CALIFORNIA COASTAL COMMISSION

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W9b

ADDENDUM

DATE: October 6, 2015

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM W9b, APPLICATION NO. 5-13-032 (Newport

Banning Ranch, LLC) FOR THE COMMISSION MEETING OF

WEDNESDAY, October 7, 2015.

A. CHANGES TO THE STAFF REPORT

Commission staff recommends modification to the SUMMARY and FINDINGS of the staff report. Language to be deleted from the staff report is identified by strike out and where language is to be added the font is **bold and underlined**.

- 1. On page 1, the list of agents has been updated. See attached letter dated September 29, 2015 from the applicant.
- 2. On page 2, the second paragraph shall be modified as follows:

...The abandonment and remediation proposed for the Banning Ranch site at this time is voluntary and has been proposed in order to accelerate the remediation process and facilitate the topographical changes the applicant has identified as necessary to prepare the site for the proposed residential and commercial development. It is not required by any regulatory agency. It has been estimated The applicant estimates that approximately 271,000 - 362,000 cubic yards of contaminated soil remediation, based on the historic oil operations footprint as the "worst case scenario," would may occur during the abandonment and remediation activities on the Newport Banning Ranch site when oil operations cease, now or in the future, regardless of the future land use for the site. The actual amount of soil disturbance is unknown at this time, and could be far less than the estimate above. In contrast, the total soil disturbance (remediation, cut and fill, and grading) that is proposed for the site to prepare the site for the development plan by the applicant (NBR) is more than 1.3-3.5 million cubic yards of soil. This amount of soil disturbance is almost 5 nearly 10 times the amount that would be required for oil clean up on the property under the worst case scenario, if the residential/commercial development were not proposed. The residential and commercial development plan is driving the site disturbances, including the proposed soil remediation plan.

3. On page 3, the final paragraph should be modified as follows:

The Commission's staff ecologists have identified a significant portion of the site as Environmentally Sensitive Habitat Area (ESHA) based on the presence of the above-described rare plant and animal life. Of the 401 acres of the site, 152.2 acres are defined as ESHA and 72.7 acres are defined as Wetlands, and in fact the Wetlands could also be defined as ESHA as they support federal and state listed species. The combined 225 acres of sensitive resources represent significant site constraints. Through the proposed grading plan, approximately 52 acres of ESHA and wetlands would be permanently impacted. There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site...

4. On page 4, the fourth and fifth paragraphs should be modified as follows:

Commission staff recognize that the proposed project offers some benefits, including condensing the oil production to a portion of the property and subsequently cleaning-up the remainder; establishing a coordinated habitat restoration and conservation plan for the south arroyo and lowlands wetlands; and developing public parks, public trails, and a visitor-serving resort. However, these benefits are entwined with substantial impacts to highly sensitive resources and permanent loss of a very rare and valuable ecosystem that cannot be replicated. The proposed development plan is not a resource-dependent use in ESHA, and is not an allowable use in Wetlands, and therefore cannot be approved. The benefits of the project could be incorporated into a less intense development plan that recognizes the resource value of the property. See the Alternatives section in the Findings for more information.

Several alternatives to the proposed remediation process plan exist (such as continued oil operations on the site, natural attenuation of the impacted soils or offsite treatment of impacted soils preceded by restoration of the site after abandonment activities), and the amount of proposed remediation and proposed standards and thresholds have not yet been approved or affirmed by the key agencies that regulate these types of clean-up activities. In addition, the applicant has not yet provided sufficient information for the USACE and the RWQCB to identify accurately the "Waters of the U.S." present on the site and the USFWS in consultation with the USACE, has not yet prepared a biological opinion which will identify critical habitat for the San Diego fairy shrimp and delineate the vernal pools and watersheds present on the property. The applicant was asked multiple times to pursue these other agency approvals before, or concurrently with, the Coastal Development Permit application.

- 5. Global Correction Dr. Jonna Engle Engel
- 6. On page 13, insert after the first paragraph:

Direction from the Coastal Commission

On several occasions, Commission staff directed the applicant, even prior to application process, to address the project's consistency with the Coastal Act.

In April 2009 Commission staff sent a comment letter for the Notice of Preparation of the Environmental Impact Report (EIR). The first point of the letter states that Section 30240 of the Coastal Act requires development be sited to avoid ESHA, and that the project must be designed to avoid impacts to ESHA. The letter recommended any ESHA or wetland delineations be reviewed by CCC staff biologists before the EIR is finalized. The letter also notes the City's preferred land use, and the preferred use under the Coastal Act for the site is Open Space (EXHIBIT 23, attached, includes staff comments on the NOP and DEIR).

In November 2011, Commission staff again sent a letter commenting on the Draft EIR. The letter stated that the project would be better served by the development of an LCP or an LUP, rather than the Coastal Development Permit process, noting that because of the extensive sensitive resources on the site the LCP process would identify the potential uses of the site before a specific project is proposed. Again, the direction was to design a project that avoids impacts to ESHA and consider alternatives that avoid fill of wetlands. Additionally, staff stated that unresolved issues relating to the land uses of the site remained, such as the scope of the 1973 exemption. The letter highlighted that the City of Newport Beach's Coastal Land Use Plan had resource protection policies with which the project would be inconsistent (EXHIBIT 23).

The EIR was finalized without input from Commission staff biologists reviewing the sensitive resources on the site. The EIR was approved with a statement of overriding considerations, stating that some impacts could not be avoided or adequately mitigated by the project, however it was approved despite the impacts because it provides economic, legal, social and other benefits to the region. However, the Coastal Act does not provide for a statement of overriding considerations and projects issued a permit must be found to be the least environmentally damaging alternative to be consistent with CEQA.

In 2013, staff sent the first incomplete/status letter for the CDP application, reiterating that because of the size of the property, scope of the project, and the resource constraints, the applicants were asked to withdraw the application and apply for an LCP, or at a minimum an LUP. Further, the first incomplete letter stated that approval of the project will prejudice the LCP for the City of Newport Beach. Again, the letter directed the applicant to resolve the scope of the exemption before proceeding with any development plans or land use designations. The incomplete letter asked for the status of applications/approvals of other resource agencies. Lastly, the letter noted that development has occurred on-site, including but not limited to unpermitted removal of major vegetation and unpermitted excavations, without benefit of the necessary CDP and that unresolved Coastal Act violations, which would establish the baseline condition of the property, must be resolved before proceeding with an application for development (all 8 CCC staff status letters are contained in attached EXHIBIT 22).

At multiple site visits over the years, Commission staff and the other resource agencies investigated the sensitive resources on the site including the vernal pools, wetlands, vegetation and wildlife. On several site visits, discrepancies arose between the information that was provided and the actual resources on the site. The applicant was asked to correct these discrepancies or to further refine their surveys, for example, areas listed on the vegetation maps as "disturbed" actually contained rare, native plants, and non-protocol level surveys were requested by US Fish and Wildlife to evaluate the "take" of California Gnatcatcher habitat areas. The applicant was also given notice by Commission staff of the

extent of sensitive resources on the site when they were given a compilation map, based on the applicant's own data, of the sensitive resources titled "Newport Banning Ranch sensitive vegetation, vernal pools, and seasonal wetlands, and special status wildlife compilation" before the Commission Field Trip at the June 2014 hearing (EXHIBIT 27). These maps were based on the applicant's own resources 'constraints' maps submitted in 2013, as well as revisions made since that submittal, which demonstrates the applicant's knowledge of the resource constraints that staff advised the applicant to avoid in their project design.

The incomplete letters (3/1/2013, 6/14/2013, among others) requested that the applicant include in the CDP application relevant parts of the project, such as the abandonment and remediation work to be done before the development plan, the scope of development occurring in the consolidated oil operations areas, and the Archaeological Research Plan for the archeological excavations that had previously occurred on the site without a CDP. The proposal for the abandonment and remediation plan was not provided as part of the CDP application until late 2014. The other items were never included in the CDP application (EXHIBIT 22).

In total staff issued 8 incomplete letters before the application was filed (copies of all letters provided in Exhibit 22). The filing letter acknowledged that items requested in previous incomplete letters and materials needed for a complete analysis of the project were still outstanding. Several of these items critical for staff's analysis were never provided as part of the CDP application, such as complete vernal pool protocol level surveys, a complete set of vernal pool watershed maps, a water supply assessment based on the most recent available data, corrected constraints maps, alternative plans for avoidance of cultural resources through the abandonment and remediation work, complete architectural plans, and hotel and hostel overnight rates. Finally, outstanding information relevant for staff's analysis was not submitted until September 11, 2015, which included a revised site plan and revised grading plans, final water quality plans, and a revised project description.

The applicant was informed that the ESHA map could not be finalized until the revised vegetation mapping was provided which did not occur until August of 2015. Staff informed the applicant of the recommendation of denial in September of 2015 after the ESHA determination was finalized, however, the applicant was informed throughout the EIR process (2009-2011) and the CDP process (2013-2015) that the extent of approvable development would be based its avoidance of the ESHA and wetlands on the site; several incomplete letters stated that the proposed mitigation plan (HCCMP) could not be reviewed until the ESHA determinations were made because the Commission cannot accept mitigation for impacts to resources without knowing the full extent of impacts and if they are avoidable. Since the filing of the application on April 29, 2015, the October meeting was the agreed to target as a southern California location and within the 180 day Permit Streamlining Act (PSA) deadline for Commission action. In early September 2015, staff indicated to the applicant that a 90 day extension of the PSA deadline would be possible to continue to work on an alternative plan that may be consistent with the Coastal Act. The applicant declined indicating they wanted to take the proposed development plan to the Commission.

7. On page 25, replace the last paragraph with:

California Regional Water Quality Control Board. Issuance of the US Army Corps of **Engineers Section 404 Permit would require the California Regional Water Quality** Control Board, Santa Ana Region (Regional Board) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act (401 Certification). The 401 Certification issued by the Regional Board would be required for the fill or alteration of "Waters of the State" on the Project site located under the Regional Board's jurisdiction. Additionally, approval of the final RAP for the oil well/facility abandonment and site remediation is required from the Regional Board. The Regional Board has issued a "Denial without Prejudice" for the water quality certification. The application did not include sufficient information for the Regional Board to identify accurately the "Waters of the State" present on the site. Therefore, Regional Board can issue conditional approval for the Final RAP proposed for the site with the conditions that implementation of the approved RAP shall not take place until such time that the 401 Certification and 404 Permit have been issued by the Regional Board and the US Army Corps of Engineers, respectively. As a result of the Regional Board review, revisions could be made to the approved Abandonment Plan and the RAP that would affect the allowable impacts to ESHA on the project site.

8. On page 44, modify the paragraph as follows:

Impacts of Development Plan

Because most of the site contains ESHA in some form, approximately 31 acres of ESHA would be impacted due to the development plan (**Exhibit 13**). The following are approximations of the total acres of ESHA that would be impacted by the development plan. The impacts of the development plan are described as impacts, as a whole, **further below** and not by individual development areas in the following chart (depicted on attached Exhibits 24 and 25): or eategories of housing or commercial or resort areas.

All acreage figures are approximate. Not all species appear in each planning area.

Urban Colony:

Total Acreage of Colony: 18.7 acres

Total ESHA Impact Within Urban Colony: 2.6 acres

Total Acreage OUTSIDE of 100 ft. Buffer of ESHA Within Urban Colony: 4.6 acres

Within Urban Colony, Impacts to Gnatcatcher Use Areas: 0.6 acre

Within Urban Colony, Impacts to CBBS Shrub: 1.6 acres

Within Urban Colony, Impacts to Maritime and Southern Coastal Scrub: 0.01 acre

Within Urban Colony, Impacts to Purple Needle Grass: 0.5 acre

Within Urban Colony, Impacts to Vernal Pools: 0.07 acre

North Family Village/Colony (NFV/C):

Total Acreage of NFV/C: 51.6 acres

Total ESHA Impact Within NFV/C: 28.1 acres

Total Acreage OUTSIDE of 100 ft. ESHA Buffers Within NFV/C: 1 acre

Within NFV/C, Impacts to Vernal Pools: 0.1 acre

Within NFV/C, Impacts to Maritime and Southern Coastal Scrub: 1.2 acres

Within NFV/C, Impacts to Purple Needle Grass: 1.6 acres

Within NFV/C, Impacts to CBBS Shrub: 15.4 acres

Within NFV/C, Impacts to Gnatcatcher Use Areas: 20.7 acres

South Family Village / Resort Colony (SFV/RC):

Total Acreage of SFV/RC: 30.4 acres
Total ESHA Within SFV/RC: 7.8 acres

Total Acreage OUTSIDE of 100 ft. ESHA Buffers Within SFV/RC: 2.9 acres

Within SFV/RC, Impacts to Vernal Pools: 0.005 acre

Within SFV/RC, Impacts to Maritime and Southern Coastal Scrub: 0.14 acre

Within SFV/RC, Impacts to CBBS Shrub: 2.4 acres

Within SFV/RC, Impacts to Purple Needle Grass: 4 acres

Within SFV/RC, Impacts to Gnatcatcher Use Areas: 1.8 acres

Parks and Recreation (PR):

Total Acreage within PR: 46.8 acres

Total ESHA Impacts Within PR: 16.8 acres

Total Acreage OUTSIDE of 100 ft. ESHA Buffers Within PR: 7.8 acres

Within PR, Impacts to Vernal Pools: 0.26 acre

Within PR, Impacts to CBBS Shrub: 5.8 acres

Within PR, Impacts to Maritime and Southern Coastal Scrub: 6.6 acres

Within PR, Impacts to Riparian: 0.2 acre

Within PR, Impacts to Purple Needle Grass: 3.8 acres

Within PR, Impacts to Burrowing Owl Territory: 0.2 acre

Within PR, Impacts to Gnatcatcher Use Areas: 10.4 acres

9. On page 46, modify these paragraphs as follows:

The HCCMP includes a Third Party Mitigation 30 acre "mitigation bank" in the lowlands of the site. Within the lowlands, approximately 30 acres of the proposed 261 265 acre Natural Open Space Preserve are proposed for designation as a third-party mitigation area to allow opportunities for additional habitat establishment, restoration and/or enhancement by parties other than the applicant requiring environmental mitigation, offsets, or other habitat sites within the region.

The HCCMP was prepared as a mitigation proposal and assumes that the underlying impacts to the sensitive resources would be approvable under the Coastal Act. Sections of the Coastal Act that protect ESHA and Wetlands have specific uses (only resource dependent uses) which allow for impacts to these resources, and may as a result of the allowed impact, require restoration in place or mitigation for those impacts. While the applicant has proposed mitigation for the impacts of the proposed project (including abandonment and remediation activities and proposed project development), the project's proposal in ESHA for its abandonment and remediation activities and large-scale development plan (i.e. residential, commercial and visitor-serving development) may not be is not an allowable use in ESHA and Wetlands, and therefore, complete avoidance of these sensitive resources may be is required, as opposed to mitigation for

the project's impacts. Therefore, as proposed, the applicant's proposed development in ESHA is inconsistent with section 30240 of the Coastal Act.

The project <u>may would</u> result in a significant change in the type of use and the level of human activity on the site, which have the potential to <u>would</u> cause significant impacts to ESHA.

10. On page 48, modify these paragraphs:

The applicant proposes to impact as significant amount of ESHA with development that is not resource dependent. Furthermore, the proposed development in areas outside of ESHA and does not provide any buffers for the sensitive resources in adjacent ESHA areas. The current proposal for the development is inconsistent with Coastal Act Section 30240, which requires development adjacent to ESHA to be consistent with the continuance of ESHA areas. A minimum of 100-foot buffers around the designated ESHA on the site is required, with 164 ft. buffer around ESHA burrowing owl habitat.

The location of the proposed water quality basin in the lowlands is inconsistent with Coastal Act Section 30233, requiring the protection of wetlands. A minimum of 100-foot buffers around the designated wetlands on the site is required.

11. On page 61 modify and add to the following paragraph:

The information provided in the application materials was not sufficient for complete assessment of potential impacts to archaeological resources. The application does not include a request for approval and implementation of an Archaeological Research Plan (ARP), nor did it include an after-the-fact request for approval for the archaeological testing and recovery that was conducted on the site through the EIR process. The goal of the ARP is to determine where development can be allowed that will avoid impacts to archaeological resources and that those resources can be preserved in place. The ARP must be peer reviewed and be subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups. Native American monitor(s) shall also be present during implementation of the ARP. The ARP must also include the preparation and submittal of a final report. The final report would also be subject to the same review and comment of the ARP. Lastly, the application did not include an assessment of the potential locations of unknown cultural resources, which would have been provided in the ARP.

The ARP submitted did not demonstrate that the archaeological testing already performed was adequate to determine that the proposed development (including remediation) will not impact known or unknown archaeological resources. There is no indication that the ARP was subject to peer review nor submitted to State Office of Historic Preservation, Native American Heritage Commission, or affected Native American groups for review and comment on the adequacy of the Plan. Some Native American individuals believe that there are burials on the project site, however no burials were found. There is no discussion in the ARP as to why no burials were found. Also, the focus of the ARP was to determine whether any sites are eligible for listing on the California Register of Historic Resources or the National Register of Historic Places. However, the focus should be to determine whether there are intact cultural resources, including Native American burials, and if they are present, what measures need to be taken to protect those resources in place, as opposed to careful excavation, regardless of whether it meets CRHR or NRHP criteria.

12. Changes to Exhibit 12 of the Staff Report, Dr. Jonna Engel's Memo dated September 25, 2015 titled "ESHA and Wetland Determination for Banning Ranch, Orange County, California (CDP 5-13-032)".

Add to the Literature Cited Section of the memo in chronological order:

Glenn Lukos Associates. August 29, 2008. Jurisdictional Delineation for the Newport

Banning Ranch Property, City of Newport Beach and Unincorporated Orange

County, Orange County, California. Addressed to George L. Basye, Aera Energy

LLC & Michael Mohler, Brooks Street.

On Page 29 of the memo (Exhibit 12 to the staff report), delete Footnote #98 as shown in strikethrough and replace with the following:

The maze of roads, oil wells, and other oil field development within the areas mapped as ESHA on Banning Ranch will be mapped to distinguish these areas from the adjacent ESHA; this just has not been done yet for the ESHA maps presented here. The ESHA boundaries include the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in ESHA buffers.

Revised Memorandum Figures in Exhibit 12 to the staff report:

- 1. Figure 8. "Areas on Banning Ranch that Commission Staff Estimated had been Mowed Before the Informal Agreement to Stop Mowing in 2012." Footnote #24 from the body of the memo has been added and noted by an asterisk to the Figure 8 caption as follows: "Commission staff analyzed a series of historical photographs to determine where the site had previously been mowed. Staff reviewed photographs dating back to before the passage of the Coastal Act for evidence of mowing (e.g. tractor lines, edges between cut and uncut vegetation, etc.). If an area had not been recently mowed or had only been mowed on a couple of occasions, or fewer, it was not included on the map of mowed areas."
- 2. Figure 12. "1928 Photograph Depicting Mima Mounds on the SouthernPortion of Banning Ranch. Photo Source: www.historicaerials.com". The title has been changed to "1938 Photograph from Dudek Depicting Mima Mounds on Banning Ranch", the 1938 photo depicting all of Banning Ranch has been substituted for the 1928 photo depicting just the southern portion of Banning Ranch, and the bottom two photographs depicting examples of mima mounds were deleted because they were examples of mima mounds and not photographs of the Banning Ranch site.
- 3. Figure 33. "Coastal California Gnatcatcher Environmentally Sensitive Habitat (ESHA) on Banning Ranch Defined by the Boundary of Compiled Breeding Territories Spanning 1992 to 2015". The ESHA boundary depicted on Figure 33 inadvertently excluded the coastal California gnatcatcher breeding season use territories surveyed in 2015. The gnatcatcher ESHA boundary on the figure has been revised to include the 2015 breeding season use territiory boundaries. In addition, a concern has been raised that the gnatcatcher ESHA boundary includes the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in buffers. An asterisk that reads the following has been added to the Figure 33

caption: "The gnatcatcher ESHA boundary includes the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in buffers."

- 4. Figure 49. "Lowland Wetlands on Banning Ranch". The lowland wetlands depicted in this figure are solely based on the wetland vegetation mapped by Dudek. In order to more accurately depicted the lowland wetland boundaries we have revised the figure based on the wetland data depicted in Exhibit 3d from the 2008 Glen Lukos Associates "Jurisdictional Delineation for the Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California" which is based on wetland delineations that included surveys of hydric soils, hydrology, and hydric vegetation and boundary determinations for ACOE, CDFW, and CCC wetlands.
- 5. Figure 50. "Banning Ranch ESHA and Wetland Boundaries." The gnatcatcher ESHA boundary on the figure has been revised to include the 2015 breeding season use territory boundaries. In addition, the following asterisk has been added to the Figure 50 caption," The ESHA boundaries include the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in buffers".

Therefore the following figures in the memo in Exhibit 12 have been updated and are attached to this addendum:

- ✓ Figure 8 of the ESHA memo.
- ✓ Figure 12 of the ESHA memo.
- ✓ Figure 33 of the ESHA memo.
- ✓ Figure 49 of the ESHA memo.
- ✓ Figure 50 of the ESHA memo.

REVISED EXHIBIT:

1. Exhibit 20 (Same as Revised Figure 50 of the ESHA memo)

NEW EXHIBITS:

- ✓ Exhibit 22 Status/Incomplete Letters Sent to the Applicant between March 2013 and April 2015 [ONLINE VERSION ONLY]
- ✓ Exhibit 23 CCC Staff Comments on the CEQA Notice of Preparation and Draft EIR letters
- ✓ Exhibit 24 New Exhibit titled Impacts to ESHA-Wetlands from Development Grading Plan
- ✓ Exhibit 25 New Exhibits titled ESHA-Wetland Impacts, by Development Area, with Remainder (Outside 100 ft. buffers) Depicted
- ✓ Exhibit 26 Exhibit from Applicant's Submittal Depicting 4 legal parcels
- ✓ Exhibit 27 Compilation map of sensitive resources titled "Newport Banning Ranch sensitive vegetation, vernal pools, and seasonal wetlands, and special status wildlife compilation" distributed before the Commission field trip to the NBR site during the June 2014 hearing

B. CORRESPONDENCE RECEIVED

Commission staff received 105 letters in opposition to the project, 1 petition requesting denial, and 45 letters in support of the project (attached-online version only).

Some letters in support of the project support the site as offering accessible open space, as opposed to supporting the actual development proposal. The Commission denying the project does not preclude the possibility of the site as open space in the future.

C. STAFF RESPONSE TO APPLICANT'S 'CORRECTIONS TO PROJECT DESCRIPTION' DATED 10/5/2015

Commission staff received the following 'corrections' to the project description from the applicant on 10/5/2015:

Project Description corrections are provided below with deleted text shown in strikeout and added text shown with underline:

Abandon oil operations; clean and remediate soil; and construct a housing and mixed-use development including: Subdivision of the 401 acre site into 159 161 residential lots; one commercial lot; two mixed use/residential lots; two resort lots; 20 16 open space lots; 10 11 park lots; and 13 public street lots. Grading includes 3,544 1,808 million cu. yds.; Residential and Commercial development on approximately 94 acres, including approx. 17 acres of roads, 72 70 acres of residential with 1,375 1,175 residential units; 75,000 sq.ft. of commercial use, 4 3 acres of retail, 6 4 acres of resort with a 75 room hotel and 8-10 20 bed hostel; 30 25 acres of parks and public trails and 261 265 acres of Natural Open Space Preserve with a Habitat Conservation and Conceptual Mitigation Plan (HCCMP) including 30 acres of a third party mitigation bank; Oil operations on 16.5 acres.

Commission staff would not characterize these changes as 'corrections', but instead are changes to the applicant's project that have not been submitted or reviewed by Commission staff. The project description used on the first page of the staff report, and elsewhere in the body of the report, comes from a project description submitted by the applicant on September 11, 2015, and from plans submitted on August 28, 2015, which included a tentative tract map and grading plans. For example, the project description submitted on 9/11/2015 indicates 1375 residential units are proposed, consistent with all prior project descriptions; in this case the applicant indicates they are proposing to change that quantity to 1175 residential units. Similarly, their 9/11/15 project description states the commercial development would occupy 4 acres and resort hotel would occupy 6 acres; the new project description states that these figures have been revised to 3 and 4 acres, respectively. Furthermore, the change to the grading shown above is not accurate; the 3.544 million cubic yards is accurate based on the Commission's typical approach to quantifying grading, which adds the cut and fill quantities to give a clearer indication of the actual amount of soil movement occurring. In this case, using the figures provided on the applicant's grading plan submitted on 8/28/2015, the amount of proposed cut, 1.808 million cubic yards, is added to the amount of fill, 1.736 million cubic yards, which equals 3.544 million cubic yards of grading.

D. STAFF RESPONSE TO APPLICANT'S LETTER DATED 10/2/2015

Staff recommends the incorporation of the following staff response to the applicant's letter dated October 2, 2015, into the staff report and findings dated 9/25/2015:

Beginning on Pg.3 of the letter and in Attachment B to the letter the applicant outlines a 'conflict resolution argument. Following is staff's response to that suggestion:

Applicant's Conflict Resolution Contention

The applicant claims that the proposed project should be approved by using the Commission's conflict resolution process provided by sections 30007.5 and 30200(b). The applicant argues that while the proposed project is "potentially inconsistent" with wetland and ESHA policies, denial of the project would result in an action that is inconsistent with Chapter 3 policies related to public access and recreation, oil-spill protection, scenic resources, marine resources and water quality. Contrary to the applicant's suggestion, the proposed project does not present a conflict between Chapter 3 policies of the Coastal Act within the meaning of these sections.

Statutory Framework

The Legislature anticipated that the Coastal Commission would occasionally be required to resolve conflicts between the various policies of Chapter 3 of the Coastal Act in its implementation of the law. It provided for this situation in two sections of the Act. Section 30200 (b) provides:

Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Section 30007.5 provides:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

Occasionally, applicants propose development projects where any action the Commission might take would conflict with one or more policies of Chapter 3 of the Coastal Act. When the Commission identifies a project that generates such a conflict, the Commission must resolve the conflict "in a manner which on the balance is most protective of significant coastal resources (Coastal Act Section 30007.5 and 30200(b)). Conflict resolution allows the Commission to approve proposals despite conflicting with one or more Chapter 3 policies where other Chapter 3 policies mandate approval and where approval would, on balance, be most protective of

significant coastal resources. Thus, the first step is to identify a conflict between one or more policies of the Coastal Act. The fact that a proposal is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily indicate a conflict. Rather, the Commission must find that to deny the proposal based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy. The second step requires the Commission to apply the policy which, on balance, is most protective of significant coastal resources.

For the Commission to use the balancing approach to conflict resolution, it must establish that a project presents a conflict between two statutory directives contained in the Coastal Act. In doing so, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the *status quo*.

In addition, if a project is inconsistent with at least one Chapter 3 policy, and the essence of that project does not result in the cessation of ongoing degradation of the resource the Commission is charged with enhancing, the project cannot "create a conflict" by adding on an essentially independent component that does not remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, project proponents could regularly "create conflicts" and then demand balancing of harms and benefits simply by offering unrelated "carrots" in association with otherwise unapprovable projects. The balancing provisions of the Coastal Act could not have been intended to foster such an artificial and manipulative process. The balancing provisions were not designed as an invitation to enter into a bartering game in which project proponents offer amenities in exchange for approval of their projects.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the project without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all the relevant Chapter 3 policies, then the proposed project does not create a true conflict among Chapter 3 policies.

Analysis- Conflict Resolution is Not Warranted

In this case, there is no conflict between policies of the Coastal Act if the Commission denies the proposed project. The denial of the project will not result in coastal zone effects that are inconsistent with Chapter 3 policies, while approval of the project would be inconsistent with several Chapter 3 policies, including sections 30233 and 30240.

Many of the Chapter 3 policies that the applicant contends mandate approval of the project do not apply to the project. Other policies require that approved development meet certain criteria, but those criteria could be met in a variety of different ways, not solely through approval of the project as proposed by the applicant. In addition, the applicant has failed to demonstrate that the adverse impacts of the project cannot be avoided or minimized in ways that are consistent with the Coastal Act. But most fundamentally, the applicant does not identify any Coastal Act policy

that requires approval of the core residential and commercial components of the project in the configuration and at the intensity that the applicant proposes.

The Applicant cites numerous Chapter 3 policies in support of utilizing conflict resolution to approve the project, but many simply do not apply. Section 30211 concerns existing rights of public access to the sea. The applicant does not explain how denial of the project would interfere with any existing rights of access to the sea. Section 30212.5 requires distribution of public facilities to avoid overcrowding. The applicant does not explain how denial thwarts this policy. Section 30220 requires protecting coastal areas suited for water-oriented recreation, but Banning Ranch is not an area suited for water-oriented recreation. Section 30232 requires that the development or transportation of petroleum products shall protect against spillage. The proposed development does not include the development or transportation of petroleum products. Section 30260 addresses new or expanded coastal-dependent industrial facilities. This project does not involve any such facilities. Finally, section 30262 addresses when oil and gas development shall be permitted. The applicant is not proposing oil and gas development.

The applicant does cite some policies that do apply to the proposed development, but at most indicates that some elements of the project may be consistent with those requirements. It does not establish that Chapter 3 policies require approval of those elements exactly as the applicant proposes.

For example, section 30210 requires that maximum access and recreation be provided, consistent with the need to protect natural resource areas from overuse. The applicant does propose public access and recreation amenities, but section 30210 does not mandate approval of all public access and recreation amenities regardless of impacts on natural resources that the Coastal Act requires to be protected. Section 30212 requires new development to provide public access from the nearest public roadway to the shoreline and along the coast except where it is inconsistent with the protection of fragile coastal resources, like ESHA and wetlands. Thus, since the new development has significant adverse impacts on ESHA and wetlands, denial of the project would be consistent with section 30212 since the project would not protect these fragile coastal resources. Contrary to the applicant's claim, the denial of the project will not result in an action that is inconsistent with section 30213. Denial of the project would not result in the lack of protection of lower cost visitor or recreational facilities because none currently exist on the site. Denial of the project would also not result in the Commission's discouragement of lower cost visitor and recreational facilities because the Commission encourages the applicant to consider alternative sites to provide such facilities that would be consistent with other resource protection policies. Finally, denial of the project is consistent with section 30213 because the applicant's proposed provision of lower cost visitor and recreational facilities is not feasible due to the siting constraints from existing coastal resources including ESHA and wetlands and does not in any way preclude the applicant's provision of lower cost recreation facilities as part of a revised project that is consistent with relevant coastal resource policies. Finally, denial is consistent with 30252 because denial of the project wouldn't result in the kinds of impacts on public access that 30252 is intended to address. In sum, denial of the proposed project does not preclude provision of public access and recreation as components of a revised project that is consistent with all relevant Coastal Act requirements.

Sections 30230 and 30231 do require the protection of marine resources and water quality, but the applicant does not establish that current conditions on the site pose a significant threat to marine resources or water quality. The applicant points to the various features of the proposed

development that would ensure that the project does not adversely affect water quality and marine resources, but those or similar features would be required in any substantial redevelopment of the site.

Section 30251 does require the scenic and visual qualities of coastal areas to be considered and protected. The removal of visible structures related to oil activities can advance this policy. The applicant, however, has not established that large-scale disruption of ESHA and wetlands is necessary in order to accomplish this objective.

More generally, the applicant has not demonstrated that the large-scale remediation activities that are associated with many of the project's impacts to ESHA and wetlands are the minimum necessary to avoid degradation of ecological resources or threats to public health. The applicant has refused to do detailed, on-the-ground surveys of exactly where contamination may be present and what kind of remediation would be necessary to address the contamination that is actually present. That information is necessary to assess whether that magnitude of the remediation that the applicant proposes might be appropriate.

Finally, and most importantly, the proposed residential and commercial development of the site determine most of the impacts of the development. The applicant does not identify any Chapter 3 policies that require approval of the residential and general commercial development. More generally, the applicant argues that the Commission must approve a project with the amount of residential and commercial development that the applicant proposes in order to generate sufficient revenue to pay for site remediation and the various amenities the project would provide. The applicant, however, has voluntarily assumed responsibility for the abandonment and remediation of oil and gas development outside the remainder areas on the site. Normally, the companies that carried out the oil and gas development would be responsible for cleaning up the aftermath. Here, the applicant is seeking to have the proposed real estate development pay for those costs. That voluntary decision by the applicant does not warrant approving avoidable impacts to ESHA and wetlands.

Feasible Alternatives Exist that Would Preclude Conflict Resolution

When alternatives exist that would ensure consistency with all relevant policies of the Coastal Act, then conflict resolution does not apply. The applicant claims, in large part, that staff's suggested alternatives are infeasible because the proposed project will fund the \$30 million abandonment and remediation efforts. What the applicant fails to mention, however, is that the \$30 million cost of abandonment and remediation is directly tied to the applicant's proposed development, not the cost of remediation for a much smaller project that would be consistent with all relevant Coastal Act policies. In addition, the companies that carry out oil and gas development are normally responsible for remediation costs. Here, the applicant voluntarily assumed those costs. Thus, the applicant has not established that alternatives that avoid impacts to ESHA and wetlands are infeasible.

Quotes from the Applicant's Letter, pgs. 18-23:

Top of Page 18: There is an agency and public expectation that the abandonment, removal and cleanup of Industrial Sites in Orange County actually physically remove all materials and pollution associated with that Industrial activity from the surface so that the landowners and/or the public may then be able to decide how best to use the property. It would be false to imply that in this case suddenly those agencies and the public would be OK with leaving remnants or environmental pollution impacts of the industrial activity solely for the purpose of providing a larger hurdle for a specific follow-up development that some parties do not agree with.

Top of Page 19: It is false to imply that at the cessation of an industrial activity, such as oil operations, that the operator may just walk away and leave materials, equipment and pollution caused by that activity. The state, local agencies, and the public expect industrial sites to remove all materials, equipment and any associated pollution before just walking away. This staff characterization would never be accepted otherwise and is solely intended to create a false hurdle for any follow-up land uses that the staff personally disagrees with.

STAFF RESPONSE: In several sections between pages 18 and 23 of its October 2, 2015, letter in response to the staff report and recommendation, NBR mischaracterizes the report's analysis and discussion of the proposed abandonment and remediation elements of the project and alleges that Commission staff is implying that complete clean-up of pollutants and oilfield infrastructure is not necessary. In fact, Commission staff recognizes that such clean-up efforts are not only necessary, they are required by law. As discussed in the staff report, the Commission has a long history of working with its partner agencies to ensure that oilfield clean-up activities are carried out completely and consistent with applicable standards. Further, the Commission also has a long history of working to ensure that such activities, when proposed for areas that support sensitive resources, are designed and conducted in a manner that is the least environmentally damaging. Despite the additional information provided in NBR's response letter, Commission staff remains unconvinced that NBR's abandonment and remediation proposals are appropriately responsive to and protective of, the sensitive resources on the site. It is important to note that in addition to the proposed activities described in NBR's abandonment plans and remediation plans, there are many other ways that the oilfield clean-up work could be accomplished, some of which would likely result in significantly fewer adverse impacts to sensitive coastal resources.

Quotes from Applicant's Letter, pgs. 23-24:

- 1. The alleged historic occurrence of mima mounds on the southern portion of the NBR site does not coincide with the seasonal features on the site purported to be vernal pools;
- 2. The alleged historic occurrence of mima mounds on the southern portion of the NBR site is not material when considering the current status of seasonal features, as any mima mounds that may have occurred on the property would have been removed prior to potential regulation under the Coastal Act;
- 3. All of the existing seasonal features, with the possible exception of Seasonal Feature A, are the product of activities associated with the current oil operations, past grading and/or site manipulation;
- 4. The presence of the versatile fairy shrimp (Branchinecta lindahli) is not a reliable indicator of the presence of vernal pool habitat; rather as the common name indicates, this

species can tolerate a broad range of ecological conditions and occurs more often in non-vernal pool areas than in vernal pools.

STAFF RESPONSE: Documenting the historic presence of mima mounds on the site demonstrates that the physical conditions necessary to support vernal pools are present and the existing seasonal wetlands and vernal pool features represent a continuation of historical conditions, despite the human activities that have modified the site's micro-topography over the years. The current site conditions reflect human-related alteration of historical conditions, not the creation of wetland conditions by human actions. For these reasons, whether or not a given seasonal pond may be traced back to a given mima-mound photographed on the site a century ago is not relevant to the determination of ESHA. The relevant questions are whether the ponded area exists, whether it is a wetland as defined by the Coastal Act and the Commission's Regulations, and whether the resource values associated with that ponded area satisfy the ESHA criteria given in Section 30107.5 of the Coastal Act.

The 1938 aerial photograph of the site does depict mima mounds scattered across the site and definitively shows the presence of VP1 and W (Ticonderoga Pond) at that time, which precedes the construction of a baseball field and the CalTrans work that the applicant suggests led to these features.

The presence of fairy shrimp of any species is considered an indicator of wetland hydrology, as water must pond long enough for the shrimp to complete their life-cycle, and although the common fairy shrimp, *Brachinecta lindahlii*, occurs in other seasonal ponds, it is the most common and characteristic fairy shrimp of southern California vernal pools. The Commission considers any vernal pool indicator species, whether it be animal or plant, to be indicative of a wetland that is also a vernal pool. However, in the context of the Coastal Act, whether a wetland is also a vernal pool in the strict sense is something of a red herring, because all wetlands are protected under Section 30233 of the Coastal Act and in many past actions the Commission has provided a 100-foot buffer regardless of their status as a vernal pool. All 39 pools identified as vernal pools are also Coastal Act wetlands.

Quote from the Applicant's Letter, Page 28:

In summary, many of the disturbed areas onsite occupied by California brittle bush scrub should not be considered ESHA due to 1) abundance of non-native invasive plant species; 2) evidence of anthropogenic disturbance; 3) typically monoculture or low diversity in nature; and, 4) absence of a sensitive or special status species.

STAFF RESPONSE: Plant communities across the entire property exhibit varying levels of human disturbance, yet continue to support a wide range of native plant and wildlife species. Almost all habitats in the coastal zone are invaded to one degree or another by invasive plants and animals and therefore the threshold for determining that a rare plant community is not ESHA based on the level of non-native invasion is made on a case by case basis and tends to be quite high. The native plant communities were determined to be ESHA based on whether they met the MCV2 membership rules. In past actions, the Commission has recognized degraded rare plant communities as ESHA (e.g degraded needlegrass 4-04-085 Comstock Homes), unless they were so degraded that they no longer met the definition of the community.

The site has been adversely impacted/disturbed by humans for decades. The Commission issued Consent Cease and Desist No. CCC-15-CD-01 and Consent Restoration Order No. CCC-15-RO-

01 in 2015 to address drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land that had occurred across large areas of the project site. NBR agreed informally to stop mowing in 2012 and the scrub vegetation on the site has rebounded and expanded remarkably (see Dudek's revised 2015 vegetation map).

Degraded or not, the California brittle bush is relied upon by the federally threatened coastal California gnatcatcher and the ESHA determination was based on the best estimate of gnatcatcher use areas during the nesting season. Larger areas of habitat are utilized during the non-breeding season, but these areas were not mapped as ESHA based on their ecosystem services to gnatcatchers.

Thus, it is very likely that gnatcatchers use even wider areas of the California brittle bush and other native scrub than has been documented. For all of these reasons, it is the Commission's determination that the applicant's disturbance of California brittle brush scrub on the site has not reduced habitat characteristics or the ecological value of that scrub to such a degree that it no longer satisfies the criteria for ESHA provided in Section 30107.5 of the Coastal Act.

Quote from Applicant's Letter, Page 28:

The notion that coast prickly pear (Opuntia littoralis) and coast cholla (Cylindropuntia prolifera) was arbitrarily placed into the disturbed category while ice plant was mapped at a finer scale is a misunderstanding of the overall goals of the project. Ice plant is a target invasive non-native plant species that will be eradicated during project development. In areas of ice plant located outside of the project footprint, the plan is to remove the ice plant and re-establish healthy native scrub communities, including, but not limited to Coastal Prickly Pear Scrub. As is evident in areas of NBR that contain ice plant, shrubs and cacti are often overcome by the ice plants aggressive nature. The dense mat coverage of ice plant suppresses native plant growth and establishment. Identifying all areas of ice plant for their later removal and replacement with native coastal sage and cactus scrub is critical to the long-term ecology of NBR.

STAFF RESPONSE: The overall goal of mapping plant communities is to evaluate the existing conditions. For purposes of evaluating the existing conditions it is important to document the extent of small patches of cactus. For example, when potential cactus wren habitat was mapped in the Nature Reserve of Orange County individual cactus plants were mapped:

"In addition to recording the spatial location of all mature cactus scrub, we identified the location on field maps of all significant individual prickly pear and cholla plants, termed "satellites", and the extent of scrub containing cactus stands not yet mature enough to support cactus wrens, termed "proto-cactus scrub". Mitrovich & Hamilton. 2006.

This is the current standard for mapping potential cactus wren and gnatcatcher habitat, not an "arbitrary" requirement or "misunderstanding of the overall goals of the project.

Quote from the Applicant's Letter, Page 29:

The purple needle grass grassland (PNGG) alliance is identified by the CFDW Natural Communities List (September 2010) and the MCV2 (Sawyer et. al. 2009) as a G4/S3? rank.

The "?" indicating more information is required for the California (i.e., state) Rank. Although purple needle grass is plentiful in many areas of the site, areas classified as PNGG suffer from an abundance of invasive non-native plant species and extremely low plant diversity; therefore, the on-site PNGG does not demonstrate a high quality vegetation community worthy of an ESHA determination in areas where sensitive or special-status wildlife species are absent.

STAFF RESPONSE: The staff report did not identify all of the site's grasslands as ESHA, only those that include sufficient density of purple needle grass to meet the MCV2 membership rules for purple needle grass grassland. Furthermore, burrowing owls and many species of raptors have been observed perching and foraging throughout the sites native and non-native grasslands demonstrating the value to several rare species.

Quote from Page 30:

In summary, PNGG should not be considered ESHA due to the following reasons: 1) plant diversity is extremely low; 2) non-native invasive plants dominant; and, 3) abundance of similar wildlife habitat at Newport Banning Ranch. Additionally, maintenance activities (i.e., mowing) may have been beneficial to the preservation of PNGG over the decades, however, historic agricultural uses and oil exploration likely affected the diversity that used to be typical of this vegetation community.

STAFF RESPONSE: These arguments do not disqualify classification of the purple needlegrass grassland as ESHA; as stated above, in past actions, the Commission has recognized degraded rare plant communities as ESHA. However, these arguments are also based on very limited data. The surveys that were conducted in purple needlegrass grasslands fail to fully characterize the dynamic nature of grassland vegetation, and base conclusions about diversity and composition of this grassland on two years where surveys were conducted late in the growing season. Although purple needlegrass, Stipa pulchra, is a native perennial grass, within the California florisitic province it now generally occurs in mixed coastal grasslands, which are dominated by annual grasses and forbs. The composition and diversity of annual grasslands in California are highly dynamic from year to year, and the variation is largely attributable to climatic variation in the timing and amount of precipitation, and in temperature variability. Although purple needlegrass, Stipa pulchra, is a perennial grass, other grasses identified as also present within these grasslands are annual grasses. These grasslands, similar to most coastal grasslands within the California florisitic province, are dominated by annual grasses and forbs. In a seminal grassland paper by M.D. Pitt and H.F. Heady, in which they investigated changes in annual grassland properties over a period of 18 years, they state:

"Weather patterns play a very significant role in annual grasslands, both within and between years. Wide fluctuations in standing crop and relative botanical composition from one year to the next are the direct result of both temperature and precipitation patterns"

Throughout this paper, and several previous papers written by these and other authors, they stress that high variability of annual grassland properties is the norm:

"Gross vegetational characteristics such as standing crop and cover varied tremendously throughout the watershed study. Standing crop fluctuated from 106 to 562 g.m-2, and cover ranged from a low of 8.3% to a high of 67.7%. The apparent upward trends in both standing crop and cover likely reflect poor and excellent growing conditions at the beginning and end

of the study. Annual vegetation throughout the Hopland Field Station displayed similar trends, even in areas of different elevations, soil types, and experimental regimes."

This dynamism in the presence and relative cover of species in annual grasslands is based on a long-lived seedbank in annual grasslands, in which not all species germinate and/ or survive every year, based primarily on climatic conditions.

In addition to high variability, in dry and very dry years such as 2012 and 2015, many of the species have already died by the time that species level surveys were conducted by Dudek. The life cycle strategy of annual plants relies on the ability to produce abundant seed when soil moisture is limiting. Therefore, with the onset of summer drought occurring early in both years, it is entirely consistent with expectations that plant diversity was found to be low. Regarding the survey conducted in late April 2015 during the four year drought, many annual plants may have senesced by this time period, and even perennial vegetation would be expected to be poorly represented.

E. EX PARTE COMMUNICATIONS

Since the staff report was published Commission staff received 12 Ex Parte Communications in time to be added to this addendum.



September 29, 2015

Amber Dobson California Coastal Commission South Coast District 200 Oceangate, 10th Floor Long Beach, CA 90802

Regarding: Newport Banning Ranch, Section 30319 Disclosure

Dear Ms. Dobson:

This office represents the Newport Banning Ranch LLC in connection with the above referenced application for the proposed Newport Banning Ranch located in Newport Beach, CA. The purpose of this letter is to advise you that, pursuant to Public Resources Code Section 30319, the following persons may, for compensation, communicate with Coastal Commissioners and/or Commission staff members on behalf of the property owners:

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Should you have any questions about the foregoing, please do not hesitate to contact me

Thank You,

Michael Mohler

Newport Banning Ranch

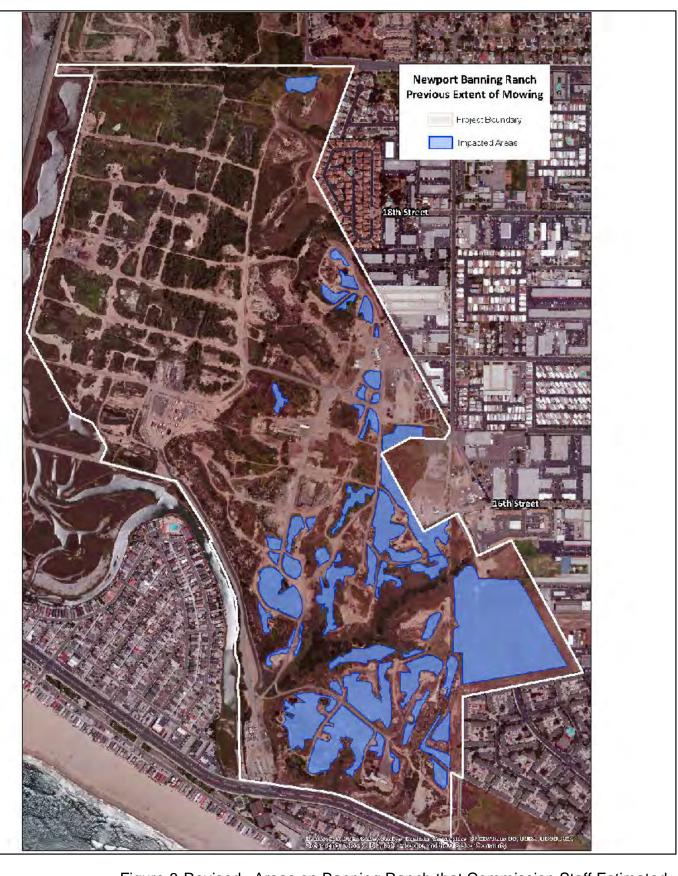


Figure 8-Revised. Areas on Banning Ranch that Commission Staff Estimated had been Mowed Before the Informal Agreement to Stop Mowing in 2012.*

*Commission staff analyzed a series of historical photographs to determine where the site had previously been mowed. Staff reviewed photographs dating back to before the passage of the Coastal Act for evidence of mowing (e.g. tractor lines, edges between cut and uncut vegetation, etc.). If an area had not been recently mowed or had only been mowed on a couple of occasions, or fewer, it was not included on the map of mowed areas.

5-13-032



1938 Aerial Photo

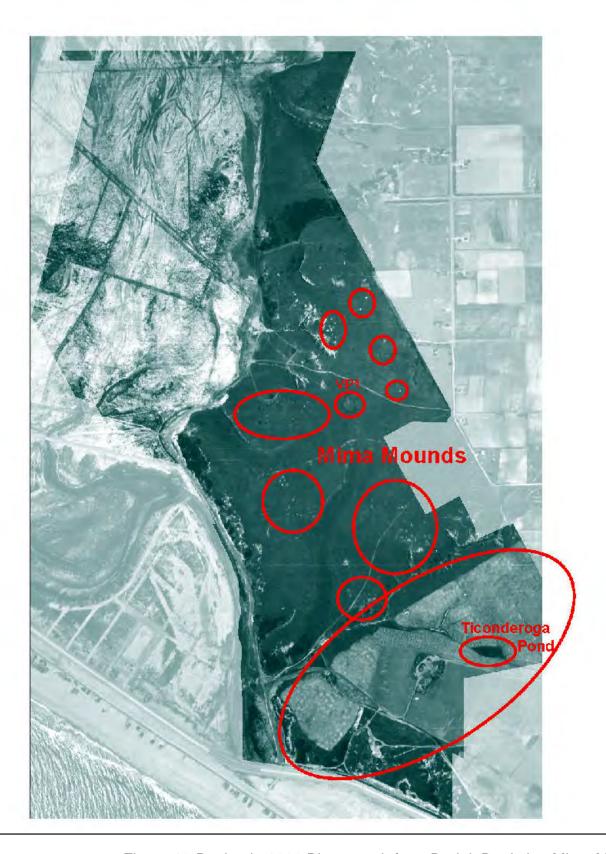




Figure 12-Revised. 1938 Photograph from Dudek Depicting Mima Mounds on Banning Ranch. 5-13-032



Figure 33, Revised to include 2015 Gnatcatcher Survey Data. Coastal California Gnatcatcher Environmentally Sensitive Habitat (ESHA) on Banning Ranch Defined by the Boundary of Compiled Breeding Territories Spanning 1992 to 2015.*

*The gnatcatcher ESHA boundary includes the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in buffers.

5-13-03



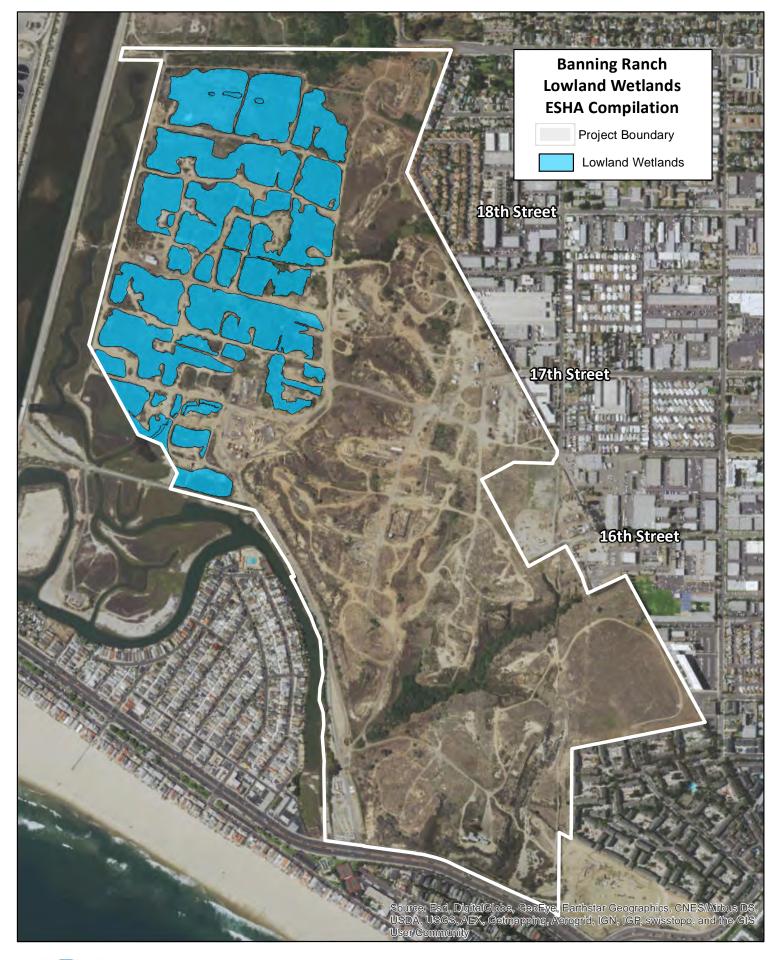




Figure 49 -Revised. Lowland Wetlands on Banning Ranch. 5-13-032

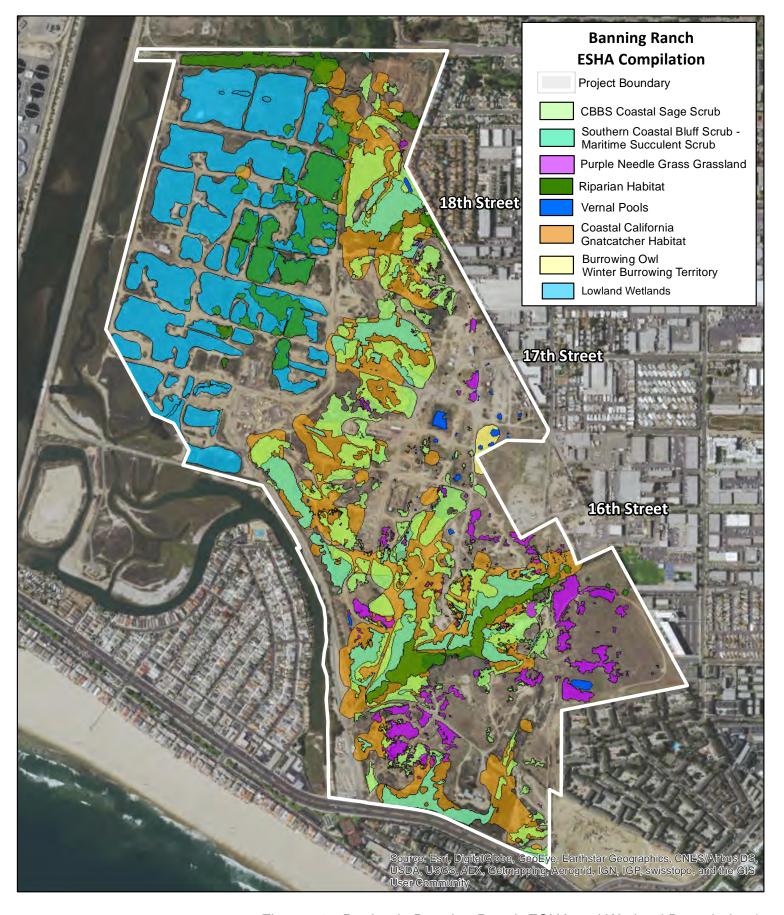


Figure 50 - Revised. Banning Ranch ESHA and Wetland Boundaries.*



*The ESHA boundaries include the maze of roads, oil wells, and other oil field development under current use. These areas are not part of the ESHA but for ease of mapping these areas were not excluded from the ESHA boundary because once buffers are applied, these areas are subsumed in the buffer and new development is not an allowable use in buffers.

5-13-032

EXHIBIT 22 CCC STAFF STATUS LETTERS/NOTICES OF INCOMPLETE APPLICATION Copies Provided in On-Line Edition Only

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



3/1/2013

Ms. April Winecki Dudek 621 Chapala Street Santa Barbara, CA 93101

Re: NOTICE OF INCOMPLETE APPLICATION

Application No.5-13-032

Site Address: Newport Banning Ranch Site

5100 Block of West Coast Highway, Newport Beach, Orange County.

Dear Ms. Winecki:

On February 1st, 2013, our office received the subject coastal development permit application. The proposed project includes grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, and 52 acres of parks. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete and that a range of issue areas need to be addressed, as described herein.

Section 13053.5 of the Commission's regulations requires that a permit application shall contain, at a minimum, "an adequate description...of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act. The submitted permit application fails to meet this standard, and does not provide an adequate description sufficient to determine whether or not the project complies with all relevant Coastal Act policies. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for certain types of structures, and various other draft plans for public amenities and habitat restoration. The coastal development permit process is not suited to the type of 'conceptual' approval that is being sought in the proposed application because only in a planning context can the Commission fully evaluate whether development of this scale can comply with Coastal Act policies. Given the scope and complexity of the proposed project, Commission staff has in the past and continues to recommend that the project be considered in the context of a Local Coastal Program review, submitted by the City. This would allow for consideration of significant threshold issues at the planning level, such as the kind, location and intensity of development that would be appropriate for the site given the policies established under the Coastal Act and the constraints present on the site (e.g. biological resources, geologic hazards, archeological resources etc.).

Further, evaluating a project of this scale in a pure CDP context would be inconsistent with section 30604(a) because it will prejudice the local government from preparing a local coastal program that is in conformity with Chapter 3. This is so because the individual evaluation of site-specific resources on the ground on each individual building site would result in an incoherent and unintegrated development scheme where the purpose of a certified LCP is to develop an integrated and coherent development plan for a large area, like the subject area consisting several hundred acres of land. Only with the certification of an LCP for the project site can the Commission fully

5-13-032 (Newport Banning Ranch LLC) Notice of Incomplete Application Page 2 of 20

evaluate whether a proposed development of this scale complies with all relevant policies of the Coastal Act. Without a planning effort, the Commission is left with a scattershot approach where it will attempt to evaluate each component of development in a unique manner depending on the individual site constraints as they relate to projects on that individual site which will inevitably lead to unworkable and inconsistent results when considering the overall development scheme and its compliance with Chapter 3 of the Coastal Act. Therefore, staff recommends that the applicant withdraw its application for development and work with the local government on developing an integrated and coherent local coastal program that will provide adequate policies, after exhaustive consideration of the coastal resources on the subject site, for future development on the site.

Furthermore, throughout this letter we outline a host of issue areas that need to be addressed, including unresolved unpermitted development, the role that an exemption issued by the Commission in 1973 for certain oil field activities has in the review of the current development proposal, the type and location of biological resources, unresolved questions about geologic conditions and archaeological resources, among others. Each one of these issues must be resolved before a CDP application for any new development plan could be adequately reviewed. We cannot begin to consider the kind, location and intensity of development that is appropriate for the site, especially at the level of detail required in a coastal development permit application, until these fundamental issues/problems are resolved. Thus, we urge you to withdraw this application, work through the issues we are raising, and to wait to submit a CDP application until all of these issues have been fully addressed.

If, on the other hand, despite our advice and admonition, you choose not to withdraw, we do not intend to review further submittals that do not meet the level of cohesiveness only found in a planning document such as a local coastal program. We will withhold any further review and analysis of project details and filing the application complete unless and until the threshold issues are addressed. Once those larger issues are addressed, we will turn to the subsequent detailed review of the ultimate development plan. To the best of our ability we have identified deficiencies related to details of your ultimate development proposal but given the significant unresolved nature of the larger issues mentioned above, your submittal of these details and our review of it should wait until a later time.

A. Exemption / Oil Field Operations

For the purposes of assessing the presence of coastal resources on the site, the application relies on the future state of the project site, after abandonment/relocation/consolidation of the oil operations on the site and after remediation of the site for the specific purpose of the residential development proposed in the application, rather than the current condition of the site (minus impacts of unpermitted development discussed below) to conclude that the project is consistent with the environmental protections of the Coastal Act. The application assumes that all prior and future oil operations and subsequent cleanup/remediation to facilitate the proposed residential development are exempt pursuant to Resolution of Exemption No. E-7-27-73-144 ("the Exemption").

Any development that exceeds the scope of the Exemption requires a coastal development permit from the Commission, unless the Executive Director decides that no permit is legally required. The environmental reports provided with the application assume the legality of the unpermitted removal of major vegetation that has occurred on the site, notably, moving extensive areas of the site, as STATUS LETTERS 5-13-03

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more fully described in staff's correspondence to NBRLLC and/or the oilfield operator dated May 18, 2012, September 9, 2012, and in staff's comments on the Newport Banning Ranch DEIR. As noted in said letters, extensive removal of major vegetation has occurred on the site, purportedly to address fire safety concerns, without the necessary coastal development permits. Fuel modification may be exempt from coastal development permit requirements pursuant to the Exemption, but only if it is demonstrated that such activities qualify as reasonable oilfield maintenance within the scope of the Exemption. Staff has asked for information, documentation and regulations, or any support for the claim that the subject vegetation removal is necessary to oilfield maintenance, but we have received in response only a general assertion that vegetation removal is necessary across the site, in some areas hundreds of feet from any active well, pipeline, of flammable structure, in order to preserve future drilling opportunities. Clearly this assertion is not supported by the Exemption, which expressly limits its application to 340 specific wells in operation or under construction in 1973.

Commission staff is unable to evaluate the validity of all these assumptions with the information that has been provided. Typically the Commission considers the existing state of the site (minus the impacts of any unpermitted development), to determine what the impacts of the proposed project will be. Unpermitted development, such as the vegetation removal noted above, ¹ cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, consideration of this application must consider site conditions as if unpermitted development had not occurred. In addition, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted vegetation removal noted above, that has occurred on the site. Your assumptions relative to the 'baseline' state of the site are clearly important and the actual, not assumed, baseline must be determined before we can continue to process this application. Toward that end, please submit the following documents:

- 1) A detailed rationale with evidence for why the Commission might not consider the existing site conditions as the baseline for the impacts of the project.
- 2) The drilling and abandonment plan in place at the time of the resolution of exemption from 1973.
- 3) A copy of the relevant codes and regulations regarding oil field operations, abandonment, remediation, and environmental protection best management practices in oil field operations, from 1973 and from today, and your analysis of what the applicable policy is
- 4) Full documentation of the site conditions at time of the 1973 exemption, including the location and type of all equipment (e.g. wells, pipelines, processing facilities, roads, etc.) and in particular those facilities specifically identified in the exemption (e.g. the 312 existing wells and associated surface facilities and 28 additional wells that were to be drilled in 1973)
- 5) Full documentation of the existing site conditions
- 6) A detailed description of the changes to site conditions and oil operations and facilities between 1973 and today, including but not limited to repair, drilling, redrilling, closing,

¹ Please note that the description herein of the unpermitted development on the site is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should <u>not</u> treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

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relocating all wells (e.g. injection wells, oil production wells, etc.) and changes to associated surface facilities to date

- 7) Documentation of the extent of vegetation removal that has occurred on the site, including annual record of mowing activities and the areal extent of vegetation removal
- 8) An assessment of habitat characteristics of the site prior to, and if not for, the unpermitted removal of major vegetation noted above, as well as in staff's letters noted above.
- 9) An explanation of how the development undertaken since the exemption would meet the standard outlined in the exemption that such development is only exempt "...provided that no substantial changes may be made in said development..." and that "...future exploratory drilling within the lease area is not exempted..."
- 10) Information, documentation, regulations or any support for the claim that the removal of major vegetation noted above is necessary to oilfield maintenance.
- 11) A letter from the Department of Oil and Gas, and/or other appropriate regulatory entities (e.g. Orange County Health Care Agency), which states what the standard and minimum practices for abandonment and remediation of a site in an environmentally sensitive area would be for different degrees of soil contamination, and for the following land uses [and all potential project alternatives]: a) open space, b) residential development, c) commercial development
- 13) A complete description and detailed plans describing all development to be undertaken in conjunction with abandonment/relocation/consolidation of the oil operations on the site and remediation (i.e. final Remedial Action Plan) and justification for all such proposed work as may have been required by regulations in 1973 and current requirements. The draft Remedial Action Plan (dRAP), and accompanying graphics appear to significantly oversimplify the type and extent of work to occur in each particular area. For instance, there are many instances where the dRAP graphic depicts vegetated areas that would be subject to unspecified 'remedial activities', yet there are only 'utility' poles in the area. Why would such an extensive area need to be 'remediated' when there is merely a utility pole present? Similarly, there are other areas targeted for unspecified remediation where there are no pipelines, wells, utility poles, or other oil field facility present. If there are no oil field facilities present in these areas, why is remediation required? Another issue that needs to be addressed is whether or not there are alternative methods for remediation that would reduce impacts on resources (e.g. biological resources). For instance, Attachment 26, Map 2, Oil Field Abandonment and Remediation Staging Map, identifies various locations where soil subject to bioremediation would be staged/stockpiled. These soils subject to remediation and the staging/stockpile areas overlap significant biological resource areas. Are there alternatives to bioremediation that would reduce or eliminate the need to excavate and/or stockpile soils (e.g. in-situ or other measures)? Finally, the resource impacts (e.g. biological, water quality, archeological, etc.) to occur as a result of the remedial activities must be identified in detail. These impacts need to be distinguished from the impacts ultimately proposed under the new development plan. The least environmentally damaging alternative should be identified/chosen whenever impacts are identified.
- 14) If there is a regulatory or other process that must be undertaken to determine the existing state of site contamination and associated clean up/remediation requirements, and all associated development to implement those clean up/remediation requirements that process must be completed consistent with Section 13052 of the Commission's regulations
 15) If not captured in the materials above, please submit copies of all documentation provided to the Commission in conjunction with the original exemption request in 1973.

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B. Alternatives

- 1. Status of Primary Open Space Land Use Pursuant to General Plan. The City of Newport Beach's General Plan states that the primary land use of the subject property is Open Space. Clearly, under the Coastal Act, this is the preferred use for the property. Your application states that the General Plan allows the applicant to pursue secondary land uses (i.e. residential, commercial, etc) so long as a certain time period had passed and certain other terms of an agreement between the City and the applicant were satisfied. Please identify the time period and terms of this agreement (and provide a copy of the agreement) and how those requirements were met such that the applicant has been able to pursue the secondary land uses.
- 2. Resource Constraint Plan. Staff is still developing its delineation of ESHA on the site (and as noted elsewhere in this letter, additional biological resource information is necessary in order for staff to complete this effort); however, based on a review of the submitted materials it is likely that substantial areas of the project site could qualify as wetlands and/or ESHA. To assist in the development and review of alternative project plans, please submit a set of plans identifying areas where each of the following resource constraints exist: wetlands, vernal pools, coastal sage scrub occupied by the California gnateatcher, raptor foraging habitat used by sensitive species, burrowing owl burrow areas or foraging habitat, purple needlegrass grassland, and any areas occupied by sensitive plant or animal species. Various buffers should also be identified around these areas, including a buffer of 50 feet, 100 feet, and 300 feet. The plan should include a key for each of these categories. A second page of the plans should contain a colored area showing only the areas where there is a lack of the resource constraints identified above. After review of the resource constraint plan, further alternative development plans will need to be identified, in conjunction with the filling of the application, to ensure avoidance of ESHA and wetlands (and any other significant coastal resources that are identified).
- 3. Alternative Access Plans. Based upon earlier review of biological information for the Sunset Ridge Park project, ESHA is located within and adjacent to the proposed Bluff Road in the area where it intersects with Coast Highway. Similarly, based on the information submitted to date, it appears that North Bluff Road also passes through and causes impacts to sensitive coastal resources. Please submit alternative project designs, including redesigned access and reduced project densities, that do not rely on the proposed Bluff Road access from Coast Highway and/or North Bluff Road from 19th Street. Also, if roadway access to the site were limited to just one of the projects from 15th, 16th, or 17th streets, what is the maximum amount of development that could occur on the site given circulation and other requirements? In other words, if a roadway from Coast Highway and/or 19th Street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th Streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints?

C. Biological Resources

1. Further Review Required. The points listed below ask for additional information regarding the biological resources on the site. Prior to completion of the application, staff and the applicant should seek to resolve any disagreement regarding the type and extent of the resources on the ground – what types of vegetation communities or species, and where those communities, species, and wetlands are located.

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An ESHA designation is based on site specific circumstances, and, except for the portion of the site that is part of the Sunset Ridge Park project that was heard at the Commission's November 2011 hearing, the Commission staff has not yet performed a formal ESHA delineation for the site. However, the site is known to support significant numbers of sensitive species, and there are likely significant areas of ESHA on the site. ESHA determinations are based on site specific circumstances, which the Commission has not had the ability to review in full. Based on review of additional submitted information and additional visits to the site, a determination of ESHA and wetlands will be made which may affect the allowable locations for development on the site.

2. Past Surveys / Updated Maps. The submitted biological information includes maps which contain just one year of survey data. In review of previous projects on or near the Newport Banning Ranch property (Cease and Desist Order CCC-11-CD-03, Consent and Restoration Order CCC-11-RO-02, and Coastal Development Permit 5-10-168), the Commission staff has reviewed a continuous survey record of gnatcatcher usage from 1992 to 2009. However, only a single year of data is shown for the usage of sensitive species of the property, and of this year of data, only a single point is shown to indicate usage. A single year of data is not sufficient to draw conclusions regarding the usage of habitat on the subject site by sensitive species, as some sensitive species, such as Burrowing Owls, may be absent one winter and present the next. Furthermore, surveyors do not always detect rare species they are searching for, even when individuals are present. Finally, a point does not indicate the range of habitat that was observed by the surveyor, and does not indicate the entirety of the habitat which should be protected.

For these reasons, please submit all known biological surveys regarding sensitive species on the site, and submit updated biological maps which show all known survey data regarding all sensitive species on the site, and which have been updated to indicate the extent of usage.

- 3. Mowing. The site has been subject to mowing activities, which have in some cases reduced or may have eliminated the ability of the mowed area to provide habitat. Please submit a map showing what areas have been mowed over time. Additionally, please submit all available information regarding the purpose, extent, and timing of mowing activities.
- **4.** Burrowing Owl Surveys. The submitted burrowing owl surveys and reports state that the burrowing owl has been found repeatedly on the site since 2008. However, the survey concludes that, although the owls are there in late January each year, they are not there during mid-February to mid-April. Where is the likely location that they occupy during the breeding season? Given that the owl seems to repeatedly utilize the area, why should or should not the area be considered as habitat that is necessary for the survival of the owls on the site.
- 5. California Gnatcatcher Survey. The last formal gnatcatcher survey on the site is from 2009. There have been substantial amounts of disturbance on the site associated with mowing and the continuing oil operations. Additionally, the gnatcatcher is a highly mobile species that may utilize one area in one year and not the next, and not all areas utilized by the gnatcatcher will be found in each survey. For these reasons, up to date gnatcatcher surveys are essential to adequately outlining the areas used by this sensitive species. Therefore, please submit a new current protocol gnatcatcher survey and any intervening survey information that may have been collected since the last survey provided in this application.

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6. Vernal Pools/Seasonal Pond Surveys.

- a. 2010-2011 Surveys We are not able to confirm whether protocol surveys were completed for the pools. For a number of the pools there is missing data on data sheets. For example, pool depth is an important piece of information and the depth of the pool at the time of sampling is often missing. In addition, in many cases there are only one or two data sheets. The protocol requires that sampling occur over the entire period of pool inundation and we know that ponding extended well beyond the sampling period documented by the limited number of data sheets. Please address these deficiencies
- b. Some of the pools that had fairy shrimp cysts were identified as not suitable for fairy shrimp because the cysts were not successfully hatched. This does not seem to be a logical conclusion if cysts are there fairy shrimp have successfully reproduced on the site in the past. Please explain.
- c. Wet Season Sampling When fairy shrimp cysts (*Brachinecta sp.*) are found, an additional wet season is required. No wet season survey was completed. Please submit a wet season survey.
- d. Has a watershed delineation been completed for each pool which indicates whether the project has the potential to impact the pool? If not, such delineation and analysis must be provided.
- 7. Vegetation Mapping. Please address the following questions and concerns regarding the submitted vegetation map.

General comments

- a. The discussion of vegetation mapping methods is hard to follow. Please provide explicit details for exactly how the mapping was conducted, how the transect data was collected and used, and how the membership rules for the habitat categories was interpreted.
- b. It is unclear when the "The Manual of California Vegetation" (MCV2) membership rules are applied and whether Dudek is using absolute or relative cover values. This is a problem because the MCV2 membership rules vary for each category of vegetation. This needs to be reviewed and corrected for all cases where data was used to identify habitats.
- c. There seems to be an inconsistency regarding the minimum mapping unit. For instance, the document states that the minimum mapping unit is 0.5 acres for assessing disturbed areas. There are many patches of mapped purple needlegrass that are much smaller than this, which is beneficial because it gives additional information regarding the existing vegetation on the site. However, there are also other large areas mapped as disturbed that contain large patches of disturbed encelia scrub consisting of well beyond the minimum 10% cover threshold. Please explain.

Encelia/Disturbed Habitat

- a. The membership rules for what constitutes "disturbed" are unclear. Please provide a clear definition and membership rules for the various disturbed categories.
- b. While Table 2 provides rules for disturbed encelia scrub categories (this is the only type of disturbed habitat with defined membership rules), we have several concerns including:

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- 1. There appear to be gaps that miss existing disturbed encelia scrub. For instance, there is a gap for anything less than 80% cover that is greater than 1m in height
- 2. Although the membership rules require 30% relative cover of encelia in order for the vegetation to be classified as encelia, neither Table 7 or 8 appear to include this information as only the absolute cover of encelia is provided. Please clarify. Also, please explain what coverage requirements and other factors determine whether a patch of vegetation qualifies as 'encelia scrub' or 'disturbed encelia scrub'.
- 3. For all the transects that had 10% or greater native shrubs other than encelia, what were those species?
- 4. Many areas of the site have been subject to mowing over time, and therefore a portion of habitat could be described as either encelia scrub or disturbed encelia scrub depending on whether the vegetation had been recently mowed at the time of the survey. Please explain whether usage of height in the guidelines for disturbed habitat is consistent with the listed determinations.

Grassland

- a. Native grassland is defined as either characterized by purple needlegrass or salt grass. However, the transect data has areas with significant percentages of native forbs other than purple needlegrass or salt grass that might meet the membership rule for another category of coastal prairie/ native grassland /native habitat.
- b. Bare ground rules are unclear we need more specificity to understand how bare ground was treated in determining habitat type for grassland (this relates back to the general comment about absolute vs. relative cover).
- c. Are the areas mapped as annual grassland appropriately labeled, or are there instances where mowing of scrub or other habitat resulted in this determination?
- 8. Environmental Mitigation. The application states that 78.5 acres set aside for future mitigation for "environmental mitigation, offsets, or other habitat sites," a site for restoration credits (see page IV-2 of CDP Application Letter). Would oil remediation activities not result in the restoration of these areas? Page IV-7 goes as far as to say that the area would be a 'mitigation bank'. If that is part of the proposal, the terms, conditions, mechanisms, management, etc. need to be identified at this time.
- 9. Fuel Modification Zones. The proposed fuel modification appears to extend to a minimum 120 feet, and in some instances a much greater distance from the adjacent residences. Does the proposed project minimize the width of required fuel modification zones by usage of alternative means and methods of construction? In areas where there are larger areas of park space between residences and the bluff edge, why does the fuel modification zone extend the same amount into the canyon?
- 10. Fences / Barriers. Movement of wildlife through the development is essential to preserving the biological integrity of important wildlife habitat at the site. For example, studies have concluded that the presence of the coyote in coastal sage scrub habitat resulted in higher survival rates for the California gnatcatcher due to the coyote's predation on species that may harm gnatcatchers. What are the potential barriers to wildlife migration around the site, and how will the development ensure that such barriers are minimized?

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- 11. Lighting. The proposed project includes development at topographically high places (bluff tops) that are directly adjacent to topographically low places (wetlands, riparian areas, Semeniouk Slough). How will the proposed project ensure that light, including reflected light, does not result in increased light levels in natural areas?
- 12. Plant Palette. CLUP policy 4.1.3-1 C states:
- C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.

 The proposed project includes both native and non-native species. Although a non-native species may be non-invasive, non-native species still have the potential to spread from landscaped areas into natural areas. Additionally, non-native species typically require additional irrigation, pesticides, and maintenance than native species, which raises additional concerns regarding adjacent habitat and geologic stability. Please submit an alternative plant palette that utilizes only species native to coastal orange county.
- 13. Habitat Management Plan. The submitted draft habitat management plan will be further reviewed and further modification will be required upon receipt of additional information regarding biologic information and the scope of the proposed project, as requested in this letter.
- 14. Changes to Wetland Hydrology. The proposed project will involve significant changes to existing surface drainage patterns, natural water infiltration, and perhaps changes to subsurface water movement. Please provide a biological/hydrological analysis identifying all such anticipated changes and any subsequent impacts to existing wetlands on the site and surrounding the subject site. If impacts are anticipated, please identify appropriate mitigation measures.
- 15. Current Pacific Pocket Mouse Survey. An assessment of potential Pacific Pocket Mouse habitat, prepared by Dudek, was submitted dated September 25, 2012. This document references past surveys done in 1990 and 1995, but does not include a current survey. The assessment states that based on the prior surveys, no new survey is recommended. However, the assessment goes on to identify potential survey locations should USFWS recommend that new surveys be performed. Since it has been about 18 years since the last survey, conditions may have changed. Therefore, staff believes it would be appropriate for a current survey to be performed, consistent with established professional protocols (e.g. USFWS protocols). Please undertake and submit a current survey. We also request that you consult with USFWS regarding this requirement and include a copy of all correspondence with USFWS on this issue with your submittal. If USFWS decides they would not recommend a new survey, Commission staff may consider modifying or eliminating this requirement.

D. Archaeology

As noted in staff's comment letter on the DEIR, the DEIR confirms that the archaeological consultant, BonTerra Consulting, performed a walk-over on May 13, 2009 and carried out Phase II test excavation and evaluation of the 11 mapped archaeological sites. Specifically, testing activities included brush clearing, excavation of shovel test pits (STPs), and one square meter units. These activities constitute "development" under the Coastal Act. All development, unless otherwise exempt, which is not the case here, requires a Coastal Development Permit (CDP). The DEIR contained no mention of CDPs having been issued for the development. On March 19, 2012 we 5-13-032

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received a CD containing Responses to Comments for the Newport Banning Ranch EIR. In response to our request for information regarding any CDPs issued for archaeological excavations the City stated that this information would be provided separately (Newport Banning Ranch EIR, Responses to Comments (RTC), #24, page 3-74). When was this separate submittal made? Please provide this information again.

The NBR site contains 11 mapped archaeological sites. The EIR states that 3 of the sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are eligible for listing in the California Register of Historic Resources (CRHR) as well as the National Register of Historic Places (NRHP). Further, CA-ORA-839 is also considered a "unique archaeological resource" and as such, measures are required to be taken to preserve these resources in place or to leave them undisturbed. Concerning CA-ORA-839, the DEIR is unclear as to whether direct impacts will occur to this unique archaeological resource as a result of the Proposed project. However, it is clear in the DEIR that direct impacts will occur to this archaeological site from the removal of oil field infrastructure. Likewise, CA-ORA-844B and CA-ORA-906 will be impacted, either in whole or in part, by the Proposed project or development associated with the planned removal of oil field infrastructure. Please explain, in detail, the proposed oil field infrastructure removal activities that will impact the archaeological resources. What agency is requiring the removal of the infrastructure? Please provide a copy of such agency correspondence requiring the removal. Are there alternatives that will avoid impacts to the archaeological resources, including, but not limited to, abandonment in place?

In the DEIR, staff questioned the adequacy of the testing that was previously performed to determine the nature, extent and boundaries of existing archaeological sites on the Project site. The DEIR acknowledges, "it is clear that cultural resources still exist within sites on Newport Banning Ranch, and it is not unlikely that previously undetected cultural material and unknown archaeological sites could remain in the subsurface of the Project site." There is no discussion of peer review of the archaeological testing that previously occurred. Although the DEIR states that the local tribes were solicited for consultation, and the DEIR references a solicitation letter, there is no record of the responses. Please provide copies of any such peer review and Native American comments. The DEIR states that the archaeological investigations carried out by BonTerra in 2009 were monitored by members of the Juaneno tribal group. The history/pre-history of the NBR area indicates that this area has a shared use by the Gabrielino/Tongva tribal group, according to the Native American Heritage Commission (NAHC).

In the staff comments to the DEIR we indicated that a CDP should be obtained to carry out a comprehensive archaeological research plan (ARP) in order to provide protection in place of the existing archaeological resources, In the Responses to Comments (RTC), the City indicated that it would advise the applicant to submit an ARP to the Coastal Commission in support of a CDP for the archaeological work (Newport Banning Ranch EIR, Responses to Comments, #25, page 3-74). No such ARP was included in the subject CDP application or separately submitted. Please submit the ARP coastal development permit application, requesting Commission review and approval of the ARP prior to consideration of your proposed Project since the Proposed project (including the removal of oil field infrastructure) will need to be redesigned to allow the existing archaeological resources to remain in place undisturbed. The ARP should not be designed to recover archaeological resources (however should penetrate the soil layers that could contain burials) but be designed to determine the nature, extent and boundaries of existing archaeological resources so that development of the site can be located and designed to leave the archaeological resources in place

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and undisturbed. The Coastal Commission requires that an ARP be subject to peer review by at least three qualified archaeologists and review and comment opportunity be extended to the State Historic Preservation Officer, Native American Heritage Commission (NAHC), and Native Americans with cultural ties to the area, as determined by the NAHC. The ARP should also include any subsurface archaeological investigation that was done without a CDP. However, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted excavations noted above, that has occurred on the site.

The DEIR states that the Project would impact three known archaeological sites that are deemed eligible for listing on the State and National registers of historic resources/places and that development activities could also further impact unknown archaeological resources. The two proposed mitigation measures included in the EIR indicate that the proposed measures will mitigate this impact to a level considered less than significant. The mitigation measures (MM 4.13-1 and MM 4.13-2 are not consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources. The mitigation measures call for the salvaging and cataloguing of archaeological resources as opposed to in-situ preservation as the preferred option. Further, the mitigation measure state that some project grading would be monitored by Native American monitors. All grading activities that have the potential to impact Native American resources should be monitored by Native Americans with cultural ties to the area. The mitigation measures do not provide for avoidance of impacts and thus maximum protection of archaeological resources. The mitigation measures call for removal (data recovery) of known archaeological sites in order to make way for Project development, including unspecified removal of oil field infrastructure, as opposed to redesign of the Project in order to protect archaeological resources in place.

At a minimum, the mitigation measure that is most protective of resources, i.e. avoidance should be considered and assessed. To that end, an archaeologist's assessment identifying the locations of all cultural resources discovered on-site and an appropriate setback from these resources must be submitted. The resource locations and the setback area must be delineated on a site plan. A written description substantiating the basis for the setback must be provided. In addition, this assessment must be prepared in consultation with the appropriate Native American groups with ancestral ties to the site as recognized by the Native American Heritage Commission.

Finally, staff received the attached correspondence questioning whether previous excavations at NBR, that have the potential to change the significance of the site, were disclosed. If one or more of the archaeological sites on NBR were a part of a larger off site archaeological site, this information should be disclosed. Please provide your comments regarding the attached correspondence.

E. Development

1. Height Limits. The proposed inn would be four stories and 50 feet high(IV-14). Is this height, and heights of other proposed structures consistent with the City of Newport Beach's zoning code and the City's certified Land Use Plan? Would these proposed heights be a departure from the character of surrounding areas?

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- 2. Pedestrian Bridge. The proposed project includes a pedestrian bridge spanning Coast Highway. Please submit full plans for the proposed structure. Would the proposed structure result in impacts to views from important public viewpoints identified in the City of Newport Beach certified Land Use Plan, or would it obstruct scenic views of coastal bluffs? Please submit view analyses identifying the impact of the proposed structure from vantage points located near and distant from the structure. Would the proposed bridge, or the associated path, be built on the edge of a coastal bluff or on the bluff face?
- 3. Landform alteration. The project includes modifications to existing bluffs to address erosion (page IV-15 of CDP application, figure 4_4 of development plans). Bluffs naturally erode, and such erosion is a characteristic feature of coastal bluffs. Policy 2.8.6-8 of the Newport Beach Land Use Plan states:

Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

Please explain whether the proposed work to the bluff is necessary and unavoidable and whether such work is consistent with the protection of natural landforms.

Despite the large cuts and fills on the site and the large total amount of grading, the Master Development Plan concludes that no significant landform alteration would occur. Please explain why.

F. Land Division

- 1. Map of Existing Legal Lots. The application states that the proposed project would subdivide a site currently comprised of 18 legal lots into about 250 legal lots. Please provide a graphic depicting the boundaries and locations of all existing legal lots within the subject site.
- 2. Tentative Tract Map. The submitted Tentative Tract Map refers to a Bohn-Mack court case decision and required easements. What was this court case and what relevance does it have to the subject permit application? The map also states that various easements run across the property, for utility and other purposes. Which of these easements are existing? Where are they located? Will any of those easement be relocated? If so, where to? The submitted tentative tract map states that it is for condominium purposes. Does the proposed development involve any actual changes to lot lines or splits in the existing lots?
- 3. Chain of Title. Also, please provide a complete chain of title for all existing legal lots located within the project boundary. The chain of title must include legible copies of all deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, including but not limited to creation of parcels via a recorded tract map, parcel map, official map, lot line adjustment, by grant deeds or other transfer, land grant, patent, etc. A typed copy of all handwritten deeds shall be prepared along with all copies of handwritten deeds

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in the chain of title. These documents should be accompanied by any maps or supporting documents to support and clarify when and how the existing parcels were created.

G. Geology/Hazards

1. Bluff Edge Delineation. The submitted project plans include delineations of the bluff edge. However, from the submitted information it is unclear whether these bluff edge determinations are correct as they are plotted on site plans and not on topographic maps. Additionally, the submitted topographic maps appear to be rough or incomplete, as the depicted contour lines are not continuous and appear and disappear in different locations. Please submit a set of detailed topographic plans, with contours represented at an appropriate interval, for example 2 - 5 feet, for all slopes located on the site. The plans should also identify a bluff edge that is consistent with the definition of Bluff edge provided in Section § 13577 (h) "Criteria for Permit and Appeal Jurisdiction Boundary Determination" of Title 14, Division 5.5 of the California Code of Regulations (copied below).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff...

Please note that a site visit may be required to determine the appropriate bluff edge.

2. Development Near The Bluff Edge. The July 2011 Geo Report (appendix B, part 1 of EIR) states that setback requirements from the California State Mining and Geology Dept were in the progress of being re-evaluated at the time of writing of the report. Have updated setback requirements been released?

Development, including trails and children's playgrounds, appear to be constructed within the 25 foot blufftop setback (e.g. see North Bluff Park). The geologic report (June 2011 report, page 45 of pdf) recommends only trails, lighting, and minor grading. Please include your analysis of whether picnic areas and playgrounds in this setback area are consistent with Section 30253 of the Coastal Act.

- 3. Bluff Retreat. July 2011 geo report states that a bluff retreat rate has been approximately 2 feet per year between 1932 and 1965, but that such retreat rates will most likely be much lower in the post-project condition. Did such analysis include the potential effects of sea level rise, according to a range of conservative (high) to modest (low) sea level rise estimates? By how much will the bluff retreat within the next 100 years?
- 4. Faulting. The Master Development Plan states that no Alquist-Priolo faults are on the site. However, the June 2011 geotechnical report included in the EIR states that there are fault at the

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north and south on the eastern portion of the site which could not be determined to be inactive (p 43 of pdf, page 75), and recommends setbacks. The report also recommends additional trenching between the two fault traces.

In the comments to the DEIR, Commission staff stated:

... it is logical to conclude that the area between two segments of an active fault in such close proximity is likely active as well. Accordingly, the fault setback zones should be extended to connect the north and south segments of the Newport Mesa fault unless further study conclusively demonstrates that the area of the fault between these segments is not active as defined by the State of California.

On a site visit on September 11, 2012, Commission staff requested additional trenching to help delineate faulting on the site. No additional studies appear to have been prepared. Please submit an explanation of why. Based upon a review of the submitted material, additional geotechnical investigations may be required.

Please submit an additional fault setback zone map prepared by a qualified professional that has been modified to include a fault setback zone between the north and south segments of the Newport Mesa fault. Please also be sure to coordinate with Commission staff regarding any permitting necessary to carry out additional geologic investigation. Additionally, to help assess how close the fault segments are to proposed development and the risk posed by the fault segments, please submit a set of project plans which include the fault setback zone.

5. Constructed Slopes. The submitted Master Development Plan states that 1.1 million cubic yards of grading for development are required, with cuts from one foot to 25 feet and fills from one foot to 60 feet. Additionally, 1.5 million cubic yards of soil are required for structural stabilization of the site, and includes cuts from one to 30 feet. According to the rough grading plans submitted, this would include fill at or near the bluff edge. However, the submitted plans do not specify where different quantities of cut and fill would occur. In order to analyze the impacts of the proposed grading plan, please submit a copy of a grading plan which includes colored gradations depicting 10 foot intervals of depth of cut and fill.

The proposed cut and fill is of a significant degree, and if not properly done could result in impacts to public health and safety. Therefore, to ensure consistency with Coastal Act Section 30253, please submit a quantitative slope stability analysis for all cut and fill slopes not only for the existing condition, but more importantly, for the proposed development. Essentially, a geotechnical review of the proposed grading plan should be performed to assure stability and structural integrity and that the development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs

6. Hilfiker Wall. Near 18th street is a large gully with significant erosion occurring near existing residences and a large retaining wall. Is any development, including grading, structures, or oil remediation activities occurring in the vicinity of this structure? Would any proposed development change the hydrology of this area? Would the proposed development result in any potential for impacts to the adjacent residences, and have the studies recommended in the July 2011 geologic report been completed?

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- 7. Proposed Roadways. The proposed project appears to include roads across existing riparian areas (e.g. North Bluff Road in the vicinity of 16th street). How would these riparian areas be crossed, and are fill, culverts, bridges, or other means proposed? Please include an analysis of the different options, and identify what is the least environmentally damaging alternative. Has this road alignment been reviewed for geologic stability of the final structure/slope?
- 8. Pedestrian Bridge. How would the proposed pedestrian bridge across Coast Highway affect the stability of the bluff? Geotech investigation (July 2011, page 52) recommends additional studies for foundations for the bridge. Have these been completed?
- 9. Sea Level Rise. Please include an analysis of how sea level rise will affect the proposed development, including wetland restoration, roads, trails, utilities and other infrastructure, oil field remediation, and consolidated oil field operations. The analysis should include a range of sea level rise estimates, including the latest guidance from the Ocean Protection Council.

H. Water Quality / Marine Resources

- 1. Tidally Influenced Areas. Development proposals must first avoid impacts to wetlands. Then, where such impacts cannot be avoided, only the specific allowed types of developments are allowed to result in impacts to wetlands, and those impacts must be mitigated. Based upon the submitted historic aerials, geologic reports, and the location of the lowlands portion of the project in relation to the Semeniuk Slough, it appears as though this area was at one point subject to tidal action. Are any portions of the subject site currently subject to tidal action, or will portions of the project again be subject to tidal action at the conclusion of the project? If there were any allowable impacts to wetlands on the site, could opening up areas to tidal action be a potential mitigation option for said impacts?
- 2. Wetland Delineation. The wetland jurisdiction maps submitted in the DEIR do not include all areas where fairy shrimp have occurred, and additional data is needed regarding depth of pools and potential for occupation by fairy shrimp. Based upon additional review of the biological and hydrologic information on the site, the determination of the locations of wetlands (as defined by the Coastal Act and the Commission's regulations) on the site may change, which may result in changes to the areas where development on the site would be consistent with the Marine Resources sections of the Coastal Act.
- 3. WQMP. Have any changes, additions, or updates been made to the preliminary Water Quality Management Plan? Please identify: 1) the types of water quality features and numbers or volumes of such water quality features for each area of development on the site, including roads, and how such features were chosen; 2) what the total area of additional impervious surfaces is; 3) what is the estimated area and throughput of proposed infiltration features; and 4) what is the proposed volume of proposed detention basins.

The submitted drainage plan includes drain lines, but it is unclear whether certain areas are contributing or receiving storm water. Please submit a drainage plan which depicts the stormwater flow from all areas affected by the project, and shows where such runoff would lead.

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4. Peak Runoff Rates. The Newport Beach Coastal Land Use Plan Policy 4.3.1-4 states:

Preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface flow, and groundwater recharge function near natural equilibrium states.

Will the project increase the volume of runoff or peak runoff rate from the development? The preliminary WQMP states that the peak runoff rate will increase, but by less than 5% - 1 cf for a 2 year storm. However, the WQMP also states that the drainage area for the project will decrease by 27.6 acres. How will this decrease occur? If that runoff is instead leading to Coast Highway, where would it ultimately end up and should that flow be incorporated into the amount of total runoff resulting from the development?

- 5. Runoff Volumes. The proposed development includes detention basins. This would be effective in reducing large increases in flood amounts and erosive potential of rain events however it is not reducing the total amount of runoff which is delivered to off-site areas. How much of an increase in total discharge to off-site areas would be created by the proposed development? How long would the proposed detention basins take to empty? Would the proposed project create low-volume nuisance flows throughout the summer months?
- 6. SWPPP. Please submit copies of the Stormwater Pollution Prevention Plan (SWPPP).
- 7. Storm Water Detention Structures. The proposed detention basins and diffuser basins appear to be handling the majority of the runoff from the site and would discharge into sensitive habitats. What would the structure and function of these features be? What plant species are proposed, and are those species consistent with the continuance of adjacent habitat? Please include an analysis of whether the features would be consistent with Coastal Act Section 30231, requiring maintenance of biological productivity of streams and wetlands, Coastal Act Section 30233, regarding diking or filling of open coastal waters and wetlands, and Coastal Act Section 30236 regarding substantial alterations to streams? Portions of these features appear to overlay existing ESHA. In similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities is consistent with the Coastal Act or Local Coastal Programs.

I. Public Access

- 1. Trails and Sea Level Rise. The proposed project includes the installation of trails located adjacent to the Semeniouk Slough and the wetland areas located in the lowlands portion of the development. What is the estimated frequency of flooding of the slough, and would the location and design of the proposed trails allow for such flooding?
- 2. Land Trust. CDP Application states that areas of open space would be managed by Newport Banning Land Trust, and that the NBLT would work out a MOU with the applicant to allow for the long term management of the areas(Page IV-1 CDP App). Does the project proposal include a transfer in title to the trust, or a offer to dedicate an easement? Is there a proposed amount of money or long term source of funding dedicated to maintenance of this area? Is the trust willing to accept such an offer? (Page III-2 of CDP application)
- 3. Lower Cost Visitor Serving Accommodations The proposed project includes a 75 room resort. Section 30213 of the Coastal Act provides that lower cost visitor and recreational facilities shall be

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protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. Coastal LUP policy 2.3.3-1 states:

"Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations."

Lower-cost visitor accommodations are designated as a priority use in the coastal zone. Therefore, please submit an analysis of the demand for lower cost overnight visitor serving accommodations in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone, and whether the proposed resort inn would contain lower to moderate cost overnight accommodations.

- 4. Time Restrictions. Would restrictions be placed on the hours during which access to public trails, the pedestrian bridge, or other accessways on the site?
- 5. Proposed Commercial Uses. Please list the types and areas of commercial uses which are proposed on the site. Would the proposed commercial uses create additional public access and visitor serving recreational opportunities? Would the proposed development include adequate commercial establishments (i.e. supermarkets, retail) to reduce vehicle miles traveled for residents within or surrounding the community?
- 6. Parking. The CDP Application states that 4000 parking spaces will be constructed as a result of the project. The submitted master development plan states that there would be areas designated as public parking spaces within the development that are located separate from the residential development. Will public parking be allowed within residential areas? Please identify all proposed parking restrictions, including time limits, parking fees, and proposed metering of spaces on a site plan.

Please submit a Transportation Demand Management Plan to reduce the amount of parking required and reduce total number of vehicle miles traveled. For instance, are employee transit passes or other methods proposed to minimize the amount of car trips created by the travel of employees to the site? The plan should include alternative forms of transportation, including public transit and bicycling.

Please provide a breakdown of the amounts of parking that will be made available for each use on the site, what the standard requirements for parking for that use are, what amount of the parking for each use will be subject to restrictions, and any requested breaks in parking requirements due to Transportation Demand Management strategies.

7. **Pedestrian Bridge.** Is parking available for public utilization of the proposed pedestrian bridge? Is the applicant proposing to dedicate an easement or fee title to the pedestrian bridge to the City or other agency?

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8. Project Phasing. The current project phasing plan does not adequately prioritize the completion of required mitigation. Please change the construction schedule to indicate that construction of public access amenities, habitat restoration will occur at the first stages of the project.

J. Unpermitted Development

As noted in Sections A and D above, staff believes development has occurred on-site, including but not necessarily limited to unpermitted removal of major vegetation and unpermitted excavations, without benefit of the necessary coastal development permits. In some cases the Coastal Commission has preferred not to proceed with a decision on an application for a coastal development permit until after a pending enforcement action is resolved (e.g. 5-11-068, Shea Homes). This is in part because the Commission does not want to preclude mitigation options available under the Coastal Act which may be most consistent with Chapter 3 of the Coastal Act to remedy the violation, In this regard, applications for proposed development affecting properties with unresolved Coastal Act violations are inherently incomplete because the remedy for those violations, which would establish the baseline condition of the property (i.e. its pre-violation condition), has not been established from which the Commission can make a consistency determination on an application for proposed development. (See, Pub. Res. Code § 30604; see, also, 14 CCR § 13053.5) Thus, the Commission cannot make a determination that the proposed development is consistent with the Coastal Act until the parties remedy the violations. As you know, the Commission's enforcement staff has been in contact with you and the oilfield operator to discuss the issue of unpermitted removal of major vegetation on the site and will be contacting you to address unpermitted excavations on the site.

K. Miscellaneous Policies

- 1. Agricultural Land. Section 30242 of the Coastal Act requires that lands suitable for agricultural use shall not be converted to nonagricultural use unless (I) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Agriculture was at one time performed on the site. Please address whether the project would be consistent with Section 30242.
- 2. Takings Information. Because there are significant constraints on development of the subject property, in terms of impacts to biological resources, among other issue areas, the Commission may find that any significant development of some or all of the subject site would be inconsistent with Coastal Act requirements. In that case, the Commission would be able to approve development of those lots only if it finds that denial of development would constitute a taking of private property without compensation in violation of Constitutional requirements. To allow the Commission to undertake that analysis, please provide the information specified in the enclosed "Takings Information" form.
- 3. Development Agreement. The submittal contains a copy of a Development Agreement between the applicant and City of Newport Beach. California Government Code Section 65869 states that "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, STATUS LETTERS 5-13-

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unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action." Since the City of Newport Beach does not have a certified local coastal program, any development agreement that pertains to property within the coastal zone must be approved by the Commission. In general, the Commission must either approve or deny the development agreement; there is no process by which the Commission can 'condition' an approval of a development agreement. Since the proposed project is likely to undergo changes in conjunction with the coastal development permit process, we recommend that the development agreement be withdrawn from consideration by the Commission at this time. At a future date, if a local coastal program is certified for the site, and/or when a development plan is approved for the site through the CDP process, the development agreement should be modified to conform to the LCP/CDP and submitted at that time for approval.

L. General Filing Requirements:

- 1. Approvals from Other Agencies. What is the status of approvals for other agencies which are listed as requiring permits on page I-4 of the CDP application letter? Please demonstrate compliance with Section 13052 of the Commission's regulations. The Executive Director is choosing not to waive any of the requirements of Section 13052, as is allowed under Section 13053. Please also address the following:
 - The CDP Application states that the majority of the site is currently located within unincorporated Orange County. What approvals are necessary from Orange County and have those approvals been received?
 - Please provide a copy of the Statement of Intent filed with the Local Agency Formation Commission (LAFCO)
- 2. Fees. Based on the information submitted to date, Commission staff has determined that the proposed project will be processed on the Regular Calendar. You have submitted a fee of \$159,150. Please submit a breakdown of the submitted fee, including the amounts submitted for residential and commercial development, and the fee submitted for grading, lot line adjustments and subdivisions. Any fee discrepancies will need to be resolved prior to filing the application complete. Please note that if you are seeking a fee discount in anticipation of LEED certification, you must comply with the Commission's Regulations, Section 13054(h), relative to the discount including but not limited to the required letter of credit. Otherwise, the full fee must be submitted at this time.
- 3. Co-Applicant Invitation: The sole applicant identified in the permit application is Newport Banning Ranch LLC (NBR LLC). Two other entities, Aera Energy LLC and Cherokee Newport Beach LLC, were identified as property owners. If there are any other entities that have any property interest in the area proposed for development, those entities must also give NBR LLC the authority to apply for and to undertake the proposed development. Furthermore, please demonstrate that all individuals signing on behalf of any LLC (or similar type entity) have the legal authority to do so on behalf of those LLCs.

The application states (IV-22) that off-site improvements are needed to provide access to the subject site. This includes development near 15th Street, Sunset Ridge Park, the proposed pedestrian bridge which has a landing on West Newport Park. Are all such improvements located outside of the STATUS LETTERS 5-13-032

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subject site included in the subject application? Do the property owners of these off-site areas wish to be a co-applicant for the project? If the development in these off-site areas is included in the application, please provide written evidence that these property owners have granted you written permission to apply for and to undertake development on their property. Please see the attached coapplicant invitation forms.

4. Development Review Process/Detailed project plans. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for each type of structure, and draft park plans showing the types of uses that are proposed in each area. In the context of a coastal development permit, the Commission's review of the proposed project has to be of the project which is actually proposed on the site, and not just for the types of land uses or types of structures in each area. The coastal development permit process is not suited to the type of 'conceptual' approval that is being sought in the proposed application.

For a project of this scale, land uses/designations should be identified through a local coastal program prior to any coastal development permit being processed. We strongly urge the applicant to work with the City to make use of this preferred development review process. If, on the other hand, you choose not to follow this advice, you will need to fully develop the proposal into a complete -not concept- project.

Thus, you would need to submit two sets of detailed project plans for all proposed development and structures, including full grading plans, foundation plans, site plans, floor plans, water quality measures associated with each structure, detailed landscaping palettes with all proposed species and their drought tolerancy and whether they are native to coastal Orange County, elevation plans, and full utility plans, and other plans as appropriate.

5. Public Comments on Current Application. Several members of the public have reviewed the current submittal and provided comments on the application. Those comments are attached to this letter. Please review and respond to those comments insofar as the comments raise questions or issues related to the completeness of the application.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,

John Del Arroz

Coastal Program Analyst

Karl Schwing

Supervisor Regulation and Planning

Attachment: Takings Information Sheet

Co-applicant invitation form

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



June 14, 2013

Ms. April Winecki Dudek 621 Chapala Street Santa Barbara, CA 93101

Re:

NOTICE OF INCOMPLETE APPLICATION

Application No.5-13-032

Site Address: Newport Banning Ranch Site

5100 Block of West Coast Highway, Newport Beach, Orange County.

Dear Ms. Winecki:

On February 1st, 2013, our office received the subject coastal development permit application. On March 1, 2013, Commission Staff sent a Notice of Incomplete Application. On May 17th, 2013, Commission staff received a submittal of additional information. The proposed project is grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, and 52 acres of parks. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your application please submit the following:

I. Threshold issues

Staff requires that the following should be addressed first, in order to clarify the fundamental questions on which the rest of the project development relies. The fundamental issue that would be addressed by fully responding to the requests, below, is the establishment of the baseline coastal resource setting of the subject site which will provide the lens through which the Commission will evaluate the proposed development as it relates to this baseline. Staff requires that, only after the following issues have been satisfied, should the remaining issues detailed in Section II, below, be addressed.

A. Wells

1. The Resolution of Exemption No. E-7-27-73-144, issued by California Coastal Zone Conservation Commission, South Coast Region on October 30, 1973 (Exemption Resolution) states:

Continued operation and maintenance of existing oil producing and injection wells and associated surface facilities. The "existing" wells to be defined as the 312 wells either drilled or in progress as of Nov. 8, 1972.

The exemption resolution references the specific wells in the specific locations that were in place at the time of the exemption, and the 28 additional wells which were planned to be completed soon after the exemption as depicted in an approved plan. The exemption resolution provided an exemption for drilling, redrilling and repairs to the 312 existing wells and the 28 planned wells. The exemption resolution did not exempt relocation of the existing wells. Thus, the relocation or reorganization of wells would not be included in the definition of "the 312 wells either drilled or in progress as of Nov. 8, 1972, and therefore, would be subject to Coastal Development Permit requirements.

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Please identify the locations of a) the specific 312 wells which were drilled or in the progress of being drilled as of Nov 8, 1972, b) the locations of the 28 additional wells named by the exemption and their dates of drilling, and c) the locations of any wells or pipelines on the site which are not encompassed by part b, and which have been drilled or installed since November 9, 1972.

Please submit copies of permits which were issued for the 340 wells either drilled or in progress as of Nov. 8, 1972.

Please submit documentation that the landowner and/or oil field operator received from the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) for the wells subject to the exemption resolution that have been abandoned which indicates that such abandonment is compliant with DOGGR standards and regulations, including, but not limited to sections 3228, 3229, 3230 and 3232 of the California Public Resources Code.

- 2. Please state what vegetation types or habitat existed surrounding the wells which have been installed since November 9, 1972, and what vegetation types or habitat currently surrounds the wells. 3. The exemption resolution requires that development is only exempt 'provided that no substantial changes may be made in said development'. The submitted NBR history document details changes in the type of secondary production which has occurred on the site over time, which have required the installation or expansion of existing structures on the site. Please provide copies of permits for these expansions.
- 4. The exemption resolution, exemption application, and subsequent correspondence indicate that the exemption lasted until 1994, when the lease expired. However, oil production on the site has continued since that time (for the past 19 years). Please address what occurred regarding the lease on the site in or around 1994, what has occurred since that time, and the consistency of the intervening years of oil production and development to the exemption. Please include a copy of the lease, and any records regarding any extensions or transfers of the lease.
- 5. To help clarify the status of well operations which have occurred since the exemption resolution, please submit copies of all relevant permits from DOGGR since November 8, 1972.

B. Remediation

1. The exemption resolution states:

Claim of exemption No. E-7-27-73-144 is hereby granted as to the following development: Continued production and operations on the 480 acre "Banning Lease" per the attached items:

g. Abandonment of wells in accordance with requirements and approval of the State Division of Oil and Gas and removal of surface equipment and pipelines per state and local agency requirements.

The exemption resolution includes an allowance for abandonment of wells, and the removal of surface equipment and pipelines. However, the exemption resolution does not include authorization for remediation of the area surrounding the well or other areas on the site. Furthermore, while the DOGGR regulations do include requirements for closing of wells, they do not include requirements for environmental remediation of the well or areas a certain distance from any well. Since remediation to the extent which you are identifying is not covered in the list of activities specifically

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exempted from Coastal Development Permit requirements, any future remediation on the site requires a Coastal Development Permit.

The proposed development appears to rely on the oil field remediation. Please clarify whether such remediation is included in the project application. If not, why not? The Commission wouldn't be able to proceed with review of the ultimate development plan without certainty that any required remediation would be undertaken with all appropriate approvals in place.

2. Standards for remediation. The resubmittal letter states "Clean-up standards for NBR are part of the 2001 RWQCB CAO" Please provide this document.

The submitted information does not include specific standards for remediation which must be met, or letters from respective agencies detailing the type of remediation that would be required. Other documents included in the application, including regulations submitted (Attachment 6 to the resubmittal), and environmental assessments (Appendix D to the EIR) also do not go into any detail regarding these requirements or recommendations. Therefore, please submit a written analysis with evidence (such as letters from relevant state or local agencies and citation to applicable standards) detailing what is a) required by the relevant agencies for the abandonment of a well, b) required by the relevant agencies for the cessation of oil activities on the site, c) standards recommended by the relevant agencies for abandonment of wells d) recommended by the relevant agencies for cessation of oil activities on the site, e) required to allow for development of each type of proposed land use (i.e. park, residential, commercial, open space) on the site, or f) recommended to allow for development of each type of proposed land use on the site.

- 3. Contamination and effects of remediation. As stated above, remediation of the site requires a Coastal Development Permit. Therefore, such remediation needs to be analyzed for consistency with the Coastal Act. Therefore, please address the following: a) what is the level of contamination on the site b) what is the potential harm to habitat areas from leaving the contamination on site; c) what the effects would be to habitat areas from the required remediation; and d) what effects would occur to habitat due to the recommended remediation.
- 4. The 3/1/13 Notice of Incomplete application, requested 1) a detailed identification of impacts to coastal resources expected to occur as part of the remediation activities, 2) a detailed identification of impacts to coastal resources proposed for the final development plan, and 3) identification of the least environmentally damaging alternative wherever impacts are identified. The 5/17/13 submittal included Attachment 4, a graphic depiction of impacts to habitat resources on the site. However, attachment 4 does not distinguish between the temporary and permanent impacts of the proposed development. Please revise attachment 4 accordingly.
- 5. As mentioned above, further information is required regarding the standards required for remediation. However, the only alternative to whole site remediation identified by the letter included a) removal of soil and trucking off site, or b) a reduced remediation footprint, which would require "an agreement to a full written closure" "from the resource agencies, and a securitized release." Please provide 1) an explanation of the rationale behind this statement, 2) further detail, such as a sample document, of the type of agreement that would be required. After review of these materials, additional information regarding such agreement may be required, such as letters from the applicable agencies regarding their willingness to enter into such an agreement. Further detail regarding additional potential options to address any contaminated materials will likely be required after review of the additional information regarding remediation standards requested above.

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6. To ensure compliance with CCC regulation 13052, please state whether the approvals of other agencies are required in order to determine the existing state of site contamination and remediation requirements, or carry out the development necessary to implement oil field remediation. If so, those approvals must be submitted prior to the completion of the application.

C. Consolidation

- 1. Based on our review of the information submitted to date, a Coastal Development Permit is required for installation of new wells, pipelines, or facilities required to relocate oil operations to the consolidated oil site(s). Please state whether such development is included in the application. If not, why not? How could the ultimate development plan proceed without this important element being resolved?
- 2. To ensure compliance with CCC regulation 13052, please state whether the approvals of other agencies are required in order to consolidate oil field operations. If so, those approvals must be submitted prior to the completion of the application.

D. Unpermitted development.

- 1. Fuel modification. In your 5/17/13 letter the criteria given for why areas have been subject to fuel modification include: a 100 ft. radius surrounding oil facilities / structures, a 20 foot radius surrounding pipeline maintenance corridors, 20 foot surrounding utility poles, and a general requirement to clear areas for oil field safety or security. Please provide a map depicting the areas which are located within: a) 100 ft radius surrounding oil facilities, b) a 20 foot radius surrounding pipeline maintenance corridors, and c) a 20 foot surrounding utility poles.
- 2. The 3/1/13 letter requested an assessment of habitat characteristics if not for unpermitted development. The 5/17/13 letter stated that no assessment was provided as no unpermitted development occurred on the site. As mentioned, above, to support this claim that no unpermitted development has occurred on the subject site, please submit documentation that the landowner and/or oil field operator received from the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) for the wells subject to the exemption resolution that have been abandoned which indicates that such abandonment is compliant with DOGGR standards and regulations including, but not limited to, sections 3228, 3229, 3230 and 3232 of the California Public Resources Code. Further, please provide permits that were issued to the landowner and/or oil field operator for any development that occurred beyond the development exempted in the exemption resolution.
- 3. Please provide an assessment of the quality of habitat on the site if clearance of vegetation had not occurred beyond 100 feet from oil facilities or 20 feet from pipelines or utility poles since November 8, 1972 for the areas subject to Prop 20 and January. 1, 1976 for the areas not subject to Prop. 20 (See former PRC Section 27404).
- 4. Our 3/1/13 letter requested all available information regarding the purpose, extent, and timing of mowing activities. In the 5/17/13 letter, it is stated that previous oil operators did not keep records for vegetation maintenance. Please provide any available evidence regarding mowing activities,

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including receipts from companies which may have done mowing, or descriptions of operations from the current or previous operators, pictures or any other relevant evidence. In addition, please provide an interpretation of the photographic record by a qualified professional, outlining the areas of the site which have been subject to fuel modification over time.

E. Land Use Planning

1. Land Use Planning. Staff still believes that the adoption of an LCP, or at minimum adoption of an LUP with additional LUP policies which pertain to the subject area should be undertaken prior to the Coastal Development Permit process for the entire development, for the reasons laid out in previous communications, including the comments to the Draft EIR and the 3/1/2013 notice of incomplete application. These include the fundamental land use issues, such as the type, location, and intensity of development, its compatibility with the surrounding land uses, and the consistency with the Coastal Act, including consistency with the identified priority land uses. These issues remain unresolved and will need to be resolved prior to filing any application. Whether through the LCP planning process, or the CDP process, you will need to demonstrate that the proposed uses, and area allocated to each use, conforms to the priorities established under the Coastal Act. These higher priorities include areas for open space, lower cost recreation, and visitor serving development. The proportion of area you have identified as developable (which still needs to be ascertained based on all applicable constraints such as biological resources) and which is allocated for lower priority residential uses is high (nearly 92 acres are devoted to residential, compared with just 5.7 acres for visitor serving commercial). Your application has not yet demonstrated whether adequate area (within the potential developable area) has been reserved on site for higher priority uses.

The 5/17/2013 letter states that the relevant local governments are unable or unwilling to seek certification of an LCP for the subject area or, at minimum, seek certification of an LUP. Please provide letters from the City of Newport Beach and Orange County addressing whether and why they are declining to pursue certification of an LCP, or at minimum a land use plan for the subject site.

II. Other Issues

To the best of our ability we have identified deficiencies related to details of your ultimate development proposal to give you notice that the following items remain incomplete but given the significant unresolved nature of the issues mentioned in section I, above, your submittal of these details and our review of it should wait until a later time. Note that the following list is not complete. Further review and clarifications will be required in the future.

A. Alternatives

1. Alternatives Analysis: Thank you for the submittal of the alternative development plan, which included a project design that did not include an extension of North Bluff Road to 19th Street. Please note that Attachments 14 and 15 appear to be the same document. Was a difference between these documents intended?

Although the 5/17/13 letter states that reduction in project intensity would reduce public access options, evaluation of all project alternatives by the Commission is required in order to ensure that the Commission is able to determine the least environmentally damaging feasible alternative. Therefore, please submit alternative project designs, including redesigned access and reduced project densities, that do not rely on the proposed Bluff Road access from Coast Highway and/or north Bluff Road from 19th Street. Also, if roadway access to the site were limited to just one of the projections

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from 15th, 16th, or 17th streets, what is the maximum amount of development that could occur on the site given circulation and other requirements? In other words, if a roadway from Coast Highway, and/or 19th street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints?

B. Biological Resources:

- 1. Vernal Pools/Seasonal Pond Surveys
 - a. Wet Season Sampling When fairy shrimp cysts (Brachinecta sp.) are found during a dry season survey (2012), an additional wet season survey is required. No wet season survey was completed after this dry survey for features C, D, K, L, M, N, P, R, Q, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP and QQ.
 - i. The laboratory hatching of a sampling of cysts found during a dry season survey is neither to protocol nor sufficient in determining species present (features C,D,M,X,Y,Z,CC,DD,EE,FF,GG,HH,KK,LL,MM,OO,PP). This technique allows for a) sampling error in missing cysts or b) not obtaining an adequate sampling all cysts that are present, or c) preferential hatching of certain fairy shrimp species. ii. Assuming that co-occurrence of the two species of known fairy shrimp on site will not occur is not permitted as sound science (feature N,P,B,T). Though co-occurrence has not been seen at this site before, it cannot be assumed to be consistent with the amount of cross contamination of the seasonal features on site that occurs due to maintenance.
 - iii. Assuming seasonal feature failed cyst hatchings to be of a certain species due to the surrounding seasonal feature findings is unacceptable. This is primarily due to the level of cross contamination of the seasonal features on site that occurs due to maintenance.
 - iv. Feature W was not addressed.

For the reasons above, a wet season protocol survey is required in order to delineate the location of wetlands and sensitive habitat. Please submit a wet season protocol survey

- b. A preliminary Vernal Pool Approximate watershed Study was conducted to determine the watershed boundaries for the eight (8) seasonal features known to contain the federally-endangered San Diego fairy shrimp. This should also be done for the rest of the features on the site. Also, whether the overall development project will/has the potential to impact these pools still remains to be addressed.
- 2. Vegetation mapping of encelia/disturbed habitat

 Encelia/Disturbed Habitat The membership rules for what constitutes "disturbed" are unclear.

 Please provide a clear definition and membership rules for the various disturbed categories.

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The rules for what constitutes "disturbed" and what constitutes disturbed native vegetation remain unclear. First, while bare ground is identified as a factor for determining disturbed areas, a quantitative value for what amount of bare ground relegates a particular area into a "disturbed" category is not provided. Second, the criteria for whether an area is labeled disturbed or disturbed native shrub vegetation is not provided. According to Sawyer et al. (2009), the criteria for shrub cover to be considered shrub vegetation is that the absolute cover (total cover) must be 20% or greater. We believe that this is a logical criteria for distinguishing "disturbed" from "disturbed native vegetation". In areas where the absolute cover is 20% or greater the MCV2 membership rules can be applied to determine the type of disturbed native shrub cover. Once the 20% absolute cover bar is passed for native shrub vegetation, relative cover must be used for evaluating the type of disturbed native shrub vegetation because the MCV2 membership rules are based on relative cover. We believe that Dudek's practice of using absolute cover when using the MCV2 membership rules in disturbed areas is wrong; the membership rules cannot be applied using a different metric from the one they are designed around.

Third, the only native shrub that is currently considered when evaluating disturbed areas is California brittle brush (CBB). Singling out this plant results in many areas with native shrubs, that are important members of California sage scrub (CSS) habitat, being categorized as "disturbed" when they could be categorized as disturbed habitat that is a particular subset of CSS based on the MCV2 membership rules. The data for running this analysis has been collected; 76 vegetation transects were sampled by Dudek in disturbed areas in the second vegetation mapping pass. The transect data provides the information necessary to determine the particular disturbed native shrub habitat using the MCV2 membership rules.

For instance, in transect D-01, found in Appendix F of *Vegetation Mapping Transects-Data Sheets* dated June 18, 2012, there was 28% absolute native cover. So there is at least 20% native cover, the amount required by Sawyer et al. to be considered native shrub vegetation. And within that the relative cover of deerweed is 57% and the relative cover of CBB is 28%. Under Dudek's current rules, this area was identified as disturbed because it didn't meet the 30% or greater MCV2 rules for California brittle brush scrub and because Dudek does not include any other category of disturbed native vegetation. However, using the transect data that identifies deerweed as having 57% relative cover, the area would be more appropriately identified as deerweed scrub (the MVC2 membership rules for deerweed scrub is that there be 50% or greater relative cover of deerweed). Whether the area would be categorized as disturbed needs to be clarified based on a criteria for the amount of bare space in a particular area.

Another example is transect D-09 where the native absolute cover was 44%, and the deerweed relative cover was 60%, and the CBB was 15%. This disturbed area was categorized as disturbed when it would more appropriately have been categorized as deerweed shrub. Again, whether the area would be categorized as disturbed deerweed scrub needs to be clarified based on a criteria for the amount of bare space in a particular area.

Finally, while patches of iceplant, below the minimum mapping unit, have been mapped across the entire site, similar size patches of prickly pear cactus (indicator species of coast prickly pear scrub which is a rare plant community) located within polygons mapped as "disturbed" were not mapped. We believe that these patches of prickly pear cactus must be mapped.

¹ Sawyer et al. (2009) identifies deerweed, *Lotus scoparius*, as a shrub, not a forb, as it is identified by Dudek.

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- 3. Oil Field Consolidation. The submitted materials appear to exclude data located within the oil field consolidation area. As mentioned above, such consolidation is subject to Coastal Development Permit requirements. Additionally, the consolidation areas are located directly adjacent to habitat areas, and sensitive species mapped within oil consolidation areas likely utilize habitat directly adjacent to the oil consolidation areas. For these reasons, please submit updated figures which include biological information for the entirety of the project site.
- 4. Gnatcatcher Surveys.
 - a. Thank you for the submittal of the updated gnatcatcher survey map. However, the submitted map appears to include less known pairs and territories than what has been identified in previous survey consolidation efforts (e.g. see Exhibit 7, Figure 18 for CDP No. 5-11-302). Have any data been excluded from the map? Please explain.
 - b. Please provide the latest gnatcatcher survey in full, including the accompanying report.
- 5. Burrowing Owls. Thank you for the additional information regarding the burrowing owl. Your response clearly states that wintering habitat is very important to the survivability of migratory bird species. Though burrowing owls, in general, exhibit variable migratory behavior, the submitted burrowing owl surveys and reports conclude that this species uses this site only as wintering habitat. None of the breeding season surveys (March/April 2008, May 2009, March 2010, and 2012) have ever detected any signs of burrowing owls, while all wintering season surveys (January 2008, January 2009, and January 2010) have found birds on site. Although there has not been burrowing owls identified during the breeding season, the submitted information indicates that the burrowing owl habitat within this site is important and necessary for the migratory patterns of the burrowing owl. Therefore, please submit a new current protocol wintering season survey to aid in the understanding of the site's current use by the burrowing owl.
- 6. Field lights The submitted materials state that lighting is proposed until 10 pm. Would the proposed lighting result in impacts to migratory birds, or is the subject site located within the Pacific Flyway? If the site constitutes a migrational stop site, a lighting plan to minimize impacts to migratory birds may be required
- 7. Mitigation Banking. Please state whether a mitigation bank is proposed as part of this application for the 78.5 acres set aside for future mitigation. If so, additional information, including documentation of the location of the mitigation bank and the accepting body will be required prior to completion of the file.
- 8. Wildlife movement. The proposed development appears to create significant obstacles to wildlife movement, especially between the southern and northern portions of the site. Project alternatives and mitigation measures to address this issue need to be identified.
- 9. Plant Palette. Thank you for the submittal of the modifications to the landscaping palette. However, it appears that the landscaping palette still contains species that are not native to Coastal Orange County. If you choose not to provide the alternative plant palette, changes in the landscaping palette will likely be required through the Coastal Development Permit process.
- 10. Pocket Mouse Surveys. Thank you for the notification of forthcoming pocket mouse surveys. Submittal and review of new surveys will be required prior to the completion of the file.

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- 11. Known Biological Surveys. We asked in the previous incomplete for: "all known biological surveys regarding sensitive species on the site" Although you have submitted a compilation figure of sensitive species, the submitted information did not include a) more than one year of data for some species, such as the cactus wren, and b) the copies of the full surveys, with associated reports. Please provide the full surveys / reports.
- 12. Resource Constraints Map. Thank you for the submittal of the Resource Constraints map. However, the submitted map does not appear to include identification of the areas not subject to resource constraints. Please provide a second page to the resource constraints map which identifies the areas where there is a lack of the resource constraints (i.e. wetlands, vernal pools, coastal sage scrub occupied by the California gnatcatcher, raptor foraging habitat used by sensitive species, burrowing owl burrow areas or foraging habitat, purple needlegrass grassland, and any areas occupied by sensitive plant or animal species, and buffers around these areas) After review of the resource constraint plan, further alternative development plans will need to be identified, in conjunction with the filing of the application, to ensure avoidance of ESHA and wetlands (and any other significant coastal resources that are identified).
- 13. Roadways. The submitted cut/fill map indicates that a riparian canyon would be filled to allow for the construction of North Bluff Road (either near 18th Street or between 16th and 17th Streets. Coastal Act Section 30233 limits fill to wetlands to certain allowable uses, and only when there is no feasible less environmentally damaging alternative, and when mitigation is provided. Coastal Act Section 30236 limits substantial alterations of rivers and streams to certain allowable uses, which do not include roadways. Please submit an alternative road plan which does not require the filling of riparian corridors and/or wetlands.
- 14. Storm Water Detention. Prior to completion of the file, please provide an analysis of whether the proposed stormwater detention structures would be consistent with Coastal Act Section 30231, requiring maintenance of biological productivity of streams and wetlands, Coastal Act Section 30233, regarding diking or filling of open coastal waters and wetlands and movement of sediment, and Coastal Act Section 30236 regarding substantial alterations to streams? Portions of these features appear to overlay existing ESHA. Please note that in similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities is consistent with the Coastal Act or Local Coastal Programs. Please also provide detailed plans for the proposed stormwater detention structures, including depth of the structures, their composition, and important elements such as energy dissipators, riprap etc.
- 15. Fuel Modification Areas. Thank you for your comments regarding potential future reductions in proposed fuel modification areas. We look forward to reviewing revised fuel modification proposals prior to completion of the file.

C. Geology.

1. Bluff edge delineation. Thank you for the submittal of the slope analysis/bluff delineation exhibit. However, the submitted plan does not appear to be of precision sufficient to assess the bluff edge lines delineated by the applicant. The depicted bluff edge is discontinuous, appears to cross areas of steep (>20%) slopes, and does not appear to accurately depict the bluff edge in the northern part of the property. Please submit a set of large-scale topographic maps, with contours at an appropriately detailed interval, for example 2 - 5 feet, to allow for the assessment of the plotted bluff edges. Such

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contours should cover the entire property. In addition, please provide a plot of the surveyed bluff edge referred to in your 17 May 2013 letter.

- 2. Bluff Retreat Rate. The estimated bluff retreat of 45 feet over the lifetime of the development was justified by multiplying the minimum historic bluff retreat rate measured by 75 years. Other estimates based on the historical bluff retreat rates would include greater distances likely subject to erosion over the lifetime of the development. Although the 5/17/13 letter regarding effects of sea level rise stated that sea level rise would not affect bluff erosion, the submitted exhibits showed that sea level rise would affect the base of the bluff. Please clarify. Please estimate what the future bluff retreat rate over the next 75 years is likely to be, considering climate change and sea level rise, and provide a rationale for that estimate. Although structures appear to be located at least 60 feet from the bluff edge (see Master Development Plan included with 2/1/13 submittal), the parks and trails which are proposed to improve public access appear to be located within the area of the bluff estimated to erode. Please address whether the stability of proposed park and trails along the bluff edge would be assured over the lifetime of the development.
- 3. Alteration of Natural Landforms. The 5/17/13 letter states that bluff remediation is not required to: a) protect existing development, or b) to protect proposed development, but rather to address erosion of the bluff. Bluffs are naturally subject to erosion, and new development should take such erosion into account by avoiding areas of hazard as much as possible. Drainage improvements might limit anthropogenic erosion without the need for grading of the bluff face or edge. The proposed project does not include sufficient justification for the need to alter the existing landform by grading of the bluff face or edge.

D. Development.

1. Project Heights. CLUP section 4.4.2 states: Outside of the Shoreline Height Limitation Zone, heights up to 50 feet are permitted within the planned community districts. However, the proposed structures appear to exceed 50 feet due to parapets. Please submit alternative plans which include heights of all structures on all plans, and which do not include any portions of the structure greater than 50 feet height.

Additionally, the 5/17/13 letter states that the proposed heights of the structures proposed in this Coastal Development Permit application would be consistent with the character of the surrounding areas, and uses as reference various structures located in the vicinity of the project site. Please provide a map of the structures chosen, along with their respective heights, and an assessment of the average height of the buildings in each area.

- 2. Lower Cost Visitor Serving Overnight Accommodations. The proposed hotel does not appear to provide low to moderate cost overnight accommodations. Mitigation such as the provision of such lower cost accommodations on-site and/or payment of an in-lieu fee will likely be required through the coastal development permit process.
- 3. Pedestrian Bridge. If the pedestrian bridge is proposed as part of the project, the following will be required prior to the completion of the file: 1) detailed plans and engineering studies 2) view simulations from multiple perspectives, both near and far away, and 3) clarification of whether the proposed structure would be located on the bluff face or within the blufftop setback, or in any way result in alteration to natural land forms.
- 4. Takings Information. Section 30010 of the Coastal Act provides that the Coastal Act does not authorize the Commission, "acting pursuant to the [Coastal Act] to exercise [its] power to grant or

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deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor...." To assure compliance with section 30010, the Commission, at times, must adopt findings consistent with section 30010 if the a development application warrant a closer look at the risk of a potential Commission action that may tread close to an unconstitutional taking, in violation of section30010. In no way is an action by the Commission that includes a regulatory takings analysis a final adjudication of such an issue. Rather, findings that include a regulatory takings analysis is required if the Commission has to permit development notwithstanding the proposed development's inconsistencies with Chapter 3 policies of the Coastal Act because to deny such a proposal may violate section 30010. Therefore, in order to fully assess whether or not the Commission's action may violate section 30010, an application submittal must include the information included in the Takings Form to better assess the risk of whether or not a Commission action would constitute an unconstitutional taking. For more information regarding takings proceedings, please refer to the staff report for CDP No.s 4-10-040 through 045, or A-3-SCO-08-029, which are available on the Commission's website. Please note that submittal of the takings information sheet will be required prior to completion of the application.

- 5. Development Agreement. Thank you for your comments regarding the development agreement. For clarity, please state whether the development agreement is a formal part of the subject application, or whether the agreement is excluded from the subject application and will be submitted as a separate application.
- 6. Approvals from other agencies. Please provide the status of the approvals process for each of the agencies listed on page 1-4 of the CDP application letter. The CDP Application states that the majority of the site is currently located within unincorporated Orange County. What approvals are necessary from Orange County and have those approvals been received? Please provide a copy of the Statement of Intent filed with the Local Agency Formation Commission (LAFCO)
- 7. Co-Applicant Invitation: The sole applicant identified in the permit application is Newport Banning Ranch LLC (NBR LLC). Two other entities, Aera Energy LLC and Cherokee Newport Beach LLC, were identified as property owners. If there are any other entities that have any property interest in the area proposed for development, those entities must also give NBR LLC the authority to apply for and to undertake the proposed development. Furthermore, please demonstrate that all individuals signing on behalf of any LLC (or similar type entity) have the legal authority to do so on behalf of those LLCs.

The submitted evidence for the authority to undertake development off-site include the City of Newport Beach Council resolutions, City of Costa Mesa Traffic Mitigation Agreement (which according to a public comment received has been postponed from the June 4th hearing), and MOU between NBR LLC and the Newport-Mesa Unified School District. Proof of the authority to undertake development on off-site locations does not appear to have been submitted for: 1) the footing of the pedestrian bridge on the seaward side of Coast Highway, or CalTrans approval (if required) for encroaching over the highway 2) approvals from property owners for the widening of 15th, 16th, and 17th Streets. Please state whether the applicant has the authority to undertake development in these areas.

Please distribute the co-applicant invitation form to any party which has a property interest in the subject site or the areas subject to off-site development, and return the completed forms stating whether those parties wish or do not wish to be a co-applicant.

Also please note that the proposed road leading from the subject site to Sunset Ridge Park may require a separate proof of authority to undertake development from the City of Newport Beach (as it is located outside of the public right of way). Additionally, the proposed road would likely require an amendment to Coastal Development Permit No. 5-11-302.

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- 8. Tentative map approval As part of the proposal, staff interprets the application submittals as including approval of a land division(s) as part of the proposed development. In light of this, the Commission requires strict compliance with the Subdivision Map Act (SMA) before it considers approval of divisions of land subject to SMA regulation. The submitted Tentative Tract Map No. 17308 for Condominium Purposes includes the subdivision of the subject property into approximately 251 lots. The application proposes 1,375 residential units, with some commercial units mixed into that matrix. In consideration of this, please provide documentation that the applicant has complied with the SMA for all proposed divisions of land necessary for the proposed development, including but not limited to, approved tentative maps for all subdivisions to accommodate development of all proposed residential development. In addition, please provide any resolutions adopted by relevant local governments that have approved tentative tract maps related to the proposed development. The submitted Tentative Tract Map No. 17308 for Condominium Purposes does not include such resolution, approving the map.
- 9. Chain of title. Thank you for the notification that the chain of title requested in the 3/1/13 notice of incomplete application is forthcoming. Please note that submittal of the chain of title information will be required prior to completion of the application.
- 10. Plans. The submitted plans are unclear as to the landscaping species proposed, the total amounts of impervious surface, and what water quality management features are proposed on each lot. Please submit an analysis of the amount or locations of water which can safely be infiltrated into the soils, and detailed plans detailing the water quality management features². Additionally, the plans should depict the amounts of landscaping on the site, with a clear note that the plant palette will be consistent with the plant palette requested above. Please also clarify whether the garden court homes (which appear to include 2 separate garages), and each of the other dwelling units on site, include 2 parking spaces per unit?
- 11. Agriculture. Please clarify whether any grading or soil remediation would occur at any of the potential agricultural lands idenfied in the 5/17/13 submittal. Is the maintenance of agricultural lands possible in any of these areas through the introduction of agriculture, such as creation of a community garden?
- 12. Mitigation Phasing. Please note that the Coastal Development Permit process will address the phasing of different parts of the development. Specifically, the required mitigation will likely be required at the first stages of the project, and/or at certain points such as prior to the construction of residences, and/or prior to the issuance of the certificate of occupancy. Therefore, staff recommends that the project schedule be modified to ensure that completion of mitigation will be prioritized.

² For instance, will the project include any measures such as the construction of driveways and walkways using porous materials (crushed gravel, concrete grid, cobblestones) to allow increased percolation of runoff into the ground? Direct runoff from impervious surfaces to sheet flow through a biofilter (such as a landscaped area) or other filtration oriented BMP?; Maximize on-site percolation of runoff?; Use infiltration trenches to collect and retain runoff, allowing it to seep into the ground, thereby reducing or preventing off-site flows?; Use retention structures or design rooftops to store runoff?; Install rain gutters and orient them towards permeable surfaces (such as landscaped areas) rather than driveways or impermeable surfaces in order to facilitate infiltration and reduce the amount of stormwater leaving the property?; Design curbs, berms or the like so as to avoid isolation of permeable or landscaped areas? Include the use of rain barrels to minimize irrigation requirements?

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- Can we ask for how they might minimize the size of the end of line detention basins, or have those already been minimized?
 - 13. Land Trust. In order for the Commission to recommend a special condition which requires a property be conveyed to another party, it must first be able to a) identify the anticipated recipient of the conveyance, and b) have evidence that the anticipated recipient is willing to accept the transfer. Therefore, submittal of the information necessary to determine the exact type of conveyance, and information showing that the anticipated recipient would accept the conveyance, will be required prior to completion of the file. Additionally, the Commission's recommendation would likely include a requirement for long term maintenance of areas adjacent to developed areas to ensure that the development does not result in negative impacts to adjacent habitat. For example, the Commission may require that trash collection or other routine maintenance occur throughout the lifetime of the development. Therefore, identification of a funding source and the mechanism of funding should also be included prior to the completion of the file.

E. Archaeological Resources

1. The submitted letter states that archaeological site ORA 906 would be impacted by the construction of North Bluff Road, but that there are alternative road designs that do not impact ORA 906. Avoidance of impact is a type of reasonable mitigation that may be required for development projects which would impact archaeological resources. If there is an alternative project designs that would avoid impacts to sensitive resources, staff recommends that the applicant incorporate the alternative into the project proposal.

2. The submitted letter states:

According to the City's consultant, BonTerra Consulting, its work plan for the archaeological investigations that it conducted was not peer reviewed;

Although the City's consultant believes that its study is suitable to address the archaeological resources on the site, the peer review process is designed to ensure that all relevant factors have been considered in the review. To ensure that the submitted archaeological information provides the most accurate depiction of the archaeological resources on the site, a peer review of the archaeological investigation is necessary. Therefore, please submit a peer review of the archaeological investigation. The archaeological investigations on the site proceeded without benefit of a Coastal Development Permit. The proposed project should address the unpermitted development through the enforcement or CDP process prior to the completion of the file. This will ensure that the unpermitted development on the site is resolved, and that the proposed project would not in any way rely on existing unpermitted development.

• 3. Remediation Work And Impacts To Archaeological Resources. As discussed above, remediation work on the site requires a Coastal Development Permit. However, even if some remediation work were included in the scope of the exemption resolution, and thus impacts to sensitive resources associated with the remediation were not subject to Commission review, subsequent development of the site may result in further impacts to archaeological resources. For example, while disturbance associated with oil remediation activities may be relatively shallow, project associated grading or construction of utility trenches may result in significantly deeper disturbance. Please submit a review of the subsurface testing which has occurred on the site to determine whether the subsurface testing has been conducted to a depth necessary to ensure that deep archaeological resources, such as burials, have been detected if they are present.

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- 4. Archaeological Research Plan. An ARP must be prepared, approved and implemented prior to consideration of a CDP for development prior to the completion of the file. This is to ensure that the results of the ARP are used to determine the appropriate development footprint that would be proposed in the CDP application. Without an ARP, such footprint cannot be determined, and it cannot be determined whether the project would be the consistent with the protection of coastal resources.
 - 5. Please address the comments included in the June 11, 2013 letter from Dr. Mikel Hogan, and the June 10th letter from Patricia Martz of the California Cultural Resource Preservation Alliance (attached).

F. Public Access

- Trails and Sea Level Rise. Thank you for your comments regarding trail design. Please provide analysis of how often trails will be subject to flooding, whether the trails are expected to last at least 75-100 years, and what design features of the trails are included to ensure that trails in flood prone locations will be able to withstand occasional flooding. Would the location of proposed trails allow for gradual landward migration of wetlands with increases in sea level over time? Similarly, is space provided for the gradual landward migration of the trails as well?
- A full Transportation Demand Management Plan, with analysis by a qualified professional, will be required prior to completion of the project. Please provide all agreements between the applicant and any governmental entity that would contribute to meeting the goals in the final TDM plan, including but not limited to, an agreement that will ensure compliance with section 30252(1) of the Coastal Act of "facilitating the provision or extension of transit service." Your resubmittal refers to a commitment to coordinate with OCTA for a transit route. Please submit evidence of this commitment.
- Proposed Commercial Uses. What is the estimated square footage of the proposed commercial uses? What portion of that would be primarily visitor serving, and what portion would be primarily resident serving? Would the commercial uses accommodate a variety of price ranges? Please provide an analysis of how the total amount of commercial and visitor serving commercial uses were determined to be appropriate for the amount of residential uses on the site and in the surrounding area, and how the proposed amounts of these uses would be sufficient to reduce vehicle miles traveled.
- Parking. Does the Guest parking indicated on attachment 33 to the 5/17/13 letter composed of parking which is available to the general public, or to the specific owners of the residential units?
- Pedestrian Bridge. Thank you for the additional information regarding the pedestrian bridge. Please note that the method of conveyance of the pedestrian bridge, and documentation of the proposed receiving agency will be required prior to completion of the file.

G. Miscellaneous

• Public comments. The 3/1/13 Notice of Incomplete Application asks for a response to the public comments attached to the notice which pertain to the filing of the application. At our 3/15 meeting in Long Beach, the applicant requested that we clarify the scope of this request and work with the applicant to narrow down the public comments to those which needed a response.

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Staff has reviewed each of the public comments which were attached to the notice of incomplete, and the following reference those comments which have not yet been addressed and which are not addressed by the other questions included in this Notice of Incomplete Application. These include:

- Dr. M. Hogan's letter received on 2/26 regarding existence of archaeological sites not analyzed in the CDP application, including the existence of 'cogged stones'.

- M. and D. Krauss email dated 2/25/2013, regarding consistency of the project with Coastal Act Section 30253 (c)

- S. Forster email dated 2/25/2013 regarding additional fault traces which are not analyzed in the CDP application

- R. Hamilton Letter dated 1/28/2013 requesting an independent third party review

Fees. Based on the information submitted to date, Commission staff has determined that the proposed project will be processed on the Regular Calendar. The fee for processing the proposed project is \$ 265,250. You have submitted a fee of \$159,150, and requested a reduction in permit fees pursuant to California Code of Administrative Regulations Section 13055 (h) (3). This section states, in part:

After registering a project with an approved third-party certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute approved by the executive director in the amount of the remainder of

the required filing fee.

Please submit either: 1) proof that you have registered your project with an approved third-party certification program and a letter of credit or other cash substitute for the approval of the Executive Director, or 2) the balance of the remaining permit fee, at \$106,100. Please note that this is the fee based on the current fee schedule. Fees are adjusted annually based on CPI. The required fee will continue to be adjusted until the application is deemed 'filed'.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,

John Del Arroz

Coastal Program Analyst

File

Karl Schwing

Supervisor Regulation and Planning

cc:

Attachments: Letter from Dr. Mikel Hogan

Letter from Dr. Patricia Martz of the California Cultural Resource Preservation Alliance

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



August 7, 2013

Susan K. Hori Manatt, Phelps & Phillips, LLP 695 Town Center Drive, 14th Floor Costa Mesa, CA 92626-1924

Re: NOTICE OF INCOMPLETE APPLICATION

Application No.5-13-032

Site Address: Newport Banning Ranch Site

5100 Block of West Coast Highway, Newport Beach, Orange County.

Dear Ms. Hori:

On February 1st, 2013, our office received the subject coastal development permit application. The proposed project includes grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, and 52 acres of parks. On March 1, 2013, Commission Staff sent a Notice of Incomplete Application. A response to that notice with additional information was received in the Commission's office on May 17, 2013. After reviewing the submitted information, staff determined that further information was required to process the subject application, and a Notice of Incomplete Application was sent on June 14, 2013. On July 8, 2013 staff received a letter from the applicant responding to the June 14th Notice.

The Notice of Incomplete Application (herein 'notice' or 'notices') which was sent on June 14, 2013 identified five threshold issues, which are of primary importance because they address the way the Commission can process the subject CDP application, including defining the scope of proposed development and the manner of its review by the Commission. Due to their importance in the review of the subject application, in the March 1st and June 14th notices, staff requested that the threshold issues be resolved first before filing the application as complete and turning to other areas of the subject CDP application. Your assistance at separating out and addressing just the threshold issues in the most recent letter has been appreciated.

The previous notices identify where there are deficiencies in your application relative to the threshold issues, and in other areas of the application. Although the other areas of the application remain incomplete, the discussion and resolution of those issues should wait until after the resolution of the threshold issues. For convenience, I am including the pages of the June 14, 2013 notice, where the 'other issues' are outlined.

In response to the concerns raised in your letter, I would like to assure you that Commission staff is aware of the responsibilities and procedures of the Permit Streamlining Act. Notifications in previous letters that listed issues that were not completely addressed were for the benefit of the applicant to know that further questions or concerns may be raised during the review of the Coastal Development Permit application, not that these concerns would necessarily prevent the filing of the application, though they could, nonetheless, constitute a basis for an incomplete application

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determination. Even if an application is deemed complete, however, Government Code, section 65944, subdivision (a) allows the Commission to request an applicant to "clarify, amplify, correct, or otherwise supplement the information required for the application" after the application is deemed complete. The Commission can make this request for additional information for any of the categories listed in the application form, like the category that requires information related to biological resources in Section III of the South Coast permit application form. Thus, filing of the application will proceed in compliance with the Permit Streamlining Act.

In the letter received in the Commission's office on July 8th, the applicant states:

We also believe that Commission staff and the Applicant should meet immediately to come to agreement on the Project definition. Based upon the two letters we have received from Commission staff and the Threshold Issues, it is apparent that this is the fundamental issue that must be resolved...

In the most recent letter, you requested a meeting to help resolve the threshold issues. As you may be aware, we are in the process of scheduling such a meeting, tentatively set for August 29th. We look forward to discussing these issues with you in this meeting. Your letter also requested to review the available files regarding the subject site, and those files were reviewed on 7/16/2013.

In 1973 an oil company (General Crude Oil and G.E. Kadane & Sons) applied to the South Coast Regional Coastal Zone Conservation Commission to exempt, in a vested rights application, from Commission review those activities that were ongoing as of Nov. 8, 1972 and Feb. 1, 1973, had incurred substantial liabilities, and were acted on in good faith reliance under authorizations pre-existing November 8, 1972. The Commission reviewed their application, and issued a Resolution of Exemption dated October 2, 1973 which stated that the specific development described by the Resolution did not require a coastal development permit provided that no substantial changes be made to that development. The applicant for the subject CDP application claims that there is development that has occurred, and is yet to occur that is within the specific limits set by the Resolution of Exemption, and therefore exempt from coastal development permit requirements. This includes installation and removal of equipment, installation of new wells, clearance of vegetation, and grading of in excess of 246,000 cubic yards of material for soil remediation activities. However, commission staff does not interpret the Resolution of Exemption to authorize all of the development claimed by the applicant, and that such development requires a Coastal Development Permit.

The law governing exemption claims in a vested rights context limits the scope of development allowed under the exemption to that development that has been properly permitted by the regulatory entities with authority to regulate the exempted development prior to the enactment and/or effective date of new laws and regulations that have altered the legal requirements for the same development. (See, gen., Avco Community Developers v. CCC (1976) 17 Cal.3d 785; McAllister v. CCC (2008) 169 Cal.App.4th 912.) Further, to establish a vested right, one must have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government." (Avco, *supra*, 17 Cal.3d at 791.) Once a vested right is obtained, the exempted development is only that development that has been specified in the terms of the underlying permit. (Id.) Given the general basis to establish a vested right, the scope of the work allowed under the 1973 Resolution of Exemption (herein '1973 Resolution' or '1973 Exemption') is limited to that

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allowed under the terms of the permit issued for the oil development from the Division of Oil and Gas and other regulatory agencies with authority to regulate oil development at the subject site prior to November 8, 1973. (See former Pub. Res. Code, section 27404.) Therefore, the scope of the 1973 Exemption is established by evaluating the terms of the permits relied upon when the Commission made its exemption determination in 1973, not based on the content of a letter that accompanies an application submittal by the vested rights claimant, as asserted by the applicant.

Based on the communications which we have received to date, it is our understanding that there is a difference in the interpretation of the 1973 Resolution regarding the scope of development that has been exempted. Specifically, Commission staff has found that planned elements of the project (e.g. planned remediation activities on the site) require a coastal development permit but are not proposed as part of the CDP application. There may also be unpermitted development on the property. Staff is therefore requesting further specificity on these activities which we believe should be addressed ahead of the current proposal (for ATF development) or should be included within the proposed CDP application (for development not yet undertaken), or some combination thereof. However, the applicant has stated that these activities are exempt and that no further details are required to assess the consistency of the specified activities with the Coastal Act. Due to this disagreement in the scope of what the 1973 Resolution of Exemption covers, there is a dispute regarding whether sufficient information has been submitted to analyze the threshold issues and determine whether the proposed project is consistent with the Coastal Act. In order to proceed with completing the application, some resolution of this dispute over the interpretation of the 1973 Exemption is required.

Section § 13056 of the Commission's Administrative Regulations provides a process for resolving disputes over the filing status of a permit application. It states:

(d) An applicant may appeal to the commission a determination by the executive director that an application is incomplete. The appeal shall be submitted in writing. The executive director shall schedule the appeal for the next commission hearing or as soon thereafter as practicable but in no event later than sixty (60) calendar days after receipt of the appeal of the filing determination and shall prepare a written recommendation to the commission on the issues raised by the appeal of the filing determination. The commission may overturn the executive director's determination and/or direct the executive director to prepare a different determination reflecting the commission's decision. Otherwise, the executive director's determination shall stand. The executive director shall issue any such different determination that the commission may direct no later than sixty (60) calendar days after receipt of the appeal of the filing determination.

As described in further detail in the sections below, Commission staff believes a dispute exists with respect to whether the application is incomplete with regard to the 'Threshold Issues.' Therefore, staff recommends that the applicant bring this question to the Commission through an appeal of the Executive Director's determination on this issue, for consideration at an upcoming Commission hearing.

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I. Number of Wells Authorized By Exemption

Number 12 of the 1973 Resolution describes the development which is being exempted as part of the Commission's action:

- 12. Claim of exemption No. E-7-27-73-144 is hereby granted as to the following development: Continued production and operations on the 480 acre "Banning Lease" per the attached items:
- a. Continued operation and maintenance of existing oil producing and injection wells and associated surface facilities. The "existing" wells to be defined as the 312 wells either drilled or in progress as of Nov. 8, 1972
- b. Performing workover or remedial operations on existing wells necessary to maintain or improve their performance.
- c. Drilling, redrilling and repairs to existing injection wells.
- d. Drilling, redrilling and repairs to existing oil production wells.
- e. Based upon the existing plan, the drilling of 28 additional oil producing wells and construction of associated surface facilities.
- f. Drilling, redrilling and repairs to the 28 new wells and associated facilities.
- g. Abandonment of wells in accordance with requirements and approval of the State Division of Oil and Gas and removal of surface equipment and pipelines per state and local agency requirements.
- h. Future exploratory drilling within the lease area is not exempted.

Item number 12 of the 1973 Resolution specifies in part "a" and "e" that the resolution is limited to the "existing wells," the 312 wells that were in existence or in the process of being drilled in 1972, and 28 new wells that were authorized prior to the passage of Proposition 20. Therefore, Commission staff has determined that the exemption covers only these specific developments, and that the drilling of any new wells beyond these specific 340 wells that were in existence at that time, among other activities, would require a coastal development permit.

In contrast, the applicant has interpreted the exemption to mean that the operation of 340 wells on the site is what has been exempted, and that wellheads can be closed and new wellheads drilled as often as necessary as long as the number does not exceed 340. As discussed below in the section regarding consolidation, the applicant also interprets the exemption to cover the abandonment of a well in one part of the site and the construction of a new well in a different part of the site. The applicant's interpretation is not supported by any submitted evidence regarding the scope of development allowed under a new well permit.

Your letter states that Commission staff fails to consider the context of the 1973 Resolution, and has come to its interpretation through selection of isolated phrases. The 1973 Resolution of Exemption is the final document produced by the Commission, and the document which ultimately determines what is included in the Commission's action. The Resolution, relying on permits issued prior to passage of Prop. 20 (Nov. 8, 1972), does not include a specific authorization for new wells on the site beyond the 340 wells permitted prior to passage of Prop 20, it does not include a reference to the relocation or reorganization of wells on the site, nor does it indicate that new structures on the site would be considered exempt from permit requirements. Rather, it refers to the 'continued

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operation and maintenance' of the existing wells on the site, and names that as the development that has specifically been exempted.

A review of the submitted information indicates that new wells have been drilled on the site. Therefore, Staff has requested:

- 1) Information regarding the 340 existing wells at the time of the exemption, and the locations of any other wells or pipelines which had been constructed since 1972. We realize that the location of the 340 wells is encompassed by the records submitted to date; however in order to get a comprehensive picture of the development on the site, a compilation of the data for the "existing" and other wells and their locations is necessary in order to assess the development which has occurred on the site.
- 2) Additional permit documentation regarding development prior to and after Prop 20. Although copies of permits included with the exemption application were included in your submittal, there has not been a full submittal of the records for a) each of the 340 wells, b) abandonment records, c) installation or expansion of structures associated with changes in secondary production over time
- 3) Information regarding the habitat surrounding wells which were installed since 1972 at the time of installation and currently, to address what impacts have occurred from additional well installation
- 4) Copies of permits from the Division of Oil, Gas and Geothermal Resources (DOGGR) since 1972.

In the June 14, 2013 notice, staff raised a question of whether the 1973 Exemption was limited to the end of 1994. The application for Exemption indicates an expectation on the behalf of the applicant that the oil operations would continue through the term of a lease that ended in 1994. That expectation is also indicated in the Resolution, which states: "7. Claimant anticipates to complete the total development on or about 1994." Therefore, Staff has requested information regarding: what happened to the lease which anticipates that oil operations would end in 1994; what has occurred since 1994; how the continuation of oil production since 1994 is consistent with the 1973 Exemption; and records regarding the lease including a copy of the lease and any records of extensions or transfers.

This information is requested to help determine the scale of development which has occurred and whether development has occurred without the necessary coastal development permit, and what the impacts from development on the site have been. This is necessary so that staff can separate out the development which has been approved or exempted, from any unpermitted development that cannot be used as a baseline for the consideration of new development on the property.

Staff considers this information to be necessary to determine the baseline environmental conditions of the subject site to ensure that any future proposed development is properly conditioned to avoid or lessen any significant adverse environmental impacts that the proposed development may have on the environment. However, there appears to be a dispute regarding whether this information is necessary for the completion of the application, related to the question of whether the exemption covers the installation of new wells. Therefore, staff recommends that the applicant bring this dispute to the Commission so that it can be resolved.

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II. Abandonment / Remediation

The 1973 Resolution states:

12. Claim of exemption No. E-7-27-73-144 is hereby granted as to the following development: Continued production and operations on the 480 acre "Banning Lease" per the attached items:

g. Abandonment of wells in accordance with requirements and approval of the State Division of Oil and Gas and removal of surface equipment and pipelines per state and local agency requirements.

The 1973 Resolution includes a provision for abandonment of the wells that are covered by the exemption in accordance with DOGGR regulations. Commission staff interprets this to mean that the exemption covers the cementing and closing off of the individual wells that were covered by the 1973 Resolution, and that no CDP is required for such closure. The 1973 Resolution also specifically includes the removal of surface equipment and pipelines related to the wells that are covered by the exemption, and therefore staff may very well agree that the removal of the well head and pipelines surrounding the well would also not require coastal development permits.

The applicant's interpretation of the 1973 Exemption is that it covers the ending of oil operations over the majority of the site, removal of all associated equipment surrounding the site, and the remediation of the site to residential building standards through a soil remediation process.

We acknowledge that development associated with the ending of oil operations on the site, such as remediation, may be required at some point. We also understand that the applicant may be under an obligation to provide such remediation to satisfy lease obligations or agency restrictions. However, the only question that is at issue currently is whether the development that is planned by the applicant is covered under the 1973 exemption or is subject to coastal development permit requirements. The remediation which is planned for the site does not seem to be within the scope of the 1973 Resolution, which limits the development specifically exempted to "Abandonment of wells," and makes no mention of site remediation.

Therefore, Commission staff has determined that remediation activities on the site would require a coastal development permit. Therefore, Commission staff has requested the following information:

- 1) Is the remediation included in the application, if not why not, and is there certainty that the remediation would be undertaken with all appropriate approvals in place?
- 2) Copies of a 2001 Regional Water Quality Control Board (RWQCB) document referenced by the applicant as providing clean-up standards
- 3) Letters and/or approvals from the respective agencies, including DOGGR, on the remediation standards which must be met by the project,
- 4) A written analysis with evidence detailing the type of remediation required (see June 14, 2013 letter for further detail)
- 5) Further detail on the level of contamination on the site. The submitted documentation includes some discussion as to the areas which are required to be remediated due to contamination on the site. However, it is not clear how the applicant determined these areas require remediation, the level of contamination at each location, and how the geographic

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extent of each remediation area was determined. The submitted documentation further expresses that remediation in excess of what is described may be required based upon further testing. Therefore, there is not sufficient information for the Commission to evaluate the applicant's process in coming up with each of these areas, to ensure that they are appropriate given the constraints on the site, or in sufficient detail to know what the impacts of the remediation would be.

- 6) What is the potential harm to habitat from the existing contamination and what is the potential harm to habitat from required and recommended remediation? This information is necessary to determine whether the proposed project would avoid impacts to sensitive habitats where possible and whether it constitutes the least environmentally damaging alternative.
- 7) A revised graphic depiction of impacts to establish what the temporary and permanent impacts to habitat are from the proposed development.
- 8) Further explanation on the feasibility of alternatives to the planned remediation (see June 14, 2013 letter for further detail)
- 9) Evidence of other agency approvals for determining the state of contamination/remediation requirements necessary to carry out the remediation

This information is requested in order to determine the scope of existing contamination, the extent of remediation required by the project, potential alternative remediation, and whether remediation would impact habitat. This is necessary so that staff can determine whether the project, including the remediation activities, would be consistent with the Coastal Act, particularly the biological and archaeological protection policies.

Staff considers this information to be necessary to determine the baseline environmental conditions of the subject site to ensure that any future proposed development is properly conditioned to avoid or lessen any significant adverse environmental impacts that the proposed development may have on the environment. However, there appears to be a dispute regarding whether this information is necessary for the completion of the application, related to the question of whether the exemption covers remediation of the site. Therefore, staff recommends that the applicant bring this dispute to the Commission so that it can be resolved.

III. Consolidation.

The project plan includes the consolidation of oil operations onto one portion of the site. This consolidation appears to include the abandonment of oil operations on other portions of the site and the construction of new wells and associated surface facilities in a consolidated area on the subject site.

As stated above, the 1973 Resolution exempts the continued operation of the 312 wells existing or in progress as of Nov. 8, 1972 and 28 new wells that were specifically identified, and therefore their operation may be continued without a permit. The construction of new wells and their associated structures which occurred after this date would require a coastal development permit.

However, the applicant has interpreted the exemption to extend to the abandonment of wells and facilities and construction of new wells and facilities as necessary to gain full production of the site, and is not requesting the approval of the consolidation through the subject CDP application.

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Therefore, there exists a dispute regarding whether the construction of new wells and associated surface facilities, and their associated impact on coastal resources such as sensitive habitats, is subject to Commission review. The June 14, 2013 letter requested information on whether the consolidation activities would be included in the proposed project; the reason for not including it if applicable; how the development could proceed without the resolution of the issue of consolidation; and for the submittal of evidence of approvals of other agencies for consolidation activities.

This information is necessary to ensure that the consolidation activities are adequately reviewed by the Commission and to ensure compliance with CCC regulation 13052. However, there appears to be a dispute regarding whether this information is necessary for the completion of the application with regard to whether the consolidation activities require a CDP. Therefore, commission staff recommends that the applicant bring the dispute regarding CDP requirements for consolidation to the Commission, so that this issue can be resolved.

IV. Vegetation and Fuel Modification

The project site has been subject to extensive clearance of major vegetation over time, and such clearance has likely resulted in alterations to the extent or type of vegetation and habitat located on the site. The Commission has typically found that precise fuel modification areas, such as 100 feet from existing homes, has been appropriate to ensure public safety. However, the applicant has interpreted the 1973 Resolution of Exemption to allow the clearance of vegetation over the majority of the project site, in some cases far from any structure, through the 1973 Resolution's provision for "continued production and operations on the 480 acre Banning Lease." Thus, there is a dispute over the extent of vegetation maintenance on the site which is allowed by the 1973 Resolution.

Commission staff has requested the following information to help substantiate the applicant's claim that such vegetation maintenance is covered by the 1973 Resolution:

- 1) A map of areas within 100 feet of oil facilities, or 20 feet surrounding pipelines or utility poles.
- 2) Copies of documentation of abandonment of wells from DOGGR and whether such abandonment has been compliant with DOGGR regulations, any permits issued for any development carried out beyond that exempted in the 1973 Resolution of Exemption.
- 3) Assessment of habitat on the site if clearance of vegetation did not occur beyond 100 feet from oil facilities or 20 feet from pipelines since 1972 and 1976. (see June 14, 2013 letter for further information)
- 4) Any available evidence regarding mowing activities, including receipts, descriptions, pictures, or any other relevant evidence.
- 5) An analysis of the submitted aerial imagery by a qualified professional, outlining the areas of the site which have been subject to fuel modification over time.

Commission staff has asked for this information to assess the Applicant's claim that clearance of the majority of the subject site through mowing is necessary to maintain the subject site and therefore covered by the Resolution. Further, this information is necessary to assess the impacts that clearance of vegetation has had on the site, and to establish the baseline against which the impacts

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of the proposed development upon biological resources would be measured. Thus, the requested information is necessary for analyzing whether the proposed project is consistent with the Coastal Act.

However, there appears to be a dispute regarding whether the information requested above is necessary to analyze the impacts of the fuel modification activities and whether it is necessary for the completion of the application. Therefore, Commission staff recommends the applicant bring this question to the Commission for resolution.

V. Land Use Planning.

Commission staff has indicated in each of its previous Notices that, at this stage, land uses and planned development on the subject site should be considered through the LCP process, instead of through the CDP process. This would allow for more complete consideration of land use alternatives by the Commission. However, the applicant has stated that the CDP process is sufficient to handle the proposed project, and has stated that the respective municipalities, the City of Newport Beach, and Orange County, do not wish to or are unable to perform this land use planning due to certain constraints. Nothing in the Commission's record supports this assertion by the applicant. If this position has been taken by these municipalities, Commission staff requested a letter so stating from each of them.

In our June 14, 2013 letter, Commission staff also states that your submittal has not yet addressed the fundamental land use issues that are typically vetted through the LCP process. The issues that remain to be resolved are:

- 1) type, location, and intensity of development
- 2) compatibility of proposed land uses with the surrounding land uses
- 3) compatibility of proposed land uses with the Coastal Act
- 4) whether the proposed land uses, and the areas allocated to each use, conform to the priorities established under the Coastal Act
- 5) whether adequate area within the potential developable area has been reserved for higher priority uses.

Commission staff has determined that the satisfaction of questions related to these issues is required prior to the completion of the application. As noted below, if the applicant is disputing the above filing requirements regarding land use planning, the applicant should include these requirements in their request for Commission action to resolve the dispute regarding the completeness of the application.

Commission staff believes that a dispute exists regarding whether sufficient information has been presented to analyze the threshold Issues, as they are described above and in our prior notices, and therefore whether sufficient information has been presented on these issues to complete the subject CDP application. Therefore, we invite the applicant to confirm 1) that a dispute exists regarding these issues, and 2) whether there is any dispute as to the completeness of any other portion of the application, so that the Commission can resolve the dispute.

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We look forward to the applicant's request, under section 13056(d) of the Commission's regulations, to appeal the Executive Director's filing determination on the issues identified in this letter. Assuming a timely reply, staff believes a 'dispute resolution' hearing before the Commission remains possible for October if necessary, but preferably for the November 2013 hearing, depending on receipt of the appeal at the South Coast office. Please submit your request for Commission action within 30 days to ensure that the matter can be scheduled for the November 2013 hearing.

Sincerely,

John Del Arroz

Coastal Program Analyst

Karl Schwing

Supervisor Regulation and Planning

Cc: April Winecki

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071

Re:



12/6/2013

Michael A. Mohler Managing Director Newport Banning Ranch 1300 Quail Street, Suite 100 Newport Beach, CA 92660

NOTICE OF INCOMPLETE APPLICATION

Application No. 5-13-032

Site Address: Newport Banning Ranch Site

5100 Block of West Coast Highway, Newport Beach, Orange County

Dear Mr. Mohler:

On February 1st, 2013, our office received the subject coastal development permit application. The proposed project is grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, and 52 acres of parks, pedestrian bridge, and approval of a Development Agreement.

Commission Staff received letters containing additional information on May 17, 2013, July 8, 2013, and November 8, 2013. After review of the submitted information, Notices of Incomplete Application were sent on March 1, 2013, June 14, 2013, and August 7, 2013.

We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your application, please submit the following:

I. THRESHOLD ISSUES:

Resolution of the Threshold Issues is of primary importance to determining the baseline condition of the site. Analysis of the proposed CDP application cannot begin until it is clear what development is and is not covered by the Exemption.

Any analysis on the proposed project which is undertaken before the resolution of the Threshold Issues may assume the wrong baseline and need to be redone. Each of the questions pertaining to the Threshold Issues raised in the 8/7/2013 letter must be addressed prior to the completion of the file. If you need another copy of that letter, please make that request. We look forward to working with the applicants to come to a resolution on these issues.

Additionally, please respond to the following questions either previously posed or which are raised by new information presented in your latest letter:

- 1. Number of Wells. Please see the questions regarding number of wells posed in staff's 8/7/2013 Notice of Incomplete Application.
- 2. Exemption expiration. In the June 14, 2013 notice, staff raised a question of whether the 1973 Exemption was limited to the end of 1994. The application for Exemption indicates an expectation on the behalf of the applicant that the oil operations would continue through the term of a lease that ended in 1994. That expectation is also indicated in the Resolution, which states: "7. Claimant anticipates to complete the total development on or about 1994."

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The submitted 11/8/2013 letter states:

"Based on the progress in our recent meetings on addressing Staff's questions about the 1973 Exemption, it appears that this issue is unrelated to the NBR CDP application."

The questions posed in our 6/14/13 letter regarding whether the Exemption included a limitation on its term have not been resolved. If a term was included on the length of the exemption, that could affect the baseline condition of the site for analysis of the project. Therefore, the following questions should be resolved prior to the completion of the file:

What happened to the lease which anticipates that oil operations would end in 1994?; What has occurred since 1994?; Explain how the continuation of oil production since 1994 is consistent with the 1973 Exemption; and provide copies of records regarding the lease including a copy of the lease and any records of extensions or transfers.

- 3. **Remediation.** The information on the proposed remediation activities, and the background information necessary to analyze those remediation activities, must be submitted prior to the completion of the file. Please see the questions regarding abandonment and remediation posed in staff's 8/7/2013 Notice of Incomplete Application.
- 4. Consolidation. Sufficient information on what will occur in the consolidation areas or "remainder oil operations areas" has not been submitted. If there is development, as defined by the Coastal Act, which will occur in this area, please submit a description of that development, information necessary to determine the environmental impacts of that development, and a copy of approvals from the respective resource agencies and local entities for that development.
- 5. Vegetation and Fuel Modification. Please see the questions regarding vegetation and fuel maintenance posed in staff's 8/7/2013 Notice of Incomplete Application. Your letter asserts that at the direction of Commission staff the site is in a potentially unsafe condition due to lack of fuel management. The Coastal Commission is sensitive to and concerned about public safety as well as the obligations of property owners to address potential fire hazards on their property. To this end, as you know, in a September 5, 2012 letter to you staff agreed that "appropriate" vegetation management on the site is necessary. The Orange County Fire Authority ("OCFA") Vegetation Management Guidelines prescribe appropriate vegetation management in order to reduce wildfire threat to homes including decreasing the amount of vegetation and removing undesirable vegetation species within 100' of homes. It is also our understanding after discussions with staff at the state's oilfield regulatory body, Department of Conservation, that typical maintenance of oilfields for fire safety purposes includes limited clearance of vegetation from active wells sites and active pipelines.

In order to provide for fire safety and to maximize protection of sensitive ecological resources on site, staff states in our September 5 letter that we support immediate measures to reduce vegetation within previously modified areas that are 1) within 25' of any active well; 2) within the minimum distance necessary to provide physical access to any active, above ground pipeline; or 3) within 100' of any home (pursuant to OCFA Vegetation Management Guidelines). We believe this approach addresses fire safety concerns in a manner that is protective of sensitive habitats.

If the applicant wishes to have further discussions regarding the fuel modification procedure currently in practice, please contact Andrew Willis or Karl Schwing in the Commission's South Coast District Office.

6. LUP/LCP Planning. In past letters, we have advised the applicant that the proposed project would be better served through processing an LUP amendment / LCP. However, the applicant has asserted that the City of Newport Beach and/or Orange County do not wish or are unable to perform land use planning for the site. Please submit a letter from these agencies to support this assertion.

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From the submitted letter, it appears that the applicant has chosen to move forward with the subject CDP application. Questions associated with LUP Planning, whether in a LUP or CDP context, need to be resolved prior to the completion of the subject application.

Please address the following questions:

- 1) Are the type, location, and intensity of development appropriate for the surrounding area?
- 2) Are the proposed land uses compatible with the surrounding land uses?
- 3) Are the proposed land uses consistent with the Coastal Act?
- 4) Are the proposed land uses, and the areas allocated to each use, consistent with the priorities established by the Coastal Act?
- 5) Has adequate area within the potential developable area been reserved for higher priority uses? What portion of proposed commercial development will be primarily visitor serving?

II. OTHER ISSUES

As stated in previous letters, the Threshold Issues should be resolved before the details of the proposed project are analyzed. The baseline of development on the site will affect how the Commission considers the constraints on the site, such as the location of development that might be considered unpermitted, and the location of Environmentally Sensitive Habitat. The latest letter includes new information regarding details of the project which will be affected by the Threshold Issues, such as the location of development on the site, and biological information. Due to the pending Threshold Issues, this submitted information is subject to change, and our review is therefore premature.

Although our review of the material is premature at this time, staff has, where appropriate, responded to the newly presented information with new questions, and has repeated other questions that were not addressed in the latest submittal.

A. ALTERNATIVES.

Thank you for the submittal of the Alternative Plans 1 and 2. The submitted diagrams include the depiction of the proposed development footprints, which are reduced in size compared with the prior proposal. However, the alternative designs do not show the location of the proposed roadway and development in relation to the biological and archeological resources on the site. Please submit a copy of the resource constraints map, and the archeological resources map which have been modified to depict the development shown on Alternative Plans 1 and 2.

The submitted letter states that alternatives that do not include access from West Coast Highway are infeasible. No feasibility analysis for this assertion was provided, except for consistency with local plans which the Commission did not review. Please provide a feasibility analysis for alternative projects without access from West Coast Highway, including alternatives with reduced project densities.

There are a variety of coastal resources present on the site. In order to ensure the protection of these resources, Commission Staff asked the following questions to determine possible alternatives to the proposed project:

Also, if roadway access to the site were limited to just one of the projections from 15th, 16th or 17th streets, what is the maximum amount of development that could occur on the site given circulation and other requirements? In other words, if a roadway from Coast Highway, and/or 19th street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints?

In response to this question, the submitted letter quotes from the applicant's 5/17/13 letter:

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Alternative Development Plans relying on fewer access points to and through the Project site are not preferred because such alternatives would inherently limit opportunities for public use and enjoyment of the site, and because such alternatives would eliminate options for public access to the shoreline.

The submitted response does not answer the question posed. Although the applicant states that the current proposed design and the submitted alternatives provide new coastal access, these alternatives may still be inconsistent with the resource protection policies of the Coastal Act. Therefore, please 1) submit an alternative plan depicting an alternative project design that does not rely on access from West Coast Highway or North Bluff Road and state what alterations would be required to project density, and 2) submit an analysis of why, in the applicant's view, an alternative project without access from West Coast Highway, including alternatives with reduced project densities, would be infeasible.

B. BIOLOGY

To allow the Commission to review development located both within, and outside of the oil field consolidation / oil remainder areas, up to date biological information is required. The provided figures exclude all information within the identified oilfield consolidation areas. This area is located directly adjacent to habitat areas, and sensitive species mapped within oil consolidation areas likely utilize habitat directly adjacent to, and outside of the oil consolidation areas. Therefore, please submit updated figures which include biological information for the entirety of the project site.

Although a formal designation of Environmentally Sensitive Habitat Area is currently being prepared, please note that based upon the information submitted to date, it appears that much of the site would constitute ESHA. Therefore, please note that the developable area on the site may be significantly limited.

- 1. HCCMP. Thank you for the submittal of the Draft HCCMP. However, please note that staff's ability to review the submitted HCCMP is limited, due to two factors: 1) The HCCMP document is incomplete, and is missing key diagrams present on pages 39-50. 2) The HCCMP discusses mitigation for impacts to wetlands and sensitive habitat based on the existing proposed footprint of the development. This development footprint may be subject to significant changes through the discussion of Threshold Issues, and further analysis of the wetlands, sensitive habitat, and archeological resources on the site. The mitigation ratios, methods of mitigation, and other elements of the plan are also likely to change, as the sensitivity of the various resources on the site are determined. Therefore, the Commission's review of the document at this time is premature. Further comments on mitigation plans for the subject site will occur throughout the Coastal Development Permit process.
- 2. Vernal Pool Sampling. As stated in our March 1 and June 14, 2013 incomplete letters, we find that another set of wetland surveys is necessary to complete the USFWS protocol level survey requirements for specific vernal pool/seasonal pond features located on the Newport Banning Ranch (NBR) site. These features were identified in our June 14th letter under the biological resources section, subsection 1a, and are repeated here: features C, D, K, L, M, N, P, R, Q, W, X, Y, Z, AA, BB, CC,DD, EE, FF, GG, HH, II, JJ,KK, LL, MM, NN, OO, PP and QQ. The protocol surveys that you refer to in your response letter did not evaluate all the pools and all of the older surveys do not contain adequate data to determine if a protocol survey was conducted. For example, the older surveys may include one survey data sheet for the entire wet season without documenting any other visits to the pool to determine if ponding occurred at other times during the season and many pools have surveys that were initiated mid-way through the season; these examples violate the requirements of USFWS protocol surveys. The Banning Ranch Conservancy has submitted photographs that document ponding on NBR for extended periods when no sampling occurred. Furthermore, the survey protocol does not include provisions for genetic analysis or hatching in the lab as a substitute for wet season sampling.

Christine Medak, USFWS Biologist, sent an email to John Davis, Dudek Senior Biologist, on April 8, 2013, under the subject "Newport Banning Ranch - Cumulative Fairy Shrimp Report" that includes information in support of our request for another set of wet season protocol surveys:

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Insufficient information was provided in the 2007/2008, 2009/2010 and 2010/2011 wet season reports to verify that surveys were conducted in accordance with the survey protocol. Wet season surveys require sampling to be conducted once every two weeks, beginning no later than two weeks after their initial inundation and continuing until they are no longer inundated. When the pools dry and then refill in the same wet season, sampling is re-initiated within eight days of refilling every time the pools meet the 3 cm of standing water criteria. The purpose for the repetitive sampling is to maximize the opportunity to detect the listed entities given that not all cysts are expected to hatch out at the same time and given that more than one species of fairy shrimp can occupy the same pool.

Ms. Medak also stated the following in her April 8, 2013 email to John Davis:

Several pools listed as having no fairy shrimp in 2010/2011 (in the cumulative report) were not surveyed in that year (e.g., A, S, U, KK).

Wet season surveys conducted in 2011/2012 were conducted in a below average rainfall year; therefore, many of the pools did not pond sufficiently to complete wet season surveys.

Conclusions regarding many features rely on this wet season survey result, even though ponding was insufficient to conduct the survey (e.g., pools S, Y, Z, DD, EE, FF, LL, MM, OO, PP). Therefore, in addition to conducting protocol wet season surveys for features C, D, K, L, M, N, P, R, Q, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP and QQ, we request that you also conduct protocol wet season surveys for features A, S, and U.

Vernal pools are a type of seasonal pond characterized by unique species of plants and animals and identified as rare by the California Natural Diversity Database. The Coastal Commission considers vernal pools to be environmentally sensitive habitat (ESHA) and as such they are protected under section 30240 of the Coastal Act. It is important to understand that the Coastal Commission considers any seasonal pond that supports species indicative of vernal pools to be ESHA, whether or not the respective plant or animal vernal pool indicator species is state or federally listed. Furthermore, the Coastal Commission protects seasonal ponds (without vernal pool indicator species) under section 30233 of the Coastal Act, if they meet the Coastal Commission one parameter definition of a wetland.

We are pleased to know that you recently authorized your biological consultant to conduct wet season surveys. In order for the wet season surveys to be valid per the USFWS survey protocol requirements, they must be initiated after the first storm event of the season (defined an event where seasonal ponds hold a minimum of 3 cm of water a minimum of 24 hours after rain). According to weather records, coastal Orange and San Diego Counties received the first significant rainfall on October 9, 2013. You must demonstrate that this rain event did not result in seasonal ponds on the NBR site holding a minimum of 3 cm of water a minimum of 24 hours after the October 9 rainfall by providing rain gauge and/or in-field observation information to demonstrate that you have not missed the first storm of the season.

3. Vegetation Mapping. In our June 14, 2013 incomplete letter we asked questions or asked for clarification regarding several vegetation mapping issues. Our first question involved bare ground. We stated that "while bare ground is identified as a factor for determining disturbed areas, a quantitative value for what amount of bare ground relegates a particular area into a "disturbed" category is not provided." You did not provide a quantitative value for what amount of bare ground relegates a particular area as "disturbed". Please provide this value or the value range.

Second we asked for the criteria for determining whether and area is labeled as simply "disturbed" or "disturbed native shrub". There is clearly a difference in habitat value between "disturbed" and "disturbed native shrub" and we want to know the parameters distinguishing these categories. In your response you list the descriptions of the main vegetation categories mapped by Dudek which do not provide the requested criteria. In fact, it appears that the disturbed vegetation categories have been changed to two type of "disturbed (non-vegetation community associated)" and two types of "disturbed

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(vegetation community associated). The descriptions of all four of these groups are difficult to follow. Following the list of vegetation categories mapped by Dudek you state the following:

In response to questions related to prior vegetation mapping that arose during the May 2012 site tour conducted (with Coastal Commission Staff and Biologists, representatives from USFWS and ACOE, as well as NBR representatives and biologists), and to subsequent input from USFWS and Coastal Commission biologists related to site maintenance conducted by the oil field operator, Dudek further categorized disturbed areas on the Newport Banning Ranch that contain greater than 10 percent vegetation cover. The result of this effort was the creation of two new categories to describe disturbed areas containing native vegetation: Disturbed-Maintained (D-M-) and Disturbed-Infrequently Maintained (D-I-). The USFWS comment highlighted the potential for Disturbed areas to contain California brittle bush scrub (CBBS). Therefore, the effort focused further categorizing the Disturbed areas as D-I-, D-M-, or remaining as D.

In neither the vegetation category descriptions nor the above paragraph do you provide a discernable answer to our second question.

In our June 14, 2013 letter we had pointed out that the only native shrub currently considered when evaluating disturbed areas is California brittle brush (CBB). We felt that singling out this species results in many areas with native shrubs that are important members of California sage scrub (CSS) habitat, being categorized as "disturbed" when they could be categorized as disturbed habitat that is a particular subset of CSS based on the MCV2 membership rules. We pointed out that the data for running this analysis has been collected; 76 vegetation transects were sampled by Dudek in disturbed areas in the second vegetation mapping pass. The transect data provides the information necessary to determine the particular disturbed native shrub habitat using the MCV2 membership rules. We remain concerned that important areas mapped as "disturbed" on the site are in fact areas with native shrubs and habitat value and we do not understand how your response has addressed this concern. In our June 14, 2013 letter we had provided the following as a potential approach for establishing criteria for discerning between "disturbed" vegetation and "disturbed native scrub" and we continue to believe that it is a viable approach:

According to Sawyer et al. (2009), the criteria for shrub cover to be considered shrub vegetation is that the absolute cover (total cover) must be 20% or greater. We believe that this is a logical criteria for distinguishing "disturbed" from "disturbed native vegetation". In areas where the absolute cover is 20% or greater the MCV2 membership rules can be applied to determine the type of disturbed native shrub cover. Once the 20% absolute cover bar is passed for native shrub vegetation, relative cover must be used for evaluating the type of disturbed native shrub vegetation because the MCV2 membership rules are based on relative cover. We believe that Dudek's practice of using absolute cover when using the MCV2 membership rules in disturbed areas is wrong; the membership rules cannot be applied using a different metric from the one they are designed around.

We continue to be concerned that the mapping method excludes patches of prickly pear cactus (indicator species of coast prickly pear scrub which is a rare plant community) that are located within polygons mapped as "disturbed". Please alter the vegetation maps to show patches of prickly pear cactus below the minimum mapping size.

4. Gnatcatcher Survey. In our March 1, 2013 incomplete letter we requested "a new current protocol gnatcatcher survey..." and in our June 14, 2013 incomplete letter we again requested that you "provide the latest gnatcatcher survey in full, including the accompanying report." The 2013 survey that you submitted is a modified protocol survey specifically requested by Christine Medak of the USFWS; we requested a protocol gnatcatcher survey. The USFWS California gnatcatcher survey protocols, published in 1997, require a minimum of six or more surveys covering all potentially occupied habitat areas during the gnatcatcher breeding season which extends from March 15 to June 30^{1,2}. All surveys must take place

¹ U.S. Fish and Wildlife (USFWS). 1997a (February 28). Coastal California Gnatcatcher (Polioptila californica californica) Presence/Absence Surve Tractol Swashing R.S.: USFWS. 5-13-032

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during the morning hours and no more than 80 acres of suitable habitat may be surveyed per visit. Typically gnatcatcher survey reports include a compilation of gnatcatcher observations (dot/point locations) in the form of a map of gnatcatcher breeding pair use areas (breeding territories). The modified protocol survey, while consisting of more hours, only occurred on two days. Furthermore, to be effective, the modified protocol survey should occur in January or February when the males are setting up territories and are very noisy. However, the modified protocol surveys took place in April after territories would be expected to have been established and the gnatcatchers would be quieter. More importantly, we requested the protocol surveys, because they are the formal vetted method and in order to compare to the results to the majority of the surveys conducted in the past which have utilized these protocols. Therefore, please conduct protocol gnatcatcher surveys between March 15 and June 30, 2014.

- 5. Burrowing Owl. Thank you for the submitted information. Your response states that there are distinctions between burrowing owls and other migratory bird species. However, the response does not address the consistent pattern of use of the site by the burrowing owl for wintering habitat. Based on the submitted information, it appears that portions of the site may be playing an important role in the migration and wintering habitat for burrowing owls. Therefore, please submit a new protocol wintering season survey to aid in the understanding of the site's current use by the burrowing owl.
- 6. **Field Lighting.** In addition to the potential impacts of artificial night lighting on migrating birds, the potential impacts of proposed artificial night lighting adjacent to ESHA will also be evaluated. Section 30240, which states the following, is the standard against which the potential impacts of night lighting will be evaluated.
 - a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
 b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The pivotal role of light in organismal biology raises the potential that there will be significant impacts on plants and animals from artificial night lights. Light is used by plants and animals to infer a wide range of information from their environment and therefore artificial night lights have the potential to cause adverse impacts. Just as our understanding of the impacts of artificial lighting on organisms (including humans) continues to expand and improve, the policies regarding the limitations and thresholds regulating artificial lighting evolve and improve. You state in your response letter regarding field lighting that you will implement a "dark sky" lighting concept within areas of the project that "adjoin" habitat areas; that light fixtures within these areas will be designed for "dark sky" applications. In addition you state that the lighting design will be "in accordance with the "dark sky" lighting standards as defined by the Illuminating Engineering Society of North American [sic] (IESNA)..." You go on to state that "prior to final inspection, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Community Park."

It is important to bring to your attention that the International Dark-Sky Association (IDA) — Illuminating Engineering Society of North America (IES, formerly IESNA) Joint Task Force has developed a Model Lighting Ordinance³ published in June 2011 which provides environmental lighting standards and a new 5-Zone Lighting System. The most recent version (10th Ed.) of the IES Lighting Handbook ⁴ has also adopted the 5-Zone Lighting System. It must be understood that sports field lighting is in a class of its own. The Model Lighting Ordinance puts sports field lighting in the category of "types of lighting that are intrusive or complex in their impacts and need a higher level of scrutiny and/or site sensitivity". Sports lighting is typically 20 to 50 times more light per unit area than any other lighting application and approximately 25% of sports lighting is reflected and contributes to sky glow

² U.S. Fish and Wildlife (USFWS). 1997b (July 28). Coastal California Gnatcatcher (Polioptila californica californica)
Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

International Dark-Sky Association- Illuminating Engineering Society. June 15, 2011. Joint IDA-IES Model Lighting Ordinance (MLO) with User's Guide. 44 pgs.

⁴ Illuminating Engineering Society. 2011. TISTIANTILE Sand FOOK ROP Since & Application, Tenth Edition 32032.

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and glare. The only thing that rivals sports field lights are car dealerships. Prior to approval of night lighting adjacent to ESHA, a lighting analysis that evaluates the potential environmental impacts of the proposed lighting design will be required.

- 7. **Mitigation Banking.** In our prior letters we have requested additional information about the suggestion that the project include a mitigation bank. Your latest submittal states that a mitigation bank is not part of the current proposal, but may be requested through a subsequent coastal development permit application. With that understanding, no further information about the mitigation bank concept is requested at this time.
- 8. Wildlife Mobility. Thank you for the information supplied. We will analyze this issue using the information submitted and other information available to staff, with request for your assistance as necessary, should your proposal continue to evolve.
- 9. Pacific Pocket Mouse Survey. Thank you for the information supplied.
- 10. Known Biological Surveys. Thank you for the information supplied.
- 11. Roadways. Thank you for the submittal of the Alternative Plan, which eliminates fill of riparian areas at the eastern portion of the property. Detailed plans for the proposed bridge will need to be submitted prior to completion of the application. However, there still appears to be 3 areas of 40-50 foot fill slopes proposed for two arroyos, located on the northern and southern edges of the northern uplands area, near the prolongation of 16th and 17th Streets, for the construction of the perimeter roadway and adjacent parks. Please clarify whether the fill of these areas would be consistent with Coastal Act Section 30236, and submit an alternative road plan which does not require the filling of riparian corridors and/or wetlands.
- 12. Storm Water Detention. Prior to completion of the file, please provide an analysis of whether the proposed stormwater detention structures would be consistent with Coastal Act Section 30231, requiring maintenance of biological productivity of streams and wetlands, Coastal Act Section 30233, regarding diking or filling of open coastal waters and wetlands and movement of sediment, and Coastal Act Section 30236 regarding substantial alterations to streams.
 Portions of these features appear to overlay existing ESHA. Please note that in similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities is consistent with the Coastal Act.

Please also provide detailed plans for the proposed stormwater detention structures, including depth of the structures, their composition, and important elements such as energy dissipaters, riprap, etc.

13. Fuel Modification Areas. Please keep us apprised of any progress toward reduction of proposed fuel modification areas, as was outlined in your letter dated 5/17/2013.

C. GEOLOGY.

1. **Bluff edge delineation.** The submitted bluff edge delineation plans appear to be based on topographic plans which include proposed grading. Listed elevations and elements of the topographic lines are illegible.

Please submit a bluff edge delineation which has been revised to:

- a) be based on a topographic map of existing conditions on the site, rather than proposed conditions
- b) with legible elevations and symbols,
- c) be at a suitable scale for evaluation
- d) show the bluff edge and bluff top setback.
- 2. Bluff Retreat Rate. The submitted analysis relies on the minimum bluff retreat rate experienced in the past, and states that factors which contributed to higher bluff retreat rates would not exist in the

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constructed condition. However, the submitted analysis did not appear to incorporate all potential factors which could affect the bluff retreat rate.

Submitted analysis did not appear to incorporate the effects of storm surges as well as sea level rise. The Pacific Institute's sea level rise map shows that the base of the bluffs at the site are subject to inundation for the 100 year storm under current conditions, without taking sea level rise into account.

The submitted letter states that if sea level rise is higher than anticipated, protective devices could be placed at the base of the bluff. Please note that Coastal Act Section 30253 requires that new development assure structural integrity, and not rely on the construction of shoreline protective devices. The analysis of the bluff retreat rate, and the setbacks proposed, should demonstrate that the proposed development will not require shoreline protective devices within its economic life.

Therefore, please revise the submitted bluff retreat rate analysis as follows:

- a) effects of sea level rise and storm surges
- b) demonstrate that anticipated sea level rise and storm surge levels will not require the construction of protective devices to protect the bluff
- c) does not rely on grading of the bluff or other landform alteration.
- d) incorporates a bluff retreat rate based on the average rate of erosion, rather than the minimum.

Although there is no minimum setback requirement for parks and trails, the project should ensure that the proposed public access improvements will be present for its economic life, and the proposed development should ensure stability and structural integrity. Therefore, please submit a plan which details the amount of erosion which can be expected over the economic life of the proposed development, and shows that the proposed improvements are either: a) sited where they will not be threatened, or b) there is sufficient room within the economic life of the development to move the proposed improvements back when the bluff edge retreats, and c) that bluff erosion will not result in a hazardous condition for the public using these improvements.

3. Alteration of Natural Landforms. The proposed project does not include sufficient justification for the need to alter existing landforms, including the grading of the bluff face or edge. Therefore, at this time there is not sufficient information to determine that such grading would be consistent with the Coastal Act. Please submit an explanation of the project's consistency with Coastal Act Section 30251, along with '30% grading plans', with legible elevations and symbols, which clearly differentiate areas of cut and fill, for all areas of grading on the site.

D. DEVELOPMENT

1. **Project Heights.** Thank you for the submittal of the Height Vicinity Map. The submitted map indicates that the height of residences in coastal Newport Beach is 35'. This is incorrect. The City's LUP requires that residential height limits in these areas to be no greater than 28 feet. The Height Vicinity Map should be modified accordingly.

The submitted height diagram includes projects that are outside the Coastal Zone (projects in Costa Mesa, Hoag Hospital), or were constructed prior to the Coastal Act / LUP: (Mariner's Mile project). Although the project is in an area of deferred certification, there is an established standard for new development in the City of Newport Beach. The submitted information does not offer sufficient justification for exceeding the 50 foot height limit specified by the LUP for structures outside of the shoreline height limitation zone.

Therefore, to allow Commission staff to analyze whether the project consistent with the visual protection policies of the Coastal Act and LUP, please submit alternative plans which: 1) indicate the heights of all structures on all plans, and 2) do not include any portions of the structure above the relevant LUP height limit.

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2. Pedestrian Bridge. What is the height of the proposed bridge? Please submit detailed plans and engineering studies prior to the completion of the file.

The submitted Bluff Edge Delineation appears to depict development located on the bluff face. Are there feasible alternative designs which would not result in structures located on the bluff face or within 25 feet of a coastal bluff?

Please note that the method of conveyance of the pedestrian bridge, and documentation of the proposed receiving agency will be required prior to completion of the file.

- 3. Takings Information. Section 30010 of the Coastal Act provides that the Coastal Act does not authorize the Commission, "acting pursuant to the [Coastal Act] to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor...." To assure compliance with section 30010, the Commission, at times, must adopt findings consistent with section 30010 if the a development application warrant a closer look at the risk of a potential Commission action that may tread close to an unconstitutional taking, in violation of section 30010. In no way is an action by the Commission that includes a regulatory takings analysis a final adjudication of such an issue, Rather, findings that include a regulatory takings analysis is required if the Commission has to permit development notwithstanding the proposed development's inconsistencies with Chapter 3 policies of the Coastal Act because to deny such a proposal may violate section 30010. Therefore, in order to fully assess whether or not the Commission's action may violate section 30010, an application submittal must include the information included in the Takings Form to better assess the risk of whether or not a Commission action would constitute an unconstitutional taking. For more information regarding takings proceedings, please refer to the staff report for CDP No.s 4-10-040 through 045, or A-3-SCO-08-029, which are available on the Commission's website. Please note that submittal of the information identified on the takings information sheet previously attached to our correspondence dated 3/1/2013 will be required prior to completion of the application.
- 4. **Development Agreement**. Thank you for the statement that the Development Agreement is being submitted as a part of the application. California Government Code Section 65869 states that "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action."

Since the City of Newport Beach does not have a certified local coastal program, any development agreement that pertains to property within the coastal zone must be approved by the Commission. In general, the Commission must either approve or deny the development agreement; there is no process by which the Commission can 'condition' an approval of a development agreement.

The proposed project is likely to undergo changes in conjunction with the coastal development permit process. Since the Commission cannot require alterations to the Development Agreement, the Commission's only option at that point would be to recommend denial of the Development Agreement.

Therefore, we recommend that the development agreement be withdrawn from this application, and that it be submitted for review later, after approval of a CDP for a project, or after an LCP has been certified for the area. If the Development Agreement is not withdrawn from the subject CDP, please be aware that the staff recommendation will likely be for denial of the Development Agreement.

5. Other Agency Approvals:

The submitted HCCMP states that a streambed alteration agreement is required by CA Fish and Wildlife, a 404 permit is required by ACOE, a 401 WQ certification is required by RWQCB, and a Section 7 consultation is required by USFWS.

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No status was listed for approvals from the following agencies: Caltrans Orange County Health Care Agency DOGGR

For CA FW, ACOE, RWQCB, USFWS, Caltrans, OC Health Care, and DOGGR, please: a) State what approvals are required, or if any additional approvals are likely to be required; b) Are any other approvals from other agencies likely to be required? And c) state whether these approvals have been received or when are they anticipated to be received.

Please answer the preceding for both the currently proposed project, and for elements of the project such as remediation, construction of new wells, and abandonment of an oil field which might be incorporated into the project proposal pending resolution of the Threshold Issues.

Depending on the answers to the preceding, evidence of approval may be required prior to completion of the file.

In addition, because the proposed remediation requires a Section 404 permit from the Army Corps of Engineers, you must also submit a federal consistency certification to the Commission for this project. Typically the federal consistency requirements for a project can be met through the Commission's approval of a CDP, and we would work with you in this case to ensure that the CDP would also satisfy the federal consistency requirements.

6. Co-Applicant Invitation. Thank you for the submitted explanation. Does that mean that no development would occur on land owned by private property owners other than the applicant? Are any additional City approvals required for off-site improvements?

Proof of the authority to undertake development on off-site locations does not appear to have been submitted for: the footing of the pedestrian bridge on the seaward side of Coast Highway, or CalTrans approval (if required) for encroaching over the highway. Please submit documentation which shows that such authority has been received, or is not required.

- 7. Chain of title. Thank you for submitting the chain of title for the parcels up to May 31, 1977. Please confirm that there have not been any subsequent subdivisions, lot line adjustments or any other parcel alteration to any of the subject parcels after May 31, 1977 that would be regulated under the Subdivision Map Act and/or the Coastal Act. If there have been such alterations to parcels after May 31, 1977, please provide any documentation related to the approval of such alterations.
- 8. Parking. Please clarify whether each of the other dwelling units on site, include 2 parking spaces per unit. Please note that typical parking requirements of 2 parking spaces per unit have the potential to be reduced to below that amount if the project is accompanied by a comprehensive Transit Demand Management Plan. Please see this item later in this letter.
- 9. Infiltration. When the file is completed, Commission staff must have all the information necessary to determine whether the project is consistent with the Coastal Act. Staff has typically required detailed drainage and runoff plans for each project, to ensure that the project will not result in negative impacts to runoff. Although the project is proposing larger scale water quality measures which serve the whole development, lot by lot measures are important as they offer additional room and capacity to infiltrate/filter/detain runoff before discharge to the larger system. Although the submitted geotechnical report (attached to the EIR) does indicate that some types of infiltration should be prohibited, a) it does not indicate to what areas on the subject site this should apply, and b) it explicitly states that shallow infiltration could be used on the project site, as long as a subdrain system is installed as well.

The submitted letter identifies that certain types of features will be used in the final project. Please submit preliminary plans for each type of development on the site, depicting the type of features used,

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and amount of runoff which will be treated/filtered/detained by lot-scale improvements. This will allow Commission staff to undertake a thorough review of the submitted water quality information, and ensure that the sizing of both the large-scale and lot-scale water quality measures are appropriate for the anticipated amount of runoff on the site.

10. Dedication of Preserve Areas. In order for the Commission to recommend a special condition which requires a property be conveyed to another party, it must first be able to a) identify the anticipated recipient of the conveyance, and b) have evidence that the anticipated recipient is willing to accept the transfer. Therefore, submittal of the information necessary to determine the exact type of conveyance, and information showing that the anticipated recipient would accept the conveyance, will be required prior to completion of the file. Additionally, the Commission's recommendation would likely include a requirement for long term maintenance of areas adjacent to developed areas to ensure that the development does not result in negative impacts to adjacent habitat. For example, the Commission may require that trash collection or other routine maintenance occur throughout the lifetime of the development. Therefore, identification of a funding source and the mechanism of funding should also be included prior to the completion of the file.

11. Archaeology.

- a. Thank you for the submittal of the Alternative Plan 2. As mentioned above, please revise the cultural resources map to indicate the location of development associated with Alternative Plan
- b. The submitted 5/17/13 letter states:

According to the City's consultant, BonTerra Consulting, its work plan for the archaeological investigations that it conducted was not peer reviewed;

Although the City's consultant believes that its study is suitable to address the archaeological resources on the site, the peer review process is designed to ensure that all relevant factors have been considered in the review. To ensure that the submitted archaeological information provides the most accurate depiction of the archaeological resources on the site, a peer review of the archaeological investigation is necessary. Therefore, please submit a peer review of the archaeological investigation. The archaeological investigations on the site proceeded without benefit of a Coastal Development Permit. The proposed project should address the unpermitted development through the enforcement or CDP process prior to the completion of the file. This will ensure that the unpermitted development on the site is resolved, and that the proposed project would not in any way rely on existing unpermitted development.

- c. Remediation Work And Impacts To Archaeological Resources. As discussed above, remediation work on the site requires a Coastal Development Permit. However, even if some remediation work were included in the scope of the exemption resolution, and thus impacts to sensitive resources associated with the remediation were not subject to Commission review, subsequent development of the site may result in further impacts to archaeological resources. For example, while disturbance associated with oil remediation activities may be relatively shallow, project associated grading or construction of utility trenches may result in significantly deeper disturbance. Please submit a review of the subsurface testing which has occurred on the site to determine whether the subsurface testing has been conducted to a depth necessary to ensure that deep archaeological resources, such as burials, have been detected if they are present.
- d. Archaeological Research Plan. An ARP must be prepared, approved and implemented prior to consideration of a CDP for development prior to the completion of the file. This is to ensure that the results of the ARP are used to determine the appropriate development footprint that would be proposed in the CDP application. Without an ARP, such footprint cannot be determined, and it cannot be determined whether the project would be the consistent with the protection of coastal resources.
- e. Please address the comments included in the June 11, 2013 letter from Dr. Mikel Hogan, and the June 10th letter from Patricia Martz of the California Cultural Resource Preservation Alliance (if you need us to supply another copy of this letter, please make that request).

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12. **Trails.** The Notice of Incomplete Application dated 6/14/2013 states:

Please provide analysis of how often trails will be subject to flooding, whether the trails are expected to last at least 75-100 years

Please revise the submitted response to incorporate sea level rise and storm surge estimates, and include an estimate as to how often the trails will be subject to flooding (Once a year? During a 1-, 10-, 100-year rainfall event?) The submitted response recommends rolling easements and landward relocation. How will the stated rolling easements be designed with the property owner? Is landward relocation of trails feasible? Finally, will the stated measures ensure that the trails last for the economic life of the development, and are those measures proposed as part of the CDP application?

13. **TDM.** Thank you for your response regarding Transit Demand Management. The submitted information does not appear to address the same points as a stand-alone transit demand management plan. That is, the number of people who will use TDM strategies, what impact the strategies will have on reducing vehicle trips, and whether the proposed measures will reduce the need for parking for the subject development. Therefore, please submit a Transit Demand Management Plan for the proposed development.

Thank you for the response, stating that the project's conditions and mitigation measures show that the applicant is willing to incorporate transit into the project. However, the details of this transit integration are missing. Where would the bus stops be located? Would grades and other constraints such as ridership levels allow bus service? Please submit a letter from OCTA showing that the transit agency is willing and able to serve the subject site with transit opportunities.

- 14. Proposed Commercial Uses. Please provide an analysis of how the total amount of commercial and visitor serving commercial uses were determined to be appropriate for the amount of residential uses on the site and in the surrounding area, and how the proposed amounts of these uses would be sufficient to reduce vehicle miles traveled. (Page 14, ¶5)
- 15. Public Comments. Staff has reviewed each of the public comments which were attached to the notice of incomplete, and the following reference those comments which have not yet been addressed and which are not addressed by the other questions included in this Notice of Incomplete Application. These include:
 - Dr. M. Hogan's letter received on 2/26 regarding existence of archaeological sites not analyzed in the CDP application, including the existence of 'cogged stones'.
 - M. and D. Krauss email dated 2/25/2013, regarding consistency of the project with Coastal Act Section 30253 (c)
 - S. Forster email dated 2/25/2013 regarding additional fault traces which are not analyzed in the CDP application
 - R. Hamilton Letter dated 1/28/2013 requesting an independent third party review

If you need us to supply another copy of these letters, please make that request.

16. Filing Fees. Thank you for the submitted filing fee, and letter of credit. The reduction in application filing fees for a project that seeks to achieve a LEED gold standard or equivalent must be for the entire proposed project. In the Attachment 17 (LEED registration form), you have indicated that you are seeking LEED Platinum certification for only two buildings. If you wish to seek a reduction in filing fees, the entire project must be registered for at least LEED Gold certification. Please submit a new LEED registration form that indicates that all of the proposed buildings in your application will seek to achieve the LEED Gold or higher certification.

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Alternatively, you may choose to pay the balance due on the regular filing fee. Please note that the filing fee for the subject application is determined at the time of filing of the application. Filing fees are adjusted each year on July 1, according to the California Consumer Price Index.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,

John Del Arroz

Coastal Program Analyst

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



February 7, 2014

Michael A. Mohler Managing Director Newport Banning Ranch, LLC 1300 Quail Street, Suite 100 Newport Beach, CA 92660

Subject: Notice of Incomplete Application

Coastal Development Permit Application Number <u>5-13-032</u> Newport Banning Ranch Site, 5100 Block of West Coast Highway, Newport Beach, Orange County

Project Description: grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, 52 acres of parkland, a pedestrian bridge, and approval of a development agreement.

Summary of Activities: Application received February 1, 2013. Notices of Incomplete Application (NOIA) have been sent on March 1, 2013, June 14, 2013, August 7, 2013, February 7, 2014, and December 6, 2013. Supplemental letters and materials provided on May 17, 2013, July 8, 2013, November 8, 2013 and January 10, 2014.

Dear Mr. Mohler,

Thank you for sending additional information about your project 5-13-032 on January 10, 2014 as requested by our Coastal Program Analyst John Del Arroz. Mr. Del Arroz transferred to another department in the Coastal Commission and I have been assigned the application for the Newport Banning Ranch site. I understand that there have been several incomplete application notices in the past; I have read through them and all the responses. In addition to requesting the information needed for a complete application, I hope to clarify a few key issues of concern in this letter. As always, please feel free to contact either myself or Karl Schwing with any additional questions or concerns at the number above. For continuity, I have used headings used in previous letters to describe the information we are requesting: the specific information requested is **bolded**.

Given the comments in your letter dated January 10, 2014, it seems necessary to explain the permit application process and the intention and meaning of the term: "incomplete application." Every item requested in the incomplete letters must be submitted prior to the application being deemed complete by staff. Although the application completion process for this particular project has been lengthy, it is absolutely necessary to review all requested documentation before proceeding in order for staff to make a thorough analysis and a thoughtful recommendation of the project to the Commission. In your January 10th letter, several times you mention: "this item does not go to the completeness of our application." We would not have requested the information, and continue to do so, if it was not needed to complete the application.

Threshold Issues

We highly recommend that you resolve the outstanding threshold issues before proceeding with the remainder of your application. As has been stated in previous NOIAs, outstanding issues not related to the Threshold Issues and the completeness of the application are inherently based on the pending Threshold Issues and cannot be resolved until the Threshold Issues are resolved.

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The questions regarding the permitted and unpermitted wells onsite cannot be resolved separately from this application. The land-use and restoration procedures that may be required of the pending enforcement action and the resulting vegetation, habitat and wildlife onsite of such actions (the baseline condition) will directly impact the footprint and intensity of possible development in the future. We request that NBR LLC, as the landowner, be involved in the discussions with WNOC and CCC enforcement regarding these issues and we feel it is in the best interest of NBR LLC to resolve these issues as they will continue to result in an incomplete application without resolution, as is stated in the recent Notice of Violation.

Please see the NOIA dated December 6, 2013 for the details of the requested information regarding Threshold Issues. In addition the information regarding the enforcement action, please supply the materials below.

1. Consolidation.

Section 13053.4 (a) of the California Coastal Commission Regulations states "To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept for filing a second application for the development which is the subject of a permit application already pending before the commission."

Therefore, before this application can be deemed complete, the pending and/or future development on the "consolidated oil production site" (consolidation area) of the property must be included in this application and is subject to the same requirements as the rest of the property. Development, as defined by Section 30106, includes any of the following activities: paving, grading, moving oil pipelines, constructing roads, installing fences, mowing, vegetation removal, any change in land use intensity (even a reduction) etc. It seems highly likely that any one of these activities constituting development will inevitably take place as a result of the consolidation of the oil operations. Accordingly, please submit the plans for any proposed development on the consolidation area. If you insist that no new development will take place in this area, then please confirm this in writing. If new development does, in fact, take place on the site without a prior issued permit, then this would constitute a violation of the Coastal Act and is subject to a notice of violation.

Along those same lines, we have yet to determine if the proposed consolidation area contains permitted wells covered by the original exemption and/or subsequent exemptions. *Even if no new development is proposed for this area*, the existing development within the consolidation area may or may not be permitted and will need to be evaluated in conjunction with the pending enforcement action. If we determine, as a result of the enforcement action, that this area was subject to unpermitted development with the installation of unpermitted wells and/or accessory structures and/or unpermitted vegetation removal, then this site is subject to the same mitigation and restoration efforts as the remainder of the property. **Therefore, please submit plans for existing and, if applicable, proposed development specifically for the consolidation area.** Please work with WNOC and CCC Enforcement staff to determine the scope of the property covered by the exemption(s) and the particular permitted and/or unpermitted development of the consolidation area to determine the site constraints *before* including the proposed development of the consolidation area as a part of your pending application.

In addition, if the existing development is found to be unpermitted and/or if there is new development proposed in the consolidation area, as part of the current application, the consolidation area is subject to the same conditions as the remainder of the property and will need the same supporting documentation such as, all biological surveys performed onsite. Please submit all related documentation specifically for this area, and submit updated reports including the area.

STATUS LETTERS

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EXHIBIT 22

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2. Vegetation and Fuel Modification Zone.

The Coastal Commission is cognizant of the obligations of property owners to address potential fire hazards on their property and has supported appropriate fuel modification activities conducted on the site consistent with Orange County Fire Authority requirements to address legitimate fire safety concerns in a manner that is most protective of sensitive habitat, limited to the minimum amount and least intrusive methods necessary to abate a fire hazard. Please work with CCC enforcement staff and WNOC to develop appropriate Fuel Modification plans. See our December 6, 2013 NOIA for more details.

3. LUP/LCP Planning.

We understand that the City of Newport Beach and Orange County do not wish to or are unable to perform this land use planning due to certain constraints. Letters from both agencies have been received by staff in regards to this issue. Thank you for submitting the type, location and intensity of development; the compatibility of the proposed land uses with surrounding land uses; and the compatibility of proposed land uses with the Coastal Act. No additional information is requested at this time.

II. Other Issues

As stated earlier, please resolve the Threshold Issues before attending to the following "other issues."

A. Alternatives

Please respond with an alternatives analysis for the development plan that does not include access from West Coast Highway. Staff understands very clearly that this alternative may not be consistent with local plans, however, staff also understands that local plans may be adjusted in light of development projects such as this one. You indicated in the January 10, 2014 response letter that you are expecting an amendment to the Orange County Master Plan of Arterial Highways. If an amendment was needed, this could be perused as part of the request. Note that the alternatives analysis should take into account the constraints onsite and should include the intensity of development appropriate for the site, based on the constraints, not based on the intensity of development desired for the proposed development. This concept is what the following questions, asked in the NOIA dated December 6, 2013, attempt to address: If the roadway access to the site were limited to just one of the projections from 15th, 16th, or 17th streets, what is the maximum amount of development that could occur on the site given circulations and other requirements? In other words, if a roadway from Coast Highway, and/or 19th street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints? Please submit alternative plans that do not rely on access from West Coast Highway and North Bluff Road and state what alterations would be required to the project's density. Please respond to the above questions.

B. Biology

As noted in your last letter, we understand that the site is currently being (or will shortly be) surveyed for the following biological reports: Wintering Owl Habitat and Vernal Pool/Wet Season Surveys (USFWS Protocol). We expect to see these reports when they are complete and consider them necessary to complete the application. Thank you, in advance, for these materials.

As noted earlier in this NOIA letter, we also need to see updated biological surveys and reports that include the consolidation area. This area is located directly adjacent to habitat areas, and sensitive species mapped within oil consolidation areas likely utilize habitat directly adjacent to, and outside of the oil consolidation areas. Therefore, please submit updated figures which include biological information for the entirety of the project site.

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EXHIBIT 22

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1. HCCMP. Thank you for sending the HCCMP. We have had our staff biologist Jonna Engel review that plan and she has concluded that because the plan discusses mitigation for impacts to wetlands and ESHA based on the proposed development, and the intensity and/or footprint of the proposed development may change as a result of resolving the Threshold Issues, analysis of the plan is premature. Resolving the Threshold Issues may lead to future studies, surveys and reports that will likely impact the current HCCMP. While we appreciate your effort and the work involved in preparing the HCCMP, we continue to believe that the Commission's review of this document is premature. As stated in our December 6, 2013 NOIA:

The HCCMP discusses mitigation for impacts to wetlands and sensitive habitat based on the existing proposed footprint of the development. This development footprint may be subject to significant changes through the discussion of Threshold Issues, and further analysis of the wetlands, sensitive habitat, and archeological resources on the site. The mitigation ratios, methods of mitigation, and other elements of the plan are also likely to change, as the sensitivity of the various resources on the site are determined......Further comments on mitigation plans for the subject site will occur throughout the Coastal Development process.

Nothing further is needed for the HCCMP at this point, but may be required at a later date.

2. Vernal Pool Sampling. Thank you for conducting wet season sampling to complete the vernal pool protocol level survey requirements. Unfortunately, southern California has been experiencing lower than normal rainfall the last several years and predictions for this "wet" season are a continuation of below average rainfall. This may prove problematic because wet season vernal pool protocol surveys require a minimum of 3 cm of standing water 24 hours after a storm to conduct sampling. Only when the wet season is over and we receive and review the wet season survey report will we be able to determine whether we have all the information necessary for making vernal pool determinations for the site.

As stated in our December 6, 2013 NOIA, the Commission protects seasonal ponds under section 30233 of the Coastal Act if they meet the Coastal Commission one parameter definition of a wetland. Per our request during our May 2012 site visit, your consulting biologist conducted wetland sampling at all areas on the site that had the potential to support Commission wetlands. While we have reviewed the May 2013 "Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch" submitted to Newport Banning Ranch by Dudek and find that the report is comprehensive and covers the biological information we need to make wetland boundary determinations for the site, we would like to obtain copies of the original field data sheets. Please send copies of the original hand-written ACOE "Wetland Determination Data Form – Arid West Region" sheets.

3. Vegetation Mapping. We remain concerned that Dudek's category for "disturbed" vegetation may include areas that should be described as "disturbed native scrub" vegetation. We believe this is the case based on our site visit observations, vegetation type membership rules in MCV21[1], and Dudek's transect data. Rather than continuing to request that the applicant re-analyze the areas defined "disturbed", we will analyze Dudek's transect data and make revision decisions in accordance with the MCV2 membership rules. In addition, we will arrange to visit the respective "disturbed" vegetation category locations to observe current on-the-ground conditions. During our site visit, we will also review the areas identified as "disturbed" to determine if we can discern a threshold value for the

^{1[1]} Sawyer, J.O., T. Keeler-Wolf and J.M. Evens. I. 2009. A Manual of California Vegetation (Second Edition). California Native Plant Society Plant Section (Second Section). Section (Second Section). Section (Second Section).

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amount of bare ground that relegates an area into the "disturbed" category; and if so, whether we concur with the threshold value for bare ground.

We do not agree with the rationale in the response letter dated January 10, 2014 for not adjusting the vegetation mapping to include stands of prickly pear cactus. Another goal of a site visit will be to observe and map patches of coast prickly pear as we remain concerned that areas of maritime succulent scrub, a rare plant community, may have been overlooked. We will contact the applicant to schedule a site visit. We request that the Dudek biologists who conducted the vegetation mapping accompany us on the site visit.

4. California Gnatcatcher Survey. In our March 1, June 14, and December 6, 2013 NOIA we requested that a current protocol gnatcatcher survey be conducted for the site as the last protocol level survey for the site was performed by Bonterra in 2009. In your January 10, 2014 response letter, you state that during correspondence with USFWS biologist Christine Medak she requested a modified gnatcatcher protocol survey be performed in order to better identify pairs and pair locations. We pointed out in our last NOIA that: ...to be effective, the modified protocol survey should occur in January or February when the males are setting up territories and are very noisy. However, the modified protocol surveys took place in April after territories would be expected to have been established and the gnatcatchers would be quieter. More importantly, we requested the protocol surveys, because they are the formal vetted method and in order to compare to the results to the majority of the surveys conducted in the past which have utilized these protocols.

The modified protocol level gnatcatcher survey performed in 2013 identified a total of 10 pairs on the site2[2]. The USFWS has determined that 19 is the average number of pairs the site supports based on data that spans over 20 years. Ten pairs is significantly below the average number for the site. A number of factors are likely involved in this reduction of gnatcatcher pairs but we believe that three years of drought conditions and reduction of critical habitat due to mowing are important contributors. While we continue to believe that a protocol gnatcatcher survey for this year would provide important data and additional insights, given the fact that we are looking at a much lower than average rainfall wet season as well as the fact that we have gnatcatcher survey data that spans over 20 years for the site, we believe we have enough information and data to make a gnatcatcher habitat ESHA determination for the site. Nothing further is required regarding this issue at this time.

- 5. Burrowing Owl. We look forward to reviewing the future Wintering Owl Habitat Survey and consider it necessary to complete the application.
- 6. Field Lighting. We do not agree that it is premature to prepare a lighting analysis and we feel it is necessary as part of a complete application. We look forward to reviewing a lighting analysis when it is complete. If you choose not to submit the required information for the field lighting, then consider removing the proposed ball fields from the CDP application and notify us in writing that it will no longer be included in the application.
- 7. Mitigation Banking, Wildlife Mobility, Pocket Mouse Survey, Known Biological Surveys. These items need no further attention at this time.

^{2[2]} It is important to note that the modified protocol surveys were not to protocol in that they were performed in April when the modified protocol surveys are designed to accur in January and February.

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- 8. Roadways. Thank you for your analysis of consistency with the Coastal Act, section 30236. Please provide an alternative plan that does not require the filling of riparian and wetland areas that is less environmentally damaging. Additionally, please submit plans for the proposed bridge over the riparian area.
- 9. Storm Water Retention. Thank you for providing the analysis of whether the proposed stormwater detention structures are consistent with Coastal Act. We maintain that installing these features in environmentally sensitive areas is not consistent with the Coastal Act. Please provide alternative plans for the storm water retention that does not impact these areas and provide the detailed plans requested in the NOIA dated December 6, 2013.
- 10. Fuel Modification Areas. We look forward to reviewing the current fuel modification plans and the proposed plans for the consolidation area, as stated earlier in this NOIA letter, when they are complete.
- 11. Constraint Maps. Thank you for submitting the series of Constraints Maps for the site. We expect that the constraints listed will vary significantly after resolving the Threshold Issues. In determining permitted from unpermitted wells, we can determine which wells will require remediation and which will require restoration and mitigation. While the constraint maps attempt to reflect any remaining constraints after the abandonment and restoration have been completed, they significantly under-represent the sensitive species onsite. Our staff biologist, Jonna Engel, will be reviewing all of the biological information submitted by the applicant as well as all past biological information available for the site to make a site-wide ESHA determination. Our ESHA determination will be used to develop a biological constraints map that includes our biologist's buffer recommendations that we believe reflects the sensitive species and habitat onsite and provides the appropriate protection for these sensitive resources.

The "Oilfield Abandonment and Soil Remediation Area" constraints map indicate where soil remediation will take place, in some cases under, through, and within the buffer space of documented sensitive bird species, San Diego Fairy shrimp habitats, and documented sensitive vegetation. Please provide the plans for the "Abandonment and Soil Remediation" process and explain a) how this footprint of soil remediation is appropriate for the site remediation process and the designated wells; b) and how the plan for remediation meets the requirements of abandonment and soil remediation processes as required by other agencies. What exactly does the soil remediation process entail and can the effects be minimized, or are there alternatives, so as not to remove sensitive vegetation, habitat area, and impact sensitive species on site?

- C. Geology
- 1. Bluff Edge Delineation. Thank you for submitting the revised bluff edge delineation maps.
- 2. Bluff Retreat Rate. We understand that the historical conditions of the site may not be typical of future conditions regarding the bluff retreat rate (BRR). In fact, the BRR is likely to increase compared to historical conditions, regardless of use, due to inevitable sea level rise and many other unpredictable factors associated with climate change. For more information on this topic, we can arrange a conversation between the consulting engineer and our engineering staff to discuss the issue. Coastal bluff retreat is temporally episodic due to a variety of external and internal factors. External factors include tides, episodic wave events (spurred by either local or distant storms), episodic rainfall events, El Niño-Southern Oscillation events, major earthquakes, and long-term climate change on a multidecadal to

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century scale. Internal factors include the autocyclicity inherent to many bluff failure mechanisms and bluff response to continued toe erosion [3]. The Newport Banning Ranch site is subject to many of these potential events in the future. Therefore, please provide an updated analysis of the BRR based on the historical average, not the minimum, rate of erosion.

- a. Effects of Sea Level Rise and Storm Surges on BRR. Note that the effects of sea level rise and storm surges are applicable to the bluffs onsite and the analysis will affect our review of the appropriate setbacks for the proposed development and public improvements. The bluffs onsite are adjacent to the Santa Ana River, channels, and wetlands and are subject to tidal action. Please address these effects and submit a revised analysis. Also address in the analysis the items listed in the December 6, 2013 NOIA:
- b. Demonstrate that the anticipated sea level rise and storm surges will not require construction of bluff protective devices.
- c. Demonstrate that the anticipated sea level rise and storm surges will not rely on grading and/or landform alteration.
- 3. Alteration of Natural Landform. The proposed plans include alteration of the natural landform, which is addressed in the Coastal Act section 30251. The information requested regarding the grading plans is needed to complete the application. Please include revised "30% grading plans" showing legible elevations, symbols, clearly marked areas of cut and fill for all areas of grading onsite. This cannot be requested through a special condition.
- D. Development
- 1. Project Heights. Because the project is in an area of deferred certification, CCC staff must analyze if the proposed development will be consistent with the visual protection policies of the Coastal Act and the Newport Beach LUP. Please submit detailed plans showing the height of all existing structures in the surrounding area, overlaid with any current regulation on height limitations. This will be used to compare the proposed structures with the existing and anticipated future conditions in the community.
- Pedestrian Bridge. Please submit detailed plans and engineering studies for the
 proposed bridge, if it is still a part of this application. If you choose not to submit the
 plans at this time, please notify us in writing that you withdraw the Pedestrian
 Bridge from the current CDP application.
- 3. Takings Information. Thank you for clarifying your position regarding the potential takings of the property, stating in your most recent response letter dated January 10, 2014 "even if the requested CDP were denied, the denial would not result in a 'categorical' taking" because the site is still economically viable with oil extraction activities. No further information is required at this time.
- 4. Development Agreement. While we do not agree that the Development Agreement should be included in this application at this time, please note that it may incur significant modifications at a later date.

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- 5. Other Agency Approvals. Please submit local and state agency approvals prior to the completion of the application as these agencies may require additional changes to the proposed development. We see that these approvals are listed in the HCCMP, however we need actual approvals, not just the acknowledgement that you are aware they are required. If the approvals are still in-process, please provide an anticipated date. See the December 6, 2013 NOIA for more details.
- 6. Co-Application Invitation. Thank you for clarifying this issue. No approvals for off-site improvements related to the pedestrian bridge have been received. **Please either submit these or withdraw this item from the application,** as stated earlier in this NOIA.

Additionally, as noted in our December 6, 2013 NOIA, because the proposed project requires a Section 404 permit from the Army Corps of Engineers, you must also submit a federal consistency certification to the Commission for this project. To date, we have not received this federal consistency certification and this requirement remains unfulfilled. It is our understanding that you may believe that the 1973 Exemption affects your need to submit this federal consistency certification. Federal consistency is, however, a requirement of federal law, not State law, in which applicants for federal agency permits, such as U.S. Army Corps of Engineers permits, must conduct their activities in a manner consistent with the California Coastal Management Program (CCMP). This allows the Commission to authorize federally permitted activities in a way that minimizes impacts to coastal resources and is consistent with the CCMP. The processes established to implement this requirement is called a consistency certification for federal permits and licenses, and no federal permit listed in the CCM P can be issued by the federal agency until either (1) the Commission concurs with a consistency certification prepared by the applicant, (2) the Commission's concurrence is conclusively presumed; or (3) the Secretary of Commerce, on appeal from a Commission objection, overrides the objection. The 1973 Exemption, even if it applied to this proposed development, which it does not, would not obviate the need for Commission concurrence with a consistency certification before the Army Corps could issue a Section 404 permit for your proposed activities.

In order to comply with the federal consistency requirements of the Coastal Zone Management Act, you must provide, in your application to the U.S. Army Corps, a certification of consistency. The certification must include a variety of required elements and must also be submitted to the Commission along with necessary data and information. The supporting information shall include a copy of the federal permit application, a detailed description of the proposal, its associated facilities, its coastal effects, and comprehensive data and information sufficient to support your consistency certification. The consistency certification must also include an evaluation of the consistency of the project and its associated facilities with the enforceable policies of the CCMP, Chapter 3 of the California Coastal Act. The most efficient way for you meet this requirement is to include your consistency certification in your application for a CDP for this project.

- 7. Chain of Title. Thank you for submitting the updated Chain of Title. We will review the information and may request additional information at a later date. No further information is needed at this time.
- 8. Parking Thank you for the clarifications. No further information is needed at this time. See the below discussion regarding the TDM Plan.
- 9. Infiltration. Thank you for providing the information regarding the proposed infiltration features, the Hydrologic Source Control Features (HSC), and related BMPs. Please provide preliminary infiltration plans for each type of development showing exactly 3-13-032

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where HSCs would be installed and what types, as requested in the NOIA dated December 6, 2013. For example, HSC "Impervious Areas" could be considered bioswales, permeable pavement, rain gardens, etc. Please indicate which types in the plans. Please also indicate where the rain barrels would be installed. Are they for commercial and residential?

- 10. Dedication of Preserve Areas. Thank you for submitting the MOU between NBR LLC and the Newport Banning Ranch Land Trust. We understand that NBR LLC will provide the funding necessary for the implementation of the HCCMP, land transfer, and for the long-term maintenance and management of the site after such a time that NBLT will be responsible for these costs. Please clarify the timeline for the change in funding responsibilities and clarify the projected sources of funding for the required activities. Please clarify whether the transfer will be either fee title or conservation easements.
- 11. Archeology. The CDP application does not include a request for approval and implementation of an Archaeological Research Plan (ARP). Before the Commission can approve development on a site that contains cultural resources, the applicant must obtain a CDP to carry out an ARP. The goal of the ARP is to determine where development can be allowed that will avoid impacts to archaeological resources and that those resources can be preserved in place. The ARP must be peer reviewed and be subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups. Native American monitor(s) shall also be present during implementation of the ARP. The ARP must also include the preparation and submittal of a final report. The final report would also be subject to the same review and comment of the ARP.

Statements have been made in recent correspondence that an alternative proposal will not impact archaeological resources. However, the EIR distinguishes between impacts caused by the proposed project and impacts caused by removal of oilfield infrastructure. Please clarify if any development will result in impacts to archaeological resources and what the alternatives are that will avoid impacts.

- 12. Trails. Given the changes in Sea Level Rise and your comments confirming if "the postulated sea level rise occurs, it will be infeasible for the proposed trail system to remain in place," please submit alternative plans showing where the trails would be located landward if they were moved to avoid impacts from sea level rise and/or where the Newport Banning Land Trust would have to relocate them to prevent these impacts. Please be sure these plans do not impact areas of documented sensitive species. If Newport Banning Land Trust does propose trail and open space maintenance, will you be submitting long-term land management and maintenance plans for these areas as part of this application? Are these included in the HCCMP? If not, note that these programs also constitute development and will require a CDP application at a later date. Additionally, please address the questions listed in the NOIA dated December 6, 2013: How will the rolling easements be designed with the property owner? Is the landward relocation of the trails feasible given the current footprint of proposed development? Will the above plans and measures ensure the trails last for the economic life of the development?
- 13. TDM. We look forward to reviewing the updated, final version of the TDM plan, which should include: the conceptual conclusions, agreements with OCTA, details regarding the urban colony, and the number of people who will use TDM strategies, what impact the

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strategies will have on reducing vehicle trips, and whether the proposed measures will reduce the need for parking for the subject development.

- 14. Proposed Commercial Uses. Thank you for submitting the information regarding the commercial uses in partnership with the City. Please be sure that the submitted documentation addresses the reduced number of vehicle trips and presents clear, quantifiable methods for meeting this. Be sure to include a thorough analysis determining if the proposed amount of commercial and visitor serving commercial uses are appropriate for the amount of residential onsite and in the surrounding areas and how this relates to a reduction in vehicle miles traveled.
- 15. Public Comments. Staff prefers that comment letter from the public regarding the proposed project are replied to before the completion of the application, as it is possible that the points raised could influence the plans for development. If you chose not to respond to public comments before the application filing, please explain how you plan to address their concerns and respond to their comments without the intention of changing your proposed plans. For the most recent list of outstanding public comments, see the NOIA letter dated December 6, 2013. Also note that public opposition to a project can impact Commission decision-making before and during a hearing.
- 16. Filing Fees. We understand that the project may qualify for LEED platinum when complete. Given the nature of the Commission's discount program for the LEED Certification, at this time we ask that you submit the entirety of the application fee balance. Upon submission of the revised registration form showing that the entire project (other than 2 individual buildings) will be LEED certified, or upon actual certification, a refund will be issued.

Lastly, we acknowledge there may be challenges to implementation of the proposed development presented by the recent court finding that this development proposal is inconsistent with City of Newport's general plan. Should any further changes to the proposed development result because of the court's finding, please submit these changes and all appropriate documentation as part of the application.

As always, please feel free to submit any information beyond the requested items above. You may submit any information you feel may assist the Commission staff in gaining a clear understanding of the scope of the project. Upon receipt of the requested materials we will proceed with determining the completeness of you application.

Sincerely,

Amber Dobson

Coastal Program Analyst

Karl Schwing

Coastal Program Manager

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



June 5, 2014

Michael A. Mohler Managing Director Newport Banning Ranch, LLC 1300 Quail Street, Suite 100 Newport Beach, CA 92660

Subject: Notice of Incomplete Application

Coastal Development Permit Application Number <u>5-13-032</u>
Newport Banning Ranch Site, 5100 Block of West Coast Highway, Newport Beach, Orange County

Project Description: Construct 258 acres of habitat preservation, open space and trails, 32 acres of parks, 11 acres of new road network and 83 acres of mixed use development including: 1,375 residential units, 75,000 square feet of commercial space, 75 unit coastal inn and more than 400 public parking spaces and 17 acres of remaining oil production on an existing oil field operations site of 401 acres. Current proposal includes: clearance of vegetation, 2.5 million cubic yards of grading, landform alteration, fill of seasonal pools and riparian areas, subdivision and lot divisions, habitat restoration and approval of a development agreement.

Summary of Activities: Application received February 1, 2013. Notices of Incomplete Application (NOIA) have been sent by Commission staff on March 1, 2013, June 14, 2013, August 7, 2013, December 6, 2013 and February 7, 2014. Supplemental letters and materials provided by the applicant (NBR) on May 17, 2013, July 8, 2013, November 8, 2013, January 10, 2014 and May 6, 2014.

Dear Mr. Mohler,

Thank you for sending additional information about your project 5-13-032 on May 6, 2014. Commission staff has been accessible to NBR representatives and through the meetings since Feb. 7, 2014 (Feb. 19, March 7, March 13, March 28, April 18, and May 1) we have worked to improve communication and clarify key issues of concern. Thank you for clarifying that the proposal now reflects the CCC Alternative Project 2 as the preferred alternative¹. As discussed previously with you and your staff, the application is incomplete pending resolution of the 'Threshold Issues', however the applicant has decided to continue to work on completing the application with regard to the other details of the proposal. The submittal on May 6, 2014 was largely focused on these other details, and did not attempt to address the 'Threshold Issues' in any significant way. Thus, Commission staff's comments below are similarly focused. We request additional information regarding the following items:

Threshold Issues

As has been stated in previous NOIAs, outstanding issues not related to the Threshold Issues and the completeness of the application are inherently based on the pending Threshold Issues and cannot be resolved until the Threshold Issues are resolved. Please see the NOIA dated December 6, 2013 for the details of the requested information regarding Threshold Issues.

¹ Note: All plans, such as site plans, that depict the project will need to be revised to reflect the new proposal.

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1. Consolidation Area.

Regarding planning:

The 30% grading plan that was submitted May 6, 2014 indicates that 2 water quality features will require development through and under the "consolidated oil production site" (consolidation area). The pipes leading from the northern subdivision to the large water quality basin located in the low lands are shown going through the consolidation site. As submitted, it is unclear how the storm water from the Southern Arroyo exits the arroyo and enters the Semeniuk slough. Does it sheet flow over the top of the road and into the slough (which is not appropriate for water quality)? If not, a pipe or culvert under the road of the consolidation area is necessary. These are examples of development occurring in the oil consolidation area (not covered by an exemption) and do require a CDP. Because both of these examples are related to the current CDP application, we continue to require additional information regarding proposed development in the consolidation area.

Regarding enforcement:

Even if no new development is proposed for this area, the existing development within the consolidation area may or may not be authorized, or otherwise exempt, and will need to be evaluated in conjunction with the pending enforcement action. If we determine, as a result of the enforcement action, that unpermitted installation of wells and/or accessory structures and/or unpermitted vegetation removal was undertaken in this area, then this site is subject to the same mitigation and restoration efforts as the remainder of the property. Therefore, please submit plans for existing and, if applicable, proposed development specifically for the consolidation area. Please work with WNOC and CCC Enforcement staff to determine the scope of the development covered by the exemption(s) and the particular permitted and/or unpermitted development of the consolidation area to determine the site constraints before including the proposed development of the consolidation area as a part of your pending application.

2. Vegetation and Fuel Modification Zone.

Please work with CCC enforcement staff and WNOC to develop appropriate Fuel Modification plans. See our December 6, 2013 NOIA for more details.

II. Planning Issues

A. Alternatives

Thank you for submitting the alternative development plan that does not include access from West Coast Highway. We recognize you have concerns with the elimination of this proposed road. To help us understand your concerns, please provide the revised traffic data and alternatives analysis that is mentioned in your May submittal when they are available.

Although the May 6, 2014 cover letter listed the types of vegetation that would be eliminated by the construction of this section of the road, staff is reluctant to concur as we continue to work on remapping several areas of vegetation. Once the remapped vegetation has been completed, the plant communities in the path of this road will be clarified.

Thank you for providing the alternatives suggested by CCC staff that show reduced grading and landform alteration in key areas, compared with the initial proposal. However, significant landform alteration remains part of the plan under the newly identified preferred alternative. Staff believes that grading and landform alteration could be reduced further. For example, grading inside the 60 foot bluff edge setback could be avoided; the grading of the hillside between the northern housing development and the oil consolidation site could be reduced or avoided by relocating the trail; or the footprint of the housing and resort or commercial space could be further concentrated. These alternatives should be explored further.

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Additionally, staff has received public comment letters (enclosed) that highlight concerns about the use of the term "open space" throughout the proposal. Please define what is included in the 258 identified acres of "open space" and provide a breakdown of acreage that represents in detail the following categories (one figure/exhibit should be provided for each):

- acreage of land not being graded or impacted in any way by development nor remediation (land outside the limits of work).
- 2. the acreage of land that is proposed to be impacted by development and/or remediation activities but restored and considered habitat conservation area.
- 3. the total acreage of land that will be developed with roads, homes, commercial and resort space, and the oil consolidation area,
- 4. the total acreage of land that will developed as parks, trails, landscaping and fuel modification areas, and water quality basins,
- 5. Lastly, please provide a map showing these areas as "impacted" and "non-impacted."

B. Biology

- HCCMP. Nothing further is needed for the HCCMP at this point, but may be required at a later date.
- 2. Vernal Pool Sampling. Thank you for submitting the hand-written ACOE Wetland determination data forms. We understand that the site will be surveyed for Vernal Pool/Wet Season Surveys (USFWS Protocol) and consider this report necessary to complete the application. Public comments regarding the thoroughness of these surveys have indicated that there may be as many as 50 additional pools that were not surveyed specifically for Fairy shrimp (enclosed letter). Please include these additional pools in the future Vernal Pool Surveys.

Given the new preferred alternative, please clarify if any vernal pools and/or seasonal wetlands will be filled or impacted and please send an updated exhibit map overlaid with the outline of the limits of grading to reflect this.

- 3. Vegetation Mapping. Staff remains concerned that Dudek's category for "disturbed" vegetation may include areas that should be described as "disturbed native scrub" vegetation, based on our site visit observations. We plan to arrange additional field work days to visit the respective "disturbed" vegetation category locations to observe current on-the-ground conditions and request assistance in adjusting the mapping as necessary.
- 4. Burrowing Owl. Thank you for submitting the Wintering Owl Habitat Survey. Public comments regarding the thoroughness of these surveys have indicated that there may have been oversight during the survey and the actual number of owl spottings was inaccurate. Please see the enclosed letters and respond accordingly.
- 5. Field Lighting. We understand field lighting is no longer included in this proposal.
- 6. Roadways. Thank you for providing a preferred alternative that reduces fill of riparian and wetland areas for the construction of roadways. It appears that the bridge spanning the southern arroyo may still require grading, and possibly fill, on the Northern side bridge abutment. Please confirm if the construction of the bridge completely avoids impacting the arroyo? If not, can it be constructed in a way that does?
- 7. Storm Water Retention. The new location of the large water quality basin in the lowlands would not allow for a necessary wetlands buffer. We maintain that installing these features in environmentally sensitive areas is not consistent with the Coastal Act. Please identify

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alternative locations for this basin that will not impact environmentally sensitive areas and would allow for a necessary buffer. Please see 'Infiltration' below for additional details needed regarding storm water retention devices.

- Fuel Modification Areas.
 Thank you for submitting the information regarding the fuel modification zones. Please confirm that the fuel modification zones B and C activities, vegetation clearing or thinning, will not impact the bluff edge nor bluff face.
- Constraint Maps. As stated in our last letter, our ESHA determination will be used to develop a biological constraints map that includes our biologist's buffer recommendations that we believe reflects the sensitive species and habitat onsite and provides the appropriate protection for these sensitive resources.
- 10. Remediation Plan. Thank you for supplying a draft of the Remediation Plan to Cassidy Teufel of our Energy and Ocean Resources Unit. As you have discussed with staff of the Energy and Ocean Resource Unit, there may be components of your proposed remediation plan (e.g., down-hole well abandonment work, removal of some surface infrastructure and pads) that may fall within the scope of Exemption E-7-27-73-144. However, after conferring with the State Department of Oil, Gas and Geothermal Resources (DOGGR) staff, we have concluded that most of the activities proposed in your Remediation Plan (e.g., bioremediation) do not fall within the scope of this Exemption. We are happy to assist you in discerning which activities proposed in your Remediation Plan must be a part of the CDP application. Please also provide the following:
 - A. Please revise your CDP application project description to include the activities proposed in your Remediation Plan.
 - B. It's our understanding that the work proposed in the Remediation Plan is not being required by the Regional Water Quality Control Board (RWQCB), the Department of Toxics and Substance Control or any other agency, but is being proposed to support the applicant's desired residential and commercial development project. The remediation activities, as proposed, may result in potentially significant adverse habitat impacts. Therefore, we need to understand more fully the scope of remediation alternatives considered by the applicant and the reasoning for the remediation options chosen. Please describe how the proposed remediation is the least environmentally damaging alternative for each development type (residential, commercial, parks and open space) and provide details on what other alternatives are available and have been considered.
 - C. Given sensitive species onsite, please address in your Remediation Plan the location and size of buffers planned at each specific remediation site. Identify specific circumstances and areas where pipe and surface facility removal can be performed without any impacts to sensitive species.

C. Geology

- 1. Bluff Edge Delineation. Thank you for submitting the revised bluff edge delineation maps.
 - A. The base map is unclear with extraneous lines (grading lines) and lines that appear to cross contours in some locations. Please provide the bluff edge delineation revisions on a clean topographic base map.
 - B. On sheet 2, near the southern edge of the sheet is an arroyo (also shown near the northern edge of sheet 3). Note that Commission staff disagrees with the location of the bluff edge in that area and believe it needs to be placed higher.

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- C. Currently, the bluff edge delineation ends just before the footprint of the proposed northern housing development. However, there is development (e.g. grading, road, trails) proposed further to the north of this point and the bluff edge setback should be determined according to the bluff edge delineation. Please continue the bluff edge delineation to the north, to include the most northern point of any proposed development (including grading).
- D. Please determine the bluff edge of the arroyos and canyons using the same criteria as for coastal bluff edge as defined in CCR section 13577(h).
- 2. Bluff Retreat Rate. Thank you for providing the analysis of bluff retreat rate, Sea Level Rise and the information regarding flooding from the Santa Ana River. We maintain that the minimum average bluff retreat rate is not appropriate for the analysis of the tidal bluffs, but require nothing further at this time. However, we do request an analysis evaluating the bluff/slope retreat rate of the arroyos and canyons on the site.
- 3. Alteration of Natural Landform. Thank you for submitting the 30% grading plans. It appears that there is fill extending over the canyon edge at several locations (an arroyo/canyon bluff edge delineation is necessary to confirm this), including the northern abutment of the bridge spanning the southern arroyo. Please clarify by providing the bluff edge delineation of the arroyos and provide further alternatives that completely avoid fill in riparian areas. Also provide alternatives that reduce or eliminate grading the slope between the northern housing development and the consolidation area.
- 4. Pedestrian Bridge. Would the construction of the abutments for the pedestrian bridge spanning Coast Highway require caissons? Please provide preliminary foundation plans for this item. Additionally, please provide an alternative location for the proposed bridge that would not impact the bluff edge and/or bluff face.
- 5. Fault Setback Area. Please confirm that no structures for human habitation will be constructed in the fault setback area identified on attachment 30 of the CDP resubmittal of May 17 2013 by providing the most recent development footprint overlaid on a similar exhibit showing the fault setback area.

D. Development

- 1. Project Heights. Thank you for submitting the mapped heights of surrounding structures. Please note that while we do have floor plans for the proposed buildings, we do not have complete conceptual plans for the residential, mixed-use, and commercial structures showing foundations, elevations, square footage, and height. This information is particularly important for the retail/commercial space and the resort as it relates to visual qualities, parking and other coastal concerns. Please provide complete conceptual plans for these use areas.
- 2. Pedestrian Bridge. Thank you for submitting additional information regarding the proposed pedestrian bridge. We still need to identify what impact the elevator structure will have on the bluff edge. Please submit a brief discussion from an engineer describing: how many cubic yards of cut of the bluff are required for this structure; how deep the cut will be; what specific alternatives have been explored that are less environmentally damaging? Are there alternatives locations that are appropriate for the structure that are a minimum of 25 feet away from the bluff? Please have a biologist confirm whether there are any sensitive vegetation and/or wildlife occupying this area and/or within 50 feet of the bluff.
- 3. Takings Information. Thank you for clarifying your position regarding the potential takings of the property. No further information is requested at this time.

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- 4. Development Agreement. No further information is requested at this time.
- Other Agency Approvals. Staff is interested in learning more about the details of the pending ACOE Section 404 permit. Please provide when available to our Federal Consistency staff.

Please provide details about your in-process approval from other agencies, specifically Cal F&W, RWQCB, USFWS, OC Heath Dept., and DOGGR. Please include the status of approvals from Caltrans for off-site improvements in the public park related to the construction of the pedestrian bridge.

- 6. Co-Application Invitation. Nothing further is required at this time.
- 7. Chain of Title. No further information is needed at this time.
- 8. Parking. See the below discussion regarding the TDM Plan.
- 9. Infiltration. Please provide the dimensions, construction specifications, and cross sections for all water quality basins. Staff also requests to see information regarding the following:
 - A. Lowland Water Quality Basin.
 - i. In the Water Quality Management Plan (Exhibits 9-1 and 9-2) show the large 'Perimeter Zone Water Quality Basin' in the lowlands will be treating runoff from the residential area of the northern housing development as indicated by the two 20' wide storm drain easements between the development drainage areas D and E. Are these storm drain easements open bioswales, channels, underground pipes or other?
 - ii. Please provide details for the capacity needs of the development run-off and existing run-on water and the sizing requirements of this basin, as well as the drainage paths in/out.
 - B. Community Basins. There are 15 detention/infiltration water quality treatment basins labeled "community basins" in Exhibit 9-2. Please provide the specifics regarding these basins such as: size and capacity, drainage paths in/out, and construction specifications. Please specify the originating location of runoff that they are designed to treat. Many of these community basins are located in the parkway areas along the bluff top, between the housing development and the bluff edges. Given their proximity to the bluff edge, how will these be designed to prevent bluff instability and erosion? Some of the community basins are depicted within individual parcels, possibly in individual homeowners' backyards and front yards. Please clarify the details of these basins and provide updated maps to indicate where these will be placed, and provide details regarding how they will be maintained if on individual parcels.
 - C. Bio-cells. Where will the bio-cell enhancement and green street bioswales be constructed, and how many are proposed? Please provide a map showing these items in the development. Are the proposed bioswales on B, K, G streets enough to capture runoff for the whole development? Should bioswales be constructed on all streets? If the bioswales were located on L, J, S, E streets and at the entry of I street, they would avoid the bluff top and potential erosion in the future. Please revise.
 - D. Perimeter Zone water quality Basins (in lowlands and near 16th St.).

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i. The design calculations for the two large water quality basins (capture volume and drainage area) are based on models. Please provide the actual calculations based on the development plans and capacity needs, as well as the construction specifications for both basins.

E. BMPs.

- i. Thank you for providing the information on the HSC water quality BMPs. Please provide the extended details and indicate if these details change, and how, due to the requested alternative location of the large water quality basin located in the lowlands.
- ii. Please provide specific commercial and resort space water quality BMPs based on the most recent alternative. If there will be any delivery service areas, what procedures will be in place to protect water quality, specify containments, prevent spills etc.? Please indicate how the ongoing operations and maintenance of all BMPs associated with these development areas will be carried out.
- F. Diffuser basin in Arroyo. How will the runoff from the southern arroyo enter into the Semeniuk Slough? Will there be an underground culvert? Will the water sheet flow over the existing road? Please provide detailed plans for this.
- 10. Dedication of Preserve Areas. We understand that NBR LLC will provide the funding necessary for the implementation of the HCCMP, land transfer, and for the long-term maintenance and management of the site after such a time that NBLT will be responsible for these costs. Before the completion of the application, please clarify which funding mechanism(s) will be part of the agreement.
- 11. Archeology. The CDP application does not include a request for approval and implementation of an Archaeological Research Plan (ARP). Although the construction of the proposed preferred alternative will not impact the current known locations of cultural resources, it is unclear whether deconstruction of the oil field operations and the subsequent oil remediation will have impacts to known archaeological sites.
 - Based on past Commission experience with other properties containing mapped archaeological sites, human burials and artifacts have been found outside of the boundaries of the mapped archaeological sites. Therefore, we continue to request that you submit as part of this CDP application a request to perform the necessary ARP to determine how best to avoid any known, as well as unknown, archaeological resources that exist on the project site. Methods of removal of oil field infrastructure that would have the least impact to any known or unknown buried archaeological resources should be explored.
- 12. Trails. Given the recent conclusions regarding BRR and impacts of SLR, can the geologists of the site confirm that the bluff trails will remain in existence for the economic life (75 to 100 years) of the development and need not be relocated inland? Would space be available for such relocation?
- 13. TDM. The submitted TDM plan lacks sufficient information for the urban colony, resort and commercial space, and does not address topics such as: 24-hour valet service for resort guests, bike rack in all parks and parking lots, commercial and resort area circulation patterns, etc. Will resort guests and the public have access to rental bikes? Will employees of the shopping center and resort be offered discounted public transportation to get to work or offered a carpool program? Give the sites proximity to the beach, how will public parking be handled in the shopping area: Paid parking, 2-hour time limits, validation, etc. Although

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the City of Newport Beach will not require these items until a later date, staff considers it necessary to complete the application.

The project description implies that additional parking will be available to the public using the parks, trails, and other public facilities proposed. However, it is not clear if the proposed number of parking spaces is adequate without the details of the TDM plan.

Additionally, the number of retail spaces, the square footage of each store, the use of each store, and the square footage of the main resort areas are all factors in determining the number of necessary parking spaces for the proposed development. Please provide these details.

14. Proposed Commercial Uses. While we understand that the City of Newport Beach has preferences for commercial uses, we continue to request an analysis that includes a breakdown of approximate square footage that will be used for visitor-serving commercial and retail related to the nearby residents. In the letter received May 6, 2014, it is stated that the proposed Coastal Inn and retail space will require their own CDPs; however these structures are included in the project description of the application and we must consider that information at this time, under the current CDP application. To date, complete conceptual plans with foundations, floor plans, square footage, etc. for the retail and resort have not been received. Please provide this information as part of this CDP application.

Accordingly, please submit detailed conceptual plans for the proposed resort and the retail space. How many retail spaces are proposed and what is the square footage of each store? What percentage of the resort rooms will be offered at a low-cost to the public? What is the square footage of the spa and restaurant and other multi-purpose rooms in the resort? Will these amenities be open to the public or for resort guests only? How many parking spaces are proposed for the resort and how many are proposed for the commercial space? Where are these parking spaces located?

- 15. Public Comments. Public comments regarding items above have been received and are enclosed here. Please respond to the concerns presented in these letters.
- 16. Filing Fees. Please provide a copy of the "Conditional Approval of the LEED ND plan" which is received after registration with LEED. This will provide enough details ensuring the entire project (neighborhoods), not building by building, will qualify for LEED.

We encourage the NBR team and representatives to continue to work with CCC staff and resolve the outstanding planning issues; however the resolution of the threshold issues and the establishment of the baseline condition of the site is essential to the CDP process. As you are aware, the resolution of the threshold issues is a significant part of the application and the fulfillment of the outstanding remaining planning issues will not result in a complete application. As always, please feel free to submit any information beyond the requested items above. You may submit any information you feel may assist the Commission staff in gaining a clear understanding of the scope of the project.

Sincerely,

Amber Dobson

Coastal Program Analyst

Karl Schwing

Coastal Program Manager

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



November 26, 2014

Andrew Holstein Project Manager Newport Banning Ranch, LLC 1300 Quail Street, Suite 100 Newport Beach, CA 92660

Re: Notice of Incomplete Coastal Development Permit Application 5-13-032 – Newport Banning Ranch

Dear Mr. Holstein:

Thank you for your letter of October 30, 2014, and attached materials in support of Coastal Development Permit Application 5-13-032. Although you submitted much of the information Coastal Commission staff identified in our letter of June 5, 2014, there remains a few outstanding items we list again below. Your October 30 submittal also includes information regarding the "abandonment" of oil field operations on 384 acres, including pipelines, roads, pads, and other infrastructure removal, and the bioremediation of contaminated soil from the Newport Banning Ranch ("NBR") site. This is the first time that this element of the project – one of significant scope and complexity – has been formally provided to Commission staff for review. We have identified a variety of details associated with this proposed work that need to be provided, clarified, or supplemented to allow for an adequate analysis under the Chapter 3 policies of the Coastal Act and before we can file the CDP application as complete.

Oil Field Abandonment, Infrastructure Removal and Remediation Activities

- 1. Although NBR's latest submittal includes information about the proposed abandonment, infrastructure removal, and remediation of 384 acres of the oil field operation, it did not include a revision to the CDP application project description to include these activities. Please revise the *Newport Banning Ranch Revised Project Description* to include this work. This description may take the form of a summary of proposed activities that includes a reference to the more specific descriptions included in the document titled, *Newport Banning Ranch Oil Field Abandonment Plan* ("Abandonment Plan"). As we discussed previously, by amending CDP application 5-13-032 to cover the entirety of the proposed project by including the proposed oil field abandonment, removal, and remediation activities it will allow the Commission's CDP to satisfy NBR's federal consistency obligations. Thus, if amended to include all of these activities, this would obviate the need for additional and separate federal consistency review of these activities by the Coastal Commission.
- 2. The Abandonment Plan refers to the development of a site-specific Final Remedial Action Plan ("RAP") for this project. Please submit NBR's proposed Final RAP.
- 3. The scope of the Abandonment Plan covers well abandonment, infrastructure and facility removal and remediation of contaminated soil over 384 acres. For the wells to be abandoned, please provide the name, status, and location of the wells. Demolition and

- removal activities will cover oil field features such as pipelines, power poles, electrical conduits, roads, pads, pumping units, tanks, vessels, motors, buildings, sumps, other fluid containment areas, etc. For each feature, please provide detailed information on numbers, location, size, and composition. For pipelines, please provide (a) the location and amount of pipeline segments that are *buried* and those that are located within heavily vegetated areas or sensitive resources, and (b) the locations of proposed pipeline tap and drain activities.
- 4. For each feature to be removed, describe how they will be removed. For example, describe the excavation method that would be used to remove buried pipelines. (e.g., what would be the size of excavation trenches? Would excavated soil be side-cast and backfilled or removed? How would excavations in heavy vegetation or sensitive areas be accomplished?).
- 5. Please identify the number of truck trips to dispose of oil field debris, equipment, etc. offsite.
- 6. Please clarify if DOGGR is requiring that any previously abandoned wells be "reabandoned" to meet current standards. If such requirements have been established by DOGGR, please indicate the number and location of these wells as well as the activities that would be carried out to effectuate this "re-abandonment."
- 7. Commission staff understands that significant biological assessment work has been carried out throughout the project site. However, the primary focus of many of these assessments that have been provided to Commission staff has been on the proposed residential and commercial development project. We now need to understand the biological resource implications and potential impacts associated with solely the proposed abandonment and remediation activity. Rather than requiring new or additional biological surveys or studies, providing this site-specific biological information on the abandonment, removal and remediation phases of the overall project to Commission staff will likely entail a refinement of the data collected through the studies and surveys that have already been carried out. A key issue here is that implementation of the Abandonment Plan will likely result in significant biological impacts to habitat and wildlife caused by wetland and upland ESHA habitat disturbance and loss, noise, spills, etc. Please therefore provide a biological assessment that addresses the potential impacts of all proposed oil field abandonment, removal and remediation activities. The assessment should assume a "worst-case" footprint and include an accounting and description of the amount and type of each species of plant and animal known to be present within and adjacent to each work site (including each well site, pipeline, soil or material stockpile area, soil borrow site, etc.). Please also provide a detailed description of the assumptions and methodology used to develop this "worst case" project footprint (for example, how were disturbance limits delineated? What activities were considered in developing this disturbance footprint? What, if any, buffers were used?). Please also include all measures proposed by NBR to avoid biological impacts and mitigate those impacts that cannot be avoided.
- 8. Please provide an analysis of sound levels within 100 feet of the different construction equipment proposed to be used onsite. Please provide sources and models you used to develop those figures. We also recommend you identify mitigation measures to reduce sound levels.
- 9. Please indicate the specific activities proposed for each of the areas displayed on Exhibits 7 through 11 of the Abandonment Plan (for example, excavation, vegetation clearance, access routes, staging areas, etc.).
- 10. Please (a) identify the amount of soil to be removed from each of the clean soil borrow areas, (b) clarify why clean soil would be excavated and replaced with concrete debris, (c)

- evaluate the potential biological impacts associated with this proposed method of disposal for concrete debris, and (d) specify the number, size, and location of the existing concrete debris stockpile locations as well as the amount of concrete stored at these sites.
- 11. Please clarify if the wetland areas to be avoided have been delineated per U.S. Army Corps of Engineers standards or Commission standards. Please provide the survey reports and field data sheets supporting the delineations shown in Exhibit 8.
- 12. Please provide an analysis of air impacts, including greenhouse gas emissions. Is a SCAQMD permit required for this work? If so, please provide the status of that application and provide information regarding mitigation measures or offsets proposed by NBR or required by the SCAQMD.
- 13. Please provide an evaluation of a range of alternative infrastructure removal strategies, including partial removal options that include abandonment in place of materials in sensitive resource areas and other methods of minimizing the disturbance footprint and potential resource impacts associated with removal activities.
- 14. Please submit a copy of the 2010 Archaeological Resources Assessment for the site.
- 15. Please provide additional information regarding the amount of excavation (size and depth of burial pits) that would be required to effectuate the proposed onsite burial of concrete and asphalt debris. Please also evaluate additional alternatives to this disposal method, including partial onsite re-use and partial offsite disposal options. Please indicate the nearest offsite disposal location, the proposed route to this site, and the number of miles for this route. Please also evaluate offsite re-use options for the concrete and asphalt materials, such as use as roadbed or construction fill material.
- 16. Please provide the 2001 site clean-up levels referred to in Section 3.6 as well as a description of the circumstances surrounding the application of these levels to the project site and the status of consultations with resource agencies regarding the applicability of these levels to the proposed project.
- 17. Please provide the footprint area of ongoing oil operations within each of the proposed soil stockpile, treatment, testing, and placement areas.
- 18. Please describe and quantify the potential adverse impacts associated with moving materials across the arroyo.
- 19. Please quantify the heavily disturbed area within Abandonment Area 2 that currently supports oil infrastructure and a prior remediation soil stockpile. Please also quantify the proposed total and per week water use needed to carry out the proposed soil remediation.
- 20. Please provide any studies, reports, and documentation supporting the anticipated success of the proposed onsite soil bioremediation program.
- 21. Please provide an exhibit that shows the sensitive habitat and wildlife use areas that would be impacted by implementation of the proposed Abandonment Plan (essentially a map depicting the on-site sensitive wildlife and vegetation species with an overlay of proposed construction/disturbance areas). Please also provide access to related GIS files.
- 22. Given what we know now about the location of sensitive habitat areas and wildlife use on the overall site, it appears that the proposed location of stockpiling, concrete crushing areas, etc. are to be located within areas of sensitive habitat and wildlife use. Please evaluate alternatives to using these areas.
- 23. Please provide a thorough evaluation of a reasonable range of alternatives to the proposed bioremediation program. These alternatives should include an evaluation of the use of (a) only remediation and stockpiling sites on one side of the arroyo rather than replicate sites on each side; (b) a phased remediation approach carried out over a longer time period using

- smaller/fewer remediation, stockpile, and borrow areas; (c) multiple small remediation cells rather than fewer larger cells; (d) treated bio-remediated soil to backfill impact sites rather than the excavation and use of clean soil for backfill; (e) a combination of trucking offsite and onsite treatment that includes onsite treatment of only the lowest levels of contaminated soils; and (f) alternative locations and configurations of remediation, stockpiling, and borrow sites that minimizes the use of areas outside current development footprints.
- 24. Please provide a project specific Spill Prevention and Response Plan. This plan must at a minimum (a) quantify a "worst-case" spill scenario and explain the basis for the identified "worst-case" scenario, (b) a detailed description of all spill prevention and control measures proposed to be implemented to avoid a spill from occurring, and (c) a description of detailed response measures (e.g., onsite oil spill response equipment) sufficient to respond to the "worst-case" estimate spill.
- 25. Please provide all GeoSyntec reports from 1992 through 1996 included in the list of references to the January 1996 Phase I Description Environmental Restoration Program Newport Banning Ranch and from 1989 through 2003 included in the list of references in the August 2009 Draft Remedial Action Plan.

Planning Issues Related to NBR Development Plan

26. Water Quality

- a. While Commission staff understands that NBR's proposed water quality basins, both in the lowlands and near the perimeter of the site may be "above and beyond" the water treatment requirements necessary for the development proposed, we still need to understand the construction impacts the development of these basins will have on the resources of the site. In order for us to assess the impacts related to the construction and post-construction, please provide the details regarding the size, specifications, dimensions and cross sections for these two basins.
- b. Although OC DAMP has specific requirements for commercial establishments, please provide the details regarding the location, placement, and design of the commercial and resort space features (loading bays, storage areas, refuse, etc.) and proposed BMPs for these features (such as spill prevention techniques, treatments for backup and overflow, etc.).
- c. Stormwater Pollution Prevention Plan (SWPPP). Your May 17, 2013 response letter stated on page 80, "SWPPP's are typically prepared in conjunction with rough grading plans and precise grading plans immediately before the site commences construction activities... A detailed SWPPP will be prepared and provided to Coastal Commission review following approval of the site plan." Commission staff would like to review the draft SWPPP. Please provide as soon as it is available.

27. Conceptual Plans

a. Thank you for providing the square footages of the commercial spaces. The cover letter included with the package submitted Oct. 30, 2014 indicated that complete floor plans and foundation plans were included in the exhibits, although these items were not received. Preliminary floor plans were submitted in the EIR for the resort only. Please provide proposed floor plans (architectural plans) for the commercial areas, mixed-use areas, and the resort.

b. The elevations provided depict the heights of the structures, but do not depict the height of the architectural features that extend above the height labeled. While the height of the architectural features is not a filing requirement, it is necessary for staff's analysis.

28. Archeology

- a. Thank you for submitting the Archeological Research Plan (ARP). As a general comment, we find the ARP to be lacking as does not demonstrate that the archaeological testing already performed was adequate to determine that the proposed development (including remediation) will not impact known or unknown archaeological resources. There is no indication that the ARP was subject to peer review nor submitted to State Office of Historic Preservation, Native American Heritage Commission, or affected Native American groups for review and comment on the adequacy of the Plan. Some Native American individuals believe that there are burials on the project site. No burials were found. There is no discussion in the Plan as to why no burials were found. Also, the focus of the ARP was to determine whether any sites are eligible for listing on the California Register of Historic Resources or the National Register of Historic Places. However, the focus should be to determine whether there are intact cultural resources, including Native American burials, and if they are present, what measures need to be taken to protect those resources in place, as opposed to careful excavation, regardless of whether it meets CRHR or NRHP criteria.
- b. Section 2.2 Regulatory Setting includes the California Coastal Act. However, the discussion is vague and does not cite the specific Coastal Act policy, Section 30244, that requires the protection of cultural resources. Page 33 of the Plan states, "through a combination of STPs and intuitively positioned Control Units" measured each site's cultural constituents. One potentially significant site, ORA-906, had only one Unit. It is unclear as to whether the number and depth of STP and hand excavated units were adequate to detect any deeply buried resources. Finally, on page 33 the Plan states that fire-affected rocks were discarded after they were recorded. Fire-affected rocks are considered significant cultural resources. It is unclear why these were discarded as opposed to reburied or given to the Cooper Center.
- c. Will an after-the-fact approval be sought for the archeological resources previously disturbed onsite? If so, please amend the current project description to include this.
- d. Is mitigation proposed for the disturbed and removed archeological resources? Again, if so, please amend the project description to include the mitigation proposed.

29. Biology

- a. Inconclusive data regarding the presence of fairy shrimp was presented in the summary of wet season survey for several seasonal features including F, O, S, U, AA, and QQ. The summary reported insufficient ponding, however the ponding averages listed were all above the 3 cm depth required for sampling, except for feature O. Please explain why features with sufficient ponding had inconclusive results. In the 2013-14 wet season survey, these ponds were not sampled.
- b. The summary also states that some seasonal features were not surveyed for fairy shrimp including RR, SS, and TT; however it states earlier that they may have been subject to at least 2 wet season surveys. For these reasons, additional surveys comprised of dry season surveys followed by complete wet season surveys or comprised of two consecutive complete wet season surveys are required.

5-13-032 (NBR LLC) Application Status 11/26/2014 Page 6 of 6

30. Other Agency Approvals
Please provide an update on the status of the CDFW and USACE permits as of September 2014.

The information requests regarding NBR's proposed oil field abandonment, infrastructure removal, and remediation activities were developed by the Commission's Energy, Ocean Resources, and Federal Consistency Division. If you have questions regarding these requests, please direct them to Cassidy Teufel at (415) 904-5502. For other questions, please call Amber Dobson at (562) 590-5071. Upon receipt of the requested materials we will proceed with determining the completeness of you application. For your information also, we have enclosed public comment recently received by Commission staff regarding the information you provided on October 30, 2014.

Sincerely,	
Amber Dobson	Karl Schwing
Coastal Program Analyst	Coastal Program Manager

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



April 3, 2015

Mike Mohler Andrew Holstein Newport Banning Ranch, LLC 1300 Quail Street, Suite 100 Newport Beach, CA 92660

Re: Notice of Incomplete Coastal Development Permit Application 5-13-032 – Newport Banning Ranch

Dear Mr. Mohler and Mr. Holstein:

Thank you for your letter of March 5, 2015, and attached materials in support of Coastal Development Permit Application 5-13-032. Thank you for working in collaboration with CCC staff. We will continue to work with NBR representatives in a productive way to answer questions, clarify materials needed, and offer guidance throughout the application process.

Although you submitted much of the information CCC staff identified in our letter of November 26, 2014, there remains a few outstanding items listed below. Note that much more information will be needed as review proceeds, but the specific items needed to fulfill the filing requirements are listed below and indicated as such.

Oil Field Abandonment, Infrastructure Removal and Remediation Activities

1. As we have previously discussed, amending the project description section of your coastal development permit application to include the proposed oil field abandonment and remediation activities described in the *Newport Banning Ranch Oil Field Abandonment Plan* would facilitate a more timely and efficient review of the proposed project by removing the need for the Commission to carry out a separate federal consistency review. Please memorialize your support for this approach by deleting the second paragraph of the February 20, 2015, "Revised Project Description" and modifying the first paragraph to the following:

The proposed Project involves the oil field abandonment, removal, and remediation activities described in greater detail in the Newport Banning Ranch Oil Field Abandonment Plan as well as development of a Conservation, Recreation and Mixed-Use Village Reuse Plan on a 401-acre site currently and historically used for oil field development and production.

- 2. In response to Commission staff request number 15 regarding proposed excavation, your letter notes on page 34 that sites selected for excavation were among those that would require "cleanout and re-compaction" to facilitate the proposed development project. (a) Please provide the "development geotechnical study" that identifies these "cleanout and re-compaction" sites and describes the methodology and information used in their identification. (b) Please also describe the activities and methodologies involved in this "cleanout and re-compaction" process and indicate which other areas on the project site have been identified as needing "cleanout and re-compaction."
- 3. Please clarify the response to Commission staff request number 15 to describe the feasibility of alternative onsite concrete and asphalt-like-material reuse options such as placement as recycled road base and/or construction fill.

5-13-032 (NBR LLC) Application Status 4/3/2015 Page 2 of 3

4. In response to Commission staff request number 20 for any studies, reports, or documentation supporting the proposed bioremediation program, you provided a pamphlet titled *Citizen's Guide to Bioremediation*. This pamphlet notes that bioremediation is often accomplished in situ without the need for soil excavation or removal. Please provide the information used by Newport Banning Ranch to evaluate the feasibility of this less invasive in situ soil treatment alternative and describe the reason this alternative was rejected in favor of the proposed ex situ treatment option involving soil excavation.

Planning Issues Related to the Development Plan

5. Water Quality

At this time, the conceptual water quality BMPs proposed and the information provided are sufficient for staff to analyze the proposal. As discussed with the Fuscoe water quality engineer consultant on March 26 and April 2, detailed diagrams and photographs of the larger BMPs and the treatment basins, as well as flows, will be submitted in the coming months as analysis for the CDP moves forward.

6. Archeology

The March 12, 2015 executed settlement agreement between NBR and the CCC was for impacts to archeological resources caused by unpermitted development related to the past and on-going oil well operations and preventing the disturbance of known cultural sites as a result of the restoration and removal activities required by the settlement agreement. However, there are certain aspects of the archeological work that are relevant to the current CDP process and aside of the enforcement process. The statement in your most recent cover letter that the executed settlement agreement resolves the outstanding issues related to archeology for the completeness of the CDP application is incorrect.

Focusing on the filing requirement for now, please clarify the following: in the March 5, 2015 letter you state that Section 4, Site Assessment and Investigation, 4.2 Ground-Truthing of the RAP includes measures to ensure avoidance of any cultural resources to the maximum extent feasible. We have reviewed the attached February 18, 2015 Remedial Action Plan, by Geosyntec Consultants, specifically pages 15-16, and found no discussion of measures to ensure avoidance of any cultural resources. There is some discussion of biological monitoring of vegetation but no mention of cultural resources or measures for their identification and/or avoidance. Please clarify the location of this information, and provide the information if not elsewhere provided.

7. Biology

We have requested re-mapping done by Dudek of the "disturbed" vegetation and mapping of prickly pear cactus patches onsite, both in-person on site visits and in meetings with NBR, and NBR has agreed to provide it. While it is not a filing requirement, please provide the revised mapping of the disturbed areas and mapping of the prickly pear cactus categories as soon as possible. As analysis continues there will be additional information needed in order for staff to have a complete data set to work with, for both the seasonal features onsite as well as the vegetation. Please note that additional requests for biological information will be made in the future, as needed and staff expects that NBR will provide it.

Please clarify if features 24b, 49a and 49b are still present on the site. If so, please assign them seasonal feature IDs and provide data regarding the presence of cysts and the type of vegetation found in the features.

While we understand USFW has not required protocol level surveys for San Diego Fairy Shrimp in every identified feature onsite, Wetlands and Environmentally Sensitive Habitat Areas are defined under the Coastal Act as areas that may contain endemic invertebrates. In order to make these determinations through the CDP process, staff requires information for the presence of fairy shrimp (listed or not) in all features on the site. Most of this information has already been provided, with the

exception of: features RR, SS, TT. We understand that this may be unlikely Fairy Shrimp Habitat, but should be subject to a survey, particularly since these features may be subject to degradation due to proposed remediation activities. As an alternative to additional wet season surveys, please provide soil sample data for the presence of cysts in these features: RR, SS, TT, and include data for QQ.

As noted before there are just a few items remaining that are needed to file the application complete. It's important to note, however, that additional information may be needed as we continue our analysis and/or negotiate changes to the proposal. Also, many of the documents submitted are preliminary, conceptual or drafts, such as those related to water quality, which will need to be developed into final form before a permit could be issued and/or at some other appropriate point in the development phase. Similarly, there are components that will require further advance work, such as more detailed investigation and monitoring for archeological resources. These issues will ultimately need to be addressed before any development could be undertaken.

The information requests regarding NBR's proposed oil field abandonment, infrastructure removal, and remediation activities were developed by the Commission's Energy, Ocean Resources, and Federal Consistency Division. If you have questions regarding these requests, please direct them to Cassidy Teufel at (415) 904-5502. For other questions, please call Amber Dobson at (562) 590-5071. Upon receipt of the requested materials we will proceed with determining the completeness of you application. As always, we have enclosed public comment letters recently received by Commission staff regarding the proposed project.

Sincerely,

Amber Dobson

Coastal Program Analyst

Karl Schwing

Coastal Program Manager

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



April 16, 2009



Debby Linn, Contract Planner City of Newport Beach Planning Department 3300 Newport Blvd Newport Beach, CA 92663

RE: Newport Banning Ranch, Notice of Preparation Draft Environmental Impact Report

Dear Ms. Linn:

In response to the Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project, California Coastal Commission (CCC) staff concurs that a full EIR study is necessary for the proposed development project. Following are issues of concern that staff suggests should be addressed in the project Draft EIR:

- Pursuant to Section 30240 of the Coastal Act, development within environmentally sensitive habitat areas (ESHA) must be resource dependent, and development adjacent to ESHA must be compatible with the continuance of the ESHA. New development should avoid these resource areas and their buffers. The DEIR should include documentation of biological resources present on site to determine what portions of the site are ESHA and provide detailed delineation of all on-site wetland habitats. The location of these resources and the required buffers should be established and accommodated before land use areas and development footprints are established. We suggest ESHA and wetland delineations and recommended buffers be reviewed by Coastal Commission staff biologists before the DEIR is finalized. Although the City of Newport Beach Coastal LUP (CLUP) does not currently apply to the subject site, it contains numerous policies for coastal resource protection that should be referenced with regard to this site. The buffer area/setbacks identified in the CLUP should be viewed as minimums; larger buffers/setbacks may be deemed appropriate at the subject site if necessary to protect biological resources.
- The proposed project is adjacent to the Santa Ana River and an Army Corps of Engineers wetlands restoration area. The project would be required to provide appropriate habitat buffer areas and setbacks, and shield and direct exterior lighting away to minimize impacts to wildlife.
- Table 1: Newport Banning Ranch Statistical Summary on page 8 of the NOP indicates that gross acres for the Bluff Park and Interpretive Parks District may include fuel management zones. Fuel modification requirements to address fire hazard should be set back (outside of buffers) so that the buffer areas serve their CEQA COMMENT LETTERS
 5-13-032

5-13-032 Exhibit 23 intended function of protecting ESHA from the disruption of habitat values. Again pursuant to Section 30240 of the Coastal Act development adjacent to ESHA must be compatible with the continuance of the ESHA. Fuel modification has generally not been considered to be compatible with protection of ESHA. In addition, this appears to be inconsistent with CLUP policies to provide a minimum 50-foot buffer area to ensure the biological integrity and preservation of the habitat they are designed to protect. Coastal LUP policy calls for buffer areas to be maintained with exclusively native vegetation to serve as transitional habitat, not as a fuel modification zone.

- The proposed project includes a 75 room resort. Section 30213 of the Coastal Act provides that lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. Coastal LUP policy 2.3.3-1 requires the approving authority to "protect, encourage, and provide lower-cost visitor accommodations including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels"¹, which stems from Coastal Act Section 30213.and supports lower-cost visitor accommodations as a priority use in the coastal zone. Therefore, the DEIR should analyze the demand for lower cost overnight visitor accommodations as well as other lower cost public recreational facilities in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone. Based on this analysis, such facilities must be addressed and incorporated into the potential build-out of the subject site.
- The NOP indicates that certain roadway connections that have been identified in the City of Newport Beach's General Plan and the Orange County Master Plan of Arterial Highways that involve the subject site are not being proposed at this time but that land areas are being reserved for these roadways. These roadway segments could have significant adverse impacts on coastal resources if they are deemed necessary at any time in the future. The EIR should analyze the need for these roadways now and in the future given buildout of the site and the surrounding area. The EIR should analyze the impacts of developing these roadways and identify alternatives for roadway alignments that avoid adverse impacts and/or size development on the site such that the roadways are not necessary.

¹ A recently certified amendment to the Coastal Land Use Plan modified policy 2.3.3-1 such that it reads as follows: "Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations." Once the City completes the certification process the above policy language will be in effect.

- The NOP indicates the project being considered may require up to 1,200,000 cubic yards of grading, with cuts of up to 25 feet and fills up to 60 feet. These numbers suggest the project involves significant landform alteration. The Coastal Act requires that landform alteration be minimized. Alternatives should be considered that minimize landform alteration.
- The NOP includes a definition of "bluff" from the City's municipal code that is different from the definition that is applicable for the review of development under the Coastal Act. The 26.6 degree (50%) slope and requirement for a vertical rise of 25 feet or greater that is cited from the municipal code should not be used to identify bluffs for Coastal Act purposes. For Coastal Act purposes, the following should apply with regard to bluff terminology: bluff edge shall be defined as the upper termination of a bluff, cliff, or sea cliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosion processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a step-like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.
- The proposed project has potential to increase emissions of carbon dioxide that is a known contributor to global warming and the attendant impacts there from, such as sea level rise. Sea level rise will have significant adverse impacts on coastal resources. The EIR should analyze these impacts that would be caused by the proposed project and include appropriate alternatives and mitigation. The Commission's web site contains many resources that may be useful at the following link: http://www.coastal.ca.gov/climate/climatechange.html
- The proposed project should incorporate "green building" concepts such as energy savings through solar site orientation, energy efficient designs, mechanical systems, and building materials, and well insulated structure and duct systems; water savings through native and drought tolerant landscaping, use of recycled water for irrigation, and incorporation of efficient appliances and plumbing fixtures; and waste minimization through the use of recycled and reused materials and opportunities for onsite composting. While the proposed project will be evaluated for consistency with all policies of the Coastal Act, resource protection is encouraged through these green building categories.
- The DEIR should analyze and develop transportation demand measures associated with buildout of the site to reduce reliance on the private automobile by residents, visitors and business/commercial users of the property. Connectivity through non-automobile circulation to major transportation centers/corridors, employment centers, recreational/visitor destinations and the coast must be specifically addressed as part of the proposed development to address the requirements of Section 30250 and 30253 of the Coastal Act to reduce energy consumption and vehicle miles traveled.

- We note that the City of Newport Beach's preferred land use, according to the City's General Plan, is for Open Space. Preservation of open space for habitat and public recreational purposes is a high priority under the Coastal Act. There is likely ample land area that is suitable for habitat restoration and creation. Every effort should be made to implement this preferred land use option.
- We also note that a development agreement may be considered. Commission staff recommends that the project proponent withhold submittal of any development agreement to the Commission for review until all other Coastal Act approvals are obtained (e.g. coastal development permit).
- The City's 2005 Coastal Land Use Plan also contains a variety of other policies aimed at the protection of coastal resources, including but not limited to public access; protection, enhancement and provision of lower cost visitor serving and recreational development; water quality protection and enhancement; visual resources; avoidance of geologic hazards; and the protection of archeological resources, among others. The Chapter 3 policies of the Coastal Act will remain the standard of review for any coastal development permit until the City has a fully certified Local Coastal Program, although, the Coastal Land Use Plan will provide strong guidance. The DEIR should analyze the consistency of the proposed development with applicable policies in the certified Coastal Land Use Plan and Chapter 3 policies of the Coastal Act and identify and address impacts accordingly.

These are some of the initial concerns and issues identified by Commission staff that we feel should be addressed in the project Draft EIR. Please note that the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when it is submitted to the Commission for formal review. We request notification of any future activity associated with this project or related projects. Additionally, the comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself. Thank you for the opportunity to comment on Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project.

Sincerely,

Liliana Roman

Coastal Program Analyst

cc: State Clearinghouse

CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



November 8, 2011

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

RE: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT

SCH# 2009031061

Site: Newport Banning Ranch Newport Beach, Orange County

Dear Mr. Alford,

Thank you for the opportunity to review the Draft Environmental Impact Report for the residential and commercial development at Newport Banning Ranch. According to the Draft EIR, the proposed project includes 1,375 residential dwelling units, 75,000 square feet of commercial space, a 75-room resort inn, approximately 51.4 gross acres for active and passive park uses, and 252.3 gross acres for natural resources protection in the form of open space.

The following comments address, in a preliminary manner, the issue of the proposed project's consistency with the Coastal Act. This letter is an overview of the issues we've identified at this time based on the time available for analysis and the information we've been presented and is not an exhaustive analysis. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself.

I. Procedure for Commission Review of the Proposed Development

The DEIR states that the applicant intends to request a 'master coastal development permit' from the Coastal Commission for the proposed development. The DEIR suggests that the Commission would be asked to provide a preliminary review and approval of land uses, with details of some portions of the development, and lesser details for other parts of the development. It also suggests the 'Master CDP' would set up a process for delegating review and approval authority for certain details of the project to the City when the City has no authority for ultimate approval of any part of the project. There is no statutory or regulatory authority for the kind of coastal development permit review process described in the DEIR. Rather, the process the DEIR describes is more akin to requesting approval of a Local Coastal Program, not a coastal development permit. Such request would need to come from the City and not the developer.

Given the scope and complexity of the proposed project, Commission staff would recommend that the project be considered in the context of a Local Coastal Program review, submitted by the City. This would allow for consideration of significant threshold issues at the planning level, such as the kind, location and intensity of development that would be appropriate for the site given the priorities established under the Coastal Act and the constraints present on the site (e.g. biological resources, geologic hazards, etc.). Furthermore, we do not endorse the 'master CDP' process described in the DEIR, and believe it would be unworkable. The CDP process is not appropriate for analyzing conceptual projects; rather it is designed for consideration of specific projects with

known and identifiable impacts. Such impacts couldn't be identified at the conceptual level. Significant additional details regarding the planned development would be needed in order to property analyze the effects of the development in the context of a CDP application. Those details are not available now and would not normally be available until the planning level issues described above have been resolved, and are better resolved in the LCP context. Thus, references to a 'master CDP' process should be removed from the DEIR.

Legal Status of Disturbances on Site

The DEIR characterizes acres of the subject site as disturbed due to ongoing oil field operations that purportedly began in the 1940s. The disturbances include, but may not be limited to, the presence of bare dirt, roads, areas developed with oil field equipment and buildings, and places where vegetation thinning, mowing, and/or clearing have occurred. The DEIR describes removal of oil field equipment and discontinuation of operations within certain areas, and restoration of disturbed areas as one benefit of the proposed development plan. The DEIR suggests that the existing oil operations are merely a continuation of those that began in the 1940s, and cites authorization for continuation of those oil operations after passage of Proposition 20 under California Coastal Commission South Coast Regional Coastal Zone Conservation Commission Claim for Exemption No. E-7-27-73-144. At this time, we have not yet analyzed whether the existing operations are in compliance with the exemption cited. The DEIR should include the details regarding the extent of the exemption authority that Newport Banning Ranch claims exists for its ongoing oil operations.

When a project is submitted to the Commission for authorization, the Commission's analysis of impacts will be based on the legally permitted condition of the site. If there are any unpermitted impacts to native vegetation, wetlands, or other habitat, the impacts of the proposed project will be based on the conditions prior to the unpermitted impacts. Assertions have been made during a public comment period at a Commission meeting that unpermitted resource impacts have occurred on the subject site. Therefore, we recommend that the City and/or applicant thoroughly and precisely document the activities that led to the existing disturbed conditions, and whether those conditions were legally authorized or subject to a vested rights determination.

Please note that if the City and/or applicant will be claiming a 'vested right' to conditions on the subject property arising from ongoing oil field operations and/or vegetation thinning, mowing, and/or clearing, a claim of vested rights must be made to the Commission. The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the individual(s) or organization(s) asserting the vested right, make a formal 'claim' with the Commission, that staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from CDP requirements to complete that specific development only. Any substantial changes to the development subject to the vested rights determination after the effective date of Prop 20 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

II. City of Newport Beach Coastal Land Use Plan

The City's 2005 Coastal Land Use Plan also contains a variety of other policies aimed at the protection of coastal resources, including but not limited to public access; protection, enhancement and provision of lower cost visitor serving and recreational development; water quality protection and enhancement; visual resources; avoidance of geologic hazards; and the protection of archeological resources, among others. The Chapter 3 policies of the Coastal Act will remain the

standard of review for any coastal development permit until the City (or County) has a fully certified Local Coastal Program, although, the Coastal Land Use Plan will provide strong guidance. The EIR should analyze the consistency of the proposed development with applicable policies in the certified Coastal Land Use Plan and Chapter 3 policies of the Coastal Act and identify and address impacts accordingly.

III. Biological Resources

A. Relevant Statutes:

Coastal Act Section 30240 states (emphasis added):

- (a) Environmentally sensitive habitat areas <u>shall be protected against any significant</u> <u>disruption of habitat values</u>, and <u>only uses dependent on those resources shall be</u> <u>allowed</u> within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be <u>sited and designed to prevent impacts</u> which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30240 of the Coastal Act requires the protection of ESHA from significant disruption of habitat values, and further specifies that only uses dependent on those resources shall be allowed in those areas. Also, development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and be compatible with the continuance of the habitat.

A key point is that Section 30240 requires that development <u>avoid</u> impacts to ESHA. Unlike the requirements for other resource agencies, Section 30240 does not allow for non-resource dependent impacts to an ESHA area, and mitigation for those impacts in other areas. Rather, Section 30240 requires that proposed new development be located outside of ESHA areas. Additionally, Section 30240 requires siting, design, and appropriate buffers to ensure that development adjacent to ESHA does not result in impacts to ESHA.

Buffers are important for preserving the integrity and natural function of environmentally sensitive habitats. The purpose of a buffer is to create a zone where there will be little or no human activity, to "cushion" species and habitats from disturbance, and to allow native species to go about their "business as usual". Buffer areas are essential open space between development and ESHA. The existence of open space ensures that development will not significantly degrade ESHA. Critical to buffer function is the fact that a buffer area is not itself a part of the ESHA, but a "barrier" or "screen" that protects the habitat area from adverse environmental impacts. Habitat buffers provide many functions, including keeping human disturbances such as noise, night lighting, and domestic animals, at a distance; Reducing the hazards of herbicides, pesticides and other pollutants, And preventing or reducing shading and reducing the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development.

Coastal Act Section 30107.5 defines Environmentally Sensitive Areas as:

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

Plants and animals and habitats that meet the rarity criterion under this definition may include rare plant communities identified by the California Department of Fish and Game (CDFG), federal and state listed species, California Native Plant Society "1B" and "2" plant species, California species of special concern, and habitats that support the type of species listed above. A habitat could also be designated as ESHA due to its special nature or role in an ecosystem, such as if it provides an important function in a local ecosystem, or regional significance.

Although the City of Newport Beach Coastal LUP (CLUP) does not currently apply to the subject site, it contains numerous policies for coastal resource protection that should be referenced with regard to this site. As the most proximate and relevant discussion of habitat areas in and around the City, a discussion of the policies of the Coastal Land Use Plan for the City of Newport Beach should be included within the EIR. The buffer area/setbacks identified in the CLUP should be viewed as minimums; larger buffers/setbacks may be deemed appropriate at the subject site if necessary to protect biological resources. The City of Newport Beach Coastal Land Use Plan (CLUP) provides criteria for determining what constitutes ESHA in the Natural Resources section, including the following:

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

- The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
- The presence or potential presence of plant or animal species that are notlisted under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.
- The presence of coastal streams.
- The degree of habitat integrity and connectivity to other natural areas.

The LUP goes on to discusses particular species and habitats of importance within the City, and also states the following:

Where the habitats discussed above occur in the City of Newport Beach the presumption is that they are ESHA and the burden of proof is on the property owner or project proponent to demonstrate that that presumption is rebutted by site-specific evidence.

In summary, there is a significant amount of guidance available in both the Coastal Act and the Land Use Plan for the City. The policies therein stress the preservation of existing ESHA areas, and avoidance of ESHA.

B. Determination of ESHA

The figures shown in the DEIR only include one year of survey data. In review of previous projects on or near the Newport Banning Ranch property (Cease and Desist Order CCC-11-CD-03, Consent and Restoration Order CCC-11-RO-02, and Coastal Development Permit 5-10-168), the Commission staff has reviewed a continuous survey record of gnatcatcher usage from 1992 to 2009. However, only a single year of data is shown for the usage of sensitive species of the property, and of this year of data, only a single point is shown to indicate usage. A single year of data is not sufficient to draw conclusions regarding the usage of habitat on the subject site by sensitive species, as some sensitive species, such as Burrowing Owls, may be absent one winter and present the next. Furthermore, surveyors do not always detect rare species they are searching for, even when individuals are present. Finally, a point does not indicate the range of habitat that was observed by the surveyor, and does not indicate the entirety of the habitat which should be protected. For these reasons, the EIR should be updated to reflect all known survey data regarding all sensitive species on the site, and the maps should be updated to indicate the extent of usage.

An ESHA designation is based on site specific circumstances, and, except for the portion of the site that is part of the Sunset Ridge Park project that was heard at the Commission's November 2011 hearing, the Commission staff has not yet performed a formal ESHA delineation for the site. However, the site is known to support significant numbers of sensitive species, and there are likely significant areas of ESHA on the site. ESHA determinations are based on site specific circumstances, which the Commission has not had the ability to review in full. However, generally, habitat which supports sensitive species would be considered ESHA. Other examples of potential ESHA include rare community types, such as Coastal Bluff Scrub, and non-native or degraded habitat that supports special status species.

As listed above, Coastal Act Section 30240 requires that development **avoid** impacts to ESHA. Therefore, it is important that the EIR process incorporate a determination of probable ESHA areas and their required buffers before land use areas and development footprints are established. We suggest that ESHA and wetland delineations and recommended buffers be reviewed by Coastal Commission staff biologists before the EIR is finalized.

C. Compatibility with ESHA policies

In regards to Coastal Act Section 30240, The DEIR states:

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

Based on a preliminary analysis by the Commission to date of the provided information, the development proposed in the EIR does not appear to be compatible with Coastal Act Section 30240.

The proposed project includes a four lane arterial from West Coast Highway to access the subject site. Coastal Commission Staff recently analyzed the habitat resources present in the footprint of the proposed road in processing the Coastal Development Permit for Sunset Ridge Park by the

City of Newport Beach (Please see the Staff Report and attached exhibits for Coastal Development Permit 5-10-168 available on the Commission's web site at http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf). Staff has determined that a four lane arterial road in the proposed location would result in significant, unavoidable impacts to ESHA. Therefore, staff has determined that the proposed arterial road would be inconsistent with the Coastal Act. Therefore, the EIR should more fully consider alternative intensities of development on the site and alternative means to access the property, and should not rely on access from West Coast Highway, as such access would likely be found to be inconsistent with the Coastal Act.

The proposed project involves extensive grading and the placement of structures within and adjacent to sensitive habitats and species (as presently mapped in the DEIR). Once more fully mapped as recommended herein, the quantity of sensitive habitat areas may be even more extensive. In any event, its clear that the proposed development would result in the elimination of habitat supporting sensitive species. The special status species and habitats that are known to be supported by the site and which are possibly impacted by the proposed development footprint include the San Diego fairy shrimp, Coastal California Gnatcatcher, wetlands, riparian habitat, Southern tarplant, least Bell's vireo, Belding's savannah sparrow, Cooper's hawk, sharp shinned hawk, Northern harrier, white-tailed kite, osprey, merlin, California gull, loggerhead shrike, California horned lark, coastal cactus wren, yellow warbler, and yellow-breasted chat. Exhibits 4.6-6a and 4.6-6b of the EIR show that development is planned in areas that support sensitive species, and would fragment and isolate habitat areas located on the site. Both the direct elimination of habitat supporting sensitive species and the fragmentation of habitat on the site would have significant deleterious impacts and would be inconsistent with Coastal Act Section 30240.

The proposed project shows significant elimination of non-native grassland. In the past, the Coastal Commission has identified areas of nonnative grassland as ESHA because of their value as foraging habitat for raptors. The Commission has in the past considered habitat that supports burrowing owls ESHA. The Burrowing Owl, a California Species of Special Concern, is extremely rare in Orange County due to large-scale development of nearly all the county's suitable grasslands, especially near the coast. The EIR should evaluate whether the proposed development will result in sufficient foraging habitat for raptor species.

As stated above, Section 30240 requires that development avoid impacts to ESHA. Although it may be allowable by the requirements of other resource agencies, non-resource dependent impacts to ESHA and mitigation in other areas to offset those impacts, is nevertheless inconsistent with Section 30240. Thus, the EIR should evaluate alternatives that result in avoidance of these impacts.

D. Other Impacts

Bird Strikes: From a review of the Draft EIR, it is unclear whether transparent or reflective screenwalls will be used in the design of the building or the surroundings. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which expose them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat).

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to other types of treatments such as appliqués because of the lower maintenance and less frequent replacement that is required.

A more recent development is the creation of bird-safe building standards. Multiple cities around the country have created bird safe building guidelines. Recently, the Commission approved Local Coastal Program Amendment 1-10 for the City of Long Beach, which incorporated guidelines for bird safe buildings. Given the sensitive nature of habitat in the area and the bird species present, future planning documents for the site should incorporate bird safe building standards.

IV. Development

A. Public Access

The proposed project includes a 75 room resort. Section 30213 of the Coastal Act provides that lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. Coastal LUP policy 2.3.3-1 states:

"Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations."

This language stems from Coastal Act Section 30213 and supports lower-cost visitor accommodations as a priority use in the coastal zone. Therefore, the EIR should analyze the demand for lower cost overnight visitor accommodations as well as other lower cost public recreational facilities in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone. Based on this analysis, such facilities must be addressed and incorporated into the potential build-out of the subject site.

B. Oil and Gas Consolidation

It is unclear from the DEIR what development would be undertaken as a result of the consolidation of oil operations on the site. Consolidation activities may have impacts on sensitive resources on the site, and should be planned and managed carefully to avoid those impacts. The EIR should also more carefully break down the size of the open space proposed in the development. The consolidated oil and gas operations on the site do not have a timeline on their usage, and including such operations in the open space total may be misleading if the consolidated operations will continue for the foreseeable future.

V. Visual

The DEIR indicates the project being considered may require up to 2,500,000 cubic yards of grading. This suggests the project involves significant landform alteration. Section 30251 of the Coastal Act requires that landform alteration be minimized. The EIR should be revised to include an analysis of whether there is significant landform alteration on the site.

VI. Geology

The DEIR indicates that there are three areas in which a fault-setback is required because of the inability to rule out the presence of active faulting at the site. Two of these areas, the north and south segments of the Newport Mesa Fault, are separated but in line. Further, it is logical to conclude that the area between two segments of an active fault in such close proximity is likely active as well. Accordingly, the fault setback zones should be extended to connect the north and south segments of the Newport Mesa fault unless further study conclusively demonstrates that the area of the fault between these segments is not active as defined by the State of California.

Quantitative slope stability analyses should be performed for all cut and fill slopes not only for the existing condition, but more importantly, for the proposed development. Essentially, a geotechnical review of the proposed grading plan should be performed to assure stability and structural integrity and that the development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

VII. Water Quality

- The EIR states that the project will prepare a Water Quality Management Plan (WQMP) following the guidance produced by Orange County dated May 2011. That WQMP will need to be included in the coastal development permit application which is eventually submitted.
- Portions of the water quality basins described in the EIR appear to overlay existing ESHA. In similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities to be consistent with the Coastal Act or Local Coastal Programs.
- The WQMP will need to show that the combination of LID, source control and treatment control BMPs, meeting CASQA design standards, for the site will treat at least the runoff generated by the 85th percentile storm event (3/4 inch, 24-hour storm).
- The WQMP or another document will need to show that the development project will not increase the volume of runoff or peak runoff rate from the development.
- Any Stormwater Pollution Prevention Plan (SWPPP) submitted to the SWRCB will need to be included in the eventual coastal development permit application.
- It is stated that although it will be feasible to apply traditional LID treatments at some locations with no limitation to the volume that is infiltrated, other areas would require subdrains and impermeable liners to prevent infiltration that would penetrate into groundwater,

or that perforated drainpipe might be used to infiltrate a portion of the runoff to deeper geologic strata in other areas where geotechnical conditions allow.

The extent to which LID can be used effectively for this development appears to depend on the infiltration capacity of the soils, the depth to groundwater and geotechnical considerations. LID is a practice where runoff is infiltrated, evaporated or reused close to the source; normally each residence's roof and driveway runoff is infiltrated into the landscape adjacent to these features. There is a qualitative commitment to use LID within the development, but not at all locations within the development due to the above concerns.

It is also not clear whether runoff collected in the sub drains will be routed to a conventional storm drain system or to the proposed water quality basin, or how it will be determined where the collected sub drain water would be routed.

In the final WQMP prepared for the project, the actual area and volume of runoff handled by the LID system and that collected in sub drains, and where it would drain to, will need to be discussed.

- The North Orange County Permit Area has requirements for development that prevents hydromodification as measured for a 2-year return interval storm event. The EIR does not commit to limiting hydromodification effects from the project, but does appear to provide infiltration to the MEP for the project, which is a basic step toward preventing hydromodification. The WQMP that will be prepared for the project should discuss the extent to which LID and other stormwater BMP would be effective in preventing hydromodification, and should demonstrate how closely the hydrograph for a 2-year return interval storm would be matched post development.
- The EIR presents tables of possible site design BMPs and possible non-structural source control BMPs that could be used on the site. Although the lists are exhaustive, it is not clear which of the methods are to be considered for the development. The WQMP should detail which of the BMPs would actually be used and how the decision to use or not use a BMP was made.

VIII. Wetlands

A. Wetland Delineation

The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "one parameter definition" that only requires evidence of a single parameter to establish wetland conditions:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)

The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year

For more information on how the Commission delineates wetlands, please see the staff report and video archive of the workshop on wetlands which was held on October 5, 2011.

The wetland delineation shown on figure 4.6-3c does not match the identification of sensitive habitat on figures 4.6-6a and 4.6-6b, which identifies areas that contain the endangered San Diego fairy shrimp. Areas are identified in the EIR as having the endangered San Diego Fairy Shrimp which do not appear on the wetland delineation.

The existence of fairy shrimp in these areas would suggest that the sites support ponding water for a sufficient length of time to support the fairy shrimp. As a result, sites which support fairy shrimp are sites that would also be considered wetlands. Vernal pools may also qualify as wetlands due to the presence of wetland indicator species or hydric soils. Vernal pools also often qualify as ESHA, as vernal pools are rare and valuable habitats in Orange County.

The wetland jurisdiction maps in the DEIR should be updated to reflect this change.

Furthermore, the data supporting the wetland delineation should be re-evaluated to ensure that areas which match the CCC wetland definition are properly considered in the EIR.

B. Impacts to Wetlands / Wetland Buffers

Coastal Act Section 30231 states (emphasis added):

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30233 states in part (emphasis added):

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
- (I) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities....
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....

The City's Coastal Land Use Plan states:

4.2.2-3. Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

In summary, wetlands are protected under the Coastal Act and the City of Newport Beach certified Land Use Plan. The development allowed in wetlands is restricted to certain allowable uses, and development adjacent to wetlands must be sited with appropriate buffers to ensure the continuance of the wetland.

It appears that development is proposed within wetlands. A comparison of exhibits 4.6-3a, 4.6-6a and 4.6-6b shows that development is being proposed within mapped wetlands at drainage course A, B, and C, that development is proposed within approximately 30 feet of a mapped wetland containing endangered fairy shrimp at wetland point 16, development is proposed in areas which likely qualify as wetlands, as described above, and many of the mapped wetlands are located in close vicinity to areas planned for permanent development.

Therefore, the proposed project does not appear to be consistent with Coastal Act Sections 30231 and 30233 because the proposed project would result in the elimination or degradation of wetlands on the subject site. The EIR should further evaluate the impacts of the development on wetland resources. The EIR should also consider alternatives that avoid wetland impacts and result in the establishment of appropriate habitat buffers between development and wetlands.

IX. Archeology

Cultural and Paleontological Resources

Section 30244 of the Coastal Act requires the protection of archaeological and paleontological resources and states in part:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The Newport Banning Ranch DEIR states that there are 11 archaeological sites on the Project Site. Further, the DEIR states that the archaeological consultant, BonTerra Consulting, performed a walk-over on May 13, 2009 and carried out Phase II text excavation and evaluation of the 11 mapped archaeological sites. Specifically, testing activities included brush clearing, excavation of shovel test pits (STPs), and one square meter units. These activities constitute "development" under the Coastal Act. All development, unless exempt, requires a Coastal Development Permit (CDP). Because the development occurred within a mapped archaeological site, the work would not be exempt. There is no mention of CDPs having been issued for the development. Please provide information regarding any CDP that were obtained for this work.

Inadequate information is provided to determine the adequacy of the testing that was performed to determine the nature, extent and boundaries of existing archaeological sites on the Project Site. In order to provide adequate protection of archaeological resources, a CDP should be obtained to carry out a comprehensive archaeological research plan (ARP) so that archaeological sites are located and can be avoided in the development of the Project Site. The ARP should be carried out in a manner that is most protective of archaeological resources. The ARP should not be designed to recovery archaeological resources but to determine the nature, extent and boundaries of existing archaeological resources. The ARP should also include any subsurface archaeological investigation that was done without a CDP. The Coastal Commission requires that an ARP be subject to peer review by at least three qualified archaeologists and review and comment opportunity be extended to the State Historic Preservation Officer, Native American Heritage Commission (NAHC), and Native Americans with cultural ties to the area, as determined by the NAHC. There is no discussion of peer review or review and comments by the above mentioned parties of the archaeological research testing and implementation plan.

The DEIR states that numerous artifacts and features were found during previous archaeological investigations. However, the disposition of those artifacts and features is not discussed. Further, the DEIR states that no burials were found on the Project Site. However, it is not clear as to whether the archaeological testing was designed to test to the appropriate depth to detect burials.

Finally, the DEIR states that the Project would impact three known archaeological sites that are deemed eligible for listing on the State and National registers of historic places and that activities could also further impact unknown archaeological resources. However, the DEIR concludes that two mitigation measures have been included that will mitigate this impact to a level considered less than significant. As stated, inadequate testing has occurred to date to make such a determination. The mitigation measures (MM 4.13-1 and MM 4.13-2 are inadequate to minimize impacts to cultural resources. The mitigation measures call for the salvaging and cataloguing of archaeological resources as opposed to in-situ preservation of human remains and significant resources as the preferred option. Further, the mitigation measure state that some project grading would be monitored by Native American monitors. All grading activities that have the potential to impact Native American resources should be monitored by Native Americans with cultural ties to the area. The mitigation measures do not provide for maximum protection of archaeological resources and

calls for removal (data recovery) of known archaeological sites in order to make way for Project development as opposed to redesign of the Project in order to protect archaeological resources in place.

For the above site reasons the DEIR is not consistent with Section 30244 of the Coastal Act.

X. Legal Inadequacies in DEIR

2.0 Introduction Section

The introduction fails to inform the public of the extent of the statutory and regulatory standards applicable to this EIR. "An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (Bakersfield Citizens for Local Control v. city of Bakersfield (2004) 124 Cal.App.4th 1184, 1197.) Please include the following statutory and regulatory references and language.

2.1

Include entire definition of EIR from Public Resources Code, section 21061 with particular emphasis on the first sentence of this section regarding the meaning of the EIR—" a detailed statement setting forth the matters specified in Sections 21100 and 21100.1…"

2.2

Include all language from Public Resources Code, section 21100 and all language regarding specificity of EIR found in 14 CCR 15146 in this section, "Type of Environmental Impact Report."

3.0 Project Description Section

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR; the defined project and not some different project must be the EIR's bona fide subject. CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process" (Burbank-Glendale-Pasadena Airport v. Hensler (1991) 233 Cal.App.3d 577, 592.)

Given the scope of the proposed development project, this chapter does not include specifics about a number of project components. The project proposal resembles more of a subdivision proposal and land use designations for the subdivision rather than a project that presents appropriate plans (architectural, engineering, etc.) for a specific number of residential, commercial, recreational, open space and circulation components. In an application for a coastal development permit, the commission typically requires specific project plans which include details of each component of the proposed project (architectural, engineering, biological, etc) and how each component may or may not impact specific coastal resources present on that component's project site. The present project description does not include the requisite detail to evaluate the scope of the impacts associated with each individual component of the proposed project. Without the

specifics, it would not be possible to determine the extent of a project's impacts on coastal resources. Please revise the project description to include specific details about each component of the project and the requisite technical information about each component.

3.6.4 Land Use Regulations subsection

The DEIR notes that "[d]evelopment of the project would be governed by City regulatory mechanisms including the following:

- A. The Newport Banning Ranch Planned Community Development Plan (NBR-PC), which would provide the zoning regulations for the Project site.
- B. The Newport Banning Ranch Master Development Plan (Master Development Plan), which would provide a general site development plan for each land use area and would establish design criteria for development of each land use within the Project site."

The DEIR mischaracterizes these "regulatory mechanisms" in the DEIR. The project applicant cannot rely on any "approval" of these regulatory mechanisms unless the City annexes the project area into its jurisdiction, the City thereafter submits an LCP amendment application to the Commission and the Commission certifies these "regulatory mechanisms" related to the project area. Without adhering to these procedures, the project's approval is subject solely to Chapter 3 policies of the Coastal Act and is entirely within the Coastal Commission's permit-issuing authority. Any alleged "regulatory mechanisms" approved by the City without receiving Coastal Commission certification will not be used as guidance in the Commission's consideration of the proposed project.

4.1 Land Use Section

Section 4-1.6 refers to an exemption issued by South Coast Regional Zone Conservation Commission for oil/gas operations—E-7-27-73-144 (March 24, 1975). Please elaborate on the specific extent of the cited exemption.

4.6 Biological Resources Section

Section 4.6-4, the Biological Resources chapter, alleges to list the permanent and temporary biological impacts of the project but completely fails to provide sufficient detail of the specific project components that cause the alleged impacts. Thus, the chapter does not provide sufficient detail to enable the general public to meaningfully consider the impacts associated with the project. Rather, the DEIR states generally the number of acres that will be impacted from the proposed development. Without specific analysis related to how each component of the proposed project impacts the biological resources, there cannot be a meaningful analysis of cumulative impacts, mitigation measures or feasible alternatives that may enable the applicant to redesign certain components to lessen any impact the project may have on the environment. This level of detail is particularly important for the Commission when it reviews projects to determine the extent of cumulative impacts from a project and its consideration of whether or not the proposal identifies the proper mitigation and/or alternatives for those impacts. Please include more specific detail regarding the site plans for each proposed structure, grading component, or other development, as defined in section 30106 of the Coastal Act, and the expected biological impact from the proposed development.

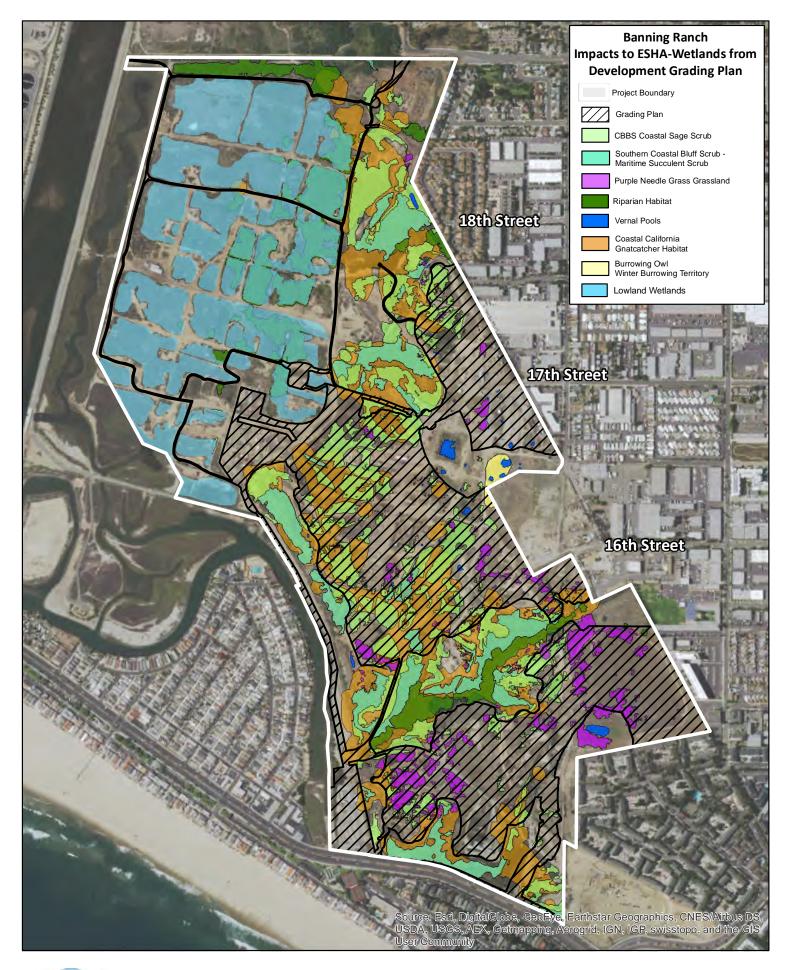
These are some of our initial concerns; we hope these issues will be addressed in the City's review of the project. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when it is submitted to the Commission for formal review. We request notification of any future activity associated with this project or related projects. Thank you for the opportunity to comment on this matter.

Sincerely,

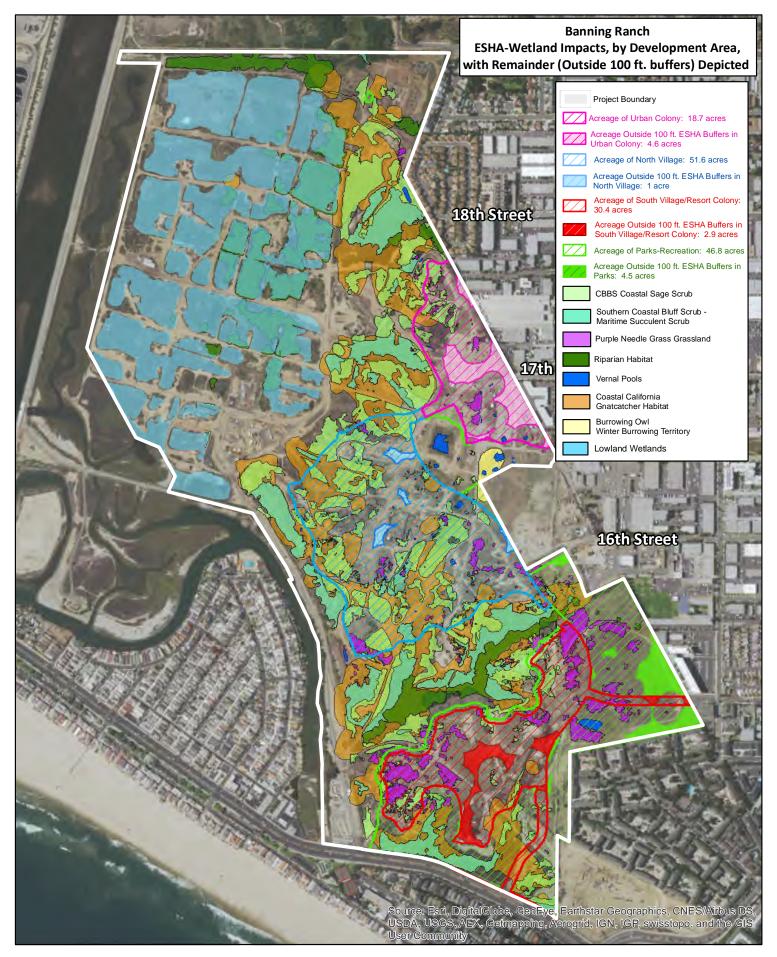
John Del Arroz

Coastal Program Analyst

Cc: State Clearinghouse









ESHA-Wetland Impacts, by Development Area, with Remainder (Outside 100 ft. buffers) Depicted

LEGAL DESCRIPTION:

PARCEL 1

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN LOTS "A" AND "B" OF SAID BANNING TRACT, WHICH POINT IS THE POINT O

INTERSECTION OF THE CENTER LINE OF NINETEENTH STREET AND THE NORTHWESTERLY LINE OF THE FIRST ADDITION TO THE NEWPORT

MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY. CALIFORNIA; THENCE SOUTH 89 DEGREES 26' 55" WEST ALONG THE NORTHERLY LINE OF SAID LOT "B", 3315,29 FEET TO THE NORTHWESTERLY CORNER OF LOT "B" OF SAID BANNING TRACT; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF LOT "B" OF SAID BANNING TRACT, THE FOLLOWING COURSES AND DISTANCES: SOUTH 1 DEGREE 45' WEST 462,00 FEET; THENCE SOUTH 34 DEGREES 15' WEST 482.95 FEET: THENCE SOUTH 6 DEGREES 15' EAST 1058.48 FEET; THENCE SOUTH 19 DEGREES 45' WEST 529.21 FEET; THENCE SOUTH 34 DEGREES 30' WEST 463.08 FEET; THENCE SOUTH 42 DEGREES 45' WEST 397.00 FEET; THENCE SOUTH 4 DEGREES 45' WEST 462.00 FEET; THENCE SOUTH 21 DEGREES 15' WEST 198.50 FEET TO THE SOUTHWEST CORNER OF LOT "B", AS SHOWN ON SAID MAP OF THE BANNING TRACT, WHICH CORNER IS ALSO STATION NO. 149 OF THE BOUNDARY LINE F RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY CALIFORNIA; THENCE SOUTH 72 DEGREES 51" 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32" 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, ecords of orange county, california; thence easterly, northeasterly and southeasterly, parallel with the said CENTER LINE OF THE SANTA ANA RIVER AND 600,00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; THENCE SOUTH 68 DEGREES 42' 20" EAST 517.33 FEET; THENCE NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; THENCE NORTH 51 DEGREES 46" EAST 405.76 FEET; THENCE NOR'TH 74 DEGREES 07' EAST 722.86 FEET; THENCE SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; THENCE SOUTH 27 DEGREES 46' EAST 498.37 FEET; THENCE SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; THENCE

SOUTH 1 DEGREE 38" 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650,00 FEET AND TANGENT TO THE LAST MENTIONED COURSE. A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY. PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIA LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST; THENCE NORTH 0 DEGREES 36" 01" WEST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 3061.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO NEWPORT MESA TRACT: THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT, 2706.70 FEET TO THE MOST WESTERLY CORNER OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT; THENCE NORTH 19 DEGREES 01' 55" EAST ALONG THE NORTHWESTERLY LINE OF THE LAST MENTIONED TRACT,

EXCEPTING THEREFROM, THAT PORTION OF LOT "B" OF SAID BANNING TRACT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EASTERLY LINE OF THE 300-FOOT STRIP OF LAND FOR SANTA ANA RIVER CHANNEL, AS DESCRIBED IN THE DEED TO THE NEWBERT PROTECTION DISTRICT, RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, WHICH POINT IS NORTH 71 DEGREES 20' EAST 510.47 FEET FROM THE SOUTHWEST CORNER OF SAID LOT "B", WHICH LAST MENTIONED CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE EASTERLY LINE OF SAID 300-FOOT STRIP OF LAND, 660 FEET; THENCE SOUTH 76 DEGREES 35' EAST 660 FEET; THENCE SOUTH 13 DEGREES 25' WEST 660 FEET; THENCE NORTH 76 DEGREES 35' WEST 650 FEET TO THE POINT OF BEGINNING, AS CONDEMNED BY THE CITY OF NEWPORT BEACH IN THE ACTION ENTITLED "CITY OF NEWPORT BEACH, A MUNICIPAL CORPORATION, PLAINTIFF VS. TOWNSEND LAND COMPANY AND OTHERS, DEFENDANTS", BEING CASE NO. 34747 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF THE FINAL JUDGMENT HAVING BEEN RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS OF ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LOT "B" IN SAID BANNING TRACT CONVEYED BY THE TOWNSEND LAND COMPANY TO THE NEWBERT PROTECTION DISTRICT FOR A RIVER CHANNEL, 300 FEET WIDE, BY DEED RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT "B" OF THE BANNING TRACT, SOUTH 84 DEGREES 45' EAST 135.64 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT "B", WHICH CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY SIDE OF SAID 300—FOOT RIGHT OF WAY, 946.75 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 42 DEGREES 45' EAST 38.70 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 19 DEGREES 45' EAST 528.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE STILL ALONG SAID WESTERLY LINE, NORTH 6 DEGREES 15' WEST 723.17 FEET TO A POINT IN THE WESTERLY LINE OF SAID 300—FOOT RIGHT OF WAY; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 34 DEGREES 15' EAST 148.48 FEET TO AN ANGLE IN SAID LINE; THENCE NORTH 1 DEGREE 45' EAST 436.44 FEET TO THE NORTHWEST CORNER OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID 300—FOOT RIGHT OF WAY; THENCE SOUTH 13 DEGREES 25' WEST 3831.55 FEET TO THE SOUTHERLY LINE OF SAID LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 45' WEST 303.08 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM, THE PORTIONS THEREOF INCLUDED WITHIN A STRIP OF LAND 30 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT WHERE THE EASTERLY BOUNDARY LINE OF THE RANCHO AS BOLSAS BETWEEN STATIONS 78 AND 79 OF THE SAID BOUNDARY LINE IS INTERSECTED BY THE LINE WHICH BEARS MORTH 13 DEGREES 26' 30" EAST FROM THE POINT ON THE SOUTH LINE OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER SECTION CORNER OF SAID SECTION, SAID BEGINNING POINT BEING ON THE SURVEYED CENTER LINE OF THE SANTA ANA—ANAHEM JOINT OUTFALL SEWER; THENCE FROM SAID POINT OF BEGINNING, SOUTH 13 DEGREES 26' 30" WEST ALONG SAID CENTER LINE TO STATION 187+74.49, BEING THE POINT ON THE SOUTH LINE OF SAID SECTION; THENCE CONTINUING SOUTH 13 DEGREES 26' 30" WEST ALONG SAID SURVEYED CENTER LINE, 2795.66 FEET TO STATION 215+70.15; THENCE SOUTH 16 DEGREES 27' 30" WEST ALONG SAID CENTER LINE, 1050.35 FEET TO A POINT 15.30 FEET SOUTH 84 DEGREES 45' EAST FROM STATION 88 OF THE RANCHO LAS BOLSAS, TOGETHER WITH THE STRIP OF LAND OF VARYING WIDTHS LYING BETWEEN THE EASTERLY LINE OF THE ABOVE DESCRIBED 30—FOOT STRIP AND THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SANTA ANA RIVER THROUGH THE NEWBERT PROTECTION DISTRICT, AS CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCELS D3-121.1 AND D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH, AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 18.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RENDERED AUGUST 4, 1965 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED "COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VS. SECURITY FIRST NATIONAL BANK, ETC., AND OTHERS" (CASE NO. 123141), A CERTIFIED COPY OF WHICH ORDER WAS RECORDED AUGUST 5, 1965 IN BOOK 7620, PAGE 215 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT B OF THE BANNING TRACT, AS SHOWN ON A MAP FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS.
MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE

OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT B; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY OF SAID LOT B, SOUTH 01 DEGREE 45' 00" WEST 462.00 FEET TO RANCHO LAS BOLSAS, STATION 75, AND SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET TO RANCHO LAS BOLSAS, STATION 74, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, SOUTH 06 DEGREES 15' 00" EAST TO THE WESTERLY LINE OF THE STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SANTA ANA, RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE INTERSECTION WITH THAT CERTAIN COURSE HEREINABOVE CITED AS "SOUTH 34 DEGREES 15' 00" WEST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, UPON, OVER AND BENEATH THE SURFACE OF SAID LAND, AT ALL TIMES TO EXPLORE FOR, EXTRACT AND REMOVE ANY OF SAID MINERALS LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228, AS AMENDED BY THE DEED AND AGREEMENT EXECUTED BY HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665, ALL IN OFFICIAL RECORDS, ORANGE COUNTY.

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN LAND AS DESCRIBED IN PARCEL 1 IN DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, ALSO BEING THE SOUTHWEST CORNER OF LOT "B" OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFERES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA, WHICH CORNER IS ALSO STATION 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES:

SOUTH 78 DEGREES 02' EAST 486.60 FEET; SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; NORTH 20 DEGREES 06' 15" EAST

539.49 FEET; NORTH 51 DEGREES 48' EAST 405.76 FEET; NORTH 74 DEGREES 07' EAST 722.86 FEET;

SOUTH 45 DEGREES 20 28" EAST 740.97 FEET; SOUTH 27 DEGREES 46' EAST 498.37 FEET; SOUTH 13 DEGREES 36' 40" EAST 820.19 FEET; SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1850,00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE O THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET UND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE FIRST ADDITION TO NEWPORT MESA TRACT RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST, WHICH POINT IS THE SOUTHEAST CORNER OF SAID PARCEL 1: THENCE SOUTH O DEGREES 36" 01" EAST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 404,46 FEET TO AN INTERSECTION WITH HE NORTHEASTERLY LINE OF THAT CERTAIN STRIP OF LAND 250 FEET IN WIDTH, AS DESCRIBED IN PARCEL 1, ARTICLE II OF SAID DEED RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE ALONG THE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND NORTHERLY LINE OF SAID PARCEL 1, ARTICLE II, THROUGH THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1300.00 FEET, THROUGH AN ANGLE OF 9 DEGREES 36' 54". A DISTANCE OF 218,16 FEET TO A LINE TANGENT THERETO; THENCE NORTH 65 DEGREES 56' WEST, TANGENT TO SAID CURVE, 667,15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394,04 FEET; THENCE NORTH 83 DEGREES 18' West, tangent to said curve, 646,66 feet to the beginning of a curve to the right; thence westerly along a curve CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT EAST THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET;

SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 8 OF MISCELLANEOUS MAPS, RECORDS OF GRANGE COUNTY, CALIFORNIA, AND 250 FEET DISTANT WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH THE NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT WESTERLY AND NORTHWESTERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES:

SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH BB DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250,00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT. angles thereto, the following courses and distances: North 66 degrees 42° 20" west 620.94 feet; North 78 degrees 02' WEST 504.89 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250.00 FEET distant northerly therefrom, measured at right angles thereto; thence westerly, parallel with the said northerly INE OF BLOCK C, EL MORO TRACT, AND 250,00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, HE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120,39 FEET; NORTH 64 DEGREES 06' 50" WEST 16.59 FEET TO A POINT IN THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL ECORDS, DRANGE COUNTY, SAID POINT BEING THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II: THENCE SOUTH 13 DEGREES 25" WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE NORTH 64 DEGREES 06' 50" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK C OF EL MORO TRACT, 16.02 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF CALIFORNIA STATE HIGHWAY; THENCE NORTH 54 DEGREES 02' WEST ALONG SAID HIGHWAY RIGHT OF WAY LINE, 145.48 FEET TO THE CENTER LINE OF SAID 300-FOOT RIVER CHANNEL EASEMENT; THENCE NORTH 13 DEGREES 25' EAST ALONG SAID CENTER LINE, 390.57 FEE TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED DATED DECEMBER 30, 1929 FROM JOSEPH BANNING JR. AND OTHERS TO JAMES H. MACKLIN, RECORDED JANUARY 29, 1930 IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 74 DEGREES 17" WEST 289.47 FEET TO A POINT IN THE SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF SAID RANCHO SANTIAGO DE SANTA ANA, WHICH POINT IS ALSO THE NORTHWEST CORNER OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 15 DEGREES 43' EAST ALONG THE SAID SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, 119.00 FEET TO THE POINT

EXCEPT ANY PORTION OR PORTIONS OF SAID ABOVE DESCRIBED LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, OR WITHIN THE EXTERIOR BOUNDARY LINES OF GOVERNMENT LOT 1, SECTION 19; GOVERNMENT LOT 1, SECTION 29, ALL IN TOWNSHIP 6 SOUTH, RANCE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE RECORDED JANUARY 20, 1962, BOOK 5993, PAGE 441, OFFICIAL RECORDS, ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF US PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 3:

A STRIP OF LAND 250 FEET WIDE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF BLOCK C OF EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK B, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR O NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS; THENCE SOUTH 64 DEGREES 06 50" EAST, ALONG THE NORTHERLY LINE OF SAID EL MORO TRACT, 154.24 FEET; THENCE CONDINUING ALONG THE LAST MENTIONED ORTHERLY LINE, SOUTH 60 DEGREES 52" 34" EAST 151.04 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SUMMIT STREET, 50.00 FEET IN WIDTH, AS SHOWN ON THE MAP OF SAID EL MORO TRACT, SAID POINT BEING IN THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON A MAP FILED IN AND ANNEXED TO THE COMPLAINT IN CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, DRANGE COUNTY: THENCE SOUTH 78 DEGREES 02' EAST ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, 517.61 FEET; THENCE CONTINUING ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, SOUTH 66 DEGREES 42' 20" EAST 644.09 FEET TO A POINT IN THE NORTHERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF DRANGE COUNTY, CALIFORNIA; THENCE EASTERLY AND NORTHEASTERLY ALONG THE NORTHERLY AND NORTHWESTERLY LINE OF SAID TRACT NO.772, THE FOLLOWING COURSES AND DISTANCES: SOUTH 88 DEGREES 25 EAST 105.91 FEET; NORTH 72 DEGREES 45' EAST 268.62 FEET; NORTH 42 DEGREES 06' EAST 228.36 FEET; NORTH 29 DEGREES 06' EAST 306.31 FEET TO A POINT IN THE SAID CENTER LINE OF THE SANTA ANA RIVER; THENCE ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, THE FOLLOWING COURSES AND DISTANCES: NORTH 20 DEGREES 06' 15" EAST 267.71 FEET; NORTH 51 DEGREES 48' EAST 117.09 FEET; NORTH 74 DEGREES 07' EAST 254.30 FEET; SOUTH 45 DEGREES 20' 28" EAST 298.02 FEET; SOUTH 27 DEGREES 46' EAST 331.04 FEET; SOUTH 13 DEGREES 35' 40" EAST 665.36 FEET; SOUTH 1 DEGREE 38' 25" WEST 1205.19 FEET; SOUTH 10 DEGREES 47" 30" EAST 116.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 19 DEGREES 20' 43" EAST; THENCE ALONG THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY. THE FOLLOWING COURSES AND DISTANCES: EASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 950.00 FEET, A DISTANCE OF 209.67 FEET; SOUTH 83 DEGREES 18' EAST, TANGENT TO SAID CURVE, 646,66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE. A DISTANCE OF 318.26 FEET; SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 216.09 FEET; SOUTH 54 DEGREES 08' 30" EAST 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS O 950.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 264.46 FEET; SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 527.80 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF LOT D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1980 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID CALIFORNIA STATE HIGHWAY NORTH 39 DEGREES 43' 45" EAST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT D OF BANNING TRACT, 265.74 FEET TO A POINT, BEING 250.00 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SAID 100-FOOT RIGH OF WAY OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 70 DEGREES 05' 30" WEST, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, 49.03 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF and as described in deed from farmers and merchants national bank of LOS angeles, trustee for anne o. Banning ND OTHERS, TO A.E.S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, PRANCE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 26 DEGREES 10' 42" WEST; THENCE ALONG THE BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 373.48 FEET, A DISTANCE OF 176.40 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND, NORTH 5 DEGREES 44' 28" WEST 104.32 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY. AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY, PARALLEL WITH THE SAID NORTHEASTERLY AND NORTHERLY LINE OF SAID STATE HIGHWAY, AND 250 FEET. DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 70 DEGREES 05' 30" WEST 376.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 194.87 FEET; NORTH 54 DEGREES 08' 30" WEST, TANGENT TO SAID CURVE, 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE. A DISTANCE OF 267.55 FEET: NORTH 65 DEGREES 56' WEST, TANGENT TO THE SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID

NORTHWESTERLY LINE OF TRACT NO. 772, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO;

ARCEL 3 CONTINUED:

THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06 WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 820.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET, AND NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF SAID EASEMENT 300.00 FEET WIDE, FOR PURPOSE OF MAINTAINING THE SANTA ANA RIVER CHANNEL; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING GENERALLY SOUTHERLY OF THE AGREED BOUNDARY LINE DESCRIBED IN EXHIBIT "E" ATTACHED TO THAT CERTAIN SETTLEMENT AND BOUNDARY LINE AGREEMENT, STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE PORTION OR PORTIONS OF SAID LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, THE PATENT FOR WHICH WAS RECORDED JUNE 28, 1884 IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND AS ESTABLISHED BY SAID HEREINABOVE DESCRIBED SETTLEMENT AND BOUNDARY LINE AGREEMENT, OR WITHIN THE EXTERIOR BOUNDARIES OF LOT 1 OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 10 WEST; AND LOT 1 OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 10 WEST; SAN BERNARDINO BASE AND MERIDIAN, THE PATENT FOR WHICH LOTS WAS RECORDED APRIL 19, 1893 IN BOOK 1, PAGE 85 OF PATENTS, RECORDS OF GRANGE COUNTY, CALIFORNIA, OR WITHIN ACCRETIONS OF SAID RANCHO

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE PARCEL OF LAND DESCRIBED AS PARCEL D3—122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH FINAL ORDER WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, DRANGE COUNTY.

ALSO EXCEPTING THEREFROM, THE PORTION INCLUDED WITHIN THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS PARCEL 73170-1 IN THAT CERTAIN FINAL DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 667539, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032786 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 30% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED FROM SAID LAND LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, AS AMENDED BY THE DEED DATED NOVEMBER 29, 1961 FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS,

ALSO EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO ORANGE COUNTY SANITATION DISTRICT, A COUNTY SANITATION DISTRICT ORGANIZED AND EXISTING PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 4700 ET SEQ. AS DISCLOSED BY ON DOCUMENT RECORDED AUGUST 30, 2006 AS INSTRUMENT NO. 2006000582598 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 70% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, BEING ALSO A PORTION OF LOT 1 OF TRACT NO. 463, AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND A PORTION OF TRACT NO. 2250, AS SHOWN ON A MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF TRACT NO. 15, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WHICH CORNER IS IN THE CENTER LINE OF SUPERIOR AVENUE, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, AND ALSO IN THE SOUTHEASTERLY LINE OF SAID LOT D IN THE BANNING TRACT: THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. 15, AND ALONG THE SOUTHWESTERLY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, 3691,50 FEET TO A POINT IN THE EASTERLY LINE OF WHITTIER AVENUE, 60 FEET IN WIDTH, AS SHOWN ON SAID MAP OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 0 DEGREES 36" 01" EAST ALONG THE SOUTHERLY PROLONGATION OF THE SAID EASTERLY LINE OF WHITTIER AVENUE, SAID PROLONGATION BEING THE EASTERLY LINE OF PARCEL 1 AS DESCRIBED IN DEED EXECUTED BY HANCOCK BANNING UR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, 3465.51 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE ON A CURVE CONCAVE TO THE SOUTHWEST, 250.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY (THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT OF INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250,00 FEET DISTANT THEREFROM MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1300.00 FEET, 49.39 FEET; THENCE SOUTH 54 DEGREES 08' 30" EAST, ANGENT TO SAID CURVE, 387.05 FEET TO BEGINNING OF CURVE TO THE LEFT: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, 194,87 FEET; THENCE SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 376.41 FEET TO A POINT IN THE WESTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM THE FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A. E. S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 422B, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE ALONG THE WESTERLY, NORTHERLY AND NORTHEASTERLY BOUNDARY LINE OF SAID 2.7827-ACRE PARCEL, THE FOLLOWING COURSES AND DISTANCES: NORTH 5 DEGREES 44' 28" WEST 160.43 FEET TO HE MOST WESTERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS NORTH 20 DEGREES 20' 15" WEST; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 450.00 FEET, 235.10 FEET; THENCE NORTH 39 DEGREES 43" 45" EAST, TANGENT TO THE LAST MENTIONED CURVE, 75.42 FEET TO THE MOST NORTHERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS SOUTH 29 DEGREES 30' 33" WEST; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 730,00 FEET, A DISTANCE OF 130,21 FEET; THENCE SOUTH 50 DEGREES 16' 15" EAST, TANGENT TO THE LAST MENTIONED CURVE, 122.00 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SUPERIOR AVENUE, 60 FEET IN WIDTH, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, WHICH POINT BEARS NORTH 39 DEGREES 43' 45" EAST 35.24 FEET FROM THE MOST EASTERLY CORNER OF LOT 1 IN BLOCK 1 OF SAID TRACT NO. 15; THENCE SOUTH 50 DEGREES 16' 15" EAST 30.00 FEET TO THE CENTER LINE OF SAID SUPERIOR AVENUE; THENCE ALONG THE CENTER LINE OF SAID SUPERIOR AVENUE, NORTH 39 DEGREES 43' 45" EAST

EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND: THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFERES FILED APRIL 14, 1880 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 80 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 28" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH O DEGREES 38" 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING: THAT PORTION OF LOT 1 AND ALL OF LOT 2 OF TRACT NO. 463 AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF FIFTEENTH STREET WITH THE CENTER LINE OF MONROVIA AVENUE, AS SHOWN ON A MAP RECORDED IN BOOK 65, PAGES 31 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 0 DEGREES 37' 24" EAST, ALONG THE CENTER LINE OF SAID MONROVIA AVENUE, 440.93 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT NO. 463; THENCE NORTH 29 DEGREES 26' 4.3" WEST ALONG SAID NORTHEASTERLY LINE, 272.61 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 29 DEGREES 26' 4.3" EAST ALONG SAID NORTHEASTERLY LINE, 1288.43 FEET TO THE CENTER LINE OF SUPERIOR AVENUE; THENCE NORTH 50 DEGREES 16' 45" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN A DEED TO A. E. S. CHAFFEY AND OTHERS, RECORDED IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND THE SOUTHEASTERLY PROLONGATION THEREOF, 152.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 730.00 FEET; THENCE NORTHWESTERLY 130.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 13' 12" TO A POINT IN THE NORTHEASTERLY LINE OF PARCEL 1, AS DESCRIBED IN A DEED RECORDED IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 63 DEGREES 11' 16" WEST 1160.70 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 100.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LAND DESCRIBED IN ANNEXATION NO. 54 TO THE CITY OF NEWPORT BEACH, DECREMBER 30, 1963; THENCE ALONG SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" EAST 1110.58 FEET TO THE TRUE P

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, DRANGE COUNTY.

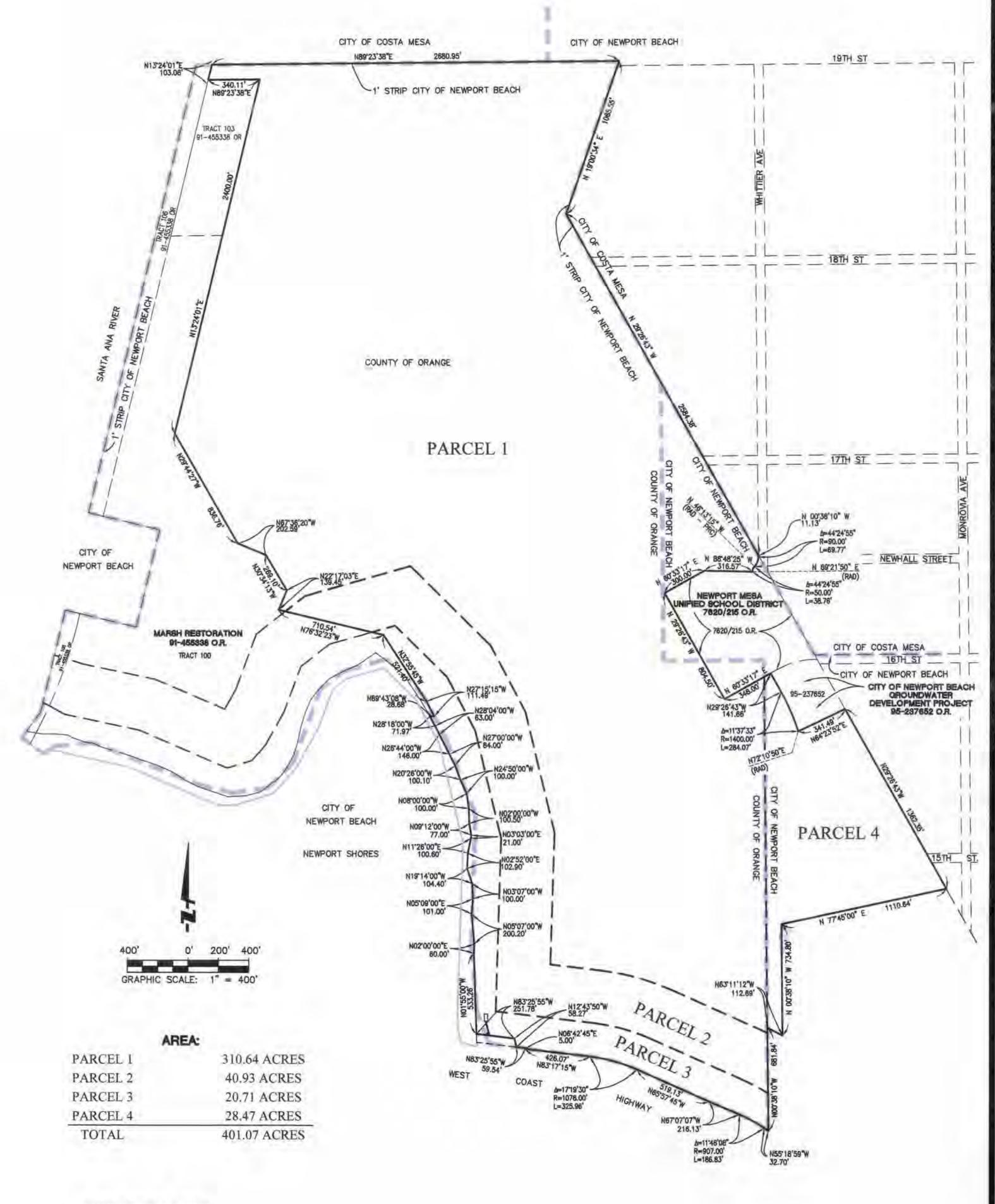
ALSO EXCEPTING THEREFROM, ANY PORTION INCLUDED WITHIN WHITTIER AVENUE AND SIXTEENTH STREET, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE LAND DESCRIBED IN THE DEED TO THE CITY OF NEWPORT BEACH, RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237652 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND, AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

ALSO EXCEPTING THEREFROM ALL THE MINERALS, INCLUDING WITHOUT LIMITATION ALL CIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER THE HEREINAFTER DESCRIBED LAND LYING 500 VERTICAL FEET BELOW THE SURFACE OF SAID LAND WAS QUITCLAIM TO ARMSTRONG PETROLEUM CORPORATION, A CALIFORNIA CORPORATION BY AN INSTRUMENT RECORDED MAY 5, 1997 AS INSTRUMENT NO. 19970206789 OF OFFICIAL RECORDS

CONSTRAINTS MAP



SURVEYOR'S NOTE:

THE LEGAL DESCRIPTIONS FOR THE PARCELS SHOWN ON THIS MAP FORM A CONTIQUOUS PARCEL AND DO NOT RESULT IN ANY GAPS, GORES, OR OVERLAPS.

RECORD DATA:

THE INFORMATION SHOWN HEREON WAS COMPILED FROM AVAILABLE PUBLIC RECORDS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, IT IS NOT THE RESULTS OF A FIELD SURVEY.

PREPARED UNDER MY DIRECTION:

JERRY L. USELTON, L.S. 5347

UCENSE EXPIRES 12/31/2011



BOUNDARY PLAT

3030 SATURN STREET, SUITE 101

BREA, CALIFORNIA 92821

NEWPORT/BANNING RANCH
NEWPORT BEACH, COUNTY OF ORANGE
STATE OF CALIFORNIA
AREA ENERGY, LLC

FUSCOE

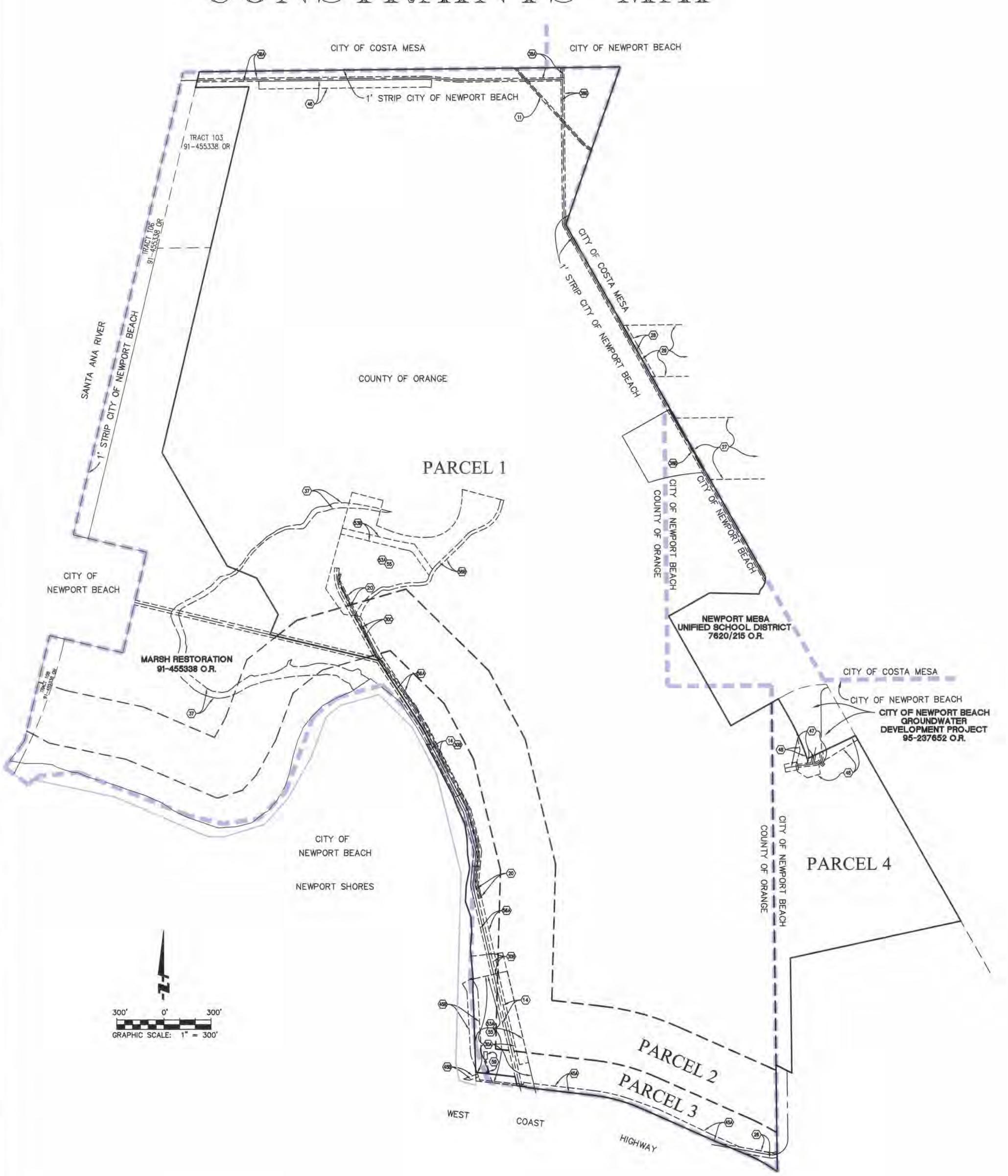
16795 Von Karman, Suite 100

Irvine, California 92606
tel 949.474.1960 ° fax 949.474.5315

www.fuscoe.com

DATE: JAN. 7, 2010
SCALE: 1" = 400'
FN: 82101cnst.dwg
JN: 821.0102
DRAWN BY: R.J.L
CHECKED BY: J.L.U.
SHEET 1 OF 2

CONSTRAINTS MAP



TITLE REPORT:

BOUNDARY AND EASEMENTS SHOWN HEREON ARE PER FIRST AMERICAN TITLE COMPANY FOR ORDER NO. 9538545 DATED OCTOBER 6, 2010. THE ITEMS REFERRED TO BELOW ARE EXCLUSIONS TO COVERAGE AS CITED IN SAID REPORT.

- THE LIEN OF SUPPLEMENTAL TAXES
- 2. INTENTIONALLY DELETED

AFFECTS:

- 3. RIGHTS OF THE PUBLIC IN AND TO THAT PORTION OF THE LAND LYING WITHIN ANY ROAD, STREET OR HIGHWAY.
- 4. Public trust easement for commerce, navigation and fisheries over any tidelands, filled or unfilled, in the BED of THE SANTA ANA RIVER OR IN THE BED OF ANY TIDAL SLOUGH WITHIN THE BOUNDARIES OF THE RANCHO SAN JOAQUIN.
- PUBLIC EASEMENT FOR FISHING, BOATING AND RECREATION OVER ANY PORTIONS WHICH ARE SUBMERGED OR WHICH MAY BECOME SUBMERGED, AND WHICH ARE CONNECTED TO A NAVIGABLE WATERWAY, INCLUDING, BUT NOT LIMITED TO, THE TRIBUTARY SLOUGH WHICH LIES WITHIN THE BOUNDARIES OF SAID RANCHO SANTIAGO DE SANTA ANA. NOTE: NOT PLOTTABLE
- B. THE RIGHTS AND RIGHTS OF WAY AFFECTING A PORTION OF SAID LAND, RELATING TO DRAINAGE DITCHES AND CONSTRUCTION AND MAINTENANCE OF THE SANTA ANA RIVER CHANNEL, AS SET FORTH IN THE AGREEMENT DATED SEPTEMBER 6, 1910, BETWEEN TALBERT DRAINAGE DISTRICT AND NEWBERT PROTECTION DISTRICT, RECORDED OCTOBER 6, 1910 IN BOOK 193, PAGE 371 OF DEEDS,
- RIGHTS OF WAY ACROSS AND ALONG A PORTION OF PARCELS 2 AND 3, FORMERLY IN TRACT NO. 15, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, FOR UNDERGROUND PIPE LINES FOR THE DISTRIBUTION OF WATER, GAS, LIGHT AND OIL FOR DOMESTIC AND AGRICULTURAL PURPOSES, AS RESERVED IN DEEDS FROM LOS ANGELES TRUST & SAVINGS BANK, RECORDED NOVEMBER 7, 1914 IN BOOK 262, PAGES 117 AND 119 OF DEEDS, AND MARCH 23, 1915 IN BOOK 274, PAGE 147 OF DEEDS, ALL RECORDS OF ORANGE COUNTY. NOTE: NOT PLOTTABLE
- AN EASEMENT FOR STATE HIGHWAY AND INCIDENTAL PURPOSES, RECORDED JANUARY 18, 1924 IN BOOK 508, PAGE 65 OF DEEDS.

STATE OF CALIFORNIA
A PORTION OF SAID LAND, TOGETHER WITH THE RIGHT TO EXTEND EXCAVATION AND EMBANKMENT SLOPES BEYOND THE LIMITS OF SAID STATE HIGHWAY NOTE: DOES NOT AFFECT

AN EASEMENT TO CONSTRUCT, LAY OPERATE, MAINTAIN AND REPAIR A 12-INCH DIAMETER WATER PIPELINE AND INCIDENTAL PURPOSES, RECORDED JULY 26, 1928 IN BOOK 182, PAGE 237 OF OFFICIAL RECORDS. IN FAVOR OF: CITY OF NEWPORT BEACH

NOTE: PORTION OF SAID EASEMENT WAS QUITCLAIMED BY DEED RECORDED SEPTEMBER 25, 1990 AS INSTRUMENT NO. 90-511496

10. AN EASEMENT FOR SEWER PURPOSES AND FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL AND INCIDENTAL PURPOSES, RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS.

HE WESTERLY PORTION OF THE HEREIN DESCRIBED LAND AND OVER A STRIP OF LAND 300 FEET WIDE, ACROSS THE WESTERLY PORTION OF SAID LAND. NOTE: DOES NOT AFFECT. EASEMENT LIES IN RIVER

(11) AN EASEMENT FOR PIPE LINES FOR THE CONVEYANCE OF WATER AND INCIDENTAL PURPOSES, RECORDED MAY 13, 1933 IN BOOK 611, PAGE 277 OF OFFICIAL RECORDS.

NEWPORT MESA IRRIGATION DISTRICT OF ORANGE COUNTY, CALIFORNIA

A PORTION OF PARCEL 1 12. AN EASEMENT FOR STATE HIGHWAY AND DRAINAGE DITCH PURPOSES AND INCIDENTAL PURPOSES, RECORDED APRIL 20, 1936 IN

BOOK 822, PAGE 48 OF OFFICIAL RECORDS.

NOTE: DOES NOT AFFECT, EASEMENT LIES IN PACIFIC COAST HIGHWAY

PORTIONS OF SAID LAND

13. AN EASEMENT FOR STATE HIGHWAY AND DRAINAGE DITCH PURPOSES AND INCIDENTAL PURPOSES, RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS.

A PORTION OF PARCEL

NOTE: DOES NOT AFFECT. EASEMENT LIES IN PACIFIC COAST HIGHWAY

(14) AN EASEMENT FOR SANITARY SEWER PIPE LINE AND PRIVATE ROAD PURPOSES AND SANITARY SEWER PIPELINE AND WATER PIPE LINES AND INCIDENTAL PURPOSES, RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS. AFFECTS: A PORTION OF SAID PARCELS 1, 2, AND 3 AND OVER A STRIP OF LAND 30 FEET IN WIDTH AND OVER A STRIP OF

NOTE: THE PRESENT OWNERSHIP OF SAID EASEMENTS AND/OR RIGHTS OF WAY HAS NOT BEEN DETERMINED. THE RIGHT TO CONSTRUCT DRAINAGE DITCHES, CHECK DAMS, ETC. ON A PORTION OF LAND ADJOINING STATE HIGHWAY, AS

CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED NOVEMBER 9, 1937 IN BOOK 918, PAGE 93 OF OFFICIAL RECORDS,

NOTE: AFFECTS PARCELS 2 AND 3 AND THE LOCATION AND EXTENT OF THE RIGHTS REFERRED TO ABOVE WERE NOT SPECIFICALLY

- 16. THE EFFECT OF A MAP PURPORTING TO SHOW THE LAND AND OTHER PROPERTY, FILED IN BOOK 12, PAGE 25; IN BOOK 27, PAGE 47; IN BOOK 65, PAGE 31; IN BOOK 121, PAGE 32; AND IN BOOK 125, PAGE 25 ALL OF RECORD OF SURVEYS.
- 17. AN OIL AND GAS LEASE RECORDED SEPTEMBER 6, 1951 IN BOOK 2227, PAGE 139 AND AUGUST 10, 1945 IN BOOK 1323, PAGE 429, BOTH OF OFFICIAL RECORDS.
- 18. A SUBSURFACE OIL AND GAS LEASE, EXECUTED BY JERGINS OIL COMPANY, A CALIFORNIA CORPORATION AS LESSOR AND HUMBLE OIL & REFINING COMPANY, A CORPORATION AS LESSEE, RECORDED JANUARY 3, 1952 IN BOOK 2270, PAGE 282 OF OFFICIAL
- ORANGE, ENTITLED "COUNTY SANITATION DISTRICT NO. 1 OF ORANGE COUNTY, CALIFORNIA VS. FARMERS AND MERCHANTS NATION BANK OF LOS ANGELES, AS TRUSTEE, AND OTHERS" (CASE NO. 59960), TO CONDEMN AN EASEMENT FOR RIGHT OF WAY FOR A PUBLIC SANITARY SEWER, OVER, ON, UPON, IN AND THROUGH THE WESTERLY PORTION OF PARCELS 3 AND 4. (20) AN EASEMENT FOR PIPE LINES FOR THE TRANSPORTATION OF OIL, ETC. AND INCIDENTAL PURPOSES, RECORDED JULY 18, 1955 IN

19. AN ACTION COMMENCED FEBRUARY 24, 1953 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF

BOOK 3143, PAGE 120 OF OFFICIAL RECORDS. STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD GASOLINE COMPANY

A PORTION OF PARCELS 2 AND 3

- ANY RIGHTS OF WAY FOR PIPE LINES OF PACIFIC COAST GASOLINE COMPANY AND OF WILSHIRE OIL COMPANY OF CALIFORNIA, AS DISCLOSED IN THE QUITCLAIM DEEDS TO ORANGE COUNTY FLOOD CONTROL DISTRICT, RECORDED JANUARY 7, 1959 IN BOOK 4540. PAGE 98 OF OFFICIAL RECORDS, AND JULY 7, 1959 IN BOOK 4789, PAGE 163 OF OFFICIAL RECORDS, RESPECTIVELY, ALL OF
- 22. AN EASEMENT FOR POLE LINES AND INCIDENTAL PURPOSES, RECORDED APRIL 5, 1961 IN BOOK 5679, PAGE 247 OF OFFICIAL NOTE: DOES NOT AFFECT
- COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, TERMS AND PROVISIONS AS CONTAINED IN THE DEEDS DATED AUGUST 1, 1958 AND RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, (RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS) AND DATED NOVEMBER 29, 1961, FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ALL OF ORANGE COUNTY, TO WHICH RECORDS REFERENCE IS MADE FOR FULL PARTICULARS, BUT DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE TITLE 42, SECTION 3604(C), OF THE UNITED
- 24. THE EFFECT ON A PORTION OF SAID LAND OF A NOTICE OF APPLICATION FOR OIL AND GAS LEASE, DATED MAY 7, 1970, EXECUTED BY HALSTEAD m. PEMBROKE, RECORDED MAY 8, 1970 IN BOOK 9285, PAGE 531 OF OFFICIAL RECORDS, ORANGE
- 25. THE EFFECT ON PARCEL 3 OF AN ACTION TO QUIET TITLE, COMMENCED AND NOW PENDING IN THE SUPERIOR COUNTY OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE, ENTITLED "HALSTEAD M. PEMBROKE VS. STATE OF CALIFORNIA AND OTHERS"

(26) AN EASEMENT FOR STORM DRAIN AND INCIDENTAL PURPOSES, RECORDED AUGUST 28, 1974 IN BOOK 11231, PAGE 650 OF OFFICIAL

A STRIP OF LAND 35.00 FEET IN WIDTH, OVER THAT PORTION OF LOT 1 OF TRACT NO. 2250 IN SAID

COUNTY OF ORANGE, AS PER MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND THAT PORTION OF LOT D OF THE BANNING TRACT, PER MAP OF SAID TRACT ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA.

NOTE: SAID DEED RECITES, AMONG OTHER THINGS, AS FOLLOWS:

"THIS EASEMENT SHALL BE DEEMED ABANDONED AND SHALL REVERT TO GRANTOR IF IT SHALL NOT BE IMPROVED AND UTILIZED FOR THE PURPOSES SPECIFIED ABOVE WITHIN A PERIOD OF THREE (3) YEARS FROM THE DATE HEREOF, OR IF SO IMPROVED AND UTILIZED, IS THEREAFTER NO LONGER SO USED."

SAID EASEMENT IS CURRENTLY BEING USED FOR THE PURPOSES REFERRED TO ABOVE.

- (27) AN AGREEMENT DATED JULY 18, 1977, EXECUTED BY BEECO, LTD., AS OWNER, AND EDWARD G. KADANE, AS THE CO-TRUSTEE OF THE ESTATE OF MIKE KADANE, AND OTHERS, WHEREIN SAID PARTIES AGREE WITH THE OWNERS OF ADJOINING PROPERTY, THA FOLLOWING THE DEVELOPMENT OF SAID ADJACENT LAND, OWNER WILL CONTINUE TO ACCEPT SURFACE WATER FROM SAID ADJOINING PROPERTY, RECORDED FEBRUARY 2, 1978 IN BOOK 12553, PAGE 74 OF OFFICIAL RECORDS, ORANGE COUNTY.
- (28) AN EASEMENT FOR DRAINAGE AND WATER TRANSMISSION PURPOSES, AS CONVEYED TO BEECO, LTD., A CORPORATION, UPON THE TERMS AND CONDITIONS CONTAINED THEREIN, AS MORE FULLY SET FORTH IN AN INSTRUMENT RECORDED MAY 6, 1981 IN BOOK 14047, PAGE 789 OF OFFICIAL RECORDS, ORANGE COUNTY; RECORD REFERENCE IS HEREBY MADE FOR FULL

NOTE: THE ABUTTING PORTION OF THE ADJACENT PROPERTY BENEFITING FROM SAID AGREEMENT IS SHOWN HEREON.

THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "SURFACE WATER ACCEPTANCE AGREEMENT", EXECUTED BY AND BETWEEN BEECO, LTD. AND WHITTIER AVENUE DEVELOPMENT CORPORATION RECORDED MAY 6, 1981 IN BOOK 14047, PAGE 803 OF OFFICIAL RECORDS. NOTE: THE ABUTTING PORTION OF THE ADJACENT PROPERTY BENEFITING FROM SAID AGREEMENT IS SHOWN HEREON.

- (30) SURFACE EASEMENTS AND SUBSURFACE PASS-THROUGH RIGHTS OF WAY, IN FAVOR OF THE CITY OF NEWPORT BEACH, AS ORDERED, ADJUDGED AND DECREED UNDER CASE NO. 35-58-16 IN SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE, RECORDED JUNE 25, 1982 AS INSTRUMENT NO. 82-219742 OF OFFICIAL RECORDS.
 - AFFECTS PORTIONS OF THE LAND.

3. OIL TRANSMISSION PIPELINE AND ACCESS EASEMENT C, OIL TRANSMISSION PIPELINE AND ACCESS EASEMENT

31. AN UNRECORDED CONTRACT, DATED NOVEMBER 1, 1943, BY AND BETWEEN THE CITY OF NEWPORT BEACH AND D.W. ELITE, AS SUBSEQUENTLY AMENDED BY AN UNRECORDED INSTRUMENT DATED JANUARY 31, 1955, (BY AND BETWEEN THE CITY OF NEWPORT BEACH AND MONTEREY OIL COMPANY AND HUMBLE OIL AND REFINING COMPANY), AND AS FURTHER AMENDED BY AND UNRECORDED INSTRUMENT DATED OCTOBER 30, 1968, (BY AND BETWEEN THE CITY OF NEWPORT BEACH AND ARMSTRONG PETROLEUM COMPANY), UPON TERMS, COVENANTS AND CONDITIONS THEREIN CONTAINED, AS DISCLOSED BY A QUITCLAIM DEED RECORDED JANUARY 27, 1983 AS INSTRUMENT NO. 83-121625 OF OFFICIAL RECORDS, AS CORRECTED BY AN INSTRUMENT RECORDED APRIL 12, 1983 AS INSTRUMENT NO. 83-151675 OF OFFICIAL RECORDS.

NOTE: BY THE ABOVE MENTIONED QUITCLAIM DEED, EXECUTED BY ARMSTRONG PETROLEUM COMPANY, IN FAVOR OF THE CITY OF NEWPORT BEACH, THE EFFECT OF SAID UNRECORDED CONTRACT, AS AMENDED, WAS PURPORTEDLY LIMITED TO PORTIONS OF THE LAND AS MORE PARTICULARLY DESCRIBED THEREIN, UPON ADDITIONAL COVENANTS AND CONDITIONS THEREIN CONTAINED.

- 32. AN "ASSIGNMENT OF INTEREST IN HYDROCARBON PRODUCTION PROCEEDS", BY MOBIL OIL CORPORATION AND ARMSTRONG PETROLEUM CORPORATION, RECORDED OCTOBER 27, 1983 AS INSTRUMENT NO. 83-474337 OF OFFICIAL RECORDS.
- NOTE: SAID AGREEMENT BEGAN ON OCTOBER 27, 1983 AT 7:00 AM AND TERMINATED AT 7:00 AM ON NOVEMBER 15, 1994. 33. A DECLARATION OF TAKING FOR SANTA ANA RIVER FLOOD CONTROL PROJECT ON PORTIONS OF THE HEREIN DESCRIBED LAND,
- ENTERED NOVEMBER 7, 1983 IN ACTION IN THE UNITED STATES DISTRICT COURT, FOR THE CENTRAL DISTRICT OF CALIFORNIA, ENTITLED "UNITED STATES OF AMERICA VS. 236.08 ACRES OF LAND, MORE OR LESS, SITUATED IN ORANGE COUNTY, STATE OF CALIFORNIA, AND DEECO, LTD., AND OTHERS, DEFENDANTS", CASE NO. CIVIL 83-7199, A CERTIFIED COPY OF WHICH DECLARATION WAS RECORDED DECEMBER 20, 1983 AS DOCUMENT NO. 83-576485 OF OFFICIAL RECORDS, ORANGE COUNTY; FOR A TEMPORARY EASEMENT AND RIGHT OF WAY FOR ANIMAL TRAPS AND TIDAL RANGE INSTRUMENTATION, AS MORE PARTICULARLY SET FORTH IN SAID DECLARATION, FOR A PERIOD OF 12 MONTHS, BEGINNING WITH THE DATE OF POSSESSION BY THE UNITED STATES.
- NOTE: DATE OF POSSESSION UNDER SAID DECLARATION IS NOT DISCLOSED BY OFFICIAL RECORDS. .34. THE EFFECT OF AN INSTRUMENT ENTITLED "MOBIL OIL CORPORATION, NOTICE OF INTENT TO PRESERVE MINERAL RIGHTS" RECORDED AUGUST 1, 1985 AS INSTRUMENT NO. 85-283554 OF OFFICIAL RECORDS; REFERENCE BEING MADE TO THE RECORD THEREOF FOR
- 35. AN EASEMENT FOR SUBSURFACE OIL DRILLING, PASS-THROUGH AND PRODUCTION PURPOSES, IN FAVOR OF THE CITY OF NEWPORT BEACH, AS SET FORTH IN THE "SECOND AMENDED FINAL ORDER OF CONDEMNATION UPON JUDGMENT BY COURT FOLLOWING DEFAULT, UNDER CASE NO. 34-86-91 IN SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE, RECORDED SEPTEMBER 4, 1986 AS INSTRUMENT NO. 86-403435 OF OFFICIAL RECORDS.

NOTE: DOES NOT AFFECT SUBJECT PROPERTY

- 38. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "SETTLEMENT AND BOUNDARY LINE AGREEMENT", STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 EXECUTED BY AND BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION AND THE CITY OF NEWPORT BEACH, AS TRUSTEE AND INDIVIDUALLY, AND MOBIL OIL CORPORATION, A CORPORATION ORGANIZED UNDER THE LAWS OF DELAWARE, AND RANCHO SANTIAGO PARTNERSHIP, A GENERAL PARTNERSHIP ORGANIZED UNDER THE LAWS OF CALIFORNIA RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-486419 OF OFFICIAL RECORDS.
- (37) EASEMENTS AND RIGHTS AS RESERVED BY THE STATE OF CALIFORNIA AND BY THE CITY OF NEWPORT BEACH IN THOSE CERTAIN DEEDS SET FORTH IN PARAGRAPHS 2(B) AND 2(C) IN AN INSTRUMENT RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF OFFICIAL RECORDS, INCLUDING THE RESERVATION BY THE STATE OF CALIFORNIA OF ANY EASEMENT ARISING OUT OF CERTAIN COURT CASE DECISIONS (MORE PARTICULARLY IDENTIFIED IN SAID INSTRUMENT) WITH RESPECT TO THE BOHN-MACK SLOUGH, AS MORE PARTICULARLY DESCRIBED IN SAID INSTRUMENT.
- (38) AN EASEMENT FOR WATER PIPELINE AND INCIDENTAL PURPOSES, RECORDED AUGUST 7, 1990 AS INSTRUMENT NO. 90-417345 OF OFFICIAL RECORDS.

CITY OF HUNTINGTON BEACH AFFECTS: A PORTION OF PARCEL 1

NOTE: AN INSTRUMENT ENTITLED "AMENDMENT OF EASEMENT, LICENSE AGREEMENT AND QUITCLAIM PREAMBLE" RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237651 OF OFFICIAL RECORDS; REFERENCE BEING MADE TO THE RECORD THEREOF FOR

- 39. AN INSTRUMENT ENTITLED "DEPARTMENT OF THE ARMY RIGHT-OF-ENTRY FOR CONSTRUCTION AGREEMENT" DATED JULY 26, 1990, BY AND BETWEEN THE UNITED STATES OF AMERICA ARMY CORPS OF ENGINEERS, MOBIL OIL CORPORATION, AND RANCHO SANTIAGO PARTNERSHIP, PERTAINING TO WETLANDS RESTORATION AND PRESERVATION, ENVIRONMENTAL MITIGATION, AND CHANNEL WIDENING FOR FLOOD CONTROL PURPOSES, UPON THE SUMS, TERMS, PROVISIONS, COVENANTS, CONDITIONS AND EASEMENTS THEREIN CONTAINED, RECORDED FEBRUARY 5, 1991 AS INSTRUMENT NO. 91-054529 OF OFFICIAL RECORDS; REFERENCE HEREBY MADE TO SAID INSTRUMENT FOR FURTHER PARTICULARS.
- 40. AN UNRECORDED "SELL REAL PROPERTY CONTRACT", DATED MARCH 23, 1990, BY AND BETWEEN THE UNITED STATES OF AMERICA INSTRUMENT NO. 91-148567 OF OFFICIAL RECORDS.
- 41. NOTICE OF PENDENCY OF ACTION RECORDED APRIL 1, 1991 AS INSTRUMENT NO. 91-148567 OF OFFICIAL RECORDS.
- 42. UNRECORDED LEASE DATED MARCH 19, 1945, EXECUTED BY CITY OF SANTA ANA AS LESSOR AND D.W. ELITE AS LESSEE, AS DISCLOSED BY US PENDENS RECORDED APRIL 1, 1991 AS INSTRUMENT NO. 91-148567 OF OFFICIAL RECORDS.
- A LOCATION MAP PREPARED BY WILLIAMSON & SCHMID, DATED NOVEMBER 15, 1985, APPROVED BY GERALD F. OLDENBURG, L.S.
- NOTE: SHOWS MISCELLANEOUS PHYSICAL CONSTRAINTS.

AFFECTS:

AFFECTS PORTIONS OF THE LAND

- 44. THE EFFET OF THE RECITALS ON A CONSTRAINT MAP PREPARED BY WILLIAMSON AND SCHMID, DATED NOVEMBER 1985, APPROVED
- AN EASEMENT FOR CONSTRUCTION OF EXCAVATION AND/OR EMBANKMENT SLOPES AND DRAINAGE AND INCIDENTAL PURPOSES, RECORDED JANUARY 14, 1894 AS INSTRUMENT NO. 94-0032786 OF OFFICIAL RECORDS.
 - THE STATES OF CALIFORNIA A PORTION OF PARCELS 2 TO 3.
 - A. THE CONSTRUCTION OF EXCAVATION AND/OR EMBANKMENT SLOPES
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "OPEN SPACE DEED RESTRICTION", EXECUTED BY AND BETWEEN MOBIL OIL CORPORATION, A NEW YORK CORPORATION AND RANCHO SANTIAGO PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP RECORDED APRIL 3, 1995 AS INSTRUMENT NO. 95-0139172 OF OFFICIAL RECORDS.
- (47) THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "STORM DRAIN PIPELINE EASEMENT AND MAINTENANCE AGREEMENT", EXECUTED BY AND BETWEEN THE CITY OF NEWPORT BEACH, MOBIL OIL CORPORATION, A NEW YORK CORPORATION AND RANCHO SANTIAGO PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237649 OF OFFICIAL RECORDS.
- 48. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "SLOPE EASEMENT AND MAINTENANCE AGREEMENT",
 EXECUTED BY AND BETWEEN THE CITY OF NEWPORT BEACH, MOBIL OIL CORPORATION, A NEW YORK CORPORATION AND RANCHO
 SANTIAL PERSONNEL PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237650 OF
- 49. THE RIGHT OF THE UNITED STATES GOVERNMENT TO ESTABLISH, OPERATED AND MAINTAIN THE SANTA ANA RIVER MARSH
 RESTORATION PROJECT, AS DISCLOSED BY A JUDGMENT FOR JUST COMPENSATION, THE UNITED STATES DISTRICT COURT FOR THE
 CENTRAL DISTRICT OF CALIFORNIA, CASE NO. CV 91—3991—1H, A CERTIFIED COPY OF WHICH WAS RECORD JUNE 21, 1995 AS
- INSTRUMENT NO. 95-0262683 OF OFFICIAL RECORDS. 50. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "ASSIGNMENT OF OVERRIDING ROYALTY INTEREST", RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016860 OF OFFICIAL RECORDS.
- 51. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED QUITCLAIM RECORDED DECEMBER 20, 2005 AS INSTRUMENT
- 52. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "SURFACE USE QUITCLAIM DEED (NBR LANDS)" RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016863 OF OFFICIAL RECORDS.
- THE TERMS, PROVISIONS AND EASEMENT(S) CONTAINED IN THE DOCUMENT ENTITLED SURFACE USE EASEMENT AGREEMENT RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016864 OF OFFICIAL RECORDS.
- 54. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED MEMORANDUM OF SURFACE USE LICENSE (SURFACE OWNER LANDS) RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016865 OF OFFICIAL RECORDS.
- THE TERMS, PROVISIONS AND EASEMENT(S) CONTAINED IN THE DOCUMENT ENTITLED "EASEMENT AND RIGHT-OF-WAY AGREEMENT", RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016866 OF OFFICIAL RECORDS.
- THE TERMS, PROVISIONS AND EASEMENT(S) CONTAINED IN THE DOCUMENT ENTITLED JOINT USE EASEMENT AGREEMENT RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016867 OF OFFICIAL RECORDS.

B. BLUFF ROAD

- 57. THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "MEMORANDUM OF PURCHASE OPTION", RECORDED DECEMBER 20, 2005 AS INSTRUMENT NO. 2005001016868 OF OFFICIAL RECORDS.
- THE TERMS AND PROVISIONS CONTAINED IN THE DOCUMENT ENTITLED "MEMORANDUM OF AGREEMENT", EXECUTED BY AND BETWEEN CHEROKEE NEWPORT BEACH LLC, A DELAWARE LIMITED LIABILITY COMPANY AND AERA ENERGY LLC, A CALIFORNIA LIMITED LIABILITY COMPANY RECORDED DECEMBER 21, 2005 INSTRUMENT NO. 2005001019176 OF OFFICIAL RECORDS.
- AN EASEMENT FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, RECORDED JULY 23, 2008 AS INSTRUMENT NO. 2008000351478 OF OFFICIAL RECORDS.

IN FAVOR OF: SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS

- 50. WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORD
- 61. RIGHTS OF PARTIES IN POSSESSION.

EASEMENT PLAT

CONSTRAINTS MAP

NEWPORT/BANNING RANCH STATE OF CALIFORNIA

EXHIBIT 26 ENGINEERING 16795 Von Karman, Suite 100 Irvine, California 92606

tel 949.474.1960 ° fax 949.474.5315

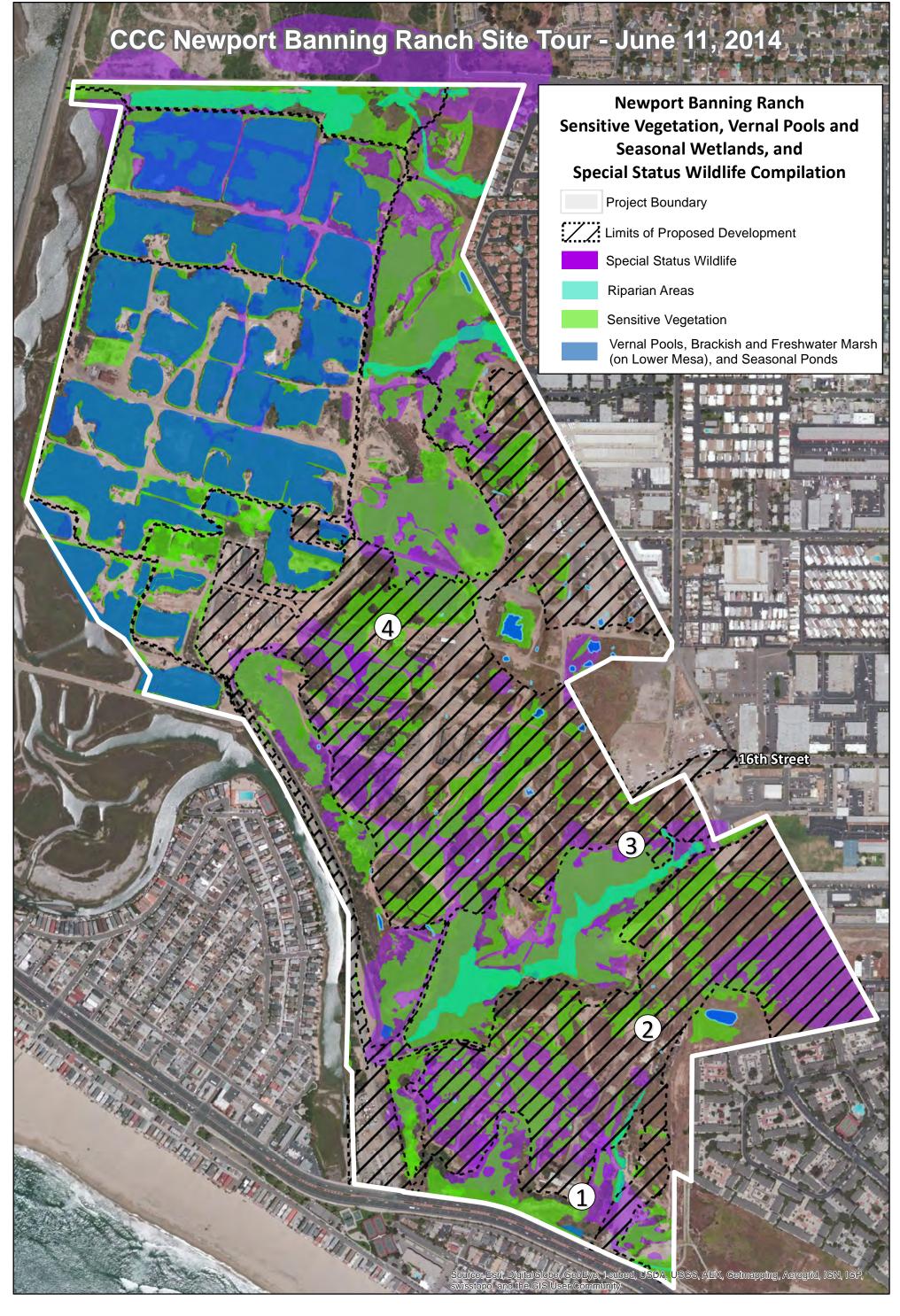
www.fuscoe.com

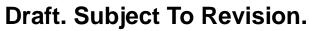
SCALE: 1" = 300' FN: 82101cnst.dwg JN: 821.01.02 DRAWN BY: R.J.L. CHECKED BY: J.L.U. SHEET 2 OF 2

DATE: JAN. 7, 2010

5-13-032

NEWPORT BEACH, COUNTY OF ORANGE AREA ENERGY, LLC 3030 SATURN STREET, SUITE 101 BREA, CALIFORNIA 92821





5-13-032 EXHIBIT 27



October 2, 2015 **W9b**

VIA EMAIL

California Coastal Commission

Via email 200 Oceangate, Long Beach CA 90802

A copy of this letter has been provided to California Coastal Commission Staff in accordance with the requirements of Public Resources Code, Sections 30319-30324

Regarding: Item W9b, CDP Application No. 5-13-032

Hearing Date: October 7, 2015

Dear Chair Kinsey and Members of the California Coastal Commission,

I would like to thank you for your time and consideration of our project. We are writing to request the Commission's approval of the Newport Banning Ranch (NBR) project. Newport Banning Ranch, although disturbed by historic and ongoing oil operations and heavily dominated by non-native vegetation, contains a fragmented population of flora and fauna species. Additionally, the site is uniquely situated both within an urban coastal community and adjacent to one of the region's most significant open space and recreational corridors along the Santa Ana River. These factors collectively provide opportunities to integrate the site's distinct physical attributes and location with a balanced redevelopment plan that emphasizes Smart Growth infill development with restoration and expansion the site's natural resource values, connections to other public open space lands, and introduction of high-priority coastal public access, recreational and visitor-serving land uses on the property.

Following unanimous local approvals, and since February 2013, we have worked diligently to provide Coastal Commission Staff (Staff) with the necessary application materials and technical analyses to address the issues raised during their review of our application. Unfortunately, we remain at odds with Staff on their analysis and view regarding the project's inconsistency with the Coastal Act and the City of Newport Beach certified Coastal Land Use Plan (which provides guidance for the Commission's review of the project).

We would like to take this opportunity to provide additional details and clarification regarding certain aspects of the Project, and the significant amount of project information and technical analyses submitted to support the Commission's review and approval of the project. We have provided a summary of our overall position regarding the Commission's ability to approve the Project pursuant to the conflict resolution

provision of the Coastal Act below, which is followed by a more detailed point-by-point response to specific elements of the Staff Report that we deemed important to better inform your review and consideration of the Project.

In essence, the Staff Report argues for a "do nothing" option, leaving the property as a long-standing industrial oil field for decades to come while non-native invasive plants increasingly dominate over fragmented and degraded sensitive habitat. NBR has instead proposed a Project that will abandon and result in consolidation of the active oil facilities on a small portion of the site, remediate soils impacted from 75 years of oil extraction activities, and restore as much of the property as possible to high quality wetlands and ESHA which will be permanently protected and maintained in a 265-acre Natural Open Space Preserve. The Project will greatly maximize public access and recreation opportunities on the property through miles of bike and pedestrian trails and active and passive parkland with linkages to the beach and inland areas along the Santa Ana River Valley. The Project will provide a visitor-serving 75-unit resort inn coupled with an onsite 20-bed hostel proximate to the trails, the beach, visitor-serving uses, and all amenities of the resort inn, available to hostel users at controlled, defined low cost rates. And, the Project will, for the first time, provide water quality improvements to halt the continuing degradation of water quality and marine resources that result today from historic fill of wetlands, existing deficiencies in drainage, uncontrolled erosion and sedimentation and the absence of water quality treatment facilities on the property.

For the reasons more fully discussed below, we respectfully request the Commission's approval of the Project, subject to the Applicant's proposed Motion and Conditions of Approval provided in Attachment A, and pursuant to the Coastal Act conflict resolution findings provided in Attachment B. For ease of reference, the Applicant's proposed Conditions of Approval are grouped by Coastal Act Policy issue, where possible, and are cited throughout this letter, where appropriate, to demonstrate the Project's consistency with the Coastal Act.

I. PROJECT DESCRIPTION CLARIFICATIONS AND REVISIONS

The City of Newport Beach (City) approved the proposed NBR Project in 2012 and, as noted above, an application was field with Commission in February 2013. Since then, we have responded to numerous incompleteness determination letters and met with Staff in an effort address their concerns. As a result of suggestions from Staff, the current submittal was revised numerous times, which is not reflected to any extent in the Staff Report. Those revisions include:

- Increase in the Natural Open Space Preserve from 228 acres to 265 acres
- Reduction in the development footprint from 87 acres to 77 acres
- Reduction in the backbone roads for the Project from 27 acres to 17 acres, including removal of the North Bluff Road from the northern portion of the site (between 17th Street to 19th Street), removal of the North Bluff Road from the school site, and realignment of the North Bluff Road to minimize vegetation and seasonal feature impacts
- Reduction in grading volumes from 3,544 to 1,808 million cu. yds.
- Reduction of all 4-lane divided roads to 2-lane divided roads
- Integrating wildlife under-crossings within the Bluff Road design between Coast Highway and 15th Street, and within the 17th Street extension

- Addition of a bridge over the large arroyo to avoid fill of a portion arroyo
- Relocation of the proposed visitor-serving commercial and over-night accommodations to the most prominent coastal oriented portion of the property
- Incorporated a ground-truthing in the remedial action plan to ensure minimization of oil abandonment and remediation impacts in the proposed Natural Open Space Preserve.

In addition, the Staff Report states that the Project proposes 1,375 residential units. The current site plan, however, has been revised to show 200 fewer units. This is reflected in the Applicant's Special Condition no. 1, which states that the Project will have no more than 1175 residential units.

As noted, the Project also proposes a 75 room resort inn and as well as a unique onsite hostel. Initially, the Applicant proposed an 8-10 bed hostel. In meetings with Staff, Staff suggested that the number of beds equal 25% of the number of hotel rooms, or 19 beds. We have embraced the suggestion and will provide a 20 bed hostel. This is reflected in the Applicant's Special Condition no. 19. The onsite hostel will be located proximate to not only the resort inn, but to the commercial and visitor-serving uses proposed, pedestrian and bike trails onsite and offsite, and the beach via the pedestrian/bike bridge access proposed. The Applicant's Special Condition establishes a formula for defining low-cost rates, consistent with recent Commission actions, to ensure the hostel is operated as a low-cost overnight accommodation facility open to the general public in perpetuity and ensures that hostel users have access to enjoy all of the amenities of the resort inn.

Further, in response to the Staff Report analysis regarding potential visual impacts of development within the South Village, although the project site is not located within the City of Newport Beach's Shoreline Height Limitation Zone, which limits building heights to 35 ft., and would not be substantially visible from the Coast Highway view corridor, we are proposing to limit development within the South Village to a maximum of 40 ft. as reflected in the Applicant's Special Condition no. 1.

II. PROJECT APPROVAL UNDER CONFLICT RESOLUTION

We acknowledge the project site contains important wetlands and sensitive habitats, and the Commission's policies require that strict limitations be placed on the types of uses allowed in such areas, and for that reason the Commission may conclude that the proposed project is potentially inconsistent with Coastal Act Section 30233 (use limitations in wetlands) and Section 30240 (use limitations in ESHAs). However, despite these potential policy inconsistencies, and when considering the degraded state of the resources onsite, and the necessity of abandoning and remediating the oil field, that would be affected by the project, the Commission has the ability to approved the Project through conflict resolution because denying or modifying the project to eliminate these potential policy inconsistencies would conflict with other important Coastal Act policies, including (1) Sections 30210, 30211, 30212, 30212.5, 30213, 30223, 30252, and 30254 (protection and enhancement of public access to the coast and enhancement of shoreline and upland recreation areas in the Coastal Zone), (2) Sections 30232, 30260 and 30262, which require protection against spillage of oil and hazardous substances and location and consolidation of oil facilities, (3) Section 30251, which requires the protection of the scenic and visual qualities of coastal areas, (4) and Sections 30230 and 30231 (protection and enhancement of marine resources and water quality).

The Coastal Act anticipates that there may be conflicts between one or more Chapter 3 policies and provides in Section 30007.5 (the "balancing" provision) that "conflicts be resolved in a manner which on balance is the most protective of significant coastal resources." A detailed analysis of the Project's consistency with conflict resolution provisions of the Coastal Act, is provided in Attachment B, and is briefly summarized below.

A. PROTECTION AND ENHANCEMENT OF PUBLIC ACCESS AND RECREATIONAL RESOURCES (Sections 30210, 30211, 30212, 30212.5, 30213, 30220, 30223, AND 30252)

The coastal access and recreation policies of the Coastal Act mandate that maximum public access and recreational opportunities in the coastal zone be provided for all people, consistent with the need to protect public safety, private property and natural resources. The property is currently a fenced, closed industrial site. The Project would eliminate existing impediments to coastal access and low cost recreation opportunities for residents and visitors associated with the current oil and gas operation, and includes several elements integral to the proposed development plan that would substantially benefit coastal access and recreation as mandated by Sections 30210, 30211, 30212, 30212.5, 30213, 30220, 30223, and 30252 of the Coastal Act.

NBR's proposed 265 natural open space is distinctively positioned to serve as the centerpiece of the long-envisioned 1,000-acre Orange Coast River Park (Exhibit 1). This regionally significant park concept is planned to extend inland from the mouth of the Santa Ana River to include properties in Costa Mesa and Newport Beach, and northerly up the coast to wetland areas in Huntington Beach. Following the consolidation and removal of oil facilities and remediation activities, NBR's proposed Natural Open Space Preserve will provide for habitat and recreational continuity with other parklands envisioned in the Orange Coast River Park concept, linking miles of trails and hundreds of acres of coastal and inland recreational areas along the Santa Ana River Valley and up coast to Huntington Beach. NBR's proposed public access plan and amenities, which includes a pedestrian and bicycle bridge across Coast Highway to the beach, will also facilitate implementation of the California Coastal Trail vision to "Create linkages to other trail systems and to units of the State Park system, and use the Coastal Trail system to increase accessibility to coastal resources from urban population centers." (Completing the California Coastal Trail, Coastal Conservancy 2003.)

The proposed Project would introduce new, low-cost public access and recreational resources to the site by creating an interconnected system of trails, natural open space and public parklands, and constructing park-specific improvements to maximize access and recreation opportunities on the site, and to adjacent parklands and the beach, for residents and visitors with diverse backgrounds, interests, ages, and abilities (Exhibit 2). In addition, the Project includes development of a number of support facilities throughout the site to support access to and use of trails and parklands, where limited support facilities are currently available, including public parking, trailhead improvements, interpretive amenities, signage, trash receptacles, picnic areas, and bike-related services. Included in the Project are approximately 25 acres of public parks a 7-mile local trail system supplemented by on-street bike trails, and pedestrian paths that would connect to the existing regional trail system, and a significant amount of public parking and regional trail staging areas provided in multiple locations throughout the project site (Exhibit 3).

The proposed public access and recreation Project elements will be implemented and managed through the Applicant's Special Condition nos. 11 – 17, which collectively require 1) recordation of an offer to dedicate fee title for the proposed community parks and associated amenities, 2) recordation of an offer to

dedicate an easements for the proposed public access improvements and associated amenities within the Natural Open Space Preserve, 3) submittal of a final development phasing plans to ensure construction of proposed access and recreational improvements occur prior to or concurrent with the issuance of the certificate of occupancy for the first residence of any particular development phase, 4) submittal of a Public Amenities and Trail Management Plan which details, among other things, that all proposed streets and sidewalks remain open to the public and appropriate signage, amenities (benches, trash receptacles, etc.), lighting, fencing and landscaping be installed throughout the site, and 5) submittal of an open space management plan which demonstrates NBR's ability to ensure long-term funding and management of the Natural Open Space Preserve and associated public access improvements (i.e. Talbert Trailhead Interpretive Park, all open space interpretive trails, and associated appurtenances including but not limited to landscaping, trail routes and surfaces, fences, benches and other facilities).

In addition to extraordinary public access and recreation features, the Project, as noted, will provide a high priority visitor-serving commercial use on the property, a 75-room resort inn, and onsite low cost overnight accommodations, a 20-bed hostel (in excess of 25% of the number of hotel rooms), with controlled rates, consistent with Coastal Act Section 30213. Special Condition no. 19 establishes controls on these uses, consistent with past Commission decisions.

The conflict resolution provisions of the Coastal Act are applicable to the Project because denial or modification of the project to fully resolve potential inconsistencies with the Coastal Act wetland and ESHA protection policies would eliminate project improvements which would serve to affirmatively implement the coastal access and recreation policies of the Coastal Act.

B. PROTECTION AND ENHANCEMENT OF MARINE RESOURCES AND WATER QUALITY (SECTIONS 30230 AND 30231)

The Coastal Act requires that marine resources and water quality be protected and, where feasible, enhanced and restored. There are currently no water quality improvements on the subject property. The proposed Project would have no adverse impact to water quality, and would alternatively incentivize the timely consolidation, abandonment, and remediation of oil facilities on the site which would allow for implementation of the proposed development plan that includes a comprehensive Water Quality Management Plan and restoration plan. The proposed Water Quality Management Plan would address the existing deficiency in drainage and water quality treatment facilities in the project area, and would therefore effectively improve water quality for both on and offsite stormwater runoff, which would serve to enhance the quality and habitat value of receiving water bodies on and adjacent to the project site.

In addition, the proposed Project includes restoration of the property's degraded wetland and riparian areas, as well as creation of a third-party reserve area for future tidal wetland habitat restoration opportunities. Removal, remediation and restoration of the existing oil facility areas on the property would remedy existing conditions that have resulted in vegetation removal and exposed bare soil, contributing to erosions and sedimentation, and well as historic fill and alteration of wetland hydrology, thus reducing the functions and biological productivity of the wetlands onsite. The Project would restore and expand wetland and riparian habitat proposed for long-term preservation, with mitigation treatments and native vegetation community establishment that would serve to strengthen wetland and riparian habitat continuity with the wetland complex on the surrounding properties.

The proposed Project Water Quality Management Plan, when combined with oil facility consolidation, abandonment and remediation and the proposed restoration plan, would significantly restore and improve runoff management and water treatment opportunities across the site. Overall, the proposed water quality improvements would address untreated flows to the arroyos, redirect runoff away from bluffs, and reduce polluted runoff from existing facilities to the Semeniuk Slough and the Santa Ana River, resulting in an improvement over existing site runoff conditions with respect to water quality, velocities and delivery of runoff to the downstream receiving waters.

The proposed Water Quality Management Plan would be implemented through the Applicant's proposed Special Condition nos. 22. Special Condition no. 20 - 21would require that Construction Best Management Practices and Interim Erosion Control Plans are implemented during the construction phase to ensure potential impacts to water quality and marine resources are minimized to the maximum extent feasible. In addition, Special Condition no. 23 would ensure all wetland and upland habitat creation, restoration, conservation, maintenance and management would be implemented consistent with the final approved HCCMP.

Here again, the conflict resolution provisions of the Coastal Act are applicable to the Project because denial or modification of the proposed project to fully resolve potential inconsistencies with the Coastal Act wetland and ESHA protection policies would eliminate project improvements which would effectively restore sustainable hydrology patterns and provide water treatment measures across the site, which are necessary to protect and enhance marine resources on the site and adjacent Santa Ana River ecosystem beyond existing conditions. Further, denial or modification of the proposed project to fully resolve policy inconsistencies would result in continued degradation of water quality and marine resources resulting from existing deficiencies of drainage, lack of water quality treatment facilities, and historically filled and altered wetland hydrology in the project area that will further degrade water quality over time.

C. SITE REMEDIATION; LOCATION AND CONSOLIDATION OF OIL FACILITIES; PROTECTION OF COASTAL SCENIC AND VISUAL QUALITIES (SECTIONS 30232, 30251, 30260 AND 30262)

Section 30232 of the Coastal Act requires protection against spillage of crude oil and gas petroleum products or hazardous substances and the provision of effective containment and cleanup facilities and procedures for accidental spill that occur. Section 30260 encourages coastal-dependent industrial facilities to be located or expanded within existing sites, and Section 30262 requires that new or expanded facilities related to oil and gas development be consolidated to the maximum extent feasible. Section 30251 further requires that the scenic and visual qualities of coastal areas be protected as a resource of public importance. The provisions are consistent with the basic goals the Legislature established for the coastal zone in Section 30001.5, which include "protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources."

More than half the site has been impacted by scattered oil operations (over 470 locations were used at one time as well drilling and production pads to produce the oil). This consists of hundreds of wells, well pads, over 40 miles pipelines, tanks, structures, power lines and poles, roads, road base and asphalt-like materials, sumps, and impacted soils. As a result of 75 years of oil operations, the site is currently degraded and the sensitive habitats onsite have become highly fragmented and degraded. NBR proposes comprehensive oil field cleanup on 384 acres of the 401-acre site and complete remediation of the affected soils at a cost to the owner of \$30 million.

Denial of the Project would continue oil operations in effect across the property for decades to come. By contrast, the abandonment and remediation component of the Project would dramatically reduce the current onsite oil operations. Consistent with Section 30262, it would consolidate them in two "remainder operations" sites totaling a maximum of 17 acres in existing areas which currently support active oil operations, and it would deed restrict those areas to open space as well upon the cessation of oil operations.

Coupled with abandonment and remediation is a comprehensive habitat preservation and restoration program – the "Habitat Conceptual Conservation and Mitigation Plan" ("HCCMP"), discussed further below. The HCCMP requires, concurrently with the oil field clean up and remediation, removal of 51 acres of nonnative invasive plants (mustard, pampas grass, ice plant, poison hemlock, exotic palms, eucalyptus, giant reed, acacia, myoporum, and pepper tree) which during the Commission's June 2014 site visit the Commission's biologist noted will become the "dominant" species onsite if left unchecked. The HCCMP establishes a comprehensive expansion, restoration, enhancement plan to ensure the long-term viability of habitats and wildlife on the property. Implementation of the Plan involves reestablishing now fragmented sections of the site by strategically preserving remaining habitats, enhancing degraded areas, restoring riparian vegetation, and creating new and improved wetland and upland habitats at a cost in excess of \$10 million. The end result will be a 265-acre protected Open Space Area which eliminates all of the unsightly oil facilities and provides functional, continuous habitat, connectivity between diverse habitat types, wildlife corridors with adjacent open spaces and larger environment, conservation and creation of habitat for sensitive and listed species (including the California Gnatcatcher, San Diego Fairy Shrimp, and Least Bell's Vireo), and enhancement of existing habitat to achieve greater biological diversity and value for existing wildlife. The Project also proposes privately funded long-term stewardship and maintenance of the restored areas by a non-profit organization, the Newport Banning Land Trust.

The conflict resolution provisions of the Coastal Act are applicable to the Project because denial or modification of the project to fully resolve potential inconsistencies with the Coastal Act wetland and ESHA protection policies would eliminate project improvements which would serve to affirmatively implement the site remediation, oil field consolidation, and scenic and visual quality policies of the Coastal Act.

D. WETLANDS AND ESHA

Section 30007.5 of the Coastal Act requires the Commission to resolve the subject policy conflicts in a manner that is most protective of coastal resources. In this case, the project would result in certain impacts to wetlands and Staff recommended ESHA, which have been subject to varying degrees of disturbance and degradation given the past and current land uses of the property. Given the expanse of existing long standing oil field disturbance and limited habitat expansion opportunities due to adjacent urban development and increasingly dominance of non-native invasive plants, the long-term sustainability of these remaining habitats and wildlife species is uncertain absent concentrated efforts to restore, expand, where possible, and responsibly manage the resources into the future.

The NBR HCCMP discussed above includes a comprehensive restoration and enhancement plan to ensure long-term viability of NBR's sensitive habitats and the special status species that rely on them. The HCCMP provides for effectively preserving and restoring wetlands and ESHA to addresses project-specific impacts, in conjunction with targeted restoration to address the unique habitat needs of the special-status species that occur on site. Implementation of the HCCMP involves strategically preserving remaining wetlands and

ESHA and enhancing degraded habitat areas, restoring riparian corridors, and creating new and improved wetland and upland habitats with functioning transitional habitat areas to achieve the overall project goal of enhancing biodiversity and habitat value on the site with adjacent open space areas to support a range of native plant and wildlife species. The HCCMP would provide enhanced and contiguous habitat contributions to the broader Santa Ana River ecosystem, and will ensure that the critical wildlife corridors supporting several special-status species within the project area have sufficient areas of high-quality habitat necessary for species survival. The proposed HCCMP would be implemented through the Applicant's proposed Special Condition no. 23, which requires submittal of a final HCCMP that addresses all wetland and upland habitat creation, restoration, conservation, maintenance and management responsibilities necessary to ensure long-term success of the proposed restoration plans. In addition, a series of Special Conditions are proposed (nos. 24-32) to ensure construction and project operational activities (public access usage, landscaping, lighting, fencing, etc.) are conducted in manner that minimizing impacts to sensitive habitats and species to the maximum extent feasible.

As such, the project is designed to avoid and minimize impacts to wetlands and ESHA to the maximum extent feasible and, with proposed mitigation, will result in the restoration and conservation of habitat with improved ecological function and value.

E. ALTERNATIVES

There are no alternatives identified that would be both feasible and less environmentally damaging. The Staff Report recommends, in effect, the "no project" alternative, which would mean that abandonment or remediation would be deferred for many decades, excluding the substantial habitat restoration proposed. The oil operations throughout the property would continue, along with continued contamination of the soil which surrounds the actively operating facilities. Sensitive habitats on the property would become increasingly fragmented and degraded; with non-native invasive plants aggressively becoming the dominant plant species. The "no project" alternative would perpetuate the existing deficiencies in drainage and polluted stormwater runoff, which is currently untreated and conveyed across the property via sheet flow or the site's drainages, causing erosion and sedimentation of the Semeniuk Slough. This alternative would not provide public access and recreation, such as the trails, trail connections, and parklands proposed. There would be no visitor-serving hotel and no low cost overnight accommodations provided. The "no project" alternative would therefore not be a less environmentally damaging alternative that is consistent with all relevant Chapter 3 policies.

The Staff Report purports to identify a "reduced development" alternative. This alternative is reflected in a figure, crafted by Staff (see page 76 of the Staff Report), that shows a handful of tiny "bubbles" in disparate areas of the property where Staff suggests limited development could be accommodated without significant disruption to habitat. The "development bubbles" shown, however, are wholly disconnected. Staff's figure does not include any roads to or as between these areas, nor does it explain how those isolated areas would relate to one another, or how they would be served by a logical array of services. The Staff Report rejects the hotel and hostel proposed and suggests a small portion of the area that would support those visitor-serving uses could serve instead environmental camping, tent cabins, or cabins. This "alternative" ignores the fact that oil facilities extend over the entire site, including those specific upland areas where development is proposed, that the cost to abandon and remediate those facilities would cost on the order of \$30 million, and that the sensitive habitats on site are in a state of decline and that the non-native invasive species that occupy 51 acres of the site have reached the point where they are becoming the dominant species on the property. This alternative also would not provide any of the public access and recreation

amenities proposed, any of the water quality improvements proposed, or any of the visitor-serving and low cost overnight accommodations proposed. The simple fact is -- no one would undertake development under the simplistic scenario Staff offers, given the obvious uncertainty surrounding what could be developed in Staff's tiny development bubbles and, most importantly, the enormous financial undertaking that would first be required to abandon, remediate, and restore the property. The "reduced development" alternative is, therefore, not the less environmentally damaging feasible alternative.

By contrast, the proposed Project would properly abandon and remediate the existing oil field and consolidate oil operations in two small areas which currently support such facilities. It would remove 51 acres of non-native invasive plants which, as noted, threaten to dominate the plant species on site. And, it would provide comprehensive habitat restoration of the property and consolidate those restored areas in a dedicated and protected 265-acre open space area contiguous with adjacent public open space. It would confine development to the upland areas following abandonment and remediation in those areas, provide the water quality infrastructure to address onsite and offsite stormwater runoff that currently does not exist, and provide the extensive trail system, parkland, and visitor serving and affordable overnight uses proposed. Given the extent of abandonment and remediation that is necessary to clean up the site, even if only for opening the site up to the public, scattered nature of seasonal features and the questionable ESHA determination recommended by Staff, there are no feasible alternatives that would achieve the objectives of the proposed Project without violating Chapter 3 policies.

CONFLICT RESOLUTION SUMMARY

In summary, the proposed Project provides a classic case for the balancing of conflicting Coastal Act policies. The Project includes abandonment and remediation activities that would create potential inconsistencies with the Coastal Act policies relating to wetlands and ESHA. However, denying the Project because of its inconsistency with those policies would result in significant adverse effects on public access and recreation, oil field clean up and consolidation, biological resources, scenic and visual quality, and water quality. For the reasons set forth above, NBR submits that approval of the Project, as proposed and with the Special Conditions requested by the Applicant, is "most protective of coastal resources" for purposes of the conflict resolution provisions of Coastal Act Section 30007.5.

III. SPECIFIC RESPONSES TO STAFF REPORT

Staff has concluded the project is inconsistent with several Coastal Act policies, including those policies that require protection of wetlands, ESHA, archaeological and visual resources, and that new development be supported by adequate services, including water supply. We disagree with Staff's conclusion for a number of reason, and request that the Commission consider the Applicant's proposed Conditions included in Attachment A and the Coastal Act conflict resolution findings provided in Attachment B, which clearly demonstrate the Project is consistent with applicable Coastal Act policies. Detailed technical responses follow in response to certain statements and conclusions of the Staff Report relative to Alternatives, status of other agency approvals, Abandonment and Remediation, Vernal Pools and Wetlands, ESHA, Takings, and Local Coastal Program Review.

Archaeological Resources

The Staff Report acknowledges that the Project accounts for known archaeological resource constraints on the site, but then asserts that information provided in the application materials was not sufficient for complete assessment of potential impacts to archaeological resources because the application does not include a request for approval and implementation of an Archaeological Research Plan (ARP). The Staff Report then indicates that the Project identified EIR mitigation measures (recovery and monitoring) are not consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources, and then suggests that only redesign of the project to avoid significant impacts (presumably be eliminating certain abandonment and remediation activities altogether or capping such that the "resources would not be impacted by the abandonment activities) would be consistent with previous Commission actions (CDP 5-97-367, Hellman and HNB-MAJ-1-12, Ridge).

First, Staff fails to acknowledge that an Archaeological Research Plan was prepared by BonTerra, dated July 2014, and submitted to the Commission on October 30, 2014..In addition, Staff completely fails to consider Special Conditions that could reasonably be applied to the project activities potentially impacting cultural resource impacts, as they have done for hundreds of projects involving the same type of potential cultural resource impacts.

Throughout the application review process, the proposed development plan was revised to avoid all potential impacts to recorded significant sites from the development plan. As identified in the ARP, measures to avoid impacts to known and unknown sensitive cultural resources have been identified and were implemented during the Extended Phase I site testing conducted during the city's environmental review process pursuant to CEQA, and will be implemented during site abandonment and remediation. These measures included Native American consultation and monitoring, limiting subsurface excavations to locations immediately adjacent to site areas previously subject to prior cultural investigations (CA-ORA-839 tested by Van Horn, results reviewed by CCC under earlier CDP application), previously disturbed by oil field development/activities (CA-ORA-844B), and/or limiting subsurface excavations to the minimum necessary (CA-ORA-906 – only 1 control unit excavated), and requiring that any intact resources be documented, preserved in place, and reburied The ARP also incorporates procedures to follow if human remains are encountered. These measures assure that all work is carried out in manner most protective of any known and potentially unknown archaeological resources on the subject site.

The Archaeological Resources Assessment includes the findings of the site testing conducted to determine site significance and possible contribution of identified sites to the research questions outlined in the ARP. While the ARP was not peer reviewed or subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups, the Archaeological Resources Assessment was. During the EIR process, the City of Newport Beach contacted the NAHC and informational letters were sent to each tribe identified on the NAHC's list. Three requests for consultation under SB 18 were received from the Juaneño Band of Mission Indians, Acjachemen Nation (Anthony Rivera); Juaneño Band of Mission Indians, Acjachemen Nation (David Belardes, Joyce Perry); and Juaneño Band of Mission Indians (Sonia Johnston, Alfred Cruz). The City undertook consultation with each of the three tribes. A representative of the Juaneño Band of Mission Indians, Acjachemen Nation, Anthony Riverawas present on site during all archaeological excavations and was afforded the opportunity to examine excavation units and artifact discoveries.

The ARP summarizes the results of systematic archaeological assessment undertaken at all of the previously recorded archaeological resources. The use of hand- excavated shovel test pits (STPs) were used to "determine the presence or absence of subsurface cultural material in locations where archaeological sites were previously mapped." This is a standard professional archaeological strategy used to evaluate the subsurface presence or absence of cultural materials identified on the ground surface. All archaeological sites that were systematically resurveyed in the course of project analyses and found to retain evidence of cultural resources on the ground surface were subject to STP excavations. Where subsurface cultural resources were identified during STP excavations, additional intensive hand-excavated "control unit" excavations were completed to determine the extent of cultural remains present that would have the potential for addressing California Register of Historic Resources or the National Register of Historic Places eligibility criteria.

The archaeological investigations conducted on the site sufficiently determine whether there are intact cultural resources, including Native American burials, onsite. STP and control unit excavations were completed systematically and in a manner to address the "integrity" of the archaeological soils within the previously recorded archaeological sites. This assessment of prior disturbance is based on the presence of obvious soil disruptions, the presence of modern refuse that is mixed with soils during grading, or the complete absence of cultural material indicating prior removal. The following archaeological sites exhibited one or more of those objective criteria, indicating a lack of intact cultural deposits: CA-ORA-148, -843, , -844 Locus B, -845, -1599, -1600, -1601H, - 1602H, and -1610H. In contrast, the remaining prehistoric archaeological sites CA-ORA-839, -844 Locus A, and -906 retain their integrity as the archaeological soils and cultural deposits do not exhibit evidence of previous grading, or mixing with modern refuse. The STP and control unit excavations collectively determined: 1) the presence or absence of subsurface cultural deposits within all previously recorded archaeological site boundaries; and 2) the ability of all identified subsurface cultural deposits to address California Register of Historic Resources or the National Register of Historic Places eligibility criteria. These data allowed for the systematic, comprehensive assessment of potential project impacts on the previously recorded cultural resources.

The ability to identify the presence of Native American burials within an archaeological site is undertaken by completing sufficient excavations to characterize the nature of prehistoric activities that occurred on the site. A burial can conceivably be located within any prehistoric site, but is traditionally associated with more complex residential camps that were occupied over a longer period of time. Hand-excavated control units completed within CA-ORA-839, -844 Locus A, and -906, intact sites that were residential camps, did not identify any evidence of Native American burials. To eliminate this potential entirely, the intensity of archaeological excavations would result in the complete disturbance of each of the sites. The archaeological control units provide for the reasonable characterization that prehistoric burials are not anticipated in these sites, while minimizing the potential to adversely impact the resource during site testing.

As such, based on review of prior archaeological investigations on the site and the results of the Archaeological Resources Assessment, in which no human remains have ever been identified on the Banning Ranch, the certified Final EIR concludes that there is no indication that there are burials present on the project site. Nevertheless, the EIR recognizes that Native American tribes note that ancestors were often buried in coastal locations and evidence exists to support this supposition. Therefore, the ARP and EIR detail specific procedures to be implemented in the event human remains are discovered during grading activities to ensure potential impacts to such unknown resources are adequately minimized

The ARP, when reviewed and considered with the analysis and conclusions of the Archaeological Resources Assessment (BonTerra Consulting 2009a) and the certified Final EIR for the Newport Banning Ranch project, collectively demonstrate that 1) the testing conducted by the City in preparation of the EIR was implemented in manner to avoid significant impacts to cultural resources, and 2) potential cultural resources on the property (known and unknown) have been adequately assessed in the context of the proposed project (including remediation) to ensure impacts are avoided, and/or are mitigated, to the maximum extent feasible pursuant to the requirements of the Coastal Act.

Special Condition no. 34 requires that prior to the issuance of the coastal development permit approving the proposed project that the applicant prepare and submit an archaeological monitoring and mitigation plan to be implemented during all site grading and any other development activities (for example, trenching for utilities) that may impact buried archaeological resources. The plan shall provide for (1) monitoring of these activities by archaeological and Native American monitors, and the designated most likely descendent (MLD) when required by State law that an MLD be designated; (2) that a pre-grading meeting be convened on the project site involving the applicant, grading contractor, archaeologist, and all monitors and the MLD to in order to make sure all parties are given a copy of the approved archaeological monitoring and mitigation plan and understand the procedures to be followed pursuant to the plan, including the dispute resolution procedures to be followed if disputes arise in the field regarding the procedures and requirements of the approved archaeological monitoring and mitigation plan; (3) if archaeological/cultural resources are found, all grading and construction must cease that could adversely impact the resources and/or prejudice mitigation options until the significance of the resource is determined (if the resources are human remains then additional State and Federal laws are invoked). The potential mitigation options must include consideration of in-situ preservation, even if it means redesign of the approved project. The significance testing plan (STP), prepared by the project archaeologist, with input from the Native American monitors and MLD, must identify the testing measures that will take place to determine whether the archaeological/cultural resources are significant, is submitted to the Executive Director to make a determination as to whether the STP is adequate and whether the implementation of the proposed STP can go forward without a Commission amendment to the permit; (4) once the STP is implemented, the results along with the archaeologist's recommendation on the significance of the resource, made in consultation with the Native American monitors and MLD, are submitted to the Executive Director in order to make a determination as to whether the discovered resources are significant; (5) if the resources are determined to be significant by the Executive Director, a Supplemental Archaeological Plan (SAP) must be prepared, that identifies appropriate investigation and mitigation measures for the resources found, in consultation with the Native American monitors, MLD, and peer reviewers and after preparation, comments solicited and incorporated from the Native American Heritage Commission (NAHC), California Office of Historic Preservation (OHP); and finally, (6) the applicant must carry out the approved SAP after it is approved by the Executive Director unless the ED determines that the proposed changes recommended in the SAP are not de minimis and therefore must be approved by the Commission as an amendment to the permit. Further, the applicant is required to submit a final report at the conclusion of the approved archaeological monitoring and mitigation plan that is consistent in format and content with the applicable OPH guidelines.

Special Condition 35 requires the applicant to curate any artifacts not reburied on the project site with an appropriately licensed facility, requesting such facility to agree to display the resources for public educational purposes.

Finally, the Staff Report states "The application does not include a request for approval and implementation of an Archaeological Research Plan (ARP), nor did it include an after-the-fact request for approval for the archaeological testing and recovery that was conducted on the site through the EIR process", suggesting that some level of unresolved unpermitted development exist on the site. We note that, in response to Staff comments on the project, we responded on March 5, 2015 by indicating all issues related to archeological resources have been resolved via the executed Settlement Agreement and acknowledging that future archeological work will require review by the Commission prior to commencement of any work.

Visual Resources

The Staff Report notes that the coastal bluffs of the NBR site contain natural bluff formations as well as rare coastal bluff scrub vegetation, which are visible from Coast Highway and comprise a visual resource, and cites to a visual analysis of the proposed resort that "shows that the resort would be visible from PCH.

However, the Staff Report fails to acknowledge that all proposed development would be setback a minimum of 60 ft. from the bluff edge, thereby minimizing the visibility of any new development from Coast Highway, and further fails to disclose that, other than the proposed public access pedestrian bridge, no development other than habitat restoration would occur on the site's disturbed bluffs, which would enhance the scenic qualities of the bluff. In addition, although the Staff Report includes the visual analysis that was provided for the proposed pedestrian bridge, it omits all other visual analyses for the balance of the Project that clearly demonstrate none of the proposed development will substantially impact public views to or across the site. A complete copy of the visual analysis in included as Exhibit 4.

As noted previously, in response to the Staff Report analysis regarding potential visual impacts of development within the South Village, although the project site is not located within the City of Newport Beach's Shoreline Height Limitation Zone, which limits building heights to 35 ft., and would not be substantially visible from the Coast Highway view corridor, we are proposing to limit development within the South Village to a maximum of 40 ft. as reflected in the Applicant's Special Condition no. 1. In addition, Special Condition 36 addresses the structural appearance of the proposed Project to ensure acceptable earth tone colors and only windows comprised of non-glare glass are used to further provide for compatibility of the Project with the surrounding areas, and to minimize overall visibility of the Project from offsite areas.

Water Supply

The Staff Report asserts that, based on the information provided, it is unknown if the proposed development can be supported by adequate water supply, and as such, the proposed project's consistency with Section 30250 of the Coastal Act cannot be determined. In response, Charles Marr Consulting and provided an additional Technical Memorandum (Exhibit 5) to address Staff's comments. The memorandum further substantiates that, even without any additional water sources, the City's existing water sources are more than sufficient for the NBR Project as it is only projected to increase City population by 5%. In addition, the memorandum clarifies that, by virtue of the fact the Project was considered in the City's current UWMP, the City's ability to meet water demands is already demonstrated in its UWMP, and restated in the WSA pursuant to the requirements of SB 610.

A. OTHER AGENCY APPROVALS

Staff makes certain assertions regarding the status of other agency approvals. We offer the following responses to clarify our coordination efforts to-date and current status with these agencies as it relates to their purview over the Project. Special Condition no. 7 requires compliance with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Special Condition no. 7 further requires any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

U.S. Fish and Wildlife Service (USFWS). The project requires federal agency permits, including a Clean Water Act Section 404 permit from the US Army Corps of Engineers), thus the USFWS must conduct a Section 7 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the issuance of a Biological Opinion. As a federal agency, the USFWS' actions require compliance with the National Environmental Policy Act (NEPA). No Biological Opinion has been issued as of the date of this staff report.

We have submitted a draft Biological Assessment to the U.S. Army Corps of Engineers for purposes of initiating Section 7 consultation. A site visit with representatives of the Army Corps of Engineers, the Regional Water Quality Control Board and Commission Staff is schedule for Monday, October 5th, to assist with completing the jurisdictional determination for the agencies.

California Department of Fish and Wildlife (CDFW). The project would require a Section 1600 Streambed Alteration Agreement from the CDFW pursuant to Section 1602 of the California Fish and Wildlife Code. The applicant has applied for a streambed alteration agreement. The application did not include sufficient information for CDFW to determine the streambeds on the project site, and there cannot issue the Streambed Alteration Agreement.

On September 30, 2015, California Department of Fish and Wildlife issued a letter notifying NBR that the Project may proceed as described in our Notification of Lake or Streambed Alteration No. 1600-2014-0155-R5.

Regional Water Quality Control Board. Issuance of the US Army Corps of Engineers Section 404 Permit would require the Santa Ana Regional Water Quality Control Board (RWQCB) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. Waste Discharge Requirements issued by the Santa Ana RWQCB would be required for the fill or alteration of "Waters of the State" on the Project site located under the RWQCB's jurisdiction. Additionally, approval of the final RAP for the oil well/facility abandonment and site remediation is required from the Santa Ana RWQCB. The RWCQB has issued a "Denial without Prejudice" for the water quality certification. The application did not include sufficient information for the RWCQB to identify accurately the "Waters of the State" present on the site. Therefore, RWCQB cannot issue approval for the Final RAP proposed for the site.

Regarding the status of the application for Section 401 Water Quality Certification, while it is true that the RWQCB issued a denial without prejudice for the project on September 15, 2015, we disagree with the assertion by Staff that the application did not include sufficient information for the RWCQB to identify

accurately the "Waters of the State" present on-site. The Applicant provided written clarification to RWQCB staff outlining the facts on September 22, 2015. The Applicant continues to maintain the position that the information provided as part of the application submittal and in subsequent submittals is more than sufficient for RWQCB staff to conclusively and quantifiably evaluate impacts to resources subject to Section 401 of the federal Clean Water and the State's Porter-Cologne Water Quality Control Act. The property continues to support 49 seasonal features and the impacts to those features we felt should be subject to RWQCB regulation was clearly described in our application for Section 401 Water Quality Certification. Further, following the RWQCB's receipt of the initial August 2014 application, the Applicant met on-site with RWQCB staff to familiarize them with the environmental setting and, more specifically, with those resources potentially subject to their jurisdiction and regulation.

In regard to the RAP review and approval being dependent upon the Section 401 process, this has not been the case with other projects in the past. The RAP is a separate review process covering only the remediation methods and cleanup criteria. Implementation of the field work is, of course, subject to other permit restrictions but in our experience the review and approval of the RAP has, until this staff report, always been separate.

U.S. Army Corps of Engineers (USACE). The project would require Clean Water Act Section 404 permit from the USACE for impacts to areas determined to be "Waters of the U.S." While NBR has applied for the project to be considered under a general Nationwide Permit, USACE is still in the process of determining if this approach would be appropriate or if a more extensive review under the Individual Permit process would be required. As a federal agency, the USACE's actions require compliance with NEPA. Again, the application did not include sufficient information for the USACE to identify accurately the "Waters of the U.S." present on the site. The Jurisdictional Delineations (JDs) submitted by the applicant contained conflicting and incomplete information. Additionally, USFWS in consultation with the USACE, cannot issue a biological opinion without accurate JDs. Once it has accepted the JDs for the site, the USACE would proceed with its review along either the Nationwide Permit or Individual Permit process. Final decisions on these matters are anticipated within the next several months.

The USACE reviewed the jurisdictional delineation submitted to the USACE for the Newport Banning Ranch project and prepared a letter of verification dated June 3, 2009. The letter of verification expired on June 3, 2014, prompting the USACE to request an additional site visit to update and confirm the jurisdictional delineation. During discussions with Stephen Estes and Corice Farrar of the USACE, they indicated that it was USACE's intention to complete the updated jurisdictional determination prior to the phasing in of the new rule re-defining waters of the U.S., which became effective on August 28, 2015. However, due to staffing limitations, it was not possible to achieve this goal and a date for the initial site review to begin the work necessary to complete the jurisdictional wetlands verification is set for October 5, 2015. During numerous conversations with the USACE (primarily Mr. Estes), the USACE has not noted any "conflicting or incomplete information". The only potential difference between the previously verified wetland delineation and the current information provided to the USACE is the addition of additional seasonal features that would be reviewed by the USACE. Previously, the USACE only asserted jurisdiction over VP1 and VP2 and declined jurisdiction, for example, over Feature VP3. Newport Banning Ranch has also submitted an updated Biological Assessment to the USACE and has been coordinating with them regarding cultural resources and coordination with the State Historic Preservation Officer (SHPO).

Newport Banning Ranch looks forward to reviewing the other seasonal features on-site with the USACE because, in an important clarification, the new waters of the U.S. rule explicitly eliminates from jurisdiction the type of seasonal features that Staff's ecologist has asserted to be vernal pools. Specifically, the new rule states that certain classes of features are not regulated by the Clean Water Act, including:

(E) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water;

According to the new waters of the U.S. rule, "Western Vernal Pools" are considered waters of the U.S. where they exhibit a significant nexus with downstream waters.

State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). Oil and gas wells to be abandoned or re-abandoned shall be done in accordance with the current requirements of the DOGGR. The abandonment requirements will be those applied by DOGGR at the time the RAP, including the Combustible Soil Gas Hazard Mitigation Plan, is submitted for review to the Orange County Fire Authority.

In addition, DOGGR has standards and requirements for comprehensive oilfield abandonment. These include the review and approval of a field restoration plan that indicates the amount and location of aboveground infrastructure proposed to be removed. DOGGR staff have not received an application for field restoration or a field restoration plan from NBR.

The DOGGR does not vary or change well abandonment requirements based on the submission of the RAP or a Combustible Soil Gas Hazard Mitigation Plan. The DOGGR has not changed well abandonment requirements in many years (1970's) and specifically says that they only provide an advisory role so that "responsible decisions can be made by the property owner, developer, and local permitting agency when development occurs near oil or gas wells".

Their Well Review Program (previously call the Construction Site Well Review Program) is not part of any early permitting requirement as it provides near well guidance once general entitlement status has been achieved and the limits of any development are known. Any field restoration notice would also be given after that time.

The Abandonment Plan and RAP as proposed go well beyond DOGGR well and field restoration requirements which are more basic in nature and do not address cleanup criteria at all. The abandonment of the oil field operations happens only if the full NBR project is approved thus these DOGGR specific review and advisory steps can only be addressed further once the project is approved. In addition, the Combustible Soil Gas Hazard Mitigation Plan is only developed after the site has been remediated and mass grading has occurred.

NBRLLC partner Aera Energy is one of the California's largest oil and gas producers and has extensive previous experience with oil field abandonments, restorations and development of oil field properties.

Orange County Health Care Agency. Approval of the final RAP for the oil well/facility abandonment and site remediation is required from the RWQCB. The OC Health Care Agency, due to lack of staffing, has requested assistance from RWQCB for determinations on the RAP. As stated earlier, RWCQB cannot issue approval for the Final RAP proposed for the site due to the lack of a water quality certification.

Again, in past projects the RAP review and approval has been separate from other RWQCB programs as it only addresses remediation methods and cleanup criteria. Field implementation of the RAP would be subject to all other permit requirements.

B. ABANDONMENT AND REMEDIATION

The following responses are specific to a number of Staff Report statements and conclusions relative to then proposed Abandonment and Remediation Plan. Because Staff's analysis of the abandonment and remediation plan is found throughout the Staff Report, we've cited the report page and Staff statements with our specific response.

Page 2: It has been estimated that approximately 271,000 cubic yards of contaminated soil remediation would occur during the abandonment and remediation activities on the Newport Banning Ranch site when oil operations cease, now or in the future, regardless of the future land use for the site.

The correct estimated volume, as stated in the originally submitted RAP, is 163,000 cubic yards containing crude oil impacts. The 271,000 cubic yard number includes concrete, gravel and road materials. After receiving comments from the resource agencies reviewing the RAP, a revised RAP was submitted to the Regional Water Quality Control Board (RWQCB) on September 16, 2015. The revision included a revised estimate of up to 182,000 cubic yards of crude oil impacted soils.

Page 2: In fact, both of the key resource agencies reviewing the proposed Remedial Action Plan (RAP) (the plan that sets the cleanup standards and establishes the cleanup locations and methods), the Orange County Health Care Agency and Regional Water Quality Control Board (RWQCB), continue to have significant questions about the plan despite several years of effort providing NBR with both formal and informal input and guidance.

The RAP has not been before these agencies for several years as it was only initially submitted in February 2015. The cleanup criteria submitted was in fact almost identical to that which the RWQCB requested to be used at the site in 2001. The RWQCB submitted very limited questions on the original document on June 10, 2015 only in regard to the cleanup criteria and weekly field reporting. The Orange County Health Care Agency (OCHCA) did not express any questions before it turned over full review authority to the RWQCB. The Revised RAP submitted on September 16, 2015 addressed the RWQCB concerns and no other issues have been identified.

Page 2: During the review and ultimate acceptance of the proposed Remedial Action Plan (RAP), the scope and standards for remediation activities has the potential to change significantly, thus affecting the number of proposed clean-up locations, the excavation depths of these areas, the amount of soil needing treatment or disposal, and the scale of proposed soil treatment activities.

The comments received from the RWQCB on June 10, 2015 did not indicate any significant issues with the original RAP that would have materially changed the extent of the field cleanup.

Page 5: Future oil clean up can be targeted toward the areas where it is required as an alternative to the proposed project which contemplates a far more intrusive plan developed in order to allow for the intensity of development that is not consistent with Chapter 3 policies.

The surface extent of the oil field abandonment and cleanup would not be materially different if there were no development plan. There is an agency and public expectation that the abandonment, removal and cleanup of Industrial Sites in Orange County actually physically remove all materials and pollution associated with that Industrial activity from the surface so that the landowners and/or the public may then be able to decide how best to use the property. It would be false to imply that in this case suddenly those agencies and the public would be OK with leaving remnants or environmental pollution impacts of the industrial activity solely for the purpose of providing a larger hurdle for a specific follow-up development that some parties do not agree with.

Page 9: This figure was developed by NBR based on a review of oilfield history and historic aerial photographs and includes the over 400 wells that have already been abandoned on the site and many of the well pads, pipeline corridors, and access roads that have been covered with vegetation over the years and no longer support above-ground infrastructure.

This is not a correct characterization. While very limited areas have been covered by vegetation, most of the roads, well pads and work areas have necessarily continued to be used for the operation, maintenance and monitoring of the oil field activities. As an oil and gas field operation has flammable and inherently dangerous materials in constant use there is a need for access roads to all wells, pipelines, facilities, and power poles. Even in less active areas there is also a need for roads and large work areas that can be utilized should an emergency response effort need to be mobilized in the event of a spill or accident. Access also is maintained to the more than 380 wells that were previously abandoned in order to monitor and clean those sites when the full industrial activity is removed.

Page 10: In addition, the "abandonment of wells in accordance with requirements and approval of the State Division of Oil and Gas and removal of surface equipment and pipelines per state and local agency requirements" was exempted from coastal development permit requirements. While certain well abandonment and surface equipment removal activities are exempted from coastal development permit requirements, these activities are limited in type and scope. The exemption states that the abandonment of wells and the removal of surface equipment and pipelines carried out according to the State Division of Oil and Gas (currently known as the California Department of Conservation's Division of Oil, Gas and Geothermal Resources or DOGGR) authorization is exempt. However, none of the proposed abandonment activities currently contemplated have been required or authorized by DOGGR.

There is no requirement or statute that the abandonment of any privately owned oil operations in the state may only be done when required or authorized by the DOGGR. Whether to continue or to cease operations is at the sole discretion of the oil operator determined by their own economic and business decisions. Once the operator has decided to abandon any operations then it must be done in accordance with the DOGGR, state and local agency requirements, not DOGGR requirements alone.

Page 10: In addition, typical well abandonment activities considered by DOGGR are limited to the capping of active wells and the removal of oil infrastructure and clean-up of visible areas of oil. The extensive onsite soil and concrete processing, treatment, and disposal element of NBR's proposal significantly exceeds the scope of what DOGGR would require under it oilfield restoration regulations and is therefore not exempt.

The exemption that Coastal staff quotes states clearly that the removal of surface equipment and pipelines be done <u>per state and local agency requirements</u>. It is false to imply that at the cessation of an industrial activity, such as oil operations, that the operator may just walk away and leave materials, equipment and pollution caused by that activity. The state, local agencies, and the public expect industrial sites to remove all materials, equipment and any associated pollution before just walking away. This staff characterization would never be accepted otherwise and is solely intended to create a false hurdle for any follow-up land uses that the staff personally disagrees with.

Page 13: C. PROJECT DESCRIPTION - The proposed project includes abandoning oil operations, the onsite clean-up and disposal of contaminated soil and debris material, and constructing a housing and mixed-use development on 385 acres of the 401 acre site.

Clarification: The project actually includes abandoning oil operations, the clean-up of contaminated soil and the onsite recycling of soils and debris materials. The project does not include onsite disposal of contaminated soil.

Page 13/14: As noted in the RAP, these standards and thresholds, and the nature and extent of remediation that needs to be carried out on the site, "will depend on the ultimate reuse of the property." In other words, while there is no area on the site that requires remediation under its present use as an operating oilfield, NBR has concluded that its proposal to bring commercial and residential development to the site would trigger the need for an extensive soil treatment and/or removal effort – specifically, the proposed remediation of an estimated 271,000 cubic yards of soil including 163,000 cubic yards anticipated to contain some level of hydrocarbons and 108,000 cubic yards estimated to be made up of road materials such as asphalts, gravels, and concrete remnants.

If some other level or type of development were proposed for the site, the relevant clean-up standards and the resulting scope, location, and type of remediation activities that would need to be carried out would be substantially different than what NBR has currently proposed.

The surface abandonment and cleanup is actually triggered by the cessation of the industrial activity on the site which must be done in accordance with requirements of the DOGGR, state and local agencies. The removal of materials, equipment and associated pollution from the surface is expected of all industrial site abandonments regardless of the ultimate reuse of the property. To imply that an industrial site operator may just walk away from surface impacts and pollution is not correct and is misleading.

While the scope and extent of the <u>surface</u> cleanup is generally the same for all follow-up uses of the property, the ultimate type of follow-up use can determine the depth and intensity of soil cleanups. In other words, while the surface cleanup may be the same for both residential and open space, the residential use will usually require deeper and more complete cleanups to lower (stricter) criteria.

Page 14: In addition to the pipelines, the site also includes approximately 306 wooden power poles with lengths of 35 to 40 feet, as well as several electrical panels and transformers. These poles are proposed to be cut at ground level and transported to an onsite staging area for onsite recycling or offsite disposal. Belowground pole sections would be excavated or abandoned in place, depending on their location.

This is not correct. Any recycling of power poles would only be done offsite. There are no plans to abandon any poles, or sections of poles in place.

Page 14: NBR's proposed soil treatment plan includes several key elements: bioremediation (spreading the estimated 270,000 cubic yards of hydrocarbon contaminated soil across large areas to facilitate the natural breakdown of hydrocarbons by native soil bacteria);

The soils to be bioremediated are estimated to total up to 182,000 cubic yards. The 270,000 number included gravels, concrete and road materials that do not require bioremediation.

Page 17: Additionally, in order to achieve the desired level grade in the area south of the arroyo, NBR would need to fill the existing excavation site in this area that was created by an abandoned Caltrans road cut that dates back to the 1960s. The proposed disposal of treated soil, concrete waste, and roadbed material into this excavation would increase its final elevation and bring it to the desired grade with surrounding area.

This is not correct. Filling the Caltrans road cut area with remediation soils and recycled concrete and road materials was not part of the RAP or Abandonment Plan.

Page 37/38: While the removal of equipment and materials that pose a potential threat to human health and safety or environmental resources is required as part of abandonment, the intensity, scope, and type of clean-up operations required to be carried out often varies and can depend also on the planned future use of the site. The future use of the site will determine soil and groundwater contamination cleanup levels. For example, a site designated as open space would likely have a less stringent cleanup standard than one designated for future residential uses.

In addition to the clean-up standards, the level of contamination, and presence of sensitive resources also plays a large part in the determining how and where remediation activities will be carried out. Site by site evaluations are carried out at each target clean-up location with consideration of the contamination and specific resources on the ground and the relevant resources agencies coordinate to establish the most appropriate and least environmentally damaging approach.

These approaches typically follow a gradient from the least extreme – natural attenuation (often supplemented by planting certain types of vegetation capable of extracting target pollutants) – to the most extreme – wholesale excavation, removal and backfill. In and around sensitive resource areas, excavation is typically only used for soils with high levels of potentially dangerous pollutants that are causing ongoing damage to those resources or pose a human health and safety risk. Where excavation of contaminated soils is the chosen method, the Coastal Commission then requires the site to be restored.

In past permit actions, the Commission has directed that removal/remediation activities be carried out in a manner that minimizes their associated disturbance footprint and potential for adverse impacts, including by requiring that cranes be used instead of access roads in sensitive resource areas, by requiring the use of hand tools and labor in place of heavy equipment whenever feasible, by imposing seasonal restrictions near seasonally sensitive biological or recreational resources, and in certain circumstances by allowing infrastructure to be "abandoned in place" rather than removed. For example, in CDP No. E-10-009, the Commission approved the abandonment in place of pipeline segments

located within sensitive habitat areas and wetlands and required through Special Conditions that the project disturbance footprint adjacent to sensitive areas be minimized and that the permittee develop and implement a restoration plan to mitigate for unavoidable impacts to wetland habitat.

As previously discussed, cleanups for both open space and residential uses may have the same extent and scope at the surface. The more stringent residential criteria would generally require more extensive cleanup to greater depths and to stricter criteria.

Natural attenuation is rarely used in practice as it involves leaving contamination in place for decades, the addition of vast amounts of non-native vegetation, little to no public access, and the requirement to then dispose of that vegetation at some point in the future. It also can not address all site contaminants. Natural attenuation is not effective for accumulations of heavier end hydrocarbons such as the heavy crude oil that is produced at the Banning Ranch oil field.

It is not correct that excavation is typically only used for dangerous contamination. In fact, at most sites, agencies and the public prefer excavation and removal or treatment of contamination to order to be confident that properties can be reused and that there are no environmental "surprises" at a later time. This also applies to the old practice of "abandon in place" which leaves old equipment or pipelines and any residual contaminants in place without further investigation or treatment. Both of these practices will encumber the property restricting future uses and public access.

Page 40: Use of this approach with the proposed removal activities that NBR has proposed would result in a significant reduction of overall impacts because it would ensure that the wholesale excavation of contaminated soils – the most extreme and impactful clean-up approach – would only be carried out to the minimum extent and as a last resort once all other less impactful methods (including natural attenuation, phytoremediation, and heat treatment) had been found to be infeasible to meet a cleanup goal established by the Regional Water Quality Control Board or other agency(s) with authority to establish cleanup standards.

Natural attenuation, phytoremediation and heat treatment methods were reviewed and determined to be infeasible in the submitted Abandonment Plan.

Page 40: In this case, no agency has yet approved a Remedial Action Plan and established cleanup standards for the site, but in this application NBR has assumed that all areas of known or potential contamination at the site, including all areas in which historic operations may once have occurred, must be excavated.

This is not correct. The RWQCB submitted cleanup standards for the site as part of the 2001 Cleanup and Abatement Order. The standards proposed in the RAP are very similar to these standards.

Page 40: Although Coastal Act Section 30240 does allow certain resource dependent uses within areas designated as ESHA, the proposed excavation of clean soil, placement and use of bioremediation cells, materials stockpiling and processing, and waste material disposal, are not considered resource dependent uses because they are, ultimately, being proposed to accommodate the proposed residential, commercial and visitor serving development. Further, as noted previously, the proposed siting and sizing of the onsite clean soil excavation and waste material processing, treatment, and disposal areas is not mandated or proposed in response to any regulations governing these

activities but, rather, is being done to accommodate its overall residential, commercial and visitor serving development plan.

The proposed methods were specifically proposed to reduce overall impacts of the field abandonment and remediation to the surrounding urban area and onsite sensitive resources. This is done by strategically locating A&R staging areas within the already disturbed planned development footprint, cite ground-truthing task, reducing offsite truck hauling and its associated emissions, and keeping as much of the remediation onsite as possible by using natural bioremediation methods, and recycling and reusing as much of the soils and materials onsite as possible. These strategies, which have been used in other oil field abandonment and remediation programs in Orange County, align with the principles and elements recommended for Greener Cleanups as outlined by the US EPA Office of Solid Waste and Emergency Response (OSWER).

Page 41: Despite the lack of infrastructure to be removed in this area and presence of only minimal amounts of potentially contaminated material to be treated there, NBR proposes extensive soil excavation and grading activities in this location in order to achieve its target topography and grade and to provide a disposal location for waste material generated from removal activities on the northern portion of the site. Although these are important considerations from the perspective of NBR's desired residential and commercial development project, NBR's proposed remediation activities at the southern treatment and disposal area are not resource dependent uses of and, therefore, must avoid the adverse impacts on ESHA in that area. Thus, the applicant's proposed use of the southern treatment and disposal area is inconsistent with section 30240 of the Coastal Act.

The southern area is required to deal with the well, well pad, and road materials volumes in the southern area that would otherwise overload the northern placement site. Nowhere in the Abandonment Plan or the RAP does it state that the southern placement area would be used for materials from the northern area. It is also intended to avoid heavy traffic taking southern volumes across the more sensitive arroyo area to the norther site. In no way is any of the proposed abandonment and remediation removals from these areas related to any target topography and it is only the use of the placement area that coincides with an area that would also need to be excavated for the development. To double the total land disturbance area by selecting a completely different placement locations from the area the development would excavate makes no sense environmentally or otherwise.

Page 41: In response to Commission's staff's request that NBR evaluate project alternatives that would include the consolidation of material treatment and disposal operations on only the north side of the arroyo, NBR indicated that it rejected such alternatives because of its desire to minimize truck trips across the arroyo and because it needed the capacity of the proposed southern disposal site in order to bury material from the northern part of the site. Because the current proposal includes the transport of 20,000 to 45,000 cubic yards of material from the northern portion of the site to the disposal area that would be located south of the arroyo, NBR is already proposing to carry out up to 4,500 truck trips (assuming a truck capacity of 10 cubic yards) across the arroyo. In contrast, NBR estimates that as few as 3,500 truck trips may be needed to remove the limited amount of material proposed to be collected in the area south of the arroyo.

If these amounts are accurate, the use of the disposal area south of the arroyo may actually result in an increase in truck traffic across the arroyo of up to 1,000 trips.

Nowhere in the submitted Abandonment Plan or the RAP is it stated that NBR "needed the capacity of the proposed southern disposal site in order to bury material from the northern part of the site". The southern placement site will only be used for material from south of the arroyo area for two reasons: 1) the capacity is needed for southern materials so as to not overload the northern area, and 2) to avoid trucking across the arroyo. Again, the southern site has always only been proposed for south of the arroyo materials.

Page 42: As part of its proposal, NBR has assumed the maximum worst case level and extent of abandonment and removal activities would be carried out. The worst case disturbance footprint from these activities is shown in Exhibit 21.

This was done in order to be conservative and assume the largest impact to vegetation possible and its related mitigation needs. It is likely the impact to vegetation will be less than that assumed by this method.

Page 42: Although the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) does not require re-abandonment of wells unless their condition poses a risk to human or environmental health, because NBR is proposing to introduce increased human use and habitation on the site, it expects to work with DOGGR to review all the previously abandoned wells within 25 feet of habitable structures to determine if the condition of these wells meets current abandonment standards (established in the 1970s). Any wells that do not meet these standards are proposed to be re-abandoned in accordance with proposed practices that would be reviewed and approved by DOGGR through the issuance of an abandonment job permit. These proposed practices include removing all subsurface pumping equipment from the well hole, using cement to seal off the oil production zone and fill the casing to the surface, and cutting off the well casing six feet below the ground surface. As part of its planning for worst case conditions, NBR's Abandonment Plan includes an assumption that re-abandonment activities would be carried out on the over 400 abandoned wells located throughout the site – despite the fact that most of these wells have been abandoned according to current standards.

This is not correct. The listed practices are for active/idle wells and not for reabandoned wells. The statement that re-abandonment activities would be carried out on the over 400 abandoned wells is completely false. Neither the Abandonment Plan nor the RAP stated that reabandonment activities would be carried out on the over 400 abandoned wells. The well file research will determine the actual number that are not abandoned to current standards but it is expected to be in the range of 15 to 20 wells.

C. VERNAL POOLS AND SEASONAL FEATURES

Dr. Engel's September 25, 2015 Memorandum Regarding ESHA and Wetland Determination for Banning Ranch (Staff Memo) identifies a total of 39 vernal pools on the project site that qualify as ESHA. This determination is based on a number of asserted lines of evidence, each of which is not supported by the detailed biological surveys conducted during the previous 15 years to identify the flora and fauna on the site (see Table 7a and 7b from Dudek Biological Assessment, included as Exhibit 6). Staff's determination that the 39 features are ESHA based on their status as "vernal pools" is flawed for the following reasons:

1. The alleged historic occurrence of mima mounds on the southern portion of the NBR site does not coincide with the seasonal features on the site purported to be vernal pools;

- The alleged historic occurrence of mima mounds on the southern portion of the NBR site is not
 material when considering the current status of seasonal features, as any mima mounds that may
 have occurred on the property would have been removed prior to potential regulation under the
 Coastal Act;
- 3. All of the existing seasonal features, with the possible exception of Seasonal Feature A, are the product of activities associated with the current oil operations, past grading and/or site manipulation;
- 4. The presence of the versatile fairy shrimp (Branchinecta lindahli) is not a reliable indicator of the presence of vernal pool habitat; rather as the common name indicates, this species can tolerate a broad range of ecological conditions and occurs more often in non-vernal pool areas than in vernal pools.

Each of these is addressed below. Before addressing these, NBR has recognized certain seasonal features on the site as ESHA because of the presence of the San Diego Fairy Shrimp, a federally listed endangered species. Specifically, features VP1, VP2, VP3, E, G, H, I, and J, along with appropriate watershed areas have been set aside in permanent open space and would be subject to long-term restoration and management. The remaining 31 features are addressed below.

1. The historic occurrence of mima mounds on the southern portion of the NBR site does not coincide with the majority of seasonal features on the site purported to be vernal pools

Exhibit 7 (attached) shows the extent of the mima mound topography in 1928 on the southern portion of the NBR site as depicted on Figure 12 of the Engel Memo. Exhibit 7 shows that only one of the 39 features (Feature W) occurs within the area of purported mima mound topography. Feature W is does not appear on the 1928 aerial photograph as it was created during site grading in the 1960s by Caltrans. Feature PP occurs on the edge of the round polygon on Dr. Engel's Figure; however, it occurs in an area that was previously disturbed by grading.

The bottom half of Figure 12, which depicts photos of mima mound habitat are from Washington State and should not be confused with conditions on the NBR site. While Figure 12 includes a caption that states: "For illustrative purposes only" it does not make clear that the photos are from Washington State, without which, the Figure has the potential to be highly misleading.

The historic occurrence of mima mounds on the southern portion of the NBR site is not material when considering the current status of seasonal features, as any mima mounds that may have occurred on the property were removed prior to potential regulation under the Coastal Act

The aerial photograph that depicts purported mima mound topography is from 1928. To the extent that any mima mounds areas and associated vernal pools occurred on the site, such features were lawfully removed well before such features came under regulation under the Coastal Act. As already noted, none of the seasonal features on the site are naturally occurring vernal pools but are remnants of construction/excavation (e.g. Features CC, D, AA, P, O, N and Z), while others are low areas in existing roads or road shoulders (e.g. Features Q, R, S, T, X and Y- See Exhibit 8 for example photos). Some features such as Feature M were created by excavation and abandonment of oil field infrastructure. A detailed description for all of the season features was prepared by biologist with years of experience

working with vernal pools, as well as up to 15 years of experience evaluating the seasonal features on the NBR site, which was provided to Staff to assist in their analysis.

3. All of the existing seasonal features, with the possible exception of Seasonal Feature A, are the product of activities associated with the current oil operations or past grading and/or site manipulation

As noted, the anthropogenic origin of the seasonal features was well-documented, and this documentation was submitted to Staff. Even features with the San Diego fairy shrimp, which while strongly associated with vernal pools is not "endemic" to vernal pools as is clear from a review of the data from the NBR site. Feature VP1 was created as a baseball field in the mid-1970s and later abandoned; Feature VP2 is a low area adjacent to an active oil well and is traversed by pipelines; Feature VP3 is a bulldozer scrape overlying a buried pipeline; Features E and G are oil sumps; Feature H is a series of road ruts. Because these features support a federally-listed species, with the exception of Feature E, preservation and, as appropriate, restoration is proposed to ensure the long-term survival of the San Diego fairy shrimp. As already clarified, all of the other features on the site with the possible exception of Seasonal Feature A have anthropogenic origins.

4. The presence of the versatile fairy shrimp (Branchinecta lindahli) is not a reliable indicator of the presence of vernal pool habitat; rather as the common name indicates, this species can tolerate a broad range of ecological conditions and occurs more often in non-vernal pool areas than in vernal pools.

As the common name, versatile fairy shrimp indicates, this species exhibit broad ecological tolerances and occurs more often in non-vernal pool habitats than in vernal pool habitats. GLA and Dudek biologists holding Section 10(a)(1)(A) Recovery Permits for listed branchiopods (fairy shrimp) find the versatile fairy shrimp in road ruts, low areas in roads, including asphalt roads (such as for features T at NBR), stock ponds, "unofficial" BMX bicycle tracks, low areas created by equestrian uses, just to name typical examples. The presence of the versatile fairy shrimp, while sometimes indicative of vernal pools; is only a reliable indicator when other indicators such as vernal pool indicator plants. On the NBR site, as summarized in Appendix 1 of seven pools support the San Diego fairy shrimp and an additional 25 features support the versatile fairy shrimp. Of these, five support hyssop loosestrife (Lythrum hyssopifolia), a nonnative invasive that occurs in vernal pools and other types of wetlands, but which is not, like the versatile fairy shrimp, a reliable indicator for the presence of vernal pools. Of the pools that do not support the San Diego fairy shrimp1, only one, Vernal Pool K, which is avoided by the project, supports a reliable vernal pool indicator woolly marbles (Psilocarphus brevissimus). As such, of the 21 features impacted by the development or site remediation, none exhibit reliable indicators consistent with the presence of vernal pools, which is fully consistent with disturbed character of the anthropogenically created features.

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¹ Feature E is clearly not a vernal pool based on any known definition. This feature is a documented oil sump created to capture oil spills from adjacent wells. While this feature supports the San Diego fairy shrimp, the vegetation associated with this feature is mulefat (*Baccharis salicifolia*) a large shrub that occurs in wetlands and uplands in equal proportions. No vernal pool plants have ever been detected in this feature.

D. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

1. Vegetation Communities

Regarding Staff's recommended ESHA determination of vegetation communities, we offer the following comments which take into consideration the preponderance of invasive plant species in many portions of the site, mapping units, and other factors not reflected in Staff's recommended ESHA determination.

a. California Brittle Brush Scrub ESHA

Staff notes that coastal sage scrub on Banning Ranch is best characterized as California Brittle Bush Scrub (CBBS), also called Encelia californica Alliance Shrubland, which is identified as a rare habitat by the CNDDB. Staff further describes California Brittle Bush dominated Coastal Sage Scrub as a rare habitat that provides an especially valuable ecosystem service when occupied by the coastal California gnatcatcher or other rare species, and is easily disturbed and degraded by human activities and development, and therefore concludes the CBBS Coastal Sage Scrub on the project site meets the definition of ESHA. Further, in delineating CBBS ESHA, Staff notes that the Project's consulting biologist, Dudek, placed CBBS in 13 different categories, depending on associated species and type of disturbance, but Staff combined these sub- types into one CBBS Coastal Sage Scrub layer for mapping purposes since the overwhelming dominant in each case is California brittle bush (Encelia californica).

The California brittle brush scrub alliance is identified by the California Department of Fish and Wildlife's (CFDW) Natural Communities List (September 2010) and the Manual of California Vegetation Second Edition (MCV2; Sawyer et. al. 2009) as a G4/S3 rank, which is defined as: greater than 100 viable occurrences worldwide, and/or more than 12,950 hectares (G4) / 21-100 viable occurrences statewide, and/or more than 2,590 – 12,950 hectares (S3). The S3 rank of a vegetation community or alliance is considered a natural community of special concern (i.e., rare) in the state of California. To understand the value of this rare stand, the CDFW further request consultants and resource agencies to address the rare plant communities through the outline provided below and located on-line at:

http://www.dfg.ca.gov/biogeodata/vegcamp/natural_comm_background.asp:

Ascertain if project-affected stands of these vegetation types or natural communities can be considered as high-quality occurrences of the given community. The judgment of whether a stand is high quality or not involves a flexible set of criteria such as the range of existing sustainable occurrences of this element or vegetation type based on site quality, defensibility, size, and surrounding landscapes. These criteria vary based on the type of vegetation or natural community and the range of existing occurrences known. For example, it is likely that although there are many individual stands (or occurrences) and many thousands of acres of Douglas-fir/Vine maple/Oregon grape association (*82.200.20 Pseudotsuga menziesii / Acer circinatum - Mahonia nervosa) in northwestern California, there are only a few that reflect the most exemplary qualities of natural vegetation including:

- 1. lack of invasive exotic species,
- 2. no evidence of human-caused disturbance such as roads or excessive livestock grazing, or high-grade logging,
- 3. evidence of reproduction present (sprouts, seedlings, adult individuals of reproductive age), and

4. no significant insect or disease damage, etc.

For this community, these characteristics exemplify high quality, sustainable, old growth characteristics. Thus the ranking of this association is based on the restricted high quality examples. If a project would affect a small acreage of second growth stand of this type, unless there are other plant or animal elements of significance associated with it, it is unlikely that this would constitute a significant impact. Modification of this stand would be considered less likely to be a serious threat to the existence of all high quality stands of this type.

The CDFW guidance places into understanding the definition of a rare vegetation community type, especially at the time a project is to be analyzed for impacts. Although we understand the importance of coastal sage scrub in the California's coastal zone, especially southern California, a distinction must be made between California brittle brush scrub displaying higher quality ecological components and one that is a mixture of a brittle brush scrub and non-native invasive plants in a legally disturbed setting. To calibrate this discussion, Dudek considers the higher quality (not necessarily all high quality) to consist of the codominant vegetation communities of California brittle bush scrub and coastal prickly pear scrub (CBBS-CPPS) containing consistent breeding pairs and/or use areas of the California coastal gnatcatcher. Alternatively, California brittle bush scrub containing a: 1) strong invasive plant association such as mustard (see CBBS-MF); 2) exhibiting legal oil field disturbance; and, 3) void of any special-status plant or wildlife species would be characterized as low quality habitat not representing a rare vegetation community per CDFW: "Thus the ranking of [a rare] association is based on the restricted high quality examples." Additionally, a shrub stand consisting of a monoculture (i.e., one plant species) is not only indicative of disturbance, but is also considered low quality based on its minimal plant diversity. Most of the California brittle brush scrub on-site is characteristic of 1) - 3) and consist of a shrub monoculture. As quoted in the Staff Ecologists memo, the EIR states:

"Encelia scrub occurs in large areas in the northeastern portion of the Project site and along the bluffs and southern portions of the mesa. This vegetation type is dominated by bush sunflower, and it occurs as a monoculture in many of the northern patches."

Dudek spent an extraordinary amount of time to accurately document California brittle bush scrub to meet the demands of Staff during the objective collection of defensible vegetation data on behalf of the NBR Project. Often, the results were extremely small and non-standard mapping units and/or the hyphening of nomenclature to capture the nature of the vegetation on-site. For instance, in Staff Ecologists memo, it is recognized that Dudek mapped thirteen (13) alliances containing California brittle brush shrubs. Of these, Dudek identified nine (9) as "disturbed" based on obvious oil field disturbance, the presence of non-native invasive plant species, and the often monoculture or low native plant diversity within the alliance. Per Dudek 2013:

"On the Newport Banning Ranch, stands of vegetation mapped as Disturbed-California Brittle Bush Scrub (D-CBBS) have at least 30% relative cover or greater of California brittle bush, similar to CBBS; however, the shrub canopy is often open to intermittent with a significant forb/grass layer of invasive non-native and pioneering native plants, sometimes also including subshrubs. Additionally, ... 5 to 50% of the polygon is affected by disturbance including but not limited to roads, trails, disked activity, or scrapes."

Dudek (2013) further describes the majority of California brittle bush scrub on-site as:

"[Disturbed-California brittle bush scrub] community occurs adjacent to developed roads, adjacent to active oil operations, and adjacent to disturbed areas with high percentages of non-native species. Within the community, California brittle bush has an open canopy with high percentages of bare ground and non-native species including mustard, bromes, tocalote, sweet fennel, and iceplant."

Reflecting on the guidance of the CDFW on the "rarity" ranking and its intent, the combination of non-native invasive plant species and obvious disturbance along with other important ecological factors should be given stronger weight in the determination of ESHA or non-ESHA, than purely the presence of one shrub species that is often a component of coastal sage scrub, but unto itself and in this particular setting, does not represent a diverse high quality coastal sage scrub.

In summary, many of the disturbed areas onsite occupied by California brittle bush scrub should not be considered ESHA due to 1) abundance of non-native invasive plant species; 2) evidence of anthropogenic disturbance; 3) typically monoculture or low diversity in nature; and, 4) absence of a sensitive or special-status species.

b. Prickly Pear Cactus

Staff implies that the vegetation mapping conducted for NBR is incomplete or deficient because, in Staff's opinion, "...while patches of iceplant below the minimum mapping unit have been mapped across the entire site, similar size patches of prickly pear cactus (indicator species of coast prickly pear scrub which is a rare plant community) located within polygons mapped as 'disturbed' were not mapped. We believe that these patches of prickly pear cactus must be mapped."

The notion that coast prickly pear (*Opuntia littoralis*) and coast cholla (*Cylindropuntia prolifera*) was arbitrarily placed into the disturbed category while ice plant was mapped at a finer scale is a misunderstanding of the overall goals of the project. Ice plant is a target invasive non-native plant species that will be eradicated during project development. In areas of ice plant located outside of the project footprint, the plan is to remove the ice plant and re-establish healthy native scrub communities, including, but not limited to Coastal Prickly Pear Scrub. As is evident in areas of NBR that contain ice plant, shrubs and cacti are often overcome by the ice plants aggressive nature. The dense mat coverage of ice plant suppresses native plant growth and establishment. Identifying all areas of ice plant for their later removal and replacement with native coastal sage and cactus scrub is critical to the long-term ecology of NBR.

Using the criteria set forth in the vegetation mapping, if one only considered the threshold for determining a shrub versus non-shrub alliance, these very small patches of cacti never exceeded the 20% (not even 10%) absolute cover within the mapped polygon to be considered a vegetation category. The ice plant on the other hand was a contiguous "mat," whereas areas of cacti were in small patches not directly associated with other native or non-native vegetation. Instead, the patches of cacti were essentially small islands within a dominance of invasive non-native vegetation. The benefit of mapping the cacti patches was to document acceptable sources area for propagules. Propagation is easily performed from the cacti "pads" and seeds; therefore, these small isolated patches can be used to improve the local genetic nursery stock for future habitat restoration at NBR.

Inclusion of small patches of cacti as ESHA again defeats the intention of the rarity ranking. As with the California brittle brush scrub, these patches are not high quality due to the abundance of non-native

invasive plant species and ongoing oil field disturbance. Furthermore, the mapping unit that the Staff requested NBR to delineate is not indicative of a vegetation community or alliance. It does not represent a stand. Instead, the patches represent cacti individuals in disturbed vegetation communities dominated by invasive non-native plant species.

c. Purple Needle Grass Grassland

Staff states that the CNDDB ranks purple needle grass grasslands as a rare habitat, and further notes that, in California, native coastal grasslands (coastal prairie) once covered vast areas of the coast but have been extirpated from approximately 95% of their former range. Staff goes on to indicate that large patches of purple needle grass that in aggregate form purple needle grass grassland are located across the Banning Ranch upper mesa area, and that purple needle grass grassland also provides dwelling habitat for burrowing animals and significant foraging habitat for numerous species of mammals, birds, and reptiles, citing a number of special-status birds that have been observed perching and foraging at various locations within and in the vicinity of the purple needle grass grassland across the NBR site. Staff therefore concludes that the purple needle grass grassland on Banning Ranch meets the definition of ESHA because it is a rare habitat that also provides an especially valuable ecosystem function as foraging habitat for many species of animals, including the burrowing owl (a Species of Special Concern) and numerous raptor species, and because it is easily disturbed and degraded by human activities and development.

The purple needle grass grassland (PNGG) alliance is identified by the CFDW Natural Communities List (September 2010) and the MCV2 (Sawyer et. al. 2009) as a G4/S3? rank. The "?" indicating more information is required for the California (i.e., state) Rank. Although purple needle grass is plentiful in many areas of the site, areas classified as PNGG suffer from an abundance of invasive non-native plant species and extremely low plant diversity; therefore, the on-site PNGG does not demonstrate a high quality vegetation community worthy of an ESHA determination in areas where sensitive or special-status wildlife species are absent.

Dudek (2013) describes the on-site PNGG as:

"The purple needle grass grasslands found throughout the Newport Banning Ranch contain characteristic grasses; purple needle grass, bromes, and wild oats, however, they typically only contain a low diversity of non-native [invasive] forbs including tocalote, filaree, smooth cat's ears, etc. Native characteristic forb species identified by the MVC2 are rare on-site and not often associated with patches or areas containing purple needlegrass. The native forb clustered tarweed (Deinandra fasciculata), a forb adapted to disturbance, was occasionally observed in bloom within this community during summer months."

"Areas of purple needle grass grasslands, as defined by MCV2 (Sawyer et al. 2009), and greater than 0.25 acres, have the potential to be good quality habitat in situations where anthropogenic disturbance is limited and/or when located in serpentine soils, presumably based on the presence of other native grasses and forbs as noted by the MCV2 and Holland (1986). The areas (greater than 0.25 acre) or patches (less than 0.25 acres) of purple needle grass grassland on the Newport Banning Ranch do not contain associate forbs or native grasses that distinguish this community as good quality habitat. In fact, invasive and naturalized grasses and forbs dominant all portions of the site that contain grasslands, even when purple needle grass is present."

NBR recognizes that purple needle grass grassland is an important native plant alliance that has paramount potential through on-site habitat restoration and re-introduction of characteristic native forbs, bulbs, and grasses.

Ecologically, the PNGG on Newport Banning Ranch functions similarly as annual brome grassland (ABG) and other areas of low vegetation in disturbed areas since: 1) predators (i.e., raptors and coyotes) can access prey; and, 2) the soil type and consistency are relatively uniform (and friable) on the mesa for burrowing animals (i.e., coyotes and rodents) to excavate dens and burrow systems. So when common wildlife is considered, the PNGG does not represent a unique habitat for hunting, foraging, or denning; therefore, the on-site PNGG, unless occupied by a special-status species, falls short of the requirements of an ESHA determination.

In summary, PNGG should not be considered ESHA due to the following reasons: 1) plant diversity is extremely low; 2) non-native invasive plants dominant; and, 3) abundance of similar wildlife habitat at Newport Banning Ranch. Additionally, maintenance activities (i.e., mowing) may have been beneficial to the preservation of PNGG over the decades, however, historic agricultural uses and oil exploration likely affected the diversity that used to be typical of this vegetation community.

In addition, we draw attention to a decline in percent cover of purple needle grass in polygons that was documented between 2012 and 2015, which was entirely omitted in the Staff Report. The precise reason for the decline in not known, but was likely the result of 1) drought conditions; 2) changes in maintenance (i.e., no mowing); 3) possible increase in herbivory; and, 4) seasonal timing of the surveys (2012 was surveyed in spring, while 2015 was surveyed in summer). The year of 2012 (rain year 2011-2012) was the first year of drought, which followed an above average rain year (2010-2011). The year of 2015 represented the ensuing four years of drought conditions. 2015 also represented the third year that mowing ceased on the majority of the site. While drought usually negatively affects most native and non-native plants, mowing can actually benefit purple needle grass through a reduction of competing non-native and often invasive grass and forb species. Mowing also keeps native pioneering shrubs and sub-shrubs at check allowing grasslands to continue to proliferate in areas of disturbance where shrubs and larger forbs (i.e., mustards) may dominate an area. Dudek noticed what appeared to be an increase in herbivory of the purple needle grass by rabbits. This may have been a result of the drought, which causes a reduction in food availability for the local herbivore community. The late timing of the 2015 may also have contributed to the condition of the purple needle grass and apparent herbivory observation.

2. Special-Status Species

a. Coastal California Gnatcatcher

The Staff Memo discusses several life history characteristics of California gnatcatcher (CAGN) which serve to provide a basis for the determination of ESHA related to CAGN. We offer clarification on several points follows:

1. It is stated that "They primarily feed on insects, which are eaten directly off coastal scrub and other vegetation."

CAGN actually primarily feed on arthropods, which include spiders and other exoskeleton invertebrates such as insects. And they do not eat off of the vegetation, but forage for

invertebrates by perching and gleaning (picking off) them from shrubs, having been described as "near-surface searchers" that glean arthropods off foliage while moving quickly through the substrate². Since they do not forage while flying, they must perch and hunt for their prey. To do so, the vegetation must be stout enough to support them. Further, CAGN do not like to be exposed to predators, so are very secretive when hunting. They prefer to glean invertebrates from within the shrub canopy.

2. The memo states (Pg. 14), "Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California sunflower and California buckwheat were co-dominant with sagebrush."

While this is true regarding their habitat preferences, it needs to be noted that on the Newport Banning Ranch (NBR) site, California sagebrush and California buckwheat is nearly non-existent. On page 14 of the Memo, the author specifically cites the EIR's description of Encelia Scrub (the only noted type of sage scrub on site according to the author "The coastal sage scrub on Banning Ranch is best characterized as California Brittle Bush Scrub (CBBS)), which says, "This vegetation type is dominated by bush sunflower, and it occurs as a monoculture in many of the northern patches. Other species present in lower densities include bladderpod, wreath plant (Stephanomeria virgata), goldenbush (Isocoma menziesii), California buckwheat, coastal prickly pear, and coastal cholla." It is important that Encelia is considered to be a monoculture and that California sagebrush and California buckwheat are not even discussed as other "lower density" species within the community. Previously (add John's reference Section here), Encelia was described as a species that was extremely easy to germinate, had high seed production numbers, and easily exploited disturbed areas.

While the CAGN can exist within habitat that is a monoculture, the best habitat types for them include a variety of shrub species and in the coastal part of its range, occupied habitat is dominated by open California sagebrush3. Winchell and Doherty (2008, p. 13254) found the density of gnatcatchers was highest in high-quality habitat and decreased as habitat quality decreased. Further, they prefers nesting habitat to be dominated by California sagebrush, including between 20 and 60 percent cover and an inter-shrub gap of 5 to 6 feet. In these situations, nests are often located in California sagebrush plants about 1 meter (3 feet) above the ground5. This description shows that they prefer to occur in more mature and open sage scrub communities that are dominated by California sagebrush. The NBR habitat is of general poor quality for CAGN based on monotypic, Encelia dominated, California sagebrush lacking, patchy and weedy habitat. Further, much has been made in the Memo of the regeneration of high quality

² Burger, J.C., M.A. Patten, J.T. Rotenberry, and R. A. Redak. 1999. Foraging ecology of the California gnatcatcher deduced from fecal samples. Oecologia 120:304-310.

³ Mock, P. 2004. California Gnatcatcher (*Polioptila californica*). *In* The Coastal Scrub and Chaparral Bird Conservation Plan: a strategy for protecting and managing coastal scrub and chaparral habitats and associated birds in California. California Partners in Flight. http://www.prbo.org/calpif/htmldocs/scrub.html

⁴ Winchell, C.S., and P.F. Doherty. 2008. Using California gnatcatcher to test underlying models of habitat conservation plans. Journal of Wildlife Management 72: 1322–1327.

⁵ USFWS. 2010. Coastal California Gnatcatcher 5-Year Review. 51 pg.

Encelia in areas that had formerly been mowed, or the value of grasslands. These areas do not support valuable foraging habitat – in fact it is highly likely that CAGN will not forage in these areas until larger shrubs are present which would provide some cover and stable perch.

Most habitat restoration efforts regarding CAGN (e.g., Montebello Hills, Ocean Trails, El Sobrante Landfill, Coyote Hills East (UnoCal), and many more), require California sagebrush as a dominant component. While the current NBR site supports poor, yet occupied CAGN habitat, the ultimate project will restore or enhance all of the sage scrub open space areas to high-quality scrub which will return California sagebrush, California buckwheat, and other appropriate shrubs to the landscape. This will provide for a more suitable base for arthropod prey species to thrive in and will provide better overall habitat and nesting opportunities for CAGN. Since Encelia can be weedy, it will need to be managed to allow for the more appropriate species to take hold.

3. On page 22, the Memo discusses their foraging use of non-native, such as black mustard and use of habitats such as grasslands.

CAGN use of non-native plant species as a foraging substrate is anecdotal and very much exception to the norm. They spend nearly all of their foraging energy investment in habitat that is likely to provide the arthropods of choice. As noted, they prefer to glean sedentary arthropods off of plants and will exploit invertebrates where they occur – for example a break-out of butterfly caterpillars. Most typically this occurs within their standard habitat, but of course may sometimes happen in adjacent novel habitat types. Similarly, they may occasionally move, or fly through non-standard habitat or land cover types to get to patches of suitable scrub areas, but those areas should not be considered to be required or necessary habitat. They typically only land in those areas when isolated scrub shrubs are present. As discussed above, they do not like to be exposed to predators and like to have cover when foraging or moving. The exceptions are when they are flying rapidly through an inhospitable area (e.g., open landscape), flying to respond to a territory dispute, when perched at the top of a small tree to observe their territory (cover always is nearby), and sometimes when nest building. Never say never with biology, but an evaluation of Environmentally Sensitive Habitat Areas should not be based on occasional and accidental uses⁶.

4. Some context is required with regard to the history of the CAGN listing. The Memo states on page 22, "In response to the drop in gnatcatcher numbers in southern California resulting from habitat loss and fragmentation, the northernmost subspecies (Polioptila californica californica) was listed as federally threatened in 1993."

This is true, but the species was listed as a Distinct Vertebrate Population – meaning that the U.S. Fish and Wildlife Service only considered the United States population when listing. "Although a large majority of the California Gnatcatcher population is found in Baja California most of the research on the species has focused on only the Coastal California Gnatcatcher subspecies (Polioptila californica californica) in a small portion of it range in Southern California over the last

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⁶ Pers. Com. Brock Ortega – Mr. Ortega has over 24 years of extensive field experience with the species, beginning with a 1992 study of 27 pairs of CAGN 9minimum 30-hours of observations per pair). Additionally, he obtained his federal 10(a)(1A) permit in the first group of biologists to do so in 1993.

10-20 years. In Baja California all three subspecies are found and it is estimated up to 99% of the species' total population is located south of El Rosario (Salata 1993).7"

5. With regard to the federal Primary Constituent Elements (PCE's) associated with CAGN, the USFWS (20078) describes the first category as "(1) Dynamic and successional sage scrub habitats: Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging." This only relates to sage scrub habitat types and is the main factor. It goes on to describe the secondary type of PCE as "(2) Non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats as described for PCE 1 above that provide space for dispersal, foraging, and nesting." It is interesting to note that the term, "proximity" is not defined and thus unfortunately can be subjectively interpreted differently. This should be interpreted to mean areas that are directly adjacent to scrub habitats as opposed to widespread inclusion. As discussed, grasslands onsite would not support CAGN breeding or foraging as they are too open and generally do not include shrub cover. One good test is whether the USFWS would allow the vegetation community or land cover to be included as restoration or mitigation for the species. The USFWS has historically not allowed mitigation conservation or habitat restoration credit for CAGN impacts over chaparral, riparian, grassland, or ruderal lands. They have only accepted mitigation in the form of quality sage scrub - either through preservation or through restoration/enhancement.

When modeling Critical Habitat for CAGN, the USFWS used the following methods "To help predict the presence of coastal California gnatcatcher occurrences throughout the range of the species, especially in areas with limited survey information, we commissioned a spatial habitat evaluation model incorporating habitat parameters used by the coastal California gnatcatcher during the breeding season. We began with a GIS layer identifying California sagebrush habitats (e.g., Venturan, Diegan, and Riversidean sage scrub). We recognize that other habitats are used by coastal California gnatcatchers at various points in their life history, such as chaparral, grassland, and riparian habitats during foraging or dispersal. However, few breeding territories have been documented in habitats devoid of California sagebrush." This indicates that they understood that sage scrub was the important vegetation community. Further, "When determining the revised final critical habitat boundaries, we made every effort to avoid lands occupied by development such as buildings, paved areas, and other structures that lack PCEs for the coastal California gnatcatcher. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in this rule and are not designated as critical habitat." Therefore, portions of the site that include previous oil developments (e.g., well pads, roads, maintenance areas) should be excluded from the Critical Habitat designation as well as non-PCE areas such as weedy or disturbed areas. These areas should not be considered to be ESHA either.

⁷ http://neotropical.birds.cornell.edu/portal/species/overview?p p spp=542796

https://www.federalregister.gov/articles/2007/12/19/07-6003/endangered-and-threatened-wildlife-and-plants-revised-designation-of-critical-habitat-for-the#h-23

6. When ESHA was modeled for CAGN on the site in the Memo, they indicated on page 23, "...that specific observations of gnatcatchers within any particular area are not necessary in order to conclude that the area is occupied by gnatcatchers. If gnatcatcher foraging or nesting is observed in the general proximity of a site, it is considered occupied."

This is not consistent with the USFWS description of how Critical Habitat was defined. "General proximity" was not considered a threshold when describing why Sunset Ridge Park (page 15) was considered to NOT be ESHA.

7. There were various discussions on pages 24 and 25 regarding the validity and interpretation of survey results and methods. This fed into a discussion about whether drought or site impacts led to a reduced population. As discussed in detail below survey methods and results varied across the years, but it is likely that a few factors contributed to the recent decline but the main factors are varied survey methods and interpretation and drought. By all accounts, territory sizes in the coastal region range from between 2.96 and 6.04 acres per pair (excluding the recent 2013 to 2015 NBR results). Purported direct loss of 7+ acres of sage scrub vegetation could only account for a reduction of 1 to 2 pairs of CAGN. This leaves a reduction difference of 8 to 9 pairs (on average) which then could only be accountable by (a)misinterpretation of previous population numbers, or (b)natural factors such as drought or loss of prey availability.

First, contrary to the Memo, the survey guidelines allow for flexibility in study design if coordination with the USFWS occurs. That said, there has been much variance in the level of survey effort applied on NBR. However, much survey work has been conducted between 1992 and 2015. While the methodology of the 2013 Dudek surveys was designed for distinguishing between pairs and documenting population sizes, the USFWS (1997) guidelines are not intended to produce estimates of populations and therefore prior surveys conducted pursuant to the guidelines are not a sound basis for determining the number of CAGN pairs supported by the site historically. Survey reports for many of those previous presence/absence survey efforts to USFWS did not typically explain methods for distinguishing pairs, territories, or individuals. Additionally, the typical employment of the survey technique often involves a limited number of biologists and often different biologists on different days, walking around patches of habitat. At NBR, there are a number of very useful roads that circumscribe suitable habitat patches, but wander around impediments such as riparian bands, equipment, and topography. Following these routes is useful for providing good coverage for presence/absence surveys, but potentially biases the population results, as the same individuals may be mapped at multiple locations, thus inadvertently elevating the estimated population. Therefore, results cited in reports of these surveys are not readily open to interpretation or comparison in terms of determining the absolute CAGN population on site during their respective survey period and cannot easily be reconciled with the results of efforts such as the 2013 Dudek survey effort. However, while the 2013 results marked a significant drop in the estimate of territories on the Newport Banning Ranch, similarly low numbers or territories in 2014 and 2015 suggest these later estimates were consistent with a short-term decline in the CAGN population at NBR after 2009.

Specific information lacking in reports on surveys conducted between 1992 and 2009 and in 2014/2015 also makes comparison difficult across methods:

- In most reports (except for GLA 2002), is it not clear how often or during which passes specific birds were observed. So it is not clear whether a pair associated with a specific territory was observed during each survey or only once. This would not eliminate the possibility that an individual or pair was detected in different areas on different dates, thus potentially inflating the population size.
- It is not clear from any of the reports how many birds or pairs were detected during each survey. So it is unclear whether birds in adjacent territories were observed simultaneously (thus confirming multiples pairs or territorial males were involved) or even during the same survey. Were this information available, it would help determine whether population estimates were potentially inflated.
- Several reports note that nests were located, but none of the reports include exhibits showing the locations of the nests, the dates nests were observed, the stage of the nests (incubation, nestling period), or whether the nests were active. While information about nests is potentially useful in confirming population size, more specific information than provided in the reports is necessary for several reasons:
- Multiple nests in an area may be from different pairs (if all active), or may be nests from the same pair, if one is active and the others are not. Also, active nests located in several adjacent territories could indicate that territory size estimates are accurate.
- Nests widely distributed across the site leaves open the possibility that the nests were associated with pairs using larger areas than supposed, and that several "pairs" in an area where only one active nest was located may have represented only one pair.
- As the dates and locations for nests are not noted, it is unclear whether multiple nests of the same pair, from different nesting attempts at different times in the season, might have been involved in some cases.
- Nest location information would provide some insight regarding the most important habitat areas on site, since it is reasonable to assume that the CAGN would choose the better areas to nest in.

Although the methods were designed to provide a more accurate estimate of population size, results of the 2013 Dudek effort show some consistency with previous and subsequent findings, and with results from 2014 and 2015 surveys suggesting a decline in the population since 2009. Overall, the 2013-2015 survey efforts documented CAGN using the same general areas used in previous years, though fewer pairs.

In a 2010 analysis, CAGN "use areas" 1 through 9, the average in 1992–2009 was 8.76 (range of 6–12). In 2013, Dudek recorded only 4 territories in this area, below the lowest previous total and less than half the average. However, the survey method allowed for biologists to follow individual birds, unlike previous efforts. In this case biologists followed (tracked) a single male moving approximately 300 meters (990 feet), across historic use areas 7, 8, and 9. Simultaneously a single male was detected moving through use area 6 and 7. Neither paired male experienced territorial disputes. Therefore, 2 males were confirmed as behaving territorially over an area encompassing 5 use areas identified in 2010. These males were simultaneously watched and followed by at least 6 biologists. Using real-time mapping software (i.e., all biologist were able to "watch" the mapped CAGN in real-time as other biologists mapped its progress), the "7, 8, 9" male was observed by multiple biologists to move up, over, and around an intervening hill and up and through dense riparian bands. A single expert observer would have easily missed these

movements. The frequency of the movements, combined with the apparent barriers, would have led the observer to map the single individual as multiple individuals. Therefore, while the 2013 results were consistent with findings for the northern portion of the site, this survey provided convincing evidence that significantly fewer CAGN territories were present in the southern portion of the site compared to previous estimates. The real-time nature and movement patterns of this CAGN also raised the possibility that previous CAGN mapping locations may have been artificially high.

Both the number of territories and the estimated acreage of suitable habitat in the upland portion of the site have varied over years. The average number of estimated territories during surveys from 1992 to 2009 was 19 (range of 15–29). For years when documented acreages for suitable scrub habitat were available (1992, 1997, 1998, 2000, 2007, 2009), the average was 18.3 (range of 17–19), for an average territory size of 2.96 acres, assuming all suitable habitat was occupied. Between 2013 and 2015, the average territory sizes increased as a function of fewer pairs. The available habitat was estimated at 56.36 acres on site and resulting territory sizes ranged from between 5.64 acres to 7.05 acres. The ranges found onsite coincide with other sites in the western part of their range. For example: Palos Verde Peninsula in Los Angeles County found a mean territory size of 5.7 (n=16); Montebello Hills at 3.48 acres per pair (2005; n=58) and 3.01 acres per pair (2007; n=67 pairs); West Coyote Hills in Fullerton, Orange County, 5.53 acres per pair (2005; n=60) and 6.04 acres per pair (2009; n=55 pairs).

In addition, Staff has previously raised concerns regarding construction of an access road from Coast Highway into the site during the Commission's review of the adjacent Sunset Ridge Park project. To address those concerns as it relates to NBR's Project, Dudek prepared a technical paper Review of Occurrence and Persistence of Californian Gnatcatcher (*Polioptile Californica Califonica*) Along Roadways (September 2015), included as Exhibit 9. The information included in the technical paper provides evidence to conclude that the proposed Bluff Road entrance from Coast Highway will not adversely impact gnatcatcher use of the project site.

We further note that the Commission has addressed similar issues involving potential road expansion impacts to CAGN in the south Coast area. In its action to approve CDP 6-02-153, the Commission overturned the Staff recommendation for denial of a Caltrans auxiliary lane project in which nesting gnatcatchers and a rare plant species occupied a portion of the manufactured freeway slope immediately adjacent to the proposed disturbance footprint. However, the Commission determined that the occupied slope area was not ESHA, because the habitat is degraded and exists in this location primarily because Caltrans planted it for slope protection when this segment of I-5 was constructed in the late 1960's, prior to the Coastal Act. The Commission thus found that the proposed impacts could be allowed with appropriate mitigation. The Commission's approval of the Caltrans road improvements represents a similar situation as that which exists at the NBR site. The area of concern is immediately adjacent to the already developed transportation corridor of Coast Highway, and the existing topography and vegetation is heavily degraded due to a combination of significant grading conducted by Caltrans in the 1960s, and continued use of the grading cut for oil field operations since that time.

b. Cactus Wren

The Memo indicated that while the site historically included coastal cactus wren (CAWR) family groups, they have not been observed onsite since 2009. This was supported by a discussion of the relative

observed loss of CAWR in Orange County coastal areas since 1993. Specifically, an 87% decline of occupied habitat was identified within the Coastal Reserve of NROC between 1992 and 2006 and a greater than 80% decline in occupied habitat within the overall NROC over the last 20 years. This species is generally resident, with little seasonal movement noted and is tied to areas that include native cactus patches. Additionally, this species is monogamous and maintains a life-long partnership. Over time, the species has become increasingly isolated⁹. In areas with abundant cactus patches it still occurs in numbers, though they might be diminishing. While the absolute reason for the general coastal population decline is not known, it may be a confluence of factors which include the development-caused isolation, tendency to not move very long distances, and its propensity to mate for life. Linked pairs may be less inclined to leave their current location, seek out new habitat, and colonize it, whereas individuals may be better able to do so.

Dudek reviewed vegetation mapping conducted in 2009 as compared to vegetation mapping results conducted in 2015 (Exhibit 10). The methods of mapping were not directly comparable (Staff required atypically precise mapping of every cactus patch for the 2015 effort, while it is likely that the 2009 effort used a more standard mapping unit and perhaps blended isolated patches into larger polygons. Based on a review of the two coverages, there are areas mapped in 2015 that were not mapped in 2009, and areas mapped in 2009 were not mapped in 2015. A follow-up review of aerial imagery (Google Earth Pro maps from 2008 through 2015) showed that the differences could not be explained by grading or clearing between 2008 and 2015. Therefore, the differences in coverages must be due to mapping methodology differences. In conclusion, local extirpation of CAWR from the NBR site was not due to impacts to requisite vegetation community resources between 2009 and 2015. Other factors were at play.

c. Raptor Foraging

As noted in Section the discussion of PNGG ESHA above, although Staff concludes purple needle grass grassland on NBR meets the definition of ESHA because, in part, provides an especially valuable ecosystem function as foraging habitat for many animals and birds including the burrowing owl which is a Species of Special Concern and numerous raptor species, we continue to emphasize that, at NBR, the habitat functions of PNGG are no different than the extensive stands of non-native annual brome grassland (ABG) on the site, and in terms of optimal raptor foraging habitat, currently the lowlands provide for good raptor foraging habitat given the low-plant growth associated with salt marsh that is highly desirable habitat for prey items such as voles and deer mice. Implementation of the HCCMP would remove all oil field development from the lowlands and result in extensive wetland and transitional grassland habitat restoration that would significantly expand optimal habitat for raptor prey species over large portions of the project site.

E. TAKINGS ANALYSIS

The Staff Report suggests that a denial of the CDP, or doing nothing, would not constitute a regulatory taking. The Commission need not reach this issue because, as explained in the preceding Section, there are compelling reasons to approve the Project through conflict resolution based on the extraordinary coastal resource benefits that the Project will provide.

⁹ Solek, C. and L. Szijj. 2004. Cactus Wren (*Campylorhynchus brunneicapillus*). *In* The Coastal Scrub and Chaparral Bird Conservation Plan: a strategy for protecting and managing coastal scrub and chaparral habitats and associated birds in California. California Partners in Flight. http://www.prbo.org/calpif/htmldocs/scrub.html

In any event, whether a governmental regulatory decision results in a taking that must be compensated pursuant to the Fifth Amendment of the U.S. Constitution is a constitutional determination under well-established takings jurisprudence. The Commission has no jurisdiction to make constitutional adjudications, or to force an applicant to submit information in support of such an adjudication. The weighing and balancing of constitutional determinations is simply beyond the Commission's authority. As the Court of Appeal explained in *Healing v. California Coastal Commission* (1994) 22 Cal.App.4th 1158, 1178: "[T]he Commission is authorized to make and enforce rules and decides issues of constitutional magnitude. It is not an adjudicatory body authorized to decide issues of constitutional magnitude."

The Staff Report acknowledges this limitation. It nonetheless argues that a denial would not constitute a taking because it would not result in a "final and authoritative" decision about the use of the property. The support for this argument is a figure that Staff crafted which shows a handful of tiny "bubbles" in disparate areas of the property where Staff suggests limited development could be accommodated as an "alternative" without significant disruption to habitat. (See the figure on page 76 of the Staff Report.) The takings issue, however, cannot be overcome by the expedient of the simplistic figure Staff has provided. The precondition to any development of the NBR property -- clean-up and restoration - would cost in excess of 40 million dollars - \$30 million for clean-up and \$10+ million for restoration, not including the private habitat maintenance funding that would be required. The Staff Report ignores this. The "development bubbles" Staff has created exclude the areas where abandonment and remediation are required in any event and areas which, as explained above, do not reasonably qualify as ESHA. The Staff Report asserts a 100 foot buffer is required, but fails to explain that the City's LUP provides for a 50 foot buffer, not a 100 foot buffer, and that the Commission, in many instances, has approved an even lesser buffer (for example, the Commission has in past permit actions approved buffers at 25 ft., including the Artist Live/Work project and The Ranch in Laguna Beach). The "development bubbles" themselves are wholly disconnected. The figure provided includes no roads to or as between these areas, how those isolated areas would relate to one another, or how they would be served by a logical array of services. The Staff Report suggests a portion of the area proposed for the hotel/hostel complex could serve instead environmental camping, tent cabins, or cabins. Simply put, Staff's "development alternative" is neither realistic nor remotely feasible. For this reason, the analysis offered in the Staff Report does not support the conclusion that denial of a permit would not result in an unconstitutional taking. 10

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¹⁰ In evaluating whether denial of a project would result in a taking, the Commission has also applied the rule articulated in *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, which requires examination of the reasonable investment-backed expectations of the applicant, the economic impact of the denial of a permit, and the character of the Commission's action. As to the last criterion, the Staff Report asserts that should the Commission deny the CDP, it would be doing so to promote policies that protect coastal resources (ignoring the countervailing policies that, on balance, would be more protective of coastal resources). With respect to the other two criteria, the NBR property contains no development restrictions, such as restrictive covenants or open space easements that would have informed the Applicant of any limitations on the ability to development the property. The property has not changed in size and in use, but has been operated continuously as an oil field since the 1940s, and none of the property has been sold. Further, the applicant has neither solicited nor ever received any offers to purchase the property.

F. LOCAL COASTAL PROGRAM REVIEW

Section 30604(a) of the Coastal Act provides that prior to certification of an LCP, a coastal development permit shall be issued if the issuing agency (here, the Commission) finds that "the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200)." The Section additionally states that denial of a CDP on grounds it would prejudice the ability of local government to prepare an LCP must "be accompanied by a specific finding which sets forth the basis for such conclusion."

The Staff Report notes that the County and City of Newport do not have certified LCPs that include the project site. It offers a conclusionary finding on LCP prejudice: "Approval of this project under a coastal development permit would effectively prejudice the ability of the local government to certify their LCP because it is inconsistent with the policies of the Coastal Act and the City has expressed intent to annex the site in the future." (Staff Report, p. 80.) This finding falls well short of demonstrating that approval of the Project will serve in any manner to prejudice preparation of the County's or City's LCP and it is not supported by any evidence. There are several reasons why Project approval will not prejudice preparation of an LCP for the project site.

First, the NBR property is geographically distinct and development of the property would be, as here, evaluated on a site-specific basis.

Second, the standard of review applied by the Commission in its review would be the same whether the proposed Project is evaluated in the context of an LCP, a CDP, or federal consistency in the case of abandonment and remediation. Because there is no certified LCP, the standard of review in each case is the Chapter 3 policies of the Coastal Act – just as analyzed in the Staff Report and by the applicant in its response to the Staff Report. (See Pub. Res. Code, §§ 30512(c) [LCPs]; 30604(a) [CDPs]; CZMA, Section 307(c)(3)(A) [Federal Consistency].

Third, the application for CDP in this case makes sense because of the complicated jurisdictional issues that affect the project site. The property lies within the jurisdiction of both the City and the County of Orange. Under the Knox Cortese Hertzberg Local Government Reorganization Act, the City is allowed to plan areas within its designated "sphere of influence." The City included the property in its General Plan noting that it is within the "sphere of influence" and adopted land use policies for the site. The development proposed by the CDP application is consistent with the City's General Plan, which was the foundation for the City's Coastal Land Use Plan (LUP). Because the project is consistent with the City's General Plan, consideration of the CDP would not prejudice the City from completing its LCP. The General Plan was approved not only by the City Council, but the City's voters, and it establishes the land use and densities for the project site and the coherent development plan proposed.

Further, because the City currently has jurisdiction over only a small portion of the project, preparation of an LCP would actually result in greater fragmentation of land use policies as both the City and the County would be required to prepare LCPs for the respective portion of the site that lies within their respective jurisdictions. (Coastal Act Section 30500(a) requires "Each local government . . . [to] prepare a local coastal program for that portion of the coastal zone within its jurisdiction.") Moreover, as the City does not yet have a fully certified LCP, the Staff Report would require the City to prepare a LCP submittal for a segment of its coastal zone specific to the NBR property, and for the County to do the same as its LCP is organized according to various geographic segments. Because such a course of action would only

promote greater fragmentation in planning, consideration of the entire property by the Commission in the context of a CDP application provides the most efficient and logical means of comprehensive planning evaluated in accordance with the Chapter 3 policies of the Coastal Act.

Finally, at this point in time, it is also not feasible for the project site to be annexed into the City. Because of the City's policies on oil production, with limited exception, existing oil operations do not allow for annexation into the City.

Thus, contrary to the Staff Report, preparation of an LCP is not legally feasible or necessary, and consideration of the project in the context of a CDP is the most appropriate means to consider the proposed development in the context of the Chapter 3 policies of the Coastal Act.

Respectfully submitted,

Michael A. Mohler

Newport Banning Ranch LLC

Exhibits and Attachments:

Exhibit 1 Orange Coast River park

Exhibit 2 Composite Site Plan

Exhibit 3 Public Access – Parking Resources

Exhibit 4 Visual Simulations

Exhibit 5 Water Supple Technical Memorandum, Charlie Marr, P.E.; CMC, October 1, 2015

Exhibit 6 Draft Biological Assessment for Newport Banning Ranch, Table 7a and 7b, Survey Results for Newport Banning Ranch Fairy Shrimp Surveys, Dudek, August 2015

Exhibit 7 CCC Mima Mound Area Map

Exhibit 8 Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch, Appendix B Photo plates, Dudek, May 2013

Exhibit 9 Review Of Occurrence And Persistence Of California Gnatcatcher (Polioptila Californica Californica) Along Roadways, Dudek, September 2015

Exhibit 10 Southern Coastal Bluff Scrub - Maritime Succulent Scrub Comparison

Attachment A – Applicant Proposed Motion and Standard and Special Conditions of Approval

Attachment B – Coastal Act Conflict Resolution Findings

Cc: Kim Brandt, City of Newport Beach George Basye, NBRLLC Tony Bomkamp, GLA April Winecki, Dudek John Davis, Dudek

Attachment A

Newport Banning Ranch Applicant Proposed Motion and Standard and Special Conditions October 2, 2015

MOTION

MOTION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT

The Applicant requests that the Commission make the following motion and adopt the following resolution to **APPROVE** the permit application with standard and special conditions.

MOTION

I move that the Commission approve Coastal Development Permit Application 5-13-032 subject to the following conditions.

The Applicant requests a **YES** vote on the foregoing motion. Passage of this motion will result in condition approval of the permit and adoption of the following resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby **approves** Coastal Development Permit Application 5-13-032 on the grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a
 copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and
 acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

- 4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

GENERAL SPECIAL CONDITIONS

- 1. Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised project plans reflecting the following changes:
 - The total amount of residential units constructed in the approved development area shall be no more 1174.
 - The total beds in the affordable overnight accommodations (hostel) shall be no less than 20.
 - The maximum building height for all structures within the South Village shall be no more than 40 ft.
- 2. Final Plans and Subdivision Map. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, two (2) sets of final development plans and subdivision map suitable for recordation, in substantial conformance plans submitted to the Commission on February 1, 2013, as amended by the revised site plan on file with the Commission and attached as Exhibit 1, related supplemental project plans, the project description dated September 11, 2015 and the special conditions of Coastal Development Permit 05-19-032 and its related federal consistency certification. Final development plans shall include site plans and architectural plans, grading plans, drainage and run-off control plans, utility plans, and landscaping plans, and all other plans required pursuant to the special conditions of this permit.

The permittee shall undertake development in accordance with the final plans and final subdivision map as approved by the Executive Director. Any proposed changes to the approved final plans shall be approved in writing by the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- Local Government Approval. Except as modified by the conditions of this coastal development permit, all requirements and conditions approved and imposed by the City of Newport Beach upon the proposed project remain in effect.
- 4. Revised Development Agreement or Development Agreement Amendment. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director, for review and approval, a revised Development Agreement or Development Agreement Amendment, approved by the City of Newport Beach. The Revised or Amended Development Agreement shall reflect the project approved by the Commission and shall be consistent with all special conditions within this coastal development permit.
- 5. Expiration. Notwithstanding Standard Condition 2, above, if development has not commenced, this coastal development permit shall expire five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. An application

for extension of this coastal development permit must be made prior to the expiration date.

6. Covenants, Conditions, and Restrictions (CC&Rs) and Final Tract Maps

- A. Consistent with the permittee's proposal, the permittee shall establish covenants, conditions and restrictions (CC&Rs), or an equivalent thereof, for the proposed development to address ownership and management of all public streets and sidewalks of the subdivision, public trails, public parks, habitat restoration and preservation areas, environmentally sensitive habitat areas, and common landscaped areas. The CC&Rs shall reflect all applicable requirements of this coastal development permit, including but not limited to the specifications concerning the development of the parks, trails and habitat creation and restoration areas, and landscaping. The CC&Rs shall include a provision specifically stating that the CC&Rs shall not be modified, amended or changed in any manner that would render them inconsistent with any special condition and/or the findings in this coastal development permit approved by the Coastal Commission at its October 7, 2015 hearing; any amendment made by the HOA modifying the CC&Rs in a manner that renders the modification inconsistent with any special condition and/or the findings in this coastal development permit shall be null and void.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to recordation of any CC&Rs, or tract maps associated with the approved project, proposed versions of said CC&Rs and tract maps shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this coastal development permit, including ensuring that, pursuant to paragraph A of this condition, the CC&Rs also reflect the ongoing restrictions and obligations imposed by these conditions. The restriction on use of the land cited within the special conditions of this permit shall be identified on the Tract Map(s), where appropriate, as well as being placed in the CC&Rs.
- C. Simultaneous with the recording of the final tract map(s) approved by the Executive Director, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The permittee shall submit a recorded copy of the covenants, conditions and restrictions within 30 days of their recordation to the Executive Director. The CC&Rs may not be modified in a manner that would render them inconsistent with any provision of this permit or of any plan or other document approved by the Executive Director pursuant to the conditions of this permit. Any change that would not create a direct conflict between the CC&Rs and the provisions of this permit or of any approved plan or other document shall be submitted to the Executive Director, in writing, for a determination as to whether such change requires approval of the Coastal Commission. The Executive Director shall have 90 days in which to communicate a determination to the Homeowners' Association. If, within that 90 day period, the Executive Director indicates that Commission approval is required, no such change shall occur until such approval is secured. Otherwise, no Coastal Commission approval shall be required. The CC&Rs shall indicate these restrictions within their terms.
- 7. Resource Agencies. The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Wildlife, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

- 8. Future Improvements. This permit is only for the development described in Coastal Development Permit 5-13-032. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit 5-13-032 Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit 5-13-032 from the Commission.
- 9. Liability for Costs and Attorneys Fees. By acceptance of this permit, the applicant/permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant/permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 10. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (a) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (b) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

PUBLIC ACCESS AND RECREATION

- 11. Public Open Space, Community Parks and Trail Uses. Use of the proposed Natural Open Space Preserve, Community Park areas and public access trails and associated amenities shall be restricted to open space, community park uses, and public recreation in perpetuity, as general shown on Exhibit 2 and on the final plans approved pursuant to Special Condition 1.
- 12. Offer to Dedicate In Fee for Public Access and Recreational Resources. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the permittee's proposal, the permittee shall submit to the Executive Director, for review and approval, an irrevocable offer to dedicate to the City of Newport Beach, County of Orange, or other non-profit entity(ies) or public agency(ies) acceptable to the Executive Director, fee title over the areas identified as public community park as generally depicted on Exhibit 2 for public access, passive and active recreational use, habitat enhancement, public trail purposes, and water quality management, as appropriate based on the restrictions set forth in these special conditions.

Once the documents irrevocably offering to dedicate such areas are accepted by the Executive Director, and also PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit

evidence that it has executed and recorded those documents, completing the offers to dedicate. The land shall be offered for dedication subject to the restrictions on the use of that land set forth in the special conditions of this permit, and the offer to dedicate shall reflect that fact. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

- 13. Offer to Dedicate Easement for Public Trails and Habitat Protection and Restoration. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to the Newport Banning Land Trust, County of Orange or other non-profit entity(ies) or public agency(ies) acceptable to the Executive Director, fee title or, in the alternative, easements for public pedestrian, biking and/or passive recreational use of the trails and habitat restoration as proposed by the permittee, including within bluff parks and interpretive parks, trails and pedestrian paths within the bluff parks and interpretive parks, and the Natural Open Space preserve, as generally depicted on Exhibit 2 approved by this permit.
 - A. The recorded document(s) shall include legal descriptions of both the permittee's entire parcel(s) and the easement areas. The recorded document(s) shall reflect that development in the offered area is restricted as set forth in the special conditions of this permit. The offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.
 - B. The lands identified in this dedication shall be maintained in accordance with the approved final Habitat Conservation and Conceptual Mitigation Plan required pursuant to Special Condition 23 and with the approved final Public Amenities & Trail Management Plan required pursuant to Special Condition 16 of this coastal development permit.

14. Public Access, Recreation and Habitat Protection/Restoration Funding in Perpetuity.

- A. The permittee shall have the sole obligation to fund or arrange funding for the planning, design, engineering, construction, supervision, inspection and all other costs associated with site remediation, open space and habitat restoration, construction of the bluff park, interpretive parks, and Natural Open Space Preserve interpretive trails, and water quality management facilities including facilities to treat on-site and off-site flows, to serve residential, resort and commercial development and the open space preserve as proposed by the permittee.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit an open space management plan for approval by the Executive Director, for the long term funding and management of the open space and habitat restoration described in the final Habitat Conservation and Conceptual Mitigation Plan, for the bluff park, interpretive parks, and Natural Open Space Preserve interpretive trails, and water quality management facilities. The open space management plan shall identify all entities responsible for ownership, management and maintenance of the open space preserve and their credentials which qualify the entity as capable of management and maintenance of the open space preserve and able to implement all applicable special conditions of this coastal development

permit. The open space management plan shall specify the timeline for commencement of implementation of the management plan by the management entity for the open space preserve. The open space management plan shall include but not be limited to identification of funding, management responsibilities, and maintenance activities in perpetuity for but not limited to the following:

- Maintenance and periodic repair and replacement of park facilities in all open space interpretive trails, and associated appurtenances including but not limited to landscaping, restrooms, trail routes and surfaces, fences, benches and other facilities.
- On-going habitat protection, restoration, and maintenance, including on-site supervision of trail and habitat areas by qualified personnel, operation of interpretive trails, signs and displays, and funding for any public outreach programs.
- 3. Maintenance of drainage systems, water quality management systems, and other devices required to protect on-site habitat and water quality within the open space preserve.
- 4. Maintenance of fuel modification zones within the open space preserve in accordance with the Final Fuel Modification Plans required pursuant to Special Condition 37.
- 5. The Maintenance and Monitoring Program for all restored habitat areas pursuant to the final Habitat Conservation and Conceptual Mitigation Plan required pursuant to Special Condition 23.
- 15. Development Phasing of Public Amenities & Trail Management. The permittee by itself or in conjunction with Newport Banning Land Trust, County of Orange or other non-profit entity(ies) or public agency(ies) acceptable to the Executive Director, shall construct or cause to be constructed, the public access and recreation improvements for park and trail purposes dedicated pursuant to Special Condition 13 and approved pursuant to this permit.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final development phasing plan for review and approval by the Executive Director, which shall conform to the following:

- A. All grading shall be carried out consistent with the provisions for the protection of the ESHA, wetland and habitat areas. The grading and construction of the public trails, parks and amenities and the planting described in the approved Habitat Conservation and Conceptual Mitigation Plan shall begin as soon as practical following the construction of the proposed public infrastructure (e.g. the public streets of the subdivision, drainage system, utilities, etc.) for each phase of development. The permittee shall construct the public trails, parks and amenities in an expeditious manner.
- B. Construction of the public trails and recreation areas, the installation of habitat protection fencing, and the installation of public access signage consistent with the Public Amenities and Trail Management Plan, and the opening of the parks and trails for public use shall occur prior to or concurrently with the issuance of the certificate of occupancy for the first residence for each phase of development.

The permittee shall undertake development in accordance with the approval final construction/development phasing plans. Any proposed changes to the approved final plans or phases of construction that results in changes to the approved development footprint/disturbance area shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- **16. Public Amenities & Trail Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a Public Amenities and Trail Management Plan that includes, but is not limited to:
 - A. Streets, Roads, Parking and Trails All public open space, parks, streets, roads and parking shall be provided as described in the coastal development permit application submitted on 2015. All roads and public parking areas shall be for public street purposes including, but not limited to, pedestrian, bicycle and vehicular access. All streets, roads and public parking areas shall be open for use by the general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. With the exception of parking structures, all public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Only temporary gates and access restrictions as necessary for construction safety purposes are allowed.
 - B. Public Access Signage The Public Amenities & Trail Management Plan shall include a detailed signage plan that directs the public to the public trails and public recreational opportunities on the project site. Signs shall invite and encourage public use of access and recreation opportunities and shall identify and direct the public to their locations. At a minimum, the detailed signage plan shall include:
 - 1. Public Access Signage shall be provided, at a minimum, in a visually prominent place visible to vehicular and pedestrian traffic at each entry point onto the project site.
 - 2. In addition to and/or in conjunction with the above, Public Amenity Overview Signs shall be provided in a visually prominent place visible to vehicular and pedestrian traffic.
 - 3. The public access and amenities signage plan shall include, at a minimum, plans indicating the size, wording and placement of public access signs.
 - 4. Signage shall include public facility identification monuments (e.g. public park name); facility identification/directional monuments (e.g. location of public amenities on- site and in the vicinity); informational signage and circulation; and roadways signs.
 - 5. Signage shall convey the message that public pedestrian and recreational use is permitted and invited.
 - 6. Vegetation shall not be allowed to obscure public access and amenities signage.
 - 7. Signage that has the effect or creates the effect of limiting public use of the public trails and amenities are prohibited.
 - 8. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.
 - Community identification signage at the main project entry points is allowed provided that any such signage also makes clear the availability of the public trails and amenities throughout the site and that the public is welcome.
 - 10. The required public access and amenities plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign and interpretive display text and graphics, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, and the location and orientation, size, materials and use of structures during a physical inspection of the premises.

- C. Recreational appurtenances such as benches; refuse containers; fencing between the trail and habitat areas; erosion control and footpath control plantings shall be depicted on the required public access and amenities plans.
- D. All public areas, including parks and trails, shall include low intensity lighting during nighttime hours. Such lighting shall be consistent with Special Condition 29 regarding directing all lighting within the development away from habitat and buffer areas. The required lighting shall be included in the lighting plan described and required in Special Condition 29.
- E. All sidewalks and streets within the development shall be open and available to the general public
- F. Measures that discourage public use of any public trails/amenities on-site, including but not limited to, use of trails, parks, and viewpoints, are prohibited. Such prohibited measures include, but are not limited to, installation of gates (excepting parking structures) and/or use of guards.
 - With the exception of the proposed lowland and bluff top trails, which will be open to the public from dusk till dawn, any limitation on the hours of public use is prohibited unless the permittee or its successor- in-interest applies for an amendment to this coastal development permit or a separate coastal development permit for a limitation on the hours of public use and receives authorization for such limitations from the Commission.
 - The plan shall identify the minimum allowable width for each of the proposed trails, which shall be no less than 10 feet wide. The minimum 10 foot width shall be devoted entirely to pedestrian trail area and shall be exclusive of any area necessary for landscaping and/or buffer and/or setback area or similar type of development.
 - All subdivision and project roads and sidewalks shall remain open and available to the public for vehicular, parking, pedestrian, and bicycle use. All limitations or restrictions are prohibited except temporary restrictions for public safety when a documented need arises, subject to approval of a coastal development permit.
 - 4. Restrictions on public parking, including, but not limited to limited hours and/or preferential parking districts, are prohibited. Parking restrictions to allow periodic street cleaning is allowed provided the restriction is the least necessary to accomplish the objective and that the restriction is no greater than on-street street cleaning parking restrictions typically established throughout the City.
 - 5. No new permanent chain link fencing is allowed with the exception of fencing required around the remaining oil consolidation sites; only new temporary chain link fencing as necessary for safety during construction may be allowed. Existing chain link fencing may remain and be maintained.
 - 6. All public trails and amenities shall be maintained at all times in a manner that promotes public use.
 - 7. The extent of public trails and amenities shall not be reduced from that depicted on the approved final Public Amenities and Trail Management Plan.
 - 8. The public access trail easements shall be maintained in a manner that promotes public access and use of these public trails, as proposed by the permittee and as described in and required by this permit.

The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved

final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

17. Pedestrian/Bicycle Bridge Construction and Funding. PRIOR TO CONSTRUCTION OF THE PEDESTRIAN BICYCLE BRIDGE, the permittee shall demonstrate the permittee's legal ability or authority to undertake development of the proposed bridge across Coast Highway, including submittal of any necessary easements/encroachment permit granted by the City of Newport Beach and the California Department of Transportation.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for review and approval by the Executive Director, CC&Rs which generally provide for the following:

- A. A statement that the Master Association and/or responsible Sub-Association will be responsible for funding the maintenance of the pedestrian bridge spanning West Coast Highway, if constructed.
- B. In the event the pedestrian cannot be constructed, the permittee shall provide a shuttle service, utilizing the Bluff Road and Coast Highway connection, between the visitor-serving uses in the South Village and the adjacent beaches, between Memorial Day and Labor Day.

VISITOR-SERVING OVERNIGHT ACCOMMODATIONS

- **18. Hotel Overnight Units.** By acceptance of this coastal development permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that;
 - A. **Hotel Length of Stay Provisions.** All hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days; and
 - B. **Conversion Prohibited.** The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited unless an amendment to this coastal development is approved.
- **19. Low-Cost Overnight Accommodations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in order to implement the permittee's proposal, the permittee shall submit to the Executive Director, for review and approval, final development plans for the proposed onsite hostel, which shall provide for the following:
 - A. The onsite hostel shall be developed concurrent with the proposed resort inn. The hostel shall consist on no less than 20 beds and shall be available for use by the general public prior to or concurrent with the opening of the resort inn.
 - B. All hostel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 7 consecutive days;
 - C. All amenities of the resort inn shall be open and available to patrons of the hostel.

D. The permittee shall ensure the hostel is operated as a low-cost overnight accommodation facility open to the general public in perpetuity. For purposes of establishing low-cost unit rates, low-cost shall be defined as a percentage of the Statewide average room rate, as calculated by the Smith Travel Research website (www.visitcalifornia.com) or other comparable or similar website or study such as www.Calif.AAAcom, where the percentage is based on average market rates in coastal Orange County for the months of July and August and the average cost of motels/hotels within five (5) miles of the coast that charge less than the Statewide average.

WATER QUALITY

20. Construction Best Management Practices.

- A. The permittee shall comply with the following construction-related requirements:
 - 1. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - 2. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into stream or coastal waters;
 - 4. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control dust and sedimentation impacts to stream or coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into stream or coastal waters; and
 - 5. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.
- B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
 - The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
 - 2. The permittee shall develop and implement spill prevention and control measures;
 - 3. The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
 - 4. The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

21. Interim Erosion Control Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, two (2) sets of an Interim Erosion Control and Construction Best Management Practices plan, prepared by licensed civil engineer or qualified water quality professional for the approved development areas. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

A. Erosion Control Plan

- 1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags;
- 2. Include a narrative report describing all temporary run-off and erosion control measures to be used during construction;
- 3. The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures;
- 4. The plan shall specify that should grading take place during the rainy season (November 1 March 31) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); temporary drains and swales; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible; and
- 5. The erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- B. The final Interim Erosion Control Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 22. Final Water Quality Management Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall be in substantial conformance with the Water Quality Management Plan (WQMP) prepared by Fuscoe Engineering, dated June 30, 2011 and supplemented by a Technical Memorandum prepared by Fuscoe Engineering, dated September 3, 2015, and shall include all development approved by this permit. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:
 - A. The WQMP shall incorporate appropriate structural and non-structural Best Management Practices (BMPs) (site design, source control and treatment control) into the development, designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather

flows leaving the developed site;

- B. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible;
- C. Trash, recycling and other waste containers, as necessary, shall be provided. All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals;
- D. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to a) trap sediment, particulates and other solids and b) remove or mitigate pollutants of concern (including trash, debris and vehicular fluids such as oil, grease, heavy metals and hydrocarbons) through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
- E. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs;
- F. All structural and/or treatment control BMPs shall be designed, installed, and maintained for the life of the project in accordance with well-recognized and accepted design principles and guidelines, such as those contained in the California Stormwater Quality Association Best Management Practice Manuals;
- G. All BMP traps/separators and/or filters shall be, at a minimum, inspected and cleaned/repaired or otherwise maintained in accordance with the following schedule: (a) prior to the start of the winter storm season, no later than October 15th each year, (b) inspected monthly thereafter for the duration of the rainy season (October 15 -April 30), and cleaned/maintained as necessary based on inspection and, (c) inspected and maintained where needed throughout the dry season;
- H. Debris and other water pollutants removed from structural BMP(s) during clean out shall be contained and disposed of in a proper manner;
- I. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

ENVIRONMENTALLY SENSITIVE HABITAT AREA

23. Final Habitat Conservation and Conceptual Mitigation Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a

final Habitat Conservation and Conceptual Mitigation Plan. The permittee shall implement all wetland and upland habitat creation, restoration, conservation, maintenance and management, as described in the draft Habitat Conservation and Conceptual Mitigation Plan, prepared by Dudek, dated October 2014, and as revised by the conditions of this coastal development permit. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without an approved amendment to this coastal development permit or an approved coastal development permit unless the Executive Director determines that none is legally required.

- 24. Construction Staging Area and Temporary Fencing. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for each phase of development, for the review and approval of the Executive Director, which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands, ESHA, and other sensitive habitat areas consistent unless authorized per this approval. The plan shall include the following requirements and elements:
 - A. Wetlands and any environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
 - B. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to wetlands and ESHA identified for protection in the Habitat Conservation and Conceptual Mitigation Plan. Solid physical barriers shall be used at the limits of grading adjacent to all ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking and fencing shall be removed upon completion of construction.
 - C. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in the final Remedial Action Plan and/or Habitat Conservation and Conceptual Mitigation Plan.
 - D. The plan shall demonstrate that:
 - Construction equipment, materials or activity utilized for implementing abandonment and remediation and mitigation within wetlands and/or sensitive habitat shall be the minimum necessary to complete the activities authorized by the coastal development permit.
 - Deep grading and construction within the project areas shall avoid adverse impacts upon adjacent wetlands and ESHA identified for protection in the Habitat Conservation and Conceptual Mitigation Plan.
 - Construction equipment, materials, or activity shall not be stored within any ESHA wetlands or their buffers and shall not be placed in any location that would result in impacts to wetlands, ESHA or other sensitive habitat except as identified in the final Remedial Action Plan and/or Habitat Conservation and Conceptual Mitigation Plan.
 - E. The plan shall include, at a minimum, the following components:
 - 1. A site plan that depicts:

- a. Limits of the staging area(s)
- b. Construction corridor(s)
- c. Construction site
- d. Location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
- e. Compliance with the approved Water Quality Management Plan required pursuant to Special Condition 22.
- f. Measures to be employed to avoid adverse impacts on wetlands, ESHA, and other sensitive habitat.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- **25. Dust Control Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a Dust Control Plan to the Executive Director for review and approval. The Plan shall include measures to control fugitive dust emissions during project construction, including:
 - A. Coastal Sage Scrub habitat within the likely dust radius resulting from earth moving activities shall be sprayed periodically with water to reduce accumulated dust on the leaves, as recommended by the monitoring biologist.
 - B. Pave or apply water three times daily, as needed to control fugitive dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas if construction activity causes persistent visible emissions of fugitive dust beyond the work area;
 - C. Pre-water sites as appropriate up to 48 hours in advance of clearing;
 - D. Spray all dirt stock-pile areas daily as needed;
 - E. Cover loads in haul trucks or maintain at least 6 inches of free-board when traveling on public roads; Premoisten prior to transport and import and export of dirt, sand, or loose materials;
 - F. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets or wash trucks and equipment before entering public streets;
 - G. Plant vegetative ground cover in disturbed areas as soon as possible following construction or in accordance with the landscape plan, taking into account the appropriate planting season; and
 - H. Apply chemical soil stabilizers or apply water to form and maintain a crust on inactive construction areas (disturbed lands that are unused for 14 consecutive days).

The Plan shall describe how these measures will be implemented and monitored throughout construction.

26. Habitat Impact Management Plan. The permittee shall staff a qualified monitoring biologist on-site during all vegetation clearing and any other project-related work with the potential to impact sensitive wildlife species.

The biologist must be knowledgeable of the biology and ecology of sensitive wildlife species with the potential to occur on the project site and wetland ecology. The following measures shall be taken prior to and during construction:

- A. Pre-construction surveys shall be conducted within 10 days of the start of construction by a qualified biologist to determine the presence of any sensitive species with the potential to occur on the project site.
- B. A qualified biologist shall be present daily during construction in locations with the potential to support sensitive species, and to monitor for these species. The biologist will be authorized to stop work if threats to any sensitive species are identified during monitoring and/or to recommend appropriate measures to ensure sensitive wildlife species are protected. Any recommended mitigation measures and/or monitoring protocols shall be submitted to the Executive Director prior to commencement of vegetation removal activities. The permittee shall implement the monitor's recommendations unless the Executive Director finds that implementation of the monitor's recommendations is not necessary to protect sensitive species.
- C. The limits of vegetation removal will be delineated in all areas adjacent to preserved sensitive vegetation by bright orange plastic fencing, stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.
- D. Construction shall be scheduled to avoid the breeding seasons of special status species that are found to be present in the construction area to the maximum extent feasible.

1. Nesting Birds

- a. If construction activities, including but not limited to grading or site disturbance, are to occur between February 15 and September 15, a nesting bird survey shall be conducted to determine the presence of nests or nesting birds within 250 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. The survey shall focus on special-status species potentially occurring on the site. All ground-disturbance activity within 250 feet of an active nest will be halted until that nesting effort is finished. The monitor shall review and verify compliance with these nesting boundaries and shall verify that the nesting effort has finished. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to Executive Director.
- b. If grading or site disturbance must occur within 250 feet of an active nest, the permittee shall submit a noise report from a certified acoustician to the Executive Director to document the noise levels that would result from proposed construction activities at the active nests identified by the monitor. In the event the noise report indicates construction noise levels may exceed 60 dBA Leq(h) at nearby sensitive habitat areas and/or active nests, a temporary noise barrier shall be constructed to reduce noise levels to below 60 dBA Leq(h) to attenuate noise from construction equipment. If the installation of a temporary noise barrier is infeasible for specific construction activities, or if noise levels cannot be reduced below 60 dBA Leq(h), mufflers or other noise suppression devices that are more effective than the original manufacturer's specifications shall be used to help reduce noise levels. Noise-monitoring equipment shall be installed near active nests to monitor noise levels during construction in areas where noise walls are infeasible, and equipment shall be turned off when not required for active construction activities. If noise levels still exceed 60 dBA Leq(h) at the edge of nesting territories and/or a no-construction buffer cannot

be maintained, construction shall be deferred in that area until the nestlings have fledged, unless otherwise approved by the CDFW.

2. Gnatcatcher

- a. Prior to and during the clearing of any suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area away from birds. In addition, the biologist shall walk ahead of clearing equipment to flush birds towards areas of habitat that will be avoided. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by the clearing of Coastal Sage Scrub.
- b. Prior to initiating clearing and/or project construction during the gnatcatcher breeding season, the biological monitor shall meet on-site with the construction manager and/or other individual(s) with oversight and management responsibility for the day- to-day activities on the construction site to discuss implementation of the relevant avoidance/minimization/mitigation measures for gnatcatcher. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.
- c. The permittee shall submit weekly reports (including photographs of impact areas) to the Executive Director and the Wildlife Agencies during initial clearing of Coastal Sage Scrub and/or project construction within 100 feet of avoided Coastal Sage Scrub during the gnatcatcher breeding season. The weekly reports shall document that authorized Coastal Sage Scrub impacts were not exceeded, work did not occur within the 100-foot setback during the gnatcatcher breeding season except as approved by the Executive Director, and general compliance with all conditions. The reports shall also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports shall specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes shall be available upon request by the Executive Director.

3. Burrowing Owl

a. Preconstruction burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) to determine the presence or absence of the burrowing owl within the project site limits, plus 250 feet beyond. In addition, the burrowing owl shall be looked for opportunistically as part of other surveys and the monitoring required during project construction. If the burrowing owl is absent, then no mitigation is required. If the burrowing owl is present, no disturbance shall occur within 160 feet of occupied burrows from September 1 through January 31, October 16 through March 31, or within 250 feet of occupied burrows from April 1 through October 15 and February 1 through August 31 (CDFW 19952012), unless coordination occurs with the CDFW that allows for modifications which still protect the burrowing owl. During construction, any pipe or similar construction material that is stored on site for one or more nights shall be inspected for burrowing owls by the monitor(s) before the material is moved, buried, or capped. Passive relocation of owls shall be implemented prior to construction only at the direction of CDFW and only if the previously described occupied burrow disturbance absolutely cannot be avoided (e.g., due to physical or safety constraints). Relocation of owls shall only be implemented during the nonbreeding season (October 16 through March 31, September 1 through January 31;

CDFW 19952012). Following passive relocation, the area of impact and the preserved foraging habitat with alternate burrows shall be surveyed daily for 1 week to confirm owl use of alternate burrows before excavating burrows in the impact zone. All passive relocation shall be conducted by a biologist approved by CDFW. If the alternate burrows are not used by the relocated owls, then the permittee shall work with CDFW to provide alternate mitigation for burrowing owls. If the alternate burrows are used, no other mitigation shall be required.

b. If it is not possible to preserve contiguous habitat on which to provide alternate burrows (e.g., on private land), and occupied owl burrows would be directly affected, then the owls shall be passively relocated without the creation of alternate burrows prior to construction (relocation should only be implemented during the nonbreeding season (September 1 through January 31)). The loss of occupied owl habitat shall be mitigated by acquiring and preserving other occupied habitat elsewhere as described in the Staff Report on Burrowing Owl Mitigation (CDFW 19952012) and the Burrowing Owl Survey Protocol and Mitigation Guidelines (The Burrowing Owl Consortium 1993), or as otherwise determined in consultation with the CDFW and the Executive Director.

4. Light-footed Clapper Rail, Western Snowy Plover, Belding's Savannah Sparrow

- a. Due to temporary impacts to marsh habitat in the lowland by oilfield remediation activities, a focused survey shall be conducted for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site.
- b. Marsh vegetation shall be removed after September 15 and before March 1.
- c. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required.
- d. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding's savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat. In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).

5. Least Bell's Vireo

- a. Activities involving the removal of riparian habitat shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15) unless otherwise directed by the USFWS and the CDFW.
- b. Vegetation-clearing activities shall be monitored by a qualified Biologist. The Biological Monitor shall ensure that only the amount of riparian habitat approved during the consultation process shall be removed. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.
- c. The use of any large construction equipment during site grading shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to

- September 15), unless otherwise directed by the USFWS and the CDFW. Construction may be allowed within 500 feet of an active nest if appropriate noise measures are implemented, as approved by the resource agencies.
- d. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at specified monitoring locations near active nest(s), as determined by the Biological Monitor. This shall be verified by weekly noise monitoring conducted by a qualified Acoustical Engineer during the breeding season (March 15 to September 15) or as otherwise determined by a qualified Biological Monitor based on vireo nesting activity.
- e. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFW following completion of construction.
- 27. Rare Plant Protection Measures. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, a rare plant protection plan, which demonstrates that potential impacts to rare plant species within the project area will be minimized to the extent feasible throughout the course of the abandonment, remediation and construction, and restoration activities. The rare plant protection plan shall include all of the following:
 - A. Sensitive plant surveys conducted in conformance with applicable CDFW guidelines will be completed prior to the initiation of ground disturbing activities. The results of up-to-date seasonally appropriate botanical survey conducted by a qualified botanist according to current CDFW guidelines shall be reported with a map(s) depicting the locations of rare plants in relation to proposed project abandonment, remediation and construction activities,
 - B. Sensitive plants will be flagged for avoidance using temporary flagging, which will be removed upon completion of work in an area;
 - C. Only manual methods (e.g., hand-pulling, shovels, and other hand tools) will be used to remove target invasive plants within sensitive plant protection areas, and sensitive plants will be avoided to the maximum extent feasible during the course of manual removal activities;
 - D. Where impacts to sensitive plants cannot be avoided, either project activities will be delayed until the rare plants have set seed and naturally dispersed, and/or individual rare plants will be transplanted to nearby suitable habitat that will be protected from project impacts. The plan shall include a description of proposed transplant areas for rare plants that cannot feasibly be avoided by project activities and the approximate number of plants to be transplanted
 - E. A schedule for the implementation of rare plant protection measures and authorized restoration activities.
 - F. Unavoidable impacts to southern tarplant shall be mitigated by seed collection and re-establishment. The seeds shall be collected and then placed into a suitable mitigation area in the undeveloped or restored portion of the Project site or at an approved adjacent off-site location. The southern tarplant restoration program shall include the following measures:
 - Seed ripeness shall be monitored every two weeks by a qualified Biologist and/or a qualified Seed Collector at the existing southern tarplant locations to determine when the seeds are ready for

- collection. A qualified Seed Collector shall collect all the seeds from the plants to be impacted when the seeds are ripe. The seeds shall be cleaned and stored by a qualified nursery or institution with appropriate storage facilities.
- 2. The topsoil shall be collected from areas with limited amounts of weeds from the impacted population and re-spread in the selected location, as approved by the qualified Biologist. Approximately 60 to 80 percent of the collected seeds shall be spread in the fall following soil preparation and seed preparation. The remainder of the seeds shall be kept in storage for subsequent seeding, if necessary.
- 3. The qualified Biologist shall have the full authority to suspend any operation at the site which is, in the qualified Biologist's opinion, not consistent with the restoration program.
- 4. Use of temporary and portable shades and non-habitable structures for onsite propagation and storage of native plants for restoration purposes is permitted as long as all such facilities are located outside of sensitive habitat areas and buffers.

The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 28. Nest Predator Monitoring and Exclusion Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a program for monitoring and potential eradication of nest predators, including the brown-headed cowbird and domestic and feral cats, from the project site shall be submitted for the review and approval of the Executive Director. A qualified biologist shall design the monitoring and potential eradication program. The monitoring and potential eradication program shall provide for the following:
 - A. Monitoring of the impact of predation by domestic pets on the California gnatcatcher. A qualified biologist shall monitor the presence of domestic and feral cats on the subject site, and submit annual monitoring reports for 5 years after completion of grading documenting the degree of usage of the site by domestic and feral cats.
 - B. Monitoring via annual surveys for the presence of the brown-headed cowbird (Molothrus ater) on the project site. A qualified biologist shall survey to document the presence of brown-headed cowbird on the site and submit annual monitoring reports for 5 years after completion of grading documenting the degree of usage of the site by brown-headed cowbird.
 - C. The potential eradication program shall be designed to reduce the prevalence of nest predators on the project site to reduce potential impacts to the California gnatcatcher. The program shall include, but shall not be limited to, provisions for trapping, public education, and installation of additional fencing, if consistent with the Protective Fencing and Signage Condition required pursuant to Special Condition 30. The Nest Predator Exclusion Program shall be enacted if, upon review of the reports from the monitoring program, the Executive Director determines that cowbirds or domestic or feral cats are posing a significant risk to the California gnatcatcher or other sensitive species on the project site

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 29. Lighting Minimized. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, a "dark sky" lighting plan designed to minimize intrusion of light generated by the project into natural open space areas. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting plan is effective at preventing lighting impacts upon adjacent environmentally sensitive habitat. The proposed lighting plan shall include, but not be limited to, the following elements:
 - A. Street lights may only be utilized at key intersection locations as approved by the Commission and shall be limited to the use of light emitting diode (LED) lights.
 - B. All other exterior lighting shall be wildlife-friendly and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes, and shall directed or shielded so as to minimize artificial lighting from reflecting into native habitat.
 - C. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from public viewing areas to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc.).

The CC&Rs shall include a provision specifically stating that all homeowners and residents within 100 feet of natural open space areas shall be provided written information upon close of purchase or signing of rental agreement, regarding the applicable requirements of the "dark sky" lighting program for the project.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- **30. Protective Fencing and Signage.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fencing and signage plan showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. The fencing and signage plan shall incorporate the following requirements:
 - A. Fencing on the project site shall be located where it will not result in adverse impacts to ESHA.
 - B. To the maximum extent feasible, all fencing on the site shall be designed to allow the unimpeded ingress, egress and traversal of wildlife, including the coyote.
 - C. The proposed oil field security fence between the Newport Banning Ranch and Sunset Ridge Park shall be removed when no longer necessary to provide security for oil field operations pursuant to DOGGR requirements.
 - D. The fencing plan shall include provisions for signing and fencing to discourage human intrusion into ESHA and buffers to ESHA. The fencing shall be designed in a manner that creates a delineation between areas of native habitat and the private and public use areas, where necessary to ensure maximum protection of sensitive habitat areas.

E. Signs prohibiting entrance of the public into the native habitat areas and identifying their sensitive nature shall be posted at reasonable intervals along public trails and/or at likely points of entry along the periphery of private and public use areas. The plan shall include samples of such signage.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

31. Herbicide/Rodenticide Use Restrictions. Herbicide use shall be restricted to the use of Glyphosate AquamasterTM (previously RodeoTM) herbicide for the elimination of non-native and invasive vegetation located within the project site for purposes of habitat restoration only. Herbicide may be applied with a low pressure backpack sprayer and wand in non-sensitive areas, or within sensitive habitat areas. No use of herbicide shall occur during the rainy season (November 1 – March 31) unless otherwise allowed by the Executive Director for good cause. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain. Rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone or Diphacinone shall not be used.

32. Landscape Plans.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and written approval, two (2) sets of landscape plans for all common areas prepared by an appropriately licensed professional which demonstrates the following:
 - 1. The plans shall demonstrate that:
 - a. All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
 - b. All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - c. All landscaping shall consist of native drought tolerant on- invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (http://www.CNPS.org/), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (http://www.cal-ipc.org/), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf); and
 - 2. The plans shall include, at a minimum, the following components:
 - a. A map showing the type, size, and location of all plant materials that will be on the developed site,

- the irrigation system, topography of the developed site, and all other landscape features,
- b. a schedule for installation of plants; and
- c. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used.
- 3. Five years from the date of the completion of the installation of landscaping of the common areas as required in these special conditions, the permittee shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist, that certifies the on-site landscaping is in conformance with the requirements of the special conditions of this permit and the landscape plans approved pursuant to the special conditions of this permit. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscape plan must be prepared by a licensed landscape architect or a qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, landscape palette lists to be incorporated into the landscaping guidelines for future residential development. The approved landscape palette list shall identify: 1) the native plant species that may be planted on the residential lots; 2) a list of the non-native, non-invasive drought tolerant common garden plant species that may be planted on the residential lots; 3) the non-native, non-invasive drought tolerant turf that may be planted within approved turf areas in the parks, and 4) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the Approved Plant List for Non-Habitat/Non-Buffer Areas as reviewed and approved by the Executive Director.
 - These lists shall remain available for consultation and shall be recorded in the CC&Rs required by Special Condition 6. Additions to or deletions from these lists may be made by the Executive Director of the California Coastal Commission, in consultation with the project's restoration ecologist.
 - No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

ABANDONMENT AND REMEDIATION

- 33. Abandonment and Remediation. Final Remedial Action Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, a final Remedial Action Plan (final RAP) approved by the Regional Water Quality Control Board (RWQCB). The final RAP shall:
 - A. Incorporate the findings of the ground-truthing of historical impacts task as detailed in Section 4.2 in the draft RAP. Modifications to the identified abandonment impact footprint resulting from the ground-truthing effort shall be identified in a letter report with appropriate maps illustrating such modifications. Where reductions in the impact footprint may occur in sensitive habitat areas, the areas shall be protected during construction consistent with Special Condition 30. In the event a significant increase in the impact footprint would result in significant impacts to sensitive habitat areas beyond those authorized, project construction may not commence until after the Commission approves an amendment to this permit unless the Executive Director determines that no amendment is required.
 - B. Incorporate the remediation methods to be employed that are described in the draft RAP, include the use of natural bio-remediation of soils on site; reuse and recycling of treated soils where and when feasible; and removal and recycling of materials such as concrete, gravel, and asphalt-like road materials;
 - C. Specify the clean-up criteria for specific areas of the site, which shall be approved as a part of final RAP subject to the review and approval of the RWQCB. The final RAP shall describe the means by which those clean-up standards shall be met per the remediation methods described in the draft RAP; and

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 Executive Director before issuance of the first certificate of occupancy.

CULTURAL RESOURCES

34. Protection of Potential Archaeological Resources During Grading.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director an archeological monitoring and mitigation plan, prepared by a gualified professional, that shall incorporate the following measures and procedures:
 - Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading;
 - The permittee shall provide sufficient archeological and Native American monitors to assure that all
 project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at
 all times. All archaeological monitors, Native American monitors and Native American most likely
 descendents (MLD), if State Law requires the involvement of the MLD, shall be provided with a copy

of the approved archaeological monitoring and mitigation plan required by this permit. Prior to commencement of grading, the permittee shall convene an on-site pre- grading meeting with all archaeological monitors, Native American monitors and Native American most likely descendents (MLD) along with the grading contractor, the permittee and the permittee's archaeological consultant in order to make sure all parties understand the procedures to be followed pursuant to the approved archaeological monitoring and mitigation plan. At the conclusion of the meeting all parties attending the on-site pre-grading meeting shall be required to sign a declaration, which has been prepared by the permittee, subject to the review and approval of the Executive Director, stating that they have read, discussed and fully understand the procedures and requirements of the approved archaeological monitoring and mitigation plan and agree to abide by the terms thereof. The declaration shall also include contact phone numbers for all parties. The declaration shall also contain the following procedures to be followed if disputes arise in the field regarding the procedures and requirement of the approved archaeological monitoring and mitigation plan. Prior to commencement of grading, the permittee shall submit a copy of the signed declaration to the Executive Director and to each signatory.

- a. Any disputes in the field arising among the archaeologist, archaeological monitors, Native American monitors, Native American most likely descendents (MLD), the grading contractor or the permittee regarding compliance with the procedures and requirements of the approved archaeological monitoring and mitigation plan shall be promptly reported to the Executive Director via e-mail and telephone.
- b. All work shall be halted in the area(s) of dispute. Work may continue in area(s) not subject to dispute, in accordance with all provisions of this special condition.
- c. Disputes shall be resolved by the Executive Director, in consultation with the archaeological peer reviewers, Native American monitors, Native American MLD (if State Law requires the involvement of the MLD), the archaeologist and the permittee.
- d. If the dispute cannot be resolved by the Executive Director in a timely fashion, said dispute shall be reported to the Commission for resolution at the next regularly scheduled Commission meeting.
- 3. If any cultural deposits are discovered during project construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or features, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found by the Executive Director to be significant pursuant to subsection C of this condition and, if applicable, any other relevant provisions, additional investigation and mitigation in accordance with all subsections of this special condition shall be carried out and implemented;
- 4. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or features, all construction shall cease in accordance with subsection B. of this special condition;
- 5. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition:
- 6. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring and mitigation plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the

landowner and the MLD regarding the manner of treatment of human remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.

- 7. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring and mitigation plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.
- B. If an area of cultural deposits, including but not limited to skeletal remains and grave- related artifacts, traditional cultural sites, religious or spiritual sites, or features, is discovered during the course of the project, all construction activities in the area of the discovery that have any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection D and other subsections of this special condition. In general, the area where construction activities must cease shall be 1) no less than a 50-foot wide buffer around the cultural deposit; and 2) not larger than the development phase within which the discovery is made.
- C. A permittee seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed. Once a plan is deemed adequate, the Executive Director will make a determination regarding the significance of the cultural deposits discovered.
 - 1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures have a de minimis impact on the cultural deposits, in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 - 2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein do not have a de minimis impact on the cultural deposits, significance testing may not commence until after the Commission approves an amendment to this permit.
 - Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings should be

considered significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection E of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

- D. A permittee seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archaeological Plan shall identify proposed investigation and mitigation measures. If there is disagreement between the project archaeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the Executive Director. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered shall range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and creating an open space area around the cultural resource areas. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the final, approved, Supplementary Archaeological Plan.
 - If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures have a de minimis impact on cultural deposits, in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 - If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein do not have a de minimis impact on cultural deposits, construction may not recommence until after the Commission approves an amendment to this permit.
- E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, shall have received review and written comment by a peer review committee convened in accordance with current professional practice, and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and the Native American groups with documented ancestral ties to the area. Furthermore, upon completion of the peer review process, and prior to submittal to the Executive Director, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for those entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

- F. At the completion of the archaeological grading monitoring and mitigation, the permittee shall prepare a report, subject to the review and approval of the Executive Director, which shall include but not be limited to, detailed information concerning the quantity, types, location, and detailed description of any cultural resources discovered on the project site, analysis performed and results and the treatment and disposition of any cultural resources that were excavated. The report shall be prepared consistent with the State of California Office of Historic Preservation Planning Bulletin #4, "Archaeological Resource Management Reports (ARMR): Recommended Contents and Format". The final report shall be disseminated to the Executive Director and the South Central Coastal Information Center at California State University at Fullerton.
- G. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- 35. Curation of Artifacts and Dissemination of Cultural information. PRIOR TO ISSUANCE OF THIS PERMIT, the permittee shall submit for the review and approval of the Executive Director, evidence of a written agreement with a curation facility that has agreed to accept any artifacts recovered from the project site. Any such artifacts shall be curated within Orange County, at a facility meeting the established standards for the curation of archaeological resources. Further, the permittee shall request in the agreement that the facility receiving the collection prepare an appropriate display of significant materials so that the public can view the investigation results and benefit from the knowledge gained by the discoveries.

If permanent curation facilities are not available, artifacts may be temporarily stored at a facility such as the Anthropology Department of the California State University at Fullerton until space becomes available at a facility meeting the above standards. The permittee shall submit written proof of acceptance from the above curation or temporary facility of 100 percent of the recovered artifacts prior to issuance of the permit.

PRIOR TO ISSUANCE OF THIS PERMIT the permittee shall submit, for the review and approval of the Executive Director, a written agreement to distribute the final reports required pursuant to this special condition to interested area institutions, vocational groups and Native American tribal units within Southern California, as well as to appropriate City, County and State agencies.

VISUAL RESOURCES

36. Structural Appearance. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of this Coastal Development Permit. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only

be applied to the structures authorized by this Coastal Development Permit if such changes are specifically authorized by the Executive Director as complying with this special condition.

HAZARDS

37. Fuel Modification Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval, Final Fuel Modification Plans which have been reviewed and approved by the City of Newport Beach Fire Department. The fuel modification plans shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Vegetation/landscaping within Fuel Modification Zone A shall consist of hardscape or irrigated landscape. Irrigated lawn, turf and ground cover planted within Fuel Modification Zone A shall be selected from the most drought tolerant species or subspecies, or varieties suited to the project area. Vegetation within Fuel Modification Zone B shall consists of irrigated native vegetation, where such irrigation shall mimic natural average rainfall. Vegetation within Fuel Modification Zone C shall consist of non-irrigated low grasses, succulents, cactus, and other low height/fuel volume native plants. Maintenance within Fuel Modification Zone C may include removal of non-native/invasive species, species inconsistent with the approved Habitat Conservation and Conceptual Mitigation Plan, dead plant material, and plants on the Fire Department's Undesirable Plant List. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition and the approved Habitat Conservation and Conceptual Mitigation Plan.

The Permittees shall undertake development in accordance with the Final Fuel Modification Plans. The Final Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

38. Final Plans Conforming to Geotechnical Recommendations.

- A. All final design and construction plans shall be consistent with all recommendations contained in Geotechnical Study, prepared by GMU Geotechnical, dated July 2011, and the mitigation measures contained in the Newport Banning Ranch Final EIR, dated July 3, 2012. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. Prior to issuance of the coastal development permit, the permittee shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.
- 39. Fault Setback. No development of habitable structures shall occur within the 50 ft. Fault Setback Zone as

generally shown on Exhibit 3, except that development of a small visitor center adjacent to the proposed Vernal Pool Restoration Complex may be allowed if, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee completes all necessary geotechnical trenching and field investigations and submits a geotechnical report to the Executive Director, for review and approval, confirming the adequacy of the proposed project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act.

- **40. Bluff Setbacks.** All development, other than (1) public access pathways, overlooks, and benches, (2) habitat restoration, landscape maintenance and fuel modification activities approved pursuant to this permit, and (3) drainage and water quality facilities approved pursuant to this permit, shall be located inland of 75 year 60' ft. bluff setback line.
- 41. No Future Bluff or Shoreline Protective Devices. By acceptance of this permit, the permittee agrees, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to coastal development permit including, but not limited to, the residential, commercial and visitor-serving structures, foundations, decks, balconies, patios, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the permittees/landowners hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235. By acceptance of this permit, the permittees/landowners further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residential, commercial and visitor-serving structures, foundations, decks, balconies, patios, hardscape and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above.

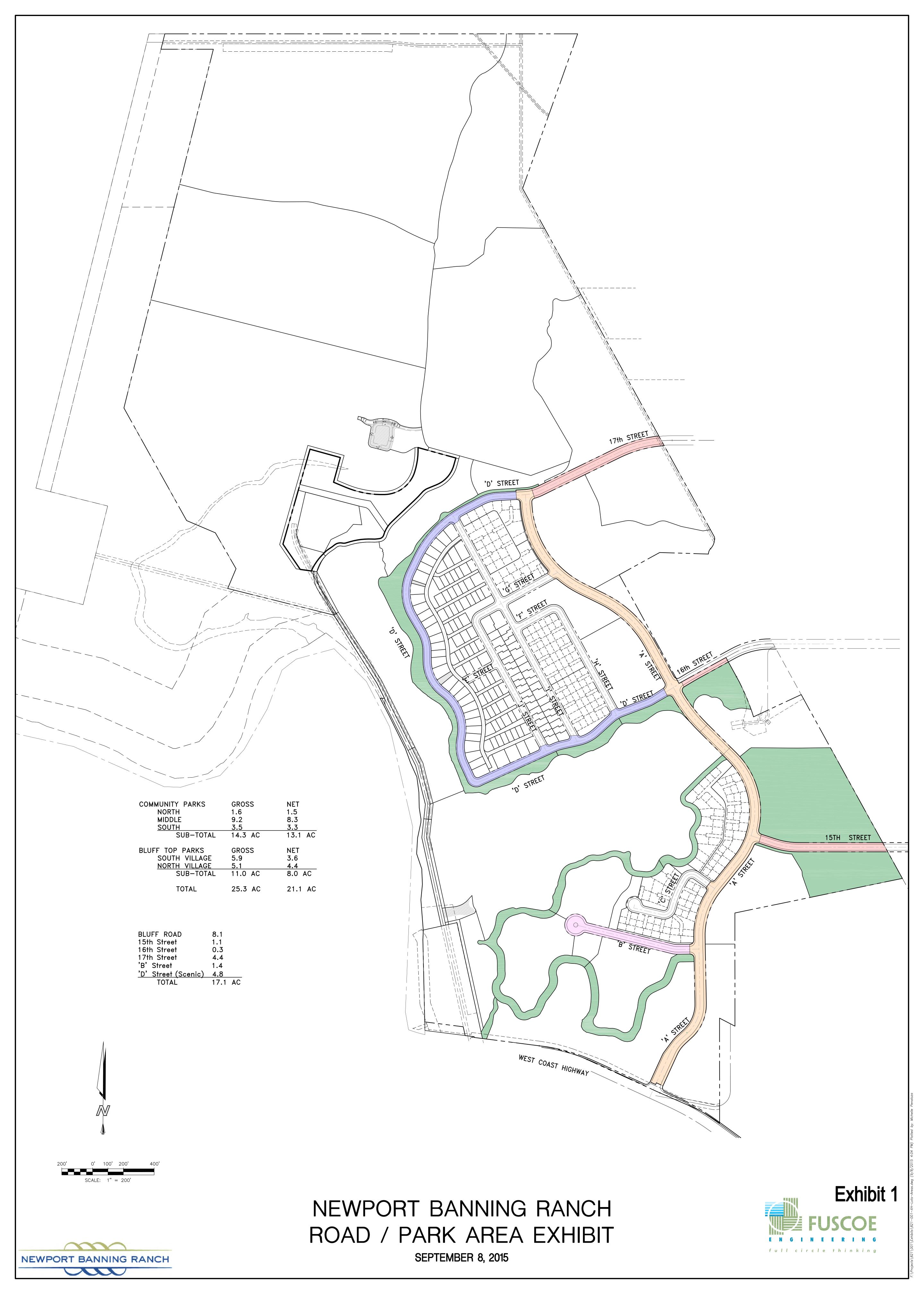
In the event the bluff edge recedes to within ten feet of any of the public amenity improvements, the Permittee shall retain a licensed geologist or civil engineer with experience in coastal processes and hazard response to prepare a geotechnical investigation that addresses whether any portions of the public access amenities are threatened by coastal hazards. The report shall identify all those immediate or potential future ordinary repair and/or maintenance measures that could be applied to address the threat and maintain the public amenities without shoreline protective structures. The investigation shall be submitted to the Executive Director and appropriate local government officials for review and approval. If the approved geotechnical investigation concludes that any bluff-top park public amenity improvements are unrepairable and unsafe for use, the Permittee shall submit a Removal and Restoration Plan.

If an appropriate government agency or the above-referenced approved geotechnical investigation determines that any public amenity improvements within the bluff-top park can not to be occupied or used due to any coastal hazards, and such safety concerns cannot be abated by ordinary repair and/or maintenance, the Permittee shall submit two copies of a Removal and Restoration Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to the coastal development permit or a separate coastal development permit is legally required in order to accomplish the removal and restoration, the Permittee shall immediately submit the required application, including all necessary supporting information to ensure it is complete. The Removal and Restoration Plan shall clearly describe the manner in which the bluff-top park public amenities shall be relocated inland so as to ensure their public access and recreational value is maintained. If any of the bluff-top park public amenities affected by coastal hazards, including erosion, are to be removed, the affected area(s) are to be restored so as to best protect coastal resources. These restoration and removal activities shall be implemented immediately upon Executive Director approval, or Commission

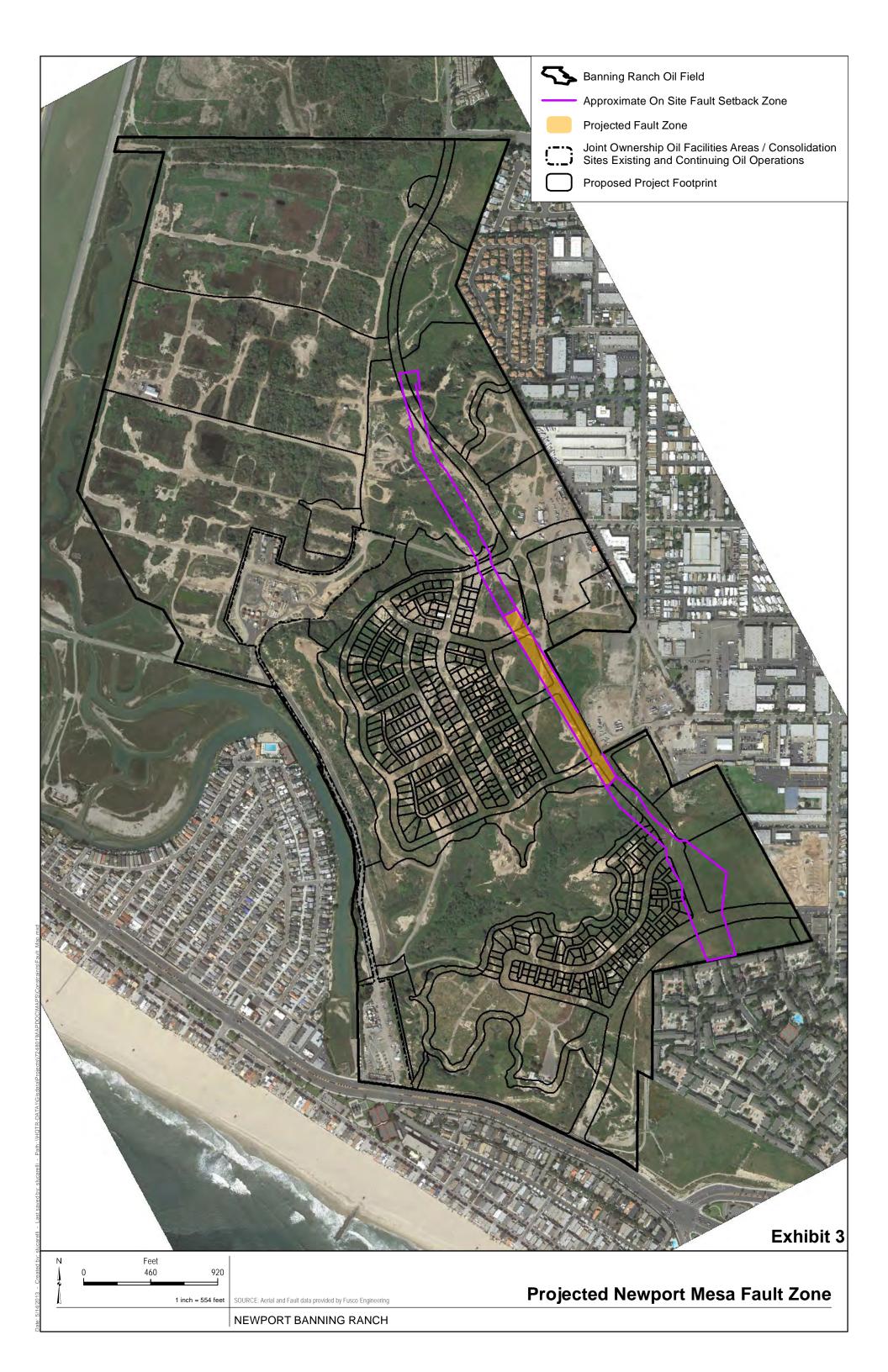
approval of the coastal development permit or coastal development permit amendment application, if necessary.

COASTAL DEVELOPMENT PERMIT AS CONSISTENCY CERTIFICATION

42. Consistency Certification. This Coastal Development Permit 05-19-032 and the forgoing standard and special conditions contained herein shall serve as the consistency certification for the project to ensure that the approved activity will be conducted in a manner consistent with California's approved coastal management program.







ATTACHMENT B

COASTAL ACT CONFLICT RESOLUTION FINDINGS

I. CONFLICT RESOLUTION

Two provisions in the Coastal Act allow the Commission to approve a proposal in a case where there is a conflict between one or more Chapter 3 policies.

Coastal Act Section 30007.5 provides:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

Coastal Act Section 30200(b) further states:

Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

The Legislature has recognized through Sections 30007.5 and 30200(b) that conflicts can occur among applicable Coastal Act policies. It therefore declared that when the Commission identifies a conflict among the policies of Chapter 3, the conflict is to be resolved "in a manner which on balance is the most protective of significant coastal resources," pursuant to Coastal Act Section 30007.5.

The proposed Project is potentially inconsistent with Coastal Act Section 30233 (use limitations in wetlands) and Section 30240 (use limitations in ESHAs). However, as provided in Section 30007.5, the Commission may nonetheless approve the proposed Project through conflict resolution because based on the factual record before the Commission, denying or modifying the Project to eliminate these potential policy inconsistencies would conflict with other important Coastal Act policies, including Sections 30210, 30211, 30212, 30212.5, 30213, 30223, 30252, and 30253 (protection and enhancement of public access to the coast and enhancement of shoreline and upland recreation areas in the Coastal Zone), Sections 30232, 30260 and 30262 (protection against spillage of oil and hazardous substances and location and consolidation of oil facilities), Section 30251 (protection of the scenic and visual qualities of coastal areas), and Sections 30230 and 30231 (protection and enhancement of marine resources and water quality).

As noted, Section 30007.5 of the Coastal Act requires the Commission to resolve the subject policy conflicts in a manner that is most protective of coastal resources. Here, denial of the Project, or in essence "doing nothing," as Staff suggests, makes little sense when weighed against the extraordinary coastal resource

benefits that the Project will provide. Approval of the Project will eliminate existing oil operations currently scattered over the entirety of the property and provide consolidation of the oil field in two small areas. It will provide for abandonment and remediation of the property now at significant cost \$30-\$40 million, rather than when the economic life of the oil field has been depleted - decades away. The Project will provide for comprehensive expansion, restoration, enhancement and long-term, privately funded management, maintenance and protection of the now declining, fragmented sensitive wetland and upland habitats onsite. Although the Project would result in certain impacts to wetlands and ESHA, the replaced and protected wetland and ESHA habitat on the site will provide enhanced and contiguous habitat contributions to the broader Santa Ana River ecosystem, and will ensure that the critical wildlife movement corridors supporting several special-status species within the coastal zone have sufficient areas of high-quality habitat necessary for species survival restored and protected in perpetuity. As such, the Project is designed to avoid and minimize impacts to wetlands and ESHA to the maximum extent feasible and, with the Habitat Conceptual Conservation and Mitigation Plan (HCCMP) proposed, will result in the restoration and conservation of habitat with improved ecological function and value. Further, in resolving the identified Coastal Act policy conflicts, the proposed Project will protect, promote and enhance extraordinary public trail, bike, park, and beach access and recreation on and through a currently fenced, closed site. Moreover, it will for the first time protect and enhance the water quality of stormwater runoff and for both onsite and adjacent offsite receiving waterbodies as mandated by the Coastal Act. Lastly, it will provide a high priority visitor-serving commercial use on the property, a 75-room resort inn, and onsite low cost overnight accommodations, a 20-bed hostel, with controlled rates. For all of these reasons, discussed further below, approval of the Project is, on balance, the most protective option for coastal resources.

A. APPLYING THE CONFLICT RESOLUTION CRITERIA

The first step in applying Section 30007.5 is to establish that a project presents a substantial conflict between two statutory directives set forth in Chapter 3 of the Coastal Act. In order to identify a conflict, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. The Commission has identified several criteria that must be satisfied to invoke this process. These are discussed and applied below.

1. The Project, as proposed, is inconsistent with at least one Chapter 3 policy – here, wetlands and ESHA protection policies.

As noted, the proposed Project is potentially inconsistent with Coastal Act Sections 30233 (wetlands) and 30240 (ESHA). The existing location of the Project would require that the improvements occur in areas containing wetlands, and it is therefore infeasible to avoid all fill impacts to wetland areas during construction of the proposed improvements. As to ESHA, NBR's proposed trail improvements, interpretative improvements and habitat restoration plans are considered resource-dependent uses and therefore are permitted uses in ESHAs. However, the proposed project elements consisting of residential, commercial, visitor-serving uses and associated improvements are not considered resource-dependent uses. As such, project improvements that do not consist exclusively of resource-dependent uses are potentially inconsistent with the limited uses permitted in ESHAs as required by Coastal Act Section 30240.

2. <u>Denial of the Project, however, would be inconsistent with other Chapter 3 Coastal Act policies that mandate resource protection or enhancement and is fully consistent with such policies.</u>

Denial of the proposed Project would be inconsistent with the following Chapter 3 policies: (1) Sections 30210, 30211, 30212, 30212.5, 30213, 30223, 30252, and 30253, which require protection and enhancement of public access to the coast and enhancement of shoreline and upland recreation areas in the Coastal Zone, (2) Sections 30232, 30260 and 30262, which require protection against spillage of oil and hazardous substances and location and consolidation of oil facilities, (3) Section 30251, which requires the protection of the scenic and visual qualities of coastal areas, and (4) Sections 30230 and 30231, which require the protection and enhancement of marine resources and water quality.

a. <u>Protection and Enhancement of Public Access and Recreational Resources (Sections</u> 30210, 30211, 30212, 30212.5, 30213, 30220, 30223, and 30252)

The coastal access and recreation policies of the Coastal Act mandate that maximum public access and recreational opportunities in the Coastal Zone be provided for all people, consistent with the need to protect public safety, private property and natural resources. These policies further require that public facilities are to be provided throughout an area so as to mitigate impacts of overcrowding or overuse by the public of any single area, and that low-cost visitor and recreational facilities be protected, encouraged, and where feasible, provided. Furthermore, the Coastal Act requires upland areas necessary to support coastal recreational uses to be reserved for such uses, where feasible.

The Project would eliminate the existing impediments to coastal access and low cost recreation opportunities for residents and visitors associated with the current oil and gas operation, and it includes several elements integral to the proposed development plan that would substantially benefit coastal access and recreation as mandated by Sections 30210, 30211, 30212, 30212.5, 30213, 30220, 30223, and 30252 of the Coastal Act.

The Project would not result in impacts to existing public access and recreation resources as the subject property is completely fenced and there are no public access or recreation uses or amenities that currently exist on the project site. The proposed Project would introduce new, low-cost public access and recreational resources to the project area by creating an interconnected system of trails, natural open space and public parklands, and constructing park-specific improvements to maximize access and recreation opportunities on the site and to adjacent parklands.

The proposed Project provides for development of a number of new coastal trails and a variety of parklands which would maximize public access and recreation opportunities in the project area for both residents and visitors with diverse backgrounds, interests, ages, and abilities. In addition, the Project includes development of a number of support facilities throughout the site to support access to and use of trails and parklands, where limited support facilities are currently available, including public parking, trailhead improvements, interpretive amenities, trash receptacles, restrooms, and picnic areas.

Included in the Project are approximately 51.4 acres of public parks and a local trail system comprised of offstreet multi-use trails, on-street bike trails, and pedestrian paths that would connect to the existing regional trail system. The Project includes areas for a diverse public park system to include active, passive, and interpretive recreation opportunities in both shoreline and upland environments. The Project would include an approximate 11 acre Community Park, a 14 acre Bluff Park. The public Bluff Park would act as a visual and passive recreational amenity, trail corridor, and a transition between open space and proposed development.

Additionally, a pedestrian and bicycle bridge spanning West Coast Highway would provide north-south access to the site and the Pacific Ocean without having to cross West Coast Highway at the street level, and would encourage walking and bicycling to and from the beach. The Project also designates more than 265

acres of the project site as Open Space, including wetland restoration/water quality areas, interpretive trails, habitat restoration and preservation areas, providing educational opportunities for individuals utilizing the Project's trail system.

Public parking and regional trail staging areas would be provided in multiple locations on the project site within the Community Park, along Scenic Drive at the Nature Center, and within the Resort Colony area, and would provide additional access and connectivity to trails within the Talbert Preserve and Fairview Regional Park.

The proposed approximate 0.1-acre (gross and net) Talbert Trailhead site in the upland open space area south of the terminus of 19th Street would serve as a trailhead to on-site trails and connect to the Talbert Nature Preserve north of the project site. The Talbert Trailhead Park would also provide a platform for public viewing of open space areas and directional and interpretive signage to on-site and off-site trails. The proposed trail system would include the multi-use trails, all of which would be privately developed as part of the project and permanently accessible to the public. Bluff Park and the Trailhead would also be privately developed as a part of the project, but would be permanently accessible to the public.

The Community Park consist of three lots located east of proposed Bluff Road. The overall community park elements consists of a 1.6 acre area adjacent 16th Street, a 9.2 acre active park area north of 15th Street and a 3.5 acre area passive park area south of 15th Street. The northerly portion of the park adjacent 16th street will have a trail system and a water quality basin. The active community park will provide approximately 140 parking spaces. These spaces can be comprised of on and off street parking. The southerly park south of 15th Street will include picnic areas, open turf areas, and a parking area (approximately 25 parking spaces). This parking would be in addition to the Community Park public parking and is proposed to be accessible to park users during non-business hours.

In addition, the Project includes development of a commercial area that would provide retail services for visitors and residents. The Project also proposes the development of a 75-room resort inn consistent with the Coastal Act provisions which would provide the public (both local residents and visitors) with additional access opportunities. As noted, the Project further provides a 20-bed hostel, consistent with the Coastal Act requirement to provide low cost overnight accommodations, proximate to the resort inn with full access to the amenities of the hotel as well as the pedestrian and bike trails on and offsite, the nearby parklands and commercial retail uses proposed, and the beach via the pedestrian and bike bridge over Pacific Coast Highway.

Project improvements have been designed in consideration of topographic and natural resource constraints, as well as minimizing conflicts with adjacent residential development. Proposed trail and staging area improvements include primarily low-intensity uses that would largely be located along the seaward edge of the proposed development (along the upland edge and bluff, and within the lowlands), away from adjacent developed neighborhoods, and are sited and designed to be noninvasive on the natural topography and to minimize impacts to sensitive habitat areas. The large majority of trails and parklands would be located in relatively level, disturbed areas containing existing oil field infrastructure. In consideration of site topography and natural resource constraints, public access through the Open Space Preserve would be limited to a trail system utilizing existing oil field roads to minimize impacts, and would be managed to ensure public access and recreational use of the site would not degrade the restored and enhanced habitat areas.

Facilitating and encouraging nonautomobile transportation within the project site with new multimodal options will provide access to the coast and recreation areas with alternative modes of transportation (trails, bike paths, and transit). The Project will add sidewalks and bicycle lanes along the circulation system throughout the site, providing access to coastal amenities including Coast Highway and the California Coastal Trail. In addition, the Project's circulation system would be coordinated with OCTA to allow for a public transit routing

through the community, and would provide bus stops and/or shelters as needed in the community. The proposed improvements would improve not only travel choices for coastal access, but also substantially enhance recreational opportunities in the corridor by completing linkages among inland and coastal communities, and by providing access opportunities to the project area's regionally significant natural resource and recreation areas. The proposed bicycle and pedestrian routes and trails would enhance an existing trail network by creating new accessways to the beaches, open spaces, and coastal communities in the project area.

For all these reasons, the Project, as proposed and with the Special Conditions requested by the Applicant, is fully consistent with Coastal Act Sections 30210, 30211, 30212, 30212.5, 30213, 30220, 30223, and 30252. Denial or modification of the proposed project to fully resolve potential inconsistencies with the Coastal Act wetland and ESHA protection policies would eliminate project improvements which would serve to affirmatively implement the coastal access and recreation policies of the Coastal Act. Further, denial or modification of the proposed Project to fully resolve project inconsistencies would result in continued, adverse impacts to public access and recreational resources by leaving existing coastal access impediments in-place when new resources are necessary to meet an ever-increasing demand for public access and recreation opportunities throughout upland and shoreline areas of the coastal zone. Absent the proposed project improvements, the missing trail linkages and parkland resources on the site would perpetuate an inadequate pedestrian, bike, and parkland system in the project area and would therefore continue to limit and further degrade the ability for people to access the coast and coastal upland recreational areas.

b. <u>Protection and Enhancement of Marine Resources and Water Quality (Sections 30230</u> and 30231)

Sections 30230 and 30231 of the Coastal Act require that marine resources and water quality be protected and, where feasible, enhanced and restored. There are currently no water quality improvements on the subject property. The proposed Project would have no adverse impact to water quality, and would alternatively incentivize the timely consolidation, abandonment, and remediation of oil facilities on the site which would allow for implementation of the proposed development plan that includes a comprehensive Water Quality Management Plan. The proposed Water Quality Management Plan would address the existing deficiency in drainage and water quality treatment facilities in the project area, and would therefore effectively improve water quality for both on and offsite stormwater runoff, which would serve to enhance the quality and habitat value of receiving water bodies on and adjacent to the project site.

In addition, the proposed Project includes restoration of the property's degraded wetland and riparian areas, as well as creation of a third-party reserve area for future tidal wetland habitat restoration opportunities. The Project would result in restored and expanded wetland and riparian habitat proposed for long-term preservation, with mitigation treatments and native vegetation community establishment that would serve to strengthen wetland and riparian habitat continuity with wetland habitat in Semeniuk Slough, with restored upland habitat on the project site, and with adjacent habitats within the Talbert Nature Preserve.

The proposed Water Quality Management Plan for the property would include water quality features and BMPs to be implemented at development sites, in public street rights of way, as well as in parks and the Open Space Preserve. Urban development east of the site (off-site tributary areas) and onsite historic oil field operations have resulted in increases in stormwater pollutant loads and runoff velocity and erosive characteristics overtime, contributing to erosion and sedimentation to and within the site's wetland and riparian habitats, as well as to Semeniuk Slough. The majority of these land uses were developed before current regulations were enacted to control and treat stormwater discharge in an effort to protect and restore

water quality and sensitive marine resources. Given the existing, degraded water quality conditions on the property, the proposed Project provides an opportunity to comprehensively restore and maintain water quality across the site, and thereby enhance both onsite and adjacent marine resources.

Accordingly, the project's Water Quality Management Plan is designed to intercept, control and treat stormwater runoff from onsite and adjacent offsite development, which is currently untreated and conveyed across the site via sheet flow or the site's drainages. The Project includes regional water quality treatment measures that would capture and treat runoff from approximately 46 acres of adjacent developed areas located within the City of Costa Mesa and the City of Newport Beach. In addition, the Project is designed to provide on-site retention and treatment capacity to maintain water quality standards and to comply with forthcoming enhanced regulatory requirements for runoff expected from the proposed project site.

Two energy dissipation/diffuser basins are proposed in the lowland area within the Open Space Preserve. One diffuser basin is proposed just north of the North Family Village, and would be located above the 100-year floodplain and would serve as an energy dissipation basin to control the rate at which treated runoff drains from the Upland down to the Lowland. This basin has been reduced in footprint to avoid habitat impacts. An additional diffuser basin is proposed in the Lowland area which would collect treated flows from development areas adjacent to the Southern Arroyo and provide energy dissipation of flows prior to entering the Semeniuk Slough. Both of the Lowland basins would be planted with native emergent marsh and riparian species to promote additional water quality cleaning and natural energy dissipation.

A third water quality basin is proposed to intercept approximately 46 acres of off-site flows from the 16th Street Costa Mesa drainage area. These off-site flows enter the project site via a 48-inch reinforced concrete pipe and discharge into the Southern Arroyo. In general, these flows contain urban runoff pollutants and also convey sediment from the eroding tributaries of the Southern Arroyo to the downstream end, ultimately discharging into the Semeniuk Slough during severe storms. The water quality basin is proposed on the project site at the southeast corner of 16th Street at the project site boundary. The basin capacity would treat all dry weather and a portion of first-flush runoff from the off-site tributary. The basin is also intended to reduce peak flow rates discharging into the Southern Arroyo to reduce erosion and scour potential. The removal of pollutants, reduction in peak discharges and the stabilization of the eroding tributaries of the Southern Arroyo would reduce the current sediment loads into the Semeniuk Slough.

Within the development footprint on the mesa, water quality control will start at the individual lots. Hydrologic Source Control (HSC's) measures will be implemented at each lot to provide runoff reduction and localized water quality treatment. Each single family detached home will include two rain barrels strategically located near roof downspouts and backyard landscaping. The downspouts will include a bypass system for when the rain barrels reach their storage capacity. Rain barrels are above ground storage vessels that capture runoff from roof downspouts during rain events and detain that runoff for later reuse for irrigating landscaped areas. The temporary storage of roof runoff reduces the runoff volume from a property and will reduce the peak runoff velocity for small, frequently occurring storms. In addition, by reducing the amount of storm water runoff that flows overland into a storm water conveyance system, less pollutants are transported through the conveyance system into the Santa Ana River and the Pacific Ocean. The reuse of detained water for irrigation purposes leads to conservation of potable water and also acts as a sustainable educational opportunity.

The design of these on-lot homes will also include impervious area dispersion which refers to the practice of routing runoff from impervious areas, such as rooftops, walkways and patios onto the surface of adjacent

pervious areas. Runoff from disconnected roof drains is dispersed uniformly typically via splash blocks and soaks into the ground as it moves slowly across the surface of pervious areas. Minor ponding may occur, but it is not the intent of this practice to actively promote localized on-lot storage or focused infiltration.

Proper use of HSC's are an effective tool in reducing runoff and pollutants from leaving each lot. The combination of the rain barrels and impervious area dispersion techniques will result in an average 40% runoff reduction of the 85TH percentile event for each product type based on the design criteria set forth in the Orange County Technical Guidance Document (TGD). HSC's will also be implemented for all areas of development including higher density residential (multi-family attached), resort villas and retail/resort areas. Harvest and reuse (aka. Rainwater Harvesting) BMPs will also be incorporated as part of the water quality treatment train. Rainwater harvesting BMPs are LID BMPs that capture and store storm water runoff for later use. These BMPs are engineered to store a specified volume of water to be used for water demands, such as landscape irrigation, after a rain event has occurred. Harvest and use BMPs include both above-ground and below-ground cisterns. Harvest and reuse feasibility was calculated for each drainage area within the NBR project site. Of the 17 delineated drainage areas, 7 drainage areas covering over 45% of the development area were determined to be feasible to implement harvest and reuse systems. The Urban Colony, future Parks and portions of the Resort Colony and North Village Flats will implement harvest and reuse cisterns. The remaining areas did not mean the minimum criteria for implementation of harvest and reuse systems based on a lack of common area landscaping.

The cisterns will be designed to hold the full capacity of the design capture volume (85th percentile storm event). After a storm event, each cistern per drainage area will draw down in less than 30 days to meet the 40% minimum capture value (OC TGD, 2011). After a storm event, the entire DCV can be utilized to satisfy on average 82% of monthly irrigation demands within those drainage areas meaning on average, the stored water will provide up to 26-28 days of irrigation water for the local landscaping areas in lieu of potable water. If there are multiple storm events that occur within the month proceeding the first storm event and exceed the capacity of the cisterns, the overflow portion of the DCV will flow into a connected proprietary biotreatment system (modular wetland system – MWS) to maintain water quality.

The MWS units are connected to the harvest and reuse systems to treat the overflow runoff once the cistern capacity is reached. Dependent on the upstream harvest and reuse capture efficiency, the MWS units are sized to treat the remaining DCV to reach 80% capture efficiency criteria. This is calculated by removing the amount of DCV captured and used by the harvest and reuse cisterns and calculating the new flow that must be treated by the MWS unit.

The combination of harvest and reuse cisterns and MWS units will be located at the low point of each drainage area. Storm drain flows will flow into localized catch basins and into the proposed storm drain lines. The storm drain lines will include low-flow diversion structures which will direct water quality flows to the harvest and reuse cisterns. The cisterns will include a pre-treatment device that can remove particulates down to fine sand size distributions which is sufficient for pre-treating Total Suspended Solids and associated heavy metals attached to sediment. In addition, all internal roads within Harvest and Reuse areas will include biweekly street sweeping to prevent build-up of sediments and associated pollutants on streets and parking areas. The water stored in the cistern will be connected to a pump system and irrigation line to allow for a portion or the entire DCV to be utilized for landscape irrigation purposes. Any additional treatment needed during frequent storm events will be provided by the MWS units connected to the harvest and reuse cisterns.

Community water qulity biotreatment basins will be implemented in the regions where harvest and reuse is not feasible. The biotreatment areas include 10 drainage areas throughout the majority of the North Village and a portion of the South Village and BMPs implemented on the streets and parkways throughout the entire site. These basins are landscaped shallow depressions that capture and filter stormwater runoff. These facilities function as a soil and plant-based filtration device that removed pollutants through a variety of physical, biological, and chemical treatment processes. The facilities normally consist of a ponding area, mulch layer, planting soils, and plants. As stormwater passes down through the panting soil, pollutants are filtered, adsorbed, biodegraded, and sequestered by the soil and plants. Similar to the harvest and reuse systems, HSC's will be implemented upstream within the individual lots or clustered development areas.

The community basins will be sized to meet forthcoming and updated water quality treatment requirements as part of the next term Orange County MS4 Stormwater Permit. The basins will be sized to treat 1.5 times the Design Capture Volume as stated in the Draft Order No. R8-2015-0001 5th Term MS4 Permit for Orange County. The area required to treat 1.5 times the DCV was calculated by assuming the maximum 1.5 foot ponding depth. The total depth will not exceed 2 feet which allows for a 6" freeboard. The basins are located at low-points at each DMA where a dedicated water quality low flow storm drain line will collect initial flows and deliver the storm water to the basins during rain events. After bio-treatment, flows will be collected back into the main line for conveyance to the lowlands for additional natural treatment including infiltration, evapotranspiration and plant uptake.

Flow-through planters and MWS units will be incorporated into the streets and parkways BMP design. Flow-through planters act similarly to the biotreatment basins but will be designed with a shallower ponding depth of 6 inches to comply with street design biotreatment BMP specifications. Bio-swales will also be used as pre-treatment facilities before flows reach the flow-through biotreatment planter of the parkway landscaping areas. This allows for the treatment of water quality at the source and for the reduction of peak storm water runoff volumes and rates.

To protect downstream receiving waters during construction, the proposed project will implement an extensive series of erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control BMPs. These BMPs would be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the project's Water Quality Management Plan, and Storm Water Pollution Prevention Plan (SWPPP). As part of the CA Construction General Permit (CGP), rain response field monitoring will occur to ensure the proposed BMPs are adequately controlling sediment and construction related pollutants from discharging from the site during various construction activities.

The implementation of the proposed LID features including Hydrologic Source Control measures, pretreatment devices, harvest and use systems and bio-treatment will result in a robust water quality treatment train for the NBR Conservation and Re-Use Plan. Water quality modeling results (SWMM with continuous simulation as prepared during the EIR process) indicate an overall reduction in annual pollutant concentrations as compared to the existing conditions and annual mass loadings of total suspended solids will decrease compared to existing conditions. Reductions in annual pollutant concentrations as compared to existing conditions will ensure long term water quality within the tidally influenced downstream receiving waters. In addition, the modeling results also show highly favorable water quality results when evaluating the pollutant loads reductions over existing condition when evaluating the dedicated water quality basin for treatment of off-site flows prior to entering the Southern Arroyo. The water quality modeling results conservatively do not account for any implementation of HSC's or Harvest and Reuse BMP's which would

further reduce average annual pollutant concentrations under the proposed condition. Integration of these features will further reduce pollutant concentrations, loads and volumes another 15-25%% prior to discharging into either the Semeniuk Slough or the lowlands.

The proposed project Water Quality Management Plan, when combined with oil facility consolidation, abandonment and remediation and the proposed Habitat Conservation and Conceptual Mitigation Plan, would significantly restore and improve runoff management and water treatment opportunities across the site. Overall, the proposed water quality improvements would address untreated flows to the arroyos, redirect runoff away from bluffs, and reduce polluted runoff from existing facilities to the Semeniuk Slough and the Santa Ana River, resulting in an improvement over existing site runoff conditions with respect to water quality, velocities and delivery of runoff to the downstream receiving waters. As such, denial or modification of the proposed project to fully resolve potential inconsistencies with the Coastal Act wetland and ESHA protection policies would eliminate project improvements which would effectively restore sustainable hydrology patterns and provide water treatment measures across the site, which are necessary to protect and enhance marine resources on the site and adjacent Santa Ana River ecosystem beyond existing conditions. Further, denial or modification of the proposed project to fully resolve policy inconsistencies would result in continued degradation of water quality and marine resources resulting from existing deficiencies of drainage and a lack of water quality treatment facilities in the project area that will worsen water quality over time. Absent the proposed project, opportunities to comprehensively modify existing hydrology and drainages systems to improve water quality would remain extremely limited and unlikely. As such, the project improvements are planned and designed to remedy impacts to water quality and marine resources caused by existing conditions to the maximum extent feasible, and would thereby facilitate enhancement and restoration of the biological productivity and quality of marine resources on and adjacent to the project site.

The Project, as proposed and with the Special Conditions requested by the Applicant, is fully consistent with the provisions of Coastal Act sections 30230 and 30231.

 Protection Against Spillage of Oil and Hazardous Substances; Location and Consolidation of Oil Facilities; and Protection of Coastal Scenic and Visual Qualities (Sections 30232, 30251, 30260 and 30262)

Section 30232 of the Coastal Act requires protection against spillage of crude oil and gas petroleum products or hazardous substances and the provision of effective containment and cleanup facilities and procedures for accidental spill that occur. Section 30260 encourages coastal-dependent industrial facilities to be located or expanded within existing sites, and Section 30262 requires that new or expanded facilities related to oil and gas development be consolidated to the maximum extent feasible. Section 30251 further requires that the scenic and visual qualities of coastal areas be protected as a resource of public importance.

Currently, an active oil field proliferates on 85 acres scattered throughout the project site. This consists of hundreds of wells, well pads, over 40 miles pipelines, tanks, structures, power lines and poles, roads, road base and asphalt-like materials, sumps, and impacted soils. As a result of 75 years of oil operations, the site is currently degraded and the sensitive habitats onsite have become highly fragmented and degraded. The Applicant proposes comprehensive oil field cleanup and complete remediation of the affected soils at a cost to the owner of \$30-40 million.

Denial of the Project would continue oil operations in effect across the property for decades to come. By contrast, the abandonment and remediation component of the Project would dramatically reduce the current

onsite oil operations. Consistent with Section 30262, it would consolidate them in two "remainder operations" sites totaling a maximum of 17 acres in existing areas which currently support active oil operations, and it would deed restrict those areas to open space as well upon the cessation of oil operations.

Coupled with abandonment and remediation is the comprehensive habitat preservation and restoration program - the Habitat Conceptual Conservation and Mitigation Plan ("HCCMP")- which the Applicant submitted with its application. The HCCMP requires, concurrently with the oil field clean up and remediation, removal of 51 acres of non-native invasive plants (mustard, pampas grass, ice plant, poison hemlock, exotic palms, eucalyptus, giant reed, acacia, myoporum, and pepper tree) which during the Commission's June 2014 site visit the Commission's biologist noted will become the "dominant" species onsite if left unchecked. The HCCMP establishes a comprehensive expansion, restoration, enhancement plan to ensure the longterm viability of habitats and wildlife on the property. Implementation of the Plan involves reestablishing now fragmented sections of the site by strategically preserving remaining habitats, enhancing degraded areas, restoring riparian vegetation, and creating new and improved wetland and upland habitats at a cost in excess of \$10 million. The end result will be a 265-acre protected Open Space Area which eliminates all of the unsightly oil facilities and provides functional, continuous habitat, connectivity between diverse habitat types, wildlife corridors with adjacent open spaces and larger environment, conservation and creation of habitat for sensitive and listed species (including the California Gnatcatcher, San Diego Fairy Shrimp, and Least Bell's Vireo), and enhancement of existing habitat to achieve greater biological diversity and value for existing wildlife. The Project also proposes privately funded long-term stewardship and maintenance of the restored areas by a non-profit organization, the Newport Banning Land Trust.

The Project, as proposed and with the Special Conditions requested by the Applicant, is fully consistent with Coastal Act Sections Sections 30232, 30251, 30260 and 30262.

3. The Project, if approved, would result in tangible resource enhancement over existing conditions.

This aspect of the conflict between policies may be viewed from two perspectives, both of which clearly apply here. First, approval of the Project would result in vastly improved conditions for coastal resources subject to the affirmative mandate of the Coastal Act sections discussed in the preceding section. Second, denial of the Project would result in continued degradation of those resources.

Every aspect of this integrated, multi-use development project will result in a substantial tangible resource enhancement over existing conditions. Oil facility abandonment and remediation will eliminate an unsightly oil operation that currently proliferates over the 401-acre property and will consolidate the oil operations in a two small areas with existing oil facilities totaling 17 acres. Removal of the increasingly dominant non-native invasive species and comprehensive restoration of the disturbed areas on the property will result in a restored and dedicated 265-acre open space area that will be protected and maintained as the primary land use for the property. Without concentrated efforts to restore, expand and manage the sensitive habitats onsite, the decline of these habitats will continue. With abandonment and remediation, the Project will provide public access to a now closed site, bike and pedestrian trails to the Beach and the Santa Ana River, substantial active and passive parklands, a 75-room room inn and related visitor-serving uses, and a 20-bed hostel at controlled, low cost rates. The site currently has no water quality improvements. The Project will, for the first time, provide water quality features to intercept, control and treat stormwater runoff from both onsite and adjacent offsite development, which is currently untreated and conveyed across the site via sheet flow or the

site's drainages. Those improvements will reduce excessive runoff to arroyos, redirect runoff away from the bluffs, and reduce flow rates and volumes of untreated runoff to the Semeniuk Slough and the Santa Ana River – an undeniably substantial improvement over existing site runoff conditions.

4. The benefits of the Project are not independently required by some other body of law.

None of the project benefits discussed above are independently required by some other body of law. They are required through application of the Chapter 3 policies of the Coastal Act.

5. The Project benefits will result from a main purpose of the Project, not an ancillary component added to the Project to "create a conflict."

The Project proposes abandonment of existing oil operations scattered throughout the property and site remediation of those areas, substantial habitat restoration, and construction of a housing and mixed use development on a portion of the remediated property. Oil facility abandonment and the associated site remediation will be conducted to implement the integrated, multi-use development proposed, which, as noted, includes a comprehensive program for restoring and dedicating 265 of open space as the primary land use for the property, as well as providing significant active and passive public access and recreational facilities. Implementation of the open space and public access and recreation land uses, as well as the water quality improvements proposed, must also be preceded by abandonment, consolidation and remediation of the existing oil field development and uses.

6. There are no feasible alternatives to achieve project objectives that avoid a Chapter 3 policy conflict.

There are no alternatives identified that would be both feasible and less environmentally damaging. The "no project" alternative would mean that there would be no abandonment or remediation of the oil facilities or the substantial habitat restoration proposed. The oil operations throughout the property would continue, along with continued contamination of the soil which surrounds the actively operating facilities.. Sensitive habitats on the property would become increasingly fragmented and degraded; non-native invasive plants would become the dominant plant species. The "no project" alternative would perpetuate the existing deficiencies in drainage and stormwater runoff, which is currently untreated and conveyed across the property via sheet flow or the site's drainages, causing erosion and sedimentation of the Semeniuk Slough. This alternative would not provide public access and recreation, such as the trails, trail connections, and parklands proposed. There would be no visitor-serving hotel and no low cost overnight accommodations provided. The "no project" alternative would therefore not be a less environmentally damaging alternative that is consistent with all relevant Chapter 3 policies.

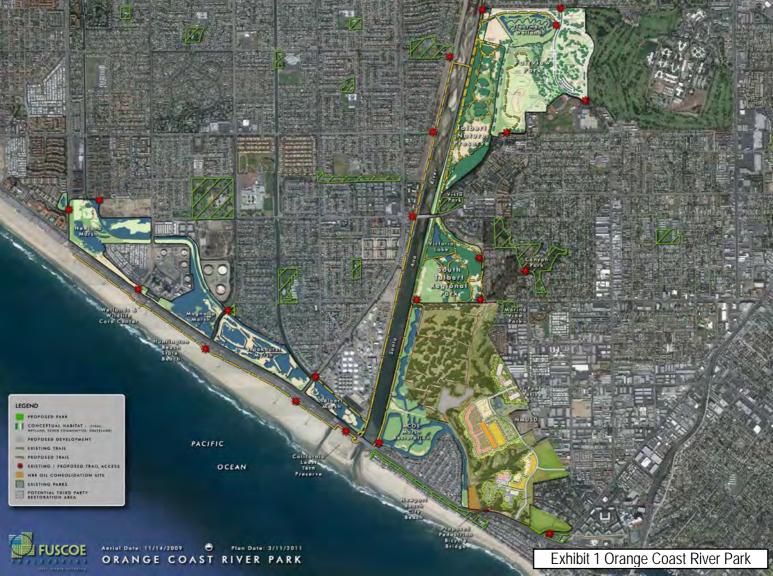
The Staff Report purports to identify a "reduced development" alternative. This alternative is reflected in a figure, crafted by Staff (see page 76 of the Staff Report), that shows a handful of tiny "bubbles" in disparate areas of the property where Staff suggests limited development could be accommodated without significant disruption to habitat. The "development bubbles" shown, however, are wholly disconnected. Staff's figure does not include any roads to or as between these areas, nor does it explain how those isolated areas would relate to one another, or how they would be served by a logical array of services. The Staff Report eschews the hotel and hostel proposed and suggests a small portion of the area that would support those visitor-serving uses could serve instead environmental camping, tent cabins, or cabins. This "alternative" ignores

the fact that oil facilities proliferate over the entire site, including those specific upland areas where development is proposed, that the cost to abandon and remediate those facilities would cost on the order of \$30 million, and that the sensitive habitats on site are in a state of decline and that the non-native invasive species that occupy 51 acres of the site have reached the point where they are becoming the dominant species on the property. This alternative also would not provide any of the public access and recreation amenities proposed, any of the water quality improvements proposed, or any of the visitor-serving and low cost overnight accommodations proposed. The simple fact is -- no one would undertake development under the simplistic scenario Staff offers, given the obvious uncertainty surrounding what could be developed in Staff's tiny development bubbles and, most importantly, the enormous financial undertaking that would first be required to abandon, remediate, and restore the property. The "reduced development" alternative is, therefore, not the less environmentally damaging feasible alternative.

By contrast, the proposed Project would abandon and remediate the existing oil field and consolidate oil operations in two small areas which currently support such facilities. It would remove 51 acres of non-native invasive plants which, as noted, threaten to dominate the plant species on site. And, it would provide comprehensive habitat restoration of the property and consolidate those restored areas in a dedicated and protected 265-acre open space area. It would confine development to the upland areas following abandonment and remediation in those areas, provide the water quality infrastructure to address onsite and offsite stormwater runoff that currently does not exist, and provide the extensive trail system, parkland, and visitor serving and affordable overnight uses proposed. Given the extent of abandonment and remediation that is necessary to clean up the site, even if only for opening the site up to the public, scattered nature of seasonal features and the very broad ESHA determination recommended by Staff, there are no feasible alternatives that would achieve the objectives of the proposed Project without violating Chapter 3 policies.

CONFLICT RESOLUTION SUMMARY

In summary, the proposed Project provides a classic case for the balancing of conflicting Coastal Act policies. The Project includes abandonment and remediation activities that would create impacts to wetlands and ESHA, contrary to the cited Coastal Act policies. However, denying the Project because of its inconsistency with those policies would result in significant adverse effects on public access and recreation, oil field clean up and consolidation, biological resources, scenic and visual quality, and water quality. For the reasons set forth above, approval of the Project, as proposed and with the Special Conditions requested by the Applicant, is "most protective of coastal resources" for purposes of the conflict resolution provisions of Coastal Act Section 30007.5.







Public Access - Parking

Scenic Drive 110 spaces

Resort Colony Parking Structure 165 spaces

Visitor Serving Commercial Parking 196 spaces

Community Parks

Total Public Parking 646 spaces

EV/Hybrid Parking

 City Conditions: 3% of the total parking spaces (23 spaces), including installation of recharging stations

Resort Colony Parking Structure Details

- Three levels, top floor open
- Sides covered with vegetation/living walls
- Approx. 250' long x 130' wide x 18' tall

175 spaces

view simulations west coast hwy entry







view simulationswest coast hwy - south







view simulations across slough







view simulations across slough





view simulations santa ana river trail





view simulations17th street entry





view simulations







view simulations

west coast – santa ana river bridge







view simulations 19th street terminus





view simulations 19th street terminus







TECHNICAL MEMORANDUM

Response to Coastal Commission Staff Report

PREPARED FOR: California Coastal Commission

Newport Banning Ranch LLC

PREPARED BY: Charlie Marr, P.E.; CMC

DATE: October 1, 2015

PURPOSE

The purpose of this memorandum is to respond to the Staff Report (No. 5-13-032, 9/25/15) from the California Coastal Commission regarding the response letter from Charles Marr Consulting, Inc. titled *Response to Banning Ranch Conservancy Newport Banning Ranch Water Supply Assessment*.

RESPONSE TO COMMENTS

1. The Coastal Commission states that

"Instead of updating the WSA report, the response letter defends the original report, based on 2005 data, despite the fact that newer, more accurate data is available. Ultimately, it is unknown if the development can adequately be supported by the water supply available without recent information."

This statement is simply incorrect and misleading. The staff report failed to mention that the CMC response letter identified that a separate analysis utilizing new and more accurate data was included in the 2011 Environmental Impact Report (EIR). The EIR focused on examining the context of the WSA (based on data from the 2005 UWMP) with the most up-to-date UWMP from 2010. The next cycle of 2015 UWMP will not be available until 2016; thus, the 2010 UWMP is the guiding document for WSAs today. The EIR analysis found that the 2010 WSA is consistent with the 2010 UWMP even as the 2010 UWMP assumed higher water demands. As stated in the EIR: "The City of Newport Beach 2010 Urban Water Management Plan was adopted by the Newport Beach City Council on June 14, 2011. The Project's WSA is consistent with the assumptions of both the 2005 and 2010 Urban Water Management Plans." (Newport Banning Ranch Draft EIR at page 4.15-9.) Therefore, based on the most current data from the 2010 UWMP/2010 WSA, the proposed project will be adequately supported by the water supply available.

NEWPORT BANNING RANCH WSA RESPONSE TO COMMENTS

2. The staff report also included an erroneous statement regarding the 60% decrease in local groundwater supply which was originally raised by the Banning Ranch Conservancy. Both statements are incorrect. The particular statement states that the groundwater basin has lost 60% of its water supply over the time period from 1999-2014 due to a decrease in Santa Ana River flows. See original statement from the Banning Ranch Conservancy below:

"In Orange County, according to the Orange County Water District's 2015 Draft Groundwater Management Plan (GWMP), Table 10-13, p224: "Declining Santa Ana River base flow reduces supply of water available to recharge groundwater basin. (Flows declined from a Water Year (WY) 1998-1999 high of 158,600 acre-feet to a WY 2013-2014 low of 64,900 acre-feet)."

That's a loss of 93,700 acre-feet, or 60% of the water basin's water supply. This steep decline is even more concerning given that the City's Newport Banning Ranch Water Supply Assessment Report (WSAR, AECOM, September 2010) states on page 20 that the City "receives all its groundwater from the Lower Santa Ana Basin, also referred to as the Coast Plain of Orange County Groundwater Basin (Groundwater Basin Number 8-1)."

The "decreased by 60%" statement is simply incorrect as the Santa Ana River (SAR) is not the only source of recharge to the groundwater basin. The Santa Ana River provides about 30% of recharge supply on average to the basin. Therefore, a decrease of 93,700 AF of water from the Santa Ana River over the 15-year period currently represents an 18% decrease in the groundwater basin recharge supplies when accounting for all sources. More importantly, when viewing the water supply data within the same time frame noted by the comment (1999-2014), the statement fails to mention the addition of the Groundwater Replenishment System (GWRS) which provides 103,000 AFY of water supply. This directly cancels out the loss of the SAR source and actually provides more water than the deficit of SAR flows. The GWRS is also currently under design to increase its capacity to 130,000 AF/year. This expansion will increase the amount of water available for groundwater further improving water supply reliability for the City and the region.

Furthermore, because OCWD has the means to manage basin storage within a safe operating range (100,000 to 500,000 AF below full), and has operated the basin within this range for decades, overdraft in the traditional sense does not exist in the Orange County Groundwater Basin. For this reason, it makes more sense to refer to the storage condition of the basin, similar to the manner of describing storage in a surface water reservoir. With approximately 66,000,000 acre-feet of water in storage at the full condition, when storage levels are decreased by 200,000 acre-feet, the basin is approximately 99.7 percent full. When storage levels decrease from 200,000 to 400,000 acre-feet, the basin is 99.4 percent full. From a classical surface water reservoir perspective and the long term history of managing the basin, the basin is almost always nearly "full" (Draft Groundwater Management Plan, 2015). Even with the severe drought, the basin capacity is currently operating at 99.4% full and is

NEWPORT BANNING RANCH WSA RESPONSE TO COMMENTS

projected to remain above 99% through 2015/2016 (OCWD Board of Directors Meeting, April 15, 2015).

3. The state of California recognizes the importance of mandating water use reduction in terms of natural population growth. Rather than establish an 'overall' water use reduction goal, the state mandated a per-capita water use reduction as part of the Water Conservation Act of 2009. "Overall ability to adequately supply water" is addressed in the water supply reliability section of the UWMP and WSA. This is a specific evaluation required by the documents and supported by supply and demand figures and analysis using historical single- and multipledry year scenarios to illustrate that existing and/or planned water supplies can meet demands under worst-case scenarios. On the demand side of the equation, when the City achieves its established per-capita water use reduction goal by Year 2020 pursuant to its Compliance Plan and SBx7-7, it will also achieve an overall reduction in City-wide water demands because it likely will not experience a population growth equal to its water use reduction rate. The governor's 2015 Executive Order will have the effect of further reducing overall City demand because it is requiring the City to reduce its per-capita water use by an additional 8%. Without any additional water sources, the City's existing water sources are more than sufficient for the NBR Project as it is only projected to increase City population by 5%. Lastly, by virtue of the fact that the Project was considered in the City's current UWMP, the City's ability to meet water demands is already demonstrated in its UWMP, and re-stated in the WSA pursuant to the requirements of SB 610.



Table 7a

Survey Results for Newport Banning Ranch Fairy Shrimp Surveys

	Protocol Surveys Conducted for Listed Vernal										
-	GLA	GLA	GLA	GLA	GLA	GLA	GLA	Dudek		Dudek	
	2000	2008	2009	2010c	2011a	2011b	2012b	2013c	Dudek 2014b	2015	
-	Wet	Wet	2007	20100	20114	20110	20120	20130	20170	2013	
Season	Seaso	Seaso	Wet	Wet	Wet		Wet		Wet	Wet	
al	n	n	Season	Season	Season	Dry	Season	Dry	Season	Season	
Feature	1999-	2007-	2008-	2009-	2010-	Season	2011-	Season	2013-	2014-	
ID	2000	2008	2009	2010	2011	2011	2012	2012	2014	2015	
VP1	SDFS	-	-	-	-	-	-	-	-	-	
VP2	SDFS	-	-	-	SDFS	-	-	-	-	-	
VP3	-	-	-	SDFS	-	-	-	-	-	-	
Α	-	VFS	VFS	M	М	-	-	-	-	-	
В	-	-	-	VFS	VFS	-	-	-	-		
С	-	-	-	-	VFS	-	М	VFS (CI)	-	NI	
D	VFS	-	-	-	М	-	М	VFS (CI)	-	-	
E	-	_	-	-	SDFS	-	-	-	-	-	
F	_	_	_	_	No FS	-	M	No FS	_	-	
•					11010		141	Cysts			
G	-	-	-	-	SDFS	-	-	-	-	-	
Н	-	-	-	-	NI	-	M	SDFS (CI)	-	-	
ı	_	_	_	_	SDFS	_	-	-	-	-	
J	_	_	_	_	SDFS	_	_	_	_	_	
K	-	_	l -		M	-	М	VFS (CI)	-	-	
L	_	_	_	_	М	_	M	NI	_	_	
	-	-	_	_	VFS	_	M	VFS (CI)	_	-	
	-	-	-	-	VFS	-	М	NI	-	M	
0	-	-	_	_	NI	-	M	-	-	-	
P	_	_	_	_	VFS	_	M	VFS (CI)	_	NI	
Q	-	-	-	-	NI	_	M	NI	-	VFS	
R	_	_	_	_	VFS	_	M	No FS	_	VFS	
TX.					VIS		IVI	Cysts		VIS	
S	_	-	_	-	M	-	М	No FS	-	M	
								Cysts			
T	-	-	-	-	VFS	-	VFS	-	VFS	VFS	
U	-	-	-	-	M	-	М	No FS	М	М	
								Cysts			
V	-	-	-	VFS	М	-	-	-			
W	-	-	-	-	М	-	М	VFS (CI)	-	-	
Χ	-	-	-	-	-	-	VFS	VFS (CI)	NI	VFS	
Υ	-	-	-	-	-	-	M	VFS (CI)	NI	VFS	
Z	-	-	-	-	-	-	М	VFS (CI)	-	-	
AA	-	-	-	-	-	-	М	No FS	-	-	
								Cysts			
BB	-	-	-	-	-	-	М	NI	-	-	

Table 7a **Survey Results for Newport Banning Ranch Fairy Shrimp Surveys**

Sui	Protocol Surveys Conducted for Listed Vernal Pool Branchiopod (FS presence) ¹									
	GLA	GLA	GLA	GLA	GLA	GLA	GLA	Dudek	Dudek	Dudek
	2000	2008	2009	2010c	2011a	2011b	2012b	2013c	2014b	2015
Season al Feature ID	Wet Seaso n 1999- 2000	Wet Seaso n 2007- 2008	Wet Season 2008- 2009	Wet Season 2009- 2010	Wet Season 2010- 2011	Dry Season 2011	Wet Season 2011- 2012	Dry Season 2012	Wet Season 2013- 2014	Wet Season 2014- 2015
CC	-	-	-	-	-	-	VFS	VFS (CI)	-	-
DD	-	-	-	-	-	-	M	VFS (CI)	-	VFS
EE	-	-	-	-	-	-	М	VFS (CI)	-	-
FF	-	-	-	-	-	-	M	VFS (CI)	-	-
GG	-	-	-	-	-	-	VFS	VFS (CI)	VFS	VFS
НН	-	-	-	-	-	-	VFS	VFS (CI)	-	-
II	-	-	-	-	-	-	M	NI	-	М
JJ	-	-	-	-	-	-	М	No FS Cysts	-	-
KK	-	-	-	-	M	-	M	VFS (CI)	-	-
LL	-	-	-	-	-	-	М	VFS (CI)	-	-
MM	VFS	-	-	-	-	-	M	VFS (CI)	-	-
NN	-	-	-	-	-	-	M	No FS Cysts	-	-
00	-	-	-	-	-	-	М	VFS (CI)	-	-
PP	VFS	-	-	-	-	-	M	VFS (CI)	-	M
QQ	-	-	-	-	-	No FS Cysts	M	No FS Cysts	-	-
RR**	-	-	-	-	-	-	-	-	-	-
SS**	-	-	-	-	-	-	-	-	-	-
TT**	-	-	-	-	-	-	-	-	-	-
NA ³ (B RC 24b)	VFS	-	-	-	-	-	-	-	-	-
NA ³ (B RC 49a)	-	-	-	-	-	-	-	-	-	-
NA ³ (B RC 49b)	-	-	-	-	-	-	-	-	-	-
NA ⁴ (B RC 6)	-	-	-	-	-	-	-	-	-	-

¹SDFS = San Diego fairy shrimp VFS = Versatile fairy shrimp M = Met survey criteria

NI = Not identified due to immature individuals or inability to culture



CI = Cultured identification

Table 7b

Survey Results for Newport Banning Ranch Fairy Shrimp Surveys

	ey Results	Fairy Shrimp Surveys		
Survey Results for Newport Banning Ranch Fairy Shrimp SurveysSeasonal Feature ID	Size (approx.)	#/Type of Surveys (Wet or Dry Season)	Species Presence or Absence	Impact (due to removal/remediation, etc.)
В	0.030 acre, 20 cm. deep (avg.)	3 wet season surveys	Occupied by VFS	Removal of stockpiled remediated soil adjacent to two inactive/abandoned oil wells
С	0.001 acre, 10 cm. deep (avg.)	2 wet season surveys	Occupied by VFS	Removal of stockpiled concrete and removal of oil pipeline
D	0.002 acre, 7.5 cm. deep (avg.)	3 wet season surveys & 1 dry season survey	Occupied by VFS	Removal and remediation (location contaminated by crude oil and debris from oil operations)
F	0.030 acre, 9 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Inconclusive (insufficient ponding)	Restoration/remediation due to excavation and berming
M	0.014 acre, 6-9 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Occupied by VFS	Removal and remediation of oil field pipe and material storage yard
N	0.029 acre, 5-7 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Occupied by VFS	Removal and remediation of gravel covered oil field pipe and material storage yard
0	0.004 acre, 2 cm. deep (avg.)	2 wet season surveys	Inconclusive (insufficient ponding)	Removal of gravel parking and equipment storage area
P	0.009 acre, 5-8 cm. deep (avg.), some depths of 10 cm.	2 wet season surveys & 1 dry season survey	Occupied by VFS	Removal/remediation of area where soil is stockpiled for remediation
Q ¹	0.004 acre, 5 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Occupied- species not identifiable (cysts did not hatch)	Removal of paved and dirt roadway and shoulder
R ¹	0.006 acre, 5 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Occupied by VFS	Removal of road/paved parking area
S ¹	0.003 acre, 4 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Inconclusive (insufficient ponding)	Removal of gravel and dirt road
T ¹	0.004 acre, 12-15 cm. deep (avg.)	2 wet season surveys	Occupied by VFS	Removal of paved parking area and access road

Table 7b

Survey Results for Newport Banning Ranch Fairy Shrimp Surveys

Survey Results for Newport Banning Ranch Fairy Shrimp SurveysSeasonal Feature ID	Size (approx.)	#/Type of Surveys (Wet or Dry Season)	Species Presence or Absence	Impact (due to removal/remediation, etc.)
U ¹	0.002 acre, 5 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Inconclusive (insufficient ponding)	Removal of paved parking area
Z	0.007 acre, 10 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Remediation of trench used to contain oil spills
AA	0.002 acre, 6.5 cm deep (avg.)	1 wet season survey & 1 dry season survey	Inconclusive (insufficient ponding)	Removal/remediation of inactive/abandoned well pad
CC	0.003 acre, 12-13 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Removal/remediation of oil pipeline
DD	0.003 acre, 4-5 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Removal of stockpiled concrete
EE	0.003 acre, 3-6 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Removal/remediation of inactive/abandoned oil well pad
FF	0.005 acre, 3 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Removal/remediation of inactive/abandoned oil well pad
GG	0.003 acre, 7-8 cm. deep (avg.)	1 wet season survey & 1 dry season survey	Occupied by VFS	Removal/remediation of road within active oil well site
PP	0.001 acre, 3 cm. deep (avg.)	2 wet season surveys & 1 dry season survey	Occupied by VFS	Removal of paved oil field operation road
QQ	0.003 acre, 5 cm. deep (avg.)	1 wet season survey & 2 dry season surveys	Inconclusive (insufficient ponding)	Removal a dirt road
RR	0.001 acre	no surveys		Remediate/restore area of depressed tire ruts
SS	0.002 acre	no surveys		Removal/remediation of inactive/abandoned oil well pad
TT	0.001 acre	no surveys		Remediate/restore depression in southeastern portion of site

NOTES: VFS = Versatile Fairy Shrimp (non-listed)

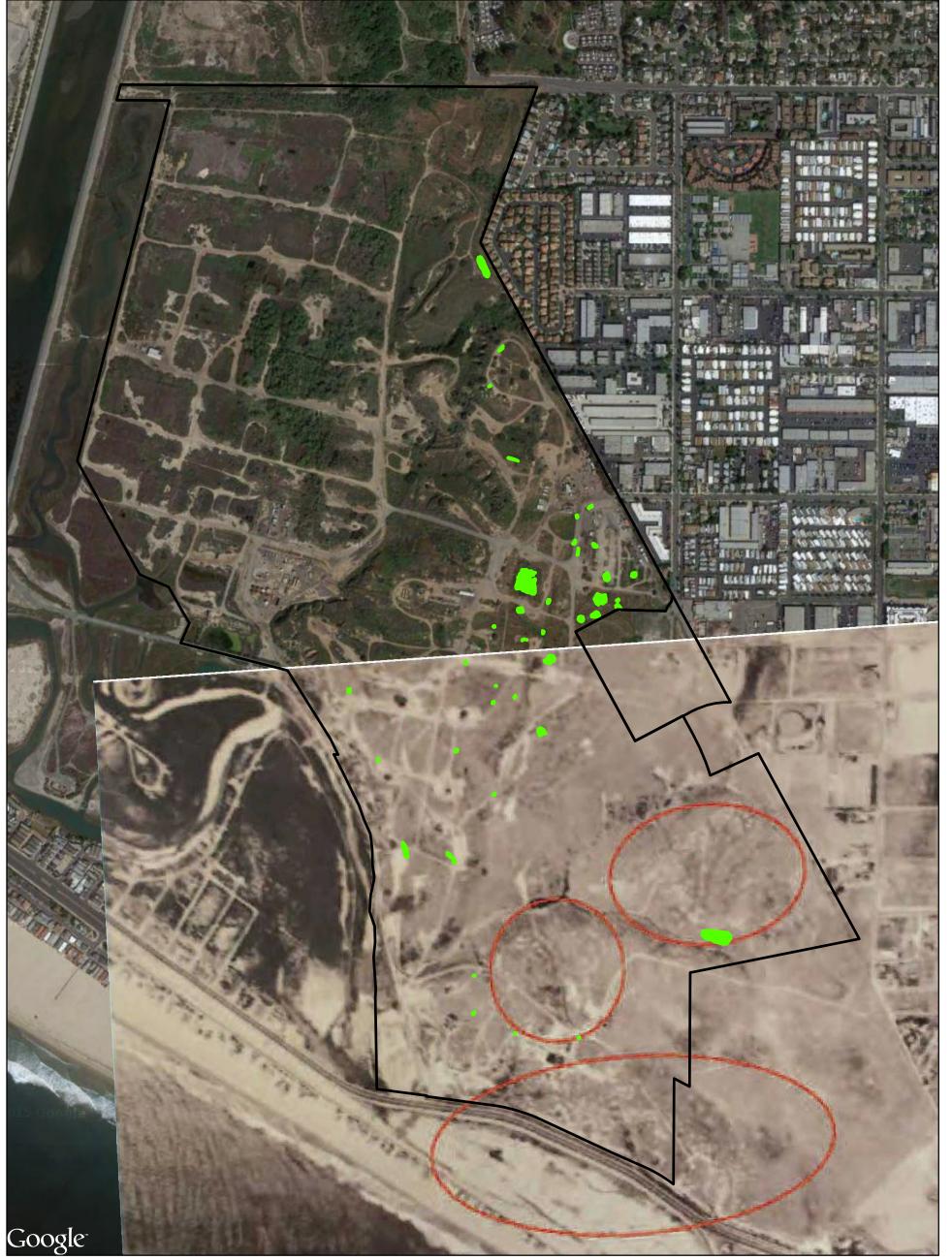
Inconclusive – Protocol wet-season surveys were inconclusive due to insufficient ponding



No surveys-- USFWS determined that feature not a vernal pool and exhibits no potential for supporting listed Fairy Shrimp ¹ – Features Q, R, S, T, and U could be treated as a single feature as during major rain events, they all join within the parking lot area. As a result, all features could be assumed to be occupied by versatile fairy shrimp







Aerial photo referenced in from CCC Figure 15.
Photo may be slightly skewed during the conversion process.



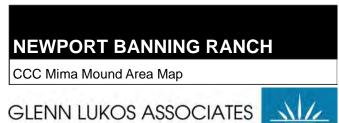




Photo 1. Feature VP1 during wet conditions in 2000 (GLA).



Photo 2. Feature VP1 during wet conditions with native mulefat (*Baccharis salicifolia*) in 2010 (GLA).



Photo 3. Feature VP1 during dry conditions with non-native annual rabbitsfoot grass (*Polypogon monspeliensis*) and native mulefat (GLA).



Photo 4. Feature VP1 during dry conditions with non-native annual rabbitsfoot grass and native mulefat (GLA).



Photo 5. Feature VP2 during wet conditions (GLA).



Photo 6. Feature VP2 during dry conditions with non-native vegetation (GLA).



Photo 7. Feature VP3 during wet conditions in 2010 (GLA).



Photo 8. Feature VP3 during dry conditions (GLA).



Photo 9. Feature A during wet conditions in 2008 (GLA).



Photo 10. Feature B during wet conditions (GLA).



Photo 11. Feature B during wet conditions (GLA).



Photo 12. Feature C during a dry conditions (GLA).



Photo 13. Feature C during wet conditions (GLA).



Photo 14. Feature D during dry conditions (GLA).



Photo 15. Feature F during dry conditions (GLA).



Photo 16. Feature G during dry conditions (GLA).



Photo 17. Feature H during dry conditions in November 2012 (Dudek).



Photo 18. Feature I during dry conditions (GLA).



Photo 19. Feature J supporting a predominance of non-native vegetation (GLA).



Photo 20. Feature J supporting a predominance of non-native vegetation (GLA).



Photo 21. Feature K supporting a predominance of non-native vegetation (GLA).



Photo 22. Feature K supporting a predominance of non-native vegetation during November 2012 (Dudek).



Photo 23. Feature L supporting upland vegetation (GLA).



Photo 24. Feature L supporting upland vegetation during November 2012 (Dudek).



Photo 25. Feature M during dry conditions (GLA).



Photo 26. Feature M during dry conditions (GLA).



Photo 27. Feature M during dry conditions in November 2012 (Dudek).



Photo 28. Feature N during dry conditions (GLA).



Photo 29. Feature N during dry conditions (GLA).



Photo 30. Feature N during dry conditions in November 2012 (Dudek).



Photo 31. Feature O during dry conditions in November 2012 (Dudek).



Photo 32. Feature P soil remediation area (GLA).



Photo 33. Feature P soil remediation area (GLA).



Photo 34. Feature P during dry conditions in November 2012 (Dudek).



Photo 35. Feature Q in earthen road shoulder during dry conditions (GLA).



Photo 36. Feature Q in earthen road shoulder during dry conditions (GLA).



Photo 37. Feature R roadside feature during dry conditions (GLA).



Photo 38. Feature R roadside feature during dry conditions in November 2012 (Dudek).



Photo 39. Feature S during wet conditions (GLA).



Photo 40. Feature S during dry conditions (GLA).



Photo 41. Feature S during dry conditions in November 2012 (Dudek).



Photo 42. Feature T low area along major access road during wet conditions (GLA).



Photo 43. Feature T low area along major access road during wet conditions (GLA).



Photo 44. Feature U unvegetated asphalt parking area during wet conditions (GLA).



Photo 45. Feature U unvegetated asphalt parking area during dry conditions (GLA).



Photo 46. Feature V during wet conditions (GLA).



Photo 47. Feature V during wet conditions (GLA).



Photo 48. Feature V during dry conditions in October 2012 (Dudek).



Photo 49. Feature W supporting a predominance of non-native vegetation (GLA).



Photo 50. Feature X during wet conditions (GLA).



Photo 51. Feature X during dry conditions (GLA).



Photo 52. Feature Y during dry conditions (GLA).



Photo 53. Feature Z during dry conditions (GLA).



Photo 54. Feature Z during dry conditions (GLA).



Photo 55. Feature AA during dry conditions in November 2012 (Dudek).



Photo 56. Feature BB during dry conditions in November 2012 (Dudek).



Photo 57. Feature CC during wet conditions (GLA).



Photo 58. Feature CC during dry conditions in November 2012 (Dudek).



Photo 59. Feature CC depicted as a pit excavated to repair a pipeline (GLA).



Photo 60. Feature DD during dry conditions in November 2012 (Dudek).



Photo 61. Feature EE within an oil well pad supporting a predominance of upland vegetation (GLA).



Photo 62. Feature FF during dry conditions in November 2012 (Dudek).



Photo 63. Feature GG during wet conditions (GLA).



Photo 64. Feature GG during wet conditions (GLA).



Photo 65. Feature GG during dry conditions in November 2012 (Dudek).



Photo 66. Feature HH during dry conditions in November 2012 (Dudek).



Photo 67. Feature II during dry conditions in November 2012 (Dudek).



Photo 68. Feature JJ during dry conditions in November 2012 (Dudek).



Photo 69. Feature KK during dry conditions in October 2012 (Dudek).



Photo 70. Feature LL during dry conditions in November 2012 (Dudek).



Photo 71. Feature MM during dry conditions in October 2012 (Dudek).



Photo 72. Feature NN during dry conditions in October 2012 (Dudek).



Photo 73. Feature OO during dry conditions in November 2012 (Dudek).



Photo 74. Feature PP during dry conditions in November 2012 (Dudek).



Photo 75. Feature QQ during dry conditions (GLA).



Photo 76. Feature QQ during dry conditions (GLA).



Photo 77. Feature RR during dry conditions (GLA).



Photo 78. Feature SS during dry conditions (GLA).



Photo 79. Feature SS during dry conditions (GLA).



Photo 80. Feature TT during dry conditions (GLA).



Photo 81. Feature TT during dry conditions (GLA).

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REVIEW OF OCCURRENCE AND PERSISTENCE OF CALIFORNIA GNATCATCHER (POLIOPTILA CALIFORNICA CALIFORNICA) ALONG ROADWAYS

Prepared for:

Newport Banning Ranch LLC

1300 Quail Street, Suite 100 Newport Beach, California 92660

Prepared by:

DUDEK

605 Third Street Encinitas, California 92024 Contact: Brock Ortega

SEPTEMBER 2015

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		to Highway 1				

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1 CALIFORNIA GNATCATCHER ECOLOGY

1.1 Habitat

California gnatcatchers (*Polioptila californica californica*; gnatcatcher) typically occur in or near coastal sage scrub habitat. Coastal sage scrub is patchily distributed throughout the range of the gnatcatcher, and the gnatcatcher tends to occur most frequently within California sagebrush (*Artemisia californica*)-dominated stands on mesas, gently sloping areas, and along the lower slopes of the coast ranges (Atwood 1990 as cited in USFWS 2010). The gnatcatcher occurs with the most frequency and density in scrub with an open or broken canopy while it is nearly absent from scrub dominated by tall shrubs and occurs in low frequency and density in low scrub with a closed canopy (Weaver 1998). Gnatcatchers also have smaller territories, higher population densities, higher reproductive rates, and lower winter mortality rates in areas near the coast, like Newport Beach, than in more inland areas despite higher levels of habitat fragmentation near the coast (Preston et al. 1998, AMEC and CBI 2003, Mock 2004).

Gnatcatchers will also use other habitats where they occur adjacent to sage scrub, but usage is mostly limited to dispersal (Campbell et al.1998). Use of these habitats appears to be most frequent outside the breeding season during late summer, autumn, and winter. The general consensus of gnatcatcher biologists is that birds are much more likely to disperse to habitat patches they can see (J. Lovio, P. Mock, and J. Atwood personal communications as cited in Mock and Spencer 2007). This consensus is based in part on direct observations of gnatcatcher behavior (e.g., young-of-year being chased off territories by parents were observed flying to the nearest visible patch of scrub). Although gnatcatchers are occasionally able to access more isolated coastal sage scrub patches (e.g., Point Loma), the distance limits the rate of dispersal and establishment of breeding pairs (Bailey and Mock 1998). Continuous habitat linkages along linear features such as highways and power-line corridors may be of significant value in linking populations of the gnatcatcher (Famolaro and Newman 1998). Based on an exponential dispersal model fitted to Rancho San Diego dispersal data, Bailey and Mock (1998) estimated that the California gnatcatcher is capable of dispersing up to 13.5 miles across fragmented and highly disturbed sage scrub habitat, such as that found along highway and utility corridors or remnant mosaics of habitat adjacent to developed lands.

1.2 Life History

Gnatcatchers move quickly through vegetation while gleaning small prey items from plant surfaces (e.g., leafhoppers) and also hover-feed for spiders and insect prey such as grasshoppers not readily available on plant surfaces. In southern California, California sagebrush, Laurel sumac (*Malosma laurina*), broom baccharis (*Baccharis sarithroides*), bush sunflower (*Encilia*)

californica), and California buckwheat (*Eriogonum fasciculatum*) represent typical plants used for foraging, among others (Mock and Bolger 1992). Specific use is largely dependent on particular plant community makeup in each territory (Mock 2004).

The breeding season of the gnatcatcher generally extends from late February through July (sometimes later), with the peak of nest initiations (start-ups) occurring from mid -March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials and are often located in California sagebrush (Artemisia californica) plants about 1 meter (3 feet) above the ground. Nests are constructed over a 4 to 10 day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 and 16 days, respectively. Both sexes participate in all phases of the nesting cycle.

1.3 Required Patch Size

The gnatcatcher's territory size is large for a bird of its size, and both males and females actively defend their territory (Preston et al. 1998). The size of a breeding pair's territory is highly variable but correlated with distance from the coast, ranging from less than 2.5 acre along the coast to over 20 acres farther inland (Mock and Bolger 1992 as cited in Mock 2004, Braden 1992 as cited in Mock 2004, Preston et al. 1998, Atwood et al. 1998a). During the nonbreeding season, a pair's home range may be 80% larger than during the breeding season (Preston et al. 1998, Bontrager 1991 as cited in Mock 2004).

In coastal areas, California gnatcatcher presence does not correlate with patch size, although smaller patches are less consistently occupied over time (Atwood et al. 1998a). Successful breeding of California gnatcatcher has been reported from a patch as small as 0.5 acre. In inland areas, California gnatcatcher occurrence does increase with larger patch sizes (Mock and Bolger 1992 as cited in Mock 2004, Famolaro and Newman 1998, Preston et al. 1998a).

2 POTENTIAL ENVIRONMENTAL STRESSORS ASSOCIATED WITH ROADWAYS

2.1 Habitat Fragmentation

Many species will either not cross roads, drainages, disturbed lands, and urbanized areas, or do so infrequently or unsuccessfully. The necessity of crossing roads also increases the risk of vehicle collisions for low- or slow-flying birds. Roadway mortality or limitations on species movement leads to a variety of problems, including reduction and isolation of populations. As populations become isolated and smaller, they become particularly vulnerable to negative demographic trends, including genetic bottlenecks, genetic drift, and inbreeding depression. These changes in turn can affect ecological functions and the long-term viability of species, including those for which roads are not major barriers, but which have important ecological relationships with high-risk species (e.g., predator/prey relationships, mutualisms such as burrow construction and use, pollination). This disruption may also affect vegetation communities if the spatial behavior of plant dispersers and pollinators is altered.

A related indirect consequence of habitat fragmentation and isolation is an increase in urbanadapted or urban-tolerant mesopredators, such as raccoons, skunks, opossums, and foxes, in
small habitat fragments where top predators, such as coyotes and bobcats, have been removed
(i.e., the "mesopredator release" effect) (Crooks and Soulé 1999). Non-native mesopredators also
may include free-roaming stray and feral cats and dogs, which can have the same effects as wild
mesopredators. These species can out-compete smaller native species for available resources and
increase predation rates, thus reducing the distribution and populations of vulnerable native
species (Crooks and Soulé 1999). The increase in mesopredators in fragmented habitats is often
considered an indirect edge effect, but because some of these species can penetrate long
distances in natural habitats in the absence of top predators (e.g., coyotes, bobcats), they also
have landscape-level ecosystem effects.

2.2 Lighting

Direct glare and increased ambient light from streetlights can result in chronic ecological light pollution. Lighting from vehicle headlamps can result in both chronic and unexpected glare. Longcore and Rich (2004) address the ecological effects of light pollution at three levels: (1) behavioral and population ecology, (2) community ecology, and (3) large-scale ecosystem functions. Effects at the behavioral and population ecology level include orientation/disorientation and attraction/repulsion, reproduction, and communication, and are the main effects of lighting related to construction activities. Orientation and disorientation are responses to ambient light levels, while attraction and repulsion are responses to the source of light (e.g.,

moths attracted to a light bulb). Orientation includes artificially expanding behavioral repertoires of normally diurnal (active during the day) or crepuscular (active during dawn or twilight hours) species, such as foraging or territorial advertisement or mate attraction (e.g., singing birds), into nighttime periods. Attraction to lights affects birds, which may suffer injury or mortality due to collisions with permanent lighted structures.

Lighting may disturb the nighttime rest and sleep periods of diurnal species, including most passerine (perching) birds, having effects similar to noise, including annoying individuals and causing them to abandon nests that are otherwise perfectly suitable. Nest site selection by some birds may be affected by light, with nests being established farther from light sources (Longcore and Rich 2004). Artificial light may simulate increased day length, affecting reproductive cycles by triggering premature reproductive activity at a time when environmental conditions are not conducive to successful reproduction (e.g., cold temperatures and/or poor food resources). Because light may interfere with sleep, it can be stressful and may disrupt normal biological rhythms and raise the level of stress hormones, which may in turn affect reproductive capacity.

2.3 Noise

Chronic increases in noise related to urban development primarily result from increased traffic volumes at all hours. Other sources of development-related increases in noise that may affect native wildlife include operation of landscape maintenance equipment and tools (e.g., mowers, blowers, trimmers, wood chippers), active recreation at parks (particularly at night), loud music from vehicles and residences, noise from aircraft operations, and on-site heavy equipment and machinery use by commercial and industrial businesses.

Some of these noise sources, such as traffic noise, are relatively constant (although with daily cycles related to peak traffic periods), and some wildlife species may habituate and adapt to the chronic ambient noise levels, while others may avoid noisy areas. Other noise sources are more occasional or discrete and are more likely to startle wildlife and at least temporarily disrupt their behavior at the time. Noise may affect wildlife in several ways that disrupt both their behavior and physiology in complex and interactive ways, including startling or annoying, raising stress levels, interrupting sleep and rest, interfering with acoustic communications, interfering with prey detection, and in the case of loud abrupt noises, causing permanent injury to the auditory system (e.g., Dooling 2006; Brattstrom and Bondello 1983).

2.4 Increased Human Presence

Urban development results in permanent increases in human presence from adjacent development. Increased human presence near occupied habitat affects essential and normal

behavioral patterns and physiology of wildlife. Similar to noise and lighting effects, permanent increases in human activity from adjacent urban development can disturb animals during their rest or sleep periods, annoying them and causing harm to them if they abandon nests or den sites, as well as harming them by disrupting their normal biological rhythms and raising the level of stress hormones. Abandonment (even temporary) of active nests increases the risk to eggs, nestlings, fledglings, and other dependent young. Flushing birds from nests also increases their risk of injury or mortality from collisions with vehicles, as well as predation. Human presence may also alter the spatial behavior of birds, causing them to avoid certain parts of their home range, which may prevent them from using critical resources such as water.

Increases in human activity along the open space—urban interface may also result in trampling of vegetation and compaction of soils, affecting the viability of vegetation communities, wildlife habitat quality, and species that are sensitive to habitat structure, such as shrub and herbaceous vegetation integrity and soil friability.

Many coastal sage-scrub species occupy intact habitat even when it is immediately adjacent to urban areas. However, some coastal sage scrub species respond to habitat patchiness: sage sparrow, California thrasher and California towhee are less common at edges, whereas the northern mockingbird and European starling are more common at edges (Kristan et al., 2003).

2.5 Collisions

New roads or increased capacity of roads increases the risk of vehicle collisions where wildlife use or attempt to cross roadways, particularly in areas that were frequently used by wildlife before roads were constructed or improved and other development was built. Wildlife may be able to cross two-lane, low-density, and lower-speed roads in relative safety, but if roads are expanded to four and six lanes, and traffic densities and speeds increase, vehicle strikes can increase dramatically. Factors related to the number and types of species affected therefore include vehicle speeds, traffic volume, traffic pulses, accessibility of cover, structure of the road (e.g., whether the road is raised or at grade level with the surrounding environment), and barrier walls to prevent access to a roadway, and availability of alternative crossings.

2.6 Non-Native Invasive Species

Development, including roads, can promote invasive, non-native plant species that negatively affect habitat in a variety of ways, ultimately changing ecological functions and adversely affecting native species. As new urban development and infrastructure encroach into natural landscapes, newly disturbed areas and/or the new interface between developed areas and native habitats provide an opportunity for invasive plant species to establish and eventually invade

natural habitat settings, degrading habitat and potentially displacing native species. Ornamental plants and native cultivars may spread to adjacent protected habitats and outcompete and displace native plant species; they can also hybridize (interbreed) with local native plants and thereby disrupt the genetics of the native population. Such hybridization can cause a number of problems for the native plant population, including poor growth and reproduction.

Non-native invasive plant species can alter ecosystem processes, such as nutrient cycling, hydrologic cycles, frequencies of wildfires, and erosion and sediment deposition (Bossard et al. 2000). All of these can reduce habitat suitability for California gnatcatcher. Invasive plants interfere in ecosystem functions by outcompeting and displacing native plants and wildlife by providing refuge for non-native animals and by hybridizing with native species (Bossard et al. 2000). Invasive plant species are often identified as an indirect "edge effect" of new urban development because invasive plants generally colonize modified or otherwise disturbed zones between development and remaining natural areas. However, invasive species can colonize virtually any upland area that is subject to some kind of disturbance, such as road shoulders, cleared zones along railroad lines, clearings along utility easements, areas affected by fire, fire breaks, and grazed areas.

3 CALIFORNIA GNATCATCHER VULNERABILITY TO ENVIRONMENTAL STRESSORS ASSOCIATED WITH ROADWAYS

Researchers have not documented any effects specific to California gnatcatcher for the lighting or vehicle collision stressors described above in Section 2. Therefore, the following section describes effects of habitat fragmentation, noise, increased human presence, and non-native invasive species.

3.1 Habitat Fragmentation

Disturbances that reduce shrub cover, such as frequent fire, mechanical disruption, or off-highway vehicle use can reduce habitat suitability for California gnatcatcher (Bontrager et al. 1995b, Mayer and Wirtz 1995, Beyers and Wirtz 1997, Wirtz et al. 1997, Atwood et al. 1998b). Though the California gnatcatcher is eliminated by development of its habitat, it does not appear especially sensitive to fragmentation of that habitat at the landscape scale (Bailey and Mock 1998). Data supporting this conclusion include the species' persistence in patches of sage scrub long isolated from extensive stands, as in Florida Canyon, Balboa Park and Chollas Valley near Fairmount Avenue (San Diego Bird Atlas 2012). Gnatcatchers are also documented to occur and nest successfully near edges with human development (Mock 1993, Mock and Preston 1995 as cited in Mock 2004, Lovio 1996 as cited in Mock 2004, Atwood et al. 1998b, San Diego County Bird Atlas 2012).

Although they are not strong flyers, fledglings and juvenile gnatcatchers cross unsuitable habitat such as riparian woodland, chaparral, and man-made landscapes such as major highways and residential development (Lovio 1996 as cited in Mock 2004, Bailey and Mock 1998, Campbell et al. 1998, Galvin 1998, County of San Diego, Department of Parks and Recreation 2003, Ortega 2015). Banding studies in Los Angeles County have shown that juvenile gnatcatchers may disperse as many as 4.3 miles from their nest location, with an average dispersal distance of 1.4 miles (Manomet Observatory for Conservation Sciences 1994 as cited in Natural Resources Consultants 1996). Natural and restored coastal sage scrub habitat along highway corridors is used for foraging and nesting by gnatcatchers and may serve important dispersal functions (Famolaro and Newman 1998).

The San Diego Multiple Species Conservation Program assumes that large freeways, including Interstate 8 (Figure 1), do not impede dispersal; however, this thesis has not been formally tested aside from a limited study (County of San Diego, Department of Parks and Recreation 2003). Gnatcatcher biologists have suggested that development should not constrict corridors of suitable habitat to less than 200 feet in total width to ensure gnatcatchers can find and use it, and to at

least provide the potential for establishing breeding habitat. Two hundred feet is considered the minimum width likely to support a breeding territory (provided the total coastal sage scrub patch size is at least 2 acres; Preston et al. 1998).

Across southern California, many occurrences of California gnatcatcher have been recorded near roadways, including roadways such as Interstate freeways and State highways (e.g., Figure 2, Figure 3). Within the Newport Banning Ranch site, gnatcatcher occupancy of suitable habitat does not appear to be constrained by Highway 1, which borders the site to the south (Figure 4). For this review, use of suitable habitat by California gnatcatcher was compared at the Banning Ranch site to determine whether a smaller number of occurrences were recorded in suitable habitat near Highway 1. This analysis found no clear trend in the number of occurrences per acre of suitable habitat near the roadway as compared to the overall number of occurrences per acre of suitable habitat on the Banning Ranch site as a whole (Figure 4, Table 1). For example, occurrences were more frequent within 200 feet of the Highway than they were for the site as a whole or the area more than 500 feet from the roadway. The fact that occurrences within 100 feet of Highway 1 were less common per acre of suitable habitat is not surprising when topography is considered: that area slopes toward the highway at grades exceeding 1:1. As noted earlier, California gnatcatcher strongly prefers gentle slopes, so the habitat suitability of the 100 feet nearest the roadway is limited despite the presence of scrub. This analysis is site-specific for Banning Ranch and should not be extrapolated to other sites without replication at other locations; however, the lack of a clear trend provides some support for the assertion that California gnatcatcher is tolerant of the disturbance associated with roadways. Occurrences were also documented near roadways during surveys conducted for the West Coyote Hills development, including at least two territories immediately adjacent to major roads such as Euclid Street and Rosecrans Avenue (Dudek 2010).

Figure 1. California gnatcatcher has been documented as dispersing across Interstate 8 in San Diego County. (image from County of San Diego, Department of Parks and Recreation 2003).



Figure 1. California gnatcatcher has been documented as dispersing across Interstate 8 in San Diego County. (image from County of San Diego, Department of Parks and Recreation 2003).

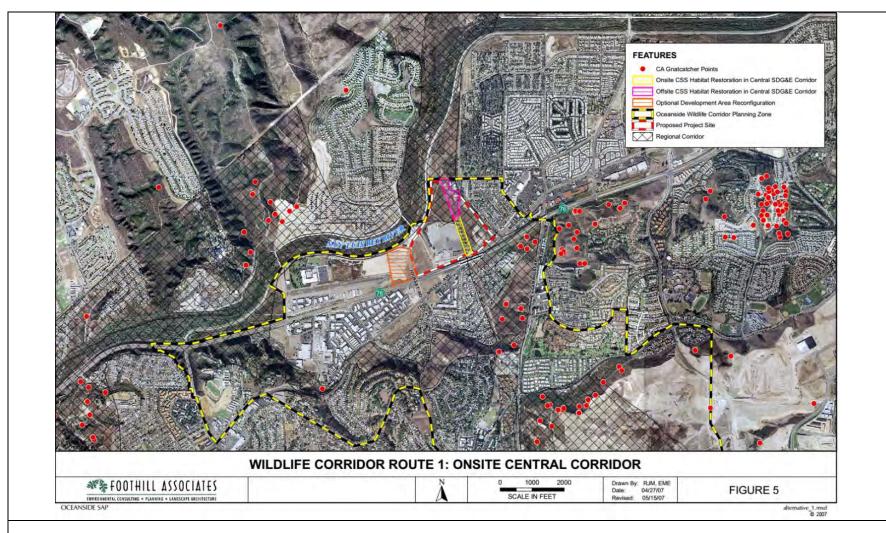


Figure 2. Example from Oceanside area of California gnatcatcher occurrences adjacent near roadways. Red points are recorded California gnatcatcher occurrences (from Mock and Spencer 2007)

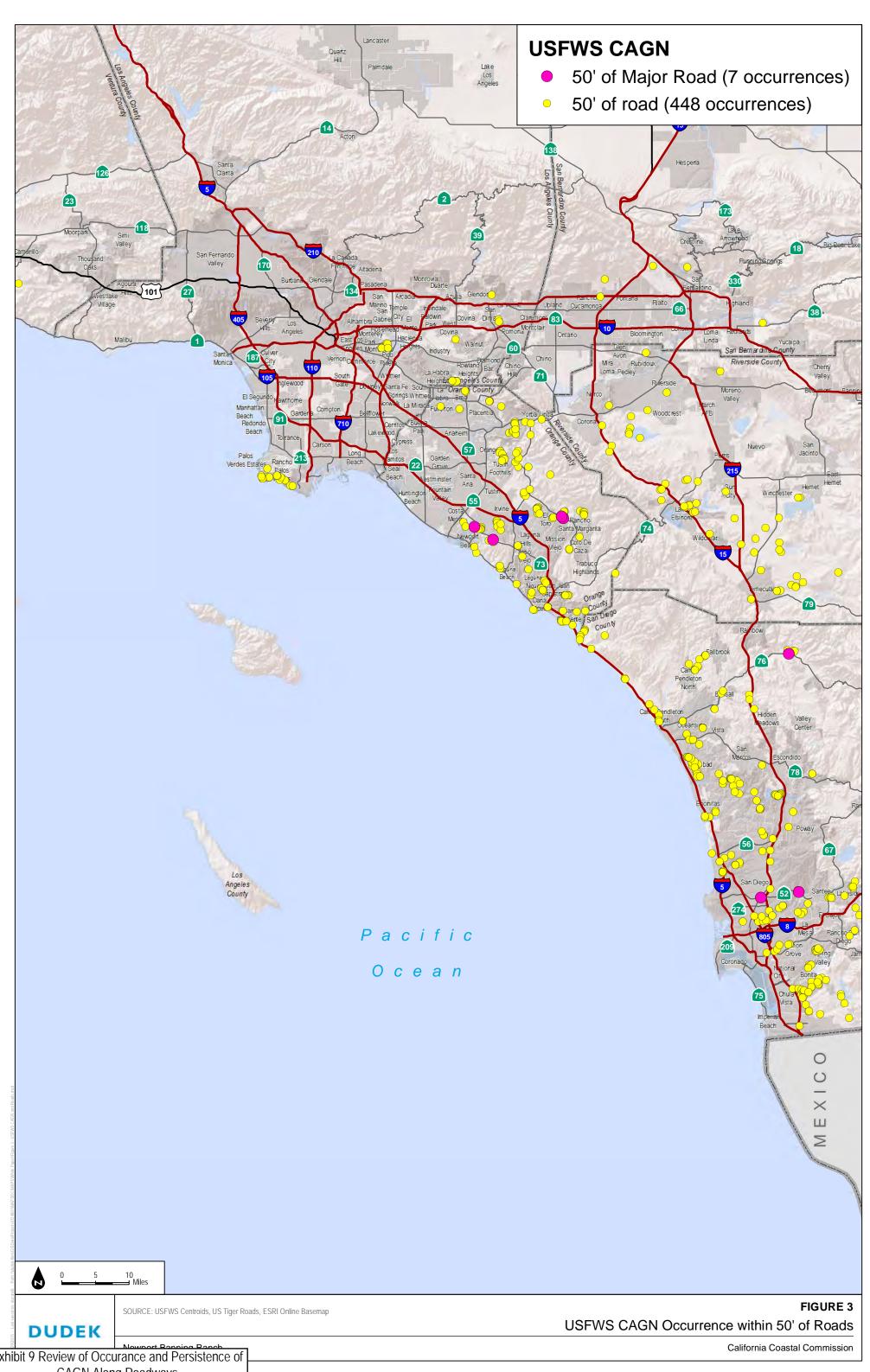
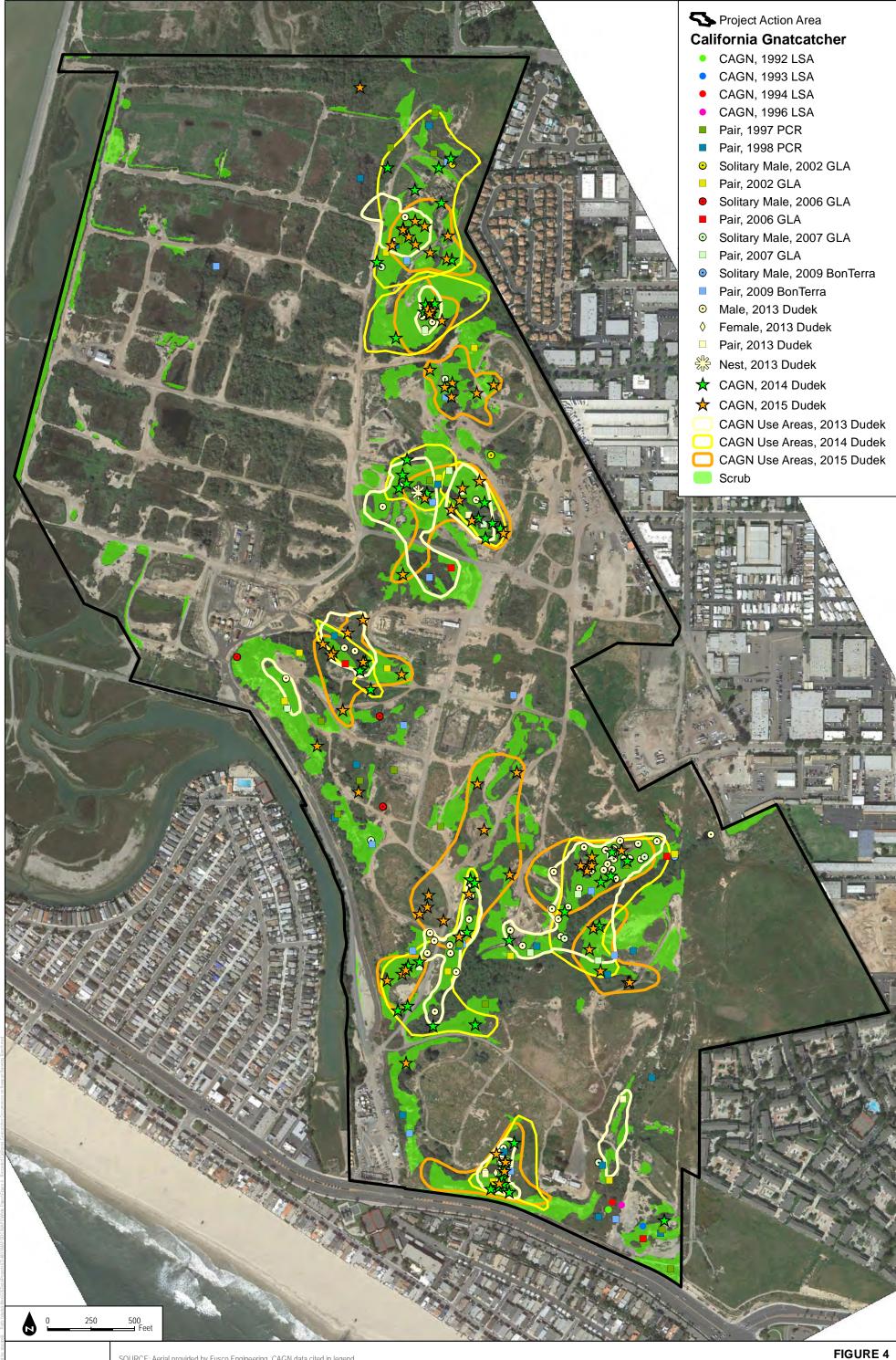


Exhibit 9 Review of Occurance and Persistence of **CAGN Along Roadways**

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SOURCE: Aerial provided by Fusco Engineering, CAGN data cited in legend

Recorded California Gnatcatcher Occurrences on Newport Banning Ranch

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Table 1
California Gnatcatcher Habitat Use at Newport Banning Ranch in Relation to Highway 1

Distance from Nearest Edge of Highway 1	Gnatcatcher Occurrences	Suitable Habitat ¹ (acres)	Gnatcatcher Occurrences Per Acre of Suitable Habitat
Within100 feet	5	2.29	2.18
Within 200 feet	21	3.71	5.67
Within 500 feet	49	5.12	9.56
>500 feet	250	51.68	4.84
All Site	299	56.80	5.26

Limited to scrub only for analysis.
Refer to Figure 4 for occurrence points and sources.

3.2 Noise and Increased Human Presence

Construction monitoring studies suggest California gnatcatchers are tolerant of adjacent construction activities (Atwood and Bontrager 2001) and high noise levels (Famolaro and Newman 1998, Awbrey 1993 as cited in Mock 2004, Awbrey et al. 1995 as cited in Mock 2004, Awbrey and Hunsaker 1997, URS Corporation 2004 as cited in Mock 2004). However, noise and human presence associated with construction activities may adversely affect gnatcatchers by disrupting breeding and foraging if activities occur during the breeding season. This could cause birds to frequently flush from the nest and endanger eggs, chicks, and adults. Flight from predators incurs an implicit cost in lost foraging time, where birds confronted with a predator at a nest face an explicit choice between loss of current reproduction versus total reproductive loss (Burhans and Thompson 2001).

Noise from construction and road activities is a concern if it is at such a level that it masks intraspecific communication (Awbrey 1993 as cited in Mock 2004, Awbrey et al. 1995 as cited in Mock 2004). This level has been previously estimated to be greater than 60 dBA hourly Leq, a level which was measured to extend about 15 m from the edge of the slow lane on a busy interstate freeway (Awbrey et al 1995 as cited in Mock 2004). However, other research suggests that breeding bird habitat can be degraded at noise levels as low as 36 dB(A) (Reijnen et al. 1996, Kaseloo 2005). However, over 16% of the point locations recorded for the gnatcatcher in San Diego County are within 500 feet of major roads, suggesting that this species is at least somewhat tolerant of road noise (San Diego County Bird Atlas 2012). Awbrey et al (1995) further noted that a gnatcatcher breeding site was located near an airport (Lindberg field) and that site often experienced background levels of noise about 70 dB, indicating that even higher levels of intermittent noise did not disallow gnatcatcher use of suitable habitat.

3.3 Non-Native Invasive Species

In coastal sage scrub habitats, increased fire frequency can cause habitat conversion to non-native annual grassland (Zedler et al. 1983), which has been demonstrated to reduce gnatcatcher populations (Grishaver et al. 1998, Atwood et al. 1998b). Other non-native plants such as bridal veil broom (*Retama monsperma*) can outcompete native coastal sage scrub species and render previously suitable habitat less suitable or unsuitable for California gnatcatcher (Bossard et al 2000).

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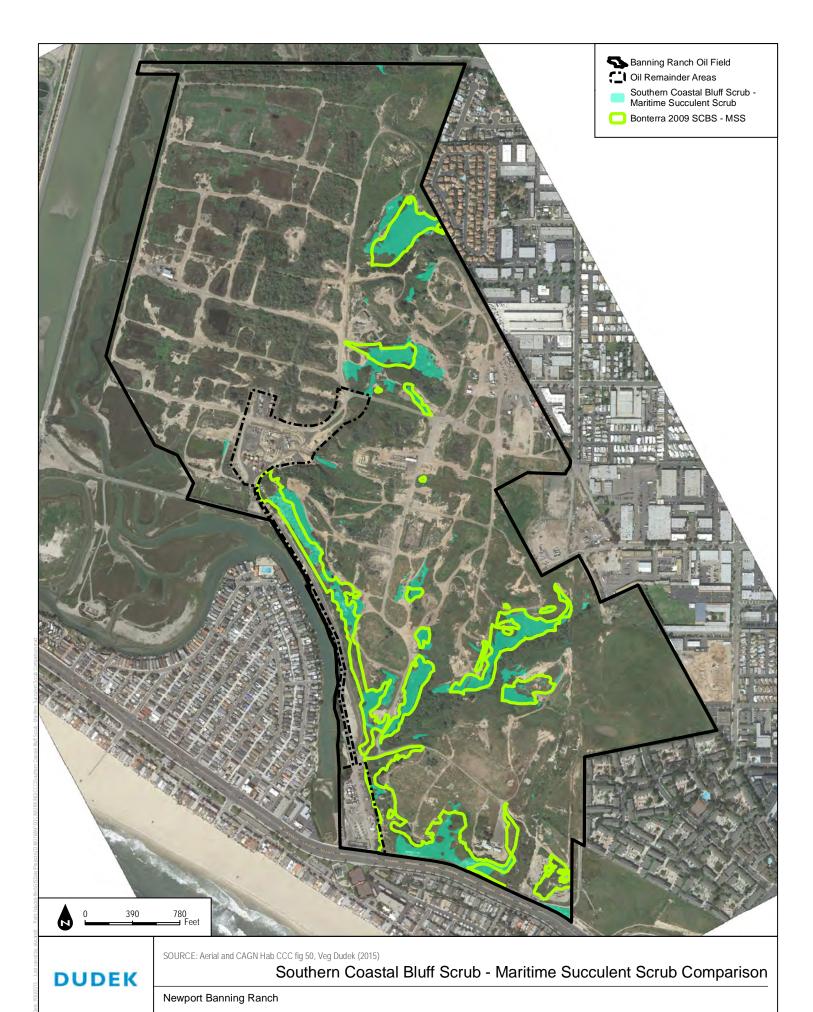


Exhibit 10 Southern Coastal Bluff Scrub

LETTERS IN SUPPORT OF THE PROJECT Copies Provided in On-Line Edition Only

From:

Nancy Louie <nlouie@wamcoinc.com>

Sent:

Monday, October 05, 2015 10:17 AM

To:

Dobson, Amber@Coastal

Cc:

info@newportbanningranch.com

Subject:

Banning Ranch Project

Dear Ms. Amber Dobson,

I urge you to support the Banning Ranch Project. The owners are proposing a generous plan to give the public over 300 acres of land and to develop a mixed use development (with affordable housing and affordable overnight accommodations) on less than 100 acres. This plan creates access to a now closed site and provides more open space, parks and trails that the west-side of Newport Beach needs. Leaving this site the way it is keeps all of us from enjoying it. The Banning Ranch proposal opens up the site, creates access and an opportunity for all of us to access and enjoy this coastal resource. Let's have access now, this is the Plan that delivers.

This property currently is not accessible to the public. It is fenced off and not maintained. Why not clean it up and let the community enjoy it? I ask for you to vote for the Banning Ranch Project so we can all enjoy the land and the view! Thank you!

Sincerely, Nancy Louie For The Banning Ranch Project

The information in this e-mail, including any attachments, is confidential and intended solely for the addressee(s). Access to this e-mail by anyone else is unauthorized. If you are not an intended recipient, any disclosure, copying, or distribution is prohibited and may be unlawful and any action taken or not taken in reliance on this e-mail is not authorized by the sender. If you receive this in error, kindly notify the sender by return e-mail and delete this e-mail and any attachments.

From:

Alice Chen <alice.j.chen@gmail.com>

Sent:

Monday, October 05, 2015 10:19 AM

To:

Dobson, Amber@Coastal; info@newportbanningranch.com

Subject:

Banning Ranch project

Dear Honorable Chair Kinsey, Commissioners and Staff:

I am a long term resident of Orange County and have been working in Newport Beach / Irvine area for the past 15 years.

I urge you to support the Banning Ranch project. I support the balanced plan presented by the Developer, which creates access to a now-closed site and provides more open space, parks and trails that the west-side of Newport Beach needs.

In my view, the opponents of the project present an unrealistic approach to which will end up leaving this site the way it is. The Banning Ranch proposal opens up the site, creates access and an opportunity for all of us to access and enjoy this coastal resource.

Thank you, Alice

From:

Peter Helfrich <pehelfrich@gmail.com> Wednesday, September 30, 2015 3:09 AM

Sent: To:

Dobson, Amber@Coastal

Cc:

Info@newportbanningranch.com

Subject:

Support for Banning Ranch

The purpose of this e mail is to voice my complete support for the Banning Ranch development plan. I have lived in Newport Beach for 53 years. My parents raised myself and my 5 siblings in Newport and in all that time no one in my family has ever stepped foot onto Banning Ranch. After recently touring Banning Ranch with two of my Brothers, I know why- it is a blighted, contaminated oil field that has not brought one positive element to our community. The developers plan to dedicate 80% of the property to open space, a trail system that the community can benefit from, and much needed parks seems very reasonable. My parents are ardent walkers and would love to one day have the ability to walk through Banning Ranch, possibly all the way to the ocean.

I have received flyers from groups opposed to Banning Ranch showing raw sewage spilling into the ocean. This seemed unbelievable and it turns out is beyond misinformation. There isn't any discharge going into the ocean and in fact as part of the development, there is a system that is catching and cleaning all runoff water.

This project is going to sit as a dilapidated oil field that brings nothing to our community, or it can be a responsible development that can provide numerous benefits to citizens who want to enjoy our coastline.

I urge you to support this project.

Peter Helfrich 30 Pine Valley lane Newport Beach, Ca 92660

From:

Tiffany Broderick <tiffklly@yahoo.com>

Sent:

Thursday, October 01, 2015 10:01 PM

To:

Dobson, Amber@Coastal; Info@newportbanningranch.com

Subject:

Banning Ranch Support

Dear Mrs. Dobson,

I am in support of the Banning Ranch proposed project. I have been following the process for years, and know that there has been countless hours of community and local input. As a resident of Orange County I look forward to being able to access this site, use the trails and finally have the oil field cleaned-up. It represents a balance, with the project offering over 300 acres to the public while using less than 100 acres for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain behind lock and key for decades. Thank you in advance for your consideration.

Regards,

Tiffany Broderick



RECEIVED
South Coast Region

OCT

5 2015

Amber Dobson
California Coastal Commission

South Coast District 200 Oceangate, 10th Floor Long Beach, CA 90802 COASTAL COMMISSION

RE: BANNING RANCH PROJECT- REFERENCE NUMBER 5-13-032; ITEM NUMBER W9B

Dear Ms. Dobson

October 2, 2015

Orange County Business Council (OCBC) is proud to support the Newport Banning Ranch (NBR) Project. The proposed development includes 1,375 homes, a 75-room resort hotel, 75,000 square feet of commercial space, a 4-lane 50 mph roadway (Bluff Road) traversing Banning Ranch from 15th Street to Pacific Coast Highway plus arterial highways, and an active sports park comprised of six tennis courts, soccer fields, baseball fields, a skateboard park, and two parking lots with over 125 parking spaces.

The NBR Project would also result in significant site remediation from previous oil field activities along with returning previously privately held land back to the public with the provision of protecting over 245 acres of land as open space. Since the early 1940's the NBR site has been an active oil field with more than 40 miles of pipeline and scarred and compacted the earth. The NBR master vision for the property has a much greener picture in mind and will resolve the ongoing conversations and critical issues required to clean-up and restore the land with the resources to take action requiring no public, state, or federal funding. NBR has put in place a reality based program that entails "real economic solutions" that will provide the working capital crucial in making a positive impact, creating new fertile ground without burdening the taxpayer.

For these and other reasons, OCBC asks the California Coastal Commission to approve the NBR Project.

Sincerely,

Bryan Starr

Senior Vice President Government Affairs

THE LEADING VOICE OF BUSINESS IN ORANGE COUNTY

Amber.Dobson@coastal.ca.gov

September 29, 2015

Chair Kinsey, Coastal Commissioners:

My name is Paul Julian and I am asking you to support the Newport Banning Ranch project.

I am a long-time homeowner in Newport Beach and surf in front of the site regularly. As it stands today, the site is an eyesore and useless to the citizens of this City and visitors alike. I wouldn't want to see its beauty squandered for another generation which includes my children. I hope my kids will be able to hike over the new open space that will be created and enjoy the views of sunsets over the Pacific. As it stands today no one is benefitting from the site, which is a shame. You have before you a terrific plan with minimal development for such a large parcel. Now is the time to approve this plan so that many more years don't pass by without anyone being able to enjoy the coastal land.

Although I love the plan for all of the open space we'd be gaining, I also understand that a reasonable amount of development is OK. Why should I be able to live on this great coast but future generations can't? My house had to be built someday so why can't a few other houses be responsibly built as well? I want others to enjoy living here as much as I do.

Please approve this project as it is a terrific addition to a world class community like Newport Beach.

Thank you for your time.

Paul Julian

116 Kings Place

Newport Beach, CA 92663

From:

Ashley Benshoof <ash@gtdinc.com>

Sent:

Tuesday, September 29, 2015 3:20 PM

To:

Dobson, Amber@Coastal; Info@newportbanningranch.com

Subject:

Support Banning Ranch

My name is Ashley Benshoof and I am here today speaking in support of the Newport Banning Ranch project.

As a long-time resident near the project I am thrilled that what you have before you is a plan that finally opens this property to the public. For years my family and I have looked at this oil field and hoped that one day we would be able to walk, bike and explore the area. The plan before you will allow us to finally access this site.

We will no longer be neighbors to a fenced off oil field. With the Commission's approval you will create an opportunity for the public to at last explore the property, and connect to the beach and ocean. Access, the very thing you are tasked with ensuring along the coast.

This plan is not just about access though. It delivers so much more and it does it now, not someday, not down the road, not when funding is found – right now with your approval we walk away knowing that in my lifetime the oil field will be cleaned-up, open spaces restored, trails and beach access created – right now. I urge you to take a step back, look at what the big picture is – a gift, a huge gift to the public. Support NBR.

Thank you for your time.

Ashley Benshoof

From: Brett Isaacman
bisaacman@gmail.com>

Sent: Monday, September 28, 2015 4:09 PM

To: Dobson, Amber@Coastal

Cc: info@newportbanningranch.com
Subject: Newport Banning Ranch Supporter

I become aware of the details regarding the development of the Banning Ranch property in Newport Beach. I know for years this site has been an unsightly oil field, inaccessible to the public, and that there are current development plans that will create open space and site restoration. I strongly support the Banning Ranch project and urge the coastal staff to do the same. The development of this property will be a true benefit to the community and create a balanced access to new open space and trails, and a new family focused community to Newport Beach.

Thank you, Brett Isaacman 949.378.4401

From:

Lisa RuizDelSol < Iruizdelsol@yahoo.com>

Sent:

Wednesday, September 30, 2015 1:51 PM

To:

Dobson, Amber@Coastal

Cc:

info@newportbanningranch.com

Subject:

Banning Ranch Support

Chair Kinsey - As a small business owner in West Newport I strongly support the Banning Ranch project. This project cleans the oil field and opens the site up to the public, creating access and open space.

Our community has been bombarded with mis-information and in some cases outright untruths by a group who has had nearly two decades to purchase this site and have not raised any money. They claim to have funds, but no evidence of them. The city valued the site more than five years ago at nearly \$200 million dollars. Those funds don't exist.

Support this project - we get access and 80% of the site as open space for free! This is a balanced plan years in the making.

Thank you.

Lis~

From:

Michael Monaco <michael.monaco@hotmail.com>

Sent:

Monday, October 05, 2015 3:50 PM

To:

Info@newportbanningranch.com; Dobson, Amber@Coastal

Subject:

Banning Ranch Support

Dear Mrs. Dobson,

I am in support of the Banning Ranch proposed project. I have been following the process for years, and know that there has been countless hours of community and local input. As a resident of Orange County, I look forward to being able to access this site, use the trails and have the oil field cleaned-up. It represents a balanced plan, with the project offering over 300 acres to the public while using less than 100 acres for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain behind lock and key for decades.

Thank you,

Mike Monaco

Dear Commissioners,

My name is Matt Cobb and I am writing to you today about the development of the property known as Banning Ranch. Before I step into why I am a full supporter of this development I would like to tell you a little bit about myself. I was born and raised in Newport Beach and come from a family of 8. My family is very active day to day and we love to be out and about enjoying our southern California weather. We also love to ride mountain bikes; it's kind of our thing. This leads me to share my opinion on why our city needs to develop the current oil field into something families like mine can enjoy.

The roughly 400-acre property will contain endless opportunities for our community. Open space to run, parks to where adults can bring their children, and of course, trails where I can ride my bikes and overlook the Pacific Ocean. I know I speak for many people when I say I would rather have this land turned into a destination where people can do they love. Right now it sits as a fenced in, hazardous oil field with no public access. But who wants to access an oil field anyway? The land is being tremendously underutilized and we need to change that now. I am very excited to attend the Coastal Commission hearing on Oct. 7th in Long Beach, where I will be representing the part of our community in full favor of this development. I believe this land will be developed sooner or later, so lets do it now and be apart of something great! Thank you for taking the time to read my letter and I hope to have had an influence on your vote in the upcoming weeks!

Matt Cobb

Dear Commissioners,

My name is Parker Douglas and I am a resident of Newport Beach, CA. I am writing to you today with regards to the development of the current oil field that is known as Banning Ranch. I have been waiting for the day that this land can be turned into something useful and beautiful. I'd like to express my opinions on this development, which has my absolute full support.

Right now the roughly 400-acre property is utilized as a fenced in hazardous oil field. Who wants that in our city? I understand that a portion of this oil field will be present with the new development, but only in designated areas. I know I speak for many of the great people in Newport Beach when I say we want these fences taken down, and for the land to be developed. New homes, office space and restaurants are just few examples of what the development would have to offer.

The majority of this property will be cleaned up and maintained by the Land Trust and the green open space, parks and trails it would contain will attract many of our residents. Newport Beach if full of active, outgoing people who would love to see this oil field developed into a popular destination. I say we bring change to this city that many are against, for the overall reason to turn this land into a place people can bring their families and enjoy their time with the community. An oil field doesn't help our residents in this aspect. I'm looking forward to the coastal hearing in a couple weeks, and I hope my letter has helped with your decision!

Respectfully,

Parker Douglas

Dear Commissioners,

As a local Newport Beach surfer I feel it is my duty to speak up for our surfing community about the development of Banning Ranch. Today I am speaking for my fellow brothers and sisters who are out riding the waves of the pacific. I have formed a group of local surfers who wake up every morning and catch the waves before our busy workweek. Our main surf spot is between 56th and 61st street, which is a close walk to the Banning Ranch site. After hours of surfing each morning, our group always complains how there isn't a local place to grab a quick bite to eat. I have done my research on the proposed plan for Banning Ranch and I know the development would include a bridge that would overhang PCH with access to and from the beach. What an awesome idea! Our surf group has been waiting for the day when we could throw our surfboards under our arms and be able to walk across PCH, safely, and have our breakfast. We fully support this development and all the great things it will have to offer. We would love to see this current oil field turned into a beautiful place to relax and over look the water. We hope you can see how we see it, and to know that we would rather have a beautiful open grassland than an 80 year old oil field

I want to thank you for taking the time to read my letter and to hear how the surfing community of Newport Beach feels about this development. We will be present during the Coastal Commission hearing on October 7th and look forward to hearing your decision.

From all the Surfers in Newport Beach, we thank you!
-Sam Hart

Dobson, Amber@Coastal

From:

David Kurien <dklabruin@yahoo.com>

Sent:

Monday, October 05, 2015 3:23 PM

To:

Dobson, Amber@Coastal; Info@newportbanningranch.com

Subject:

Banning Ranch Support

Dear Mrs. Dobson,

I am in support of the Banning Ranch proposed project. I have been following the process for years, and know that there has been countless hours of community and local input. As a resident of Orange County, I look forward to being able to access this site, use the trails and have the oil field cleaned-up. It represents a balanced plan, with the project offering over 300 acres to the public while using less than 100 acres for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain behind lock and key for decades.

Thank you,

David

Dobson, Amber@Coastal

From:

James Ahn <jd_ahn@hotmail.com>

Sent:

Monday, October 05, 2015 1:57 PM

To:

Dobson, Amber@Coastal

Subject:

Banning Ranch project

I urge you to support the Banning Ranch project. This plan creates access to a now closed site and provides more open space, parks and trails that the west-side of Newport Beach needs. Leaving this site the way it is keeps all of us from enjoying it, the Banning Ranch proposal opens up the site, creates access and an opportunity for all of us to access and enjoy this coastal resource. Let's have access now, this is the Plan that delivers.

Tony Ditteaux

528 Irvine Avenue Newport Beach, CA 92663

RECEIVED
South Coast Region

OCT 0 2 2015

September 28, 2015

CALIFORNIA COASTAL COMMISSION

Mr. Steve Kinsey
Chair, California Coastal Commission
South Coast District
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

Re: Banning Ranch Development

Newport Beach

Dear Mr. Kinsey,

I have been a Newport Beach resident for 20 years and lived in Newport Shores for 10 years. I always wondered what would happen to the oil fields behind the neighborhood. I firmly believe that the plan that has been submitted is a good one. Open space, parks, trails, newly created habitats for our coastal wildlife, and most importantly the oil field cleanup will be great for our coastal community. My family and I fully support this project and encourage the Coastal Commission to approve it.

Thank you.

Sincerely,

Tony Diffeaux

Cc:

Steve Hudson, South Coast District

Katherine Flores

2365 Mesa Drive Newport Beach, CA 92660



OCT 0 2 2015

CALIFORNIA COASTAL COMMISSION

September 28, 2015

Mr. Steve Kinsey
Chair, California Coastal Commission
South Coast District
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

Re: Banning Ranch Development

Newport Beach

Dear Mr. Kinsey,

I have been a Newport Beach resident for 30 years in both Newport Heights and Santa Ana Heights. I have always wondered what would happen to the oil fields and I firmly believe that the plan that has been submitted is a good one. Open space, parks, trails, newly created habitats for our coastal wildlife, and most importantly the oil field cleanup will be great for our coastal community. My family and I fully support this project and encourage the Coastal Commission to approve it.

Thank you.

Sincere

Katherine Flores



OCT 5 2015

CALIFORNIA COASTAL COMMISSION



September 29, 2015

To: Chair Kinsey & Coastal Commissioners

c. Dr. Charles Lester, Sherilyn Sarb, Karl Schwing, Amber Dobson

From: **Newport Banning Ranch**

Project Support Re:

Enclosed are letters and emails we have collected from supporters that we want to bring to your attention. Also is a recent article about the Newport Banning Land Trust's Research Program.

POLICE BLOTTER

Unknown trouble was reported in the 2600 block of San Miguel Dr., at 12:11 p.m. on Thursday. Police checked and cleared the area. No further assistance was required.

A suspicious person was reported at Marine Avenue and N. Bay Front, at 11:18 p.m. on Wednesday. The suspect was gone by the time police arrived.

Illegal parking was reported in the 1300 block of W. Balboa Blvd., at 7:38 a.m. on Tuesday. Police issued a citation.

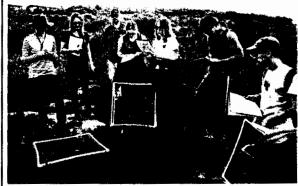
A drunk driver was reported at W. Coast Highway and Superior Avenue, at 2:28 a.m. on Monday. Police responded but were unable to locate the suspect.

ARREST LOG

A 54-year-old Westminster man was arrested at E. Coast Hwy and Clubhouse Drive, at 2:46 p.m. on Monday for strong arm battery. Bail was set at \$50,000.

A 34-year-old Baldwin Park man was arrested at 16th Street and Dover Drive, at 6:34 p.m. on Saturday for 459 felony burglary, Bail was set at \$50,000. He was released on Monday.

Newport Banning Land Trust Launches Student Research Program



Huntington Beach High School students conduct experiments at the Newport Banning Ranch oil field

By NB INDY STAFF

The Newport Banning Land Trust will launch its Science Research Program with Huntington Beach and Costa Mesa High Schools this weekend, which is designed to give high school seniors the opportunity to have real hands-on field research experience on topics pertaining to water quality, mapping and native versus invasive species identification.

The program was developed by NBLI in partnership with the Institute for Conservation Research and Education in collaboration with instructors from the Huntington Beach High School AP Environmental Science and Costa Mesa High School Environmental Field Stud ies classes

Once each month throughout the school year, the students will conduct field research with supervision from NBLT and ICRE professionals on-site at the Newport Banning Ranch oil field and Fairview Park. The students will gain field research experience by collecting scientific data from both sites.

The program will culminate with a presentation to teachers, peers and the community in June, 2016. The goal is to teach the students how to critically analyze their findings with the assistance from teachers and professionals.

The program is driven by NBLT Executive Director Robyn Vettraino and ICRE representative Barry Nerhus, who is the founder and senior biologist of Endemic Environmental Services, Inc.

Nerhus specializes in herpetology and is also trained and skilled in wildlife surveys, habitat restoration, habitat assessments and wetland delineation.

In addition to the field experience for the students and class credit, the goal of this program is to teach high school seniors the fundamentals of field biology to help them in their college careers. The program can be modified to teach middle school natural science classes.

For more info, visit newportbanning landtrust.org.

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Editor's **Office Hours**

Newport Indy Editor Christopher Trela invites readers to drop in and have a chat with him at various spots around town next week.

If you'd like to meet Christopher and talk, drop by between 10 and 11 a.m. at one of these locations

· Mon: Monlin Bistro, 1000 Bristol

St. North. · Tues: Champagnes Deli, 1260

EDITOR CHRISTOPHER TRELA LOOK FOR THIS GUY

Bison at MacArthur. Get to know Christopher, and let him know what's on your mind.

NEWS BRIEFS

Wake Up to the New Minimum Wage

How will the proposed minimum wage increase affect restaurants? What does it mean for those employed in the food service industry, and will consumers experience menu sticker shock if wages, and prices, go up?

Those are just a few of the topics to be debated at the monthly Wake Up! Newport event on Thursday, Oct. 1, hosted by the Newport Beach Chamber of Commerce at the Newport Beach Public Library Friends Room, 1000 Avocado Ave.

A panel discussion features lennifer Muir, General Manager of Orange County Employees Assoc, Russell Mangum, Professor at Concordia University School of Business, and Matt Sutton, California Restaurant Association Vice President of Government Affairs + Public Policy.

The free event starts at 7:15 a.m. with a complimentary continental breakfast from Bluewater Grill, followed by the program at 7:45 a.m. The event is scheduled to end at 8:30 a.m.

Make reservations by emailing psmith@ newportbeach.com or calling Pam at (949) 729-4411. Walkups welcome on a space available basis. For more information, visit newportbeach.com.

Bachelor Book Signing at Fashion Island



n and Dana Christensen of Br and Christensen real estate walking the red carpet with Chris Harrison

Chris Harrison, longtime host of the ABC hit reality show "The Bachelor and The Bachelorette," was at Barnes & Noble in Fashion Island last Thursday to sign copies of his debut romance novel called "The Perfect Letter" that explores love and consequences.

During the book signing, Harrison took questions from the audience (many appropriately dressed in all-white) and helped with a drawing for such prizes as tickets to a "Men Tell All" taping in Hollywood and seven-nights accommodations at the Westin Regina in Cabo San Lucas.

Open Hearts for Purple Hearts

Open Hearts for Purple Hearts & VerdeWatts presents a free job fair for veterans on Oct. 27 from 11 a.m. to 2 p.m. at the Newport Beach Civic Center's com munity room.

Among the companies scheduled to participate: 5.11 Tactical, Abtna Design Build, C2 Imaging, City of Newport Beach, E2 ManageTech, Hoag Hospital, The Irvine Company, JPMorgan Chase, Microsemi, Newport Beach Police Department, and Toshiba. Register at openheartsforpurplehearts.org.





OCT - 5 2015

CALIFORNIA COASTAL COMMISSION

September 28, 2015

California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, CA 94105

Re: Banning Ranch Development

Dear Coastal Commissioners:

At a meeting of the Newport Beach Chamber of Commerce Board of Directors on September 28, 2015, the Board unanimously voted to support approval of the Banning Ranch LLC's application for development and restoration of the Banning Ranch property.

It is the Board's position that the proposed project is in the best interests of Newport Beach residents, Newport Beach businesses and all others that visit the Coastal Zone. It provides for badly needed active park space, cleans up and restores over 400 acres of badly degraded open space that currently operates as an oil field and opens up approximately 75% of the property in perpetuity for use by the general public in an area where these types of activities are lacking.

Although the City's 2006 General Plan update provided for the potential of 100% open space, in nine years no viable plan has been brought forth to acquire, remediate and provide for the on-going maintenance of the property as open space. The project currently being considered provides a path that will achieve all of these objectives for the vast majority of the property and at the same time improve water quality, restore habitat and provide educational opportunities for Californians. The project makes these objectives achievable today as opposed to some unknown and unlikely future date.

The Board urges you to see the merits of this project and vote affirmatively for its approval and implementation.

Warmest Regards

Steven Rosansky President & CEO

Newport Beach Chamber of Commerce



Huntington Beach High School

1905 Main Street, Huntington Beach, CA 92648 (714) 536-2514 FAX (714) 960-7042

September 30, 2015

Chair Kinsey and Commissioners Via email:

Re: Newport Banning Ranch

Dear Chair Kinsey:

South Coast Region

GUT 5 2015



I am writing to support approval of the Newport Banning Ranch Project. I am an AP Science teacher at Huntington Beach High School and have taught here for 5 years. We started a Field Science program nearly ten years ago where students interested in the sciences were able to get field study research outside the classroom and could travel to Yosemite and Catalina Island to teach high school seniors the fundamentals of field biology. This program gives students the unique opportunity to attain field experience pertaining to water quality, mapping and native versus invasive species identification and the use of statistics to support claims. We at Huntington Beach High School pride ourselves as leaders in this type of curriculum and have been copied by school both inside and outside of our district.

The majority of this program was almost cut out of our curriculum last year, but was revived through the team at Newport Banning Land Trust. They stepped in to partner with the Institute for Conservation Research and Education and utilized the restoration area on the Newport Banning Ranch site as well as the Fairview Ponds in Costa Mesa, and through an Advisory Team, taught students how to critically analyze their findings and present before a group of peers, parents and teachers.

Leaders in the science programs are rare and the ability to access sites for analysis and gain field experience is harder and harder to come by. The Newport Banning Land Trust is ready to take the leadership role in advancing those programs locally so that students here in Orange County are provided the opportunity for exposure to these important career paths. Without the thoughtful balance of public access, restoration and housing options that include a funding stream, this opportunity may again be lost. I urge you to approve the Newport Banning Ranch project.

We are ready to participate with the Newport Banning Ranch team in their leadership role on the the natural open space portion of the proposed plan and make it a community legacy.

Best regards,

Carissa Rice

AP Science Teacher, Huntington Beach High School.

arma Dillie

Cc: Steve Danner - AP Science Teacher

Daniel Morris - Principal

Chair Kinsey, Coastal Commissioners:	
My name isClay Gallagher and I am here today sp of the Newport Banning Ranch project.	eaking in support
As a long-time homeowner near the project I am thrilled that what you is a plan that finally opens this property to the public. For years my followed at this oil field and hoped that one day we would be able to water explore the area. The plan before you will allow us to finally access the	amily and I have lk, bike and
We will no longer be neighbors to a fenced off oil field. With the Comyou will create an opportunity for the public to at last explore the proto to the beach and ocean. Access, the very thing you are tasked with encoast.	perty, and connect
This plan is not just about access though. It delivers so much more an not someday, not down the road, not when funding is found — right n approval we walk away knowing that in my lifetime the oil field will b spaces restored, trails and beach access created — right now. I urge yo back, look at what the big picture is — a gift, a huge gift to the public.	ow with your e cleaned-up, open
Thank you for your time.	South Coast Region
In a	OCT 5 2015
	CALIFORNIA COASTAL COMMISSION



OCT 5 2015

|| Parallels

From: Renee West <renee@bhhscdm.com>

Sent: Tue 29/09/15 10:55 AM

o: "info@newportbanningranch.com" <info@newportbanningranch.com>

CALIFORNIA

COASTAL COMMISSION Priority: Normal

Subject: *****SPAM3.2***** I support the Newport Banning Ranch Project!

Type: Attachments

Dear Sirs:

Education

I support the Newport Banning Ranch project and all that they propose to do for remediate what is now an operating oil field. Their plan includes an on-going opportunity for community involvement in a restoration process and, more importantly, an opportunity for partnerships with other environmental groups and educational institutions.

Already in place is a unique science program with two of the local high schools as part of their curriculum. Students have an opportunity never available before to have hands-on field research through the Newport Banning Land Trust.

The Land Trust and Newport Banning Ranch developers have open their 'doors' to the community, have a plan to restore the habitat for wildlife, clean up the oil field and allow public access.

Please consider all the above points and in particular the opportunities for our young people to have an experience that would not otherwise be provided for approval of Newport Banning Ranch.

Sincerely,
Renee West
Luxury Collection Specialist
Berkshire Hathaway HomeServices
California Properties
3301 E. Coast Hwy
Corona del Mar, CA 92625

Cell: 714- 914- 9060 Renee@bhhscdm.com www.ReneeWest.com

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RECEIVED South Coast Region



From: John Hoefer <jhoefer@milestonepromise.com>

OCT 5 2015

Sent: Mon 28/09/15 9:06 PM

To. "info@newportbanningranch.com"

Subject: Support for Banning Ranch

<info@newportbanningranch.com>

CALIFORNIA

Priority: Normal

COASTAL COMMISSION

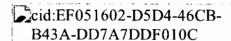
Type: Attachments

My wife and I look forward to see Banning Ranch developed. Open space and the responsible re-use of an oil field site is so important for Orange County. I urge you to support Banning Ranch when it comes up to a vote on October 7th.

Sincerely,

John Hoefer, CIC

Founder, <u>Brewery Insurance Program</u>
VP of Business Development & Sales
O: (949) 379-6955 | C: (714) 396-4784
Connect with me on **LinkedIn**



RECEIVED South Coast Region



From: "Mike Recupero" < mrecupero@recupero.net>

Sent: Tue 29/09/15 9:35 AM

To: <info@newportbanningranch.com>

OCT 5 2015

Priority: Normal

Subject: Banning Ranch Support

CALIFORNIA COASTAL COMMISSION Type: Embeded HTML/Text

Dear Sir or Madam:

I am writing to express my support for the Newport Banning Ranch redevelopment and open space project. It preserves almost all of the land for open space and creates new areas of public access on oil lands that are now unusable. This project represents a fair balance of community, private and environmental interests which should be appreciated and encouraged by the California Coastal Commission.

Sincerely,

Mike Recupero

Michael Recupero
RECUPERO AND ASSOCIATES, INC.
31877 Del Obispo Street, Suite 204
San Juan Capistrano, CA 92675-3228

Phone: (949) 429-6300 Fax: (949) 429-6303

RECEIVED

| Parallels

From: Ron Hoefer < rhoefer@milestonepromise.com th Coast Region

Sent: Mon 28/09/15 2:41 PM

To: "info@newportbanningranch.com" <info@newportbanningranch.com>

OCT 5 2015

Priority: Normal

Subject: Banning Ranch

CALIFORNIA COASTAL COMMISSION Type: Attachments

Dear Coastal Commission:

While I too like to see land conserved in southern California, Banning Ranch brings a great opportunity for Newport to turn an unsightly and inaccessible property into a beautiful, sustainable Land Trust financially supported by a small development of homes.

This will bring to the citizens of Newport, and surrounding communities, access to miles of hiking trails, public parks and wetlands. Banning Ranch is the perfect equilibrium between development and open space for the residents of Newport to enjoy.

Sincerely,

Ronald J. Hoefer

Chief Visionary & Storyteller AKA: CEO
O: (949) 379-6950 | C: (714) 469-4114

Connect with me on LinkedIn

cid:image001.png@01CFF4EE.917I



OCT 5 2015

Banning Ranch Project Open Space & Access

CALIFORNIA COASTAL COMMISSION

I'm writing in support of Newport Banning Ranch and the current proposed development already approved by the City of Newport Beach. The plan provides public access to an existing site that the public has been denied access to for over 75 years.

Through a complicated remediation plan, this land will be converted from a currently operating oil field into open space with hiking and biking trails for public access. There will be over seven miles of public trails for public use that will connect to over 28 miles of the existing Santa Ana River Trail and to the beach.

The plan also accounts for long-term, on-going maintenance and protection for this natural open space and the trails included in it. The developer is spending millions so that we can have access to this land. There isn't another organization, individual or group with the ability to spend the required amount of money to bring this vision to reality.

Approval and successful implementation will also support efforts to bring to life a significant portion of Orange Coast River Park. Banning Ranch is the centerpiece for the long-envisioned Orange Coast River Park and the proposed plan will provide nearly 30% if the 1000 acres planned for the Park.

The open space, remediation and public access to Banning Ranch will provide opportunity for habitat restoration and recreational continuity with other parklands.

Sincerely,

Kay Walker



From: Gail Upton <upton.gail@gmail.com>

Sent: Mon 28/09/15 8:52 PM

To: "info@newportbanningranch.com" <info@newportbanningranch.com> Priority: Normal

Subject: Banning Ranch Project

Type: Embeded HTML/Text

I am writing to express my support for the Newport Banning Ranch Re-Use Plan. This plan represents decades of community input, voter approvals and a balanced plan that delivers on all fronts. With nearly 80% of the plan as open space and trails, this will become a community asset for generations. When you hear this project on October 7th, I urge you to support the Newport Banning Ranch.

Gail Upton



OCT 5 2015



OCT 5 2015

September 28, 2015

CALIFORNIA COASTAL COMMISSION

California Coastal Commission 45 Freemont Street Suite 2000 San Francisco, CA 94105

RE: Banning Ranch Development

Dear Coastal Commissioners,

I am writing in support of the Newport Banning Ranch project.

The plan provides for public access to an existing site that the public has been denied access to for over 75 years. I've toured Banning Ranch and have seen its current condition as an operating oil field and understand that it will cost tens of millions to remediate the land.

The land will then be restored and converted to open space with hiking and biking trails for public access along with the proposed housing and commercial area. There will be over seven miles of public trails for public use that will connect to over 28 miles of the existing Santa Ana River Trail and to the beach.

The developer is spending hundreds of millions so that we can have access to this land. There isn't another organization, individual or group with the ability to spend the required amount of money to bring this vision to reality.

Approval and successful implementation will also support efforts to bring to life a significant portion of Orange Coast River Park. Banning Ranch is the centerpiece for the long-envisioned Orange Coast River Park and the proposed plan will provide nearly 30% if the 1000 acres planned for the Park. Without approval it is not likely this vision will ever come to fruition.

The Newport Banning Ranch project is a wonderful addition to our community. I urge you to approve this plan.

Regards,

Marie Case 2101 East 15 Street, # 12 Newport Beach, CA



From: "Grayson P. Carter" < graysoncarter@gmail.com>

Sent: Mon 28/09/15 4:18 PM

To: info@newportbanningranch.com

Priority: Normal

Subject: Please support the Newport Banning Ranch Re-Use plan

Type: Embeded HTML/Text

I'm writing to express my support for the Newport Banning Ranch Re-Use Plan.

This is a plan that has been a long time in the making and the benefits to the community will live on for generations.

Please join me in supporting this plan.

Sincerely,

Grayson Carter (Orange County Resident Since 1984) 714-883-4753 graysoncarter@gmail.com



GCT 5 2015



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Sent: Mon 28/09/15 4:09 PM

To: <amber.dobson@coastal.ca.gov>

Priority: Normal

Cc: <info@newportbanningranch.com>

Subject: Newport Banning Ranch Supporter

Type: Embeded HTML/Text

I become aware of the details regarding the development of the Banning Ranch property in Newport Beach. I know for years this site has been an unsightly oil field, inaccessible to the public, and that there are current development plans that will create open space and site restoration. I strongly support the Banning Ranch project and urge the coastal staff to do the same. The development of this property will be a true benefit to the community and create a balanced access to new open space and trails, and a new family focused community to Newport Beach.

Thank you, Brett Isaacman 949.378.4401 RECEIVED
South Coast Region

OCT 5 2015

PAUL K. WATKINS*
*A PROFESSIONAL
CORPORATION

Of Counsel SELF & BHAMRE LAW OFFICES OF

PAUL K. WATKINS, APC

SUITE 320
4400 MACARTHUR BOULEVARD
NEWPORT BEACH, CALIFORNIA 92660-2031
OFFICE TELEPHONE (949) 955-0230
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FACSIMILE (949) 955-0240

September 28, 2015

AUTHOR'S E MAIL ADDRESS: <u>paul@watkinslegal.com</u> or <u>paul@lawfriend.com</u>

WEBSITE: WATKINSLEGAL.COM

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South Coast Region

OCT 5 2015

CALIFORNIA COASTAL COMMISSION

California Coastal Commission 45 Fremont Street Suite 2000 San Francisco, Ca. 94105

Re: Banning Ranch Development (Newport Beach, Ca.)

Dear Coastal Commissioners:

I support the Newport Banning Ranch project and their thoughtful plan to fully remediate what is now an operating oil field. Their plan includes an on-going opportunity for community involvement in a restoration process, and more importantly, an opportunity for partnerships with other environmental groups and educational institutions.

As you may know, already in place is a unique science program with two of the local high schools as part of the high schools' curriculum. Students have an opportunity not previously available to have hands-on field research through the Newport Banning Land Trust.

The Land Trust and the Newport Banning Ranch developers have gladly opened their doors to the community, they have come up with a thoughtful and thorough plan to restore the habitat for wildlife on site, they will clean up the oil field, and they will allow unparalleled public access to over 75% of the site.

Please consider all of the above points and in particular the opportunities for our young people to have an experience that would not otherwise be provided absent approval of the Banning Ranch project.

Sincerely,

Paul K. Watkins for Paul K. Watkins, APC

Of Counsel, Self & Bhamre

aul K. Wathins

) Parallels

From: Valerie Hardman < vhardman@OutdoorDimensions.com>

Subject: Support for the Newport Banning Ranch Re-Use Plan

Sent: Mon 28/09/15 2:53 PM

To: "info@newportbanningranch.com"

Priority: Normal

<info@newportbanningranch.com>

Type: Embeded HTML/Text

To The Coastal Commission:

I am writing to express my support for the Newport Banning Ranch Re-Use Plan. This plan represents decades of community input, voter approvals and a balanced plan that delivers on all fronts. With nearly 80% of the plan as open space and trails, this will become a community asset for generations. I believe it will be a valuable contribution to the City of Newport Beach and our county so when you hear this project on October 7, I urge you to support the Newport Banning Ranch. Thank you!

Sincerely, Valerie Hardman RECEIVED
South Coast Region

OCT 5 2015

Valerie Hardman / Vice President
Outdoor Dimensions
5325 E. Hunter Avenue / Anaheim, CA 92807
714-578-9555 O / 714-693-9578 F / 714-501-1943 M
www.outdoordimensions.com

CALIFORNIA COASTAL COMMISSION

Member of BIA/SC http://www.biasc.org/
Member of BIA/OC http://biaoc.com/
Member of 55+ Housing Council http://www.55socal.com/
Member of GSMC http://www.biasc.org/greater-sales-marketing/

) | Parallels

From: Art Bieber <art@biebercommunications.com>

To: info@newportbanningranch.com

Subject: Newport Banning Ranch - Vote on Oct. 7

Sent: Mon 28/09/15 2:36 PM

Priority: Normal

Type: Embeded HTML/Text

Dear Sirs,

I would like to express my support for the Newport Banning Ranch Re-Use Plan. I seems like a balanced plan, that cleans up the oil field and allows for a lot of open public space. Please support this Newport Banning Ranch when you vote on Oct. 7th.

Thank-you, Randy Salisbury Graphic Designer

Bieber Communications 3609 W. MacArthur Boulevard, Suite 812 Santa Ana, CA 92704

714.210.3630 Fax 714.210.3634 www.biebercommunications.com RECEIVED
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OCT 5 2015



From: Ken LaCroix <klacroix@signatureanalytics.com>

Sent: Mon 28/09/15 1:32 PM

To: info@newportbanningranch.com

Priority: Normal

Subject: Support for the Newport Banning Ranch

Type: Embeded HTML/Text

California Coastal Commission:

I am writing to express my support for the Banning Ranch Re-Use Plan. I have been a resident of Newport Beach since 1971, a property owner since 1995, and have watched the city develop previously off-limits open space into beautiful amenities that the public can enjoy. With nearly 80% of the plan as open space and trails, this plan continues to open up land to the community for generations to come.

Specifically, this plan will address the clean-up of the oil field from the last century, will allow public access to breathtaking views of the coastline, as well as create parks, trails, open space and other resident and visitor amenities. With years of community input, I feel this plan best addresses the opening up of previously closed and inaccessible land.

When you hear this project on October 7th, I urge you to support the Newport Banning Ranch.

Sincerely,

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South Coast Region

Ken LaCroix 2900 Park Newport, #322 Newport Beach, CA 92660 949-644-2044 Home Phone

OCT 5 2015



From: "tracymcniven@verizon.net" <tracymcniven@verizon.net>

Sent: Mon 28/09/15 12:01 PM

To: "info@newportbanningranch.com" <info@newportbanningranch.com> Priority: Normal

Subject: Project Support Type: Embedded HTML/Text

I am writing to express my support for the Newport Banning Ranch Re-Use Plan. This plan represents decades of community input, voter approvals and a balanced plan that delivers on all fronts. Not to mention, cleans up an oil field that is more than 75 years old. With nearly 80% of the plan as open space and trails, this will become a community asset for generations. When you hear this project on October 7th, I urge you to support the Newport Banning Ranch.

Tracy McNiven
Huntington Beach, CA
714-270-6120
tracymcniven@verizon.net

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OCT 5 2015





From: Maurine <maurinekwhite@hotmail.com> Sent: Mon 28/09/15 12:12 PM

To: "info@newportbanningranch.com" <info@newportbanningranch.com> Priority: Normal

Subject: Newport Banning Ranch Project Support

Type: Embedded HTML/Text

SUBJECT: Newport Banning Ranch Project Support

I have been a resident of Huntington Beach since 1967, forty-eight years. In that time I have seen the blight of the oil fields in Huntington Beach improved and redeveloped, and the wetlands restored and opened to the public. Now we have an opportunity to restore to public use another area along our beautiful coastline. The proposed Banning Ranch Re-Use Plan will clean up another oil field, create public access, add parks, trails, and open space, and in general beautify and restore another section of this coastline. More open space will be available for everyone.

I urge you to approve and support this plan as it is one of the major goals that the Coastal Commission was created to accomplish.

Sincerely,

Maurine Endicott White

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OCT 5 2015



From: "Kellie Bieber" < kelliebieber 99@gmail.com>

Sent: Mon 28/09/15 12:10 PM

To: <info@newportbanningranch.com>

Priority: Normal

Subject: Newport Banning Ranch Project

Type: Embeded HTML/Text

I am writing to support the Newport Banning Ranch Re-Use Plan. This plan represents decades of community input, voter approvals and a balanced plan that delivers on all fronts. With nearly 80% of the plan as open space and trails, this will become a community asset for generations. When you hear this project on October 7th, I urge you to support the Newport Banning Ranch.

Sincerely, Kellie Bieber 805 S. Ola Vista San Clemente, CA 92672



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www.avast.com

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OCT 5 2015

Pewerd o

From: Tyler Strateman < tstrateman@intercommunications.com >

Sent: Mon 28/09/15 11:07 AM

To: <Amber.Dobson@coastal.ca.gov>

Priority: Normal

Cc: <Info@newportbanningranch.com>

Subject: Newport Banning Ranch Support

Type: Embeded HTML/Text

Dear Amber,

I am in support of the Banning Ranch proposed project. I have been following the project for years, and know that there has been countless hours of community and local input. As a kid, I spent 9 years of my life as a student at Carden Hall right next to the property and always wondered what would happen to this un touchable but beautiful part of the coastal adjacent area of Newport Beach.

As a resident lifetime resident of Newport Beach I look forward to being able to access this site, use the trails and have the oil field cleaned-up. Despite the oppositions predictable concerns over uage and traffic and environmental impact, this project represents an appropriate balance of land usage, with the project providing nearly 75% for public while using less than 25% of the acreage for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain a gated and underutilized piece of land that the public will continue to only see from behind an iron gate.

Best Regards, Tyler RECEIVED
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OCT 5 2015

TYLER STRATEMAN

InterCommunicationsInc®
1375 Dove Street, Suite 200
Newport Beach, CA 92660
Telephone 949.644.7520
Fax 949.640.5739
www.intercommunications.com

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From: CJ Stos <cj@sr-commercial.com>

Sent: Mon 28/09/15 10:44

AM

__ "Amber.Dobson@coastal.ca.gov"

<Amber.Dobson@coastal.ca.gov>,"Info@newportbanningranch.com"

Priority: Normal

Subject: Newport Banning Ranch

Type: Embeded HTML/Text

Dear Amber:

I am in support of the Banning Ranch proposed project. I have been following the process for years, and know that there has been countless hours of community and local input. As a resident of __115 27th Street, Newport Beach_ I look forward to being able to access this site, use the trails and have the oil field cleaned-up. It represents a balance, with the project offering over 300 acres to the public while using less than 100 acres for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain behind lock and key for decades.

If you need anything else from me, I can be reached at (949) 413-5042 or CI@sr-commercial.com

Sincerely, CJ Stos

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OCT 5 2015



From: Brad Lisotto <BLisotto@universalflooring.com> Sent: Mon 28/09/15 9:52 AM

'to' <Amber.Dobson@coastal.ca.gov>,

To: "Info@newportbanningranch.com" Priority: Normal

<Info@newportbanningranch.com>

Subject: Newport Banning Ranch Type: Embedded HTML/Text

Amber,

I am in support of the Banning Ranch proposed project. I have been following the process for years, and know that there have been countless hours of community and local input. As a resident of Newport Beach, I look forward to being able to access this site, use the trails and have the oil field cleaned-up. It represents a balance, with the project offering over 300 acres to the public while using less than 100 acres for a mixed use development. I urge you to support this plan, it delivers today what will otherwise remain behind lock and key for decades.

Sincerely,

Brad Lisotto Vice President RECEIVED
South Coast Region

OCT 5 2015

Universal Flooring Systems Inc 15573 Commerce Lane Huntington Beach Ca 92649 714-373-1136 FAX 714-373-1165 www.universalflooring.com



From: allen jahroumi <aldodgers@yahoo.com>

Sent: Sun 27/09/15 7:43 PM

To: "Amber.Dobson@coastal.ca.gov" < Amber.Dobson@coastal.ca.gov>,
"Info@newportbanningranch.com" < Info@newportbanningranch.com>

Priority: Normal

Subject: Banning Ranch Project

Type: Embeded HTML/Text

To whom it may concern,

I am in support of the Banning Ranch proposed project. I have been following the process for quite some time, and know that there has been countless hours of community and local input. As a resident of San Clemente I look forward to being able to access this site and use the trails. I believe it is a balanced plan, will open a now closed site and most importantly it will clean up an oil field that is greater than 75 years old. I believe the proposed project offers a plan that exceeds what would otherwise be required in terms of mitigations, traffic improvements and far surpasses any open space and parks requirements. I strongly urge you to support this plan. It delivers today what will otherwise remain behind lock and key for decades.

Thank you,

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OCT 5 2015

Allen Jahroumi, MD
Optum Medical Group
CDQI Committee Chair
30110 Crown Valley Parkway Suite 101
Laguna Niguel, CA 92677
Ph. 949-453-4343





From: "Gartlan, Mike" < MGartlan@kbhome.com>

Sent: Fri 25/09/15 4:33 PM

To: "info@newportbanningranch.com"

Priority: Normal

<info@newportbanningranch.com>

Cc: "Steve La Motte (slamotte@biaoc.com)" <slamotte@biaoc.com>

Subject: Newport Banning Ranch

Type: Attachments

I am in complete support of this community development. Newport Beach and Costa Mesa will greatly benefit. This development is carefully planned with so many beautiful amenities, parks, neighborhoods and OPEN SPACE. It will enhance the livelihood of all surrounding communities. This community completes an area that currently appears to be neglected and forgotten. Let's take care of our land! Approve it and Improve it! It is our duty to shepherd and enhance the land with which we have been graced...let's not ignore that duty!

South Coast Region

OCT 5 2015

Mike Gartlan

Senior Vice President, Regional Finance

CALIFORNIA COASTAL COMMISSION

KB HOME | Southern California

Office: (951) 691-5183 Mobile: (949) 836-5457

Email: mgartlan@kbhome.com

888-KB-HOMES kbhome.com

Consider the environment before printing this email.



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From: Mark Himmelstein < Mark. Himmelstein@ndlf.com>

Sent: Fri 25/09/15 4:11 PM

To: "info@newportbanningranch.com"

<info@newportbanningranch.com>

Priority: Normal

Subject: Support

Type: Attachments

As a resident of Huntington Beach and an employer in Newport Beach, I am excited to support the Newport Banning Ranch development. It will be great to have the housing (much needed in the coastal communities) and parks. The magnitude of the open space and community areas is excellent for such a project. This would be a great improvement upon the current status of the land.

Mark Himmelstein

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South Coast Region

OCT 5 2015

CALIFORNIA COASTAL COMMISSION

Mark Himmelstein

Mark.Himmelstein@ndlf.com p 949,854,7000 - d 949,271,7217

Newmeyer & Dillion LLP 895 Dove Street, 5th Floor Newport Beach, CA 92660

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OCT 5 2015

Mark Ellis

21126 Hidden Spring Lane

CALIFORNIA COASTAL COMMISSION

Trabuco Canyon, CA 92679

949-858-9822

September 25, 2015

Mr. Steve Kinsey

Chair, California Coastal Commission

Dear Mr. Kinsey,

I am writing this letter to let you know my thoughts and opinion on the future of the Newport Banning Ranch site in Newport Beach. I have toured this site twice in the past few years and it is obvious that this land needs to be improved. The site is strewn with oil pumps; piping, old concrete structures and has many areas that someone could get hurt. It looks like a war zone. The land in its current condition needs to re-developed or improved.

As I understand it, the plan for this site is to dedicate over 75% for open space, habitat for wetlands and other native birds and wildlife. I feel that this is very generous by the land owner to give up that much of this privately owned property for open space that would be enjoyed by the public.

I encourage you to approve this project, as it is a "smart development & reuse" of a blighted section of land for the environmental and public benefit. In my opinion, this is a "No – Brainer" to approve the application for improvement.

Thank you for your consideration,

Mark D. Ellis



From: Jim Yates <jyates@ranchomv.com>

Sent: Thu 24/09/15 5:26 AM

To: "info@newportbanningranch.com" <info@newportbanningranch.com> Priority: Normal

Subject: Banning Ranch - Coastal Commission Letter of Support

Type: Embeded HTML/Text

I would like to express my support for the Banning Ranch Development in Newport Beach. I believe that the thoughtful development of this property will enhance the area in many ways. The creation of additional housing and other uses in Orange County is essential to serving the people that live here. The development of Banning Ranch will also help to clean up a long standing problem that was left by decades of oil drilling operations. This project provides for the establishment of natural habitat benefiting those around the area and the environment.

I feel that the project truly presents the best balance of uses for this property and provides a sustainable program that enhances its surroundings. I encourage you to support and approve this project.

Sincerely,

James B. Yates

27083 Pinario Mission Viejo, CA 92692 Cell: (949) 795-8817

e-mail: jyates@ranchomv.com

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> OCT 5 2015

From: "William R. Watt" < wwatt@baywooddevelopment.com>

Sent: Tue 22/09/15 3:16 PM

To: <info@newportbanningranch.com>

Priority: Normal

Subject: Support NBRanch

Type: Embeded HTML/Text

Hello,

I strongly support the Newport Banning Ranch Plan and Development. It is a fantastic plan that balances public and private benefits as well as the environment.

It is exactly the kind of plan that needs to be encouraged; especially in the Coastal Zone.

I believe it would be a very significant asset to Newport Beach and Costa Mesa as well as the entire SoCal area.

Please forward this email to the appropriate parties at the Coastal Commission.

William Watt 19116 Sierra Majorca Rd. Irvine, CA 92603. RECEIVED
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OCT 5 2015