



BRIEFING BOOK
for
California Coastal Commission

W14d

Newport Banning Ranch – Application 5-15-2097

September 7, 2016



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EXECUTIVE SUMMARY

RE: Application 5-13-032 (Newport Banning Ranch)

The Banning Ranch Conservancy objects to the scheduled hearing on the above application on the basis that the application is incomplete and the hearing is unlawful.

1. The project has been segmented by the applicant, with concurrence of the Commission Staff, into two supposedly separate and distinct projects, resulting in “piece-mealing” of the overall project. The project, as documented from the beginnings of the project proposal, includes a development proposal that is based upon, contingent upon and includes consolidation of oil field operations (to include abandonment of wells, well sites, pipelines, structures and equipment; remediation and clean-up of the impacted land, especially the development footprint; and translocation of wells and equipment to the designated “oil consolidation” sites on the same property).
2. The application is also incomplete because of lack of information or inaccurate information from the applicant. Eight Notices of Incomplete Application (on file) from Commission Staff to the applicant detail all of the studies and reports repeatedly requested or required by Staff to

process the application that the applicant ignored or simply refused to provide.

3. If the Commissioners give serious consideration to approve the Staff recommended development footprint or a “compromise” footprint between the project as proposed and the Staff recommendation, there would be insufficient information available to the decision makers and/or the public to adequately analyze the project for conformance with Chapter 3 policies of the Coastal Act. Too much information would be lacking regarding the specific layout, design, placement and mix of structures and features to properly analyze any such “project”.

The Commission should strongly encourage the applicant to withdraw the application and re-submit when they are willing to provide all requested information. If the applicant is unwilling, and/or in order to eliminate any conflict with the Streamlining Permit Act, the Commission should then deny the project for the reasons stated herein and in the complete record of these proceedings.

The Banning Ranch Conservancy recommends DENIAL of the applicant's proposed project for all the reasons enumerated in this Briefing Book, in the Coastal Commission Staff Report on Application 5-13-032 (Newport Banning Ranch) and in the Administrative Record of this proceeding. The proposed project contains so many issues and violates the Coastal Act in so many ways as to render any consideration of it as an exercise in futility and any approval of it as legally unsustainable.

The Banning Ranch Conservancy recommends DENIAL of the Staff's recommendation of a project of 19.7 acres for all the reasons enumerated in this Briefing Book, in the Coastal Commission Staff Report and in the Administrative Record of this proceeding. There is much to applaud in the Staff Report, such as recognition of much of the ESHA for the Burrowing Owls. However, Staff continues some of the same egregious errors from the May 2016 Staff Report, to wit: changes in the law, science and interpretation of ESHA, wetlands and vernal pools in contravention of the Coastal Act, settled case law and past precedent in prior Coastal Commission decisions. Where there has been unpermitted development on Banning Ranch, Staff is inconsistent in applying the baseline environmental conditions as what was there prior to the unpermitted development (as required by the Coastal Act) versus what the conditions are since that unpermitted development occurred.

The Banning Ranch Conservancy, further, finds additional and substantial reasons that both the applicant's proposed project and the Staff's recommended project should be denied. They are discussed herein and in the Administrative Record of this proceeding.

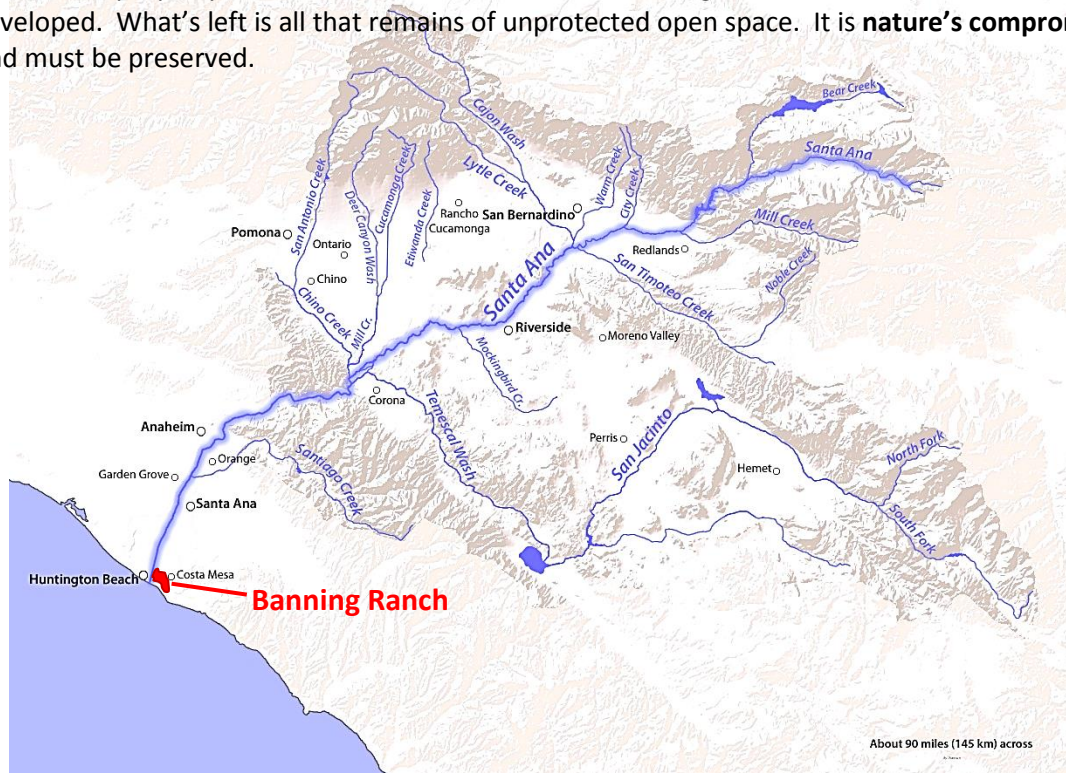
The Banning Ranch Conservancy has recognized and recommended a potential Alternate Proposal that meets requirements of the Coastal Act and is most protective of coastal resources.

It is the position of the Banning Ranch Conservancy that Section 30007.5 – "Conflict Resolution", also known as the "Balancing Provision" - is inapplicable and must not be relied upon by the Commission to provide support for any discussion or decision to implement it in this proceeding. No provisions of the Coastal Act are in conflict with any other provision of the Act in this application. The inherent purpose of the Banning Ranch project is development of the property for residential and commercial uses for private economic gain. Any "public benefits" are ancillary to that inherent purpose.

Many other problems, issues and areas of concern are illuminated in this Briefing Book and throughout the Administrative Record on file for this application.

SITE DESCRIPTION

- Banning Ranch at 401.1 acres is the last large parcel of unprotected privately owned coastal open space in Southern California, located where the Santa Ana River meets the Pacific Ocean.
- Branches of the active Newport Inglewood Fault, source of the Long Beach 6.3 earthquake of 1933, traverse the property.
- The site was occupied by both the Gabrielino/Tongva and Juaneño/Acjachemen Native Americans. Cultl resources have been found on the Banning Ranch site and more archeological resources are likely still present, yet to be found.
- Oil drilling operations began in 1943. Peak annual oil production in the early 1980's was roughly 1.2 million barrels of oil with over 300 active wells. Production now averages approximately 90,000 barrels per year with approximately 60 active wells.
- Approximately 72 acres would be developed to include housing, retail commercial space, resort development, parks, roadways and trails, with approximately 15 acres of oil consolidation activity. Additional open space acreage will be seriously disturbed or lost due to oil field remediation and construction grading activity.
- The current property is all that remains of the historic Banning Ranch. Over 90% has been sold and developed. What's left is all that remains of unprotected open space. It is **nature's compromise**. And must be preserved.



OTHER PUBLIC AGENCIES:

CONDITIONAL APPROVALS:

- California Department of Fish and Wildlife (CDFW) – Section 1601 Permit issued September 2015 by default due to Department's failure to timely act on it.
- Regional Water Quality Control Board - Remedial Action Plan (RAP) – Conditionally approved December 2015
- Regional Water Quality Control Board -- Section 401 Permit. Heavily conditioned approval February 2016

APPROVALS STILL REQUIRED:

- U.S. Army Corps of Engineers (USACE) – Jurisdictional Delineation.
- U.S. Army Corps of Engineers (USACE) – Section 404 Permit
- U.S. Fish and Wildlife Service (USFWS) – Section 7 Consultation
- State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR) – oil field abandonment
- Orange County Health Care Agency – Remedial Action Plan for oil field abandonment
- California Department of Transportation – encroachment permit – road expansion, intersections, pedestrian bridge.
- Newport-Mesa Unified School District - encroachment permit
- Orange County Transportation Authority (OCTA) – public transit
- The Local Agency Formation Commission (LAFCO) – annexation



DEVELOPMENT & ESHA

NBR Revised Project Development Proposal

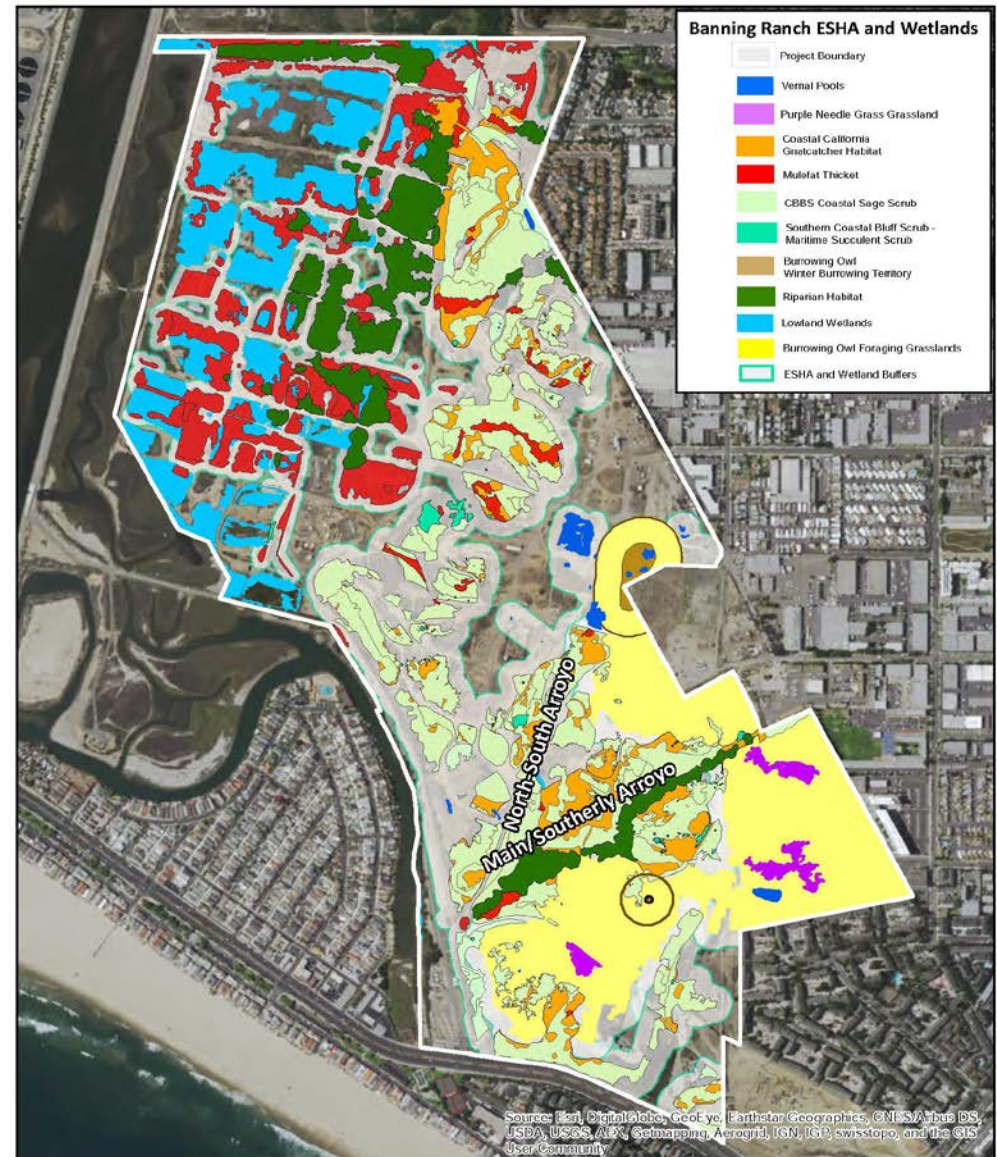


CONCEPTUAL SITE PLAN 07/11/16
NEWPORT BANNING RANCH
NEWPORT BEACH, CA

NEWPORT BANNING RANCH

5-15-2097, EXHIBIT 2
Page 1 of 12

CCC Staff Delineated ESHA and Wetlands with Buffers



CALIFORNIA
COASTAL
COMMISSION

For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

5-15-2097, EXHIBIT 3b
Page 1 of 1
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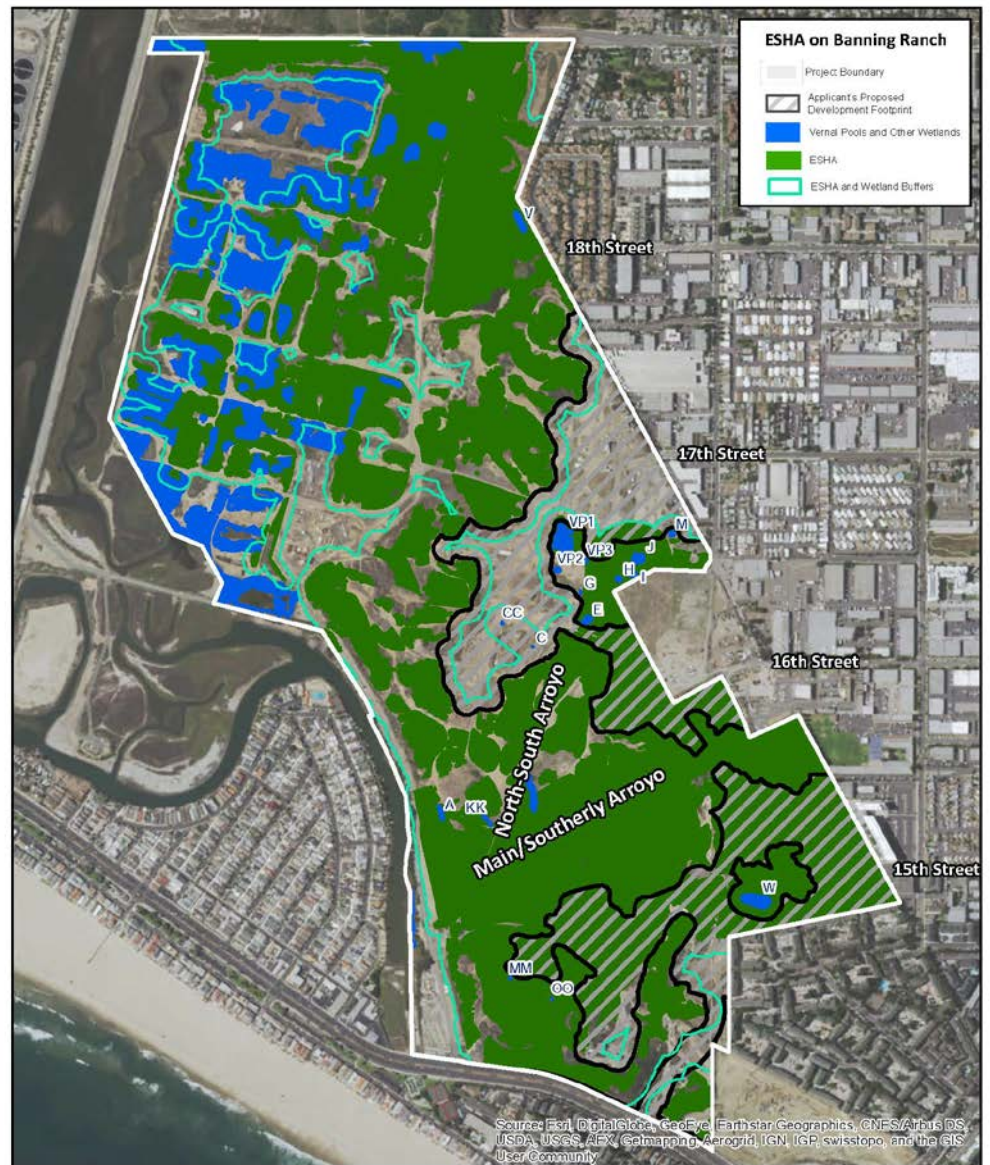
Development Plan Impacts Upon ESHA and Wetlands

NBR's latest proposal before the Coastal Commission is shown in Exhibit 2, Page 1 of 12, on the previous page. It includes an Urban Village by the 17th Street entrance north, a residential development, the North Family Village, on the Central Mesa, and a public park area west of 16th Street and the Newport Mesa Unified School District property. In the southeastern portion of the property is the South Family Village and in the southwest the Resort Colony and retail development. All these development areas are connected by the proposed Bluff Road which begins in the south at the intersection with Pacific Coast Highway and continues north to 17th Street, with connecting roads at 15th and 16th Streets.

Exhibit 3b, Page 1 of 1, on the previous page displays the Coastal Commission Staff's delineations of wetlands, vernal pools, environmentally sensitive habitat areas (ESHA*) and Coastal Act sanctioned buffer areas on the Banning Ranch property. In the side-by-side comparisons of both exhibits on the previous page, note the conflicts between the proposed development footprint and all the areas requiring protection under the Coastal Act.

On Exhibit 6, Page 1, seen at right, the proposed development footprint is overlaid on the protected areas. It is clear that the proposed development areas with gray diagonal lines invade the protected areas and are therefore unsuitable for development. Further, the light turquoise line inside the development footprint of the Urban Village and North Family Village represents the required habitat buffers and further limits any potential development.

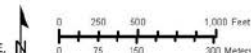
*Environmentally Sensitive Habitat Areas (ESHA) are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.



Development Plan Impacts Upon ESHA and Wetlands - Site Plan Detail NOT Shown



For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE,
CDFW, ESRI, CCC.



5-15-2097, EXHIBIT 6
Page 1 of 2

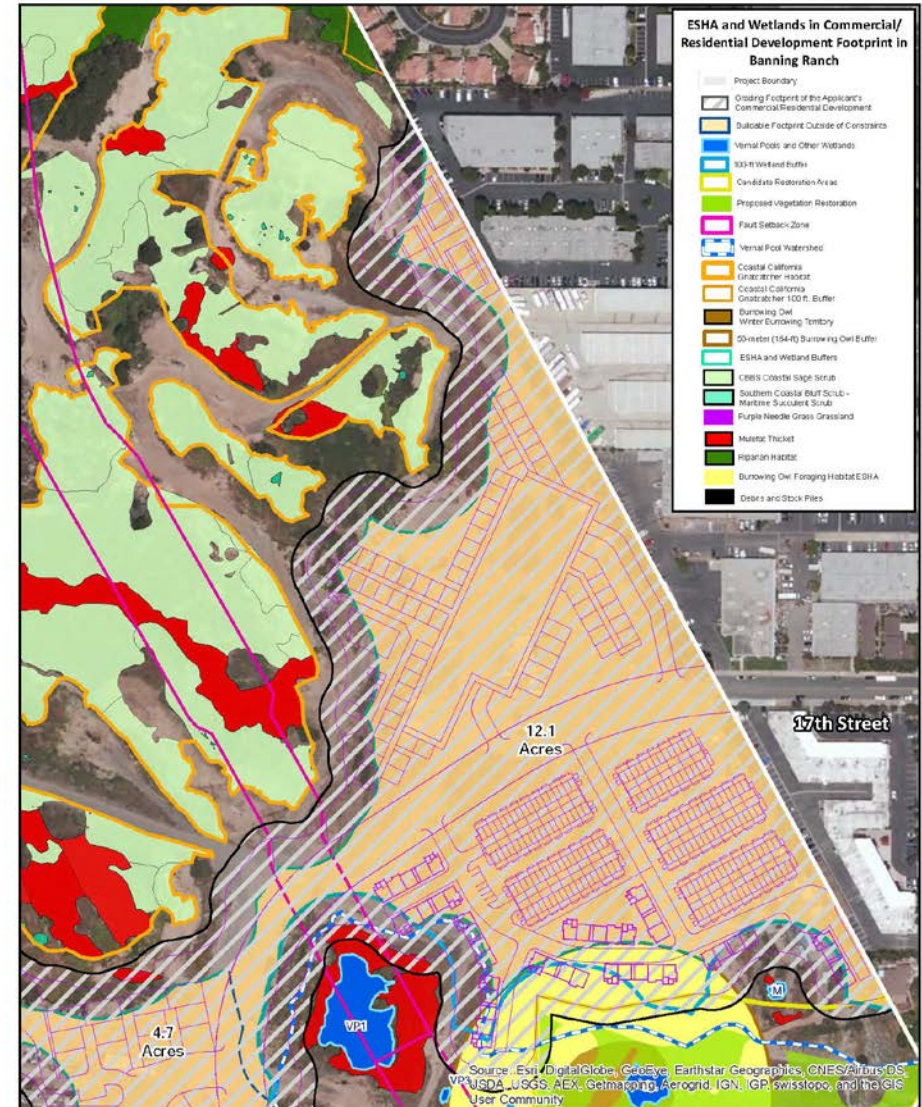
DSM 8/26/16

North Development Area Impacts on ESHA and Wetlands

The Exhibit to the right and the two on the following page (Exhibit 5, Page 1, 2 & 3) provide a closer more detailed view of the conflicts between the proposed development and the wetland, vernal pool, ESHA and buffer delineations by Coastal Commission Staff.

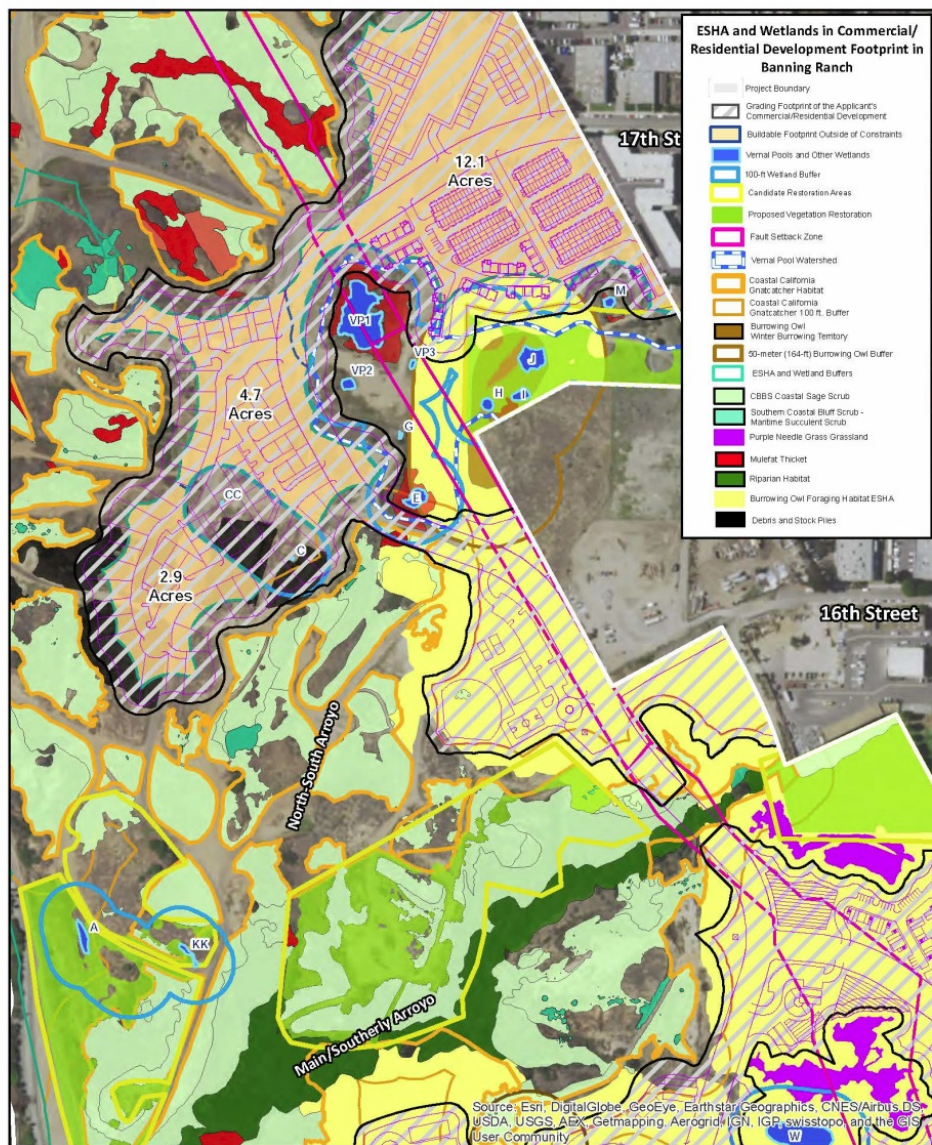
It is the position of the Banning Ranch Conservancy that the delineations of ESHA, wetlands, vernal pools and buffers are incomplete and inadequate, to wit:

- A. Watershed delineations have not been performed on all the vernal pools. The watershed is the source of water flow into the vernal pool. Without the watershed ponding, the pools are seriously constrained, thus disrupting the plant and wildlife resources within the pool and those dependent on the pools. Buffer areas should extend 100 feet beyond the watershed, which may service individual or multiple pools, not just a single pool.
- B. Habitat for Gnatcatchers in the lower southeastern portion of the property has not been adequately protected. Scrub habitat in close proximity and almost identical to ESHA habitat delineated in that portion of the property and well within the use range of documented Gnatcatcher sightings has not been similarly delineated as ESHA. It is a reasonably scientific assumption that these proximal and similar habitat areas constitute foraging and dispersal habitat for the federally threatened Gnatcatchers and, therefore, merit similar protection. One such site located at the proposed connection of Bluff Road to Pacific Coast Highway has been addressed in a report to the Commission by the respected biologist and Gnatcatcher expert Robert Hamilton of Hamilton Biological Inc.
- C. Not all documented Burrowing Owl sightings have been included on the ESHA Delineated Map. Dozens of sightings of multiple Burrowing Owls which have been documented in the record (reports to the Commission by Cindy Black, Shyang Ray, Kevin Nelson and Steve Ray) are not noted on Staff maps. Most of the sightings have been in the grasslands of the southeastern portion of the Central Mesa between 15th and 16th Streets. The burrow areas must be designated as such for protection and not just as foraging areas.



ESHA and Wetlands in Commercial/Residential Development Footprint in the Northern Area of Banning Ranch
5-15-2097, EXHIBIT 5
Page 1 of 3 DSM 8/26/16

Central Development Area Impacts on ESHA and Wetlands



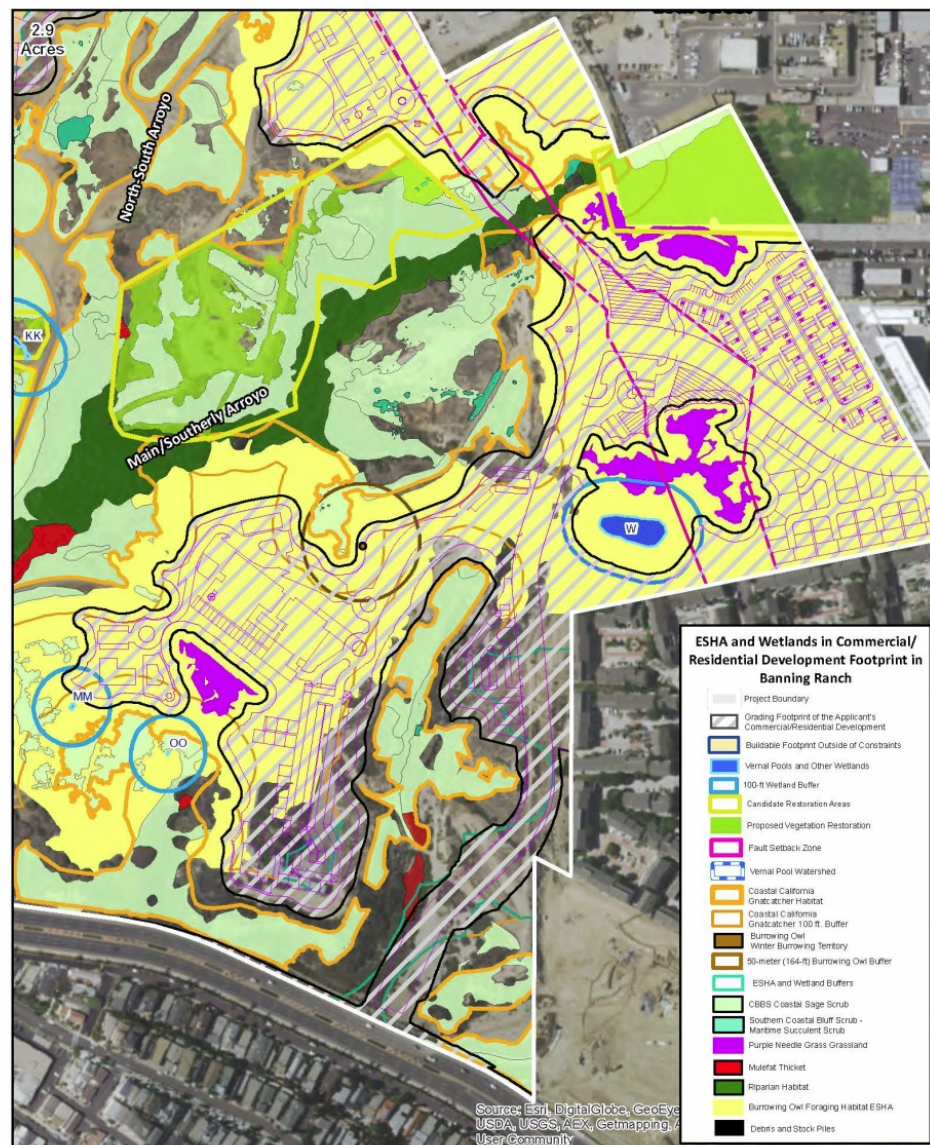
ESHA and Wetlands in Commercial/Residential Development Footprint in the Central Area of Banning Ranch

5-15-2017, EXHIBIT 5

Page 2 of 3

DSM 8/26/16

South Development Area Impacts on ESHA and Wetlands



ESHA and Wetlands in Commercial/Residential Development Footprint in the Southern Area of Banning Ranch

5-15-2017, EXHIBIT 5

Page 3 of 3

DSM 8/26/16

THE HABITATS

The site contains 45 vegetation types, including 20 types of coastal sage scrub; 9 types of pools, marshes and mudflats; 8 riparian types; and 8 grassland areas.

- The Lowland Wetlands
- Vernal Pools
- Rare Plant Communities
- Rare Listed Wildlife
- Riparian Habitat
- Coastal Sage Scrub and California Gnatcatcher Habitat*
- Coastal Bluff Scrub and Maritime Succulent Scrub
- Burrowing Owl
- Purple needlegrass Grassland
- Federally Designated Critical Habitat as ESHA*



Coastal California Gnatcatcher

*Figure 16 to the right identifies that all of Banning Ranch and additional adjacent lands have been declared critical habitat by the US Fish and Wildlife Service.

“The coastal California gnatcatcher is an obligate, year-round resident of coastal sage scrub communities. Gnatcatchers in Southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sunflower, California sagebrush, and California buckwheat.”

J.D. Engel memo

*ESHA and Wetland Determination for Banning Ranch p. 15
September 25, 2015*

USFWS Coastal California Gnatcatcher Critical Habitat

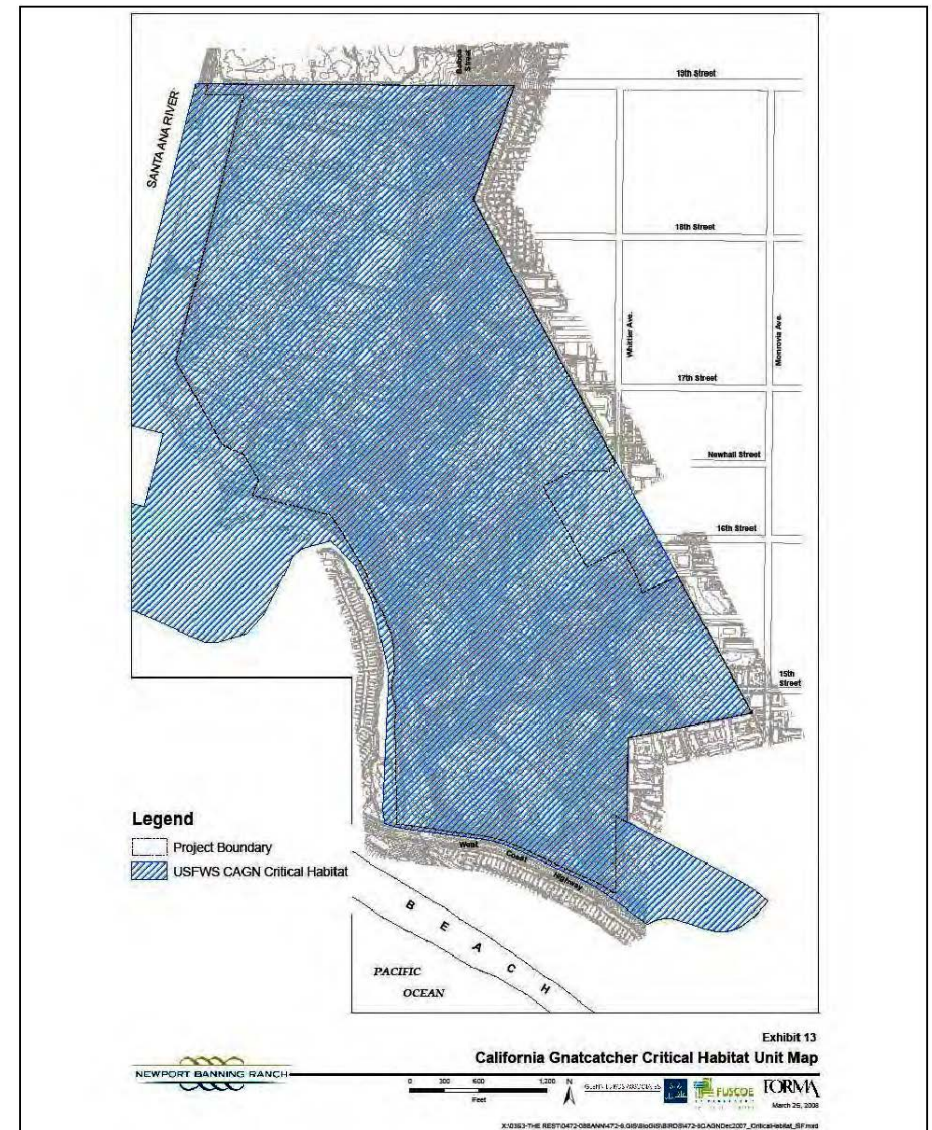


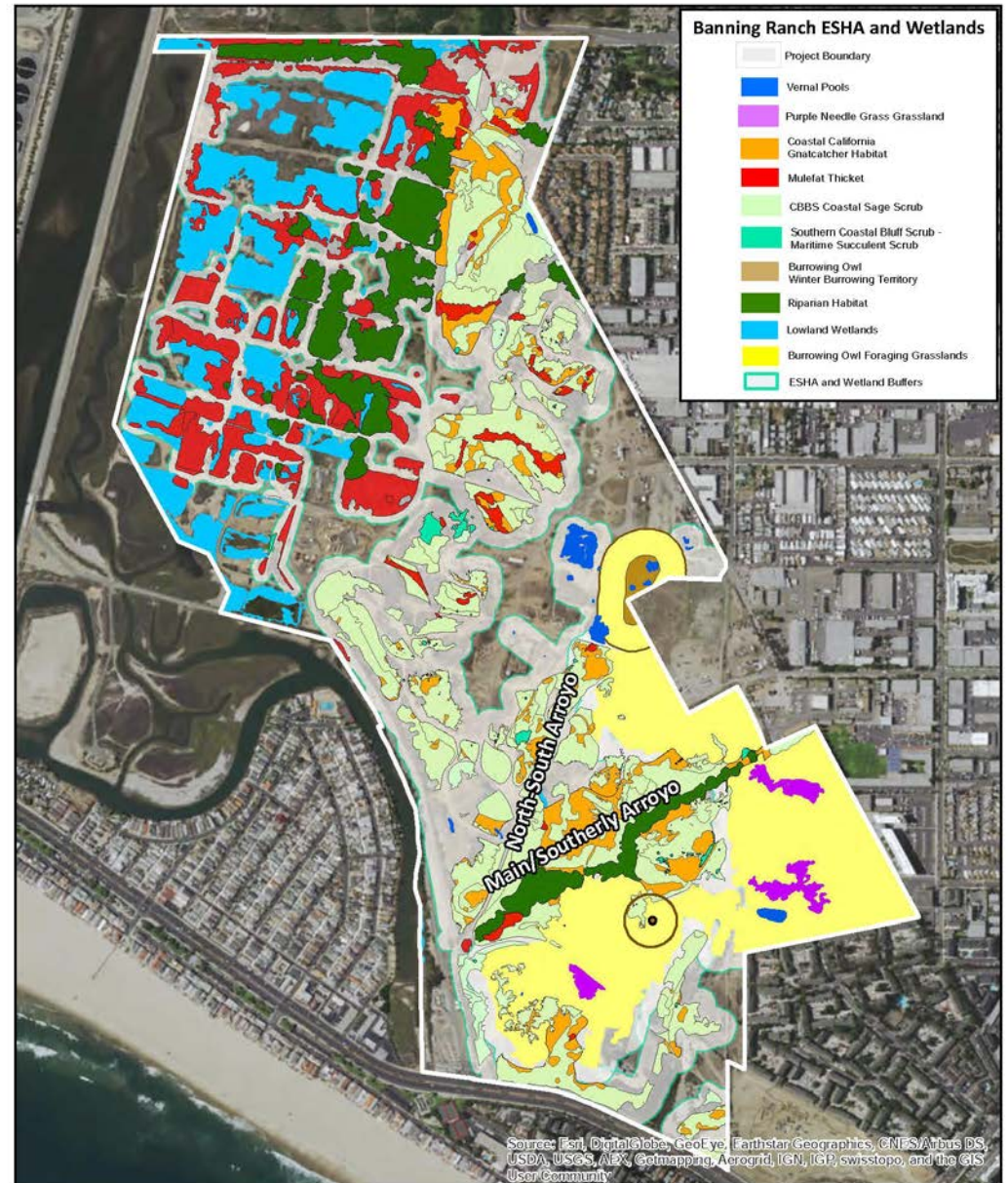
Figure 16. USFWS Coastal California Gnatcatcher Critical Habitat.

BURROWING OWLS

Burrowing Owls have almost disappeared from the Southern California coast. The primary cause is loss of habitat due to over-development. Banning Ranch harbors a wintering population of Burrowing Owls and is one of the few sites in Southern California where they are regularly documented. In order to protect Burrowing Owls, it is necessary to safeguard not just their burrows but also their foraging (feeding) areas. Failure to do so will almost certainly extirpate (make extinct) the owls from the site.



Burrowing Owl sighted on 12-28-2012 by Whittier Avenue



ORANGE COAST RIVER PARK and THE PACIFIC FLYWAY

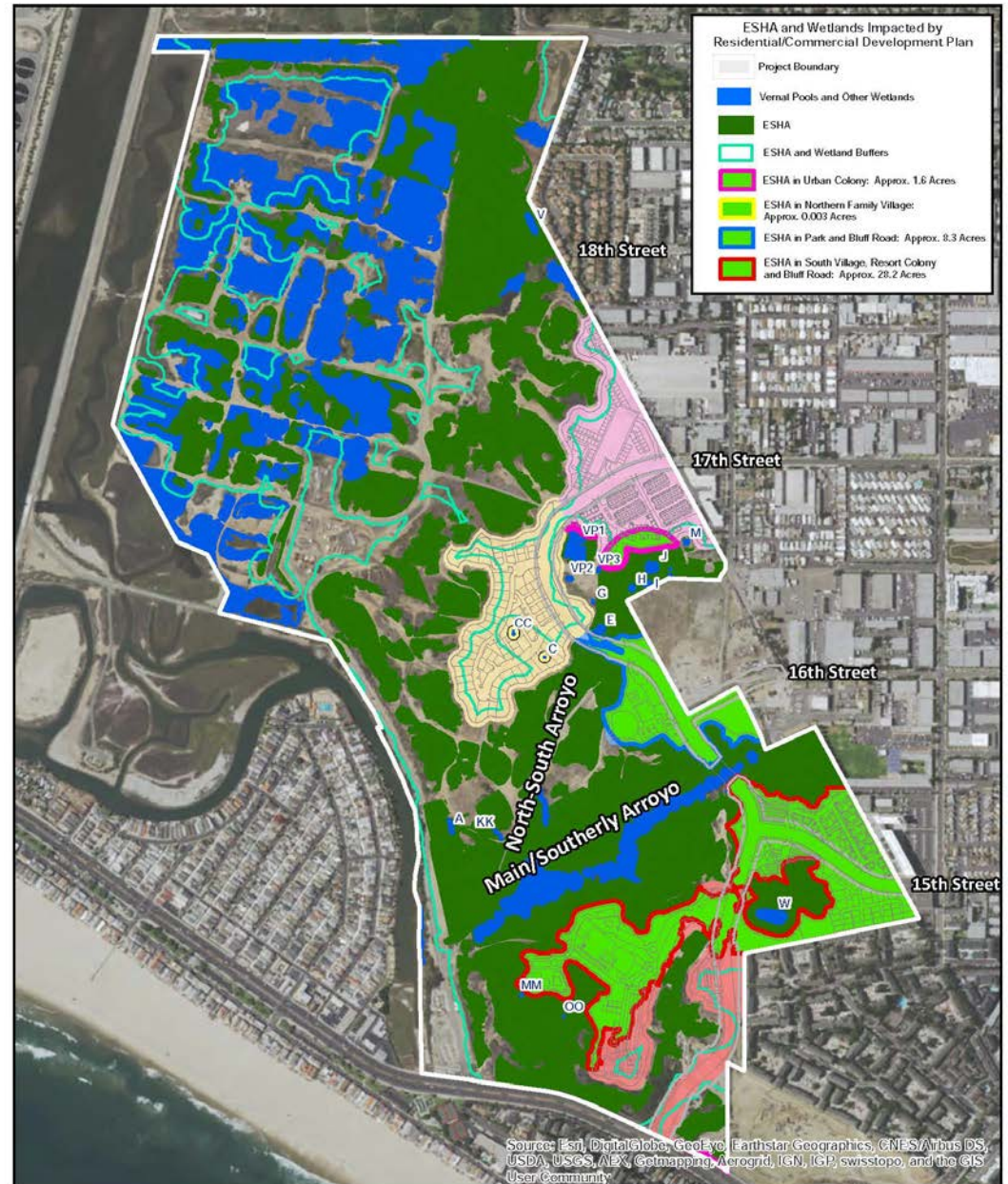
Banning Ranch is the central element of the proposed Orange Coast River Park.

Banning Ranch is also an important link in the Pacific Flyway, contributing to the annual migrations of multiple avian species.



DEVELOPMENT IMPACTS ON ESHA

- The Applicant's proposed development footprint will significantly disrupt, disturb and/or destroy 42 acres of valuable ESHA habitat on Banning Ranch as identified in the Commission Staff Report.
- **Vernal pools** containing Federally Endangered San Diego Fairy Shrimp, versatile fairy shrimp and other life forms will be impacted by remediation within the development footprint of the North Family Village.
- Remaining **vernal pools** will be impacted by oil field abandonment and remediation activities and are within the proposed development footprint.
- **Purple needlegrass** - Almost all of the PNG on the site is within the footprint of the abandonment and remediation activities and development plan. A small patch of PNG is proposed to be created to mitigate for the complete loss of the grasslands. That's totally unacceptable for mitigation even if you ignore the fact that mitigation is not permitted for loss of ESHA, which must be avoided by any development.
- **Riparian** – Multiple impacts to riparian habitat scattered across the site would result from the abandonment and remediation activities and the development plan.
- The **riparian corridor** in the far southeast of the site contains valuable riparian habitat that would be impacted by the proposed Bluff Road connecting the development site to Pacific Coast Highway.
- **Coastal sage scrub** habitat would also have to be removed to accommodate the Bluff Road connection to Pacific Coast Highway.
- **The proposed Bluff Road and its bridges**, as well as connecting roadways, will negatively impact a variety of ESHA habitats.



Development Plan Impacts Upon ESHA and Wetlands By Plan Area - Site Plan Detail Shown



Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.



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Page 2 of 2

DSM 8/26/16

WATER QUALITY

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

The development plan as a whole, for which the above described water quality systems are designed, is not consistent with the protection of vernal pools and wetlands, is inconsistent with Sections 30231, 30233, and 30255 of the Coastal Act. Therefore, the proposed development project must be denied.

Marine Resources are the tidal slough, riparian features and wetlands. The proposed development has an admitted likelihood for a discharge of polluted runoff from the project site into coastal waters during Abandonment and Remediation, Construction and Post-Construction.



WATER SUPPLY

Section 30250 of the Coastal Act requires that new development be supported by adequate services, including water supply, waste water capacity, and adequate road circulation.

- The City of Newport Beach prepared a Water Supply Assessment (WSA) in 2010 based on data from the City's 2005 Urban Water Management Plan.
- Groundwater - The City obtains groundwater pumped from four wells owned and operated by the City and managed by Orange County Water District (OCWD.) The City's wells are located in the City of Fountain Valley, approximately five miles north of Newport Beach.
- Commission Staff requested additional information from the applicant showing that the project could be developed with adequate water supply, given the extreme drought conditions and the time elapsed since the WSA was first drafted. On April 30, 2015, the Banning Ranch Conservancy (on file) submitted a comment letter to the Coastal Commission regarding the inadequacy of the 2010 Newport Banning Ranch WSA. The comment letter focused on two major points: 1) The WSA is outdated and should be invalid and 2) the region's water supply reliability and variability has changed significantly due to the current drought.
- A response letter from the Applicant posits that there is no legal requirement to update the WSA report, which at the time it was prepared, was required by law to utilize the most up-to-date data available. Instead of updating the WSA report, the response letter defends the original report, based on outdated 2005 data, despite the fact that newer, more accurate data is available. As a result, **it is unknown if the development can adequately be supported by the water supply available without more recent information.**
- Ultimately, the response does not address the City's ability to meet the demand, regardless of whether the demand per capita increases or decreases. Based on the information submitted to date, it is unknown if the proposed development can be supported by adequate water supply. As such, the proposed project's consistency with Section 30250 of the Coastal Act cannot be determined and **the project must be denied.**



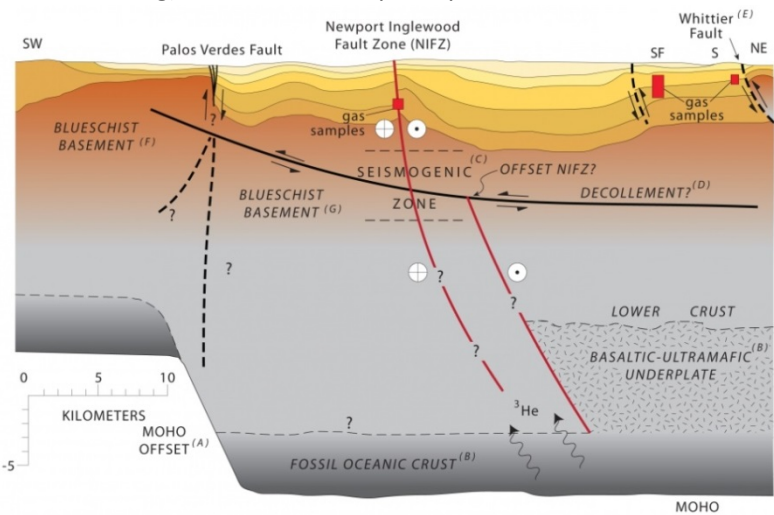
SEISMIC HAZARDS

Two distinct zones of faulting were identified within the site. The main active trace of the Newport-Inglewood fault is less than 1 mile from the site and the Palos Verdes fault is within 11 miles from the site. The above-mentioned faults are capable of generating significant ground shaking at the site. Converse Consultants (1994) discovered a second active fault on the site called the “West Mesa Fault.” This fault traverses the NBR site.

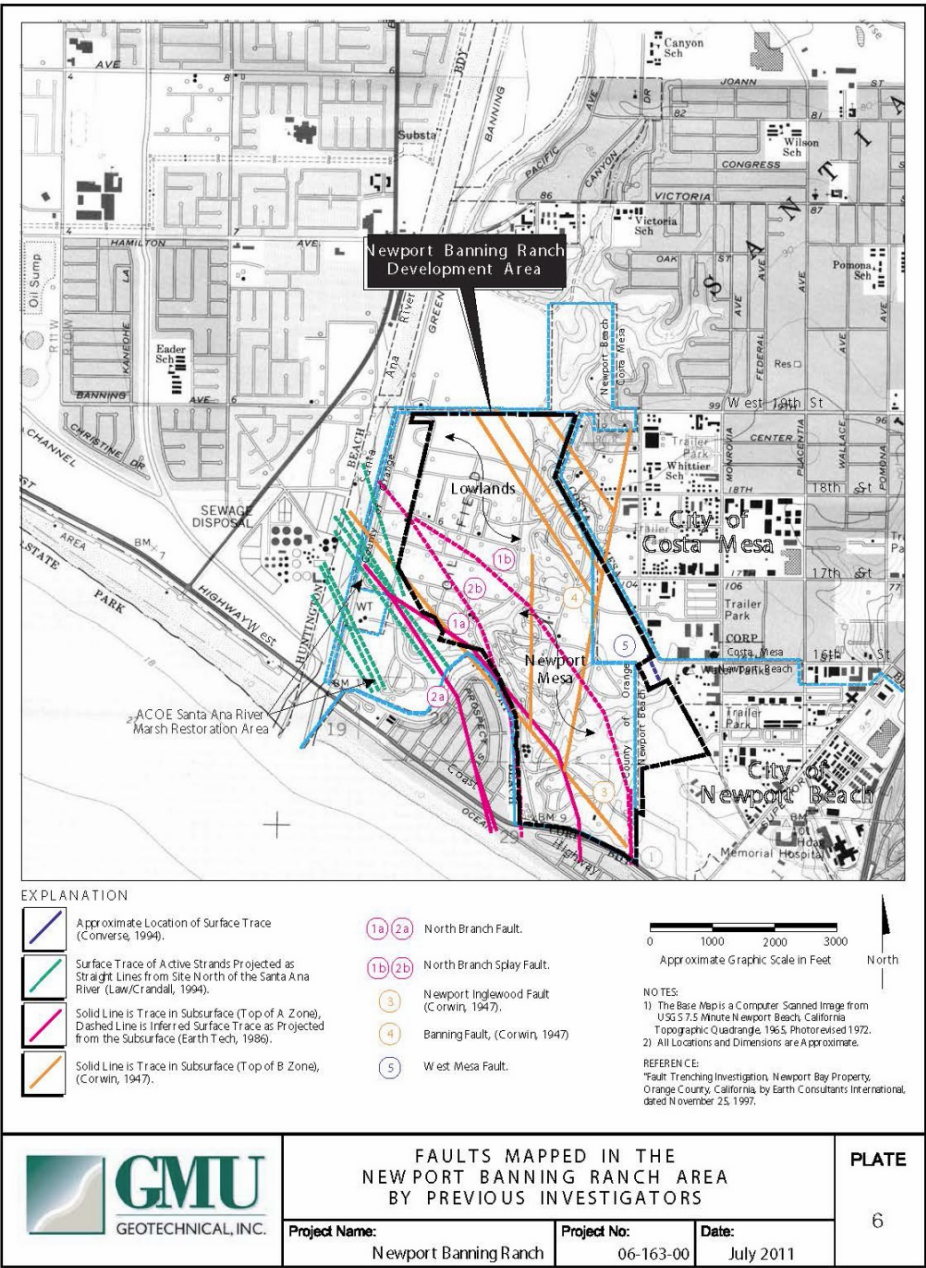
The West Mesa Fault and the Newport-Inglewood fault system should be considered **likely sources for future earthquakes** that would generate strong ground motions at the site. In addition, **surface rupture at the site is possible** along the West Mesa Fault.

Several splays of the active Newport-Inglewood fault zone have been mapped across the site and in the site vicinity. Faults that break the ground surface during an earthquake can do considerable damage to structures built across them. Therefore, fault studies are typically designed to evaluate whether a fault is active. If a fault is deemed active, structures cannot be placed across the trace of the fault (Alquist-Priolo Earthquake Fault Zoning Act).

Commission Staff’s ill-advised concurrence with the action taken by the applicant and the on-site oil operator (WNOC) to illegally segment the project into two separate projects, the development and the oil consolidation, results in no information being available about the oil consolidation plan, its drilling and extraction methodologies, to potentially include well stimulation (hydraulic fracturing) nor its waste disposal plan.



Recent significant research concludes that well-stimulation and deep waste disposal have a direct effect on seismic activity as has happened with increased frequency of earthquakes in the Midwestern parts of the United States.



ARCHAEOLOGICAL RESOURCES

- Sedimentary deposits in coastal Orange County are considered to be some of the most important fossil-producing formations in the world (similar to the sites at Bolsa Chica).
- Eight prehistoric and three historic resources are recorded on the project site, and five cultural resources studies have been conducted on the site. There have been 17 cultural resources investigations within a 1-mile radius of the site.
- At CA-ORA-844B, the applicant has proposed to remove the archaeological resources instead of capping due to costs.
- CA-ORA-839 could be impacted by soil remediation.
- CA-ORA-906 could be impacted by oil infrastructure removal. The applicant's plans have not included capping resources found during grading, including any human burials.
- The information provided in the application materials and in the rushed recently-conducted Shovel Test Pit study was not sufficient for complete assessment of potential impacts to archaeological resources. The application has not included a request for approval and implementation of an Archaeological Research Plan (ARP), nor did it include an after-the-fact request for approval for the archaeological testing and recovery that was conducted on the site through the EIR process.
- The two proposed mitigation measures (recovery and monitoring) are **not** consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources such as avoidance. **The proposed project results in avoidable impacts to cultural resources and must be denied.**
- Even if the project might be consistent with section 30222, it is inconsistent with Section 30210 which requires that the development of public recreational opportunities shall not be at the expense of the overuse of natural resources.



LOWER COST VISITOR-SERVING FACILITIES

HOTEL

- An average daily rate of \$175 or more is considered high cost.
- The Conservancy is not aware that proposed rates for the resort hotel have been published. Without rates to identify as qualifying for a definition of lower cost, the project's consistency with Section 30213 of the Coastal Act cannot be determined.

HOSTEL

- The proposed hostel would include four rooms with shared bathroom facilities placed above retail space.
- Rates for the hostel have been established at \$59 per night per bed, five beds to a room, with an additional \$20 for each "privacy" screen (optional).
- The rates may sound lower cost but at a minimum of \$295 per night per room, they're not.

AFFORDABLE HOUSING

- The applicant has (laughably) tried to include affordable housing as a "low cost visitor-serving use". The purpose of affordable housing is to provide permanent housing for low income residents of the development and does not qualify as "visitor-serving".

NOTE: Further, because the development of both the resort and the hostel would **permanently impact ESHA**, the proposed project is inconsistent with multiple policies of the Coastal Act and **must be denied**.



GRADING, SOIL DISTURBANCE, LANDFORM ALTERATION AND REMEDIATION

- As of the publication date of this Briefing Book, the Banning Ranch Conservancy has not been informed about any updated grading or remediation plans, nor viewed any maps illustrating such. Therefore any data or analysis is difficult. One document has been received titled “Newport Banning Ranch - Clean-Up, Redevelopment and Public Access Plan - September 7, 2016”. There is one reference on page 9 of the document that says “Reduced Grading - 1.4 million cubic yards - (40%)”. One would surmise that grading of the Banning Ranch project has been reduced by 40% to 1.4 million cubic yards (may represent cut or fill or both).
- Whatever the amount of cubic yards of grading might be, significant landform alteration and grading will be required for the project. Cuts may vary from one foot to ten feet throughout the project site but may be up to 40 feet in localized areas. Fills may vary from one foot to forty feet.
- There would also be areas excavated for construction of the proposed primary access onto the site from Pacific Coast Highway known as Bluff Road.
- Partial or complete fill of arroyos and/or vernal pools is also a possibility.
- The landform alterations would require grading that has potentially devastating impacts upon valuable biological resources within the arroyos and upon the mesa, impacts upon habitat buffer areas and adverse changes to wetlands hydrology.
- Remediation activities to abandon and/or remove oil field wells and structures have been seriously exaggerated in prior iterations of planning for the proposed project. While remediation requirements for residential and commercial uses are more significant than open space, the developer’s Remedial Action Plan (RAP) is more of a “disposal” plan rather a remediation plan consistent with other similar projects, according to oil field remediation expert Nancy Beresky of Waterstone Environmental Inc (report on file).
- The proposed project does not minimize landform alteration. There is potential space on the project site where development might be accommodated without the substantial alteration of the existing landscape features or the destruction of valuable habitat and potential reduction or extirpation of sensitive wildlife species.
- The massive grading and remediation activities will displace significant amounts of soil and potentially release contaminated dust and/or carcinogenic particulates into fugitive dust streams that may cause harmful and/or unhealthful impacts to downwind residents.
- The proposed project is inconsistent with Section 30251 of the Coastal Act and must be denied.



TAKINGS ANALYSIS

- It has come to the attention of the Conservancy that some Commissioners may be concerned about a potential “takings” claim by the applicant if the project is denied. It is the opinion of the Conservancy that there would be no justifiable cause for such a claim, for the following reasons:
- The project proposed by the applicant is inconsistent with the Chapter 3 policies of the Coastal Act and, therefore, must be denied by the Commission.
- For decades, **the applicant has received and will continue to enjoy an economic benefit** from the property in the form of revenues (royalties) resulting from ongoing oil exploitation.
- The applicant/owners of the property **are not entitled to violate the law to achieve any guaranteed or maximum return for any development of the property.**
- An alternative project could be approved on the portions of the site identified in the Alternate Proposal submitted by the Banning Ranch Conservancy. (NOTE: Commission Staff’s recommendation would also result in an alternative proposal for development but is not supported by the Conservancy.) Thus, a **denial is not a final adjudication by the Commission** of the potential for development on a portion of the project site, as it does not preclude the applicant from applying for some other development or use of the site, such as a much smaller-scale development project that proposes visitor serving, mixed-use commercial and/or residential uses and more carefully addresses the applicable Coastal Act policies.



ALTERNATIVES

Commission Staff has identified approximately 19.7 acres of land (which does not include the oil consolidation areas of approximately 15 acres) that are potentially not constrained by wetlands, ESHA, their 100 foot buffers, or steep slopes, and that, with careful planning, in Staff's opinion, could possibly be accessible without significant disruption to surrounding habitats.

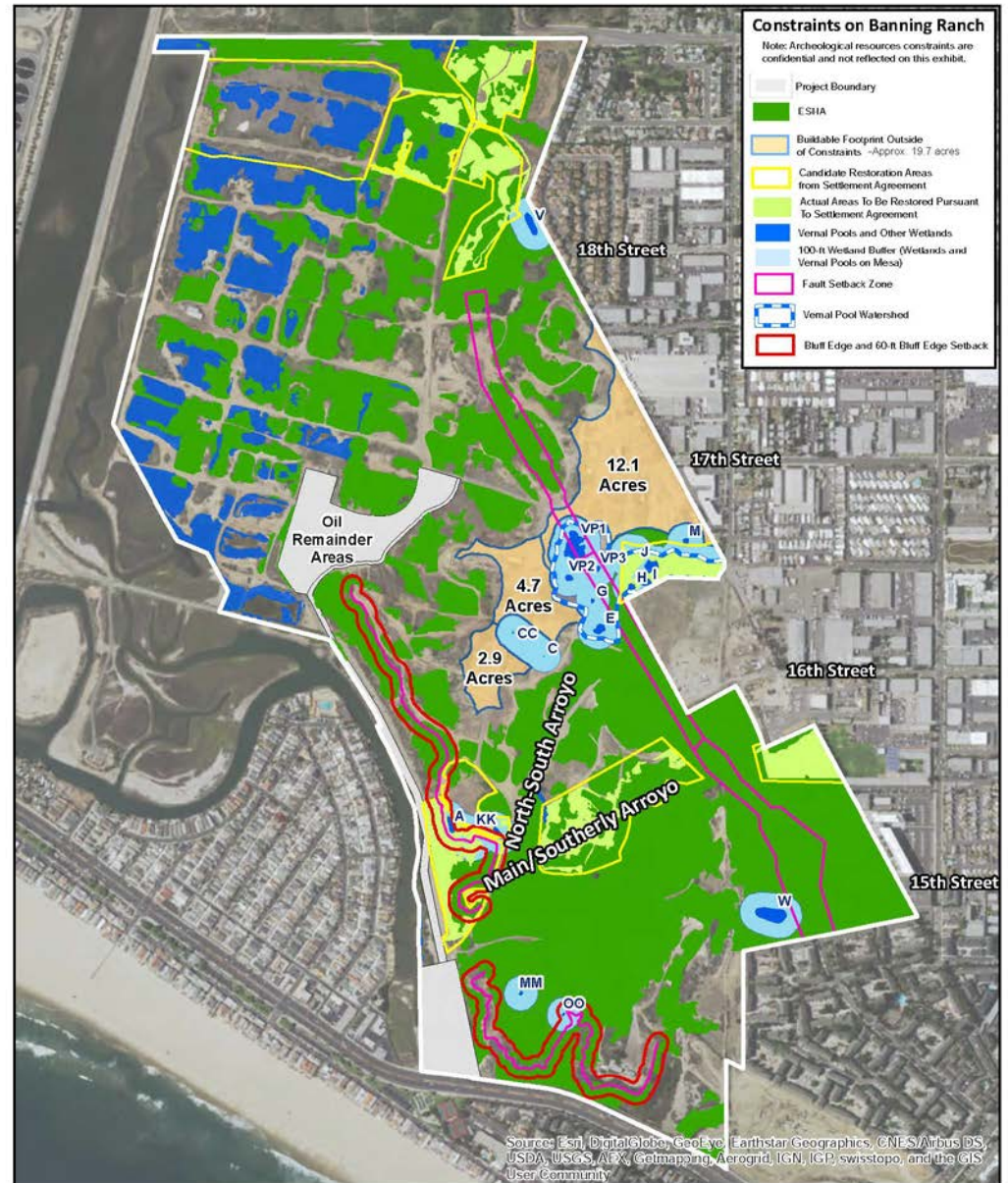
In conjunction with the proposed consolidation of the oil operation, Staff projects that the NBR property could provide significant protected coastal habitat, open space and passive recreational use, and substantial development. The Commission Staff has also found that there are feasible alternatives (as seen in Exhibit 4 to the right) which could avoid such impacts.

NOTE: The Banning Ranch Conservancy does not endorse any or all of the potential areas for development as identified by the Staff.

The Conservancy submitted an Alternate Proposal in May 2016, that identified potential development footprints on two areas of the site with suggested types of development for those sites. The Conservancy will require adjustment of that proposal to conform to Staff's ESHA delineations. The Conservancy will posit that a development alternative is possible on the site near the 17th Street entrance. However, the Conservancy will require onsite study and delineation to determine the feasibility of that or any other site for potential development.

Since there is at least one feasible alternative that conforms to the Coastal Act and is more protective of Coastal resources, the Commission must deny the applicant's proposed project.

Therefore, the Commission must **deny the project**.



Constraints on Banning Ranch

UNPERMITTED DEVELOPMENT

Unpermitted development, in violation of the Coastal Act, occurred on Banning Ranch on dates too numerous to mention and for years, even decades, and through many forms and actions, again too numerous to mention.

The Commission has taken action on three occasions to address the liability for the unpermitted development (separate state agencies took action on another occasion, due to egregious dumping of oil waste in the wetlands), which included mowing and clearing of valuable plant habitats significant in their own right and used by protected species. Two actions taken by the Commission were both resolved through Consent Orders with the applicant.

A third Consent Order involving the oil operator (WNOC) is on hold during a stay in litigation brought by WNOC. That unpermitted development consisted of oil drilling without permits, placing structures and oil field appurtenances without permit and removing protected habitat.

The Banning Ranch Conservancy posits that not all violations of the Coastal Act have been adjudicated through the above actions. Additional multiple violations of the Coastal Act have been documented and reported by the Conservancy, and Notices of Violation must be filed, processed and adjudicated before the project can proceed.



LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms to Chapter 3 policies of the Coastal Act.

The Banning Ranch property has been placed within the Sphere of Influence of the City of Newport Beach. The City processed the local application for the proposed Banning Ranch project. However, the City has no certified Local Coastal Plan (LCP) for either the City or the Banning Ranch property. Two days after the public hearing on the Banning Ranch project and at the same Coastal Commission hearing, the Commission will consider approval of an Implementation Plan to accompany the City's certified Coastal Land Use Plan, thus certifying their LCP. However this LCP does not cover Banning Ranch, which would remain an Area of Deferred Certification under the Coastal Act.

The City of Newport Beach has announced that, if the Banning Ranch is developed, it intends to annex the property into the City and process an LCP specific to it.

Approval of this project with a coastal development permit that is inconsistent with the policies of the Coastal Act **would effectively prejudice the ability of the City of Newport Beach to certify their Banning Ranch LCP.**

Thus, pursuant to Section 30604(a) of the Coastal Act, the Commission must **deny the project.**



SEGMENTATION OF PROJECT AND OIL FIELD CONSOLIDATION

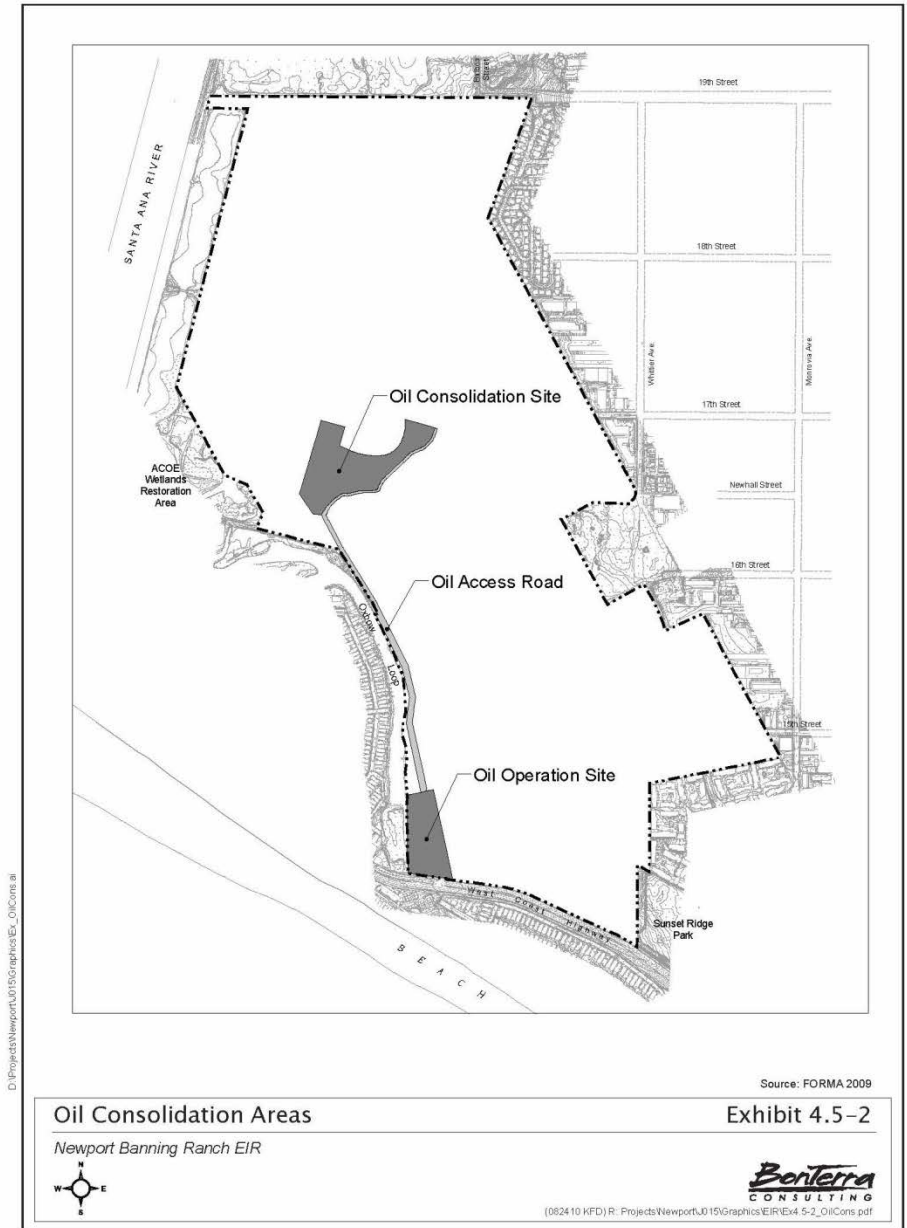
The Conservancy objects to the legality of this hearing on the basis that segmentation or “piece-mealing” of a single project has been accepted by Commission Staff, and is being treated as two separate unrelated projects. In fact, the development of the property and the oil consolidation are co-related and co-dependent on each other. The owners and the oil operators have made clear that there will be no oil consolidation without the development being built and that the development cannot be built without the oil consolidation.

The oil consolidation and development will occur on the same property with the same owner with contractual and financial agreements in place between the developer and oil operators and with full knowledge, one of the other, especially given that the two elements of the project are being processed at the same time but treated as separate by Commission Staff. This prohibits full disclosure and analysis of cumulative impacts on the full project (which includes both the oil consolidation and the development).

Further, the Conservancy has identified a potential project alternative that is the most protective of the environmental and coastal resources. The alternative is discussed elsewhere in this Briefing Book.

The formal application does not include the proposal to consolidate the existing surface oil facilities onto two sites conjoined by an oil access road, all totaling 15 acres. Plans for the Oil Consolidation Zones and Oil Operations were submitted but rejected by Commission Staff as an incomplete application. However, this does not preclude combining the oil consolidation application with the development application and processing them together as one project.

Oil Consolidation Areas



CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) and COASTAL ACT COMPLIANCE

Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is not the least environmentally damaging alternative. The EIR describes several alternatives for the project including Alternative B, Open Space and Park. Ultimately Alternative B was not adopted due to assumed economic restrictions, however under CEQA it is a less environmentally damaging alternative. Under Section 21080.5(d)(2)(A) of CEQA, the proposed project cannot be approved.

While the Coastal Commission has no authority or responsibility to regulate or enforce the CEQA law, the Commission must ensure compliance with other legal and regulatory requirements such as CEQA.

The Commission's primary responsibility, of course, is to ensure compliance with the Coastal Act. As explained throughout this Briefing Book and all the documentation submitted by the Banning Ranch Conservancy, our allied organizations and supporters and as incorporated herein by reference, the proposed project is inconsistent with Sections 30240, 30233, 23231, 32055, 30253, 30210, 30251 of the Coastal Act due to adverse impacts upon natural landforms, adverse impacts upon biological resources including wetlands and vernal pools; adverse visual impacts related to landform alteration and the project's consistency with 30252, 30213 and 30250 cannot be determined based on the lack of required information.

The Commission Staff and the Banning Ranch Conservancy have also found that there are feasible alternatives which would avoid such impacts.

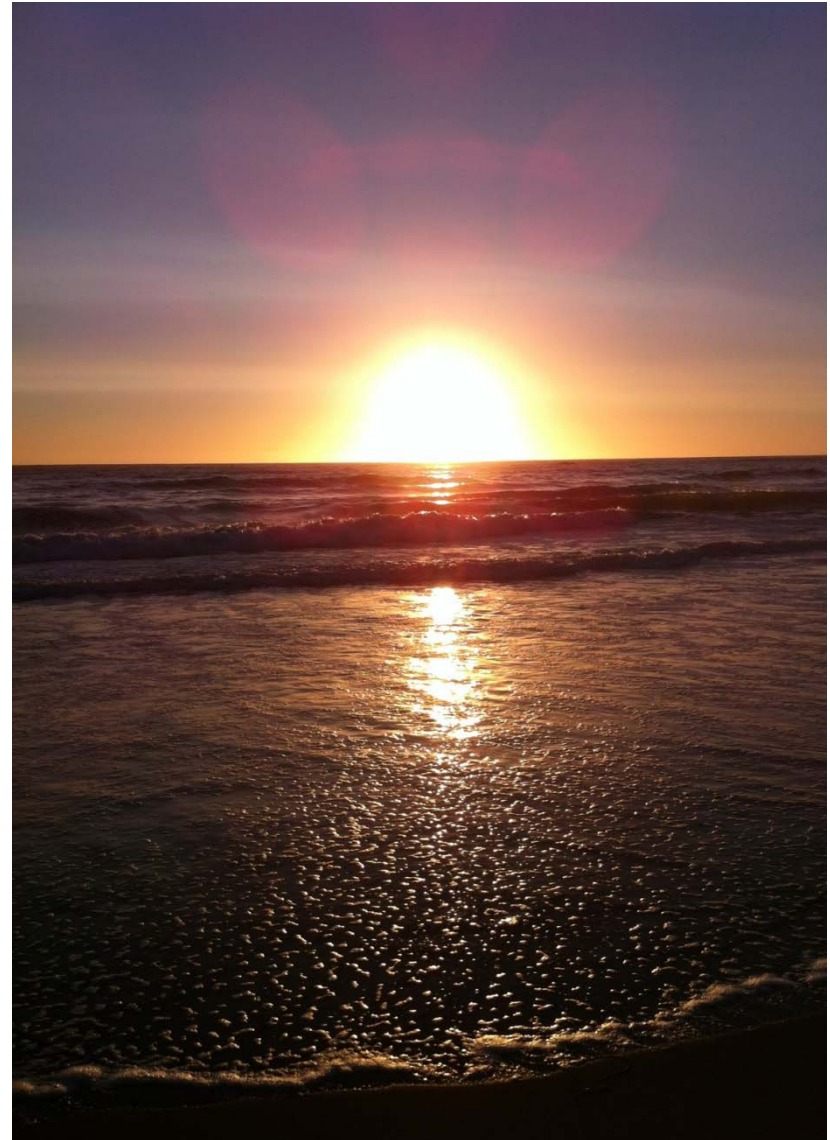


THE APPLICANT'S CONSERVANCY

The applicant, Newport Banning Ranch LLC, founded its own conservancy, the Newport Banning Land Trust (NBLT). It is painfully obvious that NBLT is the applicant's organization and promotes development of Banning Ranch. Most members of the NBLT board are, actually, the applicants.

NBR presented NBLT a Memorandum of Understanding (MOU) that would require NBLT to assume stewardship responsibility for the proposed Natural Open Space Preserve. The burden for funding for preservation of these open space areas would likely be passed to the Homeowners Association established for the proposed housing developments, not the applicant, even though they publicly maintain that they are providing funding.

Funding mechanisms such as high Homeowners Association dues, a legally questionable transfer tax on home sales and creation of a Mitigation Bank in the lowland wetlands that would require outside developers needing to mitigate for their environmental transgressions elsewhere to pay for the need to restore open space, are designed to relieve the applicants and their land trust of the actual responsibility to restore the land.



BANNING RANCH IS NOT A WASTELAND DEVOID OF LIFE

“In spite of the ongoing four [now five] year drought, many of the areas mapped ‘disturbed’ in 2012, now support a high cover of native shrubs, especially California sunflower (also known as California brittle brush).”

*J.D. Engel memo
ESHA and Wetland Determination for Banning Ranch p. 13
September 25, 2015*

The California brittle brush, commonly known as *Encelia* (*encelia californica*), is recognized by its bright yellow “sunflower-like” appearance. A base plant, a progenitor of coastal sage scrub habitat, *Encelia* is found in profusion throughout the mesas on Banning Ranch and is easily viewed, especially following any rain event. *Encelia* serves as the basic nesting and foraging species for the threatened coastal California gnatcatcher. The State of California, Natural Diversity Data Base recognizes California Brittlebush Scrub as a high-priority sensitive native plant association (independent of its function as habitat for the gnatcatcher).



MISSING – INFORMATION, STUDIES, CCC STAFF REQUESTED INFO

- Plans for the Oil Consolidation Zones and Oil Operations were submitted but were rejected by Commission Staff as an incomplete application. The consolidation will not occur without the development project and the project cannot be built without the consolidation. They are one and the same project. By law, they cannot be segmented into two supposedly unrelated projects.
- Commission Staff requested additional information from the applicant showing that the project could be developed with adequate water supply, given the extreme drought conditions and the time elapsed since the Water Supply Assessment was first drafted. On April 30, 2015, the Banning Ranch Conservancy (on file) submitted a comment letter to the Coastal Commission regarding the inadequacy of the 2010 Newport Banning Ranch WSA. The comment letter focused on two major points: 1) The WSA is outdated and should be invalid and 2) the region's water supply reliability and variability has changed significantly due to the current drought. More current data is available and the WSA needs to be revised.
- The Vernal Pool Interpretive Area Park would be planted with native grasslands providing a vegetated buffer between the vernal pool restoration complex and adjacent development. It appears on the site plan that the interpretative vernal pool complex may contain a pedestrian footpath around, and in some cases through, the vernal pools. Construction plans for the vernal pool complex have not been provided.
- A protocol Wet Season Survey must be performed on all potential vernal pool features to determine their functioning as a vernal pool or coastal wetland or neither, thereby determining the level of protection required for them.
- And many more ...

