential new alternatives for open space acquisition.

**Response 2**

The City of Newport Beach's existing oil operations and wells are not a part of the proposed Project.

**Response 3**

The opinions of the commenter are noted.

**Response 4**

The Project area contains two fault segment zones within the North Branch of the Newport Inglewood fault zone which could not be proven to be inactive. Therefore, all proposed development would be set back from these fault segments in accordance with State law and as per current standards of practice.

**Response 5**

The opinions of the commenter are noted with respect to the impacts of the proposed Project. Potential biological impacts associated with the Project are addressed in Section 4.6, Biological Resources, of the Draft EIR; alternatives to the proposed Project are addressed in Section 7.0 of the Draft EIR. Please also refer to Topical Response: Vernal Pools.

**Response 6**

The opinions of the commenter are noted with respect to the impacts of the proposed Project.

## **Response 7**

As shown on the “Existing Condition Hydrology Map” (Appendix C, Exhibit 1 of the Draft EIR), storm water runoff and nuisance flows originating in off-site areas (east of the Project site) and in the Project site’s bluff areas (where proposed development would occur) currently drain to the Semeniuk Slough, Salt March Basin, and Lowland areas. Although not a requirement of the Project, the Project proposes a water quality basin located near 16<sup>th</sup> Street to treat 48 acres of off-site Costa Mesa runoff that flows onto the Project site.

The Southern Arroyo, located near the Project site’s southern boundary, runs approximately 2,340 feet through the Project site from east to west, and terminates at a dirt road approximately 500 feet upstream of the Semeniuk Slough. The Southern Arroyo is surrounded by approximately 30 acres of natural habitat with heavy vegetation cover. Field observations indicate severe erosion and sloughing of sediment into the Southern Arroyo from the adjacent on-site tributary areas that enter this Arroyo as a result of sheet flow. During large storm events, sediment from the tributaries enters the Southern Arroyo and is conveyed downstream to the Semeniuk Slough, resulting in large sediment fans within the channel following these rain events. Historical photos of the site indicate that erosion and undercutting within the tributaries has been occurring since the 1930s.

As addressed in Section 3.0, Project Description, of the Draft EIR, bluff restoration is proposed along the south- and west-facing bluffs to restore (1) areas impacted by oil operations, (2) uncontrolled on-site and off-site drainage and erosion, and (3) soil degradation. These areas would require grading in order to restore and revegetate the bluff/slope edge and to limit further degradation. In addition, surface water runoff that currently overtops the bluff/slope edge would be intercepted along the public trail system and would be redirected to minimize continued bluff erosion.

## **Response 7**

As a part of the Project, colluvium and artificial fill on the bluff top would be removed and recompacted so that it is capable of adequately supporting proposed improvements associated with the development.

## **Response 8**

None of the bluff top is subject to liquefaction.

## **Response 9**

None of the bluff top geo-materials including “pockets of colluvium and artificial fill” are subject to liquefaction.

## **Response 10**

This is correct. Colluvial soils would only be removed and re-compacted where they exist below proposed grading and improvements.

## **Response 11**

Please refer to Topical Response: ESHA.

## **Response 12**

As set forth in Section 4.5, Hazards and Hazardous Materials, with the proposed Project, the extent of oilfield operations would be consolidated onto 2 areas totaling 16.5 acres, which would be located along the southwestern margin of the Project site and more than ¼ mile from existing schools, and the proposed residential, commercial, recreational, visitor-serving, and open space land uses would not emit or otherwise handle hazardous materials, substances, or wastes. The nature of anticipated future oilfield operations in the consolidated area would not be different than the existing operations. Therefore, operation of the proposed Project would result in a less than significant impact to schools in the Project vicinity.

## **Response 13**

Section 4.5, Hazards and Hazardous Materials, of the Draft EIR includes Mitigation Measure (MM) 4.5-1 which requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site disturbance unrelated to oil remediation activities. A final RAP is required once all entitlements are obtained and a decision has been made by the Applicant to proceed with oilfield abandonment, remediation, and development of the Project site.

## **Response 14**

The Draft EIR addresses the Project's potential environmental impacts on water quality and biological resources. Please refer to Section 4.4, Hydrology and Water Quality and Section 4.6, Biological Resources, respectively.

## **Response 15**

Upon final well and lease area abandonment, the Department of Oil, Gas and Geothermal Resources (DOGGR) would require the removal of pipes and other support facilities from abandoned well sites. The 2001 Environmental Assessment document included a Figure 2-1 Sampling Locations map. The commenter's statement that "No map was included in the Phase II Environmental Assessment (EA) showing the areas where samples were collected..." is noted. This document is on file and part of the public record at the RWQCB, Santa Ana Region and can be obtained from the agency through the appropriate document request procedures.

## **Response 16**

The Baseline Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. This report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing. The 2001 testing found no levels of contaminants above State hazardous criteria and none of the identified impacted areas were found to be mobile or have the potential of further movement. The current oilfield operators (West Newport Oil Company and the City of Newport Beach) are under strict regulatory compliance and review measures to report any spills or leaks of consequence and no significant issues have been reported since that timeframe.



Alford, Patrick

Comment Letter O24

**From:** Sharon Boles [sharon.boles@roadrunner.com]  
**Sent:** Saturday, November 05, 2011 9:44 PM  
**To:** Alford, Patrick  
**Subject:** FW: NBR DEIR Comments - Request for Extension of Time

Patrick Alford, Planning Manager  
City of Newport Beach, Community Development Dept.  
3300 Newport Blvd.  
P.O Box 1768  
Newport Beach, CA 92658-8915

Dear Mr. Alford,

I am a homeowner in Newport Crest and a member of the Board of Directors of the Newport Crest Homeowners Association. My husband and I have lived in our current residence for 14½ years. I am requesting that the City extend the deadline for comments on the DEIR for Banning Ranch.

The publication and comment period of the DEIR for Banning Ranch has overlapped the Sunset Ridge Park application from the City to the California Coastal Commission.

The NBR DEIR is over 7,000 pages long and we definitely need more time to sift through and comment on this lengthy document.

Both developments are extremely important to us and the future of Newport Crest since both will have a major impact on our quality of life.

Many of our homeowners have been very involved in the Coastal Commission Sunset Ridge Park application and therefore, have had less time to comment on the DEIR for Banning Ranch.

The public comment period is an essential part of the process as it provides information to all parties involved and aids in the mitigation process of various issues.

The process needs to be extended to allow for more input.

Thank you for considering my request

Sharon Boles

**Letter O24    Sharon Boles**  
November 5, 2011

**Response 1**

The opinions of the commenter are noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

Comment Letter O25a

**Alford, Patrick**

**From:** Don Bruner [don\_bruner@hotmail.com]  
**Sent:** Saturday, November 05, 2011 5:44 PM  
**To:** Alford, Patrick  
**Cc:** suzanne forestar; alec parker; farid ghanem; dorothy kraus  
**Subject:** Banning Ranch DEIR Air Quality Section Questions

November 5, 2011

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

Attention: Patrick Alford  
[palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

Dear Mr. Alford:

I'd like to submit the following questions regarding the Air Quality Section of the Banning Ranch DEIR:

On page 1 of the INTRODUCTION (4.10-1) under the heading "Toxic Air Contaminants," it states the following:

[...] **Toxic air contaminants (TACs)** are a diverse group of air pollutants that may cause or contribute to an increase in deaths, that may cause serious illness, or that may pose a present or potential hazard to human health. TACs include both organic and inorganic chemical substances that may be emitted from a variety of common sources, including gasoline stations, motor vehicles, dry cleaners, industrial operations, painting operations, and research and testing facilities. TACs are different from the "criteria" pollutants in that ambient air quality standards have not been established for TACs. TACs occurring at extremely low levels<sup>(\*)</sup> may still cause adverse health effects, and it is typically difficult to identify levels of exposure that do not produce adverse health effects.<sup>(\*\*)</sup>

(\*) What is meant by "extremely low levels"? What are these levels and what adverse health effects are they referring to?

(\*\*) Is the following statement from the same paragraph a contradiction? "Ambient air quality standards may not have been established for TACs." In 4.10-2 Regulatory Environment, it says:

"CARB, a part of the California Environmental Protection Agency, is responsible for the coordination and administration of both federal and State air pollution control programs in California. In this capacity, **CARB conducts research; sets the California Ambient Air Quality Standards (CAAQS)** shown in Table 4.10-1."

What are the impacts of TACs on the biological resources of Banning Ranch and especially on the critical habitat that is necessary to establish and sustain endangered species like the California Gnatcatcher? What impact does it have on vernal pools that are home to the San Diego fairy

shrimp? What is the danger of the water in the vernal pools becoming contaminated with TACs or other contaminants from the oil field operations?

2  
cont.

In the Air Quality Section under the heading of Methodology on p4.1-6, it states:

***"Local Concentrations of Criteria Pollutants from On-Site Sources***

As part of the SCAQMD's environmental justice program<sup>(\*)</sup>, attention has focused on local air quality impacts from nearby sources. The SCAQMD developed the localized significance threshold (LST) look-up tables to allow the evaluation of localized impacts for many projects and scenarios without the complex task of dispersion modeling<sup>(\*\*)</sup>. The tables show the maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or State ambient air quality standard. The LST methodology is recommended for project sites that are five acres or less. However, the method may be used for construction on larger sites if it is demonstrated that the area of daily disturbance is not substantially larger than five acres and calculated project emissions for the larger site would not exceed the five acre site emissions limits <sup>(\*\*\*)</sup>; For the Newport Banning Ranch Project site, this methodology is used for the analysis in Section 4.10.7."

3

(\*) What is SCAQMC's "environmental justice program?"

(\*\*) Where does the data in the LST look-up tables come from? How current is the data? How reliable is the data? How does it compare to dispersion modeling for accuracy in emission estimation?

(\*\*\*) How was the five-acre "area of daily disturbance" determined and by whom? What does "substantially larger than five acres" mean?

Your consideration of these questions is very much appreciated. When can I expect a response to my questions and concerns?

4

Respectfully submitted,  
Don Bruner  
11 Serena Ct.  
Newport Beach, CA 92663

**Letter O25a Don Bruner**  
November 5, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

Comment Letter O25b

**Alford, Patrick**

**From:** Don Bruner [don\_bruner@hotmail.com]  
**Sent:** Saturday, November 05, 2011 5:22 PM  
**To:** Alford, Patrick  
**Cc:** dorothy kraus; suzanne forestar; farid ghanem; alec parker  
**Subject:** Extend Comments Deadline Request on the Banning Ranch DEIR

November 5, 2011

Patrick Alford, Planning Manager  
City of Newport Beach, Community Development Dept.  
3300 Newport Blvd.  
P.O Box 1768  
Newport Beach, CA 92658-8915  
Email: [palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

Dear Mr. Alford:

We are homeowners in Newport Crest and have lived in our current residence for 22 years. We are requesting the City extend the deadline for comments on the DEIR for Banning Ranch.

Our reasons are as follows:

The publication of the DEIR for Banning Ranch and comment period has overlapped the Sunset Ridge Park application from the City to the California Coastal Commission.

The NBR DEIR is over 7,000 pages long, very complicated and difficult to navigate through. Both developments are extremely important to us and the future of Newport Crest since both will have a major impact on our quality of life. We live on the perimeter of Sunset Ridge Park and Banning Ranch.

Many homeowners have been very involved in the Coastal Commission Sunset Ridge Park application and therefore, have spent less time on the DEIR for Banning Ranch.

The public comment period is an essential and vital part of the process. It provides information to all parties involved and contributes to mitigating issues.

Therefore, in my opinion, the process needs to be extended to allow for more quality input.

Thank you for your time and considering our request.

Respectfully submitted,  
Mr. and Mrs. Don Bruner  
11 Serena Court  
Newport Beach, CA 92663

**Letter O25b Don Bruner**  
November 5, 2011

### **Response 1**

Criteria air pollutants are generally measured in concentrations of parts per million and micrograms per cubic meter whereas toxic air contaminants (TAC) are generally measured in parts per billion and nanograms per cubic meter. Therefore, the common definitions of TACs use the term “extremely low levels”. The State of California Air Resources Board (CARB) has designated almost 200 compounds as TACs. Of the ten tasks posing the greatest health risk in California, most are associated with risk for various forms of cancer. Non-carcinogenic risks include but are not limited to respiratory illness, blood disorders (from chronic benzene exposure), renal toxicity (from hexavalent chromium), and eye, nose, and throat irritation (from formaldehyde). The Human Health Risk Assessment (HHRA) for the proposed Project determined that both carcinogenic and non-carcinogenic health risks associated with the proposed project would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR.

### **Response 2**

There is no contradiction. Ambient air quality standards are established for criteria pollutants, and are not established for TACs, except when the TAC is also a criteria pollutant, such as lead. There is not a CEQA requirement for analysis of TAC emissions to endangered species or habitats which indicates that the biological resource agencies do not consider TACs a reasonably critical hazard.

### **Response 3**

Environmental justice has been defined by SCAQMD as, “...equitable environmental policymaking and enforcement to protect the health of all residents, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location, from the health effects of air pollution”.

The data in the LST look-up tables was developed by SCAQMD from dispersion modeling combined with monitored background data for the individual receptor locations. Neither the look-up tables nor dispersion models estimate emissions; the look-up tables provide very conservative thresholds for evaluating emissions and dispersion models predict concentrations based on emissions estimates, meteorology, and topography.

The look-up tables provide values for one-, two-, and five-acre areas of disturbance; the values are shown in Table 4.10-9 of the Draft EIR to show the increase in threshold data with size. Substantially larger than five acres has been roughly interpreted to be more than seven acres.

### **Response 4**

Responses to all environmental comments are provided in this document.



Comment Letter Q25c

November 8, 2011

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

Attention: Patrick Alford  
[palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

Dear Mr. Alford:

In going through the Air Quality section of the Banning Ranch DEIR, I came across areas under the heading Operational Emissions that need some clarification.

On page 4.10-23, under Operational Emissions, *Mass Emissions Thresholds*, it says that regional emissions of VOC, NOx and CO resulting from Project operation would exceed SCAQMD CEQA significance thresholds in 2023 and that vehicle emissions would be the primary source of the pollutants.

1

What will make vehicle emissions so high that they will exceed SCAQMD CEQA thresholds in 2023? Will they continue to exceed the significance thresholds beyond 2023? What percentage increase in vehicles will be operating compared to 2017 and 2011 when the thresholds will not be exceeded? How many more vehicles will be on the roads in 2023 than are today in 2011?

On page 4.10-26, as shown in Table 4.10-15, forecasted Project buildout emissions of VOCs and CO in 2023 would exceed the SCAQMD CEQA significance thresholds.

2

Please define buildout emissions? What is the source of these pollutant emissions? What can be done to mitigate them?

On page 4.10-26 under Total Operational Emissions, it says "the analysis of anticipated operational emissions shows that Project emissions would be less than the SCAQMD CEQA significance thresholds in 2017 and 2020, as shown in Tables 4.10-10 and 4.10-14; the impact over that period would be less than significant. As Project development continues beyond 2020, the continuing growth would result in emissions of VOCs and CO that would exceed the significance thresholds and the impact would be significant."

3

What does continuing growth mean specifically? Will the source of emissions primarily be vehicles?

And last, on page 4.10-27 under Concurrent Construction and Operations Emission, it talks about not adding together construction and operational emissions:

4

Page 2 Operational Emissions 2023

“From the beginning of occupancy of the first residences (estimated for late 2015) until the completion of construction (estimated for late 2023), there would be concurrent construction and operational emissions. For impact analysis, construction and operational emissions are not added together because the SCAQMD has separate thresholds for each type of emissions.

4 cont.

Isn't this a flaw in the analysis? How can we know what the total impact is if the values aren't added together, and if we don't know the total impact, how do we know what the health effects are? Also, how can mitigation be adequately addressed without knowing what the total impact and the health effects are?

Thanks for whatever clarification you can provide.



Mr. and Mrs. Don Bruner  
11 Serena Ct.  
Newport Beach, CA 92663

**Letter O25c Don Bruner**  
November 8, 2011

### **Response 1**

The increase in vehicle emissions from 2017 through 2023 occurs because the Project's trip generation would increase as each phase of the Project is built. As shown in Tables 4.9-13 and 4.9-7 of the Draft EIR, at the completion of Phase 1, the Project is expected to generate 1,868 daily vehicle trips (ADT) and at the completion of the Project, the trip generation would be 14,989 trips. Beyond 2023, vehicle emissions would decline as newer cleaner vehicles replace older vehicles; however, Project VOC and CO emissions would continue to exceed the South Coast Air Quality Management District's (SCAQMD) thresholds. Project vehicle emissions are based on trips generated by Project facilities. There are no Project facilities in 2011; therefore, the data shown above are comparisons to 2011.

### **Response 2**

Buildout emissions are those emissions attributed to the proposed Project when the Project is initially completed, forecasted for 2023. As stated in Table 4.10-15 of the Draft EIR, the sources of these emissions are shown in Table 4.10-12 (Area sources are the sums of hearth/fireplace, landscape maintenance, consumer products, and architectural coatings; Energy sources are natural gas uses; and vehicles) and Table 4.10-13 (stationary and mobile oilfield sources). Please see the response to SCAQMD comment 4, which describes project design features and mitigation measures for reducing operational emissions.

The SCAQMD states that, "the lead agency should minimize the project's significant air quality impacts by incorporating the transportation mitigation measures found in the greenhouse gas quantification report published by the California Air Pollution Control Officer's Association (CAPCOA)."

The following four transportation measures are included in the Project Description, implied in the Project design, or described in Project Design Features (PDFs) 4.10-1 and 4.10-2. In the Draft EIR, these measures were not specified as being correlated with the CAPCOA document.

Increase density – CAPCOA measure LUT-1

Increase diversity of urban and suburban developments (mixed use) – LUT-3

Integrate affordable and below market rate housing – LUT-6

Provide pedestrian network improvements – SDT-1

The four measures above are "mitigation measures" in the CalEEMod model and were included in the Draft EIR emissions analysis. These measures provide emissions reductions of 29 percent VOC, 22 percent NOx, 23 percent CO, 35 percent PM10, and 32 percent PM2.5.

The Project includes PDF 4.11-3, which requires the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and would provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA. This PDF implements CAPCOA measure LUT-5, Increase Transit Accessibility. The measure was not included in the CalEEMod analysis because the input requires a single distance from the Project to a major transit facility, which is not compatible with the Project design. However, PDF 4.11-3 would reduce VMT and would reduce criteria pollutant and GHG emissions below the rates shown in the Draft EIR.

The Project includes MM 4.10-10, which requires bicycle facilities in multi-family, commercial, and resort buildings, which corresponds to CAPCOA transportation measures SDT-6 and SDT-7. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

The Project includes MM 4.11-5 which requires electric vehicle charging stations at the multi-family buildings and at the resort inn, which corresponds to CAPCOA transportation measures SDT-9, Provide Electric Vehicle Parking. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

To further encourage the use of electric vehicles, MM 4.11-5 has been revised and is incorporated into the Final EIR as follows:

**MM 4.11-5** Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

### Response 3

Continuing growth means the project continuing to develop between 2020 and 2023. Please refer to Table 3-3 in the Draft EIR for the specific development anticipated for the Phase 3 period. The source of emissions growth is primarily vehicles, as may be seen by comparison of Tables 4.10-11 and 4.10-12.

### Response 4

Assessing construction and operations separately is standard procedure for SCAQMD air quality analysis. The peak day emissions are primarily regional emissions, whereas health effects are assessed by examining local emissions and concentrations. The Draft EIR analyses found that all local air quality impacts would be less than significant.

Comment Letter O25d

November 8, 2011

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

Attention: Patrick Alford  
[palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

RECEIVED BY  
COMMUNITY  
NOV 08 2011  
DEVELOPMENT  
CITY OF NEWPORT BEACH

Dear Mr. Alford:

On page 4.10-21 and 4.10-22 of the Air Quality section of the Banning Ranch DEIR, local significance thresholds for ambient air quality are discussed. On page 22 it describes the “closest sensitive receptors” to the Project’s construction activities:

“The closest sensitive receptors to the Project site are the Newport Crest residences adjacent to the southeastern boundary of the site in the City of Newport Beach; the Carden Hall School, adjacent to the site on the east at 16th Street in the City of Newport Beach; and the California Seabreeze community, located generally between 19th Street and 18th Street contiguous to the Project site in the City of Costa Mesa. Each of these receptors is within 25 meters (82 feet) of a part of the Project site that would have construction activity.”

1

This confirms that school children, while they are playing outside in the school yard or engaging in sports activities, will be exposed to and in breathing air pollutants that exceed CEQA significance thresholds over the ten-year period of the remediation and construction. Also, the elderly, infirm and otherwise vulnerable residents of the communities within 25 meters will be exposed. What plan is in place to bring these pollutants to safe levels that is not dependent on assumptions that Tier 4 construction equipment will be used and not based on mitigation measures that are not quantifiable in the model?

On page 4.10-27, under *Ambient Air Quality – Local Significance Threshold*, there is an ambient air quality analysis for CO emissions, but no analysis has been done for NOx, PM10, PM2.5 or other criteria air pollutants. As was pointed out in the EQAC draft comment to the BR DEIR, Air Quality, ambient air quality analyses for all criteria pollutants during project operations should be provided.

2

On page 4.10-21, the DEIR describes the “complaint resolution process”:

“MMs 4.10-8 and 4.10-9 provide notices to nearby residents of planned grading work and a complaint resolution process.”

3

A complaint resolution process for issues like noise is understandable, but is that the only recourse for those who health is adversely impacted by the health hazards associated with the Project?

Page 2 Ambient Air Quality Analysis

Under MM 4.10-9, it says that “upon receipt of a complaint, the designated contact person shall investigate the complaint and shall develop corrective action, if needed. The designated contact person shall respond to the complainant within two working days to describe the results of the investigation, and submit a report of the complaint and action taken to the City of Newport Beach. The designated contact person shall maintain a log of all complaints and resolutions.”

4

What recourse does the complainant have if action isn’t taken to resolve the problem—or if the resolution isn’t satisfactory?

If possible, I’d like a response by email and could you give me some idea how long that might take?

Thank you,



Mr. and Mrs. Don Bruner  
11 Serena Ct.  
Newport Beach, CA 92663



**Letter O25d Don Bruner**  
November 8, 2011

**Response 1**

Please refer to Topical Response, Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NO<sub>x</sub> during construction would be less than significant.

Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources.

The potentially significant NO<sub>x</sub> impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NO<sub>x</sub> or NO<sub>2</sub> would be less than significant.

**Response 2**

Please refer to the response to Comment 1.

**Response 3**

The filing of a complaint is the initial step when there is a complaint. Please note that all potential air quality health hazards associated with the Project were found to be less than significant.

**Response 4**

Comment letters can be viewed on the City of Newport website ([www.newportbeachca.gov](http://www.newportbeachca.gov)). Comments received and their responses will be included in the Final EIR for the decision makers to consider prior to certification of the Final EIR as final and complete. The availability of the Final EIR and the times and dates of public hearings on the Project and the Final EIR can be viewed on the City's website as the information is completed and the scheduling of hearings is known.

Comment Letter O25e

November 8, 2011

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

Attention: Patrick Alford  
[palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)



Dear Mr. Alford:

<p>The calculations for the Cancer Burden referred to on pages 4.10-31 and 32 of the Air Quality second of the DEIR appear to be based on incorrect distances of the nearest receptors to the Project fence line. The Tier 1 analysis under "Threshold 4.10-4 refers to off-site receptors 100 meters from the Project fence line. One hundred meters is 328 feet. What happens to people who are closer than 100 meters from the Project fence line?</p>	1
<p>Based on the DEIR's "Community Transitions and Interface Key Map," which includes a series of exhibits that depict the distances between Newport Crest residences "immediately contiguous to the Project" and the Community Park and Bluff Road, the distances of the nearest receptors to the Project fence line will be much closer than 100 meters or 328 feet. Exhibit 4.1-2g "Central Community Park Interface with Newport Crest" Section E1-E1 depicts the interface of Bluff Road with the most northwestern portion of the Newport Crest complex. According to Section E1-E1 the narrowest point of Community Park separating Newport Crest residences from Bluff Road is twenty-two feet (22 ft).</p> <p>Virtually all of the 52 perimeter courtyards are within 328 feet of the Project fence line, which means that this will impact between 300 to 400 people, if just two people live in each condo. None of these people are included in the Tier 1 analysis. It also appears that Carden Hall School may be within the 100 meter distance. The analysis only applies to people beyond 100 meters. What is the cancer burden for those who are inside the boundaries?</p>	2
<p>On page 4.10-31, what does "provide reductions of cancer risk at 40 percent of the fence line receptors" mean? Also, "reduction of chronic non-cancer risk at 29 percent of the receptors?" How does this apply to the hundreds within the 100-meter distance?</p>	3
<p>On page 4.10-31 and 32, under "Cancer Burden," it refers to 19 census tracts with a combined population of just over 86,000 people. It then says that if everyone in the tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5."</p>	4



Page 2 Cancer Burden

What conditions would create a 4 in 1 million incremental cancer risk? It seems the cancer burden at 0.34 is uncomfortably close to the SCAQMD significance threshold of 0.5. At 0.34, how many people of the 86,000 could be expected to get cancer? And what about the Newport Crest residents who are inside the 100-meter boundary used for the calculations? How many of them could be expected to get cancer?

4 cont.

Thank you for taking the time to review my letter. In your response, would you please advise if these calculations will be redone using figures that actually reflect the distances of the nearest receptors from the Project fence line?

5

Yours truly,



Mr. and Mrs. Don Bruner  
11 Serena Ct.  
Newport Beach, CA 92663

**Letter O25e Don Bruner**  
November 8, 2011

**Response 1**

The reference to 100 meters on page 4.10-30 of Section 4.10, Air Quality, of the Draft EIR is associated with the Tier 1 screening analysis and not with the subsequent Tier 4 health risk analysis that developed the cancer and non-cancer risks at the fence line and areas beyond. The risks shown in Table 4.10-18 are the maximum risks at all points in the areas of study.

**Response 2**

Please refer to the response to Comment 1.

**Response 3**

Please refer to the response to Comment 1. The 100-meter reference applies solely to the Tier 1 screening analysis. As explained in the Draft EIR, the oilfield consolidation would reduce emissions and would improve location with respect to dispersion meteorology, thereby reducing risk to some receptors.

**Response 4**

Please refer to the response to Comment 1. The 100-meter reference applies solely to the Tier 1 screening analysis. The 4 in 1 million factor is the peak incremental cancer risk forecast at one receptor. The range of incremental risk, as shown in Table 4.10-18 is from minus 8 (a reduction compared to baseline) to plus 4. Thus, applying the maximum value in the range to the total area is a methodology that makes the 0.34 cancer burden very conservative. The burden does not indicate how many people could be expected to get cancer, but estimates that, if the incremental risk to the entire area was 4 in 1 million (as stated, a very conservative assumption) of the 86,000 persons, approximately one-third of one person more would get cancer than if the risk did not occur.

As addressed in Section 4.10, Air Quality, of the Draft EIR, it is also important to understand the risk assessment calculations using CARB's Hotspots Analysis Reporting Program (HARP) protocol for fence line, residential, and commercial receptors is conducted for a 70-year exposure period assuming that a person is located at each receptor grid 24-hours per day, 365 days per year for 70 years. The chronic modeling for receptors in recreational areas assumes that the maximum exposure time would be 8 hours per day, 245 days per year. The acute air toxic modeling is conducted for the peak one-hour exposure.

**Response 5**

Please refer to the response to Comment 1.

**Comment Letter O26**

October 22, 2011

Steve Bunting  
3198 Bonn Dr.  
Laguna Beach, CA 92651

Mr. Patrick Alford, Planning Manager  
City of Newport Beach Community Development  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

RE: Comments regarding the Newport Banning Ranch Draft Environmental Impact Report;  
Section 4.14 PUBLIC SERVICES AND FACILITIES, Subsection 4.14.1 FIRE PROTECTION.

Dear Mr. Alford:

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record for this project. The comments provided in this letter apply to the entirety of the DEIR, including the Executive Summary and the Cumulative Impact Report.

My comments are divided into two sections: The first section deals with errors and inaccuracies in the text found throughout Section 4.14.1 and all other affiliated or referenced sections of the DEIR. The second section addresses adequacy of the analysis and the mitigations proposed.

**Section 1, Errors and Inaccuracies;**

**SECTION 4.14.1 FIRE PROTECTION:**

Methodology:

The DEIR incorrectly states that the report by Fire Force One (Appendix K) evaluated the ability of the fire department to adequately respond to the City as a whole. The study was focused on the ability of the department to provide adequate coverage to the proposed project and to evaluate coverage of the west side of Newport Beach in the event a fire station is relocated. The study area was limited to the portion of the City located west of the Back Bay, including the Balboa Peninsula, the Lido Peninsula and Lido Island.

1

Newport Banning Ranch  
Draft Environmental Impact Report Comments  
Section 4.14 Public Services and Facilities  
10/22/10

Beginning with the "Methodology" section and continuing throughout the DEIR, the author incorrectly characterizes "automatic aid" as "mutual aid". The proper use of the term mutual aid is in reference to agency participation in the "*State of California Disaster and Civil Defense Master Mutual Aid Agreement*" (CALMMAA), which was first created in 1950 and of which all public agencies in the state of California are signatories.

In 1957, the City of Newport Beach entered into a local mutual aid agreement with the cities of Costa Mesa, Huntington Beach, Laguna Beach, Santa Ana, San Clemente and the County of Orange. This agreement has become functionally obsolete. In addition to the loss of two of the cosignatories, the agreement was replaced by the "*Orange County Fire Services Operational Area Mutual Aid Plan*" (OCMAP). The purpose of the OCMAP is the implementation of the CALMMAA at the county Operational Area level for major emergencies, not day to day operations. Requests for mutual aid are evaluated by the Operational Area case by case on an as-needed, as-requested and as-approved basis prior to the dispatch of the requested resources.

A system of day in and day out cooperative response between local fire agencies is known as automatic aid. Automatic aid is assistance dispatched automatically by contractual agreement between two communities or fire districts. That differs from mutual aid or assistance arranged "as needed". True automatic aid must meet the following conditions:

- It must be prearranged for first-alarm response according to a definite plan. It is preferable to have a written agreement, but may also be demonstrated performance or past practice.
- The aid must be dispatched as part of the initial alarm and without human efforts to relay a message between dispatch centers.
- The aid must be provided 24 hours a day, 365 days a year.
- The communities should have common mobile and portable radio-frequency capability.

2

The City of Newport Beach has entered into automatic aid agreements with the cities of Huntington Beach, Costa Mesa, Laguna Beach and the Orange County Fire Authority. The agreements are very general in nature assigning costs and responsibilities as well as indemnifying each party. They also grant the fire chief the authority to enter into a memorandum of understanding (MOU) with each corresponding fire chief. They do not prescribe the amount of resources to be dispatched or the response areas that will be covered by each department.

The MOU's between each of these departments and the Newport Beach Fire Department (NBFD) provide only slightly more detail. The MOU's define types of equipment and staffing levels for each type of apparatus. The MOU also states the maximum amount of equipment that can, on a pre-approved basis, be sent by one agency to another, provision of maps, training and dispatch responsibilities. The MOU's do not in any way establish automatic "first-in" coverage in which a unit from one city routinely and automatically responds as the first piece of equipment to an emergency in another city's jurisdiction.

Newport Banning Ranch  
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All references within the DEIR to mutual aid should be changed to automatic aid or as- needed aid, whichever is appropriate.	2 cont.
<p><u>Existing Conditions:</u></p> <p>The City of Costa Mesa provides automatic aid to a single neighborhood known as "Newport Terrace" located north of 19<sup>th</sup> Street. The Newport Terrace residential neighborhood is non-contiguous to the rest of Newport Beach. Costa Mesa also automatically provides a truck company as part of a first alarm response to some areas on the west side of Newport Beach. In exchange, Newport Beach Fire Station 6, located at Irvine Bl. And Dover Dr., responds into a portion of Costa Mesa located closer to Station 6 than to any Costa Mesa Station. This is a cooperative agreement between the fire chiefs and is not described in either the Automatic Aid Agreement or the MOU.</p> <p>While fire and EMS units do cross jurisdictional boundaries, the closest unit available is not always the unit that is dispatched.</p>	3
<p><u>Fire Department Response Time and Number of Calls for Service:</u></p> <p>The text leads the reader to believe that the fire department's policy manual (SOP) was approved in 2010. This is incorrect as the Department has had a policy manual for at least the past 40 years. Policy 3.A.201, "Fire Department Response Objectives", was first adopted in March of 2004. The policy was updated in January of 2010 subsequent to the adoption of a national response time standard by the National Fire Protection Association (NFPA 1710) in order to be consistent with the national minimum standards.</p> <p>The maximum response times listed in the NBFDP SOP manual, and quoted in this section of the DEIR, are intended to be met 90% of the time. Acceptable delays that can be attributed to the remaining 10% include units out of service for training and maintenance, the closest unit is already assigned to another call, fire inspections in which the crew is a distance away from their apparatus and similar instances. It is not, as is commonly believed, a response time standard that allows 10% of the response district to lie outside the maximum response time area.</p>	4
<p>CUMMULATIVE IMPACT ANALYSIS; SECTION 5.4.14 PUBLIC SERVICES AND FACILITIES:</p> <p><u>Project Impact Summary:</u></p> <p>Within this summary, it is stated that "As discussed in Section 4.14.1, no Project-specific impacts on public services and facilities were identified" This is incorrect; the Service Response portion of Environmental Impact Threshold 4.14-1 clearly states the need to relocate a fires station closer to the proposed development, or to construct a temporary station within the development until the existing facility can be relocated.</p>	5

Newport Banning Ranch  
Draft Environmental Impact Report Comments  
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<p><u>Geographic Context:</u></p> <p>This paragraph states that “With respect to fire protection services, the proposed Project assumes that adequate fire protection would be provided by the City of Newport Beach as well as the use of the City’s Mutual Aid Agreement with the Orange County Fire Authority and the Cities of Costa Mesa, Santa Ana and Huntington Beach.”</p> <p>This is incorrect; the Service Response portion of Environmental Impact Threshold 4.14-1 clearly states the need to relocate a fires station closer to the proposed development or to construct a temporary station within the development until the existing facility can be relocated. As stated previously, the term Mutual Aid is used incorrectly in this paragraph as there is only a verbal agreement with the City of Costa Mesa covering a narrow geographic area of Newport Beach known as Newport Terrace.</p>	6
<p><u>Cumulative Impact Analysis:</u></p> <p>Fire Protection:</p> <p>Again, this section grossly misuses the terms mutual aid and automatic aid. Additionally, we see for the first time the invention of a new term “automatic mutual aid”. This section also repeats the common misconception that “...the closest emergency response unit is dispatched to the emergency, regardless of jurisdictional boundary</p> <p>Within the sentence “The Project would increase demand for fire protection services; this demand would cumulatively contribute to the need for the <u>replacement</u> of Fire Station Number 2.”, the word “replacement” is incorrect as the DEIR calls for the actual relocation of Fire Station 2.</p>	7
<p><u>Mitigation Measures:</u></p> <p>MM4.14-1</p> <p>MM 4.14-1 identifies three planning areas and the resort inn as areas in which a Certificate of Occupancy (CofO) shall not be issued for any type of occupancy unless Fire Station 2 has been relocated in order to satisfy the fire department’s response guidelines as detailed in the Fire Force One study (Appendix K). While the Fire Force One study does generally identify planning areas 10a, 10b and 12b as the areas of the development that lie beyond the NBFD response time standard, the resort inn, located within planning areas 13a and 13b is identified as being within the response time standard of the</p>	8

Newport Banning Ranch  
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existing fire station. Only residential and commercial structures included within planning areas 10a, 10b and 12b should be included in this mitigation.	8 cont.
<p><u>MM4.14-3</u></p> <p>As in MM.14-1, MM4.14-3 improperly includes the resort inn. Only residential and commercial structures included within planning areas 10a, 10b and 12b should be included in this mitigation.</p> <p>MM14.4-3 states that the "Applicant shall provide and improve a site within the Project site boundaries for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance". The Fire Force One study identified planning areas 10a, 10b and 12b as being deficient with regard to the response time of the first arriving engine company. The study concluded that the entire development was within the response time standard for an advanced life support unit (paramedics) from NBFD's existing facilities. The temporary facility, therefore, would not need to house a paramedic apparatus or crew.</p>	9
<p><b>Section 2, Inadequacy of the Analysis;</b></p> <p><u>MM4.14-2</u></p> <p>MM4.14-2 states that the applicant shall pay the City of Newport Beach a "fire facilities impact fee" equal to its fair share of costs to relocate Fire Station 2. While it is impossible to determine an exact cost for such a move at this time, it is possible to determine what percentage of the cost will be attributable to the development. Since the only reason to relocate the station is arguably to better serve the proposed development, 100% of the cost could be attributed to the development. However, consideration must be given to the fact that the existing Fire Station 2 is aged and not in compliance with seismic standards for such a facility and was already on the City's list of facilities to be upgraded. There is also value to the community in relocating the station outside of an identified seismic liquefaction zone that must also be considered in establishing a fair share percentage.</p>	10
<p><u>MM4.14-3</u></p> <p>MM4.14-3 states that ..."Applicant shall provide and improve a site within the Project site boundaries for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least nine firefighters on a 7-day/24-hour schedule prior to the issuance of certificates of occupancy for any development in the said Planning Areas. The site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur".</p>	11

Newport Banning Ranch  
Draft Environmental Impact Report Comments  
Section 4.14 Public Services and Facilities  
10/22/10

MM4.14-3 is deficient in several areas: It does not state that a site will be selected that is approved by the NBFD. It does not state where the temporary station will be located, or which other use will be displaced by the station. It also does not state a minimum size of the site. A sufficient site for a fire station is between ½ and ¾ of an acre for a single engine company. This size permits the housing of the crew and apparatus, off street parking for crews going both on and off duty as well as space to park the apparatus outdoors, but still secured, onsite. The selected site should also be large enough to allow for drive-in rear access for the apparatus.	11 cont.
Neither MM4.14-3, nor any of the other mitigations considers the possibility that the City will not relocate the existing Fire Station 2 and that a permanent site within the development will need to be selected. Since it is possible that the City will not relocate Fire Station 2, it is important to identify a permanent site of suitable size and character that meets with the approval of the NBFD prior to any environmental approval. If the same site as the temporary site is selected, the DEIR should explain how coverage will be provided to the deficient planning areas during demolition of the temporary station and construction of the permanent station.	12
In conclusion, I believe that the errors, inaccuracies and inadequacies found within the fire protection portion of Section 4.14 render that section of the Environmental Impact Report unusable for the purpose of adequately evaluating fire, rescue and emergency medical services for a project of this significance.	13

Again, thank you for the opportunity to make these comments. If there are any questions, I may be contacted at [Stevebunting@cox.net](mailto:Stevebunting@cox.net).

Sincerely,



Steve Bunting



**Letter O26 Steve Bunting**  
October 22, 2011

### **Response 1**

Page 4.14-3 of Section 4.14, Public Services and Facilities, the second sentence under *Methodology* been changed and is incorporated into the Final EIR as follows:

To assist the Fire Department, the City retained the firm, Fire Force One, to evaluate the City's ability to provide adequate response to the Project site as part of the evaluation of existing fire station sites and three potential locations for future fire station sites ~~as well as to the West Newport area and the City as a whole.~~

### **Response 2**

On pages 4.14-2 to 4.14-12 of Section 4.14, the term "mutual aid" has been changed and is incorporated into the Final EIR with the term "automatic aid".

### **Response 3**

Page 4.14-3, under *Existing Conditions* has been changed and is incorporated into the Final EIR as follows:

The Costa Mesa Fire Department provides fire protection services through ~~an automatic aid~~ a cooperative agreement to the Newport Terrace residential community located north of 19<sup>th</sup> Street in the City of Newport Beach.

### **Response 4**

Page 4.14-4, the first paragraph under *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department's Policy Manual, ~~approved~~ updated by the Fire Department in January 2010, identifies policies of the Fire Department related to operating procedures including but not limited to response time objectives. Policy 3.A.100, Department Goals, of the Fire Department's Policy Manual identifies the standard operating procedures for the Fire Department and states "Provide a safe, effective and expeditious response to requests for assistance" (NBFD 2010).

Page 4.14-6, the first paragraph under *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City's "turnout time" and "travel time" values are based upon national standards published by the National Fire Protection Association (NFPA) in its Standard 1710, "Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments", 2010 edition. The City has adopted the response time goals identified in NFPA Standard 1710 which states "the fire department's fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4" (Fire Force One 2010). The maximum response times

are intended to be met 90 percent of the time. Acceptable delays that can be attributed to the remaining 10 percent include units out of service for training and maintenance, the closest unit is already assigned to another call, fire inspections in which the crew is a distance away from their apparatus and similar instances.

### Response 5

The Threshold 4.14-1 impact summary on Page 4.14-13 states that the impact would be less than significant with mitigation. The Project can be adequately served through the use of existing/future City of Newport Beach (City) fire and emergency medical services, a temporary fire station on the Project site, as well use of fire and emergency medical services provided through the City's automatic aid agreement with adjacent jurisdictions.

### Response 6

Section 4.14.1 of the Draft EIR concludes that in order to maintain appropriate response times, a temporary fire station would be required on the Project site and would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. Both the temporary fire station and the replacement fire station would be operated by the City of Newport Beach. Therefore, the Draft EIR correctly assumes that adequate fire protection would be provided by the City of Newport Beach as well as the use of the City's Automatic agreement with the Orange County Fire Authority (OCFA) and the cities of Costa Mesa, Santa Ana, and Huntington Beach.

### Response 7

Page 5-74, the first paragraph under *Cumulative Impact Analysis Fire Protection* has been changed and incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department serves existing development (inclusive of past and present projects) through the facilities and staff identified in Section 4.14. The proposed Project assumes the provision of fire protection services is based on a combination of existing and planned City of Newport Beach fire services and the use of ~~mutual~~ automatic aid. The City participates in Central Net, an automatic ~~mutual~~ aid system with the Cities of Costa Mesa, Santa Ana, and Huntington Beach, and the Orange County Fire Authority (OCFA). Together, these cities and the County provide personnel to any emergency. As part of this ~~mutual~~ automatic aid agreement, ~~the closest~~ an emergency response unit is dispatched to the emergency, regardless of jurisdictional boundary. As such, all projects in the Cities of Newport Beach, Costa Mesa, and Huntington Beach would be assumed in the cumulative analysis for fire protection services.

A new location for Fire Station Number 2 would both relocate and replace the existing station. The use of both "relocation" and "replacement" to describe possible future plans for Fire Station Number 2 does not present a conflict and has no affect on conclusions of the analysis.

### Response 8

In Mitigation Measure MM 4.14-1, "resort inn" refers to a land use, not a site planning area. Under the proposed Planned Community Development Plan, a resort inn is permitted with a conditional use permit in Mixed-Use/Residential (MU/R) District. Site Planning Area 12b would be designated MU/R and cannot be served by Station Number 2 within the established

response time. Therefore, it is appropriate that a resort inn be subject to this mitigation measure along with residential and commercial uses.

### **Response 9**

Please refer to the response to Comment 8.

The City of Newport Beach Fire Department's *Policy Manual* contains a response time of 240 seconds or less travel time for the arrival of a unit with first responder with automatic external defibrillator (AED) or higher level capability at an emergency medical incident. The Fire Force One study identified Site Planning Area 12b, the northerly block of Site Planning Area 10a, and the northerly block of Site Planning Area 10b as areas that are anticipated to not be served by Station Number 2 within this response time. The stationing of a paramedic unit at the temporary fire station is intended to mitigate this impact.

### **Response 10**

The opinion of the commenter is noted.

### **Response 11**

Additional information on the implementation of mitigation measures would be provided in conditions of the Project and the Mitigation Monitoring and Reporting Program.

### **Response 12**

As stated on Page 4.14-10 of Section 4.14, Public Services and Facilities, the temporary fire station would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. The City has prioritized the replacement of Newport Station Number 2 in the City's Facilities Replacement Plan.

### **Response 13**

The opinion of the commenter is noted.

Comment Letter O27

**Alford, Patrick**

**From:** Brian Burnett [techcowboy@ca.rr.com]  
**Sent:** Tuesday, November 08, 2011 3:36 PM  
**To:** Alford, Patrick  
**Subject:** Newport Banning Ranch DEIR

Dear Mr. Patrick Alford,

I have a few questions and concerns regarding the DEIR for Banning Ranch.

The first issue is I do not believe there was enough time given to nearby residents to come up with adequate responses or questions. Most of us work full time and have families and other commitments. I would like to ask for an extension of the deadline.	1
---	---

The first question I have is why did the DEIR not include any and all evidence that the owners of Banning Ranch are illegally clearing it? Were they not just reprimanded by the Coastal Commission for not having permits to clear what appears to sensitive and endangered habitat? How much wildlife habitat and wildlife would be there if this area was not mowed down (either legally or illegally)? It seems apparent to me that there would be much more wildlife habitat and wildlife if illegal mowing was not taking place.	2
--	---

Why is the fact that this area was used to protect the Orange County coastline from a Japanese invasion not considered important? I think that is very important! This is important from a historical perspective as well as any time in the future America is put into a similar situation.	3
--	---

Thank you for the opportunity to listen to my concerns and ask questions.

Brian Burnett

--

"This message may contain confidential and/or proprietary information and is intended for the person or entity to whom it was originally addressed. Any use by others is strictly prohibited."

**Letter O27    Brian Burnett**  
November 8, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

**Response 2**

Please refer to Topical Response: Mowing and Fuel Modification.

**Response 3**

The Draft EIR makes no judgment on the historic importance of the WW II era protection of the Orange County coast from a Japanese invasion. Because the gun emplacement site (CA-ORA-1610H) has been destroyed, it no longer retains integrity and thus cannot be eligible for listing on the National or California Registers.

Comment Letter O28

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915



November 7, 2011

Dear Sir:

**Regarding: Environmental Impact Report prepared for the Banning Ranch Project and the construction of a major road through a very sensitive Coastal Bluff Habitat**

I am very puzzled about how the City of Newport Beach ended-up operating the remaining active oil wells. When I used to work for the Division of Oil and Gas and Geothermal Resources. All oil wells have to have bonds that assure proper plugging if they are shut-in (idle) for more than 5 years. Most of the 489 wells would be played out (non-productive) years ago if the field started producing in the 1940s, and according to California Conservation Law the wells should have been plugged and the well sites restored years ago. In addition, if the majority of the 489 wells are plugged and abandoned as required, were they plugged and abandoned to the current criteria for wells in areas that will be subject to urban development? I wouldn't want to live over and old oilfield that that has oil wells that haven't been abandoned to urban criteria (concrete from bottom to top). Some of the wells intersect fault planes and could be sheared by any significant fault movement. I have attached maps and cross-sections of the Newport and West Newport Oilfields from Report No. TR12 "California Oil and Gas Fields, Volume II, South, Central and Coastal Offshore California. Numerous Newport-Inglewood fault traces are shown extending from depth to the surface in the West

It was very disconcerting to see how the EIR was written to downplay the fact that the Project site is located in a major fault zone. I am submitting the comments below.

Section 4.3 GEOLOGY AND SOILS

Page 4.3-1 - Subsection 4.3.1 INTRODUCTION

Grading is the development activity that is most destructive. The reader should be informed what the percentage of project grading is for "bluff/slope restoration versus remedial grading to address geotechnical and soils issues". The main reason all of this restoration and remedial grading is necessary is because the developers are planning to build homes, offices and roads in the Newport-Inglewood Fault Zone, one of the major active fault zones in Southern California.

The developers are predicating the proposed development with the idea that they are engineer around the problem of being located on a major fault, a zone of right lateral crustal adjustment. It is unlikely anyone would be killed but the stucco repair bills will be astronomical.

Page 4.3-3 - Subsection 4.3.2 REGULATORY SETTING

Who is the lead agency?

Page 4.3-4 Has the RWQCB's Model Water Quality Management Plan (WQMP) and post 2003 Local Drainage Area Management Plan (DAMP) or Location Implementation Plan (LIP) been revised as required for new development? If it hasn't been revised, it is way overdue, and if it has this more up-to-date information should be included in this EIR.

Pages 4.3-4 and 4.3-5 - Subsection 4.3.3 METHODOLOGY

GMU used a Caltrans and commercial computer program (EZ-Frisk- vers.7.22) to assess ground motion on the project site. Buoyant conditions representative of soils below groundwater were



modeled below an elevation of 0 feet. If the model assumes soils on bluff slopes are saturated when this condition doesn't exist?	4 cont.
<p>Page 4.3-5 to 4.3-6 - Subsection EXISTING CONDITIONS</p> <p><b>Site topography- this subsection is confusing.</b> This subsection states that there are two distinct geomorphic regions.... "Approximately 254 acres of the 401 acres (63.3 %) in the southeast portion of the project site are atop Newport Mesa, as the upland, a board flat topped mesa at an elevation 50 to 110 feet. ... The highest elevation is 105 feet above msl" ... located at the eastern-central portion of the project site. The term Bluffs is used as defined in the Newport Beach Municipal Code Section 20.70. "bluff" is a high bank or bold headland that slopes down to a body of water or plain.' Are there not bluffs above the arroyos? This is a very specific definition and it is ..." the bluffs that are subject to surficial slumping and gully erosion and the bluffs represent the western edge of the Upland Area rising between 50 to 90 feet above the adjacent Santa Ana River floodplain. This floodplain at an average elevation of 1 to 10 feet comprises the northwestern one-third (33.33%) of the Project site. Two major arroyos, the Northern Arroyo and Southern Arroyo have incised the bluff" ... <b>Thus, 63.3 plus 33.33% is 99.63 % and we must assume that the "bluffs" are part of the Upland.</b> The next paragraph states. ... "The Lowland area encompasses approximately 147 acres in the northwest portion of the Project site at an average elevation of 1 to 10 feet above msl." <b>(MSL) Mean Sea Level and is no longer acceptable reference for vertical elevation datum especially in coastal regions of the United States.</b> Why not explain that the Lowland area is the floodplain with the respective acreages?</p>	5
<p>Subtopic- Geologic Setting</p> <p><b>Section 4.3 Geology and Soils is found in Subtopics - Geologic Setting, Seismic Environment, Faulting and Surface Rupture, Regional Faulting</b></p> <p>This section is poorly written and likely misleads the reader. ... "Three regional faults systems are within approximately 6 miles of the Project site: the Compton Trust Ramp, the Newport-Inglewood Fault Zone, and the San Joaquin Hills Blind Trust Fault". <b>Of the three fault systems listed, the Newport-Inglewood Fault Zone has the far greatest regional significance.</b> The remainder of this large paragraph goes on at length to explain the Compton Thrush Ramp, which was identified as having no Holocene movement (within 10,000 yrs.) Exhibit 4.3-1 an entire page is devoted to this by definition inactive fault. The implication is that the limited Holocene evidence found by the Banning Ranch LLC consultants means that all the faults sections found on the Project property might not be active, when this isn't the situation.</p> <p>Since the 1940s, it has been known the Newport- Inglewood Fault Zone crosses the Banning Ranch because the fault is identified by numerous oil wells drilled in the West Newport Beach Oilfield. The next paragraph states ... "The Newport-Ingelwood Fault Zone is a northwest-southeast trending feature <b>within 1/2 mile of the Project site.</b>" Yes, it is within 1/2 miles, in fact numerous fault traces (segments cut through the Project site. Exhibit 4.3-2 is a small-scale regional map showing the Newport-Inglewood Fault Zone from Beverly Hills to South Laguna, and the next two paragraphs describe this fault zones as seen in areas north of the Project.</p> <p>Page 4.3-7. "Since 1920 approximately 15 earthquakes greater than or equal to magnitude 4.0 have occurred along this fault zone north of Newport Bay." Why discuss much of the activity north of the Project area when there have been at least three quakes that I remember as having been centered in Newport Beach since 1989 when I bought property in the area. Second paragraph, it is stated... "South of Huntington Beach (the Project area) the Newport-Inglewood Fault Zone has a northwesterly orientation which diverges into splay faults. Splay faults are smaller faults that branch of the main fault. Splay faults on the Project site are part of the North Branch of the Newport-Inglewood Fault Zone. The implication is that fault</p>	6

<p>splays are not faults, but they are. "Exhibit 4.3.3, Geologic Map shows two fault segments that are less than 1800 feet long and are separated by 1300 feet of sediments and soils that show no Holocene activity and the terminus of these fault segments "splays" are said to appear not experience high degrees of seismicity (evidenced by infrequent movement and low slip rates) ... "trench data indicate that portions of these fault segments could not be proved to be inactive". <b>Exhibit 4.3.3 shows more than two fault segments (greater than 15 segments). Why the awkward weasel words? There is a major fault zone crosses the Project area, but the authors if this EIR want to confuse that fact as much as possible.</b></p>	6 cont.
<p>Page 4.4-7 - Subtopic -<i>Surficial Deposits, Soils and Stratigraphy</i> Discussion of the surficial deposits, river alluvium (Qal) and marine terrace deposits (Qtm) and the bedrock San Pedro Formation (Qsp) focuses on the marine terrace deposits and states the these soils above the marine terrace deposits (Qtm) show a lack of disturbance that would denote fault activity in the Holocene period, but don't go into detail on how many places these soils were trenched. The arroyos contain alluvial material interfingering with colluvial material (Qcol), comprises if sands, silts and clays. Associated with former oil production facilities are pockets of artificial fill (Qaf).</p>	7
<p>Page 4.3.9 - <i>Subtopics, Seismic Hazard Zones, Seismically induced Ground Shaking, and Liquefaction and Lateral Spreading</i> The CDMG, California Division of mines and Geology (2008) identified the lowland area near the Santa Ana River is subject to liquefaction. The west facing bluff slopes were also identified as zones of required investigation for earthquake induced landslides. The EIR states. ... "The Project site is subject to fairly high levels of seismically induced ground motion due to its proximity to the Newport-Inglewood Fault Zone" <b>It would be more accurate to state the Project Site is crossed by the Newport -Inglewood Fault Zone. I would dispute the assumptions made in the (PSHA in the GMU 2010 Report ... "a risk level of 10 percent probability of exceedance in 50 years (475-year average return)"... LIVING IN THE AREA FOR 22 YEARS, I am aware of 3 quake episodes in the Newport Beach area during the last 22 years. Please explain why when using the Caltrans model (State Model), the peak ground horizontal acceration (PHGA) was .60g significantly higher than the applicant' projected PHGA of .37g.</b></p>	8
<p>Page 4.3-9 to 4.3-10 - The EIR states that most of the soil material in the Uplands proposes for development are too far above the water table to be subject to liquefaction and lateral spreading to occur. There are pockets of colluvial and artificial fill in the Uplands and bluff area, which could be subject to liquefaction if saturated and although they won't be saturated. ... "As identified in the GMU 2010 Report colluvium and artificial fill would be removed by corrective grading below development areas. This paragraph suggests that the natural arroyos must be graded for public safety when it is obvious that the building area will be increased by grading and this maximizes the monetary aspects of the proposed project.</p>	9
<p>Page 4.3-10 - subtopic <i>Compressible and Collapsible Soils</i> <i>Third paragraph. "Colluvial soils present at the base of the Upland slopes, in ravines and in arroyos are a combination of slope wash, talus deposits, general soft and porous" ... "considered moderately to highly and compressible and would be removed and recompacted underneath development areas during grading".</i> <b>The applicant is proposing to take all the dirt out of the arroyos, essentially destroying this rare habitat, so that they may (safely) develop closer to the bluff edge.</b> The bluff arroyo areas should be left undeveloped and there would be no need to remove the dirt. Widespread grading and earth moving is the development activity most destructive to the environmental and will kill and displace the far more individual plants and animals.</p>	10



<p>Page 4.3-11- <u>Subtopic Bluff Slope Stability</u></p> <p>The first two paragraphs contain a description of the bluffs and attribute most of the bluff erosion to the former oilfield activities. Bluff slope retreat due to erosion (2 feet a year) is not considered a critical site hazard after the oil production equipment and well sites in the Newport West Oilfield are remediated as required by Conservation law. Most of the other paragraphs in this subtopic are filler to enhance the impression that real research has been conducted.</p>	11
<p>Page 4.3-12- Subsection <u>Mineral Resources</u></p> <p>No effort is made to distinguish between those few wells that may be active in the West Newport Oilfield and the historical 489 well total. The public should be told how the majority of the 489 wells in the project site have been abandoned, if they have been abandoned, and how have these wells been plugged; the criteria for abandoning oil wells in urban developed areas is greater. <b>The City of Newport Beach operates 16 wells out of the 489 wells. Is the City the owner of these wells?</b> Subscript no. 7 - only mineral rights are owned West Newport Oil Company, which is wholly owned by Horizontal Drilling LLC, separate from the surface owners. Does the City of Newport Beach own oil wells and maintain bonding to assure proper abandonment of these wells?</p>	12
<p>Page 4.3-12 - <b>Section 4.3.5 PROJECT DESIGN FEATURES AND STANDARD CONDITIONS</b></p> <p><b>Subsection - Project Design Features</b></p> <p>PDF-1 Requires a habitable structure setback of 60 feet from the tops of bluff edges and states no habitable structures will be constructed within identified fault setback zones. <b>Comment - The applicant's consultant seems very reluctant to locate faults.</b></p>	13
<p>PDF-4.3.2 Master Plan Specifies drainage devices tube constructed along slopes and minimize surface flows and irrigation. This is good.</p>	14
<p>PDF- 4.3.3 "The Master Plan includes a Bluff/Slope Restoration Plan that requires eroded portions of the Bluffs be repaired and stabilized. In order to stabilize slopes and help avoid erosion, bluff areas devoid of vegetation after repair and stabilization will be planted with native vegetation that does not require irrigation." <b>There is no irrigation now! Why remove existing plants which provide stabilization, only to replant with new plants not requiring irrigation?</b></p>	15
<p>Page 4.3-12 <u>Standard Conditions and Requirements</u></p> <p>This sounds good... Any grading Plan submitted to the City that deviates from the grading plan submitted for the tentative map shall be reviewed for conformance. If not in substantial conformance, a new revised tentative map and CEQA determination shall be required. Since the City operates oil wells and has some interest in getting the old oilfield properly abandoned with LLC money, it seems like the fox maybe guarding the henhouse.</p>	16
<p>Page 4.3-14 - Section 4.3.6 THRESHOLD OF SIGNIFICANCE</p> <p>The authors of this EIR conclude that all the thresholds of significance are mitigated to levels of insignificance. Thresholds 4.3-2 and 4.3-3 expose people or structures to potential substantial adverse effects. It is concluded that all hazard on development and building on a very active major fault zone can be engineered away. <b>As a Registered Professional Geologist #7858 in the State of California, I don't agree.</b></p> <p>Threshold 4.3-5 Result in substantial erosion or loss of topsoil. It is proposed to remove all of the topsoil in the arroyos and use it for building pads. <b>This practice will result in lost of the value of topsoil as topsoil.</b></p>	17

If the Project would result in a significant impact related to geology and soils if it would: Threshold 4.3-6 "Be located on a geologic unit or soil that is unstable or that would become unstable as result of the project, and potentially result in on or offsite landslide, lateral spreading, liquefaction or collapse."

The impact summary conclusion on Page 4.3-16 concludes that all the items related to potential impacts due to certain onsite soils can be mitigated to a levels of insignificance would be more believable if the EIR was significantly most honest about planning a development on 401 acres that is all located in a major fault zone which they describe a smaller fault splays. The right lateral transverse Newport-Inglewood Fault Zone is a major zone of crustal adjustment very similar to the San Andreas Fault. The removal and loss of that unique habitat in the arroyos is justified by being needed for the public safety. But adjustment to the required setback from the bluff slopes and arroyos would move safely accomplish the same goal without loss of unique habitat.

17 cont.

The EIR prepared by Bon Terra seems to miss the point of an EIR. The EIR discusses the impact of the existing geological and soil conditions on the Project more the impact of the proposed Project on the environment.

18

Sincerely,

Toni M. Callaway  
California Registered Professional Geologist #7858

**Letter O28    Toni Callaway**  
November 7, 2011

### **Response 1**

The City of Newport Beach operates wells currently on the Project site near West Coast Highway in what is proposed as one of two oil consolidation site. All other remaining active wells in the property are operated by West Newport Oil Company. All wells outside of the two oil consolidation sites would be abandoned or re-abandoned to current requirements and standards of the State of California Department of Oil, Gas and Geothermal Resources (DOGGR).

### **Response 2**

Remedial grading associated with bluff repairs (see Exhibit 3-3 for bluff locations and Exhibit 4.3-6 for bluff repair/restoration areas of the Draft EIR) is approximately 2 percent of the total anticipated remedial (i.e., corrective) grading quantity. All development would be set back from faults within the North branch of the Newport Inglewood fault zone that could not proven to be inactive in accordance with State law and as per current standards of practice.

### **Response 3**

Regarding Subsection 4.3.2, page 4.3-3, the lead agency is the City of Newport Beach.

Regarding page 4.4-4, the MS4 Permit has been re-issued as noted in the Watershed Assessment Report contained in Appendix C of the Draft EIR. The following paragraph has been incorporated on page 4.4-6:

#### Municipal Storm Water Permitting (MS4 Permit)

The State's Municipal Storm Water Permitting Program regulates storm water discharges from MS4s. MS4 Permits were issued in two phases. Phase I was initiated in 1990, under which the RWQCBs adopted NPDES storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving more than 250,000 people) municipalities. As part of Phase II, the SWRCB adopted a General Permit for small MS4s (serving less than 100,000 people) and non-traditional small MS4s including governmental facilities such as military bases, public campuses, and prison and hospital complexes (WQ Order No. 2003-0005-DWQ).

On May 22, 2009 the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order No. R8-2009-0030, Amended by Order No. R8-2010-0062). Re-issuance of this permit will result in future changes to the OC DAMP and City of Newport Beach LIP and storm water program. This updated fourth-term MS4 Permit includes new requirements pertaining to hydromodification<sup>20</sup> and low impact development (LID) features associated with new developments and redevelopment projects. As part of the Permit requirements, the County of Orange as the Principal Permittee and the co-permittees including the City of Newport Beach were required to develop a new Model Water Quality Management Plan (Countywide Model WQMP) which incorporates feasibility criteria for LID and hydromodification requirements. The

<sup>20</sup> Hydromodification is generally defined as the alteration of natural flow characteristics.

2011 Model WQMP and accompanying Technical Guidance Document was approved by the Santa Ana RWQCB on May 19, 2011 with an effective implementation date of 90 days following the approval (August 17, 2011).

#### **Response 4**

Ground motion analyses used appropriate soil conditions (i.e., soil type and shear wave velocity) for the Upland area where shallow groundwater is not present. However, for stability analyses and evaluation projected future worst-case near surface saturation conditions are used. These are two separate analyses requiring different assumptions.

#### **Response 5**

For analysis purposes the topographic features of the Project site have been described as the Lowland area and the Upland area as reflected on Exhibit 3-3 of the Draft EIR. The extent of the bluffs are also reflected on Exhibit 3-3 of the Draft EIR and do not include slopes above the arroyos.

Paragraph 2 of page 4.3-6 has been revised and incorporated into the Final EIR as follows:

The Lowland area encompasses approximately 147 acres in the northwest portion of the Project site at an average elevation of 1 to 10 feet ~~above msl.~~ This area consists of remnants of the Santa Ana River floodplain and contains channels conveying drainage from surrounding areas at higher elevations to the Santa Ana River through the Semeniuk Slough (also known as Oxbow Loop) (see Exhibit 3-3, Existing Topographic Site Conditions, Section 3.0, Project Description).

The limits of the Lowland area are not consistent with the floodplain limits and therefore the term Lowland is adequate for the description of the Lowland area referenced in Exhibit 3-3 of the Draft EIR.

#### **Response 6**

There is no implication that fault splays are not faults. The faults found on site are grouped together in zones called the “North Segment Faults” and the “South Segment Faults”. All of the individual faults are clearly shown on Exhibit 4.3-3 and shown on the fault trench logs contained in Appendix B of the Draft EIR.

#### **Response 7**

The fault trenches are shown on Exhibit 4.3-3 of the Draft EIR. Additional detail in regards to the trenching (i.e., such as detailed “fault trench logs”) are contained in the Geotechnical report (see Appendix B of the Draft EIR).

#### **Response 8**

The assumptions made in the PSHA are correct. The PHGA of 0.36g was determined using probabilistic methods at a specified risk level corresponding to a 475 year recurrence interval. This risk level is consistent with the standard of practice for residential and commercial developments. The PGA of 0.6g was determined deterministically with the San Joaquin Hills blind thrust as the controlling fault. The two methods reports (i.e., probabilistic and deterministic) inherently yield differing results.

### **Response 9**

The paragraph referenced in the GMU 2010 report indicates how the compressible colluvial soils would be mitigated in proposed development areas. No reference is made to the public safety of the arroyos.

### **Response 10**

Exhibit 3-3 of the Draft EIR identifies the locations of the Southern Arroyo, Northern Arroyo, and Minor Arroyo that are discussed in the Draft EIR. The Village and Colonies areas of the proposed land Use plan as shown on Exhibit 3-2 are outside of the arroyos.

### **Response 11**

The two feet of bluff erosion per year is an average rate which occurred during oilfield operations. Following completion of the proposed development with controlled surface drainage, bluff repairs and off-site flood-control improvements, bluff retreat is anticipated to be reduced to levels that are adequately addressed with the proposed setback.

### **Response 12**

Figure 3, Historic Oilfield Impacts Map, in the draft Remedial Action Plan distinguishes between active/potentially active oil wells and abandoned oil wells. With the exception of the two oil consolidation sites, all on-site oil wells would be abandoned or re-abandoned to current DOGGR standards. The mineral rights below the Project site are owned by West Newport Oil Company, which is wholly owned by Horizontal Drilling LLC. While the City's oil well surface locations are within the Project site, they produce from locations outside of the Project site by use of directionally drilled wells.

### **Response 13**

In addition to the habitable structure setback for bluff edges, there are also setbacks for both the Newport Mesa North and South segment faults including a projected extension of these two fault zones. The setbacks shown on Exhibit 4.3-3 meet or exceed State standards.

### **Response 14**

The commenter's opinion is noted.

### **Response 15**

The bluff face is not fully vegetated in the existing condition as can be seen in Exhibit 4.2-5a of the Draft EIR. Existing vegetation in the areas where bluff repair is limited and contains loose soil. Restoration of the repaired bluff areas as it relates to planting is described in Section 4.6.8 of the Draft EIR.

### **Response 16**

The commenter's opinion is noted.

### **Response 17**

Exhibit 3-3 of the Draft EIR identifies the locations of the Southern Arroyo, Northern Arroyo, and Minor Arroyo that are discussed in the Draft EIR. As shown in Exhibit 3-17, only portions of the arroyos are to be graded.

### **Response 18**

The opinion of the commenter is noted.



November 4, 2011  
Mr. Patrick Alford  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663



Re: Banning Ranch DEIR, Section 4.5, Hazards & Hazardous Materials

NOTE: We hereby object to approval of the project in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

**Summary:** This public comment to the Banning Ranch DEIR addresses the issue of unregulated oil wastes and fugitive emissions of toxic air contaminants (TACs), including benzene, which is known to cause cancer in humans, methylene chloride and vinyl chloride, as well as the DEIR criteria pollutants (NO<sub>x</sub>, O<sub>3</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, CO, SO<sub>2</sub>, lead and four State-designated pollutants: visibility reducing particles, sulfates, hydrogen sulfide, and vinyl chloride), all of which have been detected by field sampling and/or ambient air analyses of the Banning Ranch oil field operations, according to this DEIR. Other issues that should have been, but were not adequately addressed by this DEIR are toxic leaks and seepage from oil production, processing and storage equipment, including piping, oil sumps and oil storage tanks. Radiation exposure is also a concern, given the age of the oil field.

"One of the chemicals in crude oil that is of highest concern is benzene. It has long been known to cause rapid toxic effects, and it is carcinogenic and mutagenic. A review the toxic effects and other characteristics of benzene is available at: <http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>.

[...] Benzene in the crude oil can cause a variety of specific effects described in the recent CDC summary of benzene toxicity: ventricular fibrillation, congestive gastritis, toxic gastritis, pyloric stenosis, myalgia, kidney damage, skin irritation and burns, swelling and edema, vascular congestion in the brain, and lethal central nervous system depression.  
(<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>)"

**Discussion:** The Banning Ranch oil field is nearly 70 years old and was in operation before regulations for radiation exposure (radium-226, -228 and radon gas) existed. The Environmental Protection Agency's (EPA) web site discusses how radioactive wastes are formed and why they're of particular concern in older oil field operations (emphasis added).

#### **Radioactive Wastes from Oil and Gas Drilling**

[...] Radioactive wastes from oil and gas drilling take the form of produced water, drilling mud, sludge, slimes, or evaporation ponds and pits. It can also concentrate in the mineral scales that form in pipes (pipe scale), storage tanks, or other extraction equipment. Radionuclides in these wastes are primarily [radium-226](#), [radium-228](#), and [radon gas](#). The radon is released to the atmosphere, while the produced water and mud containing radium are placed in ponds or pits for evaporation, re-use, or recovery.



<p>The people most likely to be exposed to this source of radiation are workers at the site. They may inhale radon gas which is released during drilling and produced by the <a href="#">decay</a> of radium, raising their risk of lung cancer. In addition, they are exposed to alpha and gamma radiation released during the decay of radium-226 and the low-energy gamma radiation and beta particles released by the decay of radium-228. (Gamma radiation can also penetrate the skin and raise the risk of cancer.) Workers following safety guidance will reduce their total on-site radiation exposure.</p> <p>Most states and federal land management agencies currently have regulations which control the handling and disposal of radionuclides which may be present in production sites. However, the general public may be exposed to TENORM [Technologically Enhanced Naturally Occurring Radioactive Materials] from oil and gas drilling when sites that were active prior to the mid-1970s, when regulations went into effect, are released for public use. It is likely that a number of these sites contain radioactive wastes. The public may also be exposed when contaminated equipment is reused in construction project."</p> <p><a href="http://www.epa.gov/radtown/drilling-waste.html">http://www.epa.gov/radtown/drilling-waste.html</a></p>	<p>1 cont.</p>
<p>The DEIR Air Quality section describes the history of air, soil and water sampling and various clean-up operations of the oil field. It appears that no soil or water sampling has been done since 2001 and there is no mention of a radiation survey ever having been done. If there was such a survey, when was it done, what were the results and why wasn't it covered in either the BR DEIR or the Banning Ranch Draft Remedial Action Plan (DRAP), prepared by Geosyntec for the Project Applicants in 2009?</p>	<p>2</p>
<p>The DRAP's plan for abandonment and remediation of the oil field states that as much salvageable material as possible from the oil field operations will be reused and recycled. With regard to the recycling of metals, the EPA web site states the following measures should be taken:</p> <p>"Now that the petroleum industry is aware of the potential for contamination, they take a number of precautions before recycling:</p> <ul style="list-style-type: none"> <li>- Loads of scrap metal are surveyed for hidden radioactive sources and TENORM.</li> <li>- Piping and equipment are cleaned before release for recycling at smelters.</li> <li>- Pollution control devices, such as filters and bubblers, are installed in smelter stacks to reduce airborne radiation releases."</li> </ul> <p>The EPA web site also describes the exposure risk as follows:</p> <p>"TENORM contamination in oil production waste came to the attention of industry and government in 1986 when, during routine well work in Mississippi, barium sulfate scale in tubing was found to contain elevated levels of levels of radium-226, and thorium-232.</p> <p>Because of concerns that some pipes may have contaminated the surrounding environment, radiological surveys were conducted by EPA's Eastern Environmental Radiation Facility. These surveys showed that some equipment and disposal locations exhibited external radiation levels above 2 mR/hr and radium-226 soil contamination above 1,000 pCi/g. Some contamination had also washed into a nearby pond and drainage ditch at one site, as well as into an agricultural field with subsequent uptake of radium by vegetation.</p>	<p>3</p>

<p>Because TENORM contaminated wastes in oil and gas production operations were not properly recognized in the past, disposal of these wastes may have resulted in environmental contamination in and around production and disposal facilities. Surface disposal of radioactive sludge/scale, and produced water (as practiced in the past) may lead to ground and surface water contamination.</p> <p>Those at risk include: Oil and radiation waste disposal workers. Nearby residents/office workers."</p>	<p>3 cont.</p>
<p>There are 470 wells on Banning Ranch, most of them abandoned and likely improperly capped, 40 miles of piping, processing and treatment facilities, oil storage tanks and approximately 36 historic oil sumps, which held toxic oil wastes and were never subject to regulatory guidelines. Nor is the current method for storing and disposing of toxic oil wastes (in the form of produced oils and fluids) regulated by the U.S. or the California State EPA. No testing has ever been required and there was no discussion found of any testing of the oil field wastes in the Banning Ranch DEIR.</p> <p>Oil wastes contain dangerous toxins, including benzene, toluene, arsenic, lead and barium, along with radioactive material and various treatment chemicals, such as mercury, which can be lethal at levels as low as 0.1 parts per million. Do the Project Applicants plan to do a radiation survey of the oil field operations to determine the level of radioactive wastes? If so, what is the remediation plan to deal with these wastes? Does the Project Applicant plan to test the current disposal areas being used for toxic oil wastes? Do any of the original oil sumps still exist and will they be tested?</p>	<p>4</p>
<p>Because of its age, the Banning Ranch oil field operation is also exempt from Coastal Commission oversight, according to the 2009 DRAP (*). As previously stated, the operation includes 470 oil wells, the majority of which have been abandoned and incorrectly plugged or capped, some 40 miles of piping (**), as well as oil production, processing and storage equipment (***) [emphasis added].</p> <p>(*) Because the oil operations predated the establishment of the California Coastal Act (CCA) and other related regulatory definitions and codes, oilfield operations at Newport Banning Ranch were granted a permit exemption by the California Coastal Commission (CCC) in 1973 that covers ongoing and future oil production operations and also includes abandonments and equipment/pipeline removals and cleanup as exempt activities.</p> <p>(**) <b>There currently remains over 40 miles of pipelines throughout the Site for the conveyance of oil, water, and gas produced from the wells to various separation and treatment facilities on the Site.</b> Figure 3 shows that these operations are spread across both the upland and lowland areas of the Site.</p> <p>(***) <b>Oil operations including exploration, development, and production have been conducted continuously within the boundaries of the Site since 1944. Most of the Site has been heavily impacted by these historic oil operations and the related access roads and work areas.</b> The majority of the Site is still used today in active oil and gas production operations. There are currently over 470 producing/potentially producing and abandoned oil wells at the Site, together with related roads, transport pipeline networks, above-ground crude oil storage tanks and processing equipment, service buildings and other facilities (see Figure 3).</p>	<p>5</p>



Figure 3 provides a composite picture as to the extent of the Site that has been impacted by both historic and current oil wells, pipelines, utility poles, and related facilities, as well as oilfield operation work areas like graded roads and equipment areas surfaced with gravel, asphalt, **crude oil, or crude oil tank sediments, and historic sumps which held produced oil and fluids within in-ground surface impoundments.** This map was assembled from a variety of in-field evaluations, technical maps, aerial photography, and other sources, **and illustrates that the over 65 years of oil producing operations have resulted in substantial impacts to the Site.**

[http://www.city.newport-beach.ca.us/pln/CEQA\\_REVIEW/Newport%20Banning%20Ranch%20DEIR/Newport%20Banning%20Ranch\\_DEIR/Newport%20Banning%20Ranch\\_Appendices\\_DEIR\\_September%202011/D%20Haz%20Mat/Appendix%20D%20Part%201.pdf](http://www.city.newport-beach.ca.us/pln/CEQA_REVIEW/Newport%20Banning%20Ranch%20DEIR/Newport%20Banning%20Ranch_DEIR/Newport%20Banning%20Ranch_Appendices_DEIR_September%202011/D%20Haz%20Mat/Appendix%20D%20Part%201.pdf)

A copy of Figure 3 is attached. All of the equipment associated with Figure 3 is subject to corrosion, contamination, leakage, seepage and fugitive emissions, which would be true even if the operation hadn't been situated over the Inglewood-Newport Beach fault line (DEIR Section 4.3: Geology & Soils; Seismic Environment, Faulting and Surface Rupture, page 4.3-6) and subject to hundreds of earthquakes over its lifetime.

In April of 2010, the National Defense Resources Council (NRDC), petitioned the EPA to regulate oil wastes:

**"NDRC Petitions EPA to Apply Hazardous Waste Rules to Toxic Oil and Gas Waste**

What is perhaps most horrifying about the current disposal of toxic waste being created by oil and gas production is that it can be dumped, without protections, right in the backyards of families across the nation, even if the family doesn't want it there, due to split estate situations. Our petition provides examples; here's one: Analysis of soil samples taken from a residential property in Texas, where pit sludge had been spread on the ground less than 300 feet from a residence, confirmed the presence of numerous hydrocarbons identified as Recognized and Suspected human carcinogens and neurotoxins (1, 2, 4 Trimethylbenzene, 1, 3, 5 Trimethylbenzene, 4-Isopropyltoluene, Acetone, Benzene, Carbon disulfide, Ethylbenzene, Isopropylbenzene, m&m Xylene, n-Butylbenzene, n-Propylbenzene, o- Xylene, sec-Butylbenzene, tert-Butylbenzene, Toluene)."

[http://switchboard.nrdc.org/blogs/amall/nrdc\\_petitions\\_epa\\_to\\_apply\\_ha.html](http://switchboard.nrdc.org/blogs/amall/nrdc_petitions_epa_to_apply_ha.html)

In light of these findings, it becomes all the more imperative to know what toxins are in the oil wastes produced by the oil field operations on Banning Ranch.

With regard to fugitive emissions, studies show that the majority of them are not from refinery oil stacks but from unintentional leaks in equipment such as tubing, valves, flanges and hatches.

"Fugitive emissions are unintentional leaks of gases. This may occur from breaks or small cracks in seals, tubing, valves or pipelines, as well when lids or caps on

5 cont.

<p>equipment or tanks have not been properly closed or tightened. When oil and natural gas vapors escape via fugitive emissions, methane as well as volatile organic compounds (VOCs) and any other contaminants in the gas (e.g., hydrogen sulfide) are released to the atmosphere.</p> <p>Recently, while on a tour of oil and gas field in Weld and Adams counties, a team of high-tech Environment Protection Agency investigators used an infrared camera to look for fugitive emissions, which are normally invisible to the naked eye. They aimed their camera at pipelines, valves and hatches atop storage tanks. The EPA regulators found numerous cases of fugitive emissions. According to a story in the Rocky Mountain News, "in one case, an open hatch atop a storage tank was gushing such a tremendous volume of emissions into the air that one participant jokingly compared it to the eruption of Mount Vesuvius near the ancient city of Pompeii."</p> <p><a href="http://www.earthworksaction.org/airpollutionsources.cfm">http://www.earthworksaction.org/airpollutionsources.cfm</a></p>	<p>5 cont.</p>
<p>Ambient air analyses have been done for the DEIR criteria pollutants, but such an analysis could not be found for benzene, a known carcinogen and highly toxic air contaminant. Why haven't ambient air analyses been done for benzene and why is there no mention in the DEIR of the known health hazards associated with benzene and the other criteria pollutants? Of course, leaks and fugitive emissions are more likely to occur with old equipment.</p> <p>According to the Banning Ranch DRAP, during field sampling, benzene, methylene chloride and vinyl chloride were detected and exceeded standards (MCLs) in the groundwater on Banning Ranch. [Banning Ranch DRAP, Table 4: Range of Groundwater Sample Results-EA (2001)]</p> <p>From the Occupational Health &amp; Safety Administration (OSHA) on benzene:</p> <p>"Benzene is a component of products derived from coal and petroleum and is found in gasoline and other fuels. Benzene is used in the manufacture of plastics, detergents, pesticides, and other chemicals. Research has shown benzene to be a carcinogen (cancer-causing). With exposures from less than five years to more than 30 years, individuals have developed, and died from, leukemia. Long-term exposure may affect bone marrow and blood production. Short-term exposure to high levels of benzene can cause drowsiness, dizziness, unconsciousness, and death."</p> <p><a href="http://www.osha.gov/SLTC/benzene/">http://www.osha.gov/SLTC/benzene/</a></p> <p>And this article from Sciencecorps [emphasis added]:</p> <p><b>Crude Oil Health Hazards</b></p> <p>Toxic Effects: Crude oil's toxic ingredients can damage every system in the body: respiratory system, nervous system, including the brain, liver, reproductive/urogenital system, kidneys, endocrine system, circulatory system, gastrointestinal system, immune system, sensory systems, musculoskeletal system, hematopoietic system (blood forming), skin and integumentary system, metabolism.</p> <p>Damage to these systems can cause a wide range of diseases and conditions. [...] The chemicals can impair normal growth and development through a variety of mechanisms, including endocrine disruption and direct fetal damage. They cause mutations that may lead to cancer and</p>	<p>6</p>



multi-generational birth defects. Some are known carcinogens, such as benzene (CDC, 1999).

[...] **One of the chemicals in crude oil that is of highest concern is benzene**, because it has long been known to cause rapid toxic effects, and it is carcinogenic and mutagenic. A review the toxic effects and other characteristics of benzene is available at:

<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>.

[...] **Benzene in the crude oil can cause a variety of specific effects described in the recent CDC summary of benzene toxicity: ventricular fibrillation, congestive gastritis, toxic gastritis, pyloric stenosis, myalgia, kidney damage, skin irritation and burns, swelling and edema, vascular congestion in the brain, and lethal central nervous system depression.**

(<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>).

[...] In susceptible individuals such as children and those with health problems, moderate or low level exposures can cause effects usually associated with high exposures."

<http://www.sciencecorps.org/crudeoilhazards.htm>

A landmark study by the University of Texas, School of Public Health in 2010, showed that benzene exposure via air pollution increased the incidence of spina bifida in children:

**"Maternal Exposure to Ambient Levels of Benzene and Neural Tube Defects among Offspring: Texas, 1999–2004"**

6 cont.

Objective: Our goal was to conduct a case-control study assessing the association between ambient air levels of benzene, toluene, ethylbenzene, and xylene (BTEX) and the prevalence of NTDs among offspring.

Methods: The Texas Birth Defects Registry provided data on NTD cases (spina bifida and anencephaly) delivered between 1999 and 2004. The control group was a random sample of unaffected live births, frequency matched to cases on year of birth. Census tract-level estimates of annual BTEX levels were obtained from the U.S. Environmental Protection Agency 1999 Assessment System for Population Exposure Nationwide. Restricted cubic splines were used in mixed-effects logistic regression models to determine associations between each pollutant and NTD phenotype.

Results: Mothers living in census tracts with the highest benzene levels were more likely to have offspring with spina bifida than were women living in census tracts with the lowest levels (odds ratio = 2.30; 95% confidence interval, 1.22–4.33). No significant associations were observed between anencephaly and benzene or between any of the NTD phenotypes and toluene, ethylbenzene, or xylene.

Conclusion: In the first study to assess the relationship between environmental levels of BTEX and NTDs, we found an association between benzene and spina bifida. Our results contribute to the growing body of evidence regarding air pollutant exposure and adverse birth outcomes."

<http://ehp03.niehs.nih.gov/article/info%3Adoi%2F10.1289%2Fehp.1002212>

**Conclusion:** Up-to-date and comprehensive testing for TAC pollutants, oil waste toxins and radioactive wastes must be done before any DEIR can be considered complete and certainly before it can be approved. Please advise as

7

to whether this testing will be done and if it will be done by independent consultants with no prior or current contractual relationship with either the Project Applicants or the City in order to verify the reliability and accuracy of the results. Also, please provide a list of city or country experts who have independently reviewed each section of the Project Applicant's DEIR.

7 cont.

Thank you for your attention to these areas of deep concern. My strongest recommendation is that the Hazards and Hazardous Materials section of the DEIR be redone and the revised version documented with all of the necessary testing (whether current regulations require it or not) and a plan for the remediation required to safeguard the Project workers, the adjacent residents, the community college currently under construction, the grade school (Carden Hall) and the children and families who will use the City's proposed soccer fields, baseball diamond and tennis courts, and especially the residents who will be living in and above an operational oil field.

8

Sincerely,

Suzanne Forster  
8 Summerwind Court  
Newport Beach, CA

*Dorene Christensen  
19 Bacuna Court  
Newport Beach, CA*

**Letter O29     Dorene Christensen**  
November 4, 2011

**Response 1**

The Baseline Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. The 2001 report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). There are no current waste disposal areas or active sumps on the Project site. A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing.

The California Department of Oil, Gas, and Geothermal Resources (DOGGR) conducted a statewide study in 1996 that included the West Newport Oilfield confirming that NORM (Naturally Occurring Radioactive Material) is not a serious problem in California (which confirmed an earlier 1987 study). As a part of the proposed Project's oilfield abandonment program, comprehensive surveys would be conducted among any salvaged and recycled oilfield equipment and soils to confirm suitability for those purposes. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, should any material be determined unsuitable for recycling, it would be properly disposed of in a licensed State facility.

**Response 2**

Please refer to the response to Comment 1.

**Response 3**

Please refer to the response to Comment 1.

**Response 4**

Please refer to the response to Comment 1. Additionally, Mitigation Measure (MM) 4.5-1 requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site disturbance unrelated to oil remediation activities. This is intended to ensure further agency review of any identified contaminants and plans for clean-up.

**Response 5**

With the exception of the two oil consolidation sites, all on-site oil wells would be abandoned or re-abandoned to current requirements and standards of the DOGGR. There are no current waste disposal sites or active sumps. All historical sites were tested and characterized in the 2001 Environmental Assessment. Impacted soils would be removed from these areas and remediated to agency approved cleanup criteria. The remediation process is reviewed, monitored, and approved by State regulatory agencies and is designed to address the protection of the environment and human health. Development construction is allowed only after verification that all the remediation criteria have been met and the oversight agencies have signed off the final closure document.

With respect to fugitive emissions, please refer to Section 4.10, Air Quality, of the Draft EIR.



## **Response 6**

The State of California Air Resources Board (CARB) has designated almost 200 compounds as TACs. Of the ten tasks posing the greatest health risk in California, most are associated with risk for various forms of cancer. Non-carcinogenic risks include but are not limited to respiratory illness, blood disorders (from chronic benzene exposure), renal toxicity (from hexavalent chromium), and eye, nose, and throat irritation (from formaldehyde). The Human Health Risk Assessment (HHRA) for the proposed Project determined that both carcinogenic and non-carcinogenic health risks associated with the proposed project would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR. Appendix G of the Draft EIR explains in greater detail the potential health risks of TACs. Please also refer to Topical Response: Air Quality.

The source of the benzene at Potential Environmental Concern (PEC) 01, located in the Lowland area, appeared to be a ground level drain tank that is no longer in service. This is a targeted area for the remediation program.

## **Response 7**

Please refer to the responses to Comments 1, 4, and 6 and to Topical Response: Air Quality and Topical Response Oilfield Regulatory Oversight and Remediation. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. Additional testing and verification sampling will be conducted during the remediation program. The Project requires that third-party certified environmental professionals monitor the oilfield abandonment, the remediation, and the full site grading phase to ensure all impacts are addressed to the approved criteria.

## **Response 8**

The opinions of the commenter are noted.

30th October, 2011

Comment Letter O30

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

I have lived in Newport Beach for over 40 years and Orange County for most of my life. While I support the development of the Sunset Ridge Park, I am 100% against the Banning Ranch Development. The loss of open space and increased crowds, traffic etc. is not what I envision for West Newport. 1

Sincerely,  
Mr. Francis Cignotti  
230 Lugonia St.  
Newport Beach, Ca, 92663

949-646-3863  
mcignotti@earthlink.net

**Letter O30    Francis Cignotti**  
October 30, 2011

**Response 1**

The commenter's opposition to the Project is noted.

5th November, 2011

**Comment Letter O31**

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

Have the potential negative impacts of long term exposure to artificial fertilizers, herbicides and pesticides associated with development been thoroughly evaluated?	1
These impacts would result when developing natural landscapes into active park grass fields and other artificial landscaping. Isn't groundwater quality degradation of utmost concern on, or adjacent to multiple vernal springs and other natural pools?	2
Additionally, considering the presence of this surface water and its associated groundwater, will the lessons learned by Costa Mesa's South Coast Plaza Crystal Court development be applied to Banning Ranch development? Severe and widespread damage was caused to the surrounding neighborhoods due to extensive land subsidence damage caused by the pumping out of groundwater for construction. Will the city of Newport Beach be held liable for permitting a repeat of this mistake since it now has prior knowledge?	3

Sincerely,  
Mr. David Cooley  
3 Landfall Court  
Newport Beach, California, 92663-2306

(949) 645-6391  
david.cooley@earthlink.net

**Letter O31     David Cooley**  
October 30, 2011

**Response 1**

The proposed Project requires the implementation of a series of site design and structural/non-structural source control measures to reduce and limit the application and transport of artificial fertilizers, herbicides, and pesticides from entering the storm drain system and ultimately the downstream receiving waters. These measures include but are not limited to efficient irrigation designs to prevent overwatering, Homeowner Association/Covenants, Conditions, and Restrictions (CC&R) restrictions on fertilizer applications prior to anticipated rain events, proper storage of landscaping materials, and homeowner education on storm water protection. In addition, the proposed Project includes a series of bioretention Best Management Practices (BMPs) which use natural biological, chemical and physical processes to remove or alter the impact of these compounds on downstream receiving waters and natural habitats.

**Response 2**

Due to the infiltration limitations within the development areas and the treatment of surface waters using proposed biotreatment BMPs within the development area, degradation of groundwater quality is considered less than significant.

**Response 3**

There are no plans to pump groundwater beneath the proposed improvements which are restricted to the bluff area. In addition, the bluff area is underlain at depth by bedrock from the San Pedro formation. Unlike the alluvial soils beneath South Coast Plaza, the San Pedro formation is over consolidated and indurated and is not subject to significant volume loss due to groundwater pumping.

Comment Letter O32

**Alford, Patrick**

**From:** Brandt, Kim  
**Sent:** Monday, November 07, 2011 7:54 AM  
**To:** Alford, Patrick  
**Subject:** Fwd: Banning Ranch Project

More comments on the DEIR.

Kim

Sent from my iPad

Begin forwarded message:

**From:** [parahdigm@aol.com](mailto:parahdigm@aol.com)  
**Date:** November 7, 2011 5:33:04 AM PST  
**To:** [dacj@sbcglobal.net](mailto:dacj@sbcglobal.net), [CityCouncil@newportbeachca.gov](mailto:CityCouncil@newportbeachca.gov), [kbrandt@newportbeachca.gov](mailto:kbrandt@newportbeachca.gov)  
**Subject:** Re: Banning Ranch Project

Dear Ms. Davis:

By copy of this e-mail to Kim Brandt, our Community Development Director, I am requesting that your comments be included in the DEIR record.

Steve Rosansky

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

From: Amy Davis <[dacj@sbcglobal.net](mailto:dacj@sbcglobal.net)>  
To: CityCouncil <[CityCouncil@newportbeachca.gov](mailto:CityCouncil@newportbeachca.gov)>  
Sent: Sun, Nov 6, 2011 1:25 pm  
Subject: Banning Ranch Project

Dear Sirs:

Recent changes in the laws require that information on earthquake faults, earthquake history and vulnerability to earthquakes be reported in all EIRs, as well as what forms of mitigation will take place, if mitigation is possible.

The reality of Banning Ranch's problems, as an area for dense development relates, to it's the proximity to the Newport Inglewood Rose Hills fault, and the more recent disclosure, in the USGS Earthquake Hazard's Program, that the epicenter of the 1933 Long Beach earthquake was near the mouth of the Santa Ana River. Additionally, the subsoil of the ranch's location is mostly river sand, beach sand and other conglomerate, all highly vulnerably to liquefaction. Liquefaction played a large part in the damage in Long Beach, Compton, and Venice California in that earthquake of 1933. At the time the damage in Long Beach and Compton was blamed on oil drilling practices. Given what we have learned from northeast Japan, the issues of liquefaction have far more to do with historic geologic subsoils, and our failures to understand the fragility of certain soils.

The USGS shake map, from the 1933 event shows the most severe effects were in the areas of Costa Mesa and especially near, and northwest of the epicenter. The map indicates there was evidence of shaking south of the border with Mexico, into Arizona, Nevada, north of Fresno, CA. Costa Mesa and Newport Beach were never shown as an area of damage, because there wasn't much there that would be damaged

Now we all know about Japan, and how the land dropped 40 feet during the earthquake.

Recent changes in current State laws require that you seriously questioning the seismic viability of the area, and the wisdom of placing a dense population at risk when there is no possible mitigation.

1 cont.

Amy Davis  
714-636-4810



**Letter O32     Amy Davis**  
November 7, 2011

**Response 1**

State of the art earthquake analyses were performed for the Project site. The results of these analyses indicate that the proposed development can be safely constructed with the implementation of proper setbacks, foundation design and other regulatory requirements related the development. For reference, these analyses included (1) regional fault evaluation; (2) seismicity and earthquake history analyses; (3) seiche and tsunami hazard analyses; (4) geomorphic analysis; (5) various ground motion analyses; (6) review of past fault trenching and exploration of thousands of feet of new fault trenching using recognized doctoral experts; and (7) an age dating analysis.

Comment Letter O33

November 8, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915

**Subject: Comments on Newport Banning Ranch DEIR**

Dear Mr. Alford,

As a long-standing member of the Sierra Club I provide these comments on the Draft EIR for the proposed Newport Banning Ranch Project (State Clearinghouse No. 2009031061) to the City of Newport Beach (City). I hereby object to approval of the project in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

My comments focus on the ongoing, unpermitted mowing that occurs not only on the Newport Banning Ranch property, but also on the adjacent proposed Sunset Ridge Park area. As a point of reference for my comments I direct your attention to the recent Coastal Commission hearing for the proposed Sunset Ridge Park project that was held last week on November 2, 2011, item W16a. If you did not attend the hearing I would highly recommend viewing the archival webcast so that you can fully appreciate the Commission's comments related to the mowing at Sunset Ridge, specifically the comments of Commissioner Steve Blank.	1
<a href="http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&amp;date=2011-11-02">http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&amp;date=2011-11-02</a>	
16a. <b>Application No. 5-10-168 (City of Newport Beach Sunset Ridge)</b> Application of City of Newport Beach to construct, on vacant land, active recreational park (Sunset Ridge Park) of approximately 18 acres at northwest corner of intersection of West Coast Highway and Superior Ave, including access road, parking lot, public restroom, playground, sports fields, paths, viewpoint, retaining wall, landscaping, and coastal sage scrub habitat enhancement. Grading consists of approximately 110,000 cu.yds. of cut, and 102,000 cu.yds. of fill, at 4850 West Coast Highway and on portion of Banning Ranch, Newport Beach, Orange County. (JDA-LB) Public Comment on Item Return to Staff Return to Commission Motion and Vote Amending Motion and Vote Motion and Vote Withdrawal of Application	2
Based upon the City's current fire regulations, it would appear as though the applicant, the City of Newport Beach and its Fire Department have implemented a vigorous and methodical campaign to destroy, via unpermitted mowing, all of the Encelia on site (Encelia is known to be a precursor to ESHA and does not require fuel modification). Not only has this mowing been done without a permit (Coastal Development Permit), it appears to have been accomplished through a thorough and ongoing abuse of police power. In fact, the City went as far as to hire Steven Kaufmann to substantiate their unpermitted mowing at Sunset Ridge, but to date, has not hired him to do the same for the unpermitted mowing at the Banning Ranch property. Mr. Kaufmann, a shareholder at Richards, Watson & Gershon is Chair of the firm's Coastal Law Department and was employed by the California Attorney General's Office, and represented the Coastal Commission as his primary client from 1977 to 1991.	3
Mr. Kaufmann was retained by the City of Laguna Beach several years ago to assist with reinstating fuel modification on property that had been abandoned in 1994 in preparation for an upcoming EIR for a large project being proposed by The Athens Group. It would appear as though this strategy is being embraced by Newport Banning Ranch and the City of Newport Beach as well, knowing that ongoing fragmentation of valuable habitat will facilitate a multi-million dollar project which would be lucrative for both the landowner and the city.	4

I strongly object to these tactics and find it unacceptable that the city continues to attempt to veil this blatant destruction of valuable habitat as fuel mod. Numerous photos of this unpermitted mowing have been submitted by Kevin Nelson. I am attaching his submittal as photo evidence and back up to my comments.

5

As stated earlier, I object to approval of the project in its present form and am appalled at the ongoing attempts by the landowner and the City of Newport Beach to degrade, fragment and destroy important and valuable habitat in this area only to facilitate development.

Thank you for the opportunity to submit these comments.

Penny Elia  
30632 Marilyn Drive  
Laguna Beach, CA 92651  
949-499-4499

Attachment: Photo documentation by Kevin Nelson

**Letter O33 Penny Elia**  
November 8, 2011

**Response 1**

Please refer to Topical Response: Mowing and Fuel Modification.

**Response 2**

The commenter references the City's Coastal Development Permit application to the California Coastal Commission (Coastal Commission) in connection with the Sunset Ridge Park project. The approved Sunset Ridge Park Project is a public park project and not a part of the proposed Newport Banning Ranch Project; a separate EIR was prepared and certified for the proposed park. Please refer to Topical Response: Sunset Ridge Park.

**Response 3**

Please refer to Topical Response: Mowing and Fuel Modification and the response to Comment 2; the Sunset Ridge Park project is not a part of the Newport Banning Ranch Project. As a point of clarification to the commenter, approximately 361 acres of the 401.1-acre Project site are located in unincorporated Orange County. Only the remaining property is currently served by the Newport Beach Fire Department.

**Response 4**

The opinions of the commenter are noted but are not related to the proposed Newport Banning Ranch Project.

**Response 5**

The opinions of the commenter are noted. Please refer to Section 4.6, Biological Resources, and Section 6.0, Cumulative Impacts of the Proposed Project, which identify that the significant biological impacts of the proposed Project can be mitigated to a less than significant level.

hastily. Preserve what was for all of us.

7 cont.

Sincerely,  
Ms. Iris Fieldman  
30 Ima Loa Court  
Newport Beach, California,

Diam@cox.net

**Letter O34 Iris Fieldman**  
November 6, 2011

### **Response 1**

The purpose of the EIR is to evaluate the potential environmental effects of the Project as proposed by the Applicant including building heights and landscaping. The opinions of the commenter are noted.

### **Response 2**

Potential effects of night lighting on biological resources are addressed in Section 4.6 of the Draft EIR. As a part of the Project, no permanent night lighting would be permitted within the Open Space Preserve with the exception of safety lighting in the two oil consolidation sites. Temporary lighting would be required associated with drilling operations on the Project site, which requires some periods of 24-hour activity. Project Design Feature (PDF) 4.6-4 requires that street lights be used only in key intersections and safety areas. A “dark sky” lighting concept would be implemented within areas of the Project that adjoin habitat areas. This “dark sky” lighting concept would be implemented for homeowners’ association (HOA) properties and businesses (e.g., resort inn, retail center) within 100 feet of the Open Space Preserve and Bluff Parks. Light fixtures within these areas would be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. As indicated in PDF 4.6-4, the Project would restrict exterior house lighting to minimize light spillage into adjacent habitat areas. Implementation of PDF 4.6-4 would reduce this impact to less than significant.

With respect to the proposed Community Park, please refer to Section 3.0, Project Description; Section 4.1, Land Use and Related Planning Programs; Section 4.2, Aesthetics and Visual Resources; and Section 4.8, Recreation and Trails. Approximately 26.8 gross acres (21.7 net acres less public roadways) are proposed for development as a Community Park (comprised of the North, Central, and South Community Park areas). The North Community Park area would be a predominately active park area and the Central and South Community areas would not include improved ball fields or courts. In the City, public park operational hours are from 6:00 AM to 11:00 PM with active ball fields and courts and the parking lot areas lit until 10:00 PM. After 10:00 PM, park lighting would be limited to that needed for public safety. Low-profile (e.g., bollard) security lighting would be provided in the North, Central, and South Community Park areas along pathways for pedestrian safety. Low-profile security lighting would also be provided in the parking areas after 10:00 PM. Exhibits 4.8-3, 4.8-4, and 4.8-5 provide conceptual plans for the park including proposed parking areas.

### **Response 3**

The opinions of the commenter are noted. Approximately 274 off-street public parking spaces would be provided in 2 locations within the North Community Park area. The North Community Park area (Site Planning Area 7c) is proposed east of North Bluff Road between 15<sup>th</sup> Street and 16<sup>th</sup> Street. Providing parking for the Community Park at the existing beach parking lot at the intersection of Superior Avenue at West Coast Highway would not be convenient as it is over 0.4 mile (as the crow flies) from the proposed park site.

### **Response 4**

The potential traffic and circulation issues associated with the proposed roadway system for the Project are addressed in Section 4.9 of the Draft EIR. With respect to the provision of parking at

the existing lot on Superior Avenue for the proposed Community Park, please refer to the response to Comment 3. Please also refer to Letter S2 from Caltrans with respect to the proposed signalization of West Coast Highway at Bluff Road.

#### **Response 5**

Please refer to Section 4.3, Geology and Soils, of the Draft EIR with respect to topographical modifications. Please also refer to Topical Response: Mowing and Fuel Modification.

#### **Response 6**

Section 4.5, Hazards and Hazardous Materials and Appendix D, Section 5.4.4 of the draft Remedial Action Plan (dRAP) provide information concerning soil remediation areas and methods. Remediation activities would be monitored to evaluate compliance with appropriate site emission control requirements. Section 4.10, Air Quality, of the Draft EIR addresses the construction and operational air quality emissions anticipated from the proposed Project. The air quality analysis determined that there would be less than significant impacts related to emissions during remedial activities on the site.

#### **Response 7**

The opinion of the commenter is noted. Please also refer to Section 7.0 of the Draft EIR which addresses several alternatives to the Applicant's proposed Project. These alternatives include Alternative A: No Project and Alternative B: General Plan Open Space Designation. Alternative A assumes no development of the Project site; it would remain as an active oilfield. Alternative B assumes the site is developed under the City's General Plan Primary Use of open space.



**Comment Letter O35**

Mr. Patrick Alford

City of Newport Beach

3300 Newport Beach, Newport Beach, Ca.

Re: Banning Ranch DEIR

Section 4-3

Geological

4.3 – 1	
Grading of Bluff – Primary goal of Newport Beach is to reduce the potential ....property damage from human induced hazards. The possibility of earth movement and damage to the structures close to the areas that have heavy grading have not been addressed. Notice from an occupant at 11 Summerwind Court has given notice to the city regarding earth movement and resulting in damage to the unit. The DEIR does not address the possible damage to the units from subsidence and ground movement from the extensive grading in close proximity to the units in Newport Crest.	1
4.3-1 The section mentions habitable should be a minimum of 60 feet from the bluff top. Does the proposed alignment of bluff road meet this standard to the wall of Newport Crest and adjacent patios? Would it not be prudent to have a separation of more than the minimum standard of setbacks from a bluff area including the roads ?	2
4.3-6 Could the soil become more unstable because of this project and subsidence occur in nearby homes?	3
Noise 4.12	
4-12-3 The city cities noise policy is to protect residents from excessive noise intrusions, yet why does it state the guidelines primarily used to assess noise impacts to new development when the major impacts would be to the Newport Crest community which are repeatedly stated as “significant and unavoidable”. The information states that the Title 24 regulations for interior CNEL with windows closed is 45dba, yet the next paragraph states that a 60-65dbi is compatible with noise levels. Would the noise levels would exceed 60-70dbi in Newport Crest for heavy grading with large earth movers and the alarms for reverse on the heavy equipments over long periods of time? Why are there not clear guide lines for heavy equipment when it will have a significant effect and noise levels for homeowners? This effect of noise over 8-9 months is too important to be exempted. Why would this not be an important element in the DEIR, as affect so many people for so long? Possibly 10 houses a day 6 days a week for 8-9 months.	4
4.12-3 The Deir does not address the amplified noise levels in the Newport Crest development. The development is built in courtyards which amplify noise entering the courts and more so to residents	5

having master bedrooms on the court. This issue has not been addressed in the DEIR and what measurements will be made to address this problem.	5 cont.
4.12-8 all these dbl numbers exceed the standards of acceptable noise levels of under 65 dbl and they are expected to continue for 8 months! What studies will be done for the excessive noise for an extended time. What data on the effect of this level of noise for long periods will do to the existing residences and most of courtyards in Newport Crest with approximately 460 units?	6
Exhibit 4.12-4 why have alternative alignments not been proposed for Bluff road? This appears to be a clear oversight on the part of the DEIR. If the city is actually concerned with noise and pollution impacts should not other alignments be considered? Why has the movement of Bluff road to the north and the entrance into the already graded roadway by Caltrans been considered? Would this mitigate some noise for the Crest and use the already partially graded caltrans trench? Would this save the city the cost of excessive grading of the existing Bluff? Why has the proposal of a two lane road since all the roads that are proposed to free into Bluff road are 2 land roads and the "throw away "road to the park is 2 lanes? Why has the Caltrans trench been used rather than cutting the bluff?	7
4.12-13 Most all residences have the master bedroom on the second floor which they have suggested would not exceed 65dbl. few have any air conditioning and need to have open windows. What data takes this into consideration and the amplified noise in the courtyard configuration?	8
Page 4.12-27 The paragraph states that realignment would further impact open space. The DEIR does not address the actual impacts. The consideration is for the new homes and not the existing homes. Would not the actual grading be less as the roadway would utilize the roadway that was actually graded by Caltrans and there would be no grading of the Bluff top which is significant? Would this not significantly mitigate the noise, pollution and damages to the existing communities? Why was this not deemed feasible? Will the Caltrans trench be graded and filled in to accommodate the NEW communities?	9
4.12.4 Where are the proposals that have studied to mitigate noise in the Crest? The simple statement of significant and unavoidable would appear to be an inadequacy of planning and what further studies are going to be done to address the issues on the DEIR regarding this development.	10
Page 4.12.32 Impact summary. Has the noise generated by the commercial entities been evaluated for the Crest residences with specific decibel levels at times of highest use?	11
4.12-4 It would appear that the bulldozers would come within 25-30 feet of the walls of Newport Crest if the alignment of Bluff road cuts the existing bluff?	12
Mm4.12-6 Many Crest residents have ocean views. How will this barrier affect these views and how will these noise barriers affect noise to the second story master bedrooms?	13
Why has the DEIR contained no health information on the impacts of the noise levels produced from remediation, continued grading and construction? Including, but not limited to stress levels from long	14

term exposure to heightened noise levels over extended periods of time, insomnia, hearing impairment and impacts of vibrations on the body, loss of quality of life to name a few.	14 cont.
<p>4.11 Greenhouse Gas Emissions</p> <p>Endangerment finding – Where are the specific levels of green house gases and the levels of each that will effect the existing communities next to the construction and what will the emissions be separated for for the remediation process, the grading process, the construction phase and the continuing levels for the roads and the built out phase for the residents most affected by the project – Newport Crest, Newport Shores, Lido Sands and Costa Mesa locations? I am sure there will be varying levels of impacts for each area and very significant in the analysis of the impacts to this development to the people surrounding it.</p>	15
4.11.2 Page 4.11.5 The mitigation measure appears to be inadequate and very vague. Should the measures be outlined in an actual plan to mitigate the problems based on actual concrete programs and planned measures by the city in the DEIR?	16
The recommended measures on the table on page 4.11.1 and in the data do not address the actual project that is being considered and the actual impact to these communities. Is it the responsibility to the residents on the specific areas to go in depth to analyze what the gas emission will be for each area and the impact on the continuing health of the residents?	17
4.11.1 The estimated gas emission are an average and do not address the specific community of the Crest residents. The impact study says the project would make a cumulative considerable impact and a significant impact to global climate change. Will it outline specific plans to reduce the emissions - electric vehicles, trucks with significantly reduced emissions, shorter hours of operation, more separation from existing communities – actual concrete information on how the developers will mediate this issue?. Will each building permit for mitigation procedures be open to public scrutiny?	18

Sincerely,

Natalie Fogarty

12 Summerwind Court

Newport Beach, Ca. 92663

**Letter O35     Natalie Fogarty**  
November 7, 2011

**Response 1**

Proposed grading adjacent the Newport Crest development consists of minor cuts and fills to achieve roadway grades for the entry road. All grading would be performed to current standards resulting in a condition that would either be as or more stable than current conditions. As a result, there would not be significant subsidence or adverse ground movement caused at the Newport Crest development by the proposed grading. As with all projects in the vicinity of existing off-site improvements, precautions would be taken during grading to ensure that there is no damage to existing structures.

**Response 2**

The recommended bluff setbacks for the project are 50 feet for roads utilities and other soft improvements and 60 feet for habitable structures. These setbacks meet or exceed those contained in the City of Newport Beach's General Plan. The setbacks only apply to bluff areas and are designed to conservatively account for potential slumping and erosion of the bluff face (even though bluff stability would; please see the response to Comment 3 below). Consequently, the recommended bluff setbacks are not applicable to the existing Newport Crest development.

**Response 3**

No. The Project would alleviate future subsidence and enhance the stability of the site. The only past subsidence at the site was related to oilfield activities, and since oilfield activities would be consolidated into two locations (one being an existing location adjacent to West Coast Highway in the lowlands) as a result of the development, the potential for future subsidence would be reduced to negligible levels. The only on-site stability issue applies to run-off from the existing oilfield activities and run-on to the Project site from off-site locations in the cities of Costa Mesa and Newport Beach. Stability would be improved since the proposed development would improve run-off conditions and repair existing erosional features.

**Response 4**

As noted by the commenter, the State Title 24 noise guidelines are for interior noise levels. The City's noise compatibility guidelines are for exterior noise levels.

Construction noise levels may exceed 60 dBA Leq at Newport Crest intermittently over periods of days or weeks during the initial grading of the areas near the Newport Crest condominiums. The noise levels would vary depending on the distance of the work from the residences, the types and numbers of equipment, and the nature of the work (i.e., whether use of full power is required). Mitigation Measures 4.12-1 through 4.12-3 are included to provide feasible noise reduction.

**Response 5**

The noise guidelines and significance criteria are based on noise levels to building exteriors and interior spaces facing the noise sources. The abatement of noise reflected within the Newport Crest courtyards, if it occurs, is not within the scope of the environmental analysis or the Project.

## Response 6

As noted in the response to Comment 4, noise levels would vary during the period of grading. No further studies for construction noise levels are anticipated.

## Response 7

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment. The commenter has also suggested that Bluff Road be reduced to a two-lane road. The proposed Project provides access points from 15<sup>th</sup> Street, 16<sup>th</sup> Street, 17<sup>th</sup> Street, 19<sup>th</sup> Street, and West Coast Highway. The Newport Banning Ranch Draft EIR includes a Traffic Impact Analysis for the proposed Project and considers alternative intensities of development on the site which would reduce the amount of traffic on Bluff Road and North Bluff Road. Please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR.

As addressed in Section 4.12, Noise, of the Draft EIR, a reduction of future traffic noise to the Newport Crest community could be accomplished by realignment of Bluff Road to a location farther from the existing homes. In order for the cumulative noise level increase to be less than significant, that is, less than 5 dBA above the existing noise level, it was calculated that the realigned Bluff Road would need to be approximately 700 feet from the Newport Crest homes. The realigned 15<sup>th</sup> Street east of Bluff Road would need to be approximately 440 feet from the Newport Crest condominiums. These realignments would result in greater impacts to open space and biological resources, and would result in additional grading and alteration of natural landforms. To move the roadway a sufficient distance to avoid significant noise impacts to the Newport Crest development would require that the roadway veer to the west through the area designated for the Resort Colony and the South Family Village. As a result, the roadway would bisect the open space area adjacent to West Coast Highway and necessitate grading into the bluff proposed for preservation. In addition, the roadway would bisect the open space in Site Planning Area 1b. This would result in impacts to the Southern Arroyo. To connect back to 15<sup>th</sup> Street, Bluff Road would bisect the Community Park, which may constrain the effective development of the active use component of the park. Both Site Planning Areas 1a and 1b contain sensitive biological resources that would be adversely impacted with the realignment of the roadway.

The State CEQA Guidelines Section 15126.6(c) sets forth the criteria for the selection of a range of reasonable alternatives for consideration in an EIR. "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects....Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts".

Reducing the number of traffic lanes from four to two lanes to the Project site from West Coast Highway would be inconsistent with Project Objective 1 and Project Objective 7 identified in Section 3.0, Project Description, of the Draft EIR, for the reasons set forth below. Project Objective 1 states "Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area". A reduction in lanes from West Coast Highway would fail to meet this Project objective because the Newport Beach General Plan Circulation Element Master Plan of Streets and Highways contemplates the construction of a four-lane divided Primary Road that would provide a new connection from West Coast Highway to 19<sup>th</sup> Street. The provision of a new four-lane connection from West Coast Highway to 19<sup>th</sup> Street is a fundamental goal of the City and both the development option (Residential Village) under the General Plan and property acquisition for open space (Open

Space) land use option for the Banning Ranch property both contemplate development of an arterial extending inland from West Coast Highway through the Project site. A two-lane road from West Coast Highway would conflict with attainment of this Project Objective.

Project Objective 7 states “Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access”. The provision of two rather than four vehicular lanes from West Coast Highway would only partially provide the needed roadway system to improve or enhance regional circulation as set forth in the City’s General Plan Circulation Element that was designed to provide an alternate means of coastal access to provide regional traffic relief from existing coastal access routes (e.g., Newport Blvd and Superior and Pacific Coast Highway). The Draft EIR includes an exhibit showing the General Plan buildout traffic volumes for this roadway segment. The projected volumes indicate the need for a four-lane roadway in the General Plan buildout condition.

In addition to the City’s General Plan Circulation Element Master Plan of Streets and Highways, the Bluff Road arterial is included in the Orange County Master Plan of Arterial Highways (MPAH). The Orange County MPAH is the regional transportation system administered by the Orange County Transportation Authority (OCTA). The variation would also be inconsistent with the City’s General Plan. Specifically, General Plan Goal CE 3.1, as implemented by Policies CE 3.1.2 and 3.1.3, require both integration, and regional consistency with the Orange County MPAH. Therefore, the inconsistency with the Orange County MPAH would preclude the proposed Project from meeting Project Objective 1 and Project Objective 7.

Finally, reduction the number of vehicular lanes from West Coast Highway would not avoid or substantially lessen all of the significant environmental impacts of the proposed Project, and could create new significant impacts when compared to the proposed Project. With respect to biological resources, it has been suggested that eliminating access from West Coast Highway would avoid impacts to two areas adjacent to the proposed access road. Although construction of Bluff Road would affect sensitive vegetation communities, the Draft EIR concludes that these impacts can be mitigated to a less than significant level.

As part of its evaluation of these comments, the City considered the traffic impacts of reducing the number of traffic lanes from West Coast Highway and believes this could create burdens on the existing circulation system. This belief is based on the fact that Bluff Road is anticipated on the Orange County MPAH to serve regional traffic in addition to traffic generated by the proposed Project. Therefore, fewer lanes from West Coast Highway would result in the continued impact to the existing arterials including Newport Boulevard, West Coast Highway, Superior Avenue, and Placentia Avenue.

The City evaluated whether fewer traffic lanes from West Coast Highway would preclude significant unavoidable noise impacts to certain residences in the Newport Crest condominium development. Noise impacts from future traffic on Bluff Road and 15th Street were evaluated in the Draft EIR. This analysis establishes that, after mitigation, noise levels at existing residences in the Newport Crest development would be considered “Clearly Compatible” or “Normally Compatible”, and that the resulting exterior and interior noise levels at these residences would remain consistent with the City of Newport Beach noise standards (MMs 4.12-6 and 4.12-7). However, the analysis also confirms that long-term noise increases at some Newport Crest residences would remain above the 5 dBA significance criterion for noise increase. Therefore, the proposed Project’s noise impacts as to some of the Newport Crest residences are significant and unavoidable. Although a reduction in traffic lanes may reduce this significant noise impact, it would not eliminate the impact as well as increase significant noise levels on other existing

roadways such as 15<sup>th</sup> Street resulting in significant noise impacts to other off-site sensitive receptors including schools and other residents in the vicinity.

For these reasons, the City determined that the consideration of the a two-lane roadway connection from West Coast Highway as a part of the currently proposed Project was not warranted.

### **Response 8**

The commenter is correct that second floor noise would not exceed 65 dBA CNEL. As noted in the response to Comment 5, the analysis does not consider reflected noise in the unit courtyards.

### **Response 9**

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment and the response to Comment 7.

### **Response 10**

Mitigation Measure (MM) 4.12-6 requires additional acoustical analysis of future traffic noise to the Newport Crest condominiums prior to the design of the noise reduction barrier. MM 4.12-7 provides opportunity for Newport Crest homeowners to install improved windows and doors to increase noise reduction.

### **Response 11**

The closest commercial use to the Newport Crest community would be the Resort Inn. Noise from the Resort Inn with a large crowd was evaluated and described in Section 4.12, Noise, on pages 4.12-33 and 34 of the Draft EIR. The noise at the nearest receptor would be less than the 55 dBA Leq City of Newport Beach Noise Ordinance limit.

### **Response 12**

The comment is noted. If grading is required within 25 feet of any residence, MM 4.12-4 requires the use of lighter equipment to avoid the risk of excessive vibration.

### **Response 13**

With respect to view protection, Newport Beach Municipal Code Section 20.30.100:

...provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code....The provisions of this section shall apply only to discretionary applications where a project has the potential to obstruct public views from public view points and corridors, as identified on General Plan Figure NR 3 (Coastal Views), to the Pacific Ocean, Newport Bay and Harbor, offshore islands, the Old Channel of the Santa River (the Oxbow Loop), Newport Pier, Balboa Pier, designated landmark and historic structures, parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space....Where a proposed development has the potential to obstruct a public



view(s) from a identified public view point or corridor, as identified on General Plan Figure NR 3 (Coastal Views), a view impact analysis may be required by the Department. The view impact analysis shall be prepared at the project proponent's expense. The analysis shall include recommendations to minimize impacts to public views from the identified public view points and corridors while allowing the project to proceed while maintaining development rights.

It is not the intent of this Zoning Code to protect views from private property. Further, the City's General Plan goals and policies provide directives in its consideration of aesthetic compatibility.

While Natural Resources Element Goal NR 20 is the "Preservation of significant visual resources", the policies of the Natural Resources Element are applicable to public views and public resources not private views or private resources.

NR Policy 20.1: Enhancement of Significant Resources: Protect and, where feasible, enhance significant scenic and visual resources that include open space, mountains, canyons, ridges, ocean, and harbor from **public vantage points** (emphasis added), as shown in Figure NR3.

All of the Newport Crest condominium units which border the Project site where Bluff Road is proposed have an existing solid landscape wall on the Newport Crest Homeowners Association (HOA) property. Should it be deemed feasible and acceptable to the Newport Crest HOA and affected homeowners, it may be possible to increase the elevation of the existing solid wall to add masonry block, glass, or another transparent material. Although these measures are feasible and would mitigate the significant noise impact, improvements would be implemented on private property thereby requiring the permission of private property owners and the Newport Crest HOA. At this time it cannot be guaranteed that this permission would be granted. The City cannot mandate improvements on private property.

#### Response 14

As stated on page 4.12-1 of the Draft EIR, "The effects of noise on people can include general annoyance, interference with speech communication, sleep disturbance and, in the extreme, hearing impairment. Excessive noise levels may also affect performance and learning processes through distraction, reduced accuracy and increase fatigue, annoyance and irritability, and the ability to concentrate". Noise levels anticipated from Project construction would not be of the magnitude associated with hearing loss nor would it occur in the evening or nighttime (the only nighttime noise operations would be associated with oil well drilling which is addressed in the Draft EIR). As described in the response to Comment 4, elevated construction phase noise levels would be intermittent and would vary depending on the distance of the work from the homes, the types and numbers of equipment, and the nature of the work (i.e., whether use of full power is required). Although construction noise levels would be within limits considered acceptable by some jurisdictions that have established construction noise standards, the impact is considered by the City to be significant because the noise levels would be substantially greater than the existing noise levels.

#### Response 15

Greenhouse gas (GHG) concentrations are global phenomena affecting worldwide climate. GHGs are not criteria or toxic pollutants with localized impacts directly affecting communities or individuals.

**Response 16**

The mitigation measure guidelines stated on page 4.11-5 state the guidance contained in the CEQA Guidelines document. Project-specific design features and mitigation measures are described in Sections 4.11.5 and 4.11.8, respectively, of the Draft EIR.

**Response 17**

There is no table on page 4.11-1. With respect to analyzing GHG emissions “for each area” and GHG impacts on residents’ health, please refer to the response to Comment 15.

**Response 18**

Neither the City nor the Applicant can control the choice of vehicles used by residents of the proposed Project or residents of Newport Crest. Mitigation Measure (MM) 4.11-5 provides electric vehicle charging stations, an incentive for the use of electric vehicles. Building permits are public documents.

RECEIVED BY  
Comment Letter O36  
COMMUNITY

NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

Mr. Patrick Alford, Planning Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

NOTE: I hereby object to approval of the project in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Dear Mr. Alford:

I'm a Newport Beach resident of over thirty years and an engineer by profession and I've just read the Air Quality section of the DEIR for Banning Ranch. I have concerns about construction emissions associated with the Project, including the methodology and the modeling equipment used. Answers to the following questions would be appreciated.

On page 19 under the heading of Thresholds, it says the following:

***Threshold 4.10-2 Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?***

***Construction Emissions [...]***

Construction emissions were calculated using CalEEMod<sup>(\*)</sup>, as described in the Methodology section (1), and based on the scenario described above and information provided in Section 3.0, Project Description. Compliance with SCAQMD Rules is required; specifically, it is assumed that construction would be performed in accordance with Rule 403, Fugitive Dust, and Rule 1113, Architectural Coatings (SC 4.10-1 and SC 4.10-2, respectively). Therefore, emissions reductions consistent with those rules have been included in the estimation of construction emissions prior to mitigation. The details of phasing, selection of construction equipment, and other input parameters are included in Appendix G of this EIR.

***(1) 4.10.3 METHODOLOGY/Criteria Pollutants  
Construction and Operations Mass Daily Emissions***

Construction and operational emissions were calculated by using California Emissions Estimator Model (CalEEMod) version 2011.1.1 (SCAQMD 2011a). CalEEMod is a computer program accepted by the SCAQMD that can be used to estimate anticipated emissions associated with land development projects in California. CalEEMod has separate databases for specific counties and air districts. The Orange County database was used for the proposed Project. The model calculates emissions of CO, SO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> and the O<sub>3</sub> precursors VOC and NO<sub>x</sub>. For this analysis, the results are expressed in pounds per day (lbs/day) and are compared with the SCAQMD mass daily thresholds described in Section 4.10.6 to determine impact significance.

<sup>(\*)</sup> The CalEEMod air model was beta tested and released for use just this year. In the May 2011 issue of "The Environmentor," a newsletter for the Association

2

of Environmental Professionals, San Diego Chapter, Joe O'Bannon writes about witnessing the beta testing of CalEEMod and states that he believes the new model will bring benefits, but will have the usual "startup bugs."

What are the startup bugs found to be associated with the use of CalEEMod and how will they impact the accuracy of its estimates with regard to the health and environmental impacts of the proposed Project? Given the known health risks of the criteria pollutants associated with the Project, the reliability, accuracy and functionality of the air modeling equipment must be established, especially because CalEEMod has many new applications, is new to its operators, and the full potential for problems is not yet known. The overall reliability of any model can only be known based on its usage in a real-world environment over a sufficient period of time. As an example, many of the functional problems with Microsoft's operating program, Vista, were discovered by the real-world users who purchased computers with the flawed program, not by the beta testers. No one got sick, became chronically ill or died because Vista didn't work the way it was supposed to. The sensitive receptors of the significant and unavoidable impacts cited in this DEIR might not be so fortunate if CalEEMod has undiscovered flaws.

1 cont.

The reliability of software models over time has been described in the "Laws of Software Evolution" that were formulated by Drs. Lehman and Belady (2). They refer to E-Types (embedded-types) software, which characterizes the majority of software in everyday use. The real world is constantly in flux and in order to remain relevant, E-Types systems must change as the world does. It has been cited by The Standish Group (3) that a full 83.8% of software projects surveyed fail to achieve their definition of success, which has been attributed to shifting user/developer requirements.

(2) [http://blogs.msdn.com/b/karchworld\\_identity/archive/2011/04/01/lehman-s-laws-of-software-evolution-and-the-staged-model.aspx](http://blogs.msdn.com/b/karchworld_identity/archive/2011/04/01/lehman-s-laws-of-software-evolution-and-the-staged-model.aspx)

(3) <http://www.projectsmart.co.uk/docs/chaos-report.pdf>

On page 4.10-5 of Air Quality, it states the following:

2

Operational inputs to CalEEMod (\*) include (1) the specific year for project operations, (2) vehicle trip generation rates, (3) fireplace types and quantities, (4) land use features that contribute to reductions in vehicle miles traveled (VMT), and (5) project criteria for energy use. Model default values for trip distances, fleet composition, and other factors may be adjusted for project-specific conditions. Output operational emissions data are separated into energy use, area sources, and mobile sources. The area sources are fireplaces, landscape maintenance equipment, consumer products, and architectural coatings used for routine maintenance. Consumer products (e.g., household cleaners, air fresheners, automotive products, and personal care products) emit VOCs. Mobile sources are the vehicles used by residents and by patrons, staff, and vendors for commercial businesses.



3

(\*) Do the "operational inputs" to CalEEMod include season and time of day? Are weather and wind directions inputs? Ozone emissions are made much more rapidly in the hot months of the years and they are highest in the late afternoon and early evening. Are there worst-case scenario estimates available from the CalEEMod model?

2 cont.

In light of the above concerns about start-up bugs and the failure probability of software generally, how much confidence can be placed in the air modeling performed by CalEEMod? How was model beta-tested, for what length of time and how long has it been in use since? Has it been used for other development projects of this size and scope where residences, commercial space and a variety of villages will exist in the midst of an operating oil field and perhaps above abandoned wells, piping and oil sumps?

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Thank you in advance for your responses to my concerns about the reliability of air modeling with regard to the health risks associated with this Project and my questions about the methodology.

Yours truly,



Allan Forster

8 Summerwind Court

Newport Beach, CA 92663

aforster@aol.com

**Letter O36     Allen Forster**  
November 8, 2011

### **Response 1**

CalEEMod 2011.1 was released in February 2011. Some “bugs” were found in the initial release, and a revised version 2011.1.1 was released in the summer of 2011. BonTerra Consulting did considerable testing of CalEEMod including comparison with URBEMIS 9.2.4, which had been used prior to the CalEEMod issue and is still accepted by many jurisdictions. BonTerra Consulting’s testing, confirmed through many contacts with SCAQMD, showed that CalEEMod predicts higher emission rates than URBEMIS for development projects in Orange County. Because CalEEMod is more conservative than URBEMIS, CalEEMod was used on the Newport Banning Ranch Project. Based on BonTerra Consulting’s testing of the model and continuing discussions with the South Coast Air Quality Management District (SCAQMD) about CalEEMod characteristics, the City is confident that there are no flaws in the model that would result in under-prediction of air quality impacts to sensitive receptors.

### **Response 2**

Operational inputs to CalEEMod do not include season, time of day, weather, or wind direction because CalEEMod calculates pollutant emission rates, not concentrations. Temporal and meteorological inputs are used in dispersion models, such as AERMOD, which was used for other air quality analyses described in the Draft EIR. CalEEMod outputs include separate results for summer and winter seasons because equipment emission factors vary with temperature, among other factors.

### **Response 3**

Please refer to the response to Comment 1. More information about CalEEMod may be found at [www.caleemod.com](http://www.caleemod.com).

Comment Letter O37

COMMUNITY

NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

Mr. Patrick Alford, Planning Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

NOTE: We object to approval of the Banning Ranch DEIR in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Dear Mr. Alford:

My husband and I have been residents of Newport Beach for over 30 years and we have concerns about air pollution issues with regard to the development proposed for Banning Ranch. On pages 3 and 4 of the Air Quality section of the Banning Ranch DEIR under "Regulatory Setting," it states that California standards for O3, CO, NO2, PM10, PM2.5 and visibility reducing particles are not to be exceeded. Here is the exact wording:

"In the Banning Ranch Draft Environment Impact Report (DEIR) in the footnotes of "TABLE 4.10-1 California and National Ambient Air Quality Standard", it states that "California standards for O3, CO, NO2, PM10, PM2.5 and visibility reducing particles are values that are not to be exceeded."

If these values are not to be exceeded, how is it acceptable that the Project Applicant will likely exceed them, based on numerous findings of "significant and unavoidable impacts" in this DEIR?

For example, on 4.10-28 and 29, the following is stated:

**"Impact Summary: Significant and Unavoidable.** Without mitigation, regional (mass) emissions of NOx are forecasted to exceed applicable thresholds in some construction years. MM 4.10-1 would reduce the emissions to less than significant. However, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured; thus the impact is potentially significant and unavoidable. [...] However, as Project development continues beyond 2020, emissions of VOC and CO would exceed the significance thresholds, principally due to vehicle operations. The impacts would be significant and unavoidable even with implementation of the PDFs, compliance with Standard Conditions, and implementation of identified mitigation measures."

NOx is a dangerous pollutant and its adverse environmental and human health effects are well-documented:

**What Environmental Problems form from Nitrogen Oxide Pollution?**

- Helps form acid rain
- Contributes to global warming
- It hampers the growth of plants
- NOx can form with other pollutants to form toxic chemicals



2

**How Can Humans be Affected by Nitrogen Oxide?**

- Small levels of NOx can cause nausea, irritated eyes and/or nose, fluid forming in lungs and shortness of breath
- Breathing in high levels of NOx can lead to: rapid, burning spasms; swelling of throat; reduced oxygen intake; a larger buildup of fluids in lungs and/or death
- NOx, plus other ground-level ozone, can cause other major respiratory problems in high levels
- Can react with aerosols from aerosols cans and also cause respiratory problems
- NOx can cause visual impairment in the area affected by NOx

**What Steps Have Been Taken To Reduce The Level of Nitrogen Oxide Pollution?**

- The EPA has set standards for NOx pollution on every type of motor vehicle
- For plants, the EPA has set limits on how much coal can be burned (reduces acid rain)
- The EPA has set special rules for upwind states (since NOx pollution can travel by wind, the states that "push" the pollution have special rules/laws that they have to abide by)
- Yet, this pollution has still grown (by 10%) since attempts have been made to reduce it

School District of Belleville, WI Oct. 2011

[http://www.belleville.k12.wi.us/bhs/health/environment/nitrogen\\_oxide.htm](http://www.belleville.k12.wi.us/bhs/health/environment/nitrogen_oxide.htm)

2 cont.

The DEIR states that these impacts are significant and unavoidable. The significance is apparent, but why are they unavoidable? Our research shows that Tier 4 equipment can reduce construction pollutants by 50-96%(\*) and although the Project Applicants state a concern with the availability of Tier 4 equipment by the year 2014, it is in fact available now from manufacturers like John Deere, Volvo and others.

Banning Ranch is a nearly 70-year old oil field and its remediation, concurrent with grading and construction, will subject all those who are in close proximity to the Project, including grade school children, to high levels of construction pollutants because of the heavy equipment required to do both grading and remediation concurrently. The Project Applicants could avoid exposing hundreds, perhaps even thousands, of Newport Beach residents and visitors, including children and vulnerable adults, to these health risks if Tier 4 equipment was used and if the grading and remediation were done separately.

Why aren't these offered as mitigations in the DEIR, given that they would considerably reduce risks to the vulnerable? Otherwise, all nearest receptors, including the Newport Crest condominium complex with 460 units and Carden Hall, a grade school and the community college, now under construction, will be exposed to NOx above threshold for at least 5 of the 10 years of proposed construction, along with other potentially dangerous toxic air contaminants.

(\*) Tier-4 refers to a generation of federal air emissions standards established by the U.S. Environmental Protection Agency (EPA) that apply to new diesel engines used in off-road equipment. Essentially it requires manufacturers to reduce the levels of particulate matter and oxides of nitrogen (NOx) to a level that is 50-96 percent lower than existing generation of diesel engines.

<http://www.cedmag.com/article-detail.cfm?id=10926717>.

3

3

On page 4.10-26 of the DEIR, Table 4.10-15 shows that VOC & CO emissions will exceed SCAQMD CEQA significance thresholds in 2023. It refers to the continuing growth as the reason. Shouldn't that signal that the Project is too ambitious at 1375 homes, a boutique hotel, commercial space, a North and South Family Colony, an Urban Colony and a Resort Colony? Were seasonal traffic and tourist issues taken into consideration in the development of this project, given the heavy beach congestion that already exists? Was the traffic burden of the new community college taken into consideration? Or the impact on the 55 freeway, both north and southbound?

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"As shown in Table 4.10-15, forecasted Project buildout emissions of VOCs and CO in 2023 would exceed the SCAQMD CEQA significance thresholds. [...] As Project development continues beyond 2020, the continuing growth would result in emissions of VOCs and CO that would exceed the significance thresholds and the impact would be significant."

On page 4.10-29, the DEIR also acknowledges that "regional pollutant concentration of O3 would be cumulatively considerable and would create a significant and unavoidable impact.

**"Impact Summary: Significant and Unavoidable.** The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations of O3 would be cumulatively considerable."

The EPA web site has extensive information on the health effects of Ozone:

"Breathing ground-level ozone can result in a number of health effects that are observed in broad segments of the population. Some of these effects include: Induction of respiratory symptoms, decrements in lung function and inflammation. Respiratory symptoms can include: Coughing, throat irritation, pain, burning, or discomfort in the chest when taking a deep breath, chest tightness, wheezing or shortness of breath.

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In addition to these effects, evidence from observational studies strongly indicates that higher daily ozone concentrations are associated with increased asthma attacks, increased hospital admissions, increased daily mortality, and other markers of morbidity. The consistency and coherence of the evidence for effects upon asthmatics suggests that ozone can make asthma symptoms worse and can increase sensitivity to asthma triggers."

<http://www.epa.gov/apti/ozonehealth/population.html>

The South Coast Air Quality Board's web site (\*) lists Ozone as the air pollutant having the most impact on the health of children and adults. It lists asthma as the most important disease with increasing incidence in this country, but says other diseases, such as allergic reactions, bronchitis and respiratory infections are also increasing and that air pollution is a causal factor for these incidences. SCAQB's site points out that children spend more time outside than adults and are often outdoors when pollution is at its highest. Children also exert themselves harder than adults. But the most important difference is that



children are growing and developing and their lungs are growing and developing too.

(\*) [http://www.aqmd.gov/forstudents/health\\_effects\\_on\\_children.html#WhichAir](http://www.aqmd.gov/forstudents/health_effects_on_children.html#WhichAir)

Also, studies published in the *Lancet* (\*) and the *New England Journal of Medicine* (\*\*) have concluded that athletes are more vulnerable to air pollutants because their exposure is greater. The University of Brisbane, Australia, in a 2004 review of pollution studies worldwide, found that during exercise, low concentrations of pollutants caused lung damage similar to that caused by high concentrations for those who weren't exercising. We breathe in thirty times as much air when we're exercising as when we're sitting still. Consider the impact for children on the playground, the baseball diamond or the soccer fields of this proposed development.

5 cont.

(\*) [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(02\)07597-9/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(02)07597-9/abstract)  
(\*\*) <http://www.nejm.org/doi/full/10.1056/NEJMe078139>

If the Projects Applicants and the City are aware of the ozone risks to all nearest receptors, to children in particular and to the public at large, why aren't they listed in this DEIR, given that ozone will be a significant impact of the Project development? Have the Project Applicants and the City exhausted every possible option to reduce the health hazards associated with ozone, given the risks to school children who will be exposed on their own playgrounds, as well as on the soccer and baseball fields that the city has planned for Sunset Ridge Park and the Sports Park planned near 15<sup>th</sup> Street?

Also, if the SCAQMD's thresholds are values are "not to be exceeded," how is it that the Project has exceeded SCAQMD's mass emission thresholds for VOC and NOx, failing to achieve Threshold 4.10-3? Again, this is referred to as a significant and unavoidable impact, but can—and should—be avoided.

**"Threshold 4.10-3:** Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment under an applicable NAAQS or CAAQS (including releasing emissions that exceed quantitative thresholds for ozone precursors)?

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The Project region is in nonattainment for O3, NO2, PM10, and PM2.5. As described above, after 2020, implementation of the Project could result in long-term emissions of the O3 precursor VOC and short-term emissions of the O3 precursor NOx, which would exceed the SCAQMD mass emissions thresholds for those pollutants."

I would like to request that in line with EQAC's comments in their analysis of the Air Quality section of the Banning Ranch DEIR, that the Project be re-envisioned and the DEIR be rewritten with the impacts on Newport Crest and all the nearest sensitive receptors, including Carden Hall, Sunset Ridge Park,

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the proposed Sports Park and the adjacent community college currently under construction, be made less than significant.

7 cont.

And last, given that the City Council has voted to certify a "Statement of Overriding Considerations (Section 1-11, Executive Summary, Newport Beach Banning Ranch DEIR) which notes that there are "specific economic, social and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan Project (Threshold 4.2-3)," I would like some clarification.

Is there any possibility that this Statement could have the effect of diminishing or discounting the essential concerns raised by this DEIR and by EQAC's findings of adverse impacts on the environment and health risks to the nearest receptors and the surrounding community? We respectfully submit that City officials are elected to work with the best interests of their entire constituency in mind, but that cannot mean putting residents of a large segment of the population at risk of health issues or damaging their quality of life and the property values of their homes to create more housing, traffic and congestion in an already densely populated and overcrowded coastal area.

8

Thank you for your consideration of our concerns and questions.



Suzanne & Allan Forster  
8 Summerwind Court  
Newport beach, CA 92663  
blush1996@aol.com

**Letter O37     Suzanne and Allan Forster**  
November 8, 2011

### **Response 1**

The ambient air quality standards (AAQS) shown in Table 4.10-1 of Section 4.10, Air Quality, of the Draft EIR are pollutant *concentrations*, that is, the amount of pollutant per volume of air.<sup>21</sup> The forecasted exceedances in the Draft EIR for VOC and CO during operations are *emission rates*, that is, the amount of pollutant emitted per day. The emission rates exceed the South Coast Air Quality Management District's (SCAQMD's) guidance CEQA significance thresholds, not the federal or State AAQS. Footnotes a and b in Table 4.10-1, including "not to be exceeded", refer to the AAQS, not to the SCAQMD thresholds. The Draft EIR does not indicate that the Project Applicant will likely exceed the AAQS thresholds. Construction NOx emissions would be less than significant with mitigation; please refer to Topical Response: Air Quality.

### **Response 2**

Please refer to Topical Response: Air Quality. Based on the revised emissions analysis using new California Air Resources Board (CARB) data relative to construction equipment emissions, Tier 4 equipment is not required to reduce forecasted emissions to a less than significant level. Therefore, no revision of MM 4.10-1 is required. It is further noted that, based upon further inquiries to contractors, the City has determined that it would be reasonable to expect that Tier 4 equipment would be available after January 2015 and that, as required by MM 4.10-1, would be included in the project construction equipment inventory.

### **Response 3**

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NOx during construction would be less than significant and that there would be no need to change the plan for concurrent construction activities. Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources. The potentially significant NOx impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NOx or NO<sub>2</sub> would be less than significant. Please also see the general discussion of NOx emissions during construction.

### **Response 4**

The Traffic Impact Analysis is based on current traffic conditions during the "shoulder" months (outside the peak beach and tourist season) in accordance with City of Newport Beach General Plan policy; approved and pending future projects in the area, as identified by the cities of Newport Beach, Costa Mesa, and Huntington Beach; and the currently adopted City and County street master plans, which reflect SR-55 as a freeway facility north of 19<sup>th</sup> Street, and an arterial street south of 19<sup>th</sup> Street.

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<sup>21</sup> One exception, not a concentration standard, is for Visibility Reducing Particles, which are not analyzed in the Draft EIR.

### **Response 5**

Please refer to Topical Response: Air Quality, with respect to operational pollutant emissions, which identifies that there is little relationship between mass emissions attributable to project operations and exposure to persons on site and nearby off site. Exposure of persons to excessive concentrations of long-term vehicle CO emissions is investigated at severely congested signalized intersections; the analysis in the Draft EIR demonstrates a less than significant impact. A summary of the health risks of the national criteria pollutants has been provided in Topical Response: Air Quality.

### **Response 6**

Please refer to the response to Comment 1.

### **Response 7**

The Draft EIR does not forecast any significant local air quality impacts to the nearest sensitive receptors.

### **Response 8**

The Statement of Overriding Considerations was adopted by the Newport Beach City Council to describe the anticipated economic, social, and other benefits or other considerations that supported the decision to adopt the 2006 General Plan Update even though all of the identified impacts are not mitigated to a less than significant level. Both the unavoidable significant impacts and the economic, social, and other benefits or other considerations relate to the entire City of Newport Beach. The opinions of the commenter are noted.



Comment Letter O38a

**Alford, Patrick**

**From:** Blush1996@aol.com  
**Sent:** Friday, November 04, 2011 5:29 PM  
**To:** Alford, Patrick  
**Subject:** Request for BR DEIR time extension

Dear Mr. Alford,

I am one of many Newport Beach residents finding it difficult to meet the 11/8 deadline for reviewing the Banning Ranch DEIR, partly because the DEIR comment period and the Sunset Ridge Park Coastal Commission process are occurring at the same time. The Sunset Ridge process has taken longer than anticipated and has overlapped with the window for comments for the Banning Ranch DEIR.

Also, the DEIR is approximately 7000 pages in length, including the appendixes and most sections are written in highly technical language, requiring professional expertise to interpret. I don't know how long it took to prepare the DEIR, but I would respectfully submit that it's asking a lot of the lay public, who may be impacted in a variety of ways by this project, to respond with thoughtful, well-documented public comments in a sixty-day period in which they're dealing with Coastal Commission hearings that also impact them.

I'm asking that you please consider an additional sixty days to give Newport Beach residents and other interested parties a reasonable chance to prepare and submit their comments.

Thank you,  
Suzanne Forster  
8 Summerwind Court  
Newport Beach, CA 92663

**Letter O38a Suzanne Forster**  
November 4, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

Comment Letter O38b

November 7, 2011

Mr. Patrick Alford  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663



Re: Banning Ranch DEIR, Section 4.5, Hazards & Hazardous Materials

NOTE: We hereby object to approval of the project in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

**Summary:** This public comment to the Banning Ranch DEIR addresses the issue of unregulated oil wastes and fugitive emissions of toxic air contaminants (TACs), including benzene, which is known to cause cancer in humans, methylene chloride and vinyl chloride, as well as the DEIR criteria pollutants (NO<sub>x</sub>, O<sub>3</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, CO, SO<sub>2</sub>, lead and four State-designated pollutants: visibility reducing particles, sulfates, hydrogen sulfide, and vinyl chloride), all of which have been detected by field sampling and/or ambient air analyses of the Banning Ranch oil field operations, according to this DEIR. Other issues that should have been, but were not adequately addressed by this DEIR are toxic leaks and seepage from oil production, processing and storage equipment, including piping, oil sumps and oil storage tanks. Radiation exposure is also a concern, given the age of the oil field.

"One of the chemicals in crude oil that is of highest concern is benzene. It has long been known to cause rapid toxic effects, and it is carcinogenic and mutagenic. A review the toxic effects and other characteristics of benzene is available at: <http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>.

[...] Benzene in the crude oil can cause a variety of specific effects described in the recent CDC summary of benzene toxicity: ventricular fibrillation, congestive gastritis, toxic gastritis, pyloric stenosis, myalgia, kidney damage, skin irritation and burns, swelling and edema, vascular congestion in the brain, and lethal central nervous system depression.

(<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>)"

**Discussion:** The Banning Ranch oil field is nearly 70 years old and was in operation before regulations for radiation exposure (radium-226, -228 and radon gas) existed. The Environmental Protection Agency's (EPA) web site discusses how radioactive wastes are formed and why they're of particular concern in older oil field operations (emphasis added).

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<p><b>Radioactive Wastes from Oil and Gas Drilling</b></p> <p>[...] Radioactive wastes from oil and gas drilling take the form of produced water, drilling mud, sludge, slimes, or evaporation ponds and pits. It can also concentrate in the mineral scales that form in pipes (pipe scale), storage tanks, or other extraction equipment. Radionuclides in these wastes are primarily <u>radium-226</u>, <u>radium-228</u>, and <u>radon gas</u>. The radon is released to the atmosphere, while the produced water and mud containing radium are placed in ponds or pits for evaporation, re-use, or recovery.</p> <p>The people most likely to be exposed to this source of radiation are workers at the site. They may inhale radon gas which is released during drilling and produced by the <u>decay</u> of radium, raising their risk of lung cancer. In addition, they are exposed to alpha and gamma radiation released during the decay of radium-226 and the low-energy gamma radiation and beta particles released by the decay of radium-228. (Gamma radiation can also penetrate the skin and raise the risk of cancer.) Workers following safety guidance will reduce their total on-site radiation exposure.</p> <p>Most states and federal land management agencies currently have regulations which control the handling and disposal of radionuclides which may be present in production sites. <b>However, the general public may be exposed to TENORM [Technologically Enhanced Naturally Occurring Radioactive Materials] from oil and gas drilling when sites that were active prior to the mid-1970s, when regulations went into effect, are released for public use. It is likely that a number of these sites contain radioactive wastes. The public may also be exposed when contaminated equipment is reused in construction project."</b></p> <p><a href="http://www.epa.gov/radtown/drilling-waste.html">http://www.epa.gov/radtown/drilling-waste.html</a></p>	<p>1 cont.</p>
<p>The DEIR Air Quality section describes the history of air, soil and water sampling and various clean-up operations of the oil field. It appears that no soil or water sampling has been done since 2001 and there is no mention of a radiation survey ever having been done. If there was such a survey, please advise as to when was it done, the survey results and why the subject wasn't covered in either the BR DEIR or the Banning Ranch Draft Remedial Action Plan (DRAP), prepared by Geosyntec for the Project Applicants in 2009?</p>	<p>2</p>
<p>The DRAP's plan for abandonment and remediation of the oil field states that as much salvageable material as possible from the oil field operations will be reused and recycled. With regard to the recycling of metals, the EPA web site states the following measures should be taken:</p> <p>"Now that the petroleum industry is aware of the potential for contamination, they take a number of precautions before recycling:</p> <ul style="list-style-type: none"> <li>- Loads of scrap metal are surveyed for hidden radioactive sources and TENORM.</li> </ul>	<p>3</p>



- Piping and equipment are cleaned before release for recycling at smelters.
- Pollution control devices, such as filters and bubblers, are installed in smelter stacks to reduce airborne radiation releases."

The EPA web site also describes the exposure risk as follows:

"TENORM contamination in oil production waste came to the attention of industry and government in 1986 when, during routine well work in Mississippi, barium sulfate scale in tubing was found to contain elevated levels of levels of radium-226, and thorium-232.

Because of concerns that some pipes may have contaminated the surrounding environment, radiological surveys were conducted by EPA's Eastern Environmental Radiation Facility. These surveys showed that some equipment and disposal locations exhibited external radiation levels above 2 mR/hr and radium-226 soil contamination above 1,000 pCi/g. Some contamination had also washed into a nearby pond and drainage ditch at one site, as well as into an agricultural field with subsequent uptake of radium by vegetation.

Because TENORM contaminated wastes in oil and gas production operations were not properly recognized in the past, disposal of these wastes may have resulted in environmental contamination in and around production and disposal facilities. Surface disposal of radioactive sludge/scale, and produced water (as practiced in the past) may lead to ground and surface water contamination.

Those at risk include: Oil and radiation waste disposal workers. Nearby residents/office workers."

3 cont.

There are 470 wells on Banning Ranch, most of them abandoned and likely improperly capped, 40 miles of piping, processing and treatment facilities, oil storage tanks and approximately 36 historic oil sumps, which held toxic oil wastes, but are not subject to regulatory guidelines. Nor is the current method for storing and disposing of toxic oil wastes (in the form of produced oils and fluids) regulated by the EPA. Apparently no testing has ever been required and no discussion was found in the Banning Ranch DEIR of any testing of the oil field wastes.

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Oil wastes contain dangerous toxins, including benzene, toluene, arsenic, lead and barium, along with radioactive material and various treatment chemicals, such as mercury, which can be lethal at levels as low as 0.1 parts per million. Do the Project Applicants plan to do a radiation survey of the oil field operations to determine the level of radioactive wastes? If so, what is the remediation plan to deal with these wastes? Does the Project Applicant plan to test the current disposal areas being used for toxic oil wastes? Do any of the original oil sumps still exist and will they be tested?

Because of its age, the Banning Ranch oil field operation is also exempt from Coastal Commission oversight, according to the 2009 DRAP (\*). As previously stated, the operation includes 470 oil wells, the majority of which have been

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abandoned and may have been incorrectly plugged or capped, some 40 miles of piping (\*\*), as well as oil production, processing and storage equipment (\*\*\*) [emphasis added].

(\*) Because the oil operations predated the establishment of the California Coastal Act (CCA) and other related regulatory definitions and codes, oilfield operations at Newport Banning Ranch were granted a permit exemption by the California Coastal Commission (CCC) in 1973 that covers ongoing and future oil production operations and also includes abandonments and equipment/pipeline removals and cleanup as exempt activities.

(\*\*) **There currently remains over 40 miles of pipelines throughout the Site for the conveyance of oil, water, and gas produced from the wells to various separation and treatment facilities on the Site.** Figure 3 shows that these operations are spread across both the upland and lowland areas of the Site.

(\*\*\*) **Oil operations including exploration, development, and production have been conducted continuously within the boundaries of the Site since 1944. Most of the Site has been heavily impacted by these historic oil operations and the related access roads and work areas.** The majority of the Site is still used today in active oil and gas production operations. There are currently over 470 producing/potentially producing and abandoned oil wells at the Site, together with related roads, transport pipeline networks, above-ground crude oil storage tanks and processing equipment, service buildings and other facilities (see Figure 3).

5 cont.

Figure 3 provides a composite picture as to the extent of the Site that has been impacted by both historic and current oil wells, pipelines, utility poles, and related facilities, as well as oilfield operation work areas like graded roads and equipment areas surfaced with gravel, asphalt, **crude oil, or crude oil tank sediments, and historic sumps which held produced oil and fluids within in-ground surface impoundments.** This map was assembled from a variety of in-field evaluations, technical maps, aerial photography, and other sources, **and illustrates that the over 65 years of oil producing operations have resulted in substantial impacts to the Site.**

[http://www.city.newport-beach.ca.us/pin/CEQA\\_REVIEW/Newport%20Banning%20Ranch%20DEIR/Newport%20Banning%20Ranch\\_DEIR/Newport%20Banning%20Ranch\\_Appendices\\_DEIR\\_September%202011/D%20Haz%20Mat/Appendix%20D%20Part%201.pdf](http://www.city.newport-beach.ca.us/pin/CEQA_REVIEW/Newport%20Banning%20Ranch%20DEIR/Newport%20Banning%20Ranch_DEIR/Newport%20Banning%20Ranch_Appendices_DEIR_September%202011/D%20Haz%20Mat/Appendix%20D%20Part%201.pdf)

A copy of Figure 3 is attached. It can also be viewed at the above link, in the "Figures" section of the DRAP.

All of the equipment associated with Figure 3 is subject to corrosion, contamination, leakage, seepage and fugitive emissions, which would be true even if the operation hadn't been situated over the Inglewood-Newport Beach

fault line (DEIR Section 4.3: Geology & Soils; Seismic Environment, Faulting and Surface Rupture, page 4.3-6) and subject to hundreds of earthquakes over its lifetime.

In April of 2010, the National Defense Resources Council (NRDC) petitioned the EPA to regulate oil wastes:

**“NDRC Petitions EPA to Apply Hazardous Waste Rules to Toxic Oil and Gas Waste**

What is perhaps most horrifying about the current disposal of toxic waste being created by oil and gas production is that it can be dumped, without protections, right in the backyards of families across the nation, even if the family doesn't want it there, due to split estate situations. Our petition provides examples; here's one: Analysis of soil samples taken from a residential property in Texas, where pit sludge had been spread on the ground less than 300 feet from a residence, confirmed the presence of numerous hydrocarbons identified as Recognized and Suspected human carcinogens and neurotoxins (1, 2, 4 Trimethylbenzene, 1, 3, 5 Trimethylbenzene, 4-Isopropyltoluene, Acetone, Benzene, Carbon disulfide, Ethylbenzene, Isopropylbenzene, m&m Xylene, n-Butylbenzene, n-Propylbenzene, o- Xylene, sec-Butylbenzene, tert-Butylbenzene, Toluene).”

[http://switchboard.nrdc.org/blogs/ama11/nrdc\\_petitions\\_epa\\_to\\_apply\\_ha.html](http://switchboard.nrdc.org/blogs/ama11/nrdc_petitions_epa_to_apply_ha.html)

5 cont.

In light of these findings, it becomes all the more imperative to know what toxins are in the oil wastes produced by the oil field operations on Banning Ranch.

With regard to fugitive emissions, studies show that the majority of them are not from refinery oil stacks but from unintentional leaks in equipment such as tubing, valves, flanges and hatches.

“Fugitive emissions are unintentional leaks of gases. This may occur from breaks or small cracks in seals, tubing, valves or pipelines, as well when lids or caps on equipment or tanks have not been properly closed or tightened. When oil and natural gas vapors escape via fugitive emissions, methane as well as volatile organic compounds (VOCs) and any other contaminants in the gas (e.g., hydrogen sulfide) are released to the atmosphere.

Recently, while on a tour of oil and gas field in Weld and Adams counties, a team of high-tech Environment Protection Agency investigators used an infrared camera to



look for fugitive emissions, which are normally invisible to the naked eye. They aimed their camera at pipelines, valves and hatches atop storage tanks. The EPA regulators found numerous cases of fugitive emissions. According to a story in the Rocky Mountain News, "in one case, an open hatch atop a storage tank was gushing such a tremendous volume of emissions into the air that one participant jokingly compared it to the eruption of Mount Vesuvius near the ancient city of Pompeii."

5 cont.

<http://www.earthworksaction.org/airpollutionsources.cfm>

Ambient air analyses have been done for the DEIR criteria pollutants, but such an analysis could not be found for benzene, a known carcinogen and highly toxic air contaminant. Why haven't ambient air analyses been done for benzene and why is there no mention in the DEIR of the known health hazards associated with benzene and the other criteria pollutants? Of course, leaks and fugitive emissions are more likely to occur with old equipment.

According to the Banning Ranch DRAP, during field sampling, benzene, Methylene chloride and vinyl chloride were detected and exceeded standards (MCLs) in the groundwater on Banning Ranch [Banning Ranch DRAP, Table 4: Range of Groundwater Sample Results-EA (2001)]. Was an investigation done to discover the source of the benzene and if so was the source tested for possible leaks of benzene and other contaminants?

From the Occupational Health & Safety Administration (OSHA) on benzene:

"Benzene is a component of products derived from coal and petroleum and is found in gasoline and other fuels. Benzene is used in the manufacture of plastics, detergents, pesticides, and other chemicals. Research has shown benzene to be a carcinogen (cancer-causing). With exposures from less than five years to more than 30 years, individuals have developed, and died from, leukemia. Long-term exposure may affect bone marrow and blood production. Short-term exposure to high levels of benzene can cause drowsiness, dizziness, unconsciousness, and death."

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<http://www.osha.gov/SLTC/benzene/>

And this article from Sciencecorps [emphasis added]:

#### **Crude Oil Health Hazards**

Toxic Effects: Crude oil's toxic ingredients can damage every system in the body: *respiratory system, nervous system, including the brain, liver, reproductive/urogenital system, kidneys, endocrine system, circulatory system, gastrointestinal system, immune system, sensory systems, musculoskeletal system, hematopoietic system (blood forming), skin and integumentary system, metabolism.*

Damage to these systems can cause a wide range of diseases and conditions. [...] The

chemicals can impair normal growth and development through a variety of mechanisms, including endocrine disruption and direct fetal damage. They cause mutations that may lead to cancer and multi-generational birth defects. Some are known carcinogens, such as benzene (CDC, 1999).

[...] **One of the chemicals in crude oil that is of highest concern is benzene**, because it has long been known to cause rapid toxic effects, and it is carcinogenic and mutagenic. A review the toxic effects and other characteristics of benzene is available at:

<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>.

[...] **Benzene in the crude oil can cause a variety of specific effects described in the recent CDC summary of benzene toxicity: ventricular fibrillation, congestive gastritis, toxic gastritis, pyloric stenosis, myalgia, kidney damage, skin irritation and burns, swelling and edema, vascular congestion in the brain, and lethal central nervous system depression.**

(<http://www.atsdr.cdc.gov/toxprofiles/tp3.pdf>).

[...] In susceptible individuals such as children and those with health problems, moderate or low level exposures can cause effects usually associated with high exposures."

<http://www.sciencecorps.org/crudeoilhazards.htm>

A landmark study by the University of Texas, School of Public Health in 2010, showed that benzene exposure via air pollution increased the incidence of spina bifida in children:

"Objective: Our goal was to conduct a case-control study assessing the association between ambient air levels of benzene, toluene, ethylbenzene, and xylene (BTEX) and the prevalence of NTDs among offspring.

Methods: The Texas Birth Defects Registry provided data on NTD cases (spina bifida and anencephaly) delivered between 1999 and 2004. The control group was a random sample of unaffected live births, frequency matched to cases on year of birth. Census tract-level estimates of annual BTEX levels were obtained from the U.S. Environmental Protection Agency 1999 Assessment System for Population Exposure Nationwide. Restricted cubic splines were used in mixed-effects logistic regression models to determine associations between each pollutant and NTD phenotype.

Results: Mothers living in census tracts with the highest benzene levels were more likely to have offspring with spina bifida than were women living in census tracts with the lowest levels (odds ratio = 2.30; 95% confidence interval, 1.22-4.33). No significant associations were observed between anencephaly and benzene or between any of the NTD phenotypes and toluene, ethylbenzene, or xylene.

Conclusion: In the first study to assess the relationship between environmental levels of BTEX and NTDs, we found an association between benzene and spina bifida. Our results contribute to the growing body of evidence regarding air pollutant exposure and adverse birth outcomes."

6 cont.

**Conclusion:**

<p>To reiterate, these are my concerns and questions: The DEIR, Air Quality Section 4.5, describes the history of air, soil and water sampling and various clean-up operations of the oil field. It appears that no soil or water sampling has been done since 2001 and there is no mention of a radiation survey ever having been done. If there was such a survey, please advise as to when it was done, the survey results and why it wasn't covered in either the BR DEIR or the Banning Ranch Draft Remedial Action Plan (DRAP), prepared by Geosyntec for the Project Applicants in 2009?</p>	<p>7</p>
<p>Do the Project Applicants plan to do a current radiation survey of the oil field operations to determine the level of radioactive wastes? If so, what is the remediation plan to deal with these wastes? Does the Project Applicant plan to test the current disposal areas being used for toxic oil wastes? Do any of the original oil sumps shown in Figure 3 (Historic Oil Field Impact Map, DRAP 2009) still exist and will they be tested for toxins? Was the benzene, Methylene chloride and vinyl chloride detected in the groundwater and reported in Table 4: Range of Groundwater Sample Results-EA (DRAP, 2001) also included in the Hazards &amp; Hazardous Materials section of the Banning Ranch DEIR? And more significantly, was an investigation done to discover the source of the three contaminants (benzene, Methylene chloride and vinyl chloride), and if so, was the source tested for possible leaks?</p>	<p>8</p>
<p>Ambient air analyses have been done for the DEIR criteria pollutants, but such an analysis could not be found for benzene, which is a known carcinogen and highly toxic air contaminant. Why weren't ambient air analyses done for benzene and why is there no mention in the DEIR of the known health hazards associated with benzene and the other criteria pollutants? An environmental impact report should include impacts to human health.</p>	<p>9</p>
<p>Up-to-date and comprehensive testing for TAC pollutants, oil waste toxins and radioactive wastes must be done before any DEIR can be considered complete and certainly before it can be approved. Please advise what testing will be done and which independent consultants will be used that have no prior or current contractual relationships with either the Project Applicants or the City, in order to verify the reliability and accuracy of the results. Also, please provide a list of city or country experts who have independently reviewed each section of the Project Applicant's DEIR.</p>	<p>10</p>



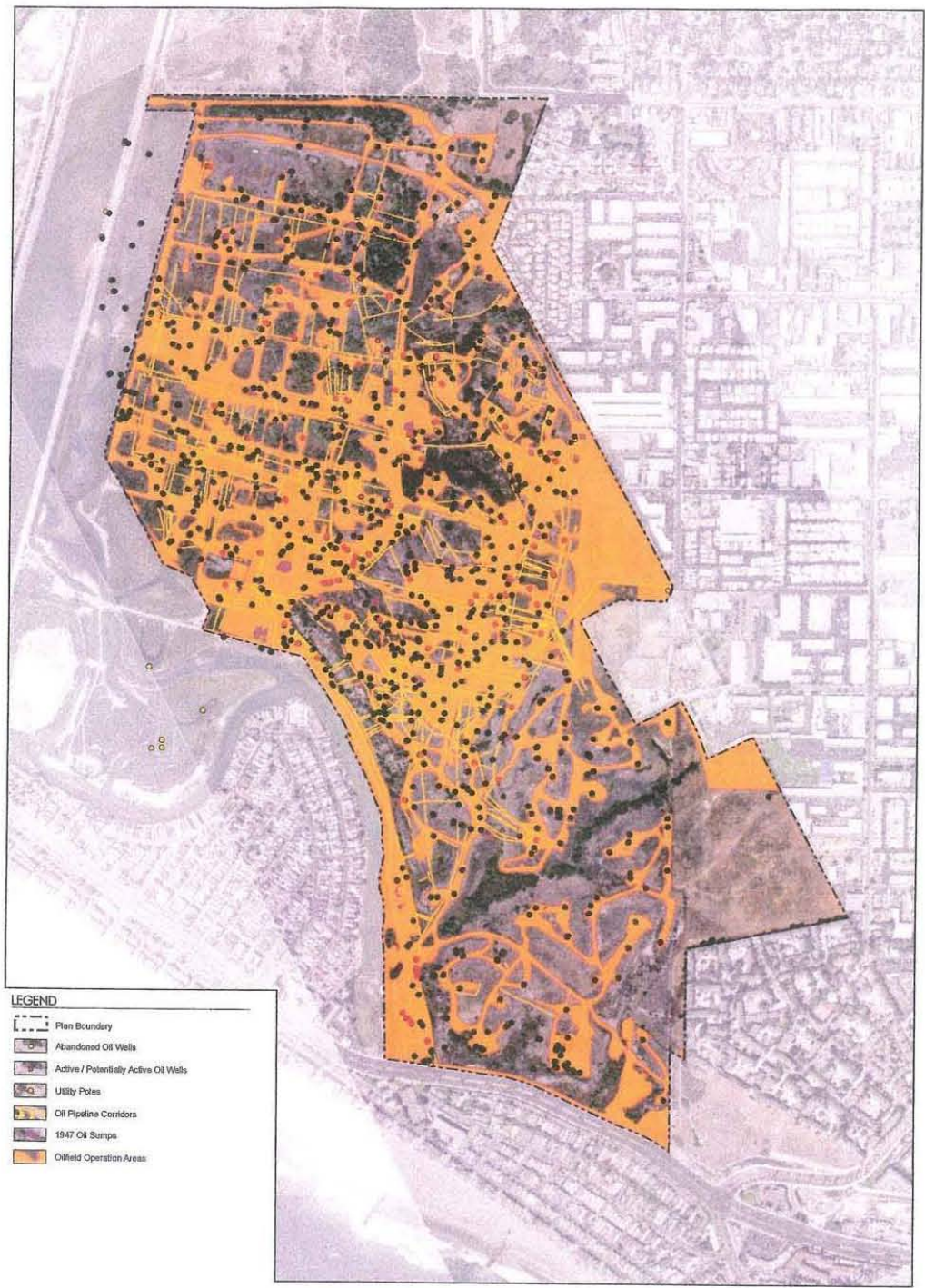
Thank you for your attention to these areas of deep concern. My strongest recommendation is that the Hazards and Hazardous Materials section of the DEIR be redone and the revised version documented with all of the necessary testing (whether current regulations require it or not) and a plan for the remediation required to safeguard the Project workers, the adjacent residents, the community college currently under construction, the grade school (Carden Hall) and the children and families who will use the City's proposed soccer fields, baseball diamond and tennis courts, and especially the residents who will be living in and above an operational oil field.

11

Sincerely,



Suzanne Forster  
8 Summerwind Court  
Newport Beach, CA



NEWPORT BANNING RANCH  
REMEDIAL ACTION PROGRAM  
City of Newport Beach - California

10-24-11

Figure 3  
Historic Oilfield Impacts Map

0 800 1,200  
Geosyntec FUSCOE FORMA  
07-14-2009  
\\sdc\newport\_beach\172815710001008\_gis\newport\_beach\_remediation\fig\_3\_102714.mxd

**Letter O38b Suzanne Forster**  
November 7, 2011

### **Response 1**

The Baseline Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. The 2001 report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). There are no current waste disposal areas or active sumps on the Project site. A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing.

The California Department of Oil, Gas, and Geothermal Resources (DOGGR) conducted a statewide study in 1996 that included the West Newport Oilfield confirming that NORM (Naturally Occurring Radioactive Material) is not a serious problem in California (which confirmed an earlier 1987 study). As a part of the proposed Project's oilfield abandonment program, comprehensive surveys would be conducted among any salvaged and recycled oilfield equipment and soils to confirm suitability for those purposes. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, should any material be determined unsuitable for recycling, it would be properly disposed of in a licensed State facility.

### **Response 2**

Please refer to the response to Comment 1.

### **Response 3**

Please refer to the response to Comment 1.

### **Response 4**

Please refer to the response to Comment 1. Additionally, Mitigation Measure (MM) 4.5-1 requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site disturbance unrelated to oil remediation activities. This is intended to ensure further agency review of any identified contaminants and plans for clean-up.

### **Response 5**

With the exception of the two oil consolidation sites, all on-site oil wells would be abandoned or re-abandoned to current requirements and standards of the DOGGR. There are no current waste disposal sites or active sumps. All historical sites were tested and characterized in the 2001 Environmental Assessment. Impacted soils would be removed from these areas and remediated to agency approved cleanup criteria. The remediation process is reviewed, monitored, and approved by State regulatory agencies and is designed to address the protection of the environment and human health. Development construction is allowed only after verification that all the remediation criteria have been met and the oversight agencies have signed off the final closure document.

With respect to fugitive emissions, please refer to Section 4.10, Air Quality, of the Draft EIR.



## **Response 6**

The State of California Air Resources Board (CARB) has designated almost 200 compounds as TACs. Of the ten tasks posing the greatest health risk in California, most are associated with risk for various forms of cancer. Non-carcinogenic risks include but are not limited to respiratory illness, blood disorders (from chronic benzene exposure), renal toxicity (from hexavalent chromium), and eye, nose, and throat irritation (from formaldehyde). The Human Health Risk Assessment (HHRA) for the proposed Project determined that both carcinogenic and non-carcinogenic health risks associated with the proposed project would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR. Appendix G of the Draft EIR explains in greater detail the potential health risks of TACs. Please also refer to Topical Response: Air Quality.

The source of the benzene at Potential Environmental Concern (PEC) 01, located in the Lowland area, appeared to be a ground level drain tank that is no longer in service. This is a targeted area for the remediation program.

## **Response 7**

Please refer to the response to Comment 1.

## **Response 8**

There are no current oil waste disposal sites and no active sumps. All suspected historic sites were tested and characterized in the 2001 Environmental Assessment. The source of the groundwater contaminants at PEC 01, located in the Lowland area, appeared to be a ground level drain tank that is no longer in service. This is a targeted area for the remediation program.

## **Response 9**

Please refer to the response to Comment 6 and Topical Response: Air Quality.

## **Response 10**

Please refer to the responses to Comments 1, 4, and 6 and to Topical Response: Air Quality and Topical Response: Oilfield Regulatory Oversight and Remediation. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. Additional testing and verification sampling would be conducted during the remediation program. The Project requires that third-party certified environmental professionals monitor the oilfield abandonment, the remediation, and the full site grading phase to ensure all impacts are addressed to the approved criteria.

## **Response 11**

The opinions of the commenter are noted.

RECEIVED  
Comment Letter O38c  
COMMUNITY

NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

Mr. Patrick Alford, Planning Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

NOTE: I object to the approval of the Banning Ranch DEIR in its present form. The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Dear Mr. Alford:

I'm submitting additional comments to the Banning Ranch DEIR on the Air Quality section.

On page 4.10-11, it says that the Costa Mesa monitoring station does not monitor PM10 and PM2.5, so the data was supplemented from the Mission Viejo Station (Saddleback Valley). It also says that data from 2008 to 2010 from these stations are summarized in Table 4.10-2 and those data show exceedances of the federal 8-hour O3 standard in 2008 and the State 8-hour O3 standard in 2008 and 2009 at the Costa Mesa Monitoring Station. At the Mission Viejo Monitoring Station, the State PM10 24-hour and annual standards were exceeded in 2009 and the federal PM2.5 24-hour standard was exceeded in 2009.	1
How is the monitoring done and where? If the monitoring is done at the station location, how can a station in Mission Viejo accurately measure TACs at the Project Site on Banning Ranch?	
Also, what time of day were the 2008 and 2009 samples taken and what were the weather and wind conditions? It's known that ozone levels are higher in the afternoon, but how does weather impact concentrations of low-level pollutants like ozone?	2
Table 4.10-2 shows exceedances of O3 in 2008 and 2009 and exceedances of PM10 and PM2.5 in 2009. Is the current station monitoring being done in accordance with the new national one-hour standards for Nitrogen Dioxide that require monitors at locations where maximum NO2 concentrations are expected to occur, i.e. within 50 meters of major roadways? Has the computer modeling to estimate future emissions been done with data from monitoring stations that meet this standard?	3
See the following clarifications from the EPA and the Federal Register:  <b>"Strengthened National Standards for Nitrogen Dioxide"</b> <a href="http://www.epa.gov/oaqps001/nitrogenoxides/actions.html#jul11">http://www.epa.gov/oaqps001/nitrogenoxides/actions.html#jul11</a>	4

January 22, 2010 – The Environmental Protection Agency strengthened its national ambient air quality standards (NAAQS) for nitrogen dioxide. The new standard will protect public health, including the health of sensitive populations - people with asthma, children, and the elderly.”

“[Final Rule \(PDF\)](#) (65pp, 418k) - Federal Register - Feb 9, 2010  
<http://www.epa.gov/ttn/naaqs/standards/nox/fr/20100209.pdf>

Specifically, EPA is establishing a new 1-hour standard at a level of 100 ppb, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. **EPA is also establishing requirements for an NO2 monitoring network that will include monitors at locations where maximum NO2 concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO2 concentrations that occur more broadly across communities.”**

Also, the 2009 9<sup>th</sup> Conference on Air Quality Modeling raised concerns about the proximity of monitoring stations to locations where maximum pollution is expected to occur:

4 cont.

“9th Conference on Air Quality Modeling – A&WMA AB-3  
**Comments on AERMOD Study**

[http://www.epa.gov/scram001/9thmodconf/awma9thmodelingconference\\_aermod\\_schewe.pdf](http://www.epa.gov/scram001/9thmodconf/awma9thmodelingconference_aermod_schewe.pdf)

**Modeling of Roadway Sources**

- Short-term NO2 ,PM10 and PM2.5 concentrations are dominated by mobile source impacts near major roadways
- Roadways are characterized by enhanced turbulence and low wind speeds generated by traffic itself
- Review of data from tracer studies and adjustments to AERMOD modeling procedures for roadway is an important issue for EPA to pursue
- **Problems - few long-term monitors near roadways & quantification of emissions, especially PM, is questionable”**

Do the monitoring stations used for the data in this DEIR address the above concerns about proximity and conform to the new national standards for NO2? If not, how can it be held that the analyses of pollutant emissions are accurate and reflect their true impact?

I appreciate your attention to these areas of concern and I look forward to your response.

Thank you in advance,



Suzanne Forster  
8 Summerwind Court  
Newport Beach, CA 92663  
Blush1996@aol.com

**Letter O38c Suzanne Forster**  
November 8, 2011

### **Response 1**

The Costa Mesa station is located at 2850 Mesa Verde Drive East in the City of Costa Mesa; the Mission Viejo station is located at 26081 Via Pera in the City of Mission Viejo. Data relative to the site and instrumentation may be found at <http://www.aqmd.gov/tao/AQ-Reports/AQMonitoringNetworkPlan/AQnetworkplan.htm>. The pollutants monitored at these sites and listed in Table 4.10-2 of the Draft EIR are not TACs. The criteria pollutant data are generally regional representation and are not site specific.

### **Response 2**

Gaseous pollutants are monitored continuously, ideally 24 hours per day, 365 days per year. Ozone concentrations are very dependent on weather; stagnant air and inversions increase concentrations, while clear, windy days will have low ozone concentrations.

### **Response 3**

Details of the SCAQMD's monitoring program may be found at <http://www.aqmd.gov/tao/AQ-Reports/AQMonitoringNetworkPlan/AQnetworkplan.htm>. Current monitoring is not relevant to the Newport Banning Ranch Draft EIR; the Draft EIR's emissions modeling does not use data from the monitoring stations.

### **Response 4**

Please refer to the response to Comment 3.



Comment Letter O38d

November 8, 2011

Patrick Alford, Planning Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92663



Dear Mr. Alford:

Please let it be noted that I object to approval of the Banning Ranch DEIR in its present form and request that the comments below, along with all references, be incorporated into the official record of proceedings of this project and its successors.

Because Banning Ranch is and will continue to be an operating oil field, even after the development is done and families are living on the property, and because there will be children and adults exercising on the soccer fields, baseball diamond and tennis courts proposed for Sunset Ridge Park and the community/sports park near 15<sup>th</sup> Street, I'm writing in regard to the impact of contaminants like mercury and methane gas on exercising children and adults.

Oil wastes contain dangerous toxins, including benzene, a known carcinogen, toluene, arsenic, lead and barium, along with radioactive material and various treatment chemicals, such as mercury, which can be lethal at levels as low as 0.1 parts per million. Further, oil wastes are not regulated by the EPA, and there is no indication in the Banning Ranch DEIR's Chapter 4.5, Hazards and Hazardous Materials, that the oil field operations have been tested for mercury, which would include the oil wastes.

1

Frank Tamminen, author and environmental policy advisor makes videos on the health and environmental effects of oil pollution. Below is a transcript of his video on the effects of mercury on the human body:

**Oil Wells: What are the effects of mercury on the human body?**

Mercury is one of the more insidious toxins with respect to human health because we bio-accumulate it. That means, for example, if you ate one aspirin every single day you would be perfectly fine for your entire life, and there is some evidence it would be good for your health. If you took the same amount of mercury every day it would build up in your system day after day after day until it killed you. Frankly, if you took that much you would be dead within the year.

[http://www.dailymotion.com/video/xg6d18\\_oil-wells-what-are-the-effects-of-mercury-on-the-human-body\\_lifestyle#rel-page-1](http://www.dailymotion.com/video/xg6d18_oil-wells-what-are-the-effects-of-mercury-on-the-human-body_lifestyle#rel-page-1)

In a detailed study ["Mercury in Petroleum and Natural Gas: Estimation of Emissions From Production, Processing, and Combustion" (PDF) (79 pp,



1.03 MB) (EPA/600/R-01/066) September 2001], the U.S. Environmental Protection Agency (EPA) describes what is known about mercury as a byproduct of oil production. Here is a brief excerpt:

"Mercury is a trace component of all fossil fuels, including natural gas, gas condensates, crude oil, coal, tar sands, and other bitumens. The use of fossil hydrocarbons as fuels provides the main opportunity for releasing emissions of the mercury they contain into the atmospheric environment, but other avenues also exist in production, transportation, and processing systems."

<http://www.epa.gov/nrmrl/pubs/600r01066/600r01066.htm>

And this, from *Pipeline*, an international newsletter for the energy industry:

"[...] The dangers of mercury stem from the toxic vapour it emits at room temperature. Unlike hydrogen sulphide (H<sub>2</sub>S) mercury vapour cannot be seen or smelled and is therefore a silent killer.

About 70% of mercury that is inhaled is retained by the body. The mercury then enters the blood stream and is able to cross the blood brain barrier with harmful long term effects. It takes approximately 20 years for one teaspoon of mercury to evaporate. One gram of mercury can pollute a 20-acre lake causing the fish in that lake unsafe to eat.

#### How common is mercury exposure in the oil and gas industry?

On a daily basis, it is very common for people in the oil and gas industry to be exposed to mercury vapour at dangerous levels. Remember this is the same material that we used to handle in school science classes. No one had any idea it was giving off a toxic vapour.

#### Where would you find mercury? Is it through drilling, exposing naturally occurring mercury or a by-product of the chemical processes utilised in refining?

Mercury is found in almost all oil and gas reservoirs. Highest concentrations are normally found from reservoirs in South America, Australasia and the Middle East. European, African and North American gas sources also contain mercury while lower concentrations are found in the North Sea. The more mature and deeper reservoirs seem to have more mercury.

Mercury is a challenge to the industry with regard to corrosion/fouling of piping and equipment, product quality specifications, and Health, Safety and Environment aspects. Monitoring of mercury levels is important due to system integrity, gas specifications, surrounding environment and work environment."

[http://www.pipelinecommunity.com/index.php?option=com\\_content&view=article&id=275%3Amercury-and-solace-catid=44%3Afeatures&Itemid=13](http://www.pipelinecommunity.com/index.php?option=com_content&view=article&id=275%3Amercury-and-solace-catid=44%3Afeatures&Itemid=13)

Given that mercury is a product of crude oil extraction and processing and the potential releases of mercury wastes are to air, water and land, what tests for mercury contamination are routinely done by the Banning Ranch oil field? What tests have been done and what are the results?

1 cont.

<p>How are oil wastes containing mercury stored on Banning Ranch? What is the operation's mercury recovery system? Is there a compliance and monitoring inspection program in place?</p>	<p>1 cont.</p>
<p>Methane gas is also a hazard, particularly on oil fields developed for residential use and where oil exploration and production is still ongoing, as is the case with Banning Ranch.</p> <p>On page 4.5-7 of the Hazards and Hazardous Materials section, it describes the discovery of a highly elevated concentration of methane gas near the Main Drill Site Tank Farm, which prompts questions about safety and human health impacts.</p> <p>The paragraph in question reads as follows (emphasis added):</p> <p style="padding-left: 40px;">“Twenty-three areas were identified as areas of PECs (Exhibit 4.5-1). The Project site is impacted primarily by petroleum hydrocarbons. Seven of the 23 PECs (1) investigated showed significant hydrocarbon impacts beyond surface areas. During the soil evaluation, soil gas was observed bubbling in a Lowland pond near REC/PEC3 #02 – Main Drill Site Tank Farm, and samples were collected. <b>Analytical results indicate elevated methane concentrations, measured up to 73.2 percent (2) of the collected vapor with no hydrogen sulfide detected.</b> This indicates a natural origin from the marsh area. There were no indications of soil gas observed in the Upland (e.g., odors indicating a release from soils or abandoned wells) (3) (Geosyntec 2009).”</p> <p>The above paragraph can also be found on page 8 of Geosyntec's 2009 Draft Remedial Action Report that was prepared for Newport Banning Ranch LLC, with the exception of one sentence: “This indicates a natural origin from the marsh area.” In checking the BR DEIR's Exhibit 4.5-1, which locates all the PECS on a map of Banning Ranch, there doesn't appear to be anything that could be called a marsh near the Main Drill Site Tank Farm. Is that a reference to the Acoe Wetlands Restoration Area to the west? If so, were the wetlands also tested for methane? Is the lack of hydrogen sulfide the only reason to think methane found in the pool near the tank farm was from a natural source? Does natural methane normally form vapors with concentrations as high as 72.3%? With a concentration that high, it would seem very important to know the exact source, especially since tank farms are for oil storage and a concentration that high could indicate a leak. Was the tank farm checked for leaks?</p>	<p>2</p>
<p>The legend of Exhibit 4.5-1 mentions that PECs 13 and 14 were grouped with other PECs, but doesn't describe them. What were PECs 13 and 14 originally? It also states that PECs 25 and 26 are non-specific PECs. It describes PEC 26 as drilling mud sumps and oil well sumps. Were these</p>	<p>3</p>



4

sumps used for oil wastes? Where are the oil wastes currently stored on Banning Ranch? Are they above ground, below ground or both? Have the oil wastes ever been tested for contaminants or for fugitive emissions?	3 cont.
(1) Which 7 PECs showed significant hydrocarbon impacts beyond surface areas? How far down did the impacts go and what will be done to determine their depth? What was or will be done to remediate these areas? Has Geosyntec repeated this field sampling since 2001 to determine current methane levels? Have any of these findings been verified by independent expert analysis?	4
(2) Shouldn't testing have been done to assure that soil gas wasn't present in the upland areas, especially given that there are over 300 abandoned wells on Banning Ranch, likely improperly capped and subject to seepage of methane and other toxins? Is a smell test enough? Shouldn't current field sampling be done on soil gas because it was detected in such high concentrations in the lowlands? How can a DEIR (Draft Environmental Impact Report) be an accurate assessment of the contamination and possible health impacts without current sampling? No environmental impact report should be considered complete, nor should it be approved, without up-to-date and accurate sampling, including verification of that sampling by independent experts.	5
(3) The 2001 analysis found methane concentrations up to 73.2%. What are the dangers of that high a concentration? This sampling was done a decade ago. In 2011, have methane gas concentrations been ruled out in all other areas of the oil field operations? Given that methane is highly combustible and extremely dangerous, shouldn't field samples be taken in advance of development to assure that high methane concentrations don't now exist? How can environmental impacts be adequately addressed and the safety of future residents of the development be assured without such information?	6
Also, why weren't the health impacts of methane gas mentioned in this DEIR, especially since methane replaces oxygen in the air, which is of particular concern for athletes and children and teens, who breathe in 30% more air while exercising? The development is adjacent to Sunset Ridge Park, which will have a soccer field, a baseball diamond and areas for children to run and play, and it has a planned community/sports park with three soccer fields and six to eight tennis courts, so the health impacts of methane will have much more significance. In addition, there will be health impacts to the students of Carden Hall, a grade school adjacent to the development, and to the students of the community college that's currently under construction next to Carden Hall.	7

**“What are the main health hazards associated with breathing in methane?” (emphasis added)**

Methane is not toxic below the lower explosive limit of 5% (50000 ppm). However, when methane is present at high concentrations, it acts as an asphyxiant. **Asphyxiants displace oxygen in the air and can cause symptoms of oxygen deprivation (asphyxiation).** The available oxygen should be a minimum of 18% or harmful effects will result. Methane displaces oxygen to 18% in air when present at 14% (140000 ppm). It is not expected to cause unconsciousness (narcosis) due to central nervous system depression until it reaches much higher concentrations (30% or 300000 ppm) - well above the lower explosive limit and asphyxiating concentrations.

Effects of oxygen deficiency are:

12-16% - breathing and pulse rate are increased, with slight muscular incoordination;  
10-14% - emotional upsets, abnormal fatigue from exertion, disturbed respiration;  
6-10% - nausea and vomiting, inability to move freely, collapse, possible lack of consciousness;  
Below 6% - convulsive movements, gasping, possible respiratory collapse and death.

Since exercise increases the body's need for oxygen, symptoms will occur more quickly during exertion in an oxygen-deficient environment. Survivors of oxygen deprivation may show damage to some or all organs including the central nervous system and the brain. These effects may or may not be reversible with time, depending on the degree and duration of the low oxygen and the amount of tissue injury. [...] Under stressful conditions and with exposure to high concentrations, the effects of cardiac sensitization may be important for some hydrocarbon gases. The asphyxiant effects of methane may enhance cardiac sensitization.”

[http://www.ccohs.ca/oshanswers/chemicals/chem\\_profiles/methane/health\\_met.html#\\_1\\_1](http://www.ccohs.ca/oshanswers/chemicals/chem_profiles/methane/health_met.html#_1_1)

7 cont.

Another area of great concern is the health risks of pollution generated during the Project development when construction and remediation will be done concurrently, resulting in significant and unavoidable impacts. In the Air Quality section of the DEIR, it states that potential exceedances of NOx will be caused due to questions of the availability of Tier 4 construction equipment. The Air Quality section also states that after the development, air pollutants like ozone and NOx will continue to cause significant and unavoidable impacts because the Project development's growth will create increasing energy requirements and traffic impacts.

Therefore, children will be breathing in hazardous pollutants while they are playing in the parks next to and on the development, as will exercising adults. And there will be no end in sight to this exposure because as

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remediation and construction end, the health risks don't. The exposure continues unabated, caused by the rising traffic volume and congestion.

Detailed information on the health risks of NOx and ozone can be found on the EPA web site as follows:

NOx: <http://www.epa.gov/air/nitrogenoxides/health.html>

Ozone: <http://www.epa.gov/apti/ozonehealth/population.html>

8 cont.

In summary, NOx creates small particles that penetrate deeply into sensitive parts of the lungs. It can cause respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admission and premature death. Breathing in higher concentrations of ozone is associated with increased asthma attacks, increased hospital admissions, decrements in lung function and inflammation, increased daily mortality and other markers for morbidity.

In light of these concerns, doesn't the city have an obligation to ensure that toxic exposure is minimized in every way possible, especially for children whose immune system is not mature? As stated, the children in question are those who will play on the parks' four soccer fields, its baseball diamond and its tennis courts. It's the school children of Carden Hall and any children who live adjacent the property as nearest sensitive receptors, or in the tightly wrapped surrounding communities. It's the young adults who will be attending Coastline Community College on 15th Street, adjacent the property. It's also the elderly, the infirm and those suffering respiratory conditions, cancers or other wasting illnesses. Can these toxic health risks be ignored in favor of the overriding public benefits that the City Council refers to in their Statement of Overriding Considerations? It's hard to imagine what benefits the public more than their health and well being. It's even harder to imagine what could take a greater toll on the public than the poisoning of the very air they breathe as they exercise.

9

Thank you for your consideration of these concerns. I look forward to your response.

Sincerely,



Suzanne Forster  
8 Summerwind Court  
Newport Beach, CA 92663  
blush1996@aol.com

**Letter O38d Suzanne Forster**  
November 8, 2011

### **Response 1**

The 2001 Environmental Assessment (EA) involved comprehensive testing of the property including all current and historic oilfield operating areas and included testing for mercury in soils. Table 4.5-1 in the Draft EIR indicates no exceedances of mercury or other metals above Total Threshold Limit Concentration (TTLC). The 2001 EA was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). No oil wastes are stored at the two oil operations. Because mercury is not an issue at this oilfield there is no recovery system or monitoring program.

### **Response 2**

The marsh area and Lowland pond referred to in the Draft Remedial Action Plan (dRAP) and the Draft EIR refers to cells in the Lowland area of the Project site, specifically to a cell to the west of the tank farm facility. Minor amounts of methane emanating from wetland marsh areas are not uncommon in this and nearby coastal wetlands. Testing indicated that of the very small amount of vapor that was captured from the bubbles surfacing in the Lowland pond, 73.2 percent of that was methane. The lack of hydrogen sulfide and other hydrocarbon fractions indicate the methane is naturally produced (i.e., derived from decaying biomass in the subsurface). The tank farm facility does not store methane but no leaks of any kind were found in the existing system. Also, there were no lines or facilities in or near the pond. Soil gas testing in the areas planned for the development of habitable structures would also be performed following remediation and mass grading.

### **Response 3**

The numbering designations for the Potential Environmental Concerns (PECs) in Exhibit 4.5-1 were not initially activity-specific; rather, they were potential areas of interest. Several of the areas were determined not to require further evaluation (e.g., 13 and 14). Certain non-area specific PECs included drilling mud sumps which were used up until the 1980s. Investigations indicate that these sumps were generally abandoned by removing the materials and backfilling with on-site soils. Oil wastes are not currently stored on the Project site.

### **Response 4**

Table 4.5-3 of Section 4.5 of the Draft EIR shows the PECs list with contaminant impacts including the seven PECs with impacts beyond the surface. The remediation methodologies, describing what would be done and how sites are verified complete, are described in the Draft Remedial Action Plan (see Appendix D of the Draft EIR). The Phase I 2005 and 2008 updates found no significant changes or reasons that warranted additional field testing. All samples were taken by a third-party consultant, Geosyntec, and submitted to third-party State certified laboratories. The documentation and results were submitted to and reviewed by the RWQCB.

### **Response 5**

While there are no indications of soil gas in the Upland area, comprehensive soil vapor testing would be conducted after all the oil operations are removed, the soils are remediated, and the mass grading is completed. The proposed Project would also be required to test all abandoned wells and have all measures installed before any development-related construction.



## **Response 6**

Please refer to the response to Comment 2. While the wetland marsh gas that was tested had a concentration of 73.2 percent methane, the volume was extremely small and was isolated to the wetlands area.

## **Responses 7**

Though methane is not an issue within the development area, the Project would be required to implement mitigation measures associated with all abandoned oil wells. The proposed Project would also be required to follow the Orange County Fire Authority Guideline C-03 for Combustible Soil Gas Hazard Mitigation.

## **Response 8**

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NO<sub>x</sub> during construction would be less than significant.

Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources.

The potentially significant NO<sub>x</sub> impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NO<sub>x</sub> or NO<sub>2</sub> would be less than significant. Please also see the general discussion of NO<sub>x</sub> emissions during construction.

## **Response 9**

Please refer to the responses to Comments 1 through 8. The Statement of Overriding Considerations was adopted by the Newport Beach City Council to describe the anticipated economic, social, and other benefits or other considerations that supported the decision to adopt the 2006 General Plan Update even though all of the identified impacts are not mitigated to a less than significant level. Both the unavoidable significant impacts and the economic, social, and other benefits or other considerations relate to the entire City of Newport Beach. The General Plan Update's Findings of Fact and Statement of Overriding Considerations are included in the Staff Report to the City Council dated July 25, 2006. The Staff Report can be accessed from the City of Newport Beach website.

**Comment Letter O39a**

**Alford, Patrick**

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**From:** Ron42554@aol.com  
**Sent:** Saturday, November 05, 2011 4:16 PM  
**To:** Alford, Patrick  
**Subject:** Extending November 8 Deadline

Mr. Alford,

Due to the volume of data in the DEIR, is there anyway to extend the deadline for comments? It is difficult for us mortals to grasp the document and we mortals are going to be affected by the project.

1

Thanks.

I will try to get some of my comments to you before the deadline.

Ron Frankiewicz

**Letter O39a Ron Frankiewicz**  
November 5, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

6th November, 2011

**Comment Letter O39b**

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

The DEIR fails to adequately take into account the negative affects of the development on surrounding neighboring communities. These negative impacts include widening of 17th & 19th streets and potential taking of Costa Mesa homes & businesses for this project. Will the final EIR take into account this issue?	1
Please note that community officials from Costa Mesa, including Raja Sethurman P.E., Manager Transportation Services, and councilman Steve Mensinger have commented on the necessity to widen 17th & 19th St. due to this project.	2

Sincerely,  
Mr. Ron Frankiewicz  
950 W. 19th St  
Costa Mesa, CA, 92627

949-233-3656  
ron42554@aol.com

**Letter O39b Ron Frankiewicz**  
November 5, 2011

**Response 1**

The Project is estimated to generate 14,989 vehicle trips per day. The Traffic Impact Analysis indicated that approximately 5 percent of the Project traffic would travel along Placentia north of 17<sup>th</sup> Street. Project traffic is not shown to travel along Victoria in Costa Mesa since other streets provide a more direct path of travel to off-site destinations. The Traffic Impact Analysis indicates that a composite of approximately 65 percent of the Project traffic can be expected to travel along the street system in southwest Costa Mesa. The impact on the southwest Costa Mesa streets was addressed in the Draft EIR Traffic Impact Analysis. The resulting traffic volumes do not indicate the need for widening of 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, or 19<sup>th</sup> Street. The Project's impact on the peak hour operation of intersections along these streets was evaluated, and mitigation measures have been identified for any intersections that would experience a significant Project impact.

**Response 2**

The comment is noted.



6th November, 2011

**Comment Letter O39c**

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

BR developers have been claiming that 75% of the land will be set aside as open space. Where will the money come from to manage this open space? How much of this land is unsuitable for building anyway? Does the remaining 25% that they will be building on include the concrete walkways, hardscape, sports courts & parking lots?

1

Sincerely,  
Mr. Ron Frankiewicz  
950  
Costa Mesa, CA, 92627

949-233-3656  
ron42554@aol.com

**Letter O39c Ron Frankiewicz**  
November 6, 2011

**Response 1**

With respect to Project financing, this question does not address an environmental issue. With respect to whether the development area includes parks, sidewalks, landscaping, and parking lots, the answer is yes.

6th November, 2011

**Comment Letter O39d**

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

With all the traffic studies, the DEIR does not mention the need for the 19th St. bridge to disperse the traffic. Why has this been omitted? The EIR, the cities involved and the county should have this addressed and speak openly about the pressure this project will put on 19th street and the need for the bridge.

1

Sincerely,  
Mr. Ron Frankiewicz  
950 W. 19th St Costa Mesa  
Costa Mesa, CA, 92627

949-233-3656  
ron42554@aol.com

**Letter O39d Ron Frankiewicz**  
November 6, 2011

**Response 1**

The construction of the 19<sup>th</sup> Street Bridge is not a part of the proposed Project. As addressed in Section 4.9, Transportation and Circulation, both the Orange County MPAH and the City of Newport Beach General Plan Master Plan of Streets and Highways reflect the extension of 19<sup>th</sup> Street from its current terminus in the City of Costa Mesa, over the Santa Ana River, connecting to Brookhurst Street at Banning Avenue in the City of Huntington Beach. As such, the proposed Project General Plan Buildout scenario assumes the completion of the 19<sup>th</sup> Street Bridge, consistent with the assumptions of the City's General Plan and the Orange County MPAH. However, because the timing of construction of the bridge is uncertain, an analysis of future General Plan Buildout conditions with the Project but without the 19<sup>th</sup> Street Bridge is provided in the Draft EIR for informational purposes. It should be noted that the Year 2016 traffic analysis scenarios do not assume the 19<sup>th</sup> Street Bridge.

6th November, 2011

Comment Letter O40a

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

The Bluff Road is projected to be a 4 lane road to 17th Street with a mention of speeds to include 45-50 MPH. Why is it necessary for a 4 lane Road in less than a 1 mile trip to travel within the proposed BR Community, which is to include residential and a play park for children? Doesn't this speed seem a bit concerning and extreme for only 412 acres, which will result in potential deaths at the rate of the proposed speed?

1

Sincerely,  
Mrs. Sandie Frankiewicz  
950 W. 19th St  
Costa Mesa, CA, 92627

949-533-2955  
sandie.frankiewicz@gmail.com

**Letter O40a Sandie Frankiewicz**  
November 6, 2011

**Response 1**

Bluff Road/North Bluff Road is shown on the City of Newport Beach Master Plan of Streets and Highways as a four-lane Primary Road. The Project site plan shows Bluff Road connecting to West Coast Highway approximately 960 feet west of Superior Avenue, and North Bluff Road connecting to 19<sup>th</sup> Street, at the north end of the site. The Newport Beach Traffic Model (NBTM) forecasts indicate a daily volume of 15,440 trips on Bluff Road north of West Coast Highway. This segment of Bluff Road would be a four-lane divided roadway, with a daily level of service (LOS) E capacity of 37,500 vehicles per day, based on Table 102.1 of the Orange County Highway Design Manual. On North Bluff Road north of 17<sup>th</sup> Street, the NBTM forecasts indicate a daily volume of 17,150 trips. The Project shows this segment of Bluff Road to be a three-lane divided roadway (two northbound and one southbound) to the commercial center boundary, narrowing to a two-lane undivided roadway north of the commercial center boundary. The capacity of a three-lane divided roadway would be estimated to be 28,000 trips, and the daily LOS E capacity of a two-lane undivided roadway would be 12,500 vehicles per day based on Table 102.1 of the Orange County Highway Design Manual. The capacity of a roadway segment will increase when there are no driveway access points and no intersections, such as the planned segment of North Bluff Road between 17<sup>th</sup> Street and 19<sup>th</sup> Street. Please see Exhibit 4.9-25 which shows traffic volumes. The typical design speed for an arterial roadway is 45 miles per hour (mph) or greater.



6th November, 2011

Comment Letter O40b

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

Soil Gas surveys. Is there a survey for the public to review which would include the measure of the toxic chemical and gas fumes coming from the oil wells and construction equipment, which will spread vapor intrusions into the homes of the neighboring communities and our homes?	1
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Sincerely,  
Mrs. Sandie Frankiewicz  
950 W. 19th St  
Costa Mesa, CA, 92627

949-533-2955  
sandie.frankiewicz@gmail.com

**Letter O40b Sandie Frankiewicz**  
November 6, 2011

**Response 1**

The fugitive emission studies, including emissions from construction equipment, are presented in Section 4.10, Air Quality, of the Draft EIR. The results of soil gas surveys performed at the Project site related to subsurface gas conditions are described in Section 4.5, Hazards and Hazardous Waste; please refer to page 4.5-7.

6th November, 2011

**Comment Letter O40c**

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663  
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. Please include the following comments and concerns in the official record.

Deviations and change orders to the project. Will the city of Newport Beach, or other agencies (Coastal Commission) be very diligent at observing the project for deviations and all change orders? Will the changes or deviations be brought to the public for comment?	1
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Sincerely,  
Mrs. Sandie Frankiewicz  
950 W. 19th St  
Costa Mesa, CA, 92627

949-533-2955  
sandie.frankiewicz@gmail.com

**Letter O40c Sandie Frankiewicz**  
November 6, 2011

**Response 1**

The City is uncertain what potential “deviations and change orders” are being referenced by the commenter. With respect to the Mitigation Program in the EIR, a Mitigation Monitoring and Reporting Program (MMRP) would be approved as a part of the proposed Project and would include all project design features, standard conditions, and mitigation measures applicable to the Project. The MMRP includes the elements of approval with a method of verification upon implementation of each mitigation measure, including a responsible person/agency and a milestone date for implementation. Mitigation monitoring bridges the gap in the CEQA process between identifying proper mitigation and implementing specific programs to accomplish the stated goals. The MMRP becomes a public document available for public review throughout implementation of the proposed Project.

**Alford, Patrick**

**Comment Letter O41**

**From:** Mary Froemke [mary.froemke@gmail.com]  
**Sent:** Tuesday, November 08, 2011 4:19 PM  
**To:** Alford, Patrick  
**Subject:** Please Preserve Banning Ranch!

I am writing you today to express my concern and opposition to the proposed development of Banning Ranch. I live at the end of 19th St. off Monrovia between 19th & Victoria in the Canyon Park neighborhood. I have poured over the Environmental Impact Report for the proposed development and while I do see the necessity & benefit of remediation of the oil wells, in considering the increase in traffic, maximum building height, air pollution, degradation & loss of vital ecosystem, and the consumption of natural resources with no semblance of replenishment or sustainability, one thing is abundantly clear: With this development the only benefit is monetary & the only benefactors Area Energy, its partners & the developer Newport Banning Ranch, LLC. I know we can do better. Please honor & protect the RESIDENTS & constituents of your districts from the single-minded profit motivated ambitions of overzealous developers – PLEASE SAY NO to Banning Ranch development. Honor the intentions of the voters who prioritized Open Space as their first choice for this land.

Thank you sincerely,  
Mary Froemke  
910 Cedar Pl.  
Costa Mesa, Ca. 92627  
714-473-7913

**Letter O41**    **Mary Froemke**  
November 8, 2011

**Response 1**

The commenter's opposition to the Project is noted.



**Comment Letter O42**

Jennifer W. Frutig  
Banning Ranch Conservancy  
P.O. Box 16071  
Newport Beach, CA 92659  
[JenniferFrutig@aol.com](mailto:JenniferFrutig@aol.com)

Mr. Patrick Alford  
Planning Manager  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92658

November 8, 2011

Dear Mr. Alford,

The following comments are in regard to the Newport Banning Ranch DEIR. One comment concerns the DEIR in general and the rest relate to Section 4.7 Population, Housing and Employment.

Shouldn't the City of Newport Beach have extended the comment period for this DEIR due to the following:

- I. The DEIR was not available at the Newport Beach Public Libraries on September 9, 2011. Several people at both the Central Library and the Mariner's Branch asked for it and were told that it was not available and was not in transit.
- II. The Newport Beach Central Library was closed for two weeks in October, from October 17<sup>th</sup> to October 30<sup>th</sup> 2011, which was during the public comment period.
- III. The closure of the Newport Beach Central Library for the two week period meant that not only was the two volume hard copy not available at that location, but also that a substantial number of computer terminals were not available.
- IV. The DEIR is a very lengthy (over 1,000 pages), detailed and complex document which does not make it easy to analyze on a computer.
- V. The DEIR is quite costly to try to print. (Please note: I copied one relatively short section of 25 pages which cost \$5.00.)

1

Section 4.7: Population, Housing and Employment.

4.7.2 Regulatory Setting (p. 4.7-1)

"These projections are recognized by the agencies that sponsor the CDR as the uniform data set for use in local planning applications."

How do these projections compare with the updated version of the OCP which was anticipated to be available in the summer of 2011?

2

<p>4.7.2 General Plan Housing Element (p. 4.7-4)</p> <p>“It is the City’s goal that an average of 15 percent of all new housing units be affordable to the very low, low, or moderate income households.”</p> <p>What is the definition of very, low, and moderate income households?</p> <p>What is the definition of affordable housing?</p>	3
<p>4.7.4 City of Newport Beach (p. 4.7-7)</p> <p>“The City’s population is projected to be 96,892 (in 2030).”</p> <p>What is the basis/formula for the City’s projected population?</p> <p>If the CDR projections are updated, will the 2030 and 2035 population projections change?</p> <p>How will this affect the significance?</p>	4
<p>4.7.6 Thresholds of Significance (p. 4.7-14)</p> <p>“Threshold 4.7-1 Induce substantial population growth in an area, either directly (for example, by proposed new homes and businesses) or indirectly (for example, through extension of roads or infrastructure).”</p> <p>How can a development of 1,375 residential units, which is approximately one-third to one-half of all projected development in Newport Beach over the next 25 years not be significant?</p>	5
<p>“Threshold 4.7-2 Conflict with any applicable plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) be adopted for the purpose of avoiding or mitigating an environmental effect.”</p> <p>Does this include the California Coastal Commission?</p>	6
<p>Table 4.7-12</p> <p>How does the City define very low, low, or moderate income households?</p> <p>What is the definition of affordable housing units?</p> <p>Why are all affordable housing units proposed as rental units?</p> <p>Can the applicant still request a density bonus or other incentives?</p> <p>Will there be housing for seniors and persons with disabilities?</p>	7
<p>Table 4.7-13</p> <p>Will the created parcels be no smaller than the average size of the surrounding parcels?</p>	8

The following questions are also related to Section 4.7

Why does the DEIR try to disguise the fact that approximately one-half of all future development in Newport Beach will be on Banning Ranch? What is the most accurate percentage?	9
Why is the Banning Ranch development so much larger than other recent coastal developments in Orange County? The proposed Banning Ranch development is at least twice as large and on average, six times as big as anything built along the Orange County coast in recent memory. Other than Bolsa Chica, the last four developments along the Orange County coast have averaged approximately one acre per residential unit. Yet, Newport Banning Ranch in comparison is quite dense at an overall 3.4 residential units per acre.	10
Most of the single family housing units and multi-family housing units will be built on land where oil wells have been drilled and where oil pipelines have criss-crossed the terrain. Is this really safe for the residents?	11
What are the names of the city experts who independently reviewed this section?	12
Is this really an objective analysis?	13

We hereby object to approval of the project in its present form. The comments above and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors.

Sincerely,

Jennifer W. Frutig

**Letter O42 Jennifer Frutig**  
November 8, 2011

### **Response 1**

The opinions of the commenter are noted. The City apologizes for any potential inconvenience. However it should be noted that copies of the Draft EIR were delivered to all branches of the City's library system on September 9, 2011. In addition to copies of the Draft EIR at the library, the Draft EIR was available on the City of Newport Beach website, CDs of the Draft EIR were available for purchase, and Draft EIR was at the City of Newport Beach Community Development Department.

### **Response 2**

The projections have not yet been published.

### **Response 3**

The Housing Element identifies "very low," "low," or "moderate" income as annual household incomes not exceeding a percentage of the median family income identified annually by the Department of Housing and Urban Development (HUD) for the Orange County area. As presented in Section 4.7, Population, Housing, and Employment, the State of California Department of Housing and Community Development (HCD) categorizes households into the following five income groups based on County Area Median Incomes (AMI):

- Extremely Low Income – 0 to 30 percent of the AMI.
- Very Low Income – 31 to 50 percent of the AMI.
- Low Income – 51 to 80 percent of the AMI.
- Moderate Income – 81 to 120 percent of the AMI.
- Above Moderate Income – above 120 percent of the AMI.

Extremely low, very low, and low income groups combined are referred to as "lower income groups". Household income is adjusted for household size. The City's 2000 Census income distribution using the above income thresholds was as follows:

- Extremely Low Income – 7 percent.
- Very Low Income – 6 percent.
- Low Income – 9 percent.
- Moderate and Above Moderate Income – 78 percent.

The City identifies affordable housing as Moderate, Low, and Very Low Income.

### **Response 4**

Please refer to the response to Comment 2. Population estimates and projections are prepared by the State of California Department of Finance.

## **Response 5**

Please refer to Section 4.7 of the Draft EIR. In summary, the proposed Project's population, housing, and employment growth are within the overall OCP-2006 projections for Orange County and RSA F-39. The Project would provide up to 1,375 residential units including up to 206 affordable units, resulting in a population increase of 3,012 persons. While the Project would result in population growth in the area through the construction of new residences and employment opportunities, the Project would not exceed the growth currently projected for the Project site or exceed regional projections. Based on the City's significance criteria set forth in this EIR, the increase in population would be less than significant.

## **Response 6**

The Draft EIR addresses applicable plans, programs, and policies including applicable policies of the California Coastal Act.

## **Response 7**

Please refer to the response to Comment 3. The Applicant has not requested a density bonus. Whether housing for "seniors and persons with disabilities" would be provided has not been specifically proposed. The proposed Project would not preclude such housing be provided.

## **Response 8**

Residential single-family home lots are proposed with varying sizes depending on the housing type planned. Single family detached "Traditional Homes" are proposed on lots ranging in size from 3,900 to 4,150 square feet (sf); single-family detached "Coastal Homes" are proposed on lots ranging in size from 2,550 to 3,750 sf; and single-family detached "Beach Cottages" are proposed on lots ranging in size from 2,250 to 2,500 sf. Additional single-family detached homes are proposed on a condominium basis with lots ranging from 1,650 to 3,000 sf.

## **Response 9**

As stated in Section 4.7 of the Draft EIR:

The General Plan Housing Element identifies several areas where land use changes may be anticipated over the next 20 years, including new residential opportunities. With the exception of the Newport Banning Ranch site, new residential development is expected to occur as infill housing and replacement of previously permitted retail and office development capacity. The key opportunity areas identified in the Housing Element are Newport Banning Ranch, Corona del Mar, West Newport Mesa, Mariner's Mile, Balboa Peninsula, Dover Dr./Westcliff Dr., Newport Center, the Balboa Peninsula, and Airport Area. As identified on Table 4.7-1, these locations provide an opportunity for approximately 4,612 new dwelling units (du), inclusive of the Project site. The General Plan identifies up to 1,375 du for the Newport Banning Ranch site if the property is developed consistent with the Residential Village General Plan land use designation.

## **Response 10**

The proposed development is consistent with the City of Newport Beach General Plan land use Residential Village land use designation. The General Plan allows for up to 1,375 residential dwelling units; 75,000 square feet of commercial development, and a 75-room resort inn.

Approximately 51.4 gross acres are proposed for public parks and approximately 252.3 gross acres are proposed for natural open space, both of which exceed the City's General Plan policies.

The lack of project names in this comment (for the developments which are referenced generally as being within coastal Orange County) makes it difficult to respond to. Without knowing the projects, it is simply not possible to specifically respond to the commenter's questions and statements such as the proposed Project being "twice as large" or "six times as big".

It is not possible to address the comment that the Project is "quite dense at 3.4 units per acre" and that the "last four developments along the Orange County coast have averaged 1.0 units per acre" without knowing which projects are referenced. For example, it may be that the projects are primarily mixed use (e.g., Pacific City in the City of Huntington Beach, Marblehead in the City of San Clement), or primarily resort developments (e.g., Montage in the City of Laguna Beach), and/or simply that the projects are large single-family homes on large lots. Residential density is not the only measure of a project's size or intensity. Other factors include the percentage of the land devoted to public open space, parks, or other non-residential public or private purposes; public benefits including how that land is set aside for public purposes (e.g., dedication, acquisition, easements, etc.); and what building setbacks, massing, and heights are proposed.

With respect to the proposed Newport Banning Ranch Project, the Project's average density reflects (1) a range of proposed housing types, from low-density single-family detached homes in the North and South Family Villages to higher density housing and potentially affordable housing within the Urban Colony; and (2) non-residential uses including a 75-room resort inn and 75,000 square feet of commercial uses. The Project proposes 730 of the 1,375 proposed residences in the Urban Colony, which adjoins existing off-site mixed use development. Approximately 252 acres would be in open space.

## **Response 11**

As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR and the Newport Banning Ranch Planned Community Development Plan (NBR-PC) Chapter 3.0 Land Use and Development Standards, all habitable structures are required to have a minimum setback of 10 feet from abandoned oil wells and 100 feet from active wells. With implementation of the proposed Project, the only active wells on the Project site would be located within the two oil consolidation sites.

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. All remediation activities, such as excavating pipelines, are required to be conducted pursuant to State and local requirements. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, any contaminated soil in areas proposed for development would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these soils are safe for human exposure in the future. As noted on page 3-24 of the Draft EIR, contaminated material that cannot be effectively remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. Appendix D of the Draft EIR includes the draft Remedial Action Plan that identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by the Regional Water Quality Control Board (RWQCB) and/or the Orange County Health Care Agency (OCHCA) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site



disturbance unrelated to oil remediation activities. Preparation of and compliance with the final RAP would ensure further agency review of any identified contaminants and plans for clean-up.

**Response 12**

Please refer to Section 8.0, Preparers and Contributors, of the Draft EIR.

**Response 13**

The opinion of the commenter is noted.

Comment Letter O43

Alford, Patrick

**From:** Sara O [sofunky2@yahoo.com]  
**Sent:** Sunday, November 06, 2011 12:21 PM  
**To:** Alford, Patrick  
**Subject:** re: Banning Ranch DEIR questions...4.8 Recreation and Trails  
**Attachments:** Banning Ranch DEIR questions from Don Funk.pages

Comments and Questions for Newport Banning Ranch DRAFT DEIR  
Submitted November 4, 2011, by:  
Don Funk  
18 Tribute Court  
Newport Beach, CA 92663

To Whom it may concern,

I have some questions regarding the Newport Banning Ranch DRAFT DEIR, section 4.8, "Recreation and Trails."

In Table 4.8-4, "General Plan Consistency Analysis", the City of Newport Land Use Element Goal LU 2 is spelled out, to wit:

"A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life."

And here is the Consistency Analysis for that Goal:

"The Project is consistent with this goal. The proposed Project would allow for the development of a mix of residential, retail, visitor-serving resort inn, active and passive recreational and open space uses on the Project site. Included in the Project are approximately 51.4 gross (42.1 net) acres of public parks as well as a local off-street multi-use trail system and on-street bike trails that would connect to the existing off-site regional trail system. The Project would include an approximate 26.8-gross-acre (21.7-net-acre) Community Park, a 20.9-gross-acre (17.5-net-acre) Bluff Park, and approximately 3.7 gross (2.9 net) acres of interpretive parks. Additionally, a pedestrian and bicycle bridge spanning West Coast Highway would provide north-south access to the site and the Pacific Ocean without having to cross West Coast Highway at street grade. Please also refer to Section 4.1, Land Use and Related Planning Programs."

Here's my questions, and I look forward to your answer:

Specifically, how does a "mix of residential, retail, visitor-serving resort inn, active and passive recreational and open space" complement our lifestyles and enhance our neighborhoods as much as an open space like the Back Bay or Crystal Cove would?  
And, how does addressing the diversity of uses in the project alone address diversity of uses in the whole West Side community?

In my opinion, the West Side of Newport has no access to large open space like the Back Bay or Crystal Cove, and once Banning Ranch is developed we will have more of the same (resorts, residences, parks) rather than the open space that is sorely needed to provide a "diversity of uses that support the needs of residents."

My main point is that the Consistency Analysis for the project is a subjective answer designed to serve the needs of the developer. As commendable as their efforts have been to provide diversity within the project itself, I could provide a Consistency Analysis that came up an entirely different answer (True Open Space and hiking trails) that would satisfy the Land Use Element Goal in question from the perspective of our community as a whole.

Thank you for your consideration of my questions, and again, I look forward to your answers.

Sincerely,

Don Funk  
18 Tribute Court  
Newport Beach, CA 92663

**Letter O43     Don Funk**  
November 6, 2011

**Response 1**

The opinions of the commenter are noted. Please also refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which addresses several alternatives to the Applicant's proposed Project. These alternatives include Alternative A: No Project and Alternative B: General Plan Open Space Designation. Alternative A assumes no development of the Project site; it would remain as an active oilfield. Alternative B assumes the site is developed under the City's General Plan Primary Use of open space.

Comment Letter O44

**Alford, Patrick**

**From:** Gary Garber [garbergary@yahoo.com]  
**Sent:** Saturday, November 05, 2011 2:09 PM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR Comments - Request for Wxtension of Time

Patrick Alford, Planning Manager  
City of Newport Beach, Community Development Dept.  
3300 Newport Blvd.  
P.O Box 1768  
Newport Beach, CA 92658-8915

Dear Mr. Alford,

I am a homeowner in Newport Crest and have lived in my current residence at 8 Landfall Court for 14 years. I am requesting the City extend the deadline for comments on the DEIR for Banning Ranch.

My reasons are as follows:

The publication of the DEIR for Banning Ranch and comment period has overlapped the Sunset Ridge Park application from the City to the California Coastal Commission.

The NBR DEIR is over 7,000 pages long, very complicated and difficult to navigate through.

Both developments are have been and are still extremely important to me and the future of Newport Crest since both will have a major impact on my quality of life. I live on the perimeter of Sunset Ridge Park.

Many homeowners have been very involved in the Coastal Commission Sunset Ridge Park application and therefore, have spent less time on the DEIR for Banning Ranch.

The public comment period is an essential and vital part of the process. It provides information to all parties involved and contributes to mitigating issues.

The land in question has been vacant for very long time, another six months won't hurt matters. Therefore, in my opinion, the process needs to be extended to allow for more quality input from as many individuals effected as possible.

Thank you for considering my request.

Gary A. Garber  
8 Landfall Court  
Newport Beach, CA

**Letter O44    Gary Garber**  
November 5, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

**Alford, Patrick**

**Comment Letter O45**

**From:** Kandice Thayer [kandicemthayer@yahoo.com]  
**Sent:** Sunday, November 06, 2011 11:30 AM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR Comments -Request for Extension of Time

Dear Mr. Alford,

I understand at the City of Newport Beach Planning Commission study session on November 3<sup>rd</sup> Mr. Jim Mosher requested the DEIR be rewritten so that the public can understand it, and in a much shorter version, i.e. no more than 300 pages total and that the deadline for comments to be received by the City be extended.

I also understand at close of the meeting, Planning Commissioner Hillgren agreed with Mr. Mosher and suggested to Mr. Mike Mohler, NBR developer, that Mr. Mosher's request be complied with.

I totally agree with Mr. Mosher and Commissioner Hillgren and, if an extension is granted but the document is not rewritten, I would ask for an extension of at least six months. It has taken years for this document to be compiled and yet we, the uneducated public, are expected to read this complicated, confusing rhetoric in sixty days whilst we work and care for our families, etc. Studying the DEIR is a full time job and the majority of people cannot participate in this heavy burden, even though they want to, because it is way too time consuming and they simply do not have the time.

The land in question has been vacant for a very long time; another six months or more won't hurt matters. Therefore, as a long term resident of Newport Crest, the process needs to be extended to allow for more quality input from as many individuals as possible.

Thank you for your patience and willingness to help.

Kondace M. Garber  
8 Landfall Court  
Newport Beach, CA



**Letter O45    Kondace Garber**  
November 8, 2011

**Response 1**

The opinion of the commenter is noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.