RESPONSE TO CALIFORNIA COASTAL COMMISSION'S COMMENTS ON THE NEWPORT BANNING RANCH PROJECT COASTAL DEVELOPMENT PERMIT APPLICATION

Introduction

1. **Adequate project description, consideration of the project in the context of a Local Coastal Program vs. Coastal Development Permit (Page 1)**

Section 13053.5 of the Commission's regulations requires that a permit application shall contain, at a minimum, "an adequate description...of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act. The submitted permit application fails to meet this standard, and does not provide an adequate description sufficient to determine whether or not the project complies with all relevant Coastal Act policies. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for certain types of structures, and various other draft plans for public amenities and habitat restoration. The coastal development permit process is not suited to the type of' conceptual' approval that is being sought in the proposed application because only in a planning context can the Commission fully evaluate whether development of this scale can comply with Coastal Act policies. Given the scope and complexity of the proposed project, Commission staff has in the past and continues to recommend that the project be considered in the context of a Local Coastal Program review, submitted by the City. This would allow for consideration of significant threshold issues at the planning level, such as the kind, location and intensity of development that would be appropriate for the site given the policies established under the Coastal Act and the constraints present on the site (e.g. biological resources, geologic hazards, archeological resources etc.). **(Pg. 1, ¶2)**

Further, evaluating a project of this scale in a pure CDP context would be inconsistent with section 30604(a) because it will prejudice the local government from preparing a local coastal program that is in conformity with Chapter 3. This is so because the individual evaluation of site-specific resources on the ground on each individual building site would result in an incoherent and unintegrated development scheme where the purpose of a certified LCP is to develop an integrated and coherent development plan for a large area, like the subject area consisting several hundred acres of land. Only with the certification of an LCP for the project site can the Commission fully evaluate whether a proposed development of this scale complies with all relevant policies of the Coastal Act. Without a planning effort, the Commission is left with a scattershot approach where it will attempt to evaluate each component of development in a unique manner depending

> *on the individual site constraints as they relate to projects on that individual site which will inevitably lead to unworkable and inconsistent results when considering the overall development scheme and its compliance with Chapter 3 of the Coastal Act. Therefore, staff recommends that the applicant withdraw its application for development and work with the local government on developing an integrated and coherent local coastal program that will provide adequate policies, after exhaustive consideration of the coastal resources on the subject site, for future development on the site.* **(Pg. 1, ¶3)**

The Coastal Commission staff recommends that the project be considered in the context of a Local Coastal Program review. One of the reasons why the applicant elected to submit a coastal development permit application to the Coastal Commission is the complicated jurisdictional issues that affect the project site. The approximately 400-acre project site lies within the jurisdiction of both the City and the County of Orange. In fact, the majority of the project site is under the jurisdiction of the County of Orange, not the City of Newport Beach.

The City of Newport Beach under the Knox Cortese Hertzberg Local Government Reorganization Act is allowed to plan areas within its designated "sphere of influence." Given this authorization, the City included the project site in its General Plan noting that it is within its "sphere of influence" and adopted land use policies for the project site. The development that is the subject of this CDP application is consistent with the City's General Plan. The City's General Plan Land Use Element was the foundation for the City's Coastal Land Use Plan (LUP). Given that the project is consistent with the City's General Plan, consideration of the CDP application would not prejudice the City from completing its local coastal program (LCP). As the Commission's letter states, "the purpose of a certified LCP is to develop an integrated and coherent development plan for a large area, like the subject area consisting of several hundred acres of land." The City's General Plan which was approved not only by the City Council, but the Newport Beach voters, establishes the land uses and densities for the project site and provides the coherent development plan for this area that the CDP application implements.

As a CDP that is submitted to the Coastal Commission must be found consistent with the Chapter 3 policies of the Coastal Act, consideration of the project in the context of a CDP application allows the Coastal Commission the ability to "evaluate whether a proposed development of this scale complies with all relevant policies of the Coastal Act."

The Coastal Commission staff has requested that the applicant withdraw its application and work with the City to development an integrated and coherent LCP. As noted above, however, as the City only has jurisdiction over a small portion of the project site, preparation of a LCP would actually result in greater fragmentation of land use policies as both the City and the County would be required to prepare LCPs for the respective portion of the site that lies within their respective jurisdictions. (Coastal Act Section 30500(a) requires "Each local government ... [to]

prepare a local coastal program for that portion of the coastal zone within its jurisdiction.") Moreover, as the City of Newport Beach does not yet have a fully certified LCP, Commission staff's recommendation would require the City to prepare a LCP submittal for a segment of its coastal zone specific to the Newport Banning Ranch property, and for the County to do the same as its LCP is organized according to various geographic segments. Given that such a course of action would only promote greater fragmentation in planning, consideration of the entire property by the Coastal Commission in the context of a CDP application would appear to provide the most efficient means of comprehensive planning evaluated in accordance with the Chapter 3 policies of the Coastal Act.

At this point in time, it is also not feasible for the project site to be annexed into the City. Because of the City's policies on oil production, the existing oil operations do not allow for annexation into the City. Nor would either the City or County deem it desirable to unincorporate the area of the project site from the City and return it to County jurisdiction.

For these legal reasons, preparation of a LCP is not legally feasible, and consideration of the project in the context of a CDP is the most appropriate means to consider the proposed development in the context of the Chapter 3 policies of the Coastal Act.

The proposed project will establish open space as the primary land use for the large majority of the property which, as Commission staff has stated on page 5 of the incompleteness letter regarding open space, is clearly the preferred use of the property under the Coastal Act. Therefore, the cited "threshold issues" staff is concerned about are limited to the appropriate kind, location and intensity of development on 97 acres of the property, not several hundred acres as suggested in the letter. The Commission has reviewed and approved similar development proposals pursuant to the CDP process, including development approved for the Boeing Realty Corp. (5-03-355, 107 acres industrial), Brightwater (5-05-020, 68 acres residential/34 acres restoration/public access), Hellman Ranch (5-97-367, 18.4 acres residential/100 acres deed restricted/13.2 acres oil production/11acre park), and Comstock Homes (4-04-084/085, 36 acres residential/116 acre open space/public access).

The submitted CDP application includes a detailed project description and associated development plans approved by the City which, as supplemented by this resubmittal package, provide adequate detail to evaluate the proposed development for consistency with applicable Coastal Act policies. As requested, this submittal also includes a detailed consistency analysis of the proposed project with the City's certified LUP (Attachment 1) that demonstrates the level of project detail provided is adequate to evaluate the project for consistency with applicable Coastal Act policies and that the proposed project will not prejudice the City's ability to complete a fully certified LCP.

The complete Newport Banning Ranch (NBR) Planned Community Development Plan and Newport Banning Ranch Master Development Plan were submitted as attachments to the CDP application (Attachments 14 and 15, respectively). In addition, to assist staff's review of the application materials for completeness, a list of development plans and technical studies included in the initial CDP application and the supplemental materials included with this resubmittal is included below:

February 2013 Application Submittal

Master Development Plan

- Development Plan 1 Master Development Plan

Open Space, Parks and Trails Plans

- Development Plan 2-1, Open Space Preserve Project Restoration/Development Plan
- Development Plan 2-2, Parklands Project Development Plan
- Development Plan 2-3, North Community Park Project Development Plan
- Development Plan 2-4, Central Community Park Project Development Plan
- Development Plan 2-5, South Community Park Project Development Plan
- Development Plan 2-6, South Bluff Park Project Development Plan
- Development Plan 2-7, North Bluff Park Project Development Plan
- Development Plan 2-8, Nature Center / Vernal Pool Interpretive Area Project Development Plans
- Development Plan 2-9, Talbert Trailhead Area Project Development Plan
- Development Plan 2-10, Master Trails and Coastal Access Plan
- Development Plan 2-11, Multi-use Trail Cross-Section/Character
- Development Plan 2-12, Lowland Interpretive Multi-use Trail Cross-Section/Character
- Development Plan 2-13, Southern Arroyo Multi-use Trail Cross-Section/Character
- Development Plan 2-14, Bluff Park Pedestrian Trail Cross-Section/Character
- Development Plan 2-15, Bluff Toe Multi-use Trail Cross-Section/Character
- Development Plan 2-16, Public Bluff Park Multi-use Trail Cross-Section/Character
- Development Plan 2-17, Upland Interpretive Multi-use Trail Cross-Section/Character

Residential, Mixed Use/Commercial, and Visitor Serving Development, including Clustered Villages and Colonies, Plans

- Development Plan 3-1, Villages and Colonies Project Development Plan
- Development Plan 3-2, South Family Village Project Development Plan
- Development Plan 3-3, South Family Village Development Edge Section
- Development Plan 3-4, Traditional Homes Adjacent South Bluff Park Typical Plans and Elevations
- Development Plan 3-5, Motor Court Homes Typical Plans and Elevations
- Development Plan 3-6, Garden Court Homes Typical Plans and Elevations

- Development Plan 3-7, North Family Village Project Development Plan
- Development Plan 3-8, North Family Village Development Edge Section
- Development Plan 3-9, Traditional Homes Adjacent Scenic Drive Typical Plans and Elevations
- Development Plan 3-10, Coastal Homes Typical Plans and Elevations
- Development Plan 3-11, Beach Cottages Typical Plans and Elevations
- Development Plan 3-12, Village Flats Typical Plans and Elevations
- Development Plan 3-13, Urban Colony SPA 12a Project Development Plan
- Development Plan 3-14, Urban Colony SPA 12b Conceptual Development Plan
- Development Plan 3-15, Urban Colony Conceptual Edge Section
- Development Plan 3-16, Urban Flats Concept Plans and Elevations
- Development Plan 3-17, Resort Colony SPA 13a Conceptual Development Plan
- Development Plan 3-18, Resort Colony SPA 13b Project Development Plan
- Development Plan 3-19, Resort Colony Development Edge Section
- Development Plan 3-20, Resort Flats Concept Plans and Elevations

Grading and Drainage/Water Quality Plans

- Development Plan 4-1, Master Grading Plan
- Development Plan 4-2, Cross Sections
- Development Plan 4-3, Soil Disturbance Map
- Development Plan 4-4, Cut and Fill Map
- Development Plan 4-5, Bluff and Slope Restoration Plan
- Development Plan 4-6, Master Drainage Plan
- Development Plan 4-7, Water Quality Management Plan

Circulation and Parking Plans

- Development Plan 5-1, Master Roadway Plan and Key Map
- Development Plan 5-2, West Coast Highway Pedestrian Bridge Details
- Development Plan 5-3, Sections A-A, B-B, and P-P Bluff Road (West Coast Highway to 15th Street) North Bluff Road (15th Street to 16th Street)
- Development Plan 5-4, Sections Q-Q and R-R North Bluff Road (16th Street and 17th Street)
- Development Plan 5-5, Sections J-J and M-M North Bluff Road (17th Street to 19th Street)
- Development Plan 5-6, Sections C-C, D-D, and E-E 15th, 16th, and 17th Streets
- Development Plan 5-7, 17h Street Entry and Off-Site Improvements
- Development Plan 5-8, 19th Street and North Bluff Road Entry and Off-Site Improvements
- Development Plan 5-9, Sections G-G and H-H Resort Colony Road and Scenic Drive
- Development Plan 5-10, Sections F-F, I-I, and N-N Typical Local Roads and Private Alley
- Development Plan 5-11, Traffic Calming Design Features
- Development Plan 5-12, 15th Street Entry and Off-Site Improvements
- Development Plan 5-13, 16th Street Entry and Off-Site Improvements
- Development Plan 5-14, North Bluff Road Off-Site Improvements

- Development Plan 5-15, West Coast Highway – Bluff Road Entry/Intersection Improvements
- Development Plan 5-16, Sections K-K and L-L West Coast Highway

Landscape Plans and Design Details

- Development Plan 6-1,Fuel Management Zones Map
- Development Plan 6-2, Community Landscape Zones Map
- Development Plan 6-3, Streetscape Cross Sections Key Map
- Development Plan 6-4, Bluff Road – West Coast Highway to Resort Colony Road Streetscape
- Development Plan 6-5, Section B-B North Bluff Road – Resort Colony Road to 17th Street Streetscape
- Development Plan 6-6, Section M-M North Bluff Road – 17th to 19th Street Streetscape
- Development Plan 6-7, Section C-C 15th Street Streetscape
- Development Plan 6-8, Section D-D 16th Street Streetscape
- Development Plan 6-9, Section E-E 17th Street Streetscape
- Development Plan 6-10, Section G-G Resort Colony Road Streetscape
- Development Plan 6-11, Section H-H Scenic Drive Streetscape
- Development Plan 6-12, Section I-I Local Street Streetscape
- Development Plan 6-13, Section F-F Local Street Streetscape
- Development Plan 6-14, Street Signage and Light Fixtures
- Development Plan 6-15, Community Walls, Fences, and Monumentation Plan
- Development Plan 6-16, Block Wall and Open Space Fence Details
- Development Plan 6-17, View Fence/Wall Details
- Development Plan 6-18, Community Monumentation Concepts
- Development Plan 6-19, West Coast Highway Monumentation Concept
- Development Plan 6-20, Key Map for Community Transition/Interface Sections
- Development Plan 6-21, Section A-A Open Space Preserve and South Bluff Park Interface with West Coast Highway and Lido Sands Community
- Development Plan 6-22, Section B-B Open Space Preserve and South Bluff Park Interface with Newport Shores Community
- Development Plan 6-23, Section C-C Open Space Preserve and North Bluff Park Interface with Newport Shores Community
- Development Plan 6-24, Section D-D South Community Park Interface with Newport Crest Community
- Development Plan 6-25, Section E1-E1 and Section E2-E2 South Community Park and Bluff Road Interface with Newport Crest Community
- Development Plan 6-26, Section F-F Central Community Park Interface with Newport Crest Community
- Development Plan 6-27, Section G-G North Community Park Interface with Carden Hall School

- Development Plan 6-28, Section H-H North Consolidated Oil Facilities Site Interface with North Bluff Park and Family Village
- Development Plan 6-29, Section I-I Urban Colony Interface with Newport Mesa School District Property
- Development Plan 6-30, Section J-J Urban Colony Interface with MesaWest Bluffs Urban Plan Area
- Development Plan 6-31, Section K-K Open Space Preserve Interface with California Seabreeze Community
- Development Plan 6-32, Master Color Palette

Infrastructure and Utilities Plans

- Development Plan 7-1, Master Water Plan
- Development Plan 7-2, Master Wastewater Plan

Concept Sequencing Plan for Parklands, Villages, and Colonies

- Development Plan 8 Concept Sequencing Plan for Parklands, Villages, and Colonies

The CDP application also included the following technical studies:

Burrowing Owl

- Results of 2012 Focused Breeding Season Burrowing Owl Surveys Conducted for the Newport Banning Ranch Project, Located in Unincorporated Orange County and Newport Beach, Orange County, California. GLA, 2012.

San Diego Fairy Shrimp

- Summary of Protocol Surveys for Federally-Listed Vernal Pool Branchiopods Conducted on Newport Banning Ranch, City of Newport Beach and Unincorporated Orange County, California. Dudek, 2013

Pacific Pocket Mouse

- Pacific Pocket Mouse Habitat Assessment for Newport Banning Ranch. Dudek, 2012.

Raptors

- Raptor Survey Report for the Newport Banning Ranch. Dudek, 2012.

Vegetation

- Grassland Assessment and Vegetation Mapping Survey Report for the Newport Banning Ranch. Dudek, 2013

Geology/Geotechnical

- Preliminary Geotechnical Investigation of Liquefaction and Settlement Potential, Proposed Residential Development at the Lowland Portion of Newport/Banning Ranch. Leighton & Associates, 1997.
- Fault Trenching Investigation, Newport-Banning Property. Earth Consultants International, 1997.
- Phase 1 Description, Environmental Restoration Program. GeoSyntec Consultants, 1996.

- Pacific Soils Engineering, Inc. Geotechnical Feasibility Investigation (1993)
- Preliminary Geotechnical Engineering Study, Long Range Planning Program. Woodward-Clyde Consultants, 1985.

In addition, the CDP application included the following technical studies in City of Newport Beach Final Environmental Impact Report (EIR) prepared for the Newport Banning Ranch project:

Geotechnical Studies

- Report of Geotechnical Studies, GMU Geotechnical, Inc. July 2011. The GMU Geotechnical, Inc. Report of Geotechnical Studies includes the following three volumes:
  - Volume 1: Report of Geotechnical Studies Proposed Newport Banning Ranch Development
  - Volume 2: Geotechnical Engineering and Engineering Geology Data and Analysis
  - Volume 3: Fault Evaluation Data

Hydrology and Water Quality

- Watershed Assessment Report, Design Applications for Hydrology, Flood Control, Water Quality, and Low Impact Development Features, Newport Banning Ranch, Fuscoe Engineering, Inc. June 30, 2011. The Watershed Assessment Report includes the following Appendices: A. Study Related Documents, B. Hydrology Calculations, C. HEC-RAS Modeling, D. Water Budget Analysis, and E. Best Management Practices.

Site Remediation and Hazardous Materials

- Draft Remedial Action Plan, Newport Banning Ranch, GeoSyntec, August 21, 2009.
- Draft Phase 1 Environmental Site Assessment Update, Newport Banning Ranch, GeoSyntec, April 16, 2008.

Biological Resources

- Final Biotechnical Technical Report, Newport Banning Ranch, BonTerra Consulting, September 2, 2011. See EIR Appendix E, Biological Resources. The Final Biotechnical Technical Report contains the following appendices that are also included in the Biotechnical Report in Appendix E:
  - Appendix A Plant and Wildlife Compendia
  - Appendix B Site Photographs
  - Appendix C Special Status Plant Species Survey Report, BonTerra Consulting, September 23, 2009. Appendix C also includes a Plant Compendium (Appendix A) and CNDDB Forms (Appendix B).
  - Appendix D GLA Fairy Shrimp includes the following two Reports:
    - Report of a Wet-Season Survey for Listed Branchiopods Conducted for Oil Field Features at the 401-acre Newport Banning Ranch Property, Glenn Lukos Associates, Inc. May 26, 2009

- Report of a Wet-Season Survey for Listed Branchiopods Conducted for Oil Field Features at the 401-acre Newport Banning Ranch Property, Glenn Lukos Associates, Inc. July 26, 2011

- Appendix E Results of Focused Burrowing Owl Surveys for the Newport Banning Ranch Project, BonTerra, July 17, 2009.
- Appendix F Results of Coastal California Gnatcatcher Surveys for the Newport Banning Ranch Project Site, BonTerra, July 17, 2009.
- Appendix G Results of Southwestern Willow Flycatcher and Least Bell's Vireo Surveys for the Newport Banning Ranch Project Site, BonTerra, September 21, 2009.
- Appendix H Draft Jurisdictional Delineation Report, Newport Banning Ranch, BonTerra, August 23 2011.

Transportation and Circulation

- Traffic Impact Analysis for Newport Banning Ranch in the City of Newport Beach, Kimley-Horn and Associates, Inc., June 2011.

Air Quality

- Air Toxic Health Risk Assessment in Support of CEQA Documentation, for Newport Banning Ranch, CDM, July 12, 2010.
- Modeling of maximum daily emissions associated with Project construction, Project mobile and areas sources (as included as EIR Appendix F).

Climate Change

- Annual greenhouse gas emissions modeling results, which estimates emissions generated during remediation and construction, and operational emissions resulting from energy usage, water consumption, waste generation, and mobile and area sources (as included as EIR Appendix H).

Cultural and Paleontological Resources

- Archaeological Resources Assessment, Newport Banning Ranch, BonTerra, February 16, 2010.
- Paleontological Resources Assessment, Newport Banning Ranch, BonTerra, February 16, 2010.
- Historical Resources Assessment Report of West Newport Oil Company Banning Ranch 1080 17th Street, Newport Beach. BonTerra, July 2009.

Utilities

- Newport Banning Ranch Water Supply Assessment City of Newport Beach City Council Staff Report, City of Newport Beach Utilities Department, October 12, 2010
- Water Supply Assessment, Newport Banning Ranch, AECOM, September 2010.
- Sewer and Water Facilities Plan, Newport Banning Ranch, Fuscoe Engineering, Inc. June 30, 2011

Fire Protection

- Study to Evaluate Impact on Fire Department Response Time due to the Relocation of Existing Fire Station, Fire Force, May 25, 2010
- Fire and Life Safety Program, Newport Banning Ranch, FireSafe Planning Solutions, January 2011.
- Fuel Management and Maintenance Program Analysis, Newport Banning Ranch, FireSafe Planning Solutions, June 2010.

May 2013 Application Resubmittal

Coastal Land Use Plan Policy Analysis
Correspondence letters from West Newport Oil Company (WNOC) and NBR to staff regarding historic and vested uses of the oil field
1973 Application Materials for Exemption Under Vested Rights (27404) by General Crude Oil Company and G. E. Kadane & Sons
Newport Banning Ranch Abandonment/Remediation and Alternative Development Plan Impact Map, May 2013
Newport Banning Ranch Abandonment/Remediation and Alternative Development Plan Impacts & Mitigation Tables, May 2013
Relevant Oil Field Regulations and Codes

- California Code of Regulations Title 14. Natural Resources Division 2. Department of Conservation
- Title 7 – Land Use and Building Regulations, Division 8 – Oil Drilling and Production Regulations, Article 1. – The Orange County Oil Code
- Banning Ranch-West Newport Oil Field Spill Spill Prevention Control & Countermeasure Plan 2012

History of Banning Ranch 2013

- Oil Field Production Summary 1973-2012
- Well Count Data from 1973-Present

Coastal Development Permit E-85-1 and Staff Report
Coastal California Oil Field Aerial Photos

- Long Beach (Bixby Lease)
- Huntington Beach (the "Strip")
- Seal Beach (the "Hill")
- Santa Barbara County (Las Flores)
- Carpinteria (Veneco)
- Ventura County (Rincon)
- Monterey County (San Ardo)

Coastal Development Staff Report E-10-011, Signal Hill Petroleum
1990 correspondence between Coastal Commission and Armstrong Petroleum regarding weed abatement and vegetation clearing
City of Newport Beach City Council Staff Report, Report of Funding Feasibility for Open Space Acquisition of Banning Ranch, August 11, 2009

- Consultive Pricing Analysis, Potential Acquisition Components, Banning Ranch, Newport Beach, December 23, 2008
- Orange County Transit Authority/City of Newport Beach Measure M Letter Correspondence, April 15, 2009; May 21, 2009; June 15, 2009.

NBR LLC Letter to Mr. Steve Ray of the Banning Ranch Conservancy, January 2011
Resource Constraints Plans (3 maps), May 2013
Alternative Development Plan
Special Status Species and Sensitive Vegetation Map, May 2013
Historical CAGN Survey Data
Glenn Lukos Associates 2013 Memorandum Recommendations Regarding Fairy Shrimp Surveys for Newport Banning Ranch, Newport Beach, California
Vernal Pool Approximate Watershed Study, May 15, 2013
Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch, May 2013
Grassland Assessment and Vegetation Mapping Survey Report for the Newport Banning Ranch, Revised May 2013
Draft Habitat Conservation and Restoration Opportunities Map, May 2013
Existing & Proposed Watershed Map
City of Newport Beach SB18 Correspondence
***Confidential** Cultural Resource Map for Proposed Project and Alternative Project Footprints*
Cut & Fill Exhibit
Title Constraints Map
Slope Analysis/Bluff Delineation Map
Newport Banning Ranch Projected Newport Mesa Fault Map
Existing & Proposed Hydrology Map
City of Newport Visitor Serving Accommodations Analysis
Parking Plans
Farmland and Soils
Memorandum of Understanding between Newport Banning Ranch LLC, and the Newport-Mesa Unified School District, dated November 8, 2011
Conceptual Floor Plans, Elevations and Renderings (Attachment 36)

- Traditional Home Floor Plans and Elevations
- Coastal Homes Floor Plans and Elevations
- Garden Court Homes Floor Plans
- Motor Court Home Floor Plans

- Village Flats Floor Plans
- Urban Flats
- Resort Flats
- Resort Inn

2. Resolution of Exemption No. E-7-27-73-144 and oil field operations (A. Exemption/Oil Field Operations, Page 2)

For the purposes of assessing the presence of coastal resources on the site, the application relies on the future state of the project site, after abandonment/relocation/consolidation of the oil operations on the site and after remediation of the site for the specific purpose of the residential development proposed in the application, rather than the current condition of the site (minus impacts of unpermitted development discussed below) to conclude that the project is consistent with the environmental protections of the Coastal Act. The application assumes that all prior and future oil operations and subsequent cleanup/remediation to facilitate the proposed residential development are exempt pursuant to Resolution of Exemption No. E-7-27-73-144 ("the Exemption"). **(Pg. 2, ¶3)**

Any development that exceeds the scope of the Exemption requires a coastal development permit from the Commission, unless the Executive Director decides that no permit is legally required. The environmental reports provided with the application assume the legality of the unpermitted removal of major vegetation that has occurred on the site, notably, mowing extensive areas of the site, as more fully described in staffs correspondence to NBRLLC and/or the oilfield operator dated May 18, 2012, September 9, 2012, and in staff's comments on the Newport Banning Ranch DEIR. As noted in said letters, extensive removal of major vegetation has occurred on the site, purportedly to address fire safety concerns, without the necessary coastal development permits. Fuel modification may be exempt from coastal development permit requirements pursuant to the Exemption, but only if it is demonstrated that such activities qualify as reasonable oilfield maintenance within the scope of the Exemption. Staff has asked for information, documentation and regulations, or any support for the claim that the subject vegetation removal is necessary to oilfield maintenance, but we have received in response only a general assertion that vegetation removal is necessary across the site, in some areas hundreds of feet from any active well, pipeline, of flammable structure, in order to preserve future drilling opportunities. Clearly this assertion is not supported by the Exemption, which expressly limits its application to 340 specific wells in operation or under construction in 1973. **(Pg. 2, ¶4)**

Comment noted. The Project Team recognizes the complex circumstances under which the subject application relies on the terms of the Exemption, and specifically as it relates to historic site development and pending/planned abandonment, consolidation and remediation activities to document those activities and sensitive resources over which the Commission has jurisdiction for purposes of evaluating the NBR Project for consistency with the Coastal Act. For this reason, the Project Team is providing for staff's review all available information requested relative to historic and planned development, a detailed description of the exempt status of this development, and a full inventory of resources that have been observed on the site, irrespective of the exempt status of site development and activities that affect those resources that would otherwise be subject to the Commission's jurisdiction. The Project Team is committed to sharing this information with staff in conjunction with the additional information requested to validate the exempt status of existing and future development affecting the Commission's review of the project. Important to this evaluation will be the receipt of comments from staff, following review of the additional information provided, clarifying the reasons if staff does not concur with the Project Team's assessment of the Exemption, and identifying the specific elements of the oil field development, uses, and planned abandonment, and remediation activities staff portends are not covered under the Exemption.

Please note that the application also includes several correspondence letters from West Newport Oil Company (WNOC) and NBR to staff regarding historic and vested uses of the oil field (see Attachment 2 and response to comments # 7), 8) and 10) below), site uses which must equally be considered to establish the appropriate baseline for the Commission's review of the Project.

It is incorrect to state that remediation of the site would be conducted for the specific purpose of the residential development. Oil facility abandonment and associated remediation will be conducted for implementation of the integrated, multi-use development proposal which includes a comprehensive program for restoring and dedicating 235-acres of open space as the primary land use for the property, as well as providing significant active and passive public access and recreational facilities. Implementation of the open space and public access and recreation land uses must also be preceded by abandonment, consolidation and remediation of the existing oil field development and uses. Further, the Exemption in no manner "expressly limits its application to 340 specific wells in operation or under construction in 1973" as stated by staff. As documented in more detail in response to comment #3, all oil field development and uses were anticipated to be modified on the site overtime to provide for the continued and indefinite production, operation, maintenance and abandonment of the Banning Lease (also known as the West Newport Oil Field and/or NBR site), as detailed in the application materials and master plan evaluated by the Commission during its review and issuance of the Exemption request.

Please see Attachment 3, which includes the 1973 Application for Exemption Under Vested Rights (27404) made by General Crude Oil Company and G. E. Kadane & Sons, with materials

provided to the Commission in support of the application review. These materials are referenced throughout the following responses to comment #3 to facilitate a better understanding of the development, uses and terms of the Exemption, and how they affect existing and future site conditions and the Commission's review of the proposed Project.

3. Validity of assumptions and existing site conditions (A. Exemption/Oil Field Operations, Page 3)

Commission staff is unable to evaluate the validity of all these assumptions with the information that has been provided. Typically the Commission considers the existing state of the site (minus the impacts of any unpermitted development), to determine what the impacts of the proposed project will be. Unpermitted development, such as the vegetation removal noted above, 1 cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, consideration of this application must consider site conditions as if unpermitted development had not occurred. In addition, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted vegetation removal noted above, that has occurred on the site. Your assumptions relative to the 'baseline' state of the site are clearly important and the actual, not assumed, baseline must be determined before we can continue to process this application. Toward that end, please submit the following documents: **(Pg. 3, ¶1)**

1) A detailed rationale with evidence for why the Commission might not consider the existing site conditions as the baseline for the impacts of the project.

The matter of identifying the appropriate baseline for the project impact analysis requires careful consideration of the site conditions and resources that will be impacted by activities that are subject to the Commission's review. The NBR site is unique in that the site conditions will be significantly modified by exempt abandonment and remediation activities, prior to project development activities that fall under the Commission's purview.

In addition to exempting development and activities associated with continued production, operation and maintenance of the oil field from coastal development permit requirements, the Exemption also exempts abandonment of wells, conducted in accordance with requirements and approval of the State Division of Oil and Gas and Geothermal Resources (DOGGR), and removal of surface equipment and pipelines per state and local agency requirements. Other than meeting the requirements of DOGGR and applicable State, City, and/or County regulations for removal of surface facilities, the Exemption does not include any parameters or limitations

pursuant to which the abandonment and associated remediation activities would not be covered by the Exemption.

To verify consistency with the Exemption terms for abandonment activities, a detailed description of the oil field abandonment and remediation activities and associated requirements is included in the *Phase I Environmental Site Assessment Update (*GeoSyntec Consultants 2008), *Draft Remedial Action Plan (*GeoSyntec Consultants 2009), and *Oil Facility Consolidation, Abandonment, and Remediation Program* (NBR LLC 2008) included in the initial application submittal. As it relates to local government requirements for these activities, including removal of surface equipment and pipelines, please also refer to Section 4.5, Hazards, of the City's certified EIR.

In addition, as described in more detail in response to comment #2), oil field production facilities were anticipated to be modified on the site overtime to provide for the continued and indefinite production, operation and maintenance of the oil field. The oil field consolidation activities are a continuation of this historic and vested practice, as detailed in the application materials evaluated by the Commission during its review and issuance of the Exemption request, and therefore are also exempt from coastal development permit requirements.

Impacts associated with the oil field abandonment and remediation activities will affect the existing site conditions, prior to implementation of the proposed development plan which is subject to the Commission's review. However, because the oil field abandonment, remediation and consolidation activities are exempt, the Commission's review of project impacts is appropriately based on site conditions that reflect the scope and footprint of disturbance resulting from the oil field abandonment and remediation process. To assist staff in evaluating the site conditions resulting from this process, and thereby establish the environmental baseline upon which project impacts should be evaluated for the subject application, the Project Team has included a detailed map and impact analysis differentiating temporary and permanent impacts that would result from the oil field abandonment and remediation process and the impacts that would subsequently result from the Alternative Development Plan (Attachments 4 and 5). Please see response to comments # 11) – 14) for additional information regarding the planned oil field abandonment and remediation process, which is the basis for determining the scope and footprint of disturbance resulting from the oil field abandonment, consolidation and remediation activities.

2) The drilling and abandonment plan in place at the time of the resolution of exemption from 1973

Please see Attachment 3, which includes supporting materials for the 1973 Application for Exemption Under Vested Rights (27404) by General Crude Oil Company and G. E. Kadane & Sons. These materials include a series of maps documenting the oil field facilities existing at the

time the Exemption was issued. While there was no specific drilling plan that existed when the Commission issued the Exemption, the application materials describe a "master plan" for the oil field which included implementation of a drilling and production program involving clusters of producing and injection wells and envisioned the entire oil field "being covered by such cluster developments".

As described in the application materials, the master plan identified the development of 17 new wells in the latter part of 1972 and the planned development of 28 new wells in 1973. These two sets of new wells are specifically reflected in the Exemption, the development of which resulted in a total of 340 wells on the oil field. However, the application materials explicitly state that, while only 340 wells would be operational at any one time, the oil field operation would require that the wells be replaced or redrilled. The application materials further establish that a critical component of the oil field operation was the "timely and orderly modifications of individual wells or patterns" including "addition, moving, replacement, rework or abandonment of individual producing wells, injection wells or patterns; together with related support facilities and equipment."

For these reasons, the Exemption issued by the Commission identified the drilling of 28 new wells (anticipated to occur in 1973), and additional drilling, repair and replacement of existing wells (such that 340 wells could be in production at any one time), as exempt development. The Exemption further provided for:

- Continued operation and maintenance of existing oil producing and injection wells and associated surface facilities. The existing wells to be defined as the 312 wells either drilled or in progress as of November 1972.
- Performing workover or remedial operations on existing wells necessary to maintain or improve their performance.
- Drilling, redrilling and repairs to existing injection wells.
- Drilling, redrilling and repairs to existing oil production wells.
- Based upon the existing plan, the drilling of 28 additional oil producing wells and construction of associated surface facilities.
- Drilling, redrilling and repairs to the 28 new wells and associated facilities

Because the Commission exempted the oil field development and operations, as defined by the master plan, no single drilling plan exists that accurately reflects the scope of the Exemption, nor is a "snap-shot" of oil field facilities in operation at any one time an appropriate means of validating the exempt development on the site and associated disturbance area. In this unique situation, the Exemption clearly anticipated that oil production facilities would change overtime, resulting in replacement, relocation, repairs and maintenance of development over the site, as determined necessary by the oil "operator".

Similarly, there was no abandonment plan that existed when the Commission issued the Exemption. However, the application material supporting the Exemption clearly articulate that the Exemption includes "The abandonment of wells and the removal of surface facilities and equipment in accordance with the requirements and approval of the State Division of Oil & Gas and the Orange County Building & Safety Department". The application materials further indicate that such abandonment would involve the orderly abandonment of the property in accordance with the rules and regulations of the appropriate governmental bodies. Please see response to comment # 1) and # 11) – 14) for additional discussion regarding exempt abandonment/remediation activities.

> *3) A copy of the relevant codes and regulations regarding oil field operations, abandonment, Remediation, and environmental protection best management practices in oil field operations, from 1973 and from today, and your analysis of what the applicable policy is*

Please see Attachment 3, which includes supporting materials for the 1973 Application for Exemption Under Vested Rights (27404) by General Crude Oil Company and G. E. Kadane & Sons. These materials include documentation of the review/permits of the State Division of Oil and Gas, the Orange County Building Department applicable to the oil field facilities and operations at that time, which were accepted by the Commission for purposes of reviewing and issuing the Exemption. It should be noted that much of the oil field development and operations predated regulations implemented by these government entities in 1973, and therefore were not all necessarily subject to compliance with the same regulations..

Currently, all oil field operations are regulated by the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). In order to implement Section 3208.1 of the California Public Resources Code (PRC), the DOGGR has developed the Construction Site Plan Review Program to assist local permitting agencies with the abandonment or reabandonment, if necessary, of oil wells. Oil fields that are abandoned for purposes of future development, such as for the proposed Project, are subject to local permitting agency review and implementation of DOGGR's preconstruction well requirements prior to issuance of grading or building permits. In addition, the oil operations have environmental regulatory oversight by both the California Regional Water Quality Control Board – Santa Ana Region (Santa Ana RWQCB) and the Orange County Health Care Agency (OCHCA). Since 1992, both agencies have been involved in overseeing certain aspects of cleanup activities and oil field operations. Copies of the following applicable codes, regulations and environmental protection best management practices are included as Attachment 6:

- California Code of Regulations Title 14. Natural Resources Division 2. Department of Conservation

- Title 7 – Land Use and Building Regulations, Division 8 – Oil Drilling and Production Regulations, Article 1. – The Orange County Oil Code
- Banning Ranch-West Newport Oil Field Spill Spill Prevention Control & Countermeasure Plan 2012

4) Full documentation of the site conditions at time of the 1973 exemption, including the location and type of all equipment (e.g. wells, pipelines, processing facilities, roads, etc.) and in particular those facilities specifically identified in the exemption (e.g. the 312 existing wells and associated surface facilities and 28 additional wells that were to be drilled in 1973)

Please see Attachment 3, which includes supporting materials for the 1973 Application for Exemption Under Vested Rights (27404) by General Crude Oil Company and G. E. Kadane & Sons, including a series of maps documenting the oil field facilities existing at the time the Exemption was issued, including the approximate location of the 28 additional wells planned for development in 1973. More specifically, the map series includes the following information relative to the various facilities associated with the oilfield operations:

- Road system
- Oil gathering pipeline system
- Electrical distribution system
- Pipelines and weighmeters for individual well production testing
- Pipelines for gas gathering system
- Pipelines for fresh water distribution system
- Steamer locations and steam pipeline system
- Air compressor plant locations, injection well locations and connecting pipeline system
- Gas treater location and connecting pipeline system
- Fencing around perimeter of lease and buildings for general office, field offices, employee change rooms, garages, heavy equipment repair shops, material storage yards, etc.

While the Exemption included detailed documentation of oil field facilities existing in 1973, as noted in response to comments #2) and #9), the Exemption clearly anticipated that oil production facilities would change overtime, resulting in replacement, relocation, repairs and maintenance of development on the site as determined necessary by the oil operator to ensure continued oil field development and operations.

5) Full documentation of the existing site conditions

A review of historic aerial imagery dating from the 1940s to 2011, submitted with the February 2013 application package, documents the surface facilities and activities cited in the Exemption that have resulted in the existing conditions of the site. In addition, the site's existing conditions are documented in the Jurisdictional Determination of Seasonal Features (Dudek 2012), included in this submittal, and the Grassland Assessment and Vegetation Mapping Survey Report (Dudek 2012), resubmitted with this package with revisions requested by staff.

The Banning Ranch Oil Field Facilities, Infrastructure, Operations and Maintenance Map, included with the initial application submittal, further illustrates the existing site conditions including oil wells, tanks, pipelines and associated surface facilities, utilities, graded roads and equipment areas, some of which are surfaced with gravel, asphalt and asphalt-like material (degraded crude oil, or crude oil tank sediments blended with sand and/or dirt). Surface facilities also include various storage facilities, staging and stockpile areas, personnel support facilities, historic sumps which have held produced oil and fluids within in-ground surface impoundments, and areas subject to vegetation management.

> *6) A detailed description of the changes to site conditions and oil operations and facilities between 1973 and today, including but not limited to repair, drilling, redrilling, closing, Relocating all wells (e.g. injection wells, oil production wells, etc.) and changes to associated surface facilities to date*

Please see the History of Banning Ranch 2013 document (Attachment 7), which details the oil field development and operations conducted on the site since 1944. This document also includes a summary of production data from 1973-2012 and a series of tables that include well count data from 1973-present. The well count data documents the date each well and/or replacement well on the site was drilled and, if applicable, abandoned, and the time period in which each well was active or shut-in. The well count data documents that, consistent with the terms of the Exemption, no more than 340 wells have been in operation at any one time on the site.

> *7) Documentation of the extent of vegetation removal that has occurred on the site including annual record of mowing activities and the areal extent of vegetation removal*

> *8) An assessment of habitat characteristics of the site prior to, and if not for, the unpermitted removal of major vegetation noted above, as well as in staff's letters noted above.*

The historic aerial imagery provided for the years of 1927-2011 submitted with the initial application package illustrates and documents the extent of vegetation maintenance that has occurred on the site; the current and previous oil operators have not kept annual records of vegetation maintenance activities and this is not a customary practice for oil field operators. As

detailed in response to comment # 10), no unpermitted removal of vegetation has occurred on the property. As such, the requested assessment of habitat characteristics of the site, assuming some unpermitted removal of major vegetation has occurred, is not provided with this application package.

> *9) An explanation of how the development undertaken since the exemption would meet the standard outlined in the exemption that such development is only exempt "...provided that no substantial changes may be made in said development..." and that "...future exploratory drilling within the lease area is not exempted..."*

No development has occurred on the property that has exceeded the scope or resulted in "substantial changes" to the development and uses covered by the Exemption. As described in detail throughout responses to comments #2 and #3 and documented in the Exemption application materials, the Exemption issued by the Commission was not limited to a single and static plan for the development and abandonment operations conducted on the oil field. Rather, the Exemption articulates the facility, infrastructure and operational components for a process of development to achieve "a greater ultimate recovery" of the oil reserves, through a combination of primary and secondary production methods, as implemented through the dynamic master plan described in the application.

Please refer to the History of Banning Ranch 2013 document (Attachment 7), which details the oil field development and operations conducted on the site since 1944. The documentation details all development undertaken since the Exemption was issued, and provides a thorough explanation of the facility, infrastructure and operational improvements conducted on the site in the context of the primary and secondary production methods evaluated during the Commissions review and issuance of the Exemption.

Consistent with the terms of the Exemption that specifically excluded exploratory drilling, no exploratory drilling has occurred on the site. As explained in the History of Banning Ranch, in response to the oil market collapse in the 1980's, WNOC filed for and obtained a permit to drill 3 exploratory wells from the California Division of Oil, Gas, and Geothermal Resources, County of Orange, and California Coastal Commission (see Attachment 8, Coastal Development Permit E-85-1 and related Staff Report). The authorized exploratory drilling improvements were never implemented and the associated Coastal Development Permit expired in May 1997.

Based on available documentation, staff apparently raised similar questions to those being raised as part of the subject application review regarding the exempt and/or authorized status of the oil field development during the Commission's review of the above cited permit request for exploratory drilling. In a letter addressed to representatives of WNOC, dated February 5, 1985, requests clarification of alleged discrepancies in the acreage and total number of existing wells

and exempted wells are different. However, the May 1985 Staff Report identified no unauthorized development on the site and included the following findings:

> *The field has been in production since 1943 by various operators including Mobil Oil Corporation. The first wells produced 40 barrels per day of 14.5 degree gravity oil. Today, up to 243 wells produce oil from 800 to 2700 feet deep. The oil is extremely heavy and treatment with compressed air, steam and heat is utilized for extraction. The Commission issued an exemption (E-7-27-73-144) to General Crude Oil and G.E. Kadane and Sons for surface and subsurface oil drilling and production of up to 340 wells, however "future exploratory drilling within the lease area [was] not exempted".*

Although the Project Team does not have additional documentation of correspondence that followed staff's February 5, 1985 letter, any concerns staff had at that time regarding the exempt and/or authorized status of the oil field development and operations were apparently addressed as part of the application review process. Given this correspondence and the Staff Report findings adopted by the Commission, all development and uses on the site as of May 1985 were determined to be in full compliance with the Exemption.

> *10) Information, documentation, regulations or any support for the claim that the removal of major vegetation noted above is necessary to oilfield maintenance.*

The Project Team is not aware of any regulations that specifically govern vegetation maintenance requirements for active oil fields. Regulations of the DOGGR do include a multitude of inspection requirements for both above and below ground facilities, and also require weed and debris removal from containment areas or catch basins and maintenance of vehicle access routes to all production facilities. All of these activities must be conducted in conjunction with maintenance of vegetation within and around the oil field facilities.

The type and extent of vegetation maintenance on the Banning Ranch is also consistent with vegetation maintenance practices of similar oil fields located within or proximate to urban areas, as well as oil fields located in less developed locations. Included in this resubmittal package are a number of aerial photos of oil fields (active and inactive) located along the California coast in Long Beach (Bixby Lease), Huntington Beach (the "Strip"), Seal Beach (the "Hill"), Santa Barbara County (Las Flores), Carpinteria (Veneco), Ventura County (Rincon), and Monterey County (San Ardo) (Attachment 9). The permit status of the extent of vegetation maintenance exhibited on the aerials has not been reviewed or confirmed. Nevertheless, the aerials demonstrate that substantial vegetation maintenance is typically conducted within and around the oil field facilities, including over large open field areas absent of and far removed from surface

facilities, no doubt for the same express purpose of avoiding and minimizing potential environmental hazards and protecting public health and safety.

In addition, the Commission has previously recognized various vegetation maintenance activities as "repair and maintenance" and, in the case of the Bryant Lease located in Long Beach, the Commission approved a coastal development permit for removing vegetation, debris and soil from the stormwater collection and retention system, controlling vegetation surrounding all oil pumps, electrical poles, and pipelines, and removing vegetation surrounding all oil production facilities and buildings, including a "vegetation free zone", finding that the vegetation maintenance qualified as a repair and maintenance activity that was necessary for safety and maintenance access purposes (see Attachment 10, Coastal Development Permit Staff Report E-10-011, Signal Hill Petroleum). Many of the same vegetation maintenance activities are conducted on the West Newport Oil Field and therefore should also be considered as routine repair and maintenance, an activity clearly covered under the Exemption and equally necessary to ensure safe and functional oil field operations.

The Project Team has included the following description of each element of the vegetation maintenance program to further assist staff's understanding of the Banning Ranch vegetation maintenance program as it relates to general oil field operations and maintenance.

Banning Lease Oil Field Operations and Maintenance

Operation of the oilfield involves drilling and production operations, as well as staging of activities, the movement of equipment and personnel to, from, and across the site, and the storage of equipment and materials. In addition, there is the need for maintenance and security activities that are essential to efficient operations and the protection of the property, oil field employees, and persons and properties in the vicinity of the oilfield. These activities include, among others, road repairs, vegetation management, fire abatement, and weed control. The need for the full scope of these historic and ongoing maintenance activities is not based on conjecture. The NBR property has experienced a number of incidents of trespass, some of which have resulted in fires, property damage, and other impacts.[1] Absent appropriate vegetation management, the risk to surrounding communities would significantly increase.

Oil Facilities and Infrastructure

Various work/material storage areas, parking areas, graded roads and oil wells occur throughout the oil field and are subject to daily use and regular maintenance. Oil field facilities also include

[1] In particular, Talbert Regional Park has historically been a location from which trespassers enter onto the Newport Banning Ranch property, and the trespassing activities have resulted in fires that have spread onto the property, caused damage to electrical lines, and posed a threat to oil field personnel and facilities.

access roads that are not subject to clearing or grading for maintenance purposes, but are regularly used to patrol the oil field and/or to retain access and inspect abandoned and partially abandoned facilities. Use of these access roads is limited to use of vehicular travel on the existing track lines (i.e. no vegetation clearance or grading would be implemented for maintenance or improvement of the facility). In addition, a number of pads with partially abandoned wells exist on the NBR property that require regular mowing to maintain the areas free of vegetation to allow for completion of the cleanup/abandonment and site closure process.

Vegetation management is a key component of the site maintenance program, and has been performed by oil operators since the early 1940s. As an oil field, Banning Ranch presents unique fire and public safety risks due to the potential ignition of oil, gas and other combustible materials extracted and/or used at the oil field. Vegetation maintenance is critical for reduction of this fire risk, as well as for other public health and safety reasons, site security, and proper oil field functioning (e.g., site visibility and accessibility to infrastructure). The fire risk exists both as a result of potential harm to persons and property at the oil field from a fire starting off-site, and potential harm to persons and property off-site from an on-site fire/accident. The scope of fire abatement activities results, in part, from the absence of infrastructure on-site for fire suppression. If there is a significant fire on the property, fire fighters do not have ready onsite access to water, resulting in repeated trips to and from the property to obtain water and a significantly greater challenge to prevent the fire from spreading to surrounding communities. Accordingly, vegetation management has always been critical to control the potential spread of fire. In addition, unobstructed site visibility and access to infrastructure accomplished by proper vegetation maintenance is critical to ensuring oil operators can quickly detect and respond to potential fire and environmental hazards to protect public health and safety.

Oil Facilities and Infrastructure Vegetation Maintenance

Oil facilities and infrastructure maintenance consists of facility and/or structure-specific vegetation maintenance. These oil facilities and associated oil infrastructure areas are a high priority for vegetation maintenance activities; therefore, these areas are subject to regular maintenance on an annual basis.

East Property Line 100-Foot Fuel Modification

Most of the eastern area of the NBR property is adjacent to schools, residential, commercial, and/or industrial development. Vegetation management is performed in these areas for fire prevention and health and safety reasons. Maintenance within areas of mature riparian and/or native scrub vegetation is limited to selective thinning and removal of weeds and dead/dying debris.

Property Line Fence Maintenance

In the northerly portions of the NBR property, road maintenance is conducted to reduce fire risk and enhance security. Property line fence maintenance is also conducted along portions of the south and west property lines. To the extent possible, maintenance within areas of mature riparian and/or native scrub vegetation along the property fence line is limited to selective thinning and removal of weeds and dead/dying debris. However, as required by the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources, a 10-foot area is maintained along the north property line of the site which does require selective thinning of some disturbed native vegetation. These fence maintenance activities, in addition to vegetation maintenance activities along a surface channel, were previously the subject of staff review with respect to their exempt status (See Attachment 11, 1990 correspondence between Coastal Commission and Armstrong Petroleum regarding weed abatement and vegetation clearing).

Oil Facility/Structure 100-Foot Fuel Modification

Onsite structure fuel modification is generally limited to a 100-foot radius around existing buildings, tank storage areas and/or significant electrical facilities (i.e., transformers), but in some instances has exceeded 100 feet based on historic practices.

Pipeline 20-Foot Maintenance Corridor

The level of maintenance in areas near oil pipelines varies depending on whether or not a pipeline is active. Active pipelines are subject to the most regular maintenance, which includes a 20-foot maintenance corridor (10 feet on either side of the pipeline), while older, idle pipelines are subject to limited maintenance.

Utility Pole 20-Foot Maintenance

Numerous utility poles and lines are located throughout the oil field. Vegetation maintenance is limited to the active utility infrastructure and includes a 20-foot radius around utility poles.

Oil Field Maintenance

Oil field vegetation maintenance on the NBR property includes open site areas historically maintained by mowing of grasses and forbs. This vegetation management is conducted for fire prevention purposes, health and safety reasons, and to ensure visual access to all oil facilities.

Areas Subject to California Coastal Commission Restoration Order

Four distinct areas on the NBR property are subject to a Coastal Commission Restoration Order CCC-11-RO-02. Vegetation maintenance within these areas is limited according to the terms of the restoration order, and generally consists of coastal sage scrub revegetation, initial eradication and control of non-native and invasive plant species, and erosion control.

Voluntary Resource Protection Measures

WNOC and NBR have voluntarily implemented measures on portions of the Banning Ranch property. These measures include: (1) performing reviews/surveys prior to engaging in the initial vegetation maintenance activities for the year, (2) performing vegetation maintenance outside of nesting season unless the specific area to be mowed has been surveyed and it has been determined that the area does not have nesting birds, and (3) avoiding specified areas where certain bird species may occur. Additional, voluntary resource protection measures that do not obstruct or impede the effectiveness of vegetation maintenance for fire prevention, public health and safety, site security, or other purposes are currently being developed with the USFWS.

> *11} A letter from the Department of Oil and Gas, and/or other appropriate regulatory entities (e.g. Orange County Health Care Agency), which states what the standard and minimum practices for abandonment and remediation of a site in an environmentally sensitive area would be for different degrees of soil contamination, and for the following land uses [and all potential project alternatives]: a) open space, b) residential development, c) commercial development*

DOGGR codes are very basic and describe only removing all equipment and sumps. Orange County Health Care Agency and the Regional Water Quality Control Board require more extensive cleanup standards. Remediation standards for hydrocarbons, unlike hazardous wastes, are typically negotiated and rarely clearly outlined in regulations. Clean-up standards for NBR are part of the 2001 RWQCB CAO.

Minimum practices for abandonment and remediation of a site in an environmentally sensitive area would still require removal of all oilfield facilities, pipelines, power, road materials and the associated impacts of that removal. A lesser remediation standard tends to require less depth of excavation but the surface footprint is often very similar. A smaller abandonment and remediation footprint could be attained if the applicable agencies agree to a full, written closure with some materials and/or roads left in place and no further action required. In other words, the applicable agencies, future owners and/or stewards of the proposed Open Space Preserve would have to issue a securitized release and assume all responsibility for materials left in place.

> *13) A complete description and detailed plans describing all development to be undertaken in conjunction with abandonment/relocation/consolidation of the oil*

operations on the site and remediation (i.e. final Remedial Action Plan) and justification for all such proposed work as may have been required by regulations in 1973 and current requirements. The draft Remedial Action Plan (dRAP), and accompanying graphics appear to significantly oversimplify the type and extent of work to occur in each particular area. For instance, there are many instances where the dRAP graphic depicts vegetated areas that would be subject to unspecified 'remedial activities', yet there are only 'utility' poles in the area. Why would such an extensive area need to be 'remediated' when there is merely a utility pole present? Similarly, there are other areas targeted for unspecified remediation where there are no pipelines, wells, utility poles, or other oil field facility present. If there are no oil field facilities present in these areas, why is remediation required? Another issue that needs to be addressed is whether or not there are alternative methods for remediation that would reduce impacts on resources (e.g. biological resources). For instance, Attachment 26, Map 2, Oil Field Abandonment and Remediation Staging Map, identifies various locations where soil subject to bioremediation would be staged/stockpiled. These soils subject to remediation and the staging/stockpile areas overlap significant biological resource areas. Are there Alternatives to bioremediation that would reduce or eliminate the need to excavate and/or stockpile soils (e.g. in-situ or other measures)? Finally, the resource impacts (e.g. biological, water quality, archeological, etc.) to occur as a result of the remedial activities must be identified in detail. These impacts need to be distinguished from the impacts ultimately proposed under the new development plan. The least environmentally damaging alternative should be identified/chosen whenever impacts are identified.

No justification for abandonment and remediation work as may have been required by regulations in 1973 is provided in this submittal. As detailed in response to comment # 2), no abandonment plan existed when the Commission issued the Exemption in 1973. The Exemption requires only that abandonment of wells be conducted in accordance with requirements and approval or the State Division of Oil and Gas (now DOGGR) and that removal of surface equipment and pipelines be conducted per state and local agency requirements. As such, oil field abandonment and remediation activities and associated remediation requirements described in the *Phase I Environmental Site Assessment Update (*GeoSyntec Consultants 2008), *Draft Remedial Action Plan (*GeoSyntec Consultants 2009), and *Oil Facility Consolidation, Abandonment, and Remediation Program* (NBR LLC 2008) represent the current standards applicable to the this process As it relates to local government requirements for these activities, including removal of surface equipment and pipelines, please also refer to Section 4.5, Hazards, of the City's certified EIR.

The Project Team does not believe the submitted draft RAP significantly oversimplifies the type and extent of work necessary to complete remediation of the site. Site areas that *appear* to be

absent facilities and/or oil related materials have been evaluated to determine if subsurface facilities and or other materials (such gravel, oiled road bed, and/or crude oil tank bottom) are present. For instance, utility poles are typically surrounded by gravel or asphalt/oiled road materials and have the potential to be impacted by transformer oils. Many areas shown for road material removals have supported wells that are no longer visible at the surface (abandoned) and thus appear to be unrelated to operations. There are also areas on the property covered by partially deteriorated pavement, crude oil tank bottom, and/or areas historically oiled for dust and weed control purposes through which vegetation has grown. As mentioned previously, should the agencies having jurisdiction over these activities desire no action in vegetated areas and, along with the future land owner and/or steward of the proposed Open Space Preserve, agree to a full closure and assume all future responsibility for those areas, such facilities and/or materials may be left in place to minimize the disturbance footprint.

The methodology used to determine the extent and level of site abandonment/remediation are described in the draft RAP and Section 4.5, Hazards, of the City's certified EIR. Numerous studies (submitted with the initial application) have been conducted on the site to adequately characterize and determine the scope of site abandonment and remediation activities necessary for the project. These studies are an integral part of the abandonment process contemplated under the Exemption, and collectively involved records review per specific regulatory requirements for conducting an inquiry into the previous ownership, uses, and environmental conditions of the property, a preliminary pVIC evaluation to identify whether or not a "vapor intrusion condition" (VIC) exists on the site, and fieldwork and evaluation of data produced from collecting and evaluating samples from test pits/borings, groundwater monitoring wells, surface water, and soil gas sampling points. Excavated test pits also allowed for visual observations of hydrocarbon impacts as well as unaffected soils. In addition, the anticipated level of site abandonment/remediation has been based on past experience with cleanup requirements involving removal of all vestiges of the oil field surface impacts including all equipment, facilities, power, road materials (gravels, oils, asphalts, etc.) and specific restoration aspects.

Regarding alternative methods for remediation that would reduce impacts to resources, it should be noted that most disturbance for abandonment and remediation of the oil field will occur within the top 6'- 8' from site surface where in-situ methods are not practical at such shallow depths and in place treatments would result in the same or greater amount of surface resource impacts.

Bioremediation is a recognized best-practice when considering a holistic approach to environmental impacts of oil field remediation because it utilizes a natural cleaning process using indigenous bacteria, it includes the recycle/reuse of natural soils and materials, reduces landfilling of materials, and substantially reduces truck trips, traffic impacts, and emissions from hauling on and offsite. The volume of remediation in a full-field abandonment necessitates large

stockpiling and spreading of materials into bio cell areas. Bioremediation of soils is only effective in approximately the top 18" of a soil lift which requires large spreading, treatment, and testing areas. In addition, the staging and stockpile areas must be designed in relation to the location of contaminated site areas and their relative location to areas with topography appropriate for stockpile and final disposal. While bioremediation would involve an expanded facility footprint, the large majority of staging and stockpiles areas have been located within the existing oil facility footprint (developed areas), and would be located in areas appropriately setback from adjacent residential land uses, and, to the extent possible, in areas that avoid sensitive resources. There are no other areas nearby large enough to accommodate the bioremediation, and none that are proximate to the site that would adequately minimize haul/equipment trips that result in significant traffic and air emission impacts.

With respect to alternatives that would eliminate stockpile and staging locations to reduce or eliminate the need to excavate and/or stockpile soils on the site, removal and transport of the oil field abandonment / remediation volumes from the site would require over 24,000 truck trips by the typical 10 wheeler road worthy haul trucks. This would require 2.4 years of 40 truck trips per day, or 1.6 years of 60 truck trips per day. There is no known regional area that could accommodate bioremediation of these large volumes. Thermal treatment of hydrocarbon impacted soils is prohibitively expensive and involve both truck and treatment emissions. Landfill can accommodate only a portion of these volumes on a much more expanded timeframe as imported soils are scheduled and received per demand for daily cover within the landfill facility. In addition, only Class III, State-certified landfills can receive the materials further limiting feasible options to transport offsite for landfill disposal. As haul trip distances increase the options become increasingly infeasible due to transportation and fuel costs. In addition, these truck trips would be doubled by the later need for a similar volume of cleaned soils that would have to be hauled back to the site to make up for the lost volumes necessary to backfill excavation sites.

The remediation methods for the oil field recognize the overall goal of state and local authorities to remediate and/or recycle impacted materials on site to the greatest extent possible in order to reduce impacts associated with traffic on local streets, air emissions that would be experienced with mass soil export, or the use of landfill capacity for otherwise recyclable resources. In addition, though the remediation process described herein is exempt from coastal development permit requirements, agency-approved materials may be re-used as fill for Project development, which would further serve to minimize overall grading for the proposed Project. As indicated in response to comment #1), the Project Team has included a detailed map and impact analysis (Attachments 4 and 5) differentiating temporary and permanent impacts that would result from the oil field abandonment and remediation process, and the impacts that would subsequently result from the proposed project.

14) If there is a regulatory or other process that must be undertaken to determine the existing state of site contamination and associated cleanup/remediation requirements, and all associated development to implement those cleanup/remediation requirements that process must be completed consistent with Section 13052 of the Commission's regulations

The Project Team is not aware of any other regulatory or other process related to the planned site abandonment and remediation process that would cause the process to be excluded from the Commission's Exemption and therefore subject to the Commission's review pursuant to Section 13052 of the Commission's Regulations.

15) If not captured in the materials above, please submit copies of all documentation provided to the Commission in conjunction with the original exemption request in 1973

All available documentation provided to the Commission in support of the 1973 Exemption application is included in this resubmittal package.

4. Status of Primary Open Space Land Use Pursuant to General Plan (B. Alternatives, Page 5)

1. Status of Primary Open Space Land Use Pursuant to General Plan. The City of Newport Beach's General Plan states that the primary land use of the subject property is Open Space. Clearly, under the Coastal Act, this is the preferred use for the property. Your application states that the General Plan allows the applicant to pursue secondary land uses (i.e. residential, commercial, etc.) so long as a certain time period had passed and certain other terms of an agreement between the City and the applicant were satisfied. Please identify the time period and terms of this agreement (and provide a copy of the agreement) and how those requirements were met such that the applicant has been able to pursue the secondary land uses. **(Pg. 5, ¶1)**

As detailed in the City of Newport Beach City Council Staff report, dated July, 23, 2012, the City's General Plan was adopted by the City Council on July 25, 2006, and the land use plan was approved by the voters on November 6, 2006.

Land Use Element Policy LU 6.3.1 establishes the primary use of the Banning Ranch property as open space, including significant active community parklands that serve adjoining residential neighborhoods, if the site is acquired through public funding. Policy LU 6.3.2 calls for the City to "support active pursuit of the acquisition of Banning Ranch as permanent open space."

Policy LU 6.4.1 further states that if the Banning Ranch property is not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site

may be developed as a residential village. Policy LU 6.4.1 also provides that the property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space.

Although Policy LU 6.4.1 provides that the property owner could pursue entitlement and permits for a residential village during the time allowed for the property to be acquired as open space, the City did not initiate review of the proposed project until 2009, three years following adoption of the General Plan and after substantial effort was made by the City and environmental groups to pursue acquisition of the entire site for open space.

On January 12, 2008, the City Council adopted as a priority to "conduct an appraisal of the Banning Ranch property and assess funding available for the purchase of the property for open space." On February 12, 2008, the Banning Ranch Appraisal and Acquisition Ad Hoc Committee was appointed, and a comparative pricing study was completed and presented to the City Council in study session on January 27, 2009. The study estimated the gross acquisition value for the property to be between $184,000,000 and $211,000,000. The study also concluded that State or private funding was unlikely at that time; although, some funding from Measure M may be possible.

On January 27, 2009, the Council authorized the City to request Measure M funding and the request was submitted to the Orange County Transportation Authority (OCTA) on April 15, 2009. On June 15, 2009, OCTA responded that a "prioritization process" was under preparation.

On August 11, 2009, a Report of Funding Feasibility for Open Space Acquisition of Banning Ranch was presented to the City Council (Attachment 12), and the Council acted to continue the exploration of open space acquisition possibilities and monitor funding opportunities. The Council also directed staff to move forward with review of the Newport Banning Ranch application. On March 30, 2010, OCTA Environmental Oversight Committee removed Banning Ranch from list of potential acquisitions for the first round of funding.

In an effort to further assist examination of options for acquisition of the property as open space, NBR LLC, at the request of the Banning Ranch Conservancy, submitted a January 2011 letter to Mr. Steve Ray (Attachment 13), to assist that entity in the preparation of a "willing buyer" letter by outlining the various terms that would be pre-requisites to discussions regarding acquisition of the property for open space. Among the terms identified were:

- Evidence that the Buyer is a non-profit corporation or similar entity formed for the primary or exclusive purpose of acquiring, preserving and maintaining open space and that has the ability to pay the Purchase Price

- Demonstrated means and mechanism to complete oil field facility abandonment, remediation, consolidation of the oil development surface operations, and restoration
- Seller indemnification and release of liability
- Commitment to methodology for valuation and identification of Buyer's non-contingent funding sources

To-date, no additional follow-up or response to the referenced January 2011 NBR LLC letter or willing buyer letter has been received.

Please refer to the Development Agreement submitted with the February 1, 2013 application for more details regarding the specific terms agreed to by the applicant and City for purposes of pursuing development of the proposed residential village as allowed by Policy LU 6.4.1.

Please also note that, with development of the proposed 97-acre residential village, 235 acres of natural open space will be established as the property's primary land use, to be maintained and protected as such in perpetuity, consistent with Policy LU 6.3.2.

5. Resource Constraint Plan (B. Alternatives, Page 5)

2. Resource Constraint Plan. Staff is still developing its delineation of ESHA on the site (and as noted elsewhere in this letter, additional biological resource information is necessary in order for staff to complete this effort); however, based on a review of the submitted materials it is likely that substantial areas of the project site could qualify as wetlands and/or ESHA. To assist in the development and review of alternative project plans, please submit a set of plans identifying areas where each of the following resource constraints exist: wetlands, vernal pools, coastal sage scrub occupied by the California gnatcatcher, raptor foraging habitat used by sensitive species, burrowing owl burrow areas or foraging habitat, purple needlegrass grassland, and any areas occupied by sensitive plant or animal species. Various buffers should also be identified around these areas, including a buffer of 50 feet, 100 feet, and 300 feet. The plan should include a key for each of these categories. A second page of the plans should contain a colored area showing only the areas where there is a lack of the resource constraints identified above. After review of the resource constraint plan, further alternative development plans will need to be identified, in conjunction with the filing of the application, to ensure avoidance of ESHA and wetlands (and any other significant coastal resources that are identified). **(Pg. 5, ¶2)**

Please see Resource Constraints Plans, which include one map with all documented resource constraints and the oil field abandonment/remediation disturbance area, and two additional maps prepared to illustrate the resource constraints, and the abandonment/remediation disturbance

exemption area with the Proposed Project and Alternative Development Plan Project footprints included with this submittal (Attachment 14). The Resource Constraints Plans present biological data and recommended buffers supported by the technical studies provided in support of the CDP application, as well as the analysis and information provided in responses to comments #1 and #2 relating to existing exempt, historic and vested uses of the site and how those factor into ESHA determinations for site resources. The NBR Project Team understands that sensitive resource constraints on the property will be further refined and confirmed in coordination with staff as part of the Project review process.

6. Alternative Access Plans (B. Alternatives, Page 5)

> *3. Alternative Access Plans. Based upon earlier review of biological information for the Sunset Ridge Park project, ESHA is located within and adjacent to the proposed Bluff Road in the area where it intersects with Coast Highway. Similarly, based on the information submitted to date, it appears that North Bluff Road also passes through and causes impacts to sensitive coastal resources. Please submit alternative project designs, including redesigned access and reduced project densities that do not rely on the proposed Bluff Road access from Coast Highway and/or North Bluff Road from 19th Street. Also, if roadway access to the site were limited to just one of the projects from 15th, 16th, or 17th streets, what is the maximum amount of development that could occur on the site given circulation and other requirements? In other words, if a roadway from Coast Highway and/or 19th Street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th Streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints?* **(Pg. 5, ¶3)**

Please see the Alternative Development Plan included with this submittal (Attachment 15). The Alternative Development Plan has been designed to address comments received by staff raising concerns regarding the proposed Bluff Road, particularly as it relates to potential gnatcatcher habitat and use areas. Accordingly, the Alternative Development Plan removes North Bluff Road extending from 17th Street to 19th from the project design as requested, reduces the width of the remaining Bluff Road from 4 to 2 lanes and further realigns the road throughout the development to avoid permanent, direct impacts to adjacent vegetation potentially supporting gnatcatchers (the road realignment avoids the northwest and southeast polygons as identified in the Consent and Restoration Order CCC-11- R0-02). The Alternative Development Plan would provide for additional land designated as Open Space Preserve and would create additional opportunities to enhance contiguous and high quality gnatcatcher habitat on the site.

Pursuant to the Alternative Development Plan, primary emergency access will be limited to the southern end of the Project site from West Coast Highway via a down-scaled and more

sensitively aligned Bluff Road, and three (3) secondary accesses will be provided from 15th Street, 16th Street, and 17th Street, all which connect to Bluff Road. This proposed ingress/egress pattern is consistent with the primary and secondary (emergency access) points that exist for the site, and would create a system of new coastal access corridors connecting adjacent neighborhoods to onsite recreational resources and to the coast. Alternative Development Plans relying on fewer access points to and through the Project site are not preferred because such alternatives would inherently limit opportunities for public use and enjoyment of the site, and because such alternatives would eliminate options for public access to the shoreline.

Following review of the Resource Constraint Plans provided in response to comment #5, and further dialogue with staff regarding the responses to comments #1 and #2 relating to existing exempt, historic and vested uses of the site and how those factor into ESHA determinations for site resources, the NBR Project Team understands that alternative development plans will be identified in coordination with staff as part of the Project review process to ensure impacts to ESHA are avoided/minimized to the maximum extent feasible.

7. Additional review/information related to biological resources (C. Biological Resources, Page 5)

1. Further Review Required. The points listed below ask for additional information regarding the biological resources on the site. Prior to completion of the application, staff and the applicant should seek to resolve any disagreement regarding the type and extent of the resources on the ground- what types of vegetation communities or species, and where those communities, species, and wetlands are located. **(Pg. 5, ¶4)**

An ESHA designation is based on site specific circumstances, and, except for the portion of the site that is part of the Sunset Ridge Park project that was heard at the Commission's November 2011 hearing, the Commission staff has not yet performed a formal ESHA delineation for the site. However, the site is known to support significant numbers of sensitive species, and there are likely significant areas of ESHA on the site. ESHA determinations are based on site specific circumstances, which the Commission has not had the ability to review in full. Based on review of additional submitted information and additional visits to the site, a determination of ESHA and wetlands will be made which may affect the allowable locations for development on the site. **(Pg. 6, ¶1)**

Comment noted. Following review of the Resource Constraints Plans provided in response to comment #5 and related biological data and technical studies, and further dialogue with staff regarding the responses to comments #1 and #2 relating to existing exempt, historic and vested uses of the site and how those factor into ESHA determinations for site resources, the NBR

Project Team understands that ESHA will be identified and designated on the site in coordination with staff as part of the Project review process.

8. Updated maps of past surveys (C. Biological Resources, Page 6)

2. Past Surveys I Updated Maps. The submitted biological information includes maps which contain just one year of survey data. In review of previous projects on or near the Newport Banning Ranch property (Cease and Desist Order CCC-11-CD-03, Consent and Restoration Order CCC-11- R0-02, and Coastal Development Permit 5-10-168), the Commission staff has reviewed a continuous survey record of gnatcatcher usage from 1992 to 2009. However, only a single year of data is shown for the usage of sensitive species of the property, and of this year of data, only a single point is shown to indicate usage. A single year of data is not sufficient to draw conclusions regarding the usage of habitat on the subject site by sensitive species, as some sensitive species, such as Burrowing Owls, may be absent one winter and present the next. Furthermore, surveyors do not always detect rare species they are searching for, even when individuals are present. Finally, a point does not indicate the range of habitat that was observed by the surveyor, and does not indicate the entirety of the habitat which should be protected. **(Pg. 6, ¶2)**

For these reasons, please submit all known biological surveys regarding sensitive species on the site, and submit updated biological maps which show all known survey data regarding all sensitive species on the site, and which have been updated to indicate the extent of usage. **(Pg. 6, ¶3)**

Please see the Special Status Species and Sensitive Vegetation Map and the Historical CAGN Survey Data map included with this submittal (Attachments 16 and 17). Please note that the Historical CAGN Survey Data map provided includes all gnatcatcher survey data collected between 1992-present. The compilation of gnatcatcher survey data has been provided on a separate map for ease of use legibility, and will be refined when additional analysis is conducted to reconcile the variation in methods, the type of data collected and observations documented during the past 20 years of surveys.

9. Vegetation mowing (C. Biological Resources, Page 6)

3. Mowing. The site has been subject to mowing activities, which have in some cases reduced or may have eliminated the ability of the mowed area to provide habitat. Please submit a map showing what areas have been mowed over time. Additionally, please submit all available information regarding the purpose, extent, and timing of mowing activities. **(Pg. 6, ¶4)**

Please see response to comment 2 above, Resolution of Exemption No. E-7-27-73-144 and oil field operations (A. Exemption/Oil Field Operations, Page 2)

10. Burrowing owl surveys (C. Biological Resources, Page 6)

> *4. Burrowing Owl Surveys. The submitted burrowing owl surveys and reports state that the burrowing owl has been found repeatedly on the site since 2008. However, the survey concludes that, although the owls are there in late January each year, they are not there during mid-February to mid-April. Where is the likely location that they occupy during the breeding season?* **(Pg. 6, ¶5)**

Although some burrowing owls are year-round residents in California, others are migratory. In parts of coastal of southern California, such as in coastal Santa Barbara and Los Angeles counties, burrowing owls are known to winter but are no longer known to breed.[2,3] In Orange County, the CNDDB includes recent nesting records for the Seal Beach Naval Air Station and vicinity and the University of California, Irvine, area. Additional records from other locations, such as the El Toro Marine Corps Air Station, have involved only wintering owls.[4] The seasonality of burrowing owl records in such places is a result of the migratory nature of some owls. Burrowing owl populations of lowland areas of the state are likely augmented by migrants from elsewhere during the winter.[5]

Although the origin of burrowing owls wintering in California is unknown, western burrowing owls have been documented traveling as far as 2450 kilometers (more than 1500 miles) to their wintering grounds.[6] Data on burrowing owls captured and banded by researchers provide some insight on where owls wintering in California may come from. Of 90 banded owls encountered prior to 2001, including those encountered in California and those banded in California and encountered elsewhere, 62% were encountered near where the owls were originally banded. Four

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[2] CDFG (California Department of Fish and Game). 2003. Evaluation of Petition: Request of the Center for Biological Diversity et al. to list the Western Burrowing Owl (*Athene cunicularia hypugaea*) as a Threatened or Endangered Species. October 2003.

[3] Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*). Pp. 218-226 in *California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California*, W. D. Shuford and T. Gardali, eds. Studies in Western Birds, No. 1. Camarillo, Calif.: Western Field Ornithologists; Sacramento: California Department of Fish and Game.

[4] CDFW (California Department of Fish and Wildlife). California Natural Diversity Data Base. 2013. Rarefind Version 43.0.2. On-line database.

[5] Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*).

[6] Haug, E. A., B. A. Millsap, M. S. Martell. 2011. Burrowing Owl (Athene cunicularia). In Birds of North America Online, ed. A. E. Poole. Ithaca, N.Y.: Cornell Lab of Ornithology. Access March 2013 at http://bna.birds.cornell.edu.bnaproxy.birds.cornell.edu/bna/species/061.

owls were banded elsewhere (two in Boise, Idaho, and one each in Washington State and British Columbia), and two owls were banded in California and encountered elsewhere (one banded in Orange County and found dead in Mexico and one banded in the Los Angeles Basin and later encountered in Nevada) (Harman and Barclay 2003 cited in LSA Associates 2009)[7]. The remaining owls were those banded in California and later encountered elsewhere in the state. However, some of these may have been encountered in migration rather at breeding sites. Therefore, not only is it not possible to determine based on the available data where owls wintering in coastal Orange County might breed, but it is unclear how likely they are to breed elsewhere in California versus somewhere out of state.

> *Given that the owl seems to repeatedly utilize the area, why should or should not the area be considered as habitat that is necessary for the survival of the owls on the site.* **(Pg. 6, ¶5)**

In general, wintering habitat is necessary for the survival of migratory bird species. Given the variable migratory behavior of burrowing owls, in which some individuals migrate away from their breeding habitat in winter while others remain in the same area year-round, distinct wintering habitat may be less important for the species than for species that are strictly migratory. In addition, individuals of this species have demonstrated behavioral plasticity in their migratory patterns, in which they choose to migrate some years but not others.[8]

The EIR noted that suitable burrowing foraging habitat was present in non-native grasslands and ruderal areas on the site, noting the project would have permanent impacts to 97.26 acres of foraging habitat and temporary impacts to 2.87 acres.[9] The EIR further noted the project includes approximately 20.27 acres of grassland areas and opportunities for restoration of 50.07 acres of grassland.

11. California gnatcatcher surveys (C. Biological Resources, Page 6)

> *5. California Gnatcatcher Survey. The last formal gnatcatcher survey on the site is from 2009. There have been substantial amounts of disturbance on the site associated with*

[7] GLA (Glenn Lukos Associates). 2013. Results of 2012 Focused Breeding Season Burrowing Owl Surveys Conducted for the Newport Banning Ranch Project, Located in Unincorporated Orange County and Newport Beach, Orange County, California. Letter to Newport Banning Ranch, LLC.

[8] Haug, E. A., B. A. Millsap, M. S. Martell. 2011. Burrowing Owl (Athene cunicularia). In Birds of North America Online, ed. A. E. Poole. Ithaca, N.Y.: Cornell Lab of Ornithology. Access March 2013 at http://bna.birds.cornell.edu.bnaproxy.birds.cornell.edu/bna/species/061.

[9] City (City of Newport Beach). 2011. Draft Environmental Impact Report. Newport Banning Ranch Project, City of Newport Beach. State Clearinghouse 2009031061. Prepared for the City of Newport Beach by BonTerra Consulting. September 9, 2011.

mowing and the continuing oil operations. Additionally, the gnatcatcher is a highly mobile species that may utilize one area in one year and not the next, and not all areas utilized by the gnatcatcher will be found in each survey. For these reasons, up to date gnatcatcher surveys are essential to adequately outlining the areas used by this sensitive species. Therefore, please submit a new current protocol gnatcatcher survey and any intervening survey information that may have been collected since the last survey provided in this application. **(Pg. 6, ¶6)**

Protocol gnatcatcher surveys were conducted in April 2013 according to protocol agreed upon with the U.S. Fish and Wildlife Service and the survey results are included on the Special Status Species and Sensitive Vegetation Map (Attachment 16).

12. Vernal pools/seasonal pond surveys (C. Biological Resources, Page 7)

6. Vernal Pools/Seasonal Pond Surveys.

a. 20I0-20II Surveys - We are not able to confirm whether protocol surveys were completed for the pools. For a number of the pools there is missing data on data sheets. For example, pool depth is an important piece of information and the depth of the pool at the time of sampling is often missing. In addition, in many cases there are only one or two data sheets. The protocol requires that sampling occur over the entire period of pool inundation and we know that ponding extended well beyond the sampling period documented by the limited number of data sheets. Please address these deficiencies.

As stated in the Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods (Guidelines; USFWS 1996), wet-season survey shall be conducted in pools every two weeks starting within two weeks after initial inundation until the pool has experienced inundation for 120 days. Initial inundation is defined as 2cm of standing water within 24 hours of a rain event. If the pool dries prior to 120 days, surveys shall be reinitiated within 8 days of refilling again, until 120 days of inundation or until they are no longer initiated. The Guidelines are currently undergoing revisions (J. Vanderweir and C. Medak, USFWS, personal communication); however, the revised Guidelines, once available, are not expected to change these wet-season requirements. In 2010, Glenn Lukos and Associates (GLA) expanded their sampling efforts to include seasonal features not originally surveyed following a request by the U.S. Fish and Wildlife Service (GLA 2011[10]). These features were first surveyed on January 6, 2011. As you noted, the permitted

[10] GLA. 2011. Report of a Wet-Season Survey for Listed Branchiopods for Conducted for Oil Field Features at the 401-acre Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. July 26.

surveyor did not revisit all of these features every two weeks until dry as required in the Guidelines (GLA 2011 and 2013). These wet-season discrepancies are addressed in Glenn Lukos Associates 2013 memorandum[11] (Attachment 18); however, more importantly, we believe the survey efforts for listed branchiopods in 2012 compensated for previous incomplete surveys.

To address the uncertainty of presence/absence surveys results stemming from an incomplete wet-season survey, Dudek proceeded with a dry-season survey/cyst analysis of all appropriate seasonal features per Guidelines. Since fairy shrimp cysts can only be identified with certainty to the genus level, determination of *Branchinecta* species, in this case the San Diego fairy shrimp (*B. sandiegoensis*) and versatile fairy shrimp (*B. lindali*), can only be identified to species by a complete wet-season surveys under natural field conditions or *in Vitro* culturing of shrimp in the laboratory. Therefore, Dudek and Chuck Black, Ph.D. completed the dry-season survey in all pools that weren't conclusive for the presence/absence of listed branchiopods (i.e. fairy shrimp) and subsequent hatching, culturing, and identification of fairy shrimp species where cysts were observed. The results of the culturing of shrimp are considered conclusive by Dudek (2013[12]) and Mr. Black (C. Black 2013[13]).

Dr. Black states in his memo:

> *"Based on my experience with wet and dry sampling for fairy shrimp, and on my training as a biologist, my opinion is that basins that produce only Lindahl's fairy shrimp from cultured cysts are extremely unlikely to also support populations of endangered San Diego fairy shrimp, especially where San Diego fairy shrimp are produced simultaneously in adjacent cultures kept under identical cultural conditions, as was the case in the above Dudek survey. Furthermore, if San Diego fairy shrimp might occur in some of the basins where very few shrimp were reared, these populations would have questionable value from a conservation standpoint because of possible hybridization."*

Additional steps taken by Dudek and Dr. Black to reach a defensible presence/absence results for federally-listed fairy shrimp on Newport Banning Ranch more than compensated for any uncertainties arising from the wet-season survey of interest.

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[11] GLA. 2013 Recommendations Regarding Fairy Shrimp Surveys for Newport Banning Ranch, Newport Beach, California. *Submitted to the Chris Medak, U.S. Fish and Wildlife Service, on May XX, 2013.*

[12] Dudek 2013a. Summary of Protocol Surveys for Federally-Listed Vernal Pool Branchiopods Conducted on Newport Banning Ranch, City of Newport Beach and Unincorporated Orange County, California. *Submitted to Chris Medak, U.S. Fish and Wildlife Service on January 29, 2013.*

[13] Black, C. 2013. Memorandum. *Dated May 7, 2013.*[13]

b. Some of the pools that had fairy shrimp cysts were identified as not suitable for fairy shrimp because the cysts were not successfully hatched. This does not seem to be a logical conclusion- if cysts are there fairy shrimp have successfully reproduced on the site in the past. Please explain.

As presented in the "*Summary of Protocol Surveys for Federally-Listed Vernal Pool Branchiopods Conducted on Newport Banning Ranch, City of Newport Beach and Unincorporated Orange County, California*" (Dudek 2013a), four seasonal features (L, Q, BB, and II) contained small numbers of fairy shrimp cysts that did not hatch during the culturing process. The wet-season survey revealed that under excessive rainfall these seasonal features were incapable of sufficient inundation for a duration that could have allowed for the completion of fairy shrimp reproduction. It is, therefore, that we conclude that Seasonal Features L, Q, BB, and II contain unlikely fairy shrimp habitat." Additionally, GLA (2011) concluded that no fairy shrimp were detected in Seasonal Feature L during the 2010-2011 wet-season surveys as the seasonal feature did not exhibit ponding. For Seasonal Feature Q, Dudek 2013a concluded "...the inability of this feature to pond water for a sufficient duration under normal rain fall conditions to complete fairy shrimp reproduction significantly reduces its habitat value. It's very possible that cysts from neighboring features were transported to this Seasonal Feature L by vehicle and wildlife movement; however, it is unlikely that this feature provides adequate habitat for fairy shrimp." Similar conclusions were described for Seasonal Features BB and II.

Essentially, under extreme or even normal storm events, Seasonal Pool L, Q, BB, and II have not been found to support sufficient inundation levels or inundation for the duration necessary for fairy shrimp to successfully produce. As mentioned, the few cysts found in these features were likely transported by vehicle, foot, animal, or by another vector. In this case, presence of cysts does not equate to reproduction and persistence of a fairy shrimp population.

c. Wet Season Sampling- When fairy shrimp cysts (Brachinecta sp.) are found, an additional wet season is required. No wet season survey was completed. Please submit a wet season survey.

As discussed in our response 6.b., we consider seasonal features L, Q, BB, and II unsuitable habitats for fairy shrimp due to the inability of these features to support the minimum inundation level and duration defined in the Guideline of 2 cm of for two weeks following a significant storm event. Survey efforts for all other seasonal features are considered complete. Please refer to 6.a. for details.

d. Has a watershed delineation been completed for each pool which indicates whether the project has the potential to impact the pool? If not, such delineation and analysis must be provided.

A preliminary Vernal Pool Approximate Watershed Study was conducted by FUSCOE (2013) to determine potential watershed boundaries for seasonal features occurring in the area west of 17th Street and south of the facilities building (Attachment 19). Eight seasonal features were included in the study: VP1, VP2, VP3, E, G, H, I, and J (please refer to Attachment 20, Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch, Dudek, May 2013. All eight features contain the federally-endangered San Diego fairy shrimp. This particular area of the site is slightly elevated with undulating topography that has been altered by oil operations; however, several depressed areas, perhaps modified by oil field activities, are positioned to capture and retain seasonal rainfall. The approximate watershed boundaries of these features have potential to extend beyond the basins themselves. Two, VP1 and VP2, were previously confirmed 3-criteria wetlands by U.S. Army Corps of Engineers. Additional information on potential jurisdictional wetlands for the remaining features can be found in the technical appendices *Jurisdictional Determination of Seasonal Features on Newport Banning Ranch* (Attachment 20). Towards the western part of the delineation, the topography starts to slope towards the southwest near VP3. Based on 1-foot topographical data, FUSCOE delineated seven possible watersheds. No hydrologic analysis or modeling was performed for the watershed boundaries, instead topographical assumptions were used to determine the best fit line around each of the potential watersheds that contained one or in one case, two features.

Seasonal features outside of the focused vernal pool watershed assessment area were found to be isolated basins formed by standard oil activities and site use (Dudek 2013a and b). The only exception is Seasonal Feature A, which was slightly altered by oil activities, but none the less retains natural elements and functioning of a vernal pool. Hydrologic monitoring associated with wet-season surveys for listed vernal pool branchiopods (i.e. fairy shrimp) was conducted by GLA and was used, in part, to understand feature boundaries and hence provide insight into potential watershed limits. As described in the *Jurisdictional Determination of Seasonal Features on the Newport Banning Ranch* (Dudek 2013b), the "pool boundaries" were typically determined based on obvious breaks in topography or in some instances by abrupt changes in vegetation from potential wetland indicator species to upland species. The watersheds for these boundaries are assumed to be more or less coterminous with the extent of the pool basins, although admittedly a water balance analysis or other hydrologic analyses was not conducted specifically for these seasonal features.

In light of site conditions, hydrologic monitoring, a wetland determination, and the nature and recent creation of the seasonal features, it is challenging to extend the watershed beyond the basin edges and soils directly surrounding the basin. For instance, one feature, Seasonal Feature C, was created for the purpose of gaining access to a broken oil field pipeline which traverses the feature. The oil operator did not back-fill the depression following the excavation of the "repair area;" thereby leaving a discrete basin within otherwise flat topography. In combination with

hydrologic monitoring and more or less flat topography, the watershed was considered to be equal to the extent of basin. Another example is Seasonal Feature O, which is a depression that occurs within a gravel parking and equipment storage area, surrounded by a well-used oil field operation roads. These ruts are typical of parking areas of this nature, meaning driving large trucks and equipment to and from a flat area of decomposed granite over existing soil. These "puddles" don't have a natural watershed that extends outward from the extent of the shallow depressed area(s). Other features are road depressions or ruts. In conclusion, the majority of the seasonal features were determined to have basin boundaries coterminous with their watersheds primarily due to the manner in which the seasonal features were created and in field observations.

In a hydrological study of recognized naturally formed vernal pools in Sacramento, Hanes and Stromberg (in C.W. Witham et. al. 1998[14]) concluded that "conductivity of water in the wells was typically much higher than in the pools, which supports the hypothesis that direct precipitation is a dominant source of water in the pools" and "direct precipitation is by far the most important source of water to the vernal pools on the study site." In the situation at Newport Banning Ranch, nearly all of the features were formed in discrete areas surrounded by relatively flat terrain and/or adjacent to a road or parking area. This is not to discount the possibility that small amounts of water are transferred laterally via subsurface transport and/or temporarily from local runoff of nearby paved roads where these exist adjacent to seasonal features. It is important to stress that the seasonal features that occur on-site today are not natural vernal pools (possibly with the exception of Seasonal Features A), but topographical depressions created since the 1930's by oil exploration and maintenance activities. Additionally, during soil inspections, a restrictive hardpan or claypan, characteristic of natural vernal pools, was not identified in the top 18 inches in pits excavated near the features, even though clay type soils are present on the mesa where several of the features occur (Dudek 2013b[15]). It appears that in the sites current condition, naturally occurring vernal pool complexes and/or broader more extensive watersheds do not exist on-site beyond the hydrologic study area previously mentioned.

13. Vegetation mapping (C. Biological Resources, Page 7)

7. Vegetation Mapping. Please address the following questions and concerns regarding the submitted vegetation map.

General comments

[14] C.W. Witham et. al. 1998

[15] Dudek 2013b. Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch. May 2013.

a. The discussion of vegetation mapping methods is hard to follow. Please provide explicit details for exactly how the mapping was conducted, how the transect data was collected and used, and how the membership rules for the habitat categories was interpreted.

Recent vegetation community mapping was conducted to further examine and describe areas of vegetation on Newport Banning Ranch. The primary goal was to review and revise, as appropriate, the vegetation map prepared by Glen Lukos and Associates (GLA) as part of their Biological Technical Report (GLA 2009). The methodology for mapping vegetation communities consisted of transferring GIS shape files onto a Trimble GPS unit to verify polygon boundaries representing a particular vegetation community were accurately delineated. If GLA identified the existing vegetation within the polygon as a mature unaltered stand that correctly corresponded to Orange County Central-Coastal Natural Community Conservation Plan (NCCP) (1996) based on Holland's *Preliminary Descriptions of the Terrestrial Natural Communities of California* (1986), then Dudek (2013) conducted a visual estimate of relative cover of the dominant plant species. Relative coverage is the cover of a particular plant species as a percentage of total plant coverage, thus relative cover will always total 100%, even when absolute coverage is quite low (Barbour et. al 1987). For homogenous and continuous stands of native vegetation (i.e. shrubland), Dudek biologists estimated relative cover of dominant plant species for the polygon and then compared the results to the membership rules presented in *A Manual of California Vegetation, Second Edition* (MCV2). To reduce sampling error and bias, two (to three) biologists would independently estimate the cover; the mean cover of the two estimates was used in the comparison to the membership rules. In the case where Dudek concurred with GLA's delineation and the vegetation was accurately representative, only the nomenclature was updated to MCV2 classification and recognized on the *List of California Terrestrial Natural Communities recognized by the California Natural Diversity Database* (CNDDB) (CDFW 2003 [updated 2011]). If the vegetation stand had significantly expanded or contracted, Dudek remapped the boundary or entire polygon, as appropriate. Please note that the methodology applied was in areas that displayed characteristics relatively unaffected by oil operations. Additionally, it should be noted that the vegetation communities described in the MCV2 are based on data collected for vegetation communities in their natural unaltered condition. Mature shrublands that experienced low levels of disturbance also were visually quantified and assessed based on relative cover using the methodology described above.

Modified (disturbed) vegetation stands that managed to retain an acceptable community structure within a stand or polygon were approached as a valid vegetation community consistent with literature values, although "disturbed." The disturbance was evident in that the stand typically contained an open canopy of shrubs with a combination of bareground and invasive non-native annual plants located between areas of shrubs, which had obviously experienced an

anthropogenic disturbance. In most cases, similar methodology was used to assess these modified shrubland, such as "Disturbed – California Brittle Bush Scrub (D-CBBS)." Relative percent cover was used as the quantifier in determining classification for most of these stands. In rare instances, and for all disturbed vegetation as identified in GLA's mapping, point intercepts transects were used.

Point line transects were applied to areas of vegetation that were apparently disturbed by standard oil facility practices including past and present oil exploration and operation and maintenance (O&M) activities. GLA originally mapped these areas as simply "Disturbed" or "D." Usually, these areas contained varying arrangements of invasive non-native forbs and grasses, native forbs and subshrubs, and recruitment of young native shrubs. Absolute cover was used to assess and classify these areas or polygons. In comparison to relative cover, absolute cover is the percent of ground surface covered by vegetation or other coverages including rocks, litter, and bareground. The vegetation assemblage assessed for the majority of disturbed areas did not comply with membership rules for alliances or stands as presented in the MCV2 and thus were classified as disturbed.

The MCV2 Membership Rules are generally based on relative cover. That is the percent cover of dominant plant species within their respective vegetation layer (i.e. grass/herbaceous, shrub, tree, etc.). In disturbed areas, absolute cover was applied to eliminate the possibility that membership rules would be erroneously achieved due a false positive (i.e. classifying the disturbed area as shrubland due to a high percent of a shrub species within the shrub layer, although the shrub layer is greatly underrepresented or highly altered due to the sites disturbance). As previously discussed, the MCV2 and the membership rules were established from the collection of extensive field data in natural systems. Although natural disturbance and cover limitations exist in nature (i.e. volcanoes, desert washes, serpentinite soils, etc.), the extensive anthropogenic disturbances caused by the sites occupant is not comparable to natural stands of vegetation or classification based on relative cover.

For additional information, please refer to the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

> *b. It is unclear when the "The Manual of California Vegetation" (MCV2) membership rules are applied and whether Dudek is using absolute or relative cover values. This is a problem because the MCV2 membership rules vary for each category of vegetation. This needs to be reviewed and corrected for all cases where data was used to identify habitats.*

Please review to the response to 7.a. and the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

c. There seems to be an inconsistency regarding the minimum mapping unit. For instance, the document states that the minimum mapping unit is 0.5 acres for assessing disturbed areas. There are many patches of mapped purple needlegrass that are much smaller than this, which is beneficial because it gives additional information regarding the existing vegetation on the site. However, there are also other large areas mapped as disturbed that contain large patches of disturbed encelia scrub consisting of well beyond the minimum 10% cover threshold. Please explain.

Dudek considered the acceptable mapping unit for a site of this size to be 0.5 acres for disturbed areas. As mentioned in the response to 7.a., the mapping effort was based on GLA's (2009) vegetation polygons, which ranged in size from less than 0.1 acre to larger than 2.0 acres. If notable polygon boundaries were determined, GPS data was collected to redraw the expanded or contracted polygons.

Dudek revised polygons where a significant stand of homogenous vegetation exceeded 0.5 acre and either exceeded a membership rule or fit into the species disturbance categories for the California brittle bush (*Encelia californica*).See *Table 2* in the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013) Attachment 21, for the later. Encelia scrub was mapped using the MCV2 membership rule of *Encelia californica* at least 30% relative cover in the shrub canopy where these areas were at least 0.1 acre in size. During the second vegetation mapping pass, 76 transects were established in Disturbed areas that had *Encelia californica* present. The transects were established along a representative vertex and if *Encelia californica* was present, met the MCV2 membership rules, and was of a size greater than 0.1 acre it was mapped as an individual polygon.

Admittedly, purple needlegrass grassland received a finer examination and delineation. This native grassland is a recognized State and locally as a sensitive vegetation community; therefore, based on our knowledge of this community, experience in the coastal zone, and previous comments on other projects by Dr. Jonna Engle, we did not apply a minimum mapping unit to areas containing purple needlegrass (*Stipa nassella*) that exceeded the MCV2 membership rule and Coastal threshold of 10% relative cover.

14. Vegetation mapping of encelia/disturbed habitat (C. Biological Resources, Page 7)

Encelia/Disturbed Habitat

a. The membership rules for what constitutes "disturbed" are unclear. Please provide a clear definition and membership rules for the various disturbed categories.

Generally, "disturbed [vegetation]" is an area that has undergone an anthropogenic modification which has negatively altered a natural vegetation stand. Characteristics of vegetation disturbance

are typically a decrease in the absolute cover of native plants; a reduction of plant diversity within a particular vegetation layer; and, an increase in bareground and non-native invasive plants. As indicated in the response to 7.a., vegetation stands or communities that retain their structure and height (i.e. shrublands) and native plant composition, but have an open canopy within a defined mapping unit and/or invasive plant species, were considered disturbed-shrubland.

Areas significantly disturbed by anthropogenic means that currently contain a dominance of "ruderal" or invasive non-native plant species and retain remnants of disturbance or continued to be frequently disturbed (i.e. bareground, maintenance, mowing, tank bottom, etc.), were categorized simply as "disturbed."

Please review to the response to 7.a. and the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

> *b. While Table 2 provides rules for disturbed encelia scrub categories (this is the only type of disturbed habitat with defined membership rules), we have several concerns including:*
>
> > *1. There appear to be gaps that miss existing disturbed encelia scrub. For instance, there is a gap for anything less than 80% cover that is greater than lm in height*

Disturbed encelia scrub over 1.0 m with a cover that was between 10 and 80% cover did not occur on the Newport Banning Ranch; therefore, no category was created for this scenario. The artificial classification of disturbed encelia scrub that Dudek created was in effort to further categorize areas of interest to the U.S. Fish and Wildlife Service and West Newport Oil in developing an operation and maintenance plan for the California gnatcatcher.

> > *2. Although the membership rules require 30% relative cover of encelia in order for the vegetation to be classified as encelia, either Table 7 or 8 appear to include this information as only the absolute cover of encelia is provided. Please clarify. Also, please explain what coverage requirements and other factors determine whether a patch of vegetation qualifies as 'encelia scrub' or 'disturbed encelia scrub'.*

Absolute cover was utilized for disturbed area. Rules for encelia scrub and disturbed encelia are provided in *Table 4* of the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21. Also, please refer to response 7.a.

> *For all the transects that had 10% or greater native shrubs other than encelia, what were those species?*

The shrub species included Menzie's goldenbush (*Isocoma menziesii*), sawtooth goldenbush (*Hazardia squarrosa*), coastal pricklypear (*Opuntia littoralis*), castorbean (*Ricinus communis*), and mulefat (*Baccharis salicifolia*).

> *4. Many areas of the site have been subject to mowing over time, and therefore a portion of habitat could be described as either encelia scrub or disturbed encelia scrub depending on whether the vegetation had been recently mowed at the time of the survey. Please explain whether usage of height in the guidelines for disturbed habitat is consistent with the listed determinations.*

All areas mowed were not representative of encelia scrub (i.e. California brittle bush scrub) per the MCV2 or the literature. Mowing in and around oil features and roadways is an obvious disturbance to vegetation. Per our classification this is indicated as Disturbance-Mowed-California Brittle Bush Scrub or D-M-CBBS. In areas where mowing, site clearance, or other activities have ceased and *Encelia* shrub has recolonized or grown interrupted into mature shrub, the resulting community is Disturbed-California Brittle Bush Scrub since it often is a monotonous shrub layer of *Encelia californica* with evidence of past disturbance, such as the presence of invasive non-native plant species and bareground.

For more information, please review to the response to 7.a. and the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

15. Vegetation mapping of grassland (C. Biological Resources, Page 8)

> *Grassland*
>
> *a. Native grassland is defined as either characterized by purple needlegrass or salt grass.*
>
> *However, the transect data has areas with significant percentages of native forbs other than purple needlegrass or salt grass that might meet the membership rule for another category of coastal prairie/ native grassland /native habitat.*

The cover of native forb species within the grassland communities did not meet or exceed membership rules per the MCV2 or was not documented as an herbaceous alliance. Even in comparison to other classifications such as R. Holland (1986) and V. L. Holland and D. Keil's (1995) *California Vegetation*, the annual grassland composition at Newport Banning Ranch was not indicative of native grass or forb communities.

The native forbs that were observed at low quantities include common deerweed (*Acmispon glaber*), Cuman ragweed (*Ambrosia psilostachya*), fringed redmaids (*Calandrinia ciliata*),

common sandaster (*Corethrogyne filaginifolia*), dove weed (*Croton setigerus*), clustered tarweed (*Deinandra fasiculata*), Canadian horseweed (*Erigeron canadensis*), alkali seaheath (*Frankenia salina*), Great Valley gumweed (*Grindelia camporum*), seaside heliotrope (*Heliotropium curassavicum*), telegraphweed (*Heterotheca grandiflora*), shining pepperweed (*Lepidium nitidum*), dotseed plantain (*Plantago erecta*), greenspot nightshade (*Solanum douglasii*), salt sandspurry (*Spergularia marina*), and rod wirelettuce (*Stephanomeria virgata*).

For more information, please refer to the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

b. Bare ground rules are unclear- we need more specificity to understand how bare ground was treated in determining habitat type for grassland (this relates back to the general comment about absolute vs. relative cover).

Bareground is an area void of vegetative cover. At Newport Banning Ranch, these areas are typically "open" patches of soil that were exposed during oil operations. On occasion rock or tank bottom comprised bareground. Bareground was included in the calculation of absolute cover in disturbed areas.

For more information, please review to the response to 7.a. and the *Revised Grassland Assessment and Vegetation Survey Report* (Dudek 2013), Attachment 21.

c. Are the areas mapped as annual grassland appropriately labeled, or are there instances where mowing of scrub or other habitat resulted in this determination?

Yes, areas mapped as annual grassland are appropriately labeled. Areas containing mowed scrub were mapped as Disturbed-Maintained- (D-M-) or Disturbed-Infrequently Maintained- (D-I-) as there was evidence of shrub individuals.

16. Environmental mitigation (C. Biological Resources, Page 8)

8. Environmental Mitigation. The application states that 78.5 acres set aside for future mitigation for "environmental mitigation, offsets, or other habitat sites," a site for restoration credits (see page IV-2 of CDP Application Letter). Would oil remediation activities not result in the restoration of these areas? Page IV7 goes as far as to say that the area would be a 'mitigation bank'. If that is part of the proposal, the terms, conditions, mechanisms, management, etc. need to be identified at this time. **(Pg. 8, ¶1)**

The proposed project includes reservation of land for a potential future third-party mitigation bank. The mitigation bank, and its associated terms, conditions, and implementing mechanisms

will be subject to coastal development permit review in coordination with the implementing entity of the bank.

17. Fuel modification zones (C. Biological Resources, Page 8)

9 Fuel Modification Zones. The proposed fuel modification appears to extend to a minimum 120 feet, and in some instances a much greater distance from the adjacent residences. Does the proposed project minimize the width of required fuel modification zones by usage of alternative means and methods of construction? In areas where there are larger areas of park space between residences and the bluff edge, why does the fuel modification zone extend the same amount into the canyon? **(Pg. 8, ¶2)**

Alternatives for minimizing new fuel modification zones for the proposed project that exceed 100 feet are being pursued and alternative plans that reduce fuel modification zones will be submitted following further coordination with the with the Newport Beach Fire Department, wherever possible. Consistent with historic practices, a 100 foot fuel modification area will be provided for all adjacent structures with implementation of the proposed project and associated fuel modification plans.

18. Fences and barriers (C. Biological Resources, Page 8)

10 Fences/Barriers. Movement of wildlife through the development is essential to preserving the biological integrity of important wildlife habitat at the site. For example, studies have concluded that the presence of the coyote in coastal sage scrub habitat resulted in higher survival rates for the California gnatcatcher due to the coyote's predation on species that may harm gnatcatchers. What are the potential barriers to wildlife migration around the site, and how will the development ensure that such barriers are minimized? **(Pg. 8, ¶3)**

The Project EIR notes that the project site is within an area constrained by urban development and that the site itself is surrounded by residential and commercial development on the south, east, and northeast, as well as west of the Santa Ana River. This development restricts movement of most terrestrial species between the site and the Newport Bay Ecological Reserve (2.5 miles to the southeast) and the Bolsa Chica Ecological Reserve (5.5 miles northwest of the site), two major blocks of wildlife habitat in the region. However, as the EIR has identified, the site is an important part of a complex of habitat linkages and open space that allow wildlife to move along the Santa Ana River from Fairview Park south to the Pacific Ocean:

The Project site is adjacent to a USACE salt marsh restoration site, the mouth of the Santa Ana River, and the Talbert Marsh restoration site (located northwest of the Santa Ana River mouth). Talbert Regional Park is located immediately adjacent to the northern boundary of the Project

site, and Fairview Park is located north of Talbert Park. The Project site and these open space areas provide an important regional resource area for wildlife. In particular, a variety of birds, including Threatened and Endangered species, use this area to breed while others use it during migration as a stopover site to rest and refuel. These areas provide the primary open space in the vicinity of the Project site, and the Santa Ana River provides a riverine connection between these areas from the coast inland to Fairview Park. The Santa Ana River becomes channelized (with concrete sides and bottom) 0.8 mile upstream of Fairview Park; however, it still functions as a regionally important wildlife movement corridor for mobile species to reach open space areas upstream that would otherwise be inaccessible. Overall, the proposed Open Space Preserve within the Project site is expected to be used by wildlife moving along the Santa Ana River (especially between the coast and Fairview Park) and, most importantly, as a migration stopover site by bird species migrating along the coastline.

Currently, security fencing around the oil field perimeter presents a significant barrier to wildlife movement. Fencing along the northern and western edges of the site divide habitats in the lowlands of the site from those at Talbert Regional Park and in the tidal areas along the eastern edge of the Santa Ana River. Fences along the eastern and southern edges of the site presumably have little impact on wildlife movement, as they only separate on-site habitats from developed areas adjacent to the site.

While the project site preserves habitat for the federally listed California gnatcatcher (CAGN), further restriction of wildlife movement in parts of the site could alter the function of CAGN habitat. For example, as coyotes may control populations of species that prey on CAGN nests, such as snakes and the raccoon (Grishaver et al. 1998[16]), restricting the movement of coyotes to could have detrimental effects on the nesting success of CAGN.

The Project will result in development of 97 acres on the mesa (uplands), generally along the eastern property boundary and south of the northernmost arroyo. The 97 acre development area is currently occupied by oil field facilities and operations that impede wildlife movement within the site; however, open space and vegetated areas between the facilities and operations still provide some opportunities for wildlife movement. The Proposed development will further restrict wildlife movement within the 97-acre development area by displacing existing open space and vegetated areas and with installation of fencing and walls proposed in the immediate vicinity of the North and South Family Villages, the Urban Colony, and the Resort Colony. However, wildlife movement corridors would be improved throughout the balance of the 235 acres of the site, including along the bluff, within the site's drainages and the proposed Open

[16] Grishaver, M.A., P.J. Mock, and K.L. Preston. 1998. "Breeding Behavior of the California Gnatcatcher in Southwestern San Diego County, California." Western Birds 29: 299–322.

Space Preserve areas in the lowlands and northern portion of the site, through removal of existing oil field facilities, consolidation of remaining oil field operations, and implementation of a comprehensive restoration program for these areas. Restored and preserved natural habitats would be continuous from one end of the site to the other. Movement between these areas by bird species such as the CAGN would not be restricted. CAGN would be able to disperse to other natural habitats to the north of the site by utilizing restored and expended natural habitats on the site.

The Project would result in significant improvements to wildlife movement between the site and other locations along the Santa Ana River. Permeable fencing, or the potential to remove all fencing, between the site and Talbert Regional Park would benefit the larger species present in the area, especially the coyote, which can move over a large area and between habitats in search of prey (3 to 39 sq mi in different studies; Zeiner et al. 1990[17]). This could, in turn, benefit the CAGN. Although some potential CAGN nest predators that wander somewhat widely, such as the raccoon, may benefit as well, the CAGN may potentially benefit overall from the presence of coyotes, as noted above. Generally, by permitting movement between the site and areas further north along the Santa Ana River, permeable fencing along the northern border of the site would encourage a more naturally functioning system in which barriers to wildlife movement are minimized.

Although no fencing or walls are proposed along North Bluff Road from 17th to 19th Street, the road would create a barrier to wildlife, introducing an urban road in an area otherwise proposed to be restored and preserved as natural habitats, and could also pose a danger to wildlife attempting to cross this barrier. Therefore, the absence of this section of road in the Alternative Development Plan would provide additional benefits to wildlife of all sizes.

19. Lighting (C. Biological Resources, Page 9)

> *11. Lighting. The proposed project includes development at topographically high places (bluff tops) that are directly adjacent to topographically low places (wetlands, riparian areas, Semeniuk Slough). How will the proposed project ensure that light, including reflected light, does not result in increased light levels in natural areas?* **(Pg. 9, ¶1)**

The lighting standards for the proposed Project are designed to prevent spillage of light beyond targeted areas. The general standards for the Project limit the location of lighting, restrict the nature of lighting, and prohibit lighting from sensitive areas as follows:

[17] Zeiner, D.C., W.F. Laudenslayer Jr., K.E. Mayer, and M. White, eds. 1990. California's Wildlife. Volume III: Mammals. California Statewide Habitat Relationship System. Sacramento, Calif.: California Department of Fish and Game

1. Street lighting within the Project Site is permitted only at roadway intersections for public safety purposes. Street lighting shall be provided in accordance with the requirements of the Newport Beach Design Criteria, Standard Special Provisions and Standard Drawings for Public Works Construction Standards Manual.
2. LED and/or low-energy fixtures shall be required for lighting used in HOA-maintained common areas and in public street rights-of-way where street lights are permitted.
3. Lighting within the proposed Open Space Preserve areas is prohibited.
4. Outdoor lighting within the proposed interpretative parks shall be prohibited with the exception of public trails which may be lighted with bollard lights or similar low-height, 'dark-sky' lights, provided light fixtures are shielded to confine light rays to the trail.

In addition, the Project includes a Street Signage and Light Fixture plan that illustrates the height and basic design of light fixtures within the development. Street lights are limited to a maximum of 25 feet, and lights will be shielded to prevent spillage: Street light fixtures are required to be flat lens, full cut-off fixtures with light source fully shielded.

The Project also includes lighting standards specifically for the sensitive lowland areas as well as adjacent bluffs, which include lighting restrictions for all areas within 100 feet of the proposed Open Space Preserve (with the limited exception of Community parks)

1. Full cutoff luminaires, as defined by the Illuminating Engineering Society of North America (IESNA), shall be used in developed areas to minimize the amount of light emitted upward directly from the luminaire.
2. Exterior lighting shall be shielded and directed to confine light to the intended area to be lit.
3. No skyward casting lighting shall be allowed.
4. Pathways and trails within the Bluff Park shall be lit with low level bollard or other similar lighting which shall not exceed three feet in height.
5. Lighting levels shall be restricted to the lowest intensity necessary for security and safety purposes while still adhering to the recommended levels of the IESNA.
6. Landscaping shall be used as filtering devices to soften the impact of direct exterior, reflected exterior, and building interior lighting.
7. Design of outdoor lighting fixtures shall be approved as part of Site Development Review.

Therefore, not only would lighting within the lowlands be minimal, but lighting originating from bluffs adjoining areas proposed for development would not spill into the lowlands. Also, lights within the Community Park athletic fields would include light control visors so that light would not spill and glare, and would be directed downward onto the playing fields. Standards for these lights would be Musco Lighting™, "Light Structure Green" standards, or another standard of similar design that reduces light spillage. In addition, the CP Land Use District is located away from the bluffs and sensitive habitats.

20. Plant palette (C. Biological Resources, Page 9)

12 Plant Palette CLUP policy 4.1.3-1 C states:

> *"C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas."*

The proposed project includes both native and non-native species. Although a non-native species may be non-invasive, non-native species still have the potential to spread from landscaped areas into natural area. Additionally, non-native species typically require additional irrigation, pesticides, and maintenance than native species, which raises additional concerns regarding adjacent habitat and geologic stability. Please submit an alternative plant palette that utilizes only species native to coastal Orange County. **(Pg. 9, ¶2)**

Proposed plant palettes included in the Habitat Restoration Plan and Fire and Life Safety Program (Attachment 1a) have been reviewed and revised by Dudek's Restoration Biologists as described below:

- Habitat Restoration Plan – the plant palette species were checked with Jepson records to verify observations in coastal Orange County and there were only a few that were not prevalent in the coastal zone, and the Habitat Restoration Plan plant palette is revised to remove *Rubus ursinus* from Table 2-2 and 5-1; *Bothriochloa barbinodis* from Table 3-2, 3-3, and 3-4; Mirabilis californica from Table 3-4 (replace with *Mirabilis laevis*); and *Eriophyllum confertiflorum* from Table 3-4 (replace with *Artemisia californica*).

- Fire and Life Safety Program – Attachment 1a is revised to remove non-native species if 1) the species has a history of invading native areas, 2) the species has a similar native that could replace the non-native, or 3) if the species is non-native and on the Cal-IPC invasive list or watch list.

  Shrub layer plant species are removed/replaced as follows:

Agave attenuata Century Plant
Agave attenuata Fox Tail Agave
Baccharis pilularis 'Twin Peaks #2' Dwarf Coyote Bush (Replace with Baccharis pilularis)
Cerastium tomentosum Snow-in-Summer
Chrysanthemum leucanthemum Oxeye Daisy (Replace with Eschscholzia californica)
Cistus hybridus White Rockrose (Replace with Mimulus aurantiacus)
Cistus incanus NCN
Cistus incanus ssp. Corsicus NCN
Cistus salviifolius Sageleaf Rockrose (Replace with Rosa californica)
Cistus x purpereus Orchid Rockrose
Convolvulus cneorum (Replace with Calystegia macrostegia)
Crassula arborescens Silver Jade Plant C D
Crassula ovata Jade Tree (Replace with Crassula connate)
Drosanthemum hispidum Ice Plant
Euphorbia biglandulosa
Euphorbia characias Euphorbia (Replace with Euphorbia crenulata)
Euphorbia rigida
Grewia occidentalis Starflower
Hardenbergia comptoniana Lilac Vine (Replace with Marah macrocarpus)
Lantana camara cultivars Yellow Sage C D
Lantana camara montevidensis Trailing Lantana
Leptospermum 'Iaevigatum' Australian Tea Tree
Limonium perezii Sea Lavender
Lonicera japonica 'Halliana' Hall's Japanese Honeysuckle -
Lonicera subspicata Wild Honeysuckle (Replace with Lonicera subspicata)
Osteospermum fruticosum (Replace with Encelia californica)
Prunus caroliniana Carolina Cherry Laurel
Salvia greggii (Replace with Salvia melifera)
Tecoma capensis Cape Honeysuckle (Replace with Lonicera subspicata)

Groundcover species are removed/replaced as follows:

Artemisia caucasica (Replace with Artemisia pycnocephala)
Aptenia cordifolia x Red Apple
Australian Fuscia (Replace with Adenostoma fasciculatum 'Nicolas')
Crassula lacteal (Replace with Crassula connate)
Crassula multicava
Crassula tetragona
Drosanthemum floribundum Rosea Ice Plant (Replace with Salicornia subterminalis)
Drosanthemum hispidum
Drosanthemum speciosum
Lampranthus aurantiacus (Replace with Ambrosia chamissonis)
Lampranthus filicaulis
Lampranthus spectabilis

Ophiopogon japonicas (Replace with Aristida purpurea)
Pelargonium peltatum
Sedum species (Replace with Sedum spathulifolium)

Vine species are removed/replaced as followed:

Bougainvillea spp. (Replace with Rosa californica)
Macfadyena unguis-cati (Replace with Calystegia macrostegia 'Anacapa Pink')
Mascagnia macroptera (Replace with Clematis ligusticifolia)
Passiflora edulis (Replace with Vitis californica)

Attachment 1a, Permitted Plant Palette for Fuel Management Zone B is revised as follows:

Agave attenuate (Replace with Agave Americana)
Crassula arborescens Silver Jade Plant (Replace with Crassula connate)
Portulacaria afra (Replace with Salicornia virginica)
Tecoma capensis (Replace with Lonicera subspicata)

21. Habitat Management Plan (C. Biological Resources, Page 8)

13. Habitat Management Plan. The submitted draft habitat management plan will be further reviewed and further modification will be required upon receipt of additional information regarding biologic information and the scope of the proposed project, as requested in this letter. **(Pg. 9, ¶3)**

Commented noted; please also see the Draft Habitat Conservation and Restoration Plan Opportunities Map prepared for the Alternative Development Plan included with this submittal (Attachment 22).

22. Changes in wetland hydrology (C. Biological Resources, Page 9)

14. Changes to Wetland Hydrology. The proposed project will involve significant changes to existing surface drainage patterns, natural water infiltration, and perhaps changes to subsurface water movement. Please provide a biological/hydrological analysis identifying all such anticipated changes and any subsequent impacts to existing wetlands on the site and surrounding the subject site. If impacts are anticipated, please identify appropriate mitigation measures. **(Pg. 9, ¶4)**

Existing and proposed surface drainage patterns were evaluated to determine changes to surface runoff. A Watershed Map for each condition is provided with this response (Attachment 23). The proposed surface runoff patterns, drainage areas and discharge rates and volumes were

designed to remain similar to existing conditions (within 1% - 5%) for typically evaluated storm events (2-year, 10-year, 100-year). Based on the similar runoff conditions, surface water directed to existing wetlands will remain similar under proposed conditions; however, with the project implementation runoff will receive treatment resulting in improved water quality onsite and to offsite receiving waterbodies and the wetland habitats they support.

Please see response to comment 12.d. above and the Impact and Mitigation Summary Table for Wetlands (Attachment 5) regarding the watershed assessment conducted for the isolated features on the site, and anticipated Project impacts and mitigation acreage requirements. Please also refer to Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch, prepared by Dudek, May 2013, which includes a series of recommended mitigation measures for unavoidable impacts to wetlands (Attachment 20).

23. Pacific pocket mouse surveys (C. Biological Resources, Page 9)

> *15. Current Pacific Pocket Mouse Survey. An assessment of potential Pacific Pocket Mouse habitat, prepared by Dudek, was submitted dated September 25, 2012. This document references past surveys done in I 990 and 1995, but does not include a current survey. The assessment states that based on the prior surveys, no new survey is recommended. However, the assessment goes on to identify potential survey locations should USFWS recommend that new surveys be performed. Since it has been about 18 years since the last survey, conditions may have changed. Therefore, staff believes it would be appropriate for a current survey to be performed, consistent with established professional protocols (e.g. USFWS protocols). Please undertake and submit a current survey. We also request that you consult with USFWS regarding this requirement and include a copy of all correspondence with USFWS on this issue with your submittal. If USFWS decides they would not recommend a new survey, Commission staff may consider modifying or eliminating this requirement.* **(Pg. 9, ¶5)**

Additional coordination with the USFWS has determined that Pacific Pocket Mouse surveys will be conducted on the site. Surveys are to be initiated following a coordination meeting/site visit with the USFWS conducted on May 6, 2013, at which time the exact scope of the survey was determined. Pursuant to direction received from the USFWS, the surveys are to be completed by mid-July this year.

24. Submittal of archaeological resource information (D. Archaeology, Page 9)

> *As noted in staffs comment letter on the DEIR, the DEIR confirms that the archaeological consultant, BonTerra Consulting, performed a walk-over on May 13, 2009 and carried out Phase II test excavation and evaluation of the 11 mapped archaeological sites.*

Specifically, testing activities included brush clearing, excavation of shovel test pits (STPs), and one square meter units. These activities constitute "development" under the Coastal Act. All development, unless otherwise exempt, which is not the case here, requires a Coastal Development Permit (CDP). The DEIR contained no mention of CDPs having been issued for the development. On March 19, 2012 we received a CD containing Responses to Comments for the Newport Banning Ranch EIR. In response to our request for information regarding any CDPs issued for archaeological excavations the City stated that this information would be provided separately (Newport Banning Ranch EIR, Responses to Comments (RTC), #24, page 3-74). When was this separate submittal made? Please provide this information again. **(Pg. 9, ¶6)**

A discussion of cultural resources was – as is required by CEQA – included in the Project EIR prepared for the Newport Banning Ranch project. The City, as lead agency, retained BonTerra Consulting to prepare the EIR and various technical studies required for the EIR, including the technical studies prepared for the Cultural Resource Section of the EIR. Bon Terra used its in-house cultural resources personnel to prepare the Archaeological Resources Assessment that was included as Appendix J in Vol. IV of the EIR.

As the CCC Letter indicates, the City's responses to comments submitted by the Coastal Commission (see Vol. V of the EIR) indicated that it would provide information regarding issuance of a CDP for the archaeological investigations under separate cover as the issue of permitting per se was not an environmental issue under CEQA. To our knowledge, this information was to be provided by the City as the City and its consultant conducted the work. NBR does not have the information and therefore is unable to provide it as part of this submittal. Based upon NBR's understanding, the City did not obtain a CDP for the archaeological work, but according to BonTerra Consulting's Director of Cultural Resources, they employed many of the same safeguards, measures and consultation processes described by the Coastal Commission in its letter, such as Native American consultation and monitoring, to ensure no significant impacts to sensitive resources occurred.

25. Mapped archaeological sites (D. Archaeology, Page 10)

The NBR site contains 11 mapped archaeological sites. The EIR states that 3 of the sites (CA-ORA-839, CA-ORA-844B, and CA-ORA- 906) are eligible for listing in the California Register of Historic Resources (CRHR) as well as the National Register of Historic Places (NRHP). Further, CA-ORA-839 is also considered a "unique archaeological resource" and as such, measures are required to be taken to preserve these resources in place or to leave them undisturbed. Concerning CA-ORA-839, the DEIR is unclear as to whether direct impacts will occur to this unique archaeological resource as a result of the proposed project. However, it is clear in the DEIR that direct

impacts will occur to this archaeological site from the removal of oil field infrastructure. Likewise, CA-ORA-844B and CA-ORA- 906 will be impacted, either in whole or in part, by the Proposed project or development associated with the planned removal of oil field infrastructure. Please explain, in detail, the proposed oil field infrastructure removal activities that will impact the archaeological resources. What agency is requiring the removal of the infrastructure? Please provide a copy of such agency correspondence requiring the removal. Are there alternatives that will avoid impacts to the archaeological resources, including, but not limited to, abandonment in place? **(Pg. 10, ¶1)**

As noted in the CCC Letter and EIR, three sites (or portions thereof) were determined to be eligible for listing in the CRHR and NRHP: ORA-839, ORA-844B and ORA-906. Regardless of whether urban development proposed by the Project may impact these three sites, the EIR noted that oil field infrastructure removal activities have the potential to impact these resources. Oil field clean-up is required by agencies having regulatory oversight over resource extraction, including the California Division of Oil, Gas & Geothermal Resources and, as described in response to comments # 2 and 3 above, is exempt from coastal development permit requirements.

Although abandonment in place is an option for some oil production infrastructure, at this point it is not known whether abandonment in place is feasible for the infrastructure in the area of these three sites. As noted in response to comments # 2 and 3 above, should the agencies having jurisdiction over the abandonment and remediation activities desire no action in potentially sensitive areas and agree to a full closure, and the future land owner or steward assume any future responsibility for those areas, such facilities and/or materials may be left in place to minimize the disturbance footprint.

ORA-839, for example, is located in the northeastern portion of the project site. As noted in the FEIR, the only development that is proposed in the vicinity of ORA-839 is the extension of North Bluff Road to 19th Street, and the alignment in the area of the resource avoids direct impact to this site. Therefore, the proposed development project – specifically the construction of North Bluff Road – would not affect this resource. However, this resource may be impacted if oil field clean up requires removal of facilities which are located on this resource. Depending upon the nature of the oil facilities and the extent of clean up, abandonment and remediation that is required, the entity conducting the clean-up may be able to avoid potential impacts to this resource, assuming the agencies having jurisdiction over the abandonment and remediation activities agree to a full, written closure, and the future land owners and stewards of the proposed Open Space Preserve would issue a securitized release and assume all responsibility for materials left in place.

ORA-844B (only Locus B of this site was determined to be significant) will also not be impacted by the proposed development project – as the closest urban development component, North Bluff Road, is 400 feet east of the resource. Again, depending upon the nature of the oil facilities and the extent of clean up, abandonment and remediation that is required, the entity conducting the clean-up may be able to avoid potential impacts to this resource, assuming the agencies having jurisdiction over the abandonment and remediation activities agree to a full, written closure, and the future land owners and stewards of the proposed Open Space Preserve would issue a securitized release and assume all responsibility for materials left in place.

ORA-906 would be impacted by urban development – specifically the construction of North Bluff Road. Given the agreed upon and approved alignment of this major arterial that is required under the City's Circulation Element, avoidance would not be feasible for the proposed Project and therefore mitigation of this site was identified in the City's EIR. However, the Alternative Development Plan removes North Bluff from the project design and would avoid all impacts to ORA-906.

26. Adequacy of archaeological site testing (D. Archaeology, Page 10)

> *In the DEIR, staff questioned the adequacy of the testing that was previously performed to determine the nature, extent and boundaries of existing archaeological sites on the Project site. The DEIR acknowledges, "It is clear that cultural resources still exist within sites on Newport Banning Ranch, and it is not unlikely that previously undetected cultural material and unknown archaeological sites could remain in the subsurface of the Project site." There is no discussion of peer review of the archaeological testing that previously occurred. Although the DEIR states that the local tribes were solicited for consultation, and the DEIR references a solicitation letter, there is no record of the responses. Please provide copies of any such peer review and Native American comments. The DEIR states that the archaeological investigations carried out by BonTerra in 2009 were monitored by members of the Juaneño tribal group. The history/pre-history of the NBR area indicates that this area has a shared use by the Gabrielino Tongva tribal group, according to the Native American Heritage Commission (NAHC).* **(Pg. 10, ¶2)**

Peer Review

According to the City's consultant, BonTerra Consulting, its work plan for the archaeological investigations that it conducted was not peer reviewed; however, it believes that even if peer reviewed, the work plan and the determinations with respect to each site would not have altered significantly and the conclusions reflected in their findings would remain unchanged.

Local Tribes solicited

The City of Newport Beach conducted SB18 consultation as part of the Newport Banning Ranch project entitlement process. The City requested a list of Native American contacts from the Native American Heritage Commission (NAHC), and sent letters to all of the individuals whose names were provided by the NAHC requesting their comments on the proposed project. A copy of all of the correspondence received in connection with the City's SB18 request is enclosed Attachment 24). As noted in the EIR, only three letters were received by the City in response to the SB 18 consultation letter and all three letters were from various factions of the Juaneno Band of Mission Indians. One Gabrielino-Tongva group did submit a letter to the City, but it did not request SB 18 consultation, only a request to be hired as monitors for future excavations.

The archaeological investigations conducted by BonTerra were overseen by a Native American Monitor (Monitor). The Monitor was from the Juaneno Band of Mission Indians. The City is aware that the area of the proposed project has been historically under the geographical scope of both the Gabrielino-Tongva Tribe and the Juaneno Band of Mission Indians and that selection of a Juaneno representative to monitor the archaeological work was appropriate. As the Coastal Commission is also aware, there are multiple factions within each of these two tribal groups.

27. Comprehensive archaeological research plan (D. Archaeology, Page 10)

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

should also include any subsurface archaeological investigation that was done without a CDP. However, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted excavations noted above, that has occurred on the site. **(Pg. 10, ¶3)**

It has been Coastal Commission policy only in recent years to require both a comprehensive archaeological research plan (ARP) and a CDP for archaeological work prior to consideration of a proposed project. As part of the CEQA process, the City's archaeological consultant prepared an archaeological research design which is described in Section 4.0 of the Archaeological Resources Assessment. While the nomenclature may differ, the intended purpose of the archaeological research design would serve the same purpose as the ARP. While the City's archaeological research design was not submitted to the Coastal Commission or peer reviewed, it provided the same framework for analysis as an ARP.

As to the sufficiency of the work that was conducted, compliance with CEQA required sufficient information regarding the cultural resources on the project site to determine whether the resource would be impacted (i.e., confirmation of site boundaries), and evaluation of the site's integrity to determine significance of the site and whether the project might have a significant impact on the resource. The information was obtained through the site walkover survey and the limited excavations of various sites. The work was completed under the cultural resource provisions of CEQA, consistent with federal standards set forth in Section 106 of the National Historic Preservation Act, and in accordance with an archaeological research design that served the same function and purpose as an ARP.

At this point in time, the potential for disruption of two of the archaeological resources may occur as a result of oil field clean up and abandonment work, and only one site would be impacted by project development (North Bluff Road), an impact that would be eliminated with the Alternative Development Plan. Therefore, for the two sites that may be affected by oil field clean up and abandonment work, the work is required by agencies having regulatory oversight over resource extraction, including the California Division of Oil, Gas & Geothermal Resources and, as described in response to comments # 2 and 3 above, is exempt from coastal development permit requirements.

Second, the Coastal Act does not require all existing archaeological resources to remain in place undisturbed. Section 30244 specifically contemplates the potential for mitigation: "Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required." Therefore, it may be entirely appropriate and consistent with Section 30244 of the Coastal Act that data recovery of these sites or any portion thereof that may be impacted by activities – whether undertaken by the applicant as part of the proposed Project or by the entity that conducts

oil field clean up and abandonment – be identified and permitted as appropriate mitigation of potential impacts to significant cultural resources.

Based upon the archaeological work that has been conducted at the Project site no burials have been identified, nor has there been any indication that certain soil layers contain burials.

Should an ARP be prepared for submittal to the CCC as part of a CDP application for future archaeological excavation work – if avoidance of impacts is infeasible – the applicant (which may or may not be the applicant for this CDP) acknowledges the Commission's requirements for peer review and consultation with the SHPO, NAHC and Native Americans with cultural ties to the area.

As the City and its consultant, BonTerra Consulting, undertook the archaeological work, any questions regarding the archaeological work should also include them.

28. Mitigation of potential impacts to archaeological resources on the project site (D. Archaeology, Page 11)

> *The DEIR states that the Project would impact three known archaeological sites that are deemed eligible for listing on the State and National registers of historic resources/places and that development activities could also further impact unknown archaeological resources. The two proposed mitigation measures included in the EIR indicate that the proposed measures will mitigate this impact to a level considered less than significant. The mitigation measures (MM 4.13-1 and MM 4.13-2 are not consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources. The mitigation measures call for the salvaging and cataloguing of archaeological resources as opposed to in-situ preservation as the preferred option. Further, the mitigation measure state that some project grading would be monitored by Native American monitors. All grading activities that have the potential to impact Native American resources should be monitored by Native Americans with cultural ties to the area. The mitigation measures do not provide for avoidance of impacts and thus maximum protection of archaeological resources. The mitigation measures call for removal (data recovery) of known archaeological sites in order to make way for Project development, including unspecified removal of oil field infrastructure, as opposed to redesign of the Project in order to protect archaeological resources in place.* **(Pg. 11, ¶1)**

The CCC Letter identifies the possibility of other reasonable mitigation that should be considered in addition to the two measures that were identified in the EIR and adopted by the City. Measures such as in situ preservation are identified in the CCC's Letter. As noted previously, where in situ preservation can be reasonably and feasibly accomplished, such as

where the resource can be protected by inclusion in a park or open space area, in situ preservation is the desired means of mitigation. As noted above, where the impact to the resource is a result of oil field clean up and abandonment requirements, the feasibility of avoidance must be examined in light of other agency regulatory requirements and the ability/willingness of agencies having jurisdiction over the abandonment and remediation activities to agree to a full, written closure, and the ability/willingness of future land owners and stewards of the proposed Open Space Preserve to issue a securitized release and assume all responsibility for materials left in place. Where in situ preservation is not feasible, the Coastal Act provides for "reasonable mitigation," and does not exclusively mandate preservation. Therefore, if oil field infrastructure clean-up requires the removal of oil field infrastructure or the clean-up of contaminated soils, and in situ preservation is not feasible, then other means of mitigation must be considered, such as data recovery as has been identified in the Project EIR.

We understand the CCC Letter's position that all grading with the potential to impact cultural resources be mitigated by a Native American monitor.

> *At a minimum, the mitigation measure that is most protective of resources, i.e. avoidance should be considered and assessed. To that end, an archaeologist's assessment identifying the locations of all cultural resources discovered on-site and an appropriate setback from these resources must be submitted. The resource locations and the setback area must be delineated on a site plan. A written description substantiating the basis for the setback must be provided. In addition, this assessment must be prepared in consultation with the appropriate Native American groups with ancestral ties to the site as recognized by the Native American Heritage Commission.* **(Pg. 11, ¶2)**

Please see the **Confidential** Newport Banning Ranch Cultural Resources Map, prepared by Dudek, (Attachment 25) included in this submittal which illustrates the location of existing cultural resource sites in relation to the abandonment and remediation disturbance area, and the proposed Project and the Alternative Project footprints.

Section 30244 requires the consideration of "reasonable mitigation" not "mitigation that is most protective of coastal resources." The City's EIR has identified the locations of all significant cultural resource sites and their location. An "appropriate setback" is not delineated for the following reasons. If activity or development is proposed adjacent to significant cultural resources that would result in subsurface disturbance in the future which may impact any significant cultural resources, a buffer or setback would be appropriate; however, if no adjacent subsurface disturbance would occur then a buffer may not necessarily be appropriate or mandated. Also, the extent of a buffer is subject to considerable flexibility. There are many instances in which the federal and state agencies, as well as the Native American community have agreed that the planting of vegetation, such as cactus, would be sufficient to serve as a

buffer and protective measure for cultural resources and that a wide surface buffer/setback may actually draw more attention to the presence of a resource, than either no buffer or a small vegetative area.

29. Comments made by Professor Hogan on the Archaeological Resources Assessment prepared for the Project (D. Archaeology, Page 10)

Finally, staff received the attached correspondence questioning whether previous excavations at NBR, that have the potential to change the significance of the site, were disclosed. If one or more of the archaeological sites on NBR were a part of a larger off site archaeological site, this information should be disclosed. Please provide your comments regarding the attached correspondence. **(Pg. 11, ¶3)**

The comments from Professor Hogan – a cultural anthropologist in the Department of Human Services (not Anthropology) – pertain to the adequacy of the City's FEIR cultural resources analysis. Hogan identifies nine concerns regarding the Archaeological Resources Assessment contained at Appendix J of the FEIR. The first eight concerns all pertain to whether the references in the technical report are outdated and whether expansion of the cultural context of archaeological sites in coastal Orange County should have been included in the technical report. Inclusion of this information would not have altered the findings as to the site boundaries, or the sites' remaining integrity, or their significance. Hogan's ninth concern pertains to the Native American monitors. As the Coastal Commission staff and Hogan are aware, the project site is in an area of overlapping tribal boundaries and both the Juanenos and Gabrielinos have historically inhabited this region and all factions of both tribes were contacted by the City pursuant to SB 18. Given the overlapping use, selection of a monitor from the Juanenos was appropriate.

30. Height limits for development (E. Development, Page 11)

1. Height Limits. The proposed inn would be four stories and 50 feet high (IV-14). Is this height, and heights of other proposed structures consistent with the City of Newport Beach's zoning code and the City's certified Land Use Plan? Would these proposed heights be a departure from the character of surrounding areas? **(Pg. 11, ¶4)**

The City adopted Newport Banning Ranch Planned Community District (NBRPCD) governs the height requirements for the Project site and the submitted Project Description and development plan elevations demonstrate compliance with the applicable height requirements of the City's zoning code. The Project site is located in an area of deferred certification, within which the City's certified LUP does not serve as the standard of review for new development; therefore, there are no LUP height requirements applicable to the proposed Project. However, the City's

certified LUP Section 4.4.2, which may provide guidance for analyzing the Project for consistency with the Coastal Act states, in part:

> *Concern over the intensity of development around Lower Newport Bay led to the adoption of a series of ordinances in the early 1970s that established more restrictive height and bulk development standards around the bay. The intent was to regulate the visual and physical mass of structures consistent with the unique character and visualscale of Newport Beach. As a result, new development within the Shoreline Height Limitation Zone is limited to a height of 35 feet. Residential development is limited to a height of 24 to 28 feet and non-residential development is limited to a height of 26 to 35 feet. Outside of the Shoreline Height Limitation Zone, heights up to 50 feet are permitted within the planned community districts. There are also two properties in the coastal zone that are within the High Rise Height Limitation Zone, which are permitted heights up to 375 feet. The first is the site of Newport Beach Marriott Hotel in Newport Center; the other is an undeveloped office site northeast of the Jamboree Road/State Route 73 interchange.*

Policy 4.4.2-1 of the LUP imposes a 35-foot height limit in the Shoreline Height Limitation Zone, as graphically depicted on Map 4-3 of the certified LUP. Policy 4.4.2-2 of the LUP further requires that the visual and physical mass of structures be consistent with the unique character and visual scale of Newport Beach.

The Project site is not located within the Shoreline Height Limitation Zone, and therefore is not subject to the 35 foot height limitation. The proposed four-story Resort Inn would be consistent in terms of height and scale with other over-night accommodations in the City of Newport Beach, including the Best Western Newport Beach, which is a 4-story development located in the immediate project area. With respect to proposed development heights and project consistency with surrounding development, the 97-acre development plan area is consistent with the visual and physical mass of surrounding development as follows:

North

Newport Terrace is a 281-unit condominium development, comprised of one- and two-story units, is located in the City of Newport Beach north of 19th Street and east of Balboa Boulevard. No residential, mixed-use or resort development is proposed adjacent to the Newport Terrace development; therefore, the Project does not include any structural development incompatible with this adjacent land use. The Project provides an opportunity to establish open space lands on the site contiguous with the open space areas/parks located north of the project site (Talbert Nature Preserve and Canyon Community Park). The Alternative Development Plan removes the portion of Bluff Road that would extend between 17th Street and 19th Street, which would further enhance open space resources and connectivity between the site and adjacent lands to the north.

South

Lido Sands is a single-family residential community located south of West Coast Highway. Additional residential development south of Lido Sands includes single-family and multi-family residential units with structure ranging from one- to three-stories. The Resort Colony with a Resort Inn and residences would be the closest development to the Lido Sands area; however, the proposed development would be separated from Lido Sands by approximately 350 feet, which includes the six-lane divided West Coast Highway, an approximate 150 foot-wide area of naturally vegetated area on the site, and the proposed South Bluff Park. Additionally, there is an approximate vertical grade separation of 50 feet between the proposed development (set at a higher elevation on the mesa) than the residences south of West Coast Highway.

East

Most of the properties to the east of the Project site in the City of Costa Mesa are within the Westside Specific Plan area. Three Urban Plans were created to establish overlay zones in specific areas of the Westside: 19 West Urban Plan (103 acres); Mesa West Bluffs Urban Plan (227 acres); and Mesa West Residential Ownership Urban Plan (283 acres). Adopted in April 2006, the Westside Urban Plans serve as "regulating plans" that establish provisions for mixed-use development and residential development in the mixed-use overlay district. Properties located within the boundaries of the Mesa West Bluffs Urban Plan area are located contiguous to the eastern boundary of the Project site. These properties have a Costa Mesa General Plan land use designation of Light Industrial and a zoning designation of General Industrial with a maximum permitted building height is 4 stories/60 feet.

The Proposed 4- to 5-story Urban Colony buildings located on both the north and south side of 17th Street would be a maximum of 60 feet, which is consistent with the height restrictions in the City of Costa Mesa's adopted Mesa West Bluffs Urban Plan area.

Additional existing land uses adjacent to the Project site between 16th Street and 15th Street include the City of Newport Beach Utilities Yard, Carden Hall School, low-rise offices, and vacant properties. Land uses east of Monrovia Avenue between 16th Street and 15th Street include low-rise office and light industrial buildings and a mobile home community located on the northeast corner of Monrovia Avenue at 15th Street. The Coast Community College District's Newport Beach Learning Center is a 3-story, 67,000 sf institutional facility located on the northwest corner of 15th Street at Monrovia Avenue. Condominium developments located south of 15th Street include Newport Knolls, Seawind Newport, and Newport Crest. The Newport Crest condominium complex is a 3-story, 460-unit development located adjacent to the Project site.

No residential, mixed-use or resort development is proposed directly adjacent to these land uses. The Project would provide for a new Community Park between the proposed development area and the adjacent mixed-use development; therefore, the Project does not include any structural development incompatible with the adjacent land uses in this area.

West

The Newport Shores development is a 440-home residential community located to the southwest of the Project site across Semeniuk Slough and is vertically grade separated by approximately 50 feet from the proposed development (set at a higher elevation on the mesa). No residential, mixed-use or resort development is proposed adjacent to the Newport Shores development; therefore, the Project does not include any structural development incompatible with this adjacent land use. The Project provides an opportunity to establish contiguous open space lands on the site with the open space areas located west of the project site (Santa Ana River and River Trail, USACE-restored Wetlands and Semeniuk Slough) which would enhance open space resources and connectivity between the site and adjacent lands to the west.

31. Public views of the pedestrian bridge structure (E. Development, Page 12)

> *2. Pedestrian Bridge. The proposed project includes a pedestrian bridge spanning Coast Highway. Please submit full plans for the proposed structure. Would the proposed structure result in impacts to views from important public viewpoints identified in the City of Newport Beach certified Land Use Plan, or would it obstruct scenic views of coastal bluffs? Please submit view analyses identifying the impact of the proposed structure from vantage points located near and distant from the structure. Would the proposed bridge, or the associated path, be built on the edge of a coastal bluff or on the bluff face?* **(Pg. 12, ¶1)**

The proposed pedestrian bridge would not impact views from important public viewpoints as identified in the City's LUP. The closest designated viewpoints near the Project site are located within the Newport Shores development across from Semeniuk Slough (two viewpoints) to the west of the site, and within the Sunset Ridge Park property (one viewpoint) to the east of the site. The proposed pedestrian bridge would not be visible from these designation public view areas.

Preliminary structural calculations were made to confirm that the pedestrian bridge could span West Coast Highway without intermediate piers thus minimize the overall mass of the bridge and eliminating structures within the public transportation right-of-way. The northerly landing would be constructed at the base of the bluff immediately north of the Caltrans right of way. A shorter span would connect the northerly landing structure with the bluff top. The preliminary design of the bridge structure was used to prepare a view simulation of the bridge from Coast Highway

(please refer to Exhibit 4.2-4 in the Project EIR), which illustrates that the bridge form and massing is not intrusive to the viewshed and does not significantly alter the bluff landform.

32. Landform alteration (E. Development, Page 12)

3. Landform alteration. The project includes modifications to existing bluffs to address erosion (page IV-15 of CDP application, figure 4_4 of development plans). Bluffs naturally erode, and such erosion is a characteristic feature of coastal bluffs. Policy 2.8.6-8 of the Newport Beach Land Use Plan states:

> *"Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc."* **(Pg. 12, ¶2)**

Please explain whether the proposed work to the bluff is necessary and unavoidable and whether such work is consistent with the protection of natural landforms. **(Pg. 12, ¶3)**

The proposed bluff remediation work is not necessary to protect existing or proposed development, nor are any protective devices necessary for the Project. The proposed modifications to the existing bluffs are limited to addressing adverse erosion and sedimentation caused by existing, concentrated storm flows along the bluff edge. The purpose of the modifications is to repair and re-establish the eroded areas to its prior condition (similar to the adjacent bluff edge). It is not the intent of the repairs to extend the bluff edge but rather connect the bluff edge on either side of the erosional features and minimize future bluff erosion.

Despite the large cuts and fills on the site and the large total amount of grading, the Master Development Plan concludes that no significant landform alteration would occur. Please explain why. **(Pg. 12, ¶4)**

The Master Development Plan concludes that no significant landform alteration would occur. This conclusion is evidenced by the negligible difference of the pre-development and the post-development view sheds from the view simulations prepared in the EIR (see EIR exhibit 4.2-3b, 4.2-5a, 4.2-5b,4.2-6, 4.2-7, 4.2-11a, 4.2-11b). The bluff edge that is exposed to the south and west is preserved. The deeper areas of the cut and fill are in areas not exposed to views from the coastline. Regarding the "large amount of grading", nearly 65% of the grading quantity reported in the EIR is associated with the remedial grading or replacement of recycled soil. The remedial grading depths are recommended by the geotechnical consultant. The areas requiring remedial grading will be over excavated to the recommended depth and then re-filled leaving no impact to

the land form. Please see the revised Cut/Fill Exhibit (Attachment 26), which illustrates areas of proposed cut and fill and associated changes in topography/grade elevation.

33. Map of existing legal lots (F. Land Division, Page 12)

1. Map of Existing Legal Lots. The application states that the proposed project would subdivide a site currently comprised of 18 legal lots into about 250 legal lots. Please provide a graphic depicting the boundaries and locations of all existing legal lots within the subject site. **(Pg. 12, ¶5)**

The application is referring to assessor parcels rather than legal lots. With regards to legal lots, the attached Title Constraints Map (Attachment 27) depicts 4 lots as described in a Title Report dated May 30, 2008 prepared by First American Tile Company.

34. Tentative Tract Map (F. Land Division, Page 12)

2. Tentative Tract Map. The submitted Tentative Tract Map refers to a Bohn-Mack court case decision and required easements. What was this court case and what relevance does it have to the subject permit application? The map also states that various easements run across the property, for utility and other purposes. Which of these easements are existing? Where are they located? Will any of those easement be relocated? If so, where to? The submitted tentative tract map states that it is for condominium purposes. Does the proposed development involve any actual changes to lot lines or splits in the existing lots? **(Pg. 12, ¶6)**

The Tentative Map depicts a "finger" of the Bohn-Mack Slough which was described and depicted in the "Settlement and Boundary Line Agreement" between the State of California, City of Newport Beach and adjoining Private Landowner recorded as instrument 89-466419. See document for particulars. The location of the Bohn-Mack Slough shown is in the lowland area.

Regarding easements the attached title constraints map details the easements. The approach on the easements is to quitclaim or protect in place the existing easements. Based on ongoing discussions with the easement holders, we are not expecting an impact to the proposed land plan. The map does indicate that it is "For Condominium Purposes." By denoting that the map is for condominium purposes the builder can proceed with condominiums without a subsequent tentative tract map/final map process.

35. Chain of Title (F. Land Division, Page 12)

3. Chain of Title. Also, please provide a complete chain of title for all existing legal lots located within the project boundary. The chain of title must include legible copies of all

deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, including but not limited to creation of parcels via a recorded tract map, parcel map, official map, lot line adjustment, by grant deeds or other transfer, land grant, patent, etc. A typed copy of all handwritten deeds shall be prepared along with all copies of handwritten deeds in the chain of title. These documents should be accompanied by any maps or supporting documents to support and clarify when and how the existing parcels were created. **(Pg. 12, ¶7)**

The chain of Title (back to the establishment of the County of Orange) is being prepared and will be provided under separate cover when available.

36. Bluff Edge Delineation (G. Geology/Hazards, Page 13)

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

> *"Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff, In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff, In a case where there is a step/like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff..."* **(Pg. 13, ¶1)**

Please note that a site visit may be required to determine the appropriate bluff edge. **(Pg. 13, ¶2)**

The bluff edge delineation referenced in the submittal documents was developed by field observation. Fuscoe Engineering staff field walked the bluff edge. Lathe was positioned at the apparent bluff edge as evidenced by the steep bluff face transitioning to the flatter mesa area. Field Surveyors then surveyed the locations for use in delineating the bluff edge. In cases where erosional features were evident, the prominent bluff edges from either side of the erosion area were connected.

Consistent with Section 13577 of the CCC's regulations, Fuscoe Engineering utilized the aerial topography and ArcGIS Spatial Analyst Program by ESRI to conduct additional slope analysis for the bluff edge delineation. The Slope Analysis/Bluff Delineation Map (Attachment 28) shows the proposed bluff edge in relationship to the field located bluff edge. The two bluff edges are coincident for much of the bluff.

37. Development Near the Bluff Edge (G. Geology/Hazards, Page 13)

2. Development Near The Bluff Edge. The July 2011 Geo Report (appendix B, part I of EIR) states that setback requirements from the California State Mining and Geology Dept. were in the progress of being re-evaluated at the time of writing of the report. Have updated setback requirements been released? **(Pg. 13, ¶3)**

Development, including trails and children's playgrounds, appear to be constructed within the 25 foot blufftop setback (e.g. see North Bluff Park). The geologic report (June 2011 report, page 45 of pdf) recommends only trails, lighting, and minor grading. Please include your analysis of whether picnic areas and playgrounds in this setback area are consistent with Section 30253 of the Coastal Act. **(Pg. 13, ¶4)**

Setback requirements referred to in this item do not refer to bluff setbacks. They refer to fault set-backs. To date the California State Mining & Geological Board has not formally adopted modified fault set-back guidelines.

The proposed children's playground would not involve construction with deep foundations or other permanent improvements not easily relocated in response to potential bluff erosion.

38. Bluff retreat (G. Geology/Hazards, Page 13)

3. Bluff Retreat. July 20 II geo report states that a bluff retreat rate has been approximately 2 feet per year between 1932 and 1965, but that such retreat rates will most likely be much lower in the post-project condition. Did such analysis include the

potential effects of sea level rise, according to a range of conservative (high) to modest (low) sea level rise estimates? By how much will the bluff retreat within the next 100 years? **(Pg. 13, ¶5)**

Given that the bluff retreat analysis which was performed was historical it did not include the potential effects of sea level rise. Future bluff retreat will not be affected by sea level rise as the bluff toe elevation is above maximum postulated sea level rise. More specifically, the toe of the bluff is generally at an elevation of 10msl or higher. As can be seen by Attachment 29, the maximum elevation of postulated sea level rise in the year 2100 will be approximately Elevation 9msl. Consequently, the effect of sea level rise on bluff retreat is anticipated to be negligible.

The 2011 Geologic report estimated an historical average rate of 2 feet per year with a range in rate from 0.6 feet per year to 4.2 feet per year. The upper end of the rate range was determined from areas heavily influenced by oilfield activities (i.e. and associated uncontrolled surface water run-off) while the lower end of the rate range is more representative of "natural" conditions. However, even the lower end of the rate range is influenced by things that will not be an issue in the future - i.e. such as the 1938 flood. In addition, the controlled surface drainage and local bluff repairs that will be implemented with the development will lower even further the "lower end" of the rate range. So a conservative estimate of bluff retreat could be determined by multiplying the low end of the rate range (i.e. 0.6 feet/year) by the number of years associated with a development (i.e. 75 years). This yields a total bluff retreat of 45 feet which is less than the 50-60 foot setbacks recommended. It is also consistent with the City of Newport Beach bluff setback requirements.

39. Faulting (G. Geology/Hazards, Page 13)

4. Faulting. The Master Development Plan states that no Alquist-Priolo faults are on the site. However, the June 2011 geotechnical report included in the EIR states that there are fault at the north and south on the eastern portion of the site which could not be determined to be inactive (p 43 of pdf, page 75), and recommends setbacks. The report also recommends additional trenching between the two fault traces. **(Pg. 13, ¶6)**

In the comments to the DEIR, Commission staff stated:

... it is logical to conclude that the area between two segments of an active fault in such close proximity is likely active as well. Accordingly, the fault setback zones should be extended to connect the north and south segments of the Newport Mesa fault unless further study conclusively demonstrates that the area of the fault between these segments is not active as defined by the State of California. **(Pg. 14, ¶1)**

On a site visit on September 11, 2012, Commission staff requested additional trenching to help delineate faulting on the site. No additional studies appear to have been prepared. Please submit an explanation of why. Based upon a review of the submitted material, additional geotechnical investigations may be required. **(Pg. 14, ¶2)**

Please submit an additional fault setback zone map prepared by a qualified professional that has been modified to include a fault setback zone between the north and south segments of the Newport Mesa fault. Please also be sure to coordinate with Commission staff regarding any permitting necessary to carry out additional geologic investigation. Additionally, to help assess how close the fault segments are to proposed development and the risk posed by the fault segments, please submit a set of project plans which include the fault setback zone. **(Pg. 14, ¶3)**

Please see Attachment 30, the Newport Banning Ranch Projected Newport Mesa Fault Map, which includes a projected fault zone and associated 50 feet setback connecting the north and south segments of the mapped Newport Mesa Fault superimposed on the proposed development plan, as requested. The projected fault zone, and associated 50 foot setback, represents a worst-case scenario of potential faulting hazards on the site by assuming 1) the subject fault an active fault, and 2) the fault zone includes the 1,300 foot area extending between the north and south segments of the Newport Mesa fault. Because the fault setback zone has been modified per staff's direction, no additional fault studies have been conducted. Habitable structures on the Project site near the mapped north and south fault segments, and the projected 1,300 foot fault extension between the two, are subject to the 50 foot fault setback zone and seismic design parameters that would appropriately address seismic building standards, unless additional site work demonstrates the fault zone is inactive and/or the projected fault extension does occur on the site.

40. Constructed slopes (G. Geology/Hazards, Page 14)

Constructed Slopes. The submitted Master Development Plan states that 1.1 million cubic yards of grading for development are required, with cuts from one foot to 25 feet and fills from one foot to 60 feet. Additionally, 1.5 million cubic yards of soil are required for structural stabilization of the site, and includes cuts from one to 30 feet. According to the rough grading plans submitted, this would include fill at or near the bluff edge. However, the submitted plans do not specify where different quantities of cut and fill would occur. In order to analyze the impacts of the proposed grading plan, please submit a copy of a grading plan which includes colored gradations depicting 10 foot intervals of depth of cut and fill. **(Pg. 14, ¶4)**

The proposed cut and fill is of a significant degree, and if not properly done could result in impacts to public health and safety. Therefore, to ensure consistency with Coastal Act Section 30253, please submit a quantitative slope stability analysis for all cut and fill slopes not only for the existing condition, but more importantly, for the proposed development. Essentially, a geotechnical review of the proposed grading plan should be performed to assure stability and structural integrity and that the development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. **(Pg. 14, ¶5)**

The geotechnical engineer has reviewed both the Tentative Tract Map as well as the recently prepared Cut/Fill Exhibit (Attachment 26). Quantitative slope stability analyses consistent with worst case natural (i.e. bluff) and "graded" conditions were already performed and are contained in the 2011 Geo report. Analyses included both static and pseudo-static evaluations. These analyses are summarized below:

- Bluff Slopes

Stability analyses were performed on three cross sections that are representative of the range in bluff conditions and which includes the highest existing bluff. The analyses indicate static and pseudo-static safety factors in excess of 1.5 and 1.1 respectively.

- Cut Slopes

As cut slopes will be at angles considerably less steep than existing bluff slope angles and will be of similar maximum height, the 2011 Geo report concluded that all proposed cut slopes will be stable.

- Fill Slopes

Stability analyses were performed for a 65 high 2:1 fill slope with static and pseudo –static safety factors in excess of 1.5 and 1.1 respectively.

Based on previously performed quantitative stability analyses we conclude that "the development will neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding area in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs".

41. Hilfiker wall (G. Geology/Hazards, Page 14)

6. Hilfaker Wall. Near 18th street is a large gully with significant erosion occurring near existing residences and a large retaining wall. Is any development, including grading, structures, or oil remediation activities occurring in the vicinity of this structure? Would any proposed development change the hydrology off this area? Would the proposed development result in any potential for impacts to the adjacent residences, and have the studies recommended in the July 2011 geologic report been completed? **(Pg. 14, ¶6)**

The closest grading is more than 500 feet away from the existing Hilfiker wall. Consequently, there will be no impact on the Hilfiker wall from a geotechnical perspective and no need for additional studies. Minor grading and planting, however, is proposed as part of the habitat restoration plan to remove invasive plants and re-establish native vegetation consistent with the riparian nature of the drainage.

42. Proposed road ways (G. Geology/Hazards, Page 15)

7. Proposed Roadways. The proposed project appears to include roads across existing riparian areas (e.g. North Bluff Road in the vicinity of 16th street). How would these riparian areas be crossed, and are fill, culverts, bridges, or other means proposed? Please include an analysis of the different options, and identity what is the least environmentally damaging alternative. Has this road alignment been reviewed for geologic stability of the final structure/slope? **(Pg. 15, ¶1)**

The proposed design includes fill slopes and culverts to cross the drainage areas mentioned. The road alignment has been reviewed for geologic stability. All slopes created for the roadway will have a lower slope height than the slopes already quantitatively analyzed. Consequently all slopes associated with the roadway alignment will be stable. Bridge crossings have not been studied but are considered to be geotechnically feasible.

43. Pedestrian bridge stability (G. Geology/Hazards, Page 15)

8. Pedestrian Bridge. How would the proposed pedestrian bridge across Coast Highway affect the stability of the bluff? Geotech investigation (July 2011, page 52) recommends additional studies for foundations for the bridge. Have these been completed? **(Pg. 15, ¶2)**

Although the bridge is still in the conceptual stage, the proposed pedestrian bridge is anticipated be constructed on drilled pile foundations. Filling associated with any abutments is not anticipated to be significant. Likewise significant cutting into the bluff to accommodate the structure is also not anticipated. Additional geotechnical engineering studies will be prepared once more detailed plans for the bridge are developed.

44. Sea level rise (G. Geology/Hazards, Page 15)

9. Sea Level Rise. Please include an analysis of how sea level rise will affect the proposed development, including wetland restoration, roads, trails, utilities and other infrastructure, oil field remediation, and consolidated oil field operations. The analysis should include a range of sea level rise estimates, including the latest guidance from the Ocean Protection Council. **(Pg. 15, ¶3)**

The hydrology report prepared for the EIR included a section on Sea Level Rise within Section 3.4 of the Report (Hydrology/Hydraulics Impact Assessment). The analysis evaluated the impact of a 55 inch increase by 2100 which is consistent with the highest average increase reported in the Ocean Protection Council study (State of CA Sea-Level Rise Interim Guidance Document, October 2010). The evaluation determined that a significant portion of the lowlands including wetland restoration areas and trails would be inundated under the highest sea level rise estimates. Approximately elevations of 8' MSL or less would be subject to inundation under extreme tidal and storm events. None of the development footprint or associated storm drain systems would be impacted based on the existing and proposed elevations of the development area.

45. Tidally influenced areas (H. Water Quality/Marine Resources, Page 15)

1. Tidally Influenced Areas. Development proposals must first avoid impacts to wetlands. Then, where such impacts cannot be avoided, only the specific allowed types of developments are allowed to result in impacts to wetlands, and those impacts must be mitigated. Based upon the submitted historic aerials, geologic reports, and the location of the lowlands portion of the project in relation to the Semeniuk Slough, it appears as though this area was at one point subject to tidal action. Are any portions of the subject site currently subject to tidal action, or will portions of the project again be subject to tidal action at the conclusion of the project? If there were any allowable impacts to wetlands on the site, could opening up areas to tidal action be a potential mitigation option for said impacts? **(Pg. 15, ¶4)**

Current aerial topography base maps indicate a very small portion of the Lowlands are subject to tidal influence. Within the project boundary there are approximately 137 +/- acres of Lowland areas with approximately 4 of these acres subject to tidal action. Currently, there are no plans to alter the grading in the Lowlands area, however, it would be feasible to re-grade portions of the Lowlands area and "open up" areas to tidal action if so desired to mitigate for impacts to wetlands.

46. Wetland delineation (H. Water Quality/Marine Resources, Page 15)

2. Wetland Delineation. The wetland jurisdiction maps submitted in the DEIR do not include all areas where fairy shrimp have occurred, and additional data is needed regarding depth of pools and potential for occupation by fairy shrimp. Based upon additional review of the biological and hydrologic information on the site, the determination of the locations of wetlands (as defined by the Coastal Act and the Commission's regulations) on the site may change, which may result in changes to the areas where development on the site would be consistent with the Marine Resources sections of the Coastal Act. **(Pg. 15, ¶5)**

An updated Jurisdictional Wetland Delineation has been completed for the site by (Attachment 20), which evaluated all features previously identified and/or purported to exist on the site. The Jurisdictional Wetland Delineation identifies all wetland features meeting the one parameter test typically used by the Commission to delineate wetlands subject to the policies of the Coastal Act and certified LCP.

47. Water Quality Management Plan (H. Water Quality/Marine Resources, Page 15)

3. WQMP. Have any changes, additions, or updates been made to the preliminary Water Quality Management Plan? Please identity: I) the types of water quality features and numbers or volumes of such water quality features for each area of development on the site, including roads, and how such features were chosen; 2) what the total area of additional impervious surfaces is; 3) what is the estimated area and throughput of proposed infiltration features; and 4) what is the proposed volume of proposed detention basins. **(Pg. 15, ¶6)**

A Preliminary Water Quality Management was prepared for the EIR following approval by the City of Newport Beach. The proposed BMPs were selected in accordance with the County of Orange 2011 Model WQMP and accompanying Technical Guidance Document. These documents utilize the Low Impact Development (LID) Hierarchy and technical criteria to evaluate the feasibility of infiltration, harvest and use, biotreatment and treatment control Best Management Practices (BMPs). Based on the criteria, biotreatment BMPs were selected as the most technically feasible LID feature to be integrated in a variety of ways throughout the site. Bioretention features are proposed within parkway medians for street runoff, within community bioretention facilities per neighborhood and integrated within blufftop open space setback areas. In addition, the plan calls for two extended detention basins including one to collect and treat off-site flows from the existing upstream neighborhoods and a downstream extended detention basin within the non-ESHA lowlands. The downstream extended detention basin will serve as part of a post-water quality polishing basin and as all water quality flows will have passed through biotreatment BMPs prior to the detention basin. In addition, the basin will provide for

stormwater management to distribute flows to the lowlands in a manner that will enhance future restoration efforts.

Under existing conditions, the 401 acre site is 89% pervious and 11% impervious. Under the proposed conditions, the pervious area is reduced to 75% and the impervious areas increases to 25%. This results in an approximate increase in impervious surfaces of 56 acres. However, please note that the calculations for existing pervious/impervious conditions on the site do not include areas that contain degraded asphalt and crude tank bottom materials that affect permeability of these areas. As such, the approximate increase in impervious surfaces of 56 acres from the proposed Project is considered a maximum.

Based on the drainage management areas and impervious/pervious ratio for each area, the total volume of water for LID treatment is 240,992 cubic feet (5.52 ac-ft). Based on the minimum commitments provided in the P-WQMP, a total of 342,423 cubic feet of water (7.8 ac-ft) will be treated by the proposed Low Impact Development Features and upstream water quality basin. This volume covers the 85% 24-hour storm event for the project location.

In order to accomplish this level of treatment, a minimum bottom footprint of 165,175 square feet of water quality features (bioretention bottom surface area) is committed for biotreatment. This does not account for side slopes which would allow for a variety of ponding depths and maintenance access points. It also does not account for upstream landscaping pre-treatment areas, Hydrologic Source Controls (HSC's), or other pervious surfaces which will also provide runoff control and reduce the volume of water reaching the water quality features. Lastly, this footprint does not include the proposed diffuser basin within the Lowlands. No water quality credit is being applied to this basin. All water quality biotreatment facilities will occur within the development footprint within the Upper-Mesa.

Based on the volume of the proposed bioretention facilities for water quality (5.5 ac-ft, the upstream water quality basin for off-site runoff treatment (2.3 ac-ft) and the downstream diffuser basin in the lowland (6 ac-ft), a total volume of 13.8 ac-ft of detention is provided.

At this time, infiltration up on Upper-Mesa within the development footprint has been ruled infeasible due to bedrock constraints, slope stability constraints and soil characteristics. Infiltration is feasible within the Lowlands based on soil characteristics and storage areas.

> *The submitted drainage plan includes drain lines, but it is unclear whether certain areas are contributing or receiving storm water. Please submit a drainage plan which depicts the stormwater flow from all areas affected by the project, and shows where such runoff would lead.* **(Pg. 15, ¶7)**

Please see Attachment 31, Existing and Proposed Hydrology Maps which illustrate the existing and proposed storm drain lines, the areas receiving runoff and the areas where the runoff will be directed to.

48. Peak runoff rates (H. Water Quality/Marine Resources, Page 16)

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

> *"Preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface: face flow, and groundwater recharge function near natural equilibrium states."* **(Pg. 16, ¶1)**

Will the project increase the volume of runoff or peak runoff rate from the development? The preliminary WQMP states that the peak runoff rate will increase, but by less than 5%- 1 cf for a 2 year storm. However, the WQMP also states that the drainage area for the project will decrease by 27.6 acres. How will this decrease occur? If that runoff is instead leading to Coast Highway, where would it ultimately end up and should that flow be incorporated into the amount of total runoff resulting from the development? **(Pg. 16, ¶2)**

All of the runoff from the project tributary watershed drains to the Lowlands and Marsh/Semeniuk areas of the project site. This includes existing off-site upstream tributary areas east of the project site, existing off-site residential tributary area south of PCH, existing off-site residential tributary area west of the project site along the Semeniuk Slough, and the Upper-Mesa area of the project site where proposed development will occur. The Marsh/Semeniuk area is bounded on its westerly flanks by the Santa Ana River/Greenville-Banning Channel (River), and is separated from the River by an earthen levee. There are two tidal gates in the levee, which when open, allow tidal influenced water from the Pacific Ocean (via the River) to enter the Marsh area. The tidal gates are completely closed when the water surface elevation in the Marsh reaches elevation 3.5'. Tidal gate closure has been established as the base condition for this watershed assessment because the scenario provides the most conservative receiving water body assumptions (least available storage for the project watershed). When the tidal gates are closed, runoff from a storm event ponds in the Marsh area up to elevation 6.0' where relief pipes in the levee return water from the Marsh area to the River. The relief pipes are flap-gated (on the River side) allowing return flow from the Marsh to the River only when the water surface elevation in the River is lower than elevation 6.0'. The Lowland area, north and east of the Marsh, works in concert with the Marsh area as a storage device for project watershed runoff, although the Marsh and Lowland are separated by a levee isolating the Lowland area from Pacific Ocean tidal influences. Combined, the Marsh and Lowland provide 259 acre-feet of runoff volume storage during a storm event in the project watershed. Because the Marsh and Lowland are storage

entities (during a closed tidal gate scenario) and not conveyance devices, downstream runoff volume is a potential issue of concern during a capital storm event (100-year Expected Value event), but not runoff rate. Runoff rate is a potential issue of concern relative to conveying runoff through the project watershed via the existing RCB on PCH and via Semeniuk Slough. Accordingly, the project has evaluated the conveyance ability of the PCH RCB during a 100-year High Confidence storm event and has evaluated the conveyance ability of the Semeniuk Slough during a 2-year Expected Value storm event. Analysis results pertaining to questions herein are:

- The project will increase the volume of runoff to the downstream receiving storage facility (Lowland area, Marsh/Semeniuk Slough area) by 3.4 acre feet (264.9 acre- feet proposed versus 261.5 acre-feet existing) during a capital storm event (100-year Expected Value event), an increase of 1.3%. Calculations for storm flow volume don't currently include considerations for LID or water quality BMP features, which likely would reduce the proposed condition runoff volume based on upstream storage and flow attenuation through biotreatment systems (7.8 ac-ft of LID features proposed within Upper-Mesa). The Marsh and Lowland areas currently have a combined storage capability of 259 acre-feet prior to release of flood waters to the Greenville-Banning Channel via relief pipes in the levee separating Greenville-Banning Channel from the Marsh/Lowland area. Storage could be increased by 6 acre-feet to accommodate the total storm runoff volume of 265 acre-feet by grading additional storage in the Lowland area or by providing storage in the development areas of the project site.

- As indicated in Tables 3.5 and 3.6 of the report, the capital storm event (100-year High Confidence) peak flow rate exiting the Caltrans RCB into Semeniuk Slough will decrease from 405.5 cfs during existing conditions to 381.4 cfs (24.1 cfs less or 6.3%) during proposed conditions. This is directly attributable to diverting proposed condition on-site tributary area (27.6 acres) away from the Caltrans RCB and Semeniuk Slough and into the Lowland area where the capacity exists to accommodate the flows.

- As indicated in Tables 3.3 and 3.4 of the report, the 2-year Expected Value peak flow rate exiting the Semeniuk Slough into the Marsh area will increase from 121.3 cfs during existing conditions to 128.1 cfs during proposed conditions (6.8 cfs more, or 5.6%). This minor increase in discharge will have an insignificant effect on depth of flow and velocity in the channel based on existing channel hydraulics.

49. Runoff volumes (H. Water Quality/Marine Resources, Page 16)

Runoff Volumes. The proposed development includes detention basins. This would be effective in reducing large increases in flood amounts and erosive potential of rain events

- however it is not reducing the total amount of runoff which is delivered to off-site areas. How much of an increase in total discharge to off-site areas would be created by the proposed development? How long would the proposed detention basins take to empty? Would the proposed project create low-volume nuisance flows throughout the summer months? **(Pg. 16, ¶3)**

The proposed development would increase the capital storm event runoff volume (100-year Expected Value event) by 3.4 acre-feet (264.9 acre-feet proposed versus 261.5 acre-feet existing). The project design would accommodate the increased volume by re-grading portions of the Lowland area or by providing additional storage on the mesa. Any use of on-site basin storage in the development area would be designed to drain in 72-hours. All on-site LID features will be designed to drain within 48 hours per MS4 Permit requirements.

In addition, the conservative analysis does not factor in the influence of the 7.8 ac-ft of Low Impact Development biotreatment facilities which will attenuate flow and reduce volumes upstream within the development footprint.

Based on the extensive network of biotreatment facilities and requirements for high efficiency irrigation designs, no low-flow dry weather flows are anticipated to reach downstream receiving waters or conveyance channels improving existing conditions. Based on the LID storage area, dry weather flows will remain within the biotreatment facilities.

50. Stormwater Pollution Prevention Plan (H. Water Quality/Marine Resources, Page 6)

6. SWPPP. Please submit copies of the Stormwater Pollution Prevention Plan (SWPPP). **(Pg. 16, ¶4)**

SWPPP's are typically prepared in conjunction with rough grading plans and precise grading plans immediately before the site commences construction activities. The SWPPP requirements in the CA Construction General Permit are very specific in detail and require final permit ready plans to satisfy the requirements. A detailed SWPPP will be prepared and provided to Coastal Commission review following approval of the site plan. However, SWPPP requirements and considerations were analyzed in the Runoff Management Plan of the EIR and a summary is provided below.

In accordance with the 2009 updated General Construction Permit, a Risk Assessment was performed and determined the site to be a Risk Level 2. the analysis also provided in the Report that at a minimum, three debris/sediment basins would be required totaling 630,000 cubic feet of storage with drainage area limitations for each based on a rough grade scenario. These sedimentation calculations serve as the backbone for the rough grading design.

51. Storm water detention structures (H. Water Quality/Marine Resources, Page 16)

7. Storm Water Detention Structures. The proposed detention basins and diffuser basins appear to be handling the majority of the runoff from the site and would discharge into sensitive habitats. What would the structure and function of these features be? What plant species are proposed, and are those species consistent with the continuance of adjacent habitat? Please include an analysis of whether the features would be consistent with Coastal Act Section 30231, requiring maintenance of biological productivity of streams and wetlands, Coastal Act Section 30233, regarding diking or filling of open coastal waters and wetlands, and Coastal Act Section 30236 regarding substantial alterations to streams? Portions of these features appear to overlay existing ESHA. In similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities is consistent with the Coastal Act or Local Coastal Programs. **(Pg. 16, ¶5)**

The detention basins shown in the current base plan will provide a variety of functions including the upstream basin for water quality treatment of off-site runoff and storm water management in the lowland for project runoff. Water quality treatment requirements will be handled by biotreatment features within the development footprint while the downstream basin in the lowlands will provide additional water quality polishing and flow attenuation for future restoration efforts. The basin will serve to distribute flows to the restoration areas under controlled discharges to match the hydrology and habitat restoration objectives.

The diffuser basin just downstream of the Southern Arroyo is intended to entrap any debris loading from the Arroyo as well as act as an energy dissipation device to reduce flow velocities exiting storm drain Line B. The energy dissipation will reduce local scour at the end of the storm drain and the debris entrapment will enhance the function of Semeniuk Slough.

The plant palette for the all of the proposed basins and biotreatment features will include native plants compatible with existing biological habitat and anticipated water balances.

52. Trails and sea level rise (I. Public Access, Page 16)

1. Trails and Sea Level Rise. The proposed project includes the installation of trails located adjacent to the Semeniuk Slough and the wetland areas located in the lowlands portion of the development. What is the estimated frequency of flooding of the slough, and would the location and design of the proposed trails allow for such flooding? **(Pg. 16, ¶6)**

The Semeniuk Slough has capacity for approximately 28 ac-ft of storage which is equivalent to a 2-year storm event. The proposed project will maintain this existing level of storm water protection (rate and volume) by routing storm water to the northern portion of the site.

The location and design of the trails take into consideration inundation levels and durations by aligning trails along existing oil facility access roads that area elevated above the topographically depressed and more frequently inundated areas within the lowlands to ensure the functionality of the trails during and following such flooding events. Though located in an area subject to inundation, the proposed public access trails are consistent with the certified LUP which requires that public access to and along the shoreline, coastal waters and tidelands be expanded and enhanced, where feasible. Because land areas along the shoreline, coastal waters and tidelands are often subject to flood or wave inundation, passive public uses, such as the proposed trails, are typically considered preferred uses within such areas in place of other uses involving structural development.

53. Land Trust (I. Public Access, Page 16)

> *2. Land Trust. CDP Application states that areas of open space would be managed by Newport Banning Land Trust, and that the NBLT would work out a MOU with the applicant to allow for the long term management of the areas (Page IV-1 COP App). Does the project proposal include a transfer in title to the trust, or an offer to dedicate an easement? Is there a proposed amount of money or long term source of funding dedicated to maintenance of this area? Is the trust willing to accept such an offer? (Page III-2 of COP application)* **(Pg. 16, ¶7)**

NBR LLC is currently working with the NBLT to identify the appropriate mechanisms pursuant to which the proposed Open Space Preserve will be protected by Conservation Easements and ultimately transferred or dedicated for management by the NBLT, and to identify longterm funding mechanisms to ensure management of the Open Space Preserve in perpetuity.

It is anticipated that Conservation Easements as well as the appropriate transfer and/or dedication and funding mechanisms for the proposed Open Space Preserve will be effectuated through the Commission's conditions of approval for the project to ensure an appropriate entity accepts the land transfer and/or dedication and that the proposed open space and associated resources will be appropriately managed and maintained. Therefore, submittal of this requested level of detail should not affect the ability of staff to deem the subject application complete for purposes of initiating staff's analysis of the proposed project, including the proposed Open Space Preserve and any associated project conditions of approval potential affecting the strategy for longterm management of the land and resources included therein.

54. Lower cost visitor serving accommodations (I. Public Access, Page 16)

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

> *"Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "In-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations."* **(Pg. 17, ¶8)**

Lower-cost visitor accommodations are designated as a priority use in the coastal zone. Therefore, please submit an analysis of the demand for lower cost overnight visitor serving accommodations in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone, and whether the proposed resort inn would contain lower to moderate cost overnight accommodations. **(Pg. 18, ¶1)**

As the project site is currently used solely as a private oil and gas facility and includes no public access, recreation or visitor serving opportunities, the proposed project will have no impact on existing recreation or lower cost-visitor serving facilities. The project includes several improvements that will provide new high-priority public access, recreational and visitor serving facilities including an extensive 52 acre public park system that includes a Community Park, Bluff top Park, Interpretive Nature Center, and Vernal Pool Interpretive Areas, as well as over seven (7) miles of public interpretive and multi-use trails within the upland and lowland areas of the site, public parking throughout the project site, and clustered visitor-serving hotel and commercial uses. All public access and recreational facilities will be available for public use at no charge; therefore, the project is consistent with Coastal Act Section 30213 and Coastal LUP policy 2.3.3-1 which require lower cost visitor and recreational facilities to be protected, encouraged and, where feasible, provided.

A City of Newport Visitor Serving Accommodations Analysis has been prepared and is included as Attachment 32, which demonstrates there is a wide range of overnight accommodations available in the City of Newport Beach, with available lower cost accommodations maintaining an approximate 80% occupancy rate year-round. The proposed Resort Inn would not consist of limited-use overnight accommodations such as timeshares, fractional *ownership* or condominium-hotels, and will therefore be available for all visitors to Newport Beach. While the proposed Resort Inn does not include designated lower-cost overnight visitor accommodations, as described above, the proposed project will result in the replacement of a private oil and gas facility with a variety of coastal priority, visitor serving uses including amenities to support public access and recreation. Resort Inn is designed as a 75-room boutique hotel which includes a variety of room sizes and a corresponding range of room fees. Finally, the Resort Inn includes ancillary visitor-/guest-serving uses and recreation facilities, many of which would be available for use by visitors, recreationists and residents not staying at the Resort Inn including restaurant(s), bars, a spa and fitness center, meeting and banquet facilities, retail shops.

55. Time restrictions (I. Public Access, Page 17)

4. Time Restrictions. Would restrictions be placed on the hours during which access to public trails, the pedestrian bridge, or other accessways on the site? **(Pg. 17, ¶3)**

To minimize disturbance to the site's significant natural resources and special status species, access to the open space trails is proposed to be limited to use from dusk until dawn consistent with similar open space preserves along the California coast supporting sensitive coastal resources, with the exception of nighttime hikes that may be held by qualified biologist/resource specialists. Use of Bluff Park and the proposed active park areas would be limited to the time restrictions imposed for City parks, typically from dawn to dusk except for active City parks that may be open 6:00 a.m. to 11:00 p.m. (ball field lights are turned off by 10:00 p.m.), to minimize potential lighting impacts on adjacent natural resource areas and nighttime aesthetics, and to avoid potential land use conflicts with adjacent residential and commercial uses. No access limitations are proposed for use of the pedestrian bridge.

56. Proposed commercial uses (I. Public Access, Page 17)

5. Proposed Commercial Uses. Please list the types and areas of commercial uses which are proposed on the site. Would the proposed commercial uses create additional public access and visitor serving recreational opportunities? Would the proposed development include adequate commercial establishments (i.e. supermarkets, retail) to reduce vehicle miles traveled for residents within or surrounding the community? **(Pg. 17, ¶4)**

Commercial uses are proposed as part of the mixed-use development identified as the Urban Colony located adjacent to 17th Street, and as part of the Resort Colony located on the southern portion of the mesa. The proposed commercial uses are intended to provide local and visitor - serving commercial goods and services including grocery markets, restaurants, general retail and personal and/or professional services.

The commercial components of the project are proposed within and adjacent to existing and/or proposed residential uses, all of which would be connected by an extensive system of trails and sidewalks to maximize walkability and bicycling as a means of accessing the commercial uses from both onsite and offsite residential developments. As such, the Project would minimize vehicle miles traveled and corresponding energy consumption and air emissions by accommodating travel demand of not only the proposed project, but also that of existing adjacent land uses, through the creation and expansion of the City's pedestrian and bicycle network which would connect proposed residential neighborhoods, commercial areas and visitor-serving uses, parks and open space within the Project site and to nearby neighborhoods. The Project would implement Smart Growth practices that concentrate mixed-use development in an urban area while improving the connection between non-vehicular transportation and land use to reduce and accommodate travel demand with a combination of alternative transportation modes.

57. Parking (I. Public Access, Page 17)

6. Parking. The CDP Application states that 4000 parking spaces will be constructed as a result of the project. The submitted master development plan states that there would be areas designated as public parking spaces within the development that are located separate from the residential development. Will public parking be allowed within residential areas? Please identify all proposed parking restrictions, including time limits, parking fees, and proposed metering of spaces on a site plan. **(Pg. 17, ¶5)**

Please submit a Transportation Demand Management Plan to reduce the amount of parking required and reduce total number of vehicle miles traveled. For instance, are employee transit passes or other methods proposed to minimize the amount of car trips created by the travel of employees to the site? The plan should include alternative forms of transportation, including public transit and bicycling. **(Pg. 17, ¶6)**

Please provide a breakdown of the amounts of parking that will be made available for each use on the site, what the standard requirements for parking for that use are, and what amount of the parking for each use will be subject to restrictions, and any requested breaks in parking requirements due to Transportation Demand Management strategies. **(Pg. 17, ¶7)**

Please see the proposed Parking Plans, included as Attachment 33, that illustrate the location of required and proposed number of parking spaces provided for each development area, per the proposed residential and mixed-use developments, and those designated for public use. Please refer back to the Project Description, Section IV.A, included in the February 1, 2013 application submittal which includes a detailed description for parking type location to be provided for each proposed project element.

All local streets would be public and many serving the residential uses would allow for on-street parking; the Project would provide public parking as follows:

- Scenic Drive and all of the internal local roadways would be public roads providing on-street parking available to the public. Approximately 242 on-street parking spaces would be provided on Scenic Drive.

- Approximately 188 off-street public parking spaces would be provided within the Community Park areas and the Nature Center.

- Public off-street parking would be provided as shared parking within the Resort Inn and the Urban Colony mixed-use commercial/residential development within the Project site, including for use by coastal recreationists and park users as capacity permits.

The Project does not include any parking restrictions, time limits, parking fees, or metering of parking spaces except as follows:

- Preferential parking spaces, as determined by the City, would be provided for carpools, rideshare, and/or other vehicle-sharing services for the commercial and visitor-serving resort uses.

- Use of off-street public parking resources for the proposed park and trail uses would be limited to the time restrictions imposed for the Open Space Preserve and City parks as described in response to comment #55.

The NBRPCD identifies the number of parking spaces required for each project element, and the Project provides for the on- and off-street parking required for the proposed uses and to support coastal access and recreation, as illustrated on the Parking Plans. As such, no modification of parking requirements is requested.

The Project includes implementation of a Transportation Demand Management Ordinance specific to the proposed development, which promotes and encourages the use of alternative transportation modes through development of the facilities to support alternate modes of travel. The Project would provide several miles of off-street multi-use public trails, on-street public bike

trails, and pedestrian paths for pedestrians and bicyclists, which serve as an alternative form of transportation to the use of vehicles. The trails would provide connections to on-site land uses and habitat areas and would connect to the existing regional trail system, other parks, and open space areas. The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian walkways on the south side of West Coast Highway and to the beach. Please also refer to the response to comment #56 as it relates to Project design elements that minimize vehicle miles traveled for residents within or surrounding the community.

Bike racks would be provided as a part of the proposed neighborhood retail center, parks, and the multi-family residential uses. In accordance with the NBRPCD, on-site bicycle racks with a minimum of 1 bicycle space per 2,500 sf will be provided at the Resort Inn and mixed-use Urban Colony developments. In addition, all multi-family residential uses will provide on-site bicycle racks with a minimum of 1 bicycle space per 10 dwelling units.

With respect to public transit, the OCTA has an existing bus route along Pacific Coast Highway with bus stops on Superior Avenue and near the proposed pedestrian and bicycle bridge, among other bus stops. The Applicant has also committed to coordinate with OCTA to allow for a transit route through the Project site and provide bus stops and/or shelters as needed by OCTA.

58. Parking for the pedestrian bridge (I. Public Access, Page 17)

> *7. Pedestrian Bridge. Is parking available for public utilization of the proposed pedestrian bridge? Is the applicant proposing to dedicate an easement or fee title to the pedestrian bridge to the City or other agency?* **(Pg. 17, ¶8)**

Public parking for the proposed pedestrian bridge would be available as part of the shared parking facilities provided for the Resort Inn, as well as surplus on-street parking in the adjacent resort residential development area. The pedestrian bridge would be conveyed to the City or other appropriate entity for maintenance via an easement or fee title, with the project's Homeowner Owners Association/s responsible for maintenance funding.

59. Project phasing (I. Public Access, Page 18)

> *8. Project Phasing. The current project phasing plan does not adequately prioritize the completion of required mitigation. Please change the construction schedule to indicate that construction of public access amenities, habitat restoration will occur at the first stages of the project.* **(Pg. 18, ¶1)**

Project phasing is determined by the need to integrate, stage and fund oil field abandonment and remediation activities with project development, including public access and recreation

improvements, and corresponding mitigation/restoration opportunities in addition to maintaining access to the remaining oil reserves on the Project site. As such, it is necessary that each phase of the project be sequenced in a manner that maximizes opportunities to phase abandonment and consolidation of oil wells and facilities within the development area and the Upland and Lowland open space areas, and to complete specific land development phases such that abandonment/remediation and construction costs are efficiently implemented and development revenues maximized to establish funding for subsequent project phases and longterm maintenance of the public access and recreation amenities and Open Space Preserve. There may be opportunities to advance mitigation activities in certain portions of the project site. The Applicant is happy to explore advance mitigation/restoration opportunities in concert with determining appropriate reduced mitigation ratio requirements should staff wish to explore these options further.

60. Unpermitted development (J. Unpermitted Development, Page 18)

> *As noted in Sections A and D above, staff believes development has occurred on-site, including but not necessarily limited to unpermitted removal of major vegetation and unpermitted excavations, without benefit of the necessary coastal development permits. In some cases the Coastal Commission has preferred not to proceed with a decision on an application for a coastal development permit until after a pending enforcement action is resolved (e.g. 5-11-068, Shea Homes). This is in part because the Commission does not want to preclude mitigation options available under the Coastal Act which may be most consistent with Chapter 3 of the Coastal Act to remedy the violation, In this regard, applications for proposed development affecting properties with unresolved Coastal Act violations are inherently incomplete because the remedy for those violations, which would establish the baseline condition of the property (i.e. its pre-violation condition), has not been established from which the Commission can make a consistency determination on an application for proposed development. (See, Pub. Res. Code § 30604; see, also, 14 CCR § 13053.5) Thus, the Commission cannot make a determination that the proposed development is consistent with the Coastal Act until the parties remedy the violations. As you know, the Commission's enforcement staff has been in contact with you and the oilfield operator to discuss the issue of unpermitted removal of major vegetation on the site and will be contacting you to address unpermitted excavations on the site.* **(Pg. 18, ¶2)**

Please see response to comment #2 above, Resolution of Exemption No. E-7-27-73-144 and oil field operations (A. Exemption/Oil Field Operations, Page 2) and comment #...The Applicant does not believe unpermitted development has occurred on the property which would preclude mitigation options available under the Coastal Act or otherwise affect the Commission's ability to determine the Project's consistency with applicable Coastal Act policies. We look forward to

further discussions with Commission staff in this regard and concluding any questions/issues remaining upon staff's review of the CDP application resubmittal materials.

61. Agricultural land (K. Miscellaneous Policies, Page 18)

1. Agricultural Land. Section 30242 of the Coastal Act requires that lands suitable for agricultural use shall not be converted to nonagricultural use unless (I) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Agriculture was at one time performed on the site. Please address whether the project would be consistent with Section 30242. **(Pg. 18, ¶3)**

Agricultural resources consist of various types of farmland as defined by the California Department of Conservation (DOC), Division of Land Resource Protection, and the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). They are accessed and mapped statewide on an ongoing and regular basis and are defined as follows:

- **Prime Farmland** is defined as land that has been used for irrigated agricultural production at some time during the four years prior to the Important Farmland Map date. In addition, Prime Farmland must also meet the physical and chemical criteria as determined by the NRCS.

- **Farmland of Statewide Importance** is land other than Prime Farmland that has a good combination of physical and chemical characteristics for the production of crops. It may have been used for the production of irrigated crops at some time during the two update cycles prior to the mapping date.

- **Unique Farmland** is defined as land that does not meet the criteria for Prime Farmland or Farmland of Statewide Importance, but land that has been used for the production of specific high economic value crops at some time during the two update cycles prior to the mapping date. This land has the special combination of soil quality, location, growing season, and moisture supply needed to produce sustained, high quality and/or high yields of a specific crop when treated and managed according to certain farming methods.

- **Farmland of Local Importance** is categorized as land that is either currently producing crops, has the capability of producing crops or is used for the production of confined livestock, and may be important to the local economy due to its productivity or value. Furthermore, other agricultural lands are designated as such if they are subject to Williamson Act contract or agriculture preserve.

In accordance with prime agricultural land standards per Coastal Act Section 30241, farmland within the Coastal Zone must meet any of the following in order to be defined as prime agricultural land: (1) soil classification (Class I or II soils as defined by the NRCS), (2) Storie Index Rating of 80 through 100, (3) ability to support livestock (at least one animal unit per acre as defined by the USDA), and/or (4) planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of fewer than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

Even if land does not meet the prime agricultural land definition per Coastal Act Section 30241, Section 30242 of the Coastal Act applies to all agricultural lands on the urban rural boundary and imposes limits on both agricultural development and conversions of agricultural uses to nonagricultural uses, regardless if the agricultural lands are prime, or are suitable for agriculture.

The following table provides a summary of the three (3) areas on the project site that include underlying soils that meet the definition of prime and/or significant farmland under the NRCS' Farmland Mapping and Monitoring Program (FMMP). Please also see the corresponding Farmland and Soils map depicting the locations and types of soils found onsite (Attachment 34). The project site has been used for oil and gas production since the 1940's and none of the parcels are currently in active agricultural use. Additional analysis was conducted to determine whether any of the project site areas would qualify as prime coastal agricultural resources pursuant to Coastal Act Section 30241.

Table 1 Coastal Act Agricultural Resource Designations and Project Impacts

Parcel Soil Type Descrip-tion	Active Agriculture/ Irrigation	FMMP Farmland Type	Soil Classification[i]	Storie Index Rating[ii]	Totals by Soil Type (Acreage)	Livestock Grazing[iii]	Fruit or Nut-Bearing Crops/Annual Gross Value per Acre[iv]	Surrounded by or on Periphery of Urban Uses[v]
No. 122	No	Prime Farmland, if irrigated	Class II Bolsa Silt Loam	76 (Grade 2)	91.9 acres	No	Potential	North: Talbert Nature Preserve; residences. East: Residences, commercial
No. 136	No	Farmland of Statewide Importance	Class IV Capistrano Sandy Loam, 9 to 15 percent slopes	81 (Grade 1)	4.04 acres	No	No	

Parcel Soil Type Descrip-tion	Active Agriculture/ Irrigation	FMMP Farmland Type	Soil Classification[i]	Storie Index Rating[ii]	Totals by Soil Type (Acreage)	Livestock Grazing[iii]	Fruit or Nut-Bearing Crops/Annual Gross Value per Acre[iv]	Surrounded by or on Periphery of Urban Uses[v]
No. 162	No	Prime Farmland, if irrigated	Class IV Marina Loamy Sandy, 2 to 9 percent slopes	65 (Grade 2)	0.56 acres	No	No	& light industrial uses. South: PCH; residences. West: Santa Ana River/ restored wetlands; residences.

Prime agricultural land standards per Coastal Act Section 30241:

[i] Class I or Class II Soils, as defined by the Natural Resource Conservation Service. Soils with less than Class II would not be considered prime.

[ii] Land with a Storie Index Rating of 80 through 100; Storie Index Rating = [(Factor A/100) X (Factor B/100) X (Factor C/100) X Factor D/100) X 100], where Factor A = Soil Profile Group; Factor B = Surface Texture; Factor C = Slope; Factor D = Drainage, Alkalinity, Fertility, Acidity, Erosion and Microrelief. Land with a Storie Index Rating below 80 would not be considered prime. Source: Soil Survey of Orange County and Western Part of Riverside County, CA, USDA Soil Conservation Service (September 1978).

[iii] Land with the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture is considered prime agricultural land pursuant to Coastal Act Section 30241. "Animal unit month" is defined by the USDA as the amount of forage or feed required to feed one animal unit (one cow, one horse, one mule, five sheep, or five goats) for 30 days; roughly 12,000 pounds of forage per year is required to satisfy this element of the prime agricultural land definition. Minimum parcel size 100 acres for grazing to sustain 1 cow/calf unit.

[iv] Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

[v] Even if land does not meet the prime agricultural land definition per Coastal Act Section 30241, Section 30241 of the Coastal Act applies to all agricultural lands on the urban-rural boundary and imposes limits on both agricultural development and conversions of agricultural uses to nonagricultural uses, regardless if the agricultural lands are prime, or lands suitable for agriculture.

Sections 30241 and 30242 of the Coastal Act require that the maximum amount of prime agricultural land be maintained in agricultural production and that conflicts between urban and agricultural land uses be minimized through means such as, but not limited to: establishing stable urban-rural boundaries, limiting conversion of agricultural lands around the periphery of urban areas to those lands where the viability of existing agricultural use is already severely limited, permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250, assuring that public service and facility expansions do not impair agricultural viability, either through increased assessment costs or degraded air and water quality, and assuring that development adjacent to prime agricultural lands does not diminish the productivity of those lands. In addition, Section 30242 of the Coastal Act protects non-prime agricultural lands from conversion to nonagricultural use unless continued agricultural use is not feasible, or the conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any permitted conversion of agricultural land is required to be compatible with continued agricultural use on surrounding lands.

The proposed project would be consistent with Coastal Act policies pertaining to coastal agricultural resources. Although some portions of the project site with underlying FMMP soil designations could potentially meet the prime agricultural land standards (if irrigated) pursuant to Coastal Act Section 30241, the areas are not in active agricultural uses and the proposed project would not convert or otherwise develop these areas with non-agricultural uses as they are proposed to be maintained as open space preserve or parklands. Further, the areas containing potential agricultural soils on the project site are isolated and surrounded by urban development. As such, the viability of establishing a new agricultural use on the site is severely limited by potential conflicts with surrounding urban uses. In addition, consistent with Section 30250 of the Coastal Act, the proposed project is surrounded by existing developed areas and would serve to concentrate future development within the urban corridor. Thus, the project is consistent with the Coastal Act's policies regarding agricultural resources.

62. Takings information (K. Miscellaneous Policies, Page 18)

> *2. Takings Information. Because there are significant constraints on development of the subject property, in terms of impacts to biological resources, among other issue areas, the Commission may find that any significant development of some or all of the subject site would be inconsistent with Coastal Act requirements. In that case, the Commission would be able to approve development of those lots only if it finds that denial of development would constitute a taking of private property without compensation in violation of Constitutional requirements. To allow the Commission to undertake that analysis, please provide the information specified in the enclosed "Takings Information" form.* **(Pg. 18, ¶4)**

The Commission has requested that the applicant provide the information specified on the "Taking Information" form. Portending a potential regulatory action that will result in the possible "taking" of the applicant's property, the Commission requests information regarding the applicant's "investment backed expectations" and "economically viable" use of the property. These 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.

In short, case law prohibits the Commission from engaging in constitutional adjudication when carrying out its functions.

The NBR Project Team understands that sensitive resource constraints on the property will be refined and confirmed in coordination with staff as part of the Project review process, and that further dialogue with staff regarding existing exempt, historic and vested uses of the site and how those factor into ESHA determinations will further our collective analysis of viable development plans for the Project.

63. Development agreement (K. Miscellaneous Policies, Page 18)

> *3. Development Agreement. The submittal contains a copy of a Development Agreement between the applicant and City of Newport Beach. California Government Code Section 65869 states that "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal Commission action." Since the City of Newport Beach does not have a certified local coastal program, any development agreement that pertains to property within the coastal: zone must be approved by the Commission. In general, the Commission must either approve or deny the development agreement; there is no process by which the Commission can 'condition' an approval of a development agreement. Since the proposed project is likely to undergo changes in conjunction with the coastal development permit process, we recommend that the development agreement be withdrawn from consideration by the Commission at this time. At a future date, if a local coastal program is certified for the site, and/or when a development plan is approved for the site through the CDP process, the development agreement should be modified to conform to the LCP/CDP and submitted at that time for approval.* **(Pg. 18, ¶5)**

The CDP Application specifically requests information relative to whether or not a proposed project is to be governed by a Development Agreement, as is the case with the Newport Banning Ranch Project, and in many instances staff has requested that Development Agreements be submitted with permit applications as evidence of local government approval. The Project Team understands that the Development Agreement will not be effective in the Coastal Zone until the Development Agreement is formally submitted and approved by the Coastal Commission.

64. Approvals from other agencies (L. General Filing Requirements, Page 19)

1. Approvals from Other Agencies. What is the status of approvals for other agencies which are listed as requiring permits on page I-4 of the CDP application letter? Please demonstrate compliance with Section 13052 of the Commission's regulations. The Executive Director is choosing not to waive any of the requirements of Section 13052, as is allowed under Section 13053. Please also address the following:

- *The CDP Application states that the majority of the site is currently located within unincorporated Orange County. What approvals are necessary from Orange County and have those approvals been received?*
- *Please provide a copy of the Statement of Intent filed with the Local Agency Formation Commission (LAFCO)* **(Pg. 19, ¶1)**

Section 13052 of the Commission's Regulations indicates, in part, that an application shall be deemed in compliance with Section 13052 when the proposed development has received approvals of any or all of the followings aspects of the approval, as applicable:

- Tentative map approval – ***Completed and submitted with CDP application***
- Planned residential development approval - ***Completed and submitted with CDP application***
- Special or conditional use permit approval – ***Not Applicable***
- Zoning change approval - ***Completed and submitted with CDP application***
- All required variances, except minor variances for which a permit requirement could be established only upon a review of the detailed working drawings – ***Not Applicable***
- Approval of a general site plan including such matters as delineation of roads and public easement(s) for shoreline access - ***Completed and submitted with CDP application***
- A final Environmental Impact Report or a negative declaration, as required, including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency - ***Completed and submitted with CDP application***
- Approval of dredging and filling of any water areas - ***Completed and submitted with CDP application***
- Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances - ***Completed and submitted with CDP application***

- In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission– ***Not Applicable***
- A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations – ***Not Applicable***

As demonstrated above, the Project application complies with all applicable requirements of Section 13052 and the application should be accepted for filing accordingly.

65. Fees (L. General Filing Requirements, Page 19)

2. Fees. Based on the information submitted to date, Commission staff has determined that the proposed project will be processed on the Regular Calendar. You have submitted a fee of $159,150. Please submit a breakdown of the submitted fee, including the amounts submitted for residential and commercial development, and the fee submitted for grading, lot line adjustments and subdivisions. Any fee discrepancies will need to be resolved prior to filing the application complete. Please note that if you are seeking a fee discount in anticipation of LEED certification, you must comply with the Commission's Regulations, Section 13054(h), relative to the discount including but not limited to the required letter of credit. Otherwise, the full fee must be submitted at this time. **(Pg. 19, ¶2)**

Comment noted. The Project application consists of a mixed-use development for which different types of development (residential, commercial, recreation, restoration, etc.) are included on one site under one application. Accordingly, the application fee for the Project was determined to be $265,250.00 based on the Commission's fee schedule which provides that the application fee is not to exceed $265,250.00 for all other types of development. Pursuant to Section 13054(h) of the Commission's Regulations, the Applicant submitted a payment of $165,100, equal to 60% of the total application fee. In January, the NBR Project Board of Directors approved a reserve for the remaining 40% of the application fee in recognition of pending LEED certification (documentation to be provided separately).

66. Co-applicant invitation (L. General Filing Requirements, Page 19)

3. Co-Applicant Invitation: The sole applicant identified in the permit application is Newport Banning Ranch LLC (NBR LLC). Two other entities, Aera Energy LLC and Cherokee Newport Beach LLC, were identified as property owners. If there are any other

entities that have any property interest in the area proposed for development, those entities must also give NBR LLC the authority to apply for and to undertake the proposed development. Furthermore, please demonstrate that all individuals signing on behalf of any LLC (or similar type entity) have the legal authority to do so on behalf of those LLCs. **(Pg. 19, ¶3)**

The application states (IV-22) that off-site improvements are needed to provide access to the subject site. This includes development near 15th Street, Sunset Ridge Park, the proposed pedestrian bridge which has a landing on West Newport Park. Are all such improvements located outside of the subject site included in the subject application? Do the property owners of these off-site areas wish to be a co-applicant for the project? If the development in these off-site areas is included in the application, please provide written evidence that these property owners have granted you written permission to apply for and to undertake development on their property. Please see the attached co- applicant invitation forms. **(Pg. 19, ¶4)**

All of the development described in the Project Description, including offsite improvements, is included in the subject application. The large majority of offsite improvements would occur in public right-of-way. Evidence of property owners' consent for offsite improvements is included as follows:

- City of Newport Beach Council Resolutions approving all offsite improvements located within public right-of-way and the City yard owned by the City of Newport Beach;
- City of Costa Mesa Traffic Mitigation Agreement between Newport Banning Ranch LLC and the City of Costa Mesa, pending City Council Hearing June 4, 2013.
- Memorandum of Understanding between Newport Banning Ranch LLC, and the Newport-Mesa Unified School District, dated November 8, 2011 (Attachment 35)

67. Development review process/detailed project plans (L. General Filing Requirements, Page 20)

4. Development Review Process/Detailed project plans. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for each type of structure, and draft park plans showing the types of uses that are proposed in each area. In the context of a coastal development permit, the Commission's review of the proposed project has to be of the project which is actually proposed on the site, and not just for the types of land uses or types of structures in each area. The coastal development permit process is not suited to the type of 'conceptual' approval that is being sought in the proposed application. **(Pg. 20, ¶1)**

For a project of this scale, land uses/designations should be identified through a local coastal program prior to any coastal development permit being processed. We strongly urge the applicant to work with the City to make use of this preferred development review process. If, on the other hand, you choose not to follow this advice, you will need to fully develop the proposal into a complete -not concept- project. **(Pg. 20, ¶2)**

Thus, you would need to submit two sets of detailed project plans for all proposed development and structures, including full grading plans, foundation plans, site plans, floor plans, water quality measures associated with each structure, detailed landscaping palettes with all proposed species and their drought tolerancy and whether they are native to coastal Orange County, elevation plans, and full utility plans, and other plans as appropriate. **(Pg. 20, ¶3)**

Please refer to response to comment #1.

68. Public comments on current application (L. General Filing Requirements, Page 20)

5. Public Comments on Current Application. Several members of the public have reviewed the current submittal and provided comments on the application. Those comments are attached to this letter. Please review and respond to those comments insofar as the comments raise questions or issues related to the completeness of the application. **(Pg. 20, ¶4)**

Thank you for providing the public comment letters received on for the Newport Banning Ranch project and associated application materials. We appreciate staff's keeping us apprised of public interest and comments as they arise. As a result of the meeting discussion that occurred with staff and the NBR Project Team, we understand that no response to the public comment letters received on the application materials is required for purposes of reviewing the application materials for completeness, but that the Project Team will be available to prepare and provide responses as determined necessary by staff, during the Project review process.