

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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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 "re-abandoned" 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.

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 your 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
Coastal Program Analyst



Karl Schwing
Coastal Program Manager

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Comments on NBR CDP application submitted 10/30/14
Terry Welsh, Banning Ranch Conservancy
11-23-14

It is estimated that over 95% of Southern California coastal vernal pools have been lost to development. With its relatively flat topography and clay soils acting as an aquatard, it is not surprising that vernal pools are found on the Banning Ranch mesa. USFWS considers the vernal pool complex at Banning Ranch, along with the complex at near-by Fairview Park, to be the only remaining examples in coastal Orange County. Although the USFWS designated 15 acres of the Banning Ranch mesa as critical habitat for the San Diego Fairy Shrimp in 2007 (the only vernal pool complex in Orange County receiving a critical habitat designation), it is clear, from a series of aerial and ground photos taken during the above-average wet seasons of 2009/2010 and 2010/2011, that the vernal pool complex on the Banning Ranch mesa extends over much of the mesa.

As Banning Ranch has served as an oil field for the last 70 years, the vernal pools/seasonal wetlands show a range of disturbance. Still, a series of wet and dry season surveys have, so far, documented listed or non-listed fairy shrimp in at least 38 of these vernal pools/seasonal wetlands, including 8 occupied by the San Diego Fairy Shrimp. In short, the vernal pool complex at Banning Ranch is alive and should be preserved to the greatest extent possible.

1. On pages 18 and 19 of the recent NBR cover letter, the applicant discusses each of the 49 – 53 vernal pools/seasonal wetlands and mentions the number of wet season and dry season surveys done on each of these vernal pools/seasonal wetlands (except those documented to be occupied by the San Diego Fairy Shrimp). The number of wet season surveys is incorrectly overstated by one in 22 of the vernal pools/seasonal wetlands discussed (A, W, II, K, L, JJ, OO, Q, S, U, Z, AA, DD, EE, FF, QQ, RR, SS, TT, BB, KK, and LL).

The reason for this is not clear. Since it is unlikely that there are additional wet season surveys that have not been reported to the agencies, it is possible that applicant is considering cases where the vernal pool/seasonal wetland did not pond during a survey, or a decision was made not to include the vernal pool/seasonal wetland in a survey, as a "wet season survey." The applicant should clarify their definition of "wet season survey."

2. Despite the applicant's repeated use of the term "wet season survey" the fact remains that USFWS-protocol fairy shrimp wet season surveys have not been completed on the majority of the vernal pools/seasonal wetlands.

Curiously, wet season surveys were only done on four of the vernal pools/seasonal wetlands during the above-average 2009/2010 wet season, despite the likelihood that all of the

estimated 49 - 53 vernal pools/seasonal wetlands ponded. When the presence of approximately half of the 49 - 53 vernal pools/seasonal wetlands was made known to the USFWS following the 2009/2010 wet season, the USFWS asked for protocol fairy shrimp surveys to be done on the property. Wet season surveys were performed on, and only on, this subset (approximately half of the vernal pools/seasonal wetlands) during the above average 2010/2011 wet season, despite the likelihood that all of the estimated 49-53 vernal pools/seasonal wetlands ponded. Unlike wet season surveys in later years, the 2010/2011 wet season survey didn't collect data on the duration or depth of the ponding for each of the vernal pools/seasonal wetlands. As a result, it was not possible to calculate the number of necessary samples to be collected. Some pools were under-sampled. For example, vernal pool/seasonal wetland "W," which is the largest on Banning Ranch and was documented (by near-by residents, but not the surveyor) to pond for 42 days during the 2010/2011 wet season, was only *sampled once during the entire 2010/2011 wet season.*

With the extreme drought that has occurred since, resulting in very few of the vernal pools/seasonal wetlands ponding during the 2011/2012, 2012/2013 and 2013/2014 wet seasons, we are in the position today that the majority of the vernal pools/seasonal wetlands on Banning Ranch *have not been subjected to USFWS protocol wet season fairy shrimp surveys.*

3. **The applicant's solution to this lack of protocol wet season surveys is to file the application for the project as planned, and for the project to be approved with a "special condition" that protocol fairy shrimp surveys be performed at a future date, before a final permit is issued.**

This solution must not be accepted. The applicant had ample opportunity to conduct protocol wet season surveys on all of the 49 - 53 vernal pools/seasonal wetlands during the 2009/2010 and 2010/2011 wet seasons, but chose not to do this. The preservation of the Banning Ranch vernal pool complex and its population of San Diego Fairy Shrimp (believed to represent the most northern extent of this species) are too important to deviate from the USFWS fairy shrimp survey protocols in order to accommodate the schedule of the applicant. Protocol surveys must be completed, even if this means waiting until an above-average rainfall wet season to complete the surveys, and even if it means the project being redesigned to avoid impacting the San Diego Fairy Shrimp.

4. **Even if the vernal pools/seasonal wetlands are documented to be occupied by the Versatile Fairy Shrimp, they should be protected as coastal wetlands under the Coastal Act.**

Vernal pools with either listed or non-listed branchiopods meet the "one-parameter" definition of coastal wetlands and should be protected, with appropriate buffers, under the

Coastal Act. The applicant should discuss development alternatives that avoid all coastal wetlands on the Banning Ranch Mesa.

5. Watershed information for all the vernal pools/seasonal wetlands has not been submitted.

While the applicant did submit approximate watersheds for the 8 occupied vernal pools/seasonal wetlands with their 5-17-13 application re-submission (File 19), they did not provide detailed methodology for these approximations. Certainly the applicant did not provide evidence that these watersheds would be sufficient to allow adequate ponding of the occupied vernal pools in the future to allow the survival of the San Diego Fairy Shrimp. Furthermore, approximate watersheds have not been submitted on any of the 41-45 other vernal pool/seasonal wetlands on the Banning Ranch mesa.

Due to recent negative impacts on vernal pools at near-by Fairview Park (the *other* Orange County coastal vernal pool complex), the USFWS has been working closely with the City of Costa Mesa to develop a plan to better-protect the vernal pools on the Fairview Park mesa. One result of this is a letter sent from USFWS to the City of Costa Mesa, dated 7-24-14 outlining some suggestions to better-preserve the vernal pools of Fairview Park. Most notable is a map of suggested protection areas, which include the watershed *plus a 100' buffer*.

<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=15159>

The applicant should provide a map of adequate watersheds with surrounding buffers, similar to that prepared recently by the USFWS, for every vernal pool/seasonal wetland on the Banning Ranch mesa (see attachment A).

6. In their HCCMP plan, the applicant has proposed preserving 7 of the 8 occupied vernal pools/seasonal wetlands, and "creating" additional occupied vernal pools/seasonal wetlands, in an approximately 8-acre area. The applicant has also proposed a monitoring method. While the applicant has provided their "expectations" of success, the applicant has provided no solid evidence that this proposal will result in the survival of the San Diego Fairy Shrimp on the Banning Ranch mesa, much less help in the recovery of this species from its endangered status.

It is difficult to imagine how building a 1375-home development immediately adjacent to, and mostly surrounding, an 8-acre vernal pool area would not have a negative impact on the fairy shrimp in this area. The applicant's proposal is a gamble that could result in the extirpation of San Diego Fairy Shrimp from Banning Ranch-the only USFWS critical habitat in Orange County. The applicant's argument that, since the San Diego Fairy Shrimp have

survived the oil field, they will likely survive the 1375-home development is difficult to understand. The oil field is a low density development which has had a relatively small crew of workers over the years, only present during the workday. The proposed high density development, on the other hand, will bring 2000-4000 full time human inhabitants (a small town) with cars, pets, noise, lights, waste, run-off, ect. Before any regulatory agency approves such a plan for preserving the San Diego Fairy Shrimp on Banning Ranch, there must be ample evidence of its likelihood of success, in the form of multiple examples of similarly-designed fairy shrimp preservations; not just "expectations" from the applicant's paid consultants. There must also be a frank discussion of similarly-designed preservations that have not resulted in success.

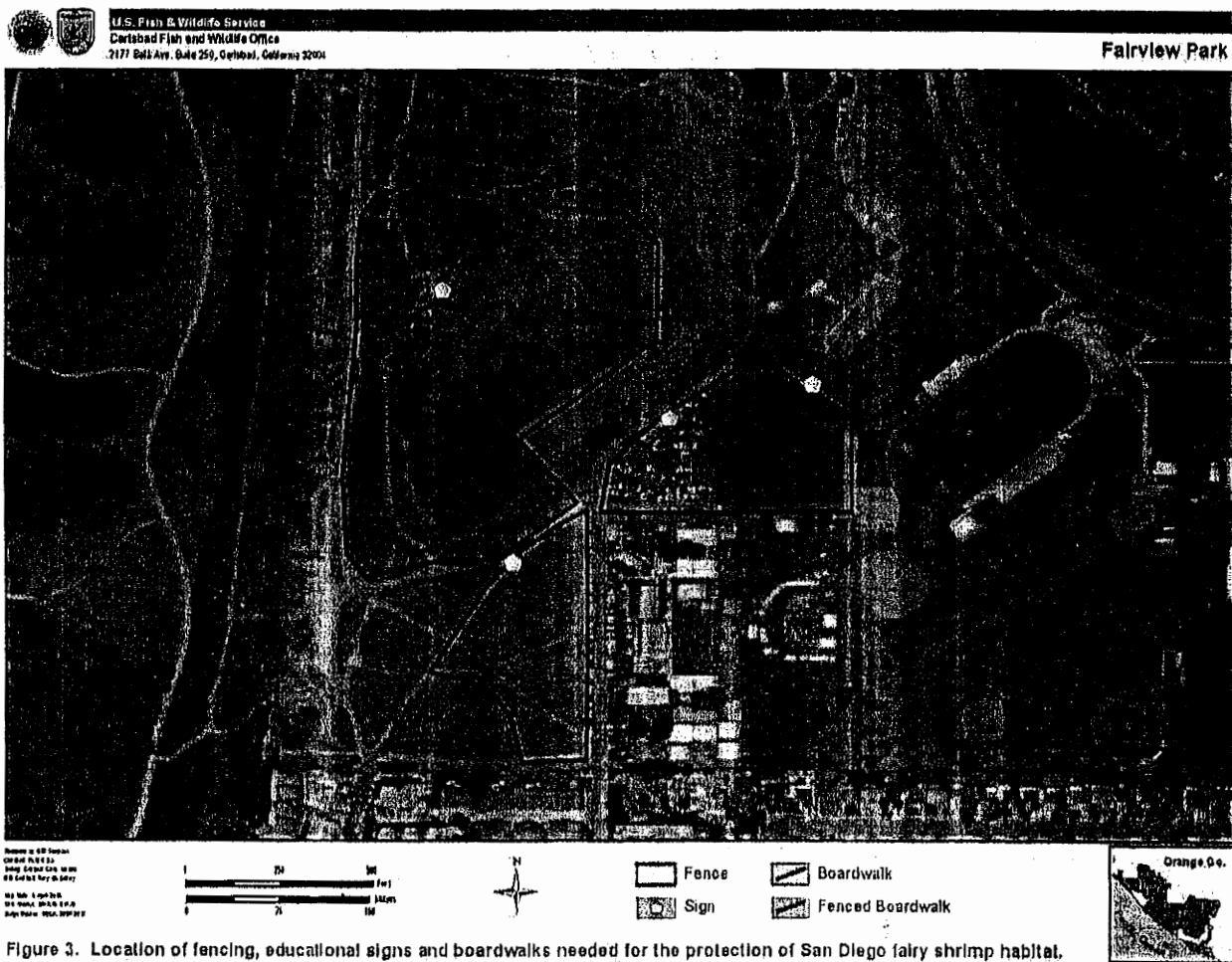


Figure 3. Location of fencing, educational signs and boardwalks needed for the protection of San Diego fairy shrimp habitat.

Attachment A: Vernal Pool buffers at Fairview Park in Costa Mesa

California Coastal Commission
South Coast Division Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Banning Ranch CDP (application 5-13-0332)

Dear Coastal Commission Staff,

When I first became involved in saving Banning Ranch in 2006, the developers claimed that no vernal pools existed on the property. The developers known as Newport Banning Ranch (NBR) stated the only pool of water on the property was a man made hole that was originally used for softball for oil workers. Presently the NBR is claiming that vernal pools do, in fact, exist, however, several identified, proven vernal pool should be disqualified on the basis that the photographers or sources of are unqualified. It was because of these "amateur like" photos that the USFWS ordered surveys of six (6) of these vernal pools which proved the presence of San Diego Fairy Shrimp and thirty (30) with Versatile Fairy Shrimp.

Citing qualification standards such as "an exhaustive laboratory test" and then retaking the test to renew the certification is padding to their rejection of proven vernal pools. NBR refers to the vernal pools as "puddled areas" saying the photo does not gauge pool depth; however, NBR has continuously refused to survey vernal pools that were named. While the aerial photographs do not determine depth; instead they determine the exact locations. The aerial photos have been powerful in identifying and locating vernal pools; the pools existence was denied by NBR. Requests made to NBR to survey vernal pools after seasonal rain were denied. NBR disputes the existence of several vernal pools therefore will not admit the existence of San Diego Fairy Shrimp(SDFS). NBR should respond to this letter by guaranteeing access, immediately following rain, to inspect vernal pools that NBR is claiming are just puddles.

It is also believed that vernal pools have been filled in with soil as to cover them. Scrapes have been done to some vernal pools on Banning Ranch. One vernal pool, had the existence of SDFS, was scraped and then filled in. These vernal pools stand in the way of the developer's project and since the public is not permitted onto the property then the developers have been free to disturb pools.

Since 90% of California's vernal pools have been destroyed then the CCC must zealously endeavor to preserve existing vernal pools and rehabilitate damaged vernal pools on the Banning Ranch property and not let the developers dictate and determine what vernal pools exist.

Truly,

Christopher S. Bunyan
Banning Ranch Defenders, President
714.865.9746

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November 24, 2015

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

Dear Amber and Karl:

Please see my comments below in response to NBR's October 30, 2014 CDP application submission. My comments focus on correspondence and data submitted by the applicant and LSA Associates Inc. regarding 1) West Coast Highway access and Bluff Road alternative and 2) "Exhibit 8, Allowable Building Heights".

Comments:

The City of Newport Beach DEIR traffic analysis found that the proposed development, which as you may recall is the maximum allowable per the City of Newport Beach General Plan Land Use Element, would result in 15,000 average daily vehicle trips resulting in significant impacts to numerous intersections surrounding the project as well as noise and air quality impacts in the surrounding communities, schools, and neighborhoods.

On page 6, II A., of "October 30, 2014 NBR Response Letter", it is stated that: "Further amending the MPAH and Circulation Element to reduce the size of Bluff Road to two lanes would reduce the ability of Bluff Road to serve its regional purpose. Eliminating the intersection of Bluff Road with West Coast Highway altogether would leave neighborhoods west of SR-55 with Superior Avenue alone to access coastal resources, potentially competing with regional coastal access trips utilizing the same access corridor."

Since when is the purpose of Bluff Road in the scheme of the proposed development suppose to "serve its regional purpose"? As a concerned citizen, I object to the presumption that the development of Banning Ranch and the case for Bluff Road is justified for "regional purposes" as the Applicant and LSA want us to believe and accept. Isn't this putting the cart before the horse? This project will result in 15,000 more vehicles on the road daily. I am concerned that the notion of a "regional purpose" for Bluff Road and/or a West Coast Highway access is being used by the Applicant to disguise or minimize the impact of 15,000 vehicles that will result from the proposed project.

Additionally, I continue to be concerned that the Applicant has not submitted a reduced development footprint; specifically, a development footprint that reflects fewer residences, less commercial/retail square footage and no resort hotel and/or reduced resort residential, which in fact would reduce average daily traffic traveling on the Banning Ranch and spilling over into surrounding roadways. This seems like an obvious and reasonable option to reduce traffic and hence, have a bearing on the need for a West Coast Highway access. Why does the Applicant persist in a pushing a development that is nothing less than the maximum development allowed per the City of Newport Beach's General Plan?

Additionally, Bluff Road as the park entrance road to the Sunset Ridge Park immediately adjacent to Banning Ranch was denied by the Coastal Commission due to the existence of ESHA on that portion of Bluff Road. I apologize if the Applicant has addressed this in a prior CDP application submission which I have overlooked but the Bluff Road access to the Sunset Ridge Park was denied by the Coastal Commission so what makes it useable in the context of the proposed Banning Ranch project?

Regarding "Exhibit 8, Allowable Building Heights": Per the City of Newport Beach CLUP, policy 4.4.2-1, building height limitations are set at 35'. All the building heights depicted on "Exhibit 8, Allowable Building Heights" exceed the 35' height limitation. Perhaps I do not have a complete or accurate understanding of height standards for this project and the need for the Applicant to conform to the City's CLUP on height standards, but wanted to have this concern about building heights for the proposed Newport Banning Ranch on the record.

Furthermore, please see below a list of prior City of Newport Beach projects where the CLUP has been amended to allow for structure heights in excess of 35'. This seems to be becoming a pattern and as a member of the public and long-time resident of Newport Beach this gives me great cause for alarm.

- June 2012, Marina Park, CDP No. 5-10-229: The Coastal Commission approved an exception to the 35' height limitation set forth in the City of Newport Beach CLUP for an over 50' high lighthouse structure.
- February 2013, City of Newport Beach approved the Back Bay Landing project DEIR which included an amendment to the CLUP to allow for a viewing tower up to 65' tall. The CDP application is in progress (unable to locate CDP application number).
- August 2014, The Lido House Hotel, City of Newport Beach approved the DEIR which included an amendment to the CLUP to allow for building height of 55' to 65'. This project will also go before the Coastal Commission.
- October 2014, Newport Town Homes LLC., CDP No. 5-14-0613. Here is another case where the City amended its CLUP to accommodate an exception to the height limitation for this project.

In an October 6, 2014 addendum to this project, "Addendum to Item Th10d, Coastal Development Permit Application No. 5-14-0613 (New Port Beach Townhouse, LLLP), for the Commission Meeting of Thursday, October 9, 2014", James Mosher, also a Newport Beach resident sent in a comment which sums up my very concern over height limitation exceptions being made over-and-over again and now apparently being attempted by the Newport Banning Ranch Applicant.

Note: Mr. Mosher also mentions yet another proposed Newport Beach project that is not included in my list above. This is the proposed "Balboa Marina Expansion" project, which is under review by the City's Planning Commission. This is another project that includes an amendment to the CLUP to allow for a height limitation exception for one of the proposed structures. This project will also go before the Coastal Commission for review assuming that the City Council approves it, which no doubt they will.

Mr. Mosher's correspondence reads as follows:

"Date of comments: October 3, 2014

Agenda Item: Th10d-10-2014

Application No.: 5-14-0613

My position: Support staff recommendation

California Coastal Commission (attn: Matt Stone)

South Coast Area Office

200 Oceangate, Suite 1000

Long Beach, CA 90802-4302

Dear Mr. Stone,

I would like to express my support of CCC staff's recommendation that the applicant for these 23 townhomes be required to complete their project entirely within the 35-foot height limit imposed by Policy 4.4.2-1 of the City of Newport Beach's certified Coastal Land Use Plan.

I say this because I believe the people of California should have a reasonable expectation that publicly adopted policies mean what they say. In this case, the 35 foot height limit in the CLUP seems simple, straightforward and unambiguous. Making one-off exceptions and allowing an otherwise clear policy to mean whatever the local City Council or staff declares it to mean in documents that are not part of the publicly agreed to CLUP makes the policy all but meaningless and erodes public confidence in predictable governance.

As an example of the continuing rush for "exceptions" to the Policy 4.4.2-1 height limitation that CCC staff properly anticipates, just last night the Newport Beach Planning Commission approved a Mitigated Negative Declaration for new conceptual development in the parking lot at the southeast corner of the Upper Newport Bay Bridge – the lot locals will remember as once serving the Reuben E. Lee floating paddle-boat restaurant. On page 26 of Appendix M2 to the MND a building with a roof sloping to 40' is found "consistent" with the 35' limit of the certified CLUP.

Likewise, to make way for the Back Bay Landing project across PCH from this, that is, adjacent to the northeast corner of the UNB Bridge, the CCC will soon be receiving a request to amend the CLUP to allow for a 60 or 70 foot tall architectural feature. And at the September 9, 2014, City Council meeting the public saw plans approved for a new hotel on the old City Hall site (across the street from the present townhome project) much of which the city plans to allow to be built to 65'.

Apparently in the view of some, 35' is a flexible limit that doesn't in itself mean much when there is a desire to do something different. To me, this is as if in an area requiring 5' setbacks, 2' or 3' was regarded as equally good whenever 5 was inconvenient, because 2 and 3 are close to 5.

Again I agree with staff's recommendation that development be required to stay within the limitations imposed by the certified CLUP and that exceptions not be allowed unless a coherent policy for granting them has been incorporated into the CLUP or a publicly agreed to implementation plan for it.

Yours sincerely,
James M. Mosher, Ph.D.
2210 Private"

Once again I wish to extend my appreciation for your hard work and dedication to uphold the Coastal Act, and preservation of our precious and limited California coastal resources. I hope you have a well-deserved and Happy Thanksgiving holiday.

Sincerely,

Dorothy Kraus
10 Wild Goose Court, Newport Beach

11/24/2014

Attn: Karl Schwing
Amber Dobson
CA Coastal Commission Staff

RECEIVED
South Coast Region

NOV 24 2014

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Schwing and Ms. Dobson,

I have some questions regarding the recent submission labeled Attachment A1 - NBR Oil Field Abandonment Plan DRAFT 2014 1022 (Report, Ex 1-6).

Specifically, the map listed as:

Map 1 Recognized Environmental Conditions (RECs) / Potential Environmental Concern (PECs) Oil Field Abandonment and Remediation map provided by Dudek (2011 aerial source map and PEC data provided by Fuscoe Engineering).

I question the suggestion that each of these areas fall under either the definition of REC or PEC.

I specifically would like to address three of the PEC locations listed on the south mesa of Banning Ranch.

The three PECs listed on the south mesa 14, 22, 23 are labeled as:

14-Coast Wash Station
22-Field Office
23-Soil/Debris Stockpile

Has evidence been provided that supports this hypothesis? If so, to which category does each of these sites belong-REC or PEC? If these three sites were of potential environmental concern to public health I believe the RWQCB would have addressed them as such in their ongoing oversight of the water quality monitoring activity at the site since January 21, 1999, when West Newport Oil was found in violation of illegal discharge into the wetlands by the RWQCB.

In the letter dated Sept. 26, 2006 addressed to Mr. Richard Baker at the Division of Oil Gas and Geothermal Resources from George Basye-Manager for Newport Banning Ranch LLC, the land owner claims ownership of the Soil/ Debris Stockpiles and described that the Soil/ Debris Stockpiles were moved from the lowland/wetland area up onto the mesa in explanation that it was to be used later for a development project.

The Landowner also claims that there is "no chance of damage to life, health or property."

See the following question posed by RWQCB and directed to West Newport Oil and the response provided by NBRLLC.

Item #1: "Disposition of the debris piles of well cellar concrete and well scrap material located in the bluff area"

As outlined in our letter of August 24, 2006, the concrete stockpiles are owned by NBRLLC and will be recycled and reused as crushed fill in our future land development. The stockpiles were moved from the lowland portion of the property to their present locations under the direction and oversight of the Santa Ana - Regional Water Quality Control Board (RWQCB) over the last two years. The stockpiles were inspected by both the RWQCB and the Orange County Planning Department, and both agencies expressed satisfaction with their present location and the plan for the stockpiles to temporarily remain in those locations until the future reuse. The property is secured from public access and, as such, there are no public nuisance or public safety issues. The stockpiles are placed and segregated so that there is no chance of damage to life, health, or property. In fact, the stockpiles were moved to these locations in the last two years as a preferable alternative to the lowland locations. At this point in time, our plan is to leave the stockpiles in their current location and continue to monitor the site to ensure it is secure and does not pose a future public nuisance.

The Landowner also claims that, "There are no hazardous levels of any constituents in these soils nor are there any volatile components of concern."

This is in contrast to the data/map that Fuscoe Engineering and Dudek have provided .

Item #2: "Disposition of the oil field contaminated soil pile located in the bluff area"

These soils are located in an engineered and lined soil storage area. The soils that were initially placed in this lined storage area were from an excavation containing a mixture of soil and cement returns related to well abandonments conducted by WNOC. In the Remedial Action Plan for that soil removal project, which was approved by the RWQCB, it was stated that these soils would be stored at this location until their reuse onsite in the future development. There are no hazardous levels of any constituents in these soils nor are there any volatile components of concern.

Item #12: "A proposal regarding the safeguarding of the Division of Oil, Gas and Geothermal Resources against future debris removal costs if we agree to allow you to store the debris mentioned in #1 above. This safeguard should be in the form of a bond in the amount required to remove all oil field waste and ship it to an appropriate recycling facility. The bond will also need to be reviewed each year to determine if it remains adequate to cover all future costs"

As we discussed in our previous letter and in Item #1, the concrete stockpiles are no longer the property of the oil operator but are in fact owned by the surface owners and are planned to be used as recycled material in the future development of the property. We are not aware of any statutory or regulatory requirement for a surface owner to bond for non-hazardous stored materials on private property. As both the RWQCB and the Orange County Planning Department (Enforcement) have also reviewed the stockpiles and found no deficiencies, we are unsure how to further address your question or concern. We are willing to meet with you at your convenience to discuss and understand this issue and concern further.

Additionally, the pipeline shown in this area extending from West Pacific Coast Highway to the PEC 22-Field Office, to PEC 23-Soil/Debris Stockpiles, and westward beyond does not describe what, if any use this pipeline serves. Has this been suggested to be an active pipeline?

There are NO active wells on the south mesa of Banning Ranch. After reviewing the proposed and active pipeline maps included along with the application for exemption filed by General Crude Oil Company July 27, 1973, the nearest mapping shows the pipeline could be a defunct well testing/oil gathering system.

DOGGR does not require the removal of underground pipeline to consider that a site has been 'remediated'. There is a process of injection of slurry into the pipeline that is acceptable to DOGGR standards.

Thank You,
Cindy Black

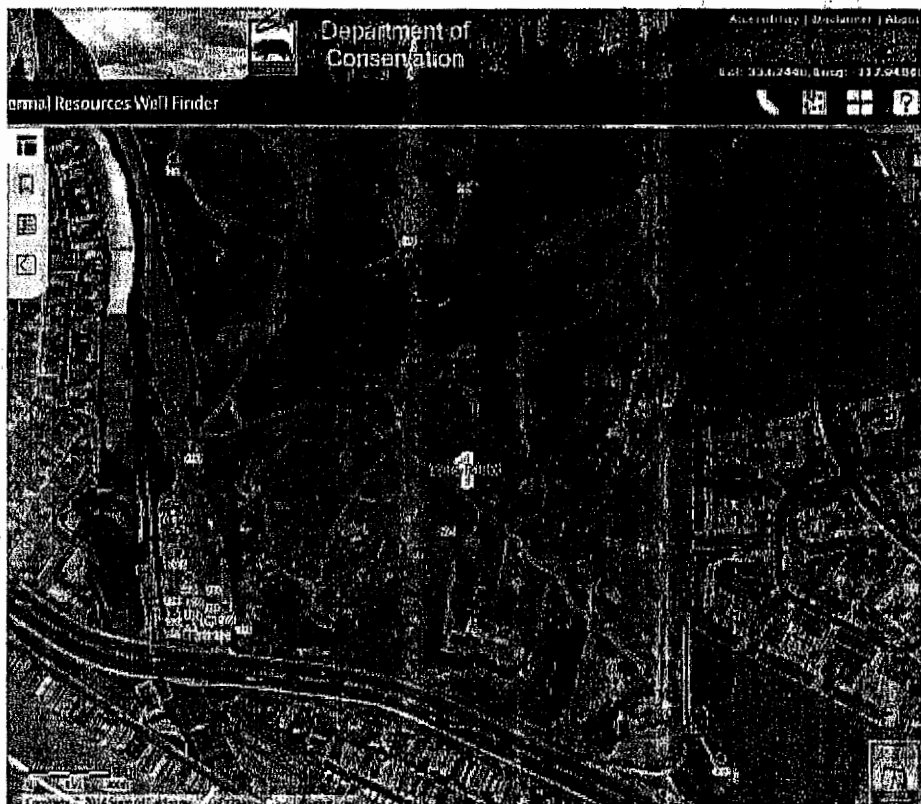
Dobson, Amber@Coastal

From: C B <cblack949@hotmail.com>
Sent: Monday, November 24, 2014 7:12 PM
To: Dobson, Amber@Coastal
Cc: Schwing, Karl@Coastal
Subject: Additional comments on Banning Ranch PECs
Attachments: CCC Pipeline.doc

Dear Mr. Schwing and Ms. Dobson,

Please review my attached comments concerning the areas of Potential Environmental Concern.
I wasn't able to paste the comments into the body of this email.

Active wells on BR south mesa are highlighted in red.



Thank you,
Cindy Black



**Nature
Commission**

RECEIVED
South Coast Region

NOV 25 2014

CALIFORNIA
COASTAL COMMISSION

Nov 25, 2014

California Coastal Commission

South Coast District Office

200 Oceangate, 10th Floor

Long Beach, CA 90802

Dear Coastal Commission Staff,

I would like to add these comments in regards to the Banning Ranch CDP (application 5-13-032):

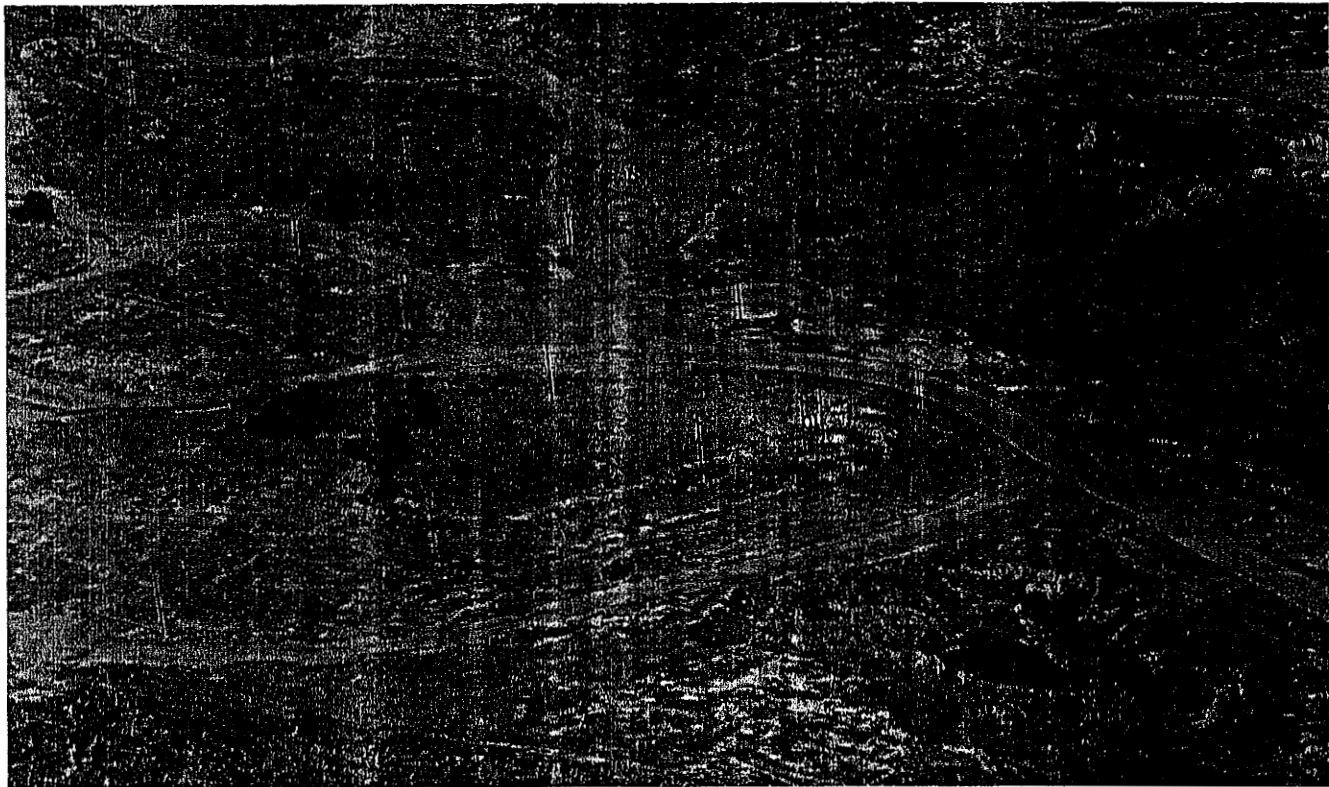
1. As regards attachment C of the application on Gnatcatcher surveys, the condition of the site shown in aerial photos from 2012 forward (2013 image attached) indicate the habitat was not in a state that would allow for a valid survey to take place. The habitat bears little resemblance to what it would otherwise be without extensive and unnecessary mowing, and the fact that CAGN territories were confined mainly to a few bluff and arroyo areas serves to confirm this.
2. A significant arroyo and drainage the runs north from the main arroyo must be analyzed by the Army Corps of Engineers through its jurisdictional delineation process before the Coastal Commission considers a development footprint that may undergo significant change as a result of other agency determinations. I spoke with ACOE today, and was told that a determination on NBR's application had not been made.

Thank you,

Kevin Nelson

Taken in December 2013, this part of the mesa shows some vegetation in an arroyo on the right, yet almost none in the areas surrounding the trees on the left. This effect is not simply the result of low rainfall.

Since CAGN rely directly on this type of habitat, the surveys are not valid in terms of an actual biological baseline.



Dobson, Amber@Coastal

From: C B <cblack949@hotmail.com>
Sent: Monday, November 24, 2014 10:37 AM
To: Dobson, Amber@Coastal
Cc: Schwing, Karl@Coastal
Subject: Banning Ranch Application 5-13-032 BUOW

Attn: Amber Dobson-CA Coastal Commission Staff
Subject: Focused Non-Breeding Season Burrowing Owl Surveys
Project: Application 5-13-032 2014 Newport Banning Ranch

Dear Ms. Dobson,

I am writing to clarify any misinterpretation in regard to my public comments on the BUOW survey report prepared by the principal biologist at Dudek dated March 7, 2014, and to also provide you with the data which I had collected when assimilating my report.

I am familiar with survey protocol, the pertinent data collected during survey and the form used when completing a survey. My past experience has been working in the agricultural research field with UC Davis and with the CDFA. In addition, to stay current, I attended a weekend workshop with the California Native Plant Society that demonstrated a new method of survey protocol.

In the report provided by Dudek's biologist there was one habitat assessment/focal survey done on two subsequent days and three additional non-breeding surveys which followed, for a total of five site visits. While I don't discount Dudek biologists effort in conducting the BUOW survey I do believe it lacks comprehensively in comparison to the data which I have provided.

As mentioned in my previous comments I have visited this site between December 2012 and March 2014, with a minimum of 42 site visits with observation of BUOW.

Furthermore, there has been an omission of data that is found on the CDFW 'survey form' dated 1/08/2014 but is not included in the BUOW report;

"One burrowing owl individual detected perched on a mound adjacent to a burrow with sign (i.e., white-wash and pellets). Another suitable burrow with burrowing owl sign observed approximately 0.30 mile northeast of the burrow where the burrowing owl was sighted."

The locations that the Dudek biologist have identified are distinct from the site(s) which I had observed BUOW. I had been observing an owl when I heard a vocalization southeast of my location. The owl I had been observing flew off in that same direction. This happened on 2 occasions. I do not find the additional three survey forms included in the response dated Oct. 30, 2014.

In the letter of response dated Oct. 30 2014 signed by Andrew Holstein, it is asserted that my public comment did not provide the time that my photo's were taken. As written in my public comments, the dates and time of photo's can be found by viewing the 'properties' selection in the photo.
Example Jan. 2014:

1-11-2014 4:14 pm Hazy
1-13-2014 4:23 pm Sunny
1-15-2014 4:03 pm Sunny
1-20-2014 3:30 pm Hazy
1-24-2014 3:23 pm Hazy
1-26-2014 5:25 pm Hazy
1-31-2014 10:00 am Sunny/Hazy

I can not provide photo's from the Jan. 30th 2014 observation, only my recordation of sighting.

To be clear-The location is within the project site.

The HCCMP proposed mitigation of impacts, regardless whether the impacts are permanent or temporary, are not sufficient in protection of burrowing owl species. Establishment of grassland within the vernal pool complex is not an acceptable exchange for destruction of current BUOW habitat. The area of the proposed project 'vernal pool complex' size is inadequate and does not provide any safety for the owls. Nor will the owls have a large enough area in which to forage for food.

Thank you for reviewing my comments and taking them into consideration. Please let me know if I might provide any additional information.

Sincerely,

Cindy Black