Environmental Intelligence, LLC

September 9, 2015

Mr. Paul Reed
Newport Mesa Unified School District
Deputy Superintendent – Chief Business Official
2985 Bear Street
Costa Mesa, CA 92626

Subject: Alternative Fence Design Associated with the Approximately 11.5-Acre Newport Mesa Unified School District Banning Ranch Site, Orange County, California

Dear Mr. Reed:

A security fence was installed by the Newport Mesa Unified School District (NMUSD) in December 2011 to prevent unauthorized access to the approximately 11.5-Acre NMUSD Banning Ranch Site (the Site) located in Orange County, California. As identified in a letter received from the California Coastal Commission (CCC; 5-13-1100), dated March 12, 2015, this installation was conducted without a Coastal Development Permit. The unpermitted fence installation has had minimal impact on the function and values of wetlands and Environmentally Sensitive Habitat Area (ESHA) as documented in *Biological Constraints Assessment* (EI 2016). However, the installation of the fence did not meet certain conditions of the Newport Beach Landuse Plan and California Coastal Act. To meet the requirements of these provisions, NMUSD proposes a less environmentally damaging alternative to provide security to the Site. Specifically, NMUSD proposes to modify the existing fence-line by: 1) relocating the fencing outside of seasonal wetlands, and 2) creating low fence cut-outs at 75-foot increments to promote wildlife movement.

Purpose of Security Fencing

The CCC contends that that the Site is secured by fencing associated with the Newport Banning Ranch (CCC 2015). However, NMUSD has documented unauthorized access as a common problem on the Site (Tim Marsh, pers. comm. 2015). Evidence of unauthorized access is also documented within the denial of the after-the fact Coastal Development Permit. Specifically, Exhibit 4 of this document shows unauthorized access as the photograph is taken from within the Site (CCC 2015).

Regulatory Framework

The CCC denial of permit letter cites the need for the fencing to meet the requirements of the Newport Beach Landuse Plan and California Coastal Act. Relevant sections are provided below:

<u>Newport Beach Landuse Plan</u>

> *Policy 4.1.3-1*. Utilize the following mitigation measures to reduce the potential for adverse impacts to EHSA natural habitats from sources including.
>
> > A. Require removal of unauthorized…structures that impact wetlands or other sensitive habitat areas.
>
> *Policy 4.2.2-3*. Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological

integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.

California Coastal Act

Section 30233: (a) The diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

Section 30240 Environmentally sensitive habitat areas; adjacent developments

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

California Environmental Quality Act

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.

Alternative Fence Design

To meet the requirements of the above mentioned provisions, NMUSD proposes an alternative fencing design to provide security to the Site. Specifically, the NMUSD proposes to modify the existing fence-line by: 1) relocating the fence-post outside of seasonal wetlands and 2) create 3x1-foot fence cut-outs at 75-foot increments to promote wildlife movement. This revised design would reduce potential impacts to environmental resources.

Relocate Fencing Outside of Wetlands

The NMUSD proposes to relocate the fencing outside of the limits of all identified seasonal wetlands. Currently, one fence post was installed within Seasonal Wetland No. 2 as identified in the CCC letter (5-13-1100). The post installation resulted in a net impact of approximately 4 square inches. The modification would be performed by hand and no mechanical compaction or equipment will be used. As discussed in the

Biological Constraints Assessment (EI 2016), this wetland is lacking an impermeable layer and the current post and its proposed relocation is unlikely to have impacted the wetland's hydrology or capacity.

Relocation of the fence post would allow the project to meet requirements identified in the City of Newport Beach's Landuse *Policy 4.1.3-1* and California Coastal Act *Section 30233*.

Facilitate Wildlife Movement

The NMUSD proposes to modify the existing fence-line to include wildlife movement cut-outs. The modification would consist of the removal of 3-ft by 1-ft chain-link sections at the base of the installed fence-line at 75-ft increments. The addition of these cut-outs would increase the ability of wildlife to pass through the fence-line and reduce digging by animals attempting to cross the fence-line while maintaining the security of the site.

The modification would increase the protection of the biological integrity of the wetland and ESHA and is consistent with the City of Newport Beach's Landuse *Policy 4.2.2-3* and California Coastal Act *Section 30240* in that this modification

Buffers

Buffers for ESHA and wetland habitats are recommended within Section 30231 and 30240 of the California Coastal Act and within Policies 4.1.3-4, 4.2.2-3 and 4.2.3-1 of the Newport Beach Landuse Plan. The purpose of the buffers is to prevent the interference of surface water flow and maintain biological integrity of ESHA habitat. Typically a 100-foot buffer is recommended to meet these purposes. As outlined in the Newport Beach Landuse Plan, buffers may be reduced to due to site-specific constraints.

The fencing should be exempt from the 100 foot buffer requirement because it does not interfere with surface flow or biological integrity of the wetlands or ESHA and does not affect existing land-use or function. The chain-link was installed at grade and would not have effected surface water flow. Additionally, minimal ground disturbance is expected, as no earth moving, mechanical compaction, or other activities that would have notably modified hydrology. In addition, soils in this area are historically disturbed and potential impacts from foot traffic are expected to have been minimal. Furthermore, biological resources, including coastal California gnatcatcher, burrowing owl, and common wildlife were observed moving over and through the fencing (EI 2016). With the proposed fencing modifications, including cut-outs, wildlife movement ability is expected to increase and further promote the integrity of the biological resources.

Mitigation and Minimization Measures

To ensure that impacts resulting from the modifications to the fencing are avoided or otherwise minimized, all fencing modifications should include measures to minimize impact to biological resources. These mitigation and minimization measures include:

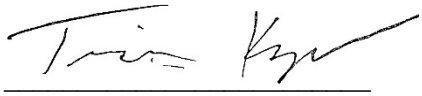
- Pre-activity survey for avian species, including coastal California gnatcatcher, burrowing owls, and nesting birds, in conformance with the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game, 2012) and the Migratory Bird Treaty Act, shall be completed no more than 10 days prior to the start of construction within 500 feet of all suitable habitat within the activities and buffer zone(s).
- Pre-activity survey for wetted or saturated areas. No activities should take place if areas of ponding or saturated soil are identified.
- Biological monitoring of on-site activities. On-site personnel will comply with directions from qualified biologists, whose role is to help personnel avoid and minimize impacts to biological resources. Biologists have the authority to temporarily halt construction activities that could harm sensitive biological resources, including nests and burrows.

Conclusion

The fence was installed within ESHA and ESHA buffers defined by the CCC. With the proposed modification, the fence-line will be located outside of ESHA and have an extremely limited, if any, effect on the wetland habitat integrity, wildlife movement, and buffer areas. With the adoption of the proposed modifications and associated mitigation measures, the Project is expected to meet the requirements of the California Coastal Act and City of Newport Beach's Land Use Plan.

If you have any questions regarding this letter report, or need any additional information, please feel free to call me at traviskegel@enviro-intel.com or David Levine at davidlevine@enviro-intel.com.

Sincerely,



Travis Kegel

Senior Biologist

LITERATURE CITED

California Coastal Commission (CCC). March 12, 2015. Application 5-13-1100 for the Newport Mesa Unified School District. California Coastal Commission.

Environmental Intelligence (EI). 2016. A Biological Constraints Assessment of the Newport Mesa Unified School District Site Located in Orange County, California. Prepared For: Newport-Mesa Unified School District. July 28, 2016