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COASTAL COMMISSION

May 1, 2014

Mr. Karl Schwing
Ms. Amber Dobson
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Coastal Development Permit Application 5-13-032 ("Application")
Newport Banning Ranch ("Project")

Dear Mr. Schwing and Ms. Dobson:

The purpose of this letter is to respond to the February 7, 2014 Notice of Incomplete Application. The NBR team is hopeful that with the meetings that have occurred with Coastal Planning Staff (March 7th, March 13th, March 28th and April 18, 2014), subsequent follow-up correspondence and this response fully address all of CCC Staff's requests for information and additional data.

The original CDP application by NBR included the Project as it was approved by the City of Newport Beach in 2012. Over the last year and based on requests/input from CCC Staff, USFWS, as well as Project neighbors and the community, NBR submitted two additional alternative projects, CCC Alternative Project 1 and CCC Alternative Project 2. At this time, NBR believes that CCC Alternative Project 2 best addresses both CCC Staff's requests/input, reduces environmental impacts and represents a better plan from the Coastal Act perspective. NBR has provided these alternatives to the City of Newport Beach staff, both NBR and the City understand that any changes to the proposed Project by the CCC will likely need to be adopted by the City subsequent to the Notice of Intent to Issue a CDP. Moving forward, NBR would like CCC Staff to use CCC Alternative Project 2 as "the Project," for its CDP analysis.

CCC Alternative Project 2 directly addresses CCC Staff's requests/input related to the City approved and original CDP Project submittal by:

1. Reducing impacts to major vegetation by:
 - a. Eliminating North Bluff Road from 17th Street to 19th Street
 - b. Redesigning Bluff Road between 15th Street and West Coast Highway, reducing the width of the road from 4 to 2 lanes and realigning the road to avoid permanent, direct impacts to the northwest and southeast polygons previously identified as ESHA in the Consent and Restoration Order CCC-11- RO-02

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- c. Redesigning and realigning the reduced Bluff Road and the 15th Street extension to further reduce Project impacts to major vegetation in the southern and central portions of the site, including eliminating direct impacts to a seasonal feature (Feature W) and sensitive vegetation communities
- d. Integrating two new wildlife under-crossings within the Bluff Road design between Coast Highway and 15th Street, and within the 17th Street extension
- e. Integrating a new bridge design to avoid fill (i.e. wetland impacts) within the lower arroyo
- f. Eliminating fill associated with the development of the northern portion of the North Community Park from North Bluff Road easterly to the property boundary
- g. Reducing the overall Project footprint by increasing site areas proposed to be enhanced and included in the Natural Open Space Preserve
- 2. Eliminating filling of riparian areas and wetlands by:
 - a. Integrating a new bridge design to avoid fill within the lower arroyo
 - b. Redesigning and realigning a reduced North Bluff Road from 15th Street to 17th Street to eliminate impacts to seasonal features occupied by the San Diego Fairy Shrimp
 - c. Redesigning water quality and detention basins
 - d. Eliminating fill associated with the development of the northern portion of the North Community Park from North Bluff Road easterly to the property boundary
 - e. Eliminating North Bluff Road from 17th Street to 19th Street
- 3. Avoiding all impacts to cultural resources known to occur on the site by eliminating North Bluff Road from 17th Street to 19th Street
- 4. Removing field lighting from the Community Parks, any subsequent plan to the parks requesting field lights would be done through a separate CDP process after Project approvals and a CDP have been issued, and will also include a lighting analysis

CCC Alternative Project 2 maintains consistency with the Coastal Act by:

- 1. Protecting and enhancing public access to the coast by:
 - a. Opening a now closed 401-acre site to the public
 - b. Implementing a circulation system to increase access to the coast
 - c. Establishing a network of trails on site, that connects to the larger Santa Ana River Trail system
 - d. Implementing a bicycle and pedestrian bridge over West Coast Highway
 - e. Establishing additional public parking in the coastal zone
 - f. Enhancing upland recreation in the coastal zone with approximately 32 acres of parklands
 - g. Creation of over 255 acres natural open space preserve
- 2. Providing visitor serving amenities by:
 - a. Natural open space creation and protection in perpetuity
 - b. Trails

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- c. Public parking
- 3. Water quality (detailed further in the response included herein)
 - a. Maintains water quality features
 - b. Exceeds accepted water quality requirements

With the responses provided in this letter, we respectfully request that you agree to deem the “planning” portions of the application complete (i.e., the application will be complete subject to resolution of the “Threshold Issues”).

Sincerely,



Michael A. Mohler
Newport Banning Ranch LLC

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Exhibits

- 1 Fuel Modification Plan
- 2 30% Grading Plans/Pedestrian Bridge/Cross-Sections
- 3 Adjacent Project Heights
- 4 Infiltration Plans
- 5 CCC Alternative Project 2 Wetland Delineation Map
- 6 CCC Alternative Project 3
- 7 CAGN Exhibit

Attachments

- A OCTA Letter
- B Vernal Pool Field Notes
- C Burrowing Owl Report (not printed)
- D Bluff Retreat/Sea Level Rise Report
- E TDM

I. Threshold Issues

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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.**

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Non-Planning Issue

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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 NOLA for more details.

Non-Planning Issue

Page 3

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.

COMPLETED

II. Other Issues

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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 constraint; 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 NOLA 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 West Coast Highway, and/or 19th street is prohibited, and/or access to the site is

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*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.***

Response:

In response to the question above and prior NOIA letters, CCC Staff has requested that Project alternatives be provided which include redesigned access and reduced Project densities that do not rely on the proposed Bluff Road access from West Coast Highway and/or North Bluff Road from 19th Street and/or which assume access to the site is limited to just 15th, 16th, or 17th streets (and combinations thereof). Please note:

No density reductions are forced if access to North Bluff Road from 19th Street is eliminated and/or access from West Coast Highway to Bluff Road is eliminated. The road system could still handle full Project densities. Please see Exhibit 6, CCC Alternative Project 3. Pending revised traffic data, an analysis will be provided on both CCC Alternative Projects 2 and 3.

However, elimination of these access points would:

- Result in increased traffic impacts to intersections within Newport Beach and Costa Mesa.
- Eliminate certain Project elements that would benefit coastal resources, including protecting and enhancing public access to the coast, enhancing shoreline and upland recreation areas in the Coastal Zone, and providing and enhancing transit and non-automobile circulation.
- Result in traffic patterns inconsistent with the primary and secondary (emergency access) points that exist for the site.
- Would not allow for the creation of a system of new coastal access corridors connecting adjacent neighborhoods to onsite amenities including proposed public parks and interpretive areas, as well as creating better project circulation and minimizing traffic impacts to existing adjacent neighborhoods and businesses.

Additional Project Alternatives Analysis to Reduce Major Vegetation Impacts...

To further respond to CCC Staff's request for Project circulation element alternatives analyses intended to reduce potential impacts to vegetation, NBR has analyzed an alternative Project design that would utilize only a combination of 15th, 16th and 17th Streets to access the site in a two-lane format, and which, as noted above, would accommodate the Project density approved by the City of Newport Beach (i.e., the capacity of the two-lane roadway system would be capable of handling the Project traffic). In addition, because 15th, 16th and 17th streets currently dead end at the site for public use purposes, any changes to roadway operations under this alternative would have no positive impact or benefit to coastal public access and recreation as it

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relates to these particular streets. However, as emphasized in our prior responses and discussed in more detail below, eliminating the Bluff Road connection to West Coast Highway would eliminate a Project element that would benefit coastal resources, including protecting and enhancing public access to the coast, enhancing shoreline and upland recreation areas in the Coastal Zone, and providing and enhancing transit and non-automobile circulation.

Vegetation impacts that would be avoided with a revised Project design that does not include the proposed Bluff Road access from West Coast Highway have been calculated and are presented in the below table. While elimination of the Bluff Road West Coast Highway connection could reduce overall Project impacts by 3.12 acres, eliminating this Project circulation element would reduce impacts to potential sensitive vegetation communities by only 0.344 acre (0.24 acre disturbed scrub, 0.09 acre scrub, 0.01 acre disturbed mulefat thicket, and 0.004 acre purple needlegrass).

Vegetation Abbreviation	Vegetation Community	Acres
D-CBBS	Disturbed California Brittle Bush Scrub	0.09
IPM	Ice Plant Mats	0.36
MYP	Myoporum Grove	0.19
CBBS	California Brittle Bush Scrub	0.09
D-CBBS-CPPS	Disturbed California Brittle Bush Scrub - Coastal Prickly Pear Scrub	0.15
D-MFT	Disturbed Mulefat Thicket	0.01
DVLP	Developed	0.88
ABG	Annual Brome Grassland	1.14
SGF	Salt Grass Flats	0.03
PNGG	Purple Needle Grass Grassland	0.004
D	Disturbed	0.18
Total		3.12

It is worth noting that this Project alternative impact analysis takes into consideration the entire grading footprint for the Bluff Road West Coast Highway connection. Permanent loss of disturbed and undisturbed scrub vegetation would be less than the 0.34 acre identified above because the HCCMP (which has been designed to fully complement CCC Alternative Project 2) includes substantial scrub enhancement and establishment on this portion of the site (approximately 3 acres of new scrub establishment) and incorporation of a wildlife undercrossing. Additional measures discussed on the recent biology field walk included fencing and other permanent protections to protect the wildlife. As a result, implementation of the Bluff Road West Coast Highway connection would not result in adverse impacts to California gnatcatcher use of the site, rather the proposed Project, with the HCCMP, would significantly enhance habitat on the southern portion of the site for the benefit of the species.

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It is expected that California gnatcatchers will use this restored habitat based on the diverse topography that is included, the low level of projected use, degree of enhancement to the habitat, current use of roadside areas (i.e., along West Coast Highway in the southern portion of the Project area), and previous experience. California gnatcatchers have been shown to utilize revegetated sage scrub communities, including smaller interstitial areas (e.g., East Coyote Hills, Trump National Golf Course) across their range. They have also been shown to use highway margins as territories and movement corridors (e.g., populations along I-5, I-15, Highway 52, etc.). In fact, the draft North County MSCP discusses the use of this in their conservation strategy for California gnatcatchers – the use of “stepping stone” corridors along I-15 to get from one core block to another. Further, California gnatcatcher have been documented to occur directly adjacent to major roads, even crossing over them to utilize resources or establish territories (e.g., South Idaho Street/North Gilbert Street in Fullerton; numerous streets in Coto de Caza; Palos Verdes Drive in Rancho Palos Verdes; Highway 52 in San Diego County; and, Olympic Parkway in Chula Vista, San Diego County. Ortega). Please see Exhibit 7, the pink dots represent occurrences of CAGN within 50-feet of a “major road,” as classified by TIGER – generally these are toll roads, highways and freeways; the yellow dots represent occurrences of CAGN within 50-feet of a “road,” as classified by TIGER – generally these are primary and secondary roads (two – four lane roads).

Additional Project Alternatives Considerations - Local and Regional Mobility and Smart Growth

We acknowledge the Coastal Commission does not certify local and regional transportation plans. However, local government and regional transportation planning agency efforts to comprehensively plan and implement sustainable transportation and mobility improvements within the Coastal Zone are nonetheless important factors to be considered during the Commission’s review of Project development. This is particularly true where planned circulation improvements, such those included in the proposed Project, are not intended to function as an isolated or private transportation corridor, but rather as one element within a larger local and regional mobility network that specifically serves to enhance public access to the coast and upland recreation areas.

In correspondence with OCTA it has been indicated that a transit stop will be relocated to the intersection of Bluff Road West Coast Highway as part of an existing route to serve the Project. Without the connection to West Coast Highway, this stop is not realistic, nor would access exist from the Project site. Please see Attachment A.

As we have previously stated in our prior responses and provided here for context:

January 10, 2104

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“The West Coast Highway connection creates coastal access from inland areas and the Project, provides access for public parking for the beaches and the proposed Natural Open Space Preserve, provides access to onsite amenities including proposed public parks and interpretive areas, as well as creating better Project circulation and minimizing traffic impacts to existing adjacent neighborhoods and businesses.”

November 8, 2013

“Alternatives with reduced Project densities were analyzed in the City’s EIR which was submitted as part of the CDP application. Alternatives that do not provide access from West Coast Highway were determined to be infeasible because they would conflict with the City’s General Plan Circulation Element and County Master Plan of Arterial Highways that provide for a connection that accesses and traverses the Banning Ranch property from West Coast Highway to Newport Blvd.”

The connection of Bluff Road West Coast Highway provides for greater mobility throughout the larger area and provides for more reliable access to the coast – including public access to parking being created on the Project site – improving local quality of life, while fulfilling the Coastal Act mandate to preserve and enhance coastal access.

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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 NOLA 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.*

Additional development within the consolidation area is not required.

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1. HCCMP

Thank you for sending the HCCMP. We have had our staff biologist Janna 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

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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 NOLA:

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.

COMPLETED

Page 4

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 NOLA, 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 Regional sheets.

Please see Attachment B.

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3. Vegetation Mapping

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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 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.

Project team, CCC Planning Staff and CCC Biologist Dr. Engel conducted a site tour to review current site vegetation, site vegetation mapping and mapping methodology. Based on this site meeting, and subsequent meetings and discussions with CCC Staff, the project team understands that this item is complete and CCC Staff has enough information to complete its analysis.

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4. California Gnatcatcher Survey

In our March 1, June 14, and December 6, 2013 NOLA 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 NOLA 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 site 2[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

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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.

No action required.

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5. Burrowing Owl

We look forward to reviewing the future Wintering Owl Habitat Survey and consider it necessary to complete the application.

Please see Attachment C, previously provided and provided herein on CD (not printed).

Page 5

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.

As noted above, in CCC Alternative Project 2, this plan does not include field lighting in the Community Parks. If the Cities of Newport Beach decide to request field lighting, they can do so through a separate CDP process after initial Project approvals and a CDP have been issued. A lighting analysis would also be required at that time.

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7. Mitigation Banking, Wildlife Mobility, Pocket Mouse Survey, Known Biological Surveys.

These items need no further attention at this time.

COMPLETED

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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

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areas that is less environmentally damaging. Additionally, please submit plans for the proposed bridge over the riparian area.

As noted above, West Coast Highway CCC Alternative Project 2, eliminates all filling of riparian and wetland areas by either the removal, realignment or bridging of roads. Please see Exhibit 2 for typical bridge abutments and for a bridge cross-section. Also please see Exhibit 5 that overlays CCC Alternative Project 2 on a jurisdictional delineation map.

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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 NOLA dated December 6, 2013.

As noted above, CCC Alternative Project 2, eliminates filling of riparian and wetland areas by relocation of storm water detention structures. Please see Exhibit 2 for storm water detention locations. Also please see Exhibit 5 that overlays CCC Alternative Project 2 on a jurisdictional delineation map.

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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 NOLA letter, when they are complete.

Please see fuel modification plans included with this submittal as Exhibit 1. Additional development within the consolidation area is not required.

Page 6

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, Janna 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.

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The "Oilfield Abandonment and Soil Remediation Area" constraints map indicate where soil remediation will take place, in some cases under, though, 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?

A discussion draft hardcopy has been delivered to the CCC Energy Staff in San Francisco and the Long Beach Planning Staff.

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C. Geology

1. Bluff Edge Delineation

Thank you for submitting the revised bluff edge delineation maps.

COMPLETED

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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 Nino-Southern Oscillation events, major earthquakes, and long-term climate change on a multidecadal to 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 NOLA:*
- b. Demonstrate that the anticipated sea level rise and storm surges will not require construction of bluff protective devices.*

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- c. *Demonstrate that the anticipated sea level rise and storm surges will not rely on grading and/or landform alteration.*

Please see Attachment D.

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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.

30% grading plans are included as Exhibit 2.

Revised CCC Alt. Project 2 eliminates all grading of Coastal Bluffs and any grading of arroyos. See CCC Alt. Project 2 plans.

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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.

Project heights exhibit is included as Exhibit 3.

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2. 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 COP application.

Pedestrian bridge exhibit included as Exhibit 2.

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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.

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We wish to clarify the Commission staff's interpretation of our prior response regarding "takings." Commission staff requested in the prior Notice of Incomplete Application detailed information regarding the purchase price of the property, the fair market value of the property, and other financial information all in the guise of needing this information to deem the application complete.

In our January 10, 2014 response and submittal we reiterated our position that none of this information is necessary to deem the CDP application complete, nor is it relevant to consideration of the proposed development that is the subject of the CDP application. The fact that the Commission staff requests information to determine whether it can deny the permit and avoid liability for taking private property under the U.S. Constitution goes well beyond the Commission staff's jurisdiction. As we have stated in our prior responses, whether a governmental regulatory decision results in a takings that must be compensated pursuant to the Fifth Amendment of the U.S. Constitution are constitutional determinations under takings jurisprudence. The Coastal Commission has no jurisdiction to make constitutional adjudications, nor to force applicants to submit information in support of such an adjudication. The weighing and balancing of constitutional determinations is beyond the Commission's authority. "[T]he Commission is authorized to make and enforce rules and decide whether to grant permits. It is not an adjudicatory body authorized to decide issues of constitutional magnitude." *Healing v. California Coastal Commission* (1994) 22 Cal.App.4th 1158, 1178.

We agree with staff that no further information is required to be submitted with respect to this issue in order to deem the CDP application complete. However, we take issue with Commission staff's misquoting of our submittal letter. In that letter, we noted that none of the staff reports cited by Coastal Commission staff concluded that the denial of a requested permit resulted in an unconstitutional takings and that we assumed that the Commission staff would conclude similarly with respect to the proposed NBR project, and therefore saw no reason to complete the Takings Form as there is sufficient information in the record before the Commission to analyze all aspects of the requested permit. We do not agree that the denial of the requested application would not constitute an unconstitutional taking of private property and fully reserve the right to challenge any denial by the Coastal Commission of the requested development in a court of law.

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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.

COMPLETED

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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, and 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 NOLA for more details.

Please see response to 6. Co-Application Invitation below.

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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 NOLA.

Additionally, as noted in our December 6, 2013 NOLA, 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

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for you meet this requirement .is to include your consistency certification in your application for a CDP for this project.

We acknowledge the requirement for a Federal Consistency Determination, as Applicants for federal agency permits, such as U.S. Army Corps of Engineers (Corps) permits, must conduct their activities in a manner consistent with the California Coastal Management Program (CCMP).

The NBR Project initially submitted a Section 404 Permit application in 2009, and the U.S. Fish and Wildlife Service (USFWS) initiated Section 7 Consultation with the Corps in July 2009. Due to a number of factors such as updated vegetation mapping, expanded fairy shrimp surveys, and other concerns that arose during the local approval process, the Section 404 permit application was withdrawn prior to completion. Following completion of the updated biological surveys, including vegetation mapping and completion of fairy shrimp surveys, (completed in 2012-13), NBR will be reinitiating the 404 Permit process with the Corps. A pre-application meeting should occur by the end of April 2014, after which a formal application submittal will occur.

We will provide, in our application to the Corps, a certification of coastal consistency. The certification will include a variety of required elements and will also be submitted to the Commission. The supporting information will 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 will 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.

All written communications between the Corps, USFWS and NBR will be forwarded to the Commission.

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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.

COMPLETED

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8. Parking

Thank you for the clarifications. No further information is needed at this time. See the below discussion regarding the TDM Plan.

COMPLETED

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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 where HSCs would be installed and what types, as requested in the NOLA 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?

Infiltration plans are provided as Exhibit 4.

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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.

- Timing: Once the success standards have been met as detailed in the HCCMP, approximately 5 years, the Natural Open Space maintenance and management responsibilities will be transferred to NBLT.
- Funding: NBR anticipates that NBLT will be funded through a hierarchy of funding mechanisms, the final details of which will be worked out as part of the Project CDP. These include:
1. Third-party mitigation programs
 2. Property Transfer Fees
 3. Special Assessment Districts
 4. HOA Fees
 5. Fundraising
 6. Endowments and Grants
- The intent is to provide for a permanent funding source, in perpetuity, that does not use or rely on any public funding.
- Transfer: In connection with a Project CDP, a conservation easement will be placed over the designated Natural Open Space.

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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

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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.

CCC Alt. Project 2 avoids impacts to archaeological resources.

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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?

Since receipt of the NOIA Letter, CCC Staff has relayed a desire to remove the public trail that bisects the lowlands. The plans with this letter do not reflect that, however we will remove the trail. NBR will agree to remove this trail once the application is complete and at that time will integrate this and any other minor modifications as appropriate.

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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,

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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.

TDM study is included as Attachment E.

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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.*

As discussed with CCC Staff, the commercial uses for the project are what the City of Newport Beach's General Plan allows. This does not go to completeness of the application.

The proposed Coastal Inn and retail will require their own CDPs.

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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 NOLA letter dated December 6, 2013. Also note that public opposition to a project can impact Commission decision-making before and during a hearing.*

As per NBR's recent meetings with CCC Staff we understand this item does not go to the completeness of the application. It should be noted that NBR agrees to continue to work with CCC Staff to assist in addressing and responding to the comments as appropriate during the application and Commission deliberation process.

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16. Filing Fee

*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.*

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During the March 7, 2014 meeting with CCC Staff the LEED-ND program was discussed in further detail to clarify the matter of qualifying for the fee reduction program. Additionally, please note that NBR is a REGISTERED LEED-ND Project.