



November 4, 2011

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Patrick J. Alford, Planning Manager
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3300 Newport Boulevard
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Subject: Comments – Newport Banning Ranch Project Draft
Environmental Impact Report

Dear Mr. Alford,

The Orange County Local Agency Formation Commission (OC LAFCO) has reviewed the *Draft Environmental Impact Report* (Draft EIR) for the Newport Banning Ranch Project (Project). OC LAFCO appreciates this opportunity to review and comment on the Draft EIR pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.: "CEQA") and the State CEQA Guidelines (14 C.C.R. § 15000 et seq.).

OC LAFCO operates under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et seq.). Under the Act, OC LAFCO is required to make determinations regarding an annexation and to consider the environmental impact report of a Lead Agency (Government Code Section 56881). According to the Draft EIR, the City of Newport Beach is Lead Agency for purposes of the Project and is responsible for certifying the EIR. The Act also establishes the factors which OC LAFCO must consider in making its determinations for a proposed change of organization, including any policies adopted by OC LAFCO to create planned, orderly and efficient patterns of development (Government Code Section 56668). Because of this role and pursuant to Section 21069 of the Public Resources Code and Title 14, California Code of Regulations, section 15381, OC LAFCO would be a responsible agency for annexation of the Banning Ranch project to an adjacent city and/or special district.

During our review of the Draft EIR for the Banning Ranch Project, we have noted that there are several missing components that are required for use of the EIR by OC LAFCO as a responsible agency. (See State CEQA Guidelines § 15096(d) [responsible agency's comments on the Draft EIR should focus on shortcomings in the EIR within the responsible agency's area of expertise].) A discussion of each of these components is referenced below.

As you know, each responsible agency is required to provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility that must be included in the Draft EIR. (State CEQA Guidelines §§ 15082(b) & 15096(b)(2).) In accordance therewith, most of the comments below were also included in the *Response to the Notice of Preparation of the Draft Environment Impact Report* submitted by Orange County LAFCO to the City of Newport Beach on April 7, 2009 (see attached).

The Final Environmental Impact Report ("EIR") must address the impacts of all of the project components, including but not limited to the annexation process, and all necessary and feasible mitigation. In particular, the EIR should address the factors as identified in Government Code Section 56668. These factors include, but are not limited to, the following considerations:

- 1. As a responsible agency, LAFCO must independently review and consider the adequacy of the lead agency's environmental documents prior to approving any portion of the proposed project. (State CEQA Guidelines § 15096.)**
 - a. The Final Project Level Environmental Impact Report must be adequate for the purposes of annexation and should include substantive discussion of the LAFCO annexation process. (State CEQA Guidelines § 15096.)
 - b. The Final EIR should include the approximately 60 acres of unincorporated territory currently excluded from project area. The Draft EIR does not include the entirety of the Banning Ranch area and excludes approximately 60 acres located on the eastern side of the Santa Ana River (Referred to as ACOE Wetlands Restoration Area). Exclusion of the 60 acres of ACOE Wetlands Restoration Area would create an "island or corridor of unincorporated territory" which, as stated above, is a specific factor to be considered in the review of annexation proposals under Government Code Section 56668(f). The omission of the ACOE Wetlands from the Final EIR would require the preparation of a Supplemental EIR to analyze the environmental impacts to the additional 60 acres discussed above as part of any application for annexation of Banning Ranch. This would financially impact the annexation proponent and also impact the timing of the proposed annexation.

- 2. The “Project Description” must be clearly articulated and must include a description of the proposed annexation of the project area to the City of Newport Beach.**
- a. The “Project Summary” section of the Draft EIR does not discuss the future annexation of the project territory to the City of Newport Beach. (See State CEQA Guidelines § 15123(b)(2), [summary section “shall identify areas of controversy known to the Lead Agency including issues raised by agencies and the public”].)
 - b. The “Project Description” in the Final EIR must clearly identify annexation of the unincorporated portions of the project area as part of the “whole of the project” requiring LAFCO review and approval. (See State CEQA Guidelines § 15124(d)(1)(B); see also State CEQA Guidelines § 15378(a) [defining the term “project” as including the whole of an action]; see also State CEQA Guidelines § 15378(c) [explaining that the word “project” includes “activity [that] is being approved and which may be subject to several discretionary approvals by governmental agencies”].) The Final EIR must also discuss the timing of annexation relative to timing of the proposed development plans.
 - c. Other LAFCO actions: In addition to annexation, the “Project Description” should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. (State CEQA Guidelines § 15124(d)(1)(B).) These agencies may include, but are not limited to the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District.
 - d. “Project Objectives” must include discussion of the eventual annexation of the Newport Banning Ranch Project Area to the City of Newport Beach. (See State CEQA Guidelines § 15124(b) [“[t]he statement of objectives should include the underlying purposes of the project”].)
 - e. “Proposed Implementation Plan” must include discussion of the timing or phasing of the annexation of the project area to the City of Newport Beach in relation to the other actions related to the development of the Newport Banning Ranch Project Area.
 - f. “Components of Newport Banning Ranch” includes a reference to annexation (Section 3.9.3), but annexation of the project area must be expressly listed as an independent component of the project.

- g. "Pre-Annexation and Development Agreement" states the availability of the Pre-Annexation Agreement on the City's website. While there is a document available on the City's website, it is not complete and does not reflect what is described in Section 3.12 of the Project Description. The current form of the Pre-Annexation Agreement does not allow for full consideration of the impacts the development may have on the project area. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192, [holding "a finite project description is *indispensable* to an informative, legally adequate EIR"].)
 - h. As required by State CEQA Guidelines section 15124(d)(1)(A), the "Intended Use of the EIR" includes LAFCO as a responsible agency under Section 3.14.2 of the Project Description, stating "annexation would include approximately 361 acres of the 401-acre Project site into the City and a change in service district boundaries for water service." For purposes of annexation LAFCO would be a responsible agency. As stated earlier, LAFCO is prohibited from approving annexation of territory that would result in the creation of an unincorporated county island. (Gov. Code § 56744.)
- 3. The "Public Services and Facilities" (Section 4.14) should include discussion of all services required by the development and the timing of those services to the project area.
 - a. Government Code section 56653 requires that each application for a change of organization include a "plan for providing services within the affected territory." Among other things, the plan for services must indicate "when those services can feasibly be extended to the affected territory" (Gov't Code 56653(b)(3)). Although the focus of Subsection 56653(b)(3) is on the timing of the *initiation* of services, the point of this subsection, especially considered with the remaining requirements of Section 56653, is on continuous, reliable services to the affected area. The Final EIR's discussion of impacts in the area of public services must be made with reference to and consistent with the plan for services submitted under the Act, in particular, Government Code section 56668, which contains the criteria for approval of the annexation of the project area.
 - b. The "Public Services and Facilities" section omits discussion of street sweeping services. The LAFCO response to the draft NOP requested discussion of the City's ability to provide services to the project area. These services identified in the LAFCO response letter included: water, sewer, waste disposal, street sweeping, fire protection and emergency

response. Both Costa Mesa and Newport Beach are equally capable of providing street sweeping services to the area and analysis of this service from these agencies should be included in the Final EIR.

- c. The “Public Services and Facilities” section omits comparison of the Fire Protection and Emergency Response to the Project Area by the Cities of Costa Mesa and Newport Beach. The LAFCO response to the NOP for this project specifically requested the analysis of Fire Protection and Emergency Response Services by both Cities. Section 4.14.1 describes the existing conditions and specifically cites the City of Costa Mesa as the service provider to the areas adjacent to the Project Area including service to the Newport Terrace residential community, located in the City of Newport Beach. The supporting document for the Fire Protection (Appendix K) discussion in section 4.14.1 also omits any discussion of fire service by the City of Costa Mesa. Both Costa Mesa and Newport Beach are capable of providing fire suppression and emergency response services to the Project Area and service provision by each agency should be analyzed in the Final EIR.

4. The “Utilities” (Section 4.15) should be verified for accuracy of analysis regarding water and sewer infrastructure.

- a. Please note the City of Costa Mesa does not own a sewer system and the reference to the City of Costa Mesa owning sewer infrastructure on page 4.15-27 is incorrect. The infrastructure is owned by the Costa Mesa Sanitary District.
- b. The *Sewer and Water Infrastructure Facilities Plan* identified as the reference document to the Draft EIR also includes the erroneous reference to the City of Costa Mesa as the sewer provider.
- c. The *Sewer and Water Infrastructure Facilities Plan* identified as the reference document to the Draft EIR states “the project site is included in the City of Newport Beach’s service area.” This statement does not coincide with the City of Newport Beach 2010 Urban Water Management Plan (UWMP) which shows the project area as outside of the Newport Beach Water Service Area. The UWMP also depicts the Mesa Consolidated Water District as the service provider to the areas of Newport Beach north and east of the proposed project area – it is not made clear in the Draft EIR why the Mesa Consolidated Water District is not considered or evaluated as a possible provider of retail water service to the project area.

- d. The LAFCO Response to the Notice of Preparation of the Draft EIR included a request for the Draft EIR to include discussion of the relative merits of the local agencies capable of providing water, sewer, and solid waste disposal service to the area. This analysis is also omitted in the Draft EIR which almost assumes that the City of Newport is the only provider of these services to the area.
 - e. The analysis of water and sewer providers to the area does not include a discussion of the levels of service or the rates paid by future recipients of these services.
5. **The EIR should identify the long-term funding mechanism and land owner responsible for the sustained maintenance of the open space and habitat conservation areas. (Pub. Res. Code § 21081.6; State CEQA Guidelines § 15097.) The “Project Description” should be amended to address the following considerations:**
- a. The “Project Objectives” includes reference to the “creation of an endowment or other funding program.” The Final EIR should include discussion of the specific funding program and long term administration of the sustained maintenance of the open space and habitat conservation areas. Without such a description, the mitigation measures are uncertain and potentially unenforceable. (See State CEQA Guidelines § 15126.4(a)(2) [explaining that mitigation measures must be fully enforceable through, among other things, legally binding instruments].)
 - b. The “Proposed Implementation Plan” must be expanded to include similar discussion of the long term maintenance of the open space and habitat conservation post development. Absent clarification, the mitigation measure is vague and uncertain and potentially unenforceable. (See State CEQA Guidelines § 15126.4(a)(2) [explaining that mitigation measures must be fully enforceable through, among other things, legally binding instruments].)
 - c. The land owner should be identified as the responsible party or alternatively, another responsible party should be identified as the long-term provider of maintenance to the open space and habitat conservation areas. (Pub. Res. Code § 21081.6 [mitigation monitoring and reporting program is intended to ensure compliance].)
6. **The Final EIR should include a “No Annexation Alternative” in Section 7.**
- a. Annexation of the unincorporated County Island commonly referred to as *Banning Ranch* is under the sole discretion of the Orange County LAFCO

and cannot be assumed as a definite outcome. Thus, a reasonable range of alternatives in the Draft EIR must include a “No Annexation Alternative”. (State CEQA Guidelines § 15126.6.) LAFCO understands that CEQA requires that an EIR “describe a range of reasonable alternatives to the project” and a “No Annexation Alternative” is reasonable here given that the authority to grant such an annexation rests with a body other than the Lead Agency for the proposed Project. Decision-makers and the public should be informed of the environmental consequences of the proposed Project if it is not successfully annexed into the City of Newport Beach. Specifically, the “No Annexation Alternative” must adequately address the following *significant* impacts under that alternative:

- i. The creation of a large, developed, and inhabited unincorporated County Island consisting of a 1,375-unit residential development project, 75,000 square feet of commercial development, and a 75 room resort inn.
- ii. Reduced levels of services to Banning Ranch residents for:
 1. Police protection
 2. Fire protection
 3. Traffic enforcement and accident investigation
 4. Roads (maintenance, street lighting, landscaping, sweeping).
 5. Code enforcement
 6. Local representation and accountability

Thank you for this opportunity to respond to the Draft EIR. Please send one complete set of the Final EIR to me at the address above at least ten days prior to the date on which the City Council certifies the EIR. (State CEQA Guidelines § 15088(b).) If you have any questions or concerns regarding this response, please contact me (jcrosthwaite@oclafco.org) or Benjamin Legbandt, Policy Analyst II (blegbandt@oclafco.org) by email or at (714) 834-25456.

Best regards,



Joyce Crosthwaite
Executive Officer



April 7, 2009

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Debby Linn, Contract Planner
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, California 92658

Subject: Notice of Preparation Draft Environmental Impact Report

Dear Ms. Linn,

The Orange County Local Agency Formation Commission (LAFCO) has reviewed the *Notice of Preparation of a Draft Environmental Impact Report* for the Newport Banning Ranch project. LAFCO appreciates this opportunity to review and comment on the NOP.

LAFCO was created pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, now known as the Cortese-Knox-Hertzberg Local Government Reorganization Act as amended in 2000 ("Act"). (Govt. Code §56000 *et seq.*) Under the Act, LAFCO is required to make determinations regarding an annexation and to certify the environmental impact report of a Lead Agency (Govt. Code §56881). The Act also established the factors which LAFCO must consider in making its determinations, including any policies adopted by LAFCO to create planned, orderly and efficient patterns of development (Govt. Code §56668). Because of this role and pursuant to Section 21069 of the Public Resources Code, LAFCO is a responsible agency for the Banning Ranch project.

The Draft Environmental Impact Report ("DEIR") should address the impacts and any necessary mitigation, including but not limited to the annexation process. In particular, the DEIR should address the factors as identified in Government Code Section 56668. These factors include, but are not limited to, the following considerations:

- **Project Description**

Annexation: The “Project Summary” section of the NOP does not specifically discuss the future annexation of the project territory to the City of Newport Beach. The “Project Description” in the Draft EIR should clearly identify annexation of the unincorporated portions of the project area as part of the “whole of the project” requiring LAFCO review and approval. The Draft EIR should also discuss the timing of annexation relative to timing of the proposed development plans.

Other LAFCO Actions: In addition to annexation, the “Project Description” should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. These should include, but are not limited to the discussion of the concurrent annexation of the area to the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District.

- **Public Service and Facilities**

Section 56653 of the Act requires that each application for a change of organization include “a plan for providing services within the affected territory.” Among other things, the plan for services must indicate “when those services can feasibly be extended to the affected territory.” (Govt. Code §56653(b)(3).) Although the focus of Subsection 56653(b)(3) is on the timing of the *initiation* of services, the point of this subsection, especially when considered with the remaining requirements of Section 56653, is on continuous, reliable services to the affected area. The EIR’s discussion of impacts in the area of public services should be made with reference to and consistent with the plan for services submitted under the Act, in particular, Section 56668, containing the criteria for approval of the annexation. (Similar discussion and references should be made in the analysis of Land Use/Planning and Population/Housing.)

The Public Services and Facilities discussion should also include a discussion of the ability of the City to provide services (Govt. Code §56668(j)). These services are discussed in detail below.

Water: The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Consolidated Water District. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area.

Sewer: The project area is currently not within the boundary of an agency providing local retail sewer services. The two agencies providing local retail sewer services to surrounding

areas are the City of Newport Beach and the Costa Mesa Sanitary District. The Draft EIR should identify and evaluate plans for the extension and delivery of local retail sewer services to the project area. The Draft EIR should also evaluate the connection of local retail sewer services for the project to regional sewer facilities provided by the Orange County Sanitation District.

Waste Disposal: The project area is currently not within the boundary of an agency providing solid waste disposal services. The two agencies providing solid waste disposal services in the area are the Costa Mesa Sanitary District and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of solid waste disposal services to the project area.

Street Sweeping: The two agencies providing street sweeping services to surrounding areas are the City of Costa Mesa and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of street sweeping services to the project area.

Fire Protection and Emergency Response Services: The project area is currently not within the boundary of an agency providing fire protection and emergency response services. The two agencies responding to emergency calls in the surrounding areas are the City of Newport Beach and the City of Costa Mesa. The Draft EIR should identify and evaluate plans for the extension and delivery of fire protection and emergency response services to the project area.

- **Utilities**

This section or the Section of Public Services and Facilities should include a discussion of water supplies as required under Subsection 56668(k) of the Act, including a discussion of the project's consistency with relevant Urban Water Management Plans.

- **Water Quality**

The Draft EIR should address storm water permitting requirements, including (preparation of Stormwater Pollution Prevention Plan), change in surface imperviousness due to the Project, drainage basins, emergency response to spills, and general compliance with the regional stormwater permit.

Thank you for this opportunity to respond to the NOP. Please send one complete set of the DEIR to me at the address above. If you have any questions or concerns regarding this response, please contact me or Benjamin Legbandt, Policy Analyst, either by email at blegbandt@oclafco.org or by phone at (714) 834-2556.

Best Regards,

A handwritten signature in black ink that reads "Joyce Crosthwaite". The signature is written in a cursive, flowing style.

Joyce Crosthwaite
Executive Officer