

Comment Letter O62
Page 1 of 4

November 6, 2011

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



Re: Responses to the Newport Banning Ranch DEIR

Dear Patrick:

I am a resident of Newport Beach. My home overlooks the Banning Ranch property and I would be directly impacted by the proposed development. I found the DEIR to be overwhelming in length and complexity, and I was dismayed at the overall proposal! I reviewed portions of the DEIR to gain a better understanding of the proposed project and its impacts. As a result, I have several questions. I will attempt to be brief.

4.1.7 Environmental Impacts; Land Use Section – Exhibits 4.1-2b and 4.1-2g

At the Costa Mesa City Council joint study session held on October 20, 2011, it was stated by the applicant that North Bluff Road was relocated outward to a distance of 355 feet from the California Seabreeze Community to minimize the impact to that community, as depicted in Exhibit 4.1-2b. **Why was this not done for the Newport Crest Community??** As depicted in Exhibit 4.1-2g, Bluff Road is within 22 feet of the Newport Crest Community. Additionally, Bluff Road is a four-lane divided road, versus the two-lane undivided North Bluff Road. Further, the artist's rendering in the exhibits is misleading by illustrating one car for the four-lane road and two cars for the two-lane road.

- **Does the applicant truly believe that building a four-lane road 22 feet from an existing residence is acceptable??**
- **Has such a major new roadway ever been built in Orange County in such close proximity to existing residences?? When and where??**

4.12.1 Introduction; Noise Section – page 4.12-1

The document states that Appendix I contains the noise model data associated with the noise calculations presented in this section. Appendix I is 225 pages with no table of contents and no index. And, it discusses intersections that don't correlate with the measurement locations presented in the Noise Section.

- **What is the correlation between the information presented in Appendix I and the information presented in the Noise Section??**
- **What do any of the roadways listed in the result summary table have to do with measurement location #2??**

Appendix I does not answer these and many other questions.

4.12.5 Existing Conditions; Existing Noise Conditions – page 4.12-10

The document states that seven short-term (approximately 15-minute) noise level measurements were collected at Noise Measurement Locations #'s 1, 2, 3, 5, 6, 8 and 10 (as shown in Exhibit 4.12-1). The primary source of noise for measurement location #2 was listed as "aircraft overflights". Having lived immediately adjacent to measurement location #2 for seven years, I question the integrity and accuracy of the results provided in Table 4.12-6.

- **What dates, days of the week and times were the seven measurements taken??**
- **What was the length of the fluctuations in noise levels during each of those periods??**
- **What were the specific causes of noise during each of those periods??**
- **How was the CNEL calculated?? Were brief increases in noise factored in equally with the longer periods of minimum noise levels??**

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My questions are directed at all of the measurements, but my comments are specific to the area in the vicinity of measurement location #2, of which I am most familiar. This is a very quiet area. Very quiet. Any sources of noise are brief and sporadic, such as a police helicopter passing overhead. **Is it fair to compare occasional increases in noise levels occurring for less than 30 seconds in duration to the non-stop and continuous increase in noise levels that will occur from the proposed Bluff Road?**

4.12.6 Project Design Features and Standard Conditions; SC 4.12-3 – page 4.12-13

The document states that the new residential and hotel units will be designed to ensure that interior noise levels do not exceed 45 dBA CNEL. The developer can control the interior noise levels of the new units, yet takes no responsibility for reducing the noise impacts on existing homes.

- **Why is the applicant designing a project that locates Bluff Road so close to existing homes when the new homes can be built to minimize noise impacts??**
- **Why is the applicant not placing more of the planned open space provided in the project adjacent to the existing homes to provide a natural buffer and to help minimize the impacts to these homes??**

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4.12.8 Environmental Impacts; Impact Analysis – page 4.12-23

The document states that the Without Project scenario "assumes" construction of the on-site roadways. **Why??** This DEIR should be analyzing the overall impacts of the entire proposed project, which includes the roadways!

- **What is the impact of the entire project compared to the existing conditions??**
- **If this DEIR is not analyzing the roadways, when will the impacts of the roadways be analyzed and available to the public for review??**

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Any impact analyses should compare the impacts of the project to the Alternative A (No Project) scenario, not to a hypothetical Without Project scenario.

<p>4.12.8 Environmental Impacts; Table 4.12-13 – page 4.12-26 The document states that the assumed ambient level for Receptor ID N1-1 is 49 dba CNEL. This is higher than the information presented in Table 4.12-6.</p> <ul style="list-style-type: none"> • Why is a higher noise level assumed for purposes of determining the effectiveness of mitigation measures?? <p>Again, the impacts of the project and any impact analyses should compare the <u>total</u> project impacts to <u>true</u> current, existing conditions.</p>	6
<p>4.12.8 Environmental Impacts; Impact Analysis – page 4.12-27 The document states that noise barriers could be installed around the second floor balconies of Newport Crest homes and that this measure is feasible. Is the applicant suggesting that we close in our open balconies with walls??</p> <ul style="list-style-type: none"> • Specifically, what “barriers” is the DEIR referring to and who determines if they are feasible?? 	7
<p>4.12.8 Environmental Impacts; page 4.12-27 The document states that future traffic noise to Newport Crest could be reduced by the realignment of Bluff Road, but that it is not feasible due to greater impacts on open space and biological resources, as well as the need of additional grading. No studies are sited.</p> <ul style="list-style-type: none"> • Where is the backup for these statements?? • How was it determined that the impacts would be greater?? 	8
<p>4.12.9 – Mitigation Program; MM 4.12-6 – page 4.12-42 The document states that a noise barrier shall reduce future ground floor and second floor residential noise levels at the Crest. Newport Crest units are three levels. The lowest levels have no windows, are partially below grade and contain the garages. The second levels are the kitchen/living room levels and the third levels are the bedroom levels. Additionally, the second levels are split levels.</p> <ul style="list-style-type: none"> • What is the applicant doing to mitigate noise to the third level of the Crest units?? • Which elevation of the second level are the measurements referring to?? 	9
<p>4.12.9 Mitigation Program; MM 4.12-7 – page 4.12-42 The document states that an offer will be made for the installation of dual pane windows/sliding doors on the façade facing the Banning Ranch property.....to owners of residences with rear elevations directly adjacent to the Banning Ranch property.</p> <ul style="list-style-type: none"> • Which residences specifically (addresses) will be receiving this offer?? • Who will pay for the Acoustical Engineer that will determine which residences will be impacted?? • When will the determination by the Acoustical Engineer be made?? • What does “cumulative increase over existing conditions” mean?? 	10

<ul style="list-style-type: none"> • Why do the lengthy “provisions and guidelines” outlined in the DEIR place the burden for this mitigation measure on the homeowners and the Crest association, and not the applicant?? • Why is the Association being “reimbursed” for the costs of the work, and the applicant is not offering to deposit funds as is being done for Mitigation Measure 4.12-5?? • Does “windows/sliding doors” actually mean windows <u>and</u> sliding doors, or just sliding doors?? <p>I believe that many more residences will be impacted than is being acknowledged in the DEIR. Additionally, how does the applicant plan to mitigate the cooling and ventilation problems that will arise from the apparent need to close sliding doors??</p>	10 cont.
<p>7.3.2 Elimination/Reduction of Significant Impacts; Aesthetic and Visual Resources – page 7-4</p> <p>Several times throughout the document, it is stated that the project would result in night lighting impacts that are considered “significant and unavoidable”, but that the City Council approved a Statement of Overriding Considerations, which notes that there are specific benefits that outweigh the significant and unavoidable impacts associated with the project.</p> <ul style="list-style-type: none"> • Specifically, what are the benefits that outweigh the significant and unavoidable impacts?? • Why is the Statement of Overriding Considerations not included in the DEIR document for easy reference by the reader?? 	11
<p>7.5 Alternatives for Analysis – page 7-11</p> <p>None of the proposed alternatives consider the realignment of Bluff Road. None of the proposed alternatives consider the lowering of Bluff Road to reduce noise impacts.</p> <ul style="list-style-type: none"> • Why has the realignment of Bluff Road not been given serious consideration by the Applicant?? • Why was the realignment of Bluff Road not analyzed as a feasible alternative?? 	12
<p>In summary, mischaracterizing the existing conditions and then comparing them to a project that “assumes” the roadways will be built anyway is not adequately analyzing the impacts of this proposed project. Additionally, Bluff Road realignments should be analyzed and included as alternatives in the DEIR.</p>	13

Thank you for your consideration and time in responding to my questions. If you need clarification or additional information, I can be reached at (949) 650-2584.

Sincerely,



Cathy Malkemus
Newport Crest Resident

Letter O62 **Cathy Malkemus**
November 6, 2011

Response 1

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

Response 2

The data in Appendix I of the Draft EIR provides the individual calculations for the off-site noise impact analyses summarized in Tables 4.12-9, -10, and -11. Assuming that the comment refers to the results summary tables in Appendix I, these tables have no relationship to measurement number 2.

Response 3

Measurements at locations 1, 2, 3, 6, 8, and 10 were made on Wednesday, September 16, 2009 between approximately 9:00 AM and 2:15 PM. Measurement 5 was made on Thursday, September 17, 2009. The measurement durations were 15 to 23 minutes each. The notable causes of noise are listed in Table 4.12-6 of the Draft EIR. As stated in the footnote to Table 4.12-6, short-term noise level measurements were converted into 24-hour CNEL based on the hourly patterns from the long-term measurements 15 and 16; measurement 16 was used to convert the data for measurement 2.

As shown in Table 4.12-6, the average noise level at location 2 was approximately 45 dBA, demonstrating that this is a relatively quiet area. The one-minute noise averages at location 2 ranged from 43.3 to 46.9 dBA. The minimum noise levels during each minute ranged from 39.8 to 43.5 dBA; only one minimum was below 41 dBA. The maximum noise levels during each minute ranged from 45.2 to 53.8 dBA. In calculating average noise levels, fairness is not an issue. The average is based on the noise energy over a period of time.

Response 4

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

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.

Response 5

As stated in the Draft EIR, the “Without Project” scenario assumes construction of the on-site roadways because the roadways are included in the General Plan, and it may be assumed that the roads would be built in the future whether or not the proposed Project is built. The noise analysis in the Draft EIR includes the noise from the roadways and compares the noise to the existing conditions (where there are no roadways); this analysis is the Cumulative Increase over Existing data shown in Table 4.12-12 of the Draft EIR.

Response 6

The ambient noise level used for the Newport Crest analysis, 49 dBA CNEL, is the average of the data calculated for locations 1 and 2. The analysis includes the total Project; please refer to the response to Comment 5.

Response 7

Noise barriers for balconies are generally transparent glass or Lucite-like material, often hinged to allow the occupant to choose an open or closed position.

Response 8

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

Response 9

Typically ground floor noise levels are measured at 5 feet above the ground elevation and the second floor at 15 feet above the ground elevation. The acoustic analysis described in Mitigation Measure (MM) 4.12-6 should use specific elevation data corresponding to the actual elevations of the windows and doors at the residences.

Response 10

The following responds to each bullet point in Comment 10.

Bullet points 1 and 2: MM 4.12-7 in the Draft EIR notes that the specific residences would be determined based upon the results of the acoustical analysis, which would be paid for by the Applicant.

Bullet point 3: The analysis would occur subsequent to final approval of the Project by the City and completion of the design for Bluff Road and the topography adjacent to Bluff Road.

Bullet point 4: The cumulative increase is the difference between the forecast future noise level and the existing noise level.

Bullet points 5 and 6: Coordination with the Newport Crest Association would be required as this is a third-party entity, and the City cannot require the implementation of mitigation on private property. It is presumed that the Newport Crest Homeowners Association's approval would be required before any changes to the buildings can take place. Additionally, homeowners would have the choice whether or not to have the improvements installed.

Bullet point 7: The reference to "windows/sliding doors" refers to all windows and sliding doors on affected building elevations that face or are affected.

The commenter expresses an opinion that there may be additional residences impacted by noise than stated in the Draft EIR; please refer to the response to Bullet point 1. The commenter also expresses an opinion that there will be a cooling and ventilation impact associated with the need to close doors and windows; however, the comment does not provide any scientific or technical support for the conclusion that there will be a significant environmental impact. The applicant is not proposing any changes to the cooling or ventilation systems of any building where window or sliding glass door upgrades are proposed.

Response 11

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.

Response 12

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

Response 13

The opinions of the commenter are noted.

Comment Letter O63

November 8, 2011

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

Re: Responses to the Newport Banning Ranch the Draft Environmental Impact (DEIR)

Dear Mr. Alford:

For a number of reasons the DEIR is extremely difficult to review.

The DEIR was made available in 3 different formats:

1. Paper copies
2. Multiple CDROM disks
3. Online available via the Internet

Paper

The paper copies were accessible at very limited, primarily City locations. Access was limited to the facility operating hours and times. In addition the City of Newport Beach Central Library was closed for 2 weeks during the review period. The document is 7300+ pages making it extremely difficult for a comprehensive review. There is a table of contents, but no index, making very rudimentary searches very difficult.

CDROM

The files were divided into 3 separate disks because the size of the files exceeded normal CDROM capacity. Disk 1 contained the main body (Volume 1) of the document, disk 2 the Appendices A-E and disk 3 Appendices F-M. The total of the 3 files sizes is approximately 876 MB. The large file chunks adversely impact computer performance, particular the disk 2 appendix – 660 MB. A high end PC configured with 6MB of RAM and an Intel second generation i7 processor takes approximately 35 seconds to load Appendix 2. Computer systems with less powerful configurations would take considerably longer to load files this large. The files are in Adobe PDF format and have been arranged in Adobe's portfolio format. Searching portfolios can take a considerable amount of time. A more even split in file sizes would have been better. The Adobe Acrobat page numbers do not match that of the actual document, making browsing the portfolio pages very difficult.

Internet

The entire DEIR document is also available on the City of Newport Beach website. The City has done a relatively nice job a splitting the document into manageable chunks. A fast Internet connection (7-10 mbps) downloaded larger chunks in just over 2 minutes. Slower connections would take much longer. The files are in PDF format and use the more "traditional" Adobe format rather than portfolios making searching much easier. Again, the Acrobat page numbers do not match the actual document page numbers. The files on the City website are also displayed alphabetically rather than in the order that they appear in the actual document. This may confuse some reviewers.

The real problem with the DEIR is the simple fact that it contains over 7,300 pages of material. Trying to review this much material in 60 days is an insurmountable task. While there may be some technical, and accessibility issues, does the document meet CEQA guidelines for length and readability? How much time did City staff spend reviewing the document? Was any consideration given towards giving the public additional time to review based upon the sheer volume of the document?

Additional Concerns and Questions

Bluff Road	2
Why is Bluff Road (a road with a wider right-of-way than Pacific Coast Highway) planned to be built within 22' of a well established existing community that has been a part of the City of Newport Beach since 1973? Why can't the alignment of Bluff Road be changed so that it is at least 300' from Newport Crest? Why must the road connect to 15 th Street (essentially a residential street)? Would eliminating this connection create greater flexibility for realigning Bluff Road?	
Page 3-46 and Exhibit 3-20, General Plan Circulation Element, depicts the proposed modifications to the Circulation Element roadway system through the project site. The diagram appears to show a 15 th Street extension to Pacific Coast Highway, is this correct? And is eliminating this extension a pending proposal based upon this development being approved? Could this extension provide a better solution than Bluff Road? Can a better description of this proposed General Plan Circulation Element Amendment please be provided?	3
What mitigation measures will be used to prevent night light, including street lights, traffic signals and car headlights from impacting Newport Crest residents?	4
There is discussion in the DEIR about providing a 6' wall or an 8' wall along the Newport Crest boundary most adjacent to the project in order to mitigate roadway noise. There is an existing 6' wall along the westerly Newport Crest boundary – does the DEIR reference include an additional wall or a replacement wall, or? A wall (6' or 8') may help to mitigate noise at the first level of some units within Newport Crest; however, the first level of the Newport Crest community contains no living space, only garage. Living space is located on levels 2 and 3. Will a 6' or 8' wall mitigate any road noise to level 2 or level 3? Would lowering the grade elevation of Bluff Road by 10-12' along the Northwesterly boundary of Newport Crest help to mitigate both light and noise issues?	5
Views	6
There are no elevation models that show how views will be affected. Will Newport Crest homeowner views be impacted? Please describe, in detail the view impacts that will be created by the development. If private property views are negatively impacted, how will this affect property values? There are also common areas within the community that are used as viewing points. How will these common areas be affected? If views are indeed adversely affected, can the South Family Village be reduced in size to provide adequate view corridors for existing Newport Crest residences and members of the community that may use common areas for viewing purposes? The current alignment of the South Village is essentially Southwesterly to Northeasterly. Can the alignment be modified to flow Southeasterly to Northwesterly? Finally, if the South Family Village was eliminated entirely, would this help to facilitate the realignment of Bluff Road and protect existing Newport Crest private property and common area views?	
The impacts on wildlife have not adequately been addressed. From my particular location, my 3 rd level deck, I have enjoyed views of the ocean and surrounding areas, and I have seen an abundance of birdlife, mammals and reptiles. I have seen and/or photographed heron, egret, coyote, raccoon, possum, skunk, fox, squirrels rabbits, hawks, hummingbirds, snakes, frogs, lizards and more (see example photographs 1, 2 & 6 on the next page). Many animals have eluded my attempts to photograph them – owls in particular. Owls regularly hunt from the trees located on the boundary between Newport Crest and Banning Ranch. I have seen and documented vernal pools come and go (see photos 3,4 & 5 on the next page) and have watched, much to my dismay, the continual mowing, by the applicant, whose sole purpose, it would appear is to destroy as much as the habitat that is in the area as possible (see photo 5, on the next page). As a result of the mowing, rabbits (Audubon Cottontail) have all but disappeared.	7
Note: mowing includes the use of tractor pulled mowers, weed-whackers, machetes and other hand tools.	



Coyote – Photo 1



Hawk – Photo 2



Vernal Pool/Egret – Photo 3



Vernal Pool prior to mowing – Photo 4



Vernal Pool after mowing – Photo 5



Heron hunting – Photo 6

The red polygon in Exhibit 1A (following page) indicates where the above photographs were taken from. The blue circles in the same exhibit indicate the approximate mapped locations of the subject in the photographs. Many more photographs could have been included in this review, however; I felt it was important to keep this document at a reasonable length.

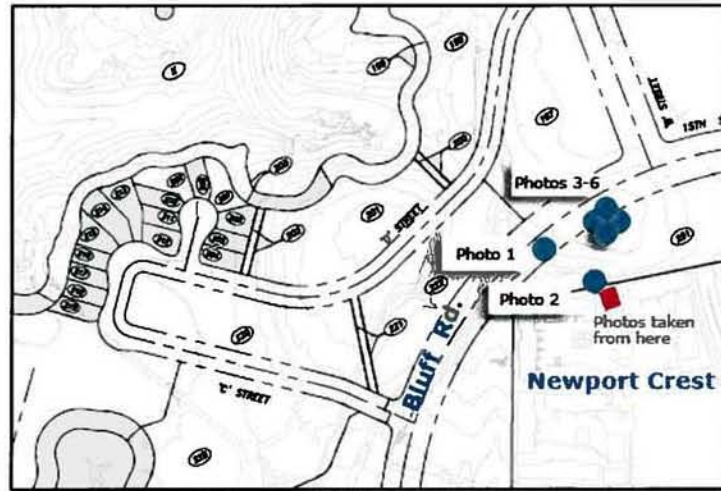


Exhibit 1A - location of photographer and photo subjects

I seriously question the DEIR noise/sound studies - I have experienced the silence. Sitting out-of-doors and enjoying what I refer to as the "National Geographic Experience" is truly amazing. At times, conversations are reduced to a whisper, because it is so quiet. Will this "quality of life" change as a result of the proposed development? This is a factor that the DEIR does not and cannot address..... yet, it is significant.	9
Lastly, the City of Newport Beach, as of September 2011 has spent over 2 million dollars associated with the Banning Ranch development. How much of those funds have gone towards the preparation and review of the DEIR and how much staff time as a whole been spent on the DEIR?	10
<p>In summary, the primary purposes of my response are to protest:</p> <ul style="list-style-type: none"> • Complexity of the document • Length of time that was allocated to review over 7,300 pages of information • Location of Bluff Road and the negative impacts associated (particularly noise and night light) with its close proximity to the Newport Crest community • Potential impact on views of Newport Crest residents • Impacts on wildlife and environmentally sensitive habitat (ESHA) 	11

Thank you for your consideration.

Paul W. Malkemus

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Newport Beach, CA
92663

Letter O63 Paul Malkemus
November 8, 2011

Response 1

The opinions of the commenter 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.

Response 2

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment. The typical Bluff Road cross section is a four-lane divided road (Primary Road) which is narrower than West Coast Highway in its six-lane divided highway configuration (Major Road). As it relates to eliminating the Bluff Road connection to 15th Street, an alignment that is near Newport Crest would be necessary to minimize wetland and habitat impacts to the large arroyo.

Response 3

The City of Newport Beach Master Plan of Streets and Highways reflects the future Bluff Road extending from West Coast Highway to 19th Street, and shows 15th Street extending westward from its current terminus, crossing the future Bluff Road, and curving southward to connect to West Coast Highway. The proposed Project would construct Bluff Road between West Coast Highway and 19th Street, and to extend 15th Street from its current terminus to Bluff Road; it would not extend 15th Street beyond Bluff Road to West Coast Highway. The need for a second connection to West Coast Highway through the Project site (via the extension of 15th Street west of Bluff Road to West Coast Highway) was first studied as part of the City of Newport Beach General Plan Update, and was revisited as part of the Newport Banning Ranch Draft EIR. It was determined that the volume of traffic that would access West Coast Highway through the Project site (consisting of new traffic generated by the Project itself, plus traffic that would shift to Bluff Road from other existing roadways) could be accommodated by a single roadway connection. The elimination of the 15th Street extension to West Coast Highway would help to avoid significant environmental impacts.

Response 4

Please refer to Section 4.2, Aesthetics and Visual Resources, of the Draft EIR which explains the dark sky program for the proposed Project. Project Design Feature (PDF) 4.6-4 requires that street lights be used only in key intersections and safety areas. A “dark sky” lighting concept would be implemented within areas of the Project that adjoin habitat areas. This “dark sky” lighting concept would be implemented for homeowners’ association (HOA) properties and businesses (e.g., resort inn, retail center) within 100 feet of the Open Space Preserve and Bluff Parks. Light fixtures within these areas would be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. Street lighting standards and requirements are described on page 4.2-15. Other project design features are identified in PDF 4.6-4; Mitigation Measures (MM) 4.2-1 and MM 4.2-2 are applicable.

Response 5

If any existing wall is sufficient for the required noise reduction, it would be retained. If not, the existing walls would be replaced. Additional walls would be built as determined by the acoustical

analysis. Typically ground floor noise levels are measured at 5 feet above the ground elevation and the second floor at 15 feet above the ground elevation. The acoustic analysis described in Mitigation Measure (MM) 4.12-6 should use specific elevation data corresponding to the actual elevations of the windows and doors at the residences. With respect to lowering the grade of the proposed road, lighting impacts are related to the overall introduction of development to the Project site and would not be eliminated with a change in the road grade.

For approximately 90 percent of the approximately 1,800-foot-long perimeter adjacent to the Project, building development is proposed to be more than 200 feet away from the condominiums within the Newport Crest community. The area between the proposed roadways (Bluff Road and extension of 15th Street) and Newport Crest would be the Central Community Park. Bluff Road would be approximately 40 feet to the closest Newport Crest condominium patio/deck. The grade for the northbound lanes is proposed to be depressed approximately 12 feet below the existing patio/deck at this location. The use of a sloped median would depress the southbound lanes to approximately 16 feet below the existing patio/deck. Section E2-E2 shows that the distance between Newport Crest and Bluff Road would increase in both directions from the “pinch point”. Located 100 feet to the south of Section E1-E1, Section E2-E2 shows that the South Community Park is approximately 90 feet wide in this location. The width of the park increases similarly north of the pinch point. Approximately 90 percent of the perimeter of Newport Crest with the Central and South Community Park areas would provide a buffer of 200 feet or more of non-active recreational space.

Response 6

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 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 7

The discussion of wildlife resources on site has been adequately addressed as required by CEQA. The discussion of the existing wildlife community on the site, potential project impacts, and proposed mitigation measures has been provided in great detail in the Draft EIR and the Biological Technical Report. A total of 98 wildlife species have been observed on site during the biological surveys conducted for the Draft EIR. This list can be found in Appendix A of the Biological Technical Report in the Draft EIR. Please refer to Topical Response: Mowing and Fuel Modification.

Response 8

The photographs of the wildlife species provided by the commenter are consistent with the wildlife species observed on site during the various biological resource surveys and documented in Section 4.6 of the Draft EIR. Please refer to Topical Response: Vernal Pools.

Response 9

The impacts of traffic noise to the proposed Project and to existing noise-sensitive uses within the City of Newport Beach are governed by the standards and policies included in the City's Noise Element.

Response 10

As a private development Project, the costs for preparation of the EIR and staff time associated with the proposed Project are incurred by the Applicant not the City. The consulting team that prepared the Draft EIR is under contract to the City of Newport Beach.

Response 11

Please refer to the response to Comments 1 and 7 and to Topical Response: ESHA and Topical Response: Bluff Road/North Bluff Road Location and Alignment.

Comment Letter O64

Alford, Patrick

From: Jim Mansfield [jtmansfield@ca.rr.com]
Sent: Tuesday, November 08, 2011 9:04 AM
To: Alford, Patrick
Subject: Comments on the Newport Banning Ranch DEIR

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

Re: Comments on the Newport Banning Ranch DEIR, section 4.14

Dear Mr. Alford:

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

The following are my comments on Section 4.14 of the Newport Banning Ranch DEIR, organized by sub-section.

Section 4.14.1 – Fire

Page 4.14-1 states: "That portion of the Project site located in the City's Sphere of Influence would be served by the Fire Department following annexation." However, Section 4.14 does not indicate what Fire agency would serve the Project prior to annexation or in the event that the portion of the Project located in the City's Sphere of Influence was never annexed?"	1
Page 4.14-2 - The majority of the Project site is designated LRA High, and small portions of the site are designated LRA Moderate or are not designated at all. However, Section 4.14 does not indicate which specific portions of the Project are LRA High or what effect this classification has on the design of buildings and residences within the Project. How would the Fire Department access those portions of Banning Ranch for which no roads are planned?	2
Page 4.14-3 refers to the "Fire Force One report", which is included in the DEIR as Appendix K. This report deals with the future location of Firestation #2, which would serve the Development. Appendix K indicates that potential future sites for the Fire Station include sites 2A and 2B – either of which would apparently be located on Banning Ranch property. However, no mention is made of these alternatives within Section 4.14.	3
Section 4.14 makes no mention of the extremely high density of the Urban Colony (40 units/acre) and the special requirements that these large, high-density units would place on the Fire Department. Please indicate how the Fire Department would deal with these large, high-density, multi-use units.	4

Page 4.14-3 states that "The City of Newport Beach has individual automatic aid agreements with the Cities of Costa Mesa and Huntington Beach, and the OCFA. Together, all fire agencies provide personnel to any emergency. The closest emergency response unit is dispatched to the emergency, regardless of jurisdictional boundary for any fire or large emergency response with multiple units." Is the Newport Beach Fire Department the 'closest emergency response unit' for all portions of Banning Ranch? Under what conditions would the OCFA or Costa Mesa Fire Department be required to respond? What is the estimated impact on these non-Newport fire organizations?	5
Page 4.14-6 states that "The Project site lies within a Special Fire Protection Area, as defined in the Newport Beach Fire Code (i.e., Section 9.04.030, as adopted). A Special Fire Protection Area (SFPA) is defined as: Any geographical area designated by the Fire Chief where structures directly abut wildland space or a fuel modification zone on one or more sides. ... These areas are subject to a greater risk of wildland conflagration due to vegetation, topography, weather, density, access, and other relevant factors." Additionally, PDF 4.14-1 states that "The Master Development Plan requires that the Project be designed to provide fire-resistant construction for all structures adjoining natural open space, including utilizing fire-resistant building materials and sprinklers." Specifically, which structures are considered 'adjoining natural open space'? Does this include all structures on Banning Ranch? Please state the specific codes – over and above building codes for non-SFPA areas – that must be met to meet the "fire-resistant" requirement.	6
Page 4.14-8 states that "The Project's Fire and Life Safety Program establishes a 120-foot-wide minimum fuel management area that consists of Zone A, which is a minimum of 20 feet wide; Zone B, which is a minimum of 50 feet wide; and Zone C, which is a minimum of 50 feet wide." However, this minimum fuel management zone is supposed to be 170 feet, as clearly pointed out in Appendix K. Please explain how you expect a 120-foot fuel management area to be approved?	7
It is stated on page 4.14-10 that "... a temporary fire station would be required on the Project site to serve those areas of the site that cannot be served by existing Station Number 2..." Please identify the planned location for this temporary fire station.	8
Page 4.14-12, Table 4.14-2 states that existing Newport Fire Station #2 cannot serve Urban Colony site 12b, and can only partially serve site areas 10a and 10b. Please indicate exactly which fire stations will serve these developments.	9
Page 4.14-12 states that "The closest Costa Mesa fire station to the Project site is Station Number 3 located at 1865 Park Avenue," and that – additionally – the "... use of fire and emergency medical services provided through the City's mutual aid agreement with adjacent jurisdictions..." may be needed. Please provide further analysis and modeling to indicate how often Costa Mesa Station #3's assistance will be needed.	10
Page 4.14-13 – It is stated that "Existing and forecasted funding [for a new or temporary Fire Station] will be available to replace the fire station within a reasonable time. Please be specific as to what time period is "reasonable time" and explain why it can be reasonably expected that this funding will become available.	11
Section 4.14.2 – Police	
It is stated on page 4.14-13 that "Upon annexation, the Project would be served by the Newport Beach Police Department (Police Department)." Until annexation – or in the event that annexation did not take place, how would Police Protection be provided for the Project?	12
It is stated on page 4.14-13 that "Because all but 40 acres of the Project site are in unincorporated Orange County, a majority of the Newport Banning Ranch property is served by the North Operations Division of the Orange County Sheriff's Department and the Costa Mesa Police Department." Please indicate when, relative to final approval of the project, Newport Beach would take over policing of the property. Is there any potential for delay (e.g. delays in incorporating the property into the City) that would require the Sheriff or Costa Mesa to police the property after approval of the Development?	13
It states on page 4.14-14 that "The Newport Beach Police Department has mutual aid agreements with the Cities of Costa Mesa, Fountain Valley, and Huntington Beach, and the Orange County Sheriff's Department to provide organized interagency assistance and cooperation during local police incidents." Based on current inter-city experience, what impact	14

14 cont.	can be expected on the Police Departments of Costa Mesa, Fountain Valley, and Huntington Beach, and the Orange County Sheriff's Department due to the development? What, especially, will be the impact on the Costa Mesa Police Department due to the opening of 16 th , 17 th , and 19 th Streets to through traffic?
15	Because of the large amount of open space adjacent to the development, what special police provisions are planned to insure that (1) open space flora and fauna are not adversely impacted by people living in or visiting the development residences, (2) that people living in or visiting the development residences are not adversely impacted by ranging wildlife (e.g. coyotes), (3) potential criminals don't take advantage of the open space to prey on the development (e.g. theft and vandalism)?
Section 4.14.3 – Schools	
16	On page 4.14-20 it is stated that "The methodology used in this analysis assumes that the number of new students generated from the proposed Project is directly related to the type and amount of the proposed Project's residential construction within the boundaries of the school district." Yet page 4.14-19 points out, under Interdistrict Transfers, that "... parents may elect to enroll their children in public school districts whose boundaries encompass the parent's place of work rather than the parent's place of residence."
	As a result, the analysis of the number of students generated by the development (on pages 4.14-22 and 4.14-23) seems flawed. Please expand the impact analysis to include the impact of the commercial workforce (from outside the development area and the school district) that will come in to service the 50,000 sq feet of commercial property and the Resort Hotel, and recalculate the number of students.
17	Page 4.14-20 states that "Existing NMLUSD schools located closest to the Project site are Newport, Newport Heights, Pomona, Rea, Victoria, and Whittier Elementary Schools; Ensign Middle School; and Newport Harbor High School." However, from exhibit 4.14-3 it is extremely clear that of the six primary schools listed, the only schools actually close to the Project site are Pomona, Victoria, and Whittier. All of these schools (per Table 4.14-4) are very near – or over – student capacity.
18	Page 4.14-22 states that "The student generation rates were developed by the School District's demographic consulting firm, DecisionInsite, based on Project information provided by the Applicant." However, the content of the "Project information provided by the Applicant" is not provided in the DEIR; hence, it is impossible to determine if the data is unbiased. Also, did the information provided to DecisionInsite include potential options for affordable housing in the Urban Colony portion of the Project? Further, it can be concluded that the data did <u>not</u> include owners or employers of the commercial property or hotel because it is further stated that "It is anticipated that only residential uses would generate school impacts." This is an invalid conclusion because of the NMLUSD policy on Interdistrict Transfer; hence, owners and employers of the commercial property and hotel should be included in the Student calculation.
19	Page 4.14.23 claims that Newport Elementary School could not take the Project's students, but that "Other elementary schools are also located in the vicinity of the Project site. Based on current enrollment figures, additional classroom facilities would be required and could be provided at any of the elementary schools to accommodate students associated with the proposed Project." The schools most likely to be impacted are Victoria, Whittier, and Pomona schools. However, there is no information provided in the DEIR as to how, on a school-by-school basis, these additional classroom facilities could be provided.
20	Page 4.14-24 states that "Compliance with mandated fee programs identified in SC 4.14-6 and SC 4.14-7 would preclude significant impacts to the NMLUSD." This broad, sweeping statement fails to show that there would be no significant impacts to the NMLUSD, and – in fact – doesn't even define "significant." Certainly from the fee and tax statutes called out in the DEIR, student estimates, and known building costs for classrooms, the actual monetary "impact" to the NMLUSD can – and should – be estimated, and the estimate should be included in the EIR.

Section 4.14.4 Library Services

No comments

Section 4.14.5 Solid Waste

Section 4.14.5 Solid Waste fails to identify solid waste associated with the Project construction – either actual construction materials or contaminated soils removed in the process of construction. The section only identifies waste generated during the “oilfield remediation and oil well closure process. Please add actual construction materials or contaminated soils removed in the process of construction to the identified solid waste generated by the Project.

21

Section 4.14.6 Mitigation Programs

MM 4.14-1 on page 4.14-30 states that: “Certificates of occupancy shall not be issued by the City of Newport Beach for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b until Fire Station Number 2 is rebuilt at the existing City Hall site at 23300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department’s established response time standards. Further, MM 4.14-3 on page 4.14-31 provides for the establishment of a temporary fire station on the Banning Ranch, in the event that “... a replacement station for Fire Station 2 not be operational prior to the development of any combustible structures....” It is further stated that “The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.”

22

However, the DEIR does not indicate where, on Banning Ranch, the temporary fire structure would be sited. Because this situation is a very real possibility, any and all alternate sites should be identified in the DEIR, and it should be shown how each of these sites meets the requirement that it is within the “Project limits of disturbance.”

Section 4.14.7 Level of Significance after Mitigation

No comments

Tables

Table 4.14-9 (page 4.14-32) states that the Project will: “... recycle and reuse materials on site during oilfield

cleanup and remediation to the extent practical.” However, it places no such requirement on the Development’s construction phase. If such a requirement is spelled out in the “Project’s Green and Sustainable Program”, it should be explicitly called out in Table 4.14-9. If not, the subject of ‘recycle and reuse of materials’ should be covered in this section.

23

Contrary to the Consistency Analysis statement for LU Policy 3.2 in Table 4.14-10 (page 4.14-33), the EIR has not demonstrated that the proposed land uses can be adequately served because Transportation and Circulation depend heavily on major roadway changes in the City of Costa Mesa over which neither the project developer or the City of Newport Beach have any control. Please indicate how the Development will deal with possible contingencies such as:

- 17th and 19th Street not being widened to handle additional traffic;
- It not being possible to construct the section of North Bluff Road from 17th Street to 19th Street.

24

Table 4.14-10 (page 4.14-33) states that “Existing NMUSD schools that are expected to serve the Project include Newport Elementary School” This is contrary to statements made on pages 4.14-20 and 4.14-23. Children are normally expected to attend their closest school. As Newport Elementary School is not the closest school to the home sites, and given that Newport Elementary School has neither the current capacity (per Table 4.14-4) or the land to expand, this appears to be a bad expectation. Table 4.14-10 should be corrected to accurately reflect the school or schools where Development children will most probably attend.

25

According to Table 4.14-11 on page 4.14-35: “... land divisions, ... outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller

26

than the average size of surrounding parcels. Contrary to the contention in this table that "The Project is consistent with this section...", it is not. According to Costa Mesa City Councilman Beaver, speaking at the 20 October 2011 Banning Ranch Joint Study Session: "[The] Urban Colony is at 40 units/acre. [He would]...be happy if it were more reflective of ...Costa Mesa proposed [nearby] developments ...at 13-25 units/acre." (Reference video at the following location: http://costamesa.granicus.com/MediaPlayer.php?view_id=4&clip_id=1790.) Please comment on this obvious inconsistency and on how the Development will meet the requirement to be consistent with surrounding housing densities – both current and planned – in both cities of Newport Beach and Costa Mesa.

26
cont.

Very truly yours,

James T Mansfield

1857 Rhodes Drive

Costa Mesa, CA 92626

Phone: 714-751-2243

jtmansfield@ca.rr.com

Letter O64 Jim Mansfield
November 8, 2011

Response 1

If development begins prior to annexation, the Orange County Fire Authority (OCFA) would require an agreement between the City of Newport Beach (City), County of Orange, and OCFA that addresses the transfer or retention of fire prevention, and planning and development services. This agreement would address issues such as access, water, inspection, plan review and other areas addressing fire service response. If the Project site is not annexed immediately, OCFA would require several other mitigations such as Optical Preemption devices on traffic signals and access gates, Secured Fire Protection Agreement, and methane mitigation reports. Please refer to Letter R6 from the OCFA.

Response 2

The Fire Department's primary concern is providing fire protection services to habitable structures which would be accessible via planned roadways. There are no habitable structures within the areas of the Project site where roads are not planned. As discussed on page 4.14-8 of the Draft EIR, the Project site has been designed to include fuel management zones consistent with the fire safety requirements for the Project. Generally, fuel management areas are a composite of two or three successive fuel management zones, which progressively provide an increasing amount of fire protection as they become closer to residences or other habitable buildings that require protection. As part of the proposed Project, a Fire and Life Safety Program has been prepared as a component of the Newport Banning Ranch Master Development Plan. The proposed Project is consistent with the fire hazard designations. With any wildland fire incident, the Fire Department places the engine at the point of access, anchors a hose line, and lays progressive hoses to flank the fire. Air support from OCFA is provided as needed.

Response 3

The majority of the Project site with the exception of Site Planning Area 12b, the northerly block of Site Planning Area 10a, and the northerly block of Site Planning Area 10b, can be served by existing Fire Station Number 2 within the established response times. Occupancy permits would not be issued for those portions of the Project site until either a replacement fire station is in place or a temporary fire station is provided on the Project site, whichever occurs first. The FireForce One report identified potential alternative locations for the replacement station. However, at this time a location for a replacement station is unknown and is therefore not included in the analysis in Section 4.14.

Response 4

The FireForce One study estimated an increase of approximately 300 calls for the Newport Beach Fire Department annually as a result of Project. This increase can be absorbed into Station Number 2's call load without the need for additional resources or adverse effects to customer service once Station 2 is relocated. Additionally, Fire protection systems such as alarms, sprinklers, fire standpipes, etc. are added to these multi-use units to address the high density safety requirements. The Fire Department has indicated that they would be able to provide service to the majority of the Project site within an adequate response time of four minutes. As indicated above in the response to Comment 3, three Site Planning Areas, including the northern half of the Urban Colony, are located outside of the four minute response

time from the existing Station 2. The Fire Department has taken into consideration the densities of the proposed development within its response time provision.

Response 5

Please refer to the response to Comment 4. Automatic aid agreements are used to ensure that adequate fire protection and emergency services can be provided. Should the Newport Beach Fire Department not be able to provide a response within a four minute response time, another automatic aid agreement participating fire agency would provide service to the Project site. Newport Beach Station Number 2 units and Huntington Beach Engine 43 are approximately equal in distance from the Project site. However, Station Number 2 would respond automatically to this area for medical aid and investigations. For structure fires and large emergencies, Huntington Beach and Costa Mesa may be a part of the current regular assignment of three engines, two trucks, one paramedic unit, and one Battalion Chief sent to any structure fire in west end of Newport Beach. OCFA would likely only be involved if a helicopter for a water drop was required.

Response 6

A request by the Applicant for the use of an Alternative Means and Methods (AM&M) has been conceptually approved where the fuel modification distances would be less than 170 feet (locations where there is a simultaneous need to preserve open space and protect native habitat areas). The AM&M measures that would have to be implemented as a part of the Project are as follows:

1. The entire development would be protected with automatic fire sprinkler systems. One and two single-family dwelling units would be required to meet National Fire Protection Association (NFPA) 13-D requirements; multi-family three or more attached dwelling units would be required to meet NFPA 13-R requirements; and retail, commercial, and resort buildings would have to meet full NFPA 13 requirements.
2. All structures on lots within 100 feet of the fuel modification/fuel management edge would have to comply with Chapter 7A of the 2007 California Building Code and Chapter 47 of the 2007 Fire Code including additional fire protection measures including:
 - a. No venting on the side of the structures facing the fuel modification edge.
 - b. All venting throughout the structures cannot be larger than 1/8 inch.

The requirements are considered substantially equivalent to the requirements of Newport Beach Fire Department Guideline G.02, "Fuel Modification Plans and Maintenance Standards". The final fuel modification plan for the proposed Project would be evaluated based upon the measures proposed in the AM&M request.

Response 7

Please refer to the response to Comment 6.

Response 8

No specific location has been identified. As stated in Mitigation Measure (MM) 4.14-3, "The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur".

Response 9

The Project can be adequately served through the use of existing/future City fire and emergency medical services, a temporary fire station on the Project site, as well use of fire and emergency medical services provided through the City's automatic aid agreement with adjacent jurisdictions. As stated on Page 4.14-10 of Section 4.14, Public Services and Facilities, the temporary fire station would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. The City has prioritized the replacement of Newport Station Number 2 in the City's Facilities Replacement Plan.

Response 10

It would be speculative to determine how often Costa Mesa Fire Station Number 3 would respond to the Project site. Automatic aid on large events and fires would include the cities of Costa Mesa and Huntington Beach. The City does not have an agreement with either the City of Costa Mesa or the City of Huntington Beach for emergency medical service coverage in this area.

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

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

Response 11

The specific timing of a replacement fire station has not been determined by the City. The new station would be funded, in part, by the proposed Project. Please refer to MM 4.14-2 of Section 4.14, Public Services and Facilities, of the Draft EIR.

Response 12

The entirety of the Project site is located within the City and its Sphere of Influence. The Draft EIR includes an analysis of a "No Project Alternative," which assumes the continued existing conditions on the Project site. In the event annexation of the 361 acres of the Project site located in the Newport Beach Sphere of Influence is not approved, the Project as proposed could not be implemented.

Response 13

The City would assume responsibility for the entirety of the Project site upon annexation of the property into the City of Newport Beach. No delays in serving the property are anticipated by the City.

Response 14

No impacts are anticipated.

Response 15

It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by a number of sources including endowments, Homeowners Association fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

Unfortunately, coyote presence in the urban/natural interface is not a new or uncommon problem. Because residential development has occurred adjacent to natural areas, coyotes have discovered that the “human environment can be ideal in providing them with abundant food choices such as readily available household garbage, pet foods, small pets, vegetable gardens, water, and vast assortments of other leftovers conveniently accessible day or night. Oftentimes food is intentionally provided by well-meaning persons who believe they are doing a good deed.”⁴⁰ The coyotes that occur on the Project site will continue to venture into adjacent residential areas as long as these resources are available.

Page 4.6-66 of the Draft EIR acknowledges this potential issue relative to the proposed Project. “Development and park uses built adjacent to natural open space, particularly near the lowland, may create urban-wildlands interface issues. Coyotes may attack cats and small dogs from residences. Outdoor cats may attack native birds, lizards, and small mammals, which is especially of concern in habitat potentially supporting Endangered, Threatened, or other special status wildlife species. These urban-wildlands interface impacts would be considered potentially significant. Implementation of Mitigation Measure (MM) 4.6-16, which requires development and implementation of an urban-wildlands interface brochure and public education program, would reduce this impact to a less than significant level.

The City of Newport Beach Police Department has not identified any concerns about a potential increase in crime because of the presence of open space. There are several areas in the City where development abuts open space including the Back Bay and Newport Coast. Standard Condition (SC) 4.14-4 notes that the Police Department will review development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations will be incorporated into the Project plans. The Applicant would prepare a list of Project features and design components that demonstrate responsiveness to defensible space design concepts. The Police Department would review and approve all defensible space design features incorporated into the Project prior to initiating the building plan check process.

Response 16

The suggested change in methodology is noted. However, this is not the methodology used by the Newport-Mesa Unified School District.

⁴⁰ http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1021&context=vpc10&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Drabbits%2Burban%2Bnatural%2Binterface%26hl%3Den%26as_sdt%3D0%26as_vis%3D1%26oi%3Dscholar#search=%22rabbits%20urban%20natural%20interface%22

Response 17

Please refer to Letter R5 from the Newport-Mesa Unified School District which identifies that the School District forecasts a district-wide capacity surplus. The School District has also provided revised school enrollment figures.

Response 18

The Applicant provided statistical information to the School District to use in its assessment of potential Project impacts. The Urban Colony has always been assumed as a probable location for on-site affordable housing. Affordable housing does not have different student generation rates. Please also refer to the response to Comment 16.

Response 19

As noted in the response to Comment 17, the School District forecasts a district-wide capacity surplus. The School District, not the City or the Applicant, would determine what additional facilities may be required in the future to accommodate students from the proposed Project as well as students from other locations within the district boundaries.

Response 20

Please refer to Section 4.14 of the Draft EIR starting on page 4.14-17 which explains how public school facilities are funded in the State of California. The payment of fees fully mitigates school impacts.

Response 21

The amount of construction-related waste materials is not known. PDF 4.11-5 requires that (1) construction waste diversion will be increased by 50 percent from 2010 requirements; and (2) to the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic. With respect to remediation, please refer to pages 4.14-28 and 4.14-29 of the Draft EIR which identifies that approximately 25,000 cubic yards (cy) of material would not be suitable for use on the Project site. Any hydrocarbon-impacted soil that cannot be treated on site would be transported to an off-site recycling/treatment facility; such facilities accessible for use within Southern and Central California.

Response 22

Please refer to the response to Comment 8.

Response 23

Please refer to the response to Comment 21.

Response 24

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 15th, 16th, 17th, or 19th 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.

Alternative C in Section 6.0, Alternatives to the Proposed Project, evaluates the proposed Project without the construction of Bluff Road from just north of 17th Street to 19th Street.

Response 25

Please refer to the response to Comment 17.

Response 26

The commenter is referencing Coastal Act Section 30250 which states in part “(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels”.

The Project site is contiguous to existing development and infrastructure to the north, south, and east. With respect to the relationship of the proposed Project to the City of Costa Mesa’s Mesa West Bluffs Urban Plan area, please refer to Section 4.1, Land Use and Related Planning Programs, of the Draft EIR. The Draft EIR identifies that “the Urban Colony would permit a much higher residential density (40 du/ac compared to 13 du/ac) and non-residential intensity (2.0 to 2.5 FAR compared to 1.0 FAR) of development when compared to the Mesa West Bluffs Urban Plan area. The maximum lot coverage for the proposed Project is also greater (90 percent compared to 60 percent). However, development of different densities and intensities in close proximity can be compatible. Residences of varying densities are located off site in both the Cities of Newport Beach and Costa Mesa and are proposed within the boundaries of the Project site. Land uses of differing densities can be sited in a manner to be compatible, particularly when the type of use and the allowable height are the same. As such, no significant land use compatibility impacts are anticipated south of 18th Street to 17th Street”.

Comment Letter O65

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

Attention: Patrick Alford
palford@newportbeachca.gov



Dear Mr. Alford:

Based on the findings of this DEIR in Air Quality under <i>Significant and Unavoidable Impacts</i> , it appears the Project will have a significant impact on air quality for the entire region, which would include Newport Beach, Costa Mesa, Huntington Beach and perhaps beyond because of its contribution to Ozone (O3) concentrations. Are my conclusions correct here? What is the extent of the region referred to in "regional pollutant concentrations"?	1
<p>"Impact Summary: Significant and Unavoidable. The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations of O3 would be cumulatively considerable."</p> <p>Why are the impacts of Ozone on human health not mentioned in the DEIR, requiring readers of the document to do their own research to find the health risks?</p>	2
<p>On the EPA web site, I found extensive information on the health effects of Ozone, including the following two paragraphs:</p> <p>http://www.epa.gov/apti/ozonehealth/population.html</p> <p>"Breathing ground-level ozone can result in a number of health effects that are observed in broad segments of the population. Some of these effects include: Induction of respiratory symptoms, decrements in lung function and inflammation. Respiratory symptoms can include: Coughing, throat irritation, pain, burning, or discomfort in the chest when taking a deep breath, chest tightness, wheezing or shortness of breath.</p> <p>In addition to these effects, evidence from observational studies strongly indicates that higher daily ozone concentrations are associated with increased asthma attacks, increased hospital admissions, increased daily mortality, and other markers of morbidity. The consistency and coherence of the evidence for effects upon asthmatics suggests that ozone can make asthma symptoms worse and can increase sensitivity to asthma triggers."</p>	3
The South Coast Air Quality Board's web site lists Ozone as the air pollutant having the most impact on the health of children and adults. It lists asthma as the most important disease with increasing incidence in this country, but says other diseases, such as	4

allergic reactions, bronchitis and respiratory infections are also increasing and that air pollution is a causal factor for these incidences. The site points out that children spend more time outside than adults and are often outdoors when pollution is at its highest.

http://www.aqmd.gov/forstudents/health_effects_on_children.html#WhichAir

Children also exert themselves harder than adults and studies on the impact of pollution on athletes demonstrate that we breathe in 30% more air while exercising. Do the Projects Applicants feel they have gone far enough to reduce the health hazards associated with breathing ozone by children engaged in sports at Sunset Ridge Park and the sports park, which has been designed with three soccer fields, and by the students playing on the Carden School playground? What more can be done to bring those ozone impacts down to less than significant?

4 cont.

A response by email would be appreciated.

Sincerely yours,

A handwritten signature in blue ink that reads "Fred Marsh". The signature is written in a cursive, flowing style.

Fred Marsh
16 Summerwind Court
Newport Beach, CA 92663

Letter O65 Fred Marsh
November 8, 2011

Response 1

Regional pollutant discussions usually imply the South Coast Air Basin, which includes all of Orange County and the urbanized areas of Los Angeles, Riverside, and San Bernardino Counties.

Response 2

A summary of the health risks of the national criteria pollutants is provided in Topical Response: Air Quality.

Response 3

The comment is noted.

Response 4

Please note that air quality impacts to local residents, park users, and other nearby receptors would all be less than significant. Please also refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that the Project's Mitigation Program has been revised to include Tier 4 construction equipment and NOx emissions, an ozone precursor; the impact would be less than significant.

Comment Letter O66a

November 7, 2011

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



TO: Patrick Alford

RE: Banning Ranch dEIR, Air Quality section, 4.10.6 Threshold of Significance

Under Air Quality on page 17, there's a check list of thresholds for significance criteria. I have questions and comments on four of the thresholds:

<p>Threshold 4.10-2 Violate any air quality standard or contribute substantially to an existing or projected air quality violation.</p> <p>Won't the Project be in violation of an air quality standard by exceeding the NOx significance thresholds in 5 out of the 10 proposed years of construction, as stated in the "Unavoidable and Significant Impacts" section of this dEIR?</p>	1
<p>Threshold 4.10-3 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).</p> <p>If the entire SoCAB is already in extreme nonattainment of O3, serious nonattainment of PM10 and nonattainment of PM2.5, NO2 & lead, according to TABLE 4.10-3 ATTAINMENT STATUS OF CRITERIA POLLUTANTS IN THE SOUTH COAST AIR BASIN (p4.10-12 of dEIR), how will the Project's short-term construction and long-term traffic pollution not be a cumulatively considerable net increase of criteria pollutants?</p>	2
<p>Threshold 4.10-4 Expose sensitive receptors to substantial pollutant concentrations.</p> <p>The closest sensitive receptors to the criteria pollution listed in this dEIR are the residents of Newport Crest Condominiums and the students of Carden School. What about the children playing on the soccer fields, tennis courts and baseball diamond of the parks on or adjacent to the development? What about the students who will attend the community college under construction? All of these populations have sensitive receptors, including school children, the elderly, the infirm and those who suffer respiratory conditions, such as asthma and COPD.</p>	3

The health hazards of exceeding NOx exposure are well-documented by the EPA:

From the EPA on NO₂/NO_x

<http://www.epa.gov/oaqps001/nitrogenoxides/>

"Nitrogen dioxide (NO₂) is one of a group of highly reactive gasses known as 'oxides of nitrogen,' or 'nitrogen oxides (NO_x).'" Other nitrogen oxides include nitrous acid and nitric acid. While EPA's National Ambient Air Quality Standard covers this entire group of NO_x, NO₂ is the component of greatest interest and the indicator for the larger group of nitrogen oxides. NO₂ forms quickly from emissions from cars, trucks and buses, power plants, and off-road equipment. In addition to contributing to the formation of ground-level ozone, and fine particle pollution, NO₂ is linked with a number of adverse effects on the respiratory system.

Health Effects: NO_x react with ammonia, moisture, and other compounds to form small particles. These small particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admissions and premature death.

Ozone is formed when NO_x and volatile organic compounds react in the presence of heat and sunlight. Children, the elderly, people with lung diseases such as asthma, and people who work or exercise outside are at risk for adverse effects from ozone. These include reduction in lung function and increased respiratory symptoms as well as respiratory-related emergency department visits, hospital admissions, and possibly premature deaths."

How does the Project Applicant intend to address these health hazards that will be visited on such a large population of sensitive receptors when the significance thresholds of NO_x are exceeded during the construction years and by the congestion that will result from the increase in population density and traffic created by the Project?

Threshold 4.10-5 Create objectionable odors affecting a substantial number of people.

On p1.7-1 of the Sacramento Metropolitan Air Quality Management District's CEQA Guide (Revised 6/11), "odiferous compounds" from construction are discussed and diesel PM is listed as one of those compounds:

"Odiferous compounds can be generated from a variety of source types including both construction and operational activities. Although less common, construction activities that include the operation of a substantial number of diesel-fueled construction equipment and heavy-duty trucks can generate odorous diesel particulate matter (diesel PM) exhaust emissions that adversely affect nearby receptors."

Since the Project Applicants intend to use heavy construction equipment concurrently for soil remediation, grading and other construction activities, how do they plan to keep the overpowering smell of diesel PM from so much heavy equipment usage from

3

becoming an adverse effect on the surrounding community and especially the residents of Newport Crest, Newport Shores and Carden Hall?

5 cont.

Oil field operations also generate benzene emissions that can cause cancer and other serious health problems. In July 2011 the EPA* proposed new regulations to reduce emissions of air toxics, including benzene, as well as methane, a greenhouse gas. Will the Banning Ranch development be complying with these new regulations and have the proposed emission reductions been included in the calculations of emissions in this dEIR?

*<http://www.epa.gov/airquality/oilandgas/index.html>

(7-28-11) EPA has proposed a suite of highly cost effective regulations that would reduce harmful air pollution from the oil and natural gas industry, while allowing continued, responsible growth in U.S. oil and natural gas production. The proposed updated rules would rely on proven technologies and best practices that are in use today to reduce emissions of smog-forming volatile organic compounds (VOCs).

[...] The rules also would reduce emissions of methane, a potent greenhouse gas, and air toxics, which are known or suspected of causing cancer and other serious health effects.

The proposal includes the review of four rules for the oil and natural gas industry: a new source performance standard for VOCs; a new source performance standard for sulfur dioxide; an air toxics standard for oil and natural gas production; and an air toxics standard for natural gas transmission and storage.

6

I ask that the contents of this letter be recorded in the public record, along with my objection to the approval of the Banning Ranch dEIR in its current form. Thank you for taking the time to review my concerns. A response via either regular mail or email would be appreciated.

7

Yours truly,

Sandra McCaffrey
9 Summerwind Court
Newport Beach, CA 92663
sl.mccaffrey@gmail.com

Letter O66a Sandra McCaffrey
November 8, 2011

Response 1

The ambient air quality standards (AAQS) shown in Table 4.10-1 of the Draft EIR are pollutant *concentrations*, that is, the amount of pollutant per volume of air.⁴¹ The forecasted exceedances in the Draft EIR for NOx during construction and 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 federal or State AAQS. Please also 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.

Response 2

As stated on page 4.10-29 of the Draft EIR, the Project's emissions would be cumulatively considerable and the impact would be significant and unavoidable.

Response 3

The comment is noted. Please note that air quality impacts to local residents, park users, and other nearby receptors would all be less than significant.

Response 4

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NOx during construction would be less than significant. Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources. The potentially significant NOx impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NOx or NO₂ would be less than significant. Please also see the general discussion of NOx emissions during construction.

Response 5

Construction equipment would be dispersed throughout the Project site and diesel exhaust odors would reduce with distance. While there may be a number of pieces of equipment working at the same time, the concentration of equipment would not be like that of a bus station or warehouse distribution facility.

Response 6

The proposed EPA regulations, not yet approved, are related to oil extraction by hydraulic fracturing, commonly called "fracking". This process is not used in the oil operations on the project site and the regulation is not relevant to the proposed project.

⁴¹ One exception, not a concentration standard, is for Visibility Reducing Particles, which are not analyzed in the Draft EIR.

Response 7

The comment is noted.

Comment Letter O66b

November 7, 2011

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



Dear Mr. Alford:

Please let the following comments be recorded in the public record, along with my objection to the approval of the Banning Ranch DEIR in its current form. With that in mind, I have several questions regarding the Air Quality Section of the DEIR:

On page 1, under the heading "Toxic Air Contaminants" (4.10-1, Introduction):

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

1

"Extremely low levels" isn't clear. What are these levels and what adverse health effects are being referred to?

Also, please clarify why ambient air quality standards haven't been established for TACs, given how dangerous they appear to be.

2

Can TACs affect the environment as well as humans? What impact do TACs have on the biological resources of Banning Ranch, especially ESHA and critical habitat? If they contaminant the soil and groundwater, what is the impact on endangered species on Banning Ranch and the habitat they need to survive? What is the danger to all plants and animals on Banning Ranch?

3

Page 4.10-22 refers to Table 4.10-9 and mentions the maximum area of daily disturbance:

"Table 4.10-9 identifies the emissions thresholds for local pollutants with receptors at a distance of 25 meters for 1-, 2-, and 5-acre sites. The table shows that emissions thresholds increase with the size of the site. Therefore, thresholds for sites larger than 5 acres, if they were developed, would be greater than the 5-acre SCAQMD thresholds. Although the Project site is much larger than 5 acres, the maximum area of daily disturbance during concurrent remediation and grading operations would be approximately 7 acres."

Where has it been established in this DEIR or some other document that the concurrent remediation and grading operations will never create a maximum area of daily disturbance over 7 acres? Who provides the supervision and accountability for containing the daily disturbance within that range? What kind of supervision and inspections are employed? How will the public at risk be able to verify their level of exposure, because if the maximum amount of daily disturbance is greater than 7 acres, then SCAQMD thresholds will be exceeded and all sensitive receptors within the 25-meter range will be exposed to pollutants, including school children, the elderly, the infirm and those with respiratory vulnerabilities

Also in the Methodology section on page 4.1-6, it states:

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

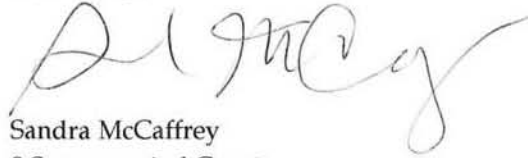
As part of the SCAQMD's environmental justice program, attention has focused on local air quality impacts from nearby sources. The SCAQMD developed the localized significance threshold (LST) look-up tables to allow the evaluation of localized impacts for many projects and scenarios without the complex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

"Area of daily disturbance" is listed as five acres here, not seven. Is this a contradiction with the reference on 4.10-22? How is the area of daily disturbance determined and by whom? What does "substantially larger than five acres" mean? Does seven acres qualify? How would raising the acreage by two acres affect the level of emissions?

3

These questions and areas of concern haven't been fully covered by the DEIR. Thank you for your attention to this matter and when can I expect a response to my questions? 6

Yours truly,



Sandra McCaffrey
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Letter O66b Sandra McCaffrey
November 8, 2011

Response 1

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

Response 2

The comment is not relevant to the analysis in the Draft EIR.

Response 3

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

Response 4

The emissions data used for assessing local impacts from on-site construction activities are derived from the anticipated equipment inventory. The area of the site being graded does not affect the emissions. However, as shown in Table 4.10-9 of the Draft EIR, the larger the site area, the greater allowable emissions because the average distance from the equipment to the receptor would be greater.

Response 5

As noted in the response to Comment 4, changing the area of daily disturbance does not change the level of emissions.

Response 6

The comment is noted.

Comment Letter O67

Banning Ranch DEIR COMMENTS

Chris McEvoy

Traffic Impacts.

<p>How is this project going to mitigate all the new permanent traffic in our community?</p> <ul style="list-style-type: none"> • If we assume that each of the 1375 homes has one car with the average length of a Toyota Camry (15.75 feet) we will have 4.1 miles of permanent traffic in our community • If we assume that each of the 1375 homes has two cars, again with the average length of a Toyota Camry we will have 8.2 miles of permanent traffic in our community. • This does not include retail and hotel visitor vehicles 	1
<p>It is proposed that rubberized asphalt will quiet the streets.</p> <ul style="list-style-type: none"> • Is the noise from an aftermarket exhaust considered dampened in this claim (ie Harley motorcycle with loud exhaust pipes) • Has a noise study been done to show the impacts to the Marina Heights community in Costa Mesa? • The Santa Ana River trail is quiet, will this be lost? • How does rubberized asphalt mitigate permanent traffic? 	2
<p>There will be massive amounts of cut through traffic. How is this going to effect</p> <ul style="list-style-type: none"> • students walking to Whitter, Pomona and Rea Elementary schools • upkeep of roads in Costa Mesa and who will pay for the increased use? 	3
<p>In trying to understand the traffic numbers for the project from the DEIR</p> <ul style="list-style-type: none"> • it was not made clear how much traffic was going to be cut through • the average of trips generated by the project was given yet a range was not given, meaning how many cars would be expected on a high traffic day and how many on a low traffic day. 	4
<p>The proposed entrance to the Bluff Road off PCH</p> <ul style="list-style-type: none"> • is going to be 4 lanes and how is this going to fit between the ESHA's that the Sunset Ridge park entrance would barely fit through • Who is going to maintain the road being that it is necessary component of the project, the taxpayers or the developer? 	5

Could the Bluff Road

<ul style="list-style-type: none"> • lead to eminent domain in areas that need more road space so to accommodate the extra traffic • lead to 19th street bridge • hurt property values where traffic increases • lead to the Sunset Ridge Park entrance 	6
<p><u>Population Impacts</u></p> <p>How is an increase in local population going to effect</p> <ul style="list-style-type: none"> • Emergency response during a natural disaster, strain on police, fire and HOAG • Increased use of ocean, ie do we need more lifeguards year round • Water supply • Sewage treatment • Landfill and recycling needs • Power demand • Voting districts for Newport Beach and State Assembly • Increase in the number of on duty police for Newport Beach 	7
<p><u>Construction Impacts</u></p> <ul style="list-style-type: none"> • Cut through traffic for construction workers, vehicles and equipment will strain Costa Mesa's roads. Use, noise, traffic etc how will this be mitigated? 	8
<p><u>General Concerns</u></p> <ul style="list-style-type: none"> • Were the residents and businesses given written notice about the DEIR and how to comment on it? 	9
<ul style="list-style-type: none"> • Will new liquor licenses be issued to businesses on this property 	10
<ul style="list-style-type: none"> • Will people be allowed to use project for parking for public beach access 	11

Letter O67 Chris McEvoy
November 8, 2011

Response 1

It is unclear what is meant by “permanent traffic”. Project traffic (new traffic that would be generated by the Project) is measured in terms of trips per dwelling unit for residential development, trips per room for a hotel, and trips per thousand square feet for commercial development. Each one-way movement by a car to or from the development is considered a trip. The combined trip total (all trips to and from the Project, all purposes) for the residential, resort inn, and commercial components of the Project would be 14,989 trips per day, distributed across the connecting roadway network and across all hours of the day. Street parking on the Project site would be available to the public for beach access.

Response 2

The noise model includes noise emission factors based on the total spectrum of vehicles. Individual vehicle noise sources are not addressed. Because traffic noise is analyzed for hourly and 24-hour averages, short-periods of very loud noise or unusual quiet do not substantially affect average noise data.

Noise impacts from the Project or Project-related traffic would be negligible. Project construction would be more than 2,000 feet from the Santa Ana Trail; the distance would provide noise attenuation of at least 35 dBA. Very loud construction noise may be discernable when ambient noise is very low. Long-term noise increases from Project traffic on Brookhurst Street would be less than 0.3 dBA.

It is assumed that the commenter is referring to the Marina Highlands neighborhood approximately 2,000 feet north of the Project site. No specific noise study was performed for this residential neighborhood because it is much farther away from the Project site than the nearest residences and other sensitive receptors. Project construction on North Bluff Road would be approximately 2,000 feet from the neighborhood; the distance would provide noise attenuation of at least 35 dBA. All other construction would be at greater distances. Very loud construction noise may be discernable when ambient noise is very low. Long-term noise increases from Project traffic on North Bluff Road and 19th Street east of North Bluff Road would be 0.5 dBA or less.

With respect to rubberized asphalt, rubberized asphalt pavement has been used for more than 30 years. There have been many studies demonstrating the noise reduction of rubberized asphalt pavement. Most studies have found noise reductions greater than the 4 decibel (dBA) value used in the Draft EIR. This pavement has been used extensively in California, Arizona, and other states. As stated on page 4.12-22 of the Draft EIR, Costa Mesa has used rubberized asphalt since 2004. Of note, CalRecycle has recently given the City of Carlsbad a \$130,000 grant to continue their rubberized asphalt program because the program would divert approximately 17,000 used tires from landfills. Standard Condition 4.12-4 requires the use of rubberized asphalt pavement on Project roadways and a 4 dBA reduction was used in the analysis of traffic noise from Project roads.

Response 3

It is expected that some existing traffic would divert from its current travel patterns to Bluff Road, to take advantage of a new connection to West Coast Highway. Connections to Bluff Road would be available via 19th Street, 17th Street, 16th Street, and 15th Street. Pomona Elementary

School and Rea Elementary School are located on an inside tract just south of Victoria Street, east of Placentia Avenue. Existing traffic that chooses to divert to Bluff Road would not be expected to enter this tract or to travel along Victoria Street to get there. Whittier Elementary School is located on Whittier Avenue south of 19th Street. Based on the select link run of the Newport Beach Traffic Model (NBTM), the majority of the traffic that would use this segment of Whittier Avenue to get to Bluff Road would be from the Newport Terrace neighborhood.

The Project would be responsible for constructing Bluff Road/North Bluff Road through the Project site. Once completed, it would be a public roadway. Operation and maintenance of the roadway would become part of the City's roadway program.

Response 4

Tables 4.9-34 and 4.9-35 of the Draft EIR identified the trips on each of the east-west roadways through southwest Costa Mesa that would be attributable to the proposed Project. This traffic consists of the combination of both the traffic that would be generated by the Project as well as existing background trips that could be expected to divert to Bluff Road via the east-west connecting streets.

The trip generation estimate for the Project is based on the Traffic Engineers (ITE) Trip Generation publication (8th Edition) trip generation rates for each of the Project components. Trip generation data collected for ITE is based on typical day and operation for the various uses being studied. Trip rates are expressed in terms a straight-line average of all data collected, and in some cases, a fitted curve equation is also provided, to account for the effect that the size of the development has on the per-unit trip rate. Trip rate data is typically not collected to measure peaks and lows based on season or activity.

Response 5

Please refer to Topical Response: ESHA and the response to Comment 3.

Response 6

The Traffic Impact Analysis has indicated that Bluff Road, as proposed by the Applicant, would accommodate the Project traffic and the traffic that can be expected to divert to Bluff Road.

The 19th Street Bridge is shown on the Orange County MPAH. The City of Newport Beach General Plan Buildout analyses for the proposed Project assumed that the roadway network would be built out as shown on the Master Plan. Because of the uncertainty of the timing of the bridge, a General Plan Buildout scenario without the bridge was also included in the Traffic Impact Analysis for informational purposes. It should be noted that the Year 2016 traffic analysis scenarios do not assume the 19th Street Bridge.

With respect to property values, CEQA Guidelines Section 15064(e), Determining the Significance of the Environmental Effects Caused by a Project, states:

Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be

used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

This comment does not present or raise an issue regarding the adequacy of analysis of the potential environmental impacts of the Project in the Draft EIR, but states the opinion of the commenter. No documentation has been provided to support the suggestion that vehicular traffic negatively affects property values.

Response 7

Please refer to Section 4.14, Public Services and Facilities, of the Draft EIR which addresses potential effects on emergency response times. As noted in on page 4.14.12 as revised:

Therefore, following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City, the entire Project can be adequately served through the use of existing City of Newport Beach fire and emergency medical services as well use of fire and emergency medical services provided through the City's mutual aid agreement with adjacent jurisdictions, the latter as needed. The plan for provision of fire protection and emergency medical services to the Project site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable fire protection and emergency medical services to the Project. No significant impacts are anticipated.

The Newport Beach Fire Department has stated that here are no established or recognized standards or criteria for the numbers of lifeguards and tower placements. The necessary density of coverage and beach crowd load expected is based on previous experience of lifeguard management, current staffing models, and previous years' average summer population estimates on the beach. Based on the proposed Project's anticipated population, the Fire Department estimates increased staffing in spring and summer months would have an average cost of \$15,000 to \$20,000 per year.

With respect to solid waste disposal, please refer to Section 4.14. With respect to water supply, sewage treatment, solid waste disposal, and electricity, please refer to Section 4.15, Utilities, of the Draft EIR. No significant impacts are anticipated. Voting districts does not address an environmental issue.

Response 8

Standard Condition 4.9-3 in Section 4.19 of the Draft EIR requires that the Applicant prepare a Traffic Management Plan for construction traffic. The condition includes the provision that the Applicant must apply for a Haul Route Permit and to identify the routes construction vehicles will use to access the site. The City of Costa Mesa has provided input on construction routes in their City.

Response 9

The State CEQA Guidelines Section 15087 requires that the lead agency (e.g., City of Newport Beach) provide public notice of the availability of a draft EIR shall be mailed to the last known

name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

- Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
- Posting of notice by the public agency on and off the site in the area where the project is to be located.
- Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

Notice of the public review period for the Draft EIR was provided by the City using the following methods:

- Mailing to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:
- Newspaper notice in the Daily Pilot
- Newspaper notice in the Orange County Register
- Publication on the City's website

Response 10

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 Mixed Use/Residential District or the Visitor-Serving Resort/Residential District would require a Conditional Use Permit (CUP).

Response 11

Street parking on the Project site would be available to the public for beach access.

Comment Letter O68

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

Dennis Mc Hale
17416 Moody Drive
Modjeska Canyon, CA 92676

R.E.: Draft Environmental Impact Report (EIR) State California Clearinghouse No.
2009031061; Newport Banning Ranch Project

Esteemed Administrators,

Many extremely knowledgeable supporters of open space and preservation will be submitting comment regarding the above project; about the need for a Banning Ranch Conservancy, the need for habitat preservation and the need to maintain the interconnectivity this property might possess to our past and our future.

My comments have to do with the personal relationship I've had with this property, my understanding of this property and the land use. You see, I'm a 3rd generation oil industry worker, my Father PM 'Red' Mc Hale and his Father, my Grandfather Al 'Big Red' Mc Hale have all worked at the Banning Lease; during it's land use as an oil producing property.

My association with this land came before I was born, as my Father PM 'Red' Mc Hale worked as driller, tool pusher and GM for Al "Big Red" Mc Hale's oil drilling and "wildcat" oil exploration company Superior Oil Service. SOS drilled quite a few of the producers on the Banning Lease in the time after WWII. 'Big Red's' wildcat drilling operations and association with J 'Paul' Getty was such that he is found noted in Alan Cockrell's book Drilling Ahead. My Father 'Red' Mc Hale found his way back to the Banning Lease after the oil boom of the 1950's and worked there the majority of his adult employment history. 'Red' having studied Oil Engineering while at Compton College, raised himself to the 2nd in command of the Banning Lease operations thru his tenure. Under Fred Jones, Lease Superintendent; both men worked for the numerous operators of this oil lease operation, Burma Oil, Armstrong Oil, General Crude Oil, International Paper, Armstrong Oil LLC, Mobil Oil and West Newport Oil.

My 1st exposure to the Banning Lease was as a young pre-teen when my many summer weekends I would accompany by Father to work on his afternoon tour/swing shift and fish in the various switch backs of the wetlands and the Santa Ana River at low tide. This fishing for halibut was sometimes complimented by rabbit hunting with my .22 Remington rifle. This activity was of course prior to the sanitation plant expansion and before the Ox Bow development.

My continuing exposure to the Banning Lease came in my own work history as I too became an oil industry (oil patch) worker. I started as a General Labor/Roustabout, Drilling Floor Hand/Derrick Hand/ Relief Driller, Production Services Derrick Hand/ Relief Gang Pusher and Junior Petroleum Engineer all on the Banning Lease.

Page 2

Per this brief history it can be said I've been on this Lease at every time of day, at every operation level of this oil field's operations as a 'boots on the ground' employee. I'm not sure this makes me qualified in the scientific analysis of the petroleum engineering data or the biological resources of this diverse open space but I can attest to things I know and have seen-because I worked with them and lived among them.

I do hope this historic narrative is not so long winded as to sounding self promoting, yet I do want to comment that after reviewing the entire Bonterra Consulting Enviro research as presented in this lengthy document CEQA Review DEIR 10/2011, it's flawed in many findings in section 4.5 Hazards and Hazardous Materials.

My primary question lies in the choice of environmental consulting services, would not Dudek of San Diego have been a better environmental consulting services firm as a choice considering the level of environmental degradation found on this property. Dudek has a larger reference list regarding environmental consulting based on Naval owned properties, oil field abandonment/land reclamation in the San Diego Bay area and water issues through-out California. None-the-less my comments address many of the assumptions/conclusions authored by Bonterra Consulting.

It's known and addressed that this property has yet to satisfy the California Regional Water Quality Control Board/Santa Ana Region Clean-up and Abatement Order No. 01-77, yet some how a blanket exemption according to DOGGR is made reference to and not the Abatement Order. The specific case cited establishes why an exemption is in accord and is the California Coastal Zone Conservation Commission's 1973 Exemption Order No. E-7-27-73 but the Bonterra document provides an impression that possible NEW oil exploration operations could be forecast and the document is presented under this cloud, thus confusing project intent.

Specifics I can attest to:

Sampling protocol;

- 4.5.3 Methodology; "approximately 489 producing/potentially producing and abandoned wells"; plus an additional 25 locations of interest per Exhibit 4.5-1, have been noted per report; yet, only "550 samples from 222 test pits/borings, 10 groundwater monitoring wells, surface water, and soil gas sampling points" were only executed. Why? DOGGR has historic record of California oil wells prior to 1940, why were all well locations not sampled? It's a far reaching to provide assessments based on incomplete data with reference to ASTM Standard E 2600, Standard Practice for Assessment of Vapor Intrusion into Structures on Property Involved in Real Estate Transactions.
- My working knowledge; drilling operations during my tenure at the Banning Lease consisted of 2 portable 'drill and drive' rigs a Wilson and a Cardwell; both were modified well service rigs with portable components. Rotary table, mud pump draw-works, pipe racks, tool 'bin' and 'dog houses' all portable including the mud pump. These portable components are similar to today's land based oil field operations. The component being noted is the mud pump and mud pit. Both rigs were outfitted with Baker tank conversions that included bar screen shaker tables, return troughs, mixing stations and a contained mud pit. This style Baker tank mud pump conversions are not unusual in today's operations and are typically stand alone components. This is where the drilling operations at the Banning site differed. The mud pump and pit were set at grade level to the MAT

<p>(surface elevation). Having been in the Roustabout department as noted above, our task was to help prepare and set up the proposed drill sites in advance of drilling operations (per annual funded program). Part of this preparation included excavation of site locations for drilling mat, oil well cellar, setting of conductor pipe and site for the mud pump and mud pit. This was done in 2 digs, one the width of the physical equipment approximately 8 feet deep and connected to this 1st dig was the 2nd hole used for cast offs, well tailings and drill mud fluid mix or chemical drill fluid mix (used for work-over) discharge. This 'dig' when complete looked like a small rectangle pool with a 'shallow end' (about 8 feet deep) and the 'deep end' (about 10 feet). If wells were in very close proximity to one another this 'dig' would accommodate both locations. <u>A reference is made to this physical operation because</u> Bonterra sampling protocol notes: <u>Soil Sampling</u> 4.5-8; "The hydrocarbon impacts observed were generally confined to the upper soil layers (i.e., within approximately six feet of the surface)". It appears that sample pot-holing did not sample all well locations and travel to effective depth of the mud pump mud pit and the tailing ponds. These pits contained the chemical 'witches brew' of modern drilling operations and are not noted in the sampling protocol. Most of this material was allowed to dry and the 'digs' buried with the native soil and some minor import soil.</p> <ul style="list-style-type: none"> ○ Further; based on the above observations this approximation per Bonterra: <u>Soil Remediation Methods</u>; 4.5-24, "Development of the Project would require the rough grading of approximately 2,400,000 cy of materials, inclusive of site remediation activities."; appears to put total soil remediation on the low end of the estimate. 	<p>3 cont.</p>
<p>Assumptions regarding Exhibit 4.5-1;</p> <ul style="list-style-type: none"> ○ The Bonterra Consulting groups mapping of the locations with Potential Environmental Concern Location Map excludes a few sites that need to be called out as potential hazardous environmental locations. A location not noted in the Potential Environmental Concern Location Map is along side the main road that leads from the "Hill" area to the "Flats" area. On the right side of this road are well locations in the 90's and early 100's. Two well sites in this area had major releases of H2S gas during work-over operations. Both releases had effects on oil workers working on the drilling rig performing well remediation (believe the work over was to replace the well's liner). These two separate incidents, one included near death, had Cal OSHA investigations with findings that imposed SCUBA operations when working below the well head or sub base of drilling rigs and is not noted in Bonterra Consulting's 4.5 review. Bonterra's review of the "Lowland pond REC/PEC3 # 02-Main Drill Site Tank Farm" states: "Analytical results indicate elevated methane concentrations, measured up to 73.2 percent of the collected vapor with no hydrogen sulfide detected". This review's language tends to provide a <u>vanilla</u> overview that H2S gas is not in residence on this site as 4.5 does not address this issue further. I'm surprised that historic research of these Cal OSHA incidents were not conducted as this would be a 	<p>4</p>

<p>major Potential Environmental Concern-based on the average well depth, based on the total soil displacement and based on the understanding that H2S gas is a byproduct of a 'fire flood secondary recovery oil extraction' operations.</p>	<p>4 cont.</p>
<p>o In a similar observation an area on the Map, next to area # 3, between area # 18 and across from area # 5 was the location of the Gas Burn Off (flare off) Reactors. Again, based on the type of Secondary Recovery in progress: 'Fire Flood with Steam Injection Processes'-coupled with acid stimulus and chemical treatment-the byproduct of these operations were H2S gas and a "Sour Gas". The 'sour gas' was an extremely sulfuric gas that was not a marketable product and had to be "flared off". To accomplish this task the 'Reactors' needed to maintain a constant temp of 1500F to 1900F. This was a constant 24-7 operation for as long as the fire flood operation was in progress. I'm surprised that Bonterra Consulting did not research this location or provide 'pot-holing' sample results that would promote investigation based on the unusually high readings of sulfuric soil that were found in the soil/debris stockpiles, Exhibit 4.5-1 # 18. I had knowledge of this, sulfur was everywhere due to the operations of the 'flare off' many times visual as large yellow piles around a Reactor scheduled for maintenance. The air around this location was so caustic as to reduce the life expediency of the vehicle fleet required to service it by stripping paint and reducing metal composition of equipment making a premature life for equipment and vehicles. The heated air mass of spent gas would make contact with the sea air moisture or fog as to create mini-acid rain events on the Banning Lease and some surrounding locations. This 'stuff' would eat your overalls with-in a month of wear. My experience with these operations included monitor of the 24-7 burn- a mixture of Southern Cal Gas and the 'sour gas' was required, metering reading, logging of this activity (ppm, air quality), maintenance of instrumentation as required including the monitor of burn temp and the constant on-line operation (this operation was an hourly check protocol). At peak production 3 Reactors were required to 'flare off' the spoiled gas. Any long term down wind Resident of Costa Mesa can attest to the 'rotten eggs' smell of the sulfuric gas, when due to conditions, a Reactor would go down. Like-wise the 'flare off' station once near Hogue Hospital was also required due to this high sulfur content in natural gas although this station was maintained by operations outside the Banning Lease personnel. The 'rotten egg' VOC was such a nuisance that a misting system of 'bubble gum' scent was engineered and put into operation to combat the down wind Resident complaint.</p>	<p>5</p>
<p>o Not registered on the Bonterra Consulting map: Potential Environmental Concern Location Map is a location south and somewhat included in area # 18. This location is was upon the 'Bluff' above the Oxbow Loop. This was an Engineering Out Building, which handled both manual and electronic weigh metering. This location was a maze of well head manifolds designed to perform this operation in a 24 hour cycle per DOG & E and DOGGR policy to ensure 'stripper production' weights. The Engineering Out building</p>	<p>6</p>

<p>was in the process of becoming fully electronic during my tenure on the Banning Lease. This site contained numerous 55 gal barrels of 'cut and sampling' dewatering chemicals, the most present was silicone. To ensure an accurate 24 hr weigh; needed to certify 'stripper production'; a well in test would be tagged in the field and the manifold opened for the test period. Byproduct was again 'sour gases' and was bleed to atmosphere thru bell containers to remove condensate and release gas per vessel psi. Open condensate ponds existed in this area where the gas was scrubbed for flare off. Manual bleeding was conducted during the morning four-grave yard shift. This site was also engineered with 'bubble gum' scent misting systems. I'm surprised that downwind testing was not conducted due to the known cancer causing properties of these compounds. Also, in this location were two pilot heat scavengers that used the Btu of the Reactors in an attempt to make steam for the secondary recovery operations. As these units were engineering proto-type constructions the need to deconstruct, modify and clean where a regular assignment. Again the byproduct of this operation was 'yellow' sulfur. The ground location all around these locations was exposed to these high levels of VIC and based on the overall sampling it's questionable if the <u>confusing</u> baseline assumptions were achieved per this published document: "The pVIC evaluation performed is not intended to meet the substantive requirements of the ASTM Standard E 2600 tiered screening or to identify which pVICs are VICs. The approach taken in the Phase I ESA Update is similar to the first phase of conducting a Tier 1 non-numeric screening for vapor intrusion, whereby pVICs have been identified so that they may subsequently be evaluated (as needed) using a complete Tier 1 screen (Geosyntec 2008)."</p>	<p>6 cont.</p>
<ul style="list-style-type: none"> • Continuing with the review of sites shown on the Bonterra Consulting Exhibit 4.5-1: <ul style="list-style-type: none"> ○ Site # 5 was used for potable water cleansing with removal of organics for the steam making operations used in the secondary oil recovery efforts. This location was difficult to maintain due to the sodium, sea air and the fact they were downwind of the Reactors. Rust remediation and vessel replacement was an ongoing operation. Heavy lead based primers and lead based paints (ship paint) was used to coat all the metal surfaces of these constructions and vessels. A reverse osmosis system was used with brine tank regeneration. Due to the problem of the location and salts, the vessels leaked and frankly this was not a major concern as long as the water samples had proper balance. The steam operations were the demand of the entire lease's operations. It was not uncommon to see mounds of spent salt and silicone beads all over the ground in this location. In review of the table 4.5-1, <i>RANGE OF PHASE II ENVIRONMENTAL ASSESSMENT SOIL SAMPLE RESULTS</i>, it appears no samples have been conducted and sampling data is restrictive to the 2001 protocol and is not reflective of this issue as noted above in what would seem an environmental soils issue related to the salts and silicone. Further, why would a competent study rely on a study conducted in 2001 that would affect new homes built in 2011? Again the reliance on data tainted by many factors including prior political activity as shown in: <i>TABLE 4.5-3; SUMMARY OF PROJECT SITE RECOGNIZED ENVIRONMENTAL CONDITIONS (RECS)/POTENTIAL ENVIRONMENTAL CONCERN (PECS)</i> really questions; has any new study work been conducted here in a decade regarding current site conditions, environmental concerns or human activity? 	<p>7</p>

<ul style="list-style-type: none"> Continuing comment on Bonterra Consulting Exhibit 4.5-1 'flats': <ul style="list-style-type: none"> Area # 2 has been widely discussed and was/is a <u>crude oil dump</u> including Area # 8. Dewatering operations included <u>generous</u> applications of silicone products to increase crude oil process separation of oil, sand, paraffin and shale. Annual clean out of heater treator/knock out tanks involved physical removal, bucket by bucket of residue. These buckets were dumped out on the ground, used to build breams when mixed with imported soil. Based on actual involvement this decades upon decades 'old school' maintenance cleaning operation could in no way be satisfied by the soil premeditations shown in <i>TABLE 4.5-3</i>. It's comical that Bonterra Consulting blind stamped the 2001 results as accurate measurements assuming no activity, including continuing maintenance operations, could have not taken place, in 10 years! Also included in Area # 2 are the stilling ponds that historically have caused environmental destruction to this lease, the wetlands, the tidal pools and waterways. I can recall receiving many overtime hours performing clean up operations during rainy seasons due to breaches in the stilling ponds ram earthen/oil dams. As an employee I recall numerous staff meetings were the prime discussion from management was the loss of migratory species and the threat of citation. The in-flight animals believed the ponds to be waterways and even with EPA approved netting they would become entangled in the crude oil soaked netting or unlucky found breaks in the netting only to find a pool of caustic crude oil, as their grave. Staff did provide tour/shift review of this location due to the historic environmental activities and US Fish and Wildlife's numerous citations. It is believed these stilling ponds date back as far as the 1940's. To believe again, the total cubic displacement and type of soil remediation required versus real on the ground findings per this <i>TABLE 4.5-3</i> <u>REQUIRED TO 'MAKE GOOD'</u> this location is a <u>sham</u>. 	8
<ul style="list-style-type: none"> Area # 7 thru to Area # 17 was the locations of water injection sites used to restrict sea water intrusion into the oil field. Most environmental groups performing investigations into an abandon oil field have knowledge of this operation and include it in their review due to the ground water issues of the injection process. All along the 'fence line' these wells were placed to keep the field from degrading into the sea water. Based on the type of 'barely fresh water' used in this operation it's concerning that no data is present regarding this highly polluting practice as the injection water was of the lowest quality. The report seems to put this burden on Army Corp of Engineers and their rehabilitation efforts along the Wetlands Restoration Area. 	9
<ul style="list-style-type: none"> Areas # 16, # 21, # 24 & # 27 as noted in the Bonterra Consulting report seems to give the allure that this is an unaffected area and this was a non production area. <u>THIS IS UNTRUE</u>, this graphic area had production wells of various stripper gravity and some in this area had 'best' value. Also of note in the methodology the 'producers' utilized in their oil and gas separation at well site. Each well was equipped with a metered run for gas used to determine cubic volume and Bell vessels used as gas scrubbers at each meter run. At each gas scrubber was a bleed down and every well was checked and serviced with a bleed down to atmosphere as detailed earlier, per daily service. This well operation dispensed <u>unknown</u> gallons of petrol-hydrocarbons into the strata. The wells were in 	10

Page 7

<p>o operation for how many years? To not have data that is reflective of this operation is 'just bad environmental work'. A few years of stock piling surface soil could not remediate decades of environmental abuse.</p>	<p>10 cont.</p>
<p>Summary of Comments:</p> <p>As an employee on this oil lease I saw environmental abuse. Operations of an oil property are un-healthy to living things. Years of environmental abuse cannot be remediated by piling up surface soil and hoping this will eliminate petroleum contaminations. Deep well issues are not on this lease; these are shallow wells, sometimes called the end of the pool wells. To believe wells abandoned in the 1950's or 1970's will sill remain abandoned and to not research this condition is to assume the impractical. A 1994 Government Accountability Office report could not have not summed up this issue succinctly (like it was looking at this lease): "If oil leaks from an improperly plugged well occur, there is risk that the environment and marine life will be adversely affected. Mammals, birds, shellfish and plants can be killed by oil." (PEOPLE?). Likewise, according to Terry Tamminen, former secretary of the California Environmental Protection Agency and author of Lives Per Gallon: The True Cost of Our Oil Addiction, "This is a problem in California. We have a century-old oil industry. How many wells were abandoned before regulations were put in place? Many wells were just wildecatted in—who knows where they are or how many there are. In the Baldwin Field alone, which sits in the center of urban Los Angeles, there are hundreds of abandoned wells." <u>Officials, you want to build parks for kids and wonderful homes for your citizens here, shouldn't the environmental research do the proper home work?</u></p> <p>The issues I've brought forward; non-sampling around well sites, the use of old outdated data, the assuming that because it wasn't pot holed for it doesn't exist as a health hazard, the belief that the highlands (hill) of lowlands (flats) are geographic disconnected and somehow one area is not environmental damaged or can be rehabilitated with a quick fix and we can build a park there; is <u>just foolishness</u>. Thinking by applying minor monitoring data for deadly gases like H2S will promote a clean bill of health, when documented Cal OSHA incidents tell us otherwise isn't poor science it's negligent and promotes an attitude of well being, until someone's home is filled with the colorless, odorless, death gas in a future housing development. Water issues, ACM, LBP and carbon sequestration have not even been addressed, including well abandonment. This was not a 'poor boy' random oil field operation. This was a secondary recovery operation enhance by fire flood, water flood and steam injection and 'wrote the book' on these type operations, to be used world wide. Simply, we pumped tons of cubic feet of oxygen underground into an oil zone and LIT IT ON FIRE, it melted the oil out, we used the water to float it out and that which was still stuck we steamed it out. This was the primary goal, none other, this was the business, and the environment was just; there in the way. To correct this will not be a 'remove some dirt six feet down pile it up and let the bugs clean it; project'. This is going to take real reverse engineering to reclaim this land, or leave it to Nature to correct.</p>	

Dennis Mc Hale

We can't solve problems by using the same kind of thinking we used when we created them.
Albert Einstein

Letter O68 Dennis McHale
November 7, 2011

Response 1

The opinion of the commenter is noted.

Response 2

The Regional Water Quality Control Board Cleanup and Abatement Order was rescinded on March 6, 2006 because all the conditions were met.

Response 3

The 2001 EA tested numerous single and multiple well pad sites to characterize the areas and impacts that would be remediated to development standards. Though most impacts were generally observed to be within the upper six feet of soil, test excavations and pot holes went beyond those depths to clean soils.

Response 4

With the exception of the two oil consolidation sites, all on-site oil wells would be abandoned or re-abandoned to current requirements and standards of the DOGGR; all facilities would be removed. After remediation, hazardous gas surveys would be conducted as part of the Orange County Fire Authority Guideline C-03.

Response 5

The "Fire flood" was discontinued in 1992. While gas flaring has not occurred at the site in over 30 years the incineration of the fire flood waste gas in reactors or steam generators was discontinued in 1994. Indications of sulfur piles or impacted soils were not observed during the various assessments. During remediation and grading, all near surface soils would be excavated and monitored during mass grading. After remediation, hazardous gas surveys would be conducted as part of the Orange County Fire Authority Guideline C-03.

Response 6

The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. Within the proposed development areas, all oil wells would be plugged and abandoned, and all facilities would be removed. In addition, all near surface soils would be excavated and monitored during the mass grading. It appears that there may be some confusion between the acronym 'VOC' (volatile organic compound) and 'VIC' (vapor intrusion concern). VOCs have been sampled at the site in soils and subsurface soil gas, and will be re-assessed during the development phase per Orange County Fire Authority Guideline C-03.

Response 7

As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, prior to removal of all oilfield facilities and equipment, a survey would be conducted for lead based paints and asbestos type materials. Also, all non-hazardous materials still present, such as filter salts or water softening materials mentioned in the comment would be removed. 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.

Response 8

The 2001 EA recognized that many oilfield facility cleanout materials were mixed with soils to construct oilfield roads and berms. These areas were tested and accounted for in the remediation volume estimates. Potential Environmental Concerns (PECs) 2 and 8 are targeted remediation sites.

Response 9

It appears the comment may be referring to produced water injection back into the oil reservoir zone which is a standard practice. The oil zone is not considered a useable water zone. Groundwater conditions of the uppermost aquifer below the Project site (above the oil zone) have been assessed as part of the 2001 EA. As a result, one area near the Main Drill Site Tank Farm is undergoing active remediation.

Response 10

It is acknowledged and known that PECs 16, 21, and 24 were active oilfield areas and that individual gas scrubbers were used at various locations. The 2001 Environmental Assessment report submitted and reviewed by the Regional Water Quality Control Board (RWQCB) involved comprehensive testing of the Project site including all current and historic oilfield operating areas and used interviews of field personnel to direct some of the testing. Section 4.5, Mitigation Measure 4.5-1, requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site disturbance unrelated to oil remediation activities. Compliance with the final RAP conditions would allow for further agency review of any identified contaminants and plans for clean-up.

Response 11

The comment is noted. With the exception of the two oil consolidation sites, all on-site oil wells would be abandoned or re-abandoned to current requirements and standards of the DOGGR; all facilities would be removed.

Comment Letter O69a

Alford, Patrick

From: Jim Mosher [jimmosher@yahoo.com]
Sent: Tuesday, November 08, 2011 11:01 AM
To: Alford, Patrick
Subject: Comments on Newport Banning Ranch Draft Environmental Impact Report
Attachments: 1 - City of Costa Mesa 2011 Oct 20 Joint Study Session notice.pdf; 2 - CNB Planning Commission 2011 Nov 3 Study Session notice.pdf

Dear Mr. Alford,

I am submitting these comments with regard to the public review process for the Newport Banning Ranch (NBR) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2009031061, and ask that they be included in the record of this and all subsequent proceedings regarding this project.

In the following, references to the CEQA statute (in the California Public Resources Code 21000-21177) and CEQA guidelines (in the California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387) quote the text found in the 2011 CEQA Handbook prepared by the Association of Environmental Professionals:

www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf

These comments highlight a sampling of procedural and content deficiencies in the DEIR, and in the review process to which it has been subjected to date. There may be a wish to dismiss such concerns as not raising new "environmental" issues, however such clear and cumulative failure to comply with the mandates of the California Environmental Quality Act and its implementing Guidelines IS an environmental issue: failure to follow CEQA is a failure to protect California's environment in the way deserved and expected by the people of California and requires corrective action. 1

In view of both the number and seriousness of the shortcomings (primarily the unnecessary size and complexity of the document) it seems clear and inescapable to me that the NBR DEIR needs to be rewritten in compliance with CEQA and re-circulated.

The Notice of Availability signed by Patrick J. Alford on September 6, 2011:

http://www.city.newport-beach.ca.us/pln/CEQA_REVIEW/Newport%20Banning%20Ranch%20DEIR/Newport%20Banning%20Ranch_DEIR/Newport%20Banning%20Ranch_DEIR_September%202011/0.0%20NOA.pdf

says:

"Copies of the Draft EIR and technical appendices are available for public review at the following locations: 2

* City of Newport Beach, Community Development Department, 3300 Newport Boulevard, Newport Beach, California 92658

* City of Newport Beach, Central Branch, 1000 Avocado Avenue, Newport Beach, California 92660

* City of Newport Beach, Balboa Branch, 100 East Balboa Boulevard, Newport Beach, California, 92661

* City of Newport Beach, Mariners Branch, 1300 Irvine Avenue, Newport Beach, California 92660

* City of Newport Beach, Corona del Mar Branch, 420 Marigold Avenue, Corona del Mar, California 92625

* City Website - <http://www.newportbeachca.gov>

Observations:

1. I first noticed links on the City website to the DEIR chapters on the evening of September 7th.
2. I first viewed the review copy in the Community Development Department on the afternoon of September 9th. Some of the appendices themselves contained appendices or attachments which were not fully printed out.
3. I personally checked at the reference desk of the Mariners Branch Library on September 9, 10, and 11 and at the reference desk of the Central Branch as late as 7 pm on September 12. In all cases I was told that I was not the first person to ask, but there was no NBR DEIR yet listed in their catalog, that they didn't have a copy, and didn't know when they would, but to keep checking.
4. I first saw a review copy of the DEIR at the Mariners Branch on the afternoon of September 13th. It consisted of just two volumes: the main text and the exhibits to the main text. The appendices were available only on CD-ROM's inserted in the front of the first volume.

2 cont.

Questions:

1. Why were links to the files not available on the City Website on September 6th as stated in the Notice?
2. Why have the technical appendices never been completely printed out in the copy that became available for review in the Community Development Department starting on September 9th?
3. Why were the technical appendices not printed out at all in the copies available for review at the City libraries?
4. Why were even the incomplete printed copies, with accompanying disks, distributed to Newport Beach City libraries not available for public review until September 13th?
5. Are computer-readable versions of files adequate to meet the CEQA requirement of making "copies of documents" available for public review?
6. How is the public interest served by a document too lengthy to print out and distribute in its entirety?

CEQA Guideline 15105(a) says: "The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances."

Observation: "Unusual circumstances" affecting the ability of the public to review the present DEIR include the facts that the lead agency requires a 1432 page main text, including a 64 page summary (supported by 5817 pages of appendices), to explain the most significant impacts of the project, feasible mitigating measures and feasible alternatives with less impact.

3

<p>With the 60 day public review period provided in the Notice of Availability, a person interested in reviewing the DEIR and committed to studying it EVERY day of the review period would have to review and comment on 24 pages of main text and 97 pages of appendices on EACH of the 60 days (with a corresponding backlog if they miss any days to attend to other life functions). This is an unreasonable burden for most persons.</p> <p>Question: Since the document is 4-5 times longer than the maxima envisioned in CEQA Guidelines 15123 and 15141 (15 pages maximum for the summary and 300 pages maximum for the main text), why is the public review period not 4-5 times longer than the normal maximum (that is, 240 to 300 days)?</p>	3 cont
<p>***</p> <p>CEQA Guideline 15087(c) says "The notice shall disclose the following:"</p> <p>"15087(c)(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice."</p> <p>Question: Why are the date, time and place of known public meetings on this project, including EQAC review, the City Council Study Session on September 13, and the Planning Commission Study Session on November 3 not listed on the notice?</p>	4
<p>"15087(c)(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice."</p> <p>Observation: the Notice of Availability says "The Draft EIR examines the potential impacts generated by the proposed Project in relation to the following CEQA Checklist categories: aesthetics and visual resources, land use and planning programs, geology and soils, hydrology and water quality, population, housing, and employment, transportation and circulation, air quality, green house gas emissions, noise, biological resources, cultural and paleontological resources, recreation and trails, hazards and hazardous materials, public services, utilities, and alternatives" but it gives no hint of the areas in which significant impacts are anticipated by the lead agency.</p> <p>Question: Why are none of the anticipated significant environmental effects uncovered in preparing the DEIR listed in the notice?</p>	5
<p>"15087(c)(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review."</p> <p>Observations:</p> <ol style="list-style-type: none"> 1. On November 7, 2011 I examined the extent to which documents referenced in the DEIR were available for public review in the Community Development Department at 3300 Newport Boulevard, Newport Beach, California. 2. It should be observed that City staff was helpful in trying to produce the documents, but it was apparent that only the main text of the DEIR and the portions of the technical appendices printed out as described above were readily available for review. 3. A volume containing the "NBR-PC" (as described in footnote 5 at the bottom of DEIR page 3-23) was produced with some difficulty, and it appeared the "Newport Banning Ranch Master Development Plan" (as described in footnote 7 at the bottom of DEIR page 3-24) could also be produced. 	6

<p>4. A 20-30 minute search by City staff by phone and internet for "The Metropolitan Water District's 2010 RWMP" (described on DEIR page 5-78 as being "available at the City of Newport Beach Community Development Department during regular business hours") produced no result, although staff assured me they could obtain a copy if I really wanted to see it.</p> <p>5. Staff also determined that the historic aerial photos used to assess the rate of bluff erosion and manmade changes to the site (DEIR page 4.3-5, and listed in more detail on pp. 17ff of Appendix D, Part 2, where the printed report says "Copies of these aerial photographs are included in Appendix B" although there is no Appendix B) were not available, although again staff promised to make an effort to obtain copies.</p> <p>6. It was similarly apparent that staff DID NOT have copies available for public review of most of the documents listed in DEIR Section "9.0 References" -- especially those for which internet addresses were not provided. Examples inquired about included:</p> <ul style="list-style-type: none"> * California Air Resources Board (CARB). 2008 (October 24). Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act. Sacramento, CA: CARB. * California Department of Education, Educational Demographics Unit (CDE). 2009 (July 7). California Public Schools - District Report: 2008-09 District Enrollment by Grade: Newport-Mesa Unified. Sacramento, CA: CDE. * California Office of Public School Construction (OPSC). 2010 (February 24). Report of the Executive Officer, State Allocation Board Meeting, February 24, 2010, Status of Fund Releases. Sacramento, CA: OPSC for California State Allocation Board. * Ward, M. 2010 (March 19). Personal communication. Email from M. Ward (M. Ward & Associates) to G.L. Basye (Aera Energy) and M. Mohler (Brooks Street) regarding the Newport Banning Ranch site and the Measure M2 Program. <p>Questions:</p> <ol style="list-style-type: none"> 1. Why did the lead agency not provide for public review of the DEIR at a location where ALL of the supporting information used to prepare it (and referenced in it) was available for review (such as at the Bonterra offices in Costa Mesa)? 2. Alternatively, why were the documents used to prepare the DEIR, and referenced in it, not archived and made available for review on CD-ROMs or in some other readily accessible electronic format? 	<p>7</p>
<p>"15087(c)(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to, lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section."</p> <p>Observation: Section 4.9 ("Hazards and Hazardous Materials") of Volume I of the Sunset Ridge final EIR (http://www.newportbeachca.gov/index.aspx?page=1541) mentions hazardous conditions at the nearby Banning Ranch property, and AERA Energy, West Newport Oil Company and Newport Banning Ranch LLC appear in several of the searches reported in Appendix H ("Hazardous Materials Report") for that EIR.</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. Has any part of the NBR property been used for disposing of hazardous waste or is it listed as currently containing hazardous waste? 	<p>8</p>

<p>2. Should any of those activities have been mentioned in the Notice of Availability per CEQA Guideline 15087(c)(6)?</p> <p>Conclusion: the Notice of Availability for the NBR DEIR does not appear to have met a number of the mandatory disclosures required by CEQA Guideline 15087(c). The failure to clearly notify the public of the most significant anticipated impacts, as required by CEQA Guideline 15087(c)(4), is particularly disturbing to me.</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. How does the lead agency defend the adequacy of notice and public review opportunities in view of CEQA Guideline 15087(c)? 2. Does the DEIR need to be re-circulated with proper notice? 	<p>8 cont.</p>
<p>***</p> <p>CEQA Guideline 15087(g) says: "To make copies of EIRs available to the public, Lead Agencies should furnish copies of draft EIRs to public library systems serving the area involved."</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. Were copies of the DEIR provided to the Huntington Beach library system (for display at their branches), and to the Orange County library system (for display at their branches in Costa Mesa)? 2. If not, why not? 	<p>9</p>
<p>***</p> <p>Public Resources Code Sec. 21002.1(a) says that the function of an EIR is to draw attention to the most significant unavoidable impacts of a proposed project and to feasible mitigation measures or alternatives with less impact.</p> <p>Question: Why does Section "1.6.2 SUMMARY OF SIGNIFICANT UNAVOIDABLE IMPACTS" (page 1-21 of the DEIR) not appear in the Table of Contents (NBR DEIR page i)?</p>	<p>10</p>
<p>***</p> <p>DEIR page 2-1 identifies the City of Newport Beach as "the "Lead Agency" for this Project" yet the California Supreme Court in <i>Bozung v. LAFCO</i> ((1975) 13 Cal.3d 263) found that the Local Agency Formation Commission (LAFCO), willingly or unwillingly, is the proper lead agency to prepare the EIR for a pre-annexation development proposal, both because the LAFCO is the agency which must act first (on the annexation which according to p. 285 "is a project all by itself") and because it is the agency most likely to be able to view the environmental impacts from the regional perspective required by CEQA (p. 283: "the officials of a municipality, which has cooperated with a developer to the extent that it requests an annexation of that developer's property for the express purpose of converting it from agricultural land into an urban subdivision, may find it difficult, if not impossible, to put regional environmental considerations above the narrow selfish interests of their city").</p> <p>Observation: The Court's reasoning would appear to apply equally for an annexation for the purpose of converting oil fields into an urban subdivision.</p>	<p>11</p>

<p>Questions:</p> <ol style="list-style-type: none"> 1. Why is the LAFCO of Orange County not the lead agency? 2. Has a separate EIR been prepared for the annexation? 3. How is it possible for the City of Newport Beach to avoid the bias due the local interests described in Bozung v. LAFCO? 4. How does this differ from the Newport Coast annexation in which the County appears to have approved the development plans? <p>***</p>	<p>11 cont.</p>
<p>Public Resources Code Sec. 21003 says it is the policy of the State of California that:</p> <p>"(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."</p> <p>Question: In what ways has the present DEIR been organized and written so as to be as meaningful and useful as possible to the people of California?</p> <p>"c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects."</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. In preparing the present DEIR what steps did the lead agency take to omit unnecessary description of the project and emphasize feasible mitigation measures and feasible alternatives to the project? 2. Are the mitigation measures described in the present DEIR ones that are already incorporated in the applicant's proposal? Or are they new ones being recommended by the lead agency? 3. Are the standard conditions described in the present DEIR ones that are already incorporated in the applicant's proposal? Or are they new ones being recommended by the lead agency? 4. What feasible alternative or alternatives to the project, if any, is the lead agency currently recommending for certification? <p>***</p>	<p>12</p>
<p>CEQA Guideline 15121(a) defines the function of an EIR as "an informational document which will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project."</p> <p>Question: How would this EIR, if certified in its present difficult-to-understand form, serve the public purpose of achieving these goals with clarity and conciseness?</p> <p>***</p>	<p>13</p>

<p>CEQA Guideline 15143 says that "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 in 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."</p> <p>Observation: The present DEIR, particularly in its "Executive Summary" appears to emphasize the effects found to be insignificant, devoting many more pages to those, and to background information, that to the effects which the preparer feels to be significant.</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. In preparing the present DEIR what steps did the lead agency take to ensure that it focus on the significant effects on the environment? 2. Was an Initial Study performed as required by CEQA Guideline 15063? 	14
<p>***</p> <p>CEQA Guideline 15063 specifies a recommended format for the INITIAL STUDY, which is a separate process preliminary to preparation of the DEIR (which is prepared only if the Initial Study indicates one is required):</p> <p>"(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subdivision (d)(3)."</p> <p>Observation: The "Threshold Criteria" referenced in Sections 4.1 through 4.15 of the main text of the DEIR appear to be copied from Appendix G of the CEQA Guidelines, and appear to constitute the results of an Initial Study.</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. Wouldn't the clarity of the DEIR have been improved by providing the conclusions of the Initial Study (assuming one was conducted) as a separate attachment as allowed by CEQA Guideline 15143? 2. Why are effects that were apparently found to be insignificant in the Initial Study repeated and given emphasis in the main text of the DEIR, often being discussed at greater length than significant effects? <p>***</p>	15
<p>CEQA Guideline 15140 requires that: "EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents."</p> <p>Observation: As a member of the public I have found the present DEIR to be obtuse, poorly organized, sprinkled with specialist language and difficult to understand.</p> <p>Question: In preparing the present DEIR what steps did the lead agency take to ensure it be written in plain language and organized for rapid understanding?</p>	16

<p>***</p> <p>CEQA Guideline 15122 requires that "An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues."</p> <p>Observation: The present DEIR contains a table of contents but no index.</p> <p>Question: Would not a DEIR of 7249 pages be more rapidly understood, and information in it more easily found, if it contained BOTH a table of contents AND an index?</p> <p>***</p>	17
<p>CEQA Guideline 15147 says: "TECHNICAL DETAIL The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review."</p> <p>Observation: In the main body of the electronic version of the DEIR the pictorial exhibits are integrated with the text and appear close to the point at which they are referenced. In the printed copies available for public review at the Planning Division and in the City's libraries the graphics are printed in a separate volume from the text. The separately printed exhibits can easily be missed, and their intended placement in the text can easily be misunderstood if the initial citation to them is overlooked.</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. Why are the graphic accompaniments to the main volume of the DEIR printed out as a separate volume in the hard copies available for public review -- as if they were a technical supplement? 2. How does this separate publication further the state mandate of Guideline 15140 that the document be written in a way decision makers and the public can rapidly understand? <p>***</p>	18
<p>CEQA Guideline 15141 says: "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."</p> <p>Question: What abnormal scope or complexity in the proposal requires the main text of current DEIR to have 1417 pages (plus a 15 page Table of Contents and 5817 pages of Appendices)?</p> <p>***</p>	19
<p>CEQA Guideline 15123 sets the following standards for the summary section of the EIR:</p> <p>" (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.</p> <p>(b) The summary shall identify:</p> <p>(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;</p>	20

- (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."

Observations:

1. The "Executive Summary" of the DEIR, as currently written, extends over 64 opaquely written pages that fail to focus on, or clarify for the public, the matters required by the CEQA Guidelines.

2. As a random example of the obtuseness of the "Executive Summary" if one ignores the text entirely and goes directly to "TABLE 1-2 : SUMMARY OF SIGNIFICANT IMPACTS AND MITIGATION PROGRAM" starting on page 1-25, in the second column, the second box appears to conclude "The Project is consistent with all applicable land use policies -- no impact" but the preceding box just informed us "There would be land use incompatibility -- Significant, Unavoidable Impact" with no hint of why a land use can be simultaneously compatible and incompatible and why there could not be mitigation or less impactful alternatives.

Questions:

1. In preparing the summary what steps did the lead agency take to ensure that the language be as clear and simple as reasonably practical?
2. What abnormal circumstances required the "Executive Summary" to exceed 15 pages?
3. Why are alternatives described before the reader is informed about the anticipated impacts of the project as proposed?
4. In describing the anticipated impacts of the project as proposed, why are random examples of impacts deemed insignificant listed before expected significant impacts?
5. For example, why are we treated to such irrelevant information as (among numerous other examples) on page 1-20 that because NBR is more than two miles from the nearest airport a standard CEQA Initial Study question about impacts of projects less than two miles from an airport will not have to be dealt with in depth in the main body of the DEIR?
6. Would not the readability and usability of the DEIR be improved if the summary included references to the sections in which the "summarized" issues are dealt with in more depth?
7. Where does the summary focus attention, with clarity and simplicity, on the proposed project's significant effect(s) and alternatives that would reduce those effect(s)?
8. Where does the summary identify areas of controversy known to the lead agency?
9. Where does the summary identify the issues to be resolved?
10. What are the conclusions of the DEIR being recommended for certification by the lead agency?

20
cont.

Observation: DEIR Section "9.0 References" lists internet addresses at which many of the documents used in preparation of the DEIR can be viewed.

21

Among the most important documents needed to understand the proposal being evaluated in the DEIR are:

- * Newport Banning Ranch Master Development Plan
- * Newport Banning Ranch PC Development Plan

Question: Why are these key documents not listed among the reference material, and why is no internet address provided at which they may be reviewed?

Observation: Other items regarded as important "reference material" on the City Newport Banning Ranch website (<http://www.newportbeachca.gov/index.aspx?page=109>) include:

- * Development Agreement Outline September 2011
- * Draft Affordable Housing Implementation Plan (AHIP) Aug 2011
- * Sewer Water Facilities Plan June 2011

Question: Why are these items, and perhaps others, not included in the reference section of the DEIR?

Observation: On October 20, 2011 the City of Costa Mesa held a "Joint Study Session of City Council, Planning Commission and Parks and Recreation Commission to discuss the Draft Environmental Impact Report (Draft EIR) for Newport Banning Ranch Master Plan" including a promised presentation by:

- * Tony Brine, City of Newport Beach Traffic Engineer
- * Mike Erickson, RBF Consulting
- * Debby Linn, Linn & Associates
- * Costa Mesa City Staff

and stating "The project consultants will focus on the potential environmental impacts (traffic, aesthetic, noise, etc.) of the project as it relates to the City of Costa Mesa" (see attachment).

Questions:

1. Why did the City of Newport Beach Traffic Engineer not present the lead agency's findings regarding the traffic impacts?
2. Is Mike Erickson a contributor to the DEIR? Why is he not listed in "Section 8.0 - List of EIR Preparers and Contributors"?
3. Why did the lead agency consultant(s) make no presentation?
4. Why did no one from the lead agency say anything about the anticipated environmental impacts of the project disclosed in the DEIR?
5. Why was the main 45 minute presentation (versus 5 minutes for Costa Mesa City staff) regarding the nature and scope of the project (and its reputedly positive environmental effects) given by the "Newport Banning Ranch Team" (as it is listed on the agenda: that is, by the applicant), rather than by an impartial agent such as the lead agency or its environmental consultants, with the City of Newport Beach being relegated to a brief "Overview" of the project location and EIR process?
6. Why did none of the presenters other than the Costa Mesa Traffic Engineer raise call attention to any possible adverse impacts?

7. How did the lead agency's presentation in any way advance the public's or the Costa Mesa decision maker's understanding of the environmental impacts of the proposal?	22 cont.

<p>Observation: On November 3, 2011 the City of Newport Beach Planning Commission held what was publicly noticed as "a study session on the Newport Banning Ranch Environmental Impact Report" (see attachment).</p> <p>Questions:</p> <ol style="list-style-type: none"> 1. Why was the study session introduced by the Planning Commission Chair as a meeting about BOTH the project AND the DEIR? 2. Why did City staff, in its brief overview, say nothing about anticipated environmental impacts? 3. Why was the main presentation given by the applicant rather than by an impartial agent such as City staff or BonTerra? 4. Why was there not a word in the main presentation about possible adverse environmental impacts? 5. How was the public's or the Planning Commissioner's understanding of the conclusions of the 7249 page DEIR advanced by these presentations? 	23

<p>Observation: On the final page of the main text of DEIR (page 7-173) the lead agency appears to be recommending Alternative F -- the project without the "Resort Village" -- for certification as a feasible development alternative achieving most of the applicant's objectives with less impact, yet as late as the November 3rd Planning Commission Study Session the applicant appeared to still be including the "Resort Village."</p> <p>Question: Has the applicant agreed to build Alternative F if the EIR is certified and the project approved?</p>	24

<p>CEQA Guideline 15088 permits the lead agency to respond to late comments.</p> <p>Question: Does the City of Newport Beach intend to accept late comments?</p>	23

<p>Answers to the above questions would be appreciated whether or not required by CEQA Guideline 15088.</p>	26
<p>In my opinion they raise procedural and structural concerns regarding the extent to which the lead agency fulfilled its responsibilities under CEQA which cannot be remedied without, prior to certification, conducting a complete re-write of the Newport Banning Ranch DEIR (the primary issue being that the size, complexity and lack of clarity of the document, and improper notice to the public, precludes adequate public review and comment within any reasonable time period) and re-circulating the re-written DEIR pursuant to CEQA Guideline 15088.5. Otherwise it will not be possible to certify the final EIR because it will not have been completed in compliance with CEQA as required by CEQA Guideline 15090(a)(1).</p>	27

Yours sincerely,

James M. Mosher
2210 Private Road
Newport Beach, CA. 92660
(949) 548-6229

Attachments:

- 1 - Public notice of October 20, 2011 City of Costa Mesa Joint Study Session
- 2 - Public notice of November 3, 2011 Study Session of City of Newport Beach Planning Commission

Letter O69a Jim Mosher
November 8, 2011

Response 1

The opinion of the commenter is noted.

Response 2

The Draft EIR review period started on September 9, 2011 not September 6, 2011 as indicated by the commenter. The City apologizes for any potential inconvenience associated with access to documents at the library. However it should be noted that copies of the Draft EIR were delivered to all branches of the City's library system on September 9, 2011. In addition to copies of the Draft EIR at the library, the Draft EIR was available on the City of Newport Beach website, CDs of the Draft EIR were available for purchase, and Draft EIR was at the City of Newport Beach Community Development Department.

Response 3

The State CEQA Guidelines sections referenced by the commenter identify suggested page limits and clearly note that they are not mandates.

Response 4

The time and dates of the public meetings referenced were not known at the time the Notice of Availability was published.

Response 5

In *Maintain Our Desert Environment v. Town of Apple Valley*, 120 Cal.App. 4th 396 (2004), the court held that a brief listing of the potentially significant environmental impacts in this notice was sufficient.

Response 6

Please refer to the response to Comment 2. While some documents may have been available prior to the start of the review period for the Draft EIR, the review period did not start until September 9, 2011.

Response 7

The Draft EIR and all documents referenced in the Draft IR were available at the Community Development Department. The reference documents listed in the comment were available on request.

Please also note that in *El Morro Community Assn. v. Cal Dept Parks & Rec.*, 122 Cal.App.4th 1341 (2004), the court rejected the claim that cited documents were required to be available at a library or other location. The court noted this requirement applies only to documents that are formally incorporated by reference into the EIR, and not to documents merely cited in an EIR.

Response 8

Please refer to Section 4.5, Hazards and Hazardous Wastes, of the Draft EIR. The property is not used for the disposal of hazardous waste materials. The Project site is not identified on the Cortese List, which is the list of hazardous materials sites that is compiled pursuant to Section 65962.5 of the *California Government Code*. In addition to the Cortese List, the federal, State and local governmental agencies maintain other lists of sites where hazardous materials may be present or used. The Phase I ESA Update includes an EDR database search report, which is provided as an appendix to the Phase I ESA Update (Appendix D). Based on review of the EDR report, the Phase I ESA Update identifies the Project site on the following databases:

- Comprehensive Environmental Response, Compensation, and Liability Information System – No Further Remedial Action Planned (CERCLIS-NFRAP);
- Orange County Industrial Site;
- Resource Conservation and Recovery Act – Large Quantity Generator (RCRA-LQG);
- Underground Storage Tank, California Facility Inventory Database Underground Storage Tank, and the Statewide Environmental Evaluation and Planning System Underground Storage Tank (Underground Storage Tank, CA-FID Underground Storage Tank, and SWEEPS Underground ST databases);
- Facility Index System (FINDS);
- Aerometric Information Retrieval System (AIRS);
- Integrated Compliance Information System (ICIS);
- Spills, Leaks, Investigations, Cleanup (SLIC); and
- Hazardous Waste Information System (HAZNET).

The database listings above are consistent with the known historic and ongoing oilfield operations and previous remedial actions on the Project site which have been discussed and analyzed in the Draft EIR.

With respect to the Notice of Availability, the State CEQA Guidelines Section 15087 requires the notice to include the “presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code....As noted above, the Project site is not identified on the Cortese List, which is the list of hazardous materials sites that is compiled pursuant to Section 65962.5 of the *California Government Code*.

Response 9

Copies of the Draft EIR were not provided to the City of Huntington Beach or Orange County library system. There is no such requirement.

Response 10

The noted subsection of Section 1.0, Introduction, was not included in the Table of Contents of the Draft EIR. The State CEQA Guidelines does not specify for format for a Table of Contents. The commenter’s question does not raise an environmental issue.

Response 11

The State CEQA Guidelines Section 15051 identifies the criteria for identifying the Lead Agency. In part, it states “Where a city rezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The Local Agency Formation Commission shall act as a Responsible Agency”.

The Newport Banning Ranch EIR addresses the proposed annexation of the property into the City of Newport Beach. It is intent of the City to have LAFCO Orange County use this EIR; however, LAFCO can determine that additional environmental documentation is required.

The commenter’s reference to bias in *Bozung v. LAFCO* is not applicable to the proposed Project. *Bozung v. LAFCO*, in part addressed whether LAFCO should have been the Lead Agency in a proposed shift in the Sphere of Influence boundaries which would have influenced subsequent land development. The Newport Banning Ranch property is, in part, located in the City of Newport Beach with the remainder totally within the City’s Sphere of Influence. Additionally, a specific development proposal for the property has been provided to the City for consideration. Further, LAFCO Orange County, as previously noted, can use the Newport Banning Ranch Final EIR for consideration of the requested annexation or require additional environmental documentation.

With respect to the Newport Coast development, the project applicant requested that the County of Orange be the lead agency. Subsequently, the property was annexed into the City of Newport Beach.

Response 12

Neither the CEQA Statute nor the CEQA Guidelines defines “meaningful” or “unnecessary”. The Newport Banning Ranch EIR has been prepared in compliance with the State CEQA Guidelines Section 15002 which states that the “The basic purposes of CEQA are to: (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities. (2) Identify the ways that environmental damage can be avoided or significantly reduced. (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved”.

Please refer to Section 4.0, Environmental Setting, Thresholds of Significance, Environmental Impacts, Mitigation Program and Level of Significance After Mitigation, which describes the differences between Standard Conditions; Project Design Features; and Mitigation Measures.

Section 7.0, Alternatives to the Proposed Project, analyzes several alternatives to the Applicant’s proposal. An EIR does not make a recommendation as to whether a project or an alternative to a project. The Lead Agency takes the information presented in an environmental document into consideration as to whether to approve a project or an alternative to a project.

Response 13

The opinion of the commenter is noted.

Response 14

The State CEQA Guidelines do not require the preparation of an Initial Study if it is determined that an EIR is required (CEQA Guidelines §15060(d)). Please refer to Section 2.3 of Section 2.0, Introduction, of the Draft EIR which discusses the steps the City took in determining the scope of the EIR.

Response 15

Please refer to the response to Comment 14.

Response 16

The opinion of the commenter is noted. The Draft EIR addresses the potential environmental impacts of the proposed development project in accordance with CEQA and the CEQA Guidelines. Section 10.0 of the Draft EIR provides a glossary of terms and acronyms that may not be familiar to the public.

Response 17

An index is not required as noted in the CEQA Guidelines section identified by the commenter.

Response 18

In the printed copy of the Draft EIR, the graphics were provided in a separate volume from the narrative to more easily cross reference graphics and text.

Response 19

The CEQA Guidelines section referenced by the commenter is not a mandate. The length of the Draft EIR reflects the outcome of legislation and court decisions that have required CEQA documents to examine more issues at greater levels of detail. For example, Assembly Bill 32 (the California Global Warming Solutions Act of 2006) resulted in EIRs evaluating greenhouse gas emissions which previously was not typically done. As such, arbitrarily limiting the length of a Draft EIR to less than 150 pages (or 300 pages) would be at odds with the CEQA objectives of disclosure. As such, the Newport Banning Ranch Draft EIR's length would not violate CEQA or render it inaccessible to decision-makers or the public.

Response 20

Please refer to the response to Comment 19. The opinions of the commenter regarding the ordering of information in Section 1.0, Executive Summary do not address an environmental issue. No additional discussion is necessary. With respect to the commenter's question regarding issues of controversy and issues to be resolved, please refer to Section 2.0, Introduction, of the Draft EIR.

Response 21

Please refer to Section 3.0, Project Description, which identifies that both the Master Development Plan and the NBR-PC are available on the City of Newport Beach website and are on file at the City of Newport Beach Community Development Department and available for review during regular business hours.

The inadvertent exclusion of the two documents from Section 9.0, References, has been changed and is incorporated into the Final EIR as follows:

Newport Banning Ranch LLC. 2011a (August). Newport Banning Ranch Master Development Plan. Newport Beach, CA.

_____. 2011b (August). Newport Banning Ranch Planned Community Development Plan. Newport Beach, CA.

Response 22

The commenter's questions regarding the content and format of the City of Costa Mesa's public meeting does not raise an environmental issue relevant to the Draft EIR.

Mike Erickson is identified in Section 8.1.1 of the Draft EIR.

Response 23

The commenter's questions regarding the content and format of the City of Newport Beach study session does not raise an environmental issue relevant to the Draft EIR. The opinions of the commenter are noted.

Response 24

Please refer to the response to Comment 12.

Response 25

The City accepted comment letters received after the close of the 60-day public review period.

Response 26

The comment is noted.

Response 27

The opinion of the commenter is noted.

Alford, Patrick

Comment Letter O69b

From: Jim Mosher [jimmosher@yahoo.com]
Sent: Tuesday, November 08, 2011 4:32 PM
To: Alford, Patrick
Subject: Additional Comments on Newport Banning Ranch Draft Environmental Impact Report

Dear Mr. Alford,

I am submitting these comments as part of the public review of the Newport Banning Ranch (NBR) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2009031061, and ask that they be included in the record of this and all subsequent proceedings regarding that project.

Observation: At its November 2, 2011 hearing (Agenda Item 16a), the California Coastal Commission found major environmental problems with even a modest two-lane, low-traffic road following the alignment of the proposed "Bluff Road" near its connection with West Coast Highway.

1

Question: To what extent were less impactful routes explored for the present project and what were the conclusions?

Observation: Also at its November 2, 2011 hearing (Agenda Item 16a), the California Coastal Commission found major environmental problems with what it believed to be unpermitted mowing of what, in the absence of the mowing, would have been Environmentally Sensitive Habitat Area protected by the Coastal Act.

2

Questions:

1. Has unpermitted mowing occurred on the Newport Banning Ranch property?
2. Can development be allowed on areas which, in the absence of mowing or other human intervention, would be ESHA?

Observation: NBR DEIR page 4.2-9 says "The City of Newport Beach General Plan does not identify any scenic vistas or view points on the Project site."

Questions:

3

1. Isn't this largely because the project site is outside the City's current jurisdiction?
2. Might not new scenic vistas or view points be identified if the site is cleaned up and annexed, and how would this affect evaluation of the impacts of the proposed development?

Observation: NBR DEIR page 4.2-9 also says "Additionally, West Coast Highway is not a State- or Locally-designated scenic highway."

4

Question: Again, might this not change if the area were cleaned up?

Observations:

1. The stability of the bluffs, their historic rate of recession, and the extent to which their stability has been (and may be) affected by human activity all seem important considerations in deciding if the area is suitable for housing.
2. According to DEIR page 4.3-5, the historic rate of bluff retreat was determined by examining a sequence of aerial photos and topographic maps.
3. The conclusion is apparently that the retreat rate has been between 0.6 and 4.2 feet per year (page 4.3-11).
4. Conclusions regarding the significance of this would presumably be found in the answer to Threshold Criterion 4.3-6: "Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?" (pages 4.3-17 to 4.3-20).
5. As most of the DEIR the conclusions discussed on pages 4.3-17 to 4.3-20 are not understandable to the non-specialist, and do not use the term "bluff retreat," which does not reappear until further down page 4.3-20 where it used in connection with the discussion of "Threshold 4.3-5 Would the project result in substantial soil erosion or the loss of topsoil?"

Question:

1. How can the public assess the accuracy of the bluff retreat conclusions without seeing the historic aerial photos (which are reproduced in neither the main text nor the technical appendices)?
2. What term in the discussion about the stability of the area on page pages 4.3-17 to 4.3-20 is equivalent to the term "bluff retreat" used in the earlier discussion?
3. If a term not exactly equivalent is used, how are they related?
4. Is the range of historic retreat rates cited the range observed in different years? Or at different locations in the project area?
4. Even if the project doesn't result in a substantial increase in soil erosion, isn't the historic rate of 0.6 and 4.2 feet per year a problem for maintaining the setbacks described elsewhere in the DEIR?

Observation: The Community Park described on page 4.8-10 appears to duplicate facilities planned by the City of Newport Beach at nearby Sunset Ridge Park.

Question: How can the two projects (Newport Banning Ranch and Sunset Ridge Park) be considered in isolation, rather than together, including, but not limited to, consideration of the possibility that taken together they represent an excessive conversion of coastal habit to active sports uses?

<p>Observation: Page 4.13-7 says "The purpose of the Newport Banning Ranch test investigations is to determine whether any of the 11 archaeological sites present on the property are eligible for listing in the CRHR or the NRHP, and if they would thus warrant further consideration in the planning process."</p> <p>Question: Why are impacts to archaeological sites important only they are eligible for listing in the CRHR or the NRHP (cf. CEQA Guideline 15064.5(a)(4))?</p> <p>***</p>	7
<p>Observation:</p> <p>1. Page 4.13-25 says "Three archaeological sites (CA-ORA-839, CA-ORA-8448, and CA-ORA-906) are deemed eligible for listing on CRHR and NRHP. Disturbance activities could also impact unknown resources. This impact would be mitigated to a level considered less than significant with implementation of MMs 4.13-1 and 4.13-2."</p> <p>2. Page 4.13-31 says of CA-ORA-906 that "Mitigation shall be in the form of data recovery excavation to collect the scientifically consequential data that the site retains prior to its destruction by Project grading."</p> <p>Question: How can destruction of a site be regarded as a less than significant impact?</p> <p>***</p>	8
<p>Observations:</p> <p>1. Section 4.14.3 of the DEIR seems to conclude that no new schools will be needed to accommodate children living at the project site.</p> <p>2. Table 4.14-4 suggests that most of the nearby elementary schools are already beyond their capacity, sometimes substantially.</p> <p>Questions:</p> <p>1. What evidence supported the conclusion that there was room to add more classrooms to the already overcrowded schools, without any need to build new schools?</p> <p>2. Why is no property on the project site being dedicated for school purposes to relieve the overcrowding, including overcrowding which might result from expected population growth in surrounding areas?</p> <p>***</p>	9
<p>Observation: Section 6 of the DEIR lists many significant environmental impacts of the project that it is claimed cannot be mitigated, including, among other things, many significant irreversible environmental changes listed in Section 6.2.</p> <p>Question: Why were these anticipated adverse impacts not brought out more clearly in the summary and in the Notice of Availability of the DEIR?</p> <p>***</p>	10
<p>Observation: Page 6-7 says: "Bluff Road and North Bluff Road ... would not provide a roadway connection where roadways do not currently exist. The Project would not induce growth through the provision of infrastructure."</p>	11

<p>Question: Would not Bluff Road/North Bluff Road provide a shorter route between points and hence provide an infrastructure conducive to growth?</p>	11 cont.
<p>***</p> <p>Observation: In the discussion on DEIR page 7-64 dismissing the economic feasibility of acquiring Banning Ranch for open space with Renewed Measure M funds, the DEIR appears to rely exclusively on statements made by the applicant and a City-hired consultant.</p>	12
<p>Question: Shouldn't the EIR consider input from outside entities with a more regional perspective who might be working acquiring Banning Ranch with Measure M funds (such as the Banning Ranch Conservancy, or OCTA itself)?</p>	***
<p>***</p> <p>Question: Since the DEIR considers the economic feasibility of realizing the open space acquisition option, should the DEIR disclose the economic incentives City officials might see in approving the development option as proposed (developer fees, transient occupancy taxes and others) and which might make it difficult for them to make an unbiased assessment of the environmental impacts of that option?</p>	13
<p>***</p> <p>Question: How much effort was made to anticipate environmental impacts other than those appearing in the standard checklist?</p>	14
<p>***</p> <p>Question: Should the lead agency have provided better guidance to the public on the kind of comments that would be most useful for improving the EIR and the format that would be most efficient for incorporating them?</p>	15

Yours sincerely,

James M. Mosher
2210 Private Road
Newport Beach, CA. 92660
(949) 548-6229

Letter O69b Jim Mosher
November 8, 2011

Response 1

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment. The proposed Primary Road is consistent with and would implement the City of Newport Beach's General Plan's Circulation Element Master Plan of Streets and Highways and the Orange County Transportation Authority's Master Plan of Arterial Highways.

Response 2

Please refer to Topical Response: Mowing and Fuel Modification.

Response 3

The General Plan addresses both the City of Newport Beach and its Sphere of Influence. It is speculative as to whether future changes to the General Plan would identify a scenic vista on the Newport Banning Ranch property.

Response 4

It is speculative as to whether this segment of West Coast Highway would be designated a State or local scenic highway. The commenter's question does not address an environmental issue relevant to the Draft EIR.

Response 5

The aerial photos were provided to the commenter and are available at the City of Newport Beach Community Development Department for review during regular business hours. In general bluff retreat and stability are two different mechanisms.

Bluff retreat refers to the incremental loss of bluff edge due to erosional forces (i.e., wind, water erosion, etc.). Bluff stability refers to the ratio of resisting forces to driving forces within a slope indicating whether a slope may be subject to complete or partial failure.

Slope stability is usually divided into two categories: surficial and deep seated stability. Deep seated stability has no relationship to bluff retreat. Surficial stability which would involve shallow slumping of a bluff face is related in that slumping of the slope face would be involved in estimates of bluff retreat.

The range is a consequence of both different locations and years.

No. Following completion of the development with controlled surface drainage, bluff repairs and on-site and off-site flood-control improvements, bluff retreat is anticipated to be reduced to levels that are adequately addressed with the proposed setback.

Response 6

The potential biological impacts of both park projects are considered in the Newport Banning Ranch Draft EIR. With respect to the proposed Community Park facilities on the Newport Banning Ranch Project site, 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 7

The significance criteria used by the City of Newport Beach for the evaluation of potential impacts to historic resources complies with the State CEQA Guidelines Section 15064.5, Determining the Significance of Impacts to Archeological and Historical Resources. As discussed in State CEQA Guidelines Section 15064.5, resources do not have to be on or eligible for the CRHR or the NRHP to be considered significant.

Response 8

Data recovery is considered a feasible mitigation method in accordance with the State CEQA Guidelines.

Response 9

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 10

Section 1.0, Executive Summary, identifies all potential environmental impacts that cannot be mitigated to a less than significant level. With respect to the Notice of Availability, in *Maintain Our Desert Environment v. Town of Apple Valley*, 120 Cal.App. 4th 396 (2004), the court held that a brief listing of the potentially significant environmental impacts in this notice was sufficient.

Response 11

Bluff Road and North Bluff Road would provide a connection between West Coast Highway on the south and 19th Street on the north that would provide capacity beyond what is needed to serve the Project site. However, this roadway has been on the City's Circulation Element Master Plan of Streets and Highways and the Orange County Transportation Authority's Master Plan of Arterial Highways for a number of years. This roadway is intended to provide an additional north-south roadway to alleviate congestion on parallel roadways. The Project would accommodate planned growth but would not induce growth through the provision of infrastructure.

Response 12

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 13

Any such economic incentives, as well as social, and other public benefits, would be identified in a Statement of Overriding Considerations required to certify the Final EIR.

Response 14

It is unclear what other environmental impacts that commenter is referencing. Please refer to Section 2.3 of Section 2.0, Introduction, of the Draft EIR which discusses the steps the City took in determining the scope of the EIR.

Response 15

City staff was available during the public review period to address such concerns with the applicant; the comment is noted.

2nd November, 2011

Comment Letter O70

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

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

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

I am stunned by the sheer size and complexity of the DEIR. It is far too much for one individual concerned citizen to plow through and really understand well enough to make informed comments. Thus, I'd simply like to request that the public comment period be extended, say, for an additional 60 days, so we can all get our arms around this huge document.

Sincerely,
Mr. Carl Mumm
319 Cedar Street
Newport Beach, CA, 92663

949-642-0031
ted@3mumms.org

Letter O70 **Carl Mumm**
November 2, 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 O71a

Alford, Patrick

From: hgnadel@aol.com
Sent: Friday, September 23, 2011 3:18 PM
To: Alford, Patrick
Subject: Re: Newport Banning Ranch DEIR
Attachments: DEIR_response_0918.docx

Dear Mr Alford,

I am very grateful for your taking the time within your busy schedule to respond. I am taking the liberty to email you my response to the DEIR for Banning Ranch, since you indicated that some technical problem added odd characters to my email and attachment.

We love our pets, our home, our community and I am an animal activist and wild life protector, member of IFAW, PETA, WWF etc...

I truly appreciate for the Planning Commission and City Council to have access to my comments and response. I am convinced that all my neighbors and ALL of Newport Beach constituents will have similar opinions and comments pertaining to the developers' project.

Thank you again, Mr Alford,

Best,

Helen G Nadel

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

From: Alford, Patrick <PAlford@newportbeachca.gov>
To: Helen G Nadel <hgnadel@aol.com>
Sent: Mon, Sep 19, 2011 8:26 am
Subject: RE: Newport Banning Ranch DEIR

Dear Ms. Nadel,

Thank you for taking the time to read and comment on the Newport Banning Ranch DEIR. Your comments will be forwarded to the City's environmental consultant, who will prepare detailed responses. Comments and responses will be incorporated into the final EIR, which will be reviewed by the Planning Commission and City Council sometime early next year.

You should be aware that both your email and PDF attachment contain some odd characters and symbols (see below).

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

From: Helen G Nadel [<mailto:hgnadel@aol.com>]
Sent: Sunday, September 18, 2011 8:04 PM
To: Alford, Patrick
Subject: Newport Banning Ranch DEIR

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

(DEIR response)	
Helen G Nadel	
6 Summerwind Court	
Newport beach, CA 92663	
310 346 9119	
To Patrick Alford/City of Newport Beach	
hgnadel@aol.com	
09/15/2011	
Dear Sir,	
I am a concerned resident of Newport Crest.	
I am extremely concerned especially with the environmental effect which the Banning Ranch development project would create within our pristine coastal area.	
The question is, would the development project or the proposed alternatives present a significant environmental effect will impact our very lives --all of our lives and our children's within our entire coastal area?	
1	
Alternatives analyzed in this EIR are listed and summarized below.	
• Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).	
• Alternative B: Newport Beach General Plan/Open Space Designation. This would seem to be the alternative which would bring the least environmental damage. But is it really acceptable for our health, the animal and plant life?	
~~~~~The following roadways would be constructed consistent with the <i>City of Newport Beach General Plan's</i> Circulation Element: (1) a north-south road with a southern terminus at West Coast Highway and extending to a northern terminus at 19th Street (Bluff Road and North Bluff Road); (2) the extension of 15th Street from its existing terminus to Bluff Road within the Project site; (3) the extension of 16th Street from its existing terminus to Bluff Road within the Project site; and (4) the extension of 17th Street from its existing terminus to Bluff Road within the Project site. As with the proposed Project, Alternative B also assumes the deletion of the future extension of a second road through the Project site and its connection to West Coast Highway; this action would require the approval of a General Plan Amendment to the City's	
2	

Circulation Element and an amendment to the Orange County MPAH. Consistent with the roadway assumptions for the proposed Project, North Bluff Road (extending from 17th Street to 19th Street) would transition from a four-lane divided to a two-lane undivided road to 19th Street. Alternative B would eliminate significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts when compared to the proposed Project; however, there would still be impacts that could not be reduced to a level considered less than significant.*****

• **Alternative C:** Proposed Project with Bluff Road Extending to 17th Street.

***** Alternative C would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O3) (Threshold 4.10-3).*****

***** Alternative C would emit quantities of greenhouse gases (GHGs) that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO2e/yr) significance threshold. Development associated with Alternative C would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).*****

• **Alternative D:** Reduced Development and Development Area.***** This Alternative does not eliminate any of the significant impacts of the proposed project.*****

***** Alternative D would emit quantities of GHGs that would exceed the City's 6,000 MTCO2e/yr significance threshold. Similar to the Project, Alternative D would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change. (Threshold 4.11-1).*****

***** **Alternative E:** Reduced Development Area.

Regional (mass) emissions of NOx are forecasted to exceed applicable thresholds in some construction years. Though MM 4.10-1 would reduce the emissions to less than significant levels, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured. Therefore, for purposes of this EIR, the impacts are found to be significant and unavoidable impact (Threshold 4.10-2).

• Long-term operational emissions of criteria pollutants would not exceed the SCAQMD

2 cont.

mass emissions thresholds from initial occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile organic compounds (VOCs) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Therefore, the impacts remain significant and unavoidable (Threshold 4.10-2).

- Alternative E would have cumulatively considerable contributions to regional pollutant concentrations of O₃ (Threshold 4.10-3).

- Alternative E would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative E would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).

- *Alternative F:*

*****Alternative F: Increased Open Space/Reduced Development Area.

regional (mass) emissions of NO_x are forecasted to exceed applicable thresholds in some construction years. Though MM 4.10-1 would reduce the emissions to less than significant levels, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured. Therefore, for purposes of this EIR, the impacts are found to be significant and unavoidable (Threshold 4.10-2).

- Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as development continues beyond 2020, emissions of VOCs and CO would exceed the significance thresholds, principally due to vehicle operations (Threshold 4.10-2).

- Alternative F would have a cumulatively considerable contribution to regional pollutant concentrations of O₃ (Threshold 4.10-3).

- Alternative F would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative F would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).*****

2 cont.

<p>From all the proposed alternatives, it is my conclusion that only one allows for our children's health and ours to remain unaffected.</p> <p>Alternative A is the only option which we have in order to maintain the fragile balance of our environment. This is only acceptable solution in order to sustain animal and plant life as the other alternatives would generate undoubtedly the health hazards which I describe below.</p>	2 cont.
<p>As per the other alternatives, quite a few questions arise:</p> <p><b><u>How many cars will be driving back and forth through our coastal area releasing greenhouse gases in the atmosphere? (Alternative B,C,D,E,F).</u></b></p> <p>The threat to the public health and welfare is great — hexafluoride (SF6), carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur will be released in the atmosphere. The atmospheric concentrations of these key greenhouse gases will be creating an immense threat to our environment and climate change now, and for current and future generations.</p> <p>R:\Projects\Newport\J015\IDraft EIR\1.0 ExSum-090411.doc 1-10 Newport Banning RanchDraft Environmental Impact Report. Section 1.0</p> <p><b>“This alternative (A) would not have any impacts that are significant and unavoidable, whereas the proposed project would have significant unavoidable impacts associated with land use compatibility (due to noise, and night lighting), aesthetics, transportation, air quality, greenhouse gas emissions, and noise.”</b></p> <p><b><u>How much more greenhouse gases do we need in the atmosphere which will affect your breathing and your children's? How many more Asthma cases do we need to see develop? Upper respiratory and lung diseases? Lung cancer?</u></b></p> <p>In all the cases, whichever Alternative but A, would result in vehicles traversing from 15th, 16th, and 19th street to Pacific Coast Highway. The combined emissions of CO2, CH4, N2O, and HFCs from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change.</p> <p><b>Speaking of carbon foot print, can you imagine the impact to our environment which will be brought about by the residents of 1,375 homes, the guests of the 75 room resort and the daily -7 days a week visitors of the 7,500 square feet commercial space?</b></p> <p>The animals will not just be affected: they will perish.</p>	3
<p><b><u>What about human life?</u></b></p> <p>Almost every day that I take my little Maltese dog out within our Newport Crest complex, I see an emaciated coyote wandering around our very grounds! Two days ago, I saw TWO in two different areas of Newport Crest.</p> <p>I have been a resident of Newport Crest since 2002, and never did we see animals look for food outside of the Banning Ranch area, before. When I contacted the Newport Crest HOA, they indicated that they were getting more and more reports of such occurring from the Newport Crest Residents. A couple of</p>	4

<p>years ago, before the developers started the mowing and began the planned, systematic destruction of the plant life is Banning Ranch, we used to see squirrels and rabbits hop around Newport Crest, and only squirrels and rabbits. The overflow of squirrels and rabbits seemed to increase suddenly when the insanely extended mowing started. Then, coyotes started sneaking around our very grounds of Newport Crest, which is adjacent to Banning Ranch, following the displaced food chain. A</p> <p>t this point, I NEVER SEE RABBITS ANYMORE, PRACTICALLY NO SQUIRRELS. *****ONLY COYOTES*****within our very grounds of Newport Crest. The exact ground, which we own and where we take our dogs. Right in our backyards. On our own lawns by our condos.</p> <p><b>To sum it up, here is a glance into our already unfolding personal tragedy in Newport Crest, and surrounding areas:</b></p> <p>Ever since the developers have been mowing and destroying our coastal ecological balance, squirrels and rabbits looking for food on our premises, invaded our grounds. The coyotes ate them. The food chain seems to have been completely disrupted. The coyotes remain, killing our pets –every day I see a note on our mailboxes, describing a <i>lost</i> cat... The coyotes are dying of hunger, and they are looking for my dogs. I will sue the developers personally, should anything happen to my furry family members.</p> <p>WHAT I DESCRIBED ABOVE IS ONLY THE RESULT OF THAT INTENSE MOWING. WHAT WILL HAPPEN IF THE DEVELOPMENT TAKES PLACE? What will happen, as well, if any of the proposed alternatives for that matter, but Alternative A comes to fruition?</p>	4 cont.
<p><b>The current development footprint clearly intrudes into California Gnatcatcher and Cactus Wren habitat on Banning Ranch.</b></p>	5
<p><i>Some of the developers' preposterous lies:</i></p> <p>LIE: "Habitat suitable for the wintering burrowing owl will also be restored and preserved"</p> <p><b><u>How will the large four lane road, affect the burrowing owls?</u></b></p> <p><b>Fact Check:</b> Burrowing Owls are a bird species that has seen their numbers plummet in recent years due to loss of habitat. The current planned development on Banning Ranch has a large four lane road (Bluff Road) placed directly over most of the documented wintering sites for these migratory birds.</p>	6
<p>LIE: "Many other animals will see their habitat improved, expanded and protected."</p> <p><b><u>How will other animals see their habitat destroyed by the constructions planned by the developers, and what impact would alternative B, C, D, E and F have on animal life in Banning Ranch?</u></b></p> <p><b>Fact check:</b> Rather than enhancing habitat, the construction of 1,375 homes (in effect, a small town) on the Banning Ranch mesa would have a serious detrimental effect on the habitat of birds and other wildlife <b>living there.</b></p>	7
<p><b><u>How can any of the following impacts on our fragile environmental conditions be considered, really????? How? How?</u></b></p> <p>***** Air Quality</p>	8

• Without mitigation, regional (mass) emissions of NOx are forecasted to exceed applicable thresholds in some construction years. Though MM 4.10-1 would reduce the emissions to less than significant levels, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured. Therefore, for purposes of this EIR, the impacts are found to be significant and unavoidable (Threshold 4.10-2).

3 The Newport Boulevard and 17th Street intersection has a Project-related impact using the Highway Capacity

Manual (Caltrans methodology), as well as an impact using the Intersection Capacity Utilization methodology.

#### Section 1.0

#### Executive Summary

R:\Projects\Newport\J015\IDraft EIR\1.0 ExSum-090411.doc 1-23 *Newport Banning Ranch*

#### Draft Environmental Impact Report

• Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Project development continues beyond 2020, emissions of VOC and CO would exceed the significance thresholds, principally due to vehicle operations. Therefore, the impacts remain significant and unavoidable (Threshold 4.10-2).

• The Project would have cumulatively considerable contributions to regional pollutant concentrations of O3 (Threshold 4.10-3).

#### Greenhouse Gas Emissions

• The Project would emit quantities of GHGs that would exceed the City's 6,000 MTCO2e/yr significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1). "*****"

8 cont.

This is a simple decision, really.

This is the last of the natural, very much needed open space within one of Orange County most populated areas. This is the habitat of many animals and a delicate ecosystem that is home to so many native plants and animals and provides a home for endangered species and for migrating and wintering

9

birds. There will be health, environmental and legal consequences to all this. The developers will not line their pockets at the cost of human, animal and plant life –or will they?

9 cont.

Sincerely,

Helen G Nadel

**Letter O71a Helen Nadel**  
September 19, 2011

### **Response 1**

The potential environmental impacts associated with the proposed Project are addressed in the Draft EIR and are summarized in Section 1.0, Executive Summary, of the Draft EIR.

### **Response 2**

The question of “cars driving back and forth” is interpreted to mean trips generated by the project. For Alternatives C, D, E, and F, the average daily number of trips, as stated in Section 7.0 of the Draft EIR, are as follows:

- B: Not calculated because there would be not project development. Although this Alternative would not generate a substantial number of trips, it would modify current traffic patterns in the area. The modification may reduce vehicle miles traveled.
- C: 14,989, the same as for the proposed Project
- D: 14,749
- E: 15,766
- F: 13, 645

### **Response 3**

Responses to questions relating quantities of greenhouse gases (GHG) to breathing, asthma, lung disease, and cancer would be speculative. It is noted that these health effects are generally not associated with GHG, but with criteria or toxic air pollutants and other environmental factors. The impact to the environment of the proposed project is “imagined” by the Draft EIR analysis.

### **Response 4**

Please refer to Topical Response: Mowing and Fuel Modification. Unfortunately, coyote presence in the urban/natural interface is not a new or uncommon problem. Because residential development has occurred adjacent to natural areas, coyotes have discovered that the “human environment can be ideal in providing them with abundant food choices such as readily available household garbage, pet foods, small pets, vegetable gardens, water, and vast assortments of other leftovers conveniently accessible day or night. Oftentimes food is intentionally provided by well-meaning persons who believe they are doing a good deed.”⁴² The coyotes that occur on the Project site will continue to venture into adjacent residential areas as long as these resources are available.

Page 4.6-66 of the Draft EIR acknowledges this potential issue relative to the proposed Project. “Development and park uses built adjacent to natural open space, particularly near the lowland, may create urban-wildlands interface issues. Coyotes may attack cats and small dogs from residences. Outdoor cats may attack native birds, lizards, and small mammals, which is especially of concern in habitat potentially supporting Endangered, Threatened, or other special status wildlife species. These urban-wildlands interface impacts would be considered potentially

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⁴² [http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1021&context=vpc10&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Drabbits%2Burban%2Bnatural%2Binterface%26hl%3Den%26as_sdt%3D0%26as_vis%3D1%26oi%3Dscholar#search=%22rabbits%20urban%20natural%20interface%22](http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1021&context=vpc10&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Drabbits%2Burban%2Bnatural%2Binterface%26hl%3Den%26as_sdt%3D0%26as_vis%3D1%26oi%3Dscholar#search=%22rabbits%20urban%20natural%20interface%22)

significant. Implementation of Mitigation Measure (MM) 4.6-16, which requires development and implementation of an urban-wildlands interface brochure and public education program, would reduce this impact to a less than significant level.

## Response 5

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.

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 commenter⁴³. The Draft 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 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.

⁴³ <http://www.naturereserveoc.org/projects.htm>

## **Response 6**

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. 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 7**

The City is unable to find the quote “Many other animals will see their habitat improved, expanded and protected” within Section 4.6 of the Draft EIR. This is not a statement that was made in this section of the Draft EIR.

Regarding alternatives, Section 7.0 of the Draft EIR includes over 170 pages of analysis and discussion of the alternatives to the proposed Project. This includes the discussion of biological resource impacts for all alternatives. Table 7-2 provides a summary of the impacts and comparison of the alternatives to the proposed Project.

Impacts from implementation of the proposed Project were found to be significant for 16 topical issues in the Draft EIR. This discussion can be found from Draft EIR pages 4.6-44 through 4.6-72.

## **Response 8**

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 9**

The opinions of the commenter are noted.

Comment Letter O71b

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DEVELOPMENT  
CITY OF NEWPORT BEACH

November 8, 2011  
Patrick Alford  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

RE: Banning Ranch Draft Environmental Report, Air Quality

Dear Mr. Alford:

I'm a resident of Newport Crest and have several questions about the Air Quality section of the DEIR. On page 4.10-9, *Existing Development*, it reads as follows:

<p>"The Project site is currently operating as a crude oil and gas production facility. Horizontal Drilling, LLC and their operating affiliate, WNOC, manage oil and gas production operations on most of the site. WNOC has approximately 85 active/idle wells spread across most of the approximate 401-acre site. In addition, the City operates 12 oil wells, 1 water injection well, and 1 oil processing facility located at the West Coast Highway entrance area. Existing oil operations are addressed in more detail in Section 3.0, Project Description, and Section 4.5, Hazards and Hazardous Materials, of this EIR."</p>	1
<p>Is Horizontal drilling done in the oil field operations? Where is it being done and how extensive is the horizontal drilling? The number of active/idol wells is stated as 85. Is this the exact number? The Hazards &amp; Hazardous Materials section (4.5) lists the number of active/inactive wells as 50-100.</p>	2
<p>What is a water injection well? Is hydraulic fracturing also done or has it ever been done on the site? If so, what measures are taken to avoid the toxic emissions associated with hydraulic fracturing? Has the EPA recently proposed new regulations that deal with hydraulic fracturing emissions? If so, is the oil field operation in compliance with these regulations?</p>	3
<p>Where are the nearly 400 abandoned wells on the Site? Is there a map of active, potentially active and abandoned wells? Are the locations of any wells unknown? Are there requirements that wells not exist within a certain number of feet of any existing structure or new development? If so, what is the required distance?</p>	4
<p>On page 3/17 of Appendix A of the Banning Ranch Draft Remedial Action Plan (DRAP), prepared for Newport Banning Ranch LLC, the Orange County Fire Authority Guideline deals with building restriction zones. It reads as follows:</p> <p><b>"1. Building Restriction Zone:</b> To the <i>maximum</i> extent feasible, the slab or foundation for a proposed building shall not be constructed over or within 10 feet of an abandoned oil/gas well. If specific site characteristics make such a setback unfeasible, construction of structures <i>may</i> be allowed within the Building Restriction Zone provided that the following mitigation measures are incorporated.</p>	5

The Proposed construction of one- or two-family dwellings within the Building Restriction Zone shall be subject to further evaluation and/or mitigation. A. A soil gas investigation and report, meeting the criteria contained herein, shall be conducted in the immediate vicinity (25 foot radius) of any abandoned oil/gas well that will be located within the Building Restriction Zone. The report shall be submitted to OCFA.

[...] C. A Registered Professional shall review the soil gas investigation report and building plan and recommend soil gas mitigation measures, if any, that may be required for the site beyond those contained in this guideline. Any additional mitigation measures recommended shall be included in the Mitigation Plan. [...]

**** THE OCFA ADVISES AGAINST THE CONSTRUCTION OF ANY STRUCTURE OVER ANY WELL ****

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

5 cont.

Does the Project Applicant intend to follow OCFA's advisement against development over wells? Is an overlay map available of the proposed development and of all wells on the Project site? If not, I would like to request that such a map be included in the final version of the EIR. The North Village area in particular appears to be where the majority of the housing will be built, but it's also one of the areas where the most wells and even some old oil sumps are located, according to a display at one of the Project Applicants' community events. It's not possible to calculate what the potential environmental impact will be without knowing where development will be in proximity to the wells. Could I be notified by email when such an overlay map is available?

Thank you for your attention to this matter.

Sincerely,



Helen Nadel  
6 Summerwind Court  
Newport Beach, CA 92663  
hgnadel@aol.com

**Letter O71b Helen Nadel**  
November 8, 2011

**Response 1**

The comment is noted

**Response 2**

West Newport Oil Company (WNOC) and the mineral resources are wholly owned by Horizontal Drilling, LLC, an entity separate and independent of the surface owners. Directional drilling, with some horizontal sections, has been done on a limited basis within the subsurface mineral lease. As stated in Section 4.10, Air Quality, of the Draft EIR, “WNOC has approximately 85 active/idle wells spread across most of the site.” The oil operator occasionally drills new wells and abandons older ones. No reference can be found to the stated “50-100” range attributed to Section 4.5.

**Response 3**

A water injection well is a well that the oil operator uses to direct produced waters back into the oil zone. The oil operator does not use hydraulic fracturing (fracking) in this field.

**Response 4**

A map of the abandoned, active, and potentially active oil wells is provided as Figure 3 in Appendix D of the Draft EIR. As set forth in the proposed Newport Banning Ranch Planned Community Development Plan (NBR-PC), all habitable structures within the Project site must be set back a minimum of 10 feet from any abandoned oil well head and a minimum of 100 feet from any active oil well head.

**Response 5**

The proposed Project would follow the Orange County Fire Authority Guideline C-03 and would not propose any habitable structures over or within 10 feet from an abandoned well. An overlay map showing the proposed development and all wells is not available as one graphic. However, individually these graphics are available in the Draft EIR and appendices.

**Comment Letter O72**

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

Dear Mr. Alford,

Please accept the following comments and images in regards to the Banning Ranch Draft Environmental Impact Report.

Associated files on CD include Banning Ranch DEIR and Banning Ranch Habitat Damage.

Below are the reasons I believe the DEIR is in inadequate document, and that the project should not move forward in any fashion.

**Missing and Incorrect Information Biological Resources Section**

In 17 instances shown in the submitted slides and images, the applicant has not accurately mapped or labeled key plant communities that exist on the Banning Ranch mesa.

1

These plants support a unique and important coastal ecosystem that has few parallels in Orange County at the present time, and indeed along the entire Southern California coast.

It is the combination of a number of factors that make Banning Ranch a unique natural asset. Some of these factors include its size at more than 400 acres, a location contiguous to Talbert Riparian area, Fairview Park the Santa Ana River, multiple federally protected species, species of special concern, rare grasslands, riparian zones, bluffs, and salt marshes. The DEIR does not accurately assess the cumulative impact of the development to Coastal Orange County in losing an environment/ecosystem in which all these attributes are present.

2

Such a diverse, rare and large natural environment demands a high level of oversight and protection, given the attached images of the destruction of wetlands, mowing of native plants, unnecessary dead-end roads, scrapings of habitat areas and large clearings around simple well markers.

3

<p>The applicant's consultant has listed approximately 70 separate areas described as disturbed or ruderal on pages 11 and 12 of the vegetation maps - on the mesa alone. Many of the areas listed contain native plants such as encelia and deerweed that have been altered or destroyed although they are not directly associated with oil wells or other operating facilities.</p>	3 cont.
<p>Given the importance of this habitat and the number of alterations, the land owner/applicant should supply on a case-by-case basis why these land alterations and mowing have occurred, when not directly associated with the physical presence of currently operating wells.</p>	
<p>In addition, the DEIR fails to adequately address the following points:</p> <p><b><u>Swallows Use of Grasslands</u></b></p> <p>Large numbers of swallows have been observed and documented using the grasslands in feeding behavior on the mesas nearest to PCH and the quadrant at end of Ticonderoga/15th st. There is no mention of this large scale feeding behavior in the DEIR.</p>	4
<p><b><u>Undocumented Burrowing Owl Location</u></b></p> <p>In item 8 of the attached images, a Burrowing Owl was sited near the east end of the arroyo, and this has not been noted in the DEIR.</p>	5
<p><b><u>Role of Grasslands in Ecosystem</u></b></p> <p>The many ground squirrel burrows documented on the grassland areas near PCH and at the end of Ticonderoga are likely to be indispensable factors in sustaining the existing coyote population and avian predators such as hawks on Banning Ranch. The impact of the development on the role these grasslands play in species survival must be studied in greater detail.</p>	6
<p><b><u>Ongoing Ecosystem Health</u></b></p> <p>In that the applicant's vegetation maps describe a fragmented environment as a natural asset of lessened value, the applicant should explain and study how the much greater fragmentation caused by the development will affect the ongoing health of the constituent parts of the ecosystem.</p>	7
<p>Just as buffers are created to protect ESHA, a biological assessment of potential future conditions must consider the natural resources required to insure the long term survival of species on Banning Ranch.</p>	8
<p>This assessment of the risks to the ecosystem health must include likely events such as the normal droughts Southern California has experienced, extended droughts caused by climate change, disease and fire. With the number of special status species already listed on Banning Ranch, it is of key importance that a detailed discussion be had in regards to the long term viability of this asset.</p>	9

<p><b><u>Mowing</u></b></p> <p>Applicant should show any and all proof of permits issued to support mowing that occurs in winter and early spring. Within the context of fire prevention this explanation should assess the real risks considering the lack of fires on record in the past and the natural fire-breaks created by the many dirt roads on the property.</p>	10
<p><b><u>Clearings</u></b></p> <p>The clearings noted in the Banning Ranch Habitat Damage file I have submitted need to be explained in detail.</p>	11
<p><b><u>Regional Water Supply</u></b></p> <p>A development of this size in an era of already stressed water supplies is inconsistent with sound resource management, given that studies such as those noted below predict large possible impacts to one of our main regional water supplies, the Colorado River. The long term impact of at least 50 years this development will have in on water supplies needs to be assessed in light of the independent studies mentioned below.</p> <p>Quote and study from University of Colorado and NOAA:</p> <p>"But if climate change results in a 10 percent reduction in the Colorado River's average stream flow as some recent studies predict, the chances of fully depleting reservoir storage will exceed 25 percent by 2057, according to the study. If climate change results in a 20 percent reduction, the chances of fully depleting reservoir storage will exceed 50 percent by 2057, Rajagopalan said."</p> <p>"On average, drying caused by climate change would increase the risk of fully depleting reservoir storage by nearly ten times more than the risk we expect from population pressures alone," said Rajagopalan. "By mid-century this risk translates into a 50 percent chance in any given year of empty reservoirs, an enormous risk and huge water management challenge,"</p> <p>Study: <a href="http://www.colorado.edu/news/r/f0f273435508fe6525e5e4903baa539b.html">http://www.colorado.edu/news/r/f0f273435508fe6525e5e4903baa539b.html</a></p> <p>Quote and Study by Scripps Institute of Oceanography:</p> <p>From Study:</p> <p>"With either climate-change or long-term mean flows, currently scheduled future water deliveries from the Colorado River are not sustainable.</p> <p>Study: <a href="http://www.pnas.org/content/early/2009/04/17/0812762106.abstract">http://www.pnas.org/content/early/2009/04/17/0812762106.abstract</a></p> <p>From Press Release:</p>	12

"All water-use planning is based on the idea that the next 100 years will be like the last 100," said Scripps research marine physicist Tim Barnett, a co-author of the report. "We considered the question: Can the river deliver water at the levels currently scheduled if the climate changes as we expect it to. The answer is no."

Even under conservative climate change scenarios, Barnett and Scripps climate researcher David Pierce found that reductions in the runoff that feeds the Colorado River mean that it could short the Southwest of a half-billion cubic meters (400,000 acre feet) of water per year 40 percent of the time by 2025.

Press Release: <http://scrippsnews.ucsd.edu/Releases/?releaseID=977>

12 cont.

Thank you,

Kevin Nelson

733 Calle Vallarta

San Clemente, CA 92673

**Letter O72 Kevin Nelson**  
November 8, 2011

## **Response 1**

### Nelson Mapping Area #1

The commenter's assertion of an "arroyo" in this location is incorrect. An arroyo is defined as "Entrenched ephemeral streams with vertical walls that form in desert environments"⁴⁴. The lack of vertical walls and other vegetative, hydrologic, and geologic features in this area has also resulted in the lack of these area being defined as jurisdictional features according to standards by the U.S. Army Corps of Engineers (USACE), California Fish and Game (CDFG) Code §§1600, and California Coastal Commission (CCC). As stated on page 4.3-6 of the Draft EIR, "two major arroyos, the Northern Arroyo and Southern Arroyo (the Southern Arroyo being the largest)" occur on the Project site. No other arroyos are present.

The photographs provided by the commenter of Area #1 show areas supporting non-native grasses (including foxtail chess [*Bromus madritensis* ssp. *Rubens*], bush sunflower (*Encelia californica*), mule fat (*Baccharis salicifolia*), pampas grass (*Cortaderia selloana*), sweet fennel (*Foeniculum vulgare*), poison hemlock (*Conium maculatum*), and dock (*Rumex crispus*). The presence of these species is consistent with the vegetation types that were mapped in this area in the Draft EIR including non-native grassland, disturbed *Encelia* scrub, ornamental, saltbush scrub, and disturbed mulefat scrub.

### Nelson Mapping Area #2

The grasslands that occur along the fence in this area are similar to other non-native grasslands on the Project site. Page 4.6-13 of the Draft EIR states that non-native grassland "species composition varies by patch". The Draft EIR acknowledges that within "these non-native grasslands there are pockets of native species that were not mapped because they were mowed to a height of less than six inches and could not be delineated". The presence of these species is consistent with the vegetation types that were mapped in this area in the Draft EIR and no changes to the vegetation map are required.

### Nelson Mapping Area #3

Area #3 of concern to the commenter is not clear from the illustrations provided in this comment letter. The vegetation map and aerial photograph have arrows pointing to different areas and pointing in different directions. Nevertheless, the grasslands in that area are similar to other non-native grasslands on the Project site. Please also refer to the discussion regarding Mapping Area #2.

### Nelson Mapping Area #4, 5, 8, 12, 13, 16, and 17

As discussed above for Area #3, the Draft EIR acknowledges that within "these non-native grasslands there are pockets of native species that were not mapped because they were mowed to a height of less than six inches and could not be delineated". The presence of these species in Areas #4, 5, and 8 are consistent with the vegetation types that were mapped in this area in the Draft EIR and no changes to the vegetation map are required.

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⁴⁴ <http://www.crrel.usace.army.mil/library/technicalreports/ERDC-CRREL-TR-08-12.pdf>

#### Nelson Mapping Area #6

As discussed above for Area #3, the Draft EIR acknowledges that within “these non-native grasslands there are pockets of native species that were not mapped because they were mowed to a height of less than six inches and could not be delineated”. The presence of scattered coyote brush (*Baccharis pilularis*) in the predominantly non-native grassland is consistent with the vegetation types that were mapped in this area in the Draft EIR and no changes to the vegetation map are required.

#### Nelson Mapping Area #7

Please refer to the following response to Comment 4 for additional information regarding the burrowing owl.

#### Nelson Mapping Area #9, 10, 11, 12, 13, 16, and 17

Please refer to Topical Response: Mowing and Fuel Modification.

Please note that there were no photographs provided for the commenter’s Mapping Area #14.

#### Nelson Mapping Area #15

The arrow pointing to in the commenter’s aerial photograph is not the same location as indicated by the commenter on the vegetation map. The aerial arrow is pointing to an area mapped as Ruderal/Disturbed Encelia Scrub/Disturbed Mule Fat Scrub. This vegetation types is described in the Draft EIR as containing “plants consist of opportunistic native and non-native species that have colonized soil piles and open areas within and along the edges of the debris piles. This vegetation type is dominated by tree tobacco, bush sunflower, and mule fat. Other species present include telegraph weed, black mustard, and castor bean”. This is an accurate representation of the area based on the photograph provided.

#### Nelson Photos Titled “Damage to Habitat and Clearing to be Explained”

Please refer to Topical Response: Mowing and Fuel Modification.

### **Response 2**

Cumulative impacts to biological resources from implementation of the proposed Project are discussed in the Draft EIR from pages 5-48 to 5-54 in Section 5.0, Cumulative Impacts. Some of the issues discussed in this Draft EIR section include the Project’s cumulative impacts to:

- special status plant species;
- vernal pools and fairy shrimp;
- 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;
- coastal California gnatcatcher;
- coastal cactus;
- least Bell’s vireo;
- burrowing owl;

- Cooper's hawk, sharp-shinned hawk, ferruginous hawk, northern harrier, white-tailed kite, merlin, prairie falcon, American peregrine falcon, short-eared owl, and osprey;
- suitable foraging and/or roosting habitat for the bats;
- indirect impacts related to disturbance from construction;
- significant traffic noise impacts on sensitive biological resources;
- special status riparian habitat;
- coastal sage scrub;
- grassland habitat; and
- coastal open space.

### Response 3

It is important to note that BonTerra Consulting prepared the vegetation map presented in the Draft EIR. BonTerra Consulting is not the "applicant's consultant" as stated by the commenter, but rather a consultant under contract to the City of Newport Beach.

Many areas that are routinely/historically disturbed by fuel maintenance area expected to recover with the growth of non-native species and native species such as deerweed and Encelia which are early successional sage scrub species. Please refer to Topical Response: Mowing and Fuel Modification.

### Response 4

Three species of swallow were identified in the Draft EIR's Biological Technical Report for the proposed Project: northern rough-winged swallow (*Stelgidopteryx serripennis*), cliff swallow (*Petrochelidon pyrrhonota*), and barn swallow (*Hirundo rustica*). These species are common in the region and their occurrence on site was reported. Large groups of individuals foraging in an area is not unusual; it is not a significant issue that warrants discussion in the Draft EIR.

### Response 5

The Draft EIR identifies the presence of the burrowing owl (*Athene cunicularia*) on site in several locations. The Draft EIR documented that suitable foraging and nesting habitat is present on the Project site and this species has been observed wintering on site in 2008, 2009, and 2010. However, this species is absent for breeding based on breeding season surveys conducted in 2008, 2009, and 2010. Impacts on occupied and potential habitat for this species were found to be significant in the Draft EIR (see page 4.6-62). Implementation of Mitigation Measures (MMs) 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level (see page 4.6-89). The documentation for this occurrence has not been provided.

### Response 6

General habitat loss as a result in project implementation is discussed in detail on pages 4.6-55 and 4.6-56 of the Draft EIR. This level of detailed discussion is adequate.

## Response 7

As a point of clarification, BonTerra Consulting, as a consultant to the City of Newport Beach, prepared the vegetation map presented in the Draft EIR. The vegetation map was not prepared by the Applicant.

In response to the commenter's concern regarding fragmentation of the site, BonTerra Consulting conducted a GIS analysis of the existing level of fragmentation and edge effects compared to the proposed Project. To understand the level of existing fragmentation on site from oilfield operations, a 50-foot-wide buffer was identified adjacent to the network of access roads, drill pads, and operation areas. Combined, this buffer of edge effects due to existing fragmentation covered approximately 169 acres of the 401-acre Project site, or 42 percent of the site.

When the same 50-foot-wide buffer is applied to the proposed development footprint (developed areas, roads, and trails), the edge effects apply to approximately 78 of the 252 acres of proposed open space, or 31 percent of the Project site. The fragmentation of the existing conditions is depicted on Exhibits 4.6-1a and 4.6-1b of the Draft EIR. By comparison, the proposed Project has focused the developed area in the eastern portion of the Project site, with contiguous areas of un-fragmented open space to the west (Draft EIR Exhibit 4.6-4).

## Response 8

Long-term species survival is discussed throughout Section 4.6, Biological Resources, of the Draft EIR. As stated on pages 4.6-44 and 4.6-45, 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. (emphasis added)

For each special status species that occurs (or has the potential to occur on site), this threshold was considered. When it was determined that this, or one of the other biological resource thresholds, were reached, impacts were found to be significant and mitigation measures were identified that would reduce these impacts to less than significant levels.

## Response 9

General biological resource effects of global climate change are discussed on pages 4.11-15 of the Draft EIR.

As stated on page 4.6-73 of the Draft EIR, approximately 205 acres are proposed for preservation or restoration as native habitat as a part of the Project's biological resources mitigation obligations. The compensatory mitigation requirements for the Project would be

ultimately determined by the regulatory agencies as permit conditions. Areas would be restored in accordance with the Project's Habitat Restoration Plan. This Habitat Restoration Plan would be adopted as part of the Project and would serve as the primary implementation program for the conservation, creation, and restoration of native habitats within the Open Space Preserve. In addition, the Habitat Restoration Plan describes the implementation procedures, responsible entities, habitat establishment criteria, and monitoring requirements. Habitat areas that are restored by the Project would be subject to a five-year Maintenance and Monitoring Program. Preserved and restored habitat would be protected by the requirement that the Applicant makes one or more Irrevocable Offer(s) of Dedication to either public agencies or non-profit organizations to oversee the maintenance and management of open space areas.

If the site is not developed, as described in Draft EIR Section 7.5.1, Alternative A: No Project, the property would continue to operate as an oilfield. Alternative A assumes existing conditions on the Project site and the continuation and possible expansion of oil exploration and oil production operations within the constraints of the existing California Coastal Act regulatory exemption for petroleum production. Further oil consolidation, clean up, and remediation would not occur for the foreseeable future, and public access would not be provided.

By not developing the Project site, impacts on biological resource (i.e., special status species, jurisdictional areas) would be less than the proposed Project due to the limited nature of site disturbance that would occur. With Alternative A, there would be no substantial adverse effect. However, it cannot be stated that there would be no impacts because the continuation and possible expansion of oil exploration/production is anticipated to continue to degrade the existing habitat. These impacts could be considered significant depending on the extent of unforeseen exploration and production activities. In addition, the proposed Project includes revegetation of native habitat areas, including, but not limited to, coastal sage scrub, riparian, and vernal pools. These habitat types, along with several others on site, have been impacted on the Project site and throughout their range by invasive non-native plant species. The proposed Project's revegetation has the potential to result in a 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). However, because Alternative A does not provide for any mechanism to require revegetation of native habitats on site or to remove invasive non-native species, implementation of Alternative A would allow for the continued decline of the native plant and wildlife species on site due to the lack of required active resource management.

In consideration of the long-term viability of the site, in the absence of a non-profit conservation organization that is ready and willing to purchase the property and restore and/or enhance the existing resources, the long-term value of the site from the proposed Project is higher than that of the No Project Alternative.

With respect to climate change and water supply, please also refer to Section 4.11, Greenhouse Gas Emissions, Section 4.115, Utilities, and Section 6.0, Cumulative Impacts, of the Draft EIR.

## **Response 10**

Please refer to Topical Response: Mowing and Fuel Modification.

## **Response 11**

Please refer to Topical Response: Mowing and Fuel Modification and Topical Response: ESHA.

## **Response 12**

The comment is noted; however, it is not required and feasible to accurately evaluate water supply beyond a 20-year planning horizon. As described in Section 4.15 of the Draft EIR, a water supply assessment (WSA) was prepared which evaluates the sufficiency of the water supplies available to the water supplier to meet existing and anticipated future demands, including the demand associated with project in question over a 20-year horizon was prepared. The WSA concludes that the City would have sufficient water to meet the proposed project demands, as well as its current and future demand. Based on the WSA, the City, as water purveyor, has determined that a sufficient supply is available during average, single-dry, and multiple-dry years that would meet the anticipated water demand associated with the Project, in addition to the water demand of existing and planned future uses through the year 2030.

**Alford, Patrick**

**Comment Letter O73**

**From:** Barry Nerhus [bnerhus@gmail.com]  
**Sent:** Monday, November 07, 2011 11:28 AM  
**To:** Alford, Patrick  
**Subject:** Biological Resource comments for dEIR

Hello,

I reviewed the Biological Resources section of the dEIR and found a few items in question:

1. Southwestern Pond Turtle - I have data that shows southwestern pond turtles do not need permanent water nor high quality freshwater marsh to survive. Additionally from personal observation, southwestern pond turtles can utilize tidal marshes, estuaries, and salt marshes for foraging. So my question is what was the methodology for survey for southwestern pond turtles? Visual surveys are inadequate for surveying for this species.	1
2. Light-footed Clapper Rail - Since the freshwater marsh habitat was described to have cattails and rushes, there is a potential to have nesting Clapper Rails. It was stated that a fence was dividing the cordgrass habitat that is known to have at least one nesting pair. Well this bird has wings and can easily fly over a fence. Additionally, I located and documented a clapper rail nest in freshwater marsh this past year with 9 eggs. They hatched and were observed foraging throughout the freshwater marsh. Light-footed clapper rails are known to nest in freshwater marshes.	2
3. Since there are alkali grasslands, there is potential for the rare Wandering Skipper. I may have missed this in the dEIR. You may want to pose this question or research this small butterfly that is endemic to coastal salt marshes in Southern California and northern baja, which therefore should be a sensitive species. Although I am qualified to give an expert opinion on the southwestern pond turtle and the light-footed clapper rail, I cannot give an expert opinion on the wandering skipper.	3

Thanks,

Barry

--  
Barry Nerhus  
Endemic Environmental Services  
Wildlife Biologist  
Restoration Ecologist  
[bnerhus@gmail.com](mailto:bnerhus@gmail.com)

**Letter O73 Barry Nerhus**  
November 7, 2011

### Response 1

As discussed in detail in the Biological Technical report (page 52) of the Draft EIR, the southwestern pond turtle occurs primarily in freshwater rivers, streams, lakes, ponds, vernal pools, and seasonal wetlands and requires basking sites such as logs, banks, or other suitable areas above water level. On behalf of the City, BonTerra Consulting conducted a review of the California Natural Diversity Database (CNDDDB) by California Department of Fish and Game (CDFG) to identify any known occurrences of the southwestern pond turtle within Orange County. The species was reported to have 33 occurrences within Orange County; however, there are no known occurrences for this species within the coastal portion of the Santa Ana River watershed where the Project site is located. The closest occurrence within the watershed is approximately 25 miles upstream in the Silverado Canyon area. No perennial streams or ponds suitable for this subspecies are present on the Project site. Therefore, due to the lack of preferred habitat and absence of the species from the area, the southwestern pond turtle is not expected to occur on the Project site. In addition, the species has not been observed by professional biologists on the Project site over the past 20 or more years.

### Response 2

Light-footed clapper rail (*Rallus longirostris levipes*) is discussed in detail on page 60 of the Draft EIR Biological Technical Report. The scientific literature states that this rail is a secretive resident of coastal salt marshes of pickleweed and Pacific cordgrass (*Spartinia foliosa*) (Eddleman and Conway 1998). Although this subspecies has occurred at other localities in Orange County, the tidal salt marshes of Upper Newport Bay and the Seal Beach National Wildlife Refuge support the only substantial populations⁴⁵. In addition to these localities, the species has been observed at the Bolsa Chica and San Joaquin Marshes and in the restored cordgrass habitat at the mouth of the Santa Ana River^{46 47}. Clapper rails nested in the relatively extensive lowland freshwater marsh habitats of San Joaquin Marsh in the 1980s (Gallagher 1997). This rail also nests in freshwater marsh habitats on the periphery of its preferred salt marsh habitat at Upper Newport Bay (Gallagher 1997). This species could be heard by BonTerra Consulting ornithologists calling from the U.S. Army Corps of Engineers (USACE) salt marsh restoration site adjacent to the Project site. Tidal marsh areas on the Project site are very limited in extent, with a chain-link fence separating the USACE salt marsh restoration site from the Project site. Freshwater marsh habitats on the Project site are not contiguous with these off-site tidal salt marsh habitats and are considered too small and isolated to be suitable habitat for clapper rails. The Project site provides potentially suitable foraging and high-tide refuge habitat but not suitable nesting habitat for this subspecies. Therefore, the light-footed clapper rail may occur for foraging or temporary refuge during high tides but is not expected to nest on the Project Site.

⁴⁵ Hamilton, R.A. and D.R. Willick. 1996. *The Birds of Orange County, California: Status and Distribution*. Irvine, CA: Sea and Sage Audubon Society.

⁴⁶ California Department of Fish and Game (CDFG). 2011. California Natural Diversity Database. Records of Occurrence for USGS Seal Beach, Newport Beach, Tustin, and Laguna 7.5-minute quadrangles. Sacramento, CA: CDFG, Natural Heritage Division.

⁴⁷ Glenn Lukos Associates (GLA). 2009 (April 21). *Biological Technical Report for the Newport Banning Ranch Property Newport Beach, California* (prepared for Newport Banning Ranch LLC). Lake Forest, CA: GLA.

### Response 3

According to the California Department of Fish and Game (CDFG)⁴⁸, the wandering saltmarsh skipper (*Panoquina errans*) does not have State or federal listing status. It does have a G4G5 S1 designation according to NatureServe, which is a non-profit conservation organization who provides data and information to State and federal resource agencies regarding the listing of species. A G4 status is for species that are “Apparently Secure” and G5 status is for species determined to be “Secure”. It also has a NatureServe Subnational rank of S1, which states that the species is “Critically Imperiled” and a World Conservation Union (IUCN) Near Threatened listing.

As set forth in the State CEQA Guidelines Section 15380(d)

A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b)”. Subdivision (b) includes the following standards:

A species of animal or plant is:

- (1) “Endangered” when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or
- (2) “Rare” when either: (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or
- (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in the Federal Endangered Species Act.

Based on a range map for this species, this species is believed to occur in coastal salt marshes from north of Santa Barbara to the southern portion of Baja, Mexico⁴⁹. Existing literature for this species states that “Upper Newport Bay may very well support the largest existing colony of this butterfly. It...may literally swarm during August along the road and the bluffs near Big Canyon on the west side of Upper Newport Bay”⁵⁰. It is also believed that continued preservation of the Upper Newport Bay is desirable for the continued survival of the butterfly at healthy population levels. This species is known to occur within Southern California in coastal and inland salt marsh areas. Given this species distribution and listing status, this species does not meet the criteria of Endangered, Rare, or Threatened as described above; however, it is noted that this species is limited in its distribution and occurrence.

The wandering skipper may occur on site, primarily within the Lowland area supporting higher concentrations of salt grass and pickleweed. Permanent Project impacts on habitat for this species would 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 marsh habitats used by this species. Much of the marsh habitat on the Project site is currently fragmented by roads and is invaded to varying degrees by non-native species which are known to have significant detrimental impacts on skipper habitat. Revegetation following oilfield

⁴⁸ California Department of Fish and Game (CDFG ). 2011 (January). *Special Animals*. Sacramento, CA: CDFG, Natural Heritage Division.

⁴⁹ <http://www.butterfliesandmoths.org/species/Panoquina-errans>

⁵⁰ <http://mamba.bio.uci.edu/~pjbryant/biodiv/lepidopt/hesper/wanderin.htm>

remediation activities has the potential to 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. Project impacts on this species would be considered less than significant in consideration of other habitat available for these species in the region; no mitigation would be required.

Comment Letter O74

Mr. Patrick Alford  
Planning Manager, City of Newport Beach  
3300 Newport Blvd  
Newport Beach, CA 92663

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NOV 08 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

Dear Mr. Alford:

The Banning Ranch DEIR states on page 21 of the Air Quality section under Mass Emission Thresholds that Mitigation Measures 4.10-1 through 4.10-4 will be used to reduce NOx emissions from construction. MM4.0-1 deals with Tier 3 and 4 certified diesel equipment and says that Tier 3 is mandatory, but Tier 4 is required only where available.

What does “only where available” mean and do the Project Applicants intend to use Tier 4 equipment to reduce NOx emissions, given that it is available now and the need for Tier 4 equipment isn’t anticipated until 2014, according to this document? On May 11, 2004, the EPA introduced Tier 4 emissions standards that are to be phased in from 2008 to 2015. These standards reduce emissions of diesel particulate matter (PM) and nitrogen oxide (NOx) by about 90% and if adhered to by the use of Tier 4 equipment could reduce the impacts of NOx from significant and unavoidable to less than significant. It could also greatly reduce the emissions of other criteria pollutants like PM10 and PM2.5, which are highly toxic.

1

A study in 2006, by the Union of Concerned Scientists on the health risks of construction pollution in California stated that in 1998, the California Air Resources Board (CARB) estimated that diesel exhaust is responsible for 70 % of the state’s risk of cancer from airborne toxins:

**“The Health Risks of Construction Pollution in California**

Using established U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) methods to quantify the impact of air pollution, the Union of Concerned Scientists (UCS) estimates that construction equipment emissions statewide are responsible for:

2

- more than 1,100 premature deaths per year
- more than 1,000 hospital admissions for cardiovascular and respiratory illness
- 2,500 cases of acute bronchitis
- tens of thousands of asthma attacks and other lower respiratory symptoms

This pollution is hurting the state’s economy as well. Construction equipment is critical to the building industry (a sector of the economy worth \$60 billion per year) and instrumental in maintaining and building our roads and highways (on which California spent eight billion dollars last year). But the pollution from this equipment results in more than nine billion

dollars in annual public health costs, including hundreds of thousands of lost work days and school absences.

The impact of several pollutants that comprise diesel exhaust must be taken into account:

- Particulate matter (PM). Also known as soot, these small particles (25 times smaller than the width of a human hair) are released directly from the tailpipe or formed indirectly from emissions of NOx and sulfur oxides (SOx). PM can penetrate deeply into the lungs, causing or aggravating a variety of respiratory and cardiovascular illnesses and even leading in some cases to premature death (Pope 2002, Krewski 2000, Samet 2000).
- Smog-forming pollutants. NOx and hydrocarbons react in the presence of sunlight to form ozone (smog), which can damage the respiratory tract, reduce lung function, exacerbate asthma, aggravate chronic lung diseases, and also cause premature death (White 1994, Koren 1995, Thurston 2001, Bell 2005). As much as 10 to 20 percent of all summertime hospital visits and admissions for respiratory illness are associated with ozone, and more than 90 percent of Californians live in areas that do not comply with federal ozone standards (Thurston 1992, 1994).
- Air toxics. The state of California has classified diesel exhaust and more than 40 compounds in diesel exhaust as toxic air contaminants.⁷ Exposure to these chemicals can cause cancer, damage to fetuses, and other serious health and reproductive problems. CARB has estimated that diesel exhaust is responsible for 70 percent of the state's risk of cancer from airborne toxics (CARB 1998)."

[http://www.ucsusa.org/assets/documents/clean_vehicles/digging-up-trouble.pdf](http://www.ucsusa.org/assets/documents/clean_vehicles/digging-up-trouble.pdf)

2 cont.

The Mass Emission Thresholds section also says that emission reductions achieved with MMs 4.10-2 through 4.10-4 are not quantifiable in the CalEEMod model, which is being used to estimate emission reductions, but would potentially reduce pollutant emissions below those shown in Table 4.10-8.

Please clarify what "not quantifiable" means with regard to the CalEEMod model. If MMs 4.10-2 through 4 are not quantifiable in the CalEEMod model, are they quantifiable in some other model? And if not, how is it known to what levels they'll reduce pollutant emissions? How can it be said with certainty that the levels will be below significance for any of the toxins listed in the table, NOx in particular?

3

When labels like "sensitive receptors" are used in documents like a DEIR it's easy to forget that actual living and breathing human beings, including pregnant women, children, the aged and the infirm, are being exposed to unsafe levels of pollutants. In this case, the only way to protect them from the health risks of emissions like NOx is to use Tier 4 equipment as


4

recommended in MM 4.10-1 and/or to avoid the concurrent remediation and grading that would cause the exceedances of NOx and other air toxins.	4 cont.
Further, as shown in Table 4.10-8 on page 21, the use of approximately 50 percent Tier 3 and 50 percent Tier 4 diesel engine equipment would reduce NOx emissions below the SCAQMD CEQA threshold value and the following is stated: "It is noted that the use of all Tier 3 equipment and no Tier 4 equipment would not reduce NOx emissions below the SCAQMD thresholds for all construction years. 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 percent Tier 3 and 50 percent Tier 4 diesel engine equipment, the availability of sufficient numbers of Tier 4 equipment in 2014 and the following years cannot be assured. Therefore, the Project construction emissions would be a potentially significant and unavoidable impact."	5
And what recourse will local residents, including the pregnant women, children, the aged and those with respiratory conditions, have if their health is adversely affected by these "potentially significant and unavoidable impacts"? Has the city given any thought to the potentially significant and unavoidable long-term costs that might occur if SCAQMD CEQA thresholds are not observed and the public is exposed to unsafe levels of air toxins and pollutants over the 9-13 years of construction and beyond, due to population growth and traffic congestion?	6
Why are the impacts unavoidable? If the Project Applicant cannot guarantee the use of Tier 4 equipment, then they can avoid concurrent remediation and grading, which would reduce the use of the heavy equipment causing these impacts. Why isn't that suggested in the DEIR as a possible mitigation in order to avoid significant impacts?	7
In Section 1-11 of the Executive Summary, the Newport Banning Ranch DEIR refers to the City of Newport Beach General Plan Final EIR, but the Banning Ranch DEIR doesn't cross-reference the General Plan FEIR, which should be done for clarity. Apparently in approving the General Plan project, the City approved a Statement of Overriding Considerations, which notes that there are "economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project (Threshold 4.2-3)."	8
Will this Statement of Overriding Considerations also apply to the Banning Ranch Project and this DEIR? If so, what significant and avoidable impacts are they referring to? Benzene, NOx, particulate matter and the other DEIR criteria pollutants have known health risks that include cancer, respiratory disease and increased morbidity (death), which is why they're regulated by state and federal agencies. Will these risks to Newport Beach residents be impacts that would be considered negotiable in favor of economic, social and other public benefits?	

Also, how are the regulating agencies made aware that exceedances will occur when remediation and grading are concurrent and Tier 4 equipment is not used? Will the public be alerted that air toxins may exceed safe levels during at least five of the ten construction years, according to this report? 9

Thank you for taking the time to read my letter. I'm sure you consider these questions as important as I do, and I await your response.

Yours truly,

  
10 Arises Ct  
Newport Beach CA 92663

**Letter O74 J. Edward Perry**  
November 8, 2011

### **Response 1**

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 2**

The comment is noted. It is also noted that in the Draft EIR impacts from diesel particulate emissions were determined to be less than significant.

### **Response 3**

The mitigation measures are not quantifiable in CalEEMod or other models because they describe best management practices that will vary in their effectiveness dependent on the local factors. The reductions in emissions attributable to these measures are generally small when compared to the total emissions. It is not implied that the mitigation would reduce emissions below the level of significance.

### **Response 4**

Please refer to the response to Comment 1.

### **Response 5**

Please refer to the response to Comment 1.

### **Response 6**

Please refer to the response to Comment 1. Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NOx during construction would be less than significant. Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NOx during construction would be less than significant. Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources. The potentially significant NOx impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NOx or NO₂ would be less than significant. Please also see the general discussion of NOx emissions during construction.

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

## **Response 7**

Please refer to the response to Comment 1.

## **Response 8**

The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the Project 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 noted that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project. With respect to the Newport Banning Ranch Draft EIR, the analyses of health risk impacts from toxic pollutant emissions and exposure of persons to substantial concentrations of criteria pollutant impacts were found to be less than significant.

## **Response 9**

Please refer to the response to Comment 1 and the response to Comment 8. It is noted that the Draft EIR was reviewed by the South Coast Air Quality Management District (see Letter R9).

**Alford, Patrick**

**Comment Letter O75**

**From:** Everette Phillips [eap@sourceglobally.com]  
**Sent:** Tuesday, November 08, 2011 4:54 PM  
**To:** Alford, Patrick  
**Subject:** Comments on the Banning Ranch Draft EIR

Dear Patrick,

My first comment is that the timeline does not allow for adequate review of the EIR. The outreach is not consistent with the intention of public comment.

The city should first have workshops where city staff can help explain sections of the DEIR and what the legal oriented words mean for laymen. We, the public, would be better able to make comments with such outreach. The city should consider offering the public more time for comments. We both know that future hearing will be more formality and this is the only real opportunity for comments on core issues.

Regarding the DEIR. The biology section seems to be missing the biology Taylor Woodrow made public in their presentations on the property. What is the city doing to incorporate that biology?

Regarding the DEIR: The General Plan Update provides for preservation. The Coastal Conservancy did not seem to be contacted about acquisition when I asked. Did the city talk with Coastal Conservancy and other conservancies regarding acquisition?

Regarding the DEIR: Newport Shores had an investigation on land settling due to oil activity. Has this investigation been considered by the city requirements?

Regarding the DEIR: Newport Shores has a view of the coastal bluffs that needs to be preserved under the requirements of the Coastal Act. The current proposals have too little set back. More setback is needed to preserve the coastal bluff view from Newport Shores.

Thank you  
Everette Phillips  
206 Walnut St  
Newport Beach, CA 92663

**Letter O75     Everette Phillips**  
November 8, 2011

### **Response 1**

The opinions of the commenter are noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period. The comment requesting public workshops prior to public hearings does not raise an environmental issue however this comment is noted as a suggestion from the public.

### **Response 2**

The referenced EIR was not certified and was prepared in 2000. The Newport Banning Ranch Draft EIR includes biological analyses based on the most current data available and the findings of field surveys of the current biological conditions on the Project site.

### **Response 3**

In August 2009, the Newport Beach City Council directed 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 4**

The study noted by the commenter cannot be identified. While the City is the lead agency for approval of the Newport Banning Ranch Project, the existing oilfield and its operations are not a part of the proposed Project and occur with or without City approval of the Newport Banning Ranch development project. Should the City approve the proposed Project, the oil operations would be consolidated into two locations to allow for soil remediation and to create development areas on the site. The Draft EIR analyzed the impacts of the proposed Project on geology and soils, including potential subsidence; please refer to pages 4.3-10 and 4.3-19.

### **Response 5**

The opinion of the commenter is noted. Bluffs are defined and identified within the Project site pursuant to the City of Newport Beach Zoning Code definition of "Bluff". The proposed Project includes a setback requirement for habitable structures of a minimum of 60 feet from the top of bluff edge. The Master Development Plan for the Project proposes a Bluff Top Park and a local roadway to extend along the westerly boundary of the North Family Village which combined provide approximately 154 feet between the top of edge of bluff and buildings along this portion of the Project which is most visible to Newport Shores.

Please refer to Section 4.1, Land Use and Related Planning Programs, of the Draft EIR. As depicted in Exhibit 4.1-2i, the existing off-site residences would be separated from proposed development in the North Family Village by approximately 450 feet including the Semeniuk Slough, the Open Space Preserve, South Bluff Park, and trails. Additionally, there is approximately 65 feet of vertical separation between the Newport Shores residences and the top of the bluff. Exhibit 4.1-2j depicts the relationship between the proposed land uses in the Resort Colony with single-family residences in Newport Shores. Newport Shores' residences on

61st Street have views of Semeniuk Slough and the Project site. Proposed resort inn and residential uses in the Resort Colony would be approximately 800 feet from the Newport Shores community with a vertical separation of approximately 50 feet. Development within the Resort Colony would be set back more than 100 feet from the bluff edge with a maximum building height of 50 feet, excluding mechanical equipment and architectural features.

As described in Section 4.2, Aesthetics and Visual Resources of the Draft EIR, and illustrated in Exhibit 4.2-6 the views of the Project to Newport Shores would appear virtually unchanged from the existing view of the Project site from Newport Shores. Due to the topography and the fact that homes would be setback approximately 154 feet from the top of bluff edge in this portion of the Project only the roof tops of a few homes would be visible. In certain, locations bluffs visible to Newport Shores would be restored to remedy the effects of erosion. However, bluff faces would not be altered to accommodate development of the Project.

As addressed in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, the proposed Project is consistent with this Coastal Act Section 30251. The General Plan does not identify any scenic vistas or view points on the Project site; however, it does recognize that the mesa area, coastal bluffs, and Lowland (part of the Santa Ana River floodplain) on the Project site contribute to the City's scenic resources. Approximately 252.3 gross acres of the 401-acre Project site would be in an Open Space Preserve with an additional 51.4 gross acres in parklands. The Project includes the restoration of eroded bluffs on the Project site and proposed development would be setback a minimum of 60 feet from the tops of the bluff. Exhibits 4.2-3a through 4.2-11b provide an existing view of the Project site from these various viewpoints and visual simulations to depict the anticipated change from these viewpoints that would occur with Project. As noted, no significant public view impacts are anticipated. The Project is not identified by the California Department of Parks and Recreation as highly scenic area.

Alford, Patrick

Comment Letter O76

**From:** Gerard Proc [GRAVYTRAIN1@roadrunner.com]  
**Sent:** Monday, November 07, 2011 6:43 PM  
**To:** Alford, Patrick  
**Cc:** Dept - City Council  
**Subject:** Banning Ranch Development DEIR

Greetings Mr. Alford,

After looking at the Banning Ranch LLC proposed massive development DEIR I am totally bewildered. After reading the headings of each issue and drilling deeper into

the verbiage I was rendered totally lost in comprehension of what was printed. I am definitely not a Rhodes scholar but I do have savvy. This "thing" threw me for a loop.

To start I was not aware the DEIR was available until I heard that it was online during the first week in October 2011. I've conversed with my neighbors and they as well as

myself never received a hard copy sent USPS announcing that this DEIR was available. Why was this?

As I did try to comprehend what this "thing" meant to me I couldn't find any specifics directed to the impacts of the community I live in, Lido Sands. What are the

environmental and change of quality of life impacts I and my community neighbors face? My home of 40 years is directly in front of the proposed boulevard and major

signaled intersection on West Coast Hwy. The windows in both of my bedrooms view directly onto the bluffs where this proposed major artery and intersection lie. How

will I be protected from the glaring lights of vehicles rolling down the boulevard? How will I be protected from the noise of revving motorcycles, autos, and trucks waiting at

a stopped signal, not to mention "boom boxes"? How will I be protected from the traffic, people and air pollution invasion of this project? I invite you to visit my home to get

a practical evaluation of what I'm asking. Anybody?

I am just winding down from the Sunset Ridge Park issue and don't think it fair that this "thing" is right on it's heels. Will you please extend the review of this life changing

DEIR and somehow format in layman's language, for at least five to six months, what's the rush?

I have one last question, for now, why is this intrusive, massive urbanization necessary in our Newport Beach, CA? Thank you

Respectfully,

Gerard Proccacino

5105 Lido sands Dr.

Newport Beach, CA 92663

**Letter O76 Gerard Proccacino**  
November 7, 2011

### **Response 1**

The State CEQA Guidelines Section 15087 requires that the lead agency (e.g., City of Newport Beach) provide public notice of the availability of a draft EIR shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

- Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
- Posting of notice by the public agency on and off the site in the area where the project is to be located.
- Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

Notice of the public review period for the Draft EIR was provided by the City using the following methods:

- Mailing to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:
- Newspaper notice in the Daily Pilot
- Newspaper notice in the Orange County Register
- Publication on the City's website

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. The comment requesting public workshops prior to public hearings does not raise an environmental issue however this comment is noted as a suggestion from the public.

### **Response 2**

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 3**

The opinion of the commenter is noted. Please refer to the response to Comment 1.

Comment Letter O77

November 4, 2011

FAX  
ORIGINAL TO FOLLOW

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

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DEVELOPMENT  
CITY OF NEWPORT BEACH

RE: Response to Bonterra dEIR, Subject Banning Ranch.

Dear Mr. Alford:

The following are specific questions and concerns regarding the Bonterra dEIR regarding the proposed Newport Banning Ranch development.

1.) Under Section 4.9 / Transportation and Circulation specifically Section 4.9.7 , Project Assumptions, there is reference on page 4.9-27( Ref.19 th Street), to: "Minor improvements on 19 th Street would be required to connect North Bluff Road to 19 th Street." Question: How can minor improvements be the case if 19 th Street is over 15 feet above grade where Bluff Road would intersect? Wouldn't earth movement and grading be substantial and environmentally disruptive?	1
2.) Under Exhibit 4.1-3 North Bluff Road is extended from approximately the proposed Urban Colony to 19 th Street. Question: How can a road be extended through designated Open Space (O.S), dividing designated Upper and Lower Habitat Regions, without violating the very Open Space so dedicated by developer and agreed to by the City especially given the large amount of earth movement required?	2
3.) Under Exhibit 4.9-7 / Project Trip Distribution, trip distribution is defined as 10% of total distribution along 19 th Street. Question: How does a nominal traffic flow justify extension of North Bluff Road to 19 th Street especially given concerns outlined in 1.) and 2.) above?	3
4.) Under Section 4.9-14, Page 4.9-91, Policy Analysis, dEIR lists "No Impacts" Question: How can the proposed development have no impacts and still be consistent with the California Coastal Act? See 1 thru 3 above. Note O.S. conflict.	4
5.) Under Section 4.9-17, Page 4.9-114, Special Studies, lists a 'special study' of a 19 th Street Bridge across the Santa Ana River. Question: How can a study of a bridge be included in the Banning dEIR when said dEIR concludes in Section 4.9 Page 4.9-120 that "the roadway system within the project site would not be subject to change if the 19 th Street Bridge were not implemented?"	5

Sincerely  
Norbert Puff   
1 Moonrise Court, NB, 92663  
Ph/Fax 949.631.1066  
norbpuff@sbcglobal.net

**Letter O77    Norbert Puff**  
November 4, 2011

### **Response 1**

The “minor improvements” referenced in the Draft EIR refer to street improvements such as paving, curb and gutter, etc., as opposed to earthwork and grading which are analyzed in Section 4.3-7. Page 4.9-27 has been revised and incorporated into the Final EIR as follows:

Minor Improvements on 19th Street would be required to connect...

### **Response 2**

Unless specifically prohibited, roads are permitted under all General Plan and zoning designations. The proposed construction of North Bluff Road from the Urban Colony to 19th Street would extend through the area of the Project site referred to as Upland Open Space. The roadway does not divide the designated Upland and Lowland areas of the Project site. Grading and earth movement proposed within the Upland Open Space between the Urban Colony and 19th Street would include site remediation activities as part of the habitat restoration of the Upland habitat areas, proposed as part of the Project, and the grading activities necessary for the roadway proposed as part of the Project. Biological impacts to the Upland area associated with the remediation and restoration aspects of the Project and the construction of North Bluff Road are addressed in Section 4.6, Biological Resources, of the Draft EIR.

### **Response 3**

Bluff Road and North Bluff Road would provide a new north-south roadway connection to provide roadway capacity that is not currently available in the general Project vicinity. As addressed in most detail in Section 4.9, Transportation and Circulation, Bluff Road is shown as a future north-south roadway connection between West Coast Highway and 19th Street in both the City of Newport Beach Circulation Element’s Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways (MPAH). The roadway shown on the City’s Circulation Element is not labeled; the roadway shown on the MPAH is labeled “Balboa”. The Newport Beach Circulation Element classifies Bluff Road as a Primary from West Coast Highway to 19th Street; the Orange County MPAH classifies it as a Primary from West Coast Highway to 17th Street and as a Major from 17th Street to 19th Street. Consistent with the Circulation Element and the Orange County MPAH, the construction a new arterial connection to West Coast Highway would provide an additional route for regional travelers to minimize impacts on Newport Boulevard and Superior Road. Both the City’s Master Plan of Streets and Highways and the Orange County MPAH assume a road through the Newport Banning Ranch property from West Coast Highway to 19th Street regardless of whether the property is retained as Open Space or developed as a Residential Village.

### **Response 4**

The opinion of the commenter is noted. The proposed Project is considered consistent with applicable transportation policies of SCAG, the City’s General Plan, and the California Coastal Act. A project can have environmental impacts while being consistent with planning policies.

### **Response 5**

The construction of the 19th 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 19th 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 19th 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 19th 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 19th Street Bridge.

**Comment Letter 078**

Dean Reinemann  
1877 Parkview Circle  
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949-548-2059  
sapience@pacbell.net

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



November 11, 2011

BY HAND DELIVERY

Regarding DEIR for Newport Banning Ranch

Dear Mr. Alford:

Newport Banning Ranch is the last piece of remaining developable land in Newport Beach. Therefore it is important that all elements affecting its development be considered very carefully. Interested parties are but not limited to, Newport Banning LLC, area, the City of Newport Beach, the City of Costa Mesa, the County of Orange, the State of California and the citizens of the aforementioned jurisdictions.

I lack technical expertise to respond to the Draft Environmental Impact Report using the same language and terms contained in the document. My understanding of the technicalities of an DEIR is very limited. Here however, are some points for consideration .

It could be that one or more of the following has already been submitted or is already in the Draft Environmental Impact Report (DEIR).

1. Noise must be a consideration. Steps must be taken to attenuate the sound from all roadways. I understand that there is such a thing as asphalt that contains ground up tires that reduces noise levels from streets. Noise requirements are addressed in CEQA, NEPA and local code. In addition to road noise, parkland and play fields should be considered in respect to noise..	1
The best effort possible should be made to contain the sound from the housing units possibly by surrounding them all with a sound dampening curtain. Will a noise analyses done?	
2. The developer will cleanup all the property of any vestiges of oil field equipment. The DEIR states this will be done to all regulatory agencies codes--federal, state, county and city. What are these codes and where are they to be found? What will the process of remediation be? There are no details in the document.	2
3. Almost all the property to be developed by Newport Banning Ranch is within Orange County unincorporated land. I have not found many references to the County in the DEIR. Is Orange County abdicating all interest in the property? Do any of the county codes need to be applied to this land?	3

4. There is public interest in "dark skies." Perhaps a simple way of explaining this is the desire to keep it light generated by man's activity at a minimum of spilling out into the sky at night. And perhaps one of the best times to do this is during new construction. All lighting in the development should take this into consideration.	4
5. In the transportation analysis, is public transportation included?	5
6. What is the planning for bicycle usage within the development. This would include both roads and also trails.	6
7. Does parking for the housing units meet the standards for Newport Beach? Will there be an analysis for parking demand?	7
8. I am not sure what this paragraph on page 17 of the Notice of Preparation is trying to convey:  16th Street. The extension of 16th Street from its existing terminus at the City of Newport Beach Utilities Yard to the Project site is proposed as a part of the Project. This off-site improvement to 16th Street would be partially constructed on Newport-Mesa Unified School District property and be within the right-of-way easement provided for the City of Newport Beach Utilities Yard to join the existing roadway at the easterly School District property line.	8
What is connected to what and on whose land?  9. <b>"Interpretive Parks.</b> Approximately one acre is proposed for Interpretive Parks to include a vernal pool preservation area (located southwest of the proposed intersection of Bluff Road at 17th Street) and the proposed Talbert Trailhead Staging Area (located at the northeastern corner of the Project site). The vernal pool interpretive area could include signage kiosks and displays. The Talbert Trailhead/Staging Area would provide public access to a regional network of on and off-site nature trails via a trail through the Upland Open Space.(b) Public parking is proposed on site and off site along the southern side of 19th Street. The Interpretive Parks are planned to be privately owned and maintained but accessible to the public. Circulation Public access. (a)"  (a)"The interpretive parks are planned to be privately owned and maintained but accessible to the public."  I have been under the impression that lower land park area would become public land.  (b) "The Talbert Trailhead/Staging Area would provide public access to a regional network of on and off-site nature trails via a trail through the Upland Open Space."  The staging area is in low land or fairly lowland. What is the plan to get from the staging area to the upland open space? Are these trails that are mentioned on any map?  (c) "Public parking is proposed on site and off site along the southern side of 19th Street."  Although Costa Mesa would be obligated to cooperate in the connections of roads as well as traffic mitigation measures, is the parking of 19th street subject to the same cooperative requirements.	9
9. Has it been proven that there will be an adequate water supply for the development?	10
10. It used to be that mature wetland willows were protected. Is that so today? To the best of	11

my knowledge there are mature wetland willows in the northern portion of the development. If the mature wetland willows are on the property and they are protected, have they not been included in the DEIR.	11 cont.
11. Is my understanding that the low lands of the property will be cleaned up and made into open space that will be restored to--at least a portion--to wetlands. I don't believe that the DEIR contains any information how this will be accomplished. If there are indeed to be wetlands, that means there will be some kind of exchange of ocean water on and off the property. Again how and where will this be accomplished? Will there be a system of dikes and gates? Is Newport Banning Ranch contiguous with a body of salt water, or will access need to be obtained through another entity?	12
12. The Army Corps of Engineers have jurisdiction by the mouth of the Santa Ana River. To what extent will they be involved in the project and should they be included in the draft DEIR?	13
13. There is proximately 100 acres at the southern edge of the proposed development that was created by the Army Corps of Engineers (and I understand maintained by the Corps), as a nesting place for the lease turn. Because this land is adjacent to the proposed development, what considerations have been given to this sanctuary? Will there be a buffer between the proposed development taking in to account noise, traffic and vehicular traffic and use of nature trails?	14
14. What measures are there to ensure water quality and air quality to today's standards as well as future standards since a reasonable supposition is that higher standards very well might be enacted? In other words to meet and exceed today's standards.	15
15. What are the provisions that address global climate change? Will California Global Warming Solutions Act (Assembly 32) by one of the guidelines?	16
16. As proposed, there is no school site on the development. I believe this will not be an all adults immunity, so where will the children of the residents go to school?	17
17. Will there be testing for radon gas?	18
18. Recently I have heard a representative from the developer say that the project will be creating an endowment for the maintenance of the Banning Ranch's parkland in perpetuity. Is this topic addressed in the draft the IR?	19
19. To what extent will paleontology be investigated? There exists the possibility of native American inhabitation on the site because of proximity to the ocean and the security to be had on the upland.	20
20. When the renewal of the site is being accomplished will the soil is excavated or disturbed me monitor my the appropriate agencies wether they be city, county state, or federal? When the soil is disturbed who knows what will develop.	21
21. What steps will be taken to minimize the impact of the development on the Coastline Community College building and the people who use it on Whittier?	22
22. What water quality sampling plans are there for the construction. And on build out on a regular basis?	23
23. Will the draft DIR the affected by the results of the California coastal commission meeting on Wednesday, November 2, 2011? The commission indicated, but did not ratified, that the entrance to Sunset Ridge Park from Pacific Coast Highway will be modified from the submitted plans of the City of Newport Beach which withdrew its application.	24

24. Will the Stormwater Pollution Prevention (SWPP-Assembly Bill 32) be implemented?	25
25. What role will the Environmental Protection Agency (EPA) play in the development?	26
26. What will be the road and property runoff plans? Will they conform to the standard urban storm water management plans (SUSMP)?	27
27. What provisions are there for renewable energy?	28

Thank you for your consideration.

Please keep me informed as the process continues.

Sincerely,



Dean Reinemann

**Letter O78     Dean Reinemann**  
November 8, 2011

### **Response 1**

As stated in Standard Condition 4.12-4 in the Draft EIR, “In accordance with City of Newport Beach standards, rubberized asphalt, or pavements offering equivalent or better acoustical properties shall be used to pave all public arterials on the Project site and all off-site City of Newport Beach roads where improvements would be provided or required as a part of the Project”. Noise from parks is addressed on pages 4.12-34 through 4.12-37 of the Draft EIR.

The use of noise barriers is addressed in Mitigation Measures (MM) 4.12-1, 4.12-6, 4.12-8, and 4.12-10 of the Draft EIR. Many of the other MMs as well as the Standard Conditions are included in the Project to minimize noise impacts to residences.

### **Response 2**

As stated in Section 4.5.8 of the Draft EIR, “Oil and gas wells to be abandoned or re-abandoned shall be done so 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 shall be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division, before issuance of the first certificate of occupancy”. DOGGR also has a process called the Construction Site Review that must be followed for oilfields that are abandoned for future development purposes – this process would be followed. The remediation scope and processes are provided in Section 4.5, Hazards and Hazardous Materials, and Appendix D of the Draft EIR, the Draft Remedial Action Plan.

### **Response 3**

Because the property is in the City of Newport Beach and its Sphere of Influence and the Applicant has requested the property to be annexed into the City (rather than remain unincorporated), the City of Newport Beach would act as the Lead Agency. City requirements would be applicable to the proposed Project.

### **Response 4**

The comment is noted. As addressed in Section 4.1, Land Use and Related Planning Programs, and Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, the proposed Project would restrict lighting associated with businesses (e.g., resort inn and neighborhood commercial uses) and HOA-owned and operated land uses within 100 feet of the Open Space Preserve to “dark sky” lighting regulations. The purpose of dark sky lighting restrictions is to (1) emit outdoor lighting for nighttime safety, utility, security, and enjoyment while preserving the ambiance of a dark sky; (2) curtail degradation of the nighttime visual environment and the night sky; (3) minimize glare and obtrusive light by limiting outdoor lighting that is misdirected, excessive, or unnecessary; (4) conserve energy and resources to the greatest extent possible; and (5) help protect the natural environment from the damaging effects of night lighting by shielding and directing exterior lighting away from sensitive biological resources.

No permanent night lighting would be permitted within the Open Space Preserve with the exception of safety lighting in the two oil consolidation sites. Outdoor lighting within the Interpretive Parks would be limited to low-profile bollard lighting for walkways and trails.

Street lighting would be permitted only at roadway intersections for public safety and provided in accordance with the requirements of the City of Newport Beach. All alleys would have lighting fixtures with sensors for automatic nighttime lighting.

Light 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.

Where not within 100 feet of the Open Space Preserve or the Bluff Parks or for land uses not restricted to dark sky lighting standards within 100 feet of the Open Space Preserve (e.g., private residences), community landscape/common areas, public facilities, streetscapes, parks, and other similar areas may contain accent or other night lighting fixtures. Commercial use lighting would include lighting of parking lots and drive aisles and building facades subject to the lighting requirements set forth in the Newport Banning Ranch Planned Community Development Plan (NBR-PC). Outdoor lighting for multi-family uses could include building and parking lot lighting.

### **Response 5**

Public transportation is addressed in Section 4.9, Transportation and Circulation, of the Draft EIR.

### **Response 6**

Please refer to Section 3.0, Project Description, Section 4.1, Land Use and Related Planning Programs, and Section 4.8, Recreation and Trails, of 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.

### **Response 7**

Parking is addressed in Section 4.9, Transportation and Circulation, of the Draft EIR. All required parking for the Project would be provided on the Project site.

### **Response 8**

Please refer to page 3-20 of the Draft EIR which discusses off-site improvements associated with 16th Street. In summary, extending and widening 16th Street and connecting it to the Project site was assumed by the City of Newport Beach as part of the planning and construction of the City of Newport Beach Utilities Yard located at 16th Street's western terminus on the south side of the roadway. Adequate setbacks are available to widen the south side of 16th Street. The widening of 16th Street on the north side would impact vacant property owned by the School District. The operation of North Bluff Road would also impact the School District's vacant property. North of 16th Street for approximately 800 feet, half-width roadway improvements for the east side of North Bluff Road are proposed on property owned by the School District.

### **Response 9**

The City suggests that the commenter review Section 4.8, Recreation and Trails, of the Draft EIR which includes graphics depicting all of the proposed parks and trails associated with the

Project. Project parking is addressed in subsection 4.9.13 of Section 4.9, Transportation and Circulation, of the Draft EIR. No Project parking is proposed in the City of Costa Mesa.

### **Response 10**

The *Water Supply Assessment, Newport Banning Ranch*, prepared by AECOM (May 2010) was approved by the Newport Beach City Council on October 12, 2010. The Water Supply Assessment (WSA) was prepared in accordance with Section 10910(d)–10910(f) of the *California Water Code*. The water demand for the Project site was included in the City's water demand forecasts (as identified by City staff and the 1999 Water Master Plan) is reflected in the City's 2005 Urban Water Management Plan and in Metropolitan Water District of Orange County, Orange County Water District, and Metropolitan Water District planning documents. A Water Supply Assessment (AECOM 2010) was prepared and concludes that the City would have sufficient water to meet the proposed project demands, as well as its current and future demand. Based on the WSA, the City, as water purveyor, has determined that a sufficient supply is available during average, single-dry, and multiple-dry years that would meet the anticipated water demand associated with the Project, in addition to the water demand of existing and planned future uses through the year 2030.

### **Response 11**

Habitat containing mature willows is discussed in detail. Please refer to the discussion of willow riparian forest on page 4.6-18 of the Draft EIR. Areas containing willow are often regulated by several resource agencies including the U.S. Army Corps of Engineers (USACE), California Department of Fish and Game (CDFG), and California Coastal Commission (Coastal Commission). For the proposed Project, the loss of approximately 2.68 acres of riparian scrub/forest habitats and approximately 10.25 acres of disturbed riparian scrub/forest habitats would be considered significant because of these vegetation types' decline in the Project region⁵¹ and also because these habitats potentially support special status wildlife species. Implementation of Mitigation Measure (MM) 4.6-5 and Project Design Features (PDFs) 4.6-1 through 4.6-4 would reduce impacts on these resources to less than significant levels. MM 4.6-5 requires habitat restoration of permanent impacts to willow scrub/willow riparian forest at a 3:1 ratio either on site or off site. In addition, all permanently impacted disturbed riparian habitats and mule fat scrub and all temporarily impacted riparian habitats would be restored at a 1:1 ratio, for a total of approximately 15.77 acres of restored riparian habitat. In addition, the proposed Project would preserve approximately 23.03 acres of riparian habitat on site. 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 12**

Please refer to the Habitat Restoration Plan which provides information on the proposed restoration program.

### **Response 13**

Impacts to jurisdictional features, including those regulated by the USACE are discussed in detail on page 4.6-70 of the Draft EIR. The Project would permanently impact 0.32 acre of "Waters of the U.S." and USACE wetlands, 1.87 acres under the jurisdiction of the CDFG, and 2.52 acres under the jurisdiction of the Coastal Commission. A total of 3.93 acres of "Waters of

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⁵¹ The proposed Project's regional setting includes the Central/Coastal Subregion NCCP/HCP.

the U.S.” and USACE wetlands, 0.05 acre under the jurisdiction of the CDFG, and 6.48 acres under the jurisdiction of the Coastal Commission would be temporarily impacted by the proposed Project.

#### **Response 14**

The commenter is correct that the USACE-restored wetlands are located adjacent to the Project site. However, the USACE wetlands were not created for or are it used for nesting by the least tern. The least tern nests at Huntington State Beach, immediately north of the Santa Ana River. The proposed Project's Open Space Preserve, including habitat mitigation areas and public trails, would be located adjacent to the USACE-restored wetlands. The approximate two-mile-long Lowland Interpretive Trail would have off-site connections to trails along the east side of the Santa Ana River. The proposed Project's open space is a similar use to, and is considered compatible with off-site wetlands and the Santa Ana River. No buffer from the developed areas (Bluff Road) is warranted because the USACE-restored wetlands occur from between 1,650 feet and 2,550 feet from the edge of the proposed Bluff Road extension in the northern portion of the Project site. The distance, along with the proposed open space is adequate the buffer the resources within the USACE-restored wetlands.

#### **Response 15**

Water quality and air quality requirements are addressed in Section 4.3, Hydrology and Water Quality and Section 4.10, Air Quality, respectively. The Project would be required to comply with applicable and current regulatory to environmental laws in place at the time that permits are pulled for site development.

#### **Response 16**

Please refer to Section 4.11, Greenhouse Gas Emissions, of the Draft EIR.

#### **Response 17**

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 18**

Soil gas surveys would be done as part of the Orange County Fire Authority Guideline C-03. In addition, surveys for Naturally Occurring Radioactive Materials (NORM) would be conducted as part of the Project's site remediation program. 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.

In general, high (greater than 4 picocuries/liter) concentrations of radon gas in residential homes are uncommon in Orange County. This is directly related to the fact that underlying soil and bedrock materials is relatively low in concentrations of uranium and thorium, the two elements that naturally occur in subsurface materials that decay to radon gas. The Project site is underlain by terrace deposits and bedrock of the San Pedro Formation both which are described in published geologic materials as highly unlikely to contain uranium and/or thorium, and therefore, unlikely to produce radon gas. It should be noted that bedrock of the Monterey Formation may underlie the site at deep depths below the San Pedro Formation. This formation has been postulated by some as a potential source of radon gas. However, review of the State Department of Public Health Radon Gas Database indicates that areas of Orange County

directly underlain by this formation do not have a higher concentration of radon gas exposure as compared to other areas of Orange County. In addition, the "Radon Potential Zone Map for Southern Los Angeles County, California," prepared by Ron Churchill of the California Geologic Survey in January 2005, indicates that the area of Los Angeles County northwest of the Project site (i.e., the Long Beach area) does not have moderate or high potential for high radon levels. This area of Los Angeles County is underlain by very similar soil and bedrock materials as the Project site. Therefore, it is unlikely that radon gas would be a potential hazard with the planned development.

#### **Response 19**

Habitat restoration would be the responsibility of the Applicant in the areas identified in the Draft EIR and Habitat Restoration Program (HRP). Should the proposed Project be approved, the Open Space Preserve would be permanently restricted as open space. Further, the conditions of approval would detail the structure and funding of the ownership and maintenance of the open space. It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by a number of sources including endowments, Homeowners Association fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

#### **Response 20**

A paleontological analysis was prepared as a part of the Draft EIR; please refer to Section 4.13, Cultural and Paleontological Resources.

#### **Response 21**

The opinion of the commenter is noted.

#### **Response 22**

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. No significant impacts are anticipated.

#### **Response 23**

During construction activities, field monitoring of construction runoff would be provided in accordance with the 2009 General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CA S000002). The General Permit requires field monitoring (pH and turbidity field measurements) for all rain events that provide measureable runoff and are 0.5 inch of rainfall or greater.

The Applicant has agreed to implement a post-construction monitoring plan for up to three years following the full implementation of Project to evaluate the effectiveness of the Project water quality BMPs and compare with pre-project conditions. Details of the monitoring program including sampling locations, pollutant constituents, and frequency of sampling would be provided in the Coastal Development Plan permit application submitted to the California Coastal Commission.

## **Response 24**

No action was taken by the California Coastal Commission on the Sunset Ridge Park Project; please refer to Topical Response: Sunset Ridge Park. The proposed Newport Banning Ranch Project is not a part of the Sunset Ridge Park Project. Upon receipt of a Coastal Development Permit application for the Newport Banning Ranch Project, the Coastal Commission would consider the Project.

## **Response 25**

As identified in Standard Condition 4.4-3, prior to the issuance of grading permits, an Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities would be prepared, submitted to the State Water Resources Control Board (SWRCB), and made part of the construction program. This SWPPP would detail measures and practices that would be in effect during construction to minimize the Project's impact on water quality and storm water runoff volumes.

## **Response 26**

It is unclear whether the commenter is referring to the U.S. EPA for the California EPA (Cal EPA). Assuming the commenter is referring to the latter, Cal EPA encompasses the Air Resources Board (ARB), State Water Resources Control Board (SWRCB), Regional Water Quality Control Boards (RWQCBs), the Integrated Waste Management Board (IWMB), Department of Toxic Substances Control (DTSC), Office of Environmental Health Hazard Assessment (OEHHA), and Department of Pesticide Regulation (DPR). With respect to the ARB, please see Section 4.10, Air Quality; SWRCB and RWQCB, please see Section 4.3, Hydrology and Water Quality, of the Draft EIR. The proposed Project would not result in any significant impacts to solid waste disposal (IWMB). The OEHHA does not have regulatory authority; it is responsible for developing and providing risk managers in State and local government agencies with toxicological and medical information relevant to decisions involving public health. And the DPR oversees pesticide regulation.

## **Response 27**

The road and property runoff plans are reflected in Section 4.4, Hydrology and Water Quality, of the Draft EIR and in the Watershed Assessment Report (Appendix C of the Draft EIR). The proposed Project is required to conform to the California Regional Water Quality Control Board requirements as they relate to new development.

## **Response 28**

Please refer to Section 4.11, Greenhouse Gas Emissions, of the Draft EIR. 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.

**Alford, Patrick**

**Comment Letter O79**

**From:** Stanley Rosenthal [stanleyrosenthal@me.com]  
**Sent:** Friday, November 04, 2011 2:45 PM  
**To:** Alford, Patrick  
**Subject:** DEIR

Dear Mr. Alfred

I have the same thoughts as Ginny. We spent a lot of time on Sunset Ridge and the city has withdrawn and will resubmit. So we need more time to study the DEIR on Banning Ranch.

1

Stanley Rosenthal  
Newport Crest

**Letter O79     Stanley Rosenthal**  
November 4, 2011

**Response 1**

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

Comment Letter O80

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

RE: DEIR Newport Banning Ranch Project No 2009031061

Dear Mr. Alford:

Please accept these comments in response to Draft Environmental Impact Report (DEIR), for the Newport Banning Ranch Project No 2009031061. I am an ecologist and have conducted numerous native and non-native vegetation surveys in Orange County over the past four and a half years and am proficient in Orange County plant identification.

I agree with inadequacies and omissions pointed out in response to the DEIR from Robert Hamilton, Barry Nerhus, Scott Thomas, and Terry Welsh. Another example of such inadequacies is listed below.

Section 4.6.3 of the dEIR states that one species of concern, southern tarplant (*Centromadia parryi* ssp. *australis*), flowers in late summer and early fall, but "focused plant surveys" for southern tarplant were not completed during the tarplant flowering season of 2007, 2008, or 2009. It is difficult to, first, find the species and, second, discern specific species from one another without the flowering parts. More focused plant surveys should be conducted during the actual flowering season of the southern tarplant in successive years to create an accurate and acceptable map of tarplant cover.

This is only one in a number of examples of failures in the DEIR to completely consider the biological resources on the Banning Ranch property. Without complete knowledge of the full extent of these resources, the full impact of the proposal cannot be known.

I appreciate the opportunity to respond to the DEIR.

Thank you for your time,  
Margaret Royall  
Ecologist  
Concerned citizen

**Letter O80     Margaret Royall**  
November 8, 2011

**Response 1**

The opinions of the commenter are noted. Please refer to the responses to Letters O50, O73, O13, and O91a-d for Hamilton, Nerhus, Thomas, and Welsh, respectively.

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.

**Alford, Patrick**

**Comment Letter O81**

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**From:** snicksdad [snicksdad@verizon.net]  
**Sent:** Monday, November 07, 2011 9:43 PM  
**To:** Alford, Patrick  
**Subject:** Banning Ranch DEIR  
**Attachments:** Comments to DEIR B B#63CA68.pdf

Hello Patrick,

Thank you for the links to the web site for the DEIR – Banning Ranch. I have attached comments as a resident of Newport Beach and Costa Mesa and the concerns I see with the project in its current form. Please provide to Bonterra so they can add to the DEIR and evaluate at your planning commission.

Thank you for the opportunity to comment.

Sandi

Comments to DEIR – Newport Banning Ranch – City of Newport Beach  
State Clearinghouse No. 2009031061

**Introduction/Overview:**

The purpose of this review is to comment on the DEIR prepared for the City of Newport Beach and a Project known as Banning Ranch (State Clearinghouse No. 2009031061). The notes below identify the section of the DEIR that have negative impacts onto a neighboring City (Costa Mesa) and the neighboring communities. This DEIR puts off mitigation to the developer and the neighboring City. The DEIR should analyze lesser densities and development alternatives that will bring the project into a less than significant impact versus unavoidable impacts. The project alternative as proposed would require right of way dedications, eminent domain potentially upon private property owners and expose residents to excess GHG that is defined as unavoidable. The project needs to be redesigned so as to bring the project into conformity with State mandated GHG requirements and local City and County roadway networks. This may include the discontinued discussion regarding the West Coast Highway connection that is currently not considered necessary. After review of the DEIR the West Pacific Coast Highway connection is necessary to reduce the project impacts to less than significant.

1

**Section 1.0, Page 1-2 and 1-3 – Alternative Use**

City may have a Development Agreement that allows the city to acquire property as open space.

2

**Request/Comment:**

Copy of the Development Agreement/Agreement with the property owner and the City/County for purchase rights.

**Section 1.0, Page 1-3 – Second roadway connection to West Coast Highway is being determined not to be necessary for the project.**

**Request/Comment:**

**Reject the determination that the West Coast Highway connection is not necessary.** The impacts to not placing this roadway into the roadway network will impact existing narrower streets in neighboring areas in Costa Mesa and the neighboring City should not burden these impacts on existing and proposed developments. The West Coast Highway connection should be included as a relieving impact to other roadway networks regardless of the traffic studies. (Refer to Section 4.9 – Transportation and Circulation)

3

Comments to DEIR – Newport Banning Ranch – City of Newport Beach  
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**Section 1.0, Page 1-3 – Removal of second connection to West Coast Highway. The Project is requesting that the City of Newport Beach recommend that the West Pacific Coast Highway connection not occur as follows:**

“As proposed, the Project requires an amendment to the General Plan Circulation Element to delete a second road connection to West Coast Highway through the Project site from 15th Street. The traffic analysis done for the Project demonstrates that this roadway is not needed to serve the traffic demand associated with the proposed Project and sub regional development. Therefore, construction of this second road to West Coast Highway has not been identified as a component of the Project. For further discussion of the travel demand, please see Section 4.9, Transportation and Circulation.”

4

**Request/Comment:**

**Reject the project as proposed** to remove the second roadway connection to West Coast Highway. Review of the County of Orange document regarding the Master Plan for Arterial Highways (MPAH) is needed. Additional review needs to be completed so as to better understand the impact before discounting a secondary access point to the Major Arterial that would better facilitate traffic flows known as the Pacific Coast Highway. This review needs to be completed before the DEIR is adopted. {Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2009031061)}

**Section 1.0, Page 1-3 – States that the Orange County MPAH designates North Bluff Road as a Primary (four-lane divided) to 17th Street and a Major (six-lane divided) between 17th Street and 19th Street. An amendment to the Orange County MPAH is required to change the designation from a Major to a Secondary (four-lane undivided) between 17th Street and 19th Street.**

5

**Request/Comment:**

A **Review of North Bluff Road** and the designation of 16th, 17th and 19th streets and the potential impacts on future and proposed projects that are currently under consideration needs to be evaluated.

**Section 1, Page 1-4 - Tentative Tract Map (TTM) No. 17308 is requested. There is also a Development Agreement (DA) between the Developer and the City of Newport Beach. This should be reviewed by the City of Costa Mesa.**

6

**Request/Comment:**

**Deem TTM incomplete** in that the impacts have not been mitigated to a level of less than significant. Any TTM, PM or land use entitlement needs to be fully reviewed for potential impacts to both the surrounding communities and the potential damage to

Comments to DEIR – Newport Banning Ranch – City of Newport Beach  
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wetlands and endangered and listed species both plant life and animal life and potential migration territories. Therefore a complete review of resource agencies that are affected will need to be evaluated before finalization of the DEIR. See Section 3.0 for additional information.

6 cont.

The DA between the Developer and the City of Newport Beach promises certain development rights on each side (City/Developer). This DA needs to be reviewed by the City of Costa Mesa, as the development is seeking acceptance of unavoidable impact to the City of Costa Mesa Community and neighborhoods that will have long-range and permanent impacts.

**Section 1, Page 1-9 and 1-10 – Project Alternative “A” is a no project alternative. As stated if the project did not move forward the following would be the result at this time:**

“This alternative would not have any impacts that are significant and unavoidable, whereas the proposed project would have significant unavoidable impacts associated with land use compatibility (due to noise, and night lighting), aesthetics, transportation, air quality, greenhouse gas emissions, and noise.”

**Request/Comment:**

7

That the City of Newport Beach support Alternative “A:” at this time and allow the developer to re-design and lower the impacts to “less than significant” as defined by CEQA. Additionally, that the City not adopt over-riding considerations. There are other project alternatives that have not been explored. Additionally, that the City of Costa Mesa should make the same recommendations that the City of Newport Beach accept Alternative “A” at this time in that the local and regional impacts have not been mitigated to a level of less than significant. Additionally, that additional right-of ways and private property impacts that affect the City of Costa Mesa be reduced so as not to be required or impacted upon such areas as Newport Boulevard and 17th Street, 15th Street, 18th Street and Monrovia Street. This is not intended to be an all inclusive impact listing but rather the indentifying factors of impacts that are unacceptable even with the proposed project mitigation measures.

**Section 1, Page 1-10 and 1-11 – Project Alternative “B” This project is deemed acceptable by the DEIR; some of the impacts are as follows:**

8

“There would be land use incompatibility with respect to night illumination associated with the Community Park and long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17th Street west of Monrovia Avenue. For noise, though mitigation is proposed, noise impacts would remain

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significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt (Threshold 4.1-1).

- Alternative B would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. 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 approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project (Threshold 4.2-3)."

8 cont.

**Request/Comment:**

**Reject Project Alternative "B"** at this time. The City should not adopt over riding considerations on any project. Especially this project, there are alternatives that with a re-design would lessen the impacts. These can be resolved and mitigated to a level of less than significant as defined by the State of California CEQA guidelines. The City of Newport Beach and the City of Costa Mesa should adopt this policy and not rely on over riding considerations. With this project there are alternatives that just have not been considered or need to be re-evaluated.

**Section 1, Page 1-12 and 1-13 – DEIR Project Alternative C describes impacts that are in control by Newport Beach and will negatively impact the City of Costa Mesa (i.e., Extension of Bluff Road to 17th Street). The Section is as follows:**

"Alternative C would have impacts on intersections in the City of Costa Mesa. Implementation of MM 4.9-2 would mitigate the impacts to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. Pursuant to Threshold 4.9-2, the following impacts were identified with the various traffic scenarios evaluated:

9

- Existing Plus Alternative C: Alternative C would significantly impact four intersections in Costa Mesa, whereas the proposed Project would significantly impact three intersections in Costa Mesa.

- Year 2016 With Alternative C Transportation Phasing Ordinance (TPO).

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Alternative C would significantly impact five intersections, compared to seven for the proposed Project.

– Year 2016 Cumulative With Alternative C. Alternative C would significantly impact six intersections; the proposed Project would significantly impact seven intersections: – General Plan Build out with Alternative C. Alternative C would significantly impact four intersections compared to the proposed Project would significantly impact two intersections.

- Without mitigation, regional (mass) emissions of nitrogen oxides (NOx) are forecasted to exceed applicable thresholds in some construction years. Though MM 4.10-1 would reduce the emissions to a less than significant level, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured. Therefore, for purposes of this EIR, the impacts are found to be significant and unavoidable impact (Threshold 4.10-2).

- Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Alternative C development continues beyond 2020, emissions of volatile organic compounds (VOC) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Therefore, the impacts remain significant and unavoidable (Threshold 4.10-2).

- Alternative C would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O3) (Threshold 4.10-3).

9 cont.

- Alternative C would emit quantities of greenhouse gases (GHGs) that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO2e/yr) significance threshold. Development associated with Alternative C would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).

- For the Existing Plus Project, 2016 with Project, and General Plan Build out scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise level increases in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At build out, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable (Threshold 4.12-2).

- For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the build out condition of Alternative C. MM 4.12-6 would reduce impacts to levels within the

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“Clearly Compatible” or “Normally Compatible” classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable (Thresholds 4.12-4).

- Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, the temporary noise increases would be significant and unavoidable (Threshold 4.12-2)."

9 cont.

**Request/Comment:**

That the City of Costa Mesa should **Reject** any Project **Alternative “C”** the will negatively impact the City even if mitigated. The City of Newport Beach should require that all impacts be retained within their jurisdiction and sphere of influence. Therefore, the roadways and intersections within the City of Newport Beach should be widened accordingly (West Pacific Coast Highway connection should be re-instituted as part of the project alternatives.

**Section 1.0, Page 1-14 and 1-15 describes unavoidable impacts unless City of Costa Mesa accepts mitigation and some impacts are unavoidable as follows:**

“• When compared to the proposed Project, Alternative D would have a reduction of average daily trips (ADT) and PM peak hour trips, but an increase in AM peak hour trips. Based on the lower volume of ADT and PM peak hour volumes, Alternative D would not create additional roadway or intersection deficiencies. Both Alternative D and the proposed Project would be expected to result in a significant impact at one intersection in the City of Newport Beach and seven intersections in the City of Costa Mesa. Impacts to the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach can be mitigated to a level considered less than significant. Alternative D would impact the following Costa Mesa intersections: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative D impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be would remain significant and unavoidable (Threshold 4.92).

10

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Alternative D would emit quantities of GHGs that would exceed the City's 6,00 MTCO₂e/yr significance threshold. Similar to the Project, Alternative D would make cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).

- The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At build out, noise levels would also exceed significance thresholds in the City of Costa Mesa (Threshold 4.12-2)."

10 cont.

**Request/Comment:**

**Reject Project Alternative "D"** and that the DEIR and Projects cannot pass-on its reasonability into an adjoining City and if not accepted it is unavoidable. There should be no project until these mitigations can be all approved and considered. GHG's need to be in compliance and development alternatives developed before adoption of the DEIR. Noise impacts need to be considered prior to build out of the project. These impacts need to be mitigated prior to consideration of the DEIR.

**Section 1, Page 1-16 and 1-17 describe project alternate E and negative impacts to intersections in the City of Costa Mesa that they say are out of their control as well as GHG and unacceptable noise levels as follows:**

"Alternative E is expected to have an increase in ADT and peak hour traffic volumes when compared to the proposed Project. However, this increase in peak hour volumes is not anticipated to cause any of the intersections operating at an acceptable level of service with the Project to operate at an unacceptable level of service this alternative. Both Alternative E and the proposed Project would be expected to result in deficiencies at the intersection of Newport Boulevard at West Coast Highway in the City Newport Beach, which can be mitigated to a level considered less than significant. Both Alternative E and the proposed Project would be expected to significantly impact seven intersections in Costa Mesa: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impacts to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative E impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable (Threshold 4.9-2).

11

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Alternative E would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative E would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).

- The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Costa Mesa's standards. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable (Threshold 4.12-4)."

11 cont.

**Request/Comment:**

**Reject Project Alternative "E".** Alternative "E" should not be considered as unavoidable and outside of the City of Newport Beach jurisdiction. All impacts should be contained within the Municipal boundary of Newport Beach. If the impacts are not reduced to less than significant than the project should not be approved in its current form.

**Section 1.0, Page 1-17 and 1-18 - Project Alternative "F" has unavoidable impacts as follows and should be rejected. The listed impacts are as follows:**

- Alternative F would be projected to result in a decrease in ADT and peak hour traffic volumes when compared to the proposed Project. This decrease in peak hour volumes would not cause any of the intersections operating at an acceptable level of service with the Project to operate at an unacceptable level of service. Both Alternative F and the proposed Project would be expected to result in deficiencies at the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach that can be mitigated to a level considered less than significant. Alternative F and the proposed Project would significantly impact seven intersections in Costa Mesa: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative F impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable (Threshold 4.9- 2). Alternative F would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative F would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change (Threshold 4.11-1).

12

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• The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At build out, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable (Threshold 4.12-2)."

12 cont.

**Request/Comment:**

**Reject Project Alternative "F"** as the impacts into the neighboring community/city are unacceptable and puts the impacts onto the neighboring city to rectify not the City of Newport Beach and the Project Developer.

**Conclusions/Summary:**

As proposed the Newport Banning Ranch – City of Newport Beach State Clearinghouse No. 2009031061 should be continued and or rejected as currently proposed based on the impacts that have long-range implications and should be redesigned for further study and consideration. Below is a summary of the residential component and how it can be redesigned to lessen the impact on the community and existing planned, proposed projects that exist not only in Newport Beach but Costa Mesa and the County un-incorporated areas.

13

The project as proposed is seeking 1,375 residential units to be placed in 84 acres for both commercial and residential land area. If we were to only consider residential that average would be 2,300 square feet of land area (Alternative E and F) per unit. This is very dense. A high-end community to retain a high property value and lessen the impact on adjacent community's and neighborhoods the land area allocation for residential units should be adjusted accordingly. Detailed below is a brief summary of land square footages that will allow a higher-end community with large land area and open space by lessening the amount of residential units. This will also lessen the impact on the existing roadway network. These need to be considered before moving forward with the DEIR.

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Residential land area Density Table Residential component only				
Lot Size or Land Area per Residential Unit	Dwelling Units	Sq. Ft Total	Acres	Notes
8,000	456	3,648,000	84	Not being considered
10,000	365	3,648,000	84	Not being considered
12,000	304	3,648,000	84	Not being considered
2,653	1,375	3,648,000	84	Proposed Project – Alt “E” and “F”
3,536	1200	4,242,744	97.4	Proposed Project – Alt “” and “D”

Project Alternative “D” is still to high of a residential unit count for the proposed land area. This also is shown in the aforementioned table above. The density should not be calculated over the entire project. The density is based on the acreage for residential units and the square footage average per unit on the acreage used. The entire project will give the reader a skewed understanding on density and impacts associated with the generation of traffic and impacts on GHG, etc. The project needs to break out land area for commercial and residential separately. This will provide the reader and elected official to better understand the impacts. As proposed the project is too dense regarding the populated land uses (commercial & residential) excluding the park elements/open space.

13 cont.

**Letter O81     Sandi (no last name provided)**  
November 7, 2011

**Response 1**

Please refer to Section 7.0, Alternatives to the Proposed Project. Bluff Road and North Bluff Road would provide a new north-south roadway connection to provide roadway capacity that is not currently available in the general Project vicinity. As addressed in most detail in Section 4.9, Transportation and Circulation, Bluff Road is shown as a future north-south roadway connection between West Coast Highway and 19th Street in both the City of Newport Beach Circulation Element's Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways (MPAH). The roadway shown on the City's Circulation Element is not labeled; the roadway shown on the MPAH is labeled "Balboa". The Newport Beach Circulation Element classifies Bluff Road as a Primary from West Coast Highway to 19th Street; the Orange County MPAH classifies it as a Primary from West Coast Highway to 17th Street and as a Major from 17th Street to 19th Street. Consistent with the Circulation Element and the Orange County MPAH, the construction a new arterial connection to West Coast Highway would provide an additional route for regional travelers to minimize impacts on Newport Boulevard and Superior Road. Both the City's Master Plan of Streets and Highways and the Orange County MPAH assume a road through the Newport Banning Ranch property from West Coast Highway to 19th Street regardless of whether the property is retained as Open Space or developed as a Residential Village.

**Response 2**

The City of Newport Beach is not proposing to purchase the Newport Banning Ranch property. The terms of the draft Development Agreement for the proposed Project 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 3**

Please refer to the response to Comment 1. The provision of a second connection to West Coast Highway through the Project site would not alleviate traffic on local roads. Please refer to Section 4.9, Transportation and Circulation, of the Draft EIR which addresses the potential traffic effects of the deletion of the second connection. The deletion of this second connection would also preclude environmental impacts associated with the construction of this road including but not limited to grading and biological resources.

**Response 4**

Please refer to the response to Comment 3.

**Response 5**

The requested review is provided in Section 4.9, Transportation and Circulation, of the Draft EIR.

**Response 6**

The opinions of the commenter are noted. The City of Costa Mesa is not a party to the Development Agreement.

**Response 7**

The opinions of the commenter are noted. Please also refer to Letter L3 from the City of Costa Mesa.

**Response 8**

The opinions of the commenter are noted. Please note that the City of Costa Mesa does not have approval authority for the proposed Project.

**Response 9**

The opinions of the commenter are noted. Please note that the City of Costa Mesa does not have approval authority for the proposed Project.

**Response 10**

The opinions of the commenter are noted.

**Response 11**

The opinions of the commenter are noted.

**Response 12**

The opinions of the commenter are noted.

**Response 13**

The opinions of the commenter are noted.

Comment Letter O82

Alford, Patrick

**From:** Julia Shunda [j_shunda@yahoo.com]  
**Sent:** Sunday, November 06, 2011 7:51 PM  
**To:** Alford, Patrick  
**Subject:** Bruce Bartram Newport Banning Ranch DEIR Comment III

November 5, 2011  
Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915  
Re: Bruce Bartram Newport Banning Ranch DEIR Comment III

Dear Mr. Alford:

Our family is appalled by the consequences of the Newport Banning Ranch Project. After reading our neighbor Bruce Bartram's Newport Banning Ranch DEIR Comment III, it is clear the direct result of the NBR Project is to allow the conversion of Ticonderoga into a "Commuter Roadway" as described under Newport Beach's General Plan.

Proof for this foreseeable extension can be found in the "Agreement for Ticonderoga Street" entered into between the City of Newport Beach (City) and the Newport Crest Homeowners Association (Association) on September 19, 1984 and recorded with the Orange County Recorder on September 26, 1984.

On Pg 2 Section 5 of the Agreement it is expressly stated:

"The Association shall allow Ticonderoga Street to be extended westerly and connect with 15th Street at such time as 15th Street and Bluff Road are constructed to connect to Coast Highway." (Emphasis added.) This pursuant to the Ticonderoga Agreement submitted to you by Bruce Bartram. Under the Agreement, Ticonderoga now connected only with Superior Avenue, a Primary Arterial Highway, is to be extended to connect to Bluff Road, a Primary Arterial Highway once it is connected to Pacific Coast Highway. All this is to occur as part of the NBR Project.

Although the extension of Ticonderoga into a commuter roadway to connect with 15th Street is a foreseeable consequence of the NBR Project, it is not even mentioned in the NBR DEIR. Consequently, the NBR DEIR is clearly deficient under the California Environmental Quality Act which requires the environmental impacts of projects to be disclosed, analyzed and mitigated if possible and the Newport Beach General Plan.

My family and I are deeply disturbed by the city's neglect to include an environmental review of the foreseeable conversion of a two lane, dead end, private road into a commuter roadway as defined by The City of Newport Beach in the NBR DEIR. The City's General Plan Circulation Element on Pg 7-5 defines a "Commuter Roadway" as a "two-to-four-lane, unrestricted access roadway with a daily capacity ranging from 7,000 to 11,000 with a typical daily capacity of 10,000 VPD. It differs from a local street in its ability to handle through traffic movements between arterials." (Emphasis added)

The possibility of 10,000 cars more every day polluting our community's air via exhaust and noise is absolutely horrifying to us. On top of increasing the chances of contracting illness directly linked to car exhaust, there will also be the increased risk for us, and even more disconcerting, our children, to get hit by speeding cars.

Again, with all of the above it can not be that a plan that would clearly have a dire impact to our community is not included, much less discussed in the NBR DEIR. For all of the above reasons we oppose the NBR Project in its present form.

2

Kind regards,  
Julia, George and Sebastian Shunda  
7 Seascape Drive  
Seawind Newport Community

**Letter O82     Julia Shunda**  
November 6, 2011

**Response 1**

On May 14, 1984, the City Council of the City of Newport Beach adopted Resolution No. 84-38, which vacated Ticonderoga Street. As part of the recitals adopting the resolution, the City Council of the City of Newport Beach found that Ticonderoga Street “is unnecessary to present or prospective public use.” While a condition of the vacation does allow Ticonderoga Street to be extended and connected to 15th Street at such time 15th 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 15th Street is proposed, contemplated, desired, or necessary. Therefore, an extension of Ticonderoga Street to 15th Street is speculative and not a reasonably foreseeable consequence of the Project.

**Response 2**

The commenter’s opposition to the Project is noted.

7th November, 2011

**Comment Letter  
O83a**

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.

In reference to the Transportation Section 4.9-74: When the MPAH with the proposed extension/widening of 19th Street and the bridge linking it to Banning Ave was designed, it could not have taken into account the endangered and protected wildlife and the delicate ecosystem that exists today in the wildlife area (Talbert Marsh) adjacent to the Banning Ranch parcel at the end of 19th Street. There is a great likelihood that it would not be feasible today to develop in this area. What alternatives to mitigating the impact this project will have on traffic in Costa Mesa if this widening/bridge/extension is not allowed?

Sincerely,  
Ms. Michelle Simpson  
900 West 19th Street, Costa Mesa  
Costa Mesa, CA, 92627

949-280-2670  
michellesimpson5@att.net

**Letter O83a Michelle Simpson**  
November 7, 2011

**Response 1**

Please refer to the construction of the 19th 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 19th 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 19th 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 19th 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 19th Street Bridge. The opinions of the commenter are noted.

7th November, 2011

Comment Letter O83b

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.

In reference to the Transportation section 4.9-11: Now that the Coastal Commission has indicated that the proposed Bluff Road access from West Coast Highway would not be approved, what impact will this have to the circulation system of the development? What is the alternative access into the site and how will this alternative change the circulation system and the effects on 15th, 16th, 17th and 19th Streets in Costa Mesa?

Sincerely,  
Ms. Michelle Simpson  
900 West 19th Street, Costa Mesa  
Costa Mesa, CA, 92627

949-280-2670  
michellesimpson5@att.net

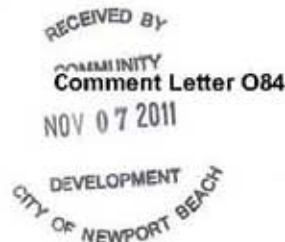
**Letter O83b Michelle Simpson**  
November 7, 2011

**Response 1**

The Applicant of the Newport Banning Ranch Project is proposing the Bluff Road connection to West Coast Highway as a part of the Project. The Coastal Commission will have to consider this request once a Coastal Development Permit application is filed with the Coastal Commission following action on the Final EIR and the Project by the City of Newport Beach City Council. Please refer to Topical Response: Sunset Ridge Park, Topical Response: Coastal Commission Consent Orders, and Topical Response: ESHA.

November 4, 2011

Patrick Alford  
Planning Manager, Newport Beach  
P.O. Box 1768



Dear Mr. Alford:

I, John Sisker, wish to go on record as to my personal comments and concerns as a resident of Newport Terrace, in reference to the Draft Environmental Impact Report for the Banning Ranch Project.

After a detailed analysis of the Draft Environmental Impact Report, I wish to submit the following comments and/or questions regarding said project.

My goal at this time is to only bring up my most important concerns regarding this project, for I may at a later time, expand on some of the more important things that will affect our community the most. However, I did want to get my general consensus in before the November 8, 2011 deadline. In addition, and as already pointed out, this is my personal comments and concerned as it relates to Newport Terrace, but does not try to speak for any other individual, who is naturally free to submit their own particular concerns.

For the record, I John Sisker endorse this Banning Ranch Project, but with the following exceptions.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| <ul style="list-style-type: none"><li>I feel the overall project would better serve our community, and surrounding areas far more effetely, if it were downsized in residential density to no more that a total 1100 home. In other words, regarding this downsize in overall density, would not this project still serves its purpose just as well with this residential reduction, and as already pointed out as a possible alternative in the Draft Environmental Impact Report? (Section 4.1 / Land Use)</li></ul>                                                   | 1 |
| <ul style="list-style-type: none"><li>In addition, I feel Bluff Road should completed be eliminated from 17th to 19th Streets, thus terminating at 17th Street. The original plans for Banning Ranch did have the major ingress/egress points for Banning Ranch at 15th, 16th, 17th Streets and Pacific Coast Highway, so why the need for this particular Bluff Road extension to 19th Street now, when many times at related presentations, it is pointed out, that the overall project does not call for it? (Section 4.9 / Transportation and Circulation)</li></ul> | 2 |
| <ul style="list-style-type: none"><li>Likewise, and even though not seemingly part of the present Draft Environmental Impact Report, I see no need for the 19th Street Bridge, originally slated to connect at Brookhurst at Banning. In fact, if this Bridge is not crucial to the overall project as claimed at all the presentation meetings, why are steps not being taken by the City of Newport Beach to have it removed from the Master Plan of Arterial Highways? (Section 4.9 / Transportation and Circulation)</li></ul>                                       | 3 |

Sincerely,

John Sisker  
11 Moonrise Court  
Newport Beach  
California 92663  
(949) 791-8302

**Letter O84     John Sisker**  
November 4, 2011

## **Response 1**

Section 7.0, Alternatives to the proposed Project, of the Draft EIR addresses several Project alternatives. Similar alternatives to the commenter's suggested alternative of 1,100 residential dwelling units (compared to 1,375 units for the proposed Project) area addressed in the Draft EIR. For example, Alternative D would allow for 1,200 units. Alternative E assumes the same number of residential units as the proposed Project but within a reduced development footprint; the development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. Alternative F assumes the same number of residential units as proposed by the Project within a reduced footprint; the development area (residential and commercial) would decrease from 97.4 gross acres to 84.0 gross acres, an approximate 14 percent reduction compared to the proposed Project.

It is important to understand 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 the number of units to 1,100. A reduction in residential density does not necessarily result in reduced impacts as suggested by the commenter. A reduction in development (whether residential, commercial, or other use) can result in reduction in traffic generation and related air quality emissions and noise depending on the on-site interaction of trips (how much traffic is captured internal to a project site). However, a reduction in density would not mean a reduction in impacts related to topics such as biological resources. It could result in an increase in impacts if a larger area were to be disturbed.

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 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 and North Bluff Road may be incrementally reduced by a reduction in dwelling units, the majority of the traffic on Bluff Road and North 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 the number of units 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 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 from 1,375 to 1,100, a reduced density alternative would not be required.

## **Response 2**

Please refer to Section 7.0 of the Draft EIR which addresses the impacts of the proposed Project without the extension of North Bluff Road to 19th Street.

Bluff Road and North Bluff Road would provide a new north-south roadway connection to provide roadway capacity that is not currently available in the general Project vicinity. As addressed in Section 4.9, Transportation and Circulation, Bluff Road is shown as a future north-south roadway connection between West Coast Highway and 19th Street in both the City of Newport Beach Circulation Element's Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways (MPAH). The roadway shown on the City's Circulation Element is not labeled; the roadway shown on the MPAH is labeled "Balboa". The Newport Beach Circulation Element classifies Bluff Road as a Primary from West Coast Highway to 19th Street; the Orange County MPAH classifies it as a Primary from West Coast Highway to 17th Street and as a Major from 17th Street to 19th Street. Consistent with the Circulation Element and the Orange County MPAH, the construction a new arterial connection to West Coast Highway would provide an additional route for regional travelers to minimize impacts on Newport Boulevard and Superior Road. Both the City's Master Plan of Streets and Highways and the Orange County MPAH assume a road through the Newport Banning Ranch property from West Coast Highway to 19th Street regardless of whether the property is retained as Open Space or developed as a Residential Village.

## **Response 3**

The comment is noted.

Comment Letter O85

**Alford, Patrick**

**From:** jskinnermd [jskinnermd@aol.com]  
**Sent:** Friday, November 04, 2011 7:56 PM  
**To:** Alford, Patrick  
**Subject:** Banning Ranch dEIR comment

RE: Availability of water supply for the proposed Banning Ranch development

Not long ago, our Newport Beach community was informed of a severe statewide draught and all residents were asked to cut back on the use of water in their homes and landscaping in order for the City to meet the water purveyors' restrictions. We were told fines for the City would follow if the required decrease in water use citywide was not achieved. As I recall, we were told we needed to achieve a 15 percent decrease in water use.

At the same time the Newport Beach City Council received a presentation from a consultant regarding projected water availability for the proposed Banning Ranch development expected to include 1375 new residential dwelling units, 75,000 feet of commercial uses, and a 75-unit resort hotel. The consultant assured the City Council that there would be enough water for the Banning Ranch development by listing various sources that were not currently available but that he anticipated would be available later! For instance, he cited a proposed desalination plant that is very controversial and may never be built. He also mentioned the Groundwater Replenishment System (GWRS) that is currently treating wastewater to the drinking water level as a possible future source. However, he seemed not to be aware that the efforts to ask people to conserve has resulted in less wastewater available to turn into drinking water. I am told the GWRS is only at 60 percent of capacity due to a reduction in the source water. That means they have the capacity to treat more wastewater but they cannot do so because conservation has cut down on the available source. So to count on the GWRS for future water supply seems short sighted to me. Somewhat the same situation is occurring with the diminishing volume of flows coming down the Santa Ana River due to conservation efforts by upstream cities. The Santa Ana River water is the principle source of water for recharging the Orange County aquifers. It seems like a Catch 22 situation to me -- the more people conserve, the less useable water we have available from reclaimed sources. I think one needs to plan for dry years while hoping for wet years!

All of the above strongly suggests that the availability of future water will actually be less than anticipated by the consultant. There are water quality professionals who have serious concerns about our future water supply. These uncertainties raise important questions regarding the availability of water for future residential needs. Newport Beach has made a considerable financial commitment to encourage its citizens to conserve water. It doesn't make sense to me to ask residents to conserve while at the same time making a determination that there is plenty of water for large future developments.

Nancy Skinner  
1724 Highland Drive  
Newport Beach, CA 92660

**Letter O85     N. Skinner**  
November 4, 2011

**Response 1**

The discussion in the Draft EIR under Threshold 4.15-2 analyzes whether sufficient water supplies are available to serve the proposed project from existing entitlements and resources or whether new or expanded entitlements are needed. The water demand for the Project site was included in the City's water demand forecasts (as identified by City staff and the 1999 Water Master Plan) is reflected in the City's 2005 Urban Water Management Plan and in Metropolitan Water District of Orange County, Orange County Water District, and Metropolitan Water District planning documents. A Water Supply Assessment (AECOM 2010) was prepared and concludes that the City would have sufficient water to meet the proposed project demands, as well as its current and future demand. Based on the WSA, the City, as water purveyor, has determined that a sufficient supply is available during average, single-dry, and multiple-dry years that would meet the anticipated water demand associated with the Project, in addition to the water demand of existing and planned future uses through the year 2030.

Comment Letter O86

**Alford, Patrick**

**From:** Danielle [dmsoriano3@aol.com]  
**Sent:** Tuesday, November 08, 2011 10:11 AM  
**To:** Alford, Patrick  
**Subject:** Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment to the DEIR. After a careful reading of the documents I believe the City of Newport Beach should consider analyzing the following Alternative to the Project:

- Bluff Road with a 2-Lane street section/profile from West Coast Highway to 15th Street. North Bluff Road with a 2-Lane street section/profile to 17th Street only. No Bluff Road extension to 19th Street. Maximum density of 1,000 homes, no resort rooms and 75,000 s.f of commercial.

An Alternative such as this responds to virtually all the public comments I have heard - with the exception of those who would see nothing happen. The ability to shape Bluff Road some is greater with a 2-Lane road - and the traffic would drop dramatically. As to those who say they want to buy the property - they appear to have no plan and no honest answers - just a desire that cannot be fulfilled. They should consider compromise - like the rest of us do. 75% plus of the land as open space and parks appears significant - even when compared to many prior Coastal area decisions. If planned correctly, this could be good for everyone.

I look forward to your response. Thank you for the opportunity to address this matter.

Danielle M. Soriano  
Laguna Beach, CA  
[dmsoriano3@aol.com](mailto:dmsoriano3@aol.com)

**Letter O86     Danielle Soriano**  
November 8, 2011

### **Response 1**

The commenter suggests an alternative that would reduce development density to a maximum of 1,000 dwelling units, eliminate the resort inn, and reduce Bluff Road to a 2-lane road. The commenter also requests consideration of an alternative that eliminates the Bluff Road extension to 19th Street. With respect to the latter request, please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR; Alternative C eliminates the construction of the segment of North Bluff Road from approximately 17th Street to 19th Street.

With respect to the suggestion that an alternative consisting of 1,000 dwelling units be considered, 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.

It is important to understand 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 the number of units to 1,000. 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 the number of units 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 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 from 1,375 to 1,000, a reduced density alternative would not be required.

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

As addressed in Section 4.12, Noise, of the Draft EIR, a reduction of future traffic noise to the Newport Crest community could be accomplished by realignment of Bluff Road to a location farther from the existing homes. In order for the cumulative noise level increase to be less than

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

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

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

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

In addition to the City's General Plan Circulation Element Master Plan of Streets and Highways, the Bluff Road arterial is included in the Orange County Master Plan of Arterial Highways

(MPAH). The Orange County MPAH is the regional transportation system administered by the Orange County Transportation Authority (OCTA). The variation would also be inconsistent with the City's General Plan. Specifically, General Plan Goal CE 3.1, as implemented by Policies CE 3.1.2 and 3.1.3, require both integration, and regional consistency with the Orange County MPAH. Therefore, the inconsistency with the Orange County MPAH would preclude the proposed Project from meeting Project Objective 1 and Project Objective 7.

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

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

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

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

**Alford, Patrick**

**Comment Letter O87a**

**From:** Norm [normsuker@sboglobal.net]  
**Sent:** Monday, November 07, 2011 3:19 PM  
**To:** Alford, Patrick  
**Subject:** Banning Ranch DEIR

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 both Costa Mesa and Newport Beach and have lived in Newport Crest for the past 25 years. My property abuts Banning Ranch and I am requesting the City extend the deadline for comments on the DEIR for Banning Ranch which is the third development plan for this site that I have experienced.

My reasons are as follows:

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

The NBR DEIR is over 7,000 pages long, very complicated, difficult to navigate through and does not conform to CEQA standards regarding the number of pages.

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.

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

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.

Norman J. Suker, P.E.

**Letter O87a Norman Suker**  
November 7, 2011

**Response 1**

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

Comment Letter O87b

**Alford, Patrick**

**From:** Norm [normsuker@sbcglobal.net]  
**Sent:** Tuesday, November 08, 2011 11:18 AM  
**To:** Alford, Patrick  
**Subject:** Banning Ranch DEIR Comments

Why has the 15 th Street Road connection to West Coast Highway (WCH) (along the Newport Shores boundary) been eliminated in the present plan since the impact of removing this road is to increase traffic next to our homes in Newport Crest?	1
Why has the four to six lane arterial Bluff Road been moved to between 20 to 50 feet of our west property line at the north end of Newport Crest when the City and County master plans show Bluff Road heading in a westerly direction (away from Newport Crest) as it continues north toward 19 th Street?	2
Why is the proposed development obscuring our ocean and mountain views and ignoring the City of Newport Beach General Plan Amendment 81-1 stated that views to the west and south are required to be preserved for a person standing on the lower balcony level of the Newport Crest development and to the extent feasible, buildings located to the north of Newport Crest are required to be terraced below existing view horizons established by a person standing on the lower balcony level of the Newport Crest development.?	3
Why is this view requirement not applied to the County's portion of the project which will result in the loss of the ocean views and would have a significantly negative impact on the market values of our homes?	4
Why is the proposed development so close to our boundary and not provide a 200 foot buffer separation that would attempt to substitute for the 400 acres of open space we have enjoyed for about 30 years and is needed to mitigate adverse impacts of the proposed development on both Newport Crest residents, the natural vegetation and wildlife that inhabit the bluffs?	5
Why is the excessive density of the proposed development needed since the negative impacts it will have on our increasingly scarce natural resources and over-taxed infrastructure, creating more traffic, congestion and reducing our quality of life?	6
Why was the intersection of 19 th St. and Newport Blvd LOS calculations bases on May 3, 2007 traffic counts that are now more than four years old and taken in an off-peak month when traffic is much lighter than the summer months when traffic is heavier going to the beach areas (Caltrans indicates that peak month traffic on the SR-55 is 80,000 ADT verses 70,000 ADT, or 14% higher) and I personally have seen southbound freeway traffic backed up from 19 th St. to Victoria St. which would result in an LOS of "F" ?	7
Why was the intersection of 19 th St. and Newport Blvd LOS calculations bases on a southbound volume of 3114 (estimated for 2009 traffic year) when on page 4.9-18 of the Transportation and Circulation section of the DEIR stated in Table 4.9-6 that the freeway segment for southbound traffic in the PM between Victoria and 19 th St is 3,223.(all traffic on this segment has to arrive at 19 th Street?	8
Why was the traffic analysis of the SR-55 freeway limited to south of Mesa Drive , when northbound freeway traffic is already baked up beginning at the SR-73 exit and the Banning Ranch traffic not considered adding the to backup?	9

Why wasn't Caltrans comments included in the DEIR since they would need to approve the Bluff Road intersection and the installation of a traffic signal (knowing that the location of Bluff Rd. violates Caltrans policy regarding spacing of signalized intersections) ?	10
Will not the proposed widening of WCH encroach upon ecological sensitive areas and was it addressed in the DEIR?	11
Has the traffic analysis considered quantitatively the existing traffic that will be diverted from Westside Costa Mesa and Huntington Beach to the proposed Bluff Road and has that traffic been included in the LOS calculations?	12
Why does the description of 15 th St. on page 4.9-13 of the Transportation and Circulation section of the DEIR not state in the last sentence that 15 th St. extension west of Bluff Road connects to WCH?	13
Why does the DEIR consider a proposed traffic signal at the future intersection of Bluff Road and 15 th St. when the developer's proposed plan shows a roundabout intersection?	14
Was the noise and air pollution generated by the proposed transit bus traffic on Bluff Road considered in the environment analysis?	15
Why on page 4.9-23 under Trip Generation are there two listings for condos & townhouses?	16
Why wasn't all the LOS calculations based upon 2011 traffic counts instead of 2009 traffic counts?	17
What is maximum proposed traffic volume of Bluff Rd. including the project and diverted traffic and what is the level of service per the Orange County Highway Design Manual page 100-5 dated August 1989?	18

**Letter O87b Norman Suker**  
November 8, 2011

**Response 1**

The need for a second connection to West Coast Highway through the Project site (via the extension of 15th Street west of Bluff Road to West Coast Highway) was first studied as part of the City of Newport Beach General Plan Update, and was revisited as part of the Newport Banning Ranch Draft EIR. It was determined that the volume of traffic that would access West Coast Highway through the Project site (consisting of new traffic generated by the Project itself, plus traffic that would shift to Bluff Road from other existing roadways) could be accommodated by a single roadway connection.

**Response 2**

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

**Response 3**

The policy mentioned by the commenter was not included when the City of Newport General Plan was updated in 2006.

**Response 4**

Please refer to the response to Comment 3.

**Response 5**

Proposed development located proximate to the Newport Crest condominium development would include single-family residences, a Community Park, and resort inn land uses. All land uses proposed as part of the Project are consistent with the Newport Beach General Plan alternative land use of Open Space/Residential Village (OS/RV) for the Project site. The Newport Beach General Plan does not restrict the location of any land use permitted under this General Plan land use designation. The proposed Project includes the restoration and preservation of over 50 percent of the Project site as permanent open space. The type and scale of proposed residential land uses adjacent to Newport Crest are compatible with the scale and type of development found within Newport Crest, a single-family condominium development.

The evaluation of the proximity of proposed Project land uses to off-site land uses is addressed in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, in particular on page 4.1-38 and as depicted on Exhibit 4.1-2g which contains two Sections E1-E1 and E2-E2.

The commenter asks why the development does not provide a 200-foot buffer separation that would attempt to substitute for the loss of open space and mitigate for impacts on Newport Crest residents, vegetation, and wildlife.

For approximately 90 percent of the approximately 1,800-foot-long perimeter adjacent to the Project, building development is proposed to be more than 200 feet away from the condominiums within the Newport Crest community. The area between the proposed roadways (Bluff Road and extension of 15th Street) and Newport Crest would be the Central Community Park. The Draft EIR acknowledges that as Bluff Road curves around the sharp (90 degree)

corner to 15th Street the edge of the road would be approximately 22 feet from one of the condominium buildings; this could be described as a pinch point.

The Master Development Plan Section E1-E1 depicts the point where Central Community Park is narrowest (approximately 22 feet wide) adjacent to the Bluff Road right-of-way. Bluff Road would be approximately 40 feet to the closest Newport Crest condominium patio/deck. The grade for the northbound lanes is proposed to be depressed approximately 12 feet below the existing patio/deck at this location. The use of a sloped median would depress the southbound lanes to approximately 16 feet below the existing patio/deck. Section E2-E2 shows that the distance between Newport Crest and Bluff Road would increase in both directions from the "pinch point". Located 100 feet to the south of Section E1-E1, Section E2-E2 shows that the South Community Park is approximately 90 feet wide in this location. The width of the park increases similarly north of the pinch point. Approximately 90 percent of the perimeter of Newport Crest with the Central and South Community Park areas would provide a buffer of 200 feet or more of non-active recreational space.

The reason the road is proposed in this location is addressed in Topical Response: Bluff Road/North Bluff Road Location and Alignment.

### **Response 6**

The proposed Project is consistent with the Alternative Use General Plan Land Use designation of Residential Village. The potential environmental impacts associated with the proposed Project are addressed in the Draft EIR. The opinion of the commenter is noted.

### **Response 7**

At the time the traffic data for the Traffic Impact Analysis was collected, Newport Boulevard was under construction between 17th Street and 19th Street. The City of Costa Mesa provided peak hour counts that were conducted before the construction began. Based on direction from the City of Costa Mesa, a growth factor of 1 percent per year was applied to the traffic data to represent 2009 turning movement data. The 2007 traffic counts were the most recent and applicable counts available at the time of preparation of the Traffic Impact Analysis. It should also be noted that the City of Newport Beach Traffic Phasing Ordinance (TPO) requires that the analysis be prepared based on traffic counts taken between February 1 and May 31.

### **Response 8**

The peak hour data for the intersection of Newport Boulevard at 19th Street is based on manual turning movement counts collected at the intersection during the morning and evening commute periods. The traffic volume on the freeway mainline is based on daily traffic volume data collected by Caltrans and posted on their website. The daily number is then factored to get a peak hour volume, based on a peak hour percentage of the daily and direction of travel. The Caltrans data and the peak hour intersection data at the adjacent intersection would not match exactly because the data is collected at different times, and the Caltrans daily data is factored to derive peak hour volumes.

### **Response 9**

The analysis of the SR-55 Freeway mainline was not limited to south of Mesa Drive. The analysis extended from the terminus of the freeway at 19th Street to the I-405 Freeway in the City of Irvine.

## **Response 10**

Caltrans has been consulted in the course of planning the location and design of the Bluff Road intersection with West Coast Highway. Please refer to Comment Letter S2 from Caltrans.

## **Response 11**

Please refer to Topical Response: ESHA. Section 4.6 of the Draft EIR includes an analysis of all impacts to biological resources resulting from the development of the Project which includes the widening of West Coast Highway within the boundaries of the Project site.

## **Response 12**

The Traffic Impact Analysis does consider that some local traffic can be expected to shift off the existing street system near the Project site to take advantage of the new connection to West Coast Highway (see page 4.9-25 of the Draft EIR). The shift in existing traffic was estimated based on select link runs of the Newport Beach Traffic Model (NBTM), which isolated the trips using Bluff Road to identify origins and destinations.

## **Response 13**

15th Street is shown on the Orange County Master Plan of Arterial Highways (MPAH) as extending west beyond Bluff Road and connecting to an extension of 17th Street. 15th Street as shown on the Orange County MPAH would not connect directly to West Coast Highway.

## **Response 14**

A roundabout is not proposed for the future intersection of Bluff Road at 15th Street.

## **Response 15**

The noise model inputs for traffic volumes include one percent medium trucks and one percent heavy trucks. Buses would be included in the medium truck volumes. The CalEEMod model for estimating air pollutants includes buses in the fleet mix. It is noted that the Orange County Transportation Authority has replaced more than 50 percent of its diesel buses with low-emission natural gas fueled buses. Please refer to the OCTA website, [www.OCTA.net](http://www.OCTA.net) in the Air Quality section of their site.

## **Response 16**

The two listings on page 4.9-23 for residential condominiums and townhouses reflect the 222 units proposed for the Resort Colony and the North Family Village, and the 730 units proposed for the Urban Colony. There is no statistical significance associated with listing them separately in the Draft EIR text. All proposed residential units were evaluated in the Traffic Impact Analysis.

## **Response 17**

The traffic counts for the Traffic Impact Analysis were either traffic counts that were provided by the City of Newport Beach as part of their Traffic Phasing Ordinance annual count program, were provided by the City of Costa Mesa for the intersections on Newport Boulevard that were under construction, or were new traffic counts conducted specifically for this analysis at the time the environmental review process was initiated.

## Response 18

The Newport Beach Traffic Model (NBTM) forecasts indicate a daily volume of 15,440 trips on Bluff Road north of West Coast Highway. This segment of Bluff Road would be a four-lane divided roadway, with a daily LOS E capacity of 37,500 vehicles per day, based on Table 102.1 of the Orange County Highway Design Manual. On Bluff Road north of 17th Street, the NBTM forecasts indicate a daily volume of 17,150 trips. The Project shows this segment of Bluff Road to be a three-lane divided roadway (two northbound and one southbound) to the commercial center boundary, narrowing to a two-lane undivided roadway north of the commercial center boundary. The capacity of a three-lane divided roadway would be estimated to be 28,000 trips, and the daily LOS E capacity of a two-lane undivided roadway would be 12,500 vehicles per day based on Table 102.1 of the Orange County Highway Design Manual. The capacity of a roadway segment will increase when there are no driveway access points and no intersections, such as the planned segment of North Bluff Road between 17th Street and 19th Street. Please see Exhibit 4.9-25 which shows traffic volumes.