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**Comment Letter O46**

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Via hand delivery and e-mail to: [palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

Subject: Newport Banning Ranch DEIR (State Clearinghouse No. 2009031061)

Dear Mr. Alford:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project (State Clearinghouse No. 2009031061) located partially within the City of Newport Beach and partially in an unincorporated area of Orange County within the City of Newport Beach Sphere of Influence. These comments are submitted on behalf of the Banning Ranch Conservancy, Stop Polluting Our Newport, and myself.

The project's location immediately to the east of the Army Corps of Engineers' saltwater marsh restoration project and immediately to the south of Talbert Nature Reserve renders impacts to the site more serious than if occurring at many other locations elsewhere in Orange County. Banning Ranch provides just a portion of an approximately one thousand-acre system of habitats along the Santa Ana River including the ACE marsh project, Talbert, Fairview Park, and wetlands in Huntington Beach adjacent to the river. Habitats range from saltwater wetlands at the mouth of the Santa Ana river; to freshwater wetlands to upland habitats. Elimination of habitat on the project site would create a break in the chain of habitats from ocean to upland.

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The project would permit the construction of up to 1,375 dwelling units, a resort hotel with related commercial facilities, an additional 75,000 square feet of commercial development, public parks, and other open space. Circulation improvement include the construction of Bluff Road between West Coast Highway and 19<sup>th</sup> Street, the extension of 15<sup>th</sup> Street, 16<sup>th</sup> Street, and 17<sup>th</sup> Street into the project site, and construction of local roadways internal to the site. A system of pedestrian and bicycle trails will also be constructed.

Oil production facilities are planned to be consolidated in two areas of the site near Semeniuk Slough and Newport Shores. Pollution at existing oil production sites will be cleaned up in accordance with State and Federal law.

The project will involve the following discretionary approvals from the City of Newport Beach:

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- General Plan Circulation Element Amendment
- General Plan Figure I2, Sphere of Influence
- Zoning Code Amendment
- Pre-Annexation Zone Change
- Newport Banning Ranch Planned Community Zoning
- Newport Banning Ranch Master Development Plan
- Tentative Tract Map
- Affordable Housing Implementation Plan (AHIP)
- Pre-Annexation and Development Agreement
- Traffic Phasing Ordinance Approval

The DEIR is thus somewhat of a hybrid between a project specific EIR addressing a tract map which includes establishment of individual residential lots in some areas and a Master or Program EIR addressing a general plan or master plan, with additional environmental documents potentially prepared for specific development in the future.

Approvals needed from other agencies as part of the project include:

- U.S. Fish and Wildlife Service - Section 7 Consultation and Biological Opinion.
- U.S. Army Corps of Engineers- Section 404 permit for impacts to "Waters of the U.S.".
- California Department of Fish and Game - Section 1600 Streambed Alteration Agreement.
- Santa Ana Regional Water Quality Control Board – Section 401 Water Quality Certification; Waste Discharge Requirements for the fill or alteration of "Waters of the State"; approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation.
- California Coastal Commission – Coastal Development Permit.
- State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR)- abandonment of oil and gas wells.
- California Department of Transportation - Encroachment Permit for widening and improvements to West Coast Highway, modifying the existing culvert in West Coast Highway, and constructing a pedestrian/bicycle bridge over West Coast Highway.
- Orange County Health Care Agency - Approval of the final RAP for the oil well/facility abandonment and site remediation.
- Local Agency Formation Commission - Annexation of the project site into the City of Newport Beach and change in water service district boundaries.
- Orange County Transportation Authority - Amendment to the Orange County Master Plan of Arterial Highways to redesignate proposed North Bluff Road between 17<sup>th</sup> Street and 19<sup>th</sup> Street from a Major (six-lane divided) to a Primary (four-lane divided) and deleting the connection from 17<sup>th</sup> Street westerly to West Coast Highway from the MPAH.
- Newport-Mesa Unified School District - Encroachment permit for the construction of the extension of 16<sup>th</sup> Street and North Bluff Road on the School District's property.

The EIR is intended to provide environmental information to the above responsible agencies, trustee agencies, and other public agencies which may be required to grant approvals and permits (DEIR p. 3-51)

**Project Description**

<p>A vague or incomplete project description will render all further analyses and determinations ineffectual. As stated in <i>McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District</i> (202 Cal.App.3d 1136, 1143; 249 Cal.Rptr. 439), "An accurate project description is necessary for an intelligent evaluation of potential environmental effects of a proposed activity".</p> <p>In setting aside the approval of an EIR by the City of Los Angeles for water development facilities in Inyo County, the court stated: "An accurate, stable and finite project description is the sine qua non of an information and legally sufficient EIR" (<i>County of Inyo v. City of Los Angeles</i> (71 Cal.App.3d 193) [139 Cal.Rptr. 401]). A stable, complete, and accurate project description is the most basic and important factor in preparing a lawful EIR. It is the denominator of the document and, thus, of the public's and decision-maker's review.</p> <p>The DEIR explains generally what is planned for the site, but certain important information is lacking or ambiguous. This is particularly problematic regarding oil production consolidation, landform alteration, and commercial uses at the boutique hotel.</p> <p>While the DEIR repeatedly indicates that oil field operations will be consolidated in specific locations, little information is provided as to what that will entail. Will new oil wells be drilled at the consolidation locations? What activities and equipment would be involved? Will new buildings be constructed? As shown on Exhibit 4.5-1, maintenance shops, storage, offices, changing rooms, an air compressor plant and other functions currently occur outside the proposed consolidation areas. Will all of those functions be provided on-site in the consolidation areas? Where specifically?</p>	2
<p>The details of the consolidation process could have significant implications for impacts on homes in Newport Shores. The DEIR must provide complete information as what consolidation entails and fully examine the associated impacts, including, but not limited to noise, vibration, air emissions, visual impacts and traffic. Particular consideration must be given to impacts on Newport Shores and Semeniuk Slough both as to impacts of consolidation and ongoing impacts due to activities at the consolidation sites.</p>	3
<p>Various documents for the project provide conflicting information as to when consolidation of oil production activities might occur. On the one hand, the Master Development Plan (Section 3.4.5; p. 3-18) states:</p> <p>Upon receiving all public agency approvals required to implement the Project, the Developer shall initiate the abandonment and remediation of existing surface oil operations within the Open Space Preserve areas described above in Sections a-d</p>	4

<p>and consolidate the existing surface oil operations into the two Consolidated Oils Sites described below.</p> <p>Thus, one would conclude that oil operations would quickly be consolidated.</p> <p>Strangely, though, the Newport Banning Ranch Planned Community Development Plan specifies in various locations (Table 3-3, p. 3-28; Table 3-4, p. 3-31) that structures in various development areas would be set back from active oil well heads at least 100 feet. If all oil production facilities were consolidated at the two locations shown, this policy would appear to be unnecessary.</p> <p>The Newport Banning Ranch Planned Community Development Plan (Section 3.2.1, p. 3-1) also states:</p> <p style="padding-left: 40px;">All surface oil production facilities located in areas outside of the OF District in existence after the effective date of the NBR-PC shall be legal non-conforming structures and subject to NBMC Chapter 20.38, "Nonconforming Uses and Structures," and subject solely to the provisions of NBMC Sections 20.38.010 through 20.38.050 of Chapter 20.38.</p> <p>Under the provisions of Chapter 20.38, existing oil production facilities could continue to operate indefinitely, unless the Planning Commission adopted specific findings pursuant to Section 20.38.100 D which would then allow up to ten years for removal. Thus, cleanup and restoration of open space areas could be postponed indefinitely.</p> <p>The DEIR does not clarify this apparent inconsistency which must be resolved. Conditions of approval must identify a reasonable time certain within which oil operations will be consolidated and associated cleanup will be completed. This must be related to issuance of occupancy permits for development on the site.</p>	<p>4 cont.</p>
<p>The Project Description indicates that 2.5 million cubic yards of materials will be excavated on the subject property (p. 3-34), but no grading plan is included in the DEIR. The DEIR generally shows areas subject to cut and areas subject to fill (Figure 3-17), but fails to illustrate how the landform will be changed.</p> <p>It is only when Figure 3-17 is magnified several times that some sense of what appear to be ultimate ground contours is provided. Unfortunately, the resolution of the map is such that details are lacking and one has no way of knowing how much site topography will be altered at a given location. Further, the contours shown are not consistent with those in Figure 4.3-6, Bluff Restoration Plan, which shows only a portion of the site. The Bluff and Slope Restoration Plan in the Master Development Plan (Exhibit 7-3) likewise fails to show the entire site and fails to include significant areas shown to be subject to cut and fill in DEIR Exhibit 3-17. The Master Grading Plan (Exhibit 7-1, Master Development Plan) shows finished contours, but not existing landforms.</p>	<p>5</p>

Based on comparisons of various maps and exhibits, it appears that the upper portion of the Southern Arroyo will be subject to fill, an arroyo branching off from the Southern Arroyo in a northerly direction, the "Central Arroyo", will be filled, and an east west trending arroyo/canyon northerly of Newport Shores will be filled. This must be addressed in the DEIR. Cross sections must be provided showing both the most extreme cases as well as representative cases.	5 cont.
<p>The DEIR repeatedly indicates (Table 3-1, p. 3-12; Table 3-2, p. 3-27) that commercial development will be limited to 75,000 square feet, and further indicates that any commercial development in any of the residential areas would be included in the 75,000 square feet. Indeed Objective 5 (p. 3-8) has as an objective "Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and <b>visitors utilizing the resort inn</b> [emphasis added] and the coastal recreational opportunities provided as part of the Project."</p> <p>In actuality, the Resort Colony would include a 75-room hotel and additional ancillary commercial uses (p. 3-16) not included in the 75,000 square feet. As described in the Planned Community Development Plan (Section 3.14-2, p. 3-34):</p> <p style="padding-left: 40px;">Commercial uses constructed as part of a resort inn facility as allowed within the VSR/R Land Use District which may include restaurants, bars, full-service spas, fitness centers, specialty shops, banquet and meeting facilities, and similar uses which are customarily developed as part of or in conjunction with a resort inn use shall not be counted as part of the maximum permitted 75,000 square feet of commercial development</p> <p>It would be unlikely that the guests of the seventy-five hotel rooms or even guests of the hotel combined with residents of the eighty-seven resort residential units, would be adequate to support the range of activities described, i.e. restaurants, bars, full-service spas, fitness centers, and specialty shops. Indeed, the project objectives include allowing ancillary facilities to be open to the public, though this is not clear from the project description, and the DEIR's calculation of traffic generation for the proposed project (Table 4.9-7, p. 4.9-24) includes no trips generated due to use of resort commercial facilities by off-site users.</p>	6
<p>The Planned Community (Table 3.5, p. 3-36) allows a floor area ratio of up to 1.5 in the Visitor Serving Resort area and basic height limit of fifty feet. This would allow over 360,000 square feet of structures in the 5.7-acre resort area. Assuming a generous 2,000 square feet per guest room, that would still leave approximately 200,000 square feet of additional commercial development allowed.</p> <p>Ancillary commercial development must be further defined and strictly limited to minor uses needed to serve the resort itself. As currently provided, massive amounts of additional commercial development could be provided on-site absent a comprehensive examination of the impacts of such development within the context of the entire Banning Ranch development.</p> <p>It is noted that the Planned Community text indicates that the same uses would be included in the 75,000 square feet limit if constructed independently of a resort inn, whether or not those uses were located in the Resort Colony area. The impact of these 75,000 square feet has been address</p>	7

in some detail in the DEIR. The impact of potentially hundreds of thousands of square feet of commercial development must be similarly examined.	7 cont.
In addition, the following questions and comments must be addressed:	
1. p. 3-1. What is the maximum square footage of visitor serving commercial uses that will be permitted at the resort inn?	8
2. p. 3-1. Will any of the commercial uses at the resort inn be restricted to those staying/residing at the resort, or will they all be available to the general public? 3. p. 3-1. Would guests in only seventy-five rooms or seventy-five rooms combined with eighty- seven resort residential units be adequate to support the proposed commercial uses? 4. p. 3-1. Will visitor serving commercial uses include one or more restaurants? Will these all be available to the general public? Will these all be marketed to the general public? 5. p. 3-1. Will the resort include a health club/spa? Will this be available to the general public? Will this be marketed to the general public? 6. p. 3-1. What constitutes "limited" meeting facilities? What is the maximum square footage anticipated? 7. p. 3-1. Will use of meeting rooms be limited to those staying/residing at the resort inn, or will the meeting rooms be available for events sponsored by and/or attended by others? 8. p. 3-1. Will the meeting rooms be marketed to the general public or to events coordinators staging events for the general public?	9
9. p. 3-2. Would all oil production activities be consolidated, or only those currently occurring in areas slated for development? 10. p. 3-2. Would consolidation of all facilities be required as a condition of approval?	10
11. p. 3-4. It should be noted that Talbert Nature Reserve is a part of the Nature Reserve of Orange County, established as part of the Orange County Central/Coastal NCCP process. Although a parking lot, tot lot, and grass area have been established at Canyon Park, the bulk of the park is in a semi-natural state, and primarily utilized for passive activities such as hiking, picnicking, bird-watching, etc. Thus, the Banning Ranch property is part of a larger system of contiguous relatively natural open space.	11
12. p. 3-5. What is the agreed upon time period for public site acquisition? 13. p. 3-6. What are the terms agreed upon for public acquisition? 14. p. 3-5. When were the agreed upon time period and terms adopted? 15. p. 3-5. Where would one find a copy of the agreement? 16. p. 3-5, 6. If the time allowed for acquisition and terms have not been publicly agreed upon and identified, how may the property owner then pursue entitlement ... "during the time allowed for acquisition as open space"?	12
17. p. 3-8, 9. Project objectives will be used as the basis for evaluation of project alternatives. Thus objectives must not be so narrow as to exclude otherwise reasonable alternatives. Specific numerical objectives regarding future use, i.e. 75 overnight hotel accommodations, 75,000 square feet of commercial development are so specific they tend to work against an even handed evaluation of alternatives. The project objective	13

would more appropriately state a goal of providing for commercial uses needed to serve residents and visitors of the proposed development.	13 cont.
18. p. 3-9. Objective 9 must be revised to include compatibility with existing off-site development such as the homes in Newport Shores.	
19. p. 3-10. The project site is currently strewn with debris including what appear to be inert materials like piles of cement as well as oil production waste. Will all debris be removed, or only that requiring remediation under the law?	14
20. p. 3-10. After oil production ceases at the consolidated site currently utilized by the City of Newport Beach, how will responsibility for cleanup be assigned? Will the city be fully responsible? Partly responsible?	15
21. p. 3-10. Gas has long been burned off in flares in the West Newport area. How is it that methane gas is not an issue here?	16
22. pp. 3-11 to 14. Will public restrooms be provided in both the lowland and upland open space? Will statues be permitted?	17
23. p. 3-15. Has the owner of the 15 <sup>th</sup> Street office building agreed to the proposed re-allocation of parking?	18
24. p. 3-15. Who would be responsible for maintenance of the shared parking area? How would conflicts be resolved?	
25. pp. 3-18 to 20. Will all roadways be public? Development at the allowable residential densities in the proposed alley areas is usually accessed of a street, not an alley. Aren't the proposed private alleys just substandard, private streets?	19
26. p. 3-19. Why are pedestrian walkways planned for the inland side of Resort Colony roads and the Scenic Drive rather than the outer, scenic side? This appears to conflict with the goal of providing public access to coastal resources, i.e. views. Will alternate trails or walkways be provided separately on the outer, more scenic side of the roadway?	20
27. p. 3-20. How much NMUSD land would be needed for the proposed street improvements?	21
28. p. 3-21. Would a fee be charged for parking at the resort inn and associated commercial development?	22
29. p. 3-24. The Coastal Act makes no provision for a "Master Coastal Development Permit". Local agencies may only approve Coastal Development Permits upon certification of a Local Coastal Program. Is the City asserting that it may assume responsibilities for CDPs without a certified LCP for the subject property? Or is the City asserting that the proposed development would somehow be covered under Coastal Act Section 30610?	23
30. p. 3-24. If the city somehow managed to assume the authority sought under the "Master Coastal Development Permit" how could the action be appealed to the Coastal Commission, which normally considers appeals based on conformance with the certified LCP?	
31. pp. 3-24 to 26, Exhibit 3-15. A graphic of the actual anticipated uses, including densities/intensities must be provided. The supposed "plan" merely provides a key to the "village" areas described on Table 3-2. Thus, one cannot easily determine what density and use will be allowed where from the "plan". An easily read graphic mapping proposed uses must be provided.	24

32. p. 3-27. Fairview Park is not called "Fairview Regional Park" but is a City of Costa Mesa facility and is considered a community park.	25
33. p. 3-30. How will it be ensured that future private development, including individual homes, makes use of permeable surfaces and other water quality measures?	26
34. p. 3-30. Existing wetlands must not be utilized for treatment of polluted runoff.	27
35. p. 3-35. Where will cuts reach as much as 25 feet in height? All such areas must be clearly identified.	28
36. p. 3-35. Where will fill reach as much as 60 feet in height? All areas subject to 20 feet of fill or more must be clearly identified.	
37. p. 3-35, 36. Haul routes for earth materials and other building materials must be identified and impacts along the routes must be addressed and mitigated.	29
38. p. 3-36. Will on-site soils be treated in place or relocated elsewhere on-site for treatment?	30
39. p. 3-36. If soils are not fully remediated at the time construction of the North Village is contemplated, where will the treated soils be placed?	
40. p. 3-36. Will consolidation of oil production facilities involve drilling new wells?	
41. p. 3-37. Development Agreement obligations must be briefly summarized.	31
42. p. 3-44. Why would air conditioning units be needed this close to the coast?	32
43. p. 3-47, 48. As noted above the Coastal Act makes no provision for a Master Coastal Development Permit.	33
44. p. 3-48. Where would units to be provided with in lieu fees be provided?	34
<b><u>Land Use and Related Planning Programs</u></b>	
This section must examine the potential to divide an established community due to increased cut-through traffic. Areas of particular concern are the residential areas along 19 <sup>th</sup> Street and along 16 <sup>th</sup> Street.	35
The DEIR provides numerous cross sections of the interface between development on the project site and the surrounding community (Exhibits 4.1-2 a through j) However, the exhibits fail to inform one as to the impact that would occur. For example, the sections showing Newport Crest and Bluff Road (Exhibit 4.1-2 g) do not include the fifteen foot tall noise barrier recommended to mitigate noise from Bluff Road. The project's interface with California Seabreeze shows only the open space interface, not the interface with the Urban Colony to the south.	36
Neither of the interfaces with the Urban Colony (Exhibit 4.1-2 c and d) show the maximum height permitted under the Planned Community and Master Plan under consideration. Section 4.1-2 d shows only a two story building in an area where structures up to a basic height of 60 feet would be permitted with additional elements up to 72 feet. Section 4.1-2 c shows only a car on the adjoining lot, not the existing structure which would form a better basis for comparison. In addition, Section 4.1-2 c shows a structure that appears to be five stories in height, but based on the scale provided in the lower right hand corner would be only about 45 feet at the plate line, less than 55 feet at the roof peak and less than 60 feet at the top of the ornamental cupola. At the same time, based on the same scale, the person shown next to the	37

<p>building would be well over six feet tall. Sections must show the maximum height, including additional elements providing up to twelve additional feet in height and all elements, including people and vehicles, must be based on the same scale.</p> <p>Impacts must be gauged based on existing conditions. Thus, sections must show the existing and projected context of the interface, including existing ground elevations. Finally, it would have been helpful if the interface labels had corresponded with the exhibit labels in alphabetical order instead of scrambled, with Interface K shown in 2b, Interface G in 2 e, Interface B in 2j, and so forth.</p>	37 cont.
<p>In addition, the following questions and comments must be addressed:</p> <p>1. p. 4.1-6. In addition to the policies cited, the certified CLUP includes the following:</p> <p style="padding-left: 40px;">2.2.4-3. The Coastal Commission shall retain permit jurisdiction in all deferred certification areas.</p> <p>The proposal for the City to assume authority over all discretionary permits following approval of what is being called the "Master Coastal Development Permit" appears to be at odds with this policy.</p>	38
<p>2. p. 4.1-6. The Coastal Act also protects other coastal resources such as coastal views and landforms. In that regard, the following language in the certified CLUP must be addressed:</p> <p style="padding-left: 40px;">p. 2-25. Banning Ranch consists of 505 acres located north of the Semeniuk Slough and Coast Highway West and east of the Santa Ana River. Nearly all of Banning Ranch (454 acres) is located within the City's sphere of influence in unincorporated Orange County. Oil and gas operations are conducted throughout the County portion of the property ... The property contains a number of sensitive habitat types, including southern coastal bluff scrub, alkali meadow, southern coastal salt marsh, southern black willow forest, coastal brackish marsh, and vernal pools. The property also contains steep coastal bluffs along the southern and western edges of the mesa.</p> <p style="padding-left: 40px;">pp. 4-76,77 The bluffs, cliffs, hillsides, canyons, and other significant natural landforms are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance... Coastal bluffs are a prominent landform in Newport Beach. ...There are also coastal bluffs facing the wetlands of Upper Newport Bay, Semeniuk Slough, and the degraded wetlands of the Banning Ranch property. Finally, there are coastal bluffs surrounding Lower Newport Bay. These can be seen along Coast Highway from the Semeniuk Slough to Dover Drive and in Corona del Mar above the Harbor Entrance....</p>	39

3. p. 4.1-9. What is the agreed upon time period for public site acquisition? What are the terms agreed upon for public acquisition? When were the agreed upon time period and terms adopted? If the time allowed for acquisition and terms have not been publicly agreed upon and identified, how may the property owner then pursue entitlement ... "during the time allowed for acquisition as open space"? Wouldn't that be inconsistent with the provisions of the adopted General Plan?	40
4. p. 4.1-14. As noted above, cut-through traffic generated by the proposed project has the potential to divide an established community.	41
5. p. 4.1-20. Which of the "established, traditional neighborhoods of Newport Beach" is the Urban Colony intended to reflect?	42
6. p. 4.1-22 to 26. From where would height be measured? Existing grade? Approved finished grade? This must be defined.	43
7. p. 4.1-22. What sort of Community Park structure would reach a building height of 36 feet?	44
8. p. 4.1-23. What sort of Bluff Park structure would reach a building height of 18 feet?	
9. p. 4.1-23. What sort of Interpretive Park structure would reach a building height of 36 feet?	
10. p. 4.1-22-26. The DEIR repeatedly states a maximum height for each use, with a tiny superscript reference to a small footnote on a different page. The EIR must make it clear that while the basic height limit for an area is the number stated, e.g. 60 feet in the Urban Colony, the actual maximum is twelve feet taller, e.g. 72 feet in the Urban Colony.	
11. p. 4.1-27. What type of lighting is currently utilized for oil production operations?	45
12. p. 4.1-29. California Seabreeze is located almost due north of the proposed Urban Colony, not just to the west.	46
13. p. 4.1-33. How will lighting from individual residential units be controlled in the completed project? Were dwellings in the upper levels of the Urban Colony to have outdoor balconies, lighting from such balconies could result in significant impacts to the surrounding area. This must be examined in the EIR.	47
14. p. 4.1-39. When would the Lowlands Interpretive Trail be implemented? Could this be implemented prior to abandonment of all oil production operations at Banning Ranch, including the consolidated operation with connecting road?	48
15. p. 4.1-45. If light is to be directed downward, won't that just direct lighting into the lowlands, potentially affecting wildlife in those areas?	49
16. p. 4.1-47. Consistency with the Coastal Act requires preservation of coastal resources, including habitat, landforms, and views. As determined by the Fourth District Appellate Court in <i>Bolsa Chica Land Trust v. Superior Court</i> (1999) 71 Cal. App. 4 <sup>th</sup> 493, resources must be preserved at their current location. As noted by the courts, the Coastal Act does not allow "a process by which the habitat values of an ESHA can be isolated and then recreated in another location ... the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development". Thus, habitat must be preserved in situ. Preservation also requires the provision of adequate buffers.	50
17. Based on the November 2, 2011 Coastal Commission hearing for Sunset Ridge Park and access road, it does not appear that the Commission finds the proposed primary access for the site to be consistent with the Coastal Act. It is requested that the staff report for that	51

item (W 16a, <a href="http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf">http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf</a> ) be incorporated by reference into this EIR.	51 cont.
<p><b><u>Aesthetics and Visual Resources</u></b></p> <p>This section must examine shade and shadow generated by the proposed development based on maximum building envelope. This must include impacts on existing residential uses to the north and west, such as California Seabreeze, which is almost due north of the sixty to seventy-two foot tall Urban Colony.</p>	52
<p>This section must address landform alteration. The EIR must include a clear delineation of existing topography and cross sections of areas to be altered along with structures built on the altered landform. Coastal Act policies regarding landform alteration must be addressed and Newport Beach Local Coastal Program Land Use Plan policies regarding views and landform preservation must also be discussed, although Banning Ranch is an area of deferred certification. Alteration of views from Newport Crest and other residential areas due to landform alteration must be addressed.</p>	53
<p>In accordance with Section 15126.4(a)(1)(D) of the Guidelines for the implementation of the California Environmental Quality Act (CEQA), if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. Thus, this section must address aesthetic impacts of any sound walls or sound barriers, including impacts to Newport Crest.</p>	54
<p>In addition, the following questions and comments must be addressed:</p> <ol style="list-style-type: none"> <li>p. 4.2-11. Stating maximum building heights twelve feet lower than actual height and use of a footnote to indicate true maximum height of structures obscures the true height and minimizes potential impacts. All analyses must address the actual maximum.</li> <li>pp. 4.2-11 through 15. The DEIR must indicate not only the height of the proposed structures in each area, but how high the roof of the structures and additional features will be above existing grade. It is the structure and the fill taken together that will affect views of the site, not just the structures. Absent information regarding existing grade and changes in grade at specific locations, one cannot evaluate the impact of the project on existing environmental conditions.</li> </ol>	55
<ol style="list-style-type: none"> <li>p. 4.2-11. Page 4.1-23 indicates that structures in the Bluff Park district would reach a maximum of 18 feet, whereas p. 4.2-11 indicates that structures would be 36 feet and up to 48 feet for ten percent of the roof area. This must be reconciled.</li> <li>p. 4.2-11. Footnote 5, regarding building height in the VSR/R District pertains to fences, not building height. This illustrates the problems caused by failure to be fully candid regarding building height in the text itself.</li> </ol>	56
<ol style="list-style-type: none"> <li>p. 4.2-11. Will existing power poles on the site be removed? The power poles have been observed to provide perches for raptors on the site.</li> </ol>	57

6. p. 4.2-11. Will power poles in the Interim Oil Facilities district be removed after oil production ceases?	58
7. p. 4.2-16. Areas where sound walls will exceed six feet in height must be identified and mapped in order that the visual impact may be evaluated.	59
8. p. 4.2-17. Glass or other transparent materials must not be utilized for walls. Use of transparent walls at the Brightwater project adjacent to the Bolsa Chica Ecological Reserve has resulted in significant numbers of bird deaths. Decals placed on what has become known as the "Wall of Death" have not remained in place and the carnage continues. Potential impacts due to transparent walls must be addressed and fully mitigated.	60
9. 4.2-28, 29. How will lighting from upper floors of residential structures be controlled, including lighting from balconies?	61
<b><u>Geology and Soils</u></b>	
1. p. 4.3-7. Approximately how many acres of the site are in the not inactive fault zones and setback areas?	62
2. p. 4.3-9. Approximately how many acres of the site are subject to liquefaction and lateral spreading?	
3. p. 4.3-10. How many cubic yards of unengineered fill will be removed and/or recompact?	63
4. p. 4.3-10. How many cubic yards of colluvial soils would be excavated?	
5. p. 4.3-10. Inasmuch as colluvial soils are in ravines and washed, impacts of excavation on biological resources must be examined.	64
6. p. 4.3-12. If the bluff is currently retreating at about 2 feet per year with a variation of 0.6 to 4.2 feet (p.4.3-11), isn't a bluff setback of 60 feet as required by PDF 4.3-1 rather paltry? Bluff setbacks must be designed to anticipate erosion for at least seventy-five years.	65
7. p. 4.3-13. Would any off-site grading be needed for the project, as addressed by SC 4.3-2? If so, where?	66
8. p. 4.3-16. Shouldn't fault zones data be updated and setback limits refined in compliance with existing State standards <i>before</i> the project is approved???	67
9. p. 4.3-16. It appears that the proposed Bluff Road may cross the mapped not inactive faults. If so, the implications for emergency access must be addressed.	68
10. p. 4.3-17, 21. What is meant by "bluff restoration"? Is the goal to restore bluffs to some former state in the past? If so, the EIR must identify the specific past bluff configuration being sought. A more realistic goal would be bluff stabilization.	69
11. 4.3-18. Where, specifically, on the site will localized cuts reach 25 feet? Cross sections must be provided in the EIR.	70
12. p. 4.3-18. Where, specifically, on the site will fill reach 30 feet and even 60 feet? Cross section must be provided in the EIR.	
13. p. 4.3-20. Surface drainage and bluff slope erosion control plans must be developed now and included for analysis in the EIR, so that decision makers and the public generally may be informed as to what the plans entail, their anticipated effectiveness at erosion control and any potential impacts.	71
14. p. 4.3-21. There is no Exhibit 3.22 in the DEIR as represented here.	72

15. p. 4.3-21. What, briefly, does Appendix Chapter A33 require?	73
16. p. 4.3-22. What sort of “adaptive management practices” might be needed to mitigate bluff instability? Is some sort of armature contemplated? If additional measures would be required, wouldn’t it make more sense to maintain a larger bluff setback to begin with?	74
17. p. 4.3-22. Shouldn’t additional trenching to further refine fault mapping be completed before the project is approved? Isn’t exposure of people to earthquake hazards an issue to be examined and resolved under CEQA?	75
18. p. 4.3-23. Evidence in the record does not support the assertion that the project is consistent with the Coastal Act in light of the landform alteration contemplated.	76
<b><u>Hydrology and Water Quality</u></b>	
1. p. 4.4-12. While the USACE-restored salt marsh basin “can be viewed as available storage capacity for local runoff”, it shouldn’t be. The marsh was designed to provide saltwater habitat in return for habitat removed elsewhere. To treat the basin as just another flood control facility is not consistent with its primary, required purpose of habitat mitigation.	77
2. p. 4.4-12. How would flooding of lowlands affect interim oil production facilities? Would petroleum residues or other materials associated with oil production be carried elsewhere in the watershed?	78
3. p. 4.4-13. Oil production facilities would be concentrated near Semeniuk Slough. How would the slough be protected from spills or other release of toxic/hazardous materials?	79
4. p. 4.4-21. Thresholds of significance must include alteration of the hydrologic regimen of a wetland or riparian area in a manner that reduces water available for the wetland or riparian area thereby reducing the continued viability of the wetland or riparian area. The proposed drainage facilities must be examined in the light of potential impacts on biological resources in existing drainage ways.	80
5. p. 4.4-23. What is the capacity of the Caltrans RCB storm drain under West Coast Highway? Does the storm drain have the capacity to accommodate additional flows?	81
6. p. 4.4-23. It appears that the various storm drains would divert flows from existing arroyos for release in the lowlands. The EIR must address how the diversion would affect biological resources in existing drainage areas. This must be fully mitigated.	82
7. p. 4.4-26. Rather than identify beneficial uses not provided by the tidal prism of the Santa Ana River and Newport [sic] Slough, the EIR must discuss beneficial uses that are provided. These include wildlife habitat, marine habitat and rare, threatened, or endangered species.	
8. p. 4.4-26. Rain Event Action Plans must be prepared as a part of project review and included for examination in the EIR.	83
9. p. 4.4-30. The Risk Assessment, Stormwater Pollution Prevention Plan and treatment system design must be prepared as a part of project review and included for examination in the EIR.	
10. p. 4.4-33. Where on the site would materials be stockpiled? Stockpiles must be located out of drainage ways and away from residential uses.	84

11. p. 4.4-35. How would use of pesticides, herbicides, fertilizers and other chemicals be controlled in single family housing areas? Strict limits must be included in CC &Rs, and highlighted at time of sale.	85
12. p. 4.4-38. Who would be responsible for maintaining the transitional area LID features? How will maintenance be assured?	86
13. p. 4.4-38. What will be the retention time for landscape biocells? What has been the demonstrated efficiency of the proposed system for specific pollutants based on that retention time? Information must be provided for heavy metals, oil residues and other pollutants.	87
14. p. 4.4-40. How will minimization of use of impervious surfaces be assured after homes are sold?	88
15. p. 4.4-41. What will happen if a property owners' association is NOT formed?	89
16. p. 4.4-41. The Water Quality Management Plan must be prepared as a part of project review and included for examination in the EIR.	90
17. p. 4.4-41. In accordance with CEQA Guidelines Section 15097, when mitigation measures are adopted in order to reduce impacts, a Mitigation Monitoring Program (MMP) must be prepared which identifies responsibility for implementing each mitigation measure. Thus, responsibility for implementing nonstructural BMPs and maintenance of structural BMPs must be identified in the MMP.	91
18. p. 4.4-42. The Spill Contingency Plan must be prepared as a part of project review and included for examination in the EIR.	92
19. p. 4.4-47. Isn't the entire first flush storm event supposed to be retained or treated, not just "almost all"?	93
20. p. 4.4-47. What "nourishment" would be released into the lowlands? Would this potentially result in eutrophication of lowland wetlands? Is "nourishment benefit" just another way of describing fertilizer pollutants?	94
21. p. 4.4-49. Who will inspect the site twice a year to observe facility integrity? Who will absorb the cost?	95
22. p. 4.4-49. Who will inspect for health of vegetation, ponded water, and excess debris quarterly? Who will absorb the cost?	
23. p. 4.4-49. Who will be responsible for ensuring implementation of all the LID features listed?	
24. p. 4.4-53. Would vegetation in the upper arroyos receive less water? What would be the effect of the diversion?	96
25. p. 4.4-56. Would storm flows in the storm drain in West Coast Highway be increased?	97
26. p. 4.4-62. Would oil production facilities be within the 100-year flood plain currently or taking into consideration sea level rise over the anticipated life of the facilities? If so, protective measures must be taken so that oil residues are not carried elsewhere in the watershed or to the ocean.	98
<b><u>Hazards and Hazardous Materials</u></b>	
This section must address impacts to Newport Shores due to consolidation of all oil production facilities in the Newport Shores area, operation of the consolidated facilities, and remediation. It	99

must also address hazards due to previously capped wells. In the past, wells improperly capped years before have resulted in oil seeping up into local living rooms.	99 cont.
In addition, the following questions and comments must be addressed:	100
1. p. 4.5-7. Will flaring of excess gases continue to be necessary?	
2. p. 4.5-10 to 12. What is the schedule for cleanup for each of the sites listed in Table 4.5-3? It appears that some of the sites requiring the largest amount of cleanup will be included in the consolidated oil production area. Will polluted soils remain for the next several decades then?	101
3. p. 4.5-13. Will old sewer pipes, and old trucks, drill rigs and equipment located across the project site which are considered de minimis conditions be removed from the site? If so, when?	
4. p. 4.5-19. When will relocation of oil production and remediation occur on portions of the site that would not be developed? What assurances exist that those areas will be included in the consolidation and remediation program?	102
5. p. 4.5-20. What would occur if tested materials did not meet required criteria?	103
6. p. 4.5-21. To where are gases vented and with what impact?	104
7. p. 4.5-21. Are any habitable structures planned to be located within an area as close as 100 feet to an active oil well head? If so, where?	
8. p. 4.5-21. Will real estate disclosure documents identify the location of abandoned well heads so that the 10 foot separation can be maintained?	105
9. p. 4.5-24. Do the soil remediation methods result in emissions of materials into the air? If so, what materials are released and n what concentrations?	
10. p. 4.5-24, 25. What does thermal treatment entail? Is the heavy hydrocarbon burned off?	106
11. p. 4.5-25. How would "impacted soils" be identified during grading? Would a hazardous materials expert monitor grading activities?	
12. p. 4.5-26. What would be the haul route for materials removal? What sensitive uses are located along the route? The EIR must examine impacts on sensitive uses along the haul routes.	107
<b><u>Biological Resources</u></b>	
This section appears to contemplate removal of habitat at some locations and re-establishment of habitat elsewhere. Much of the habitat appears to fit criteria for Environmentally Sensitive Habitat Area (ESHA), for example coastal sage scrub supporting California gnatcatchers, or riparian areas which support special status wildlife species. All ESHA must be preserved in place. Consistent with the <i>Bolsa Chica</i> decision, ESHA cannot be relocated. Any plans to do so must be abandoned.	108
Based on the November 2, 2011 Coastal Commission hearing on Sunset Ridge Park and the related access road, it appears that the Coastal Commission has identified ESHA at Banning Ranch where the City had not. Habitat mapping must be revised to reflect and observations and the standards of the Coastal Commission.	109

The DEIR must address impacts on the site in light of the system of habitats provided along the Santa Ana River moving in from the ocean. This ranges from saltwater wetlands at the river mouth; to freshwater wetlands in the lowlands and drainage ways of the project site, Talbert Nature Reserve, and Fairview Park; to upland habitat at Fairview Park, Talbert Park, and the project site. Elimination of habitat on the project site would create a break in the staircase of habitats from ocean to upland.	110
This DEIR must examine potential impacts on habitat due to changes in site drainage. Any diversion of drainage away from riparian areas must be avoided to the extent feasible.	111
In addition, the following questions and comments must be addressed:	
1. p. 4.6-6. It appears that the delineation of wetlands and habitat was conducted near the end of a three year drought, when both water and related vegetation would be long gone. Was a comprehensive survey of the site conducted subsequently?	112
2. p. 4.6-6. When the surveys were repeated in 2008 due to drought conditions in 2007, were conditions any better?	
3. p. 4.6-14. What percent of normal precipitation occurred in the year preceding the 2009 survey?	
4. p. 4.6-21. Were any surveys performed to determine the presence of bats?	113
5. p. 4.6-28, 34. Western spadefoot has been observed in nearby Fairview Park and could potentially exist on the project site.	114
6. p. 4.6-30, 38. Western snowy plovers were present in substantial numbers in Talbert Nature Reserve just north of the subject property a few years ago.	115
7. p. 4.6-44. Habitat restoration areas must be monitored for five years after apparent success is achieved not just five years after the restoration is initially pursued.	
8. p. 4.6-44. Certain habitats are quite difficult to establish. What steps would be taken if a restoration project is not clearly successful at the end of five years?	116
9. p. 4.6-44. What would be the criteria for success that would be monitored?	
10. p. 4.6-44. If light is directed downward, won't that direct light into the lowlands?	117
11. p. 4.6-47. How many acres of the site will be in fuel management zones?	118
12. p. 4.6-53. Coastal Sage Scrub identified as providing gnatcatcher habitat must be preserved in situ.	119
13. p. 4.6-54, 55. Will drainage facilities direct less water to the riparian habitat than currently occurs? With what impact?	120
14. p. 4.6-65. Use of invasive species must be prohibited in all areas of the site. This must be included in CC&Rs with buyers provided a list of unacceptable species.	121
15. p. 4.6-66. 19 <sup>th</sup> Street stubs out at the edge of the project site, so is not a source of light in the area.	122
16. p. 4.6-66. Control of predation by domestic cats is extremely difficult unless cats are kept indoors at all times. Is there any instance where providing a brochure to residents has reduced this impact to an insignificant level? If so, where? Mitigation measures without demonstrated results cannot be counted upon to reduce impacts to an insignificant level.	123
17. p. 4.6-69. Where is it proposed that replacement riparian habitat be established?	124

18. p. 4.6-71. The existing fencing provides little impediment to the movement of wildlife. Some fly over; some jump over; some crawl under; and some wriggle through.	125
19. p. 4.6-73. Development must be phased with mitigation so that habitat removal for later phases is not permitted to proceed until habitat restoration for previous phases has been demonstrated to be successful.	126
20. p. 4.6-75. Annual monitoring reports must continue for five years after the apparent success of the restoration.	127
21. p. 4.6-75, 76. Both grading and brush removal must be prohibited in the nesting season in areas potentially utilized by high interest avifauna. In no case shall any flushing be permitted during the nesting season.	128
22. p. 4.6-82. Sites must be monitored for five years after success criteria have been met to ensure against loss of marginally successful restored habitat and loss due to conditions not anticipated in the restoration program.	129
23. p. 4.6-90. No invasive landscape species must be permitted anywhere on-site. This must be included in project CC&Rs.	130
24. p. 4.6-90. The wildlands interface brochure and disclosure materials must identify appropriate coyote controls, i.e. securely covering trash, keeping pet food indoors, keeping pets in and/or supervised. Potential homebuyers must be informed that coyotes will be expected in the area, are an important part of the natural food chain, and eradication would not be successful and only pursued against individual coyotes in cases of imminent danger.	131
25. p. 4.6-90. The contingency measures included in the Habitat Restoration Plan (p. 4-18) must be included as mitigation measures.	132
<p><b><u>Population, Housing and Employment</u></b></p> <p>This section must address jobs housing balance in light of anticipated housing costs and the anticipated employee profile of future project employees by income group, including extremely low, very low, low, median, and moderate income.</p> <p>In accordance with Newport Beach Municipals Code Section 19.54.080A an Affordable Housing Implementation Plan must include the following:</p> <ol style="list-style-type: none"> <li>1. A description of the residential subdivision project, how the affordable housing requirements will be met by the applicant, and whether the affordable units will be rented or owner-occupied;</li> <li>2. The number, size, and location of each affordable unit;</li> <li>3. Incentives provided by the City (if any) for density bonus;</li> <li>4. Limits on income, rent and sales price of affordable units;</li> <li>5. Procedures for tenant selection and the process for qualifying prospective households for income eligibility;</li> <li>6. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal for owner-occupied units, or restrictions for rental units;</li> <li>7. Provisions for monitoring the ongoing affordability of the units;</li> </ol>	

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<p>8. Performance guarantees (e.g., a cash deposit, bond, or letter of credit) as required by the review authority; and</p> <p>9. Provisions for the enforcement and penalties for violation of the agreement.</p> <p>The AHIP provided on-line and dated August 2011 fails to include most of these items. This must be addressed in the EIR. An adequate AHIP in full conformance with Section 19.54.080 must be prepared.</p>	133 cont.
<p>In addition, the following questions and comments must be addressed.</p> <p>1. The regulatory setting also includes the provision of Government Code Section 65590. This must be addressed in the EIR.</p>	134
<p>2. The AHIP indicates an understanding that provision of the full number of required affordable units would not be feasible on-site. What evidence in the record supports that?</p> <p>3. The AHIP indicates an understanding that provision only of moderate income dwelling units would be feasible on-site. What evidence in the record supports that?</p>	135
<p>4. p. 4.7-16. The project would generate 247 retail jobs and 175 jobs at the resort inn. Jobs in retail and the hospitality industry are typically low paying. Where are these employees expected to live?</p> <p>5. p. 4.7-16. How would the additional employees affect the demand for lower income housing in the subregion?</p>	136
<p><b><u>Recreation and Trails</u></b></p> <p>The EIR must address how trails would be phased with development and with consolidation and eventual removal of oil production operations. Would lowland trails be available for use in the area set aside for oil production and the connecting roadway?</p>	137
<p><b><u>Traffic and Circulation</u></b></p> <p>1. p. 4.9-1. The regulatory setting also includes Caltrans authority over West Coast Highway.</p>	138
<p>2. p. 4.9-17. The levels of service in Table 4.9-5 appear to be much better than those shown for many intersections in Table 4.9-4 and much better than is normally experienced at such intersection as Newport and Harbor; Newport and Rochester, and Newport and 17<sup>th</sup>. How is it that the alternate methodology gives such different results? Results not born out by experience!</p>	139
<p>3. p. 4.9-24. Table 4.9-7 shows no trip generation for commercial uses developed in conjunction with the resort inn. Due to the small size of the hotel, additional customers would be needed from elsewhere to support the potential restaurants, bars, and shops. Trips generated by these uses must be included.</p>	140
<p>4. p. 4.9-24. Is the reduction for internal capture in Table 4.9-7 realistic considering the large size of the project site and the sloping terrain which would discourage shoppers</p>	141

from walking to commercial areas in the Urban Colony from other areas of Banning Ranch?	141 cont.
5. p. 4.9-24. To what extent would pass by trips be generated by traffic originating or ending at Banning Ranch? Wouldn't those be included as internal capture and potentially be double-dipping trip reductions?	
6. p. 4.9-25. Did the analysis include trips diverted from Coast Highway onto Bluff Road, going on to 19 <sup>th</sup> Street to Irvine/Mariners? How would that affect the residential neighborhood along East 19 <sup>th</sup> ?	142
7. p. 4.9-27. The EIR must address how the proposed project would increase cumulative demand for the 19 <sup>th</sup> Street Banning Avenue Bridge.	143
8. p. 4.9-32. The future condition included in Table 4.9-8 shows Bluff Road as extended to Victoria in Costa Mesa. There are currently no plans to construct the road, and the roadway would run through an area enrolled in the NCCP program. Thus it is highly unlikely that the roadway would be built by the time the project is full operational, if ever. Traffic analyses must be revised to reflect no further extension of Bluff Road.	144
9. p. 4.9-87. The EIR must examine effects of construction activities on emergency access.	
10. The EIR must also examine the effect of project traffic on emergency access. Already fire trucks are observed waiting to get across Newport Boulevard to respond to emergencies in East Costa Mesa. The EIR must examine how project traffic would exacerbate the problem.	145
11. p. 4.9-93. What efforts have been made to reach an agreement with Costa Mesa whereby the applicant would take full responsibility for mitigating project impacts?	146
12. p. 4.9-95. Where additional right of way would be required, what efforts has the applicant made to induce the owners to sell on the open market?	147
13. p. 4.9-95. Would any businesses or homes be lost due to the need to acquire additional rights of way?	148
14. p. 4.9-95. Why hasn't Improvement No. 37 at Newport and 18 <sup>th</sup> been completed yet?	149
15. p. 4.9-114 to 132. The analysis of Special Study Issues was helpful, though discouraging.	150
<b><u>Air Quality</u></b>	
This section must examine impacts of TACs, particulates and other emissions on nearby residents and other sensitive receptors due to consolidation of oil operations in the Newport Shores area and ongoing operation of the consolidated facilities. Impacts due to remediation and construction on adjacent off-site uses must also be examined.	151
Construction impacts must include equipment involved in the consolidation of oil production in addition to standard equipment utilized for residential and commercial construction.	
In addition, the following questions and comments must be addressed:	
1. p. 4.10-9. Cancer is not the only adverse health effect of air contaminants. Other impacts include asthma, emphysema, miscarriage, birth defects, reduced lung capacity and other	152

chronic and acute problems. Impacts must not be considered solely on the basis of cancer cases.	152 cont.
2. p. 4.10-14. To what extent will the consolidation of oil operations near Newport Shores concentrate emission of the substances identified in Table 4.10-5? How will this affect residents of Newport Shores?	153
3. p. 4.10-15. Instead of providing solar ready roofs, why not provide the solar panels installed as original equipment?	154
4. p. 4.10-28. What year is represented by the traffic volumes shown in Table 4.10.6?	155
5. p. 4.10-32. Would hydrogen sulfide be released during project construction?	156
<b><u>Greenhouse Gases</u></b>	157
Would greenhouse gases be released due to remediation? This must be addressed in the EIR.	
<b><u>Noise</u></b>	
This section must analyze noise and vibration from consolidation and operation of oil production facilities in the Newport Shores area and the impact on residents due to the consolidated facilities. Operation of both consolidated facilities must be addressed along with heavy trucks traversing the connecting road. Analyses must include noise and vibration at the northerly end of Newport Shores as well as the more southerly area where noise readings were taken.	158
In addition, the following questions and comments must be addressed:	
1. p. 4.12-15. Is the list of equipment provided in Table 4.12-8 typical of the equipment needed to consolidate oil operations, or would additional equipment be needed?	159
2. p. 4.12-14 to 17. The EIR must examine construction generated vibration as well as noise.	160
3. p. 4.12-17. On what basis is it concluded that up to twenty truck trips per day by a vehicle generating noise up to 84 dBA (Table 4.12-8) would not be significant in an otherwise quiet environment? Haul routes have not been identified but could potentially travel past homes, schools, or other sensitive uses. An 84 dBA noise every half hour or so would be more than significant for those experiencing the noise.	161
4. p. 4.12-27. It appears that planning for Bluff Road will have to be adjusted due to habitat concerns demonstrated by the Coastal Commission on November 2, 2011. Alignment of the road at a location further from Newport Crest must be considered at the same time.	162
5. p. 4.12-27. Combination of noise barriers with a Bluff Road located further from homes must be utilized to fully mitigate impacts on Newport Crest.	163
6. p. 4.12-32. Loading docks must not be located on the side of the project nearest existing residences at California Seabreeze.	164
7. p. 4.12-33. Why are air conditioning units being proposed at a location this close to the ocean? This is not consistent with a "green" approach.	165
8. p. 4.12-33. Outdoor eating establishment with amplified music must not be located on the northerly side of the building facing residences at California Seabreeze.	166

9. p. 4.12-41. What is the useful life of a rubberized asphalt surface? What is the cost compared to ordinary asphalt? Will the City of Costa Mesa be faced with ongoing costs to maintain the rubberized asphalt? If so, funds must be deposited by the applicant to cover any future costs.	167
10. p. 4.12-42. The EIR must examine the aesthetic impact of any noise barrier, including blocked views.	168
<b><u>Cultural Resources</u></b>	
Even though the site is highly disturbed, it is disappointing that richer resources weren't found, especially considering resources identified at the Castaways site, Fairview Park, Newporter North and other coastal sites. It is still very important for all grading to be monitored by an archaeologist with the authority to stop work if resources are found.	169
In addition, the following questions and comments must be addressed:	
1. p. 4.13-9. Why are only Juaneno/Acjachmen on the contact list? Weren't any Gabrieleno/Tongva contacted? If not, they must be contacted pursuant to SB 18.	170
2. p. 4.13-21. How old is the ranch house on the site? Is it old rancho structure, or merely a structure typical of the post World War II era.	171
3. p. 4.13-25. To the extent feasible, avoidance must be utilized as a strategy for reducing impacts.	172
4. p. 4.13-25. The paleontology survey must be conducted as a part of this environmental review so that decision makers and the public generally may clearly assess potential impacts.	173
5. p. 4.13-26 to 31. All grading must be monitored by a qualified archaeologist. Not just grading in areas on previously identified resources.	174
<b><u>Public Services and Facilities</u></b>	
This section must analyze the effect of the proposed project on emergency response times in both Newport Beach and Costa Mesa. This must include both operational and construction impacts on-site and off-site for construction of roadway mitigation.	175
Costa Mesa fire trucks have been observed waiting to cross Newport Boulevard at Rochester and at 19 <sup>th</sup> Street. Emergency personnel have expressed frustration about traffic impeding their ability to respond. This is a truly critical for East Side residents in Costa Mesa.	
In addition, the following questions and comments must be addressed:	
1. p. 4.14-7. What will happen if plantings are changed in fuel modification areas?	176
2. p. 4.14-7 Maintenance in sensitive areas must not be conducted during the nesting/breeding season for sensitive wildlife.	177
3. p. 4.14-12. Where would a temporary fire station be located?	178

4. p. 4.14-13. Will the applicant contribute to funding for fire station replacement?	179
5. p. 4.14-15. The EIR must examine the potential for increased police response times due to operational and construction traffic generated by the proposed project.	180
6. p. 4.14-21 to 23. Inasmuch as several schools are operating at or near capacity and existing facilities are aging, why is no new school proposed?	181
7. p. 4.14-29. Will multi-family and commercial developments be provided areas for deposit of recyclables?	182
<b><u>Utilities</u></b>	
1. p. 4.15-9. Why is the water analysis in the appendix to the EIR based on the 1999 and 2005 UWMPs, when a new UWMP was adopted five months ago?	183
2. p. 4.15-9. What additional growth not included in the UWMP would occur in the Newport Beach water service area?	
3. p. 4.15-9. The water analysis in Appendix L identifies several issues facing water suppliers, such as reduced delta pumping, and then concludes that addressing the issue was beyond the scope of the analysis so the project analysis would rely on the old outdated, unrealistic UWMP. An updated analysis relying on the updated plan must be provided and the updated plan must be provided as part of this EIR, supplementing the old, outdated plan.	
4. p. 4.15-10, 16. It should be noted that the Orange County Groundwater Basin has long experienced saltwater intrusion due to groundwater overdrafts. Future planning must be based on realistic calculation of sustainable pumping levels.	
5. p. 4.15-14. In evaluating water supplies by a new Delta conveyance, was it assumed that a new State water bond would pass? If not, how is the conveyance to be financed?	
6. p. 4.15-17. The project must be designed so that recycled water could be used if lines were extended to the project area.	184
7. p. 4.15-21. Are existing off-site water lines large enough to provide adequate fire flows?	185
8. p. 4.15-21. Would any off-site water facility improvements be needed to serve the project site?	186
9. p. 4.15-24. On what basis are MWDOC supplies anticipated to increase above the normal dry year level in the future? Where will the water come from, and how much new development will be competing to use it?	187
10. p. 4.15-28. Why has it not been investigated whether a wastewater pump station would be needed or not?	188
11. p. 4.15-28. Where would the lift station be located?	
12. p. 4.15-28, 29. Do project analyses of factors such as noise, energy use, and air emissions take into account the lift station? If not, analyses must be revised to include the lift station.	189
13. p. 4.15-29. Do off-site sanitary sewer lines have the capacity to serve the proposed project? What lines exist? What are current peak flows? What capacity remains?	190
14. p. 4.15-35. SC 4.10-1 addresses dust control. How does it relate to energy?	191
15. p. 4.15-36. SC 4.12-1 addresses construction noise. How does it relate to energy?	

**Cumulative Impacts**

The thoughtful approach to analysis of cumulative projects and cumulative impacts by topic is appreciated. However, the inclusion only of projects that have been previously subject to an environmental document in some areas will tend to minimize impacts. The city is reminded that “environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. quoting Selmi’s *Judicial Development of CEQA*)

As stated in *San Franciscans For Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61:

It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. ... A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision-maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. (*San Franciscans for Reasonable Growth v. City and County of San Francisco*, (1984) 151 Cal.App.3d 61, 80, 198 Cal.Rptr. 634.)

Thus even projects which do not result in significant impacts individually may create more than de minimis impacts which, when considered together, result in “havoc in virtually every aspect of the urban environment.” (*San Franciscans for Reasonable Growth*)

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**Growth Inducing Impacts**

The EIR must examine how Bluff Road would induce growth by removing a barrier to growth. In addition, the EIR must address the cumulative increase in pressure to construct the 19<sup>th</sup> Street/ Banning Avenue Bridge and extend Bluff Road to Victoria due to the proposed project along with other past, present, and reasonably anticipated probable future projects.

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**Conclusion**

As currently presented, the DEIR is inadequate to fulfill the purposes of CEQA. The document must be revised and re-circulated in accordance with Guidelines Section 15088.5(a) (4) in order that the public and decision makers may be fully informed of the impacts of the proposed project. A key failing is the lack of a clear, complete, unambiguous project description. However, each of the issues discussed above is itself so basic that each must be addressed in order for the EIR to be considered legally adequate and to provide decision makers and the public with the information needed to evaluate the proposed project and its impacts.

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Thank you for the opportunity to provide these comments. Please keep me informed regarding the progress of this project, including but not limited to any hearings or release of additional documentation.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', with a stylized flourish at the end.

Sandra L. Genis

**Letter O46     Sandra Genis**  
November 8, 2011

### **Response 1**

The Project's location, and proximity to other open space areas such as the U.S. Army Corps of Engineers restoration site or Talbert Marsh, was discussed throughout Section 4.6, Biological Resources, of the Draft EIR.

The commenter is incorrect that the "Elimination of habitat on the project site would create a break in the chain of habitat from ocean to upland". All habitat types currently represent on the Project site would remain on the site after Project implementation. There would be no elimination of habitat, only impacts to portions of habitats present as discussed in detail in Section 4.6, Biological Resources, of the Draft EIR. Regarding the "break in the chain", the commenter describes this area as a continuous area of habitat that transitions from the ocean to the upland areas. The areas of coastal open space that the commenter describes are currently fragmented and in some instance significantly altered by human development including, but not limited to Magnolia and Brookhurst Streets fragmenting the Huntington Beach Wetlands; Pacific Coast Highway crossing the Santa Ana River; concrete and rip-rap lining of the Santa Ana River; northbound and southbound bike/pedestrian trails along the Santa Ana River; Hamilton Avenue over the Santa Ana River; and the Orange County Sanitation District Plant and associated facilities/outlets at Pacific Coast Highway and the Santa Ana River. The proposed Project would not significantly impact the connection to the other open space area in the region beyond that which it is already fragmented by existing uses.

### **Response 2**

In paragraph 3 of the comment, the commenter states that important information is lacking or ambiguous with respect to three areas of activity: landform alteration, commercial uses at the resort inn, and oil production consolidation. Section 3.0, Project Description, of the Draft EIR comprehensively describes the components of the proposed Project including landform alteration and development of the resort inn. Landform alteration is described in the Project Description; please also refer to Exhibit 3-16, Soil Disturbance Map, and Exhibit 3-17, Cut and Fill Map. These exhibits show the areas of the Project site that would be impacted by grading and disturbance activities associated with land development, bluff restoration, soil remediation, and open space grading. The analysis of the physical impacts of the landform alteration activities are discussed throughout the Draft EIR, including Section 4.3, Geology and Soils, Section 4.6, Biological Resources, and Section 4.10, Air Quality. With respect to ancillary facilities and services in the proposed resort inn, the specific uses have not been determined by the Applicant. However, Project Objective 4 in the Draft EIR Project Description notes that the resort inn may have "...a spa, meeting rooms, shops, bars, and restaurants that would be open to the public." The Draft EIR analyzes the physical environmental impacts of developing a 75-room resort inn. The physical impacts of any retail uses within the inn are included within the physical development footprint. Other operational impacts, such as vehicle trips generated by ancillary resort inn uses are assumed within the trip generation numbers. Please also refer to the subsequent response to Comment 6 regarding trip generation assumptions.

With respect to oil production and consolidation, it may be helpful to distinguish what components of the oil operations are considered a part of the proposed Project, and what components are not. The drilling and operation of oil wells on the Project site, including on the proposed oil consolidation sites, are currently allowed uses and considered part of the existing uses on the site. Therefore, drilling and operation of oil wells is not a component of the proposed Project. This fact does not change with the implementation of the proposed Project.

The removal of existing oil facilities and site remediation are a component of the proposed Project because absent those activities, the property could not be developed for the uses proposed by the Applicant which are consistent with the General Plan.

The Draft EIR analyzes the physical environmental impacts associated with removal of the existing oil facilities (except from the proposed oil consolidation sites). The Draft EIR does not analyze the impacts of oil operations because they are (1) considered existing conditions; (2) not a part of the proposed Project; (3) conducted by an independent third-party, not the Applicant; and (4) do not require discretionary action by the City of Newport Beach. While the City is the lead agency for consideration of approval of the Newport Banning Ranch Project, the oilfield and its operations are not a part of the proposed Project and could continue to operate without City approval of the Newport Banning Ranch development project. The oilfield operator, West Newport Oil, is a separate entity from the Applicant, Newport Banning Ranch LLC, and while agreements between the mineral rights owner, HDLLC, and oilfield operator, West Newport Oil, and Newport Banning Ranch LLC establish the rights of the surface owners to develop on the Project site, the oil operations within the oil consolidation sites are wholly within the control and discretion of West Newport Oil.

The oil consolidation sites are currently active oil producing and handling areas for both the West Newport Oil Company's and City's oil operations. Both sites currently contain oil wells and main oil treating facilities: the northern site contains the West Newport Oil Company main oil facility and the site near West Coast Highway contains the City's main oil facility. No new main facility sites constructed at these locations. Both West Newport Oil Company and the City are currently able to drill new wells and construct supporting facilities as needed within these areas. This would continue in the same manner upon approval of the proposed Project, and could occur even if the Project were not approved.

### **Response 3**

The potential environmental impacts associated with the removal of oil production equipment and remediation of the Project site with the exception of the oil consolidation sites are addressed in the Draft EIR. The activities are described in Section 3.0, Project Description, and the impacts are analyzed in Section 4.5, Hazards and Hazardous Materials, and further described in the Draft Remedial Action Plan (see Appendix D of the Draft EIR). For example, the impacts of soil remediation activities are discussed in Section 4.5, Hazards and Hazardous Materials, and Section 4.10, Air Quality. Where these equipment removal and remediation activities would affect biological resources, those impacts are addressed in Section 4.6, Biological Resources. However, the continued operation of oil wells on the Project site are not analyzed in the Draft EIR because they are not impacts of the Project but are an existing condition including the oil consolidation sites. It should be noted that oil operations have historically been and would continue to be conducted within the two oil consolidation sites. Adjacent land uses, including residential development in Newport Shores, already co-exist with these operations and would continue with or without the proposed Project.

### **Response 4**

The differences in the language on oil production facilities are due to the different functions of each document. As explained in Section 3.6.4 of the Draft EIR, the Planned Community Development Plan (NBR-PC) provides zoning regulations for the Project site. The Master Development Plan addresses the NBR-PC requirement of plans for grading roadways, infrastructure, restoration, and development activities and development activities and design criteria at a sufficient level of detail to guide the review of subsequent development approvals as required by this Chapter prior to issuance of construction-level permits.

If the proposed Project is approved, all oilfield operations within the Project site (with the exception of the two oil consolidation sites) would be removed and remediated. Removal would include the abandonment of the facilities and remediation. Page 4.5-19 of the Draft EIR states that comprehensive oil facilities consolidation, abandonment, and remediation at the Project site would be a multiple-step process that would likely span a period of approximately two to three years. The minimum 100-foot setback from active oil wells refers to the minimum setback from oil wells within the two consolidated oil sites. All operations outside of the two oil consolidation sites must cease activity within 10 years of the date of annexation.

#### **Response 5**

The comment is noted. The exhibits noted by the commenter, specifically Figure 3-7, are available in full size plan format as part of the Project submittal on file at the City.

#### **Response 6**

As explained in Section 4.9.7 of the Draft EIR, the trip generation rates for a Resort Hotel include trips associated with all aspects of the hotel, including the rooms, the administrative areas, and the shops and ancillary facilities. The land use description for a Resort Hotel in the Traffic Engineers (ITE) Trip Generation publication (8th Edition) reads, in part, "Resort hotels...provide sleeping accommodations, restaurants, cocktail lounges, retail shops and guest services". Trip generation rates are based on trip counts at the hotel driveways, and account for all traffic to and from the hotel, regardless of the trip purpose. The ITE rates for the resort inn are based on case studies of land uses with similar characteristics, including amount of ancillary uses. Therefore, the trips generated by ancillary uses are factored in trip generation rate for the resort inn.

#### **Response 7**

The General Plan land use designation of Residential Village allows for up to 75,000 square feet of commercial uses. The City does not include ancillary/accessory uses in square footage calculations. An ancillary/accessory use is a use that is at all times a part of and clearly incidental and secondary to the principal use; in this case, the resort inn. Such uses do not change the character of the principal use and they must remain subordinate to and serve the principal use.

#### **Response 8**

The Land Use Element of the General Plan sets land use intensity for visitor accommodations in terms of rooms and residential densities in terms of dwelling units. The Project's Master Development Plan specifies that the Resort Colony would be located in Site Plan Areas 13a and 13b and would be developed with visitor-serving uses to include a 75-room resort inn with ancillary visitor-/guest-serving uses and recreation facilities, and with 87 resort residential dwelling units. The Newport Banning Ranch Planned Community Development Plan (NBR-PC) provides for visitor-serving commercial uses in the event a resort inn is not developed. These visitor-serving commercial uses would be counted as part of the maximum 75,000 square feet of commercial area permitted within the Project.

#### **Response 9**

The following responses address the individual questions in Comment 9.

2. The resort inn uses would be open to the general public.

3. The question does not raise an environmental question. No further response is needed.
4. Please refer to Table 4.1-1 in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR which identifies allowable and conditionally allowable land uses. Restaurants that do not serve alcohol are permitted in the Resort Colony and Urban Colony; restaurants in the Resort Colony and Urban Colony that would serve alcohol would require a Conditional Use Permit. All would be subject to further development approvals. Restaurants would be open to the public.
5. Please refer to page 4.1-26 of the Draft EIR which states “The resort inn (Site Planning Area 13a) is planned to include 75 guest rooms, restaurants and bar, gift and sundry shops, business center, fitness center, spa/salon/treatment rooms, meeting/conference rooms, and back of house areas (e.g., food and beverage, administration, housekeeping, maintenance, employee facilities)”. Should a health club/fitness center be developed, it would be available to the public.
6. Meeting facilities would be established at the time of development and regulatory review of specific building plans for this specific land use
7. Meeting rooms may be available to others.
8. Meeting rooms can be marketed to the general public or to event coordinators.

#### **Response 10**

As addressed in the Draft EIR, all oil production activities and facilities currently outside of the two consolidation sites would be removed and consolidated within those sites to allow for implementation of the Project as proposed by the Applicant.

#### **Response 11**

The commenter's opinion is noted.

#### **Response 12**

The Land Use Element of the General Plan does not establish a time period or terms for public acquisition of the site. However, on August 11, 2009, the City Council directed that the exploration of acquisition of open space continue as the review of a development proposal proceeds. There are no terms established for public acquisition except those terms and conditions set forth by Applicant in the January 8, 2010 “Willing Buyer” letter to this specific suitor (Note: the letter follows the responses to the commenter's letter). The Applicant is proceeding with entitlement in accordance with the conditions of the Newport Beach General Plan.

#### **Response 13**

The opinion of the commenter is noted. Because the Applicant's proposed Project is consistent with the Alternative Use General Plan Land Use Designation of Residential Village which includes a provision for up to 1,375 residential dwelling units, the Applicant's objectives reflect this General Plan assumption.

#### **Response 14**

All oilfield materials and debris outside of the two oil consolidation sites would be removed as a part of the Project.

#### **Response 15**

The property owner would be responsible for oil and gas wells to be abandoned or re-abandoned in accordance with the current requirements of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). Documentation of final abandonment approval from the DOGGR would be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division.

#### **Response 16**

As discussed starting on page 4.5-20 of Section 4.5 of the Draft EIR, one wetland site in the Lowland area was observed; testing determined it had small amounts of soil gas. That site was not near an oil well, and is assumed to be a natural occurrence in the wetlands. Although there were no indications of soil gas in the proposed Upland development area, methane controls, as defined in the Orange County Fire Authority (OCFA) Guideline C-03, would be implemented throughout the development area. This OCFA Guideline provides detailed measures for mitigating potential impacts due to methane and vapor intrusion in and around developments and has been implemented in most recent Orange County developments within former oilfield areas.

#### **Response 17**

No restrooms would be provided in the Open Space Preserve. Proposed uses within the Lowland are habitat conservation, restoration, and mitigation; public interpretive trails; a water quality basin; and a planting buffer around a portion of the northern oil consolidation site. The proposed uses within the Upland are habitat conservation, restoration, and mitigation areas; public interpretive trails, and a water quality basin. Although statues are not specifically prohibited, none are proposed or contemplated.

#### **Response 18**

The Applicant and the owner of the 15<sup>th</sup> Street property have not yet entered into an agreement for relocation of the parking. Responsibilities for maintenance of any shared facility have not yet been determined.

#### **Response 19**

With the exception of the private alleys, the proposed on-site roadways described on pages 3-18 and 3-19 of Section 3.0, Project Description, of the Draft EIR are proposed to be public. The proposed roadways described on page 3-20 are and would continue to be public. Development of residential densities in the proposed alley areas can be served from private streets or alleys. Final site design and the use of alleys or private streets would be determined during the site review process subject to City building and Fire Department standards. Typical alley sections are shown in the City of Newport Beach Standard Plans. Private street sections are not shown in the City standards but are typically similar to the City of Newport Beach's local street standard in character.

## Response 20

Pedestrian walkways are planned for both sides of the Resort Colony Road as shown on Exhibit 3-10e, Section GG. Page 3-19 has been revised and incorporated into the Final EIR as follows:

### Resort Colony Road and Local Road Adjacent to the South Family Village

Resort Colony Road is proposed as a public Local Road that would be accessed from Bluff Road and North Bluff Road. The loop road would provide access to the proposed Resort and Residential land use areas in the southern portion of the Project site. This roadway adjacent to the ~~VSR/R land use area~~ Resort Colony is proposed with one travel lane in each direction, ~~a pedestrian walkway on the inland side (adjacent to development) of the road, and a meandering trail adjacent to the Bluff Park~~ and eight-foot-wide walkways on each side of the street (Exhibit 3-10e; Cross-Section G-G). Resort Colony Road joins the Local Road adjacent to the ~~Residential (RL and RM) land use areas~~ South Family Village located north of the ~~VSR/R land use area~~ Resort Colony. This roadway would be constructed as a public Local Street with one travel lane and one parking lane in each direction and four-foot-wide walkways on each side of the street (Exhibit 3-10f; Cross-Section I-I).

A public Bluff Park is proposed to extend along the length of the outside perimeter of the Resort Colony and the South Family Village adjacent to the roadways. The public Bluff Park would include a 10-foot-wide multi-use pedestrian and bicycle trail where adjacent to the Resort Colony and a six-foot-wide pedestrian trail where adjacent to the South Family Village.

## Response 21

Road construction would require approximately 1.41 acres of the Newport-Mesa Unified School District's vacant parcel. Of the 1.41 acres, approximately 0.46 acre is needed for the widening of 16<sup>th</sup> Street, adjacent to the School District's property. Approximately 0.95 acre of the School District's property would be needed for the construction of North Bluff Road.

## Response 22

Resort inn and any commercial uses in the resort inn parking arrangements would be determined at the time of consideration of the Conditional Use Permit by the City and subsequent Coastal Development Permit review by the Coastal Commission.

## Response 23

The EIR will be changed to reflect that the Applicant intends to request a "Coastal Development Permit" rather than a "Master Coastal Development Permit" from the Coastal Commission to implement the proposed Project. Because the City of Newport Beach (City) does not have a certified Local Coastal Program (LCP) it lacks the ability to issue Coastal Development Permits. The City does not intend to request approval of a LCP at this time for the proposed Project. It should be noted that as a part of the Coastal Development Permit process before the Coastal Commission, the Coastal Commission has at times allowed local jurisdictions, such as Newport Beach, to implement specific portions of a project for which a Coastal Development Permit has been approved, including the issuance of subsequent building permits. (See Coastal Development Permit 5-06-145 in which the City of Newport Beach would issue permits subject to specific design standards and criteria approved by the Coastal Commission.) The ability to

allow a local agency to issue subsequent permits that implement a project approved pursuant to a Coastal Development Permit is wholly within the discretion of the Coastal Commission.

The Project proposes that a Coastal Development Permit be approved by the California Coastal Commission (Coastal Commission) for all plans within the Master Development Plan designated as “Project Development Plans”, which would serve the function of a Coastal Development Permit for each development plan. The NBR-PC provides that if the Coastal Commission approves a Coastal Development Permit that varies from the approval granted by the City for the Master Development Plan, the Coastal Development Permit must be resubmitted and reviewed by the City as a new application. The Project’s Master Development Plan provides that the Coastal Development Permit would also include provisions authorizing the City to be the final review authority for any subsequent planning development permits and construction level permits, as required by the NBR-PC, and as described in the Master Development Plan without additional Coastal Development Permits, provided the subsequent permits are consistent with the NBR-MDP “Project Development Plans”. Subsequent required planning development permits and construction-level permits include Site Development Review, Use Permits, Final Tract Maps, final grading permits, model home permits, building permits, and other required permits.

Because the Coastal Development Permit proposes to designate the City as the final review authority for all actions subsequent to the approval of the Coastal Development Permit by the Coastal Commission, any appeal of a decision of the City acting pursuant to the authority granted by the Coastal Commission in approving the Coastal Development Permit would be made to the City pursuant to the appeal process described in the NBR-PC for each action.

## **Response 24**

Table 3-2, Master Development Plan Statistical Table, in Section 3.0, Project Description of the Draft EIR identifies the proposed residential densities and intensities for all Site Planning Areas within the Villages and Colonies. Section 4.1 Land Use and Related Planning Programs, of the Draft EIR provides an 87-page description of residential land use densities and intensities by location and housing type, as well as descriptions of the intensity of the Resort, Community Park, and Bluff Parks. Individual Development/Conceptual Development Plans are provided by for the four Villages and Colonies. A Community Transitions and Interface Key Map is provided along with ten exhibits showing plan views and cross-sections around the perimeter and within the Project site.

Please also refer to Exhibit 6-1, Architectural Summary Matrix, of the NBR Master Development Plan which provides detailed architectural square footages, and statistics on each type of housing proposed as a part of the Project. Additional information on density and intensity is provided in the text and other exhibits with Chapter 6, Architectural Design Guidelines, of the NBR Master Development Plan and Section 4.2, Aesthetics and Visual Resources, of the Draft EIR.

## **Response 25**

Page 3-22 has been revised and incorporated into the Final EIR as follows:

The Project proposes a Master Plan for Trails and Coastal Access comprised of public pedestrian paths, on-street bicycle trails, and off-street multi-use trails to provide coastal access and public mobility within the Project site. The proposed pedestrian and bicycle trails would provide connectivity among open space, parks, residential, resort, commercial, and mixed-use on-site land uses as well as

public access and connections to existing off-site public trails, including the Santa Ana River and trails located in the Talbert Nature Preserve, Fairview Regional Park located further to the north, and existing walks and trails extending along West Coast Highway and the beach located to the south. A Multi-use Trail, Open Space Interpretive Trails, the Bluff Park Trail, the Pedestrian and Bicycle Bridge, On-Street Bicycle Trails, and Pedestrian Walkways are proposed as a part of the Project.

#### **Response 26**

Soils within the proposed development areas on the mesa are classified as type “D” soils which are predominantly clay, have very low infiltration rates, and are underlain by a bedrock layer. The use of permeable pavement within “D” soils is generally considered infeasible due to insufficient infiltration rates although individual homeowners would be allowed to implement permeable surfaces if they choose. Community biotreatment BMPs would be provided throughout the development to provide treatment of individual homes and road runoff.

#### **Response 27**

The comment is noted. No wetlands are proposed to provide treatment of Project runoff.

#### **Response 28**

The proposed cut and fill limits for the proposed Project are shown in Exhibit 3-17 in the Draft EIR. In order to depict the relative depths of cut and fill and their relative locations analyzed in the Draft EIR, Exhibit 3-17 has been revised and is incorporated into the Final EIR. The exhibit follows the responses to the commenter's letter). Cross sections will be provided as part of the rough grading plans prior to issuance of a grading permit.

#### **Response 29**

Standard Condition 4.9-3 requires that the Applicant provide a Traffic Management Plan prior to issuance of a grading permit. The Traffic Management Plan must be submitted to the City of Newport Beach for approval, and must identify, among other things, the routes that construction vehicles would use to access the Project site. The condition also requires that advanced written notice of any traffic disruptions be provided to emergency service providers and affected businesses at least two weeks prior to disruptions.

#### **Response 30**

With respect to the commenter's Question 38, the on-site soils that are proposed to be remediated would be treated on site at a centralized treatment area. Regarding Question 39, although the remediation process would be phased across the Project site, it is planned that soil placements would be complete prior to the construction of the North Village.

Whether new wells would be required to be drilled in the two consolidation sites is within the discretion and control of the oil operator, West Newport Oil Company. The oil operations are under the control of the oil operator and they currently have the discretion to decide whether wells are to be drilled or re-drilled on the entire oilfield site as part of its ongoing operations. Should the City approve the proposed Project or an alternative to the Project, any additional oil wells could only be placed within the oil consolidation sites.

### **Response 31**

The terms of the draft Development Agreement were made available (posted on the City's website) upon release of the Draft EIR for public review. The Development Agreement is under preparation and will be available for public review prior to public hearings on the Project. The terms and conditions of the Development Agreement will reflect following public benefits:

1. The dedication and improvement of a 12.4-acre North Community Park and a 4.5-acre Central Community Park.
2. The payment of a public benefit fee for each dwelling unit in an amount to be negotiated.

No other in-kind public benefits are proposed.

### **Response 32**

The text on page 4.12-33 of the Draft EIR is not "proposing" air conditioning; the analysis is for noise impacts where HVAC units, which could include air conditioning, are installed. Each builder will make a determination of which environmental management amenities will be included in each future dwelling unit consistent with California Energy Code requirements, site conditions, City building regulations and the goals of the Green and Sustainable Plan.

### **Response 33**

Please refer to the response to Commenter 23.

### **Response 34**

In-lieu fees are deposited into the City's Affordable Housing Fund. The Affordable Housing Fund monies are used in compliance with the General Plan Housing Element to construct, rehabilitate, or subsidize affordable housing or assist other governmental entities, private organizations, or individuals to provide or preserve affordable housing. The City Council established an Affordable Housing Task Force that works with developers and landowners to facilitate the development of affordable units and determines the most appropriate use of in-lieu fee funds. The Task Force and staff continually investigate and research potential new affordable housing opportunities. No determination has been made as to where units might be purchased or constructed.

### **Response 35**

The requested analysis is provided in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR.

### **Response 36**

The cross-section locations, shown on Exhibits 4.1-2a through -2j were chosen to represent areas of concern related to proposed land use and adjacent existing land uses. The proposed sections illustrate site relationships and the limits of work that were used for impact analysis. The exhibits identify 11 "before" and "after" plan views and cross-sections to illustrate the interface between the Project and surrounding community. The "after" visual simulations do not depict any mitigation features that may be imposed on the Project. As a point of clarification to the commenter, the Noise Mitigation Program does not address or propose 15-foot-high noise walls. As addressed in Section 4.12, Noise, of the Draft EIR, mitigated noise levels were modeled for a 12-foot-high noise wall adjacent to Bluff Road and for 6-foot-high and 8-foot-high

noise walls at the rear of the Newport Crest property. As stated on page 4.12-25, “Noise barriers taller than eight feet were not evaluated because they are not considered reasonable for relatively shallow residential yard spaces such as those at Newport Crest”. Mitigation Measure (MM) 4.12-6 states:

Prior to the approval of a grading permit for Bluff Road and 15<sup>th</sup> Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15<sup>th</sup> Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

MM 4.12-7 requires the Applicant to offer the installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The offer of retrofit applies to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA) associated with the Project as determined by a licensed Acoustical Engineer.

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.

The proposed Project's interface with the California Seabreeze residential neighborhood is best shown in Exhibit 4.1-1 which shows that almost the entirety of the interface would be Open Space. At the most southern area of California Seabreeze, the existing off-site residences would be adjacent to North Bluff Park; the proposed Urban Colony would be adjacent to and south of North Bluff Park. Exhibit 4.1-2b illustrates the relationship of the Open Space Preserve with the California Seabreeze residential neighborhood. Although the Draft EIR does not include an exhibit of California Seabreeze in relationship to North Bluff Park and the Urban Colony (to the south), the Draft EIR evaluates potential environmental impacts to these off-site residences associated with the proposed Project. Most specifically, please refer to Section 4.1 and Section 4.2 of the Draft EIR.

### **Response 37**

With respect to maximum building heights, the NBR-PC regulations (see Exhibits 3-2, 3-3, 3-4) provide that chimneys, towers, and other non-habitable architectural features, not exceeding 10 percent of the roof area, may exceed the maximum structure height restriction by up to 12 feet.

This additional height does not allow for the height of an entire structure to be increased by up to 12 feet. Similar provisions permitting limited architectural features to exceed structure heights are relatively common in city and county zoning ordinances in California, and do not conflict with provisions establishing the maximum heights, which apply to the primary volume of the structure. Interfaces are presented to give context of the proposed land uses. The structures shown are meant to be representative of the types of structures permitted and are depicted at the maximum permitted heights.

### **Response 38**

The EIR will be changed to reflect that the Applicant intends to request a “Coastal Development Permit” rather than a “Master Coastal Development Permit” from the Coastal Commission to implement the proposed Project. As stated in the Draft EIR, because the City of Newport Beach (City) does not have a certified Local Coastal Program (LCP) it lacks the ability to issue Coastal Development Permits. The City does not intend to request approval of a LCP at this time for the proposed Project. It should be noted that as a part of the Coastal Development Permit process before the Coastal Commission, the Coastal Commission has at times allowed local jurisdictions, such as Newport Beach, to implement specific portions of a project for which a Coastal Development Permit has been approved, including the issuance of subsequent building permits. (See Coastal Development Permit 5-06-145 in which the City of Newport Beach would issue permits subject to specific design standards and criteria approved by the Coastal Commission.) The ability to allow a local agency to issue subsequent permits that implement a project approved pursuant to a Coastal Development Permit is wholly within the discretion of the Coastal Commission.

### **Response 39**

As addressed in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, the CLUP establishes goals, objectives, and policies that govern the use of land and water in the Coastal Zone within the City of Newport Beach and its Sphere of Influence, with the exception of Newport Coast and *Newport Banning Ranch*. Banning Ranch, which is inclusive of the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA). The quotations from pages 2-25, 4-76, and 4-77 of the City’s Coastal Land Use Plan (CLUP) are descriptions of the Banning Ranch acreage, vegetation communities and habitat types, and landforms, including coastal bluffs in various areas of the City. The City’s CLUP sets forth policies with respect to Banning Ranch as a DCA:

Policies:

- 2.2.4-7. Designate the Banning Ranch property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.
- 2.2.4-8. Depict the boundaries of deferred certification areas on the Coastal Land Use Plan Map and other applicable LCP maps.

The Draft EIR does address applicable Coastal Act policies with respect to coastal views and landform. Coastal views are fully addressed in Section 4.2, Aesthetics and Visual Resources. Bluffs are fully addressed in Section 4.2 and in Section 4.3, Geology and Soils.

## **Response 40**

Please refer to the response to Comment 12.

## **Response 41**

Please refer to the response to Comment 35.

## **Response 42**

Page 4.1-20 of the Draft EIR referenced by the commenter states “The Project’s design is intended to reflect the established traditional neighborhoods of Newport Beach with distinct neighborhoods in a coastal setting. The Project clusters development to retain the majority of the site in open space”. This characterization is drawn from the Master Development Plan and refers to the fact that Newport Beach is composed of different neighborhoods and districts, known by name, identified by historic subdivisions, and characterized by different street patterns, housing types, building heights, and densities. The Draft EIR narrative is not intended to characterize any area of the Project or to compare it to a specific area of the City. Rather, it is intended to characterize the Project as a total planned community reflective of the City’s distinct neighborhoods and coastal setting.

This concept reflects the Vision statement in the Newport Beach General Plan which states in part on pages 2 and 3:

We have preserved and enhanced our character as a beautiful, unique residential community with diverse coastal and upland neighborhoods. We value our colorful past, the high quality of life, and our community bonds. The successful balancing of the needs of residents, businesses, and visitors has been accomplished with the recognition that Newport Beach is primarily a residential community.

We have a conservative growth strategy that emphasizes residents’ quality of life—a strategy that balances the needs of the various constituencies and that cherishes and nurtures our estuaries, harbor, beaches, open spaces, and natural resources. Development and revitalization decisions are well conceived and beneficial to both the economy and our character. There is a range of housing opportunities that allows people to live and work in the City. Design principles emphasize characteristics that satisfy the community’s desire for the maintenance of its particular neighborhoods and villages. Public view areas are protected. Trees and landscaping are enhanced and preserved.

The proposed Project includes four Villages and Colonies with different types and densities of housing. The Urban Colony is proposed at the intersection of North Bluff Road at 17<sup>th</sup> Street, and adjoins the City of Costa Mesa’s “Mesa West Bluff’s Urban Plan” area. The Urban Colony is by far the most intensive of Project’s Villages and Colonies, proposed to contain 730 units in a vertical/horizontal mixed-use format with convenience retail and services on site. There are no existing residential projects in Newport Beach which specifically characterize the proposed Urban Colony component of the Project. Architectural design guidelines for the Urban Colony are proposed as part of the Master Development Plan to maintain the compatibility of design between the Urban Colony and the adjacent development in Costa Mesa’s Mesa West Bluffs Urban Plan area and consistency with other established neighborhoods in Newport Beach of a similar scale including Bayview Landing and The Colony.

### **Response 43**

Building height would be measured as set forth in the NBR Planned Community Development Plan (NBR-PC). Generally, building height would be measured from approved finished grade, not from existing grade.

### **Response 44**

With respect to the height of structures in the Community Park, early in the planning process, a Community building with a gymnasium was considered for the proposed North Community Park. Such a building would have required a height in excess of 25 feet in order to accommodate basketball courts. However, the Community building was removed from the Project development plan for North Community Park just prior to the publication of the Draft EIR.

With respect to structures in the Bluff Park, the Draft EIR uses the example of a shade structure with respect to maximum building height (see page 4.1-23).

With respect to structures in the Interpretive Park, please refer to page 4.1-24 of the Draft EIR. The Nature Center (Site Planning Area 9a) would be located northwest of North Bluff Road and north of Scenic Drive. The approximate 2.2-gross-/net-acre site is proposed as a passive interpretive park to include a nature center building and amphitheater for indoor/outdoor educational programs and would include public parking.

With respect to maximum building heights, the NBR-PC regulations (see Exhibits 3-2, 3-3, 3-4) provide that chimneys, towers, and other non-habitable architectural features, not exceeding 10 percent of the roof area, may exceed the maximum structure height restriction by up to 12 feet. This additional height does not allow for the height of an entire structure to be increased by up to 12 feet. Similar provisions permitting limited architectural features to exceed structure heights are relatively common in city and county zoning ordinances in California, and do not conflict with provisions establishing the maximum heights, which apply to the primary volume of the structure.

### **Response 45**

The operations at the two oil consolidation sites are not a part of the proposed Project and would be under the control of the oil operator. Oilfield lighting is part of the existing baseline as the oilfield currently has safety lighting, including the proposed locations of the oil consolidation sites. The lights would be operated from dusk to dawn.

### **Response 46**

The comment is noted. Section 4.1 assesses the compatibility of the proposed Project with the California Seabreeze residential community in the City of Costa Mesa.

### **Response 47**

The Dark Sky Lighting Program for the Project, including compliance with Section 3.4.5, Outdoor "Dark Sky" Lighting Standards of the NBR-PC, would regulate lighting from individual residential units adjacent to the Bluff Parks and Open Space Preserve, including those in the Urban Colony. Section 3.4.5(8) of the NBR-PC requires that the design of outdoor lighting fixtures be approved as part of Site Development Review". The HOAs would be responsible for the enforcement of lighting restrictions.

Mitigation Measure (MM) 4.2-1 in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, requires use of Dark Sky Standards as identified by the Illuminating Engineering Society of North America (IES). The IES has 8,000 members and has existed for over 100 years as the recognized technical authority in illumination in the United States (see [www.ies.org](http://www.ies.org)). IES and the International Dark Sky Association (IDA, see [www.darksky.org](http://www.darksky.org)) have jointly developed a Model Lighting Ordinance (MLO) intended to, among other things, provide local agencies with outdoor lighting standards for dark sky that reduce glare, light trespass, and sky glow.

The MLO was publicly released in July 2011 “to address the need for strong, consistent outdoor lighting regulation” (see [www.darksky.org/MLO](http://www.darksky.org/MLO)). The MLO outdoor lighting template offers several innovations to outdoor lighting regulation, including the use of five lighting zones to classify land use with appropriate lighting levels for each. Zones range from LZ0, designed for pristine natural environments and limited outdoor lighting, to LZ4, for limited application in areas of extensive development in the largest cities. The second innovation limits the amount of light used for each property. The third uses the IES’s new TM-15-11 “BUG” (Backlight, Uplight and Glare) classification of outdoor lighting fixtures to ensure that only well-shielded fixtures are used. No uplighting for area and street lighting is allowed in any zone.

Regarding targeted darkness levels, specific maximum lighting levels are addressed in Section 4.1, Land Use and Related Planning Programs, Section 4.2, Aesthetics and Visual Resources, and Section 4.6, Biological Resources, of the Draft EIR.

#### **Response 48**

There are no plans to implement any future public amenities until all regulatory requirements have been met and the project cleanup, remediation, and construction can proceed.

#### **Response 49**

As addressed in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, lighting along the South Bluff Park would be limited to bollard lights or similar low-height dark-sky lights with fixtures that are shielded to confine light rays to the trail area, so there is no spill over into the natural open space areas. Page 4.2-14 of the Draft EIR states:

Restricted land uses within 100 feet of the Open Space Preserve and within the Bluff Parks would be required to have:

- Full cutoff luminaires and/or City-approved “dark sky” light fixtures/bulbs similar in design and function as defined by the Illuminating Engineering Society of North America (IESNA) to minimize the amount of lighting emitted upward directly from the luminaire.
- Shielded and direct exterior lighting confined to the respective area upon which the exterior lights are to be installed so that adjacent Open Space land use districts are protected from any significant light spillage, intrusion, and glare.
- No skyward casting lighting allowed.
- Pathways and trails within the Bluff Parks would be lit with low-profile (e.g., bollard or other similar dark sky lighting) which cannot exceed three feet in height and which confines lighting to the trail area.

## Response 50

Consistency with the Coastal Act requires protection, not preservation, of coastal resources, including habitat, landforms, and views. The commenter cites the decision in *Bolsa Chica Land Trust v. Superior Court*. The case addressed the interpretation of Coastal Act Section 30240 as it pertains to environmentally sensitive habitats (ESHA) as defined in Coastal Act Section 30107.5. The Coastal Commission will determine what vegetation communities on the Project site are considered ESHA. For any areas determined to be ESHA, Coastal Act Section 30240 would apply to ensure that “Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas”. Whether protection pursuant to Section 30240 requires preservation in situ is a matter to be determined by the Coastal Commission. Where ESHA has been protected, the Coastal Commission has required that the ESHA be appropriately buffered.

## Response 51

Please refer to Topical Response: Sunset Ridge Park.

## Response 52

The analyses in the Draft EIR, including the heights shown in the visual simulation Exhibits 4.2-3a through 4.2-11b, are based on the actual maximum structure heights, including the fact that the Newport Banning Ranch Planned Community Development Plan (NBR-PC) regulations provide that chimneys, towers, and other non-habitable architectural features, not exceeding 10 percent of the roof area, may exceed the maximum structure height restriction by up to 12 feet. Similar provisions permitting limited architectural features to exceed structure heights are relatively common in city and county zoning ordinances in California, and do not conflict with provisions establishing the maximum heights, which apply to the primary volume of the structure.

## Response 53

The discussion of landform alteration is contained in Section 4.3, Geology and Soils, of the Draft EIR. The Project’s master grading plan is discussed in Section 3.6.10 of the Project Description which provides references to the Project’s Soil Disturbance Map showing areas that are proposed to be graded. In addition, the Project proposes areas of bluff restoration along the south- and west-facing bluffs to restore them from impacts due to oil operations, drainage, erosion, and soil degradation. This is discussed on pages 3-35 and 3-36 of the Draft EIR. The Coastal Act policy referred to by the commenter is Section 30253 of the Coastal Act which states that “New development shall do all of the following: ... (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs”. As discussed in the Draft EIR, the proposed Project does not propose alteration of natural landforms along bluffs but would conduct bluff restoration work to ensure “stability and structural integrity” and repair impacts due to erosion consistent with Section 30253. Because the Project site is an area of deferred certification, the policies of the City’s Coastal Land Use Plan do not govern the development of the Project site. The Applicant proposes to apply for a Coastal Development Permit from the California Coastal Commission, and the policies of the Coastal Act, including Section 30253, would govern the Coastal Commission’s consideration of the application. Finally, the Draft EIR includes a view analysis (see Draft EIR pages 4.2-18 to 4.2-27).

## Response 54

Please refer to the response to Comment 26. The analysis of aesthetic impacts as it pertains to views was conducted from public viewpoints (see Draft EIR at 4.2-18 to 4.2-27). As it pertains to views and as addressed in the Draft EIR, 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.

## Response 55

Please refer to the response to Comment 52. The visual simulations contained in the Draft EIR are based on a three dimensional computer model of the proposed grading plan and the proposed structures. Therefore, for the areas identified on Exhibit 4.2-2, Visual Simulations Key Map, each of the Draft EIR's Exhibits 4.2-3a through 4.2-11b depicts both the existing grade and other site conditions as the area appears today (i.e., the "Existing View" photograph) as well as the proposed grading and structures as it would appear with the proposed development (i.e., the "Proposed View" visual simulation created by merging the computer model and photograph). This comparison allows for the aesthetic and visual evaluation of Project impacts on existing environmental conditions.

## Response 56

Page 4.2-11 has been corrected and incorporated into the Final EIR as follows:

### BP District and IP District Regulations

- Maximum IP District Building Height – 36 feet<sup>22</sup>
- Maximum BP District Building Height – 18 feet
- Maximum Building Coverage – ~~40~~ 5 percent of total gross site area

## Response 57

Structures and other features that would be present on site, after Project implementation, that would be expected to be used by raptor species for perching include, but are not limited to, light poles, street and other signs, various fence types, native trees and large scrubs in the open space areas, landscape trees, and roof/chimney tops.

## Response 58

Yes. The power poles in the Interim Oil Facilities district would be removed after oil production ceases.

## Response 59

Please refer to the responses to Comment 26 and 54.

## Response 60

The City does not have standards for bird-safe buildings. However, as a part of the City's Site Development Review process, the appropriateness of the use of transparent glass walls would be addressed. Alternative materials would be required where transparent glass is not appropriate.

## Response 61

Please refer to the response to Comment 47.

## Response 62

The "Fault Setback Zones" as discussed on Page 4.3-7 and illustrated on Exhibit 4.3-5 which include the fault segments and a conservative setback limit are approximately 11.5 acres.

The only area subject to liquefaction and lateral spreading is the Lowland area. The number of acres of the lowlands area is approximately 147 acres. For this purpose, the Lowland Open Space and Interim Facilities land uses areas identified in Table 3-1 of the Draft EIR were used.

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<sup>22</sup> Elevators, mechanical space, chimneys, towers and architectural treatments, intended to add interest and variation to roof design, and that do not exceed 10 percent of the roof area, or exceed the height restriction by more than 12 feet, are permitted.

### **Response 63**

The larger areas of unengineered fills are mapped on Exhibit 4.3-3 of the Draft EIR. Additionally, smaller pockets of unengineered fill are also anticipated to exist. Approximately 217,000 cubic yards (cy) of unengineered fill (i.e., approximately 1.5 percent of the total corrective grading) are estimated to be removed and recompacted. This amount is included in the 1,455,100 cy of corrective grading referenced in Table 4.3-2.

The colluvial soils limits are also mapped on Exhibit 4.3-3. Approximately 160,000 cy of colluvial soils (i.e., approximately 1.1 percent of the total corrective grading) are estimated to be removed and recompacted. This amount is included in the 1,455,100 cy of corrective grading referenced in Table 4.3-2.

### **Response 64**

All grading/soil removal impacts are included within the biological resource impact areas described in detail in Section 4.6 of the Draft EIR.

### **Response 65**

As discussed in the Draft EIR on page 4.3-11 and in the Project Geotechnical Report on pages 18 and 19, the historic bluff retreat rates are greatly affected by conditions which either are currently not present and or would not be present following development. Consequently, following development, bluff slope retreat would be significantly reduced such that rational and normal development setbacks can be used. In this regard it should be noted that the 60-foot setback exceeds all governing agency requirements and would be more than adequate for the design life of the development.

### **Response 66**

Limited grading is anticipated for construction of off-site improvements. Exhibits 3-11, 3-12, 3-13, and 3-14 in the Draft EIR depict the proposed footprint of the improvements. Excavation to allow for the construction of these off-site areas has been included in the earthwork volumes and the impact evaluations. Exhibit 8-7 from the Master Development Plan shows the proposed connection of North Bluff Road at 19<sup>th</sup> Street. Exhibit 8-7 follows the responses to the commenter's letter. The earthwork and other related impacts were assumed in the Draft EIR evaluation.

### **Response 67**

All fault setback zones are in conformance with State standards.

### **Response 68**

Faults that could not be proved inactive have low apparent slip rates and low recurrence intervals. Significant local ground displacements from a single earthquake event are not anticipated. Consequently, emergency access is not anticipated to be compromised.

### **Response 69**

As discussed in the Draft EIR on page 4.3-22 and in the Project Geotechnical Report on pages 36 and 37, bluff restoration would consist of repair of existing significant erosion gullies. Large gullies would be repaired by filling the erosion gully and creating a manufactured slope face that

ties in with the natural bluff face. In cases where the existing slope face is steeper than 2:1, slope reinforcement would be required such as geogrids or geofabrics. The goal of the repair is to mitigate the potential for future headward erosion in the gully areas. Therefore, it is a form of bluff stabilization.

#### **Response 70**

Please refer the response to Comment 29. Cross sections will be provided as part of the rough grading plans prior to issuance of a grading permit.

#### **Response 71**

The surface drainage and bluff erosion control measures have been developed at a conceptual level and the general footprint of the proposed measures is reflected as part of the development area for use in calculating impacts. Detailed plans will be prepared in conjunction with grading plans and permit, as noted in SC 4.3-1 (see response to Comment 70).

#### **Response 72**

The reference to Exhibit 3-22 has been deleted; the first sentence in the paragraph identifies that the Bluff Restoration Plan exhibit is provided in Section 4.3, Geology and Soils, of the Draft EIR.

The proposed locations for bluff restoration are depicted on Exhibit 4.3-6, Bluff Restoration Plan. Bluff restoration in areas where erosion damage to the existing bluff is not readily evident would consist of carefully removing invasive plants and asphalt-like material where feasible and revegetating the bluff face with native, drought-tolerant species.... ~~Potential locations of bluff stabilization activities plan (see Exhibit 3-22, Bluff Restoration Plan, in Section 3.0, Project Description).~~ Consistency with the City's General Plan requires that slope designs adhere to the standards contained in Appendix Chapter A33, Excavation and Grading, of the City's Building Code.

#### **Response 73**

Appendix Chapter A33 contained the grading and excavation code at the time of the Draft EIR's publication. It is now contained in Chapter 15.10 of the City of Newport Beach Building Code. This code addresses aspects of grading including cuts and fills and requirements for soils reports, etc.

#### **Response 74**

As stated on page 4.3-22 of the Draft EIR, adaptive management practices could include the protection of the lower three feet of the face of the slopes against erosion for a future sea level rise scenario through the installation of rip rap or coating the area with soil cement and/or geofabric.

#### **Response 75**

Sufficient fault trenching has been completed to define the setback zones. Additional trenching is only required if the setback zones are desired to be reduced. The development has been planned around conservative setback zones including the assumption that Newport Mesa North and south segments are connected (i.e., no habitable structures are planned in this area).

## **Response 76**

The Coastal Act policy referred to by the commenter is Section 30253 of the Coastal Act which states that “New development shall do all of the following: ... (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs”. As discussed in the Draft EIR, the proposed Project does not propose alteration of natural landforms along bluffs but would conduct bluff restoration work to ensure “stability and structural integrity” and repair impacts due to erosion consistent with Section 30253. All of these measures are designed to assure the stability of these landforms consistent with Section 30253. Please also refer to the response to Comment 53.

## **Response 77**

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 (SS/SMB/LA) west of Project site where there are wetland areas. When the two tidal gates along the Santa Ana River levee are closed and a storm event occurs runoff is temporarily stored in the SS/SMB/LA areas under the existing condition. This drainage pattern would not be modified in the post-development condition and it is appropriate for post-development condition storm runoff and nuisance flows to continue to drain to the SS/SMB/LA areas. Additionally, water quality treatment of Project site runoff is planned and discussed in Section 4.4 and Technical Appendix C of the Draft EIR.

## **Response 78**

Oilfield operations occur in the Lowland area of the site today. The oil consolidation sites are currently active oil producing and handling areas for both the West Newport Oil Company and City oil operations. Both oil consolidation sites currently contain oil wells and main oil treating facilities: the northern site contains the West Newport Oil Company main oil facility and the site near West Coast Highway contains the City’s main oil facility. No new main facility sites are proposed to be constructed at these locations. Both West Newport Oil Company and the City are currently able to drill new wells and construct supporting facilities as needed within these areas. This would continue in the same manner whether or not the City should approve the proposed Project. All oilfield operations are governed by regulations of DOGGR. All current and future regulations would be implemented appropriately as per State and local standards. Please also refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

## **Response 79**

Please refer to the response to Comment 78.

## **Response 80**

Water balance budget calculations were performed for the North Arroyo and South Arroyo vegetation in order to evaluate the existing and proposed conditions. Through Project Design Features, the stormwater management system has been designed to match the existing water budgets for the existing drainage ways (see Appendix C, Section 4.0, of the Draft EIR). No water balance budget impacts to the existing habitat within the drainage ways are anticipated.

## **Response 81**

Pre- and post-development peak flow discharge rates for multiple storm events have been analyzed at three separate modal locations (16, 17, and 18) inside the Caltrans reinforced concrete box (RCB) along West Coast Highway. The results of the analysis are shown in Section 4.4, Hydrology and Water Quality, Tables 4.4-23 and 4.4-24, of the Draft EIR. The results indicate that post-development peak flow rates are less than pre-development rates at all modal location except Node 16 (just south of the proposed Project entrance from West Coast Highway). In all cases, the design capacity is greater than the projected flows. At Node 16, post-development peak flow discharges have increased under all studied storm “event” conditions (10-year, 25-year, and 100-year). The largest increase is +1.5 cfs during the 100-year event or a 0.75 percent increase. However, as shown in the second column of Table 4.4-24, the capacity of the RCB at this location (213 cfs) would accommodate the slightly increase 100-year peak flow rate (204.9 cfs).

## **Response 82**

The proposed drainage diversions have been designed to match existing flow rates and volumes within each primary drainage way to avoid impacts to biological resources.

## **Response 83**

As described under page 4.4-29 of the Draft EIR, Rain Event Action Plans (REAPs) are documents required under the Construction General Permit to be prepared within 48 hours prior to any forecasted precipitation event (50 percent chance or greater) that describe the actual site specific field details of construction at that time. Since the proposed Project is not currently under construction, it is not feasible to produce a REAP that accurately describes the construction activities that have not yet commenced. The required elements of a REAP have been identified in Section 4.4 and Appendix C of the Draft EIR; an example REAP form is provided in Appendix A to this Responses to Comments document. A detailed SWPPP and site-specific Risk Assessment must be based on the final construction documents and cannot be performed at this time because detailed excavation and grading information is not available. A preliminary Risk Assessment is included in the Draft EIR; see pages 4.4-28 and -29 and Appendix C, Section 5.3.1. A summary of the BMPs applicable to the various phases of construction have been provided.

## **Response 84**

Stockpiles would be located away from drainage courses in accordance with the requirements of the General Construction Permit. Specific locations would be determined when detailed grading and construction phasing is known, and documented in the SWPPP. Please also refer to the response to Comment 83.

## **Response 85**

Please refer to Topical Response: Irrigation, Landscape Design, and Common Area Landscape Management.

## **Response 86**

The Homeowners Association would provide maintenance for transitional BMPs located in private common landscape areas. In areas within the public right-of-way, the City of Newport Beach would be responsible for maintenance. The Final Water Quality Management Plan

(WQMP) developed for the Project would describe the parties responsible for ongoing operations and maintenance of each structural BMP, including copies of any agreements. The North Orange County MS4 Permit (Section XII.I.5) requires cities, as part of their local storm water programs, to verify ongoing operations and maintenance of post-construction BMPs installed after adoption of the Order.

#### **Response 87**

In accordance with the 2011 Model WQMP and CASQA BMP Handbook, bioretention facilities, such as landscaped biocells, are designed with a maximum drawdown time of 48 to 72 hours to reduce the potential for mosquito breeding. The proposed water quality features were modeled for pollutant removal performance based on the required minimum footprints and volumes treated. Results of the modeling are included in the appendix to the Preliminary WQMP.

#### **Response 88**

Minimization of impervious surfaces is a site design BMP applied early in the site planning phase while considering local ordinances for road widths, building setbacks and accessibility requirements. These principles are observed in the site plan in the clustering of the residential areas, use of buffer zones adjacent to the bluff areas, and creating open space land use areas throughout the Project site. All the proposed BMPs are conservatively sized based on the maximum impervious estimate for each lot, street, and common area. In addition, the Covenants, Conditions, and Restrictions (CC&Rs) would require a minimum amount of front yard landscaping.

#### **Response 89**

A Homeowners Association is a mandatory component of the proposed Project.

#### **Response 90**

In accordance with the 2011 Model WQMP, a Preliminary WQMP consistent with the technical data provided in Appendix C of the Draft EIR has been prepared and is hereby incorporated into the Final EIR; please see Appendix A of this Responses to Comments document.

#### **Response 91**

In accordance with the North Orange County MS4 Permit and 2011 Model WQMP, the Final WQMP would include an operations and maintenance plan that details the responsible party and required activities and frequencies for maintenance of the structural and non-structural BMPs. The North Orange County MS4 Permit Section XII.I.5) requires cities, as part of their storm water programs, to verify ongoing operations and maintenance of post-construction BMPs installed after adoption of the Order. The responsibilities for monitoring each individual BMP would not be identified in the Mitigation Monitoring and Reporting Program because responsible parties cannot be determined until the WQMP is approved by the City of Newport Beach.

#### **Response 92**

The spill contingency planned referred to in the Draft EIR is a best management practices for water quality required to be implemented at the time of Project implementation.

### **Response 93**

For all on-site Project development areas, 100 percent of the “first flush” or the 85<sup>th</sup> percentile 24-hour storm event would be treated in accordance with the requirements of the North Orange County MS4 Permit, City of Newport Beach, and Coastal Commission requirements. The water quality basin located near 16<sup>th</sup> Street to treat 48 acres of off-site Costa Mesa runoff that does not co-mingle with Project flows is not a stormwater requirement and is considered a Project Design Feature. Due to sizing limitations and other physical constraints, it is not feasible to design this basin to treat the entire 85<sup>th</sup> percentile 24-hour storm event nor is it a requirement of the Project. The basin would be designed to treat as much as can be physically accommodated at this location and provide a reduction in peak flows to reduce scour potential within the Southern Arroyo.

### **Response 94**

Nourishment refers to additional surface inflow water that has been treated by LID BMPs upstream. Based on the projected storm water volumes for existing and proposed conditions, the storm water volumes within the Lowland area would differ by no more than 1.5 percent when compared to existing conditions. Please refer to Topical Response: Infiltration Feasibility and Low Impact Development Features, and Topical Response: Overall Storm Water Management.

### **Response 95**

The Homeowners Association would be responsible for maintaining the LID features proposed for the on-site areas under its ownership. Any BMPs in the public right-of-way and public parks would be maintained by the City. Details on BMP ownership and maintenance, including copies of any maintenance agreements, would be documented in the Final WQMP (in accordance with the approved Model WQMP) prepared in conjunction with the Coastal Development Permit application package submitted to the Coastal Commission and final grading plans.

### **Response 96**

A water budget analysis was performed for the Project, and results are summarized in Section 4.0 of Appendix C of the Draft EIR. The water budget analysis estimates the water demand and supply for the Northern Arroyo and Southern Arroyo habitats and further determines the ecological condition of the habitat from a water balance perspective. Overall, the existing water budgets would be maintained and the existing arroyos would not be subject to increased runoff due to the proposed Project. Drainage diversions would be incorporated to match existing flow and volume conditions. Impacts to the water budgets on the arroyo habitats would be considered less than significant.

### **Response 97**

Please refer to the response to Comment 81.

### **Response 98**

Please refer to the response to Comment 78. Oil operations currently lie within the 100-year floodplain and must take measures to reduce the potential for oil residuals to discharge downstream during flood events in accordance with current operating regulations. The impact of sea level rise would only increase the frequency or potential for flooding of the facilities which these facilities must already protect against.

### **Response 99**

Please refer to the response to Comment 2. The City is not aware of any improperly capped wells or oil seeping into local living rooms.

### **Response 100**

The oil operator does not flare gas in its operation.

### **Response 101**

The schedule for remediation and clean-up of the Project site would be set forth in the final RAP (see MM 4.5-1). With respect to “polluted soils remaining for decades,” please refer to page 4.5-8 of the Draft EIR which describes the results of the Phase II EA soil sampling. According to the Phase II EA, “at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines)”.

### **Response 102**

The materials referenced in the comment (old sewer pipes, trucks, drill rigs, etc.) would be removed as part of site remediation for the proposed Project. Site remediation would commence once the Project receives all required approvals. Page 4.5-19 of the Draft EIR states that comprehensive oil facilities consolidation, abandonment, and remediation at the Project site would be a multiple-step process that would likely span a period of approximately two to three years. The remediation portion of this process is expected to take most of this time. Oilfield clean up and remediation applies for the entirety of the Project site with the exception of the consolidated oil sites. In the Open Space Reserve, there may areas where oil facilities, such as pipelines, may be left in place if the resource agencies determine that retention of these materials to be clean and pose no hazards. Should this acceptable to the oversight agencies, the retention of pipelines, etc., this action would reduce habitat and cultural resources disturbance.

### **Response 103**

Please refer to page 4.5-8 of the Draft EIR that describes the results of the Phase II EA soil sampling. According to the Phase II EA, “at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines).” Because the soils do not exceed hazardous waste criteria levels, all of the estimated 246,000 cubic yards of remediated soil can be treated and used on site. If tested materials do not meet required criteria established by State and federal requirements described in the Draft RAP and Final RAP, they would either be treated until acceptable levels are reached, or if they are determined to be too contaminated and cannot be successfully remediated, they would be disposed of off-site at an approved location.

### **Response 104**

No soil gas has been detected in the proposed Upland development area. The Orange County Fire Authority Guideline C-03 outlines measures, such as vents, that would be installed so that in the unlikely event any soil gas was to occur it would be safely vented to the atmosphere. A Human Health Risk Assessment (HHRA) was conducted to determine potential exposure to air contaminants (see Section 4.10 and Appendix G of the Draft EIR) emitted from future oilfield operations and from the combination of emissions from the oilfield and the proposed residential and commercial development. No significant impacts are anticipated.

### **Response 105**

No habitable structures are proposed within 100 feet of an active oil well. Disclosure of the location of abandoned wells will be required in the sale of homes on the Project site.

### **Response 106**

Soil remediation would take place throughout the grading of the Project site and potentially after portions of the Project are occupied. The Draft EIR analyzed the impact of soil movement, including potentially contaminated soils, on sensitive receptors which include both existing off-site and future on-site residents and determined that this impact would be less than significant (see Draft EIR beginning on page 4.10-29). Remediation activities would be monitored to ensure compliance with appropriate site emission control requirements and would implement compliance measures, such as appropriate moisture controls, to prevent emissions. 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.

Thermal treatment technologies heat excavated soil in an enclosure, a process which transforms the contaminants in the soil into vapor, which is then recovered and treated, as needed, to meet appropriate site emission control requirements of the South Coast Air Quality Management District.

### **Response 107**

As stated in the dRAP, Section 5, environmental monitoring (third-party consultants) would present to monitor grading activities. Procedures to identify impacted soils may include visual (e.g., change in color, consistency, grain size), olfactory (e.g., odors) and photoionization detector (PID) test information.

### **Response 108**

As stated in Section 4.9, Transportation and Circulation, of the Draft EIR, a Construction Area Traffic Management Plan would be prepared prior to site disturbance and submitted to the City of Newport Beach for the issuance of a Haul Route Permit. The Traffic Management Plan would identify the routes that construction vehicles must use to access the Project site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas. The precise haul route for removals would be dependent on the material and the suitable destination. As addressed in Section 4.12, Noise, of the Draft EIR, impacts to sensitive receptors are expected to be less than significant due to the immediate proximity of the site to major and secondary highways that currently allow truck traffic.

### **Response 109**

Please refer to Topical Response: ESHA and Topical Response: Sunset Ridge Park.

### **Response 110**

Please refer to the response to Comment 1.

### Response 111

This issue is addressed in Section 4.4 Hydrology and Water Quality and Appendix C of the Draft EIR. Please also refer to the response to Comment 96.

### Response 112

With respect to mapping, the Mediterranean climate of Southern California has resulted in a varied vegetation complex that has adapted to seasonal and periodic droughts common in the area. Xerophytes (plants that adapt to dry habitats) occur throughout the region and on the Project site. These and other common drought tolerant plant species are visible year-round, even during, or after, periods of limited rainfall. The time period when the vegetation surveys and the jurisdictional delineation were mapped on site was biologically adequate to describe Project site resources.

With respect to the special status plant surveys, as described on page 4.6-6 of the Draft EIR, focused plant surveys were conducted in fall 2006 with a focus on southern tarplant (*Centromadia parryi* ssp. *australis*). Focused surveys were also performed in spring 2007. However, because of limited rainfall in 2007 and because this species is an annual herb, the Project botanists determined that it would be appropriate to repeat survey in 2008.

Based on data for the City of Newport Beach<sup>23</sup>, the average rainfall per year is 10.8 inches. In 2008, it rained 7.35 inches<sup>24</sup>, which is 68 percent of normal.

### Response 113

Surveys for commonly occurring or special status bat species were not conducted for the Project. No bat species listed as either Threatened or Endangered (or meeting the criteria as such) has the potential to occur on site. Therefore, suitability for bat species to occur on site was based on habitat types present, known occurrences of bat species in the region, and range maps of bat species in the region.

### Response 114

As stated on Page 4.6-34 of the Draft EIR, suitable habitat for the western spadefoot (*Spea hammondi*), a California Species of Special Concern, occurs on the Project site; however, this species has not been observed during focused fairy shrimp surveys and during hydrological monitoring on site from 2000, and 2007 through 2011 (Bomkamp 2009). Therefore, the potential for western spadefoot to occur on the Project site is considered low".

### Response 115

This information is currently not listed with the California Natural Diversity Database (CNDDDB) or the U.S. Fish and Wildlife Service (USFWS)<sup>25</sup> for the wintering and breeding season from 2006 to 2010. Any additional specific information the commenter could provide on this reference would be helpful including observation contact/expertise, date of observation, specific location of observation, population numbers, behavior, and habitat present at observation location.

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<sup>23</sup> <http://www.newportbeachca.gov/index.aspx?page=601>

<sup>24</sup> [http://www.wrh.noaa.gov/sgx/obs/rtp/rtp\\_NEW\\_08](http://www.wrh.noaa.gov/sgx/obs/rtp/rtp_NEW_08)

<sup>25</sup> <http://www.fws.gov/arcata/es/birds/WSP/plover.html>

### **Response 116**

As stated in greater detail in Draft EIR Section 4.6.8 (Mitigation Program), the Applicant would be fully responsible for the implementation of the revegetation programs until the restoration areas have met the success criteria outlined in the program. The sites would be monitored and maintained for five years to ensure successful establishment. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) have final authority over mitigation area sign-off. If areas have not met the required criteria established by the agencies, the maintenance and monitoring period would be extended accordingly.

Success criteria vary with the habit types, soil resources, resource agency requirements, and other factors. Typical success criteria that may be incorporated in to the detailed mitigation plans for the Project site include, but may not be limited to, (1) growth of plants within Project area, (2) diversity of plants within Project area, (3) coverage of native species, and increase in wildlife use/diversity.

### **Response 117**

Please refer to the response to Comment 49.

### **Response 118**

There are approximately 48.72 acres of Fuel Management Zones within the Project site. There is approximately 13.84 acres in Zone A; 15.33 acres in Zone B; and 19.55 acres in Zone C. Note that portions of the zones overlap public streets and street rights-of-way and landscape areas within development lots.

### **Response 119**

The opinion of the commenter is noted. Neither CEQA nor the Federal Endangered Species Act (FESA) (under which this species is listed by the U.S. Fish and Wildlife Service [USFWS]) requires coastal sage scrub occupied by gnatcatchers to be "preserved in situ". As discussed on page 4.6-75 of the Draft EIR, if the Project impacts coastal sage scrub occupied by the coastal California gnatcatcher, the Applicant would be required to obtain Take Authorization through Section 7 of the FESA.

### **Response 120**

Please refer to the response to Comment 96.

### **Response 121**

The Mitigation Program for biological resources (starting on page 4.6-90 of the Draft EIR) includes several mitigation measures that address the potential indirect impacts from invasive species and other human activities. These include MM 4.6-14 (Invasive Exotic Plant Species) that requires the Applicant to submit Landscape Plans to the City of Newport Beach (City) for review and approval by a qualified Biologist. The review is required to ensure that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided. When the process is complete, the qualified Biologist shall submit a memo approving the Landscape Plans to the City. In addition, MM 4.6-16 (Urban Wildlands Interface) requires the Applicant to educate residents of the responsibilities associated with living at the wildland interface, through the development of a wildland interface brochure. The

brochure would also address invasive species that shall be avoided in landscaping consistent with MM 4.6-14.

### **Response 122**

There are existing light standards along the north side of 19<sup>th</sup> Street adjacent to the Project site.

### **Response 123**

A good source of information on wild birds and domestic cat interactions can be found on the American Bird Conservancy (ABC) website<sup>26</sup>. The ABC acknowledges that birds are better off when cats stay indoors. In addition, life for outdoor cats is also risky (hit by cars, attacked by dogs/coyotes, get lost, and other dangers). Outdoor cats lead considerably shorter lives on average than cats kept exclusively indoors. In light of these risks to native birds and domestic cats, in 1997, the ABC launched the "Cats Indoors! Campaign for Safer Birds and Cats to educate cat owners, policy makers, and the general public that cats, wildlife, and people all benefit when cats are kept indoors, confined to an enclosure when outdoors, or trained to go outside on a harness and leash". The ABC has developed a very useful brochure which can be modified to meet the needs of the Project. The link to the brochure is [http://www.abcbirds.org/abcprograms/policy/cats/materials/cat\\_brochure.pdf](http://www.abcbirds.org/abcprograms/policy/cats/materials/cat_brochure.pdf).

### **Response 124**

As discussed on page 4.6-84 of the Draft EIR, the proposed Project is required to restore riparian habitat either on site, or immediately off site. The mitigation sites would be determined in coordination with the City and the resource agencies (i.e., the USFWS, the CDFG, the RWQCB, and the California Coastal Commission). The sites would either be located on the Project site in a dedicated open space area or a suitable adjacent off-site open space to be obtained/purchased. Selected sites would not result in the removal of a biologically valuable resource (e.g., native grassland).

### **Response 125**

The comment is noted.

### **Response 126**

The opinion of the commenter is noted. Remedial measures would be in place with the approval of the restoration plans with the resource agencies to provide the safeguards necessary to ensure restoration sites meet the necessary criteria standards.

### **Response 127**

Please refer to the response to Comment 116.

### **Response 128**

All on-site vegetation removal would be conducted in compliance with the State Endangered Species Act, Federal Endangered Species Act, and the Migratory Bird Treaty Act. Vegetation removal would take place during the appropriate season for the various habitat types and listed avian species that are present and the resource agency mandated restrictions.

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<sup>26</sup> <http://www.abcbirds.org/abcprograms/policy/cats/index.html>

The flushing of avian and other mobile species from habitat areas immediately prior to brush-clearing and earth-moving activities is a common and requested practice from the resource agencies.

**Response 129**

Please refer to the response to Comment 116.

**Response 130**

Please refer to the response to Comment 121.

**Response 131**

Please refer to the response to Comment 121.

**Response 130**

Please refer to the response to Comment 116.

**Response 133**

With respect to jobs-housing balance, the Southern California Association of Governments (SCAG) states that “a balance between jobs and housing in metropolitan region can be defined as a provision of adequate supply of housing to house workers employed in a defined area (i.e., community or sub-region)”. Section 4.7, Population, Housing, and Employment, of the Draft EIR does recognize that housing demand created by these jobs would be met by (1) existing units in the City; (2) projected future units in the City; (3) the proposed 1,375 residential units, including affordable housing associated with Project; and (4) dwelling units elsewhere in OC and larger SCAG region.

The proposed Project anticipates the creation of 422 jobs anticipated to be created with between 69 and 206 affordable units proposed on-site and/or off-site within the City (or in-lieu fee for portion). These new units would address a portion of jobs created from Project. Existing rental housing opportunities exist within the City and region to address the remaining need. Current vacancy rates for housing in City (2010 Census) is 12.3 percent meaning there is sufficient housing opportunities in the area. City is collecting in-lieu housing fees on other residential projects that would contribute toward the creation of new affordable housing opportunities in this planning period and future planning periods.

The commenter is incorrect in stating that Section 19.54.080.A of the City's Municipal Code states that an Affordable Housing Implementation Plan (AHIP) must include all the noted items. The contents of an AHIP are identified in Section 20.54.060; the draft AHIP includes these contents. Section 19.54.080.A of the Municipal Code identifies the required contents for the Affordable Housing Agreement, which is the legal document used by the City to implement an approved AHIP and ensure that the approved affordable housing units are rented or sold at an affordable price for the duration and to the income groups approved in the AHIP. The Affordable Housing Agreement would be drafted subsequent to the approval of the AHIP and would be reviewed as to form and content by the City Attorney's Office.

### **Response 134**

A policy consistency analysis of the Project with Coastal Commission policies regarding low and moderate income housing in the Coastal Zone is contained Section 4.1, Land Use and Related Planning Programs, and Section 4.7, Population, Housing, and Employment, of the Draft EIR.

### **Response 135**

The commenter's interpretation of the draft AHIP is incorrect. Both the Draft EIR and the draft AHIP require a minimum of 50 percent of the affordable units for the Project be located on the Project site.

### **Response 136**

The commenter's interpretation of the draft AHIP is incorrect. Both the Draft EIR and the draft AHIP indicate that the number of required affordable housing units is based on income category. As stated in Section 3.0, Project Description,

The Newport Banning Ranch AHIP proposes the construction of a minimum of 50 percent of the required affordable housing on the Project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

- Very Low Income: 5 percent of the total units (69 units); or
- Low Income: 10 percent of the total units (138 units); or
- Moderate Income: 15 percent of the total units (206 units); or
- Some combination of the three income categories.

Very Low Income is defined as households with income from 31 to 50 percent of the County median income adjusted for family size. Low Income is defined as households with income from 51 to 80 percent and Moderate Income is defined as households within incomes equal to or less than 120 percent”.

### **Response 137**

The trails would be constructed in accordance with the Proposed Implementation Plan referenced in Section 3.7 of the Draft EIR. Open space trail construction would occur following remediation and restoration. Trails within the development would be constructed in accordance with the Proposed Implementation Plan referenced in Section 3.7 and in the sequence identified in Exhibit 3.18. Trails would not be available for use within the area set aside for consolidated oil production and the connecting roadway until after oil production activities cease.

### **Response 138**

The Draft EIR identifies that activities located within Caltrans right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast

Highway. The Methodology discussion of Section 4.9 of the Draft EIR identifies that Caltrans requires the use of the Highway Capacity Manual (HCM) intersection analysis methodology to analyze the operation of signalized intersections on a State Highway controlled by Caltrans (*Caltrans Guide for the Preparation of Traffic Impact Studies* dated December 2002). In the vicinity of the project, Pacific Coast Highway/West Coast Highway and Newport Boulevard are Caltrans facilities (see Table 4.9-1 of the Draft EIR). Therefore, traffic study intersections on State Highway facilities are also analyzed using the HCM intersection analysis methodology.

### **Response 139**

The differences are based on the different methodologies used by the State (Caltrans) and the cities (Newport Beach, Costa Mesa, and Huntington Beach) within the traffic study area for the proposed Project. There are some significant similarities, and also some significant differences between the ICU and the delay (HCM) intersection methodologies. Both methodologies take into account the number of lanes on each approach to the intersection and the volume of traffic on each approach. The ICU methodology compares the volume of traffic to the overall capacity of the lanes to develop a volume-to-capacity (v/c) ratio. The HCM methodology is based on optimum usage of each lane and optimum signal timing and phasing on each approach. The ICU methodology is required by the City of Newport Beach, and is also the methodology used by the cities of Huntington Beach and Costa Mesa. The delay methodology (HCM), which is required by Caltrans, measures the average delay per vehicle, in seconds, and takes into account signal timing and phasing. The resulting measure of delay can sometimes result in a better Level of Service than the capacity measurement (ICU calculations), and can sometimes result in a worse Level of Service, depending on the intersection layout, signal timing, and signal phasing.

### **Response 140**

Please refer to the response to Comment 6.

### **Response 141**

Internal capture refers to any trip that stays on a project site, regardless of travel mode. As an example, a trip between the resort inn or the residential at the south end of the Project site and the proposed commercial center at 17<sup>th</sup> Street would be an internal capture trip regardless of it was a walking, bicycle, or vehicle trip. These trips would not impact off-site intersections.

Pass-by trips are different from internal capture trips, in that they are trips that have one or both trip ends outside a project. They are pass-by in that they would be trips already on the roadway system that stop to patronize a business in the commercial center, and then continue on. A very conservative pass-by rate of 10 percent was assumed. The ITE Trip Generation publication provides a 34 percent pass-by rate for shopping centers.

### **Response 142**

The analysis includes diverted trips on not only 19<sup>th</sup> Street, but also the other east-west streets that would connect to Bluff Road (17<sup>th</sup>, 16<sup>th</sup>, and 15<sup>th</sup>). The trip diversion assumptions were based on select link runs conducted with the City of Newport Beach Traffic Model (NBTM), which isolate the trips using a particular roadway segment to help identify the origins and destinations of those trips.

### **Response 143**

The General Plan buildout analyses assumed buildout of the surrounding area roadway network, based on the Orange County MPAH, which assumes the 19<sup>th</sup> Street Bridge would be constructed across the Santa Ana River as a four-lane Primary Road. Since the timing for the bridge is uncertain, the Traffic Impact Analysis also includes analysis of a No Bridge scenario for informational purposes. It should be noted that the Year 2016 traffic analysis scenarios do not assume the 19<sup>th</sup> Street Bridge.

### **Response 144**

The General Plan buildout analyses assumed buildout of the surrounding area roadway network, based on the Orange County MPAH, which also assumes the extension of Bluff Road from 19<sup>th</sup> Street to Victoria Street as a six-lane major roadway. This roadway segment is also shown on the City of Costa Mesa Master Plan of Highways. As proposed, the Project would not build nor preclude the completion of this roadway segment. In order to delete this roadway segment from either plan, the City of Costa Mesa would need to initiate and complete a cooperative study for an amendment to the Orange County MPAH.

### **Response 145**

Standard Condition 4.9-3 in Section 4.10 of the Draft EIR requires that the Applicant prepare a Traffic Management Plan for construction traffic. The condition includes the provision that advanced written notice (two-week) of temporary traffic disruptions be provided to emergency service providers. The condition also provides maximum truck volumes on West Coast Highway allowed per hour, depending on the time of year, to avoid traffic conflicts with beach and tourist traffic; and specifies that construction traffic will be monitored and additional restrictions may be imposed by the City Public Works Department if traffic congestion problems arise due to construction traffic.

### **Response 146**

The City of Newport Beach has approval authority over the Project. Should the City take action to approve the proposed Project, the City would need to adopt a Statement of Overriding Considerations to address the significant unavoidable impacts that cannot be mitigated to a level that is considered less than significant including traffic impacts in the City of Costa Mesa. The City of Newport Beach does not have the authority to ensure the City of Costa Mesa implements the mitigation. It should be noted that the Applicant and City of Costa Mesa are working together on a good faith basis to come to an agreement on improvements in Costa Mesa that would meet or exceed the Project's fair share of impacts to Costa Mesa intersections identified in Section 4.9, Transportation and Circulation, of the Draft EIR. The City of Newport Beach understands that discussions between the Applicant and the City of Costa Mesa are ongoing.

### **Response 147**

The proposed Project is estimated to generate 14,989 vehicle trips per day. The Draft EIR 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 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.

The Traffic Mitigation Program in Section 4.9, Transportation and Circulation, of the Draft EIR includes the provision of a second southbound left-turn on Newport Boulevard at 19<sup>th</sup> Street and notes that the proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape. With respect to 17<sup>th</sup> Street, the Mitigation Program proposes improvements to the intersection of Newport Boulevard at 17<sup>th</sup> Street. The Draft EIR proposes a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.

#### **Response 148**

The proposed Project is estimated to generate 14,989 vehicle trips per day. The Draft EIR 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 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 149**

The commenter's question does not address the proposed Project. This improvement has been identified by and conditioned on the Hoag Health Center project.

#### **Response 150**

The comment is noted.

#### **Response 151**

The air quality analysis of exposure of nearby residents to criteria pollutants and TACs during construction addresses the equipment used in remediation and it is assumed that the remediation activities include the consolidation efforts

#### **Response 152**

Chronic and acute non-cancer impacts were analyzed in the Draft EIR. The results are shown in Table 4.10-18. No significant health impacts are anticipated.

#### **Response 153**

The Human Health Risk Assessment (HHRA) addressed receptors in all directions from the Project site, which would include Newport Shores. Impacts were found to be less than significant, as described in Section 4.10, Air Quality, of the Draft EIR.

### **Response 154**

Project Design Feature 4.11.1 in the Draft EIR requires the proposed Project to be consistent with a recognized Green Building Program that exists at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design – Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard.

Additionally, solar reflectivity or other types of cool roofs can be an effective tool in reducing warming and energy consumption in buildings generally. It is often among the tools recognized and positively rated in third-party Green Building Programs – among various other techniques – for its value in providing cooling. While providing certain types of benefits, white roofs, reflective pavement, and other cooling techniques would also have to be evaluated in terms other factors, for example their aesthetic qualities and visual impacts (e.g., reflectivity and glare for Project residents and neighbors). Any such proposals and evaluations would occur during Site Development Review of individual construction-level development projects. The installation of solar panel equipment would be up to individual residents. Project Design Feature 4.11-4g notes that single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

### **Response 155**

It is assumed that the commenter is referring to Table 4.10-16. The traffic volumes are those forecast for the General Plan Buildout plus Project scenario. The City's General Plan assumes a projected year 2030 buildout year.

### **Response 156**

There would be negligible hydrogen sulfide emissions during Project construction. No significant impacts would be expected.

### **Response 157**

The greenhouse gases emitted from construction equipment used in remediation are included in the Draft EIR analysis. Please refer to Section 4.11, Greenhouse Gas Emissions.

### **Response 158**

The Draft EIR includes analysis of noise from future operations at the consolidated oilfield sites to the nearest sensitive noise receptors. Noise impacts were found to be less than significant. The volume of truck traffic related to oilfield operations on the road connecting the consolidation sites would not be substantially greater than the existing truck traffic on the southwestern part of the site.

### **Response 159**

Table 4.12-8 provides noise levels typical of equipment that would be used in the consolidation of oil operations.

### **Response 160**

Construction vibration impacts are addressed in the Draft EIR on pages 4.12-38 and 4.12-39.

### **Response 161**

The Draft EIR acknowledges that construction truck noise may be noticeable. However, 20 truck passbys per day is not considered a substantial increase in noise impacts.

### **Response 162**

Please refer to Topical Response: Topical Response: Coastal Commission Consent Orders.

### **Response 163**

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment. 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 the four-lane Bluff Road to a location farther from the existing homes. 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 (Site Planning Area 13a) and the South Family Village (Site Planning Area 11a and 11b). As a result, the roadway would bisect the open space area adjacent to West Coast Highway (Site Planning Area 1a) 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 (Site Planning Area 7c), 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.

### **Response 164**

Please refer to Mitigation Measures (MMs) 4.12-9 and 4.12-10 in the Draft EIR which are included in the Project to avoid a significant impact to the California Seabreeze community. MM 4.12-10 has been revised and is incorporated into the Final EIR as follows:

**MM 4.12-10** Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.

### **Response 165**

The text on page 4.12-33 of the Draft EIR is not "proposing" air conditioning; the analysis is for noise impacts where HVAC units, which could include air conditioning, are installed. Each builder will make a determination of which environmental management amenities will be included in each future dwelling unit consistent with California Energy Code requirements, site conditions, City building regulations and the goals of the Green and Sustainable Plan.

### **Response 166**

The commenter expresses the opinion "Outdoor eating establishments with amplified music must not be located on the northerly side of the building facing residents in California Seabreeze". Any future outdoor dining associated with any eating or drinking establishment in

either the MU/R (Mixed Use/Residential) District or the VSR/R (Visitor-Serving Resort/Residential) District would require a Minor Use Permit (MUP) as set forth in Exhibit 3-1, Allowable Uses, of the Newport Banning Ranch Planned Community Development Plan (NBR-PC) regulations.

Any eating and drinking establishment, whether outdoor or indoor, with sit down dining serving alcohol, as well any lounge, bar, or nightclub, in either the MU/R (Mixed Use/Residential) District or the VSR/R (Visitor-Serving Resort/Residential) District would require a Conditional Use Permit (CUP) as set forth in Exhibit 3-1, Allowable Uses, of the NBR-PC regulations.

Any specific proposal to establish an outdoor eating establishment in the northerly side of the building facing residences at California Seabreeze would require City approval of either a Minor Use Permit or a Conditional Use Permit as set forth in Section 4.9, Use Permits, of the NBR-PC. This, in turn, would require compliance with Newport Beach Municipal Code (NBMC) Chapter 20.52.020, D through G, "Conditional Use Permits and Minor Use Permits," which requires public notice and a hearing before either the City's Zoning Administrator or Planning Commission. This provision would afford the commenter the opportunity to comment on any proposal for an outdoor eating establishment with amplified music on the northerly side of a building facing residents in California Seabreeze, when and if such an establishment on the north side of a building is ever proposed.

#### **Response 167**

Rubberized asphalt pavement has been used for more than 30 years. Such roads have performed without maintenance for 14 years and have a life expectancy of 18 years, according to an Arizona study. Arizona is a state that has pioneered the use of asphalt rubber roads. As stated on page 4.12-22 of the Draft EIR, Costa Mesa has used rubberized asphalt since 2004.

#### **Response 168**

Please refer to the response to Comment 36.

#### **Response 169**

The number and quality of cultural resources of Newport Banning Ranch may be considered low when compared to other, regional, coastal developments. However the degree of preexisting impacts from massive grading resulting from quarrying, road building, and oil related activities far surpasses the initial conditions of the other development sites. The "richer" resources that remain (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) would be considered in the planning process, and mitigation measures are in place to reduce the impact to the sites to a less than significant level. Monitoring of grading is planned under Mitigation Measure 4.13-1.

#### **Response 170**

Pursuant to SB 18 (Government Code 65352.3), the initial contacts with Native American groups were conducted "government to government" by the City of Newport Beach. The City's inquiry to the Native American Heritage Commission included both Juaneño/Acjachemen contacts as well as Gabrielino/Tongva contacts, all of whom were contacted by the City via certified letter. The Draft EIR reference to the Juaneño/Acjachemen groups was referencing them being the only groups who chose to formally consult under SB 18 and initiate communication with the City. The letters documenting these contacts are not included in the Draft EIR are on file at the City of Newport Beach.

### **Response 171**

Building 5, a “ranch-style house” is currently used for the offices of the West Newport Oil Company and is a recent, mobile structure. It was likely built after 1960 but prior to 1965. Research has not revealed any direct association between this property and persons or events important either regionally or nationally. It was not constructed by a known architect nor was it designed in an exceptional architectural style. Therefore, under the National Register of Historic Places or California Register of Historical Resources criteria relating to the West Newport Oil Banning Ranch sites’ association with persons of historic importance, the property does not qualify as a significant resource.

### **Response 172**

Avoidance and protection of cultural resources is the preferred approach in both CEQA and Federal Section 106 law, and is the basis of mitigation measures in the Draft EIR. Only the sites where complete preservation is not feasible is data recovery excavation recommended.

### **Response 173**

A paleontological records search and survey were conducted on the property simultaneous to archaeological activities. BonTerra Consulting conducted a Phase II paleontological study, which consisted of a records search, literature review, and limited field reconnaissance in order to evaluate the sensitivity of the substrate underlying the proposed development for the presence of fossil resources and to make recommendations to mitigate the effects of the Project on those resources (p. 4.13-25).

### **Response 174**

The proposed grading specifications noted under Mitigation Measure 4.13-1 state no spatial limitation as to the nature or degree of archaeological monitoring. The mitigation measure states that the Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant/Contractor, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate (see page 4.13-27). Grading areas at present are undetermined and are not limited to simply “grading”. Monitoring would also include areas of oilfield infrastructure removal.

### **Response 175**

Please refer to the response to Comment 29. The measures that have been identified to mitigate the proposed Project’s impact at the intersections of Newport Boulevard at 19<sup>th</sup> Street and Newport Boulevard at Rochester would provide additional capacity on Newport Boulevard, to better accommodate the movement of traffic through the intersections.

### **Response 176**

Section 4905.1 of the Newport Beach Municipal Code requires that all elements of the fuel modification plan be maintained in accordance with the approved plan. Violations of the Municipal Code are subject to citations and progressive fines.

### **Response 177**

The comment Master Development Plan will be revised to specify that fuel modification maintenance will not be conducted during the nesting/breeding season for sensitive wildlife.

### **Response 178**

No specific location has been identified but the temporary fire station would be located within the areas of disturbance of the Project site.

### **Response 179**

The Project would be conditioned to pay a proportionate share of the cost of the construction of a replacement station for Fire Station 2.

### **Response 180**

As described in Section 4.14, Public Services and Facilities, in the Draft EIR, the City of Newport Beach Police Department was contacted to determine the potential impact of the Project on police protection services. The Project would increase demand for the City's Police protection services but would not require the construction of new facilities nor would it require the expansion of existing facilities that would result in physical vernal impacts. Although the exact number and frequency of calls cannot be calculated since there is no development is currently, implementation of the Project is expected to result in an increase in calls for service for non-residential development. The proposed Project is reflected in the 2006 Orange County Projections' growth estimates and has been taken into account in long-range planning efforts, including the Police Department. Based on information received from the Police Department, police protection services can be provided to the Project site without significantly impacting existing and planned development within the City. No information from the Police Department was provided that would indicate an increased demand for police protection services in the West Newport Beach Sub Region (WNBSR), as defined by the commenter. In addition, implementation of Standard Conditions 4.14-4 and 4.14-5 would ensure adequate police protection services can be provided to the Project site.

### **Response 181**

Please refer to Letter R5 from the Newport-Mesa Unified School District which identifies that the School District forecasts a district-wide capacity surplus.

### **Response 182**

The Newport Banning Ranch Planned Community Development Plan (NBR-PC) requires all development to comply Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the Newport Beach Municipal Code. Section 20.30.120 requires all new development projects to provide adequate, enclosed areas with solid roofs for collecting and loading solid waste and recyclable materials.

### **Response 183**

As addressed in Section 4.15, Utilities, of the Draft EIR, the Project's Water Supply Assessment (WSA) (*Water Supply Assessment, Newport Banning Ranch*, prepared by AECOM, May 2010) was approved by the Newport Beach City Council on October 12, 2010. Therefore, the WSA used data available at the time of its preparation. The City of Newport Beach 2010 Urban Water

Management Plan (UWMP) was adopted by the Newport Beach City Council on June 14, 2011. The 2010 UWMP indicates a much lower projection of water use as opposed to the 2005 UWMP due to water conservation and climate. These new updated estimates would indicate there is adequate infrastructure and supply.

As addressed in Section 4.15 of the Draft EIR, the water demand for the Project site was included in the City's water demand forecasts and is reflected in the City's 1999, 2005, and 2010 UWMPs and in MWDOC, OCWD, and MWD planning documents. The 2010 Urban Water Management Plan identifies that the City is capable of meeting the water demands of its existing and projected customers in normal, single dry, and multiple dry years for the 25-year planning period (through 2035).

The Project's WSA does acknowledge statewide water supply issues such as reduced Delta pumping. Additionally, the commenter is referred to Section 6.0, Cumulative Impacts of the Proposed Project, starting on page 5-78, which addresses statewide water supply and availability.

The Orange County Groundwater Basin is managed by the Orange County Water District (OCWD). The City is a member agency of the OCWD. Saltwater intrusion is not experienced in the basin because of the seawater barrier that is operated and maintained by the OCWD. The WSA, 2005 UWMP, and 2010 UWMP all include accurate calculations and projections that take in account basin levels. Basin Pumping Percentages are set by the OCWD board and discussed with member agencies to maintain overdraft levels and pumping capacities.

With respect to statewide water issues, please refer to Section 6.0, Cumulative Impacts of the Proposed Project, of the Draft EIR. The City purchases import water from the MWDOC. MWDOC is a member agency of the MWD. In evaluating import water supplies, data from MWD's Regional Urban Water Management Plan as well as MWD's Integrated Resource Plan was used.

#### **Response 184**

The comment is noted.

#### **Response 185**

As described in the Draft EIR, the City of Newport Beach adopted a Water Supply Assessment (WSA) for the Project in October 2010. The WSA was prepared based on data provided from water service providers to the City, one of which is MWDOC. Subsequent to the adoption of the WSA, the City of Newport Beach adopted its 2010 Urban Water Management Plan on June 2011. The Project WSA is consistent with the assumptions used in the City's 2010 Urban Water Management Plan. Both the WSA approved for the Project and the City's 2010 Urban Water Management Plan incorporate the data on water supply and demand provided by the City's water providers including MWDOC.

#### **Response 186**

Limited off-site water improvements are necessary to connect the proposed on-site water system to existing water mains. As depicted in Exhibit 4.15-2 of the Draft EIR, water line connections are proposed at the existing terminus of 16<sup>th</sup> Street, from intersection of 15<sup>th</sup> Street and Monrovia Ave., at Ticonderoga and at West Coast Highway.

### **Response 187**

As described in the Draft EIR, the City of Newport Beach adopted a Water Supply Assessment (WSA) for the proposed Project in October 2010. The WSA was prepared based on data provided from water service providers to the City, one of which is MWDOC. Subsequent to the adoption of the WSA, the City of Newport Beach adopted its 2010 Urban Water Management Plan in June 2011. As addressed in the Draft EIR, the Project WSA is consistent with the assumptions used in the City's 2010 Urban Water Management Plan. Both the WSA approved for the Project and the City's 2010 Urban Water Management Plan incorporate the data on water supply and demand provided by the City's water providers including MWDOC. The WSA is provided in Appendix L to the Draft EIR; the 2010 Urban Water Management Plan is available at the City of Newport Beach.

### **Response 188**

The preference of the City and the Applicant would be that the proposed Project not need a pump station. However, because the gravity system design necessitates sewer mains through the proposed open space, it has been prudent to include impacts of a pump station if it is required. The pump station would be located within the proposed development footprint and would comply with City of Newport Beach requirements.

### **Response 189**

Although not preferred, a lift station would be constructed as necessary to provide adequate wastewater service. The lift station is assumed in the Draft EIR analysis and as indicated on page 4.15-29, the lift station could be located within the limits of disturbance assumed in the Draft EIR. The lift station would be located in an enclosed structure and would not create any operational noise impacts. Construction impacts associated with the lift station are assumed in the Draft EIR analysis.

### **Response 190**

The proposed sewer connection point for the project is immediately upstream of the Bitter Point Pump Station. Adequate capacity in the connection line exists to serve the proposed project. The existing sewer lines are illustrated in Figure 3 of the Sewer and Water Facilities Plan included in Appendix L. OCSD has recently completed testing of the Bitter Point Pump Station. The test results show that the station has a rated capacity of 39.43 mgd, and OCSD estimated that the total projected max peak inflow to the pump station for Year 2020 was 37.95 MGD. Thus, the pump station has sufficient capacity to serve the Project. Please refer to Letter R7 from the Orange County Sanitation District.

### **Response 191**

With respect to energy, the references to SC 4.10-1 and SC 4.12-1 have been deleted.

### **Response 192**

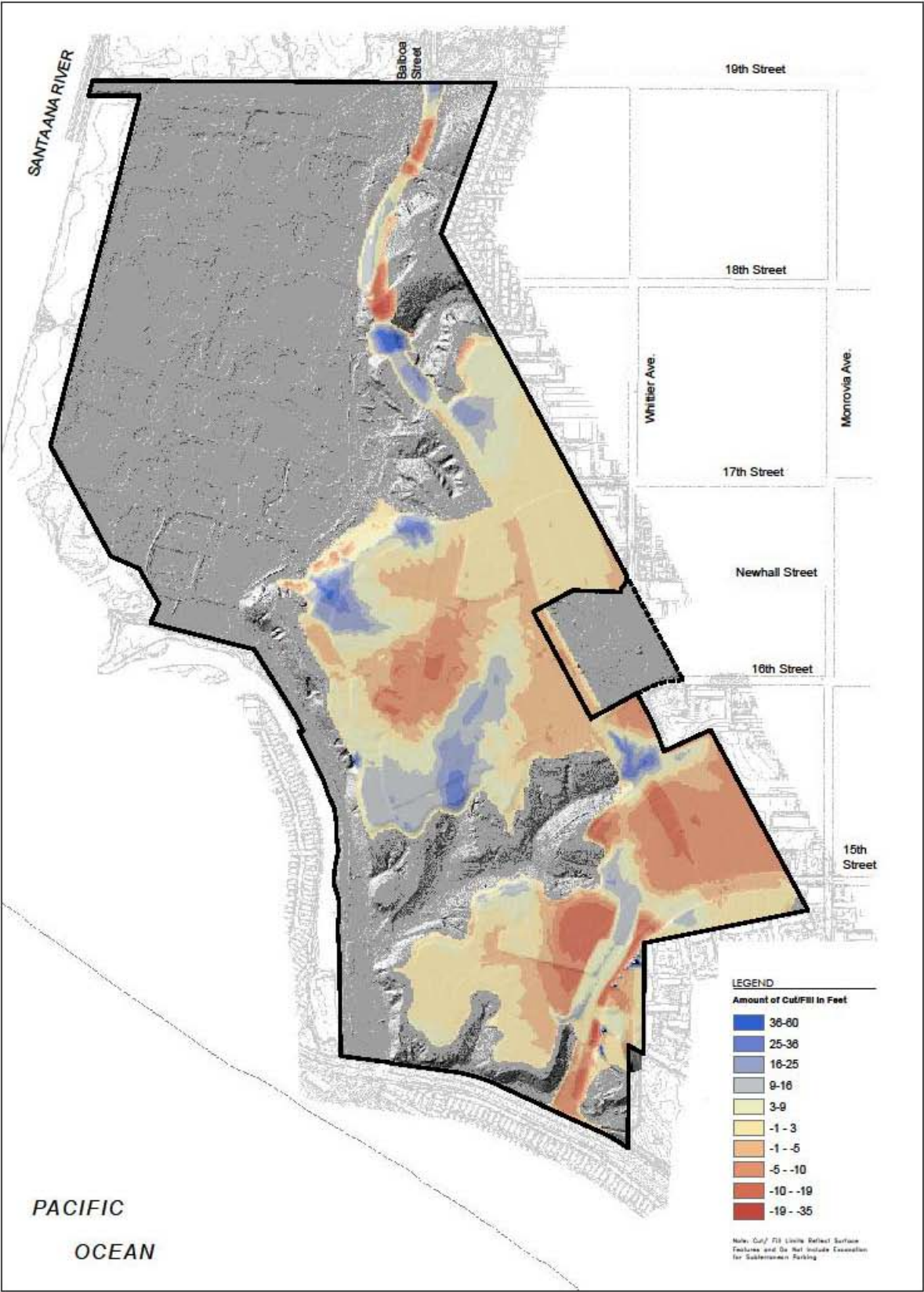
The commenter is incorrect that the cumulative analysis only addresses projects with completed environmental documentation. Further, the analysis takes into consideration General Plan buildout levels of development. The comment is noted.

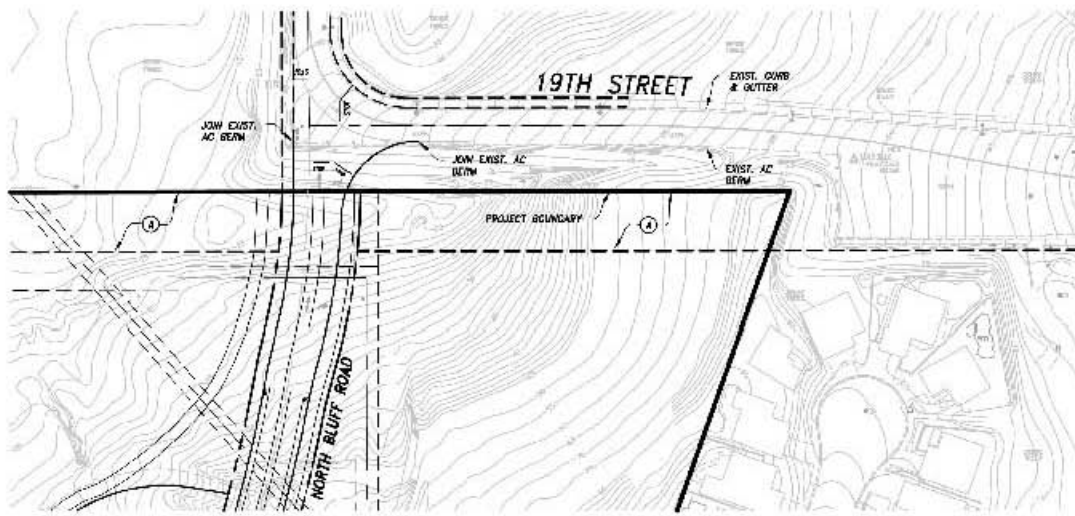
**Response 193**

Please refer to the response to Comment 144.

**Response 194**

The opinions of the commenter are noted.





- JOIN NORTH BLUFF ROAD IMPROVEMENTS TO EXISTING 19TH STREET IMPROVEMENTS WITHIN EXISTING RIGHT-OF-WAY.
- (A) 19TH STREET RIGHT-OF-WAY RESERVATION AREA.

**J. Edward Guilmette**  
P.O. Box 1187  
Costa Mesa, CA 92628  
949.645.7322 E-mail: chivatoed@yahoo.com

**Comment Letter O47**

November 6, 2011

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

RECEIVED BY  
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DEVELOPMENT  
CITY OF NEWPORT BEACH

RE: Newport Banning Ranch DEIR – Section 4.4 Hydrology and Water Quality

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch (NBR) Draft Environmental Impact Report (DEIR). Please include the following comments and concerns in the official record. I have also attached a copy of my April 16, 2009 letter that presented Newport Banning Ranch NOP comments. Many of my current comments are similar, but include additional cites from the DEIR.

Flooding is a serious issue evidenced by numerous citations in city documents and Coastal Commission requirements. Flood risk is not confined to the project site. Storm runoff into property adjacent to the project has serious impacts and in this case I am referring to the probability of flooding in the Semeniuk Slough (Newport Slough and Oxbow Loop [OIL] ) and the community of Newport Shores (NS). Here are some citations and issues from the NBR-DEIR:

1. The OIL portion of Semeniuk Slough (SS) provides only a 2-year level of storm runoff protection when the tidal gates are closed. This amounts to 1.5 feet of available flood storage capacity (section 4.4- page 14). Since flood storage capacity in the slough only accommodates a 2-year storm, the risk of flooding in Newport Shores is very high. Subwatershed A (SW-A) which includes most of the Banning Ranch (BR) land scheduled for development (houses, commercial space, etc.) creates an existing (currently - without development) 17.3 ac-ft runoff volume for a 2-yr storm and ~ 67 ac-ft of runoff for a 10-year storm that will greatly exceed the holding capacity of the slough. 1
2. The development of 149 acres of the BR site will increase the amount of impervious surfaces (roads, parking lots, driveways etc) by ~ 45% in SW-A (4.4-22). Section 4.4 does not provide any calculations of the amount of additional runoff produced from this 45% increase. The 17.3 ac-ft of runoff from of 2-year storm multiplied by 45% is 25 ac-ft (10 year = 97 ac-ft). Both of these storm events (with development) will exceed the storage capacity of OIL and produce a high probability of flooding Newport Shores. 2

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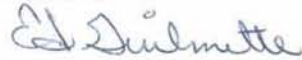
Section 4.4 Hydrology and Water Quality

<p>3. Storm runoff from SW-A will be only slightly reduced by 1.14 ac-ft (likely overestimated) by BMP and LID design protocols for the development (4.4-39). A small portion of runoff from SW-A (~ 8 %) will be diverted from OIL (4.4-52) into the ESHA wetlands North of OIL. The wetlands and SS are all interconnected and the storm runoff that drains to the wetlands ends up in SS (4.4-56), which only has a flood storage capacity of 28 ac-ft (greatly reduced when the tidal gates are closed since the water level is already 3.5 feet above mean sea level (msl)).</p>	3
<p>4. In contrast to these citations the <u>amount of runoff estimated for the proposed development (4.4-57)</u> is only 18.3 ac-ft for a 2-year storm event (estimates for a 10-year storm are not provided) based on the runoff reductions discussed above in #3. The impact of a 45% increase in impervious surfaces is not discussed in any justification of these runoff estimates. Obfuscation seems to be the intent of the estimates provided and a calculated attempt to downplay the amount of flood risk in SS and Newport Shores (disingenuous would be another term for the information presented).</p>	4
<p>The amount of storm water draining into OIL and the Caltrans storm drain, which drains into OIL (4.4-61), must be clearly discussed based on the high level of flood risk to SS, OIL and Newport Shores (NS). The impact of the 45% increase of impervious surfaces in SW-A and the <u>small</u> runoff reductions from BMP's, LID's and SW-A runoff are not clarified based on reductions to flood risk. Most of the discussions of flood risks are focused on the development itself (uplands) and not the lowlands (SS, OIL and NS). Residents of NS deserve a simple and clear explanation of the flood risk associated with the BR development and risks to their safety and property values.</p>	5

Additional comments pertaining to Section 4.4

Please refer to my letter dated April 16, 2009 for additional comments that pertain to this section.

Sincerely,



J. Edward Guilmette

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**Letter O47 J. Edward Guilmette**  
November 6, 2011

### Response 1

As shown in Tables 4.4-19 and 4.4-20 of the Draft EIR, the existing and proposed condition 2-year rainfall volumes delivered to the Semeniuk Slough/Salt Marsh Basin are 26.6 acre-feet (ac-ft) and 27.6 ac-ft, respectively. When the tidal gate in the Santa Ana River levee is completely closed, there is approximately 28 ac-ft of storage capacity in the Semeniuk Slough/Salt Marsh Basin (see page 4.4-56 of the Draft EIR), which is approximately equal to the 2-year rainfall event delivered to the Semeniuk Slough/Salt Marsh Basin. Because the runoff volume delivered (pre- and post-development are less than the flood storage capacity in the Semeniuk Slough/Salt Marsh Basin, a 2-year level of protection is provided. Recognizing the existing constraints posed by this storage deficit, the proposed Project's drainage plan was developed with the objective of avoiding any increase in storm water runoff conveyed to the Semeniuk Slough/Salt Marsh Basin while preserving its 2-year storage capacity limit. Consequently, a portion of Sub-watershed A would be diverted away from the Semeniuk Slough under the proposed Project's drainage plan and would discharge to the Lowland area via propose storm drain systems. Currently, larger storm events (>2-year) exceed the storage capacity of the Semeniuk Slough/Salt Marsh Basin; this condition would not change in the post-development condition.

### Response 2

Proposed condition runoff volumes tributary to Semeniuk Slough and Salt Marsh Basin are presented in Table 4.4-20 of the Draft EIR and are reflective of impervious characteristics created by proposed land use conditions. Backup calculations for the surface conditions can be found in Appendix C, Watershed Assessment Report, of the Draft EIR. As discussed in the response to Comment 1, a 2-year level of protection is provided to the Newport Shores residences in the post-development condition, which is consistent with the current level of protection.

### Response 3

As shown in the table, the 2-year runoff volume delivered to the wetlands (Lowland area) is 32.8 ac-ft. Calculations identify that there is approximately 70 ac-ft of storage capacity available in the Lowland area. Because available storage capacity in the Lowland area exceeds the 2-year runoff volume tributary to the area, a minimum 2-year level of protection is provided.

<b>Lowland Area</b>			
<b>Proposed Condition: 2-Year Expected Value Runoff Volume</b>			
<b>Subwatershed</b>	<b>Drainage Area (ac)</b>	<b>2-Year Volume (ac-ft)</b>	<b>100-Year Volume (ac-ft)</b>
B	120.70	12.0	34.7
C	97.50	5.2	25.5
D	22.40	1.7	5.6
E (Same as Existing)	97.2	6.8	27.8
Lowland Area	114.8	13.7	42.9
<b>Total</b>	<b>452.6</b>	<b>39.4 (+6.6)</b>	<b>136.5 (+9.0)</b>

For the Lowland area, the runoff volume is estimated by: (Prec) x (Area) /12

The available storage in the Lowland area only:  $(113,000 \text{ cy}) \left( \frac{27 \text{ FT}^3}{1 \text{ ac}} \right) \left( \frac{1 \text{ ac}}{1 \text{ ac}} \right) = 70.04 \text{ Ac. FT}$

For the Lowland area, the runoff volume estimated by (Prec) x (Area) /12

#### **Response 4**

The 18.3 ac-ft runoff volume referenced by the commenter is the 2-year runoff volume from Sub-Watershed A delivered to Semeniuk Slough/Salt Marsh Basin. The size of Sub-Watershed A is 322.0 acres of which 185.3 acres is off site (57 percent) and 136.7 acres from the Project site (43 percent). The runoff volume from Sub-Watershed A combined with the runoff volume produced from the Newport Shores residential area and the Semeniuk Slough/Salt Marsh Basin footprint area produces a proposed condition runoff volume of 27.6 ac-ft to the Semeniuk Slough/Salt Marsh Basin, and produces a 2-year level of protection to the residences which is similar to existing conditions. As discussed in the response to Comment 2, proposed condition hydrologic results are reflective of impervious characteristics created by proposed land use conditions. Backup calculations for the surface conditions can be found in Appendix C, Watershed Assessment Report, of the Draft EIR.

#### **Response 5**

The flood risk assessment of the Semeniuk Slough, Salt Marsh Basin, and Newport Shores' residents is discussed on pages 4.4-56 and 4.4-57 of the Draft EIR. Please also refer to the responses to Comments 1, 2, 3, and 4. As stated in the responses, storm water runoff peak flow rate and volumes in the post-development condition would provide a 2-year level of protection which is consistent with the level of protection present in the pre-development condition.

Comment Letter O48a

**Alford, Patrick**

---

**From:** olwen hageman [o-hageman@sbcglobal.net]  
**Sent:** Monday, November 07, 2011 8:22 AM  
**To:** Alford, Patrick  
**Subject:** DEIR and Nov 3 Planning Commission mtg

This message was e-mailed to you on Friday with a typo in the address and, of course, it did not go through. Sorry for the delay.

Dear Mr. Alford,

At the study session yesterday afternoon (Nov 3) Mr. Jim Mosher (sp?) 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.

At close of the meeting, Commissioner Hillgren agreed with Mr. Mosher and suggested to Mr. Mike Mohler that Mr. Mosher's request be complied with.

I 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 by professionals 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, 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 forever, another six months or more won't hurt matters. Plus, I don't think Exxon is hurting for money, do you?

Thank you for your patience and willingness to help.

Respectfully,

Olwen Hageman  
7 Goodwill Court  
Newport Beach, CA 92663  
949 642-1998

**Letter O48a Olwen Hageman**  
November 7, 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 O48b**

November 8, 2011

To: Mr. Patrick Alford  
From: Olwen Hageman, 7 Goodwill Court, N.B.  
Re: DEIR comments.

I wonder how this DEIR can be accomplished when roads that would lead to the development have not even been approved. How can Hotspots be determined without this information? I believe that this DEIR is premature and makes a lot of assumptions. My comments are below, listed by page number. I have not read all of Air Quality because I needed more time. I wanted to study HHRA but we don't really need to know the 7 criteria pollutants and the other 4 to know that this project will be bad for the health of the people who already live here. All one has to do is look at the close proximity of Newport Blvd. to Superior and Placentia and, if it is ever approved, to Bluff Road with all of the extensions and extra traffic coming into this area, plus PCH. Pollution will be concentrated in this area and it will take time to disperse into the Basin. Newport Crest will be sandwiched between Superior and Bluff Road? And in close proximity to Newport Blvd, Placentia and PCH. Taxpaying homeowners of 30 plus years are being thrown under the bus. It's interesting to note that the authors refer to Newport Crest as "additional residential uses south of 15<sup>th</sup> Street" when, in fact, we are impacted, I believe more than anybody else.

1

**Page 4.10-6 Local Concentrations of Criteria Pollutants from On-Site Sources**

2<sup>nd</sup> paragraph, last sentence "The worst-case on-site construction emissions were obtained from the CalEEMod analysis details (Appendix G)."

2

**Why is this important information not included in this section?**

**Page 4.10-9**

**4.10-4 Existing Conditions**

Climate and Meteorology – "The SoCAB is arid with abundant sunshine .....(drives the photochemical reactions that form pollutants such as ozone) provides conditions especially favorable to smog formation. .... mountains ...which trap pollutants in the basin. **The unfavorable combination of meteorology, topography, and emissions from the nation's second-largest urban area result in the SoCAB having THE WORST AIR QUALITY IN THE U.S.** Why are the most stringent methods not being taken to improve the air quality? 1375 homes, a 75-room hotel and commercial space will not improve the air quality. What is happening to our beautiful Newport Beach?

3

**Page 4.10-11**

**Table 4.10-2 Ambient Air Quality at Costa Mesa and Mission Viejo Monitoring Stations**

2008 03 was exceeded for 3 days (Federal)

2008 03 was exceeded for 5 days (State)

2009 03 was exceeded for 3 days (State)

PM10 was exceeded for 1 day in 09 (State) for 24 hrs. and annual

PM2.5 was exceeded for 1 day in 09 (Federal)

**Why is the City overriding CARB's requirement for standards?**

**Table 4.10-1 states that these standards are not to be exceeded**

4

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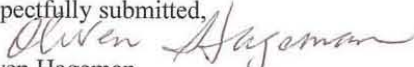
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DEVELOPMENT  
CITY OF NEWPORT BEACH

Page 4.10-12	Table 4.10-3 – Attainment Status of Criteria Pollutants in the South Coast Air Basin	5															
	<table border="1"> <thead> <tr> <th></th><th><u>State</u></th><th><u>Federal</u></th></tr> </thead> <tbody> <tr> <td>03</td><td>Nonattainment</td><td>Extreme Nonattainment</td></tr> <tr> <td>PM10</td><td>Nonattainment</td><td>Serious Nonattainment</td></tr> <tr> <td>PM2.5</td><td>Nonattainment</td><td>Nonattainment</td></tr> <tr> <td>NO2</td><td>Nonattainment</td><td>Attainment/Maintenance</td></tr> </tbody> </table> <p>Please justify adding more emissions in light of the above?</p>		<u>State</u>	<u>Federal</u>	03	Nonattainment	Extreme Nonattainment	PM10	Nonattainment	Serious Nonattainment	PM2.5	Nonattainment	Nonattainment	NO2	Nonattainment	Attainment/Maintenance	
	<u>State</u>	<u>Federal</u>															
03	Nonattainment	Extreme Nonattainment															
PM10	Nonattainment	Serious Nonattainment															
PM2.5	Nonattainment	Nonattainment															
NO2	Nonattainment	Attainment/Maintenance															
Page 4.10-13	<b>Project Design Features and Standard Conditions</b> PDF 4.8-3 If permitted ...a bicycle bridge over West Coast Highway will be provided..... <b>Who will build and pay for this bridge and how much will it cost?</b>	6															
Page 4.10-15	<b>Project Design Features and Standard Conditions</b> PDF 4.11-3 The Master Development Plan and .....require the Project to be coordinated with OCTA to allow for a transit routing through the community. <b>Will Ticonderoga be part of OCTA's transit route and if OCTA so desires, would the City give permission to OCTA for use of Ticonderoga?</b>	7															
Page 4.10-16	<b>Standard Conditions and Requirements</b> SC 4.10-1 <b>Dust Control</b> During construction .....SCAQMD rule 402 requires that air pollutant emissions not be a <u>nuisance off site</u> . <b>What would be considered a “nuisance”.</b>	8															
Page 4.10-17	<b>4.10-6</b> A significant impact related to air quality would occur if the proposed Project would: <b>4.10-3</b> Result in a cumulatively considerable net increase of any criteria pollutant.....many times these pollutants will have significant impact because they exceed standards. <b>Does this put the project in a nonattainable position?</b> <b>4.10-4</b> Expose sensitive receptors to substantial pollutant concentrations. <b>Why are stringent measures not being taken to protect sensitive receptors from significant impacts? In other words, why are they allowed to be “unavoidable”? Land can be remediated but people's health cannot.</b> <b>4.10-5</b> Create objectionable odors affecting a substantial number of people. <b>What will be done about the odors if people <u>can</u> smell them and they are offensive?</b>	9															
Page 4.10-19	<b>- Construction Emissions</b> “.....The oilfield remediation work would overlap with site development and construction of the first two building phases. The buildout of each of the first two phases would overlap with the construction of the subsequent phase.” <b>Given the verdict “<u>significant and unavoidable</u>”, Why cannot remediation be done by itself, prior to construction? And why cannot the first two phases be completed prior to the subsequent phase beginning?</b> <b>The fact that this land needs to be remediated makes this project no ordinary development project. The sensitive receptors should be given every consideration during the construction, even if it takes longer for the developer to complete the project. As I have said previously, I don't think Exxon is hurting for money. At the completion of this project, after 5 whatever years of living with the dust and the noise, the sacrificial lambs of Newport Crest, et al, can then settle</b>	10															

down to the long-term discomforts of <u>pollution, noise and lighting</u> that the completed project would expose them to. The least the developer and city can do is protect the people during construction.	10 cont.
<p><b>Page 4.10-21</b></p> <p>“Although the data in Table 4.10-8 shows that emissions of all pollutants would be less than the SCAQMD CEQA thresholds with approximately 50% Tier 3 equipment and no Tier 4 diesel engine equipment, <u>the availability of sufficient numbers of Tier 4 equipment in 2014 and the following years cannot be assured.</u> Therefore, ... <b>significant and unavoidable impact.</b>”</p> <p><b>Why cannot the availability of Tier 4 equipment be assured? And under these circumstances, Why cannot the acreage to be worked be reduced to the amount where toxic emissions would not be significant? In this instance, they would be <u>avoidable.</u></b></p> <p><b>Surely, it is more important to protect the health of the sensitive receptors than it is to finish the project in less time. Land can be remediated, but a person's health cannot. Emphysema, chronic bronchitis and lung cancer are not pretty ways to exit this life, or to live in it.</b></p>	11
<p><b>Page 4.10-23 Mass Emissions Thresholds (last paragraph)</b></p> <p>“As shown in the tables .....In 2023, calculated regional emissions of VOC, NOx, and CO ...would exceed the SCAQMD CEQA significance thresholds.”</p> <p><b>Please justify the verdict “significant and unavoidable” given when CARB, Table 4.10-1 states that 03, CO, SO2, PM10, PM2.5 ...<u>are not to be exceeded.</u> All others are not be equalled or exceeded.</b></p>	12
<p><b>Page 4.10-27 – Ambient Air Quality – Carbon Monoxide Hotspots</b></p> <ul style="list-style-type: none"> <li>– Many of the 1375 (at least) people who would live on the proposed Banning Ranch Development could likely work at Fashion Island, on the Peninsula or in Huntington Beach.</li> <li>– Many of the people who would work at the proposed hotel or in the proposed retail stores could travel from Fashion Island, the Peninsula or Huntington Beach.</li> <li>– When Sunset Ridge Park becomes open to the public, people will come from Corona Del Mar, the Balboa Peninsula, and possibly from Huntington Beach.</li> </ul> <p><b>Why is there no mention of the intersection of Superior/PCH/Balboa Boulevard? And what is the LOS for this intersection now?</b></p>	13

Respectfully submitted,

  
Olwen Hageman

**Letter O48b Olwen Hageman**  
November 8, 2011

### **Response 1**

The comment is noted. It is also noted that the Draft EIR does not forecast any significant local air quality impacts to the Newport Crest community.

### **Response 2**

The worst-case construction emissions are shown in Tables 4.10-7 and 4.10-8 of the Draft EIR.

### **Response 3**

The comment is noted. The comment is not relevant to a project-level environmental issue.

### **Response 4**

The ambient air quality standards (AAQS) shown in Table 4.10-1 are pollutant *concentrations*, that is, the amount of pollutant per volume of air.<sup>27</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 SCAQMD's guidance CEQA significance thresholds, not the State AAQS. Footnote "a" in Table 4.10-1, including "not to be exceeded", refers to the AAQS, not to the SCAQMD thresholds. The Draft EIR does not indicate that the Project Applicant will likely exceed the AAQS thresholds. 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 nitrogen oxide (NOx) mass 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's construction equipment inventory.

### **Response 5**

Nonattainment of State and federal standards is a regional issue. There are programs at all levels to reduce pollutant emissions. The proposed Project is an infill project, thus accommodating growth with a project that would generate less vehicle miles and corresponding emissions than a similar project built in a less developed area. Many other Project features to minimize emissions while accommodating growth are described in Section 4.10-5 of the Draft EIR, Project Design Features, and Standard Conditions.

### **Response 6**

The pedestrian and bicycle bridge are proposed by the Applicant as a part of the Project. If approved by the required parties (see Section 3.0, Project Description, and Section 4.8, Recreation and Trails, in the Draft EIR), the Applicant would be responsible for the construction of the bridge. The cost of the bridge does not raise an environmental issue.

---

<sup>27</sup> One exception, not a concentration standard, is for Visibility Reducing Particles, which are not analyzed in the Draft EIR.

## Response 7

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.

## Response 8

SCAQMD Rule 402 does not define nuisance. The Rule states, “A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.” The Draft EIR does not forecast any significant local air quality impacts to the nearest sensitive receptors.

## Response 9

- a. Nonattainment is a classification applicable to regional air quality and not to projects.
- b. There would be no significant exposure of sensitive receptors to substantial pollutant concentrations.
- c. Complaints about offensive odors may be reported to the City and to SCAQMD. The following mitigation measure is proposed and incorporated into the Final EIR as follows:

**MM 4.10-13 Odor Complaints.** The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

## Response 10

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction), which explains that the Project has been revised to include Tier 4 construction equipment and NOx emissions would be less than significant with the concurrent remediation and grading activities.

## Response 11

Please refer to the response to Comment 10.

## **Response 12**

Please refer to the response to Comment 4.

## **Response 13**

The intersection of Superior/Pacific Coast Highway/Balboa Boulevard is not mentioned in the air quality analysis because there are no forecast "With Project" conditions of LOS E or F at this intersection. Please see Section 4.9, Transportation and Circulation, of the Draft EIR. Table 4.9-4 shows the existing LOS B for both AM and PM peak hour conditions.

Comment Letter O49

Patrick Alford, Planning Dept. Mgr.  
City of Newport Beach Ca.  
E Mail delivery PALFORD@NEWPORTBEACHCA.GOV

8 November 2011

Re: BANNING RANCH DEIR

Dear Mr Alford,

RECEIVED BY  
COMMUNITY  
NOV 08 2011  
CITY OF NEWPORT BEACH  
DEVELOPMENT

LETS FACE IT, the Banning Ranch Environmental Impact Report (purchased by and for the City of Newport Beach) which report, in all its breadth and length, doesn't address two of the most important issues:

--- **BEFORE** -- or, the 401 acres "as is",

--- **AFTER** -- the 401 acres paved over plus effects on adjoining developed existing properties

First the **BEFORE**: We have Newport Beach a town with no particular sign of environmental restraint (?) that I believe is built out to its perimeters on the western edge. It has a few B-Ranch acres that with the authority to manage land ceded from the County adds to a total of approximately 401 acres. It's never touched by plow and is covered with rare flora and fauna -- though it has been pierced by the oil driller's bit, but not a permanent impact, other than poisoned soil, nor is the drill generally perceptible.

Is it too much for the conservationist, the naturalist, the geographical historian, the Newport Beach, Costa Mesa and county populations, plus the occupants of hundreds of homes, to say, whoa, what are you doing to our fair and rare lands and our lives. The last west end bluff outlook to the Grand Pacific!

The EIR should be addressing the impact of an uber upset of an environment that has a historical presence.

**AFTER: What is the Exchange rate?** A few hundred homes, not enough to justify retail stores, a hotel of unknown character or ownership, or for that matter, the tremendous cost of attempting to re mediate. Perhaps some additional wealth for EXXON MOBIL *versus* the destruction of a 460 Townhouse Development and peripheral properties, road additions and changes including the 55 Freeway, Highway 101, and major Costa Mesa streets and intersections. What other undetected and unintended consequences will surface. Does the Planning Dept. have a Futurist to assess the true impact and add a new chapter?

Lets take the 460 town home development known as Newport Crest Some 100 units with ocean views, views of mountains, Palos Verdes Peninsula, the Ranch and it's wild life, and many more with partial and secondary views. All with the security and integrity of a private compound and convivially clustered around famous local sailing yacht names. This property is split by a City owned "backbone" street known as Ticonderoga. It will no doubt become opened up based on full developers desires. Thus, this organic community becomes split with a loss of all the benefits a community association provides. Its financial integrity would become impaired, its unity and strength would be split and its private streets inundated with outsiders. Resale during construction development time will be impossible!

That Sir, is ENVIRONMENTAL IMPACT

<p>EIR Questions:</p> <p>-- Re: Sect. 4.5, Pg. 4.5.1</p> <p>Hazardous Materials Is there a suggestion that safety waivers might be obtained that would soften the criteria for permitting?</p>	2
<p>-- Re: Sect. 4.5, Table 4.5-3, Pg 4.5.12 Hazardous Materials</p> <p>Advises there are 138,000 cu. yd. Of petro. Soil to refine. This is an abandoned oil field. The entire field must be refined to at least a depth of 9 feet. 100 acres or so, How much additional over what time period?</p>	3
<p>-- Re: Sect. 4.1.9 or 4.1-49 Level of significance after Mitigation</p> <p>How many instances and where in the DEIR are "Overriding Considerations" invoked? (The Sacramento Delta smelt must have a powerful lobby!)</p>	4
<p>It might be interesting to know how the DEIR advisor's methods compare to the Huntington Beach approach to abandoned oil fields. Below is an extract from there opening page on this subject</p>	5

Thank you, r. hageman

cc [Bhillgren@HighRhodes.com](mailto:Bhillgren@HighRhodes.com) (re: shorter DEIR)

## City Specification No. 429

Reference to HBMC Section 17.04.085

### HUNTINGTON BEACH FIRE DEPARTMENT

#### Methane District Building Permit Requirements

"The City of Huntington Beach strongly recommends **NOT** building structures over or near abandoned oil wells or hydrocarbon contaminated soil. If abandoned wells can be proven SAFE and/or hydrocarbon contaminated soils conform to Huntington Beach Soil Cleanup Standard 431-92, construction may be allowed at the discretion of the Fire Chief. The presence of abandoned wells and **approved non-re mediated soils** shall be disclosed to future property owners."

end

**Letter O49     R. Hageman**  
November 8, 2011

**Response 1**

The Draft EIR and 2001 Environmental Assessment (see Section 4.5, Hazards and Hazardous Materials) provide a comprehensive description of the “as is” condition of the Project site. In addition, the Draft EIR includes a discussion of the following “after” conditions, potential impacts, and their mitigation programs; please refer to Sections 4.1 through 4.15.

**Response 2**

No waiver of permitting responsibility is sought by the Applicant.

**Response 3**

Table 4.5-3 in Section 4.5 of the Draft EIR provides an estimate of the volume of soil to be managed at each Potential Environmental Concern (PEC) site. The remediation process would include sampling materials within PEC sites to verify the extent of removal needed.

**Response 4**

The commenter’s refers to the Newport Beach City Council approval of a Statement of Overriding Considerations. 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.

In approving the General Plan 2006 Update and certifying the Final EIR, the Newport Beach City Council adopted a Statement of Overriding Considerations, which included this benefit:

The updated General Plan will improve the opportunities for parks and recreation facilities to serve the City's residents and visitors. It provides for the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that will provide playfields and passive recreational opportunities for the underserved western portion of the City. Additionally, the Plan, for the first time in Policy R 1.9, prioritizes park and recreational facility improvements.

The Statement of Overriding Considerations has no relationship to the “Sacramento Delta smelt”.

**Response 5**

No structures are proposed over or within 10 feet of a properly abandoned oil well.



Comment Letter O50

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,

On behalf of the Banning Ranch Conservancy (BRC) and Hamilton Biological, Inc., 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). The Project would allow for the development of the approximately 401.1-acre site with 1,375 residential dwelling units; 75,000 square feet of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8-gross-acre public Community Park. Project approvals required from the City include a General Plan Circulation Element Amendment, Pre-zoning, Zone Change, Planned Community Development Plan, Master Development Plan, Tentative Tract Map, Development Agreement, and Affordable Housing Implementation Plan. The Project would also require a Coastal Development Permit from the California Coastal Commission.

I submit these comments as a professional biological consultant with 23 years of experience working primarily in Orange County and surrounding jurisdictions. I am qualified to provide expert review, having prepared the biological resources section for numerous CEQA documents throughout Orange County and the wider region, and also having reviewed many such documents; my Curriculum Vitae is attached. In the early 1990s, as an employee of LSA Associates, I conducted numerous surveys of the Newport Banning Ranch property, then the West Newport Oil property. This included focused surveys for the Coastal California Gnatcatcher (*Poliophtila californica californica*) under my federal permit (TE-799557), trapping for small mammals, nocturnal surveys for coyotes and other wildlife, and general biological surveys. From this work I have first-hand knowledge of the property and resources that were present there approximately 18-20 years ago. I am aware that the Banning Ranch Conservancy has collected large volumes of information on vernal pools/seasonal ponds on the Newport Banning Ranch property. As I have not had the opportunity to closely inspect the areas of the property where ponding is observed, I will allow others to make most of the comments pertaining to vernal pools and seasonal ponds.

1

316 Monrovia Avenue Long Beach, CA 90803 562-477-2181 robb@hamiltonbiological.com

Review of Newport Banning Ranch DEIR  
November 8, 2011

Hamilton Biological, Inc.  
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<p>The Newport Banning Ranch project site has been subject to numerous biological evaluations over the years, with reports prepared and submitted to the landowners. Yet if any historical reports were reviewed, this is not specified in the DEIR. None of the older reports is cited in Section 4.6 or Appendix E to the DEIR. A 2009 biological technical report on the property prepared by Glenn Lukos Associates (GLA) is not listed among the References used to prepare the DEIR (although the GLA report is cited in Section 4.6). Given that an EIR is required to base its analyses upon the best available information, failure to consult biological technical reports prepared by investigators dating back to the early 1990s represents a failure on the part of the EIR preparers to comply with an important mandate of CEQA.</p>	<p>2</p>
<p>The preparer of the Newport Banning Ranch DEIR, BonTerra Consulting, also prepared the Sunset Ridge EIR, which the City recently certified. Since Sunset Ridge was largely on public land, I was able to review BonTerra's plant community mapping, and I documented numerous mapping errors. As noted in my comments on the Sunset Ridge EIR, all of BonTerra's mapping errors were made in the direction of under-representing sensitive native communities and over-representing disturbed or non-native communities. The City was forced to have parts of the Sunset Ridge site re-mapped before it could apply for a Coastal Development Permit from the California Coastal Commission, and the project had to undergo costly major revisions in order to avoid coastal wetlands</p>	<p>3a</p>
<p>and other sensitive habitat areas identified in my EIR comments. Given these costly and ultimately failed results, it is interesting that the City and Newport Banning Ranch continue to rely on BonTerra to prepare the current CEQA document. Since the Ranch is private property, and the landowners have not granted access to critically review the mapping presented in the DEIR, I have not been able to evaluate BonTerra's mapping of plant communities in this case. I do note that Exhibit 4.6-1 (Parts a and b) fails to show numerous seasonal ponds that I am aware of on the property. Perhaps the most obvious example involves the large pool visible from the end of Ticonderoga Avenue, shown in Figure 1 on the following page.</p>	<p>3b</p>
<p>Based upon very limited field-checking, accomplished from outside the property limits, it is my conclusion that BonTerra's mapping of Newport Banning Ranch requires thorough independent review before it can be relied upon as being objective and accurate. Figure 1 on the following page shows an obvious example of a major mapping error in the DEIR. Before the EIR is certified, I request to review BonTerra's plant community mapping during a single-day visit, accompanied by representatives of the City and/or landowner. In the absence of a credible independent review, and given the obvious mapping error shown on the following page, the public must assume that the DEIR inaccurately reflects the biological resources present on the project site, with the inaccuracies heavily weighted toward under-representing biologically sensitive resources (as in the Sunset Ridge EIR). Failure to accurately and credibly establish the existing conditions will invalidate this CEQA document's analyses and conclusions.</p>	<p>3c</p>

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Figure 1. Photo taken on 10 January 2011, facing west from Ticonderoga Street, showing one of the larger seasonal pools not mapped by BonTerra Consulting. The pool covers approximately 18,000 square feet (0.41 acre). Exhibit 4.6-1b in the DEIR incorrectly depicts this area as "Non-native Grassland" and Exhibit 4.6-3c does not show this area as even a "single-parameter wetland" under Coastal Commission jurisdiction.

The project biologists consistently argue that any human action resulting in improved habitat conditions should be discounted as "artificial," whereas avoidable habitat-degrading actions — such as the widespread mowing of scrub and grass far from any oil facility — represent existing conditions that cannot be avoided. In these ways, the DEIR shows bias in favor of project implementation. For example, the DEIR at Page 4.6-15 states, "The record rainfall in 2009–2010 and 2010–2011 created areas of ponding within artificial depressions." The question of whether dozens of seasonal pools on the site were created artificially or naturally is *irrelevant* to the impact analysis, and how the project biologists purport to know the origins of all of the pools is not stated. Some pools were clearly created by human manipulations whereas others appear to be natural, as is typical of mesas on the coastal slope of southern California. Since CEQA requires analysis of the existing conditions, without regard for whether these types of existing features were created naturally or otherwise, the question is moot.

4

The Banning Ranch Conservancy possesses photographic evidence showing the intentional *filling* of one or more seasonal ponds that had developed in undeveloped portions of the project site. At least one of these ponds was not close to a road, and represented no possible impediment to oilfield operations. Consistent with its pattern of promoting the project by minimizing disclosure of relevant information to the public that may not

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reflect well upon the project proponent, or further the City's interest in approving this project, the DEIR makes no mention of any pools having been filled without the required permits in recent years.

4 cont.

For the record, all mitigation sites identified in the DEIR must be specified. If habitat restoration is undertaken, this will entail changes to the existing environment, impacting some species even if others are possibly benefitted. CEQA requires that the project site be clearly defined, and the DEIR fails to meet this standard.

5

Authorizing a massive development project on Newport Banning Ranch, on the scale proposed in the DEIR, will have potentially significant cumulative and growth-inducing effects resulting from the likely revival of long-shelved plans for a 19<sup>th</sup> Street bridge across the Santa Ana River. A bridge at that location would have impacts on numerous biologically sensitive species found in that area, and would represent a major intrusion of noise into the Orange Coast River Park.

6

The Burrowing Owl (*Athene cunicularia*), a California Species of Special Concern, is rare in Orange County due to large-scale development of nearly all of the county's suitable grasslands, especially near the coast. The project site's grasslands are among the most suitable habitats for Burrowing Owls remaining in Orange County or anywhere along the coast of southern California. In January 2008, Glenn Lukos Associates (GLA) found two Burrowing Owls in the site's southern grasslands and a third individual 212 feet west of the site. A map of their sightings was included in GLA's 2008 biological technical appendix, and because that report was posted to the City's web page I do have a copy of that report. Since GLA's 2008 sightings are not mapped on Exhibits 4.6-2a, 4.6-2b, 4.6-6a, or 4.6-6b, I will reproduce GLA's own map below, to make this relevant information part of the public record:

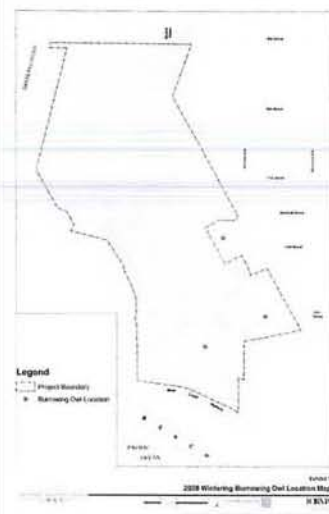


Figure 2. This map is Exhibit 7 in the 2008 draft biological report prepared by Glenn Lukos Associates for Newport Banning Ranch LLC. It shows the point locations where Glenn Lukos Associates documented the occurrence of three wintering Burrowing Owls in January 2008. The DEIR briefly mentions two of these records, but not the third, which was just outside the eastern edge of the property.

7

Numerous biological studies have been conducted on the project site over a period of nearly 20 years. Relevant data from those surveys should be incorporated into the EIR's analyses, not discarded. By omitting these observations, and the locations of other special-status species observed on the site before 2009, from the DEIR's exhibits, the EIR preparer creates a misleading impression of the environmental effects of the proposed project. Please provide revised exhibits that include all known sightings of special status species made on the project site (including all biological reports that have been prepared for the property in the past 20 years). Readers may evaluate the relative importance of a given sighting based, in part, upon the number of years that have elapsed since the sighting was made. What is gained by withholding this relevant information from the public?

8

Also, please include species observed during earlier studies in the plant and wildlife compendia, and distinguish those observed on previous survey efforts from those observed during the current studies by GLA and BonTerra Consulting.

The DEIR identifies permanent impacts to 97.3 acres of grasslands and ruderal vegetation that provide habitat for wintering Burrowing Owls, and for various other species that are now rare in the region due to loss of expansive open grasslands. The DEIR states:

These areas generally have low biological value for most species because they are vegetated with non-native species.

There is no biological justification for this statement. The fact that the grasslands consist mainly of non-native grass species has no logical or necessary connection to the DEIR's assertion that they "generally have low biological value for most species." In 2009, responding to a similar assertion in the DEIR for the Sunset Ridge project, which proposes to dump 69,000 cubic yards of fill on the grasslands of Newport Banning Ranch, I noted:

On November 6 I observed at least 80 California Ground Squirrels on and near the project site. By any objective measure, the project site's grasslands are among the most suitable habitats for Burrowing Owls in Orange County or anywhere along the coast of southern California, which is why three Burrowing Owls were documented wintering in this area during January 2008.

9a

Later, in the same letter, I noted:

In just two brief visits I have seen large numbers of grassland bird species using the site's grasslands, including two Red-tailed Hawks, an American Kestrel, 14 Killdeer, 25 American Pipits, 70 Western Meadowlarks, 100 Mourning Doves, and 100 House Finches (minimum estimates provided for the last four species).

Clearly, various native wildlife species dependent upon grasslands utilize Newport Banning Ranch in large numbers, and do not appear to be substantially affected by the grass being non-native instead of native. Since the DEIR offers no justification for suggesting otherwise, its analyses and conclusions are flawed and unsupported by fact.

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Figure 3. This photo shows the short-grass grasslands of Newport Banning Ranch, as seen from the terminus of 15th Street, on November 6, 2009. At least a dozen California Ground Squirrels are visible in this group.

Flat, open grasslands characterized much of Orange County and the greater Los Angeles Basin historically, but now very few such areas remain anywhere in the region, especially near the coast. The limited areas that remain have become very important for a dwindling suite of grassland-dependent wildlife species that persist in the area, some of which are federally listed or have other special status. It is appropriate that the DEIR identifies potentially significant impacts resulting from the proposed loss of 93% of the site's non-native grasslands and grassland/ruderal habitats, but the proposed mitigation — the restoration of 50.07 acres of grassland, either on the project site ("including native grassland areas within Zone C of the fuel modification areas") or at some unspecified off-site location — would be of little or no value to the affected species. The species most dependent upon shortgrass coastal mesas, such as the Burrowing Owl and Loggerhead Shrike, need expanses of open ground; whether or not the mesa is dominated by native or non-native grasses is of little or no importance. Very few open, undeveloped mesas remain anywhere in the coastal zone, especially in Orange and Los Angeles Counties. The notion that "restoring" 50.07 of grasslands in some unspecified area is going to replace the loss of approximately 100 acres of non-native grasslands is misguided and unsupported by fact or logical inference.

9b

About three-quarters of the 20.27 acres that are proposed for preservation are ruderal, and therefore not the type of open, short-grass mesa that is of value to Burrowing Owls,

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Loggerhead Shrikes, or other special status grassland species. The DEIR fails to make this important distinction, treating all grassland and ruderal habitats as though they were interchangeable and of similar value to the species at greatest risk of extirpation from the project site and the wider region.

9b cont.

One grassland-dependent species that I observed at Newport Banning Ranch during the early 1990s is the San Diego Black-tailed Jackrabbit (*Lepus californicus bennettii*), a California Species of Special Concern that has all but disappeared from coastal Orange County and much of the coastal slope of southern California. I recall seeing them on the site only during nocturnal surveys that were conducted by LSA Associates for the West Newport Oil Company, although hares may also have been seen during the daytime. Given that this species is known to have occurred on the site within the past 20 years, I am surprised that it is not mentioned in the DEIR, and that potential impacts to this species are not identified. Unless this species is already extirpated from the site, it is one of several special-status species that would be adversely affected by the proposed loss of grasslands and other open habitats for implementation of the proposed project. Directed nocturnal surveys throughout the site would be required to determine the species' current status there; otherwise, its presence should be assumed.

10

The uplands of Newport Banning Ranch, with their mosaic of non-native grasslands interspersed with vernal pools on a mesa surrounded by development near the coast, bear a striking similarity to More Mesa, located in southern Santa Barbara County:



11

Figure 4. The non-native grasslands of Newport Banning Ranch are comparable to the limited area of non-native grasslands at More Mesa, shown here. Most of the open space shown here has been designated as an Environmentally Sensitive Habitat Area since 1993, even though these non-native grasslands and associated riparian habitats lack the federally listed species found at Newport Banning Ranch.

The More Mesa Handbook ([http://www.moremesa.org/mesa\\_handbook.html](http://www.moremesa.org/mesa_handbook.html)), Page 19, describes the species composition of the grasslands there:

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As with most grassland along the South Coast, non-native species dominate More Mesa's grasslands. Species such as wild oat, ripgut grass, Italian rye grass, and Harding grass dominate these grasslands along with other invasive non-native species such as sweet fennel and wild radish.

Dominance of More Mesa by non-native grasses did not prevent that area from being identified as an Environmentally Sensitive Habitat Area under the Coastal Act. It is the regional rarity of shortgrass coastal mesas containing vernal pools, and the importance of these habitats to many declining and vulnerable wildlife species, that make these landscapes biologically valuable. Since it is the rarity of this habitat mosaic throughout the region that is limiting to wildlife populations, and not anything specific about the vegetative composition of the grasslands, restoration represents an ineffective and inappropriate form of mitigation for this impact. No form of restoration or minimal level of preservation, as the DEIR proposes, can effectively mitigate for the loss of the last hundred acres of shortgrass mesa remaining on the coast of Orange County. If the landowner is determined to destroy virtually all of this habitat on the Newport Banning Ranch property, this is a significant impact that cannot be mitigated to below a level of significance (meaning that a finding of overriding considerations would be appropriate). The project biologists should drop the unconvincing pretense that "restoring" native grasslands in fuel modification zones or in other unspecified areas could possibly have any meaningful mitigating effects upon local populations of numerous grassland-dependent wildlife species that would be permanently displaced, and possibly locally extirpated, through development of nearly all of the shortgrass mesa habitat on the Newport Banning Ranch.

11 cont.

It is my understanding that the Sunset Ridge and Newport Banning Ranch projects are seeking a combined permit from the U.S. Army Corps of Engineers (Corps), which includes a Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS). During my review of the Sunset Ridge project, I reviewed materials that were submitted to the City and/or USFWS by the project biologists in support of the project's permit application. Supporting materials include a letter dated 29 June 2011 from Ann Johnston of BonTerra Consulting to Michael Sinacori, P.E., at the City of Newport Beach Public Works Department. In this letter, Ms. Johnston argued that a small canyon in the south-eastern part of the Newport Banning Ranch site, vegetated with 0.08 acre of California Encelia mixed with Coastal Prickly-Pear, should not be considered ESHA due to the area having been "partially filled with large pieces of concrete and rebar," and because it is a small area of scrub separated from other areas of scrub by 55 feet of open ground. Finally, Ms. Johnston noted that, although GLA mapped a nesting pair of California Gnatcatchers in this small canyon in 2002, this "error" was later corrected. Since the area in question are within the area that would be graded for construction of Bluff Road, as specified in the DEIR and in a formal agreement between the City and Newport Banning Ranch, it is important to review this issue at this time. The original mapping of this pair in the small canyon is reproduced in Figures 5 and 6 on the following page.

12

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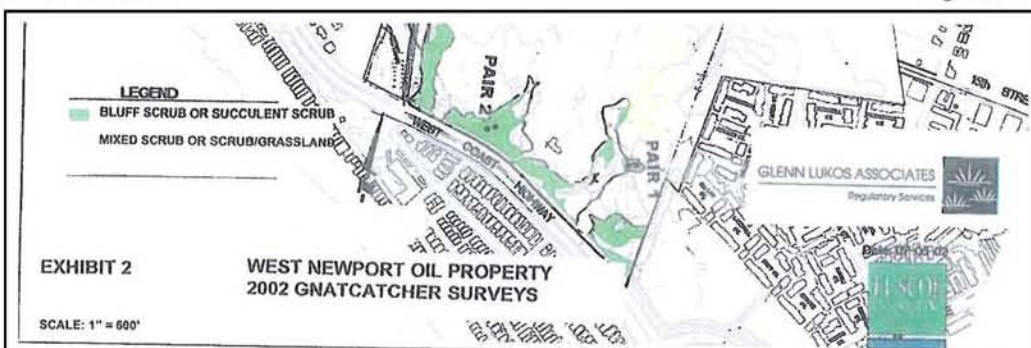


Figure 5. Scan of GLA's original 2002 mapping of California Gnatcatcher locations. The mapping of Pair 1 shows two dots, representing a gnatcatcher pair, in a small side-canyon within a much larger polygon that extends to the north, south, and west. Since the location of the side-canyon is aligned properly with the map's base topography, and its patch of native scrub is correctly mapped, it makes no sense to argue that mapping of the birds' location within the side-canyon was an error.

Figure 6 is a close-up of the gnatcatcher polygon in question (Pair 1), showing the original and "corrected" locations of the pair:

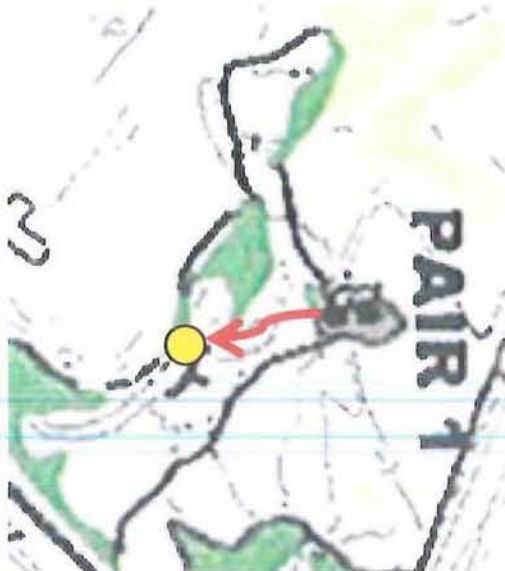


Figure 6. I do not have the report that explains what these dots were intended to represent, but their placement in this specific location suggests that this may have been a nest location. The red arrow and yellow dot show the "corrected" location of this pair, per Mr. Bomkamp's letter to the USFWS

12 cont.

Tony Bomkamp of GLA described his alteration of the 2002 map in a letter dated 14 June 2011 to Christine Medak of the USFWS (this letter is included as an appendix to Ms. Johnston's letter). Mr. Bomkamp stated the following:

During preparation of our submittal information to U.S. Fish and Wildlife Service for the Newport Banning Ranch Assessment, dated February 10, 2010, I noted that one of the [California Gnatcatcher] locations depicted in the year 2002 45-day report was incorrectly mapped. GLA corrected the error in our database such that the map in [our] February 10,

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2010 submittal shows the corrected location; however, I did not notice you of the change at that time.	
And:  I would note that GLA did not have GIS technology in 2002 and the map was prepared using "sticky dots" to the base map, a technique that was not as accurate as using sub-meter GPS combined with highly accurate GIS technology.	12 cont.
The letter also explains that the change in the birds' location was based upon Mr. Bomkamp's "clear recollection" eight years later, and not on review of archived field maps or other verifiable evidence.	
I have four questions:	
1. As stated in Ms. Johnston's letter, "native species do not grow well on concrete and rebar." Under what authority has Newport Banning Ranch dumped construction materials into the small, scrub-filled side-canyon, as described in Ms. Johnston's letter, and why have the land owners not removed the debris from this area of designated critical habitat for the California Gnatcatcher?	13
2. Why did Mr. Bomkamp wait 15 months to notify anyone that he had changed the 2002 map?	14
3. Were the two dots placed in the 0.08-acre side-canyon on the 2002 map intended to represent the birds' nest location, and, if not, what were the dots intended to represent?	15
4. Given that GLA's mapped polygon accurately represents the location of the 0.08-acre side-canyon (in relation to base topography and surrounding landmarks), how is it possible that the dots representing the gnatcatcher pair in that side-canyon ought to have been placed 200 feet west, on the other side of the main-stem canyon?	
GLA's method of representing gnatcatcher habitat usage is to map the location of a pair of gnatcatchers for an entire year using a single dot, and agency biologists seem to have accepted this method of depicting habitat use areas. GLA biologists have wide latitude in choosing where to place the dots, and these chosen locations greatly affect readers' perception of the value of each patch of scrub. For these reasons, movement of the dot on GLA's 2002 map appears to have had an outsized influence on how agency biologists perceive the relative value of the scrub-filled side-canyon in which Mr. Bomkamp originally mapped the gnatcatcher pair. Figure 7, on the following page, shows part of GLA's composite map of gnatcatcher locations from 1992 to 2009, with the 2002 dot in its original and "corrected" locations. In the absence of a coherent explanation of how the dot was placed erroneously in 2002 (as opposed to being placed in a spot that now appears inconvenient, given the proposed alignment of Bluff Road), this dot must remain in the spot where it was originally mapped.	16

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Figure 7. In the absence of a credible explanation for the 200-foot westward shift of the yellow dot representing a pair of California Gnatcatchers in 2002, and in the absence of valid surveys demonstrating habitat usage by gnatcatchers in this area, we insist that this dot remain in its original location.

16 cont.

It should matter little that a dot was placed 200 feet one way or another, because, in the absence of a valid study of habitat usage showing otherwise, California Gnatcatchers should be assumed to make use of all suitable habitat available within their normal territory size, which for coastal areas is described in the scientific literature as covering at least 2.5 acres, mean 5.7 acres<sup>1</sup>. Given that one, two, or even three pairs of California Gnatcatchers regularly breed in the southeastern corner of the project site, the default assumption should be that the birds regularly forage, and during some years may establish a nest, within the 0.08-acre, scrub-filled side-canyon where they were specifically mapped in 2002. Such use would be completely consistent with the known, typical patterns of habitat usage by California Gnatcatchers in the region.

Although Newport Banning Ranch is an area of deferred certification under the City's Coastal Land Use Plan (CLUP), Coastal Commission staff has indicated that the CLUP is a relevant document that will be used to provide staff with some form of guidance when it eventually evaluates an application for a Coastal Development Permit for the Newport Banning Ranch project. Section 4.1.1 of the CLUP states:

17

In determining whether a habitat area meets the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act and should be designated as an ESHA, the following attributes need to be taken into consideration:

<sup>1</sup>Atwood, J. L. and D. R. Bontrager. 2001. California Gnatcatcher (*Poliophtila californica*). The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/574>.

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- The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

Also:

Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include . . . southern dune scrub, southern coastal bluff scrub, maritime succulent scrub . . .

Also (emphasis added):

Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem.

17 cont.

Policy 4.1.1-1 in the CLUP directs an applicant to evaluate various attributes when determining whether a habitat area meets the definition of an ESHA, including "The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law."

Policy 4.1.1-2 in the CLUP states that the City shall "Identify ESHA as habitats or natural communities listed in Section 4.1.1 that possess any of the attributes listed in Policy 4.1.1-1."

If these CLUP criteria and policies are at all relevant to the Newport Banning Ranch project, then all areas of native coastal scrub habitat known or likely to be routinely occupied by California Gnatcatchers satisfy the City's own definition of ESHA. This clearly includes the 0.08-acre side-canyon where GLA mapped a pair of California Gnatcatchers in 2002.

In a public hearing in Oceanside, California, on 2 November 2011, nearly every member of the California Coastal Commission indicated strong support for a staff recommendation that the proposed Sunset Ridge park entry road, which would pass through the Newport Banning Ranch property, be limited to the width necessary to serve the park. But there was no support among staff or the commissioners for a major highway (Bluff Road) passing through the southeastern part of Newport Banning Ranch. This was because two patches of ESHA have already been designated in the southeastern corner of the Newport Banning Ranch property as the result of a recent enforcement action and, even with a limited park road, only minimal buffers may be established between the road and adjacent ESHA. The Coastal Commission's staff ecologist recommends that the park road buffers be restored with high-quality coastal sage scrub and preserved

18

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under a deed restriction, consistent with the City's CLUP and the California Coastal Act, and this recommendation seems to have broad support among the commissioners. Since there appears to be little chance for a major Bluff Road to be pushed through the southeastern corner of Newport Banning Ranch to West Coast Highway, and since all of the "build" alternatives considered in the DEIR include this southern segment of Bluff Road, how can the City and project proponent hope to obtain the required Coastal Development Permit for any version of this project?

18 cont.

The Coastal Commission staff ecologist also identified a need for additional Burrowing Owl surveys and vernal pool/fairy shrimp surveys. Members of the Banning Ranch

19a

Conservancy have identified many more vernal pools/seasonal ponds than have the EIR consultants, and have documented them photographically. Under the Commission's one-parameter method for identifying wetlands, pools holding water for seven

19b

days may satisfy the Coastal Act's wetland criteria. As shown in Figure 1 of this comment letter, the DEIR's plant community map and wetlands map misrepresent even the massive pool near the end of Ticonderoga Street, so all of the pools identified by the

19c

Conservancy require careful inspection by credible specialists to determine their wetland status under the relevant federal and state criteria.

In analyzing impacts to "Grassland Depression Features" (a.k.a. vernal pools and seasonal ponds), Page 4.6-53 of the DEIR states:

The proposed Project is designed to avoid the two vernal pools (VP1 and VP2) that are occupied by San Diego fairy shrimp. In addition to avoidance of these areas, the vernal pool watershed that supports VP1 and VP2 would be enlarged and the entire pool complex would be restored (GLA 2010b).

19b cont.

Figure 8, on the following page, shows the context in which these two vernal pools would be "enlarged and the entire pool complex would be restored."

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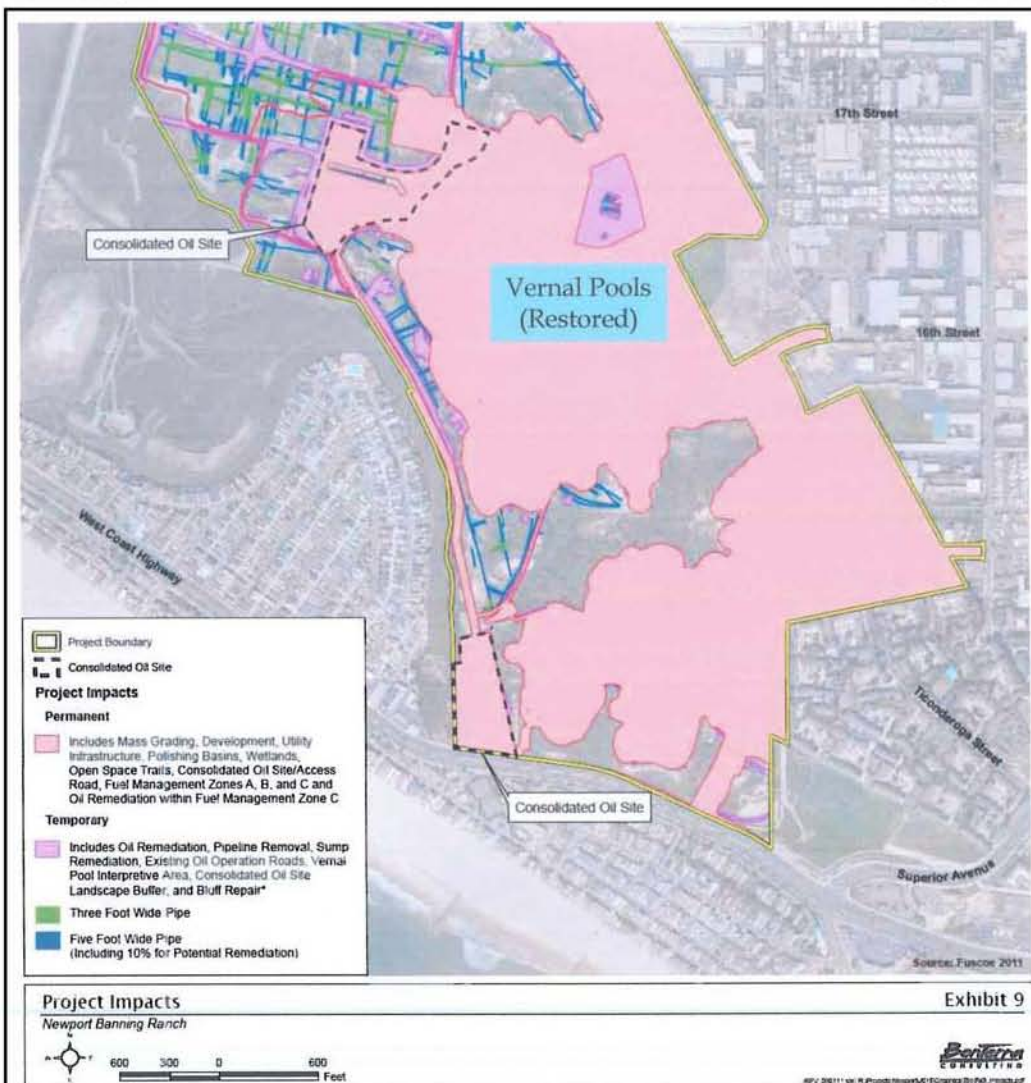


Figure 8. Exhibit 9 of Appendix E to the DEIR shows that two large vernal pools supporting San Diego Fairy Shrimp would technically be preserved and expanded, but surrounded by new development.

Preservation and "restoration" of these vernal pools in a bubble entirely isolated from the surrounding natural landscape might satisfy the narrowest federal requirement to preserve endangered San Diego Fairy Shrimp, but the ecological value of vernal pools is not limited to keeping invertebrates alive, as if in a giant petri dish. Conservation planning as outlined in the Newport Banning Ranch DEIR is anathema to the ecosystem-based approach that characterizes land planning under the California Coastal Act. It is possible that the City, project proponent, and consultants will be able to point to a letter

19c cont.

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from the USFWS confirming that the project would not harm listed species. But the federal government is not required to consider other ecological values of vernal pools, such as providing a source of fresh water and foraging habitat for terrestrial wildlife species in surrounding uplands. Legitimate, ecosystem-based conservation planning, as required under the Coastal Act, would preserve and restore these vernal pools as part of a diverse and largely intact coastal landscape, not as a small, isolated “interpretive area” surrounded by intensive development.

19c cont.

Section 2.4.1 of the DEIR “Areas of Controversy and Unresolved Issues,” states:

Commenters noted that the analysis must be based on not only the City’s criteria but also California Coastal Act criteria, particularly with respect to Environmentally Sensitive Habitat Areas and the provision of buffers between development and sensitive biological areas. These issues are addressed primarily in Section 4.6, Biological Resources and Section 7.0, Alternatives to the Proposed Project.

The DEIR attempts to dismiss the “controversy” with the following statement in Table 4.6-10:

The Project is consistent with [Section 30240 of the Coastal Act – Environmentally sensitive habitat areas; adjacent developments]. Section 4.6.4 of this DEIR has identified and mapped the vegetation types and special status species occurrences known to occur within the Project Site. The Project and associated mitigation measures avoid, minimize, and compensate for the placement of development within these areas to prevent a substantial degradation of these areas or significantly disrupt habitat values. The determination of what areas would be regulated as ESHA would be made by the Coastal Commission as part of the CDP process for the Project.

19d

It is relevant that GLA’s 2008 biological technical appendix, which was posted to the City’s web map, included a map of probable ESHA, whereas no such map is included in the current DEIR<sup>2</sup>. The DEIR identifies permanent impacts to 97.3 acres of grasslands/vernal pools, 20.5 acres of coastal sage scrub, and 7.0 acres of riparian and marsh vegetation. Most or all of these impacts involve natural communities that the Coastal Commission has consistently identified as ESHA, indicating that the City, project proponent, and their consultants either misunderstand the Coastal Act and its requirements, or believe that these requirements do not pertain to them. The DEIR’s mitigation strategy relies upon impacting sensitive habitats and restoring them somewhere else, or preserving certain resources in place and developing closely around them, with little or no consideration given to conserving, in functional form, the mosaic of natural communities that make up this coastal ecosystem. Although the DEIR’s approach may allow the project to comply with the federal Endangered Species Act – a law that routinely allows habitats for listed species to be destroyed and then restored elsewhere – the Coastal Commission is required by law and legal precedent to protect ESHA in place. Although the project design calls for numerous direct, permanent impacts within ESHA

<sup>2</sup> If a reader conducts a search for the term “ESHA” within the PDF version of the current DEIR, numerous wetland polygons are highlighted within Exhibit 4.6-3c and 4.6-7c, indicating the EIR preparer’s opinion regarding the limits of wetland ESHA on the project site; many of these areas are proposed for permanent impacts, which is inconsistent with the Coastal Act.

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and ESHA buffers, the EIR preparers blithely claim that their approach complies with Section 30240 of the Coastal Act. This appears to be a bizarre and unproductive approach to designing a project that can be found consistent with the Coastal Act.

The Newport Banning Ranch property includes all the elements of a diverse and important coastal ecosystem. Even in its somewhat degraded condition, this unique property supports numerous listed species and California Species of Special Concern in a mosaic of wetlands and uplands that truly has no parallel anywhere in Orange County. The notion that the Coastal Commission might possibly authorize the dismantling of this ecosystem in exchange for some form of restoration "within Zone C of the fuel modification areas," or at some location to be identified at a later date, reflects a profound misunderstanding of the Coastal Act and relevant precedents, including the City's own CLUP. Given the complete lack of support among Commissioners at last week's hearing for permitting even a limited stretch of Bluff Road as part of an otherwise uncontroversial park project, and given that every project alternative evaluated in the DEIR includes establishing Bluff Road as a major thoroughfare, the Newport Banning Ranch project appears to be completely incompatible with the California Coastal Act. The City — acting both as a development partner with Newport Banning Ranch and as CEQA Lead Agency — may approve this project under CEQA, but would such an approval have any validity in a court of law where the facts of a case have import and meaning? Finally, if last week's hearing on the Sunset Ridge project is any guide, the public may rest assured that this project will come under much closer scrutiny when it eventually must obtain the approval of the Coastal Commission.

19d cont.

I appreciate the opportunity to provide these comments on behalf of the Banning Ranch Conservancy.

Sincerely,



Robert A. Hamilton  
President, Hamilton Biological, Inc.

Cc: Terry Welsh, Banning Ranch Conservancy  
Jonna Engel and Karl Schwing, California Coastal Commission Staff  
Christine Medak, USFWS

Attachment: Curriculum Vitae

**Letter O50 Robert Hamilton**  
November 8, 2011

### **Response 1**

Please refer to Topical Response: Vernal Pools.

### **Response 2**

The Glenn Lukos Associates (GLA) Biological Technical Report for the Newport Banning Ranch Property (April 21, 2009) was included on page 123 of the Reference Section of the Biological Technical Report (Appendix E to the Draft EIR). The project Biological Technical Report includes 152 references cited, including the 1995 LSA letter regarding small mammal trapping on the Project site. The references incorporated were extensive and included both historical information (where relevant) and current information regarding the biological resources on site. The biological resource documentation for the Project is consistent with CEQA Guidelines.

### **Response 3a**

The City approved the project and certified the Final EIR for the Sunset Ridge project. As discussed in detail in the Response to Comments for the Sunset Ridge project, “errors” were not made during the vegetation mapping process. The California Coastal Commission did request a more detailed mapping of native plants (including individual plant location in multiple instances) and disturbance areas in a limited area of the Sunset Ridge Park site, primarily along West Coast Highway and Superior Avenue. This detailed mapping was requested as part of the Coastal Commission’s consideration of the Coastal Development Permit (CDP) application for the Sunset Ridge Park project, and has no bearing on the findings of the Sunset Ridge Park EIR.

### **Response 3b**

Please refer to Topical Response: Vernal Pools.

### **Response 3c**

As described in detail on Page 8 of the Biological Technical Report (Appendix E of the Draft EIR), vegetation mapping was conducted on numerous days in 2009 and 2010. Vegetation mapping and plant surveys were directed/conducted by Senior Botanist Sandy Leatherman, and by additional experienced biologists with BonTerra Consulting. Ms. Leatherman is a Senior Botanist with over 20 years of experience in plant biology; mitigation monitoring; and the performance of biological surveys, restoration studies, and habitat evaluations. She is an active member of the California Native Plant Society and Past President of Southern California Botanist. She also holds a collecting permit for Rare, Threatened, and Endangered Plants from the California Department of Fish and Game. Ms. Leatherman’s work and that of the biologists under her supervision were well qualified to conduct the vegetation mapping and performed the botanical surveys in an accurate and objective manner. The biological resource documentation for the Project is consistent with CEQA Guidelines.

The mapping “error” suggested by the commenter identified an area of non-native grassland. This area was accurately mapped by Senior Botanist Sandy Leatherman in September 2009. According to the National Oceanic and Atmospheric Administration (NOAA), no rain fell in the

Project area in September 2009<sup>28</sup>; therefore, this area would not have been full of rainwater at the time, as shown in the commenter's photo from January 10, 2011. The pool was the result of 0.59 inch of rain that fell in the Newport Beach area from January 2 through January 7, 2011 according to NOAA<sup>29</sup>. In addition, over 5 inches of rain fell in the area in the last two weeks of December 2010, leading up to the time when the pooled areas were photographed by the commenter. These unusual rain events should not be considered normal or reflect the vegetation types presented by the commenter. The accurate vegetation type present in non-native grassland, not "seasonal pool".

The City cannot grant access to private property.

#### **Response 4**

The use of the term "artificial" provides a frame of reference for the reader on the resource issues being discussed. Because geologic and hydrologic processes and specific soil types can play an important role in the biological value of an area, it is relevant to describe an area as "disturbed", "artificial", "manufactured", or other descriptive terms to accurately describe the resource issue as appropriate. Any inference that the preparers of the document are biased in favor or opposition to the Project by the use of the descriptive terms is inaccurate and inappropriate.

For additional comments regarding the pool areas, please refer to please refer to Topical Response: Vernal Pools.

#### **Response 5**

All mitigation for significant impacts to biological resource has been identified in the Draft EIR. CEQA does not state that the specific locations of mitigation sites be identified; rather, the EIR must include measures that are feasible to implement. The proposed Project would mitigate for impacts within the Project boundaries or off site (nearby). Project Design Feature (PDF) 4.6-1 requires the Project to include a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas. None of the proposed biological resource mitigation measures would result in a significant impact to biological resources on site. The Proposed project is consistent with CEQA case law: *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.

#### **Response 6**

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.

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<sup>28</sup> [http://www.wrh.noaa.gov/sgx/obs/rtp/rtp\\_NEW\\_09](http://www.wrh.noaa.gov/sgx/obs/rtp/rtp_NEW_09)

<sup>29</sup> [http://www.wrh.noaa.gov/sgx/obs/rtp/rtp\\_NEW\\_11](http://www.wrh.noaa.gov/sgx/obs/rtp/rtp_NEW_11)

## Response 7

The Draft EIR identifies the presence of the burrowing owl (*Athene cunicularia*) on site in several locations throughout the document. Although suitable foraging and nesting habitat is present on the Project site for the burrowing owl, it is only expected to winter on the Project site based on the results of focused surveys conducted in 2008, 2009, and 2010. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and 2010 (GLA 2010a, 2009). The proposed Project would impact approximately 100.13 acres (97.26 acres permanent, 2.87 acres temporary) of on-site grasslands and ruderal habitat. Impacts on occupied and potential habitat for this species would be considered significant. Implementation of MMs 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level. These measures require the restoration of grassland habitat at a ratio of 0.5:1 (totaling approximately 50.07 acres). In addition, the Project would preserve approximately 20.27 acres of grassland areas and include construction avoidance measures to minimize grassland impacts to the greatest extent practicable. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the grassland areas and associated wildlife species including, but not limited to, the burrowing owl. Implementation of the Mitigation Program would reduce the impact on this species to a less than significant level (page 4.6-89).

## Response 8

The State CEQA Guidelines Section 15125(a) states, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published". The Notice of Preparation was published on March 18, 2009. The Notice of Preparation was published on March 18, 2009. Using data that is over 20 years old is not relying on the most current and accurate information required by CEQA. The most current information serves as the baseline conditions by which the lead agency determines whether an impact is significant. CEQA also states that the description of the environmental setting shall be no longer than is necessary to form an understanding of the significant effects of the proposed project and its alternatives. If historical data is not substantially different that the recent data available for conditions on site, it is not necessary to reference old data sources whether this older data provides no new/valuable information that would have a effect on the Project findings.

There are reasons where the incorporation of species data from past data would not be needed or appropriate for the proposed Project's plant and wildlife compendia:

- Environmental site conditions have changed over that past 20 years which could result in a slightly different flora and fauna component of the Project site. This data would therefore not be current.
- Nomenclature has changed for many plant and wildlife species in the area and there would be confusion as to which species previous reports may have been referenced.
- Many of the previous survey reports do not have species compendia, including several which were authored by the commenter. It is unclear whether the survey compendia data is accessible.

## Response 9

The commenter has summarized rather than cited the complete discussion of grasslands and burrowing owls. The following text is from page 4.6-53 of the Draft EIR:

“The proposed Project would impact approximately 100.13 acres (97.26 permanent, 2.87 temporary) of grassland and ruderal vegetation, including areas mapped as non-native grassland, non-native grassland/ruderal, and ruderal. These areas generally have low biological value for most species because they are vegetated with non-native species. However, these areas may provide suitable foraging habitat for a variety of raptor species, including wintering burrowing owls. Additionally, the non-native grassland includes localized areas with low densities of native bunch grasses that could not be delineated separately due to a variety of factors including the scattered distribution, low densities, and mowing operations on the Project site. The loss of grassland function for foraging raptors in the region is considered significant because of its decline in the Project region. Therefore, the proposed Project would have a potentially substantial impact on raptor foraging habitat without mitigation.”

The sentence isolated by the commenter is biologically appropriate when read in context with other sentences in the same paragraph. It is documented that populations of annual forbs and native grasses are declining because of competitive suppression by non-native grasses<sup>30</sup>. The California Native Plant Society further states that “aggressive exotic plants are unacceptable in natural areas because they can exclude native plants, degrade, alter or displace natural plant communities, promote faunal change, reduce biological diversity, disrupt ecosystem processes, alter fire frequencies, restrict economic return, reduce recreational values, threaten endangered species and fundamentally alter the unique character and physiognomy of California.”<sup>31</sup>

The Draft EIR finds that the grasslands on site provide habitat for wildlife. The bird species identified by the commenter have all been observed on site and documented in the Draft EIR. The type and number of species encountered by the commenter are either ubiquitous or not unusual in the area<sup>32</sup>. In addition, it is well documented in the literature that several of these species numbers increase in the region when the commenter documented these species present on site. The analysis conducted for the Draft EIR is accurate and supported by literature.

## Response 9b

Mitigation Measure 4.6-2 in Section 4.6, Biological Resources (page 4.6-78) requires the Project to restore 50.07 acres of native grassland and alkali meadow and preserve 20.27 acres of non-native grassland areas, for a total of 70.34 acres of grassland habitat mitigation. Because the value of habitat to be replaced (native grassland and alkali meadow) is higher than those habitat values impacted by the Project, a less than 1:1 mitigation ratio is deemed adequate and consistent with CEQA<sup>33</sup> to compensate for the loss of non-native grassland areas.

The consideration of the value of the grasslands cannot be limited to the value provided for avian species as described by the commenter. The mitigation measure has been developed to provide important resources to a variety of plant and wildlife species that occur or could reasonably be expected to occur on site. It is well documented in the literature that grasslands “with higher cover of non-native species had reduced total cover and/or reduced diversity of native perennial species of grasses and forbs.”<sup>34</sup> The higher the diversity of native plant species

<sup>30</sup> Reducing Competitive Suppression of a Rare Annual Forb by Restoring Native California Perennial Grasslands, Tina M. Carlsen, John W. Menke, and Bruce M. Pavlik, Restoration Ecology, Issue 1 Page 18-29.

<sup>31</sup> <http://www.cnps.org/cnps/archive/exotics.php>

<sup>32</sup> Hamilton, R.A. and D.R. Willick. 1996. *The Birds of Orange County, California: Status and Distribution*. Irvine, CA: Sea and Sage Audubon Society.

<sup>33</sup> CEQA Guidelines Sections 15041 and 15126.4

<sup>34</sup> <http://www.hastingsreserve.org/nativegrass/StrombergKephartYadon.pdf>

present, the more biologically valuable that area is for all native plant and wildlife species in the area, including, but not limited to avian species.

## Response 10

In response to the commenter's request, a review of the California Natural Diversity Database (CNDDDB) by California Department of Fish and Game (CDFG) was conducted to identify any known occurrences of the San Diego black-tailed jackrabbit (*Lepus californicus bennettii*), California Species of Special Concern, within the coastal counties of Orange, Los Angeles, and San Diego. The species was reported to have a total of 42 occurrences within these 3 coastal counties; however, there are no known occurrences for Orange County. Of the 42 reported occurrences, 39 occurrences were reported for San Diego County, and 3 occurrences were reported for Los Angeles County. The commenter's observation of the San Diego black-tailed jackrabbit on the Newport Banning Ranch site is not within the CNDDDB database occurrences. The lack of reported observations in County of Orange, even though thousands of field hours have been spent by professional biologists in the County over the past 20-plus years, supports the finding that this species is likely extirpated from the Project site and does not warrant further evaluation in the Draft EIR. The suggestion to conduct nocturnal surveys on the Project site are not warranted by the extensive number of biological surveys that have been conducted on the site, particularly within the last 10 years, which resulted in no observations of this species. As this species does not migrate or hibernate during winter; this species could be observed year-round if present during the day when it is known to move from shrub cover to foraging areas at night<sup>35</sup>. This species was not evaluated in the Draft EIR as it is not expected to occur on site based on the most current and reported information relative to this species in the area. No additional surveys or analysis for this species is warranted.

## Response 11

The commenter refers to a vegetation type that is not a scientifically acknowledged or regionally used reference: "shortgrass mesa". This term is not consistent with the two vegetation naming standards in the County: *County of Orange Habitat Classification System Natural Resources Geographic Information System (GIS) Project* [Gray and Bramlet 1992] and *List of California Terrestrial Natural Communities Recognized by the Natural Diversity Data Base* (CDFG 2003). The dominant grassland vegetation type that is present on the Project site is non-native grassland. The commenter compares the Project site's non-native grasslands with another grassland area on Moor Mesa in the Santa Barbara area. The grass species identified by the commenter as dominant (wild oat, ripgut grass, Italian rye grass, and Harding grass) within the Moor Mesa grasslands are all listed as moderate invasive species according to the California Invasive Plant Council (Cal IPC). Cal IPC states that "invasive non-native plants that threaten wildlands are plants that (1) are not native to, yet can spread into, wildland ecosystems; and that also (2) displace native species, hybridize with native species, alter biological communities, or alter ecosystem processes." According to the Cal IPC these species have substantial and apparent ecological impacts on physical processes, plant and animal communities, and vegetation structure within the areas in which they occur.

The commenter claims that these areas are important to many declining and vulnerable wildlife species. CEQA requires the evaluation of both the plant and wildlife resources within a project area, not solely the value of areas to wildlife species. The consideration of the value of the grasslands cannot be limited to the value provided for avian species as described by the commenter. The mitigation measure has been developed to provide important resources to a

<sup>35</sup> Dixon, K. R.; Chapman, J. A.; Willner, G. R.; [and others]. 1983. The New World jackrabbits and hares (genus *Lepus*).--2. Numerical taxonomic analysis. *Acta Zoologica Fennica*. 174: 53-56. [25014].

variety of plant and wildlife species that occur or could reasonably be expected to occur on site. It is well documented in the literature that grasslands “with higher cover of non-native species had reduced total cover and/or reduced diversity of native perennial species of grasses and forbs.”<sup>36</sup> The higher the diversity of native plant species present, the more biological valuable that area is for all native plant and wildlife species in the area, including, but not limited to avian species.

## **Response 12**

The statement that the City and the Applicant were seeking a combined permit from the U.S. Army Corps of Engineers (USACE) and Biological Opinion for the two projects is incorrect. The proposed Newport Banning Ranch Project has been coordinating with the USACE and the U.S. Fish and Wildlife Service (USFWS) with respect to the federal permits and approvals that would be required to implement the Newport Banning Ranch project only. The two projects are separate projects and are subject to separate permitting.

The commenter references biological work submitted by the City 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. The commenter is correct that the City originally proposed a two-lane park access road over a portion of the Newport Banning Ranch property and biological information submitted by the City’s biologist in connection with the City’s application to the Coastal Commission addressed biological issues in the area of the access road on the Newport Banning Ranch property.

With respect to the Applicant’s biological consultant, GLA, and the mapping of gnatcatchers in the area proposed for construction of Bluff Road, GLA provided an explanation of its mapping to the USFWS which is the federal agency with authority to protect the coastal California gnatcatcher pursuant to the federal Endangered Species Act in a letter dated June 14, 2011 to Christine Medak of USFWS. The letter corrected an error that GLA detected in its mapping of a gnatcatcher location.

## **Response 13**

The source of the concrete and rebar is not known. It is not known who, how or when these materials were placed on the property. All oilfield materials and debris outside of the two oil consolidation sites would be removed as a part of the Project.

## **Response 14**

This comment does not present a question regarding the analysis of biological resources in the Draft EIR, but raises a question regarding a letter submitted to the USFWS. The letter in question was submitted during a separate and independent Coastal Commission proceeding, and it is not within the scope of this EIR for the City to speculate on any personal motives of the author of the letter.

## **Response 15**

Based upon the City’s review of the mapping information presented to it, the dots represent where the coastal California gnatcatcher was observed, not a nest location. The surveys were conducted to determine presence/absence. The mapping convention using point locations is an

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<sup>36</sup> <http://www.hastingsreserve.org/nativegrass/StrombergKephartYadon.pdf>

“accounting tool” to account for the total number of coastal California gnatcatchers observed in a given year.

### **Response 16**

The opinions of the commenter regarding coastal California gnatcatcher observation points and habitat usage are noted. With respect to the question regarding the placement of the dots, the Applicant’s biologist provided an explanation in the June 14, 2011 letter to the USFWS regarding the mapped locations and the corrections made to those locations.

### **Response 17**

The Banning Ranch property is not included within the City’s Coastal Land Use Plan (CLUP) nor is an amendment being proposed at this time to include the Banning Ranch property in the City’s CLUP. Consequently, while the CLUP may provide guidance it is not binding on the Banning Ranch property. The Draft EIR provides an analysis of the proposed Project with the California Coastal Act as required by the State CEQA Guidelines Section 15125. Please refer to Sections 4.1 through 4.15 of the Draft EIR.

The purpose of the Draft EIR is to analyze a proposed project’s impact on the physical environment. It is not, in and of itself, a policy consistency analysis. Section 4.6, Biological Resources, of the Draft EIR analyzes the proposed Project’s impact on biological resources, including federal and State listed endangered and threatened species, sensitive plant and animal species, and specific habitats such as wetlands and vernal pools. Whether any or all of these constitute ESHA under the Coastal Act was not a part of the analysis in the Draft EIR, and application of the policies of the Coastal Act to the existing conditions on the Project site will be undertaken as part of the Coastal Commission’s Coastal Development Permit process. Please also refer to the Topical Response: ESHA and the response to Comment 12.

### **Response 18**

The City is aware of the Coastal Commission’s recommendations that were prepared for the Sunset Ridge Park application including that the proposed arterial road would be inconsistent with the Coastal Act. However, it is important to note that in reviewing the City’s proposed Sunset Ridge Park project, the Coastal Commission reconfigured, but did not prohibit any access from West Coast Highway onto the property. Please refer to Topical Response: Sunset Ridge Park, Topical Response: Coastal Commission Consent Orders, and Topical Response: ESHA. The Newport Banning Ranch Draft EIR considers alternative intensities of development on the site which would reduce the amount of traffic on the four-lane Primary Road (Bluff Road/North Bluff Road). Please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR.

### **Response 19a**

The Draft EIR analyzes the Project’s potential impacts to sensitive species, including the burrowing owl and federally-listed species of fairy shrimp. If additional surveys are required by the Coastal Commission in connection with the its consideration of the Applicant’s coastal development permit application, it will be the Applicant’s responsibility to provide that information to the Coastal Commission.

## Response 19b

It should be noted that vernal pools cannot be accurately identified by aerial photography. The Draft EIR provides a discussion of the seasonal ponds and grassland depressions that have been identified by the City's biologists on site through on-foot field surveys, and evaluates the Project's impacts to these areas. Please refer to Topical Response: Vernal Pools.

## Response 19c

The commenter incorrectly states that the exhibits in the Draft EIR misrepresent the mapping of vegetation types and jurisdictional areas on site because they did not identify the "massive pool near the end of Ticonderoga Street." The vegetation mapping for the Project site was primarily conducted in September 2009. According to the National Oceanic and Atmospheric Administration, no rain fell in the Project area in September 2009<sup>37</sup>; therefore, no "massive pool" of water was observed. The vegetation types that were present at this location included non-native grassland. The Draft EIR and Biological Resources Technical Report identifies these areas as dominated by foxtail chess (*Bromus madritensis* ssp. *rubens*), slender oats (*Avena barbata*), soft chess (*Bromus hordeaceus*), hare barley (*Hordeum murinum* ssp. *leporinum*), rattail fescue (*Festuca myuros*), and red-stemmed filaree (*Erodium cicutarium*). According to the California Invasive Plant Council (Cal IPC) "invasive non-native plants that threaten wildlands are plants that (1) are not native to, yet can spread into, wildland ecosystems; and that also (2) displace native species, hybridize with native species, alter biological communities, or alter ecosystem processes". The grass species listed as dominant within the Project site area either ranked as a high, moderate, or limited threat by Cal IPC or documented in Weeds of the West<sup>38</sup>. These areas were appropriately mapped as non-native grassland consistent with the naming terminology used for the Project (*County of Orange Habitat Classification System Natural Resources Geographic Information System (GIS) Project* [Gray and Bramlet 1992] and *List of California Terrestrial Natural Communities Recognized by the Natural Diversity Data Base* (CDFG 2003).

## Response 19d

Please refer to Topical Response: ESHA.

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<sup>37</sup> [http://www.wrh.noaa.gov/sgx/obs/rtp/rtp\\_NEW\\_09](http://www.wrh.noaa.gov/sgx/obs/rtp/rtp_NEW_09)

<sup>38</sup> Whitson, T.D. (ed.) et al. 1996. Weeds of the West. Western Society of Weed Science in cooperation with Cooperative Extension Services, University of Wyoming. Laramie, Wyoming.

8th November, 2011

**Comment Letter O51**

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.

Please address the potential exterior/interior noise levels to Costa Mesa's Freedom Home residences in section 4.12. noise, table 4.12.10 and table 4.12.11 west of Placentia if and when, the City of Costa Mesa widens 19th Street. The widening of 19th Street to General Plan Standards was indicated as a solution to the potential traffic impact of the proposed Bluff Road at the Costa Mesa City Council Newport Beach Banning Ranch Study Session, October 20, 2011. Please describe the type of 8 foot barrier and the material used to build for the noise barrier for Newport Crest Residences (table 4.12-12). Will Newport Banning Ranch maintain these noise-related barriers?

Sincerely,  
Ms. Susan Harker  
1930 Monrovia Avenue  
Costa Mesa, CA, 92627

(949)722-2739  
susanharker@sbcglobal.net

**Letter O51     Susan Harker**  
November 8, 2011

**Response 1**

The noise analysis included in the Draft EIR is based on the proposed Project's Traffic Impact Analysis. As stated in the Traffic Impact Analysis included in the Draft EIR, the General Plan Buildout analysis assumes buildout of all local off-site arterials in accordance with the Orange County Transportation Authority (OCTA) Master Plan of Arterial Highways (MPAH). As shown in Tables 4.12-9 through 4.12-11 of the Draft EIR, traffic noise levels at a distance of 50 feet from the roadway would increase from an existing level of 69.3 dBA CNEL to a future General Plan Buildout level of 70.8 dBA CNEL. The maximum Project contribution to noise levels during that would be 0.5 dBA. The widening of 19<sup>th</sup> Street is not a part of the proposed Project.

As stated in Mitigation Measure 4.12-8 of the Draft EIR, barriers may be constructed using an earth berm, wall, or berm-wall combination. Walls may be masonry block, ¼-inch-thick glass, or other transparent material with sufficient weight per square foot. Any improvements on private property would be the responsibility of the applicable homeowners to maintain.

Comment Letter O52

HEATHER HENDRICKSON

November 8, 2011

Mr. Patrick Alford  
Planning Manager  
City of Newport Beach

Re: Draft Environmental Impact Report, Banning Ranch

Dear Mr. Alford

I am writing with regard to the Aesthetics (4.2) and Cultural and Paleontological Resources (4.13) sections of the above referenced document. While it is evident a great deal of effort has gone into the preparation of the Draft Environmental Impact Report, I would like to bring your attention to several items within the report which I believe warrant further investigation.

Aesthetics (4.2)	
Pedestrian/Bicycle Bridge – The dEIR understates the significant impact of proposed structure and does not suggest examined alternatives.	1
The dEIR impact summary finds significant and unavoidable light pollution will be caused by the project. Though mitigation is addressed, further examination is warranted despite the Newport Beach City Council's approval of Statement of Overriding Considerations with regard to the impact.	2
The report states visual impact of the site over 13 years will be unavoidable due to construction but until such time as the structures are "constructed and finished, the scale of the Project and changes to the visual character of the Project" will not be evident. Further, the 'renderings' of proposed Project understate the significant visual impact of the project.	3
Cultural and Paleontological Resources (4.13)	
Given that the report acknowledges there are known archaeological resources on the site of which three are deemed eligible for listing on the CRHR and NRHP, and one CA-ORA-839 is deemed a "unique archaeological resource", is the mitigation recommended sufficient? The dEIR also states the planned "removal of the oilfield infrastructure may impact portions of the site." Further investigation of alternate solutions is supported by the evidence in the dEIR.	4

Please feel free to contact me with any questions or comments on the above.

Sincerely,

Heather Hendrickson

416 Piazza Lido Newport Beach CA 92663 TEL 949 293 1433 heather.hendrickson@gmail.com

**Letter O52 Heather Hendrickson**  
November 8, 2011

### **Response 1**

The opinion of the commenter is noted. The location of the proposed pedestrian and bicycle bridge was chosen to provide access to the coast from the Project site; to tie into the proposed on-site trail system; to tie into to existing regional trails; and to preclude impacts to private property.

### **Response 2**

The commenter's refers to the Newport Beach City Council approval of a Statement of Overriding Considerations. In approving the General Plan 2006 Update and certifying the Final EIR, the Newport Beach City Council adopted a Statement of Overriding Considerations, which included this benefit:

The updated General Plan will improve the opportunities for parks and recreation facilities to serve the City's residents and visitors. It provides for the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that will provide playfields and passive recreational opportunities for the underserved western portion of the City. Additionally, the Plan, for the first time in Policy R 1.9, prioritizes park and recreational facility improvements.

The Recreation Element of the General Plan provides for the development of an active community park of 20 to 30 acres with consideration of night lighting in the Banning Ranch area. The impacts of the night lighting were anticipated and it was recognized that these impacts would be addressed further at the project level. An analysis of the impacts of lighting for athletic playing fields in the Community Park is provided in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR. Lighting for athletic playing fields in the Community Park would be required to have light control visors to control spill and glare and to direct light downward onto the playing field. Light standards used for lighting playing fields shall be either Musco Lighting™, "Light Structure Green" standards, or another comparable light standard of similar design that reduces light spillage. Furthermore, ball field lights would be turned off by 10:00 PM. The opinion of the commenter is noted.

### **Response 3**

The commenter has misstated what the Draft EIR says. Section 4.2, Aesthetics and Visual Resources states "As the structures are constructed and finished, the scale of the Project and changes to the visual character of the Project site would **become more evident**" (emphasis added).

### **Response 4**

The proposed Mitigation Program would mitigate impacts to archaeological resources to a less than significant level. While all three of the Cultural Resources deemed as "eligible" (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are independently "unique", CA-ORA-839 was mentioned as "unique" due to its capability to "... provide unique chronological and subsistence information and change about two or possibly three prehistoric cultural periods." Because it has been deemed infeasible to preserve all the sites, the specific mitigation measures noted for data recovery and preservation of the sites are appropriate. Mitigation Measure 4.13-2 requires the data recovery of those portions of the sites that would be directly impacted by grading and/or oil

infrastructure removal. The removal of oilfield infrastructure may impact a limited (ca. spatial 5 percent area) of the sites. These portions of the sites could, therefore, be destroyed. For that reason data recovery of those portions, with preservation of the remainder, is appropriate. While the removal of oilfield infrastructure fulfills other environmental mitigation measures (toxic waste), non-removal of the infrastructure would be agreeable to BonTerra Consulting Cultural Resource management if feasible. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-839 and CA-ORA-844B and they could be entirely preserved in place.

Comment Letter O53a

**Comments & Questions on dEIR-Vicki Hernandez**

**DATE:** November 6, 2011  
**TO:** Patrick J. Alford  
Planning Manager City of Newport Beach,  
Community Development Department  
3300 Newport Boulevard P.O. Box 1768  
Newport Beach, California 92658-8915  
**FROM:** Vicki Hernandez  
vhernan@earthlink.net  
**SUBJECT:** Newport Banning Ranch DEIR

Dear Patrick,

I object to the Newport Banning Ranch project as proposed. Please include my comments and questions below in the records of any and all proceedings relating to this project and its successors.

- I object to the length and repetitive nature of the dEIR. A total of over 7,234 pages does NOT create a document written in plain, readable language. Why is there so much cut-and-paste repetition in this dEIR? This seems like a tactic to confuse and discourage the public from reading the document and giving input on it. Is it? Does this document follow the CEQA policies and procedures required for an EIR?

**Cumulative Impact Analysis (5.0)**

Section 15355 of the State CEQA Guidelines defines cumulative impacts as:

Two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

- (a) The individual effects may be changes resulting from a single project or a number of separate projects.
- (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

- Page 5-6 states "Several subareas within the City, including the Newport Banning Ranch property, were determined to have special planning considerations and were subject to additional evaluation in the General Plan and General Plan EIR."

- What are these special considerations and additional evaluation? This is not immediately clear to me, given the 7,000 pages of the dEIR.

- Page 5-23 states "A quantification of cumulative impacts is not feasible for some impact topics such as visual resources...Much of the cumulative evaluation is a qualitative judgment regarding the combined effects of the relationship among the projects and projected regional growth."

**Comments & Questions on dEIR-Vicki Hernandez**

<ul style="list-style-type: none"> <li>What does the Banning Ranch Project have to do with other probable future projects? This project is unique in being the last large undeveloped coastal space in Orange County. Other projects do not have this unique status.</li> </ul>	3 cont.
<ul style="list-style-type: none"> <li>Page 5-30, The <i>City of Newport Beach General Plan</i> states that "if the Newport Banning Ranch Project site is not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village. <ul style="list-style-type: none"> <li>The Banning Ranch Conservancy plans to purchase this open space. Are you aware of these plans?</li> </ul> </li> </ul>	4
<ul style="list-style-type: none"> <li>What is the plan for a school to be included in the Newport Banning Ranch Project? This is not immediately clear to me, given the 7,000 pages of the dEIR.</li> </ul>	5
<ul style="list-style-type: none"> <li>Page 5-30 also states "In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with ...development of the Newport Banning Ranch site. <ul style="list-style-type: none"> <li>What are these specific public benefits?</li> <li>Building 1,375 residential units, a commercial area and a 75 room resort will have a massive negative impact on the native fauna and flora of Banning Ranch, and on neighboring communities. The cumulative effects of air, light and noise pollution, increased traffic, 9 years of construction, loss of habitat, and destruction of native environments will not benefit the environment, wildlife or neighboring communities.</li> <li>The Newport Banning Ranch Project WILL benefit the developers, however.</li> </ul> </li> </ul>	6
<ul style="list-style-type: none"> <li>Page 5-32 states "Land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended." <ul style="list-style-type: none"> <li>Does "<u>land uses as they were intended</u>" mean leaving this area, which is 100% under the sphere of influence of the Coastal Commission, as open space?</li> <li>Page 5-33 Primary Use: "Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding."</li> </ul> </li> </ul>	7
<ul style="list-style-type: none"> <li>Page 5-34 states "With implementation of the Mitigation Program, the proposed Project would not result in significant topographic or aesthetic impacts." <ul style="list-style-type: none"> <li>My comment is that 1,375 residential units, 7,500 square feet (sf) of commercial uses and a 75-room resort inn on an existing open space which is home to threatened and endangered species will have a negative and enduring aesthetic impact.</li> </ul> </li> </ul>	8
<ul style="list-style-type: none"> <li>How is it possible to state on page 5-36 "Although the proposed Project—combined with past, present and reasonably foreseeable future projects—would change the visual character of the Project site, the proposed Project is consistent with the General Plan and no significant cumulative visual impacts are anticipated." I walk along the</li> </ul>	9

**Comments & Questions on dEIR-Vicki Hernandez**

Santa Ana River regularly, and I guarantee that the Newport Banning Ranch Project will have an adverse and long-lasting aesthetic impact on this open space.	9 cont.
<ul style="list-style-type: none"> <li>Page 5-37 states "The Project site is located in a seismically active area with faults within the proposed development site that could not be proven to be inactive." <ul style="list-style-type: none"> <li>How wise is it to plan a massive development when we now know that this is a potential disaster area for seismic activity--building code requirements or not?</li> </ul> </li> </ul>	10
<ul style="list-style-type: none"> <li>Page 5-39 describes Project-specific impacts associated with water resources: <ul style="list-style-type: none"> <li>"increase the amount of runoff and the concentration of pollutants in storm water runoff."</li> <li>"reduce the potential for groundwater percolation"</li> <li>"involve changes to existing drainage patterns and would cause increases in erosion of the Project site or surrounding areas"</li> </ul> </li> <li>Doesn't this create a cumulative negative impact due to Southern California's overall scarce water supply?</li> </ul>	11
<p><b>5.4.6 BIOLOGICAL RESOURCES</b></p> <ul style="list-style-type: none"> <li>Page 5-48, The proposed Project would impact special status plant species</li> </ul>	12
<ul style="list-style-type: none"> <li>Tarplant - How will the Mitigation Program create impacts at a "level considered less than significant?"</li> </ul>	
<ul style="list-style-type: none"> <li>The Project would result in potentially significant impacts associated with the loss of suitable foraging and/or nesting habitat for the light-footed clapper rail, western snowy plover, Belding's savannah sparrow, tricolored blackbird, least bittern, Clark's marsh wren, long-billed curlew, and large-billed savannah sparrow. <ul style="list-style-type: none"> <li>What is the Mitigation Program to reduce the impacts to these birds?</li> <li>How can the impacts be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> </ul> </li> </ul>	13
<ul style="list-style-type: none"> <li>The coastal California gnatcatcher is a Threatened species. <ul style="list-style-type: none"> <li>What are the Measures that will be provided to mitigate this impact to a less than significant level?</li> <li>How can the impacts be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> </ul> </li> </ul>	14
<ul style="list-style-type: none"> <li>Page 5-49, The coastal cactus wren is a California Species of Special Concern. Banning Ranch has one of the largest populations of cactus wren in Orange County. I am involved in restoration of native plants to areas destroyed by fire. My experience has been that restoration does not occur overnight! Prickly Pear cactus takes YEARS to grow large enough for cactus wrens to nest. <ul style="list-style-type: none"> <li>How can the impacts of the Project be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> </ul> </li> </ul>	15
<ul style="list-style-type: none"> <li>The least Bell's vireo is a federally and State-listed Endangered species.</li> </ul>	16

**Comments & Questions on dEIR-Vicki Hernandez**

<ul style="list-style-type: none"> <li>• What is the Mitigation Program to reduce the impacts to these birds?</li> <li>• How can the impacts be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> <li>• The burrowing owl is a California Species of Special Concern.</li> <li>• What is the Mitigation Program to reduce the impacts to these birds?</li> </ul>	16 cont.
<ul style="list-style-type: none"> <li>• How can the impacts be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> </ul>	17
<ul style="list-style-type: none"> <li>• The cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. The loss of an active nest of these species by the proposed Project would be considered a violation of the <i>California Fish and Game Code</i>.</li> <li>• What is the Mitigation Program to reduce the impacts to these nesting birds?</li> <li>• How can the impacts be mitigated, given the long-term major construction planned for the Project and the extensive grading required?</li> </ul>	18
<ul style="list-style-type: none"> <li>• The Project would have significant indirect impacts found to be potentially significant due to the invasion of native areas by Project ornamental landscape species.</li> <li>• Why is the Project not considering using California native plants in all its landscaping, should the Project be approved?</li> </ul>	19
<ul style="list-style-type: none"> <li>• The proposed Project would result in significant traffic noise impacts on these sensitive biological resources</li> <li>• What is the Mitigation Program to reduce the impact of traffic noise to these birds?</li> </ul>	20
<ul style="list-style-type: none"> <li>• Page 5-50, "The Project would significantly impact approximately 14.44 acres of special status riparian habitat. "Most natural riparian vegetation in Southern California has been lost to or degraded by land use." (P. 4.6-43)</li> <li>• How can the claim be made that the cumulative impact is less than significant?</li> <li>• <u>Does Exhibit 4.6-3c indicate a riparian area (Drainage C)--the largest in the Project Boundary passing right through the proposed Project?</u></li> </ul>	21
<ul style="list-style-type: none"> <li>• "The Project would result in the loss of 14.18 acres of coastal sage scrub designated as special status; this is a significant impact"</li> <li>• What is the Mitigation Program that purports to reduce these impacts to a level considered less than significant?</li> </ul>	22
<ul style="list-style-type: none"> <li>• The loss of grassland function for foraging raptors resulting from the Project is considered significant.</li> <li>• What is the Mitigation Program that would reduce these the significant impacts to these resources to a level considered less than significant?</li> </ul>	23
<ul style="list-style-type: none"> <li>• VERNAL POOLS: The proposed Project would both result in 0.06 acre of temporarily impacts and 0.07 acre of permanent impacts to occupied vernal pool habitat (Page 4.6-34). Areas with vernal pools and ephemeral pools are considered to be special status due to the presence of fairy shrimp. Habitat loss and fragmentation is the</li> </ul>	24

**Comments & Questions on dEIR-Vicki Hernandez**

<p>largest threat to vernal pool species. It is estimated that 95 percent of vernal pool habitat in Southern California has been lost (USFWS 2005d). 4.6-43</p> <ul style="list-style-type: none"> <li>• Are there more vernal pools in the area to be located on Banning Ranch? I wonder if all vernal pools have been found? Can further studies be conducted?</li> </ul>	24 cont.
<ul style="list-style-type: none"> <li>• <b>Wildlife Movement</b>-Page 5-50, "The proposed Project would impact the movement of any native resident or migratory wildlife corridors and use of native wildlife nursery sites (Threshold 4.6-4)." Page 4.6-21, Wildlife corridors link together areas of suitable wildlife habitat that are otherwise separated by rugged terrain, changes in vegetation, or human disturbance. The fragmentation of open space areas by urbanization creates isolated "islands" of wildlife habitat. <ul style="list-style-type: none"> <li>• Isn't this the opportunity to preserve for posterity wildlife corridors joining Banning Ranch with Fairview Park, the Talbert Marsh restoration site, Canyon Park, the Santa Ana River, and the US Army Corps of Engineers restoration area?</li> <li>• Shouldn't we maintain all these open spaces as a migration stopover site by bird species migrating along the coastline? (4.6-22)</li> <li>• Given all this richness of wildlife and native vegetation, shouldn't we all halt the dense urban development that has engulfed Orange County in the past half century? This is our last chance to save the hundreds of Threatened and Endangered species that have been highlighted in this dEIR. A development of 1,375 residential units, 7,500 (sf) of commercial uses and a 75-room resort inn, plus the roads leading in, out and through the site, will disrupt wildlife movement, no matter how closely built the residences are.</li> </ul> </li> </ul>	25
<ul style="list-style-type: none"> <li>• "Most natural riparian vegetation in Southern California has been lost to or degraded by land use." (P. 4.6-43) <ul style="list-style-type: none"> <li>• What criteria are used to conclude that the cumulative impact of the Newport Banning Ranch Project is negligible?</li> <li>• Does Exhibit 4.6-3c indicate a riparian area--the largest in the Project Boundary "Drainage C" passing right through the proposed Project?</li> </ul> </li> </ul>	26
<ul style="list-style-type: none"> <li>• Page 5-53 "Section 4.6 of the EIR addresses the impacts to biological resources that would result from implementing the proposed Project. Coastal sage scrub, grassland, and riparian habitat, including habitats for Threatened, Endangered, and Special Status Species (such as coastal California gnatcatcher) would be lost. These regional resources are becoming more limited as growth and development occurs throughout Southern California." <ul style="list-style-type: none"> <li>• Why are the City of Newport Beach and the developers of this Project proceeding with this development plan, knowing that it will destroy a good portion of of this habitat, and knowing that these biological resources are becoming more and more scarce due to the growth and development your are proposing in this EIR?</li> </ul> </li> </ul>	27
<ul style="list-style-type: none"> <li>• Page 5-54 states "The Newport Beach General Plan determines that General Plan implementation would not contribute considerably to the decline of sensitive natural communities; therefore, the General Plan contribution to this impact would not be cumulatively considerable, and would result in a less than significant impact."</li> </ul>	28

**Comments & Questions on dEIR-Vicki Hernandez**

<ul style="list-style-type: none"> <li>What criteria are being used to determine that implementation of the Project “would not contribute <u>considerably</u> to the decline of sensitive natural communities? After reading section 4.6, I come to the conclusion that the Project (1,375 residential units, 7,500 square feet (sf) of commercial uses, a 75-room resort inn, plus roads throughout) would contribute greatly to the decline of sensitive habitats and species.</li> </ul>	28 cont.
<ul style="list-style-type: none"> <li>Page 5-60 states that the traffic findings are “<i>Significant and Unavoidable – City of Costa Mesa Intersections</i>” <ul style="list-style-type: none"> <li>What is the city of Costa Mesa’s response to this major traffic impact to its streets and intersections?</li> </ul> </li> </ul>	29
<ul style="list-style-type: none"> <li>Page 5-61 “<i>Less than Significant Impact – Freeway Mainline Segments</i>: Under this scenario, the Project would not significantly impact any freeway segments.” <ul style="list-style-type: none"> <li>Has the possible impact on the 55 Freeway been studied? The 405 Freeway?</li> </ul> </li> </ul>	30
<ul style="list-style-type: none"> <li>Page 5-65 Traffic Impact Analysis “The proposed Project, when combined with development in the region, would have a significant cumulative air quality impact because the contribution to regional pollutant concentrations would be cumulatively considerable.” <ul style="list-style-type: none"> <li>What is the Project planners’ and the city of Newport Beach’s response to this?</li> </ul> </li> </ul>	31
<ul style="list-style-type: none"> <li>Page 5-68 The proposed Project—in combination with other past, present, and reasonably foreseeable future projects—would make a cumulatively considerable contribution to the global GHG inventory and would have a cumulatively significant impact on global climate change. <ul style="list-style-type: none"> <li>What is the Project planners’ and the city of Newport Beach’s response to this?</li> </ul> </li> </ul>	32
<ul style="list-style-type: none"> <li>Page 5-82 states “The proposed Project’s contribution to the cumulative impact on water supply is considered less than significant. <ul style="list-style-type: none"> <li>What is meant by the “relatively minimal water demands of the proposed Project in the context of regional water supplies...?” How can the demands for water of 1375 residences, 7500 sf of retail space and a 75-room resort be defined as “minimal”?</li> </ul> </li> </ul>	33

**Letter O53a Vicki Hernandez**  
November 6, 2011

### **Response 1**

The EIR has been prepared in accordance with CEQA Statute and the California CEQA Guidelines. The opinions of the commenter are noted.

### **Response 2**

The “special planning considerations” referred to by the commenter were a part of the Final EIR for the 2006 comprehensive update of the City of Newport Beach General Plan. The Final EIR identified several anticipated unavoidable significant adverse impacts associated with the implementation of citywide development as set forth in the update of the General Plan. These included increased light effects if development ultimately occurs on the Banning Ranch property. The City adopted a Statement of Overriding Considerations regarding the potential unavoidable significant impacts of the General Plan Update Project. This Statement of Overriding Considerations described the anticipated economic, social, and other benefits or other considerations of the General Plan Update even though all of the identified impacts are not mitigated to a less than significant level. One of the benefits identified was improved opportunities for parks and recreation facilities to serve the City's residents and visitors. In addition, the General Plan Update requires the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that would provide playfields and passive recreational opportunities for the underserved western portion of the City.

As a point of clarification, the Draft EIR is not 7,000 pages as stated by the commenter.

### **Response 3**

The cumulative analysis addresses the potential impacts of the proposed Project in combination with past, present, and reasonably foreseeable future projects. The commenter's opinion that the other cumulative projects are not unique is noted.

### **Response 4**

To date, the Applicant has noted that Banning Ranch Conservancy has not made an offer to the property owner for purchase of the Project site.

### **Response 5**

No new schools are proposed or needed to serve the Project.

### **Response 6**

In approving the General Plan 2006 Update and certifying the Final EIR, the Newport Beach City Council adopted a Statement of Overriding Considerations, which included this benefit:

The updated General Plan will improve the opportunities for parks and recreation facilities to serve the City's residents and visitors. It provides for the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that will provide playfields and passive recreational opportunities for the underserved western portion of the City. Additionally, the Plan, for the first time in Policy R 1.9, prioritizes park and recreational facility improvements.

## Response 7

The threshold does not apply to a specific use for the Project site nor is it specific to the Project site. With respect to the site's Newport Beach General Plan Land Use Designation, the Project site has a General Plan land use designation of OS(RV), Open Space/Residential Village, which establishes Open Space as the Primary Use and Residential Village as the Alternative Use for the Project site as described below:

### Primary Use:

Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

### Alternative Use:

If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space.

## Response 8

The opinion of the commenter is noted.

## Response 9

The opinion of the commenter is noted.

## Response 10

The Project would comply with all mandated regulatory requirements. 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.

## Response 11

The Water Supply Assessment prepared for the proposed Project and approved by the Newport Beach City Council addressed potential project-specific and cumulative effects associated with the existing and future water supply. The findings were that the Project would not contribute to a cumulatively significant water supply impact.

## Response 12

Impacts to southern tarplant (*Centromadia australis ssp. parryi*) are considered significant because the loss of these individuals would represent a substantial adverse effect to the regional population of this species until the new population has been established through

mitigation. Implementation of Mitigation Measure (MM) 4.6-7, which requires implementation of a southern tarplant restoration program, would reduce this impact to a less than significant level. Page 4.6-86 outlines MM 4.6-7 (*Special Status Plant Species*), which requires the Applicant to “plan, implement, monitor, and maintain a southern tarplant restoration program for the Project consistent with the most current technical standards/knowledge regarding southern tarplant restoration. Prior to the first action and/or permit that would allow for site disturbance (e.g., a grading permit), a qualified Biologist shall prepare a detailed southern tarplant restoration program that would focus on (1) avoiding impacts to the southern tarplant to the extent possible through Project planning; (2) minimizing impacts; (3) rectifying impacts through the repair, rehabilitation, or restoration of the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the Project; and (5) compensating for impacts by replacing or providing substitute resources or environments. The program shall be reviewed and approved by the City of Newport Beach (City) prior to site disturbance.” In addition, to MM 4.6-7, the grasslands restoration efforts for the Project would incorporate southern tarplant seeds collected on the Project site.

### Response 13

The Draft EIR identified potentially significant impacts to the light-footed clapper rail, western snowy plover, and Belding’s savannah sparrow during oilfield remediation activities within the marsh areas associated with the proposed Project. The implementation of MMs 4.6-4 and 4.6-8 would reduce the potential impact on these species to a less than significant level. These measures require the restoration and/or preservation of approximately 9.90 acres of marsh habitat either on site or immediately off site and avoidance measures during construction. In addition, Project Design Features (PDFs) 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the marsh areas and associated wildlife species.

Page 4.6-87 of the Draft EIR includes MM 4.6-8 which requires the Applicant to conduct “focused survey for light-footed clapper rail, western snowy plover, and Belding’s savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site. If any of these species are observed, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the initiation of grading or any activity that involves the removal/disturbance of marsh habitat, including clearing, grubbing, mowing, disking, trenching, grading, or any other construction-related activity on the Project site. If any of these species would be impacted, mitigation for impacts on these species shall include replacement of marsh habitat as described in MM 4.6-4. In addition, the measures listed below shall be implemented.

1. Marsh vegetation shall be removed after September 15 and before March 1.
2. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding’s savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required.
3. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding’s savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat.

In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).

4. The limits of disturbance during oilfield cleanup shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas."

The Project site provides only potentially suitable foraging habitat for the long-billed curlew and large-billed savannah sparrow. The tricolored blackbird, least bittern, and Clark's marsh wren may also forage and/or nest on the Project site in wet years when ponding and freshwater marsh vegetation is extensive. Project impacts on foraging and/or nesting habitat for the tricolored blackbird, least bittern, Clark's marsh wren, long-billed curlew and large-billed savannah sparrow were found to be less than significant according to the significance criteria. Because impacts were found to be less than significant for these species, no specific mitigation to offset impacts is warranted according to CEQA. However, all of these species are expected to benefit from the restoration and/or preservation of approximately 9.90 acres of marsh habitat either on site or immediately off site and avoidance measures during construction.

#### **Response 14**

The proposed Project is expected to impact approximately 23.11 acres (20.53 acres permanent, 2.58 acres temporary) of coastal sage scrub and disturbed coastal sage scrub vegetation types that provide potential habitat for this species. Coastal sage scrub habitat on the Project site is primarily limited to slopes and areas surrounding the drainages that transverse the mesa, is fragmented, and is disturbed by oilfield operations and invaded by non-native species. Revegetation following oilfield remediation activities has the potential to result in higher long-term habitat quality (i.e., invasive species removed, human activity and disturbance related to oilfield operations removed, and larger blocks of contiguous native habitat) available for this species in the open space area. However, Project impacts on this species would be considered significant because of the location and size of the impacted population. Implementation of MMs 4.6-1 and 4.6-9 would be required to reduce this impact to a less than significant level. These measures require the on-site or off-site restoration of 47.75 acres of coastal sage scrub habitat at a ratio of 3:1 for coastal sage scrub (including disturbed southern coastal bluff scrub) and 1:1 for disturbed coastal sage scrub (excluding disturbed southern coastal bluff scrub). In addition, approximately 35.16 acres of coastal sage scrub or disturbed coastal sage scrub would be preserved on site. Mitigation also includes the required approval from the U.S. Fish and Wildlife Service (USFWS) to impact the species, and construction avoidance measures to minimize the impacts to the greatest extent practicable. In addition, PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the coastal sage scrub and associated wildlife species, including, but not limited to the coastal California gnatcatcher.

#### **Response 15**

As stated on page 4.6-37 of Section 4.6, Biological Resources, two cactus wren territories were observed during focused surveys for the coastal California gnatcatcher in spring 2009 including one breeding pair and one solitary male. However, two territories do not represent "one of the largest populations of cactus wrens in Orange County" as stated by the commenter<sup>39</sup>. The Draft

<sup>39</sup> <http://www.naturereserveoc.org/projects.htm>

EIR acknowledges that the proposed Project would impact southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub which provides potential habitat for this species. The Draft EIR also states that because of this species declined in Orange County (following the loss of habitat by wildfires), impacts on this species would be considered potentially significant.

Page 4.6-60 summarizes the mitigation for these impacts which includes implementation of MMs 4.6-1 and 4.6-10. These measures require the restoration of coastal sage scrub dominated by native cactus species habitat at a ratio of no less than 1:1 and construction avoidance measures to minimize the impacts to the greatest extent practicable. In addition, approximately 35.16 acres of coastal sage scrub, which includes approximately 10 acres of coastal sage scrub dominated by cactus, would be preserved on site as part of MM 4.6-1. In addition, PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the cacti-dominated coastal sage scrub and associated wildlife species, including, but not limited to the cactus wren.

## **Response 16**

As stated on page 4.6-61 of Section 4.6, two least Bell's vireo territories (both solitary males) were observed during the 2009 focused surveys. The proposed Project would impact approximately 2.74 acres (1.45 acres permanent, 1.29 acres temporary) of undisturbed and disturbed willow riparian scrub and willow riparian forest habitats. The permanent Project impacts on the species' habitat is expected to be limited, and most of the habitat for this species would remain as open space following oilfield remediation activities. However, these activities could temporarily impact riparian habitats used by this species. Currently, much of the native riparian scrub and forest habitat on the Project site is fragmented by roads and is heavily invaded by non-native species. Revegetation following oilfield remediation activities would result in a higher long-term habitat quality due to invasive species removal; removal of human activity and disturbance related to oilfield operations; and availability of larger blocks of contiguous native habitat for this species in the open space area within the Project site. However, any impact on this species would be considered significant. Implementation of MMs 4.6-5 and 4.6-11 would reduce impacts on this species to less than significant levels. These measures require the on-site or off-site restoration of riparian habitat at a ratio from 3:1 to 1:1 depending on the habitat value impacted. A total of 15.77 acres of riparian habitat would be restored by the proposed Project. The Project also requires approval from the USFWS to impact the species and its habitat. In addition, the Project would preserve approximately 23.03 acres of riparian habitats. MM 4.6-1 includes construction avoidance measures to minimize the impact to the greatest extent practicable to the vireo and the riparian habitat. In addition, PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the riparian habitat and associated wildlife species including, but not limited to, the least Bell's vireo.

## **Response 17**

Although suitable foraging and nesting habitat is present on the Project site for the burrowing owl, it is only expected to winter on the Project site based on the results of focused surveys conducted in 2008, 2009, and 2010. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and 2010 (GLA 2010a, 2009). The proposed Project would impact approximately 100.13 acres (97.26 acres permanent, 2.87 acres temporary) of grasslands and ruderal habitat on the Project site. Impacts on occupied and potential habitat for this species would be considered significant. Implementation of MMs 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level. These measures require the

restoration of grassland habitat at a ratio of 0.5:1 (totaling approximately 50.07 acres). In addition, the Project would preserve approximately 20.27 acres of grassland areas and include construction avoidance measures to minimize grassland impacts to the greatest extent practicable. Moreover, PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the grassland areas and associated wildlife species including, but not limited to, the burrowing owl.

#### **Response 18**

Page 4.6-63 states that the Cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. The loss of an active nest of these species, or any common raptor species, would be considered a violation of Sections 3503, 3503.5, and 3513 of the *California Fish and Game Code*. Therefore, the loss of any active raptor nest would be considered significant. Impacts on active raptor nests would be reduced to less than significant levels with implementation of MM 4.6-13, which provides for construction avoidance measures to minimize the impact to the greatest extent practicable.

#### **Response 19**

The proposed Project includes a Habitat Restoration Plan (HRP) and PDF 4.6-2 that includes provisions for the preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project. Further, MM 4.6-14 requires that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided.

#### **Response 20**

Page 4.6-64 states that vehicular traffic on North Bluff Road (north of 17<sup>th</sup> Street) is expected to result in noise impacts within the lowland and upland open space areas. These areas contain coastal sage scrub and riparian scrub/forest vegetation types that provide suitable habitat for the coastal California gnatcatcher and the least Bell's vireo. The Bluff Road future traffic noise impacts are considered significant. MMs 4.6-1, 4.6-2, 4.6-4 through 4.6-6, and 4.6-8 through 4.6-13 would reduce this impact to a less than significant level by increasing the biological value of the site for wildlife species. Short-term construction impacts to active least Bell's vireo nests are considered potentially significant. Implementation of MM 4.6-11 would reduce this impact to a less than significant level.

#### **Response 21**

Projects whose impacts could contribute to cumulative wetland impacts were reviewed in the context of the significance criteria set forth in Section 4.6. In evaluating cumulative impacts, the impacts of the current and future probable projects are compared with those of the proposed Project as a useful point of reference.

Restoration and preservation of wetland habitat for impacts from the proposed Project would include 52.28 acres. Restoration efforts for Talbert Marsh, the Bolsa Chica Ecological Preserve, and Huntington Beach Wetlands Restoration Project would increase the amount of wetlands along the Southern California coast. The proposed Project would have a limited impact on wetland resources (15.62 acres of temporary and permanent impacts) relative to the conservation of the remaining acreage and therefore, would not contribute to a significant cumulative effect on wetland resources.

The proposed Project and other past, present and reasonably foreseeable future projects would comply with existing laws and regulations that are administered and enforced by regulatory agency-issued permit requirements and/or a mitigation monitoring and reporting program, pursuant to CEQA.

In summary, the regulations mandate that all past, present and future projects comply with local, State, and federal laws, policies and applicable permitting requirements, which would preclude the Project and other development from resulting in a significant impact. In addition, compliance with each of these regulations is a condition of Project approval. Therefore, the proposed Project—in combination with other past, present, and reasonably foreseeable future projects—would have a less than significant cumulative impact on wetland resources.

## **Response 22**

As described on page 4.6-53 of the Draft EIR, the proposed Project would impact approximately 11.92 acres (10.89 acres permanent, 1.03 acres temporary) of coastal sage scrub vegetation and approximately 11.19 acres (9.64 acres permanent, 1.55 acres temporary) of disturbed coastal sage scrub vegetation. Much of the scrub habitat on the site occurs in small fragments and in many cases is highly degraded by invasive species. However, impacts on coastal sage scrub (disturbed and undisturbed) vegetation types are considered significant. Implementation of MM 4.6-1 and PDFs 4.6-1 through 4.6-4 would reduce this impact to a less than significant level. MM 4.6-1 requires habitat restoration of permanent impacts to coastal sage scrub (including disturbed southern coastal bluff scrub) at a 3:1 ratio and disturbed coastal sage scrub (excluding disturbed southern coastal bluff scrub) at a 1:1 ratio either on site or off site. In addition, all temporarily impacted coastal sage scrub would be restored at a 1:1 ratio on site. The proposed Project would also preserve approximately 35.16 acres on site. The combined restoration and preservation of coastal sage scrub on site would total approximately 82.91 acres. MM 4.6-1 also requires the Applicant to follow the Construction Minimization Measures, which would provide conservation and avoidance actions to reduce the adverse impact to the habitat and associated wildlife species. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

## **Response 23**

As described on Page 4.6-62 of Section 4.6, Biological Resources, of the Draft EIR, suitable foraging habitat is present for a variety of raptor species on the Project site. The permanent loss of approximately 124.83 acres of foraging habitat for these raptor species would contribute to the ongoing regional and local loss of foraging habitat. This impact would be considered significant. However, revegetation following oilfield remediation activities would result in higher-quality habitat due to invasive species removal; removal of human activity and disturbance related to oilfield operations (oil activities would be consolidated into two on-site locations); and availability of larger blocks of contiguous native habitat for these species in the open space area. Therefore, with implementation of MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5, this impact would be reduced to a less than significant level. These measures require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. The Project also includes PDFs 4.6-1 through 4.6-4, which require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the raptor foraging areas.

## **Response 24**

Please refer to Topical Response: Vernal Pools.

## **Response 25**

As stated on page 4.6-71 of Section 4.6, Biological Resources, the proposed Project would have a significant impact. However, following oilfield remediation activities within the upland and lowland, large contiguous areas would be revegetated and remain contiguous with the USACE salt marsh restoration site, the Santa Ana River, and the Talbert Marsh. The revegetation following oilfield remediation activities would result in higher quality habitat (including habitat for migrating avian species) resulting from invasive species removal; removal of human activity and disturbance related to oilfield operations; and availability of larger blocks of contiguous native habitat in the open space area. Therefore, with implementation of MMs 4.6-1 through 4.6-5, this impact would be reduced to a less than significant level. The opinions of the commenter are noted.

## **Response 26**

Please refer to the response to Comment 21. The northern portion of Drainage C as illustrated in Exhibit 4.6-3c would be impacted by the proposed Project. This is illustrated in Exhibit 4.6-7c in Section 4.6, Biological Resources, of the Draft EIR.

## **Response 27**

Please refer to Section 7.0, Alternatives to the proposed Project, which address alternatives to the development that is proposed by the Applicant. 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. The opinions of the commenter are noted.

## **Response 28**

As stated on page 4.6-44 of the Draft EIR, the environmental impacts relative to biological resources are assessed using impact significance criteria that mirror the policy in CEQA Section 21001(c) of the *California Public Resources Code*. Accordingly, the State legislature has established it to be the policy of the State to: "prevent the elimination of fish or wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities".

Determining whether a project may have a significant effect or impact plays a critical role in the CEQA process. According to Section 15064.7 of the State CEQA Guidelines (Thresholds of Significance), each public agency is encouraged to develop and adopt, by ordinance, resolution, rule or regulation, their own significance thresholds to determine the impact of environmental effects. A significance threshold defines the quantitative, qualitative, or performance limits of a particular environmental effect. If these thresholds are exceeded, the agency would consider it to be significant.

In the development of significance thresholds for impacts to biological resources, the State CEQA Guidelines provide guidance primarily in Section 15065, Mandatory Findings of

Significance, and Attachment G, Environmental Checklist Form. Section 15065(a) of the State CEQA Guidelines identifies that a project may have a significant effect if it:

...has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or wildlife community, reduce the number or restrict the range of an endangered, rare, or threatened species.

Appendix G of the State CEQA Guidelines is more specific in addressing biological resources and encompasses a broader range of resources to be considered, including Candidate, Sensitive, or Special Status Species; riparian habitat or other special status natural communities; federally protected wetlands; fish and wildlife movement corridors; local policies or ordinances protecting biological resources; and adopted habitat conservation plans. These factors are typically considered through the checklist of questions answered to determine a project's appropriate environmental documentation (i.e., Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report [EIR]). Because these questions are derived from standards employed in other laws, regulations and commonly used thresholds, it is reasonable to use these standards as a basis for defining significance thresholds. For the purpose of this analysis, impacts to biological resources are considered significant (before calculating the offsetting impacts of mitigation measures) if the proposed Project would:

- Threshold 4.6-1** Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or USFWS.
- Threshold 4.6-2** Have a substantial adverse effect on any riparian habitat or other special status natural community identified in local or regional plans, policies, regulations, or by the CDFG or USFWS.
- Threshold 4.6-3** Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- Threshold 4.6-4** Interfere substantially with the movement of any native or migratory fish or wildlife species; inhibits established native resident or migratory fish or wildlife corridors; or impedes the use of native wildlife nursery sites.
- Threshold 4.6-5** Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. 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) adopted for the purpose of avoiding or mitigating an environmental effect.

In order to evaluate whether an impact on biological resources would result in a "substantial adverse effect", both the resource itself and how that resource fits into a regional context must be considered. The proposed Project's regional setting includes the Central/Coastal Subregion

NCCP/HCP. This subregion is bound by State Route (SR) 55 and SR-91 to the north; the Santa Ana River and Pacific Ocean to the west; El Toro Road and Interstate (I) 5 to the east; and the Pacific Ocean to the south.

For impact analysis purposes, a “substantial adverse effect” is defined as the loss or harm of a magnitude which, based on current scientific data and knowledge, would (1) substantially diminish population numbers of a species or distribution of a habitat type within the region or (2) eliminate the functions and values of a biological resource in the region. For each impact found to be significant, mitigation measures for the proposed Project have been developed that avoid, minimize, or compensate for the significant impact.

#### **Response 29**

The traffic impact study has identified intersection improvements that would mitigate the proposed Project's peak hour impacts wherever those impacts were determined to exceed the significance threshold. However, the City of Newport Beach cannot impose the requirement to construct the identified improvements on the City of Costa Mesa. If the Applicant is unable to reach agreement with the City of Costa Mesa that would ensure that the Project impacts would be mitigated, then the Project's impacts would be considered significant and unavoidable. The Applicant is currently working with the City of Costa Mesa to reach agreement regarding mitigation of Project impacts in the City of Costa Mesa.

#### **Response 30**

The City of Newport Beach is the lead agency for preparation of the Newport Banning Ranch EIR. No further response to the comment is required.

#### **Response 31**

Please refer to the response to Comment 30.

#### **Response 32**

Please refer to the response to Comment 30.

#### **Response 33**

Please refer to the response to Comment 11.

Comment Letter Q53b

**DATE:** November 7, 2011  
**TO:** Patrick J. Alford  
 Planning Manager City of Newport Beach,  
 Community Development Department  
 3300 Newport Boulevard P.O. Box 1768  
 Newport Beach, California 92658-8915  
**FROM:** Vicki Hernandez  
[hvhernan@earthlink.net](mailto:hvhernan@earthlink.net)  
**SUBJECT:** More Comments and Questions-Newport Banning Ranch dEIR

Dear Patrick,

Here is some more input on the Newport Banning Ranch dEIR. Please include my comments and questions below in the records of any and all proceedings relating to this project and its successors.

<p><b>1.0 Executive Summary</b>          Page 1-4 states "A Zoning Code Amendment is proposed to adopt the 'Newport Banning Ranch Planned Community' (NBR-PC)."</p> <ul style="list-style-type: none"> <li>• What is the current zoning?</li> <li>• Does this mean that, if the Zone Change takes place, NBR-PC will have full control of the entire Banning Ranch, even though it is all within the boundary of the Coastal Zone? If it is zoned as Planned Community 57, what is to prevent more and more residential development throughout Banning Ranch in the open spaces?</li> </ul>	1
<p>"The NBR-PC establishes allowable land uses within each land use district; development regulations for each land use district; general development regulations applicable to all development within the Project site; and procedures for implementing and administering the NBR-PC.</p> <ul style="list-style-type: none"> <li>• What are the allowable land uses within each land use district?</li> <li>• How often can they be changed by the NBR-PC</li> <li>• What is meant by "each land use district?" The development site? The open spaces?</li> <li>• What are the development regulations for each land use district? Would open spaces be subject to later new "Planned Community" development plans? What safeguards are there for the natural flora and fauna, and for the neighboring communities that will be impacted by development air, light and noise pollution, traffic, and congestion.</li> </ul>	2
<p>"Approval of the Master Development Plan implements the NBR-PC zoning requirements for the Project site by establishing design criteria for each proposed land use and providing a sufficient level of detail, as determined by the City, to guide the review of <u>subsequent development approvals</u>."</p> <ul style="list-style-type: none"> <li>• WHAT IS THIS "SUBSEQUENT DEVELOPMENT?"</li> <li>• I disagree with the proposed Zone Change</li> <li>• I encourage the City of Newport Beach NOT TO APPROVE the following:             <ul style="list-style-type: none"> <li>• Zoning Code Amendment</li> <li>• Zone Change</li> <li>• Newport Banning Ranch Planned Community Development Plan</li> <li>• Newport Banning Ranch Master Development Plan</li> </ul> </li> </ul>	3

<ul style="list-style-type: none"> <li>• I encourage the City and the California Coastal Commission to NOT approve the Newport Banning Ranch Master Development Plan and Pre-Annexation and Development Agreement.</li> <li>• I encourage the California Coastal Commission to deny a Master Coastal Development Permit to the Newport Banning Ranch Proposal</li> <li>• <b>The City of Newport Beach General Plan's Land Use Element prioritizes the retention of the Project site for open space AND</b></li> <li>• <b>The entire Project site is <u>within the boundary of the Coastal Zone</u>, as established by the California Coastal Act, and, as such, should be left undeveloped.</b></li> <li>• The public deserves this last open space within the Coastal Zone in Orange County to be left in perpetuity as Open Space. Page 1-8 states "Given the nature and scale of the Project, <u>complete avoidance of significant impacts was not feasible for any alternative other than the No Project Alternative.</u>"</li> </ul>	3 cont.
<p><b><u>6.0 Long Term Implications</u></b></p> <p>Page 6-3, "The Project would make a cumulatively considerable contribution to the global GHG inventory affecting Global Climate Change."</p> <ul style="list-style-type: none"> <li>• Does the City of Newport Beach really want to make this contribution to the global GHG inventory?</li> <li>• It is our responsibility <u>to avoid contribution</u> to the global GHG inventory affecting Global Climate Change. As a society, we need to re-think our behavior toward the environment.</li> </ul>	4
<p>Page 6-5, "Typically, growth- inducing impacts result from the provision of urban services and the extension of infrastructure (including roadways, sewers, or water service) into an undeveloped area. Growth-inducing impacts can also result from substantial population increase.</p> <ul style="list-style-type: none"> <li>• Does the City of Newport Beach really want to contribute to substantial population increase in increasingly-overcrowded Orange County?</li> <li>• The Project would detrimentally contribute overcrowding in Orange County.</li> </ul>	5
<p><b><u>7.0 Alternatives</u></b></p> <p>Page 7-43, "Alternative A would have fewer impacts than the proposed Project pertaining to potential aesthetic impacts, geotechnical constraints, hydrology and water quality, biological impacts, potential exposure of the public to hazardous materials (construction only), traffic, air quality, greenhouse gasses, noise, cultural resources, and impacts associated with the construction of public services, utilities, and recreational facilities."</p> <ul style="list-style-type: none"> <li>• It is time to slow down urban sprawl and look to sustain the earth, as the earth has so long sustained us. Alternative A is the most responsible alternative for future generations.</li> <li>• This is the last large expanse of undeveloped Coastal Zone land in Orange County. It behooves us to restore and preserve it in its natural state as an undeveloped Open Space so that our posterity will have an idea of what the Orange County coast was like before urbanization. Alternative A will provide for this.</li> </ul>	6

Page 7-173 "Based on the evaluation contained in this EIR, Alternative B, General Plan Open Space Designation, would be the environmentally superior alternative because it provides for restoration of the Project site and maintains the greatest amount of open space."

7

- How is this possible or logical? Plan A will provide for MUCH more open space, and a conservancy will be provided for restoration of Banning Ranch.

**Letter O53b Vicki Hernandez**  
November 7, 2011

### **Response 1**

Please refer to Section 3.0, Project Description, of the Draft EIR which identifies the existing and proposed zoning designations for the Project site. In summary, an approximately 40-acre portion of the Project site located within the jurisdictional boundaries of the City is zoned "Planned Community District 25" (PC-25) and, as such, is covered by the PC-25 Planned Community District Regulations. Approximately 361 acres of the Project site are located in unincorporated Orange County, but within the City's Sphere of Influence, and are regulated by County zoning. County zoning for the Project site includes several designations that permit residential, commercial, and light industrial/employment uses. Approximately 319 acres are zoned for R-4 Suburban Multi-family residential uses, which permits 1 dwelling unit for each 3,000 sf of net land area (i.e., approximately 14.5 dwelling units/acre [du/ac]); approximately 23 acres area zoned for C-1 Local Business commercial uses; and approximately 19 acres for M1 Light Industrial employment uses. Overlay zones, including Oil Production, Sign Restriction, and Floodplain Zone 2 apply to portions of the property.

Should the Project be approved as proposed by the Applicant and receive all required approvals and permits from responsible agencies, the draft Newport Banning Ranch Planned Community Development Plan (NBR-PC) would serve as zoning for the Project site. Should the property owner wish to modify the development proposal in the future, such actions would be subject to review and action by the City as well as potentially other regulatory agencies.

### **Response 2**

Please refer to Section 3.0, Project Description, and Section 4.1, Land Use and Related Planning Programs, which address the commenter's questions. The Newport Banning Ranch Planned Community Development Plan (NBR-PC) is proposed to serve as the zoning regulations for the Project. The NBR-PC (available on the City's website) establishes allowable land uses within each of five land use districts, development regulations for each land use district, general development regulations applicable to all development within the Project site, a plan for circulation and infrastructure facilities to serve development, and procedures for implementing and administering the NBR-PC. The NBR-PC would serve as the zoning and development regulations for both the portion of the Project site located within the City of Newport Beach and the portion of the Project site located within the County of Orange but within the City's Sphere of Influence. Following annexation of the areas located within the Sphere of Influence, the NBR-PC would become effective.

The NBR-PC includes five major land use districts with subcategories in several of these districts:

- **Open Space Land Use Districts:** Lowland Open Space/Public Trail Facilities (LOS/PTF), Upland Open Space/Public Trail Facilities (UOS/PTF), and Oil Facilities (OF).
- **Public Parks and Recreation Land Use Districts:** Community Park (CP), Bluff Park (BP), and Interpretive Parks (IP).
- **Visitor-Serving Resort/Residential Land Use District.**
- **Residential Land Use Districts:** Residential (Low Density [RL], Low-Medium Density [RL/M], and Medium Density [RM]).

- **Mixed-Use/Residential Land Use District.**

Table 4.1-1 of Section 4.1 of the Draft EIR identifies the allowable land uses within the proposed land use districts. Uses listed as “Permitted Uses” are allowed “by right”. Uses subject to a Conditional Use Permit (CUP) or Minor Use Permit (MUP) are conditionally allowed subject to the provisions set forth in the NBR-PC. Land uses not listed are not allowed with the exception of special event uses, limited duration uses (e.g., archaeological investigations), and uses allowed through interpretations of the NBR-PC. Existing uses made legal non-conforming uses are allowed to continue but are not permitted to be expanded.

With respect to how often land uses can be changed, this would depend on whether the land use is permitted by right or requires a Conditional Use Permit. This is the same procedure for all development in the City.

### **Response 3**

Subsequent development approvals are identified in Section 3.0, Project Description, of the Draft EIR. The commenter’s opposition to the proposed Project is noted.

### **Response 4**

The opinion of the commenter is noted.

### **Response 5**

The proposed Project is consistent with the growth assumptions of the City of Newport Beach and the County for this property. The opinions of the commenter are noted.

### **Response 6**

The opinion of the commenter is noted.

### **Response 7**

Page 7-173 of the Draft EIR states “CEQA requires the identification of an environmentally superior alternative. Section 15126.6(e)(2) of the State CEQA Guidelines identifies that if the No Project Alternative is the environmentally superior alternative, then the EIR shall also identify an environmentally superior alternative among the other alternatives. For this reason, a development alternative was identified as required by the State CEQA Guidelines.

**Alford, Patrick**

**Comment Letter O54**

**From:** James Heumann [jamesheumann@hotmail.com]  
**Sent:** Tuesday, November 01, 2011 2:15 PM  
**To:** Alford, Patrick  
**Cc:** Banning Ranch Conservancy  
**Subject:** DEIR for Banning Ranch - Comments

Mr Alford,

Please see the below comments regarding the DEIR for the Banning Ranch project dated September 2011 (State Clearinghouse No. 2009031061) .

1. The air quality (AQ) section which stated that all remediation would be finished within 3 years of the start – I serious doubt that. The remediation section did not specify, but implied the remediation work would take much longer than 3 years.	1
2. The document also mentions numerous closed wells and the California agency responsible for drilling new wells and closing old wells. Nowhere does it specifically state that ALL old wells would be located and closed according to agency procedures and requirements.	2
3. The other concern is all of these docs describe the PLAN. Things never go to plan. What are the contingencies, who will provide the oversight and approve the modified plans?	3
4. The AQ section describes mitigation measures for PM from grading and soil piles, but there is no discussion in the remediation section of anti PM measures for soil piles.	4
5. The AQ section also states that the benefit for using all Tier 4 offroad/construction equipment could not be calculated using the model. Why not? They don't explain.	5
6. There is little mention of the urban heat island effect of the project, other than PDF 4.11-1/2 and SC 4.11-1 that make general reference to meeting LEED or similar standards. There has been talk within the project to meet LEED Platinum, but it is not written into the DEIR. Specific mentions should be made to increase the albedo (solar reflectivity) of the project so as to minimize local warming effects of the project ( <i>Eric Berger, Science Writer, Houston Chronicle, Saturday, 06/07/03, Section A, Page 1</i> ). The USEPA has studied Houston, for example, ascertaining that the urban heat island effect has actually increased the temperature of the local climate from 3 F to 6 F. While the area of Newport Beach is not expected to be as warm as Houston, It is vitally important, both to the health of our populations vulnerable to extreme heat and to the larger phenomenon of global warming to include cooling practices in the proposed development.	6
One might expect that for a project that builds on some last remaining developable land for an area, there would be relatively modern expectations, such as a written commitment in the EIR ensuring this proposed project is minimally insignificant to the environment, objectively qualifying for at least LEED Platinum status since the first residential project to do so was back in 2006. While the project cites a commitment to LEED practices, specific items are not mentioned in the DEIR to ensure that the project is using all cooling technologies reasonably available. The proposed development should specifically mention include already existing practices to ensure a high solar reflectivity, using mitigation efforts such as cool roofs (eg planted roofs or white roofs), reflective pavement (as opposed to plain asphalt), and other cooling projects such as ensuring a higher ratio of unpaved land to paved land or built-over land. The cooling topic is insufficiently, non-specifically addressed in the	7

DEIR. The DEIR needs to include specific plans and sufficient goals to mitigate warming effects of the project so as to at least protect the more vulnerable among us.

7 cont.

Regards,

James Heumann  
Costa Mesa resident

**Letter O54 James Heuman**  
November 1, 2011

### **Response 1**

If the proposed Project is approved, all oilfield operations within the Project site (with the exception of the two oil consolidation sites) would be removed and remediated. Removal would include the abandonment of the facilities and remediation. Page 4.5-19 of the Draft EIR states that comprehensive oil facilities consolidation, abandonment, and remediation at the Project site would be a multiple-step process that would likely span a period of approximately two to three years. The remediation portion of this process is expected to take most of this time.

### **Response 2**

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 State Department of Oil, Gas, and Geothermal Resources (DOGGR) and reviewed according to their Construction Site Review process; all facilities would be removed. After remediation, hazardous gas surveys would be conducted as part of the Orange County Fire Authority Guideline C-03. Please refer to Section 4.5, Hazards and Hazardous Materials, specifically Section 4.5.8, and to Appendix D, specifically Section 3.1 of the Draft Remedial Action Plan (dRAP) of the Draft EIR.

### **Response 3**

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.

Specific to proposed remediation activities, operational and environmental regulatory oversight is described in Section 4.5.2 (pages 4.5-1 to 4.5-3) of the Draft EIR. The remediation process is reviewed, monitored, and approved by state regulatory agencies.

With respect to Project modifications, Section 2.0, Introduction, of the Draft EIR addresses this issue. The EIR is intended to serve as the primary environmental document for all entitlements associated with the proposed Project, including all discretionary approvals requested or required in order to implement the Project. The Lead Agency can approve subsequent actions without additional environmental documentation unless otherwise required by Section 21166 of the CEQA Statutes and Section 15162 of the State CEQA Guidelines. Section 21166 of the CEQA Statutes states that:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

#### **Response 4**

The mitigation measures for soil movement and grading discussed in the Air Quality Section 4.10 would also apply to soil movement and excavation in the remediation process.

#### **Response 5**

As a point of clarification, Section 4.10, Air Quality, of the Draft EIR does not state that the benefit for using all Tier 4 equipment could not be calculated using the model. The calculation in the Draft EIR using approximately 50 percent Tier 3 and 50 percent Tier 4 equipment was shown because that is a level of mitigation that would achieve emissions reductions below the SCAQMD NOx threshold.

#### **Response 6**

Project Design Feature (PDF) 4.11.1 in the Draft EIR requires the proposed Project to be consistent with a recognized Green Building Program that exists at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design – Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard.

The specifics of building energy efficiency may vary depending upon which particular Green Building Program is selected to set the requirements. Each Green Building Program has its own extensive list of potential energy-efficiency components with corresponding points or values of each component. These lists are used as “menus” from which the final program for the Project would ultimately combined so that the final solution (i.e., the constructed Project) can be graded. Additionally, recognized Green Building Programs are each independently being updated and requirements being revised over time. Therefore, although the commitment is specific, to identify today how energy efficiency would ultimately and specifically be attained would not be mandated at this time.

In addition to compliance with the Green Building Code and the third-party Green Building Program, the proposed Project has a Green and Sustainable Program. As addressed in the Newport Banning Ranch Master Development Plan (see Appendix D of the Master Development Plan), the proposed Green and Sustainable Program contains a Resource Management Performance Matrix that identifies commitments and implementing plans/programs for various resources, including energy, air and water resources. For example and as addressed in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR, the proposed Project would be required to have low water use indoor appliances; multimetering energy use “dashboards” in all residences; and all residential buildings must exceed 2008 Title 24 requirements by at least 5 percent.

PDF 4.11.2 and Standard Condition (SC) 4.11-1 both deal with Energy Efficiency Standards. As addressed in Section 4.11 of the Draft EIR, SC 4.11-1 requires conformance with the California

*2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings*, commonly known the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit. PDF 4.11.1 states that the Project shall exceed those requirements by at least 5 percent.

At the direction of the State Legislature in Senate Bill (SB) 97, the California Natural Resources Agency adopted amendments to the California Environmental Quality Act (CEQA) Guidelines that require analysis of climate change and greenhouse gas (GHG) emissions in CEQA documents; these amendments were effective March 18, 2010.

Section 4.11 of the Draft EIR provides a comprehensive discussion of the potential global climate change impacts that would occur from construction and operation of the proposed Project. The model data used for the quantitative analysis contained in Section 4.11 are included in Appendix H of the Draft EIR.

### **Response 7**

Although EIRs are intended to avoid, reduce, and mitigate impacts of projects, it is not the function of an EIR to impose conformance with the U.S. Green Building Council’s (USGBC’s) Leadership in Energy and Environmental Design (LEED) certification programs. Although a well-respected leader in the green building movement, USGBC is a privately incorporated nationwide 20,000-member non-profit organization ([www.usgbc.org](http://www.usgbc.org)), and participation in its certification programs such as LEED or LEED-ND is voluntary, and based on its copyrighted LEED Rating System.

LEED Platinum referenced in the comment is currently the highest of five LEED ratings, typically reserved for outstanding individual buildings or homes, and not a rating that is applied to larger and more comprehensive planned communities such as Newport Banning Ranch. The Project has not committed to LEED Platinum, but has committed to meeting the standards of an independent nationally recognized Green Building Program such as LEED-ND, which is the more appropriate type of program for this scale of project at this level of design.

As required by the City’s General Plan, the Project’s land use plan proposes the protection of relatively large areas of unpaved open space and parks, and the clustering of built development.

Additionally, solar reflectivity or other types of cool roofs can be an effective tool in reducing warming and energy consumption in buildings generally. It is often among the tools recognized and positively rated in third-party Green Building Programs – among various other techniques – for its value in providing cooling. While providing certain types of benefits, white roofs, reflective pavement, and other cooling techniques would also have to be evaluated in terms other factors, for example their aesthetic qualities and visual impacts (e.g., reflectivity and glare for Project residents and neighbors). Any such proposals and evaluations would occur during Site Development Review of individual construction-level development projects.

**Alford, Patrick**

**Comment Letter O55a**

**From:** TevisHill@aol.com  
**Sent:** Friday, November 04, 2011 2:45 PM  
**To:** Alford, Patrick  
**Subject:** deadline for comments

Please extend the Nov 8th date for comments on your dEIR . I am quickly trying to comprehend the new Banning Ranch dEIR and see how both impact me. I own two units in Newport Crest and live at 6308 West Oceanfront and am very impacted by all issues.Both documents have so much to study and I am sure that many of the Newport Beach citizens need more time. I support the park.

1

Thank you for your consideration.

Tevis Hill

**Letter O55a Tevis Hill**  
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.

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**Comment Letter O55b**

COMMUNITY

NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

PLEASE USE THIS LETTER AS A REPLACEMENT FOR  
THE ONE I DELIVERED YESTERDAY. ON NUMBER 7 AND ON NUMBER 13 I  
HAD PUT NEWPORT SHORES. THIS CORRECTED COPY REPLACES THOSE  
WORDS WITH LIDO SANDS. I AM SORRY FOR THE MISTAKE. THANK YOU.



November 7, 2011  
To: Patrick J. Alford  
Planning Manager, City of Newport Beach

From: Tevis Hill

Re: Newport Banning Ranch dEIR



I am a resident of Newport Beach. I lived in Newport Crest many years ago. I own several properties there. I live at 6308 West Oceanfront. After attending the Oct. 17<sup>th</sup> EQAC meeting I have comments and questions. The meeting put forth many important changes for the dEIR and suggestions.

1. Will a detailed analysis of the hydrology data be included in the final EIR?	1
2. Will the Newport Banning Ranch sell biological mitigation credits? If so, to whom and what will be the time frame for them to be mitigated?	2
3. Will the project have LEED specifications? And if so, what level will they achieve?	3
4. After the oil extraction in the soil takes place what official agency will sign off on this process? This is where residential units are to be built. Will the City also be responsible and have liability?	4
5. Will all soil remediation take place before any residential occupancy takes place in the final plan? If not, who will guarantee the future health of this community?	5
6. What is the current state of the land as far as degree and scope of contamination? It is not clear in the tables of this dEIR.	6
7. The walking bridge will have significant, negative impact on Lido Sands. For many years all of us have walked down Superior to the beaches. If the signal is not safe, then that should be addressed. As was brought up in the last Coastal Committee meeting, it should be addressed anyway, as many thought it not safe to cross Superior from our new parking lot. If it were deemed safe, then perhaps the Sunset Park would have been approved. Perhaps this is where a bridge should be.	7
8. As was suggested by EQAC, we should have site line views maps. Will you include their suggestion?	8
9. The 60 foot building impacts surrounding communities and changes the look of West Newport to resemble Costa Mesa. Is that what we are trying to achieve? Can adjacent planned communities establish their own heights? This was given as a reason to allow the higher buildings. Where is this stated?	9
10. Can the City of Newport Beach afford to assume long term liability for this project and the future health of it's residents?	10
11. Specifically, will funds be set aside or additional liability insurance be put in place for this potential disaster?	11
12. What is the exact description of affordable housing? Please include the price range. Will these homes also include LEED designation?	11

13. As suggested in the meeting, the impact on Newport Crest needs to be less than significant and there should be an alternative. None of the existing alternatives address this. Why has the City not forced this issue? It seems that the health and well being of the older community of Newport Crest is to be sacrificed for the newer development. If the walking bridge is built, this will do the same to Lido Sands. Shame on the City if it does not protect it's existing citizens and residents to the fullest. Of course there are many ways to build a community and I hope that you require the Newport Banning Ranch to build away from the existing community of Newport Crest and buffer roads and buildings with a large passive park. Let them redesign to protect your existing residents.

12

14. It is your job to protect us. Please don't let us down.

13

Sincerely,



Tevis Hill

**Letter O55b Tevis Hill**  
November 7, 2011

**Response 1**

A detailed hydrology analysis was prepared as a part of the Draft EIR; please refer to Section 4.4, Hydrology and Water Quality.

**Response 2**

As described on Page 3-13 of the Draft EIR, approximately 118.4 gross acres of the Project site are proposed for restoration as native habitat either by the Applicant as a part of the Project's biological resources mitigation obligations or as a means of satisfying off-site mitigation requirements. The compensatory mitigation requirements for the Project would be ultimately determined by the regulatory agencies as permit conditions. The exact amount of acreage that would be required to be restored as native habitat to satisfy the mitigation requirements of the proposed Project in the Lowland Open Space area has not been established because it would be subject to the approval of respective regulatory agencies including the USACE, the CDFG, the USFWS, the Regional Water Quality Control Board (RWQCB) Santa Ana Region, and the Coastal Commission. If the Project's mitigation requirements do not require the restoration of the approximately 118.4-gross-acre area, any remaining acreage requiring restoration would be placed in a reserve area (mitigation bank) or similar mechanism and may be made available to third parties seeking off-site areas in which to fulfill their respective mitigation obligations. The Lowland Open Space area is first depicted in Exhibit 3-2, Newport Banning Ranch Land Use Plan, in Section 3.0, Project Description.

**Response 3**

As addressed in Section 3.0, Project Description, the Project's Green and Sustainable Program includes sustainability goals for the Project and measures and design elements to address these goals. The Applicant's Project objectives include consistency with recognized green building program standards through the incorporation of green and sustainable project design; water quality engineering; construction; landscape; and long-term operation and maintenance. The Project proposes to be designed to be consistent with programs such as the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) requirements for Neighborhood Development. Project Design Feature (PDF) 4.11-1 states:

The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building program that exists at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard.

**Response 4**

The environmental remediation work would be overseen and approved by both the California Regional Water Quality Control Board – Santa Ana Region (Santa Ana RWQCB) and the Orange County Health Care Agency (OCHCA).

## **Response 5**

Soil remediation would take place throughout the grading of the Project site and potentially after portions of the Project are occupied. With respect to the concern expressed regarding the exposure of adjacent residents and future residents that may be near or on-site in the initial phases of development, the Draft EIR analyzed the impact of soil movement, including potentially contaminated soils, on sensitive receptors which include both existing off-site and future on-site residents and determined that this impact would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR beginning on page 4.10-29.

## **Response 6**

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 draft Remedial Action Plan (see Section 4.5 and Appendix D of the Draft EIR) outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria.

## **Response 7**

The opinion of the commenter is noted regarding constructing a pedestrian bridge in Sunset Ridge Park.

## **Response 8**

Both cross-sections and visual simulations are provided in the Draft EIR.

## **Response 9**

A 60-foot maximum building height is proposed to be allowed only in the Project planning areas referred to as the Urban Colony which are located adjacent to the City of Costa Mesa's adopted "Mesa West Bluff Urban Plan" area and adjacent to property owned by the Newport-Mesa Unified School District which is zoned by the City of Newport Beach as "Public Facilities". The City of Costa Mesa "Mesa West Bluff Urban Plan" is a plan to permit development of mixed use commercial and residential land uses and allows a maximum building height of 60 feet. The City of Newport Beach's "Public Facilities" zoning district allows for public uses including community centers, cultural institutions, government facilities, libraries, public hospitals, public utilities, and public schools. Newport Beach's Zoning Code allows for building heights for public facilities to be determined as part of the approval of permits for these projects. The 60-foot maximum building height proposed for the Urban Colony portion of the Project is consistent with the maximum building height allowed on adjacent properties.

A Planned Community Development Plan is proposed as part of the Project. Chapter 20.26.B, "PC (Planned Community) Zoning District," of the City of Newport Beach Municipal Code, provides that specific development standards, designed to address land use relationships of a project, including building height standards, may be approved for a PC zoned property through adoption of a Planned Community Development Plan.

## **Response 10**

The Project includes conditions of approval for Tentative Tract Map No. 17308 requiring indemnification of the City by the Project developer against all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses, including without limitation, attorney's fees, disbursements and court costs, of every kind and nature which may arise from or relate to the City's approval of the Project.

## **Response 11**

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.

Prices would be established at the time the Project is constructed.

## **Response 12**

The opinions of the commenter are noted.

**Comment Letter O56**

Daniel Johnson  
4832 River Avenue  
Newport Beach, CA 92663

November 8, 2011

SENT VIA E-MAIL AND U.S.P.S.

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

SUBJECT: NEWPORT BANNING RANCH DRAFT ENVIRONMENTAL IMPACT REPORT

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.

While I acknowledge all the hard work that was put into the development of this DEIR, I also acknowledge the irreparable and permanent effects of the NBR development as proposed, only some of which are listed here:

- Loss of natural habitat and reduction and/or elimination of local animal and plant species
- Destruction of ever-disappearing natural coastal scenic resources for the general public
- Increase in air, light and noise pollution for existing residents
- Increase in toxic runoff ultimately affecting ocean water quality for existing residents
- Destruction of cultural & historical topography
- Increase in traffic and population density in existing overly dense population area
- Increase in law enforcement activity in adjacent neighborhoods

1

**GENERAL PLAN OBJECTIVES**

The Newport Beach General Plan was developed based on a Visioning process that entailed gathering input from thousands of city resident volunteers in a process that spanned several years. As a result of this collective effort 14 major fundamental objectives were established as identified in The Preamble to The General Plan. The applicable objective was listed as "Supporting efforts to acquire Banning Ranch for permanent open space". The General Plan prioritizes the acquisition of Banning Ranch as permanent open space with restoration of oil operation damaged areas and development of nature education interpretive facilities. While development thresholds were included in the General Plan in the event the property was not acquired as open space, it should be noted that the objective and priority of the citizens will not be served by the NBR development. It should also be noted that shortly after the public approval of the General Plan occurred, the development plans for NBR were initialized.

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Alford, Patrick  
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**REQUEST #1:**

**Please provide an extensive listing of specifically what elements of "support" to date has been provided by the City of Newport Beach to acquire Banning Ranch for permanent open space. Short of receiving any information in this regard, I respectfully disagree that the City of Newport Beach staff and council has upheld the stated General Plan commitments to the public they serve in this regard.**

2 cont.

**NBR DEIR COMMENTS**

*Background*

I have owned a home and resided continuously in West Newport adjacent to the proposed NBR development for the last 19 years, specifically in Lido Sands Community Association (LSCA), and more specifically on River Avenue. I was also fortunate enough to grow up living in LSCA from 1962-1982, so altogether I have been fortunate to live in this area for nearly 50 years. While I have a myriad of concerns as listed at the outset of this letter which span almost every section of the DEIR, most of my questions and comments relate to the validity of the NBR DEIR in terms of properly and realistically measuring a wide variety of impacts on the existing adjacent beach neighborhoods on the coast side of PCH, which I will refer to in this letter as the West Newport Beach Sub Region (WNBSR).

***1. Unique Demographics of WNBSR needs examination under different standards***

Section 4.7 of the DEIR discusses population impacts of the NBR development and bases its analyses on standardized information from a variety of governmental entity sources, including City, County, & SCAG to derive impact conclusions and validation of compliance to those established standards. West Newport Beach consists of two (2) miles of high quality maintained public beach surrounded by and inundated directly adjacent with an extensive proportion of multi-unit residential housing to the degree that there no longer exists any open land or lots, i.e., the WNBSR is "built out". It is also an area that is a highly sought "end destination" for public beach access and usage by local non-resident users within the county and by tourists from all over southern California and around the world, to such a degree the City of NB boasts on its website that during the summer months the population "grows by an additional 20,000-100,000 tourists daily". As a result of this unique character and extremely high usage of this WNBSR, the impact of implementing a residential development that would add an additional 3,000+ permanent residents immediately adjacent, with additional access transportation corridors in an already highly dense population and traffic sub-region **must be examined under different standards than normal development circumstances.**

3

**REQUEST #2**

**Please provide information as to what considerations, adjustments or modifications have been made to the standardized impact analysis models, to take into consideration the unique existing population and traffic traits as listed above, in order to properly examine the realistic impact conditions in the WNBSR of introducing an additional 3,000+ permanent residents into the immediate area and a new major transportation corridor (Bluff Road) with its adjacent terminus. Barring any analytical conclusions that take into consideration the unique context of the WNBSR in which the proposed development will reside immediately adjacent to, I respectfully disagree that the population and traffic impacts on existing residents are anything less than extremely significant.**

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## 2. Current Public Beach Access Deficiencies combined with New Adjacent Terminus of Major Transportation Corridor (Bluff Road)

Based on the unique population density traits as previously described in the WNBSR, the current facilities for traffic and parking remain extraordinarily deficient under normal circumstances, and become exacerbated during the summer months with the addition of non-resident tourist beach and rental property usage. The City has worked hard to deal with balancing the needs of residential parking with non-residential public beach access, but because of history of over permitting an inordinate percentage of multi-unit residential within the WNBSR, the area remains mired with density levels too extreme to accommodate both needs (residential parking & public access). Section 4.9 of the DEIR discusses the Transportation and Circulation impacts which again basis its analyses on resources that do not address the specific impacts that will occur in reality within the WNBSR as a result of the NBR development. One of the main components of the NBR development project is a new transportation corridor (Bluff Road) with a terminus on PCH directly adjacent to the existing most heavily impacted areas of the WNBSR for parking and traffic, as discussed above. The references to resources that form the basis for rationalization of this new major transportation corridor have little relevance when the current traffic and parking conditions are taken into account. The DEIR cites a plethora of governmental programs, such as Congestion Management Plan, SCAG Regional Comprehensive Plan, Regional Transportation Plan, and the Orange County Master Plan of Arterial Highways; however, once again, based on the unique character of the WNBSR as previously discussed, the introduction of this new major transportation corridor **must be examined under different standards than normal development analysis circumstances.**

### **REQUEST #3**

**Please provide information as to what considerations, adjustments or modifications have been made to the standardized impact analysis models, similar to #2 above, but that also take into consideration the current existence of the parking and traffic problems described above as the City of Newport Beach attempts to balance the current (pre-NBR Development) levels of population density. Unless there are modifications made to the existing standards to take into consideration the existing density levels and current parking and traffic deficiencies, I respectfully disagree that the traffic impacts on existing residents are anything less than extremely significant.**

### **REQUEST #4**

**Please provide information as to what alternatives have been explored within the proposed NBR Development that exclude the development of a major transportation corridor terminus onto PCH in the densely populated WNBSR.**

## 3. Issues Related to Beach Access via River Avenue West of Balboa Blvd

Within the WNBSR, River Avenue west of Balboa, the street I live on, serves as a major beach access route to some of the world's most popular beaches and surfing areas, from 47<sup>th</sup> Street to Prospect Street, a 2/3 mile stretch of beach spanning 16 Blocks of multiple rows of mainly multi-unit residential. Based on the "lay of the land" this particular street (River Avenue) provides the easiest access from the

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intersection of PCH & Balboa Blvd to this large stretch of beach because it parallel's the beach, provides easier access to Seashore Drive via the "through" streets at 51<sup>st</sup> & 54<sup>th</sup> Streets; and, also because the beach access 16 blocks to the west via Seashore Drive is not accessible easterly from the intersection of PCH & Prospect Street because of its one-way westerly orientation. As such, there exists extraordinarily high traffic usage and high vehicle speeds relative to the physical width and original intent for River Avenue, as a residential street. Even in the non-Summer months, a large proportion of the usage in the WNBSR area is by non-resident visitors accessing the beach along the 16 blocks, which include three separate City of NB public parking lots; demonstrating that regardless of the bicycle and pedestrian amenities of the area, most non-resident local users will opt to access the WNBSR by vehicle. Additionally, beach access usage increases considerably during the summer months. As was referred to previously, this is an exclusively residential area which as a result of the aforementioned "lay of the land" dynamics, has become a major beach access route and is plagued by excessive vehicle speeds, wrong-way drivers, and a high preponderance of stop sign violators subjecting residents (including a high number of children) to dangerous conditions.

5 cont.

**REQUEST #5**

**As the new transportation corridor proposed in the NBR DEIR (Bluff Road) has its terminus on PCH approximately 1,000 feet from the intersection of Balboa Boulevard & River Avenue and will significantly increase the level of beach access traffic via River Avenue, which is already too heavy for its designed residential usage from a safety standpoint, please provide a listing of mitigation solutions dealing with traffic and parking along this major beach access route that will be implemented as a result of the proposed NBR development. In the absence of any substantive mitigation measures in this regard, I respectfully disagree that the traffic impacts on existing residents along River Avenue are anything less than extremely significant as a result of the NBR development.**

**REQUEST #6**

**Please provide information on what studies have been performed relating to the additional traffic congestion, unsafe vehicle usage and parking deficiencies in the 16 block area from 47<sup>th</sup> Street to Prospect Street that will occur as a result of the proposed major transportation corridor (Bluff Road) with it terminus approximately 1,000 feet from the intersection of Balboa Boulevard & River Avenue.**

***4. Law Enforcement & Safety Issues in West Newport***

With the proposed NBR development increasing population by 3,000+ permanent residents combined with the increased visitor access provided by the new major transportation corridor (Bluff Road), another element of impact is the increased need for law enforcement & safety in the WNBSR. As standardized studies of new development impacts makes the assumption that related lifestyle activities impacts will take place within the bounds of the development and be serviced by the development's amenities and specified internal mitigation devices, Section 4.14 the DEIR related to Public Services and Facilities does not address the resultant increased level of realistic impacts on the adjacent WNBSR, which is an "end destination" for non-residents because of the beach/surfing related lifestyle environment, particularly attractive for teens and young adults. The reality is that this beach/surfing related lifestyle ("partying") environment, and all its related law enforcement and safety issues, will not exist within the NBR development itself, yet will be easily accessible by teen/young adult demographic

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proportion of the new NBR permanent residents. This will result in a significant increase of influx into the WNBSR of the teen/young adult demographic via NBR residents (plus non-residents accessing the WNBSR via the new major transportation corridor) resulting in an increased need for law enforcement in the WNBSR related to resultant higher levels of vandalism, burglary, assault & battery, loitering, property damage, littering, vehicle towing and other like activities predominant with this particular teen/young adult demographic in the WNBSR.

**REQUEST #7**

**Please provide information on what analyses have been performed to measure the impact of the increased illegal activities and behavior that would occur in the WNBSR as a result of the addition of 3,000+ permanent residents in the adjacent NBR development and increased visitor access via the new major transportation corridor (Bluff Road).**

6 cont.

**REQUEST #8**

**Please provide specific detail on what mitigation solutions to address the increased criminal and illegal activity as discussed that will be implemented in the WNBSR as a result of the influx of the addition of 3,000+ permanent residents in the adjacent NBR development and increased visitor access via the new major transportation corridor (Bluff Road).**

***5. Emergency & Law Enforcement Vehicle Siren Noise Impacts on the WNBSR***

As previously defined, the WNBSR is located adjacent to PCH and Balboa Boulevard, which appropriately serve as major corridors for emergency and law enforcement vehicle routing. While emergency and law enforcement vehicle noise (sirens) is an expected impact given the existing population density, the level of siren activity incidents and associated noise nuisances will increase substantially with the addition of the proposed new major transportation corridor (Bluff Road) intersection less than 1000 feet from the major intersection of PCH and Balboa Boulevard. The intersection of PCH and Bluff Road which will serve 3,000+ new permanent residents in the proposed NBR development will become another major corridor for emergency and law enforcement vehicle routing given its path to the closest fire station and to Hoag hospital. In addition, increased law enforcement activities in the WNBSR as a result of the NBR development, as described in Item 4 above, will also add to the increased number of incidents necessitating the use of siren activity.

7

**REQUEST #9**

**Please provide information on what analyses have been performed to measure the impact on the WNBSR neighborhoods of the increased number of emergency and law enforcement vehicle incidents and resultant increase in siren noise disturbances.**

**REQUEST #10**

**Please provide specific detail on what mitigation solutions for the WNBSR residents to address the increased incidents of emergency and law enforcement vehicle siren noise nuisance activity as a result of the NBR development.**

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#### 6. Impacts on Lido Sands Community Association (LSCA) private property

As previously mentioned I reside in LSCA, an 82-homeowner association tract directly adjacent to the coastal side boundary (other side of PCH) from the proposed NBR development, situated laterally between 47<sup>th</sup> & 56<sup>th</sup> streets and north to south between River Avenue and PCH. Since its inception in 1957, LSCA has been a self-funded/self-managed homeowner association, and a steward of responsible high quality neighborhood upkeep in an otherwise unkempt high density transient multi-unit residential renter environment within the WNBSR. As such, LSCA has been proud to act as long-term allies with the City its efforts to steadily improve the WNBSR area. Still, the resident homeowners in this area have been historically burdened with the inherent dynamics of a heavily accessed beachside community due to its transient rental and "end destination" nature. Specifically, LSCA has historically been burdened with intrusive impacts such as non-resident illegal parking on the private streets, trespassing into LSCA Pool/Recreation Center, vandalism of LSCA amenities, and burglary of LSCA homes. These conditions will be significantly exacerbated by the increased usage load on the WNBSR as a result of the NBR development, which will introduce 3,000+ new permanent residents adjacent PLUS provide a major transportation corridor (Bluff Road) with terminus on PCH adjacent to LSCA enabling additional access from the inland communities.

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#### REQUEST #11:

Please provide specific detail on what analyses has been performed to identify and measure intrusion impacts as referenced above on LSCA and its homeowner residents as a result of the proposed NBR development.

#### REQUEST #12:

Please provide specific detail on what mitigation solutions the City and/or NBR will make available to LSCA in order to manage the increased burdens that will be placed upon LSCA as a result of the proposed NBR development with regards to the increased levels of illegal non-resident parking, private property trespassing, vandalism of amenities, and drastically heightened levels of exposure to air pollution, noise pollution and light pollution on an ongoing and permanent basis.

#### 7. Construction and Other Issues Related to PCH Pedestrian Bridge at 56<sup>th</sup> Street

The NBR DEIR includes the construction of a pedestrian bridge over PCH that spans from the NBR development into West Newport Park at 56<sup>th</sup> Street, which will enable non-vehicle (pedestrian & bicycle) traffic access into the WNBSR from the proposed NBR development. This proposed construction project is adjacent to the west end of the LSCA housing tract. As previously mentioned, LSCA was developed in 1957 and pre-dates several roadway improvement projects of PCH which have caused significant impact upon the neighborhood. Historically, one negative aspect of the road improvements on LSCA has been positively mitigated by the City in installing a 10' sound wall with landscaping, which mitigated the negative noise and safety impacts of the road expansion. Other aspects of adjacent construction have not been mitigated to date, such as the destruction of the LSCA street drainage system caused by the construction of the roadway improvements resulting in properly working street drains being inadvertently converted to sumps(i.e., "French drains"). The impact of this particular lack of mitigation was that storm water surface runoff now pools up during heavy storm seasons, and has historically

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created flood incidents, one of which within the last 10 years flooded several LSCA homes and required federal flood assistance from FEMA. With the completion of the PCH pedestrian bridge at 56<sup>th</sup> Street there may be other possible impacts that affect portions of LSCA including, but not limited to, ongoing elements such as safety, noise, visual, vandalism, trespassing, littering, and inadvertent and unanticipated future negative impacts (e.g., akin to the street drainage system destruction issue mentioned above).

**REQUEST #13:**

**Please provide specific detail on what analyses have been performed to identify impacts of building a pedestrian bridge over PCH at 56<sup>th</sup> Street on LSCA related to construction elements and any on-going post-construction impacts, including inadvertent or potential unanticipated negative impacts**

9 cont.

**REQUEST #14:**

**Please provide specific detail on what mitigation solutions the City and/or NBR will make available to LSCA in order to manage the increased burdens related to the construction of the pedestrian bridge over PCH at 56<sup>th</sup> Street and any ongoing post-construction negative impacts, including any future inadvertent or unanticipated negative impacts.**

**CONCLUDING CONCEPTS & COMMENTS**

Again, I would like to thank you for the opportunity to provide comments on the Newport Banning Ranch Draft Environmental Impact Report.

As a 50-year resident of West Newport I obviously have strong feelings about this how the landscape of this area is managed as we move into the future, and have front-line experience in living in this area, experiencing the impact of past changes, and the realities of the significant population density, traffic, parking and safety/criminal issues we now live with today. The citizens of this City and particularly those that reside in the WNBSR are the ones that experience the real three-dimensional conditions and realities of living in this unique portion of Newport Beach, and have more valid and applicable concerns about the introduction of a huge percentage increase in population, as opposed to those that are contracted and well paid to put forth nearly 10,000 pages of speculations which are based on invalid and inapplicable standards that justify and rationalize the major development of our last remnant of precious open space. The citizens are also the ones that have overwhelmingly voiced their desire to retain the Banning Ranch property as Permanent Open Space, as has been clearly identified in the City's 2006 General Plan. The prospect of maxing out the development thresholds (as is detailed in the DEIR) is the exact opposite direction of what the citizens of Newport Beach communicated to the City during the Visioning Process and that is what they voted for with the General Plan that was ultimately developed. As for the City's role, their duty in this regard is listed as a fundamental tenant of the General Plan, which is to support efforts to acquire Banning Ranch property for permanent open space. As this NBR development moves forward it reinforces the overwhelming evidence that the City of Newport Beach Staff and City Council are failing to uphold their stated General Plan commitments to the public they serve in this regard.

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As for the task at hand, the NBR DEIR document in question is theoretically required in order to identify project specifics, resultant environmental impacts, and mitigation solutions to those impacts. I have consistently referred to the unique demographics of the WNBSR and understand that an impact report of substance and value must take into consideration these specifics when measuring real impact. Despite the extreme volume of the 9/9/11 NBR Draft Environmental Impact Report, it appears to fail on every level in addressing the real impacts on the existing community, and in particular the densely populated WNBSR. Not only does it fail to utilize applicable standards of measure, it fails in even acknowledge the presence of the existing WNBSR community. This is akin to studying New York City and not acknowledging the existence of Manhattan. How is it that the City constantly struggles in addressing overwhelming traffic and density problems of the WNBSR, and there is barely a mention of this reality in the document? This DEIR has essentially been prepared in a vacuum. The impact of adding 3,000+ permanent residents and a major transportation regional corridor (Bluff Road) that dumps onto PCH right into the middle of the WNBSR is more extreme than the most significant level on the scale of impacts.

10 cont.

As a hard working citizen, I do not have the time or resources to address every issue and make comments on every aspect of this extraordinarily voluminous report, as there are numerous more elements I have comments and concerns about.

In conclusion, I feel that this report is woefully inadequate in accomplishing the objective of stating impacts on the environment.

Respectfully yours,



Daniel Johnson

**Letter O56     Daniel Johnson**  
November 8, 2011

### **Response 1**

The comment is noted.

### **Response 2**

The opinion of the commenter is noted. 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 3**

Please refer to Section 4.0, Transportation and Circulation, which addresses the methodology used to prepare the Traffic Impact Analysis. 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. The opinions of the commenter are noted.

### **Response 4**

The traffic and parking issues related to beach access in the West Newport Beach neighborhood referenced in this comment are acknowledged. The proposed Newport Banning Ranch Project may contribute a small amount of traffic to the demand for beach access, due to its proximity. A select link run of the Newport Beach Traffic Model (NBTM) indicates that, of the traffic that would use Bluff Road roughly one-half of one percent of that traffic would enter the River Avenue/Seashore Drive area via Balboa Avenue. This is because of the location of the Bluff Road connection at West Coast Highway in relation to the Balboa Avenue entrance to the area. People coming from east Costa Mesa or from the north via Newport Boulevard/SR-55 would be more likely to use Newport Boulevard to go to the beach.

### **Response 5**

Bluff Road is shown on the City of Newport Beach Master Plan 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 connecting to 19<sup>th</sup> Street, at the north end of the site.

Alternative C in Section 7.0 of the Draft EIR shows Bluff Road terminating just north of 17<sup>th</sup> Street. The Project proposes a pedestrian and bicycle bridge from the Project site across West Coast Highway, to facilitate non-vehicular access to the beach. Please also refer to the response to Comment 4.

### **Response 6**

As described in Section 4.14, Public Services and Facilities, in the Draft EIR, the City of Newport Beach Police Department was contacted to determine the potential impact of the Project on police protection services. The Project would increase demand for the City's Police protection services but would not require the construction of new facilities nor would it require the expansion of existing facilities that would result in physical vernal impacts. Although the exact number and frequency of calls cannot be calculated since there is no development is currently, implementation of the Project is expected to result in an increase in calls for service for non-residential development. The proposed Project is reflected in the 2006 Orange County Projections' growth estimates and has been taken into account in long-range planning efforts, including the Police Department. Based on information received from the Police Department, police protection services can be provided to the Project site without significantly impacting existing and planned development within the City. No information from the Police Department was provided that would indicate an increased demand for police protection services in the West Newport Beach Sub Region (WNBSR), as defined by the commenter. In addition, implementation of Standard Conditions 4.14-4 and 4.14-5 would ensure adequate police protection services can be provided to the Project site.

### **Response 7**

The proposed Project would result in an increase in emergency and law enforcement demand; however, the increased demand as it relates to siren disturbances is considered nominal due to the short duration of siren noise.

### **Response 8**

The relationship of the proposed Project to the Lido Sands community is addressed in several sections of the Draft EIR and included throughout the environmental analysis. This includes but is not limited to land use compatibility (see Section 4.1, Land Use and Related Planning Programs); aesthetics (see Section 4.2, Aesthetics and Visual Resources); traffic (see Section 4.9, Transportation and Circulation); and noise (see Section 4.12, Noise). Impacts were either not specific to Lido Sands or did not exceed CEQA significance thresholds.

Please refer to Section 4.1, Land Use and Related Planning Programs, which specifically addresses the relationship of the proposed Project's land uses to Lido Sands. In summary, the Project site is adjacent to West Coast Highway, which is a six-lane divided State highway. Residences in the Lido Sands community are located on the south side of West Coast Highway, approximately 180 feet south of the southern Project site boundary. An approximate seven-foot-high noise barrier separates the Lido Sands residences from West Coast Highway providing both noise reduction and visual separation. Proposed development on the Project site would be separated from Lido Sands by approximately 350 feet. This includes the six-lane divided West Coast Highway (off site), and approximate 150 foot-wide area of native habitat (on site), and South Bluff Park (on site). Additionally, there is an approximate vertical grade separation of 50 feet with the Project site at a higher elevation than residences to the south of West Coast Highway. Any on-site development would be set back from the bluff top edge by a minimum of 60 feet. The Resort Colony with a resort inn and residences would be the closest development uses to off-site residences to the south. Buildings within the Resort Colony would not exceed 50

feet in height and would vary in height and massing. Exhibit 4.1-2a depicts the Project interface with the Lido Sands Community. The exhibit depicts the Resort Colony area of the Project separated from the Lido Sands Community by approximately of 400 feet with a vertical separation of approximately 50 feet. This is considered to be sufficient privacy buffer between the Project and the Lido Sands Community. The remaining questions do not raise environmental issues.

### **Response 9**

The pedestrian and bicycle bridge is proposed to encourage walking and bicycling to and from the beach. The proposed bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach. The bridge would allow for pedestrians and bicyclists to move between the northern and southern sides of West Coast Highway without having to cross West Coast Highway at street level. The southern landing structure for the bridge would be within a structural pier located within the existing boundaries of the City's 4.6-acre West Newport Park. This landing would have a public elevator; walkways would be constructed to connect the landing to Seashore Drive to the south allowing pedestrians and bicyclists to continue on existing public roadways to access the public beach. Exhibit 4.8-18 depicts the proposed bridge landing in the West Newport Park, which is located west of the Lido Sands Community. Vertical access to the beach is immediately adjacent at 58<sup>th</sup> Street. Therefore, it is unlikely that pedestrians and bicyclists from the Project would access the beach through the Lido Sands Community.

### **Response 10**

The opinions of the commenter are noted.

**Alford, Patrick**

**Comment Letter O57**

**From:** Dorothy Kraus [medjkraus@yahoo.com]  
**Sent:** Monday, October 24, 2011 3:07 PM  
**To:** Alford, Patrick  
**Subject:** Newport Banning Ranch DEIR - Comments and Questions

Dear Patrick,

We object to the Newport Banning Ranch project as proposed. Please include our comments and questions below in the records of any and all proceedings relating to this project and its successors.

Regarding SECTION 6.0, LONG-TERM IMPLICATIONS OF THE PROPOSED PROJECT, Sub-Section 6.1 ANY SIGNIFICANT ENVIRONMENTAL EFFECTS WHICH CANNOT BE MITIGATED, 1st paragraph under Land Use which states starting with the fourth sentence as follows:

'The proposed Project would result in a land use incompatibility with respect to long-term noise and night illumination on those Newport Crest residences immediately contiguous to the Project site. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations which notes that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project.'

In the first sentence, please specify what Newport Crest residents are assumed to be 'immediately contiguous' to the project site including street number and street name e.g., 3 Wild Goose Court.

Regarding the underlined sentences above starting with the second sentence, the Banning Ranch DEIR does not provide a cross-reference to the General Plan Final EIR where the City has approved a Statement of Overriding Considerations.

Please provide this cross-reference to the City's General Plan Final EIR for clarity. Also, please provide specific examples of 'other public benefits that outweigh the significant unavoidable impacts associated with the General Plan' including specific benefits that would outweigh the significant unavoidable impacts related to long-term noise and night illumination to those Newport Crest residents contiguous to the Project site.

Thank you.

Mike and Dorothy Kraus  
10 Wild Goose Court  
Newport Beach, CA 92663

**Letter O57 Dorothy Kraus**  
October 24, 2011

### **Response 1**

The specific residences that would be significantly impacted by noise from Bluff Road traffic would be determined upon completion of the final design of the roadway and the acoustical analysis required by Mitigation Measure 4.12-6 identified in Section 4.12, Noise, of the Draft EIR.

### **Response 2**

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. The City of Newport Beach General Plan Final EIR (SCH No. 2006011119) is available at the City of Newport Beach website at <http://www.newportbeachca.gov/index.aspx?page=196>.

### **Response 3**

Please refer to the response to Comment 2.

As described in Table 4.9-31 of the Draft EIR, the development of the proposed Project implements the City's General Plan Master Plan of Streets and Highways which requires a Primary Road to be developed connecting West Coast Highway and 19<sup>th</sup> Street as part of the development of the Project site. As described in Section 4.12, Noise, the long-term noise increases at some Newport Crest residences resulting from the operation of the Project would remain above the 5 dBA significance criterion for noise increase but that with implementation of Mitigation Measure 4.12.7, which provides an opportunity for the retrofitting of impacted residences with dual pane glass in windows and doors, noise levels would be reduced to an acceptable level. Because this mitigation measure would be implemented by the Applicant with the cooperation of residents residing on affected private properties which are not located within the boundaries of the Project site, the City has no control over the implementation of the mitigation measure. For this reason alone, the Draft EIR identified noise impacts to certain residences in Newport Crest would be significant and unavoidable.

Development of the proposed Bluff Road and North Bluff Road as part of the Project consistent with the City's General Plan would provide public benefit through provision a needed alternative north/south circulation route to relieve congestion at Superior Avenue as described in the General Plan. Additionally, the Project benefits the public through a roadway design which avoids areas of the Project site containing sensitive biological resources and providing for the restoration of these areas as permanent open space.

As described in the Draft EIR, development of the Community Park would implement the following City of Newport Beach General Plan Policies:

- Land Use Element *Policy LU 6.4.1 – Alternative Use*, which provides for active community parklands within the Project site.
- Land Use Element Policy *LU 6.5.2, Active Community Park*, which requires development of the Project site to accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted to serve adjoining neighborhoods and residents of the Project, if developed.

- Recreation Element *Policy 1.9, Priority for Facility Provision*, which 1) identifies additional park and recreation facilities that meet the needs as identified by direct feedback from residents, analysis of future trends, and through observations of the City's Recreation and Senior Services staff; and 2) which lists a need for development of a 20-30 acre active community park, with consideration of night lighting, at the Project site.

As described in the Draft EIR on Table 4.8-1, "Newport Beach Parkland Acreage Needs," there exists a current park deficiency of 67.7 acres in the City as a whole. With development of the Sunset Ridge Park this deficiency would be reduced to 48.8 acres. The development of the approximately 27-gross-acre Community Park as part of the Project would serve to reduce the City's park acreage deficit to 21.80 acres. Lighting of the proposed Community Park would provide for active nighttime recreational facilities as identified as needed by residents and City staff as part of the City's General Plan.

RECEIVED  
Comment Letter O58a  
COMMUNITY

NOV 01 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

October 30, 2011

Subject: Newport Banning Ranch DEIR

Dear Patrick,

We object to the Newport Banning Ranch project as proposed. Please include our comments and questions below in the records of any and all proceedings relating to this project and its successors.

In reviewing the California Environmental Quality Act (CEQA) the CEQA policies and procedures below related to environmental review procedures, documents, reports, and administration of the process state the following:

**§ 21003. PLANNING AND ENVIRONMENTAL REVIEW PROCEDURES;  
DOCUMENTS; REPORTS; DATA BASE; ADMINISTRATION OF PROCESS**

The Legislature further finds and declares that it is the policy of the state that:

- (b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decision makers and to the public.
- (c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

**15006. REDUCING DELAY AND PAPERWORK**

Public agencies should reduce delay and paperwork by:

- (n) Reducing the length of Environmental Impact Reports by means such as setting appropriate page limits. (15141)
- (o) Preparing analytic rather than encyclopedic Environmental Impact Reports. (15142)
- (p) Mentioning only briefly issues other than significant ones in EIRs. (15143)
- (q) Writing Environmental Impact Reports in plain language. (15140)
- (r) Following a clear format for Environmental Impact Reports: (15120)
- (s) Emphasizing the portions of the environmental Impact Report that are useful to decision makers and the public and reducing emphasis on background material. (15143)

**15140. WRITING**

EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents.

**15141. PAGE LIMITS**

The text of draft EIRs should normally be less than 150 pages and for proposals of Unusual scope or complexity should normally be less than 300 pages.

**15143. EMPHASIS**

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

**15123. SUMMARY**

- (a) An EIR shall contain a brief summary of the proposed actions and its

consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

- (1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;
- (2) Areas of controversy known to the Lead Agency including issues raised by agencies and the public; and
- (3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

The source of this CEQA statute and guideline is:

[www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf](http://www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf)

which is the source recommended by the state California Natural Resources Agency:

<http://ceres.ca.gov/ceqa/>

The Newport Banning Ranch draft Environmental Impact Report (DEIR) released for public comment by the City of Newport Beach on September 8, 2011, is a massive and difficult document to review. The DEIR is over 7,000 pages long including Appendices making it very difficult to navigate. See below for a page count by section:

Newport Banning Ranch DEIR page counts

1 cont.

<b>0.0 NOA.pdf 117291 PDF File</b>	<b>2</b>
<b>TOC</b>	<b>15</b>
<b>1.0 Executive Summary.pdf 401284 PDF File</b>	<b>64</b>
<b>10.0 Acronyms and Glossary.pdf 194468 PDF File</b>	<b>52</b>
<b>2.0 Introduction.pdf 75833 PDF File</b>	<b>12</b>
<b>3.0 Project Description.pdf 19192483 PDF File</b>	<b>79</b>
<b>4.0 Environmental Setting.pdf 18766 PDF File</b>	<b>2</b>
<b>4.1 Land Use.pdf 8512223 PDF File</b>	<b>87</b>
<b>4.10 Air Quality.pdf 4825927 PDF File</b>	<b>42</b>
<b>4.11 Greenhouse Gas Emissions.pdf 213403 PDF File</b>	<b>40</b>
<b>4.12 Noise.pdf 9605193 PDF File</b>	<b>54</b>
<b>4.13 Cultural and Paleontological Resources.pdf 202931</b>	<b>38</b>
<b>4.14 Public Services and Facilities.pdf 3781567 PDF File</b>	<b>39</b>
<b>4.15 Utilities.pdf 1894894 PDF File</b>	<b>49</b>
<b>4.2 Aesthetics.pdf 4378328 PDF File</b>	<b>58</b>
<b>4.3 Geology and Soils.pdf 9773442 PDF File</b>	<b>34</b>
<b>4.4 Hydrology and Water Quality.pdf 3926062 PDF File</b>	<b>82</b>
<b>4.5 Hazards and Hazardous Materials.pdf 1775445 PDF File</b>	<b>41</b>
<b>4.6 Biological Resources.pdf 18616906 PDF File</b>	<b>117</b>
<b>4.7 Population and Housing.pdf 152989 PDF File</b>	<b>26</b>
<b>4.8 Recreation and Trails.pdf 13764637 PDF File</b>	<b>44</b>
<b>4.9 Transportation and Circulation.pdf 3433597 PDF File</b>	<b>159</b>
<b>5.0 Cumulative Impact Analysis.pdf 5433106 PDF File</b>	<b>89</b>

6.0 Long Term Implications.pdf 39885 PDF File	8		
7.0 Alternatives.pdf 3488087 PDF File	183		
8.0 Preparers and Contributors.pdf 19006 PDF File	4		
9.0 References.pdf	14		
	1417		
<b>Appendices:</b>			
A NOP	283		
B Geo and Soils	494		
C Hydro and Water	1274		
D Haz Mat	167		
E Bio	524		
F Traffic	1929		
G AQ	391		
H Climate	30		
I Noise	226		
J Cultural	218		
K Fire	149		
L Utilities	54		
M Cumulative	79		
	5817	total:	7234

1 cont.

The DEIR is not written in plain language making it unreadable. Furthermore, the DEIR is not written in a way that is understandable to everyone who reviews the document. Significant impacts are not clear and concisely presented and are often buried in an Appendix where one has to wade through massive amounts of supporting detail to weed out the significant impact. Additionally, the City has not provided any guidelines to facilitate review or construction of comments.

The City has approved the release of a DEIR document that is clearly not following the CEQA policies and procedures as referenced above. Please provide justification and/or an explanation as to why the CEQA policies have not been followed with respect to the Newport Banning Ranch DEIR.

We respectfully request that the Newport Banning Ranch DEIR be rewritten to be compliant with CEQA policies. Although the lead agency has the responsibility for producing a clear and objective assessment of each project, the City requires the developer to pay the costs, so asking for a re-write should not place a burden on taxpayers.

We also request that guidelines for review and comment on the DEIR be included with the revised DEIR when it is released and that another 60 day review period be granted.

Thank you.

  
Mike and Dorothy Kraus  
10 Wild Goose Court  
Newport Beach, CA 92663

**Letter O58a Mike and Dorothy Kraus**  
October 24, 2011

**Response 1**

The opinions of the commenters are noted. Section 21091 of the Public Resources Code 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. The City of Newport Beach provided a 60-day public review period.

Comment Letter O58b

**Alford, Patrick**

**From:** Dorothy Kraus [medjkraus@yahoo.com]  
**Sent:** Saturday, November 05, 2011 9:34 AM  
**To:** Alford, Patrick  
**Subject:** NBR DEIR - Request to Extend Comment Period

Hi Patrick,

As homeowners in Newport Crest who have lived in this current residence for 12 years, we are requesting that the City extend the deadline for comments on the Newport Banning Ranch DEIR.

Our reasons are as follows:

- The publication of the DEIR for Banning Ranch and comment period has overlapped the Sunset Ridge Park coastal development application from the City to the California Coastal Commission;
- 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 and property values. We live on the perimeter of Banning Ranch.
- Many homeowners have been very involved in the Coastal Commission Sunset Ridge Park application including us, 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 our opinion, the process needs to be extended to allow for more quality input.

Thank you for considering our request.  
Sincerely,

Mike and Dorothy Kraus  
10 Wild Goose Court  
Newport Beach, CA

**Letter O58b Mike and Dorothy Kraus**  
October 30, 2011

**Response 1**

The opinions of the commenters are noted. Section 21091 of the Public Resources Code 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. The City of Newport Beach provided a 60-day public review period.

Comment Letter O58c

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COMMUNITY

NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

November 8, 2011

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

Dear Patrick,

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

**General**

<p>1. The NBR DEIR prepared by Bonterra Consulting is a massive, unreadable, complicated document of over 7,000 pages, the majority which are Appendices. This raises concerns that the City of Newport Beach did not conduct an independent analysis of the DEIR prior to release.</p> <p><b>Please list the name and title of City experts who independently reviewed each section of the NBR DEIR (reference PRC €21082.1, CEQA , Guidelines € 1084 (e)).</b></p>	1
<p>2. Nowhere in the Newport Banning Ranch DEIR is the Coastline Community College Newport Beach Learning Center referenced, which began construction well in advance of the release of the NBR DEIR on September 9, 2011, located at 15<sup>th</sup> Street and Monrovia Avenue, and contiguous to the Newport Banning Ranch property. This college will be fully operational when the Newport Banning Ranch project begins.</p> <p><b>Was the Coastline Community College notified of the release of the Newport Banning Ranch DEIR on September 9, 2011? Should they have been notified?</b></p>	2
<p>3. The Coastline Community College Newport Beach Learning Center which is under construction and located on Monrovia and 15<sup>th</sup> Street was not included as a 'surrounding noise-sensitive receptor area adjacent to the project site' in DEIR Section 4.12-10, nor included in Exhibit 4.12-3, 'Proposed Site Development and Surrounding Land Uses'. It will be open and operating when the NBR project begins. The Noise analysis does not include this 'noise-sensitive' receptor.</p> <p><b>We object to this omission of Coastline Community College Newport Beach Learning Center in this section and other appropriate sections throughout the NBR DEIR. A revised DEIR needs be prepared to include an analysis of the environmental impacts on the people attending the Coastline Community College Newport Learning Center on a daily basis.</b></p>	3
<p>4. The NBR DEIR is inconsistent in stating the approximate project implementation timeline. In the Noise section, Section 4.12-14 the timeline is stated as approximately nine years. In the Aesthetics section, Section 4.2-17 it is stated as approximately 13 years.</p> <p><b>Four years is a large amount of time difference in light of the significant impacts this project will have during construction. Is the project duration nine or 13 years? Please explain the inconsistency.</b></p>	4

**Section 1.0, Executive Summary**

5. In Section 1.0, Executive Summary, Sub-section 1.4, 'Project Objectives', Project Objective #3, #4, and #5 describe development 'up to 1,375 residential units', 'up to 75 overnight accommodations', and 'up to 75,000 square feet of commercial uses'.

The chart below presents density statistics of Orange County developments on coastal property. The density of the proposed Newport Banning Ranch is extreme in comparison.

Site	Acres	Residential Units
• Marblehead (San Clemente)	248	313
• Dana Point Headlands	121	118
• Bolsa Chica	2000	349
• Crystal Cove (Newport Coast)	980	635
• Newport Banning Ranch	412	1,375

**Why does the NBR project need to be built to the maximum allowed development? Where in the NBR DEIR is the quantifiable justification for building out this land to the maximum allowed development described? Why can't the project scope be reduced, for example, by half this size and still achieve the 'Project Objectives'? Please provide an explanation.**

6. In Section 1.0, Executive Summary, Sub-section 1.4, 'Project Objectives', Project Objective #16 reads, 'Provide compatibility between the Project and existing adjacent land uses'. The NBR DEIR does not include how this project objective is met.

**Please define the scope of 'compatibility'. This is a term that is open to interpretation. In the context of the NBR DEIR, does 'compatibility' take into consideration the health and safety of people living in the 'existing adjacent land uses'?**

**Please describe how this project objective is met in light of the significant impacts to adjacent land uses sited throughout the NBR DEIR including those sited in the Section below?**

Light (DEIR Section 7.0 Alternatives, page 7-4)

Traffic (DEIR Section 7.0 Alternatives, page 7-4 to 7-5)

Air Quality (DEIR Section 7.0 Alternatives, page 7-5)

Noise (DEIR Section 7.0 Alternatives, page 7-6)

7. Section 1.0 Executive Summary, Sub-section 1.5, Project Alternatives, does not include a Project Alternative that assures 'less than significant' impacts for 'significant unavoidable' impacts identified in the DEIR (such as noise, lighting and air quality) for Newport Crest residents during the nine-year long development and ongoing after project completion.

At the October 17, 2011 EQAC meeting where EQAC reviewed and discussed their comments, EQAC stated that the DEIR failed to examine an additional Project Alternative that better 'significant unavoidable' impacts on Newport Crest to 'less than significant'.

**Please ensure that the Project Alternatives section(s) of the DEIR is expanded in the revised NBR DEIR to include an additional Project Alternative such as described above and requested of EQAC at the October 17, 2011 meeting with appropriate supporting analysis, data, and documentation.**

8. Section 1.0, Executive Summary, page 1-28: Regarding Threshold 4.3-1 and 4.3-2 as follows:

Threshold 4.3-1: 'Would the project 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?'

Threshold 4.3-2: 'Would the project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking?'

**Where in the NBR DEIR is there an analysis and supporting data that proves that people in proposed NBR project and surrounding communities can safely evacuate NBR and surrounding communities in the event of a natural disaster such as an earthquake or tsunami?**

8

9. Section 1.0, Executive Summary, Section 4.3, Geology and Soils page 1-28, MM 4.3-1 and MM 4.3-2 read as follows:

**MM 4.3-1'** The Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager, a site-specific, design-level geotechnical investigation prepared by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements.'

**MM 4.3-2** 'Prior to the approval of any applicable final tract map, the Applicant shall have completed by a qualified geologist, additional geotechnical trenching and field investigations and shall provide a supplemental geotechnical report to confirm the adequacy of Project development fault setback limits.'

**What obligation does the City have to proactively notify Newport Beach residents of the results of the investigation and report referenced in these mitigation measures? What local, state and/or federal regulations are in place to ensure that the public is adequately notified of these studies in a timely manner?**

9

10. Section 1.0, Executive Summary, Section 4.3, Geology and Soils, page 1-28, reference the 'Environmental Impacts/Level of Significance Before Mitigation' which corresponds with Threshold 4.3-1 and 4.3-2 which reads as follows:

'The Project site is in a seismically active area with faults within the proposed development area that could not be proven to be inactive. Habitable structures on the Project site near these faults are subject to fault setback zones and seismic design parameters that would appropriately address seismic building standards. Impacts associated with surface fault rupture and seismic shaking would be mitigated to a level considered less than significant with the incorporation of fault setback zones (which may be refined after additional trenching data becomes available). **Potentially Significant Impact**'

**Why is the 'Level of Significance After Mitigation' 'Less Than Significant' when the impact is stated as 'Potentially Significant Impact'? Shouldn't the 'Level of Significance After Mitigation' be 'Significant Impact' until analysis and reports are available to prove otherwise?**

**Please provide a justification for stating the 'Level of Significance After Mitigation' as 'Less than Significant' considering data doesn't yet exist to prove this out.**

10

3

<p>11. Section 1.0, Executive Summary, Section 4.4, Hydrology and Water Quality, page 1-31, SC 4.4-5 reads:</p> <p>'A list of "good housekeeping" practices shall be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants could impair water quality. The WQMP shall list and describe all structural and non-structural BMPs.'</p> <p><b>What are 'good housekeeping practices'? Please provide an example of a list of 'good practices' that were implemented post-construction for a completed project comparable in size and scope to the proposed NBR development in order to provide evidence that sufficient safeguards will in fact be in place to minimize likelihood pollutants impairing water quality.</b></p>	11															
<p>12. Section 1.0, Executive Summary, Section 4.5, Hazards and Hazardous Materials, page 1-34 Threshold 4.5-3 reads:</p> <p>'Would the project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing <u>or proposed school</u>?' (underlined for emphasis)</p> <p>The 'Environmental Impacts/Level of Significance Before Mitigation' corresponding with Threshold 4.5-3 reads: 'There would be a less than significant impact to the existing schools within ¼-mile of the Project site and/or from offsite haul routes during on-site remedial activities and proposed Project construction. There would be no impact to existing schools within ¼-mile of the Project site from proposed Project operations as continued oil operations are proposed to be limited to two consolidated oil facilities located along the southwestern portion of the Project site. <b>Less Than Significant Impact</b>'</p> <p><b>The Coastline Community College Newport Beach Learning Center located at 15<sup>th</sup> Street and Monrovia has been <u>planned/proposed</u> for years, and under construction for several months, and will be fully operational when the NBR project begins. This <u>school is within ¼ mile</u> of project remedial activities so the impact statement above is erroneous. The DEIR fails to address the impacts of this Threshold to Coastline Community College Newport Beach Learning Center. Please update this section of the NBR DEIR to address impacts.</b></p> <p><b>Section 3.0, Project Description, Exhibit 3-18 and Table 3-3, Proposed Implementation Plan</b></p>	12															
<p>13. Section 3.0, Project Description, Exhibit 3-18 and Table 3-3, Proposed Implementation Plan lays out the proposed implementation plan for 3 Sequencing Areas as follows:</p> <p><b><u>Sequencing Area 1</u></b></p> <table> <tr> <th>Schedule</th><th>Start</th><th>Finish</th></tr> <tr> <td>Site Remediation</td><td>2/2015</td><td>Prior to Occupancy</td></tr> <tr> <td>Grading and Improvements</td><td>8/2015</td><td>5/2016</td></tr> <tr> <td>Construct Models and Homes</td><td>2/2016</td><td>9/2016</td></tr> <tr> <td>Occupancy</td><td>10/2016</td><td>10/2018</td></tr> </table>	Schedule	Start	Finish	Site Remediation	2/2015	Prior to Occupancy	Grading and Improvements	8/2015	5/2016	Construct Models and Homes	2/2016	9/2016	Occupancy	10/2016	10/2018	13
Schedule	Start	Finish														
Site Remediation	2/2015	Prior to Occupancy														
Grading and Improvements	8/2015	5/2016														
Construct Models and Homes	2/2016	9/2016														
Occupancy	10/2016	10/2018														

**Sequencing Area 2:**

<b>Schedule</b>	<b>Start</b>	<b>Finish</b>
Site Remediation	2/2015	Prior to Occupancy
Grading and Improvements	8/2017	5/2018
Construct Models and Homes	2/2018	9/2018
Occupancy	10/2018	1/2021

**Sequencing Area 3:**

<b>Schedule</b>	<b>Start</b>	<b>Finish</b>
Site Remediation	Complete	Complete
Improvements	8/2019	5/2020
Construct Models and Homes	2/2020	9/2020
Occupancy	10/2020	12/2024
Upland and Lowland Open Space Restoration/ Oil Operations Consolidation	2/2015	12/2024

13 cont.

**This timeline is misleading and difficult to understand because some 'Schedule' phases are described as 'Complete' for Start and Finish, some state 'Prior to Occupancy' for Finish, and others have actual Start and Finish dates.**

**To clarify when the Schedule phases are expected to COMPLETE, please include a third column to the each Sequencing Area table labeled 'Complete' and indicate when the Schedule phase is Complete by checking the cell or inserting the 'Complete' date.**

**What is the scope and definition of 'Improvements' stated under 'Schedule' in Sequencing Area 3?**

**Section 4.12, Noise**

14. Section 4.12, Noise, page 4.12-15 to 4.12-16 states that construction noise would result in temporary substantial noise (underlined for emphasis) increases at Carden Hall School, Newport Crest, California Seabreeze, Parkview Circle, Newport Shores, etc.

The discussion goes on to describe mitigation measures such as including barriers that would not be effective beyond first floor of residents in the impacted communities. Other impacts from grading and construction as described in this section of the DEIR include lost views, and prevention of air circulation such as flow of ocean breezes. Mitigation measures itemized include proper maintenance of machinery, and notification to residents and schools about construction noise levels which will be made in advance so people can plan their activities to avoid the disruption created by the noise.

14

**We have grave concerns that the NBR DEIR characterizes these significant unavoidable impacts as 'temporary'. Section 3.0, Project Description, Exhibit 3-18, Table 3-3, Proposed Implementation Plan provides the proposed timeline for Sequencing Areas 1, 2, and 3.**

**Looking at the Start and Finish dates for the 3 Sequencing Areas combined, the durations of 'Schedule' activity e.g., remediation, grading and improvement, construction is multiple years in duration which is hardly 'temporary'.**

<p>What rationale is being used by City and Applicant to justify that surrounding residents and schools should accept that they 'plan their activities to avoid disruption created by noise', put up with ineffective noise barriers, lost views and potential loss of ventilation from ocean breezes due to noise barrier, and contaminated air <u>for several years</u>? (Underlined for emphasis)</p>	15
<p>The City and Applicant need to evaluate other alternatives to mitigate the years-long effect of these significant impacts to residents, schools and business adjacent to the proposed NBR project.</p> <p>Furthermore: Mitigation Measure MM 4.12-1, Section 1, Executive Summary, page 1-52 reads: 'Grading plans and specifications shall include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and would occur for more than 20 days'.</p>	16
<p>NBR DEIR Section 4.12, page 4.12-16 states that 'Noise reduction by a barrier depends upon the barrier interrupting the line of sight between the noise source and the receiver. <u>Therefore, the barriers prescribed by MM 4.12-1 would provide noise reduction for exterior and first floor receptors, but would provide little or no noise reduction for second floor or higher receptors.</u>' (Underlined for emphasis)</p> <p>This mitigation measure does not resolve the problem for second and third floor receptors which exist in many communities contiguous to and surrounding the project. Why weren't second and third floor receptors analyzed for impact in the DEIR?</p> <p>The NBR DEIR needs to be revised to consider other effective mitigation measures during construction and grading to minimize these noise impacts over several years to second and third floor receptors.</p> <p>This section goes on to state: 'Although feasible, the implementation of MM 4.12-1 could result in temporary impacts not related to noise. The barriers may block residents' views, may prevent the normal air circulation, such as the flow of ocean breezes, and may be aesthetically undesirable. Implementation of MM 4.12-1 could also provide benefits by <u>abating dust movement that might escape the dust control measures described in Section 4.10, Air Quality.</u>' (underlined for emphasis).</p>	17
<p>This leads one to believe that the dust control measures described in Section 4.10 aren't effective, and that the DEIR relies on other mitigation measures to resolve the dust movement impact.</p> <p>Please expand on under what scenario dust control measures would be ineffective and how noise barriers described in MM 4.12-1 would 'abate' dust movement that escapes another mitigation measure?</p>	18
<p>15. NBR DEIR Table 4.12-12 "Future Noise Levels at Newport Crest Residences" shows exterior noise levels with mitigation measures including 6 to 8 ft. walls at the Newport Crest Rear Property Line. However, on Pg. 4.12-25 it is stated: "Based on the data in Table 4.12-13 and the above analysis, MM 4.12-6 requires the construction of noise barriers that would reduce ground floor exterior noise levels to 60 dBA CNEL or less and second floor exterior noise levels to 65 dBA CNEL or less. Assuming a typical 20 dBA exterior-to-interior noise reduction <u>with windows closed</u>, the interior noise levels from exterior sources would not exceed 45 dBA CNEL for rooms facing Bluff Road/15th Street. The interior noise levels for the Newport Crest Condominiums would not exceed the State interior noise level standard for the siting of new attached residences. MM 4.12-6 requires a detailed acoustical analysis that would occur after the final design of Bluff Road."</p>	19

<p>That the NBR DEIR assumes "windows closed" due to exterior noise to reduce interior noise at Newport Crest is unacceptable and unreasonable. How could the City and Applicant expect that residents in a premier beach community keep their 'windows closed' to reduce interior noise from exterior noise sources generated by the proposed NBR development? Please explain this rationale.</p> <p>Why isn't the City and Applicant including other alternatives including reduction in overall project size? An additional analysis to mitigate exterior noise needs to be conducted and included in a revised draft DEIR.</p> <p>The description of second floor balcony sound barriers for Newport Crest is vague. Please provide an acoustical analysis data model that includes sound barrier styles, materials and general description. Waiting for an acoustical analysis is not realistic. Please conduct research and produce data that gives people an idea of materials used for these types of sound barriers.</p>	19 cont.
<p>16. Page 4/12-25 and Table 4/12-13 discusses various sizes and locations of sound barrier walls along Newport Crest perimeter to reduce noise caused Bluff Road traffic.</p> <p>Why does Bluff Road need to be a 4-lane 50 mph highway? According to the City of Newport Beach's General Plan Circulation Element Pgs. 7.4-7.5, a primary arterial highway (such as Bluff Road) is usually a four-lane divided highway with a daily capacity ranging from 35,000 to 50,000 with a typical daily capacity of 40,000 vehicles per day.</p> <p>Why wasn't an alternate less impactful road design considered which would have significantly less noise impact on surrounding communities?</p> <p>Why can't Bluff Road be designed below grade with the 12' sound barrier wall located at Bluff Road which would be less noise intrusive to Newport Crest and other adjacent residents and schools? Was this 'below grade' road alignment analyzed? If not, why not?</p>	20
<p>17. The NBR DEIR Noise Section states that NBR residential and hotel units will be built with air conditioning provided by the NBR developers. On Pg.4.12-13 it states: "Prior to granting of a building permit, the Developer/Applicant shall submit to the City of Newport Beach Community Development, Building Division Manager or his/her designee for review and approval architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 CNEL or less. <u>Where closed windows are required to achieve the 45 dBA CNEL limit, Project plans and specifications shall include ventilation plans as required by the California Building Code.</u>"</p> <p>From the above, the NBR developers will cover costs for air conditioning for their noise affected residential units. Why isn't the Applicant offering to pay for air conditioning for affected Newport Crest units, and only offering sound wall barriers and double plane windows?</p> <p>18. In a 2007 study conducted by 'Medscape News Today', entitled 'Noise Pollution, A Modern Plague: Adverse Effects of Noise', seven categories of adverse health effects of noise pollution on humans is discussed:</p> <ul style="list-style-type: none"> <li>• Hearing Impairment</li> <li>• Interference with Spoken Communication</li> </ul>	21

<ul style="list-style-type: none"> <li>• Sleep Disturbances</li> <li>• Cardiovascular Disturbances</li> <li>• Disturbances in Mental Health</li> <li>• Impaired Task Performance</li> <li>• Negative Social Behavior and Annoyance Reactions</li> </ul> <p>Here is the link to this study: <a href="http://www.medscape.com/viewarticle/554566_3">http://www.medscape.com/viewarticle/554566_3</a>.</p> <p><b>The NBR DEIR does not address the health and well-being of people impacted by the effects of noise resulting from grading and construction activities during this nine-year long NBR development project and the ongoing traffic volume noise from Bluff Road, such as those health effects listed above.</b></p> <p><b>This is unacceptable and the City and Applicant need to provide more reasonable, realistic and health conscious mitigation to reduce the impact of construction activity noise and ongoing traffic volume noise from Bluff Road on all people (adults and children) impacted, and also consider the implication of ignoring people's health in the proposed design of this project.</b></p> <p><b>Section 4.2 Aesthetics and Visual Resources</b></p>	21 cont.
<p>19. Section 4.2 Aesthetics and Visual Resources, Exhibit 4.2-5a, View 3, Resort Colony: Resort Flats:</p> <p><b>What existing buildings and/or communities will be visually blocked by the proposed Resort Colony and/or lose their existing views?</b></p>	22
<p>20. At the October 17, 2011 EQAC meeting where EQAC reviewed and discussed their comments, EQAC stated that the DEIR failed to adequately address the negative visual impacts that the NBR project will have on surrounding communities including lost ocean views from Newport Crest. Additionally, EQAC commented that the Urban City will include 730 units at a height of 60 feet which is taller than most residential structures in the City of Newport Beach.</p> <p><b>EQAC requested that the Applicant provide site line view simulations to incorporate impacts to surrounding communities such as Newport Crest. Please ensure that this documentation is completed by the Applicant in the revised DEIR as requested by EQAC.</b></p>	23
<p>21. At the October 17, 2011 EQAC meeting where EQAC reviewed and discussed their comments, EQAC questioned why Bluff Road needs to be 4 lanes wide where traffic will be fast, generate noise impacts and create visual impacts.</p> <p><b>Why does Bluff Road need to be so close to the Newport Crest community? North Bluff Road is located over 300 feet from California Seabreeze, and North Bluff Road is a smaller less traveled road than Bluff Road. Bluff Road is as close as 22' to Newport Crest (see Exhibit 4.1-2g, Central Community Park Interface with Newport Crest' enclosed at end of this document).</b></p> <p><b>The NBR DEIR failed to examine an alternate road to Bluff Road to reduce the impacts to surrounding communities. EQAC asked that an alternate road plan to Bluff Road be designed. Please include an alternative Bluff Road plan into the revised NBR DEIR as requested by EQAC.</b></p>	24

22. Section 4.2 Aesthetics and Visual Resources, page 4.2-17, Grading and Construction, paragraph 3 starting with sentence:

'To the extent feasible, all grading would be balanced on site. However, an estimated 25,000 cy of export is assumed for removing remediated materials that are not suitable for retention on site.'

**What are the facts and analysis that this assumption of 25,000 cy of export is based on? In the project timeline, when will the Applicant know for certain what the estimated amount of export will be? What are the parameters and criteria that this final cubic yards of export estimate will be based on?**

The last sentence in this section reads: 'During construction, there would be views of construction equipment, ongoing construction activities, and stockpiles of building materials on the Project site. Views of construction activities are typical for projects located in an urban environment with surrounding development'.

**This project is several years in duration and it is unacceptable to 'conclude' that this is 'typical' for projects located in an urban environment. The DEIR should examine other alternatives to 'stockpiling' etc. given the length of this project and impacts to surrounding communities.**

**Please also provide examples of comparable projects with data, analysis, and visuals that make the NBR project 'typical' in comparison i.e., prove out the stated conclusion.**

#### Section 4.8 Recreation and Trails

23. Section 4.8, Recreation, page 4.8-11, the North Central Park is addressed as follows:

'The North Community Park area (Site Planning Area 7c) is proposed east of North Bluff Road between 15th Street and 16th Street. As depicted on Exhibit 4.8-3, North Community Park Development Plan, the 13.5-net-acre North Central Park area is proposed to include the following recreational uses:

- 6 tennis courts (lighted),
- 3 soccer fields (lighted),
- 1 basketball court (lighted),
- 1 youth baseball fields and 1 youth/adult softball field overlaid on the 3 soccer fields
- (noted above),
- Potential picnic area or skateboard park,
- 2 tot lots, and
- 1 Fitness/par course. (Underlined for emphasis)

In addition to the identified proposed uses, the North Community Park is proposed to include public restroom facilities, trails, and seating areas. Approximately 274 off-street public parking spaces would be provided in 2 locations within the North Community Park area. A small parking area (approximately 19 spaces) would be constructed with ingress/egress from 16th Street. The remainder of the parking (approximately 155 spaces) would be provided along the western boundary of the park with ingress/egress from North Bluff Road. (underlined for emphasis)

Furthermore, Section 4.8-12, Recreation, paragraph 1 describes the Central and South Community Park Areas as follows:

'The Central and South Community Park areas would be located east of Bluff Road and 15th Street. These components of the Community Park would not have improved ball fields or courts and could function as a continuation of the City's approved but not constructed Sunset Ridge Park. As depicted on Exhibit 4.8-4, Central Community Park Development Plan, the 4.4-net-acre Central Community Park area (Site Planning Area 7b) would include picnic areas and open turf areas (no improved play fields or courts). A parking area (approximately 25 parking spaces) would be provided as part of the Central Community Park area to replace the off-site office building's parking spaces that would be removed to allow for the extension of 15th Street between Monrovia Avenue and the Project site. This parking would be in addition to the Community Park public parking and is proposed to be accessible to park users during nonbusiness hours.' (underlined for emphasis)

Then, Section 4.2 Aesthetics and Visual Resources, page 4.2-39, beginning with paragraph 2 reads:

'Residences near the active areas of the proposed Community Park may also be adversely impacted by night lighting. As a result, the proposed Project would result in a land use incompatibility with respect to long-term noise and air quality impacts and night illumination on those Newport Crest residences immediately contiguous to the Project site.' (Underlined for emphasis)

26 cont.

Exhibits NBR DEIR 4.1-2f, 4.1-2g, 4.1-2h, and 4.8-3 are included at the end of this document for reference and emphasis.

**Based on these exhibits the project comes right to the border of Newport Crest with zero buffer between the Crest and the Community Park. Then the 4-lane primary highway, Bluff Road, then the North Community Park, including the sports fields, restrooms, and surrounding parking lots.**

**Where in Newport Beach is there a comparable residential project with roads and public parks of the size and magnitude of the proposed NBR that abuts right up to other prior existing residential property(ies)? Please provide example(s) of these comparable existing residential communities where public parks abut/border other residential communities.**

The NBR DEIR fails to examine other alternatives to better the 'significant unavoidable impacts' sited above in the DEIR to 'less than significant' for Newport Crest and other surrounding communities, residents, schools and businesses.

27

The NBR DEIR needs to be revised to include other park and roadway alternatives that reduce the 'significant unavoidable impacts' of light, noise and air quality to 'less than significant'. Effective mitigation measures and alternatives (e.g., more open space, reduced scope of active sports park, reduced parking, reduced roadway system) all need to be considered.

Furthermore, there is no reference or project design consideration that addresses the health and safety of surrounding residences with the introduction major safety risk factors associated with public parks, parking lots/parking, public restrooms, and roadways in such close proximity to existing residential communities.

28

The NBR DEIR also needs to be revised to reflect park and roadway design(s) that include safety and protection elements against the threat of home invasion and related criminal incidents that will occur

29

with the introduction of parks, roads, restrooms and parking lots that border right up to the Newport Crest property and other surrounding schools, communities, and businesses.	29 cont.
<p>24. Section 4.8, Recreation, page 4.8-6, third paragraph states:</p> <p>'As identified in the City's General Plan, the fastest growing recreational demand in Newport Beach is the need for additional sports fields. The City has identified a citywide park deficiency of 67.7 acres, <u>53.4 acres of which is in Service Area 1, West Newport (this number excludes beach recreation acreage; with the inclusion of beach acreage, there is not a citywide deficit). With the beach inclusion, there still remains a 19.4-acre park deficiency in the West Newport Service Area.</u> (Underlined for emphasis) The Project site is located in Service Area 1. Table 4.8-1 identifies parkland in the City of Newport Beach including West Newport. The City's General Plan identifies three planned parks—Newport Coast, West Newport, and Newport Center—which would help alleviate the deficiency. Of the three parks, a park in Newport Coast (Coastal Peak Park) has been completed and a park in West Newport (Sunset Ridge Park) and a park in Newport Center Civic Center) have been approved but not constructed.'</p> <p><b>Why is beach recreation acreage excluded from the 'City identified park deficiency of 67.7 acres'? If beach acreage doesn't 'qualify' as park acreage in the scheme of Newport Beach park acreage analysis why is it mentioned at all?</b></p>	30
<p>25. Section 4.8, Recreation, page 4.8-11, the North Central Park is addressed as follows:</p> <p>'The North Community Park area (Site Planning Area 7c) is proposed east of North Bluff Road between 15th Street and 16th Street. As depicted on Exhibit 4.8-3, North Community Park Development Plan, the 13.5-net-acre North Central Park area is proposed to include the following recreational uses:</p> <ul style="list-style-type: none"> <li>• <u>6 tennis courts (lighted),</u></li> <li>• <u>3 soccer fields (lighted),</u></li> <li>• <u>1 basketball court (lighted),</u></li> <li>• <u>1 youth baseball fields and 1 youth/adult softball field overlaid on the 3 soccer fields</u></li> <li>• <u>(noted above),</u></li> <li>• <u>Potential picnic area or skateboard park,</u></li> <li>• <u>2 tot lots, and</u></li> <li>• <u>1 Fitness/par course.</u> (Underlined for emphasis)</li> </ul> <p>In addition to the identified proposed uses, the North Community Park is proposed to <u>include public restroom facilities, trails, and seating areas. Approximately 274 off-street public parking spaces would be provided in 2 locations within the North Community Park area. A small parking area (approximately 19 spaces) would be constructed with ingress/egress from 16th Street. The remainder of the parking (approximately 155 spaces) would be provided along the western boundary of the park with ingress/egress from North Bluff Road.</u> (underlined for emphasis)</p> <p><b>The list of recreational uses above seems extreme. Where is the analysis and supporting data that demonstrates the need for all of these 'recreational uses' for this one park? Why hasn't a reduced park design with fewer recreational uses been considered in light of the significant unavoidable impacts this park will have on surrounding communities?</b></p>	31
Section 4.8-9 to 10, starting with sub-section 4.8.7, Environmental Impacts 3 <sup>rd</sup> to last paragraph reads:	32

'Consistent with the City of Newport Beach Subdivision Code (Chapter 19.52), which requires 5 acres of parkland for every 1,000 residents, the park requirement for the Project would be 15.06 acres as shown in Table 4.8-2.

In addition to compliance with the City's Park Dedication Ordinance, the General Plan specifically addresses the need for a Community Park to be located on the Project site. Land Use Policy 6.5.2 of the City's General Plan states that the Newport Banning Ranch property must: Accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed.

Therefore, while the City's Park Dedication Ordinance would require 15.06 acres of park or the payment of in-lieu fees, the City's General Plan requires a 20- to 30-acre community park on the Newport Banning Ranch property, although the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements. However, the General Plan requires that sufficient acreage be available on the property to comply with the General Plan. (underlined for emphasis)

32 cont.

#### **Parks**

The Project proposes to meet its parkland obligations through the provision of approximately 51.4 gross (42.1 net) acres of public parks, including an approximately 26.8-gross-acre (21.7-net-acre) Community Park; an approximately 20.9-gross-acre (17.5-net-acre) Bluff Park; approximately 3.7 gross (2.9 net) acres of Interpretive Parks; and bicycle, multi-use, and pedestrian trails (refer to PDFs 4.8-1, 4.8-2, and 4.8-3). The proposed parks are depicted on Exhibit 4.8-2, Parklands, and are identified on Table 4.8-3.'

**Based on what is presented above, the Applicant is only obligated to include approximately 15 acres of public parks on NBR but will meet its parkland obligation through provisioning approximately 51.4 acres.**

**Why can't the Central and North Community Parks that border Newport Crest be designated passive open space nature preserves? This is approximately 10 acres less than 51.4 being offered by the Applicant so the Applicant would still be within Park Dedication Ordinance Requirements?**

#### **26. Section 4.8, Recreation**

At least three sources for 'park requirements' are referenced in the NBR DEIR and which are used to baseline the Applicant/developer's 'obligation' to provide park space on the project. The three sources referenced are:

- Park Dedication Ordinance Requirements;
- Quimby parkland requirements;
- City of Newport Beach General Park Requirement.

It is unclear as to what the developer/Applicant is truly 'obligated' to provide in terms of park acreage requirements on the proposed NBR project.

**In easy to read and understandable terms, please explain the scope and definition of each of these 'requirements' sources above.**

**Please also clarify the baseline/'must-have' park acreage requirement that the developers are obligated to supply for the proposed NBR project.**

33

<p>There is no mention of 'passive' vs. 'active' park requirements in the NBR DEIR. 'Passive' and 'Active' are terms that are open interpretation. Please define each term to better understand the make-up of park space on the proposed NBR project.</p> <p>Are the requirements for 'passive' vs. 'active' park space delineated in the three sources mentioned above? If not delineated in the three sources above, what are the criteria used for including 'active' vs. 'passive' parks in the proposed NBR project.</p> <p>What is the obligation of the developer/Applicant to develop 'passive' and 'active' parks on the proposed NBR project, or is it at the discretion of the developer/Applicant?</p>	<p>33 cont.</p>
<p>27. Section 4.8, Recreation, page 4.18-15, top of page reads:</p> <p>'As depicted on Exhibit 4.8-18, Pedestrian and Bicycle Bridge, the bridge is proposed as a steel truss structure without supports or piers in West Coast Highway. The bridge span is approximately 260 feet long with a minimum vertical clearance over West Coast Highway of approximately 20 feet. The northern (inland) landing structure of the bridge would be in South Bluff Park and would connect (by a ramp) directly to the multi-use trail within South Bluff Park.</p> <p>The southern landing structure for the pedestrian and bicycle bridge would be within a structural pier located within the existing boundaries of the City's 4.6-acre West Newport Park. This landing would have a public elevator; walkways would be constructed to connect the landing to Seashore Drive to the south allowing pedestrians and bicyclists to continue on existing public roadways to access the beach.'</p> <p>Additionally, Section 4.8, Recreation, page 4.18-15, paragraph 3 reads:</p> <p>'The proposed Project would exceed its Quimby parkland requirement of 15.06 acres with the provision of the 26.8-gross-acre (21.7-net-acre) Community Park. In total, the Project would include approximately 51.4 gross (42.1 net) acres of parkland that would be available for public use. <u>The permanent is placement of 1,050 square feet (sf) of parkland at West Newport Park associated with the bicycle and pedestrian bridge would be mitigated by the Project's exceedance of mandated park requirements.</u>' (Underlined for emphasis)</p> <p>There is not any analysis or supporting data that justifies the construction of this bridge and landing structure with an elevator. What about the 3 signals (2 existing and one proposed as part of the NBR project) along West Coast Highway, including Superior, the proposed Bluff Road, and Prospect Avenue for pedestrian and bicycle use? Please provide analysis and supporting data that justifies the need for a pedestrian bridge to include parameters such as current and projected foot and bicycle traffic to substantiate the analysis.</p>	<p>34</p>
<p>The Applicant 'concludes' that the construction of a pedestrian bridge and landing structure and displacement of 1,050 square feet of existing West Newport Park is reconciled by the Project's exceedance of mandated park requirements. Again, what is analysis and data that supports this conclusion?</p> <p>Additionally, there is no mention of the impacts that the construction of this bridge and landing structure will have on surrounding adjacent communities, residents and businesses other than inability to use West Newport Park tennis courts during construction. Please provide an impact study that takes into consideration noise, air quality, traffic, lighting, etc. during construction and after completion of the pedestrian bridge and landing structure.</p>	<p>35</p>

What are the aesthetic impacts that will result during construction of this bridge and landing structure, and for how long? Where will construction vehicles and equipment be located?	35 cont.
<p>28. Section 4.8, Recreation, page 4.17, Sub-Section 'Beaches' at top of page reads:</p> <p><u>'Because public access to the coastline is limited, the Project would increase usage of the local beaches by providing direct access to the beach from the Project site and points north of the Project and introducing more people into the region'.</u> (Underlined for emphasis)</p> <p>What analysis and supporting data substantiates this statement that: 1) ..public access to the coastline is limited; 2) the (NBR) Project would increase usage of the local beaches by providing direct access to the beach from the Project site?</p> <p>Also, does the Applicant believe that introducing more people into the region is a benefit to Newport Beach? Why?</p>	36
<p>29. Section 4.8, Recreation, page 4.8-19, Table 4.8-4, 'City of Newport Beach General Plan Consistency Analysis'.</p> <p>Under column heading 'City of Newport Beach General Plan Relevant Goals, Policies, and Programs', LU Policy 6.2.5 Neighborhood Supporting Uses Reads: 'A living, active, and diverse environment <u>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,</u> (underlined for emphasis) 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'.</p> <p>Then under column heading 'Consistency Analysis' for LU 6.2.5 reads:</p> <p>'The Project is consistent with this policy. As depicted on Exhibit 3.3 in Section 3.0, and Exhibit 4.8-2, the proposed public parks <u>are near proposed residential areas and existing off-site residential areas, including but not limited to the Newport Crest Condominiums and Newport Knolls Condominiums.</u> The proposed off-street multi-use trails, on-street bike trails, and pedestrian paths would provide a means to travel through the Project site and to off-site locations without the use of a vehicle. Please also refer to Section 4.1, Land Use and Related Planning Programs.'</p> <p>We object that the proposed NBR project is consistent with LU Policy 6.2.5 because it does not enhance the Newport Crest condominium neighborhood given the significant unavoidable impact that the Community Park will have on the residents of Newport Crest in the form of noise and lights sited in the NBR DEIR. Please explain why the Applicant and the City believe that this project is consistent with LU Policy 6.2.5 given the impacts.</p>	37
<p>In closing, we wish to express our disappointment and consternation that the City of Newport Beach has so blatantly dismissed the negative impacts that the proposed NBR project will have on adjacent communities such as Newport Crest. Throughout the NBR DEIR, the Applicant chooses to 'explain away' the serious health and safety impacts that will result from this project, and other impacts such as traffic, noise, and lights that will do nothing to enhance the quality of life or appeal of this wonderful and unique coastal city.</p>	38

Therefore, we respectfully request of the City of Newport Beach that the NBR DEIR be re-written to reflect additional alternatives that will lessen or eliminate these impacts, and that another 60 day review period is granted for public review and comments.

38 cont.

Thank you very much.

Sincerely,

A handwritten signature in blue ink that reads "Michael & Dorothy Kraus". The signature is written in a cursive, flowing style.

Mike and Dorothy Kraus  
10 Wild Goose Court  
Newport Beach, CA 92663

Enclosures

**Letter O58c Mike and Dorothy Kraus**  
November 8, 2011

**Response 1**

Preparers and contributors to the Draft EIR are identified in Section 8.0 of the Draft EIR.

**Response 2**

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.

**Response 3**

The noise section has been revised and is incorporated of the Final EIR to include the Coastline Community College Newport Beach Learning Center in the listing of sensitive receptors. Therefore, Mitigation Measure 4.12-1, which is included in the Project to reduce construction noise to sensitive noise receptors, would also be applicable to the Learning Center. Long-term traffic noise levels from 15<sup>th</sup> Street or Monrovia Avenue would not exceed 65 dBA CNEL. Normal school construction would provide noise reduction adequate to reduce traffic noise to levels that would not interfere with academic activities. Exhibit 4.12-3 has also been updated.

Activities usually associated with sensitive receptors include, but are not limited to, talking, reading, and sleeping. Land uses often associated with sensitive receptors include residential dwellings, hotels, hospitals, day care centers, and educational facilities. The surrounding noise-sensitive receptors adjacent to the Project site are described below and shown in Exhibit 4.12-3.

**...East:** Residential developments, including single-family residences on the southwestern corner of 17<sup>th</sup> Street and Monrovia Avenue; multi-family residences and mobile homes on 15<sup>th</sup> Street west of Placentia; the California Seabreeze and Parkview Circle communities, located generally between 19<sup>th</sup> Street and 18<sup>th</sup> Street in the City of Costa Mesa contiguous to the Project site; and several mobile home parks, including a development at 17<sup>th</sup> and Whittier....

Coast Community College Newport Beach Learning Center, under construction, on the northwest corner of 15<sup>th</sup> Street at Monrovia Avenue (an educational facility for high school-aged students, college students, and adult education)....

**Response 4**

Page 4.2-17 of Section 4.2 has been modified and incorporated into the Final EIR as follows:

**Grading and Construction**

The Project is proposed to be implemented over a period of approximately 43 nine years.

## Response 5

The Applicant is proposing to develop the Project site consistent with the property's Alternative Use General Plan designation of Residential Village which identifies up to 1,375 dwelling units, up to 75 units of overnight accommodations, and up to 75,000 square feet of commercial uses. Section 7.0, Alternatives to the Proposed Project, of the Draft EIR identifies several alternatives to the Applicant's proposed development. The City Council is not obligated to approve the maximum development proposed by the Applicant. Rather, the City Council is required "...to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" (CEQA Guidelines §15093).

## Response 6

Please refer to Section 4.1, Land Use and Related Planning Programs, of the Draft EIR which describes the methodology used to assess compatibility and takes into consideration the factors identified by the commenters. The Project's compatibility with on-site and off-site land uses is provided in this EIR section. In summary, Section 4.1 states "The City of Newport Beach Zoning Code (October 2010) defines compatibility as 'The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include: intensity of occupancy, pedestrian or vehicular traffic generated, volume of goods handled, and environmental effects (e.g., local concentrations of air pollution, glare, hazardous materials, noise, vibration, etc.)'. Therefore, land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that project-related significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended. The *Newport Beach General Plan* Land Use Element also includes goals and policies directed at land use compatibility".

## Response 7

The only "Newport Crest" specific impact would be related to long-term noise impacts from Bluff Road. The Draft EIR does identify a Mitigation Program that would mitigate potential impacts to a less than significant level. However, because the mitigation would occur on private property (Newport Crest), the City cannot require that the mitigation be implemented. If the Newport Crest Homeowners Association and the affected homeowners agree to the mitigation, the noise impact can be mitigated to a less than significant level.

## Response 8

Faults that could not be proved inactive have low apparent slip rates and low recurrence intervals. Significant local ground displacements from a single earthquake event are not anticipated. Consequently, emergency access is not anticipated to be compromised. The City of Newport Beach Police and Fire Departments did not raise such concerns during the preparation of the Draft EIR.

## Response 9

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.

## Response 10

As discussed in Section 4.3, Geology and Soils, page 4.3-16 of the Draft EIR, the Project assumes that fault setback zones are connected (i.e., no habitable structures have been placed in this area). If the Project were subsequently be changed to include habitable structures in these zones additional fault trenching would be required. Quantitative slope stability analyses would be performed for all proposed cut and fill slopes once final development plans are prepared. Sufficient fault trenching has been completed to define the setback zones. Additional trenching is only required if the setback zones are desired to be reduced. The development has been planned around conservative setback zones including the assumption that Newport Mesa North and south Segments are connected (i.e. no habitable structures are planned in this area). All fault setback zones are in conformance with State standards. Please also refer to the response to Comment 8.

## Response 11

“Good Housekeeping Practices” are a general category of source control Best Management Practices (BMPs) aimed at reducing potential pollutants at the source. Examples include common area litter control, street sweeping, and maintenance of trash storage areas. Since 2003, the Countywide Model WQMP has included provisions for structural and non-structural source control BMPs that must be implemented at all new development and significant redevelopment projects throughout the County of Orange. The City of Newport Beach has also incorporated these requirements into their local storm water program, which also includes educational programs that target residential neighborhoods for pollution prevention. Further examples are included in the Preliminary WQMP prepared for the Project and incorporated into the Final EIR; see Appendix A of this Responses to Comments document.

## Response 12

Section 4.5, Hazards and Hazardous Materials has been revised and is incorporated into the Final EIR as follows:

There are two existing schools and one Community College campus (under construction) located within approximately ¼ mile of the Project site:

- Whittier Elementary School, 1800 Whittier Avenue, Costa Mesa; located approximately ¼ mile to the east.
- Carden Hall, 1541 Monrovia Avenue, Newport Beach; located ~~approximately 1/40 mile~~ adjacent to the Project site's eastern boundary.
- Coast Community College District's Newport Beach Learning Center, an educational facility for college students, adult education, and high school-aged students, located adjacent to the Project site's eastern boundary. The Learning Center is under construction on the northwest corner of Monrovia Avenue at 15<sup>th</sup> Street.

....On-site oilfield and other remedial activities would result in potentially greater release of contaminants, predominantly hydrocarbons, into the air during soil disturbance due to aeration during handling (i.e., earth moving) of the contaminated soils than occurs in the existing condition. Section 4.10, Air Quality, of this EIR addresses the construction and operational air quality emissions anticipated from the proposed Project. The air quality analysis determines that there would be less than significant impacts related to emissions during remedial activities on the Project site. Also, the majority of the Project site is located further than ¼ mile from existing kindergarten through 12<sup>th</sup> grade schools and the under-construction Coast Community College District's Learning Center. Based on these factors, there would be a less than significant impact to existing and proposed schools from temporary handling of contaminated soils on the Project site during oilfield consolidation and remediation.

Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach.... Therefore, with implementation of SC 4.5-1, there would be a less than significant impact related to transport of soils within ¼ mile of existing and under-construction schools.

With proposed Project implementation, 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 under-construction Learning Center, and the proposed residential, commercial, recreational, visitor-serving, and open space land uses would not emit or otherwise handle hazardous materials, substances, or wastes (see PDF 4.5-1). 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.

**Impact Summary: Less than Significant.** There would be a less than significant impact to the existing schools and the under-construction Learning Center within ¼ mile of the Project site and/or from off-site haul routes during on-site remedial activities and proposed Project construction with implementation of SC 4.5-2. There would be no impact to existing and under-construction schools within ¼ mile of the Project site from proposed Project operations as continued oil operations are proposed pursuant to PDF 4.5-1 to be limited to two consolidated oil facilities located along the southwestern portion of the Project site.

### Response 13

The "Prior to Occupancy" notation is used for Sequencing Area 1 and Area 2 is used because the duration of the site remediation is subject to several factors (i.e., weather conditions, soil remediation approach, grading schedule) and for simplicity is tied to occupancy. Therefore, the "finish" date within the remediation area may vary but would be no later than the "Occupancy" date shown for the area (for example, Sequencing Area 1 date is estimated to be from October 2016 to October 2018 as noted in Table 3-3 of the Draft EIR. Site Remediation in Sequencing Area 3 is shown as "complete" since Sequencing Area 3 site remediation would be completed concurrently with Sequence Area 2 remediation.

Exhibit 3-18 in Section 3.0, Project Description, of the Draft EIR depicts the "improvements" proposed to be constructed within Sequencing Area 3 and include the local road network and

associated surface and underground improvements within the blue shaded area. Sequencing Area 3 also includes the construction of the pedestrian and bicycle bridge over West Coast Highway.

#### **Response 14**

While the construction of the entire Project would occur over many years, the periods when heavy construction equipment would be operating near sensitive noise receptors and periods when construction noise barriers may be installed would be considerably shorter.

#### **Response 15**

Please refer to the response to Comment 14.

#### **Response 16**

Please refer to the response to Comment 14.

#### **Response 17**

The Draft EIR acknowledges noise impacts to second and third floor receptors. Mitigation measures for noise impacts to second and third floor receptors, beyond those incorporated into the Project, would not be feasible.

#### **Response 18**

The dust control measures of Section 4.10, Air Quality, of the Draft EIR are anticipated to be effective in avoiding a significant air quality impact.

#### **Response 19**

With respect to abatement of traffic noise impacts, measures are considered at the source, the path, and the receivers. At the source, local agencies have no control over noise emissions from vehicles. However, the proposed Project would incorporate rubberized asphalt pavement that would reduce noise levels by an estimated four or more decibels. Along the path, noise barriers are proposed where feasible. At the receiver, closed windows, enhanced design of windows and doors, and local barriers are considered where feasible.

While the Draft EIR includes a preliminary acoustical analysis, Mitigation Measure 4.12-6 requires further analysis because the final design of Bluff Road would define the path from the roadway to the Newport Crest homes, and the noise barrier must be designed for the final topographical conditions.

With respect to an alternative with reduced project size, please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which include reduced development and reduced development area alternatives.

#### **Response 20**

As identified on page 3.6-3 of the Draft EIR, Bluff Road is proposed as a Primary Road with two travel lanes and one on-street bike lane in each direction with a raised landscape median. As noted by the commenter, the proposed design is consistent with the City of Newport Beach's General Plan. With respect to an alternative with less impact, please refer to Section 7.0,

Alternatives to the Proposed Project, of the Draft EIR. Please also refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment.

## Response 21

Standard Condition 4.12-3 in the Draft EIR requires that the applicable sections of the California Building Code (Title 24 of the *California Code of Regulations*) be met with respects to new construction. Implementation of Mitigation Measure (MM) 4.12-6 puts noise levels at the Newport Crest residential properties within the “Clearly Compatible” or “Normally Compatible” classifications for noise-land use compatibility. MM 4.12-7 would reduce the remaining impact to less than significant level; however, the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property.

Noise standards and guidelines recommended by federal and State agencies and adopted by the City for land use compatibility and noise ordinances consider both public health and annoyance. Therefore, consideration of City policies and standards address health effects. It is noted that the article referenced by commenter references WHO (World Health Organization) guidelines. The WHO guidelines discussion states that study data indicate that “the risk for hearing impairment would be negligible for LAeq(24h) values of 70 dB over a lifetime.” The value of 70 dB LAeq(24h) is higher than 70 dBA CNEL (which is higher than the City 65 dBA CNEL standard) because the LAeq(24h) metric does not include the weighting of evening and nighttime noise values included in the CNEL.

## Response 22

The proposed building heights of the various Project land uses are evaluated in Section 4.1, Land Use and Related Planning Programs, and Section 4.2, Aesthetics and Visual Resources, of the Draft EIR. 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 the City's 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.

### **Response 23**

Please refer to the response to Comment 22.

### **Response 24**

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

### **Response 25**

In terms of current site conditions, please refer to Section 4.5, Hazards and Hazardous Materials, starting at page 4.5-8 that describes the results of the Phase II EA soil sampling. According to the Phase II EA, “at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines)”. Therefore, all of the estimated 246,000 cubic yards (cy) of remediated soils can be treated and used on site. However, it has been estimated that up to 25,000 cy of this material may be voluntarily taken off site in order to maintain efficient on-site bioremediation processes. This estimate was based on the 2001 Environmental Assessment results of historic sites in Potential Environmental Concern (PECS) #2 and #8, located in the Lowland area where hydrocarbon concentrations were higher than average. The exact volume can only be known when these sites are remediated in the oilfield abandonment, consolidation and remediation phase and when detailed verification testing determines when the cleanup criteria has been achieved.

The reference to “typical” refers to the fact that the construction of a project requires building materials, equipment, etc. regardless of the size of a site rather than to the duration of the activities. The development projects cited by the commenters in Comment 5 are all projects that occurred over several years.

### **Response 26**

The Draft EIR provides an analysis of potential impacts associated with the proposed roadways and Community Park. Most specifically, please refer to Section 4.1, Land Use and Related Planning Programs, Section 4.2, Aesthetics and Visual Resources, Section 4.9, Transportation and Circulation, Section 4.10, Air Quality, and Section 4.12, Noise.

With respect to other park facilities in the City, the Bonita Canyon Sports Park is a 39-acre community park located at 1990 Ford Road in northeastern Newport Beach. Constructed in 2002, the park contains 4 ball diamonds, 2 tennis courts, an athletic field, a basketball court, play equipment, restrooms, picnic areas, barbecues, and off-street parking for 250 vehicles. The Sports Park is separated from the Bonita Canyon residential community by Bonita Canyon Drive and from the Harbor View, Harbor View Knoll, and Seawind residential communities by Ford Road. Both Bonita Canyon Drive and Ford Road are four-lane divided Primary Roads.

## **Response 27**

As stated in Section 7.1 of the Draft EIR regarding the selection of alternatives to the Project, the City, as Lead Agency, considered alternatives that could feasibly attain most of the basic objectives of the Project and avoid or substantially lessen one or more of the significant effects, which is consistent with Sections 15126.6(a) and (b) of the State CEQA Guidelines. Pursuant to the State CEQA Guidelines, an EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. Impacts to the Newport Crest community were addressed in the analysis of the project alternatives and would be considered by decisionmakers.

The following discussion addresses the commenter's request for the consideration of more open space, less active park areas, less on-site parking, and reduced roads. With respect to more open space, Alternative B: General Plan Open Space Designation, this alternative would require a 20- to 30-acre Community Park, a Primary Road from West Coast Highway to 19<sup>th</sup> Street, site remediation, and habitat restoration; Alternative F increases the amount of open space and reduced the development footprint. With respect to a reduction in active park area, the City can consider this as a part of its consideration whether to approve the proposed Project, a Project alternative, or a variation thereof. With respect to reduced parking, the Project proposes to comply with the City's parking requirements. A reduction in parking would require approval from the City. With respect to reduced roads, Alternative C assumes that the segment of North Bluff Road from just north of 17<sup>th</sup> Street to 19<sup>th</sup> Street would not be constructed.

The State CEQA Guidelines Section 15093 does not require that an EIR mitigate all significant impacts to a less than significant level. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve a project. If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".

## **Response 28**

The City is unclear what "major safety risks" would be associated with parks and roads proximate to residential areas. There are existing parks and roads located throughout the City in residential areas.

## **Response 29**

With respect to the Bonita Canyon Sports Park described in the response to Comment 26, the Sports Park is located in Newport Beach Police Reporting District (RD) 54, which includes the Bonita Canyon residential community. 2010 crime statistics show that overall per capita Part I crimes (arson, assault, burglary, grand theft auto, homicide, larceny, robbery, and rape) were lower than those citywide. Bonita Canyon Sport Park also abuts RD 51 and RD 52, which includes the residential communities of Harbor View, Harbor View Knoll, and Seawind. Both RD 51 and RD 52 had lower overall per capita Part I crimes than those citywide in 2010. Therefore, there is no evidence in the record that suggests that the introduction of parks, roads, restrooms, and parking lots would result in increased home invasions and related criminal incidents in adjacent areas.

## Response 30

The City does not consider the beach to be a park. Although both parks and the beach provide recreational opportunities, the beach cannot provide active park uses such as soccer and baseball fields.

## Response 31

In addition to compliance with the City's Park Dedication Ordinance, the General Plan specifically addresses the need for a Community Park to be located on the Project site. Land Use Policy 6.5.2 of the City's General Plan states that the Newport Banning Ranch property must:

Accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed.

The Newport Banning Ranch Draft EIR addresses the types of needed and desirable facilities identified by the City for the proposed Community Park.

## Response 32

As a point of clarification, 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. Newport Crest is not adjacent to the North Community Park area. The Central Community Park area would include picnic areas and open turf areas (no improved play fields or courts) and a public/private parking area (approximately 25 parking spaces). The South Community Park area would include native habitat and interpretative areas; no improved play fields or courts are proposed. In both the Central and South Community Park areas, lighting would be limited to that required for public safety.

## Response 33

As addressed in Section 4.8, Recreation and Trails, of the Draft EIR, the State of California allows a City or County to pass an ordinance that requires, as a condition of approval of a subdivision, either the dedication of land, the payment of a fee in lieu of dedication, or a combination of both for park and recreational purposes (*California Government Code* §66477). This legislation, commonly referred to as the "Quimby Act", allows a City or County to require a maximum parkland dedication standard of 3 acres of parkland per 1,000 residents for new subdivision development unless the jurisdiction can demonstrate that the amount of existing neighborhood and community parkland exceeds that limit. In accordance with Section 66477, a jurisdiction may establish a parkland dedication standard based on its existing parkland ratio, provided required dedications do not exceed 5 acres per 1,000 persons. Consistent with and as permitted by the Quimby Act, the City adopted a Park Dedication and Fees Ordinance (*City of Newport Beach Municipal Code*, §§19.52.010–19.52.090). Based on the figures from the 2000 federal census and the City's General Plan Recreation Element identifying the amount of park acreage in the City, the City's park dedication requirement is 5 acres per 1,000 persons (*City of Newport Beach Municipal Code*, Chapter 19.52.040).

Consistent with the City's Park Dedication and Fees Ordinance which requires 5 acres of parkland for every 1,000 residents, the park requirement for the Project would be 15.06 acres. In addition to compliance with the City's Park Dedication Ordinance, the General Plan specifically addresses the need for a Community Park to be located on the Project site. Land

Use Policy 6.5.2 of the City's General Plan states that the Newport Banning Ranch property must:

Accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed.

Therefore, the City's Park Dedication Ordinance would require 15.06 acres of park or the payment of in-lieu fees; the City's General Plan requires a 20- to 30-acre community park on the Newport Banning Ranch property. However, the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements (15.06). However, the General Plan requires that sufficient acreage be available on the property to comply with the General Plan.

The Project proposes to meet its parkland obligations (of 15.06 acres) through the provision of approximately 51.4 gross (42.1 net) acres of public parks, including an approximately 26.8-gross-acre (21.7-net-acre) Community Park; an approximately 20.9-gross-acre (17.5-net-acre) Bluff Park; approximately 3.7 gross (2.9 net) acres of Interpretive Parks; and bicycle, multi-use, and pedestrian trails.

As addressed and described on page 4.8-5 of the Draft EIR, Newport Beach has approximately 348 acres of passive and active parks. The City's General Plan categorizes the different types of parks based on size and amenities. Please also refer to the responses to Comments 31 and 32.

#### **Response 34**

The Applicant's Project Design Feature F 4.8-3 states "If permitted by all applicable agencies, a pedestrian and bicycle bridge over West Coast Highway will be provided, as set forth in the Master Development Plan, from the Project site to a location south of West Coast Highway to encourage walking and bicycling to and from the beach". As addressed in the Draft EIR, the Project proposes to provide a system of off-street multi-use trails, on-street bike lanes, and pedestrian paths with connections to existing regional trails for use by pedestrians and bicyclists. The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach. The bridge would allow for pedestrians and bicyclists to move between the northern and southern sides of West Coast Highway without having to cross West Coast Highway at street level.

The physical impacts of implementing the pedestrian and bicycle bridge (PDF 4.8-3), are evaluated as part of the overall development Project (refer to Sections 4.1 through 4.15 of the Draft EIR). Most specifically, refer to Section 4.2, Aesthetics and Visual Resources, and to Section 4.8, Recreation and Trails.

#### **Response 35**

As a point of clarification, the Draft EIR analysis was not prepared by the Applicant. Please refer to the response to Comment 34.

#### **Response 36**

The Draft EIR notes that because public access to the coastline is limited, the Project would increase usage of the local beaches by providing direct access to the beach from the Project

site and points north of the Project and introducing more people into the region. The bridge would increase non-vehicular access where public parking is limited.

### **Response 37**

The opinions of the commenters are noted.

The commenters have misquoted General Plan Land Use Element Policy 6.2.5, which states:

Allow for the integration of uses within residential neighborhoods that support and are complementary to their primary function as a living environment such as schools, parks, community meeting facilities, religious facilities, and comparable uses. These uses shall be designed to ensure compatibility with adjoining residential addressing such issues as noise, lighting, and parking.

The proposed Project is consistent with the intent of this policy which is to have residential neighborhoods that contain supporting uses to meet the needs of residents and that are designed to be compatible. The provision of a Community Park is consistent with this policy, as well as with General Plan Policies LU 6.5.2 and R 1.9, which call for an active Community Park in the West Newport Service Area of sufficient size to serve adjoining neighborhoods and residents of Banning Ranch. It should be noted that the proposed Project provides a number of features designed to provide compatibility with adjacent residential uses. The proposed Central Community Park, which would abut the Newport Crest Condominiums, would be limited to passive recreational uses; lighting would be limited to the parking area and public safety lighting associated with walkways. The more active recreational uses would be located in the proposed North Community Park, which would be more than 300 feet from the nearest Newport Crest residence. The Community Park would be open between 6:00 AM and 11:00 PM and ball field lights would be turned off by 10:00 PM.

### **Response 38**

The opinions of the commenters are noted. Section 21091 of the Public Resources Code 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 shall be 45 days. The City of Newport Beach provided a 60-day public review period.

Comment Letter O59

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NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

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

Dear Mr. Alford:

In the Air Quality section of the Banning Ranch DEIR, I was struck by the significance of Threshold 4.10-3, not just because the Project's criteria pollutant emissions will negatively impact Newport Beach and surrounding communities such as Costa Mesa, but because they will impact attainment issues for the entire Southern California basin (SoCAB).

Threshold 4.10-3 reads as follows:

*"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)?"*

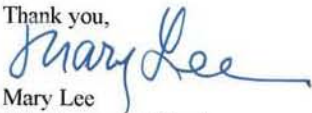
The Project region is in nonattainment for O<sub>3</sub>, NO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. As described above, after 2020, implementation of the Project could result in long-term emissions of the O<sub>3</sub> precursor VOC and short-term emissions of the O<sub>3</sub> precursor NO<sub>x</sub>, which would exceed the SCAQMD mass emissions thresholds for those pollutants. Long-term NO<sub>x</sub> emissions would not exceed the threshold but are forecasted to be just less than the threshold. Therefore, emissions of VOC and NO<sub>x</sub> would be cumulatively considerable and the proposed Project would have a significant cumulative air quality impact."

If the Project does not meet Threshold 4.10-3, then perhaps the Project Applicant should go back to the drawing board and rethink the design. This is not acceptable in terms of health risks or quality of life to either the existing residents or to the new ones who will be buying homes from the Project Applicant. Perhaps the Project is too ambitious in scale? Perhaps the planned population density is too great and will lead to overcrowding?

Is the development, no matter how valuable the land or profitable the enterprise, worth adversely impacting the lives and the health of so many Newport Beach residents? Are extra tax revenues for the city worth such impacts? Are they worth the potential of law suits from the health risks associated with the criteria pollutants, which include cancer and lung disease? There are too many significant and unavoidable impacts with this Project and if these pollutants and polluting conditions really cannot be mitigated, then isn't it time to consider that the Project has not been well envisioned or well planned, especially given that Newport Beach is already heavily over-populated with traffic and visitors whenever the mercury rises above seventy degrees, and freeway and local traffic to the beach will also expose the city of Costa Mesa to traffic congestion and excessive noise and air pollution?

I do not have email and would appreciate a response by regular mail.

Thank you,



Mary Lee  
7 Summerwind Court  
Newport Beach, CA 92663

**Letter O59    Mary Lee**  
November 8, 2011

**Response 1**

Please refer to Topical Response: Air Quality, regarding operational pollutant emissions, that explains that there is little relationship between mass emissions attributable to project operations and exposure to persons on site and nearby off site. Impacts to local residents from criteria pollutants and toxic air pollutants would be less than significant.

Section 7.0, Alternatives to the Proposes Project, of the Draft EIR assesses several Project alternatives including reduced development on the Project site.

**Response 2**

Please refer to the response to Comment 2. The opinions of the commenter are noted.

**Alford, Patrick**

**Comment Letter O60**

**From:** Ginny Lombardi [ginnylombardi@yahoo.com]  
**Sent:** Friday, November 04, 2011 1:53 PM  
**To:** Alford, Patrick  
**Subject:** DEIR for Banning Ranch

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 for 27 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.  
Both developments are 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.  
Personally, a family health issue has limited my time in studying the DEIR and responding in a thoughtful manner. The document is extensive, informative and detailed.  
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 considering my request.

Ginny Lombardi  
7 Landfall Court  
Newport Crest

**Letter O60    Ginny Lombardi**  
November 4, 2011

**Response 1**

The opinion of the commenter is noted. Section 21091 of the Public Resources Code 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 shall be 45 days. The City of Newport Beach provided a 60-day public review period.

**Comment Letter O61**

November 7, 2011

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

Re: Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2009031061)  
for the proposed Newport Banning Ranch Project

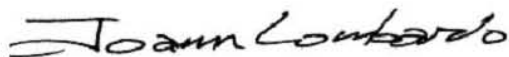
Dear Mr. Alford:

In April 2009, I submitted a comment letter in response to the project NOP. In that letter, I requested that the project EIR consider a number of environmental issues including potential traffic impacts on Clay Street and consideration of mixed-use alternatives at lower densities. None of these comments are addressed in the EIR.

The EIR does not explore a reasonable range of alternatives that could eliminate or reduce the unavoidable adverse impacts associated with the project. The alternatives offered in the EIR adhere too closely to a very narrowly defined set of objectives. CEQA does not require that the alternatives meet all the project objectives, just some of them. None of the EIR alternatives make an earnest effort to reduce project densities. The project proposal for 1,375 dwelling units is the maximum density permitted in the General Plan. Of the three reduced density alternatives, only one reduces residential density and only by 12%. 1

Please revise the alternatives section of the EIR to more fully explore alternatives that could reduce project impacts to the community. An alternative that would reduce residential densities by 25% to 50% would go a long way to reducing project impacts associated with land use, traffic, aesthetics and noise.

Thank you.



Joann Lombardo  
2916 Clay Street  
Newport Beach, CA 92663

2916 Clay Street Newport Beach California 92663 Phone: 949.650.3206 Email: joann@jalcps.com

**Letter O61     Joann Lombardo**  
November 7, 2011

**Response 1**

The criteria for selection of alternatives to the proposed Project are discussed in Section 7.3 of the Draft EIR, and reflect the guidance set forth in the State CEQA Guidelines Section 15126.6, including that the range of alternatives selected for consideration are those that would “feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project”. The alternatives selected for consideration in the Draft EIR, include the mandatory No Project Alternative, as well as alternatives that could meet the criteria set forth in Section 15126.6. The commenter states that none of the alternatives make an earnest effort to reduce project densities. However it should be noted that the significant environmental impacts of the Project are not necessarily related to the number of proposed residential units nor would impacts be substantially lessened or avoided by reducing densities by 25 percent or 50 percent as suggested by the commenter. The significant impacts of the Project are identified in Section 7.3.2. The land use and aesthetic impacts are related to night time illumination of the Project site including the proposed Community Park. A reduction in dwelling units would not avoid or substantially lessen this impact. While the noise impacts associated with Bluff Road may be incrementally reduced by a reduction in dwelling units, the majority of the traffic on Bluff Road is as a result of forecasted local off-site traffic using the road as another option to existing roadways. Traffic impacts in both the cities of Newport Beach and Costa Mesa can be mitigated to a less than significant level. However, because the City of Newport Beach cannot impose or guarantee timely implementation of improvements in an adjacent jurisdiction, traffic impacts were determined to be significant and unavoidable. Reducing densities on the Project site would not assure implementation of traffic improvements in another jurisdiction. Finally, while air quality and greenhouse gas emissions are, in part, the result of vehicular emissions and a reduction in the number of units (rather than the density) would incrementally reduce these emissions, the impacts are as a result of cumulative impacts and would not be avoided or substantially lessened. In conclusion, because the significant impacts of the Project are not entirely attributable to the number of dwelling units proposed, and would not be substantially lessened or avoided by reducing units by 25 percent or 50 percent, a reduced density alternative would not be required.