

Attachment No. CC 7

Responses to Public Comments Received
After EIR Comment Period

ATTACHMENT CC 7

CORRESPONDENCE AND PUBLIC HEARING COMMENTS

The City of Newport Beach has received written correspondence on the Newport Banning Ranch Project subsequent to the close of the 60-day public review period that was provided under the California Environmental Quality Act (CEQA) for the Newport Banning Ranch Project Draft Environmental Impact Report (EIR). Additionally, public comments on the Project have been made orally to the City of Newport Beach Planning Commission during public hearings subsequent to the close of the public review period on the Draft EIR. Should the City Council concur with the Planning Commission's recommendation for certification of the Newport Banning Ranch Final EIR, the City Council prior to taking action on the proposed Project "...shall certify that:

- (1) The final EIR has been completed in compliance with CEQA;
- (2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
- (3) The final EIR reflects the lead agency's independent judgment and analysis". (CEQA Guidelines §15090)

To assist the City Council in its review of the Final EIR, City staff has provided a compilation of the correspondence and verbal comments provided to the City at public hearings and have provided written responses to these comments. Although CEQA does not require the lead agency to respond to comments received after the end of the public review period (CEQA §21092(c)), the City Council must take into consideration all information that has been presented to it and which is made a part of the record before it. Therefore, responses to the comments which have been presented to the City are provided to demonstrate that substantial evidence supports the City's conclusions that the Final EIR meets CEQA's standards for adequacy and recirculation of the Draft EIR is not required.

The State CEQA Guidelines Section 15151 defines the standards for adequacy of an EIR:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The State CEQA Guidelines Section 15088.5 identifies the criteria whereby an EIR is required to be recirculated.

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New

information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
 - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
 - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR....
- (e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

**MARCH 22, 2012 PLANNING COMMISSION
STAFF REPORT CORRESPONDENCE**

Correspondence Item No. 4a
U.S. Green Building Council, Orange County Chapter



Correspondence
Item No. 4a
Newport Banning Ranch
PA2008-114

USGBC Orange County
Chapter

360 East First Street, #401
Tustin, CA 92780

P (714) 832-3616
F (714) 730-6296
www.usgbc-oc.org

EXECUTIVE OFFICERS

EXECUTIVE DIRECTOR
Lindsey Engels, LEED AP
LPA, Inc.

CHAIR
Ed Kweskin, LEED AP ID+C
Resolute Consulting

VICE CHAIR
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Robyn Veltrano, LEED AP
verde at Parker Properties

Jennifer Baarley
Emerging Professional

Jeffrey Howell, LEED AP
Fidelity National

March 19, 2012

Members of the City Council of Newport Beach
The Office of the City Council
Newport Beach, CA 92663

Dear Council Members,

On behalf of the U.S. Green Building Council Orange County Chapter, I write today to express our organizational support for the Newport Banning Ranch project, which is registered under the LEED for Neighborhood Development program. In addition, we support public access to Banning Ranch, protection of sensitive habitat and maximization of open space.

The Leadership in Energy and Environmental Design (LEED) rating system is a nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED for Neighborhood Development is built off LEED's success and is a consensus based approach to land development of whole neighborhoods that unite the principles of smart growth, new urbanism, and green building to provide a common framework for evaluating and rewarding environmentally-superior neighborhood development practices.

LEED-ND encourages developers to embrace a comprehensive approach in the design, planning, and building of a neighborhood which promotes using alternative modes of transportation, improved air and water quality, and the construction of more sustainable communities for people of all income levels. Some highlighted features of building and certifying with LEED-ND include:

- **Decrease automobile dependence** – LEED-ND stresses public and convenient transportation choices such as buses, trains, bicycles, and increased sidewalks for walking. A focus of program certification in "smart location" meaning developing locations which produces shorter automobile trips and reduce traffic congestion. Additionally, a 2009 study found that houses with above-average levels of walkability, a core component of LEED-ND, command a premium of \$4,000 to \$34,000 over houses more spread out.
- **Protect threatened species** - Fragmentation and loss of habitat are major threats to many imperiled species. LEED-ND encourages compact development patterns and the selection of sites that are within or adjacent to existing development to minimize habitat fragmentation and also help preserve areas for recreation.
- **Lower Costs** - Benefits of LEED-ND neighborhoods include reduced infrastructure and operating costs for municipal governments.

The results of building LEED-ND projects are quite clear. Additionally, the process to register and earn LEED-ND certification also has a number of benefits including a whole-site approach to project planning and development, consensus and input from all stakeholders, and implementing industry best practices to help achieve maximum results. The Newport Banning Ranch project has already done due diligence in pursuing LEED-ND certification, registering under the program on 5/6/2010 and hosting a number of preliminary meetings with local officials and project stakeholders. However, to ultimately be certified, the plans for the project need to be reviewed by USGBC for pre-certification review prior to the first shovel hitting the ground.

We hope members of this council work with project developers, residents of Newport Beach, and all interested parties to advance this LEED-ND project. Please feel free to use USGBC California Orange County, and the whole U.S. Green Building Council network, including over 22,133 LEED certified professionals throughout California as a resource. As an organization, we are more than happy to assist in any form possible.

Sincerely,

A handwritten signature in blue ink that reads "Lindsey Engels".

Lindsey Engels
Executive Director, USGBC-OC

Correspondence Item No. 4a
U.S. Green Building Council, Orange County Chapter
Lindsey Engels, Executive Director
March 19, 2012

Response 1

The comment is noted; no further response is necessary.

Correspondence Item No. 4b
Bruce Bartram

End of Section

Rank	
1	
2	
3	
Total	

Additionally, Banning Ranch exhibits distinctive topography to the community. The property is divided into lowland and upland areas generally in a north-south direction, separated by a steep backdrop from West Coast Highway. Drainage from the upland mesa formed a number of arroyos with riparian habitat. The property has experienced sliding over the years. Figure LU17 illustrates the topography of the property.

During the visioning process, residents were divided into three groups. Many residents preferred preserving Banning Ranch as open space. However, many participants in the public process indicated some development of the property if it would generate revenue for the majority of the property as open space.

Policy Overview

The General Plan prioritizes the acquisition of Banning Ranch as open space for the community and region. Oil operations would be consistent with the plan, and interpretative facilities provided, and an active trail system to serve residents of adjoining neighborhoods.

Should the property not be fully acquired as open space, a concentrated mixed-use residential village that retain the majority of the property as open space, while oil operations would be consistent with the plan. This would contain a mix of housing types clustered around commercial uses, small boutique hotel, active park, located and designed and an interconnected street system to reduce vehicular trips. Development would be consistent with the plan. A trail system would be developed to link uses within the property and access to adjoining neighborhoods. While the plan allows for development that would be allowed on the property, the plan also indicates the maximum intensity of development that would be allowed on the property, and the plan also indicates the maximum intensity of development that would be allowed on the property.

Goal 1

LU 6.3

Preferably protect open space amenity, with community parklands to serve adjoining neighborhoods.

that is a visual resource for the community. Bluff faces traverse the property and forming an important visual backdrop from West Coast Highway. Drainage from the upland mesa formed a number of arroyos with riparian habitat. The property has experienced sliding over the years. Figure LU17 illustrates the topography of the property.

During the visioning process, residents were divided into three groups. Many residents preferred preserving Banning Ranch as open space. However, many participants in the public process indicated some development of the property if it would generate revenue for the majority of the property as open space.

as an open space amenity for the community and region. Oil operations would be consistent with the plan, and interpretative facilities provided, and an active trail system to serve residents of adjoining neighborhoods.

The Plan provides for the development of the property as open space. The plan also indicates the maximum intensity of development that would be allowed on the property, and the plan also indicates the maximum intensity of development that would be allowed on the property. The plan also indicates the maximum intensity of development that would be allowed on the property, and the plan also indicates the maximum intensity of development that would be allowed on the property.

End of Section 3-71

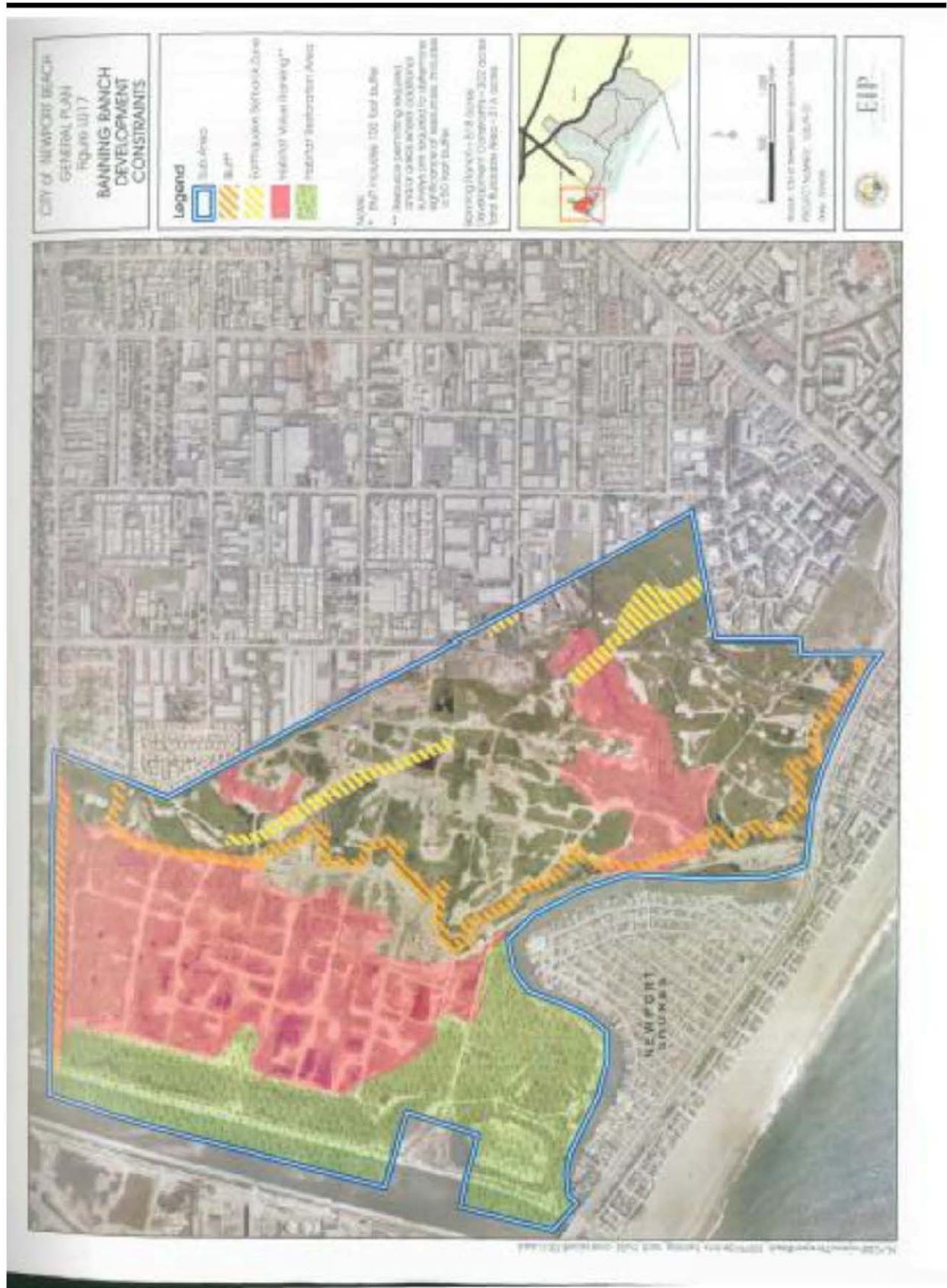
Correspondence Item No. 4b
Bruce Bartram

General Plan Policy Statement on Banning Ranch

Policy Overview

“While the Plan indicates the maximum intensity of development that would be allowed on the property(Banning Ranch), this will ultimately be determined through permitting processes that are required to satisfy state and federal environmental regulatory requirements.”

Correspondence Item No. 4b
Bruce Bartram



Correspondence Item No. 4b
Bruce Bartram

Policies 'ertCllnIng '0
1oth Land U, **Options**
(Goal, 6.3 Good 6.4)

PERMITTED USES

LU 6.5.1 Oil operations
R , I, later oil operations

LU 6.5.2 Community Park
Accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed. (Dep 3.1, 4.1)

LU 6.5.3 Habitat and Wetlands
Restore and enhance wetlands and wildlife habitats, in accordance with the recommendations of state and federal agencies. (Dep 3.1, 4.1, 14.2, 14.11)

DESIGN AND DEVELOPMENT

LU 6.5.4 Relationship of Development to Environmental Resources
Development should be located and designed to preserve and/or mitigate for the loss of wetlands and drainage course habitat. It shall be located to be contiguous and compatible with existing and planned development along its eastern property line, preserving the connectivity of wildlife corridors, and set back from the bluff faces, along which shall be located a linear park to provide public views of the ocean, wetlands, and surrounding open spaces. Exterior lighting shall be located and designed to minimize light trespass from developed areas onto the bluffs, riparian habitat, arroyos, and lowland habitat areas. (Dep 3.1, 4.1)

LU 6.5.5 Public Views of the Property
Development shall be located and designed to prevent residences on the property from dominating public views of the bluff faces from Coast Highway, the ocean, wetlands, and surrounding open spaces. Landscape shall be incorporated to soften views of the site visible from publicly owned areas and public view points. (Dep 3.1, 4.1)

STRATEGY

LU 6.5.6 Coordination with State and Federal
Work with appropriate state and federal agencies to identify wetlands and habitats to be preserved and/or restored and those on which development will be permitted. (Dep 14.2, 14.11)

Correspondence Item No. 4b
Bruce Bartram

General Plan Land Use Policy Statement on Banning Ranch

Land Use Goals

LU 6.5.3 Habitat and Wetlands

Restore and enhance wetlands and wildlife habitats, in accordance with the requirements of state and federal agencies.

STRATEGY

LU 6.5.6 Coordination with State and Federal Agencies

Work with appropriate state and federal agencies to identify wetlands and habitats to be preserved and/or restored and those on which development will be permitted.

Correspondence Item No. 4b
Bruce Bartram

Newport Banning Ranch EIR
Responses to Comments

Comment Letter 51-

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
1600 Coast Ave., Suite 200
Long Beach, CA 90801-3001

G. BRONKHORST, Governor

Patrick J. Atford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
Newport Beach, California 92658-8915

NOV 05 2011
CITY OF NEWPORT BEACH

RE: **COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT**
SCH# 200903106
Newport Banning Ranch
Orange County

Thank you for the Draft Environmental Impact Report and commercial proposed project. Includes 1,375 75,000 feet of commercial and 75-room resort inn, approximately 51.4 for 252.3 gross acres for in the form of open space.

The following comments address, in a preliminary manner, the issue of the proposed project's Coastal Act. This letter provides an overview of the project's preliminary analysis and information we've been presented and not preliminary and those of Coastal Commission not be opinion of Coastal Commission.

Proc (Review of the Project) p1

The DEIR states the Coastal Commission could be asked to provide a preliminary review and approval of land uses with details of some portions of the project. The DEIR suggests the Commission could suggest the 'Master CDP' would be a process for certain City when City ultimate approval of any part of project. There or regulatory authority kind of coastal permit review process described in DEIR. process the DEIR, Local Coastal Program, request would need City and

Given the project considered in Local Coastal This for consideration would be given the kind of project established under Coastal Act would be given the DEIR. The CDP process is not or analyzing conceptual projects; rather ... and of specific projects with

2

21

Responses to Comments

Correspondence Item No. 4b
Bruce Bartram

Newport Banning Ranch EIR
Responses to Comments

Page 11

B. Determination of ESHA

in the DEIR only or in review of previous projects property (Cease and Desist Order CCC 11-CD-03
Consent to Restoration Order CCC-11-RO-02, and Coastal Commission Permit 5-10-16). the
Commission a continuous survey of this area shown of
2009. However, only a small portion of this area is shown of
not this area draw conclusions regarding the area shown of
such as Barn Swallow Owls, and present the next time more surveys do not rare
surveyor, and does not indicate should be all known
An E on project that at for the
that is part of the 2011 hearing, the Commission's November
not yet
known support significant numbers likely
on the site ESHA determine
circumstances, which Commission has ability to review However, generally
considered
ESHA include rare community types, such as Coastal
that supports special status species
Therefore, it is important that the EIR process incorporate a determination of ESHA areas and their required buffers before land use areas and development. We suggest that ESHA and wetland delineations and recommend Coastal Commission staff biologists before the EIR is finalized.

ESHA
in Coastal The DEIR states this DEIR and
The Project is consistent with the Project Site
compensate for degradation of or significantly disrupt habitat values. The
area would be as ESHA Coastal Commission as part of
CDP process
Based on a preliminary analysis Commission provided information,
development proposed in the EIR compatible with Coastal
30240
The proposed a four Coast Highway subject
Coastal Commission Staff recently analyzed habitat resources present in
proposed road in processing Coastal D

Correspondence Item No. 4b
Bruce Bartram

<p>Because the BCLUP are not Commission di Ranch property CLUP does n consideration c consistency wit the proposed F Section 15125. i</p>	<p>to 1 ed. E the I Dev ter 3 the C ar to !</p>	<p>A in the CLUP, t ch property. Correspond CLUP requested that refi not have a certif property, the City mit for the Project site we Coastal Act. The Draft EIF tal Act as required by the h 4.15 of the Draft EIF</p>	<p>in the City's the Coastal the Banning nd the City's es that any a finding of in analysis of A Guidelines</p>
<p>Response 5</p>			
<p>The City acknowledges Coastal Act and the imp and the City's CLUP id ESHA. Please refer</p>	<p>Co al Con buffers : opicalP</p>	<p>sion's regarding Section 30240 of the ESHA the fact that both the Coastal Act and avoidance of impacts to SHA.</p>	
<p>As noted in the respons City's CLUP nor is an : property in the City's C binding on the Banning Project with the 15125. Please refer to</p>	<p>Comment 4, idment being property. Coastal Act 4.1 throu</p>	<p>Ban anch property is not inclu within the this time to include the B anch Ranch while : CLUP may pro it is not a Draft R provides an ar proposed require ay the State CE Section 4.15 of :IR.</p>	
<p>the purpose of the environment. It is not, such inconsistencies 4.6, Biological Resou resources, including plant and animal spe to these resources Section 4.6 of the Dra values. The Draft EIR to whether any or all policies of the Coastal part of the Coastal C</p>	<p>EIR is to d of itself, of the Draft EI tal and State and specific h be mitigated R, and edges that constitute to the existing sion's Coastal</p>	<p>a proposed project's consistency analysis, e s that otherwise are yzes the proposed Proje endangered and threat s such as wetlands and v voided with the Mitigatic could be protected as aga Coastal Commission mak :IA under the Coastal Act litations on the Project site t Permit process.</p>	<p>on the physical o the extent that scussed. Section pact on biological species, sensitive tools. All impacts gram set forth in ruption of habitat determination as application of the re undertaken as</p>
<p>se 6</p>			
<p>The Coastal Con Project site on sensitive states that ESHA deter response to Comment the Draft EIR analyzes and sensitive habitat. based upon site- policies of the (Commission's re presence/absence Biological Resour resources, includ plant and animal to these resourc</p>	<p>suggests that s and be c ns are ma Topical Re : Project's imp the Coastal C nstances Coastal Act. the :IA or he Di tal an and s be r</p>	<p>EIR examine historical id to r that usage. T site-specific circumstan se: ESHA. Section 4.6, l on biological resources, ission correctly notes, a s a finding to be made City anticipates that : t would make a site hat said, as not e the proposed Projec endangered and threat such as wetlands and v voided with t</p>	<p>: use of the tal Commission ase refer to the Resources, of listed species designation is plication of the of the Coastal ination of the Section 4.6, on biological as, sensitive . All impacts set forth in</p>

Correspondence Item No. 4b
Bruce Bartram

Newport Banning Ranch EIR
Responses to Comments

Section 4.6 of the Draft EIR habitat values, ... required suggestion that the EIR cause on ... therefore would be protected against Public Code Section 30240. With to ... aluate toric to " " whether Project would -- this suggestion is not consis -- CEQA.

The State CEQA Guid 15125(a) EIR must include a description of the physical, ... vicinity project, ... at the time the notice of prepar ... published". The Notice of Preparation ... 2009. The Notice of Prepar ... published on ... 2009. Using that 20 years old would not be relying on ... data information CEQA. The most current information baseline idition which ... lead agency determ whether an impact is -- CEQA that description of the en ... setting shall be longer than to significant effect ... proposed alternatives. torical not recent data available ... not to reference old data sources whether older data provides information would have a effect on ... Project findings

There are re ... where the incorporation of species data from past data would not be needed ... appropria the proposed Project:

Environmental site conditions over that 20 years which result ... therefore not be current. Project site. This would

Nomenclature has changed for many plant and wildlife species area there would be confusion ... to previous reports ve refer need

Many of the previous survey reports do not have species unclear whether the survey compendia data is acces

_____ " ;

The Coastal Commis ... proposed Project can be found consistent with Public Code Section 30240 because ... findings in a Staff Report prepared Coastal ... respect to the ... Sunset Ridge Park project. The Coa Commission suggests EIR evaluate alternative intensities ... top me ... and to the site that is not dependent on access from West Coast Highway

The City is aware Coastal Commission's ... ations that prepared ... Sunset Ridge P including ... finding tha, ... proposed arterial road would be inconsistent ... Coastal Act. However Coastal Commission has not yet acted ... City's CDP application ... Sunset Ridge P and ... findings ... determinations have been made Coastal Commission ... to ... Sunset Ridge P road that traverses Newport Ranch property addition, importantly ... Coastal Commission' included an " ... that it would an ... road from West Coast Highw circumstances

The proposed Project provides access points from 5th Street, 8th Street, 17th Street, and 19th Street in addition to entry from West Coast Highway. The Newport Ranch Draft EIR

Bluff R ... which would reduce traffic intensities refer to Section 7.0, Alternatives Proposed Project, Dr. ... EIR.

Correspondence Item No. 4b
Bruce Bartram

Newport Banning Ranch EIR
Responses to Comments

with the approved Model WQMP) application package submitted California Coastal Commission part of the Coastal Act. The Permit

Response 21

The comment is The Preliminary WQMP (Appendix A to this Comments document) for Project includes of site design and source control BMPs anticipated Project based on the level of detail provided, and available Draft EIR The Final WQMP conjunction with Coastal Commission to confirm which of specific site control BMPs used in the final plan.

Response 22

As discussed in the Draft delineation included identification of wetlands riparian habitat subject to regulation under California Coastal Act by the Coastal Commission using vegetation; predominance of hydric wetland hydrology). As Coastal Commission comment qualify (Coastal Act because of of San Diego fairy shrimp. Of that support San Diego fairy shrimp, identified Coastal wetlands Draft EIR. The support San Diego fairy shrimp on site are not vernal They artificial by ex berming slands to protect oilfield sumps contaminated low lying areas overlying existing pipelines. The City does not con areas Coastal Act-defined wetlands due to the lack of (1) a predominance of wetland vegetation, (2) predominance of hydric soils, or (3) hydrology

Response 23

The comment Coastal Act City's Coastal Land Use Plan ("U") policies wetlands The City CLUP. As Topical protection of Project site was per med Response: Vernal of wetlands. The Applicant sited de in Coastal Commission' of wetlands. With respect opnie proposed within mapped wetlands refer response to Comment 17. This response addresser proposed in area and which, in order to maximize their effecti of improving coa quality, require the construction of basins areas proposed. With respect to other areas identified in the comment, wetland buffered adjacent to to protect against the degradation of wetlands Project site current wetlands exist in an operating oilfield instances been artificially created as a result of oil operations of proposed Project is intended to upon existing condition provide benefits in comparison to current condition or No Project Alternativ

Response 24

The Coastal Commission's question permits were obtained concern matter of regulatory process under the jurisdiction of Coa Commission not present a comment regarding the adequacy of impact analysis Draft

Correspondence Item No. 4b

Bruce Bartram

No date

Response 1

The information attached was presented during the March 22, 2012 Planning Commission hearing. It contains excerpts from the City of Newport Beach General Plan, Draft EIR, and Responses to Comments document. No new information was provided; no further response is necessary.

Correspondence Item No. 4c
Rodger Hageman

Alford, Patrick	Correspondence Item No. 4c Newport Banning Ranch PA2008-114
From:	RODGER hageman [evenkeel4@sbcglobal.net]
Sent:	Thursday, March 22, 2012 3:08 PM
To:	Michael Toerge; Alford, Patrick
Subject:	public hearing March 22, 6:30 p.m.

March 22, 2012

Michael Toerge, Chairman

Patrick Alford

**Newport Beach Planning Commission
Department**

Manager, Planning

**Strataland@earthlink.net
Palford@NewportBeachCa.gov**

Re: Public Hearing / Newport Banning Ranch/March 22, 2012 / 6:30 PM

Gentlemen,

This letter is written based upon the Vision statement of the Newport Beach General Plan which states “we have a conservative growth strategy that emphasizes resident's quality of life”

The writer, a so called NIMBY, (Not In My Backyard) herewith gives notice to the City of Newport Beach that he opposes the Planned Community known as “Newport Banning Ranch Development” on the NW and south border of Newport Beach. Application No:PA2008-114. Guidelines of objections follow and will be more explicitly described in the future:

1. The Development generally identified as “Banning Ranch” was not included in the ballot measure of 2006 which modified the General Plan of the City of Newport Beach. Therefore, its application must adhere to and fit within the statistical changes prominently mentioned in “V” of the General Election Official Ballot of 2006

Correspondence Item No. 4c
Rodger Hageman

2. Undated Notice of Public Hearing regarding this matter is postmarked March 13, 2012 by USPS and was received March 14. We believe that public notice allowing only 9 days of response time violates City of Newport Beach's established legal requirements of 10 days and fails the test of fair and equitable public relations. } 3
3. A required final Environmental Impact Report has not been presented to the public to allow proper study by those who may be affected by some adversity created by implementation of the development. } 4
4. The notice of the public hearing suggests the Planning Commission will be making its recommendations to the City Council immediately. Otherwise why the rush for a public hearing? Can the Commission make recommendations in the absence of a final EIR? } 5
5. The City Council approved a "Statement of **Overriding Considerations**" which **notes that there are specific economic, social and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan.** Such impacts will render living standards of NEWPORT CREST and property values of the Crest and adjacent homes and other occupants such as business and schools to be devalued! } 6
- 6) The multi-year earth moving and construction's negative impact will drive affected parties out of their neighborhoods. Living in dirt and dust, bright night illumination, noise and other noxious exposures will make home life, recreation, sleeping, distress to the bedridden and other physical impacts unbearable. Oh yes, sales will be impossible. It is tantamount to a "taking" by the power of eminent domain. } 7
- 7) The DEIR and EIR are a product requested by the City of Newport Beach, its customer. It seems that in the interest of the City's fairness doctrine, the town's population be granted an equal EIR study by a firm of its choosing and a SSIR (Social and Societal Impact Report.). } 8
8. Is the taking or annexation of another party's 360 acres to join the very small part that Newport has, 40 or so acres, look like a modest "conservative growth strategy"? } 9

Correspondence Item No. 4c
Rodger Hageman

Especially when it is at the cost of a major disruption to at least 460 homeowners;
maybe 1500 residents } 9 cont.

9. Certain fee simple rights and duties attach to California property whether a home or
business. } 10

r.hageman

Correspondence Item No. 4c

Rodger Hageman

March 22, 2012

Response 1

The commenter's opposition to the Project is noted. No further response is necessary.

Response 2

This comment does not raise any environmental issues; however, the ballot measure submitted to the voters in November 2006 (Measure V) included the Land Use Plan and Land Use Tables adopted as part of the Land Use Element of the General Plan. These exhibits identified the Project site with an alternative land use of a planned community with a maximum of 1,375 residential units, 75,000 square feet of retail commercial, and 75 hotel rooms.

Response 3

After the close of the March 22, 2012 public hearing, Chair Toerge addressed a request of evidence of notification and Mr. Alford noted the concerns were responded to in the comments and added that at the time of the publication of the notice, the dates for study sessions and public hearings were not yet finalized. Mr. Alford affirmed that the notice provided is acceptable. At the June 21, 2010 Planning Commission public hearing on the Newport Banning Ranch Project and Final EIR, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR.

Response 4

This statement by the commenter is incorrect. As stated in the State CEQA Guidelines Section 15132:

The Final EIR shall consist of:

- (a) The draft EIR or a revision of the draft.
- (b) Comments and recommendations received on the draft EIR either verbatim or in summary.
- (c) A list of persons, organizations, and public agencies commenting on the draft EIR.
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- (e) Any other information added by the Lead Agency.

The Final EIR was made available to the public on 16, 2012.

Response 5

Please refer to Responses 3 and 4.

Response 6

This comment was previously addressed in Mr. Hageman's letter dated November 8, 2011; please refer to the Responses to Comments document. This comment pertains to the adoption

of the City's General Plan and not to the proposed Newport Banning Ranch Project. No further response is necessary.

Response 7

The Final EIR disclosed and analyzed the anticipated environmental impacts of Project construction and operation including the impacts of construction noise and air quality on sensitive receptors. Mitigation measures were identified to reduce these impacts. However, the City has acknowledged in the EIR that some of the impacts of the Project cannot be reduced to a less than significant level. This fact, however, is not equivalent to the exercise of eminent domain by the City because private property is not being physically taken from the owner for a public purpose. The future of home sales is an economic issue and "economic or social effects of a project shall not be treated as significant effects on the environment" (CEQA Guidelines Section 15131(a)). This comment does not raise any environmental issues not previously addressed in the Final EIR. No further response is necessary.

Response 8

The commenter's opinions are noted. This comment does not raise any environmental issues. No further response is necessary.

Response 9

That portion of the Project site outside of the City of Newport Beach's boundaries is within its Sphere of Influence and as such is included in the City's General Plan. This comment does not raise any environmental issues. No further response is necessary.

Response 10

This comment does not raise any environmental issues. See Response 7.

Correspondence Item No. 4d
Steve Ray, Banning Ranch Conservancy



Correspondence
Item No. 4d
Newport Banning Ranch
PA2008-114

Officers:

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Jan Vandersloot, M.D.
In Memoriam

Via Email Transmission thru
Patrick Alford, Planning Manager
City of Newport Beach

March 22, 2012

Michael George, Chair
Newport Beach Planning Commission
City of Newport Beach, CA

Dear Chair George,

On behalf of the Banning Ranch Conservancy and the thousands of members of our group and affiliated groups, we request a fair and equitable process for the Newport Beach Planning Commission hearings that begin today for the proposed Newport Banning Ranch development project.

As was evident from the Planning Commission study sessions, public participants were not satisfied that ample time was provided, nor was there encouragement for any significant participation by the public. We were assured by you that the hearing process would provide that opportunity and that we should more fully participate in the hearings. Further, as a public agency, the City of Newport Beach and its public bodies are required to encourage the fullest and widest public participation in the public hearing process. To that end, we request that the following process be established to assure responsible public participation.

Pro forma, following the announcement of the item at the hearing, staff and consultants would provide a review of the project and the proposed EIR for Commissioners and the public, followed by a Q & A session between Commissioners and those presenters. The public hearing would then be opened with a probable opportunity for the applicant to present any comments. Members of the public would then be invited to comment within the normal three-minute timeframe for each. All of this is common and appropriate.

Now for the deviation from the *pro forma*. We request that the recognized, organized public group, the Banning Ranch Conservancy, be permitted to make a comprehensive, coordinated presentation on behalf of all our members. Instead of having potentially hundreds of public comment speakers, one organized group will speak on behalf of all our members. This will be a much more effective and efficient manner in which to conduct the hearing. It will prove beneficial to the Commission, staff and the public. In return, we will reduce the number of public attendees to accommodate and not overwhelm the Commission, the facilities and the process.

www.banningranchconservancy.org

Correspondence Item No. 4d
Steve Ray, Banning Ranch Conservancy

For our presentation, we request a time grant of four (4) hours. Recognizing that the EIR is over 7300 pages, that there were many comments and responses totaling over 1000 pages and that there are many significant issues to be addressed, we feel this is an entirely reasonable request for time. (In three-minute time periods, this would total only eighty speakers, much less than the potential number of speaker/members of the Banning Ranch Conservancy.)

One note, this request for time and our commitment to adhere to its inherent restrictions is applicable only to the Banning Ranch Conservancy and our members. We dare not suggest to represent members of the public who may differ with our opinions or are unfamiliar with or unknown to the Conservancy. Therefore, we recommend that any members of the public in those or similar circumstances be afforded the first opportunity to comment at the hearing.

This requested process is reasonable, timely, efficient and not without precedent. As a former planning commission chair, I can certainly understand any reluctance, but I am experienced in the use of the above-requested process from both sides of the dais and I can assure you of its effectiveness and do-ability.

The Banning Ranch Conservancy and our members appreciate the opportunity to fully participate in this very important public hearing for the proposed Newport Banning Ranch EIR.

Please contact the undersigned at 310/961-7610 for further clarification and/or to discuss arrangements. Thank you.

Sincerely,

Steve Ray /s/

Steve Ray
Executive Director
Banning Ranch Conservancy

cc: Patrick Alford, Planning Manager, City of Newport Beach
Dr. Terry Welsh, President, Banning Ranch Conservancy
Banning Ranch Conservancy Board Members
File Copy

P. O. Box 16071
Newport Beach,
CA 92659-6071

(310) 961-7610

www.banningranchconservancy.org

Correspondence Item No. 4d
Steve Ray, Banning Ranch Conservancy
March 22, 2012

Response 1

The commenter's request for a four-hour period of time to make a presentation at the March 22, 2012 Planning Commission hearing was denied.

Correspondence Item No. 4e
Rodger Hageman

Burns, Marlene		Correspondence
		Item No. 4e
From:	Alford, Patrick	Newport Banning Ranch
Sent:	Thursday, March 22, 2012 4:06 PM	PA2008-114
To:	Burns, Marlene	
Subject:	FVV: ballot 2006 Banning	

Please distribute

From: RODGER hageman [<mailto:evenkeel4@sbcglobal.net>]
Sent: Thursday, March 22, 2012 4:04 PM
To: Michael Toerge; Alford, Patrick
Subject: ballot 2006 Banning

March 22, 2012

Michael Toerge, Chairman, Planning Commission Patrick Alford, Manager, Planning Dept.

Strataland@earthlink.net Palford@NewportBeachCa.gov

Gentlemen,

Notice is hereby given that the continued reference to the Nov. 7, 2006 general election as the authorization for the development of NEWPORT BANNING RANCH, then, it appears to be inaccurate.

The Official Ballot, a one page document, makes no reference to the so-called BANNING RANCH. Neither does its page two, a formal "Impartial Analysis by the City Attorney, Measure V," make any reference to BANNING RANCH.

If the authorization is contemplated by reference to esoteric documents such as Land Use Map, Land Use Tables, Land Use Element, "comprehensive update of the General Plan", etc, it also fails to sufficiently notify a ballot reader of the BANNING matter and therefore cannot be authorized by the Nov. 2006 election ballot. It will have to fit the new criteria and stand on its own as any other new development would. Major changes in the land use element surely is entitled to broad public discussion and specific agreement by the public at large.

If the Banning Development were to represent a traffic increase of say, 10,000 to 20,000 daily trips and the Land Use Element states there is to be a reduction in trips by 28,920,

Correspondence Item No. 4e
Rodger Hageman

then? If allowable dwelling units be only increased by 1166 units who has to take their house and move to another community to allow for the increase of 1375?

Thank you.

r hageman

Correspondence Item No. 4e

Rodger Hageman

March 22, 2012

Response 1

Please refer to the responses to Correspondence Item No. 4c. The City is unclear of the commenter's references to decreased traffic with new development and the suggestion that residents would have to relocate to allow for the implementation of the proposed Project. As addressed in the Final EIR (Draft EIR and Responses to Comments document) the General Plan was adopted by the City Council on July 25, 2006; the land use plan and land use tables of the Land Use Element were approved by the voters on November 6, 2006. The General Plan designates the Newport Banning Ranch property as Open Space/Residential Village (OS/RV). The OS/RV land use designation provides land use regulations and development standards for both the Primary Use (Open Space) and an Alternative Use (Residential Village). The uses proposed by the Applicant are consistent with the Alternative Use development assumptions.

Correspondence Item No. 4f
Jan Goerrissen

Jan Goerrissen, Ph.D.
883 Arbor St.
Costa Mesa, CA 92627
jgoerrissen@sbcglobal.net

March 22, 2012

Newport Beach Planning Commission
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Dear Council Members and Planning Commissioners of the City of Newport Beach,

I am writing to express my opposition to the proposed development of the Newport Banning Ranch community. I see a number of reasons to oppose the development, including: 1) the loss of additional critical coastal habitat in southern California, 2) the loss of the opportunity to fully maximize the acreage for open space as a recreational attraction for residents and tourists, 3) the inevitable destruction of critical habitat for several animal species with conservation status, 4) lack of access due to the California Coastal Commission's blocking of the access road from PCH and removal of the 19th street bridge from the county master plan, and 5) subjecting Costa Mesa residents to increased traffic, noise, and air pollution.

Due to the now limited extent of public coastal open space and habitat in Orange County and southern California in general, the importance of protecting this area from development cannot be overstated. Of particular importance, the area for proposed development has increased habitat value due to it's connectivity with the Talbert Preserve and the Santa Ana River. More open space is needed not only for California flora and fauna, but for long term quality of life for residents in the form of recreation and living in an aesthetically pleasing area. This is a lot to trade off for shorter term gains in potential profits.

I would also like to take this opportunity to report hearing the endangered Clapper Rail in January and then I confirmed a sighting in February 2012 on the property from the Santa Ana River trail. I have a doctorate in Ecology from the University of California, Davis with an emphasis in avian ecology, and therefore take such sightings very seriously.

Thank you for your time in consideration of my opinions.

Sincerely,



Jan Goerrissen, Ph.D.

Correspondence Item No. 4f
Jan Goerrissen
March 22, 2012

Response 1

The commenter's opposition to the Project is noted. The environmental topics identified by the commenter are addressed in the Final EIR; no new issues have been raised including potential impacts to the clapper rail. No further response is required.

Correspondence Item No. 4g

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DAILY PILOT

Thursday, March 22, 2012
2:49 p.m. PDT

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OCTA removes 19th Street Bridge from plan

Move ends years of studies, controversy about the potential bridge over the Santa Ana River that would connect Costa Mesa and Huntington Beach.

Comments: 3 Share: 46

By Mike Reicher
March 22, 2012 | 1:12 p.m.

ORANGE — The Orange County Transportation Authority Board of Directors voted Monday to strike the proposed 19th Street Bridge from the county's master plan.

The move effectively ends decades of studies and controversy about the potential bridge that would have linked Costa Mesa and Huntington Beach over the Santa Ana River.

Environmentalists and 19th Street residents pleaded Monday to eliminate the bridge, as Huntington Beach Mayor and OCTA Director Don Hansen ushered through the unusual vote to change the county's long-standing master plan.

TOPICS

- Highway Transportation
- Board of Directors
- Janet Nguyen

Newport Beach leaders were the lone holdouts among the three most affected cities; Costa Mesa and Huntington Beach opposed the bridge. Under the county's typical procedures, all three would have to agree to abandon the bridge idea.

But OCTA directors agreed that the bridge was unlikely to ever be built because of its forecasted \$150-million cost, the difficulties in obtaining permits from state and federal regulators, and intense opposition from nearby residents.

The vote was unanimous, except for OCTA Director and County Supervisor Janet Nguyen, who abstained.

"We're feeling very relieved," said Sandie Frankiewicz, who owns two homes on 19th Street, one of which would have likely been demolished to widen the street for the bridge.

Officials from Huntington and Newport said Monday that they would discuss ways to improve the existing roadways to accommodate the anticipated population growth.

"The city of Huntington Beach is very much aware that the elimination of this bridge has consequences," Hansen said.

More traffic on Coast Highway was one of the reasons Newport City Councilman Steve Rosansky revived talks about the bridge last year. Since the early 1990s, residents and officials in Costa Mesa and Huntington have worked to scrap the bridge, but Newport kept protesting, causing the process to stall.

Rosansky and Newport Deputy Public Works Director Dave Webb spoke at the meeting in an attempt to keep the bridge talks alive and to obligate the other cities to make traffic fixes. They hoped to

3/22/2012

Correspondence Item No. 4g

replicate a process that OCTA undertook up the river with the Gisler-Garfield avenues bridge, another proposed Costa Mesa-Huntington connector that faced a similar predicament.

After they couldn't agree to build or remove that bridge, Huntington, Costa Mesa and Fountain Valley officials decided about five years ago to improve existing streets near Gisler, instead of building the bridge.

But the span remains on the county master plan, in case the other measures aren't successful.

Without that type of agreement, Webb said he was skeptical that other cities would work to alleviate traffic.

"What are the assurances that any mitigations are going to be done?" Webb asked after the vote.

Even though the Gisler-Garfield improvements appeared to be helping, County Supervisor and OCTA Director John Moorlach also called for that bridge's removal from the master plan Monday. He said that eliminating both should be accomplished in "one fell swoop."

That request appeared to take OCTA staff members and directors by surprise, and Moorlach asked for the issue to be brought before the board at a future meeting.

One significant reason the county maintains a master plan of highways is to assist cities and developers in planning for future growth. Since the plan was created in the 1950s, local agencies have used the proposed 19th Street Bridge in their traffic forecasting, and have required developers to make road improvements accordingly.

Developers will now have to adjust.

Without the bridge, Newport Banning Ranch would generate congestion at more intersections than with the bridge, according to its environmental impact report. The proposed large-scale residential, resort and commercial development near the border of Costa Mesa and Newport would trigger failing grades at nine additional intersections, including seven intersections on West Coast Highway.

mike.reicher@latimes.com

Twitter: @mreicher

★★★★☆



Comments 3

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Code Enforcement tackling South Bristol Street, Balboa Village



Fair Board votes to stop elephant rides

Comments (3)

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fattyboup at 7:42 PM March 12, 2012

Stop the massive development project at Banning Ranch (over twice as large and nearly six times as dense as anything ever built along the OC coast in recent memory).
Save Banning Ranch as open space for future generations!
Join the Banning Ranch Conservancy www.banningranchconservancy.org 714-719-2148

KevinN22 at 1:20 PM March 12, 2012

3/22/2012

Correspondence Item No. 4g

A copy of the Daily Pilot Newspaper (March 22, 2012) article titled "OCTA Removes 19th Street Bridge From Plan" was submitted to the City. No further response is required. Subsequent to the March 22, 2012 Planning Commission hearing, the Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Orange County Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the OCTA MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project. All of these issues are addressed in the Final EIR.

As a point of clarification, in the event the 19th Street Bridge is removed from the OCTA MPAH, the City's Circulation Element would not need to be amended in order to remain eligible for Measure M funding. A city's eligibility for Measure M funding would be in jeopardy if its Circulation Element does not reflect a roadway segment or reflects less roadway capacity than is shown on the MPAH, but not if it shows more roadways or roadway capacity than is on the MPAH.

Correspondence Item No. 4h

The Brown Study: "Open Space" and the Banning Ranch

Page 1 of 4

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The Brown Study

The expression "brown study" is a fourteenth century British term that started out meaning a dark melancholy mood, but later came to mean a state of thinking deeply about something.



Friday, December 2, 2011

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About Me



Tim Brown

I recently completed
two terms on the Parks,
Beaches and
Recreation Commission

for the city of Newport Beach, CA. In addition, I currently serve as the President of the Civic Affairs Council for the Newport Beach Chamber of Commerce. I am also, the Immediate Past President of the Newport Beach Sunrise Rotary Club. I hold the rank of Full Professor at Riverside City College where I teach a course called Critical Reading as Critical Thinking. In addition, I hold a Faculty Seat on the Accrediting Commission for Community and Junior Colleges. I am the Principal for Tim Brown and Associates, Educational Consultants. I am the author of the Prentice Hall Textbook Reader and currently writing the Content Area Reader's Handbook due for publication in January of 2012. I coached college baseball for 13 years and remain an avid follower of college athletics particularly at my alma mater, Arizona State University. I have traveled extensively throughout the world and have set foot on every continent except for Antarctica. One of my many hobbies is playing supernumary roles in opera. Some productions in which I have had roles include, Carmen, Tosca, and Don Giovanni.

[View my complete profile](#)

"Open Space" and the Banning Ranch

Yesterday at the Newport Beach Chamber of Commerce Governmental Affairs Committee meeting, our guests were George Basye of Aera Energy and Rewdy Hoistein of Brook Street to provide our committee with an update of the Banning Ranch Development Plan. The appearance was timely in that the "public comment" period for the Environmental Impact Report on the plan has closed and the report should come before the Newport Beach Planning Commission in January and then on to the City Council.

As most citizens of Newport Beach know, the General Plan Update approved in 2006 provided for two uses of the property. One was that the property remains completely 100% open space, or the city shall consider a development proposal for 70% of the property to remain open space and 30% for development and amenities. In order for the project to remain 100% open space, it would have to be purchased by a group committed to that effort such as the Banning Ranch Conservancy. The City of Newport Beach has no plans to purchase the 400 acre property.

The open space alternative is the impetus for this post. What exactly is "open space?" According to the Institute of Natural Resources at Oregon State University open space is, "an area of land that is valued for natural processes and wildlife, for agricultural and sylvan production, for active and passive recreation, and providing other public benefits." This definition works for me; without knowing anything else, I would support the Banning Ranch property to be maintained as 100% open space. But, you see, I do know something else: I have been on the property, I have seen the condition of this property as it stands today with my own eyes.

As we all know, there is nothing natural about oil production. There have been over 400 oil wells drilled on this property since 1943. To look at the ranch from an aerial photograph you see a mosaic of dirt roads carved in to the terrain for access to these wells with oil rig debris strewn along the shoulders. The water resources have been polluted with chemicals and other toxins making it uninhabitable for most forms of wildlife. Much of the native species, such as the coastal sages, have been driven out by invasive species much more tolerant to the harsh conditions which exist there today. The property is too dangerous to be enjoyed by any member the public for passive or active recreational use. In short, the Banning Ranch property is not open space now.

To become open space, the property will require extensive mitigation measures with an estimated cost of 30 million dollars or more. That then becomes the most important question in the whole issue. Who will pay for that clean-up? Is it feasible, in

<http://www.brown-study.com/2011/12/open-space-and-banning-ranch.html>

3/21/2012

Correspondence Item No. 4h

The Brown Study: "Open Space" and the Banning Ranch

Page 2 of 4

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12/2/2011

Yesterday at the Newport Beach Chamber of Commerce Governmental Affairs Committee meeting, our guests were George Basye of Aera Energy...

So far, my job has not gone away

11/3/2011

The fall of each year is a busy time for me because I am an avid supporter of Arizona State...

Seven Days in August

9/3/2011

"Tim! Tim!" I awake wondering who is yelling my name from outside my window. Finally, as I become more coherent...

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the near term, for a non-profit group to raise sufficient funds to purchase the property and then clean it up in our lifetimes? I don't have a crystal ball, but I suspect it would be unlikely. Because I like open space, I would really want to see something done soon so that I might be able to enjoy more open space in Newport Beach while I am still here

In the current development plan, 25% of the property just under 100 acres would include single family homes, some commercial space and a small resort hotel. The remaining 300 plus acres would be cleaned up, natural resources and habitat restored and maintained as true open space in perpetuity. If this is not a win-win for those of us who enjoy and appreciate open space, then I don't what is. In the coming weeks and months, we will all be hearing and reading more about this issue. Please don't fall for the emotional appeal of "Keep the Banning Ranch as open space." If we keep it the way it is now, it is the antithesis of open space because it will remain a public hazard and fenced off to all of us who want to see more open space in Newport Beach.

Posted by Tim Brown at 3:11 PM

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1 comments:

 Dianne Russell said...

From the Newport Beach perspective it is great. More housing and hotel tax revenues. From the point of view of a Costa Mesa westside resident it is more traffic on our streets and greater potential for the 19th Street bridge to be built. Not a win for us by any stretch of the imagination.

December 2, 2011 3:58 PM

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Correspondence Item No. 4h

A copy of a blog on www.brown-study.com (December 2, 2011) titled "Open Space and the Banning Ranch" was submitted to the City. No further response is required. The author of the blog is Planning Commissioner Brown.

After the close of the March 22, 2012 public hearing, Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that Commissioner Brown was unable to be fair and impartial on this decision due to his bias. Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

Correspondence Item No. 4i
Olwen Hageman

To: Michael Toerge, Chairman, Planning Commission
From: Olwen Hageman, 7 Goodwill Court, N.B.92663 evenkeel4@sbcglobal.net 949 642-1998

Under "Existing Conditions" the DEIR states that the SoCAB has the worst air quality in the U.S.
4.10.4, Climate and Meteorology" page 4.10.9

Here are photographs of the air quality in my neck of the woods.

- 1) Pollution over land. Pollution over the land, another view.
- 2) Pollution over ocean/obscuring the Palos Verdes Peninsula.

The DEIR refers to some impacts from the development as "significant but unavoidable". Given the poor quality of air to begin with, why cannot remediation and construction be limited to the point where impacts would not be significant?

We already have pollution from Newport Blvd, Superior, PCH Placentia and, if it were approved, Bluff Road. Children at Carden Hall School and residents from rehab facilities walking on Superior would be subject to this additional pollution. And how is Hoag Hospital affected by this same polluted air.

The City's Vision for the General Plan states "we have a conservative growth strategy that emphasizes residents' quality of life". To permit any condition to be significant and unavoidable would not emphasize quality of life for its West Newport Beach residents. Quite the opposite. Even if it is within the law, is it morally acceptable to lower the quality of life for existing residents, some having resided for 30+ years? Plus, 1375 homes, a hotel and commercial space on such a small area of land is not considered **conservative**.

When you drive PCH to Laguna, notice the distance between roads such as Dover, Jamboree, McArthur, etc. Drive to H.B. And notice the distance between Superior, Brookhurst, Magnolia, etc. Then consider the very short distance between Newport Blvd. and Superior at Hospital Road, add Placentia, PCH and possibly Bluff Road. The close proximity of all these roads already creates an umbrella of pollution over West Newport

With all the emphasis on preventive medicine it seems to me that the first thing we need to do is breathe cleaner air. SoCoast Air Quality Management District has a program called The Right to Breathe and they state that "more than shelter, we need clean air. Particulates inhaled by pregnant women go through the blood stream to the fetus and can cause brain damage".

Almost part of the BRD due to its physical location right on the border, is construction of a 3-story community college that is near completion at 15th Street. Was a traffic study done on the number of anticipated car rides for the college and have they been added to the 57,000 car rides anticipated for the Banning Ranch Development?

Under Project Design Features of the DEIR, PDF 4.11.3, states: "The Master Development Plan and the NB Planned Community Development Plan require the Project to be coordinated with O.C. Transportation Authority (OCTA) to allow for a transit routing through the community..." If Bluff Road is never approved, what route will the buses take?

John Wayne's son gave an interview and told how their life "was basically small-town beach life. Newport Beach was a fishing town. no big fences, no checkpoint in the driveway. John shopped at White Front and Sears. At that time, it was much more low-key." Many are nostalgic for that kind of living and those days are gone, but great care must be taken with regard to how we grow so that beautiful Newport Beach can retain some vestige of John Wayne's city of beauty and charm. The community college has already obscured most of the beautiful views of snow-capped mountains. Will there be no beauty left, only buildings and roads.

In closing, at the end of the last study session a gentleman asked what has the City done to raise money for the purchase of this land? I don't recall seeing any surveys asking all Newport Beach residents, CDM and everyone, if they would be willing to contribute toward the purchase. Did I miss it? Although the development is not in CDM's back yard, the pollution from this area will eventually end up in their back yard. If real efforts were made, perhaps the purchase of this land would be possible.

Please give every consideration to concerns of the people living in this area. They, and not the people who will occasionally visit the proposed parks for short periods of time are here 24/7. Land can be remediated but the health of children, the elderly and people who are sensitive, once damaged, cannot always be remediated. Thank you,

Respectfully,

Olwen Hageman

*one: Photos of Banning Ranch
"pollution"*

Correspondence Item No. 4i
Olwen Hageman



Correspondence Item No. 4i
Olwen Hageman



Correspondence Item No. 4i
Olwen Hageman



POLLUTION OVER THE LAND

Correspondence Item No. 4i
Olwen Hageman



POLLUTION OVER THE LAND – ANOTHER VIEW

Correspondence Item No. 4i
Olwen Hageman



POLLUTION OVER THE OCEAN

Correspondence Item No. 4i
Olwen Hageman



PALOS VERDES OBSCURED BY POLLUTION

Correspondence Item No. 4i
Olwen Hageman



COMMUNITY COLLEGE UNDER CONSTRUCTION

Correspondence Item No. 4i

Olwen Hageman

No date

Response 1

As previously addressed in Topical Response – Air Quality included in the Responses to Comments document for the Draft EIR, updated construction equipment use data indicates that the provision of all Tier 3 construction equipment would reduce regional NOx emissions from remediation and construction to a less than significant level. Nonetheless, the Applicant and construction contractors would be required by Mitigation Measure 4.10-1 to provide Tier 4 equipment where available, thereby further reducing NOx (and other pollutant) emissions.

Response 2

The comments on air quality have been addressed in the Final EIR (Draft EIR and Responses to Comments document). No further response is necessary.

Response 3

An Initial Study and Mitigated Negative Declaration were prepared for the Coast Community College District's Newport Beach Learning Center. The Draft EIR for Newport Banning Ranch addressed the Learning Center as a part of cumulative development assumptions as well as in Section 4.1, Land Use and Related Planning Programs, Section 4.9, Transportation and Circulation, Section 4.10, Air Quality, and Section 4.12, Noise.

Response 4

PDF 4.11-3 requires coordination between the Applicant and the Orange County Transportation Authority (OCTA) to allow for a transit routing through the community and provide bus stops and/or shelters as needed. The PDF does not mandate a bus route through the property or along a specific roadway.

Response 5

The comment is noted; no further response is required.

Correspondence Item No. 4j
Norman Suker

To: City of Newport Beach Planning Commission

From: Norman J. Suker P.E.

Re: March 22, 2012 Public Hearing for the Newport Beach Banning Ranch Development DEIR

Dated: March 22, 2012

I object to the approval of the Newport Banning Ranch (NBR) project as proposed and request that all my comments be included in the records of any and all proceedings relating to the Newport Banning Ranch project or its successors.

1. I am a 25 year Newport Crest property owner and my townhouse abuts the Banning Ranch. My property has unobstructed ocean views from east of Catalina Island to Palos Verdes. This view had been protected by the Newport Beach General Plan Amendment 81-1 until the 2006 General Plan Update. I was not noticed or aware of this change. I only learned that the Amendment 81-1 had been omitted by the response to my DEIR comments for the Newport Banning Ranch. The proposed development will significantly impact my view. Please provide documentation that residents of Newport Crest were noticed regarding the elimination of Amendment 81-1.

1

2. Although I am currently licensed as a traffic engineer, civil engineer and real estate broker in the State of California and have been for about 40 years with experience in both the public (City Engineer and City Traffic Engineer) and private sectors, my comments are made as a private citizen.

2

3. OCTA has recently removed the 19th St Bridge from the Master Plan of Arterial Highways (MPAH). The City's General Plan Circulation Element needs to be amended to remove the 19th Street Bridge. Failure to remove the bridge will jeopardize Measure "M" funding. Since the DEIR is so voluminous, about 7,000 pages, the DEIR should be revised to eliminate all traffic analysis based upon the bridge being built. By removing the unnecessary traffic analysis, the DEIR pages will be reduced and made more understandable by the public.

3

4. In a telephone conversation with the Newport Beach City Traffic Engineer, I was informed that all traffic data collection and analysis in the City, including the NBR DEIR is performed in compliance with the City's Traffic Phasing Ordinance (TPO). In Appendix A of said Ordinance section 3.d.I states "The most current field counts for each Primary Intersection with counts taken on weekdays during the morning and evening Peak Hour Period between February 1 and May 31". The requirement for taking traffic counts only between February 1 and May 31 is not the industry standard, in fact it is the only agency that I am aware of that counts only in the said period. To be informative to the public, the DEIR should have a scenario of traffic analysis for the summer months in addition to the TPO months. It is obvious that traffic in the summer months, especially August and September, is much heavier than the TPO months. See Exhibit "A" attached from the Manual of Transportation Engineering Studies, 2nd Edition (latest edition) of the Institute of Transportation Engineers (ITE) shows an example of traffic at various times. I am a Life Fellow of ITE.

Correspondence Item No. 4j
Norman Suker

5. My November 8, 2011 comments regarding the Banning Ranch DEIR and the response to my comments are as follows:

Comment

Why has the 15th street Road connection to West Coast Highway been eliminated in the present plan since the impact of removing this road is to increase traffic next to our homes?

Response 1

The need for a second connection to West Coast Highway through the Project site (via the extension of 15th Street west of Bluff Road to West Coast Highway) was first studied as part of the City of Newport Beach General Plan Update, and was revisited as part of the Newport Banning Ranch Draft EIR. It was determined that the volume of traffic that would access West Coast Highway through the Project site (consisting of new traffic generated by the Project itself, plus traffic that would shift to Bluff Road from other existing roadways) could be accommodated by a single roadway connection

This response is non-responsive because it was based on the existence of the 19th Street bridge. The General Plan and the MPAH shows both roadways, 17th and Bluff Road connecting to West Pacific Coast highway. An alternative scenario of using only 15th (17th) street should be performed if only one roadway is necessary. This alternative roadway would be far west of Newport Crest and would have little impact of noise and lighting. This alternative roadway would provide for a better traffic signal spacing on West Pacific Coast highway (farther away from Superior Blvd). It would also eliminate the environmental issues that are associated with the proposed Bluff Road near West Pacific Coast highway.

6. An alternative scenario should also be conducted with the elimination of Bluff Road between 19th Street and Victoria St.. I had a recent conversation with Costa Mesa traffic staff who indicated that the City plans to request that this section of Bluff Road be removed from the MPAH (this section of roadway would be in the Talbert Park).

7. DEIR Exhibits 4.9-24 and 4.9-25 are the only graphics I found with roadway volumes and they assumed that the 19th St. Bridge was built. These exhibits need to be revised without the bridge showing TPO and summer traffic volumes. It is curious that Exhibit 4.9-24 shows a combined volume of (10,090 + 12,040) of 22,130 and Exhibit 4.9-25 shows Bluff Road with a volume of only 15,440. What happened to the other almost 7,000 vehicles?

8. The Project Trip Distribution Exhibit 4.9-7 needs to be revised to show the distribution without the 19th Street Bridge and Bluff Road north of 19th Street. The existing Exhibit 4.9-7 doesn't show any traffic from 19th Street to the SR55. This needs to be corrected.

9. Exhibit 4.9-21 indicates that the Bluff Road and West Pacific Coast highway intersection without the 19th Street Bridge would operate at LOS F in both the AM & PM. This would indicate that Bluff Road should not be built.

10. The proposed Bluff Road is planned to be about 20 feet from a Newport Crest home. Any

Correspondence Item No. 4j
Norman Suker

suggestion that double windows and air conditioning is a mitigation action is totally unreasonable. The owners of these homes which have existed for almost 30 years enjoyed the cool ocean breezes without the cost and noise of air-conditioning equipment. With energy costs rising, the electricity bill will only grow higher.

It is one thing for a developer to build next to an existing noisy roadway and include the double windows and air-conditioning. The buyers of his homes have a choice to buy or not. In the NBR example, the homes are there first and the builder wants to put a noisy roadway next to these homes. He has no authority to rehab the exiting homes and the only mitigation is to relocate the road away from the existing homes.

} 9
cont.

Correspondence Item No. 4j
Norman Suker

MANUAL OF TRANSPORTATION ENGINEERING STUDIES

2nd Edition

Bastian J. Schroeder, Ph.D.
Christopher M. Cunningham, P.E.
Daniel J. Findley, P.E.
Joseph E. Hummer, Ph.D., P.E.
Robert S. Foyle, P.E.

Institute of Transportation Engineers

EXHIBIT A-1

Correspondence Item No. 4j
Norman Suker

Exhibit 4-8. Illustrative Computation of Daily Variation Factors		
Day	Average Yearly Volume for Day (veh./day)	Daily Factor
Monday	1,332	$1,429/1,332 = 1.07$
Tuesday	1,275	$1,429/1,275 = 1.12$
Wednesday	1,289	$1,429/1,289 = 1.11$
Thursday	1,300	$1,429/1,300 = 1.10$
Friday	1,406	$1,429/1,406 = 1.02$
Saturday	1,588	$1,429/1,588 = 0.90$
Sunday	1,820	$1,429/1,820 = 0.80$
TOTAL = 10,000 vehicles ADT = 1,429 veh./day		

Source: McShane and Roess, 1990, p. 100.

The computation of seasonal or monthly variation factors follows a similar procedure. The ADT for each month is the monthly volume from the permanent-count station divided by the number of days in the month. The AADT is then computed as the average of the 12 monthly ADTs. The monthly adjustment factors are obtained by dividing each monthly ADT by the AADT. Exhibit 4-9 illustrates the computation of monthly variation factors. Daily and seasonal factors can be computed in a similar way from control-count data. Since control counts are samples rather than continuous counts, the margin for error is greater. However, carefully planned control counts will produce reliable estimates. For further discussion, see Roess, Prassas and McShane (2004).

Exhibit 4-9. Illustrative Computation of Monthly Variation Factors			
Month	Total Traffic (vehicles)	ADT for Month (veh./day)	Monthly Factors (AADT/ADT)
January	19,840	$19,840/31 = 640$	$797/640 = 1.25$
February	16,660	$16,660/28 = 595$	$797/595 = 1.34$
March	21,235	$21,235/31 = 685$	$797/685 = 1.16$
April	24,300	$24,300/30 = 810$	$797/810 = 0.98$
May	25,855	$25,855/31 = 835$	$797/835 = 0.95$
June	26,280	$26,280/30 = 876$	$797/876 = 0.91$
July	27,652	$27,652/31 = 892$	$797/892 = 0.89$
August	30,008	$30,008/31 = 968$	$797/968 = 0.82$
September	28,620	$28,620/30 = 954$	$797/954 = 0.84$
October	26,350	$26,350/31 = 850$	$797/850 = 0.94$
November	22,290	$22,290/30 = 743$	$797/743 = 1.07$
December	21,731	$21,731/31 = 701$	$797/701 = 1.14$
TOTAL = 290,851 vehicles AADT = $290,851/365 = 797$ vpd			

Source: McShane and Roess, 1990, p. 100.

EXHIBIT A-2

Correspondence Item No. 4j

Norman Suker

March 22, 2012

Response 1

The comment refers to a response previously provided to Mr. Suker's comment in the Responses to Comments document which stated that the policy mentioned by the commenter was not included when the City of Newport General Plan was updated in 2006. The request for documentation concerning Newport Crest residents' notification of the elimination of the policy when the General Plan was updated in 2006 is not relevant to the analysis of the Newport Banning Ranch EIR.

Response 2

Subsequent to the March 22, 2012 Planning Commission hearing, the Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the OCTA MPAH for purposes of transportation modeling. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project. All of these issues are addressed in the Final EIR. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project. All of these issues are addressed in the Final EIR.

As a point of clarification, in the event the 19th Street Bridge is removed from the OCTA MPAH, the City's Circulation Element would not need to be amended in order to remain eligible for Measure M funding. A city's eligibility for Measure M funding would be in jeopardy if its Circulation Element does not reflect a roadway segment or reflects less roadway capacity than is shown on the MPAH, but not if it shows more roadways or roadway capacity than is on the MPAH.

Response3

As stated in the EIR, the traffic data for the traffic study was collected in accordance with the City of Newport Beach policy which requires that traffic count data at Primary Intersections (as specified in Appendix B of the Traffic Phasing Ordinance) for TPO purposes be collected between February 1 and May 31; and that transportation planning and decisions regarding sizing the circulation system be based on typical traffic levels during the "shoulder season" (the spring and the fall) – and not traffic levels during the summer months. This is per the City policy set forth in the General Plan Circulation Element, which states: "...these policies protect Newport Beach from building oversized roads to serve weekend summer beach traffic or traffic generated outside of our border and our control". No further response is required.

Response 4

Please refer to the above response regarding the 19th Street Bridge. As addressed in Section 4.9, Transportation and Circulation, of the Draft EIR, the Newport Beach General Plan Circulation Element's Master Plan of Streets and Highways depicts a westerly extension of 15th Street extending from Bluff Road to West Coast Highway just east of the existing on-site oil consolidation area to provide a second connection to West Coast Highway. The Traffic Impact

Analysis in the EIR found that a second roadway connection is not required to effectively serve Project and cumulative traffic. Because this second connection is not needed to serve forecasted traffic volumes and because of the significance of environmental impacts associated with this second connection, the Project has proposed an amendment to the City's General Plan and the OCTA MPAH to remove the second connection. Based on the conceptual alignment for this road as shown on Figure CE1, Master Plan of Streets and Highways, in the General Plan Circulation Element, this second connection would require significant grading including the bluff face and the Southern Arroyo, areas that would be subject to very limited grading as a part of the proposed Project. As addressed in the Draft EIR, there is a vertical grade separation of approximately 50 feet from West Coast Highway to the top of the Project bluffs along West Coast Highway. Further, the second connection would traverse an area identified as a part of the proposed Project's Open Space Preserve.

Response 5

As with the 19th Street Bridge, the extension of North Bluff Road north of the Project site is depicted on the City of Costa Mesa's General Plan and on the OCTA MPAH. It would not be deleted from the MPAH as a part of this proposed Project. The General Plan Buildout analysis for Newport Banning Ranch was based on the adopted roadway network in the Project vicinity, which includes this segment of Bluff Road. If the City of Costa Mesa decides to pursue the deletion of this off-site segment of Bluff Road from the OCTA MPAH, they would be required to prepare a cooperative study to identify and mitigate any impacts resulting from the removal of the roadway from the MPAH.

Response 6

Please refer to the prior response regarding the 19th Street Bridge. The ADT forecasts shown on Exhibits 4.9-24 (General Plan with Project and MPAH Network) and 4.9-25 (General Plan with Project Proposed Network) are derived from specific runs of the Newport Beach Traffic Model (NBTM), which takes the entire area-wide network and carrying capacity into account when determining the likely paths vehicles will take to get from point A to point B. The additional carrying capacity offered by the full OCTA MPAH network through the Project site would have the potential to draw additional traffic from the Project itself, as well as from the surrounding land uses. In the absence of this additional capacity, traffic will choose alternate paths to get across the Santa Ana River, including roadways that are outside the view of these two exhibits.

Response 7

Please refer to the prior response regarding the 19th Street Bridge. The trip distribution assumptions for the proposed Project are based on select zone runs of the City's traffic model (NBTM). The majority of Project traffic destined for SR-55 (Newport Boulevard and SR-55) would make their way across 15th, 16th, and 17th Streets to head north on Superior Avenue or Newport Boulevard. These would be shorter and more direct paths from the Project development areas than 19th Street. There is no Project development proposed beyond the shopping center at Bluff Road and 17th Street. Traveling up to 19th Street to get to SR-55 would require out-of-direction travel, and would add extra stops and delay to the trip.

Response 8

The "Without Bridge" analysis was conducted for information purposes to identify future peak hour operating conditions in the event the 19th Street Bridge is not built. The results indicate that, in the absence of the planned carrying capacity of the 19th Street Bridge over the Santa Ana River, traffic will choose alternate paths to get across the River, including Victoria Street

and Adams Avenue to the north, and West Coast Highway to the south. The results also indicate that nine additional intersections in the study area would operate at a deficient Level of Service, including the intersection of Bluff Road and West Coast Highway. These impacts would be the direct result of removing the 19th Street Bridge, and improvements would need to be identified to mitigate the loss of the carrying capacity of the bridge. To also delete Bluff Road to avoid the deficient Level of Service at the Bluff Road/West Coast Highway intersection, as suggested in this comment, would further exacerbate the impact on levels of service along the remaining alternate paths to cross the Santa Ana River. Bluff Road is a planned roadway, shown on both the City's Circulation Element and the OCTA MPAH. Improvements to the intersection of Bluff Road at West Coast Highway, beyond those originally envisioned, would be needed to mitigate the deletion of the 19th Street Bridge.

Response 9

A response was previously provided to Mr. Suker's comment in the Responses to Comments document. No further response is required.

Mike and Dorothy Kraus

Alford, Patrick

From: Dorothy Kraus [medjkraus@yahoo.com]
Sent: Monday, October 24, 2011 3:07 PM
To: Alford, Patrick
Subject: Newport Banning Ranch DEIR - Comments and Questions

Dear Patrick,

We object to the Newport Banning Ranch project as proposed. Please include our comments and questions below in the records of any and all proceedings relating to this project and its successors.

Regarding SECTION 6.0, LONG-TERM IMPLICATIONS OF THE PROPOSED PROJECT, Sub-Section 6.1 ANY SIGNIFICANT ENVIRONMENTAL EFFECTS WHICH CANNOT BE MITIGATED, 1st paragraph under Land Use which states starting with the fourth sentence as follows:

'The proposed Project would result in a land use incompatibility with respect to long-term noise and night illumination on those Newport Crest residences immediately contiguous to the Project site. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations which notes that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project.

In the first sentence, please specify what Newport Crest residents are assumed to be 'immediately contiguous' to the project site including street number and street name e.g., 3 Wild Goose Court.

Regarding the underlined sentences above starting with the second sentence, the Banning Ranch DEIR does not provide a cross-reference to the General Plan Final EIR where the City has approved a Statement of Overriding Considerations.

Please provide this cross-reference to the City's General Plan Final EIR for clarity. Also, please provide specific examples of 'other public benefits that outweigh the significant unavoidable impacts associated with the General Plan' including specific benefits that would outweigh the significant unavoidable impacts related to long-term noise and night illumination to those Newport Crest residents contiguous to the Project site.

Thank you.

Mike and Dorothy Kraus
10 Wild Goose Court
Newport Beach, CA 92663

Mike and Dorothy Kraus
October 24, 2011

Response 1

The EIR refers to condominium units that border the Project site. It is not necessary to provide addresses for these units.

Response 2

This comment was previously addressed in the Responses to Comments document. The 2006 General Plan Update Statement of Overriding Considerations was adopted by the Newport Beach City Council to describe the anticipated economic, social, and other benefits or other considerations that supported the decision to adopt the 2006 General Plan Update even though all of the identified impacts are not mitigated to a less than significant level. Both the unavoidable significant impacts and the economic, social, and other benefits or other considerations relate to the entire City of Newport Beach. The General Plan Update's Findings of Fact and Statement of Overriding Considerations are included in the Staff Report to the City Council dated July 25, 2006. The Staff Report can be accessed from the City of Newport Beach website.

Dorene M. Christensen

Alford, Patrick

From: DORENE CHRISTENSEN [dorene_3@yahoo.com]
Sent: Wednesday, November 09, 2011 11:45 AM
To: Alford, Patrick
Subject: Bruce Bartram of Newport Banning Ranch, DEIR comment III

This is unbelievable that anyone here at Newport Crest Homeowners Association would agree to allow the City of Newport Beach to invade our private property (Ticonderoga Street) and actually have this agreement recorded with the Orange County Recorder as "The Agreement for Ticonderoga Street". This was apparently done Sept. 19, 1984. I have lived here in Newport Crest since July of 1976. This so-called Agreement was never discussed or brought to a vote for the members of the Association. Newport Crest has 460 homes - and with this many families involved - how could an agreement such as this be accomplished without anyone's knowledge? This sounds very fraudulent to me. How could the city even consider making this small 2 lane street into a commuter roadway?? Ticonderoga is our own only way to enter or exit our small neighborhood. Taking our private property & making it into a commuter road would be a disaster beyond words to describe it. PLEASE do not let this disaster occur. Thank you for your consideration.

Dorene M. Christensen
19 Baruna Court
Newport Beach 92663

Dorene M. Christensen

November 9, 2011

Response 1

This issue was addressed in the Responses to Comments document. The extension of Ticonderoga onto the Project site is not proposed. Neither the Newport Crest Homeowners Association nor the City nor the Applicant is proposing this extension.

Mike and Dorothy Kraus



October 14, 2011

Mr. Patrick Alford
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Dear Patrick,

On behalf of the Newport Crest individuals whose signatures and December 2010 letter to the owners and developers of Banning Ranch are enclosed, we hereby object to the current proposed development plan for Banning Ranch.

As stated in the December 2010 letter, the location of the proposed Bluff Road is of grave concern. Arterial roadways should not be in such close proximity to residential communities. Additionally, the planned development will have significant and unavoidable impacts on the Crest community such as lighting, air quality, and noise.

Please include these materials into the official Newport Banning Ranch dEIR record and any of its successors.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mike & Dorothy Kraus".

Mike and Dorothy Kraus
10 Wild Goose Court
Newport Beach, CA 92663
949-337-6651
medjkraus@yahoo.com

Enclosures

Mike and Dorothy Kraus
October 14, 2011

Response 1

The City acknowledges the petitioners' opposition to the Project. Environmental issues related to Bluff Road including lighting, air quality, and noise have been addressed in the Final EIR. No further response is required.

Ron Frankiewicz

**Newport Beach Planning Commission Study Session
January 19, 2012**

On behalf of my fellow Westside Costa Mesa residents, I want to ask for your support in getting the 19th St bridge off the Master Plan. We along with Huntington Beach eastside residents do not want the increased traffic flow in our quiet communities. We do not want our homes demolished so that autos can save a few minutes coming & going to the beach. Let me remind you that there is a bridge already just 2700' away. Mr. Rosansky was quoted in the paper after the January bridge meeting that we would be sorry 20 yrs from now if the bridge is not built. I agree that we will be sorry 20 yrs from now, we will be sorry if Banning Ranch is not set aside for open space. We know that the bridge will enhance the Banning Ranch development. Why else would talks about building the bridge be revived at same time of Banning Ranching development discussions. Why else would Mike Mohler, Banning Ranch developer, be at the bridge meeting?

You probably think it is silly or futile to think of Banning Ranch as open space for all to enjoy. That is probably what city official thought back in the mid 60's when Frank & Fran Robinson fought to protect the Back Bay from development. Can you imagine today the Back Bay developed with limited use for citizens? Today it is a gem for school children, hikers, bikers & bird watchers. Think of what Banning Ranch could be connected to the Talbert Nature and Fairview Park. An oasis in Orange County.

What about the cost of building a bridge, \$150,000,000? I asked OCTA if this included the cost of eminent domain and 19th st mitigation. They said no, it is just for the bridge. Add another 30-50 Mil for home demolition and street mitigation. By the time the bridge is to be built, the cost would probably be higher.

Traffic projections call for increased traffic and that is one of the factors per the officials for building the bridge. If future traffic is so horrendous, why build Banning Ranch putting even more traffic on overburdened roads? If is house is on fire, do you throw more gas on the fire to save it?

Ron Frankiewicz
Costa Mesa, CA

Ron Frankiewicz

January 19, 2012

Response 1

Subsequent to the March 22, 2012 Planning Commission hearing, the Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project. All of these issues are addressed in the Final EIR.

Terry Welsh, Banning Ranch Conservancy

Planning Commission hearings
From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Wednesday, February 22, 2012 11:34 PM
To: Michael Toerge; Alford, Patrick
Subject: Planning Commission hearings

Patrick, I spoke with Planning Commission chair Michael Toerge today about the upcoming hearings on Banning Ranch.

One of the items we discussed was the idea of each hearing containing a block of time for the Banning Ranch Conservancy to make a presentation, much in the way that NBR has done during the study sessions. The idea is that a block of time would allow a more coherent organized presentation than that which could be delivered by individuals speaking in three minutes bursts. Both the public and the Planning Commission would greatly benefit by information being delivered in an organized manner.

There could still be time allotted for individual citizens who aren't board members of the Banning Ranch Conservancy to make public comments.

Another option we discussed was allowing people to cede their time to the Banning Ranch Conservancy in order to make an organized presentation. I have seen this method used at other public hearings.

Let me know if you have any suggestions. Michael is also giving this issue some further thought.

I can be reached at 714-719-2148.

Thank you for your consideration,

Terry Welsh
President, Banning Ranch Conservancy

Terry Welsh, Banning Ranch Conservancy
February 22, 2012

Response 1

Members of the audience were each allocated the City's standard three-minute period to make comments during the public hearing. The Planning Commission did not grant a block of time to any groups.

Rodger Hageman

Banning Ranch Study Session Feb 23 2012
From: RODGER hageman [evenkeel4@sbcglobal.net]
Sent: Friday, February 24, 2012 4:54 PM
To: Michael Toerge; Bradley Hillgren; Kory Kramer; Jay Myers; Larry Tucker; Fred Ameri; Alford, Patrick
Subject: Banning Ranch Study Session Feb 23, 2012

From: Rodger Hageman (evenkeel4@sbcglobal.net)
To: Newport Beach Planning Commission
Date: February 24, 2012
Subject: Planning Commission Meeting, February 23, 2012

Gentlemen of the Board, please accept my apology for my inarticulate presentation at the 23rd February meeting regarding the Banning Ranch plan!!! You were very tolerant not to cut me off. My vocal cords froze up, or didn't accept my opinions.

Here is a quick abbreviation of my intended question: wouldn't the proposed road and highway additions or changes in the west end be highly disproportionate to the volume of traffic created by the development at optimum build out? I used an analogy to Balboa Island which, it is my understanding, has a population of over 2700 people in 2111 living units. This vs. 1375 new homes and a boutique hotel. Balboa's ingress and egress is served by a simple 2-lane access road and bridge. Many tourists also add to the numbers as it is truly a tourist destination. This may be a simplistic comparison of demographics but basic numbers, if correct, hold some truth.

I also was comparing Costa Mesa, Laguna Beach and Newport. Costa Mesa becoming the cultural center of Orange County with theater and music, Laguna the art world's enclave - - economic and population growth not appearing to hold an edge over maintaining its traditions - - it is promoting a full green belt perimeter (Jan. 8, 2012, article in O.C. Register.) Then we, Newport, have a very large edge in harbor, waterfront and business. Must we build to the fences? Must we modify city streets, freeway access and upset the flow of Pacific Coast Highway to gain access to a Balboa Island sized development?

Of course I have many other objections to the entire development and a strong preference for the land to remain in its natural state. But this wasn't the evening for subjective complaints.

I had intended to close with a recommendation that we immediately table this application until the sponsor of the development can return us to \$2 fuel.

Thank you.

Rod hageman

Rodger Hageman
February 24, 2012

Response 1

The Draft EIR did not evaluate the segment of Marine Avenue, leading to/from Balboa Island. However, unlike Marine Avenue, which serves only Balboa Island, Bluff Road/North Bluff Road is intended to serve not only as one of the primary entry and exit points for the Newport Banning Ranch development, but to also provide an additional outlet to West Coast Highway for existing development in the surrounding area. The analysis indicates that Bluff Road would attract some of the traffic that is currently dependent on Superior Avenue and Newport Boulevard to reach West Coast Highway, which, together, carry over 70,000 vehicles per day.

Response 2

As addressed in the Final EIR (Draft EIR and Responses to Comments document), the General Plan was adopted by the City Council on July 25, 2006; the land use plan and land use tables of the Land Use Element were approved by the voters on November 6, 2006. The General Plan designates the Newport Banning Ranch property as Open Space/Residential Village (OS/RV). The OS/RV land use designation provides land use regulations and development standards for both the Primary Use (Open Space) and an Alternative Use (Residential Village). The uses proposed by the Applicant are consistent with the Alternative Use development assumptions. The City's decisionmakers will need to determine whether the proposed Project is appropriate for the property.

Response 3

The opinions of the commenter are noted; no further response is necessary.

Sharon Starbuck

Alford, Patrick

From: Sharon Starbuck [sstarbuck@sbcglobal.net]
Sent: Sunday, March 11, 2012 6:03 PM
To: Alford, Patrick
Subject: Banning Ranch development; pro

I am a homeowner in Newport Terrace who is in favor of the community.

Sharon Starbuck
March 11, 2012

Response 1

The commenter's support of the Project is noted; no further response is necessary.

Gerard Proccacino

Alford, Patrick

Subject: Planning Commision Meeting 3/8/12

From: Gerard Proccacino [<mailto:Grayvtrain1@roadrunner.com>]

Sent: Thursday, March 08, 2012 7:38 PM

To: Burns, Marlene

Subject: Planning Commision Meeting 3/8/12

Dear Ms Burns,

I was at tonight's study session but due to time restraints did not speak. I have a couple of questions concerning the proposed Banning development that I hope you can pass on to the members of the planning commission. I thank you in advance.

What precisely are the negative effects on the quality of life for the residents of Newport Beach as a whole, West Newport Beach , The Lido Sands Community and ME with my home of 40 years directly in the path of the proposed major Coast hwy Intersection? Why does Newport Beach need this intrusive mega development? Why haven't I seen the City aggressively trying to preserve this final virgin parcel in Orange County for all to enjoy it's God given Natural beauty?

I pray that you deliberately drill into this proposal to totally see the negative effects this thing will have on our beautiful Newport Beach.

Why would the City even consider to Los Angelize Newport beach?

Please do not Los Angelize Newport Beach. Thank you.

Respectfully,
Gerard Proccacino
Lido Sands
Newport Beach, CA

Gerard Proccacino
March 8, 2012

Response 1

Responses to these comments were previously provided in the Responses to Comments document (see responses to Letter 076).

**MARCH 22, 2012 PLANNING COMMISSION
PUBLIC HEARING COMMENTS**

March 22, 2012 Planning Commission Public Hearing Comments

The following comments are taken directly from the March 22, 2012 draft meeting minutes. Chair Toerge opened the public hearing.

Steve Ray, Banning Ranch Conservancy

Steve Ray, Executive Director of the Banning Ranch Conservancy, expressed his disappointment that the Commission has chosen to make it difficult for the public to participate in the process. He indicated he was told that there would be ample opportunity to comment, but felt there is not sufficient time. He stated the possibility of having more individual members of the public attend future meetings. Mr. Ray commented on Commissioner Ameri's absence, assumed it may have been because of a conflict of interest and stated the proper procedure for recusal. He inquired regarding Commissioner Brown's website wherein he published an article regarding Open Space and Banning Ranch. Mr. Ray felt the article shows an obvious bias by Commissioner Brown and questioned whether it is appropriate for him to continue. He opined the Commission is excluding the public from adequately commenting on the issue.

Response

Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that Commissioner Brown was unable to be fair and impartial on this decision due to his bias. Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

Barry Carlson, Mesa Consolidated Water District

Barry Carlson, Mesa Consolidated Water District, thanked the Commission for the opportunity to speak, described his organization and noted Mesa Water has the ability to provide water to the entire site with one-hundred (100%) percent local ground water. He added using one-hundred (100%) percent local ground water reduces the amount of energy required which has a positive impact on greenhouse gas emissions. He presented the environmental benefits of using local ground water. In addition, he reported the response to Mesa Water District comments by BonTerra Consulting dismisses documented findings based on reference information from the Department of Water Resources, Metropolitan Water District of Southern California, Orange County Water District and Mesa Consolidated Water District 2010 Urban Water Management Plan and instead bases its response on information obtained from a website on December 13, 2011. He asked the Planning Commission to consider the appropriate documented findings in its endeavor to make an educated decision related to water service for Banning Ranch. He noted that Mesa Water is highly interested in providing continued water service to the entire Banning Ranch area and is neutral to the development of Banning Ranch and is positioned to provide water service if Banning Ranch is developed, remains the same or becomes an open space.

Response

Regarding the availability of reclaimed water at the Project site, it has been reconfirmed that the statement is correct in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR that state "At present, this (reclaimed water) is not feasible, because the City does not have or plan to provide recycled water in the vicinity of the Project site". Staff of the County of Orange Parks Maintenance, Parks Design, and Trails departments and staff at the Orange County Water District confirmed that the only normally publicly available connection for a private user would be from OCWD and MCWD at the Green Acres line located north of Fairview Park which is approximately 9,000 feet (or approximately 1.7 miles) from the Project site.

Kim Farthing

Kim Farthing thanked the Commission for responding to her questions and expressed her concern with the circulation element of the project. She reported attending the OCTA's meeting where they voted to eliminate the 19th Street Bridge. She reported the Draft EIR traffic study affects 58 intersections (52 existing and six (6) future) of which 16 are in Newport Beach, nine (9) in Huntington Beach and 31 in Costa Mesa and addressed decreased levels of service. She addressed pass-through traffic; decreased levels of service, additional car trips generated by the proposed development and expressed disappointment at not being able to hear the Banning Ranch Conservancy side of the issues. She requested the Commission not certify the Draft EIR without first taking into account the public hearing factual information being shared tonight.

Response

After the close of the public hearing, Assistant City Attorney Mulvihill addressed the 19th Street Bridge noting that the Orange County Transportation Authority (OCTA) Board did take action but that the City has a General Plan which includes a Circulation Element which references a Master Plan of Streets and Highways and there are several steps that go into removing an arterial from the OCTA MPAH. She added that she disagrees with the suggestion that the only step that needs to be taken to delete an arterial is action by the OCTA. She stated the City has a responsibility to implement the General Plan and that is the analysis that was taken forward in the Draft EIR. She did not agree that the OCTA's action affected the accuracy of the Draft EIR as the Draft EIR analyzed the Project under both the "no bridge" and "with bridge" scenarios.

Assistant City Attorney Mulvihill reported that the idea of there not being a 19th Street Bridge is not new. She stated that the Project has been analyzed without a bridge and there are technical reports indicating what would happen without a bridge. She noted that when the City drafted the document, it was done so according to the MPAH. She believes that the OCTA MPAH still has the 19th Street Bridge. Staff will have to look closely at the OCTA action. As far as the Draft EIR is concerned, the analysis included the 19th Street Bridge and identified impacts but these impacts were also analyzed under the "no bridge scenario".

Subsequent to this Planning Commission hearing, the suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project. All of these issues are addressed in the Final EIR.

Suzanne Forster

Suzanne Forster referenced CEQA Guidelines regarding responses to comments noting they must describe the disposition of significant environmental issues raised in the comments. They must good-faith, reasoned analysis and that conclusionary statements unsupported by facts would not suffice. She wondered how many who provided public comment are satisfied with the responses and that their questions were clearly, reasonably and factually answered and their concerns about mitigation was adequately addressed. She felt the responses to her most important questions were not answered, but were rather explanations, justifications and defenses and excuses for the Draft EIR as it was written. Ms. Forster opined she was told that nothing more could be done, no matter how much the project's impacts degrade the lives, health and safety of those affected. She addressed impacts of traffic, congestion, pollution, noise and safety issues and felt the project will be built on a heavily contaminated oil field. She indicated no additional tests have been conducted since 2001 and addressed hazardous effects and impacts of the contaminated soil. Ms. Forster opined there is no way to ensure off site mitigation and addressed a statement of overriding considerations relative to approve of the Draft EIR. She felt that even the most severe impacts don't matter, when compared with the public benefits of the project.

Response

Ms. Forster's opinion regarding the responses to comments on the Draft EIR is noted; City staff believes that adequate responses have been provided. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Bill Bennett

Bill Bennett pointed out that one of the issues was traffic impact on Ticonderoga when it is connected to the project. He restated the earlier conclusions of the item and stated a distinction between what's on paper and reality. He reported that the agreement the City has with Newport Crest Homeowners' Association is that Ticonderoga will remain a private dead end street until such time as Bluff Road is completed. At that time it will revert to the City and he opined the City will then connect it to Bluff Road. He felt that will be a traffic impact that is being ignored by the EIR.

Response

This issue was addressed in the Responses to Comments document. The extension of Ticonderoga onto the Project site is not proposed. Neither the Newport Crest Homeowners Association nor the City or Applicant is proposing this extension.

George Demos

George Demos referenced the matter of a conflict relative to Commissioner Brown's article and opined it is incumbent upon the Commissioners to properly address that issue. He addressed visual simulations presented at a previous study session and expressed concerns over the projects impacts on noise, traffic, light and airborne pollution as well as views.

Response

After the close of the public hearing, Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that

Commissioner Brown was unable to be fair and impartial on this decision due to his bias. Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Dorothy Kraus

Dorothy Kraus expressed concerns regarding noise impacts due to construction activities for a period of ten (10) years. She indicated the impacts are hardly temporary and expressed her belief that BonTerra's responses to her comments lack merit or legitimacy. Ms. Kraus felt the proposed noise barrier mitigation is only feasible for first-floor residents and that most of the homes in Newport Crest are two stories. She noted that Newport Crest is adjacent to the proposed Bluff Road and addressed decibels of noise annoyance.

Response

As identified in Table 4.12-13 of the Draft EIR, 6- and 8-foot high noise walls at the Newport Crest property line would provide limited or no mitigation at the second floor level, or at higher levels. Noise levels at the second floor would be in the City's "Clearly Compatible" and "Normally Compatible" ranges defined in the City of Newport Beach General Plan for new development. However, because of the City's significance criterion for noise increase, the impact would be significant. Therefore, MM 4.12-7 provides opportunities for Newport Crest homeowners to have noise abatement provided by installing dual pane windows/sliding doors and balcony barriers on the façade facing the Newport Banning Ranch property. As stated in the measure, the offer of retrofit only applies to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA).

The reference to "temporary" is in context to the CEQA checklist question: "Will the project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project"? After the close of the public hearing, in response to Commissioners comments regarding the determination of temporary impacts due to construction, Ms. Privitt of BonTerra Consulting noted the distinction of calling it temporary is in the context that at some point in time, the construction ends, so it is not ongoing. She clarified that it is identified that over the entire site, there is not going to be construction for the entire duration over the entire site for that entire time period. However, because of the nature of the duration of the construction that will occur, remediation, building construction, infrastructure and the quiet nature of the site, it is identified as a significant and avoidable impact to the project.

Norman Suker

Norman Suker stated his objection to the approval of the project, as proposed and asked that all of his comments be included in the record of any and all related proceedings. He addressed protection of his views, until the 2006 General Plan Update, stated he never received notice for

it and felt the proposed development will significantly impact his view. Mr. Suker expressed his belief that OCTA has eliminated the 19th Street Bridge and as such, if the Circulation Element is not amended, it will jeopardize Measure A OCTA funding. He opined the Draft EIR should be revised to eliminate all traffic analysis based upon the bridge being built.

Response

Mr. Suker's verbal comments and written correspondence have been included in the public record for the Project. With respect to protection of private views, this topic is addressed in the EIR which notes that Newport Beach Municipal Code Section 20.30.100 "provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code...." Mr. Alford, in response to Planning Commissioner comments, reported after the close of the public hearing that staff worked with the person performing the visual simulations, looked for a sampling of viewsheds from public viewpoints and noted that City policy calls for the protection of public views, not private views.

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling.

It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the OCTA MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Bonnie Copeland

Bonnie Copeland reported she attended the meeting where the 19th Street Bridge was removed from the MPAH. She addressed the transportation and circulation section of the Draft EIR and felt the City needs to revise it accordingly.

Response

As noted, the OCTA has suspended its action to remove the 19th Street Bridge from the OCTA MPAH. Ms. Copeland's opinion regarding the Transportation and Circulation section of the EIR is noted; City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in

the EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Suzanne Welsh

Suzanne Welsh referenced initial comments by the Chair related to the adequacy of the Draft EIR and stated she does not believe it to be such. She felt it fails to address and disclose full data regarding the California gnatcatcher habitat and its protected status or the fairy shrimp populations. She stated declaring only that the sage brush that the gnatcatchers actively use as being important is ecologically irresponsible as ecosystems are holistic rather than piecemeal. Ms. Welsh opined the visual aspects of the Draft EIR are subjective and felt that seeing development impacts the community (especially for 10 years). She reported the addressing of the population density and footprint size is insufficient relative to the alternative of reducing these by only ten (10%) percent.

Response

Ms. Welsh's opinion regarding the EIR is noted; City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR including the adequacy of the range of alternatives addressed in the Final EIR. (See also the Response 2 to the Newport Crest letter, dated May 10, 2012.) No further response is required.

Debbie Koken

Debbie Koken stated her belief that the traffic and circulation elements of the Draft EIR need to be completely redone because of the elimination of the 19th Street Bridge from the Master Plan of Arterial Highways (MPAH), it inaccurately claims that Bluff Road must be built regardless of whether or not the development is built and it includes an entrance on PCH which, she indicated the California Coastal Commission has not allowed. She felt the Draft EIR must be revised to correct its inaccuracies.

Response

As noted, the OCTA has suspended its action to remove the 19th Street Bridge from the MPAH. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR. Ms. Koken's opinion regarding the EIR is noted; City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Terry Koken

Terry Koken reported attending the Coastal Commission hearing regarding Bluff Road and stated that Newport Beach was politely allowed to withdraw its application. He reported there

was no indication that the Coastal Commission would hold the Draft EIR in anything but contempt. He affirmed the 19th Street Bridge has been eliminated.

Response

As noted, the OCTA has suspended its action to remove the 19th Street Bridge from the OCTA MPAH. No further response is required.

Patricia Barnes

Patricia Barnes, current Chair of the Orange County Sierra Club, asked that the Commission not recommend certification of the EIR noting that it fails consistently to identify ESHA that exists on the property. She referenced the Coastal Act relative to avoidance of ESHA and felt it has not been addressed adequately in the EIR. She suggested the Commission consider possible amendments to the MPAH before it considers certification of the EIR.

Response

The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

David Cooley

David Cooley addressed inadequacies in the EIR in relation to vernal pools. He reported Santa Ana has a large sign at the Santa Ana Zoo stating the protection of the environment is one of their main reasons for existence and that ninety (90%) percent of vernal pools have been lost in California. He felt the EIR does not adequately address vernal pools and ignores important facts.

Response

The Draft EIR acknowledged that vernal pools are *Special Status Habitats* as stated on page 4.6-43. As part of the biological resource surveys done for the proposed Project, the Project site was examined to determine if on-site areas met the criteria for consideration as vernal pools. As stated in the Draft EIR, the proposed Project is designed to avoid the two vernal pools (VP1 and VP2) that are occupied by San Diego fairy shrimp. In addition to avoidance of these areas, the vernal pool watershed that supports VP1 and VP2 would be enlarged and the entire pool complex would be restored. A 0.35-acre portion of the eastern edge of the watershed area would be impacted by the Project; however, the western edge of the existing watershed would be expanded by 1.03 acres for a net increase of 0.68 acre in the vernal pool watershed. The proposed Project would also temporarily impact approximately 0.06 acre of vernal pool habitat occupied by San Diego fairy shrimp associated with topographic remediation and pipeline removal. Impacts were considered a potentially significant impact. Implementation of MM 4.6-3, which requires the restoration and preservation of a 3.58-acre vernal pool complex, would reduce impacts to a less than significant level.

Bruce Bartram

Bruce Bartram provided a PowerPoint presentation noting that staff maintains the City's Coastal Land Use Plan does not apply to Banning Ranch. He referenced the General Plan related to Banning Ranch and the requirement of the permitting processes required to satisfy State and Federal environmental regulatory requirements. He addressed the buildable constraints in the General Plan, land use and open space as well as the requirement for the City to work with

State and Federal agencies to identify habitat and wetlands to be restore and those where development will be permitted. He referenced the Coastal Commission comments regarding review of the wetlands delineations and recommended buffers by Coastal Commission staff biologists before the EIR is finalized.

Response

The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Jim Mansfield

Jim Mansfield reported it has been stated that there is no master coastal development permit and felt all references to an MCDP should be eliminated from the EIR, findings and all other related documents. He stated that when the Coastal Commission talks about lower-cost visitor-serving elements, they aren't talking about trails or hotels, but rather campgrounds and other low-cost visitor-serving facilities. Regarding the Bluff Road issue, Mr. Mansfield stated that it was said that there was no directive from the Coastal Commission regarding Bluff Road or the intersection with Pacific Coast Highway. He felt the only reason there was no directive, was that the City of Newport Beach hastily withdrew its primary plan for Sunset Ridge Park prior to the vote to be made by the Coastal Commission. He referenced comments made in Section 14 of the EIR one of which relates to the tremendous density of the proposed plan, particular in the Urban Colony. He addressed the responses to his comments and felt they were insufficient.

Response

Mr. Mansfield's opinions regarding the responses to comments and the Draft EIR are noted. City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Dan Purcell

Dan Purcell read a letter by Nancy Skinner expressing concerns about the water supply, the City's position regarding drought and water conservation and the impacts related to the Newport Banning Ranch project. She referenced a presentation by a water provider in anticipation of the development and the lack of waste water due to conservation efforts. She stated the more people conserve, the less water is available to be reclaimed.

Response

The commenter has not identified any new issues that were not adequately addressed in the Final EIR. A Water Supply Assessment for the Project has already been approved by the City Council and water supply effects are addressed in the Final EIR. No further response is required.

Taoward Lee

Taoward Lee asked why the oil operators are not involved in the EIR and inquired whether testing for toxic organics emanating from the ground will be conducted.

Response

The oil operators were consulted during the preparation of the EIR; this is reflected in the EIR. Mr. Basye, on behalf of the landowners, reported that there will be significant additional confirmation sampling testing as part of the required remediation process and prior to the development of the property, as described in Section 4.5 of the Draft EIR, as part of the development process. The environmental baseline for the assessment of hazards and hazardous materials was determined from the previous tests. As the site is subject to ongoing oil operations, any changes to the property as a result of the ongoing operations will be addressed in the procedures described in the EIR regarding the remediation process.

Olwen Hageman

Olwen Hageman provided a PowerPoint presentation and illustrations of the pollution on Ticonderoga near Banning Ranch and asked why remediation construction cannot be limited to the point where impacts would not be significant. She expressed concerns regarding the additional pollution generated by the project and the resulting decrease in quality of life. She asked if it was morally acceptable to decrease the quality of life of residents and felt the size of the proposed project is not conservative. She felt the increased traffic will increase pollution.

Response

The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Chris McEvoy

Chris McEvoy requested the Commissioner reconsider hearing the presentation from the Banning Ranch Conservancy and addressed the Coastal Commission's hearing regarding Sunset Ridge Park noting he felt the Commission would not approve the Bluff Road entrance because going from a two-lane to a four-lane road would impede on the ESHA at the park entrance. He felt the Draft EIR should be revised to consider the elimination of the 19th Street Bridge by the OCTA and addressed "permanent traffic" associated with the proposed development. He felt that 60 days was not sufficient to review the Draft EIR properly and that the visuals presented by the consultant were weak and referenced archeological and paleontological sites in the Draft EIR that were not sufficiently addressed.

Response

As noted, the OCTA has suspended its action to remove the 19th Street Bridge from the MPAH. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the OCTA MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR. Mr. McEvoy's opinions regarding the EIR are noted; City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR; no specific comments were provided by Mr. McEvoy regarding archaeological and paleontological resources. No further response is required.

Jim Mosher

Jim Mosher addressed good results in government from observation of the process correctly and felt a key aspect of a properly-reviewed EIR is the public review period. He did not think the time allowed for review of the Draft EIR by the public was sufficient or provided in a good-faith effort to inform the public of the related impacts. He referenced CEQA requirements regarding notice of the item and felt the notice was not in accordance with them and that the public was not offered information regarding meetings where the public would have an opportunity to comment.

Response

A 60-day public review period was provided by the City for the review of the Draft EIR; the State CEQA Guidelines requires only a 45-day review period. After the close of the public hearing, Chair Toerge addressed a request of evidence of notification and Mr. Alford noted the concerns were responded to in the comments and added that at the time of the publication of the notice, the dates for study sessions and public hearings were not yet finalized. Mr. Alford affirmed that the notice provided is acceptable.

Cindy Black

Cindy Black spoke in opposition of the development of Banning Ranch and felt the EIR was not sufficient. She referenced CEQA requirements relative to the identification of environmentally superior alternatives and stated that Alternative B would be it because it provides for restoration of the project site and maintains the greatest amount of open space. She addressed long-term benefits associated with site restoration and the financial feasibility of the alternative but stated no one spoke with the responsible party, the Banning Ranch Conservancy. Ms. Black added that it was asked if the development would create a significant impact to the environment or species and she felt that it would. She addressed the geology section of the EIR and stated she could not imagine how grading activities would not be considered significant impacts. Ms. Black stated she attended the Coastal Commission hearing regarding Sunset Ridge Park, who, she felt was going to deny connection to Bluff Road which is why the City withdrew its application. She felt the ESHAs were not mapped properly and questioned BonTerra's ability to identify ESHA or species present in Banning Ranch. Regarding the City's responses to her comments was very general in nature and was indirect.

Response

Ms. Black's opinions regarding the EIR and the responses to her comments are noted; City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. Ms. Black did express her support of the preservation of the property as Open Space.

After the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, indicated there seems to be a consensus that open space and parks are good things and noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Sheila Koff

Sheila Koff stated one of the patterns that she noticed at this hearing was the well-reasoned analyses from staff and BonTerra has provided the Commission with a lot of information which

the Commission has confidently accepted. However, she indicated that many of the public have provided comments regarding discrepancies in the information. She referenced tradeoffs and the Coastal Commission's disallowance of them. She questioned the matter of a smaller but "better" habitat. Ms. Koff suggested that a lot of the information that has been provided needs to be questioned, that the reliability of sources needs to be considered and that noise impacts in the EIR do not include after-market exhaust pipes (Harley Davidson).

Response

The comments regarding discrepancies in the information have been addressed by the City in the responses to comments made on the Draft EIR, as well as the comments presented to the Planning Commission. Ms. Koff comments also anticipate the consideration of the Project by the Coastal Commission should the Project be approved by the City. However, the decisions or criteria applied by the Coastal Commission do not bind the City. With respect to noise, the EIR analyzed noise impacts from vehicles on the road which takes into consideration of range of vehicle types.

Shyang Ray

Shyang Ray asked regarding "other groups" wanting to address the Commission other than the Banning Ranch Conservancy. She felt the Chair has allowed the applicant unlimited time to speak where the applicant has no more standing than the public. Ms. Ray submitted a copy of Commissioner Brown's blog into the record.

Response

Ms. Ray did not identify any environmental issues regarding the adequacy of the EIR.

The Planning Commission has the discretion to determine the amount of time for testimony from an applicant and members of the public. Because an applicant is requesting approval of its application from the City, the applicant is not in the same position as a member of the public that is not the applying for approval from the City. The City has the discretion to allow an applicant sufficient time to address its application.

Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that Commissioner Brown was unable to be fair and impartial on this decision due to his bias. Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

Vincent Phillippi

Vincent Phillippi commented on the evaluation of burrowing owls and felt the public should be allowed on the property to find their nests and opined that BonTerra did not legitimately evaluate the issue of burrowing owls.

Response

As addressed in the EIR, both wintering and breeding season burrowing owl surveys were conducted in 2008, 2009, and 2010. The surveys also followed California Burrowing Owl Consortium guidelines. The property has suitable foraging and nesting habitat. The burrowing owl was observed wintering in 2008, 2009, and 2010 and was absent during breeding surveys in 2008, 2009 and 2010. As addressed in the EIR, the site is an active oilfield on private property. The City cannot require a property owner to provide access on private property.

After the close of the public hearing, Chair Toerge addressed evaluation of burrowing owls, mating, and osprey, and referenced the level and duration of studies conducted on site regarding migratory and mating habits. Ms. Johnston of BonTerra Consulting reported that the osprey was identified as occurring on the project site but that no observations of direct nesting was seen. Surveys for hawks and other avian species were conducted during the general wildlife surveys which were done throughout the documentation for the site (2007 through 2011). Regarding the burrowing owl, a more defined protocol exists and was followed and includes a wintering survey and a breeding survey. Ms. Johnston explained the protocol that was followed. In response to Chair Toerge's inquiry, she addressed the margin of error in terms of the established protocol.

Paul Grogan

Paul Grogan recommended the Commission reject the Draft EIR based upon the fact that their responses to 4.6.1 does not address any specific species of animal life and that their response to the vernal pools issue is not accurate. He added that all vernal pools are temporary.

Response

The City is unclear of Mr. Grogan's comments regarding "responses to 4.6.1". With respect to vernal pools, the vernal pool evaluation is correct. For additional information, please refer to responses to Correspondence Item 2a to the June 21, 2012 Staff Report.

**APRIL 19, 2012 PLANNING COMMISSION
STAFF REPORT CORRESPONDENCE**

Correspondence Item No. 3a
Gerard Proccacino

Burns, Marlene

From: Gerard Proccacino [Gravitrain1@roadrunner.com]
Sent: Tuesday, April 17, 2012 11:34 AM
To: Burns, Marlene
Subject: Newport Beach Planning Commission Meeting, 4/19/2012

Correspondence

Item No. 3a
Newport Banning Ranch
PA2008-114

Dear Ms Burns,

I am emailing you to ask you please to forward my comments to the Planning Commission for review before their 4/19/12 meeting. I am unable to attend. I thank you in advance.

Dear Planning Commission Members,

I would like it to be on record that I am opposed to the massive development proposed for the Banning Ranch property. I realize that the Commission has approved the dEIR and I was not pleased that there was a sense of rush to evaluate. I was at that meeting but do to work restraints could not stay late enough to voice at the public hearing. I was there when it was said that with the overwhelming public comments that the "insignificant impacts" could not addressed. Well, I want to share some of those "insignificant impacts" that will negatively affect the life of me and my neighbors in the Lido Sands Community. Although the total project, with approx. 4,500 permanent residents and who knows how many more daily residents manning the commercial, retail and lodging venues will be a mind boggling culture change to the total West Newport Community I will only address the proposed Bluff Rd.

I have lived in my home, which is directly in front of where proposed Bluff Rd. is to intersect with PCH, for forty years. This intersection will place, with all turns, eight lanes of traffic with tall, ugly steel gray, traffic and pedestrian signals right outside my bedroom windows. We home owners in West Newport spent thousands of dollars to underground utilities and now there is proposed visual pollution with this intersection. "Insignificant impact?" The homes in Lido Sands bedrooms face PCH. Most of the homes such as mine, are quaint, mid century beach cottages. Many of the windows in these homes, including mine, have 50's cathedral ceilings with windows from floor to roof. The flashing lights will pollute my home with light twenty four hours a day. "Insignificant impact?" The motor vehicles descending down the 8% grade of Bluff Rd. will shine their headlights into my bedrooms twenty four hours a day. "Insignificant impact?" The stopping and starting of motor vehicles and revving engines, especially motor cycles, creating noise pollution. The wall separating Lido Sands from PCH is a mere seven feet high, a residential property line fence is six feet high. Has consideration been taken into account of how noise reverberates and is amplified off the bluffs, towards Lido Sands? "Insignificant impact?"

I think that these and all insignificant impacts must be addressed. Time and deliberate investigation must be taken not to overlook details that can abruptly and negatively effect me and the citizens of Newport Beach.

I remember that the first and best choice for the environment, by Bonterra, was to leave Banning Ranch as natural as possible. Why is there not a priority to support the

Correspondence Item No. 3a
Gerard Proccacino

City's General Plan priority to preserve this last and only natural property as open space?
Why does the City of Newport Beach need this development? Why do the people of Newport Beach need this development? Please do not approve this development as it is in front of you. Please drill deeper into all the negative impacts and ask the developer to cure them or leave it alone. Please do not Los Angelize Newport Beach. Thank you for your consideration.

} 3
cont.

Sincerely,
Gerard Proccacino
Lido Sands, Newport Beach, CA

Correspondence Item No. 3a

Gerard Proccacino

April 17, 2012

Response 1

The commenter's opposition to the Project is noted.

Response 2

The commenter identifies concerns related to visual, noise, and traffic impacts to the community of Lido Sands which are addressed in the Final EIR. All utilities for the Project would be underground wherever feasible. Please also refer the commenter to the Responses to Comments document which provided responses to his comment letter as well as to the letter from the Lido Sands Community Association.

Response 3

After the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, indicated there seems to be a consensus that open space and parks are good things and noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. The opinions of the commenter are noted. No further response is required.

Correspondence Item No. 3b
Orange County Business Council



2 Park Plaza, Suite 100 | Irvine, California 92614-5904
phone: 949.794.2242 | fax: 949.475.0443 | www.ocbc.org

April 19, 2012

Mr. Michael Toerge, Chair
Newport Beach Planning Commission
3300 Newport Blvd.
Newport Beach, CA 92663

RECEIVED BY
COMMUNITY

APR 19 2012

DEVELOPMENT
CITY OF NEWPORT BEACH

RE: Newport Beach Banning Ranch Development (Agenda Item 3) - SUPPORT

Dear Mr. Toerge:

Orange County Business Council represents the largest, most diverse businesses in the region. We advance Orange County's economic prosperity while protecting a high quality of life. We support the Newport Banning Ranch plan as a well thought out proposal that represents both community and city input, and responsibly addresses housing, commercial, and open space needs for Newport Beach.

The business community cites the lack of housing affordable to their workforce and proximate to their jobs as a major impediment to attracting and keeping workers. When it comes to the health and vitality of our communities, an adequate supply of housing is key. Even with a down market, from an economic development perspective, we have a shortage of housing at every job level. OCBC strongly believes that the cities within Orange County must plan to meet our current and future housing needs.

Although there will certainly be more study, the foundational land use designation and density for the property are consistent, if not better than, the surrounding development. In addition, the NBR plan is the only option that ensures public access, habitat creation, oil field cleanup and more than 75% of the site preserved as permanent open space – at no cost to taxpayers.

Additionally, the roadway system follows the voter approved Newport Beach General Plan as well. In fact, the proposed roadways are reduced from what the General Plan calls for, and designed to consider the needs of Newport Beach, Costa Mesa, Huntington Beach and the surrounding region – dispersing both local and regional traffic.

Newport Banning Ranch has the opportunity to become a model for other cities for urban infill and brownfield redevelopment, providing a beneficial mix of residential, commercial, recreation and open space uses that will serve the local community and region in the years to come. The Newport Beach Banning Ranch plan will be part of an overall solution for more compact and smart growth, and an important step in supporting a sustainable future for the City.

The Business Council respectfully urges the Newport Beach Planning Commission to adopt the resolutions before you and support the Newport Beach Banning Ranch plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Klimow".

Kate Klimow
Vice President of Government Relations

cc: Newport Beach Planning Commission
Newport Beach City Council
Mr. David Kiff, City Manager

SHAPING ORANGE COUNTY'S ECONOMIC FUTURE

Correspondence Item No. 3b
Orange County Business Council
Kate Klimow, Vice President of Government Relations
April 19, 2012

Response 1

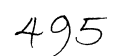
The Business Council's support of the Project is noted; no further response is necessary.

Correspondence Item No. 3d
Bruce Bartram

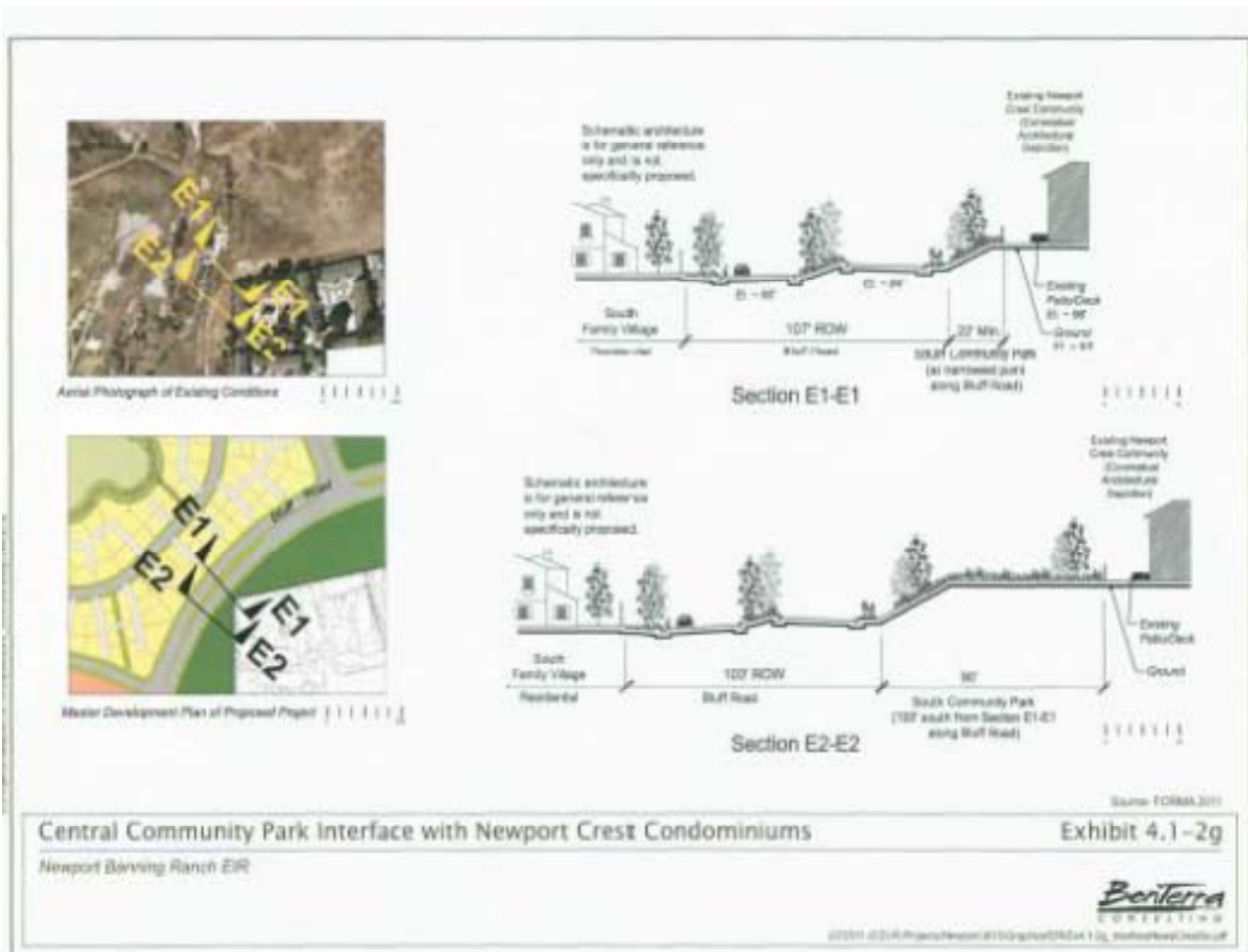
Newport Banning Ranch EIR Responses to Comments

Page 3-83 The City evaluated whether the elimination of access from West Coast Highway would preclude significant unavoidable noise impacts to certain residences in the Newport Crest condominium development. Noise impacts from future traffic on Bluff Road and 15th Street were evaluated in the Draft EIR...

However, the analysis also confirms that long-term noise increases at some Newport Crest residences would remain above the 5 dBA significance criterion for noise increase. Therefore, the proposed Project's noise impacts as to some of the Newport Crest residences are significant and unavoidable.



Correspondence Item No. 3d
Bruce Bartram



Correspondence Item No. 3d
Bruce Bartram

Newport Banning Ranch EIR Responses to Comments

Letter from Cathy Malkemus

Page 3-756:

4.12.8 Environmental Impacts: Impact Analysis - page 4.12-27

The document states that noise barriers could be installed around the second floor balconies of Newport Crest homes and that this measure is feasible. Is the applicant suggesting that we close in our open balconies with walls??

• Specifically, what "barriers" is the DEIR referring to and who determines if they are feasible??

Correspondence Item No. 3d
Bruce Bartram

Newport Banning Ranch EIR Responses to Comments

Response to Letter from Cathy Malkemus

Page 3-759:

Noise barriers for balconies are generally transparent glass or Lucite-like material, often hinged to allow the occupant to choose an open or closed position.

Correspondence Item No. 3d
Bruce Bartram
No date

Response 1

The information attached was presented during the April 19, 2012 Planning Commission hearing. It contains excerpts from the City of Newport Beach General Plan, Draft EIR, and Responses to Comments document. No new information was provided; no further response is necessary.

Correspondence Item No. 3e
Terry Welsh, Banning Ranch Conservancy

Development of OC's last large coastal properties

<u>•Site</u>	<u>Acres</u>	<u>Residential Units</u>
•Marblehead (San Clemente)	248	313
•Dana Point Headlands	121	118
•Bolsa Chica	2000	379
•Crystal Cove (Newport Shores)	980	635
•Castaways (Newport Beach)	133	119
• Banning Ranch	412	1375

Correspondence Item No. 3e
Terry Welsh, Banning Ranch Conservancy
No date

Response 1

The information attached was presented during the April 19, 2012 Planning Commission hearing. It compares the proposed density of the Newport Banning Ranch Project to other coastal developments. No new information was provided; no further response is necessary.

Correspondence Item No. 3f
Kim Farthing

Please enter record

Talking Point #1

- Traffic Impact Study No. TS2008-02 Based on information:
- Traffic was analyzed by Newport Beach during the time the 55 Freeway was under construction from 17th to 19th. Costa Mesa provided peak hour counts conducted BEFORE the construction begun. Costa Mesa based their traffic growth information by an estimated 1%. Prepared in accordance with Newport Beach's Traffic Phasing Ordinance requires analysis be prepared based on traffic counts taken between Feb 2 – May 31. (NOT DURING SUMMER MONTHS)
- 65% of the Project traffic can be expected to travel along the street system in southwest Costa Mesa

Talking Point #2

- Volume to Capacity Ratio (comments from CM 11/8/11 re DEIR traffic report)
Comment # 10 – Page 4.9-116: Table 4:9:34 exhibit shows projected increase in traffic due to Project traffic distribution, reflects that approximately 35% of the Project traffic uses 17th Street. Considering the project trip generation of approximately 15,000 vehicles per day, this translates to over 5,200 vehicles per day. However, the Table 4:9-34 shows only an increase of 3,912 vehicles. There should be an exhibit that shows clearly the level of redistribution of background traffic with the construction of Bluff Road. Even with the forecast as provided the volume to capacity ratio is over 0.90 for 17th Street as well as 19th Street, resulting in a need for increased capacity on segments west of Placentia Avenue. The need for this widening and timing should be addressed in the DEIR. Comment: The Volume to Capacity ratio of 0.90 is considered to be less than significant. 17th street DIER does not meet this criteria and mitigation is necessary because it is over 0.90

Talking Point #3 TRIP GENERATION

Comments: Trip Generation to and from Project is determined by:

- Development nodes
 - Coded as separate traffic analysis zones
 - In a distribution model
 - Following different path assignments
 - Best route to each zone
 - Final traffic volumes on any particular street represent the sum of the trip assigned to that particular path from each of the traffic analysis zones
-
- #10 – The trip distribution exhibit (Exhibit 4:907) in the Draft EIR presents a general indication of the distribution of Project traffic to/from the Project site to various off-site destinations. However, because the proposed Project consists of several development nodes throughout the Project site (which are coded as separate traffic analysis zones in the distribution model), traffic follows different paths (assignments) to and from its destinations, depending on the roadways that provide the best route relative to each zone. For example, traffic from the resort inn/residential areas toward the south end of the Project site would be more likely to use 15th or 16th Street to get to the destinations to the east; the residential areas to the north would be more likely to split up between 16th Street and 17th Street to get to the same destinations to the east; and the mixed-use/residential

**Correspondence Item No. 3f
Kim Farthing**

- **TRAFFIC – “Additional Consultant Agreements provided in City Council Staff Report Dated 1/12/10 Agenda Item #10**

Traffic Analysis

- Original Traffic Study information appeared on Newport Beach website March 7, 2012) was prepared by Antony Brine, City Traffic Engineer, David Keely, Senior Civil Engineer and Mike Erikson as Contract Traffic Engineer.

Consultant Amendments – RBF Consulting Traffic

- Staff Report - Traffic and engineering services including contract traffic engineering review of initial DIER report, EIR traffic report, review of transportation and circulation issues, work with OCTA on potential MPAH amendments – time and expenses not to exceed \$100,000 additional scope \$85,000 – Total \$185,000. Consultant will provide the following additional contract traffic engineering and development review services to the City of NB in conjunction with processing of the NBRD. Mike Erickson will function on behalf of the City Public Works Department during the review of the development subdivision map application, coordinating the preparation of the traffic report in support of the NBR EIR, reviewing the work product of the project traffic consultant, reviewing transportation and circulation issues associated with the project, reviewing and making recommendations on road alignments, intersection configurations and street sections coordinating with OCTA during the processing of the project by the City and on any required cooperative MPAH study, preparing analysis and reports as required monitoring schedules and taking actions as are necessary and appropriate to ensure that City-required reviews and actions take place in a timely manner. Other comments: Remapping, recalculations and rewriting of reports to reflect revisions and corrections to info on grading and limits of disturbance by the applicant.

(Comment: Due to the fact that the Secretary the Newport Beach Planning Commission, Commissioner Ameri, is Senior Vice President of

Correspondence Item No. 3f
Kim Farthing

RBF Consulting and Mike Erikson has represented RBF Consulting throughout this process, and above Consultant Amendment reflects authorization for \$185,000 for services rendered would be considered a conflict of interest.)

Consultant Amendment – Bon Terra - Traffic

- Revise intersection analysis and ADT (average Daily Traffic) forecast to reflect the applicant project revisions submitted to the city in November 2009.
- Incorporate the applicant proposed mix of residential land uses, modifications to roadway (page 12) revised number of dwelling units in specific portions of the project area, and subsequent incorporation of revised traffic analysis project trip rates
- Develop average daily traffic (ADT) forecasts for all study scenarios for roadway segments (adjusted for street usage to and from scenarios not totals)
- Revise intersection analysis and ADT forecasts to reflect the applicant project revisions submitted to City in November 2009
- Forecast traffic volumes (based on applicant's November 2009 revised project land use proposal) with respect to flow conservation to and from adjacent intersections

Reflects applicant's desire to have report based on 2009 information for a 2012 Traffic Impact Analysis Report

Correspondence Item No. 3f

Kim Farthing

No date

Response 1

The information attached was presented during the April 19, 2012 Planning Commission hearing. Ms. Farthing, Costa Mesa resident, addressed traffic counts for the City of Costa Mesa; trip distribution; trip generation; internal capture of trips. These topics have been previously addressed in the Draft EIR and the Responses to Comments document; no new environmental issues have been raised.

The commenter also stated that the traffic study was prepared by RBF Consulting. This is incorrect. The traffic study was prepared by Kimley-Horn and Associates as a subconsultant to BonTerra Consulting. BonTerra Consulting is under contract to the City of Newport Beach. Mr. Mike Erikson serves as a contract traffic engineer assisting Mr. Tony Brine, City Traffic Engineer, in the review of the traffic study preparation and related efforts. After the close of the public hearing, Commissioner Ameri responded that he is retired and no longer is employed by RBF Consulting.

The commenter's remarks about 2009 information in the traffic study are misleading. Existing conditions is based on the conditions in place at the time that the Notice of Preparation is released (March 2009). The traffic study was updated prior to the completion and release of the Draft EIR to reflect modifications to the Project and to best address information provided to the City of Costa Mesa.

**Correspondence Item No. 3g
The Kennedy Commission**



April 19, 2012

www.kennedycommission.org
17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909
fax 949 263 0647

Chair Michael Toerge and Planning Commission Members
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

**RE: Newport Place Affordable Housing Amendment and Newport Banning Ranch
Affordable Housing Implementation Plan**

Dear Chair Toerge and Planning Commission Members:

The Kennedy Commission (the Commission) is a broad based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$20,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with jurisdictions in Orange County to create strategic and effective housing and land-use policies that has led to new construction of homes affordable to lower income working families.

With a significant lack of quality affordable homes, it is evident that Orange County is a very expensive place to live in. While the economic downturn has allowed home prices to be at an all time low, many lower income working families are still not able to purchase a home and remain as renters; however, many of these renting families continually struggle financially to live in the city they work in. Over the past year, Orange County had the biggest rental increase in Southern California (13%) and compared to other cities in Orange County,¹ housing costs are significantly higher in Newport Beach.²

As the City moves forward in addressing the housing needs for all income segments of the community, the Commission would like to acknowledge and commend the City's leadership in facilitating and encouraging the development of homes affordable to lower income families in the proposed Newport Place and Newport Banning Ranch developments. The Commission believes the City is moving in the right direction in implementing: 1) the City's 2008-2012 Housing Element Housing Programs 3.2.2, and 3.2.3 in Newport Place and; 2) an Affordable Housing Implementation Plan (AHIP) for Banning Ranch.

For the 2008-2014 Housing Element planning period, the City's total Regional Housing Needs Assessment (RHNA), including the un-accommodated portion of the 2000-2005 RHNA, for lower income households are: 451 homes at very low-income, 319 homes at low-income and; 442 homes at moderate-income.³ To address the remaining RHNA

¹ Rising Rents May Signal a Housing Market Recovery, Los Angeles Times, March 13, 2012

² City of Newport Beach General Plan Housing Element Draft, p. 5-30 and 5-31, August 2011.

³ City of Newport Beach General Plan Housing Element Draft, p. 5-45, August 2011.

Correspondence Item No. 3g The Kennedy Commission

Chair Toerge and Planning Commission Members
Page 2 of 3
April 19, 2012

needs, the City identified the John Wayne Airport Area and Banning Ranch as opportunity sites suitable for residential development. In particular, the Airport Area was identified as the “greatest potential” to accommodate the City’s lower income RHNA need of 770 homes⁴ and between 2010 and 2025, Banning Ranch is projected to represent 48 percent of the City’s total new units.⁵ More importantly, these identified sites provide a significant opportunity for the City to address its remaining RHNA needs for extremely low-, very low- and low-income households. Providing an amendment to Newport Place would permit residential development that includes a minimum of 30 percent of homes affordable to lower income families.⁶ Also, the removal of the 10-acre minimum site requirement and allowing by-right development for multifamily housing affordable to lower-income households is essential in encouraging and facilitating the development of affordable homes in the Airport Area. In addition, Banning Ranch (subject to an AHIP), is expected to provide the following: very low-income homes at 5 percent of total units (69 homes) or; low-income homes at ten percent of total units (138 homes) or; moderate-income homes at 15 percent of total units (206 homes) or; a combination of all three income categories.⁷

In December 2011, the California Department of Housing and Community Development (HCD) found the City’s 2008-2014 Housing Element in full compliance that was contingent upon the following:

Successful implementation of Program 3.2.2, to remove the 10-acre minimum site requirement and Program 3.2.3, to allow by-right development for multifamily housing affordable to lower-income households are critical to facilitate residential development within the John Wayne Airport Area (PC 11 and PC 15).⁸

The Commission supports the City’s efforts in planning the development of homes affordable to lower income working families. The proposed zoning amendment in Newport Place and AHIP implementation in Banning Ranch will not only provide quality and affordable homes for the City’s work force, but it will also build and contribute to a more economically competitive and opportunity rich community.

⁴ City of Newport Beach General Plan Housing Element, p. 5-54, November 2011.

⁵ Draft Environmental Impact Report Volume I, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

⁶ City of Newport Beach Planning Commission Staff Report Agenda Item 2, p. 1, April 19, 2012.

⁷ City of Newport Beach Planning Commission Staff Report Agenda Item 3, p. 15, April 19, 2012.

⁸ Letter from California Housing and Community Development to City of Newport Beach, p. 1, December 2011.

Correspondence Item No. 3g
The Kennedy Commission

Chair Toerge and Planning Commission Members
Page 3 of 3
April 19, 2012

Please keep us informed of any upcoming meetings and additional information on the proposed Newport Place and Newport Banning Ranch developments. If you have any questions, feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,



Cesar Covarrubias
Executive Director

cc: Melinda Coy, State Department of Housing and Community Development

Correspondence Item No. 3g
The Kennedy Commission
Cesar Covarrubias, Executive Director
April 19, 2012

Response 1

The Kennedy Commission's support of affordable housing in the City of Newport Beach is noted.

Correspondence Item No. 3h
Norman Suker

To: City of Newport Beach Planning Commission

From: Norman J. Suker P.E., T.E

Re: April 19, 2012 Public Hearing for the Newport Beach Banning Ranch Development

Dated: April 19, 2012

I object to the approval of the Newport Banning Ranch (NBR) project as proposed and request that all my comments be included in the records of any and all proceedings relating to the Newport Banning Ranch project or its successors.

I request that no action by the Newport Beach Planning Commission be taken at this time regarding the NBR project for the following reasons;

A) The OCTA Board has removed the 19th Street Bridge across the Santa Ana River. The City of Newport Beach is contesting the Board's action and until this issue is reversed, the commission must accept the fact that the 19th Street Bridge has been removed from the OCMPAH.

B) The City of Newport Beach General Plan Circulation Element Policy CE 3.1.3 **Regional Consistency** states "The City of Newport Beach Master Plan of Streets and Highways shall be consistent with the Orange County Master Plan of Arterial Highways". The City's Master Plan is now inconsistent with the OCMPAH.

C) The NBR DEIR traffic section states that if the 19th Street Bridge is removed from the traffic analysis, that the intersection of the proposed Bluff Rd. and West Coast Highway will have an Level Of Service (LOS) of "F". No mitigation measures were proposed.

D) Caltrans has not approved the construction of the Bluff Rd. and West Coast Highway intersection or a traffic signal at the intersection because the City of Newport Beach has not applied for the necessary encroachment permits. Caltrans has stated in correspondence to the City of Newport Beach dated December 9, 2009 regarding the Sunset Ridge Park that "The proposed signalized intersection (Bluff Rd. and West Coast Highway) is not recommended ...". See attached letter.

E) Failure to remove the bridge from the City's Circulation Element will jeopardize Measure "M" funding.

F) The California Coastal Commission has environmental issues with the proposed Bluff Rd. at West Coast Highway that needs to be resolved.

Norman J. Suker, P.E., T.E
Newport Crest Resident

Correspondence Item No. 3h
Norman Suker

12/10/2009 14:51 9497242592

CALTRANS

PAGE 01/01

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894
Tel: (949) 724-2267
Fax: (949) 724-2592



Flex your power!
Be energy efficient!

Post-It* Fax Note	7871	Date	12-10-9	# of Pages	1
To	Janet Brown	From	D. Davis		
Co/Dept.	PLANNING	Co.	CALTRANS		
Phone #	916-44-3236	Phone #	916-440-3487		
Fax #	916-44-3229	Fax #	916-724-2592		

December 9, 2009

Janet Johnson Brown
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92685-8915

File: IGR/CEQA
SCH#: 2009051036
Log #: 2285A
SR-1

Subject: Sunset Ridge Park

Dear Ms. Brown,

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the Sunset Ridge Park Project. The project proposes construction of a City park with active and passive recreational uses and an access road to the park through the contiguous private property to the west (Newport Banning Ranch, SCH #2009031061). No nighttime lighting, other than for public safety, is proposed. No nighttime park uses are proposed. The project would include the following uses and facilities: 1 baseball field; 2 soccer fields; playground/picnic area; memorial garden; overlook area with shade structure; pedestrian pathways and bike rack; restroom facilities; up to 119 parking spaces. A signal is proposed on West Coast Highway at the park access road. The City also proposes to widen a portion of the northern side of West Coast Highway from Superior Avenue to a point west of the park access road. The nearest State route to the project site is SR-1.

The California Department of Transportation (Department), District 12 is a responsible agency on this project and has the following comment:

1. Table 1-1, Threshold 4.3-3 in the Level of Significance After Mitigation column should read, "Less than significant impact with mitigation incorporation".
2. The proposed signalized intersection is not recommended based on the MUTCD, chapter 4, which reads, "a traffic control signal should not be installed if it shall seriously disrupt progressive traffic flow".

Please continue to keep us informed of this project and any future developments, which could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,

Maryam Molavi, Acting Branch Chief
Local Development/Intergovernmental Review

"Caltrans improves mobility across California"

Correspondence Item No. 3h

Norman Suker

April 19, 2012

Response 1

Subsequent to the March 22, 2012 Planning Commission hearing, the Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Orange County Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required. All of these issues are addressed in the Final EIR.

Dave Sutherland

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Monday, March 26, 2012 2:41 PM
To: Alford, Patrick
Subject: NBR EIR comments

Mr Patrick Alford,
Subject: Newport Banning Ranch
Please have these comments added to the official record on the NBR EIR

Views:

The EIR report that was presented provided some simulated views and the impact of views from several locations.

What was painfully obvious, was there were no simulations on view impacts from locations that would have significant impacts on views, primarily, those from the properties of the residents of Newport Crest. Last summer, during a walk around of the property sponsored by NBR, this was a request made by Crest residents to have these view simulations provided that the NBR people said would be provided. They were never provided.

Noise:

The projected closest proximity of Bluff Rd to Newport Crest is 22'. The EIR report provides noise impacts based on an average. This basis for noise impacts taken as an average does not truly consider the noise impact of those residences that are located near the closest point.

The mitigation offered is to provide double paned windows to reduce the noise. Not only is this woefully inadequate and ineffective, as we live in a climate where our windows are seldom closed, but it does not address the impact of the use of our decks, a place we might never be able to enjoy again.

Air Quality:

There is much data that has been accumulated over recent years of the negative health impact of people living in close proximity to major roadways. The proposed Bluff Road would be within the "high risk" proximity for residents of Newport Crest. NOx, CO are among the many harmful toxic gases that would be generated by these vehicles traveling this road and the only mitigation to reduce these unhealthy consequences would be to relocate the road to a distance much farther from Newport Crest than currently planed.

Sincerely,

Dave Sutherland, resident 12 Summerwind Ct Newport Beach.

Dave Sutherland
March 26, 2012

Response 1

With respect to protection of private views, this topic is addressed in the EIR which notes that Newport Beach Municipal Code Section 20.30.100 “provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code....” After the close of the public hearing at the March 22, 2012 Planning Commission hearing, Mr. Patrick Alford, Planning Manager in the City’s Community Development Department, in response to Planning Commissioner comments, reported after the close of the public hearing that staff worked with the person performing the visual simulations, looked for a sampling of viewsheds from public viewpoints and noted that City policy calls for the protection of public views, not private views.

Response 2

The Draft EIR analysis of traffic noise impacts to Newport Crest is not “based on an average”. As shown in Exhibit 4.12-4 of the Draft EIR, noise levels were calculated at individual receptors, including receptors W4 and N1, which are the closest to the proposed Bluff Road. Further, Mitigation Measure 4.12-6 requires a new acoustical analysis when the detailed design for Bluff Road is prepared.

The offering of dual pane windows and doors is a reasonable and feasible mitigation for traffic noise impacts. The closing of windows, either existing windows or those provided to reduce traffic noise, is an option for the homeowner. As described in Section 4.12 of the Draft EIR, noise on balconies may be reduced with installation of barriers on the perimeter of the deck. These barriers could be made of clear glass or other transparent material and could have sections that may be open or closed.

Response 3

The commenter correctly notes that there are many studies correlating negative health risks with living near major roadways. As defined by the California Air Resources Board in their *Air Quality and Land Use Handbook*, a major roadway is a freeway or an urban road with a traffic volume of 100,000 vehicles per day (ADT). The forecasted traffic volume for the road segments adjacent to Newport Crest are approximately 15,440 to 16,780 ADT for Bluff Road from West Coast Highway to 15th Street and 8,510 to 10,210 for 15th Street east of Bluff Road; the range of values depends on the Project alternative. These traffic volumes are well below the 100,000 ADT threshold for detailed analysis.

John Beth

Alford, Patrick

From: john beth [jabethwdwrk@yahoo.com]
Sent: Saturday, March 31, 2012 5:54 PM
To: Alford, Patrick
Subject: banning ranch

I've lived in west Costa Mesa for over 40 years; (Freedom Homes). I dont know anyone that wants this development. The only people that want it are the rich developers that stand to make millions on the deal along with the city of Newport Beach; and none of them live here. Why doesnt the voice of those that will reap the "dirt" from this count? WE DONT WANT IT!!!!!!!!!!!!!!!!!!!!!!

John Beth
March 31, 2012

Response 1

The commenter's opposition to the Project is noted. The comment does not address an environmental issue; no further response is necessary.

Mesa Consolidated Water District
Paul E. Shoenberger, General Manager



RECEIVED BY
COMMUNITY
APR 02 2012

DEVELOPMENT
CITY OF NEWPORT BEACH

*District Mission:
Dedicated to Satisfying
our Community's
Water Needs*

April 2, 2012

Mr. Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

BOARD OF DIRECTORS

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JAMES FISLER
Vice President
Division II

TRUDY OHLIG-HALL
Vice President
Division III

Subject: Planning Commission Recommendation to the City Council

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed and provided written comment on the Draft Environmental Impact Report (Draft EIR) for the proposed Newport Banning Ranch project (SCH# 2009031061) on November 7, 2011, and provided public comment at the Public Hearing of the Planning Commission on March 22, 2012. We would like to thank you for the opportunity to provide comment on the proposed project.

PAUL E. SHOENBERGER, P.E.
General Manager

COLEEN L. MONTELEONE
District Secretary

VICTORIA L. BEATLEY
District Treasurer

**BOWIE, ARNESON,
WILES & GIANNONE**
Legal Counsel

As our comments reflect, water service provided to the Banning Ranch site by Mesa Water has the least environmental impact when compared to other water service providers. Providing water service with minimal environmental impact coincides with the intent of CEQA. Mesa Water encourages the City Council of Newport Beach to consider this fact prior to adopting the above mentioned EIR.

Consideration of comments provided by Mesa Water is essential to meeting CEQA requirements mentioned in: CEQA Guidelines Section 15126.6(c):

The range of the potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.

Water service provided by Mesa Water can be "feasibly accomplished" while maintaining reduced environmental impact. This was stated in our comment letter dated November 7, 2011. Comments made in this letter utilized multiple source references including: The California Department of Water Resources, Metropolitan Water District of Southern California, Orange County Water District, and Pacific Gas and Electric Company. The scientific data provided by these qualified sources were not considered in the response to comments.

Mesa Consolidated Water District
Paul E. Shoenberger, General Manager



Mr. Patrick J. Alford, Planning Manager
April 2, 2012
Page 2 of 2

*District Mission:
dedicated to Satisfying
our Community's
Water Needs*

Mesa Water continues its request in considering these facts prior to the EIR being approved by Newport Beach City Council. Attached are the two documents referenced. Please include these attachments with this letter to City Council for review. We thank you for the consideration of our comments and look forward to the City Council addressing these issues.

BOARD OF DIRECTORS

FRED R. BOCKMILLER
President
Division I

JAMES F. ATKINSON
First Vice President
Division IV

SHAWN DEWANE
Vice President
Division V

JAMES FISLER
Vice President
Division II

TRUDY OHLIG-HALL
Vice President
Division III

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul E. Shoenberger', is written over a horizontal line.

Paul E. Shoenberger, P.E.
General Manager

Attachments: Comment letter dated November, 7, 2012
Energy Intensity Analysis for Mesa Consolidated Water District

PAUL E. SHOENBERGER, P.E.
General Manager

DOLEEN L. MONTELEONE
District Secretary

VICTORIA L. BEATLEY
District Treasurer

**BOWIE, ARNESON,
WILES & GIANNONE**
Legal Counsel

c: Orange County Local Agency Formation Commission

Mesa Consolidated Water District
Paul E. Shoenberger, General Manager
April 2, 2012

Response 1

The Mesa Consolidated Water District has not raised any new environmental issues that have not been addressed in the Final EIR (Draft EIR and Responses to Comments document) and during the public hearings on the proposed Project.

Jim Mosher

April 5, 2012

Newport Beach Planning Commission
3300 Newport Boulevard
Newport Beach, CA 92663
(via e-mail)

Re: March 22, 2012 Hearing Item 4 - Newport Banning Ranch - (PA2008-114)

Honorable Commissioners,

I would like to add my voice to that of Suzanne Forster in her April 4, 2012 letter to the editor of the *Daily Pilot* requesting the Planning Commission rescind its two late night decisions of March 22, 2012 regarding the Newport Banning Ranch (NBR) application (recommendations to Council regarding re-circulation and certification of the Environmental Impact Report (EIR)) and reschedule a properly noticed and conducted hearing on the NBR EIR. This seems particularly important to me for a project of wide public interest in multiple communities and I request that this letter be made part of the administrative record for EIR SCH No. 2009031061.

I agree with Ms. Forster that the Chair's instructions to the public, however well intentioned, were extremely intimidating, both in substance and tone, and at least in my view improperly discouraged from speaking those members of the public who did not feel they were qualified environmental experts with significant new factual information to add to the record. I also agree with Ms. Forster that the traffic section of the EIR most likely requires significant revision in view of the Orange County Transit Authority (OCTA)'s recent decision to permanently remove the 19th Street bridge from the County's Master Plan of Arterial Highways without providing any agreed to mitigation measures – a fact which staff declined to acknowledge even though the City of Newport Beach (CNB) is either initiating or in the process of considering litigation to modify the OCTA action.

In addition I feel compelled to raise the following procedural and substantive issues which in my view improperly limited public participation and which I feel will permanently cloud the Commission's recommendations:

1. Inadequate hearing notice
2. Inadequate time to evaluate Response to Comments
3. Inadequate/misleading agenda listing
4. Improper handling of overflow crowd
5. Misleading and incomplete staff report
6. Failure to provide context for hearing
7. Lack of credible basis for actions
8. Adoption of defective resolution

1. Inadequate hearing notice

Please see Attachments 1 and 2 to this letter for a transcription of the notice of the March 22, 2012 CNB Planning Commission hearing published in the *Daily Pilot* on March 10, 2012. The NBR portion of the notice (Attachment 1) describes the project, identifies the components of the project application and informs the public that environmental concerns have been dealt with by means of an EIR prepared in compliance with California Environmental Quality Act (CEQA)

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 2 of 9

guidelines. The notice gives no hint regarding the purpose of the March 22 hearing, and could be read to imply the EIR has been completed and certified.

Compare this to the notice of the subsequent item (Attachment 2) which clearly notifies the public of the purpose of the hearing and the contemplated actions.

The similar but somewhat more extensive notice mailed to neighboring property owners (not attached) *does* include a line before the CEQA notice saying "*The Planning Commission will provide recommendations to the City Council for final decisions on these applications. Additional public notice will be provided as to the date, time, and place of City Council hearings.*"

But again, no hint is given that the NBR DEIR will be the subject of the March 22 hearing, or that recommendations regarding it would be made at that time.

2
cont.

2. Inadequate time to evaluate Response to Comments

On March 16, 2012 just six days before the hearing scheduled for an unstated purpose, CNB released 1030 pages of *Responses to Comments*, 1200 pages of appendices related to those comments, and a 96 page *Mitigation, Monitoring and Reporting Program* related to the NBR DEIR. Even for those who knew the March 22 meeting would focus on the DEIR this was a very large volume of closely worded material to digest in a very short time, especially for those, including the Commission, who are not environmental professionals with 40 hours a week (or more) to devote to the matter.

3

Several members of the public testifying on March 22 said they found the responses to their own comments non-responsive. Aside from a few perfunctory questions from Commission to staff at the March 22 hearing it is unclear if anyone, including staff or consultants, made any effort to determine if the public agencies submitting comments found the responses adequate or if they continued to have reservations about the NBR DEIR.

3. Inadequate/misleading agenda listing

The agenda listing for the NBR portion of the Planning Commission's March 22, 2012, on the basis of which the public is supposed to be able to determine if they want or need to attend, is transcribed in Attachment 3 to this letter.

The agenda listing for the previous item (the Ocean Boulevard lot merger) clearly states in the *Summary* the purpose of the hearing and under *Action* mentions not only that the Commission will be conducting a hearing, but that it will be recommending approval or denial by means of adopting one of two alternative resolutions referenced in the associated staff report.

4

By contrast, the NBR agenda listing gives no hint under *Summary* of what the purpose of the hearing, and there is nothing under *CEQA Compliance* suggesting the EIR is tentative or has not already been approved. Under *Action* the public is told the Commission will "*Receive staff report focused in Environmental Impact Report,*" conduct a hearing and continue the hearing to April 5, 2012.

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 3 of 9

This is defective in two ways. First, based only on this agenda the public might reasonably assume the EIR had already been certified and a staff report on the EIR was to be presented simply as a way to set the context for opening a hearing on the development application, which was to be continued to a future date. Second, for those more familiar with the culture of CNB Planning Commission agendas, the absence of any mention that a resolution was going to be considered for adoption definitely means that no action would be taken until a subsequent meeting.

I have personally examined all the Planning Commission agendas back through 2009, and a number from prior years, and although the Commission may suggested modifications to the actions recommended by staff, prior to the March 22 NBR matter I have been unable to find any prior instance in which the Commission took an action when no action was noticed in the agenda. In a number of instances the agenda announced under *Action*, as for the NBR listing, that the Commission would "(1) Conduct public hearing; (2) Continue public hearing to ..." On rare occasions the Commission modified the recommended date for the continuation of the hearing, but in every case the Commission continued the hearing as promised without taking any action beyond ones clearly noticed in the agenda.

Although the Assistant City Attorney assured the Commission that the March 22 votes were properly agendized in compliance with the Brown Act, the California Attorney General in their handbook on the very similarly worded Bagley-Keene Act (governing state, as opposed to county and local, agencies) notes that if a body voluntarily chooses to distinguish action from discussion items in their agendas, they should feel compelled to fit their actions to their notices.

In summary, no one seeing the March 22, 2012 agenda would have expected the Planning Commission to do anything other than open a hearing on the NBR and continue it to April 5th. While the Chair, in his opening remarks to the NBR matter, may have implied actions on the EIR might be taken that night, that is insufficient. A reasonable person relying on the agenda would have assumed that before any such actions were taken they would have an additional opportunity to provide input on April 5, and perhaps beyond.

4
cont.

4. Improper handling of overflow crowd

As the Commission may be only dimly aware, a very large crowd assembled at the CNB Council Chambers at 6:30 pm on March 22, the noticed time of the hearing. The crowd filled the lobby and overflowed into the courtyard, a problem compounded by staff having scheduled the contentious Ocean Boulevard item (which itself may have filled the Chamber) on the same night. Staff did not have an adequate supply of agendas or staff reports, nor did they provide any means for the overflow crowd to hear or participate in the proceedings. For example, at the beginning of the meeting the Chair offered to allow some of the overflow public to sit at the staff conference table at the front of the hall, but even inadequate as that was, those being invited could not hear the invitation.

5

Since no indication was given as to when the NBR matter would be heard, or if the entire overflow audience would have a chance to be seated for it, many left in frustration, and assuming they had seen a copy of the agenda would have done so assuming they would have an opportunity to speak and participate on April 5, before any action was taken. No announcement, audible or otherwise, was made to the contrary prior to the commencement of the NBR hearing at 9:00 pm. At a minimum, it would seem to me the overflow crowd should have been given a reasonable time to express their views through written comments before the

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 4 of 9

Commission considered any action, or have been clearly notified as to whether the hearing was going to be continued (as promised) or not.

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cont.

5. Misleading and incomplete staff report

The staff report compounds the confusion regarding whether any action was contemplated on Agenda Item 4 (the NBR application) at the March 22, 2012 meeting by copying on handwritten page 1 the inadequate language from the agenda as "Project Summary" and "Recommendation." Again there is no hint the EIR has not been already approved and that a vote or votes or a resolution or resolutions is contemplated at the March 22 meeting.

On the contrary, those who leaf through to handwritten page 7 will see that the timeline for the "EIR Review Process" includes not only the March 22 hearing before the Planning Commission, but also a second one on April 5, and possibly more.

Those who notice a draft resolution recommending certification is included in the staff report as *Attachment No. PC 1* will have had this impression reinforced by the "Whereas" on handwritten page 20 which says that "public hearings were held on March 22 and _____, 2012," where it can only be assumed the dates of subsequent hearings on the EIR were intended to be added to the blank space.

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The only thing contradicting this interpretation is the statements made under "Discussion" on handwritten page 8, suggesting the March 22 meeting will be devoted to the EIR and the April 5 meeting to the development application – but we now know the staff was not in fact prepared to conduct a hearing on the application on April 5 and asked for the NBR matter to be continued to April 19.

The staff report is also inadequate in providing no clear menu of actions required to complete consideration of the EIR by the Planning Commission.

6. Failure to provide context for hearing

As indicated in the draft minutes of the March 22 meeting, Agenda Item 4 began with an explanation by the Chair of the EIR process. For those who had not previously attended a meeting regarding the NBR application, this was woefully inadequate, especially since, as noted above, the vast bulk of the audience were provided with neither agendas or staff reports. To the best of my recollection neither the project nor the contents of the EIR were described, and the Commission launched into a short laundry list of questions, apparently assuming everyone in the audience had attended all the Study Sessions and had time to understand the structure and content of the EIR (described only as "oh the documentation is exhaustive – I think it's three feet tall) on their own.

} 7

Considering this was the first public hearing, and especially in view of the absence of agendas and staff reports, I feel the public deserved having the context laid a bit better before being asked to comment on something they may or may not have seen.

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 5 of 9

7. Lack of credible basis for actions

In moving to reject re-circulation of the NBR DEIR and in adopting the resolution recommending its certification, the Planning Commission is presumably telling the CNB Council that it has thoroughly reviewed the EIR and, in its independent judgment, agrees with all its conclusions.

To put this in context, Attachment No. PC 3 to the March 22, 2012 Staff Report is a table giving a "Summary of Significant Impacts and Mitigation Program." Although it seems to list "insignificant" and "less than significant" impacts as well, the table includes something like 90 numbered questions (an exact total is difficult because, for example, question Threshold 4.6-5 contains three separate questions that are not separately numbered) that have to be answered as to whether they have an environmental impact or not. The consultant appears to have concluded that something like 23 of these will have "no impact," 47 will have (after mitigation) "less than significant impact" and 8 will have a "significant unavoidable impact."

It is absolutely incredible to me that after diligently reviewing the project application, 1432 pages of the DEIR (plus another 5817 pages of appendices), the 1030 pages of comments (plus another 1200 pages of appendices), and the 96 page *Mitigation, Monitoring and Reporting Program*, and listening to the public testimony at its study sessions and public hearing, that the Planning Commission failed, in its independent judgment, to find a single instance in which they might reach a different conclusion from the applicant and consultant as to the significance of a particular impact, or think a different mitigation measure might be more effective.

I am particularly curious if the Planning Commissioners agree with the applicant and consultant that a massive pedestrian bridge over West Pacific Coast Highway has no visual impact, or that an alternative of annexation without development (that is continuing under the current ownership, but with the City Charter forcing consolidation of oil operations) should not have been considered (Alternative A, as I understand it, assumes no annexation, and therefore a continuation of oil operations as they now exist).

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8. Adoption of defective resolution

In addition to thinking the NBR DEIR should be re-circulated (due primarily to defective noticing for which the consultant could offer no adequate response), had I known the draft resolution in the March 22, 2012 staff report was going to be considered at that meeting (and not on April 5 or at some subsequent meeting, as the agenda and staff report implied) I would have spoken against it, for it is highly defective, both on its own merits and in comparison to other resolutions adopted by the Planning Commission recommending certification of EIR for other projects.

As a Newport Beach taxpayer I think I am most concerned about the final boilerplate "Whereas" on handwritten page 20 of the staff report (page 2 of 23 of the draft resolution), which seems to state the Planning Commission is recommending certification on the assumption that the costs of any legal challenges will be borne by the project applicant – but offers no suggestion as to how that assumption will be implemented or could be enforced by the City Council. For an EIR that is almost certain to provoke a legal challenge this seems to me to be an extremely serious shortcoming. At the same time, I am also concerned that such a guarantee, if feasible, could lead to a "we can approve anything because we won't have to pay to defend it" attitude, which, at least to me, serves neither the public nor the applicant well.

9

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 6 of 9

Beyond that, the 19 page "Exhibit B – Findings of Fact" is, in my opinion, highly defective both in substance and in comparison to the attachments to other resolutions recommending certification of EIRs approved by the Planning Commission in the past, and I am again startled that the Commission voted to adopt this without recommending a single change.

First, I am unable to find any guidance given as to the Council as to the CEQA required definition of what constitutes the Final EIR and the administrative record related to it.

Second, I am able to detect relatively clear findings supporting the conclusions of the EIR only with regard to the 5 to 7 "Effects with No Impact" listed on handwritten page 39 of the staff report (page 21 of the 23 page draft resolution). With respect to the list of the 8 to 13 (it's hard to count precisely) "Significant Unavoidable Impacts" listed on pages 22 and 23 of the draft resolution, the findings supporting the conclusion that these are significant frequently lack clarity and the findings supporting the notion these effects cannot be mitigated are generally non-existent. Moreover, the list of "no impact" effects appears to be an arbitrary subset of the effects concluded to have "no impact" as listed in the following Attachment No. PC 3 to the Staff Report. I am unable to understand why one particular subset of "no impact" effects deserves support by "Findings of Fact" and the others do not.

Third, the Commission appears to be offering the Council no guidance at all as to proposed findings regarding the 47 or so other effects the EIR concludes will have a "less than significant impact" after mitigation – either as to why they are significant to start with or as to why the proposed mitigation measures would be effective.

On that final note, it is unclear if the Commission, after reviewing it, is making a recommendation with regard to the *Mitigation, Monitoring and Reporting Program* since it is unclear from the resolution what the Commission is recommending be regarded as the Final EIR for the NBR project.

Again, attention to proper process, a thorough independent analysis of impacts and mitigation measures and a sincere effort to engage public involvement seem particularly important for a high profile project involving communities outside Newport Beach. For the above reasons and others stated in public comment, I feel the City's handling to date of the NBR environmental review has been inadequate and urge the Commission to reconsider its March 22nd decisions regarding re-circulation and certification of the EIR.

Thank you in advance for your consideration of my comments

Yours sincerely,

James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660
jimmosher@yahoo.com
(949) 548-6229

10

11

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 7 of 9

Attachment 1 : Content of Notice Published in Daily Pilot - March 10, 2012

**3300 Newport Boulevard,
Newport Beach
PLANNING COMMISSION AGENDA
Regular Meeting March 22, 2012 at 6:30 p.m.**

1. SUBJECT: Newport Banning Ranch - PA2008-114

North of West Coast Highway, south of 19th Street, and east of the Santa Ana River. The Project Site is adjacent to the City of Costa Mesa on the east, unincorporated County on the north and west, and the existing developed areas of the City of Newport Beach on the south and southeast. The Santa Ana River and the City of Huntington Beach are located west of the Project Site.

SUMMARY: A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75 room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, and approximately 51.4 acres of parklands. The application consists of the following components: a Pre-annexation and Development Agreement between the applicant and the City of Newport Beach describing development rights and public benefits; General Plan Amendment to the Circulation Element of the General Plan to delete the planned segment of 15th Street west of Bluff Road; Code Amendment to rezone the project site from Planned Community (PC-25) to Planned Community (PC-57) and a pre-annexation zone change is proposed for those portions of the project site located within the City's Sphere of Influence from County zoning to PC-57; Planned Community Development Plan would establish the allowable land uses, general development regulations and implementation and administrative procedures; Master Development Plan to establish detailed design criteria for each land use component to guide the review of subsequent development approvals; Tentative Tract Map to establish lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance; Affordable Housing Implementation Plan specifying how the project would meet the City's affordable housing requirements; and Traffic Study Approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance).

APPLICATION:ER2009-002, DA2008-003, NT2008-003, GP2008-008, PC2008-002, and CA2008-004

CEQA COMPLIANCE: NOTICE IS HEREBY FURTHER GIVEN that pursuant to the California Environmental Quality Act (CEQA) the City of Newport Beach has prepared Environmental Impact Report (EIR) -SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The DEIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation" of CEQA, (California Code of Regulations, Title 14, Section 15000 et seq.).

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 8 of 9

Attachment 2: Remainder of Notice Published in Daily Pilot - March 10, 2012

2. SUBJECT: 2808 and 2812 Ocean Boulevard Lot Merger - PA2011-141
2808 and 2812 Ocean Boulevard

SUMMARY: At the direction of the City Council, the Planning Commission will reconsider Lot Merger Application No. LM2011-002 requesting approval to combine 2808 and 2812 Ocean Boulevard. The Commission will review alternative development standards proposed by the applicant to be applied to the development of the property. The Planning Commission will make a recommendation of approval or denial to the City Council, which will hear the application at a future meeting.

APPLICATION: LM2011-002

CEQA COMPLIANCE: The project is categorically exempt under Section 15305 of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations).

Published Newport Beach/Costa Mesa Daily Pilot March 10, 2012

Attachment 3 : Content of March 22, 2012 Agenda Listing

ITEM NO. 4 Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway

SUMMARY: A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space.

CEQA COMPLIANCE: An Environmental Impact Report (EIR) SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The EIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation of CEQA (California Code of Regulations, Title 14, Section 15000 et seq.).

1) ACTION:

- 1) Receive staff report focused in Environmental Impact Report;
- 2) Conduct a public hearing; and
- 3) Continue public hearing to April 5, 2012.

Jim Mosher

Jim Mosher to Planning Commission, April 5, 2012 – page 9 of 9

Attachment 4: California Attorney General's View of Agenda Requirements

From the AG's Bagley-Keene Open Meeting Handbook:

"The agenda items should be drafted to provide interested lay persons with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item. Bodies should not label topics as "discussion" or "action" items unless they intend to be bound by such descriptions. Bodies should not schedule items for consideration at particular times, unless they assure that the items will not be considered prior to the appointed time. "

Source: http://ag.ca.gov/publications/bagleykeene2004_ada.pdf (under "Notice and Agenda Requirements" on page 8)

Note: I have not found time to locate a similar statement by the Attorney General with regard to the Brown Act, but the statutory sections being interpreted are essentially identical in the two acts.

Additional References/ Web Links

Suzanne Forster letter to *Daily Pilot*:

<http://www.dailypilot.com/news/opinion/tn-dpt-0403-mailbag-20120403,0,2060329.story>

March 22, 2012 Planning Commission agenda and staff report:

<http://www.newportbeachca.gov/index.aspx?page=1328>

Specifically:

http://www.newportbeachca.gov/PLN/PLANNING_COMMISSION.asp?path=/03-22-2012

Jim Mosher

April 5, 2012

Response 1

The subsequent responses address Mr. Mosher's comments with the exception of the 19th Street Bridge.

The Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Orange County Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required related to pass-through traffic, decreased levels of service, and traffic generated by the proposed Project.

Response 2

While it is correct that the hearing notice published in the *Daily Pilot* on March 10, 2012 did not contain some of the content required by the Zoning Code, the mailed and posted notices did provide all of the required content. Nevertheless, the omissions to the published notice were corrected when the proposed Project was re-noticed for the May 17, 2012 Planning Commission hearing, which was continued to June 21, 2012. Therefore, adequate public notice was provided when the Planning Commission again considered the Draft EIR and the Project on June 21, 2012.

Response 3

A subsequent Planning Commission public hearing on the EIR and the proposed Project was held on June 21, 2010. This was approximately three months after the release of the Responses to Comments document. At the June 21, 2012 Planning Commission meeting, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR.

Response 4

Staff's recommendation to the Planning Commission at the March 22, 2012 meeting was to receive the staff report; conduct a public hearing; and continue the public hearing. The Planning Commission is not required to follow the recommendation of staff and chose to make recommendations to the City Council. It is important to note that the Planning Commission does not have the authority to certify this Final EIR or to approve or deny the Project. The Commission makes a recommendation to the Planning Commission. Please also refer to the prior response

Response 5

Please refer to the prior responses. It should also be noted that the June 21, 2012 public hearing was conducted in part to address some of the comments expressed about the March 22, 2012 hearing.

Response 6

Please refer to the prior responses.

Response 7

Please refer to the prior responses.

Response 8

The opinions of the commenter regarding the Planning Commissions' actions are noted.

Response 9

The opinions of the commenter regarding the Planning Commissions' actions are noted.

Response 10

A complete revised Findings of Facts were provided to the Planning Commission as a part of the June 21, 2012 staff report which includes findings for all of the environmental impacts and alternatives addressed in the Final EIR. The contents of the Final EIR are described in Section 15132 of the State CEQA Guidelines, and the Final EIR was provided to the City Planning Commission and City Council. A Mitigation Monitoring and Reporting Program has been provided to the Planning Commission and will be submitted to the City Council for its adoption if the Newport Banning Ranch Project is approved.

Response 11

The commenter's opinions are noted. Please refer to the prior responses.

**APRIL 19, 2012 PLANNING COMMISSION
PUBLIC HEARING COMMENTS**

**April 19, 2012 Planning Commission
Public Hearing Comments**

The following comments are taken directly from the April 19, 2012 draft meeting minutes.

Evelyn Hart

Evelyn Hart spoke of behalf of seniors in Newport Beach, Seaview Affordable Housing and Oasis, Friends of Oasis and their representatives. She expressed concerns regarding affordable housing and felt this would be the time to start setting policies for the City to start taking affordable housing seriously. She referenced the recent adoption of the Housing Element and hoped the Commission will make recommendations to provide affordable housing in a significant way. She added the fastest growing percentage of the community are seniors and felt it would be appropriate for the Commission to make that same percentage of affordable housing designated for seniors.

Response

The proposed Project does not mandate senior affordable housing but nothing would preclude senior affordable housing to be provided as a part of the Project's Affordable Housing Implementation Plan (AHIP).

Reed Royalty

Reed Royalty, President of the Orange County Taxpayers Association, felt the project is a tremendous opportunity for the environment, taxpayers, and the City. He stated that taxpayers cannot afford to fix up the Banning Ranch property, but listed the amounts to be expended by the developer to do so. He felt that it is a bargain for taxpayers and advised the City to "take the money and run". He referenced those opposed to the project but questioned how much they have raised to buy the property, clean it up and prepare it for public use. Mr. Royalty felt that this is a once-in-a-decade opportunity to do something that benefits everybody including provide much-needed jobs.

Response

Mr. Royalty did not identify an environmental issue but did express his support of the Project. No further response is required.

Taryn Taddeu

Taryn Taddeu, on behalf of the Orange County Business Council, expressed support for the Banning Ranch plan as a well-thought out proposal that represents the community and City input and responsibly addresses housing, commercial and open-space needs. She stated that it is the only option that addresses public access, habitat creation, oil field cleanup and preservation of permanent open space at no cost to the taxpayers. She referenced a letter submitted in support of the project and felt the project could be a model for other cities.

Response

Ms. Taddeu did not identify an environmental issue but did express her support of the Project. No further response is required.

Terrell Koken

Terrell Koken, Costa Mesa resident, requested that the Commission consider the long-term implications of their decision and expressed his opposition to the project.

Response

The commenter did not identify an environmental issue but expressed opposition to the Project. No further response is required.

Kim Farthing

Kim Farthing, Costa Mesa resident, commented on affordable housing and the traffic impacts to the City of Costa Mesa. She questioned why traffic counts were not conducted during the summer months and stated that there were several parts of the traffic analysis that she did not understand. Ms. Farthing referenced an agreement referring to the Traffic and Engineering Services contract awarded to RBF Consulting, of which Commissioner Ameri is Vice President and felt that is a conflict of interest. She presented written comments labeled as Exhibit 1 (see Correspondence Item No. 3f).

Response

Ms. Farthing's comments on affordable housing and traffic impacts did not raise any new issues that were not previously addressed in the EIR and the responses to comments. As stated in the EIR, the traffic data for the traffic study was collected in accordance with the City of Newport Beach policy which requires that traffic count data at Primary Intersections (as specified in Appendix B of the Traffic Phasing Ordinance) for TPO purposes be collected between February 1 and May 31; and that transportation planning and decisions regarding sizing the circulation system be based on typical traffic levels during the "shoulder season" (the spring and the fall) – and not traffic levels during the summer months. This is per the City policy set forth in the General Plan Circulation Element, which states: "...these policies protect Newport Beach from building oversized roads to serve weekend summer beach traffic or traffic generated outside of our border and our control". No further response is required.

Terry Welsh, Banning Ranch Conservancy

Terry Welsh, President of the Banning Ranch Conservancy, stated the proposed project is over twice as big as what has ever been built on the Orange County coast in recent memory and four times as dense. He felt it is appropriate for the Commission to recommend against the project and ask the applicant to come back with a project more in keeping with previous Coastal development projects. Regarding the Open Space preservation option, he felt the developer's proposal relies on possible money in the future depending in part on selling possible homes in the future whereas the Open Space preservation option depends on real money. He reported that the Orange County Transportation Authority will spend \$190 million in the next several years acquiring and restoring properties exactly like Banning Ranch. He noted that money will not require the levying of additional taxes or selling bonds. He addressed the cost of restoration and noted the greatest thing the Commission could do to restore the Banning Ranch mesa would not cost money and would save money. He addressed the quality of habitat as well as timeliness, noting nature would do 90% of the restoration of Banning Ranch if it is left to. He urged the Commission to recommend against the project.

Response

Mr. Welsh's expressed opposition to the Project is noted. Mr. Welsh did not identify an environmental issue but did express his support of the preservation of the property as Open Space. After the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler (Applicant) indicated there seems to be a consensus that open space and parks are good things and noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Shyang Ray

Shyang Ray stated an objection to the participation of Commissioner Ameri on this hearing and project. She reported that he has been and is still employed by the consultant that has performed services for the City of Newport Beach on the Newport Beach Banning Ranch EIR and/or project. She felt he has had and may continue to have a direct or indirect financial interest in the proceedings. She stated he has continued to deny recusing himself from the proceedings and his participation constitutes an improper violation of the law and demanded that Commissioner Ameri recuse himself from this hearing and any future proceeding relative to the Newport Banning Ranch EIR and/or project. She opined that failure to do so may subject Commissioner Ameri to civil and/or criminal complaint, will taint the proceedings, and may serve as a causative action to void any actions taken by the Planning Commission in the proceedings.

In addition, Ms. Ray objected to the participation of Commissioner Brown. She stated that at the March 22, 2012, Planning Commission hearing on the Newport Banning Ranch EIR, documentation was entered into administrative record that showed that Commissioner Brown has a predisposed and publicly stated bias in favor of the Newport Banning Ranch project. She reported that he opposes efforts by the Banning Ranch Conservancy and other opponents of the project. Based upon the publicly published statement and upon his actions and vote at the hearing, she continued to maintain that Commissioner Brown showed a bias and is therefore, unable to vote in a fair and impartial manner on the issue at hand. The motion for continuation by Commissioner Brown on the Banning Ranch hearing also serves to taint the proceedings.

Response

After the close of the public hearing, Commissioner Ameri responded that he is retired and no longer is employed by RBF Consulting. At the March 22, 2012 Planning Commission meeting, Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

Steve Ray, Banning Ranch Conservancy

Steve Ray noted that there are other speakers in attendance who are willing to yield their time to him as he has around eleven (11) minutes of material to present. He requested that allowance. Chair Toerge refused noting the issue has been previously considered and that the item will be continued. He stated that is not a policy under which the Commission operates and asked Mr. Ray to use his appropriated time accordingly.

Mr. Ray registered his disappointment at the decision of the Chair and the Commission's failure to seek to overturn that decision. As Executive Director of the Banning Ranch Conservancy, Mr. Ray indicated that his team will present their comments until they are done. Mr. Ray stated an objection to the hearing on the Newport Banning Ranch application. He felt the hearing will be illegitimate, improper and unlawful and presented comments in support of such. Mr. Ray addressed previous action by the Commission certifying the EIR and felt that due to multiple errors that action must be considered null and void therefore, making any subsequent actions and hearings null and void as well. He listed the perceived errors including a letter submitted by Dr. James Mosher which is included as an attachment to tonight's agenda. Mr. Ray took note that the notice for the meeting of March 22, 2012, did not indicate that the purpose for the meeting was to take action to certify the EIR to the City Council. Therefore, he opined that the Planning Commission violated the law by taking action on an improper notice. In addition, he stated the agenda for that meeting simply stated the Commission would receive a report on the Banning Ranch EIR from staff, conduct a public hearing, and continue it to April 5, 2012. He stated that nowhere in the agenda did it state the Commission would take any action relative to the EIR. He stressed that a public body is not permitted to take any action that is not properly agenzized. Mr. Ray asserted that because many thought the item would be continued, members of the public who were denied entrance to the hearing left thinking they could return on April 5, 2012 to make comments at that time. He felt the Planning Commission violated the law by taking action on the EIR.

Response

At the June 21, 2010 Planning Commission public hearing on the Newport Banning Ranch Project and Final EIR, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR.

After the close of the public hearing, Assistant City Attorney Leonie Mulvihill reported the City Attorney's office reviewed comments presented by Mr. Mosher, noting the comments presented today are somewhat consistent with those comments but to the extent they suggest that the Agenda did not comply with the Brown Act, that it was misleading, persons were denied entry, or there was some sort of purposeful disparate treatment, she reported attending the meetings and stated that the Agenda fully advised people of the items being considered at the meeting of March 22, 2012 and that it is the City Attorney's opinion that the Agenda complied with the Brown Act and the Commission's actions did so as well.

Gary Itano

Gary Itano continued with the previous comment noting the Commission failed to provide contacts for the hearing he stated that having discussed items in a study session does not suffice for official public hearing. At the March 22, 2012 public hearing, neither the Commission nor staff nor City consultants presented nor discussed neither the Newport Banning Ranch Project application nor the draft EIR for the project. Therefore, there was no information provided for the Commission or any member of the public whether they had or had not attended the study sessions and the Planning Commission violated its responsibilities under the law. Mr. Itano stated there was a lack of public information available at the hearing noting several items relative to the proceedings were not attached to the staff report, but listed as separate submittals and were not readily available to the public when they sought to review the agenda and staff report. He noted there were insufficient supplies of the documents available at the hearing. He stated a public agency is obligated to provide documentation and make them sufficiently available to the public without requiring extraordinary measures by the public to obtain and review the documents. He asserted that the City and Commission failed in this responsibility and therefore, violated the law. Additionally, the City and Commission failed to

provide public access for an overflow crowd and failed to accommodate the right of all member of the public who wished to return to the hearing, to do so. He felt the Commission was warned to anticipate a large crowd and did not plan for such. He noted that the Commission was obligated to postpone the hearing if it was unable to provide for full public access and accommodation. Mr. Itano asserted that at the beginning of the meeting, the Chair ordered those who did not have a seat out of the meeting and out of the Chamber. Many who spent the entire time standing outside the building were denied the right to speak. He added this constitutes a violation of the law and requires actions taken at the March 22, 2012 meeting, to be voided.

Response

As previously noted, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR at the June 21, 2010 Planning Commission public hearing. All noted documentation was available at the City of Newport Beach and posted on the City's website.

Debby Koken

Debby Koken resumed with reading the comments stating that during the study session meetings the public was consistently denied participation during the public comments. She stated the Chair consistently stated that it would be given full opportunity to participate and everyone acknowledged the Banning Ranch Conservancy is the organized public opposition to the Banning Ranch project. The Conservancy requested sufficient time to make a coordinated comprehensive presentation on behalf of its membership and affiliates. The request was denied by the Chair on the basis that other such groups had made a request and there was not enough time to hear everybody. She noted the Chair declined to identify any other such requests by any other group, singling out the Banning Ranch Conservancy for denial. She felt that this constitutes "purposeful, disparate treatment" and to imply there was not enough time, directly contravenes the right of the public to be heard with total time for the public hearing, not being a consideration. She state the "use of time" as an excuse, also contravenes the law. Additionally, because the EIR is a City-prepared document, the applicant has no role greater than any single member of the public in its presentation. The fact that the applicant and their consultants were given unlimited time to speak in the public hearing, whereas any other member of the public was only allowed three (3) minutes, is another example of disparate treatment of the public. Ms. Koken reported that false, incorrect or misleading information is a basis for decision-making and stated the Conservancy finds it incredible that the Commission who voted in the affirmative to recommend certification of the EIR did so in spite of the amount of information that should have let it to the opposite conclusion. She commended Commissioner Myers for voting to deny certification of the EIR. Ms. Koken addressed the traffic study especially that the Commission denied that any other traffic studies would be necessary due to the elimination of the 19th Street Bridge given that the studies were based on the assumption that the 19th Street Bridge was to be built. She acknowledged the Commission was given false information by the City Attorney's office about the vote taken by the Orange County Transportation Authority (OCTA) to remove the bridge from the Master Plan of Arterial Highways, especially since Counsel had attended and witnessed the vote at the OCTA meeting. Ms. Koken noted that while the Planning Commission should be able to rely on Counsel, it is incumbent upon them to make reasoned and independent judgments based on information available to them.

Response

The Planning Commission has the discretion to determine the amount of time for testimony from an applicant and members of the public. Because an applicant is requesting approval of its

application from the City, the applicant is not in the same position as a member of the public that is not the applying for approval from the City. The City has the discretion to allow an applicant sufficient time to address its application.

As previously noted, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR at the June 21, 2010 Planning Commission public hearing. As previously addressed, the Orange County Transportation Authority (OCTA) has suspended its action to remove the 19th Street Bridge as shown on the Orange County Master Plan of Arterial Highways (MPAH) and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling.

Suzanne Forster

Suzanne Forster stated the elimination of the 19th Street Bridge by OCTA was common knowledge, yet the Commission seemed uninformed and should have known better. The denial of reality does not excuse the Commission's responsibility for independence. Ms. Forster stated that the Banning Ranch Conservancy charges the continuation of this hearing would be a further and continuing violation of the law for all of the reasons listed above. They recommend suspension of the hearing immediately, that the Commission seek reasoned counsel and that the action taken at the March 22, 2012 hearing be considered null and void, and that the Newport Banning Ranch Draft EIR be rescheduled for consideration at a public hearing in order to cure the violations charged. She asserted that failure to cure and correct the violations may be cause for civil complaint with the District Attorney's office, the office of the State Attorney and litigation.

Response

As previously addressed, the OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR. At the June 21, 2010 Planning Commission public hearing on the Newport Banning Ranch Project and Final EIR, the Planning Commission reaffirmed its recommendation to the City Council to certify the Final EIR.

Keith Banning

Keith Banning reported that he spent a number of years on the Little League Board in charge of the fields. He stated the biggest problem was getting enough field time and time for the venue to practice. Mr. Banning found there were not enough fields for children to practice and compete. He spoke in support of allocating fields and reported living near the old Ford Aerospace development and the developer that worked on that project is the same as in the Banning Ranch project. He stated they did a first-class product and stood behind their product. He noted that he is advocating for the fields and the character of the developer.

Response

Mr. Banning did not identify an environmental issue but did express his support of the Project. No further response is required.

Alexander Yelich

Alexander Yelich spoke in support of the project, especially the provision of extra fields for sports. He addressed the remediation of the oil fields and felt the project will help the economy.

Response

Mr. Yelich did not identify an environmental issue but did express his support of the Project. No further response is required.

Allyson Brahs

Allyson Brahs reported that she grew up in Newport Beach and agreed that there are not enough local fields for sports. She indicated that she knows the builder and felt that he would build nice homes. She spoke in support of the project noting that it would be very beneficial to the community.

Response

Ms. Brahs did not identify an environmental issue but did express her support of the Project. No further response is required.

Bruce Bartram

Bruce Bartram expressed concerns with the effects that the project would have on surrounding neighbors. He referenced the EIR relative to project noise, increased traffic and mitigation measures. He felt that noise mitigation measures would not work from balconies and referenced a letter from a neighbor regarding the issue.

Response

As described in Section 4.12 of the Draft EIR, noise on balconies may be reduced with installation of barriers on the perimeter of the deck. These barriers could be made of clear glass or other transparent material and could have sections that may be open or closed.

Dianne Russell

Dianne Russell urged the Commission to consider the impact to the residents of West Costa Mesa relative to increased traffic due to the proposed development.

Response

Ms. Russell's comments on traffic impacts did not raise any new issues that were not previously addressed in the EIR and the responses to comments. No further response is required.

Bill Bennett

Bill Bennett addressed the General Plan and took issue with comments from the developer in terms of the development presenting a unique opportunity to implement voter approved 2006

General Plan. He felt it is the "second choice" with the "first choice" being the preservation of Banning Ranch as Open Space. In addition, Mr. Bennett addressed the Orange Coast River Park and felt the preservation of Banning Ranch would be the keystone to a river park within the Newport Beach City limits. He stated that the developer asserts the benefits listed are not possible with any other option, that no funds have been identified to go forth with the Open Space plan. Mr. Bennett reported that there are funds available and the OCTA would be willing to work with the developer as well as other avenues of funding available. He felt that there is a problem with the City Council and the fact they are "sitting on the sidelines". He stressed the number one priority of the General Plan is working for Open Space and felt that Council is not performing its duties.

Response

Mr. Bennett did not identify an environmental issue but did express his support of the preservation of the property as Open Space. As previously noted, after the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler (Applicant) noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Linda Tang, The Kennedy Commission

Linda Tang, The Kennedy Commission, housing development advocates, submitted written comments (Exhibit 2) and commended the City's leadership in encouraging and facilitating the development of housing for low income families within the City's Housing Element. She indicated support for the City's efforts in implementing the AHIP for Banning Ranch. She indicated support the City's efforts to amend the housing program in the Newport Place Plan.

Response

Ms. Tang did not identify an environmental issue but did express her support of affordable housing in the City. No further response is required.

Chip Stassel

Chip Stassel reported that he has seen many developments in Newport Beach and noted that they have provided growth in the City and are thriving, but also addressed the related challenges. He spoke in support of the project.

Response

Mr. Stassel did not identify an environmental issue but did express his support of the Project. No further response is required.

Olwen Hageman

Olwen Hageman referenced a recent article in the Orange County Register regarding the 19th Street Bridge. She wondered why the City would want to add residences and commercial space to an already congested area. She addressed the City's mission to have a conservative growth strategy that emphasizes quality of life. Ms. Hageman felt the proposed development is not conservative and does not emphasize the quality of life noting inconveniences over ten (10) years. She felt that the City has not made any efforts to maintain Banning Ranch as Open Space. Ms. Hageman stated that the land belongs to all of Newport Beach and addressed

pollution and air quality issues and felt serious consideration must be given prior to development of the project.

Response

As previously addressed, the OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH. The commenter's support of the preservation of the property as Open Space is noted. No new issues related to traffic and air quality were provided by the commenter. These topics are adequately addressed in the Final EIR. As previously addressed, after the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Robert Tafoya

Robert Tafoya stated that as a parent and former coach, he welcomes additional sports fields for the City's children. He stated spending time in Banning Ranch and thinks of it as a blighted oil field so the concept of consolidating the area and remediating it for public use is very appealing. Lastly, Mr. Tafoya stated that he is confident that a qualified contractor will be identified to safely remediate the site without danger or concern of the immediate communities.

Response

Mr. Tafoya did not identify an environmental issue but did express his support of the Project. No further response is required.

Norman Suker

Norman Suker stated an objection to the project and requested that all of his comments be included in the records of any and all proceedings relating to the project. He requested that no action be taken by the Planning Commission at this time regarding the program and listed his reasons including elimination of the 19th Street Bridge, the City's circulation element requirement for consistency with the OCTA Master Plan of Arterial Highways, decreased level of service due to the elimination of the bridge, jeopardizing Measure M funding and environmental issues by the Coastal Commission needing resolution. He presented his comments in writing as Exhibit 3.

Response

Mr. Suker's verbal comments and written correspondence have been included in the public record for the Project; his opposition to the Project is noted. As previously addressed, the OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Rob Boyer

Rob Boyer spoke in favor of the project and felt it would be an asset to the City.

Response

Mr. Boyer did not identify an environmental issue but did express his support of the Project. No further response is required.

George Schroeder

George Schroeder stated that it is nice to have the Open Space but felt that it is a blighted area with a lot of environmental waste and agreed that it is an area in need of clean up. He expressed support for the proposed project and felt whatever is done there will have a lot of public oversight and input. Mr. Schroeder noted that the City of Laguna Beach chose to tax themselves and buy the land at Laguna Canyon. If the residents of Newport Beach who are against this project feel so strongly against it, he encouraged them to get the residents of Newport Beach and Costa Mesa to get an initiative out there to tax themselves in order to buy the land. He noted that the proposed project will take several years to complete.

Response

Mr. Schroeder did not identify an environmental issue but did express his support of the Project. No further response is required.

Richard Hamm

Richard Hamm felt the best thing about the project is the tradeoff of Open Space and cleaning up the site. He spoke in favor of the project

Response

Mr. Hamm did not identify an environmental issue but did express his support of the Project. No further response is required.

Andrew Hernandez

Andrew Hernandez stated that he loves the community and enjoys the Banning Ranch area just as it exists. He spoke in opposition of the plan.

Response

Mr. Hernandez did not identify an environmental issue but did express his opposition to the Project. No further response is required.

Allan Beek

Allan Beek addressed the General Plan noting the first choice of the people is for Open Space and stated he has been here long enough to know the Commission appreciates speakers who are brief.

Response

Mr. Beek did not identify an environmental issue but did express his support of the preservation of the property as Open Space. As previously addressed, after the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

**JUNE 21, 2012 PLANNING COMMISSION
STAFF REPORT CORRESPONDENCE**

**Correspondence Item No. 2a
Banning Ranch Conservancy**

Correspondence
Item No. 2a
Newport Banning Ranch
PA2008-114

Vernal Pools/Seasonal Wetlands of the Banning Ranch Mesa

A Rebuttal to the Vernal Pool Topical Response of the draft Environmental Impact Report for
the proposed Banning Ranch development

First Edition

6/15/12

Terry Welsh, Banning Ranch Conservancy



Vernal Pool/Seasonal Wetland #9 (documented to contain the Federally-listed San Diego fairy shrimp)

Photo dated 12/23/10

**Correspondence Item No. 2a
Banning Ranch Conservancy**

1. Introduction

In an attempt to allow for a much larger developmental footprint than should otherwise be considered, the draft Environmental Impact Report (dEIR) for the 1375 home residential development proposed by Newport Banning Ranch LLC (NBR) purposefully and intentionally underestimates the number of vernal pools/seasonal wetlands on the Banning Ranch mesa through a combination of misrepresentation of the recommended guidelines and a failure to conduct the necessary surveys. As a result, the dEIR is inadequate as a document under CEQA.

} 1

2. Background

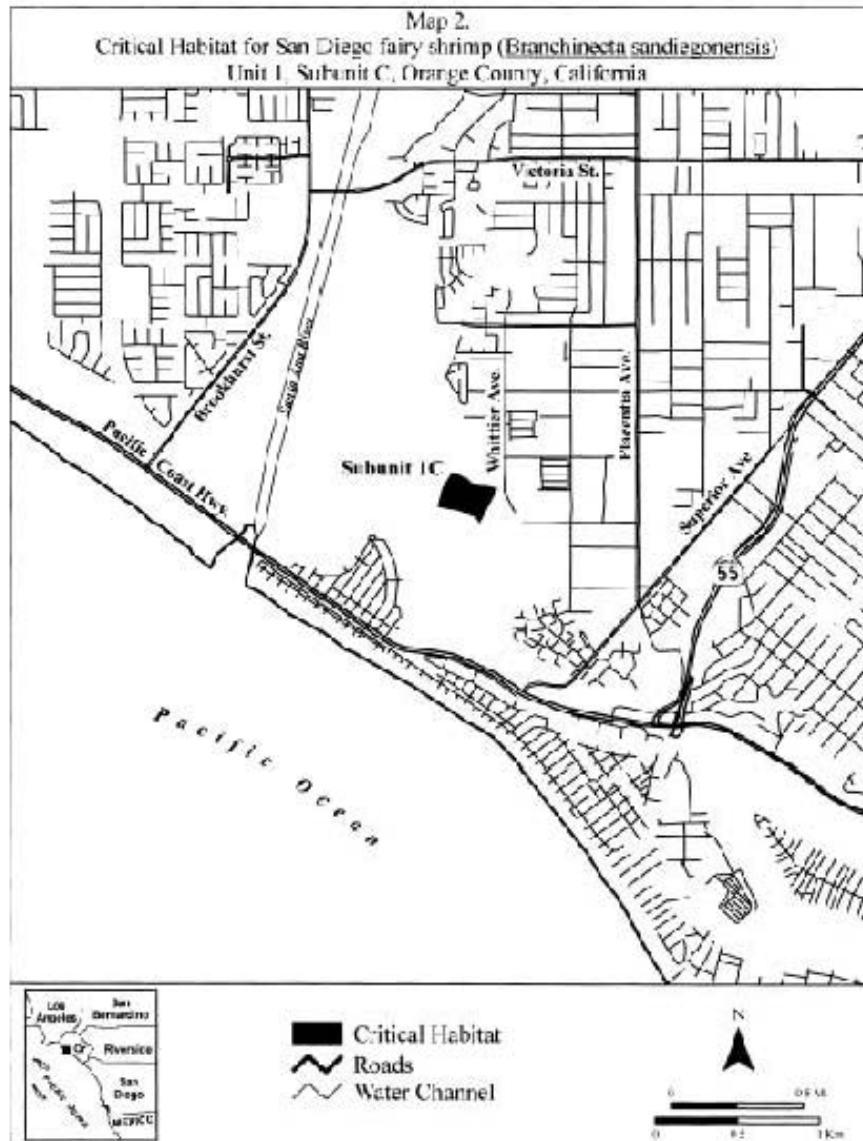
Extensive vernal pool habitat once occurred on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997). These days, the Banning Ranch mesa contains one of the last coastal vernal pool complexes in Orange County. With its relatively flat topography and its clay soils serving as an aquatard, the Banning Ranch mesa is an ideal site for coastal vernal pools/seasonal wetlands. Vernal pools/seasonal wetlands on the Banning Ranch mesa, as well as the near-by Fairview Park mesa, are the only two vernal pool complexes in Orange County containing the Federally-listed San Diego fairy shrimp. In fact, the Banning Ranch mesa represents the most northern extent of this endangered species. The USFWS has declared a 15-acre area of vernal pools on the Banning Ranch mesa to be critical habitat for the San Diego fairy shrimp. The Federal Register (Vol. 72, No. 238, 12/12/07) notes that the vernal pool complex on the Banning Ranch mesa "contains all the essential features essential to the conservation of the species."

} 2

<http://www.gpo.gov/fdsys/pkg/FR-2007-12-12/pdf/07-5972.pdf#page=1>

Correspondence Item No. 2a
Banning Ranch Conservancy

Federal Register/Vol. 72, No. 234/Wednesday, December 12, 2007/Rules and Regulations 70695



2
cont.

Map of 15-acre USFWS critical habitat area for San Diego fairy shrimp

**Correspondence Item No. 2a
Banning Ranch Conservancy**

The vernal pools/seasonal wetlands of the Banning Ranch mesa are also home to the versatile fairy shrimp as well as other invertebrates such as Ostracods (seed shrimp) and Cladocera species (water fleas). Polywogs have been documented in the vernal pools/seasonal wetlands of the Banning Ranch mesa. Birds and mammals, including coyotes, have also been documented to utilize the vernal pools/seasonal wetlands of the Banning Ranch mesa.

2
cont.

**3. Vernal Pools/Seasonal Wetlands on the Banning Ranch
mesa have adapted to development of the oil field**

Like nearly all of the Southern California coast, the Banning Ranch mesa has seen development (though less than most areas due to the fact that for the last 80 years Banning Ranch has served as an oilfield, with only a relatively small crew of oil workers coming and going everyday). The vernal pools/seasonal wetlands on the Banning Ranch mesa have adapted to the oil operation. No longer present on a pristine coastal mesa, the vernal pools/seasonal wetlands are now next to oil wells/platforms, service roads, and other oil field features. Some vernal pools/seasonal wetlands are now on top of buried asphalt parking lots. In some cases, the geographical location of individual vernal pools/seasonal wetlands has shifted as the oil field operation has physically changed the focal terrain.

3

Still, the vernal pools/seasonal wetlands persist to this day. They remain the last along the Orange County coast, and their preservation should remain a goal of all wildlife regulatory agencies.

**4. Attempts by the dEIR to exclude the vernal
pools/seasonal wetlands as *wetlands* are disingenuous.**

The dEIR states,

“Given the lack of wetland hydrology.....during the normal rainfall years of 2007/2008 and 2008/2009, these areas would not be considered wetlands even under the methodology used by the Coastal Commission.”

4

The dEIR suggests that data from 2009/2010 and 2010/2011 should be excluded from being used to determine wetland hydrology. The dEIR claims its authority from page 95 of the 2008

Correspondence Item No. 2a Banning Ranch Conservancy

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), which states,

*Direct hydrologic observations. Verify that the plant community occurs in an area subject to prolonged inundation or soil saturation during the growing season. This can be done by visiting the site at 2- to 3-day intervals during the portion of the growing season when surface water is most likely to be present or water tables are normally high. Hydrophytic vegetation is considered to be present, and the site is a wetland, if surface water is present and/or the water table is 12 in. (30 cm) or less from the surface for 14 or more consecutive days during the growing season during a period when antecedent precipitation has been **normal or drier than normal**. If necessary, microtopographic highs and lows should be evaluated separately. The **normality** of the current year's rainfall must be considered in interpreting field results, as well as the likelihood that wet conditions will occur on the site at least every other year.*

A. Normal vs. average.

While the 2008 Army Corps manual does stress consideration of the "normality" of the current year's rainfall, it is important to understand that **normal** does not equal **average** (a.k.a. **mean**). For example, the **average** height of a woman in the USA is 5'5". This does not mean a woman who is 5'6" is **abnormal**. Rather, **normality** is a **range** on either side of the **mean**. In many cases, this would be **one standard deviation** on either side of the **mean**. The **standard deviation** can be thought of as the "mean deviation from the mean," and is expressed mathematically as:

The **sample standard deviation** formula is:

$$s = \sqrt{\frac{\sum(X - \bar{X})^2}{n - 1}}$$

where,

s = sample standard deviation

\sum = sum of...

\bar{X} = sample mean

n = number of scores in sample.

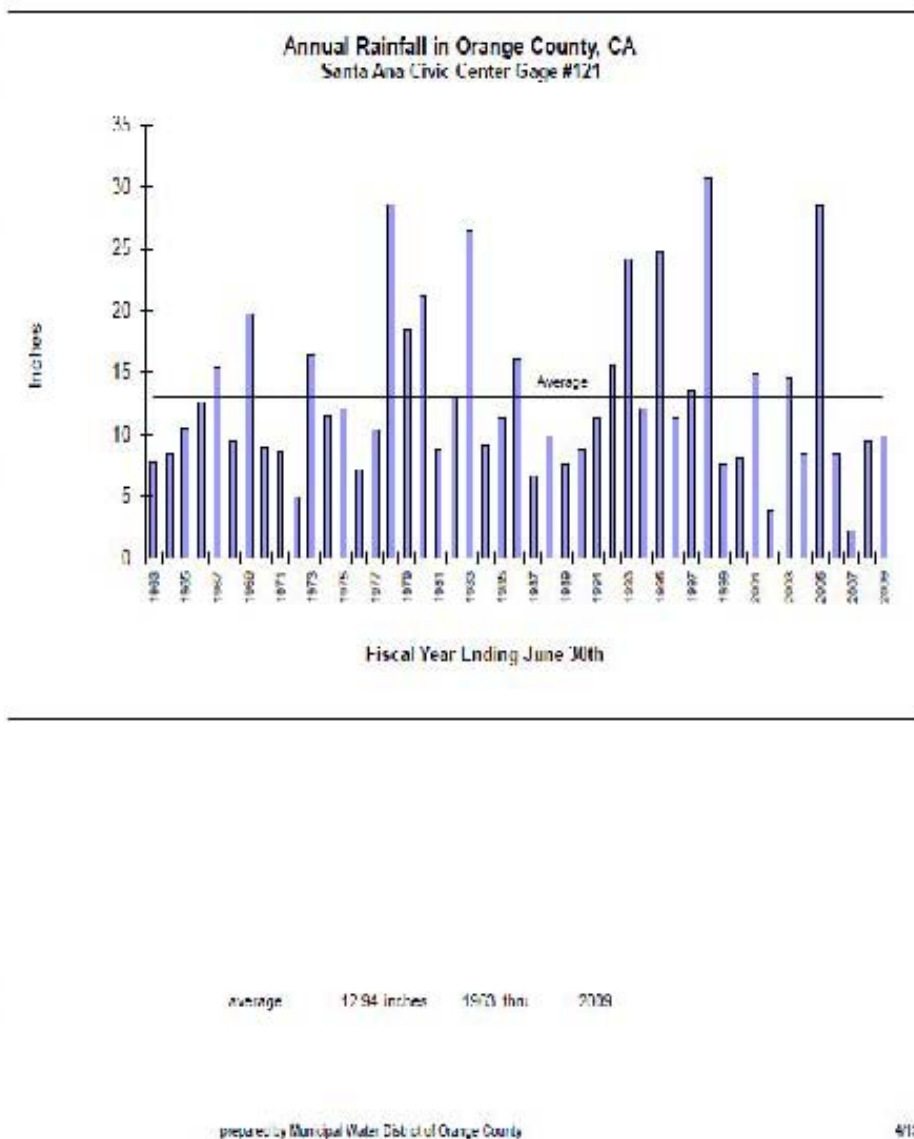
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cont.

Correspondence Item No. 2a
Banning Ranch Conservancy

A fifty year study (1963-2012) of annual rainfall in Orange County shows a *mean* annual rainfall of 13.0 inches (interestingly, only one year, 1982, actually had this amount of rain). The *standard deviation* for this period is calculated to be 6.7 inches. This would result in *normal* rainfall ranging from 6.3 – 19.7 inches. } 4 cont.

**Correspondence Item No. 2a
Banning Ranch Conservancy**

FY Ending	Rainfall (Inches)
1963	7.78
1964	8.38
1965	10.56
1966	12.56
1967	15.41
1968	9.47
1969	19.71
1970	8.01
1971	8.60
1972	4.00
1973	10.10
1974	11.46
1975	12.08
1976	7.18
1977	10.42
1978	28.52
1979	18.47
1980	21.20
1981	8.78
1982	13.05
1983	26.55
1984	9.00
1985	11.30
1986	16.09
1987	6.58
1988	8.87
1989	7.40
1990	0.65
1991	11.31
1992	15.56
1993	24.12
1994	12.08
1995	24.76
1996	11.33
1997	19.53
1998	30.59
1999	7.56
2000	8.05
2001	14.07
2002	9.82
2003	14.57
2004	8.41
2005	28.44
2006	0.50
2007	2.19
2008	9.45
2009	9.88



4
cont.

Data from 1962-2009. Not included in the table, but included in the calculation of mean and standard deviation, are totals from 2010 (16.8 inches), 2011 (21.4 inches,) and 2012 (8.3 inches as of 6/15/12). Note: the yearly rainfall at the Santa Ana Civic Center varies slightly from Banning Ranch, however this should not significantly affect the calculation of the mean, nor the standard deviation.

Correspondence Item No. 2a Banning Ranch Conservancy

In conclusion, while the rainfall total for 2010/2011 might be considered to be just outside the range of normal, the rainfall total for 2009/2010 is well within the range of normal and any observations from 2009/2010 should be considered from a year of normal rainfall in calculating the hydrology parameter.

4
cont.

B. Draft EIR's track record of inclusiveness of data is suspect.

The dEIR's failure to conduct listed fairy shrimp surveys on half (27 of 54) of the vernal pools/seasonal wetlands of the Banning Ranch mesa casts a dark shadow not only on the completeness of the dEIR's data, but on the forthrightness and intentions of its authors. Though the dEIR attempts to rationalize this omission by claiming (in retrospect) that the omitted 27 vernal pools/seasonal wetlands are "oil field features that only ponded during the extreme rainfall year of either 2009/2010 or 2010/2011" a review of the sequence of events suggests that this data was intentionally not gathered to keep the public from becoming aware of these vernal pools/seasonal wetlands. In the following chronological sequence, the vernal pools/seasonal wetlands are divided, *for simplicity's sake*, into two groups...**The Original 27** and **The Additional 27**.

Chronological sequence of events

Early 2010 Banning Ranch Conservancy presents data from model airplanes, taken during the 2009/2010 wet season, demonstrating vernal pools/seasonal wetlands in the middle mesa area (roughly bordered by 16th Street and 17th Street). The data is presented to NBR as well as the regulatory agencies, including the lead agency (City of Newport Beach).

5

Early 2011 Banning Ranch Conservancy presents additional data from model airplanes, taken during the 2010/2011 wet season, demonstrating vernal pools/seasonal wetlands in the middle mesa area. This data is presented to NBR, and the regulatory agencies, including the lead agency (Newport Beach). By this time the number of vernal pools/seasonal wetlands (most of which are located in the middle mesa area roughly bordered by 16th Street and 17th Street, but also including a handful of vernal pools/seasonal wetlands located on the peripheral portions of the Banning Ranch mesa) known to the public, including the Banning Ranch Conservancy, is approximately 27 (**aka "The Original 27"**).

May-August 2011 Banning Ranch Conservancy becomes aware, through ground photographs taken earlier and later provided to the Banning Ranch Conservancy, of the presence of approximately 27 additional vernal pools/seasonal wetlands (**aka "The Additional 27"**). Most of these additional vernal pools/seasonal wetlands are located on the peripheral portions of the Banning Ranch mesa and are not easily visible from the

Correspondence Item No. 2a Banning Ranch Conservancy

model airplane photos described above. By this time (May 2011) all of the vernal pools/seasonal wetlands on the Banning Ranch mesa have dried up. A summary of **The Additional 27** vernal pools/seasonal wetlands, along with **The Original 27** vernal pools/seasonal wetlands, is prepared on a DVD, called, "*The Complete Banning Ranch Mesa Vernal Pools/Wetlands, First Edition 6/27/11.*" This DVD is made available to the regulatory agencies including the lead agency (City of Newport Beach).

August 2011 Banning Ranch Conservancy obtains a copy of the 2010/2011 Banning Ranch wet-season brachiopod report by David Moscovitz of Glenn Lukos Associates (GLA), dated 7/26/11. This report includes data collected from October 2010 - April 2011. The report is largely limited to **The Original 27** vernal pools/seasonal wetlands. None of **The Additional 27** vernal pools/seasonal wetlands are included in the survey.

August 2011 The fact that the 2010/2011 wet-season brachiopod report, dated 7/26/11, lacks data from **The Additional 27** vernal pools/seasonal wetlands (and hence must be considered incomplete) was made known to NBR, and the regulatory agencies, including the lead agency (City of Newport Beach).

September 2011 Despite the lead agency (City of Newport Beach) being aware of the incompleteness of the wet-season brachiopod report (and the necessity of additional studies), the dEIR for the proposed Banning Ranch development is released for public comments.

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cont.

Conclusions from the chronological sequence of events:

The authors of the dEIR, in a retrospective attempt to rationalize the knowing omission of **The Additional 27** vernal pools/seasonal wetlands from the wet-season brachiopod report, imply that a decision was made not to survey **The Additional 27** vernal pools/seasonal wetlands because they were "oil field features." However, the evidence suggests that the real reason for the omission, perhaps not thinking that the public would ever know better, was to keep **The Additional 27** vernal pools/seasonal wetlands from becoming part of the public record. **The Additional 27** vernal pools/seasonal wetlands are largely of similar quality and not wholly different from **The Original 27** vernal pools/seasonal wetlands. **The Additional 27** vernal pools/seasonal wetlands were certainly present when the 2010/2011 wet season brachiopod surveys were conducted.

This conscious attempt to withhold data puts into question the dEIR's claims that these vernal pools/seasonal wetlands did not pond in during the 2007/2008 and 2008/2009 wet seasons. The fact that some of the vernal pools/seasonal wetlands ponded in 2011/2012 (a season drier than either 2007/2008 or 2008/2009) raises further doubts about the dEIR's claims.

**Correspondence Item No. 2a
Banning Ranch Conservancy**



Date 4/15/12. Ponding of #12, #16, and #20 from Spring, 2012. All three demonstrated versatile fairy shrimp in the 2010/2011 wet season survey.



Date 4/15/12. Ponding of #50 from Spring 2012 (referred to as #47 in the DVD *Complete Banning Ranch Mesa Vernal Pools/Wetlands*). No known fairy shrimp surveys have been performed on #50.

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cont.

Correspondence Item No. 2a Banning Ranch Conservancy

But as we shall see in the following section, ponding is not necessary to establish wetland hydrology.

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cont.

C. Wetland hydrology does not require ponding.

Time and time again the dEIR attempts to exclude nearly all the vernal pools/seasonal wetlands by claiming that they failed to meet the hydrology parameter because they did not exhibit ponding during most years. Again, the dEIR attempts to gain its authority from page 95 of the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), which states,

Direct hydrologic observations. Verify that the plant community occurs in an area subject to prolonged inundation or soil saturation during the growing season. This can be done by visiting the site at 2- to 3-day intervals during the portion of the growing season when surface water is most likely to be present or water tables are normally high. Hydrophytic vegetation is considered to be present, and the site is a wetland, if surface water is present and/or the water table is 12 in. (30 cm) or less from the surface for 14 or more consecutive days during the growing season during a period when antecedent precipitation has been normal or drier than normal. If necessary, microtopographic highs and lows should be evaluated separately. The normality of the current year's rainfall must be considered in interpreting field results, as well as the likelihood that wet conditions will occur on the site at least every other year.

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The key to establishing wetland hydrology is the presence, in most years, of saturated soil within 12 inches of the surface (not necessarily surface ponding). While prolonged ponding is surely evidence that the soils are saturated, an area that exhibits periodic ponding can't be excluded as having wetland hydrology unless soil samples of at least 12 inches depth are taken at 2-3 day intervals during the growing season. Admittedly, this is a very great and cumbersome amount of data to obtain (for either the developer or the environmentalist), and it is for this reason that decisions on wetland determination usually focus on wetland indicators such as vegetation and soil indicators. As Lewis M. Cowardin of the USFWS said in 1995, "The authors of the USFWS wetland classification maintained that it is neither reasonable nor practicable to establish a quantitative hydrologic criterion for field identification for wetlands. We still believe that, in the great majority of cases, wetlands should be identified by vegetation and soils. We argue that hydrology should be used only where soil and vegetation criteria cannot reasonably be applied, such as highly disturbed wetlands...."

**Correspondence Item No. 2a
Banning Ranch Conservancy**

5. Protocol fairy shrimp surveys on the Additional 27 Vernal Pools/Seasonal Wetlands will likely yield positive results.

The Banning Ranch Conservancy has identified 54 documented or potential vernal pools/seasonal wetlands on Banning Ranch (all but one on the mesa). For details and photos, go to

<http://banningranchconservancy.org/Vernal-Pools.html>

Of these 54, twenty-seven vernal pools/seasonal wetlands 27 have never even had one fairy shrimp survey.

Of the 27 vernal pools/seasonal wetlands that have been surveyed (most with only one wet-season survey), twenty (20) have been documented as having fairy shrimp, including seven (7) having the listed San Diego fairy shrimp. In other words, 74% of the surveyed vernal pools/seasonal wetlands have fairy shrimp and 26% have the listed San Diego fairy shrimp.

There is no difference in the quality of the vernal pools/seasonal wetlands that have been surveyed vs. those which have not been surveyed. There is no reason to think that the unsurveyed group will have different rates of listed and non-listed fairy shrimp compared to the surveyed group.

Though these vernal pools/seasonal wetlands are now in an oil field (as opposed to a pristine coastal mesa), they are still functioning ecosystems that need, at a bare minimum, to be subjected to the required protocol studies. Protocol studies must follow the USFWS guidelines that call for, among other things,

- c. A complete survey consists of sampling for either:
 - 1. two full wet season surveys done within a 5-year period; or
 - 2. two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey).

6. Full Wetland Delineation studies have only been done on three of the 54 vernal pools/seasonal wetlands of the Banning Ranch mesa

With minor exception, wetland delineation studies were not performed on any of the vernal

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8

Correspondence Item No. 2a Banning Ranch Conservancy

pools/seasonal wetlands of the Banning Ranch mesa. Only vernal pools/seasonal wetlands #1 (VP1) and #2 (VP2) (referred to as Soil Test Pits #15 and #16) and vernal pool/seasonal wetland #54 (referred to as Soil Test Pit #47, or Drainage D) received such studies.

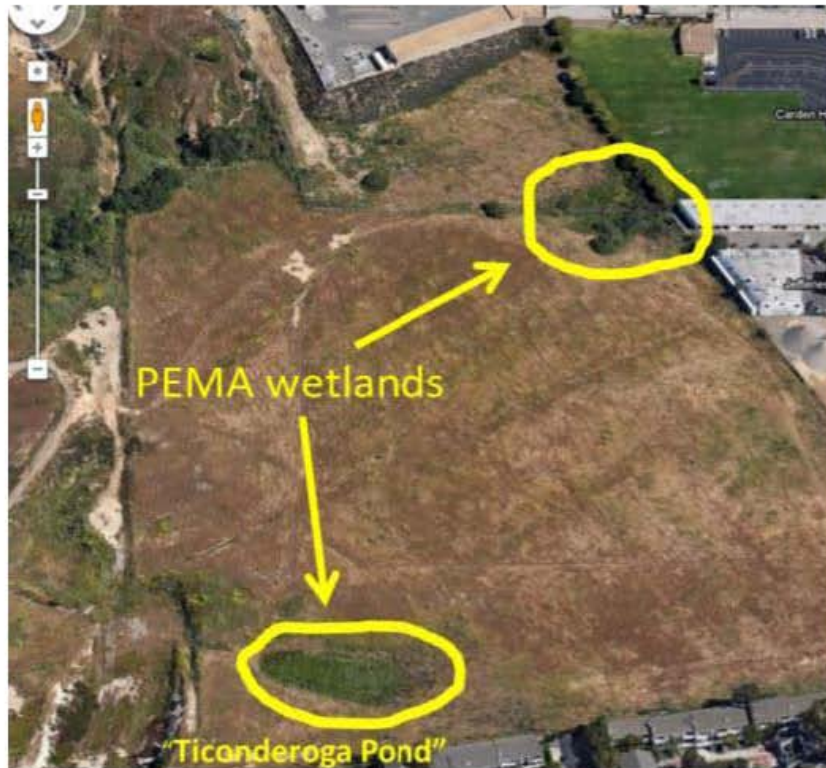
The results are as follows (from Biological Resources Appendage E, part 4 of the dEIR):

Soil Test Pit	Location	Plant species	Common Name	Absolute Percent Cover	Wetland Indicator Status ⁴	Passed Dominance Test	Passed Prevalence Test	Meets Hydrophytic Vegetation Criteria	Meets Hydric Soils Criteria	Meets Wetlands hydrology Criteria
15	Vernal Pool aka VP1	<i>Baccharis salicifolia</i> (vinea)	Mule Fat	10	FACW	Yes	Yes	Yes	Yes	Yes
		<i>Distichlis spicata</i>	Salt Grass	90	FACW					
		<i>Eremocarpus setigerus</i>	Turkey Mullen	<1	UPL					
		<i>Polypogon monspeliensis</i>	Annual Beard Grass	<1	FACW					
		<i>Heliotropium curassavicum</i>	Salt Heliotrope	<1	OBL					
16	Vernal Pool aka VP2	<i>Baccharis salicifolia</i> (vinea)	Mule Fat	5	FACW	Yes	Yes	Yes	Yes	Yes
		<i>Frankenia salina</i>	Alkali Heath	80	FACW					
		<i>Rumex crispus</i>	Curly Dock	<1	FACW					
		<i>Hemizonia fasciculata</i>	Fascicled Tarweed	2	UPL					
		<i>Polypogon monspeliensis</i>	Annual Beard Grass	<1	FACW					
47	Drainage D	<i>Salix lasiolepis</i>	Arroyo Willow	90	FACW	Yes	Yes	Yes	No	Yes
		<i>Carpobrotus edulis</i>	Hottentot Fig	20	UPL					

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cont.

Also, while the dEIR maps vernal pool/seasonal wetland #31 (referred to as #29 in *The Complete Banning Ranch Mesa Vernal Pools/Wetlands*, and described as "W" in the 2010/2011 Banning Ranch wet-season branchiopod report by GLA) as well as a similar feature near Carden Hall School, as *Palustrine Emergent* (PEMA) wetlands, the dEIR failed to do wetland delineation studies, claiming they do not "presently exhibit wetland characteristics." This is surprising, considering local residents have, for years (though it doesn't pond every year), been referring to vernal pool/seasonal wetland #31 as, "Ticonderoga Pond."

**Correspondence Item No. 2a
Banning Ranch Conservancy**



Palustrine Emergent (PEMA) wetlands , including vernal pool/seasonal wetland #31 (aka Ticonderoga Pond) which were mapped but not subjected to wetland delineation studies.

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cont.

**Correspondence Item No. 2a
Banning Ranch Conservancy**



"Ticonderoga Pond" (aka vernal pool/seasonal wetland #31). Photo from 12/30/10.

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cont.

a. Vegetation Studies are lacking

It should be noted that the dEIR is (with minor exception) extremely deficient in describing the specific vegetation in all of the vernal pools/seasonal wetlands studied. For example, in the fairy shrimp surveys the authors simply describe the vegetation in broad strokes such as, "Disturbed," or "Non-Native Grassland." One exception would be Vernal Pool/Seasonal Wetland #1 (aka VP1), where the dEIR authors do mention the occurrence of "*vegetation typical of vernal pools*," (specified in an earlier 2000 GLA report as dwarf woolly heads, water pigmy weed, and waterfern)

<http://banningranchconservancy.org/pdf/vpools/vernalpoolsurvey10-18-2000.pdf>

9

Correspondence Item No. 2a Banning Ranch Conservancy

The authors of the dEIR add that VP1 is, “dominated by mulefat and saltgrass.” It should be emphasized that the presence of mulefat and saltgrass (both considered FACW in the National Wetland Plan List) is indicative of hydrophytic vegetation.

Otherwise, specific vegetation surveys of the vernal pools/seasonal wetlands are essentially absent.

9
cont.

b. Hydric Soil studies are lacking

Again, other than a minor exception involving vernal pools/seasonal wetlands #1, #2, and #54, no specific studies of hydric soil indicators has been undertaken in any of the 54 vernal pools/seasonal wetlands on the Banning Ranch mesa. In the case of vernal pools/seasonal wetlands #1 and #2, the hydric soil indicator criteria was met for both #1 and #2 with prominent mottles characteristic of “redox depressions” (Hydric soil indicator F8) and they were both classified as “vernal pools” (Hydric soil indicator F9).

10

c. Importance of Fauna

In the case of vernal pools, fauna can also be used as indicators, and their use is essential in establishing the presence of vernal pools and seasonal wetlands. Federally-listed species such as the San Diego fairy shrimp are well described as indicator species for vernal pool determination, while other fairy shrimp, such as the versatile fairy shrimp, have a strong association with vernal pools and can be, in some cases, considered indicators (California Department of Fish and Game list of Vernal Pool Flora and Fauna).

<http://www.cramwetlands.org/documents/Vernal%20Pool%20CRAM%206.0%20Appendix%201%202012-02-29.pdf>

The presence of fairy shrimp, ostracods and other aquatic invertebrates are also considered to be primary Wetland Hydrology Indicators (B13) that meet the Hydrology criteria used in establishing wetland presence.

11

The authors of the dEIR, perhaps in an attempt to dismiss the wide distribution of the branchiopods in the vernal pools/seasonal wetlands of the Banning Ranch mesa, put forward that, “Fairy shrimp of their cysts can be transported from one ponded area to another by water fowl, car tires, or the bottom of animal and human feet.” This statement distracts from the fact that fairy shrimp (both San Diego and versatile) are considered to be vernal pool “obligates” that spend their entire life cycles in one vernal pool (ET Bauder, *et al*).

<http://www.bio.sdsu.edu/pub/andy/vernalpools/index.html>.

Correspondence Item No. 2a Banning Ranch Conservancy

The presence of adults assumes that cysts from a previous year were present in the same location, which, in turn, assumes that adults from a previous generation were present prior to this, and so on.....

Other fauna such as Ostracods (seed shrimp), Cladocera (water fleas), and pollywogs, all of which have been unofficially documented on the Banning Ranch mesa, are also associated with vernal pools/seasonal wetlands.

The fact that these species have adapted, over thousands of years, to the arid climate, and years of drought, of the Southern California coastal ecosystem, cannot be overemphasized. Fairy shrimp cysts have been reported to be able to survive a decade or more. The Banning Ranch mesa vernal pools/wetlands can go several years without ponding or even soil saturation and still be considered important ecosystems worthy of preserving if for no other reason than they are the only remnants of this ecosystem.

11
cont.

7. Conclusions

Protocol fairy shrimp studies should be performed on all vernal pools/seasonal wetlands of the Banning Ranch mesa. There is a very strong possibility that **The Additional 27** vernal pools/seasonal wetlands will show similar results as **The Original 27** after protocol studies. And most of **The Original 27** need another round of surveys to adequately exclude the San Diego fairy shrimp consistent with USFWS guidelines. So far only four vernal pools/seasonal wetlands (#3, #5, #29, and #32) have been satisfactorily excluded for the San Diego fairy shrimp.

Please see table at the end of this report describing the fairy shrimp survey results for each vernal pool/seasonal wetland of the Banning Ranch mesa.

In addition, full wetland delineation studies, including evaluation for field indicators of wetland hydrology, hydric soils, and hydrophytic vegetation, should be performed on the remaining 51 vernal pools/seasonal wetlands of the Banning Ranch mesa. It should be emphasized that VP2 is typical of the more disturbed vernal pools/seasonal wetlands of the Banning Ranch mesa in that it occurs near a service road and near oil well pads *yet it still meets all three criteria (wetland hydrology, hydric soil, and hydrophytic vegetation) for establishment of wetland presence*. If VP2 meets all three criteria, then there is a very good chance that most of the other vernal pools/seasonal wetlands of the Banning Ranch mesa would do the same. So far, three of the vernal pools/seasonal wetlands (#1, #2 and #54) have met the criteria for wetland presence and none of the remaining 51 have been studied or have been excluded as wetlands.

12

**Correspondence Item No. 2a
Banning Ranch Conservancy**

Special focused efforts will be needed in cases where the vernal pools/seasonal wetlands have been intentionally disturbed.



Vernal Pool/Seasonal Wetland #23 before and after disturbance

Watersheds for these Vernal Pools/Seasonal Wetlands must also be identified and protected. Although vernal pools/seasonal wetlands acquire most of their water from direct precipitation, adequate watersheds, with appropriate buffers, will also have to be established.

8. Chart of fairy shrimp survey results.

12
cont.

13

**Correspondence Item No. 2a
Banning Ranch Conservancy**

	Banning Ranch Conservancy (from <i>Complete Banning Ranch Mesa Vernal Pools/ Wetlands</i>)	Glenn Lukos Associates (GLA) nomenclature	1 st wet season survey results (all 2011 unless specified)	2 nd wet season survey results	Dry season results	San Diego Fairy Shrimp excluded per protocol (<u>Two</u> wet season surveys or one wet season <u>and</u> one dry season survey by certified biologist)
1	1	VP1	San Diego (2000)			N/A
2	2	VP2	San Diego (2000)			N/A
3	3	D	Versatile (2000)	No shrimp (2011)		Yes
4	4	C	Versatile			No
5	5	B	Versatile (2010)	Versatile (2011)		Yes
6	6	School Property				No
7	7	F	No shrimp			No
8	8	I	San Diego			N/A
9	9	J	San Diego			N/A
10	10	K	No shrimp			No
11	11	M	Versatile			No
12	12	P	Versatile			No
13	13	R	Versatile			No
14	14	H	No shrimp			No
15	15	L	No shrimp			No
16	16	N	Versatile			No
17	17	E	San Diego			N/A
18	18	O	No shrimp			No
19	19	Q				No
20	20	T	Versatile			No
21	21	S				No
22	22	U				No
23	23					No
24	24a	Depression 2 (2000)	Versatile (2000)			No
25	24b	Depression 3 (2000)	Versatile (2000)			No
26	25					No
27	26					No
28	27	Depression 1 (2000)	Versatile (2000)			No
29	28a	V	Versatile (2010)	No shrimp (2011)		Yes
30	28b					No
31	29	W	No shrimp			No

13
cont.

**Correspondence Item No. 2a
Banning Ranch Conservancy**

32	30a	A	Versatile (2008)	Versatile (2009)		Yes
33	30b					No
34	31					No
35	32	AD3	San Diego			N/A
36	33					No
37	34					No
38	35					No
40	37					No
41	38					No
42	39					No
43	40					No
44	41					No
45	42					No
46	43					No
47	44					No
48	45					No
49	46	G	San Diego			N/A
50	47					No
51	48					No
52	49a					No
53	49b					No
54						No

13
cont.

Notes on Vernal Pools/Seasonal Wetlands

6. Though there is no fence, and the vernal pool/seasonal wetland almost straddles the property line, #6 is technically located on adjacent Newport Mesa Unified School District Property

35. Referred to as AD3 in the 2010/2011 GLA study, this vernal pool/seasonal wetland was not mentioned in the *Complete Banning Ranch Mesa Vernal Pools/ Wetlands*. It was subsequently placed in slot 32.

49. Referred to as G in the 2010/2011 GLA study, this vernal pool/seasonal wetland was not mentioned in the *Complete Banning Ranch Mesa Vernal Pools/ Wetlands*. It was subsequently placed in slot 46.

54. This wetland was not mentioned in the the *Complete Banning Ranch Mesa Vernal Pools/ Wetlands* but was described as "Drainage D" in the dEIR. It now occupies slot 54.

Correspondence Item No. 2a
Terry Welsh, Banning Ranch Conservancy
June 15, 2012

Response 1

The City disagrees with the assertion of the commenter. Responses in support of this position are provided below.

Response 2

While there is potential for vernal pools to have occurred on the Newport Banning Ranch (NBR) site historically, none of the 50+ features identified by the Banning Ranch Conservancy (Conservancy) are extant vernal pools with the possible exception of one feature (Vernal Pool A). The following is a summary of the features:

- Oil Well Pads – 8
- Asphalt Roads – 2
- Dirt Roads – 5
- Combination of Asphalt and Dirt Roads – 5
- Deep Tire Ruts – 2
- Gravel Equipment Storage Areas – 2
- Oil Sumps – 3
- Bulldozer Scrapes/Borrow Areas – 5
- Areas Created by Excavation and Berming – 3
- Pits Created for Oil Field Repairs – 4
- Soil Remediation or Stockpile Areas – 6
- Remnant of historic drainage – 1
- Former Baseball field – 1
- Other grading activities – 3
- Apparent natural depression (Vernal Pool A)

While the San Diego fairy shrimp has been identified on the site, none of the features occupied by this species are natural vernal pools. This is not surprising as it is recognized that this species has been known to occur in unnatural features. On the Project site, the San Diego fairy shrimp occurrences are as follows:

- Former Baseball Infield – 1
- Well Pad – 1
- Oil Sump – 2
- Bulldozer Scrape above Active Pipeline – 1
- Excavated and Bermed Pools – 2

The Applicant is currently working closely with U.S. Fish and Wildlife Service (USFWS) to develop a program that includes both avoidance and habitat restoration to ensure that the

project provides adequate conservation and long-term persistence of the San Diego fairy shrimp on the site through the Section 7 Consultation process.

The Draft EIR Biological Technical Report identifies the presence of Critical Habitat for the San Diego fairy shrimp on the Project site. It is important to note that an area designated as Critical Habitat for any species listed by the USFWS is not the same as an area occupied by the species. An example of this can be found in the evaluation of vegetation types within the 13.63 acres of Critical Habitat of Subunit C on site. A total of 4.19 of the 13.63 acres contain dirt/gravel/asphalt roads, oil operation facilities, or ornamental vegetation. This represents approximately 31 percent of Subunit C on site that does not support the Primary Constituent Elements (PCEs). The USFWS has acknowledged that some areas of Critical Habitat contain non-PCEs, "Where possible, the boundaries of final critical habitat have been refined to remove lands containing features such as roads, buildings, and other infrastructure that do not contain the PCEs; however, it was not possible to exclude all such areas from the designation"¹.

The commenter references the vernal pools at Fairview Park along with those at the Project sites as the only pools in Orange County that support the San Diego fairy shrimp. This is not a true statement. Rancho Mission Viejo in south Orange County contains two complexes (Chiquita Ridge and Radio Tower Road) that support the San Diego fairy shrimp.² Also, caution must be taken in making any comparisons between the Project site and the vernal pools at Fairview Park, the latter which are high quality, generally pristine vernal pools that support a high number of vernal pool endemic plant species, some of which are the only known occurrences in Orange County. The vernal pools at Fairview Park are associated with heavy clay soils of the Cropley series while the mesa at Newport Banning Ranch is Myford sandy loams. Myford sandy loams are less likely to pond water (except in excessive rainfall years as noted above) resulting in only occasional ponding which is consistent with the finding that these cannot be wetlands due to lack of hydrology in most years.

Response 3

The commenter correctly notes in regard to vernal pools on the Project site that they are "No longer present on a pristine coastal mesa, the vernal pools/seasonal wetlands are now next to oil wells/platforms, service roads, and other oil features". As noted above, the features that the commenter describes as vernal pools are in reality exactly as described: well pads, oil sumps, roads (including asphalt roads), and low areas created during the many decades of oilfield operations (see above). The features are neither vernal pools nor seasonal wetlands.

Vernal pools/seasonal wetlands cannot be "now on top of buried asphalt parking lots" as stated by the commenter. This statement is not consistent with the science that describes how vernal pools are formed or their hydrological function.

Response 4

The Draft EIR's analysis and relevance of the 2009/2010 and 2010/2011 rainfall years was scientifically proper and accurate. The commenter's treatment of "normal" rainfall is flawed and misleading. First, the commenter uses the wrong rainfall data. The appropriate data is derived from the County of Orange Costa Mesa Station 219 and the 50-year average is 10.09 inches not 13 inches. The determination of "normal" is also incorrect. For wetland delineation purposes, the USACE's WETS methodology considers normal to be within one quartile of the mean (10.09 inches). When applied to Project site, it is clear that the rainfall years of 2009/2010 and

¹ <http://www.gpo.gov/fdsys/pkg/FR-2007-12-12/pdf/07-5972.pdf#page=1>

² *ibid*, p 70669.

2010/2011 were well above normal at 158 percent and 189 percent of the mean, respectively. Even more importantly, the commenter quotes from page 95 of the Arid West Supplement Version 2.0, which states that hydrology determinations should only be made based on periods when the antecedent rainfall was normal or below. The model airplane flight that documented ponding in early 2010 was based upon late storms in January that resulted in 313 percent of normal rainfall for January 2010. The mapping performed in late December 2010 was even more egregious in ignoring proper methodology; December 2010 exhibited 647 percent of normal rainfall and this followed an October which exhibited approximately 928 percent of normal. As of December 31, 2010, rainfall for the year was 434 percent of normal. Use of the rainfall data from 2009/2010 and/or 2010/2011 for making a wetland determination is inconsistent with the Arid West Supplement Version 2.0.

Given the origin of the features and the extreme rainfall conditions that created ponding in areas that only pond during extreme events, assertions that there are wetland areas previously missed (either purposefully or inadvertently) is not credible.

Response 5

As already noted, none of the features identified by the Conservancy are vernal pools (with the possible exception of Vernal Pool A) or seasonal wetlands; rather, the features include a variety of oilfield features catalogued by type in the prior response. As previously identified, the rainfall that resulted in ponding of these features was between 313 and 647 percent of normal, making any attempt to identify these features as wetlands erroneous and inconsistent with current wetland science.

Similarly, performance of fairy shrimp surveys for listed species such as the San Diego fairy shrimp for a large percentage of the features, such as paved parking areas, paved roads, pits excavated for pipeline repairs, oil well pads, dirt roads etc., which have been identified by the Banning Ranch Conservancy, was determined to be unnecessary based on previous years of fairy shrimp surveys and more recent visual examinations of each of the features as catalogued in response 2.

The commenter states that there was intent to hide from the public information regarding the presence of 27 of the features. This is incorrect. Best professional judgment was used in evaluating each of the features based on collaboration of Glen Lukos Associates (GLA) and BonTerra Consulting. It is very important to note that far from hiding features that have potential for supporting listed fairy shrimp, the EIR analysis identifies listed fairy shrimp in two artificial features that were not included among the Conservancy's "original 27 features". Specifically Pool E, which was not identified by Conservancy during the January/February 2010 model airplane flyover was surveyed by GLA and substantiated by BonTerra Consulting in early 2011 as it appeared to exhibit at least minimal potential for the San Diego fairy shrimp and therefore subject to surveys. Similarly Pool G, which has never been identified by the Conservancy's mapping was also surveyed and found to contain the San Diego fairy shrimp. The surveys efforts focused on features that were determined (based on years of experience) to exhibit at least minimal potential for supporting listed species.

It is also important to note that the USFWS examined four of the features identified by the Conservancy in conjunction with the Sunset Ridge Park project. Specifically, after examining BRC Pools 34, 35 and 36, the USFWS determined that the features were not vernal pools and did not exhibit potential for supporting the San Diego fairy shrimp. The USFWS did request dry-season surveys for BRC Pool 39, which were conducted. The survey indicated that the feature does not support any listed fairy shrimp or even the common versatile fairy shrimp, providing

further corroboration of the accuracy of findings regarding the suitability of many of the purported vernal pool/seasonal wetlands on the site.

Based on these visual surveys, none of the 27 features, which have not been subject to fairy shrimp surveys, were determined to exhibit habitat characteristics typically associated with the presence of the San Diego fairy shrimp.

Response 6

The commenter is correct that the presence of wetland hydrology can be driven by sources other than ponding (e.g., areas with groundwater in the upper 12 inches for a portion of the year). However, this is not the source of hydrology for any of the features that the Conservancy has incorrectly identified as vernal pool or seasonal pond wetlands. None of the features identified by the Conservancy occur within areas of high groundwater, as would potentially occur in the lowland portions of the Project site. The only water available for all of the various features identified by the Conservancy is from rainfall and surface runoff, and it is important to note that for such features, the Arid West Supplement Version 2.0 focuses the indicators for hydric soils in the upper six inches of the soil profile (see Indicator F8: Redox Depressions or Indicator F9: Vernal Pools). In both instances, indicators for hydric soils are in the upper six inches of the soil profile because the anaerobic conditions are created by surface ponding.

Furthermore, saturation at the soil surface is not sufficient for making a determination that hydric soils or wetland hydrology are present. First, the soils must become anaerobic for the area to be a wetland, and in many cases this takes far longer than 14 days. The USACE uses 14 days as a “surrogate” for such conditions as it is often the case that detailed monitoring is not possible. On the Project site, some of the features (e.g., Vernal Pool A) were checked for anaerobic conditions using alpha alpha dipyridyl in making wetland determinations and the area was found to lack anaerobic conditions in the soils profile consistent with the thresholds for hydric soil as set forth in the Arid West Supplement Version 2.0.

Second, many of the features identified by the Conservancy are not soil. Rather, they include asphalt and highly compacted dirt and gravel parking areas or roads that prevent water from reaching below the upper inch or two and as such do not meet the minimum definition for hydric soils, which requires a layer of at least four that exhibits anaerobic conditions. This is also true of many of the features that occur on well pads where the soils have been highly compacted.

Finally, it is important to reiterate that for any area to meet the minimum threshold for wetland hydrology (as the commenter rightly notes) an area must exhibit saturation in the upper 12 inches during most years and given that the ponding observations by the Banning Ranch Conservancy were made during periods of wetness ranging from 313- to 647-percent of normal, their claims lack credibility.

Response 7

Please refer to Response 5.

Response 8

As noted above, the Project site has been subject to years of study, including fairy shrimp surveys and wetland delineations that were conducted during normal rainfall years, and only as few features were identified that exhibit regular ponding (e.g., Vernal Pool A), which was identified during protocol fairy shrimp surveys in 2008 and was subject to both full protocol fairy shrimp surveys as well as a wetland determination (it was determined to not be wetland based

on the absence of reducing conditions when tested with alpha alpha dipyridyl). As noted, Vernal Pool A is the most “natural” depressional feature on the Project site and also supports vernal pool indicator plants such as woolly marbles, which otherwise uncommon on the site, occurs only in Vernal Pool 1, and Features I and J.

As previously discussed, with the exception of Vernal Pool A, none of the features identified by the Conservancy during the 2009/2010 and 2010/2011 rainfall seasons are natural wetlands, moreover vernal pools, having been identified during periods of rainfall that ranged from 313 to 647 percent of normal. To the extent that any of these other features pond water during normal rainfall years, they would still not be considered wetlands. For example, the commenter shows four features: 12, 16, 20, and 50 on two site photographs. It is important to note that the photographs were taken on April 15, 2012, one day following a storm event and at the end of a four-day period that accounted for nearly an inch of rainfall. By April 21, 2012, features 12 and 16 were dry. It is also important to understand that feature 12 is a soil remediation area; feature 16 is a slight depression in a largely gravel parking and equipment storage area. Feature 20 is a paved area within an access road. The area identified as #50 (a.k.a. 47) is the combination of oil well pad (the well was reconstructed less than two years ago) and an associated dirt access road. None of these areas is considered to be a wetland. The commenter also references the Ticonderoga Pool, noting that it does not pond every year; this statement is misleading. The pool only ponds water during extreme years such as the 2010/2011 rainfall season. It is not a wetland because it does not pond in most years.

Response 9

Examination of many of oil field features identified by the Conservancy following the substantial rainfall period of 2010/2011 found that even in the excessively wet year that many of the features supported a predominance of upland vegetation. For example, BRC features 34, 35, 36, and 39 were examined in connection with the City’s Sunset Ridge Park project, and each was determined to exhibit upland vegetation. As already noted, many of the features do not support vegetation as they occur on asphalt areas or dirt roads where vegetation is not established. Similarly, even following the substantial rainfall that resulted in ponding, the Ticonderoga Pool exhibited a predominance of upland plants during the early summer of 2011. Some of the features did support opportunistic non-native weedy species sometimes found in wetlands (e.g., rabbitsfoot grass or brass buttons); however, these species must be present in most years and must be present during periods of normal rainfall to be considered wetland plants as noted on Page 95 of the Arid West Supplement quoted by the commenter above. Other features support facultative species such as mulefat (*Baccharis salicifolia*, FAC), which has an equal chance of occurring in an upland area as in a wetland area and is not a reliable indicator of wetland conditions³.

Response 9

By definition, hydric soils can only occur in areas with wetland hydrology. As already noted above, some of the features lack soil, consisting only of asphalt, while other areas are highly compacted soils on roads and/or well pads. The general lack of hydrology (i.e., ponding for a minimum of 14 days in most years), precludes the presence of hydric soils for the features that do exhibit actual soils. Referring again to features 34, 35, 36, and 39, these features completely lack hydric soil indicators. It is expected that this is the case across the full suite of oil field features identified by the Conservancy.

³ U.S. Army Corps of Engineers. June 1, 2012. *National Wetland Plant List*.

Response 10

The commenter is correct the San Diego fairy shrimp is typically associated with vernal pools; however, as already noted, the San Diego fairy shrimp can occur in features that are not naturally-occurring vernal pools as long as the habitat is suitable. On the Project site, the pools with the highest levels of suitability are Vernal Pool 1 and Pools I and J, which are best described as grassland pools that unlike most of the features identified by BRC, exhibit at least some characteristics of vernal pools (e.g., native vernal pool plants).

Unlike the San Diego fairy shrimp, the versatile fairy shrimp (as its name implies) occurs in a wide range of habitat conditions as is clear by its occurrences on the Project site, where it occurs in road ruts, excavated pits, and well pads. It is common to find this species in road ruts, pits, and a wide variety of artificial ponding features and in no way can this species be described as a “vernal pool obligate”. Based on work within many hundreds of vernal pools and non-vernal pool ponding features in Southern California, it is the experience of GLA’s fairy shrimp biologists that this species is far more often than not, associated with non-vernal pool features such as road ruts, etc.

Another important point regarding the use of the versatile fairy shrimp as an indicator of wetlands is made very clearly by the commenter who notes that fairy shrimp cysts can survive a decade or more. This is well documented in the literature, and as such, the presence of fairy shrimp once every ten years would not be an wetland indicator as such events must occur in most years.

Similarly, the presence of the other aquatic invertebrates such as ostracods (seed shrimp) and cladocera (water fleas) which are more common and widespread than the versatile fairy shrimp, commonly occurring in road ruts and other artificial features, is not dispositive for the presence of wetlands for the same reason as described for fairy shrimp. The cysts of these species can lay dormant in the soil for many years between ponding events, emerging only during the rare years when ponding occurs. The fact that the Arid West Supplement uses these as a primary indicator for wetland hydrology takes into consideration the required presence of hydric soils and wetland vegetation as prerequisite to make such a determination.

Response 12

Regarding the need for additional fairy surveys and Table, see Response 5.

Regarding additional wetland studies, see Responses 6, 8, and 9.

Regarding VP2, the commenter makes an important point that needs to be addressed. As discussed in the responses above and in the technical studies submitted as part of the City’s CEQA process, GLA conducted detailed wetland delineation work and fairy shrimp surveys in 2000, 2007, 2008, and 2009, before the excessively wet years of 2009/2010 and 2010/2011. During these years of normal rainfall, VP2 exhibited regular ponding (it was not necessary to conduct additional surveys once the San Diego fairy shrimp was detected). Unlike nearly all of the features identified by the Conservancy, this feature ponds water in most years and as such meets the wetland hydrology threshold and also, given the regular ponding this feature has developed hydric soils. The commenter is not accurate in comparing this feature with the vast majority of features identified by BRC as it ponds in most years while the vast majority of the BRC features do not. Additionally, the Conservancy-noted features that do pond are features such as BRC 20 which is an area of asphalt in a roadway and BRC 50 (aka 47) which is a recently reconstructed and highly compacted oil well pad and associated road.

Regarding the reference to BRC 23, this feature is located on an oil well pad (decommissioned well # 231) within the active portion of the oilfield. Excavation was performed around this well and the resulting settlement appears to be the origin of the ponding. It is not a vernal pool and oilfield infrastructure remains in close proximity. Because this is a decommissioned well that will require final abandonment, ongoing maintenance on the well pad is still required.

Finally, the commenter notes that the “watershed” for each of the areas identified by the Conservancy as vernal pools/seasonal wetlands that need to be preserved. As clearly noted in the above responses, with the exception of the feature designated Vernal Pool A in 2008, none of the features are vernal pools and only Vernal Pools 1 and 2 are wetlands that require protection of the watersheds. Vernal Pool A and its watershed will be conserved as part of the Project's proposed open space. Other features that support the San Diego fairy shrimp would, as noted in response 2 above, be addressed as the Applicant works with the USFWS to develop a program that includes avoidance and habitat restoration to ensure that the Project provides adequate conservation and long-term persistence of the San Diego fairy shrimp on the site, including adequate watershed. The remaining various man-made oilfield features are not vernal pools or wetlands and would not be subject to preservation; their watersheds would not require protection.

Response 13

Please refer to Response 5.

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

June 18, 2012

Mr. Patrick Alford, Planning Manager
Community Development
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663



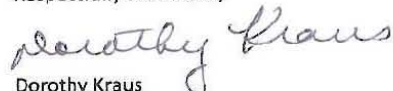
Dear Patrick,

An environmental consulting firm, Synectecology Inc., was engaged to conduct a review of the Newport Banning Ranch draft environmental impact report (DEIR) with a focus on air quality and noise. Please see enclosed report and resume for Mr. Todd Brody, Principal.

Mr. Brody's report reveals major discrepancies and defects in the Newport Banning Ranch DEIR. This is important information that needs to be carefully reviewed. Based on Mr. Brody's report, it would be in the best interest of the City and the public that the City rejects the Newport Banning Ranch DEIR. These discrepancies and defects need to be addressed in a revised environmental impact report, and re-circulated for public review.

Please incorporate these materials in the City's official proceedings related to the Newport Banning Ranch project and its successors.

Respectfully submitted,


Dorothy Kraus
10 Wild Goose Court
Newport Beach, CA 92663

Attachments

Cc: Honorable Mayor Nancy Gardner and Members of the Newport Beach City Council
Chairman Michael Lee Toerge, City of Newport Beach Planning Commission
Newport Crest HOA Board of Directors

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Correspondence Item No. 2b
Dorothy Kraus and Synectecology



Environmental Consulting Services

April 26, 2012

Due Diligence Review of the Banning Ranch Project DEIR

To Whom It May Concern:

Recognizing that the average citizen has neither the background nor technical expertise to adequately review the myriad of disciplines included in an Environmental Impact Report, Dorothy Kraus hired Synectecology to provide due diligence review of the noted project with emphasis on air quality and noise.

By way of introduction, Synectecology has been providing environmental consulting services since 1994. It's Principal, Todd Brody, has been working in the Environmental Consulting field since 1978 and Mr. Brody has prepared well over 600 environmental documents to date. Mr. Brody prepared air quality and/or noise analyses for several of these projects in the City of Newport Beach including, Dredging and Habitat Restoration of the Newport Back Bay, Improvements to Buck Gulley, The Realignment of Irvine Avenue, Mariner's Mile, Bay Island Sand Retention Wall and Bridge Refurbishment, Fletcher Jones Mercedes Benz, St. Marks Presbyterian Church, Olsen Homes Conversion from Industrial to Multi-Family Residential, and the Aerie Residential Project. Other relevant proximate projects include the restoration and development of the Bolsa Chica Wetlands area, improvements to the UCI Campus, and the proposed stadium at University High School. I've included my resume with this submittal.

With respect to air quality, we find that in many cases the air quality analysis extends construction well beyond the dates included in the project description thereby avoiding the indication of the potential impacts that are likely to ensue. We also find that the air quality analysis uses trip rates that differ from those provided in the Traffic Appendix thereby underestimating the number of daily trips and those emissions related to this travel.

With respect to the air quality modeling, we find that the Applicant bases the human health risk assessment and greenhouse gas emissions for the oilfield operations on the outdated URBEMIS model, but bases the construction and operation of the project on the current CalEEMod model. As we show through comment, the models use different parameters and defaults and predict different results that are not compatible. Furthermore, the health risk analysis overestimates the area for consolidated oil operations thereby underestimating the emissions concentrations and health risks associated with these operations. This is especially disturbing because human health risk should receive as high a priority as criteria pollutants, which may or may not manifest themselves miles downwind.

We also find that the Applicant does not adhere to the SCAQMD guidance for Localized Significance Threshold for construction emissions (or greenhouse gas emissions for that matter) leading to a claim of no significant impact where in fact using the correct methodology, one does exist. The analysis is also deficient in that it does not address the Localized Significance Thresholds for the operation of the consolidated oilfields with respect to the proximate existing and proposed land uses.

Finally, we find that much of the analysis is undocumented and because no input files are provided and only limited information was provided as to the construction and operation

2

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Correspondence Item No. 2b
Dorothy Kraus and Synectecology

parameters used in the model, the analysis is not replicable by an independent third party and these data will need to be provided prior to final review.

With respect to noise, again we find that only limited information is provided and much of the documentation to back the analysis is missing. For example, the Applicant took 15-minute noise reading and extrapolated them out to 24 hours with describing how the methodology was performed. Additionally, the vehicle mix used in the analysis does not match that of Orange County in general, nor does it follow Caltrans estimates, where applicable, and no rationale is provided as to how it was ascertained.

We also find that the noise associated with haul trucks may be underestimated due to an inconsistency in the document. Whereas the noise analysis estimates that no more than 20 trucks would visit the site on a daily basis, the traffic analysis puts this number as high as 200 trucks a day.

We also find that the mitigation does not go far enough. The Applicant is to provide the City of Costa Mesa with money for roadway improvements that the residents cannot be assured of. However, the mitigation makes no offer for sound insulation improvements that would go directly to the sensitive homeowners.

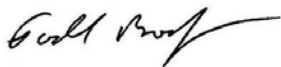
Furthermore, "temporary" construction carried out during regular business hours requires that residents be provided with sound walls when equipment comes to within 300 feet of the residence. But the text notes that consolidated oilfield operations (which use similar equipment and make similar noise levels except that they can go on 24-hours per day everyday for a week during drilling) could be within 250 feet of existing and 200 feet of future residents, and requires no sound walls. CEQA notes that the mitigation is to be commensurate with the impact and this on-going operational impact would obviously outweigh the temporary impacts of on-site construction.

We feel that the Applicant's incorporation of the included comments will result in a better, more defensible document. If you have any questions or need further information, don't hesitate to contact us.

2
cont.

Sincerely,

Synectecology



Todd Brody,

Principal

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

10232 Overhill Dr., Santa Ana, CA 92705

(714) 669-9799

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Synectecology

Environmental Consulting Services

Review of the Draft Environmental Impact Report Prepared for the Banning
Ranch Project

Prepared by:

Synectecology
10232 Overhill Drive
Santa Ana, CA 92705

Prepared For:

Dorothy Kraus
10 Wild Goose Court
Newport Beach, CA 92663

April 26, 2012

10232 Overhill Dr., Santa Ana, CA 92705

(714) 669-9799

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Review of the Draft Environmental Impact Reports Prepared for the Banning Ranch Project DEIR, September 9, 2011

SECTION 4.10, AIR QUALITY

General Comment: The Health Risk analysis bases the projected pollutant concentrations on a 20-acre site for the consolidated oilfield operations. However, Page 3-1 of the Project Description notes that the oilfield operations will be consolidated into a 16.5-acre area. Because emissions concentrations are based on a volume of emissions per unit area, decreasing the area to the 16.5-acre size noted in the Project description will raise the projected pollutant concentrations. Use of a 20-acre site decreases the projected concentrations by 21% (i.e., $(20 \text{ acres} / 16.5 \text{ acres} - 1 \times 100\%)$). Therefore, analysis not only underestimates the health risks at the proximate receptors, but also underestimates the extent of the risk on the surrounding population.

3

General Comment: The project data for the health risk assessment and construction-related greenhouse gas emissions was generated using the outdated URBEMIS model while the analysis for criteria pollutants and operational greenhouse gas emissions was based on the CalEEMod model. These models use different equipment assumptions; daily area graded, etc. and the results are not compatible. In fact, the Applicant responded to a comment by Allen Forster on the use of the models and specifically noted:

“BonTerra Consulting’s testing, confirmed through many contacts with SCAQMD, showed that CalEEMod predicts higher emission rates than URBEMIS for development projects in Orange County. Because CalEEMod is more conservative than URBEMIS, CalEEMod was used on the Newport Banning Ranch Project. Based on BonTerra Consulting’s testing of the model and continuing discussions with the South Coast Air Quality Management District (SCAQMD) about CalEEMod characteristics, the City is confident that there are no flaws in the model that would result in under-prediction of air quality impacts to sensitive receptors.”

4

So because the CalEEMod model is more conservative and predicts higher emissions, and does not result in “under-prediction,” we must assume that the health risk analysis is flawed in using the URBEMIS model and that those emissions are in all likelihood “under-predicted.” This then invalidates the health risk analysis, and for consistency and continuity, and so that the Decision Makers can make an informed decision as to the true potential of the health risk, it must be redone using the CalEEMod model.

General Comment: While the text notes that the project construction follows the schedule provided in the Project Description, the results of the model runs included in Appendix G show that this isn’t so. In fact, the construction schedule was extended by several years from the provided schedule just to reduce the daily emissions impacts.

5

For example, Table 3-3 of the Project Description shows that the Phase 1 construction of the models and homes would occur between 2/2016 and 9/2016, for a duration of just 7 months.

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

However, when one reviews the CalEEMod model results included in Appendix G, one finds that the construction of the models and homes runs from 2015 through 2017. The model heading pages included in Appendix G illustrating this point are included below:

Page 18 of 55, 3.5 Building Construction Phase 1 – 2015,

Page 20 of 55, 3.5 Building Construction Phase 1 – 2016, and

Page 22 of 55, 3.5 Building Construction Phase 1 – 2017,

So by artificially extending the construction schedule out from 7 months to 3 years, the Applicant has reduced the daily emissions by approximately 85 percent (i.e., $1 - (7 \text{ mo} / 48 \text{ mo}) \times 100\%$).

Similarly, for Phase 3, the Project Description notes that the construction of the models and homes would occur between 2/2020 and 9/2020, again for a duration of just 7 months. However, in this case the analysis extends the actual construction out over 5 years.

Once again, when one reviews the CalEEMod model results included in Appendix G, one finds that the Phase 3 construction of the models and homes runs from 2019 through 2023. The model heading pages included in Appendix G illustrating this point are included below:

Page 46 of 55, 3.10 Building Construction Phase 3 – 2019,

Page 48 of 55, 3.10 Building Construction Phase 3 – 2020,

Page 50 of 55, 3.10 Building Construction Phase 3 – 2021,

Page 52 of 55, 3.10 Building Construction Phase 3 – 2022, and

Page 54 of 55, 3.10 Building Construction Phase 3 – 2023,

In this case artificially extending the construction schedule out from 7 months to 5 years has the effect of reducing the daily emissions by 88 percent (i.e., $1 - (7 \text{ mo} / 60 \text{ mo}) \times 100\%$) grossly under-predicting the daily impacts.

So it would appear that instead of following the actual construction schedule, the analysis simply allocates the construction over the both the construction and occupancy period thereby artificially reducing the average daily emissions and leading to conclusions of no significant impacts where impacts will in fact occur. The analysis must be redone using the construction schedule projected in the Project Description and the impacts reassessed.

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cont

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

General Comment: The analysis does not include the dates/durations used in the construction phasing nor does it provide the input files used in the CalEEMod model. This makes replication of the results impossible and these data must be submitted for independent verification.

6

General Comment: While the Applicant fails to include the data used in the number of haul trips on a daily basis, review of the model output would suggest that no more than 1 or 2 trips per day are included. However, Page 142 of Appendix F, Transportation and Circulation, states that "Construction truck traffic will be limited to 16 trucks per hour between June 1 and September 1, and 25 trucks per hour at all other times of the year." Based on an 8-hour workday as is used in the Air Quality Analysis, this would then infer that 128 to 200 trucks per day could be used just in the remediation effort. The Applicant has failed to address the impact of the air quality emissions and health risk from diesel particulates associated with these 200 trucks per day that would visit the site, as well as the augmented level of construction equipment necessary to fill them.

7

General Comment: The project description indicates the use of subterranean parking. The air quality analysis is remiss in not considering the potential for elevated CO emissions within the proposed parking structures.

8

Page 4.10-7, 1st & 3rd Paragraphs: The analysis notes the use of the *outdated* URBEMIS model for calculation of dust and oilfield operational emissions to be used in the analysis of toxic air contaminants. However, Page 4.10-5, 3rd paragraph notes the use of the CalEEMod model for use in projecting criteria pollutants for construction and project-related operational emissions. Because the two models predict different particulate levels, the use of the two models leads to an inconsistency in the analysis. The analysis should be redone using the CalEEMod model in place of the dated URBEMIS model and the impacts reassessed.

9

Page 4.10-14, Table 4.10-5: There is really no explanation as to how the values provided in the table were prepared and the values would appear to be in error.

For example 1,3-butadiene shows 0.002453 pounds per hour and 0.5633 pounds per year. This then infers that this toxic air contaminant is emitted for 229.6 hours per year (i.e., $0.5633 \text{ lb/yr} / 0.002453 \text{ lb/hr} = 229.6 \text{ hr/yr}$).

But acetaldehyde shows 0.094807 pounds per hour and 0.2468 pounds per year. This then infers that this toxic air contaminant is emitted for just 2.6 hours per year (i.e., $0.2468 \text{ lb/yr} / 0.094807 \text{ lb/hr} = 2.6 \text{ hr/yr}$).

10

Finally, acrolein (2-propenal) shows 0.000001 pound per hour and 0.138261 pounds per year. This then infers that this toxic air contaminant is emitted for 138,261 hours per year (i.e., $0.138261 \text{ lb/yr} / 0.000001 \text{ lb/hr} = 138,261 \text{ hr/yr}$). It should be noted that there are only 8,760 hours in a year (i.e., 24 hours/day x 365 days = 8,760 hr/yr).

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Because these types of emissions are primarily associated with oilfield operations, it is logical that these pollutant species, as well as most of the other emissions in the table, would be based on a similar timeframe for release. Please explain these apparent discrepancies and correct the analysis as necessary.

10
cont.

Page 4.10-18, Table 4.10-6: The table notes an industrial threshold of 10,000 Mtons per year of CO₂e. However, the project is not industrial in nature but residential and commercial. The SCAQMD has a suggested threshold of just 3,000 Mtons per year of CO₂e for residential and commercial land uses, and this threshold should be used in the analysis. Note that this threshold is half the 6,000 Mtons per year of CO₂e used in the analysis of impacts. Please revise the analysis to use the appropriate threshold criterion.

11

Page 4.10-19, 5th Paragraph: The air quality analysis references Table 3-5 of Section 3 for the phasing plan. First, contrary to the text, there is no Table 3-5 (it is Table 3-3) in Section 3, so please correct the reference.

12

Next, again, contrary to the text, the schedule used in the air quality analysis does not match that included in Table 3-3. Because both equipment and vehicle emissions vary with the year, the air quality analysis is inherently incorrect by using the wrong dates. Please revise the EIR to use a consistent set of dates and time frames for all disciplines.

Page 4.10-20, 1st Paragraph: The analysis notes that it uses the URBEMIS model. That model is now outdated and the analysis should be done using the CalEEMod model. Revise the analysis accordingly.

13

Page 4.10-22, 2nd Paragraph: There is no basis for the 7-acre estimate nor does the Applicant supply justification for using this size area.

The actual area to be disturbed is to be based on the equipment used and the SCAQMD provides guidance as to how the acreage is to be allocated. The Applicant ignores this guidance and this then leads to an underestimate of the emissions' concentrations and their impacts.

Review of the CalEEMod model results show that the analysis allocates two excavators, one grader, one dozer, one scraper, and two track/loader/backhoes to the grading effort. The SCAQMD has provided a *Fact Sheet for Applying CalEEMod to Localized Significance Thresholds* and provides the following table. Furthermore, the SCAQMD specifically notes that this is "The maximum number of acres disturbed on the *peak day*" (emphasis added).

14

Equipment Type	Acres/8hr-day
Crawler Tractors	0.5
Graders	0.5
Rubber Tired Dozers	0.5
Scrapers	1

Correspondence Item No. 2b Dorothy Kraus and Synectecology

Other pieces of equipment (e.g., excavators, track/loader/backhoes) work in conjunction with those pieces that are more mobile so add little to the area of disturbance (e.g., an excavator sits in-place digging a hole and a loader moves dirt from a pile to a truck).

So based on the equipment listing provided in the CalEEMod model results, the daily area disturbed is not 7 acres as portrayed, nor even 5 acres as used in the analysis, but only 2 acres (i.e., 1 grader x 0.5 acre + 1 dozer x 0.5 acre + 1 scraper x 1 acre = 2 acres).

The SCAQMD makes it clear that this is the way in which the analysis is to be conducted and even provides the following example in the Fact Sheet:

“Example 1

A 15-acre development proposes to use one grader, one scraper, and one tractor for eight hours each during Site Preparation activities (the peak day in this case). As the maximum daily disturbed acreage for this equipment is 2 acres ($0.5 + 1 + 0.5 = 2$), the project proponent should compare the CalEEMod reported emissions against the 2-acre LST lookup tables.” Therefore, the analysis must be revised to comply with the prescribed SCAQMD methodology.

Using the prescribed SCAQMD methodology, Table 4.10-9 clearly shows that NO_x, PM₁₀, and PM_{2.5} would all be significant based on a 2- rather than 5-acre site as was used in the analysis. This then represents a previously undisclosed significant impact and no mitigation has been proposed to reduce its effects at receptor locations.

Furthermore, even if the Applicant can demonstrate that the use of Offroad2011 model, would show that Tier 3 equipment can reduce NO_x to less than the value included in the 2-acre LST lookup table (as is provided in the Topical Response to Comments), use of Tier 3 equipment does not control particulate matter associated with the exhaust, nor does it reduce the dust raised during construction activities and the impact remains significant and previously undisclosed.

Furthermore, this points to another flaw in the analysis. For some undisclosed reason, the Applicant assumes that 7 acres are graded on a daily basis, but according to the SCAQMD, only provides enough equipment to grade 2 acres per day. Therefore, to meet the desired timeframe, the listing of equipment, and their attendant emissions, must be augmented by a factor of 3.5 times (i.e., $7 \text{ acres} / 2 \text{ acres} = 3.5$), or the schedule will drag on 3.5 times longer than has been portrayed in the Project Description. Either way, the analysis needs to be revised accordingly.

Page 4.10-22, Table 4.10-9: In accordance with the SCAQMD data, the values presented for CO for 1- and 2-acre sites are incorrect and should be 647 and 962 pounds per day, respectively. While this does not change the outcome of the analysis, it shows an inattention to detail. Please revise the table accordingly.

Page 4.10-22, Table 4.10-9: The table shows maximum daily on-site emission of just 7 and 4 pounds for PM₁₀ and PM_{2.5}, respectively and notes that these values are below the

14
cont.

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Correspondence Item No. 2b
Dorothy Kraus and Synectecology

screening threshold. However, Table 4.10-7 clearly shows PM₁₀ and PM_{2.5} level of up to 48 and 13 pounds per day, respectively. These values are well above the 7 and 4 pounds quoted for PM₁₀ and PM_{2.5}, respectively, as well as the presented threshold values of 14 and 9 pounds per day, respectively. Because the text doesn't describe which of the emissions in Table 4.10-7 are produced on-site and should be counted toward the localized thresholds, the reader cannot make an informed decision as to the actual significance, or even the validity of the values presented in Table 4.10-9. In the interest of full disclosure, the text must clearly show which of these emissions are being considered. The Decision Makers will not review the technical appendix nor be expected to understand it.

16
cont.

Page 4.10-23, 2nd Paragraph: The dates noted of analysis based on projected occupancy do not agree with those presented in Table 3-3 of the Project Description and because emissions are based on the year analyzed, the analysis is in error. Revise the analysis to address the dates in the Project Description.

17

Page 4.10-25, Table 4.10-13: The table shows 17.8 pounds per day for PM₁₀ and 3.5 pounds per day for PM_{2.5}. In accordance with the text provided in the Health Risk Assessment included in Appendix G, these emissions are all produced on-site. From the Appendix:

"It was assumed in this inventory that operational emissions occur 8 hours per day, with the exception of oil rigs that operate 24 hours per day. All on-road vehicles, mainly vacuum trucks, cement trucks, and crew trucks/vans were assumed to travel a maximum of five (5) miles per on-site trip on unpaved roads."

Also,

"The emission sources included in the inventory were natural gas fuel combustion for building heat and hearth fuel (winter only), landscaping equipment fuel combustion, consumer products and architectural coating. It was assumed that the portion of the trips generated by the development that occurs on the Proposed Project site is 1 mile round trip for residential trips and 0.2 miles round trip for commercial trips. The remaining length of trips generated by residential and commercial buildings is assumed to occur off-site and was therefore not included in the HHRA."

18

As noted, these are operational emissions that are all produced on-site. Many of the oilfield operations would be consolidated into two common areas increasing the emissions concentration in those and their surrounding areas.

Because these are localized emissions generated on-site, they are subject to the SCAQMD Localized Threshold Limitations for project operations and the analysis is deficit for not examining the impact of these localized emissions on both the proposed sensitive land uses, as well as proximate off-site receptors.

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Furthermore, in this case because the emissions are on-going operational, rather than construction-oriented, the significance thresholds for PM₁₀ and PM_{2.5} are reduced from 10.4 µg/m³ to just 2.5 µg/m³. In this case a 5-acre site, as was erroneously used elsewhere in the analysis, would be significant for PM₁₀ if just 4 pounds were produced on a daily basis. PM_{2.5} would be significant if just 2 pounds were produced on a daily basis. Again, Table 4.10-13 shows that on-site PM₁₀ and PM_{2.5} values are 17.8 and 3.5 pounds per day, respectively. These values are well above the SCAQMD Localized Threshold Limitations for project. This then represents a previously undisclosed impact that has not been addressed nor mitigated.

18
cont.

While it is conceded that based on the size of the site, some of these on-site emissions would not contribute substantially toward elevated concentrations in any one area, it is up to the analysis to aggregate the on-site oilfield emissions and any proposed sources as appropriate, and address the localized emissions at all existing and proposed sensitive receptor sites to show otherwise. This analysis has not been performed.

Page 4.10-27, 2nd Paragraph: While the SCAQMD may have different thresholds for construction and operation, based on the simultaneous timing and proximity of phased construction with the ongoing operational development, the combined impact of construction and operation would represent a significant cumulative impact that must be disclosed. Please revise the analysis as necessary.

19

Page 4.10-28, 2nd Bullet: The text notes that the Sacramento Metropolitan Air Quality Management District methodology would only be applicable if “The intersection, which includes a mix of vehicle types, is not anticipated to be substantially different from the County average.” In this case the “County” represents Sacramento County and not Orange County. To use the Sacramento County screening methodology, the Applicant must therefore demonstrate that the vehicle mix in Orange County is similar to that in Sacramento County. This has not been done and therefore, the Applicant is remiss in using this methodology without validation.

20

In actuality, the Applicant should be modeling these intersections using the CALINE4 Model as is suggested by the SCAQMD, and not SMAQMD screening methodology for intersection analysis.

Page 4.10-30, 2nd Paragraph: The analysis uses a distance of 100 meters from the fence line for sensitive receptors. SCAQMD methodology requires that the proximate receptors be modeled at a distance of 25 meters. Revise the analysis accordingly.

21

Page 4.10-32, 3rd Paragraph: The analysis fails to consider any odor impacts associated with the remediation of the site and disposal of contaminated soils. To simply say these odors are “not anticipated” is not adequate assurance. Please address this potential impact.

22

APPENDIX G

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

HRA

Page 2-7, 4th Paragraph: The analysis makes use of data from the San Diego area when more proximate data is available. The analysis should use the most representative data proximate to the project area.

} 23

Page 5-1, 6th Paragraph: The Tier 1 analysis is based on a receptor distance of 100 meters. However, Figure 4-3 would appear to include proposed receptors located more proximate than this distance. The SCAQMD recommends a minimum distance of just 25 meters when the actual distance to proximate receptors is unknown or closer than this distance. Obviously, a closer receptor would experience a higher pollutant concentration so Tier 1 methodology would not apply to any receptor closer than 100 meters. Please revise the analysis accordingly.

} 24a

ATTACHMENT A, TAC EMISSIONS CALCULATIONS

General Comment: The analysis would appear to include those emissions from the equipment and vehicles used in the oilfield operations as well as those produced by the proposed on-site uses. The analysis also notes that it includes air toxics included in the fugitive dust and hydrocarbon emissions associated with the oilfield operations. However, we find no calculations that present how the emissions generated from this fugitive dust and release additional hydrocarbon emissions were converted into the various toxic pollutant species. Please supply the missing calculations.

} 24b

Page 5-30, Table: The calculation used for both PM₁₀ and PM_{2.5} from on-site dust are in error and underestimate these emissions. The spreadsheet calculates PM_{2.5} using a value of 10% of the PM₁₀ (i.e., 3.511 for PM₁₀ and 0.351 for PM_{2.5}) for dust whereas the CalEEMod models put this value at approximately 54% of the PM₁₀ associated with construction.

Furthermore, Page 18 of 30, CALIFORNIA EMISSION INVENTORY AND REPORTING SYSTEM (CEIDARS), on which the analysis is based, puts these PM_{2.5} emissions at 21.2% of the PM₁₀ value.

Additionally, Page 17 of 30 puts PM_{2.5} at 16.9% of PM₁₀. (i.e., 0.00013774 / 0.00081571 x 100%).

However, the Applicant chose to use the least conservative of all the values included in the text of 10% (i.e., 0.070229 / 0.702286 x 100%) as shown on Page 20 of 30. Still, even the values predicted by this method for both PM₁₀ and PM_{2.5} are in error and are too low.

The amount of dust kicked up is a function of the silt content on the road. The analysis assumes, without providing any reason or justification, a silt content of just 2%. However, AP-42, from where the calculations are derived, does provide guidance and suggests a mean value of 8.5% for silt at construction sites. Use of the 8.5% value would

} 25

Correspondence Item No. 2b

Dorothy Kraus and Synectecology

directly raise both the PM₁₀ and PM_{2.5} emissions by 425% (i.e., 8.5% / 2% x 100%). Please revise the analysis accordingly.

25
cont.

Page 1 of 22, Newport Banning Ranch Proposed Project Residential and Commercial Development, Criteria, Greenhouse Gas, and Toxic Air Emissions: The table calculates greenhouse gases using the outdated URBEMIS Model. The CalEEMod model that replaced the URBEMIS model includes many greenhouse gas sources (e.g., energy use, water conveyance, vegetation CO₂ sequestering) that are not addressed in the URBEMIS model. The analysis must be redone using the CalEEMod model as was used for the criteria pollutants.

26

Page 1 of 22, Newport Banning Ranch Proposed Project Residential and Commercial Development, Criteria, Greenhouse Gas, and Toxic Air Emissions: The emissions projected in the table and used in the Health Risk and Greenhouse Gas analysis differ from those included in the criteria pollutant analysis and the Decision Makers have no way of knowing which is more accurate.

We have prepared a table showing the emissions used in the two analyses. *Note that contrary to what has been stated by the Applicant that the CalEEMod Model is more conservative than the URBEMIS model, the URBEMIS model actually predicts higher CO and particulate levels than the CalEEMod model.*

Furthermore, based on the URBEMIS model, the project would also be significant for PM₁₀ (168.1 pounds per day reported with URBEMIS and 125 pounds per day reported from CalEEMod). *Of course these differences could also be that the health risk assessment is not using the same set of assumptions as the analysis of the criteria pollutants, and again, the results are not comparable.*

The document needs to be revised so that all modeling is done using the same model, where applicable, so that the analysis is internally consistent.

27

URBEMIS VS CALEEMOD Model Results, Project Operations						
Criteria Pollutants	CO (lbs/day)	VOC (lbs/day)	NOx (lbs/day)	SOx (lbs/day)	PM ₁₀ (lbs/day)	PM _{2.5} (lbs/day)
URBEMIS Values Used in Health Risk and Greenhouse Gas Analyses						
Residential and Commercial	34.63	76.21	26.32	---	0.74	0.73
Vehicles	676.76	67.43	78.94	1.00	167.33	32.38
Total	711.4	143.6	105.3	1.0	168.1	33.1
SCAQMD Threshold	550	55	55	150	150	55
Exceeds Threshold?	Yes	Yes	Yes	No	Yes	No
CalEEMod Year 2023 Values Presented in the DEIR Analysis						
Area Sources	115	48	1	<0.5	2	2
Energy Sources	5	1	11	<0.5	1	1

Correspondence Item No. 2b

Dorothy Kraus and Synectecology

Vehicles	463	146	97	1	121	6
Total	583	195	110	1	125	9
SCAQMD Threshold	550	55	55	150	150	55
Exceeds Threshold?	Yes	Yes	Yes	No	No	No
Difference (CalEEMod – URBEMIS)	<128.4>	51.4	4.7	0	<43.1>	<24.1>

27
cont.

Page 14 of 22, URBEMIS Model Input: The text notes that the analysis is based on 12,096 average daily trips (ADT). The analysis specifically states that the project would generate 14,447 daily trips, but the value is reduced to 12,096 ADT to account for the “internal capture.”

However, Page 25, Table 2 of the Traffic Appendix F shows that the project would generate 16,115 ADT and with internal capture and pass-by trips, the value is reduced to 14,989 ADT. Thus, based on the traffic analysis, the air quality analysis is underestimating mobile source emissions by approximately 20 percent and the analysis is in error. The EIR needs to be revised so that all disciplines are based on the same set of assumptions.

28

Page 1 of 5, SCREEN3: The analysis bases the projected concentrations on a 20-acre site. However, Page 3-1 of the Project Description notes that the oilfield operations will be consolidated into a 16.5-acre area. Because emissions concentrations are based on a volume of emissions per unit area, decreasing the area from 20 acres to the 16.5-acre size noted in the Project description will raise the projected pollutant concentrations. Use of a 20-acre site decreases the projected concentrations by 21% (i.e., $(20 \text{ acres} / 16.5 \text{ acres} - 1) \times 100\%$) over those of a 16.5-acre site. The analysis then not only underestimates the health risks at the proximate receptors, but also underestimates the extent of the risk on the surrounding population.

29

Page 1 of 5, SCREEN3: The analysis places the closest receptor at a distance of 500 meters (1,640 feet) and takes the analysis out to 2,000 meters (6,560 feet) from the oilfield activity. Receptors would be located considerably closer than the reported 500-meter minimum distance and the concentrations, and cancer burden, will be far greater than presented in the analysis at the proximate receptors. In accordance with SCAQMD methodology, the closest receptors are to be located at a distance of 25 meters (82 feet) and the analysis needs to be revised to address this minimum distance, or at least the actual distances to existing and proposed receptor locations.

30

Page 14 of 22, URBEMIS Model Input: The Applicant has grossly underestimated the area of construction leading to erroneous equipment use and emissions values. The analysis uses the following values and therefore assumes that 118.5 acres of the site are disturbed.

31

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Use	Assigned Acreage
Condo/Townhouse High-rise	21.0
Tonwhomes/Condos	19.5
Single-family	63.0
Hotel	11
City Park	25
Strip Mall	No acreage allocated
Total	118.5

31
cont.

However, Table 3-3 on Page 3-39 of the Project Description clearly shows that 154.3 acres are dedicated to improvements. Furthermore, the table shows 246.8 acres associated with the oilfield, much of which will need remediation. As such, the analysis of construction emissions for grading clearly underestimates the brunt of the impact and needs to be revised to fit the Project Description.

Page 16 of 22, URBEMIS Model Settings: While Page 14 of 22, URBEMIS Model Input *noted* that the analysis is based on 12,096 ADT, (reduced from 14,447 daily trips), the analysis actually uses a value of 13,323 ADT as shown on this page. Again, this demonstrates an inattention to detail.

32

CalEEMod Modeling Results (1st Set)

General Comment: The Applicant has failed to include the “input files” for all CalEEMod model runs and the CalEEMod model results do not report most of the input parameters (e.g., volume of soil hauled on a daily basis) used in the analysis. This then makes independent verification of the model result impossible to duplicate. The input file must be included for review and consistency with the project description prior to finalization of the document.

33

Page 7 of 55, Mitigation Measures for Construction: Again, the analysis fails to quantify those measures used in the mitigation (i.e., assumed control efficiency) and these results are not reported by the model. The Applicant must clearly list the assumed mitigation measures and their control efficiency so that they may be verified.

The analysis requires the use of Tier 3 (and where feasible, Tier 4) equipment and to implement the mitigation the CalEEMod analysis specifies “Use cleaner engines for construction equipment” and “Use DPF (diesel particulate filters) for construction equipment.” The analysis then fails to quantify the assumed reduction for the “cleaner engines” and the model output does not report these values for independent verification.

34

Furthermore, Tier 3 engines control the NOx and ROG associated with heavy equipment, but not the diesel particulates. Use of the DPF mitigation without specifically calling out the requirement for DPF as a mitigation measure in the document underestimates the impacts of the diesel particulate matter (DPM). We’ve reproduced the SCAQMD table showing the emissions associated with the various Tiers below. Again note that Tier 3 emissions require similar levels of DPM as Tier 2. Because the mitigation did not specify

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

the use of diesel particulate filters, no credit may be taken for their use, though the analysis apparently has done this thereby underestimating these emissions and the impact.

TABLE II – OFF-ROAD ENGINE EMISSION RATES & COMPARISON OF UNCONTROLLED TO TIERED RATES AND TIERED TO TIERED RATES													
TABLE II-B													
TIER 1,2,3, AND 4 OFF-ROAD ENGINE EMISSION STANDARDS													
Engine	Tier 1 (g/bhp-hr)			Tier 2 (g/bhp-hr)			Tier 3 (g/bhp-hr)			Tier 4 (g/bhp-hr)			
Size (hp)	NOx	ROG	PM	NOx	ROG	PM	NOx	ROG	PM	NOx (interim)	NOx (final)	ROG	PM
75-99	6.9			5.32	0.28	0.3	3.325	0.175	0.3	2.5	0.3	0.14	0.015
100-174	6.9			4.655	0.245	0.22	2.85	0.15	0.22	2.5	0.3	0.14	0.015
175-299	6.9	1	0.4	4.655	0.245	0.22	2.85	0.15	0.22	2.5	0.3	0.14	0.015
300-600	6.9	1	0.4	4.56	0.24	0.22	2.85	0.15	0.22	2.5	0.3	0.14	0.015

34
cont.

CalEEMod Modeling Results (2nd Set)

Page 2 of 11: The Applicant has unrealistically augmented the construction schedule thereby avoiding the prediction significant impacts. This phase includes the construction of just 228 dwelling units. However, the analysis pushes the painting of these structures out to 545 working days (i.e., ArchCoat1 8/15/2015-9/15/2017; 545 wd). This is unrealistic (0.4 dwelling unit painted on a daily basis) and was obviously done to reduce the daily impact of the VOCs associated with painting the structures that is typically found to present a significant impact for a project of this magnitude.

The Applicant is aware that the CalEEMod default for painting of a project of this size is approximately 35 days. Therefore, by artificially extending the schedule out to 545 days reduces the daily emissions by 94% (i.e., 1 - 35 days / 545 days x 100%). Page 6 of 11 of this model results shows architectural coatings produce 5.3 pounds per day during construction. If the CalEEMod default value of 35 days is used in the analysis, as should have been done, these emissions are augmented to 82.5 pounds per day (i.e., 5.3 lb/day x 545 days / 35 days = 82.5 pounds per day). It should be pointed out that the daily threshold for this pollutant is 75 pounds per day as shown in the table on Page 4.10-21 of the air quality analysis and this represents another previously undisclosed significant impact of the project for which no mitigation has been proposed. Similarly, this same artificial augmentation was performed with the other phases of construction leading to erroneously low daily emissions and all need to be corrected.

35

CalEEMod Modeling Results Buildout 060911

Page 5 of 52, Mitigation Measures: The analysis notes that the Applicant will water exposed surfaces but fails to quantify the efficiency of the mitigation for independent verification and the model does not output this parameter. All assumptions (e.g., days

36

Correspondence Item No. 2b Dorothy Kraus and Synectecology

spent in each type of construction activity such as grading, building construction, painting, etc. must clearly be noted so that the analysis may be replicated by an independent third party.

36
cont.

CalEEMod Modeling Results Phase 2 Operations

Page 2 of 9: The text notes that the analysis fails to include the ongoing release of ROG emissions associated with the maintenance of paints and coatings thereby under-predicting operational ROG emissions. Inclusion of these emissions could increase the 50.71 pounds per day for ROG, presented on Page 3 of 9, above the 55 pound per day threshold presenting a significant impact. These emissions must be included in the inventory to determine the significance of the impact. Revise the analysis accordingly.

37

CalEEMod Modeling Results Buildout 062411

Page 5 of 10: The analysis estimates that the project generates 32,228.6 vehicle trips per day. However, Page 25, Table 2 of the Traffic Appendix F shows that the project would generate 16,115 ADT and with internal capture and pass-by trips, the value is reduced to 14,989 ADT. We recognize that the Applicant has “chopped up” these trips to determine both on-and off-site trips in the emission calculations. However, the Applicant has provided no guidance as to how these trips were allocated making the analysis irreproducible. Please supply the missing conversion data for all model runs.

38

Page 8 of 10: The Applicant specifies the use of low VOC paints and coatings. VOC content in paints and coatings is regulated by the SCAQMD. If the Applicant has used the model default values, then these are not “low VOC” coatings as indicated, but just coatings that comply with the SCAQMD regulations and should not be called “low VOC.” If the Applicant is truly specifying the use of “low VOC” coatings that are more stringent than the SCAQMD regulatory levels, then it must be out of the result of a significant impact that has not been disclosed. (As we previously noted, the painting schedule has been extended over the period of construction and occupancy reducing its daily emissions.) In either case the Applicant has failed to disclose the VOC content and this must be specified for all model runs.

39

SECTION 4.11 – GREENHOUSE GASES

Page 4.11-11, 4th Paragraph: Contrary to the text, there is no basis for the use of a 6,000-Mton threshold for greenhouse gases. At one time in the past, prior to the advent of the noted SCAQMD Working Group, the City suggested that a standard should be no higher than the 7,000-Mton standard then proposed by CARB back in 2008, and drafted before that time. As noted on Page 4.11-9, the SCAQMD Working Group did not come into being until 2008 and did not issue their approach and suggested threshold levels until 2010.

40

Regarding the City of Newport Beach’s approach to greenhouse gas emissions, quoting from Page 4.11-11, 4th Paragraph, “To restate, until more guidance is provided from the

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

expert agencies...” This guidance was provided in 2010 by the SCAQMD Working Group and for a project of this nature, the threshold is the stated 3,000 Mtons per year of CO₂e for a mixed-use project. The analysis must be revised to address this threshold value now suggested by the SCAQMD.

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cont.

Page 4.11-12, 2nd Paragraph: The Applicant dismisses those greenhouse gases associated with solid waste. The document notes, “Solid waste emissions are not addressed in this analysis because of corrections in process to the model. Solid waste GHG emissions are relatively a very small part of overall emissions and omission of these data is considered to be acceptable.”

Please provide a reference showing that solid wastes are being readdressed in future model updates and that their inclusion is unnecessary as we can find nothing to this effect on either the SCAQMD or CalEEMod Internet web sites.

Furthermore, we note that in their June 2011 “User Tips,” the SCAQMD does indicate that several other portions of the model are receiving modification. So by the same token, why has the Applicant included these portions and not solid wastes?

41

Our experience with the CalEEMod model shows that the greenhouse gases from solid waste amount to about half of those from unmitigated water use. The analysis indicates that unmitigated water use for the operation of the project accounts for approximately 794 Mtons per year of CO₂e. If the emissions from solid waste are half of this value (i.e., 297 Mtons per year), they alone would account for over 13% of the 3,000-Mton per year threshold suggested by the SCAQMD for mixed-use projects. This is hardly a “very small part of the overall emissions” and these emissions must be included in the analysis. At the very least, in the interest of full disclosure, the analysis should present these emissions for the reader then explain why they are omitted in the total.

Page 4.11-13, 2nd Paragraph: The greenhouse gas study prepared for the future oilfield operations was prepared using the outdated URBEMIS model and as discussed, and illustrated previously, are not comparable with those projected using the CalEEMod model. The HRA will need to be modified to use the CalEEMod model so that the emissions may be added together to determine the full extent of the impact.

42

Page 4.11-18, 1st Bullet: Again, the use of a 6,000-Mton CO₂ threshold is unwarranted and the SCAQMD methodology suggests that a value of 3,000 Mtons be used.

43

APPENDIX H

Any changes made to Appendix G as a result of the prior comments must be carried through into Appendix H.

44

SECTION 4.12, NOISE

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Page 4.12-11, Table 4.12-6: The second column notes the inclusion of the date and time. However these data are not included. Please correct the table and provide the missing data.

45

Page 4.12-11, Table 4.12-6: Footnote C notes “The 15-minute short-term noise level measurements were converted into 24-hour CNEL based on the hourly patterns from the long-term measurements 15 and 16; see Table 4.12-7 and Appendix I.” While Table 4.12-7 includes the CNELS for measurements 15 and 16, it does not indicate how these values are applied to extrapolate the CNEL values for the short-term measurements. Furthermore, contrary to what is stated in the table, Appendix I provides no reference to how these values were ascertained. This then makes replication of the analysis impossible and the missing data and methodology must be supplied for review.

46

Page 4.12-16, 4th Paragraph: There is no basis provided for the 20 days required for the implementation of the mitigation. If the receptors are to be significantly impacted, then mitigation must be provided.

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Page 4.12-17, 2nd Paragraph: The text states “Although truck noise may occasionally be noticed (i.e., mostly by residents along West Coast Highway, 16th Street, and 17th Street), the volume of trucks would not be substantial, with truck trips not likely to exceed 20 trips per day.”

This would infer that volumes of up to 20 trucks a day could be expected. However, Page 142 of Traffic, Appendix F states that “Construction truck traffic will be limited to 16 trucks per hour between June 1 and September 1, and 25 trucks per hour at all other times of the year.” Based on an 8-hour workday as is used in the Air Quality Analysis, this would then infer that 128 to 200 trucks per day could be used just in the remediation effort.

48

Road noise is extremely sensitive to the volume of heavy trucks. Revising the truck estimate from 20 trucks per day to 200 trucks per day increases the noise associated with these operations by 10 dBA. The noise analysis needs to quantitatively examine the traffic associated with project construction traffic in accordance with the traffic analysis and not just dismiss it as “not likely to exceed 20 trips per day.”

Page 4.12-22, 2nd Paragraph: What is the basis for the assumption that rubberized asphalt would decrease road noise by 4 dBA? Road noise is a combination of tire, engine, and wind noise. Using rubberized asphalt, only tire noise would be reduced. The claimed reduction of 4 dBA represents a decrease from the current volume of traffic by 60 percent, yet only the tire noise would be reduced.

49

Also, please address the impacts of the mitigation. For example, resurfacing the road would locate additional construction equipment proximate to the residents and they would be subject to augmented traffic, noise, and air quality impacts from this equipment.

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

Page 4.12-22, 4th Paragraph: As noted, a sound wall will not protect 2nd story balconies and patios and the Applicant has provided no mitigation. However, viable mitigation would include the installation of transparent material, at least up to the height of the balcony railing. Because this noise is coming from below, this second story wall would not need to be as high as a ground level wall and would provide additional attenuation. Use of a wall only as high as the railing would still allow for interior airflow with the window/door open.

In fact Page 4.12-27, 1st Paragraph notes for those residents adjoining the project site, "For second floor balconies, noise barriers could be installed around the balconies. Although these measures are feasible and would mitigate the significant noise impact, improvements would be implemented on private property thereby requiring the permission of private property owners and the Newport Crest HOA." Just as these measures are applicable to the Newport Crest community, they are applicable to the residents of Costa Mesa impacted by traffic noise and the Applicant is remiss for not including this mitigation.

Page 4.12-22, 5th Paragraph: As noted in the text, the Applicant cannot be assured that the money provided for roadway resurfacing actually goes for that purpose and thereby notes that the impact is significant and unavoidable. However, under CEQA, the Applicant must do all that is feasible, regardless of cost, to reduce the impact.

Because the level of interior noise is directly related to the exterior level, any increase in road noise will result in a similar increase within the structures. In this case, because the Applicant can't assure affected receptors that the City of Costa Mesa will resurface the roadway, the Applicant must offer the residents of these homes the same amenities that they offer the residents that border the site as included in MM 4.12-7.

Page 4.12-33, 1st Paragraph: The text notes, "MM 4.12-10 would provide an 8-foot-high screening wall to reduce potential noise impacts if loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing residence."

Noise from heavy trucks comes from the tires as they roll along the asphalt, the engine, and the exhaust stacks. FHWA and Caltrans estimate the combined "average" height of these three factors at about 8 feet and this is the height that the wall is based on with the need to break the line of sight from the receptor to the truck. However, those trucks engaged in loading activities are not rolling, so the tires make no contribution to the noise. Both FHWA and Caltrans note that to be effective, a sound wall must block the line of sight to the noise source. Both FHWA and Caltrans put the height of heavy truck exhaust stacks at 11.5 feet and this is the minimum height wall that should be required as mitigation for any noise shielding associated with truck loading/unloading operations. Please revise the analysis accordingly.

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Correspondence Item No. 2b
Dorothy Kraus and Synectecology

4.12-36, 2nd Paragraph: The text states, “As the nearest noise-sensitive uses are located over 300 feet away, it is anticipated that the amplified noise would not be audible and the impact would be less than significant.”

This 300-foot distance is only the length of a football field and while the impact may be less than significant, the amplified sound would certainly be “audible” above the background. Please revise the statement accordingly.

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Page 4.12-36, 3rd Paragraph: The text states, “It is anticipated that noise from use at the North Community Park may be sporadically heard at the patios and balconies of the Newport Crest condominiums when traffic volumes on Bluff Road are relatively low because the character of park noise is different than vehicular noise. It is concluded that noise from activities at the North Community Park would not cause disturbance or annoyance at the nearest noise sensitive receptors, and no mitigation is required.”

As noted, on-site noise will be created by both the traffic, the use of the park, and other stationary uses. However, while these noise sources are all additive at the receptor locations, the analysis fails to provide the noise associated with the sum total of these sources, so understates the impacts at the receptor locations.

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Page 35, 3rd Paragraph: As above from the text, “It is noted that traffic noise impacts from Bluff Road would be above 60 dBA Leq, usually overshadowing noise related to park activities to these homes.” So again, the actual noise is underestimated because a sum of the sources is not disclosed.

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Page 4.12-37, 5th Paragraph: The text notes that oilfield operations, including the use of heavy equipment, trucks, and drilling equipment, could occur at a distance of about 250 feet to the existing residents and 200 feet to the nearest future noise-sensitive receptors. The text goes on to note that drilling would take place 24-hours a day when it occurs. This is really no different than construction except that there are no time limitations on the drilling as there are on construction.

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The mitigation for construction of the project requires the use of sound walls when this construction is to occur within 300 feet of any residents if they are to be bothered for just 20 days during regular working hours. Because oilfield operations would be closer than this 300-foot distance to sensitive receptors and could go on 24-hours per day, the near off- and on-site residents also deserve sound walls, or more, as mitigation.

Page 4.12-38, 3rd Paragraph: The text notes “The drilling of wells requires some periods of 24-hour activity. Drilling noise, consisting principally of diesel engines and tool maneuvering, could occur during the nighttime for periods up to five consecutive days. Without noise reduction, intermittent noise levels at receptors 200 feet away could be 75 dBA, although it is likely that the source to receptor distance would be greater. MM 4.12-11 would be incorporated into the Project to use noise reduction strategies to minimize drilling noise. With the implementation of MM 4.12-11 and the consideration of the limited noise generation time, the impact would be less than significant.”

57

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

While it may be subject to DOG requirements, and although it is operational noise, this drilling still uses heavy construction equipment and is still subject to the City Noise Ordinance for construction activities. Because these “construction operations” cannot be maintained to those construction hours deemed acceptable by the City, the impact remains significant.

Mitigation MM 4.12-11 states, “Prior to the approval of a permit by the California Department of Conservation, Department of Oil, Gas, and Geothermal Resources (DOGGR) for the drilling of replacement oil wells in the Consolidated Oil Facility, the Applicant shall provide to the City of Newport Beach descriptions of the noise reduction methods to be used to minimize drilling activity noise. These methods may include, as feasible, but not be limited to (1) use of electric power in place of internal combustion engines, and (2) acoustical blankets or similar shielding around elevated engines on drill rigs.”

None of these measures limit this drilling to the City’s requisite hours for construction so even with the inclusion of the mitigation, the impact remains significant.

Page 4.12-39, 3rd Paragraph: The text notes that the project is not located within 2 miles of any private air strip. However, the heliport located at Hoag Memorial Hospital is well within this distance and qualifies as a private air strip, and the analysis has failed to address this potential noise impact on the proposed residents. (It is of interest that the Hoag Hospital heliport is addressed in the Hazards and Hazardous Materials analysis on Page 4.5-16 which puts it a ½ mile from the project site.) Please address this potential impact and suggest mitigation as appropriate.

Page 4.12-41, 8th Paragraph: The 25-foot distance is based on the proximity of the construction equipment to the “residence” without properly defining the “residence,” (i.e., the property line or the physical structure).

The text notes that some residents are located at a distance of just 5 feet from the project site. The mitigation calls for the placement of temporary sound walls in sensitive residential areas. Obviously it then becomes impossible for an equipment operator to see the residential structure, or if any portion of the equipment is within 25 feet of the structure. As such, the mitigation is unrealistic and unenforceable. All mitigations specifying distance must be based on the distance to the project site’s property line and not distances to actual structures and this must be made clear in the analysis.

Page 4.12-42, 3rd Paragraph: The measure would also reduce nuisance construction noise for these residents. The mitigation should be amended requiring that those residents that want the sound-rated window and door assemblies be provided with such and reimbursed for their costs prior to the issuance of any grading permits.

Page 4.12-33, 3rd Paragraph: As noted in various portions of the analysis, the wall must be high enough to block the line of sight from the noise source and an 11.5-foot wall

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cont.

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Correspondence Item No. 2b
Dorothy Kraus and Synectecology

is required to meet this objective with heavy truck exhaust stacks. Please revise the mitigation accordingly.

61
cont.

APPENDIX I, NOISE

General Comment: Vehicle noise is extremely sensitive to the ratio of automobiles, medium trucks, and heavy trucks. Each medium truck is equivalent to about 10 autos whereas each heavy truck is equivalent to about 36 autos. In all cases the Applicant, without explanation, uses a ratio of 98% autos, 1% medium trucks, and 1% heavy trucks. However, the EMFAC model used in the CalEEMod model, as used in the Air Quality analysis, notes that Orange County includes approximately 94.36% autos, 4.49 percent medium trucks and 1.15% heavy trucks. As such, the Applicant has underestimated the ambient and future noise from vehicle traffic. Furthermore, the vehicle ratio for West Pacific Coast Highway should be based on data included in the Caltrans publication, *2010 Annual Average Daily Truck Traffic on The California State Highway System*. Please revise the analysis accordingly.

62

General Comment: Vehicle noise is extremely sensitive to the time of day as the evening and night impose penalties on the noise created during those portions of the day. The Applicant, without explanation, uses a ratio of 80% during the day, 7% during the evening and 13% at night. However, the EMFAC model used in the CalEEMod model, as used in the Air Quality analysis, notes that Orange County includes approximately 77.50% during the day, 10.77% during the evening, and 11.73% at night. These values will change the calculated CNEL values and the analysis should be revised accordingly.

63

SECTION 4.5 HAZARDS AND HAZARDOUS MATERIALS

Section 4.5-20, 2nd Paragraph: The text states, "As with all remediation projects, the total remediation volumes can vary substantially when actual removals begin; thus, contingency amounts were included in the estimates."

However, Page 4.9-88 of the traffic analysis notes, "The Project's construction activities would include the consolidation of the existing oilfields and soil remediation in addition to the site development. Remediation is estimated to require approximately 900,000 cubic yards (cy) of cut and fill with an additional 1,500,000 cy of earthwork required in the development of the Project. Essentially, all grading would be balanced on site. An estimated 25,000 cy of export was assumed for removal of materials not suitable for retention on site which would require approximately 1,563 truckloads of material removal."

64

This value of 25,000 cubic yards is then used in the transportation, air quality, and noise analyses. This value represents less than 2.8% of the total 900,000 cubic yard volume of material to be remediated and does not represent a reasonable scenario, let alone a "contingency amount." Please provide a more realistic scenario in the analysis.

Correspondence Item No. 2b
Dorothy Kraus and Synectecology

SECTION 4.6, BIOLOGICAL RESOURCES

Page 4.6-64, 4th Paragraph: The text states, "Indirect impacts are impacts related to disturbance from construction (such as noise, dust, and urban pollutants), and long-term use of the Project site and its effect on the adjacent habitat areas." However, contrary to the text, there is no analysis of the construction impacts on sensitive species and construction impacts are never deemed as significant.

The sum extent of this analysis is included in the following quote taken from the document, "The non-transportation noise impacts from human activity in the residential, retail, resort inn, park, and trail areas would dissipate rapidly with distance and would not cause significant noise impacts to wildlife on the Project site open space and lowland areas. There would be no significant impact related to non-transportation activity; therefore, no mitigation would be required."

Still, Page 4.6-86, 3rd, 4th, and 5th paragraphs require mitigation for construction noise impacts on sensitive habitat. Under CEQA, no mitigation can be required unless the impact is deemed as significant. The biological assessment is deficient in that it did not delineate the significance criteria for sensitive species (they do exist) or do a proper analysis to determine if the impacts of construction are significant prior to requiring mitigation.

Furthermore, while the text states that "dust and urban pollutants" could create significant impacts, the impacts of dust and urban airborne pollutants on sensitive species are neither addressed in the Biological Resources or the Air Quality analyses. Please supply the missing analysis.

65

Correspondence Item No. 2b

Dorothy Kraus and Synectecology

Cover letter dated June 18, 2012; report dated April 26, 2012

Response 1

Please refer to the subsequent responses.

Response 2

The City does not agree with the commenter; please refer to the subsequent responses.

Response 3

The Health Risk Assessment (HRA) conducted for the proposed project evaluated four potential health risk impacts: (i) maximum individual cancer risk, (ii) maximum chronic non-cancer hazard index, (iii) maximum acute hazard index, and (iv) cancer burden to the exposed population. Only the cancer burden calculation utilized the 20-acre site assumption, in a screening level calculation using the SCREEN3 dispersion model, which was actually conservative. The other health risk impacts were determined from detailed dispersion modeling with AERMOD and actual source area sizes, shapes, and locations as shown in the Draft EIR, Appendix G, Figures 4-1, 4-2, and 4-3.

The cancer burden was determined as noted in Appendix G, Section 5.2.3, and Attachment E. Appendix G, Section 5.2.3 is reproduced below along with notations *[in bracketed italics]* indicating why the calculations are conservative (high).

The cancer burden for a project can be determined by first finding the distance at which the maximum incremental cancer risk drops below 1 per million. This distance is used to identify all census tracts or census blocks near the site that would be included in the cancer burden calculation. Finally the population for each tract/block is multiplied by the maximum incremental cancer risk in that tract/block, and the results are summed across all tracts/blocks. The resulting value is the project cancer burden (potential increase in number of cancer cases for the actual exposed population).

To determine the cancer burden for this project, several conservative simplifying assumptions were made. The assumptions and analysis included the following:

- The consolidated oilfield annual DPM emissions (85 lbs/year) were modeled using the SCREEN3 (USEPA 1995) air dispersion model for a 20 acre area source. *[This is the future oilfield emission rate, not the proposed project incremental emissions above the existing baseline. The future oilfield DPM emissions are actually less than those under the baseline conditions. Typically, the CEQA analysis would deduct baseline emissions from future emissions to get the project's incremental impact which is the appropriate CEQA analysis for cancer burden. The proposed project's incremental DPM emissions would be a reduction of 143 lbs/year as shown in Appendix G, Table 3-3. As shown in the summarized individual cancer risk results for receptors around the site (Appendix G, Attachment D), a number of cancer risk values are less than zero, indicating a reduction in risk relative to the baseline conditions.]*

- The resulting concentrations (versus distance) results were multiplied by State's unit risk factor for DPM ($3.0 \times 10^{-4} \text{ m}^3/\mu\text{g}$) to determine risk level versus distance.
- The distance at which the cancer risk dropped below 1 per million was used as the radius from the consolidated oilfield site for selecting census tracts included in the cancer burden calculation. *[Although a distance of 1.25 miles was used in the analysis, as noted below, the actual distance where the risk drops below 1 per million is only 0.87 mile - as shown in Appendix G, Attachment E, Page 1 of 5. Therefore, the radius used in the analysis is conservative (larger) than necessary by over 40 percent and the area considered in the calculation is conservative by 100 percent (i.e., the increased radius doubles the area considered in the cancer burden calculation). This additional area dramatically increases the number of people included in the cancer burden calculation.]*
- The peak cancer risk for the consolidated oilfield on the proposed new residential and commercial areas (4 per million) was assumed to apply to the entire population within the 1 per million radius. *[The individual cancer risk actually drops off with distance such that residential cancer risk at 0.87 mile from the site would only be 1 per million, and those at 1.25 miles would be approximately 0.6 per million (as shown in Appendix G, Attachment E, Page 1 of 5). However, the calculation of cancer burden assumed that all of these locations had an individual cancer risk of 4 per million; again, substantially overestimating the cancer burden impact. It is also noted here that the distance from the center of the consolidated oilfield to the nearest fenceline is approximately 500 meters, thus the SCREEN3 analysis uses 500 meters as the minimum distance in the distance versus risk level calculation. Distances closer to 500 meters would be on the consolidated oilfield where there is no residential population.]*

The approximate distance from the 20 acre oil consolidation area of the site to the 1 in a million cancer risk isopleths based on SCREEN3 modeling, is roughly 1.25 miles. *[As noted above, this distance is actually 0.87 mile, much smaller than the 1.25 mile radius used.]* Drawing a rough boundary around the outer edge of the entire project site (not just the 20 acre consolidated oilfields) captures 19 census tracts in Newport Beach, Costa Mesa, and Huntington Beach. These census tracts have a total population of just over 86,000. Assuming that everyone in these tracts was exposed to a 4 per million incremental cancer risk, the cancer burden would be 0.34, less than the SCAQMD significance threshold of 0.5. The cancer burden has been substantially overestimated in this analysis since peak cancer risk for the new, on-site residential area is used to represent cancer to those much farther from the site with much lower incremental risk. The list of census tracts and locations are shown in Attachment E, along with the burden calculation. *[Using the calculated radius of 0.87 mile, combined with applying a distance-dependent individual cancer risk level would reduce the cancer burden by approximately one order of magnitude (i.e., a factor of 10). These corrections would more than compensate for a potential ~20 percent increase in the maximum individual cancer risk impact due to use of a slightly smaller consolidated oilfield area.]*

Response 4

Air quality and greenhouse gas (GHG) data used in the EIR from both the CalEEMod and URBEMIS models are valid. The newer CalEEMod was developed as a successor to URBEMIS to (1) add the methodology to calculate GHG emissions from sources not in URBEMIS, (2)

provide a consistent methodology for calculation of emission reductions resulting from mitigation measures, including measures quantified in recent years for addressing GHG issues; (3) revise some default calculation methodologies based on surveys of real-world data; and (4) increase the number regional specific data bases.

CalEEMod and URBEMIS work from the same basic emission factor data bases, EMFAC 2007 for on-road vehicles and OFFROAD 2007 for construction equipment. Therefore, for the same input data, the same, or very similar, output data was expected. When CalEEMod was released, the South Coast Air Quality Management District (SCAQMD) stated that either model could be used for CEQA analyses. That policy has not changed.

When initially preparing the air quality, GHG, and human health risk (HHRA) analyses for the Draft EIR, the analyses were done with URBEMIS prior to the release of CalEEMod. After the release of CalEEMod in February 2011, model comparisons performed by BonTerra Consulting, the City's CEQA consultant for the Banning Ranch Project, showed that construction phase mass emissions of nitrogen oxides (NOx) were higher with CalEEMod than with URBEMIS. This difference was confirmed in discussions between BonTerra Consulting and SCAQMD staff. Because NOx is often the critical factor in the construction phase air quality analysis, the City determined to reanalyze the proposed Project using the more conservative CalEEMod. It is noted that the revised analysis provided in the Draft EIR increased the Project's NOx emissions from below to above the CEQA significance threshold, and therefore required mitigation measures not previously anticipated.

For operational emissions, some differences between the model results were noted. These differences resulted primarily from the updating of specific vehicle trip characteristics and a change in methodology for calculation of consumer product VOC emissions.

With respect to the HHRA, the URBEMIS model was used exclusively to calculate operational phase emissions from the Project's proposed residential, commercial and recreational uses. Substantial differences between CalEEMod and URBEMIS for the operational emissions used for the HHRA were not observed. Therefore, the City decided that the revision of the HHRA using CalEEMod was not needed.

Consumer product emissions, which are only VOC, were higher with URBEMIS. Because VOC is an element in the HHRA, the use of URBEMIS resulted in a conservative result for the HHRA. Although consumer product emissions are less with CalEEMod, the newer methodology is accepted. Further, because forecasted vehicle VOC emissions at buildout are substantially greater than the consumer product emissions as well as almost three times more than the significance threshold, the variance in consumer product emissions does not notably change the severity of the significant and unavoidable VOC impact.

Operational vehicle emissions for both models are developed using EMFAC 2007 emission factors. Therefore, the variation between URBEMIS and CalEEMod reside only in the refinement of the Orange County data base. Operational emissions between the HHRA and the air quality analysis cannot be directly compared because the HHRA is limited to the vehicle miles (VMT) from on-site travel while the air quality analysis includes the VMT from on-site and off-site travel. However, it is noted that the HHRA vehicle emissions were calculated for buildout in 2015, many years earlier than the now-estimated 2024. Because vehicle exhaust emissions decline each year as newer engines are cleaner, the HHRA operational vehicle emissions are conservatively overstated.

Response 5

The air quality emissions modeling of the project construction phases used the phase durations estimated in the Project Description. It is neither forecasted nor logical that each phase of the proposed project would be built in 7 months and then have completed homes sit unoccupied for up to 2, 3, or 4 years. The emissions modeling was based on the logical concept that there would be an ongoing demand for homes over each phase during the period indicated and that developers would buy and build sections of the proposed project in response to the market demand. The modeling was not “artificially extended” and no reassessment of impacts is necessary.

Response 6

The CalEEMod input files were not requested from the City during the public review period for the Draft EIR. The files are available for review at the City Community Development Department during regular business hours. The dates and durations used for the construction sequencing are shown in the table below.

Activity Name	Activity Type	Activity Start Date	Activity End Date	Days per Week	Activity Days
Remediation 1	Grading	2/1/2014	9/30/2014	5	172
Grading Phase 1	Grading	8/1/2014	5/30/2015	5	216
Remediation 2	Grading	10/1/2014	9/30/2015	5	261
Building Construction Phase 1	Building Construction	2/1/2015	9/30/2017	5	695
Remediation 3	Grading	10/1/2015	3/31/2017	5	392
Grading Phase 2	Grading	8/1/2016	5/30/2017	5	217
Building Phase 2	Building Construction	2/1/2017	1/31/2020	5	783
Grading Phase 3	Grading	8/1/2018	5/30/2019	5	217
Building Phase 3	Building Construction	2/1/2019	12/17/2023	5	1271

Response 7

The statements in Appendix F, the Traffic Impact Analysis, refer to City limits on truck traffic to avoid congestion, not the project plan for remediation. The project air quality analysis conservatively considered the estimated 25,000 cubic yards of exported materials in both Phase 1 and Phase 2 remediation and 12,500 cubic yards of exported materials in Phase 3.

Response 8

An analysis of elevated CO levels in subterranean parking, which is not currently designed, is not necessary. Building codes for parking garages require adequate ventilation to avoid substantial CO concentrations.

Response 9

Please refer to Response 4.

Response 10

EIR Table 4.10-5 presents the hourly and annual TAC emissions for the 2008 Baseline. The peak hourly total emissions of VOC and PM10 were used to estimate peak hourly emissions of toxic air contaminants (TACs). The peak hourly total VOC and PM10 emissions in the 2008 Baseline were summarized in Appendix G, Table 3-1. The 2008 Baseline peak hourly and annual TAC emissions summarized in Table 4.10-5 can also be found in Appendix G, Tables 3-2 (peak hourly) and 3-3 (annual).

The peak hourly VOC emissions in the 2008 Baseline scenario were dominated by existing oilfield operations – mostly diesel equipment. The organic speciation profile used for diesel (CARB organic profile 818, shown in Appendix G, Attachment A, pages 27 of 30 through 29) includes fractions for 1,3-butadiene (0.0019) and acetaldehyde (0.07353), but not for acrolein. The peak hour includes a small portion of gasoline engine exhaust which includes 1,3-butadiene (0.0055) and acetaldehyde (0.00241), as well as acrolein (0.00135) according to CARB organic profile 441 (Appendix G, Attachment A, pages 27 of 30 through 30 of 30).

The gasoline contribution to the peak hour and peak day is very limited since the gasoline engines are essentially in the personal vehicles driven by the oilfield workers and inspectors. The peak day and peak hour emissions are dominated by emissions from activities such as drilling, well workovers, abandonments, and general maintenance. These activities have limited durations as far as days per week or days per year, as shown in Appendix G, Attachment A, Pages 1 of 30 through 4 of 30. Gasoline vehicle use, however, occurs every day or at least 6 days per week for most of the gasoline vehicles. Finally, the numbers of diesel equipment and gasoline vehicles used on the peak day and on an annual basis impacts the ratio of annual to peak hourly emissions. Therefore, the ratio of annual to peak hourly emissions for the different organic TACs would not be the same since different equipment types and fuel types have different fractions of each TAC, the number of each type of equipment is different, and the different equipment types and fuel types have different annual to peak hourly usage rates. The TAC emission calculations in the HRA are correct and do not need to be changed.

Response 11

EIR Table 4.10-6 shows the SCAQMD thresholds and is not project specific; the only GHG threshold that SCAQMD has established is for industrial project. While SCAQMD's working group suggested a 3,000 MTCO₂e/yr threshold in 2010, no action has been taken by the SCAQMD board on that recommendation. In any CEQA document, the establishment of significance criteria is the responsibility of the lead agency. The City has established an interim threshold of 6,000 MTCO₂e/yr. It is noted that the estimated GHG emissions for the proposed Project are 19,392 MTCO₂e/yr and would be cumulatively significant (Section 4.11 of the EIR).

Response 12

The incorrect reference was noted in the responses to comments to the Draft EIR. The comment is correct that the dates in the air quality analysis do not match those in Table 3-3. As the Draft EIR was nearing completion, the Applicant slipped the project schedule by one year. The City determined that revision of the air quality analysis was not necessary because construction equipment and vehicle emissions in later years are the same or less than in preceding years, thereby making the Draft EIR analysis conservative.

Response 13

The statement in the Draft EIR is a typographical error; the analysis was done in CalEEMod.

Response 14

The comment states, in a number of places, that the maximum daily disturbed acreage, which is used for calculation of PM10 emissions, should be 2 acres, based on the equipment specified for grading for project development. The commenter failed to note that maximum daily PM10 emissions occur when grading is concurrent with remediation, as stated on page 4.10-20 of the Draft EIR; thus there would be additional acreage disturbed for the remediation activities.

With respect to NOx emissions, the maximum daily on-site emissions stated in Table 4.10-9 are the unmitigated emissions without consideration of the OFFROAD 2011 load factors, as described in the Topical Response, Air Quality, in the Responses to Comments document. With the implementation of Mitigation Measure (MM) 4.10-1, using Tier 3 equipment only and the updated load factors, the maximum on-site NOx emissions would be reduced from the 170 pounds/day value shown in Table 4.10-9 to approximately 90 pounds/day. With use of some Tier 4 equipment the maximum on-site NOx emissions would be further reduced.

With respect to PM10 emissions, the less than significant finding of Table 4.10-9 was confirmed by dispersion modeling, as described on pages 4.10-22 and 23 of the Draft EIR. No additional analysis is required.

Response 15

The comment is correct. The thresholds of 639 and 945 pounds/day shown in Table 4.10-9 should be the higher values of 647 and 962 pounds/day. As noted in the comment, this does not change the analysis.

Response 16

The large differences between total PM10 emissions shown in Table 4.10-7 and the on-site emissions shown in Table 4.10-9 are due to model output data showing relatively large values for hauling emissions. Subsequent to publication of the Draft EIR, it was found by SCAQMD (and many CalEEMod users) that the CalEEMod calculation of daily PM10 hauling emissions is incorrect, substantially overstating the emissions. The overstated values do not affect the conclusions of the analysis.

Response 17

Please refer to Response 12; the difference in dates makes the Draft EIR analysis conservative.

Response 18

Table 4.10-4 presents the daily criteria pollutant emissions for the existing oilfield operations. Table 4.10-13 presents the daily criteria pollutant emissions for the future consolidated oilfield operations. Comparing the emissions from these two tables, one can see that the future oilfield operational emissions would be lower than the existing emissions by 64.7 lbs/day for PM10 and by 9.0 lbs/day for PM2.5. Consolidating the oilfield operations actually reduces the total emissions and moves this activity away from the peak impact location which is on the eastern side of the property. Because the oilfield emissions are reduced in the future, there is no need to attempt to compare these emissions with the LST tables since the incremental emissions are negative. The appropriate evaluations have been performed, and no undisclosed impacts exist.

Response 19

The combining of construction and operational emissions is not required by SCAQMD methodology. Further, as discussed on page 4.10-29 of the Draft EIR, the City determined that the proposed Project would have a significant and unavoidable cumulative regional air quality impact.

Response 20

Carbon monoxide (CO) pollution has declined quite substantially in the past decade, resulting in only rare instances for potential CO hotspots to occur. Due to this fact, dispersion modeling of CO at intersections is only required when screening techniques indicate a need for finer analysis. If use of the Sacramento AQMD screening methodology indicated values approaching or exceeding the threshold, then comparison of Sacramento and Orange County vehicle mixes or dispersion modeling might be appropriate. However, the highest volume intersection, as shown in Table 4.10-16, is forecasted to have a peak volume of less than 35 percent of the screening threshold, clearly indicating that there would be no potential for a CO hotspot. No further analysis is required.

Response 21

The Tier 1 screening health risk analysis was done to determine if a more detailed Tier 4 health risk assessment was necessary. Since the Tier 1 analysis “failed” (i.e., ASI values were greater than 1), a Tier 4 health risk assessment was completed and documented in Appendix G, Section 5.2, with the risks being calculated using the CARB-approved HARP model. The results of the health risk assessment are summarized in Section 4.10, Table 4.10-18. Changing the distance in the Tier 1 analysis would simply indicate that the screening analysis would still “fail” and a detailed Tier 4 assessment would be required. Since the Tier 4 assessment was completed, there is no need to revise the screening analysis.

Response 22

Generally, if objectionable odors occur during oilfield operations, then there is a potential for reoccurrence of these odors during remediation. Odors occur in some oilfield operations when additives with high sulfur content or other odor-producing constituents are used. These have not been used on the project site. As noted in the responses to comments on the Draft EIR, there is no record of oilfield odor complaints for more than ten years. Based on this history, odors from remediation are not anticipated. Section 4.5, Hazards and Hazardous Materials, of the Draft EIR includes Mitigation Measure (MM) 4.5-1 which requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB). As needed, the final RAP will include measures to address potential odors encountered in soil remediation. Because no odor complaints for the operating field have been received in over ten years, it is not a high probability that significant odors would occur in remediation. However, the movement of some crude oil-impacted soils can sometimes produce low level limited area odors. These are easily dissipated by the use of agency-approved biodegradable solutions which are added to the dust control measures.

Response 23

The AERMOD-ready meteorological data used for surface parameters such as wind speed, wind direction, and temperature were obtained from John Wayne Orange County Airport (SNA), as noted in Appendix G, Pages 2-7 and 4-2. The nearest upper air station, used for determining

the mixing height, is located in San Diego. Both the SNA and San Diego meteorological data was for 2008. It should be noted that upper air stations are not as abundant as surface stations, and some states do not have a regular upper air station at all. In California, upper air data is obtained primarily from San Diego for Southern California and from Oakland for Northern California.

Response 24a

Please see Response 21.

Response 24b

Both volatile organic compound (VOC) and individual toxic air contaminant (TAC) emissions from stationary source oilfield operations were obtained from the annual emissions reports (AERs) for the West Newport Oil Company, the City of Newport Beach, and Armstrong, as noted in the methodology discussion in Appendix G of the Draft EIR, Sections 2.1.1.1 and 2.1.2.1. These emissions are shown in Appendix G, Attachment A: on page 1 of 30 for Baseline criteria pollutant and hourly TAC emissions; on page 2 of 30 for Baseline annual TAC emissions; on page 1 of 10 for Future Consolidated Oilfield criteria pollutants and hourly TAC emissions; and on page 2 of 10 for Future Consolidated Oilfield annual TAC emissions. These emissions are listed under the line items: WNOC Oilfield Stationary Operations, City Oilfield Stationary Operations, and Armstrong Stationary Operations. The AERs, as obtained through the SCAQMD FIND database, are presented in Appendix G, Attachment A, pages 8 of 30 through 10 of 30.

The fugitive dust emissions of both criteria and toxic air contaminants are presented in Appendix G, Attachment A. Criteria pollutant (PM₁₀ and PM_{2.5}) dust emissions are shown on pages 3 through 6 of 30 for the Baseline operations where the fuel type is listed as "DUST". The CARB particulate matter speciation profile 470 (page 27) was used to calculate individual TAC emissions from road dust. The individual TAC road dust emissions for the Baseline are shown on page 21 (Attachment A of Appendix G). The criteria pollutant (PM₁₀ and PM_{2.5}) dust emissions for the Future Consolidated Oilfield are shown on pages 3 through 6 of 10, where the line item fuel type is listed as "DUST". The Future Consolidated Oilfield TAC emissions from road dust are listed on page 7, under the line item "Unpaved Road Dust".

The TAC emissions from stationary equipment, mobile equipment, and fugitive road dust for the Baseline and Future Consolidated Oilfield are included in the TAC emission summaries in Tables 4.10-5, as well as in Appendix G, Tables 3-2 and 3-3. No calculations are missing, and no changes to the calculations are necessary.

Response 25

In the opening paragraph of the comment, it is stated that CalEEMod uses a PM_{2.5}-to-PM₁₀ ratio of 0.54 (54 percent), and the majority of the comment argues that the analysis should have used a PM_{2.5}-to-PM₁₀ ratio greater than value used: 0.10 (10 percent). The specific calculation in the table being addressed in this comment (EIR Appendix G, Attachment A, page 5 of 30) was used for unpaved road dust caused by vehicular travel. It is noted here that CalEEMod actually uses a PM_{2.5}-to-PM₁₀ ratio of 0.10 (10 percent) for unpaved road dust calculations. The 0.54 ratio referred to in the comment is only used for grading at active construction sites and would not be appropriate for unpaved road dust calculations.

The PM₁₀ emission factor equation for unpaved road dust, developed by U.S. EPA (USEPA 2006) was used for the EIR analysis. This equation indicates that the unpaved road dust is

dependent on the silt content and mean vehicle weight of vehicles traveling on the road, and additional parameters are provided to facilitate calculation of both PM10 and PM2.5 fractions of total dust emissions. Because the main roadways at the Project site are covered with coarse gravel and manmade fill, the silt content was estimated to be 2 percent since most of the gravel material would be much larger than the silt fraction. The parameter values to determine the PM10 and PM2.5 fractions of total dust were taken from the same source (USEPA 2006) as the emission factor equation to ensure consistency in the use of the equation and its input parameters. In addition, the PM10-to-PM2.5 ratio in USEPA 2006, 0.10 (10 percent) is identical to the ratio used in CalEEMod for unpaved road dust calculations.

It should be noted that no attempt was made to correct the emission factor for the natural moisture content of the surface material. The emission factor equations in USEPA 2006 allow for moisture corrections which reduce the emissions. Because of the close proximity of the site to the Pacific Ocean, the relative humidity of the air above the surface is much higher than in inland areas of the Pacific Southwest. The relative humidity is known to have a direct impact on the surface soil moisture content (Gregory 1991; Chepil 1956). Because the effect of this moisture was not included in the analysis, the resulting emissions should be considered reasonable if not conservative.

Chepil, W.S. 1956. "Influence of Moisture on Erodibility of Soil by Wind," *Proceedings of the Soil Science Society of America*, Vol. 20, No. 2, pp. 288-292 (April).

Gregory, J.M. 1991. *Wind Erosion: Prediction and Control Procedures*, Report prepared for the US Army Corps of Engineers – Waterways Experiment Station, Vicksburg, Mississippi (December).

U.S. Environmental Protection Agency (U.S. EPA). 2006. "Section 13.2.2 Unpaved Roads," *Compilation of Air Pollutant Emission Factors (AP-42) – Vol. 1*.

Response 26

The GHG emissions data from the HHRA used in the EIR's GHG analysis was limited to the oilfield vehicle emissions as stated in the footnote to Table 4.11-4 of the Draft EIR. As noted in response 4, the same EMFAC 2007 vehicle emission factors are used in both models.

Response 27

The HHRA URBEMIS model used an operational year of 2015 with project area source and vehicle data for the completed project. The CalEEMod data shown in the commenter's table is for operational year 2023. Vehicle emissions decline in later years as older "dirtier" vehicles are replaced with newer "cleaner" vehicle. Thus the data sets in the table should not be directly compared. As noted in response 4, SCAQMD the differences in operational data required for the HHRA between the two models was not substantial.

Response 28

The level of traffic used in the health risk assessment (HRA) was 13,323 average daily trips (ADT). This was the value that had been determined prior to completion of the HRA in July 2010. The final traffic analysis was not completed until June 2011, and reported the final traffic level as 14,989 ADT, as noted in the comment.

When checking to determine the potential impact that this change would have on the HRA, the conservative assumption was made this 12.5 percent increase in the number of trips in the development area directly equated to a 12.5 percent increase in the incremental risks provided

in Appendix G, and in Table 4.10-18. This is a conservative estimate since the TAC emissions from the future consolidated oilfield operations would not change, nor would the non-traffic residential and commercial activity (e.g., natural gas combustion, consumer product use, landscape equipment operation, and architectural coating application) TAC emissions in the development area.

The potential impact of changing the traffic data would have little to no effect on the reported risk values, as shown in Table HRA-1 below. The values are either less than or equal to one-tenth of the applicable threshold, or do not change when rounded to one significant digit. Therefore, no corrections to the HRA were considered necessary.

Response 29

Please refer to Response 3.

Response 30

Please refer to Response 3.

Response 31

The comment refers to HHRA input data being incorrect for calculating construction emissions. The HHRA did not calculate construction emissions.

Table HRA-1				
Impact Sources and Receptors	Risk Parameter	Value Report in Draft EIR	Corrected Value	Comments
Proposed Project Incremental Impact on Existing Receptors	Cancer Risk	3.94 per million (rounded to 4 per million)	4.43 per million (would round to 4 per million)	No change
	Chronic Hazard	0.08	0.09	Still less than or equal to 1/10 of the threshold.
	Acute Hazard	0.09	0.10	Still less than or equal to 1/10 of the threshold.
	Cancer Burden	0.34	0.34	No change
Future Consolidated Oilfield Impact on New Residential & Commercial Receptors	Cancer Risk	3 per million	3.4 per million (would round to 3 per million)	No change
	Chronic Hazard	0.01	0.011 (would round to 0.01)	No change
	Acute Hazard	0.03	0.034 (would round to 0.03)	No change
Future Consolidated Oilfield Impact on New Recreational Receptors	Cancer Risk	1 per million	1.1 per million (would round to 1 per million)	No change
	Chronic Hazard	0.01	0.011 (would round to 0.01)	No change
	Acute Hazard	0.05	0.06	Still less than or equal to 1/10 of the threshold.
Source: CDM Smith, 2012.				

Response 32

Please refer to Response 28.

Response 33

The CalEEMod input files were not requested from the City during the public review period for the Draft EIR. The files are available for review at the City Community Development Department during regular business hours.

Response 34

The CalEEMod input did not specify diesel particulate filters nor were reductions taken for diesel particulate filters. When specifying Tier 3 or Tier 4 equipment as mitigation, CalEEMod takes PM (PM10 and PM2.5) reductions associated with those engine types. These PM reductions are small, as may be seen by comparing Tables 4.10-7 and 4.10-8 and the CalEEMod output files in the Draft EIR appendix. It is also noted that (1) the unmitigated PM10 and PM2.5 values in Table 4.10-7 are well below the SCAQMD significance thresholds and (2) the PM10 and PM2.5 values shown in Tables 4.10-7 and 4.10-8 are overstated as discussed in Response 16.

Response 35

Please see Response 3 that explains the rationale for the project construction phasing.

Response 36

Standard condition (SC) 4.10-1 requires compliance with SCAQMD Rule 403, Fugitive Dust, for dust control. The frequency of watering required for compliance will vary with the soil and wind conditions. The CalEEMod model used watering 3 times daily for 61 percent reduction. As noted previously, the unmitigated PM10 and PM2.5 values in Table 4.10-7 are well below the SCAQMD significance thresholds. With respect to assumptions, please see Response 6.

Response 37

Notwithstanding the “No coating” note on page 2 of 9, the maintenance coating emissions were included in the analysis as shown on pages 8 of 9 and 9 of 9, and in Table 4.10-11 of the Draft EIR. The comment also incorrectly refers to the unmitigated total emissions rather than the mitigated emissions.

Response 38

The input to CalEEMod for weekday trips for each land use corresponds to the trip rates provided in the Traffic Impact Report, resulting in a rounded total of 16,115 ADT. The input ADT was not reduced for internal and pass-by trips, as that calculation is performed internally in CalEEMod in the VMT calculations. The City did not “chop up” these trips. The early version of CalEEMod reported trips at twice the ADT; thus, the output shows 32,228.6 trips. However, SCAQMD assured the users that the corresponding emissions calculations are accurate for the input ADT.

Response 39

The default SCAQMD regulatory values for paints and coatings VOC content were used in CalEEMod. As shown on page 9 of 10, there is no difference in the unmitigated and mitigated

emissions for architectural coatings. The comment relative to painting schedule is not relevant to buildout operational emissions and is addressed in Responses 3 and 35.

Response 40

Please see Response 11. Further, a recommendation of the SCAQMD Working Group is not considered by the City as guidance from an expert agency when the agency's Board declines to adopt the recommendation after a period of more than 1½ years.

Response 41

Solid waste from the proposed project would be taken to the Bowerman Landfill, which captures all landfill gas and uses 10 percent of the gas for energy recovery. When that data was input to CalEEMod, the output for solid waste GHG emissions was a negative 54 million metric tons of CO₂e per year (MTCO₂e/yr); an obvious error! If the project estimated solid waste GHG emissions were calculated using the default landfill (no energy recovery and 6 percent gas not captured) the emissions would be 1,616 MTCO₂e/yr. This conservatively high value (because landfill gas capture and energy recovery are not accounted for) would be an increase of 8.3 percent over the 19,392 MTCO₂e/yr reported in Table 4.11-5 of the Draft EIR. The inclusion of these emissions does not change the conclusion that the projected emissions exceed the City's 6,000 MTCO₂e/yr significance threshold and are considered cumulatively considerable.

It is noted, as stated on page 4.11-12 of the Draft EIR that forecasted vehicle GHG emissions are also likely overstated because CalEEMod does not include the emissions reductions that will result from laws requiring improvements in fuel efficiency for vehicles manufactured after 2016.

Response 42

Please see Response 4.

Response 43

Please see Response 11.

Response 44

The comment is noted.

Response 45

Table 4.12-6, below, includes the dates and times of measurement.

TABLE 0-1
SHORT-TERM^A AMBIENT NOISE LEVEL MEASUREMENTS SUMMARY

Measurement Number ^a	Location (Date and Time)	Noise Levels (dBA)				Primary Noise Source
		L _{eq}	L _{max}	L _{min}	CNEL ^c	
1	Southeastern portion of the site, approximately 300 ft west of the Newport Crest Condominiums. (September 16, 2009; 9:45-10:00 AM)	47.6	63.7	41.0	50.4	Traffic on West Coast Hwy and aircraft overflights.
2	Southeastern portion of the site, approximately 300 ft north of the Newport Crest Condominiums. (September 16, 2009; 10:07-10:22 AM)	44.7	53.8	39.8	47.6	Aircraft overflights.
3	Eastern portion of the site, approximately 100 ft from the Carden Hall School building. (September 16, 2009; 10:51-11:06 AM)	47.1	60.9	36.8	50.0	Stationary noise from industrial uses and vehicle movements.
4	Curb of Whittier Ave, adjacent to the existing Island View Mobile Home Park. (September 16, 2009; 11:17-11:35 AM)	47.8	59.7	40.3	51.5	Traffic on Monrovia Ave
5	Northeastern portion of the Project site, approximately 50 ft from the existing residences' backyards. (September 17, 2009; 8:53-9:18 AM)	44.5	51.6	41.1	47.3	Aircraft overflights.
6	Northern portion of the Project site at the boundary of the ecological reserve. (September 16, 2009; 8:56-9:15 AM)	43.2	50.6	39.6	46.0	Aircraft overflights.
7	Eastern portion of the Newport Shores residential area adjacent to the Community Center and single-family residences. (September 16, 2009; 12:42-12:57 PM)	48.4	63.0	40.7	53.1	Traffic on West Coast Hwy and aircraft overflights.
8	Southern portion of the site, approximately 200 ft from the edge of the mesa. (September 23, 2009; 2:00-2:15 PM)	50.8	56.4	47.7	55.7	Traffic on West Coast Hwy and aircraft overflights.
9	Curb of 19 th St, adjacent to existing condominiums on Latitude Ct. (September 17, 2009; 8:24-8:44 AM)	54.8	71.1	39.1	57.6	Traffic on 19 th St.
10	Adjacent to existing offices where 15 th St is proposed to be extended on to Project site. (September 17, 2009; 10:25-10:42 AM)	47.0	65.6	41.7	49.9	Aircraft overflights and existing industrial uses.
11	Adjacent to condominiums' patios on 18 th St, west of Monrovia Ave approximately 25 feet from the Street curb. (October 21, 2009; 8:15-8:30 AM)	58.9	72.4	45.5	61.7	Traffic on 18 th St.
12	Adjacent to residences' backyard walls on Brookhurst St approximately 60 ft from the road centerline. (October 21, 2009; 8:45-9:00 AM)	66.9	78.8	50.6	69.7	Traffic on Brookhurst St.
13	Adjacent to residences' backyard walls on Hamilton Ave, approximately 50 ft from the road centerline (October 21, 2009; 9:15-9:30 AM)	67.9	82.0	45.4	70.7	Traffic on Hamilton Ave.

Measurement Number ^a	Location (Date and Time)	Noise Levels (dBA)				Primary Noise Source
		L _{eq}	L _{max}	L _{min}	CNEL ^c	
14	By residences' front yards at 15 ft behind the 10-ft-high sound wall along West Coast Hwy. (October 27, 2009; 9:20-9:35 AM)	56.7	71.9	47.1	59.5	Traffic on West Coast Hwy.
dBA: A-weighted decibels; L _{eq} : equivalent noise level; L _{max} : maximum noise level; L _{min} : minimum noise level. ^a Approximately 15 minutes. ^b See Exhibits 4.12-1 and 4.12-2 for measurement locations ^c The 15-minute short-term noise level measurements were converted into 24-hour CNEL based on the hourly patterns from the long-term measurements 15 and 16; see Table 4.12-7 and Appendix I.						

Response 46

The data for calculating the CNEL from short-term measurements were not requested from the City during the public review period for the Draft EIR. The files are available for review at the City Community Development Department during regular business hours.

Response 47

As stated on page 4.12-16 of the Draft EIR, paragraph 3, duration of impact is a factor in determination of significance, that is, if the short-term noise increase is substantial. The City determined that a substantial impact would occur if noise from multiple diesel engines would occur within 300 feet of a sensitive receptor for a duration of more than 20 days.

Response 48

The statements in Appendix F, the Traffic Impact Analysis, refer to City limits on truck traffic to avoid congestion, not the project plan for anticipated truck trips. Please also see comment and response number 7.

Response 49

The following are excerpts from studies verifying the noise-reducing efficiency of rubberized asphalt; references are provided:

Sacramento County Public Works Agency - Transportation Division. 1999 (November). Report on the Status of Rubberized Asphalt Traffic Noise Reduction in Sacramento County

The conclusions of the 6-year study indicate that the use of rubberized asphalt on Alta Arden Expressway resulted in an average four (4) decibel reduction in traffic noise levels as compared to the conventional asphalt overlay used on Bond Road. This noise reduction continued to occur six (6) years after the paving with rubberized asphalt. This degree of noise attenuation is significant, as it represents a 60% reduction in traffic noise energy, and a clearly perceptible decrease in traffic noise. This traffic noise attenuation from rubberized paving is similar to the results documented in several non-related studies conducted in recent years at other locations, both nationally and internationally.

Federal Highway Administration. 2005 (June) Pilot Program Evaluates Quiet Pavements in Arizona. Publication Number: FHWA-HRT-05-027. <http://www.fhwa.dot.gov/publications/focus/05jun/index.cfm>

The Arizona Department of Transportation (ADOT) has used rubberized asphalt since 1988 to resurface roads across the State, at various elevations and in different climates. Rubberized asphalt consists of a mixture of aggregate combined with asphalt cement and crumb rubber from discarded tires. "The performance of rubberized asphalt overlays is comparable to other methods of resurfacing existing roads," says Mike Dennis of ADOT. As a result of this resurfacing application, more than 15 million tires have been recycled in Arizona since 1988. In addition to its value in rehabilitating existing pavements and recycling a waste product, the rubberized asphalt has demonstrated the added benefit of reducing traffic noise at the tire/pavement interface. Data collected for the [Federal Highway Administration's (FHWA) Quiet Pavement Pilot Program] QPPP has shown an average noise reduction of 5 decibels in residential neighborhoods. By participating in the QPPP, ADOT aims to confirm that the noise reduction is sustainable over the average 10-12 year life of an ARFC pavement overlay.

The resurfacing would not differ from normal road maintenance and resurfacing efforts and would not require environmental evaluation.

Response 50

The preferred mitigation, rubberized asphalt pavement, would reduce impacts to 1st and 2nd story receptors to less than significant. The description of an alternative mitigation, a sound wall, was provided for information. There is no requirement for the alternative to reduce impacts to all receptors to less than significant.

Response 51

The City has proposed feasible mitigation that would reduce exterior noise levels to a less than significant level. There is no obligation or requirement to offer further alternative mitigation particularly where its implementation may be infeasible. It is also noted that CEQA does not require all feasible mitigation regardless of cost. "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors" (State CEQA Guidelines §15364).

Response 52

The analysis of loading docks on pages 4.12-33 and 34 of the Draft EIR does not identify daytime loading dock noise as a potential significant impact and nighttime loading dock activity would be avoided with the incorporation of mitigation measure (MM) 4.12-9. MM 4.12-10's specification of an 8-foot noise wall under certain conditions would provide additional noise reduction from loading dock activities as well as truck engines. The Caltrans and FHWA recommendations for noise walls that will break the line of sight to the exhaust stacks of heavy diesel trucks are intended for use on freeways where there is a relatively heavy concentration of heavy diesel trucks. No revision to the analysis is required.

Response 53

The statement that the amplified noise would not be audible at a distance of 300 feet follows the Municipal Code requirement that the amplified noise not be audible at a distance in excess of 100 feet. No revision is necessary.

Response 54

The analysis acknowledges that there would be both traffic noise, of varying levels, and noise from the community park, and that noise from the community park would be audible at times. The analysis also notes that the barriers that would be installed to reduce traffic noise may also reduce noise from park activities. The impact is not understated

Response 55

The analysis acknowledges the potential noise impact from park activities to residential use areas that may or may not be located where mitigation would be required. MM 4.12-8 requires analysis and noise mitigation if necessary when the future residential areas near the park have been designed. No further analysis is required at this time.

Response 56

The comment implies that drilling of new wells would be an ongoing operational activity. The site is currently an operating oilfield on which new wells are drilled. As part of the Project, the oil operations are proposed to be consolidated, and the operations could include the drilling of wells. Given that the location of the consolidation sites are located further from existing residences, the noise from oilfield operations upon Project implementation should be reduced as a result of distance from existing receptors. A distinction should be drawn between construction activities which are regulated by the City's Noise Ordinance and the mitigation measures in the EIR. The oil operations are an existing use and will continue as an existing use regardless of Project implementation. MM 4.12-11 would require actions to reduce noise impacts associated with the drilling of replacement wells in the consolidated oil facility sites.

Response 57

Although occasional oil well drilling could occur outside of the normal hours for construction, the City Municipal Code Sections 10.28.040, Construction Activity, and 10.28.045 Real Property Maintenance, both contain exemptions when, "The maintenance, repair or improvement is of a nature that cannot feasibly be conducted during normal business hours." This exemption is applicable to well drilling, which must be a continuous activity. The activity would not violate applicable codes.

Response 58

The number of flight operations at the Hoag Hospital heliport is small, being limited to emergency situations. Further, there is an operational requirement that flights be routed away from the area west of the hospital, as stated in the following mitigation measure from the Hoag Hospital EIR:

Use of the heliport/helipad shall be limited to emergency medical purposes or the transportation of critically ill patients in immediate need of medical care to and from Hoag Hospital. Helicopters shall, to the extent feasible, arrive at, and depart from the

helipad, from the northeast, to mitigate noise impacts on residential units to the west and south.

Because of the infrequent occurrence of helicopter flights over the Project site, the impact would be less than significant.

Response 59

The mitigation measure is based upon potential impact to structures not to the property line. The construction contractor(s) would have detailed site plans that enable the marking of buffer zones, thus assuring that the mitigation is realistic and enforceable.

Response 60

The issuance of a grading permit is the “trigger” to begin the mitigation process. If a grading permit is not issued, there would be no requirement for mitigation.

Response 61

Please see Response 52.

Response 62

A traffic mix of 98 percent autos, 1 percent medium trucks, and 1 percent heavy trucks is a reasonable and usually conservative mix for suburban neighborhoods. On West Coast Highway, where one would expect more trucks than in the neighborhoods, Caltrans counts show 99.3 percent autos, 0.48 percent medium trucks, and 0.22 percent heavy trucks; that is, less trucks than assumed for the noise modeling. For information, it is noted that the assumption of 94.36 percent autos, 4.49 percent medium trucks, and 1.15 percent heavy trucks would increase CNEL noise levels between 0.5 and 1 decibel. This increase would apply to both “without project” and “with project” scenarios. Therefore, the increase in noise attributed to Project-generated traffic would be the same as reported in the Draft EIR.

Response 63

The day, evening, night mix of vehicles will vary depending on the street location relative to residential and commercial development. The 80 percent day, 7 percent evening, 13 percent night mix is an accepted typical urban and suburban mix. Substitution of the values noted in the comment, with more evening traffic and less nighttime traffic, would result in a reduction in CNEL noise levels between 0.5 and 1 decibel. This difference is negligible with respect to significance determination.

Response 64

The figures referenced in the traffic analysis (900,000 cubic yards (cy) of cut-and-fill and 1,500,000 cy of total earthwork) refer to the Project grading volumes sometimes referred to as remedial grading, and are not related to the remediation of contaminated soils. The 25,000 cy are not a contingency volume but is an estimated maximum amount of oil impacted soils that the Applicant may choose to export as part of oilfield remediation. As stated on page 4.5-20 of the Draft EIR, it is estimated that 246,000 cy of materials in the oilfield may require remediation (approximately 138,000 cy are estimated to be oil impacted soils and 108,000 cy are estimated to be surface road materials and concrete). As noted, any contingency amounts are already included in these remediation volume estimates. Please also refer to Response 7.

Response 65

Contrary to the statement made by Synectecology, the Draft EIR does include a discussion of potential indirect impacts to “sensitive species” (pages 4.6-64 through 4.6-68). The Draft EIR included an analysis of the both impacts (noise) and species/resources (coastal sage scrub, riparian scrub/forest vegetation, coastal California gnatcatcher, least Bell’s vireo, breeding birds, etc.). The Draft EIR does identify significant impacts from Bluff Road future traffic noise on sensitive avian species. Page 4.6-65, 1st paragraph, 9th line, states “The Bluff Road future traffic noise impacts are considered significant”. MMs 4.6-1, 4.6-2, 4.6-4 through 4.6-6, and 4.6-8 through 4.6-13 would reduce this impact to a less than significant level by increasing the biological value of the Project site for wildlife species. Short-term construction impacts to active least Bell’s vireo nests are also considered potentially significant. Implementation of MM 4.6-11 would reduce this impact to a less than significant level.

The Draft EIR includes a discussion on potential dust impacts on page 4.6-67. Specifically, this discussion acknowledged that the dust within the development footprint and adjacent areas is expected to increase. The accumulation of dust on the leaves of trees and shrubs, which can provide habitat for special status and other common species, could negatively impact these resources. However, these impacts were found to be adverse, though not significant, because the level of potential impacts is not expected to result in the loss of a species or habitat type on the Project site.

Urban pollutants, including potential impacts as a result of changes in water quality and greenhouse gas emissions is discussed in the Draft EIR on pages 4.6-66 through 4.6-67. The Draft EIR acknowledges that runoff or improper disposal could adversely affect water quality during construction or following construction. Although indirect impacts associated with adverse water quality conditions can result in significant impacts to biological resources, the Project Design Features and Standard Conditions identified in Section 4.4, Hydrology and Water Quality would preclude significant water quality impacts.

Regarding greenhouse gas emissions, the Draft EIR identified that the Project is consistent with a suggested measures in the *California Environmental Quality Act, Addressing Global Warming Impacts at the Local Agency Level*: “Preserve and create open space and parks. Preserve existing trees and plant replacement trees at a set ratio”. The Project would preserve and enhance approximately 220 acres of native habitat. The Project would also provide approximately 51.4 gross (42.1 net) acres for active and passive park uses. Community landscaping improvements for streets, parks, common areas, open space areas, and habitat areas would be enhanced, restored, and improved with major supplemental plantings that would increase the biomass of Newport Banning Ranch, providing for on-site carbon sequestration.

Correspondence Item No. 2c
Bruce Bartram

Correspondence
Item No. 2c
Newport Banning Ranch
PA2008-114

Burns, Marlene

From: Alford, Patrick
Sent: Monday, June 18, 2012 3:38 PM
To: Burns, Marlene
Cc: Marice White
Subject: FW: NBR DEIR Banning Ranch Open Space Acquisition
Attachments: City Email NBR Purchase.pdf; NBR DEIR Open Space Alternative I.pdf; NBR DEIR Open Space Alternative II.pdf; NBR DEIR Open Space Alternative III.pdf; NBR DEIR Open Space Alternative IV.pdf; OCTA Board Action.pdf

More NBR correspondence.

From: Bruce Bartram [mailto:b.bartram@verizon.net]
Sent: Monday, June 18, 2012 3:28 PM
To: Alford, Patrick
Cc: knelson@web-conferencing-central.com; terrymwelsh@hotmail.com; robb@hamiltonbiological.com; greenp1@cox.net; medjkraus@yahoo.com; shokobennett@gmail.com; blush1996@aol.com; davesutherland4@gmail.com; pcmalkemus@gmail.com; jtmansfield@ca.rr.com; mtabbert15@gmail.com; steve.banningranch@hotmail.com; mezzohiker@msn.com; dkoken@hmausa.com; terrymwelsh@hotmail.com; jenniferfrutig@aol.com
Subject: NBR DEIR Banning Ranch Open Space Acquisition

June 18, 2012

October 14, 2011
Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: NBR DEIR Banning Ranch Open Space Acquisition

Dear Mr. Alford:

The City of Newport Beach General Plan's Land Use policies regarding Banning Ranch are contained in Pgs. 3-67 - 3-77. On Pg. 3-71 the "Policy Overview" regarding Banning Ranch is stated:

"The General Plan prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region. Oil operations would be consolidated, wetlands restored, nature education and interpretative facilities provided, and an active park developed containing playfields and other facilities to serve residents of adjoining neighborhoods. Should the property not be fully acquired as open space, the Plan provides for the development of a concentrated mixed-use residential village that retains the majority of the property as open space. This would contain a mix of housing types clustered around a "village center" of local-serving commercial uses, small boutique hotel, active park, and possibly a school. Buildings would be located and designed and an interconnected street system provided to enhance pedestrian activity and reduce vehicular trips. Development would be concentrated to preserve the majority of the property as open space, while oil operations would be clustered and wetlands restored. An internal trail system would be developed to link uses within its neighborhoods and districts and provide access to adjoining neighborhoods. While the Plan indicates the maximum intensity of development that would be allowed on the property, this will ultimately be determined through permitting processes that are required to satisfy state and federal environmental regulatory requirements." (Emphasis added)

The Policy Overview indicates the "use" of Banning Ranch as a "residential village" is a "secondary alternative" available only upon Banning Ranch's acquisition as open space proving a failure. This "open space" priority is also shown in the Introduction to the General Plan. On Pg. 1-2, it is stated that the General Plan Advisory Committee...developed this General Plan to ensure that the City achieves the (Vision Statement) by, among many other things, doing the following:

.....
"Supporting efforts to acquire Banning Ranch for permanent open space."

At any rate, the General Plan lists the following Land Use Goals, Policies and Strategies regarding the prioritizing the acquisition of Banning Ranch as open space:

Correspondence Item No. 2c
Bruce Bartram

"Goal

LU 6.3

Preferably a protected open space amenity, with restored wetlands and habitat areas, as well as active community parklands to serve adjoining neighborhoods.

Policies

LAND USES (designated as "OS(RV)")

LU 6.3.1

Primary Use

Open space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

LU 6.3.2

STRATEGY

Acquisition for Open Space

Support active pursuit of the acquisition of Banning Ranch as permanent open space, which may be accomplished through the issuance of state bonds, environmental mitigation fees, private fund raising, developer dedication, and similar techniques.

Goal

LU 6.4

If acquisition for open space is not successful, a high-quality residential community with supporting uses that provides revenue to restore and protect wetlands and important habitats.

Policies

LAND USES

LU 6.4.1 Alternative Use

If 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, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space."

To pin down what is meant by "within a time period" above, I emailed Gregg Ramirez of the City to whom which the City's website directs General Plan questions be directed to. His response is attached in which he indicates that "[T]here is no defined timeline. However, the City Council will receive a report on funding feasibility for acquisition by a non-profit group at the August 11 (2009) City Council session. We will send you a copy of that report." I never got the report, however, the foregoing shows there is no fixed time limitation for the City to successfully acquire Banning Ranch as open space.

In the NBR DEIR, the priority use of Banning Ranch as open space and the City's "efforts" at its acquisition are addressed in NBR DEIR Section 7.0 Alternatives to the Proposed Project. The Open Space acquisition is listed as Alternative B. The NBR DEIR points a supposedly bleak picture regarding potential funding for acquisition after mentioning that a pricing study in January 2009 listed a price range from \$138 mil to \$158 mil. As to funding availability, on Pg 7-64 it is stated:

"To date, funds for the acquisition of the site have not been available and a viable funding program has not been identified. The Renewed Measure M (also known as Measure M2) was passed in November 2006, to extend the half-cent sales tax for transportation projects from April 2011 through 2041. A component of Measure M2 was the allocation of funds for environmental mitigation. The Newport Banning Ranch property was one of the initial 14 properties that were recommended by the OCTA Environmental Oversight Committee (EOC) to be considered for

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cont.

Correspondence Item No. 2c
Bruce Bartram

acquisition as part of the Environmental Mitigation Program (EMP) developed for the Measure M2. Acquisition properties identified for the EMP were ranked according to their biological values and those with higher habitat values and willing sellers were subject to appraisals and further negotiations. At the time, indicated it would not provide a letter indicating intent to sell because the property was in the entitlement process and a Draft Environmental Impact Report was expected to be issued in 2010 (Ward 2010). Newport Banning Ranch, LLC indicated that, given the circumstances pertaining to the Newport Banning Ranch property-including the very high City and Owner land valuations--the admission to the OCTA Vision 2020 Committee by the EOC that their intention was not to use "highest and best use" as the standard for appraisal/valuation, as well as concerns related to oil operations cleanup liabilities, a "willing seller" letter could not be provided."

Despite the foregoing, the NBR DEIR states that Alternative B "is considered to be potentially feasible."

From policies contained in General Plan it is apparent that the City's "efforts" at acquiring Banning Ranch must be shown to have been unsuccessful before NBR's development as a "residential village" is permitted. If the City approves NBR without making any findings that acquisition of Banning Ranch was not successful, this would be grounds for legal attack against the approval for violating the General Plan.

Also, in the NBR DEIR on Pg. 7-64 is the statement that "funds for the acquisition of the site (Banning Ranch) have not been available and a viable funding program has not been identified." Yet, as shown above there then follows a discussion of Measure M2 Funds as a possible source of acquisition funds. The discussion concludes, however, by stating that Newport Banning Ranch, LLC would not provide a "willing seller letter" to the OCTA Environmental Oversight Committee to help determine Banning Ranch's acquisition eligibility through Measure M2 Funds.

It is submitted that the City prior to approval of NBR's development as a "residential village" require Newport Banning Ranch, LLC to submit a "willing seller letter" to the OCTA Environmental Oversight Committee. This to be consistent with General Plan policies outlined above which mandate the City in "Supporting efforts to acquire Banning Ranch for permanent open space."

To gain a better understanding of the Measure M2 environmental mitigation program attached is a copy the Orange County Transportation Authority Board Actions Summary for the Meeting of May 14, 2012. As you can see, at this meeting alone some \$5 million was allocated as part of the "Measure M2 Environmental Mitigation Program." In the summary, the "Measure M2 Environmental Mitigation Program" is described as follows:

"The M2 Environmental Freeway Program Mitigation fund is a comprehensive plan to preserve and restore open space open space throughout the county. It will provide approximately \$300 million during the next 30 years to preserve and restore open space throughout Orange County." (Emphasis added)

In conclusion, M2 Environmental Freeway Program Mitigation funds are an obvious source for the acquisition of Banning Ranch as open space. The General Plan prioritizing the acquisition of Banning Ranch as open space. Therefore, City is bound under the General Plan to make a good faith attempt regarding acquisition of Banning Ranch as open space prior to approval of its "development" as a "residential village."

Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

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cont.

Correspondence Item No. 2c
Bruce Bartram

Page 1 of 3

Bruce Bartram

From: "Ramirez, Gregg" <GRamirez@newportbeachca.gov>
Date: Wednesday, August 05, 2009 10:18 AM
To: "Bruce Bartram" <b.bartram@verizon.net>
Subject: RE: General Plan Question re: Banning Ranch
Mr. Bartram,

There is no defined timeline. However, the City Council will receive a report on funding feasibility for acquisition by a non-profit group at the August 11 City Council study session. We will send you a copy of that report.

Sincerely,

Gregg Ramirez
City of Newport Beach
Planning Department
949-644-3219

From: Bruce Bartram [mailto:b.bartram@verizon.net]
Sent: Monday, August 03, 2009 3:37 PM
To: Ramirez, Gregg
Subject: General Plan Question re: Banning Ranch

Dear Mr. Ramirez:

As regards acquisition of the Banning Ranch for open space, the General Plan on page 3-72, LU 6.4.1 states:

"Alternative Use

If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owners, the site may be developed as a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owners may pursue entitlements and permits for residential village during the time allowed for acquisition as open space."

What and/or how much is the "time period" and "time allowed for acquisition" of Banning Ranch by the City for open space? No mention of a specific time frame/limitation is mentioned in the General Plan.

Thank you for your expected cooperation in this matter.

Very truly yours,

Bruce Bartram
2 Seaside Circle
Newport Beach, Ca 92663

----- Original Message -----
From: Ramirez, Gregg

10/2/2011

Correspondence Item No. 2c
Bruce Bartram

Section 7.0
Alternatives to the Proposed Project

Utilities

The Utilities evaluated in the EIR include the following: water, wastewater facilities, and energy (electricity and natural gas). The General Plan Open Space Designation Alternative would not cause increases in the resident population of the City. However, because this Alternative would create an active park containing playfields and other facilities to serve residents of adjoining neighborhoods, wastewater and water services would be required with the provision of restrooms, irrigation, and potable water. Therefore, there would be minimal impacts associated with Thresholds 4.15-2 (water supply), 4.15-4 (exceeding wastewater treatment requirements), and 4.15-5 (wastewater treatment capacity). Lighting associated with the park would also require electricity (Threshold 4.15-7). Wastewater, water, and electricity service demands would be considered less than significant and would be less than with the proposed Project. Alternative B would not require new facilities (other than distribution lines) related to water, wastewater, or energy facilities and would not exceed the existing capacity of these services. Impacts associated with Thresholds 4.15-1 (construction of new water treatment facilities) and 4.15-7 (construction of new energy transmission facilities), which both pertain to physical impacts associated with construction of water and energy facilities or accelerated physical deterioration associated with increased usage of existing facilities, would be less than significant. Though the impacts would not be significant for the proposed Project, the impacts would be less with Alternative B because the overall demand generated would be less, which would reduce the demand on existing facilities.

Thresholds 4.15-3 (water), 4.15-6 (wastewater), and 4.15-8 (energy) pertain to consistency with any applicable plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. The General Plan identifies the Open Space Designation as the primary use for the Project site. Therefore, this Alternative would be consistent with land use and natural resource policies; these are outlined in Table 4.15-11, City of Newport Beach General Plan Consistency Evaluation, which identifies the use of sustainable development practices, water conservation, and use of water-conservation devices in the City. Both the proposed Project and Alternative B would be consistent with the applicable General Plan policies.

Conclusion

Alternative B would have fewer impacts than the proposed Project because it would involve less grading and site disturbance. This Alternative would have less demand on public services and utilities. However, this Alternative would not assist the City in meeting its RHNA housing requirements or implementing the General Plan Housing Element.

Significant and Unavoidable Impacts

Alternative B would be able to avoid the significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts, when compared to the proposed Project. The following topics would have impacts that could not be reduced to a less than significant level:

- There would be land use incompatibility with respect to night illumination associated with the Community Park and long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17th Street west of Monrovia Avenue. For noise, though mitigation is proposed, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased

Correspondence Item No. 2c
Bruce Bartram

Section 7.0
Alternatives to the Proposed Project

- interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt (Threshold 4.1-1).
- Alternative B would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project (Threshold 4.2-3).
 - Construction of the roadways and park would cause a substantial temporary increase in noise levels at residences and schools within 500 feet of the roadway and park construction because of existing relatively low ambient noise levels. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, the temporary noise increases would be significant and unavoidable (Threshold 4.12-2).

Feasibility and Ability to Meet Project Objectives

This Alternative is deemed to be potentially feasible. That said, the ultimate determination of feasibility is a consideration for the decision makers. In this case, the financial feasibility of this Alternative is dependent upon the ability of a responsible party to obtain sufficient funds to acquire the site and fund clean-up, restoration, and long-term maintenance of the site. Feasibility is also dependent on the City's ability to construct roadways, infrastructure, and recreation improvements. In addition, since no mechanism exists to impose consolidation and clean-up of the oilfield, agreements would have to be negotiated for this to occur.⁵

The City and others have been investigating potential funding sources; however, to date no financing has been identified to implement any component of this Alternative despite efforts by the City to establish a value for the property, efforts to identify sources of funding via open space acquisition consultants, and the efforts of independent groups.

The General Plan identifies the fiscal constraints associated with implementation of this Alternative. The acquisition of the property and implementation of Alternative B, which includes site remediation, would be very expensive. The City has had a pricing study of the Project site prepared by an appraiser, which concluded in January 2009 that the price of the land could range from \$138,000,000 to \$158,000,000, assuming a 25 percent discount if all of the property were to be acquired at once (Buss-Shelger Associates 2008). These prices do not include the cost of clean-up and remediation from the oil operations on the property. The City also retained an open space acquisition consultant, who explored the feasibility of funding for acquisition of the property as open space. The consultant's report in August 2009 found that, in light of economic and State fiscal conditions, there is little likelihood of funding from State bonds or private foundations in the near future. In addition, some agencies felt that the important habitat areas on Newport Banning Ranch should be preserved through the development entitlement process, and public funding should not be used for acquisition of the entire property (Resources Opportunity Group, LLC. 2009). The City's open space acquisition consultant re-contacted State

⁵ Acquisition of the property does not include acquisition of the underlying mineral rights, which are owned by a third party.

Correspondence Item No. 2c
Bruce Bartram

Section 7.0
Alternatives to the Proposed Project

funding agencies in July 2010, after some Proposition 84 funds had been released. While some of those funds were technically "available" and agency staff had been told they may consider projects again, the practical reality was that any money available was only for projects that have been on line for two to three years, with appraisals and purchase negotiations completed. As in 2009, the conclusion was that there would not be enough money for an acquisition like Newport Banning Ranch for open space purposes (Wood 2009).

To date, funds for the acquisition of the site have not been available and a viable funding program has not been identified. The Renewed Measure M (also known as Measure M2) was passed in November 2006, to extend the half-cent sales tax for transportation projects from April 2011 through 2041. A component of Measure M2 was the allocation of funds for environmental mitigation. The Newport Banning Ranch property was one of the initial 14 properties that were recommended by the OCTA Environmental Oversight Committee (EOC) to be considered for acquisition as part of the Environmental Mitigation Program (EMP) developed for the Measure M2. Acquisition properties identified for the EMP were ranked according to their biological values and those with higher habitat values and willing sellers were subject to appraisals and further negotiations. At the time, Newport Banning Ranch, LLC indicated it would not provide a letter indicating intent to sell because the property was in the entitlement process and a Draft Environmental Impact Report was expected to be issued in 2010 (Ward 2010). Newport Banning Ranch, LLC indicated that, given the circumstances pertaining to the Newport Banning Ranch property—including the very high City and Owner land valuations—the admission to the OCTA Vision 2020 Committee by the EOC that their intention was not to use "highest and best use" as the standard for appraisal/valuation, as well as concerns related to oil operations clean-up liabilities, a "willing seller" letter could not be provided.

While EIRs are to focus on environmental impacts, rather than economic considerations, the financial feasibility of implementing an Alternative is a reasonable consideration under CEQA. If the resources are not available, the decision makers may be determined that this is not a feasible Alternative regardless of the potential environmental or other public benefits.

Additionally, this Alternative does not meet the Project objectives as effectively as the proposed Project. Specifically, this Alternative would not meet the following Project objectives:

- Development of a residential village of up to 1,375 residential units, offering a variety of housing types in a range of housing prices, including provision of affordable housing to help meet the City's Regional Housing Needs Assessment (RHNA) (Objective 3).
- Development of up to 75 overnight accommodations in a small resort inn including ancillary facilities and services such as a spa, meeting rooms, shops, bars, and restaurants that would be open to the public (Objective 4).
- Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Development of a land use plan that (1) provides a comprehensive design for the community that creates cohesive neighborhoods promoting a sense of identity with a simple and understandable pattern of streets, a system of pedestrian walkways and bikeways that connect residential neighborhoods, commercial uses, parks, open space and resort uses; (2) reduces overall vehicle miles travelled; (3) integrates landscaping that is compatible with the surrounding open space/habitat areas and that enhances the pedestrian experience within residential areas; and (4) applies architectural design

Correspondence Item No. 2c
Bruce Bartram

Section 7.0
Alternatives to the Proposed Project

criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene (Objective 6).


- Implement a Water Quality Management Program within the Project site that will utilize existing natural treatment systems and that will improve the quality of urban runoff from off-site and on-site sources prior to discharging into the Santa Ana River and the Semeniuk Slough (Objective 14).





In addition, the following objectives would only be partially met with Alternative B, assuming that adequate funding is available:

- Provide enhanced public access in the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).
- Provide for the restoration and permanent preservation of habitat areas through implementation of a Habitat Restoration Plan (HRP) for the habitat conservation, restoration, and mitigation areas ("Habitat Areas") as depicted on the Master Development Plan (Objective 10).
- Provide for long-term preservation and management of the Habitat Areas through the establishment of a conservation easement or deed restriction and the creation of an endowment or other funding program (Objective 11).
- Improve the existing arroyo drainage courses located within the Project site to provide for higher quality habitat conditions than exist prior to the time of Project implementation (Objective 13).
- Implement fire protection management solutions designed to protect development areas from fire hazards, to preserve sensitive habitat areas, and to create fire-resistant habitat restoration areas within currently denuded, invasive-species laden, and/or otherwise degraded areas (Objective 15).

Though this Alternative would not meet or would not effectively meet more than half the Project objectives, the General Plan identifies that the open space land use is the primary land use for the site with the residential village serving as an alternate, if acquisition for open space is not feasible. Therefore, Alternative B is considered to be potentially feasible.

Correspondence Item No. 2c
Bruce Bartram



Orange County Transportation Authority • 550 South Main Street • P.O. Box 14184 • Orange, California 92863-1584 • 714-560-OCTA (6282)

Meeting of May 14, 2012

M2 Funding Headed To Environmental Restoration Projects

The Board approved six restoration projects today totaling approximately \$5 million as part of the Measure M2 Environmental Mitigation Program.

Project / City	Amount Funded	Acres
Aliso Creek / Laguna Niguel	\$1.1 million	55
Chino Hills State Park / Brea	\$193,000	21
Harriett Weider Regional Park / Huntington Beach	\$475,000	10
Lower Silverado Canyon / Irvine	\$1.4 million	44
North Coal Canyon / Yorba Linda	\$247,500	5.5
West Loma / Irvine	\$1.3 million	80

The restoration projects chosen are those determined to have the highest potential to support native plants, restore habitat for sensitive species and provide the highest potential to successfully replace resources lost to freeway construction.

The call for projects was issued June 2011 and OCTA received 40 proposals from throughout the county. The next step is to issue another call for projects with the remaining program funding of \$400,000. The focus of the next round of projects will be on restoring watersheds affected by M2 freeway projects, specifically the Bolsa Chica Channel-Frontal Huntington Harbor, lower Santa Ana River, San Diego Creek and San Juan Creek.

The M2 Environmental Freeway Mitigation Program is a comprehensive plan to preserve and restore open space throughout the county. It will provide approximately \$300 million during the next 30 years to preserve and restore land throughout Orange County.

For more information regarding OCTA's environmental program, visit www.octa.net/environmental.

Board Suspends Decision On Removing 19th Street Bridge from MPAH

The board voted to suspend its previous decision to remove the 19th Street bridge from the Master Plan of Arterial Highways (MPAH). The board asked that OCTA staff work with Newport Beach, Costa Mesa and Huntington Beach to identify potential impacts of removing the bridge from the master plan, find alternative options and generate an agreement that identifies those improvements with affected agencies. The board will revisit the issue no later than November 26.

The board has also decided to deny an appeal from a third party to have the California Environmental Quality Act (CEQA) determine if the 19th Street bridge

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Correspondence Item No. 2c
Bruce Bartram



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removal is an environmentally viable option. The board maintains the bridge is exempt from CEQA because the MPAH is solely a planning and feasibility study, requiring only consideration of environmental factors.

In a one-time exception because of unique circumstances, the board voted to remove the 19th Street bridge from the Master Plan of Arterial Highways on March 12. The bridge was in the plan as a four-lane primary arterial.

The cities of Costa Mesa and Huntington Beach requested the removal of the bridge, which faced a number of challenges to being constructed including environmental impacts, community opposition, right-of-way impacts, challenging permitting processes and substantial costs.

The board supported the removal of the 19th Street bridge because of the unlikely possibility it would ever be constructed. The board has begun working with affected agencies to develop alternatives and generate an agreement to the bridge's outcome.

Army Advisory Council Recognizes OCTA as Veteran Friendly Employer

The Southern California Army Advisory Council recognized the Orange County Transportation Authority on Monday as a military-friendly employer for its active involvement in military recruitment.

OCTA employs 124 veterans and honors those employees at an annual Veterans Day event. In addition, the agency reaches out to the military through:

- Participating in veteran recruitment events at least once a year at Camp Pendleton in San Diego
- Speaking at the Camp Pendleton Transition Assistance Program and providing career transition advice to members of the Army, Navy and Marine Corps
- Remaining engaged with local junior colleges and universities to assist veterans making the transition from the military into the academic environment
- Coordinating efforts with the U.S. Army Southern California Recruiting Battalion to assist Guard, Reserve and active duty soldiers as they make a transition from the military service to career fields in the transportation industry

Correspondence Item No. 2c

Bruce Bartram

June 18, 2012

Response 1

Mr. Bartram did not identify an environmental issue but did express his support of the preservation of the property as Open Space. After the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Correspondence Item No. 2d
John Sisker

Correspondence
Item No. 2d
Newport Banning Ranch
PA2008-114

Burns, Marlene
From: Alford, Patrick
Sent: Tuesday, June 19, 2012 10:36 AM
To: Burns, Marlene
Cc: 'Dana Privitt'; 'Marice White'
Subject: FW: Newport Banning Ranch: Draft Environmental Impact Report

Please distribute.

From: Kiff, Dave
Sent: Tuesday, June 19, 2012 10:20 AM
To: Brandt, Kim; Alford, Patrick
Subject: FW: Newport Banning Ranch: Draft Environmental Impact Report

For the record.

From: John Sisker [<mailto:jsisker@sprynet.com>]
Sent: Tuesday, June 19, 2012 10:18 AM
To: Kiff, Dave
Subject: Newport Banning Ranch: Draft Environmental Impact Report

June 19, 2012

Newport Beach Planning Commission / Patrick Alford
Planning Manager, Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92663

Re: Newport Banning Ranch Draft Environmental Impact Report

Dear Chairman and Planning Commissioners & Mr. Alford:

After due consideration, plus new and additional information that has come to light, I now wish to personally go on official record in reference to the following comments regarding the Newport Banning Ranch Draft Environmental Impact Report.

For the record, I am personally against the Newport Banning Ranch Development, and as such would request that the following concerns be officially included in the record as well.

- If the project does move forward, I feel Bluff Road should be eliminated from 17th to 19th Streets, thus officially terminating at 17th Street. The original plans for Banning Ranch did have the major ingress/egress points for Banning Ranch at 15th, 16th, 17th Streets and Pacific Coast Highway, so why the need for this particular Bluff Road extension to 19th Street now, when many times at related presentations, it was pointed out, that the overall project does not call for it? (Section 4.9 / Transportation and Circulation) } 1
- Likewise, and even though not seemingly part of the present Draft Environmental Impact Report, I see no need for the 19th Street Bridge, originally slated to connect at Brookhurst at Banning. In fact, if this Bridge is not crucial to the overall project as claimed at all the presentation meetings, steps also need to } 2

Correspondence Item No. 2d
John Sisker

be taken by the City of Newport Beach itself to have it officially removed from the Master Plan of Arterial Highways as well? (*Section 4.9 / Transportation and Circulation*)

} 2
cont.

- In addition, all talk, negotiations and/or future considerations, needs to be totally eliminated of extending Balboa Blvd., at 19th Street, plus widening and extend in a northerly direction to terminate at Victoria just east of that bridge. If the 19th Street Bridge is officially eliminated, why would existing and established developments such as Newport Terrace be used as an alternative to benefit the overall Newport Banning Ranch Development instead? (*Section 4.9 / Transportation and Circulation*)

} 3

Sincerely,

John Sisker
11 Moonrise Court
Newport Beach, CA 92663
(949) 791-8302

Correspondence Item No. 2d

John Sisker

June 19, 2012

Response 1

The construction of North Bluff Road to 19th Street is a part of the proposed Project. The Draft EIR also includes a Project alternative where North Bluff Road would connect to 17th Street rather than 19th Street.

Response 2

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the OCTA MPAH for purposes of transportation modeling. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Response 3

The extension of North Bluff Road north of the Project site is depicted on the City of Costa Mesa's General Plan and on the OCTA MPAH. It would not be deleted from the OCTA MPAH as a part of this Project. The General Plan Buildout analysis for Newport Banning Ranch was based on the adopted roadway network in the Project vicinity, which includes this segment of Bluff Road. If the City of Costa Mesa decides to pursue the deletion of this off-site segment of Bluff Road from the MPAH, they would be required to prepare a cooperative study to identify and mitigate any impacts resulting from the removal of the roadway from the MPAH.

Correspondence Item No. 2e
Newport Condominium Association (Newport Terrace)

NEWPORT
CONDOMINIUM ASSOCIATION

June 18, 2012

Patrick Alford - Planning Manager
Michael Toerge - Chair, Planning Commission
City of Newport Beach
P.O. Box 1768
Newport Beach, CA 92663

Correspondence
Item No. 2e
Newport Banning Ranch
PA2008-114

Dear Mr. Alford & Mr. Toerge:

Members of the Board of Directors for Newport Condominium Association (Newport Terrace) wish to clarify a letter dated November 7, 2011, sent for your attention responding to the draft Environmental Impact Report (dEIR) for the Banning Ranch Project. A statement contained in that letter surpassed the position agreed on by our Board of Directors. This letter clarifies the Board's position on the Project. Our Board of Directors encourages individual residents to prepare letters expressing their opinions related to Banning Ranch. This letter notably deletes any preference to favor the Project with a reduced home count.

We hereby reject approval of the Project in its current form. After some review of the draft Environmental Impact Report, discussion amongst ourselves and homeowners from recent association meetings, we kindly request the preparation of a revised Environmental Impact Report to adequately address the comments below:

We wish for Bluff Road to terminate at 17th street. We want no extensions to 19th street. Original plans for Banning Ranch had major egress/ingress points at 15th, 16th, 17th streets and Pacific Coast Highway (PCH). The extension of Bluff Road to 19th street was stated repeatedly in related presentations as not part of the Project. (Section 4.9/ Transportation and Circulation)

Though not part of the present draft Environmental Impact Report for Banning Ranch Project, we object to construction of the 19th street Bridge. Originally, it was slated to connect 19th street to Banning Avenue in Huntington Beach. Our objection is for 2 reasons: 1) Claimed to not be vital to Banning Ranch Project in past presentation meetings the resulting traffic increases would severely impact Newport Terrace Condominiums. 2) Allowing extension of Bluff Road to 19th street may strengthen arguments to favor bridge construction. (Section 4.9/ Transportation and Construction)

We also strongly object to any future plans to connect Old Balboa Boulevard (our western boundary) to Huntington Beach. Extending it northbound to connect at Hamilton Avenue would severely impact traffic for Newport Terrace. Also, to construct this extension would wipe out tons of wild preserve resulting in losses to wildlife habitat of endangered animal species, plants, etc.

Sincerely,

Board of Directors

Professionally Managed By Action Property Management, Inc.
2603 Main Street, Suite 500, Irvine, California 92614
(949) 450-0202 (800) 400-2284 (949) 450-0303 fax
www.myhoa.com/newport

Correspondence Item No. 2e
Newport Condominium Association (Newport Terrace)

NEWPORT
CONDOMINIUM ASSOCIATION

Monica Kerr, President

Sara Barnett, Secretary

John Sisker, Vice President

Robert Gilmore, Member at large

Ross Minion, Treasurer

cc:
John Moorlach, Supervisor 2nd District, County of Orange
Nancy Garner, Mayor, Newport Beach

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2603 Main Street, Suite 500, Irvine, California 92614
(949) 450-0202 (800) 400-2284 (949) 450-0303 fax
www.myhoa.com/newport

Correspondence Item No. 2e
Newport Condominium Association (Newport Terrace)

June 18, 2012

Response 1

The extension of North Bluff Road to 19th Street has always been a part of the proposed Project as set forth in the EIR. The City no held any meetings indicating the Project would not have a road extension to 19th Street consistent with the City's Master Plan of Streets and Highways. The Draft EIR does include an alternative where North Bluff Road would connect to 17th Street rather than 19th Street,

Response 2

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. No further response is required.

It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the OCTA MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Response 3

As with the 19th Street Bridge, the extension of North Bluff Road north of the Project site is depicted on the City of Costa Mesa's General Plan and on the OCTA MPAH. It would not be deleted from the MPAH as a part of this Project. The General Plan Buildout analysis for Newport Banning Ranch was based on the adopted roadway network in the Project vicinity, which includes this segment of Bluff Road. If the City of Costa Mesa decides to pursue the deletion of this off-site segment of Bluff Road from the OCTA MPAH, they would be required to prepare a cooperative study to identify and mitigate any impacts resulting from the removal of the roadway from the MPAH.

Correspondence Item No. 2f Banning Ranch Conservancy

Burns, Marlene		Correspondence
		Item No. 2f
		Newport Banning Ranch
		PA2008-114
From:	Alford, Patrick	
Sent:	Wednesday, June 20, 2012 11:04 AM	
To:	Burns, Marlene	
Subject:	Fwd: Cancellation of Planning Commission Hearing	
Attachments:	Letter to Alford re Cancellation, Revision and Recirculation.doc; ATT17747686.htm	

Please distribute

Begin forwarded message:

From: Steve Ray <steve.banningranch@hotmail.com>
Date: June 20, 2012 10:48:03 AM PDT
To: Patrick Alford <palford@newportbeachca.gov>
Cc: Aaron Harp <aharp@newportbeachca.gov>, Dave Kiff <dkiff@newportbeachca.gov>
Subject: Cancellation of Planning Commission Hearing

Hi Patrick,

Attached is a letter stating the contention of the Banning Ranch Conservancy that the Planning Commission hearing scheduled for Thursday, June 21st must be cancelled and that the EIR must be revised and recirculated for the reasons specified in the letter. I would appreciate an expedient reply. Please forward copies to the Newport Beach staff members and officials listed at the end of the letter. I will forward to the other agencies. Please contact me at 310/961-7610. Thanks.

Steve Ray
Executive Director
Banning Ranch Conservancy
www.banningranchconservancy.org
310-961-7610

**Correspondence Item No. 2f
Banning Ranch Conservancy**



Via Email Transmission

June 20, 2012

Officers:

Terry Welch, M.D.
President
James Mansfield
Vice-President
Deborah Koken
Secretary
Jennifer Frutig, PhD.
Treasurer

Steve Ray
Executive Director

Board Members:

Patricia Barnes
Suzanne Forster
John Sisker
Mark Tabbert

Jan Vandersloot, M.D.
In Memoriam

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Cancellation of Planning Commission Hearing, Revision and Recirculation of
Newport Banning Ranch Draft Environmental Impact Report ("EIR")

Dear Mr. Alford,

Significant new information has come to the attention of the Banning Ranch Conservancy which calls for the cancellation of the Newport Beach Planning Commission hearing ("hearing") on the Newport Banning Ranch EIR and project application (scheduled Thursday, June 21, 2012). This information requires significant revisions, additional environmental impact analyses, identification of mitigation and, ultimately, a recirculation of the EIR. Revision of the project design and application may also be necessary.

The information in question is known to the applicant and is, most likely, also known by the City. If so, the City should already have determined the need to cancel or delay the hearing and be proceeding to do so.

CEQA Guideline 15088.5 states that a "lead agency is required to recirculate an EIR when significant new information is added...after public notice is given...for public review...but before certification. As used in this section, the term 'information' can include changes in the project or environmental setting as well as additional data or other information." The information could show that a "new significant environmental impact would result" and/or that a "substantial increase in the severity of an environmental impact would result" and/or that the "draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded". This CEQA guideline and the provisions therein are also supported in substantial case law.

The significant information above referenced regards three matters, to wit:

www.banningranchconservancy.org

Correspondence Item No. 2f Banning Ranch Conservancy

1. Re-Mapping of Vegetation

Expert biologists from public resource agencies U.S Fish and Wildlife Service (“FWS”) and California Coastal Commission (“CCC”) toured the Newport Banning Ranch property several weeks ago. They reviewed the vegetation maps provided in the EIR, upon which environmental analyses were determined, and noted serious discrepancies between those maps and what their own expert eyes revealed – that the EIR maps were, simply put, unreliable, in other words, wrong. Since the analyses of biological resources, the plants and the wildlife dependent on them, is a critical element of the EIR for this project, and that it is unreliable, the resource agencies directed the applicant to re-map the vegetation on Newport Banning Ranch. The applicant has now retained the consulting firm, Dudek, whose staff are engaged on site. The target date to complete the re-mapping is early August. Appropriate analyses of impacts, mitigation and potential redesign required would be next. Recirculation of the EIR would follow. Further, we are not aware that there has been any public disclosure, certainly no EIR disclosure, of this matter, which is a violation of the disclosure requirements of CEQA. This whole issue is undoubtedly a significant development for this project and its EIR. By itself, it is sufficient to justify cancellation of the hearing. But – there’s more.

2

2) Notice of Violation

The CCC has issued a Notice of Violation (“NOV”), with more action expected, to the applicant regarding unpermitted removal of “major vegetation”, in other words, illegal mowing of environmentally sensitive habitat areas (“ESHA”) on Newport Banning Ranch. This is significant because this illegal activity has been ongoing and had occurred prior to the preparation of the EIR, thereby calling into question the reliability of the information therein, and the analyses and conclusions drawn, and the resultant mitigation or lack thereof. The real value of the disturbed habitat must be determined, CCC hearings will be held, mitigation would have to be performed elsewhere on site (such as in the case of the previous violations), thereby potentially removing additional acreage from the development footprint, requiring further analyses and so on. Again, there has been no public or EIR disclosure of this issue.

3

3) Expert Analysis by Synectecology

An expert report on air quality and noise issues in the EIR has been submitted to the City on behalf of Newport Crest resident, Ms. Dorothy Kraus. The comprehensive due diligence review was performed by Synectecology Environmental Consulting Services principal, Mr. Todd Brody, an expert in air quality and noise analysis. In his report, Mr. Brody notes such a plethora of outmoded modeling, factual misstatements, faulty analyses, lack of information and supporting documentation and even conclusory statements dangerous to human health in the EIR’s sections on noise and air quality that the CEQA guidelines require that a “draft EIR...so fundamentally and basically inadequate and conclusory in nature” must be redone and recirculated.

4

**Correspondence Item No. 2f
Banning Ranch Conservancy**

The above "significant new information" and the provisions of CEQA Guideline Section 15088.5 fully justify and require review and recirculation of the EIR, thereby necessitating the halt of any further Planning Commission consideration. Notice in Section 15088.5(e) that a "decision not to recirculate an EIR must be supported by substantial evidence in the administrative record". This indicates that CEQA favors recirculation of an EIR in making the determination under Section 15088.5. This is consistent with both statutory and case law stating "the California Environmental Quality Act (CEQA) (Pub. Resources Code 21000 et seq.) is to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal. App. 4th 1214.

Even the City's General Plan would require consistency with the efforts of the state and federal agencies on remapping the vegetation and resolving the violations of the Coastal Act, prior to processing the EIR. Applicable General Plan policies are as follows:

Policy Overview: "While the Plan indicates the maximum intensity of development that would be allowed on the property (Banning Ranch), this will ultimately be determined through permitting processes that are required to satisfy state and federal environmental regulatory requirements."

LU 6.5.3 Habitat and Wetlands: "Restore and enhance wetlands and wildlife habitats, in accordance with the requirements of state and federal agencies."

LU 6.5.6 Coordination with State and Federal Agencies: "Work with appropriate state and federal agencies to identify wetlands and habitats to be preserved and/or restored and those on which development will be permitted."

Further, CEQA Guideline 15006(i) requires Public Agencies reduce delay and paperwork by: "Integrating CEQA requirements with other environmental review and consulting requirements." Finally, CEQA Guideline 15006(g) requires Public Agencies reduce delay and paperwork by: "Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it."

5

**Correspondence Item No. 2f
Banning Ranch Conservancy**

As is clear above, the City cannot rush to judgment in this process. The City can no longer circumvent state laws like CEQA and the Coastal Act, nor ignore its own General Plan. And, the City must respect the jurisdictional responsibilities of other local, state and federal agencies involved in this project application process, the EIR and related issues.

We ask that you provide an expeditious reply and notice of cancellation of the Planning Commission hearing on the Newport Banning Ranch EIR and project application. Compliance with the law and consideration of the valuable time of the interested public will be greatly appreciated.

Please contact our Executive Director, Steve Ray, at 310/961-7610 or via email at steve.banningranch@hotmail.com for questions or for further information.

Thank you.

Sincerely,

Steve Ray /s/

Steve Ray
Executive Director
Banning Ranch Conservancy

cc: Chair Toerge and Planning Commissioners
Mayor Gardner and City Council Members
City Manager Dave Kiff
City Attorney Aaron Harp
Community Development Director Kimberly Brandt
California Coastal Commission
U. S. Fish & Wildlife Service
California Department of Fish and Game
BRC File # LGL-3

} 5
cont.

Box 16071
Newport Beach,
CA 92659-6071

Phone: 961-7610

www.banningranchconservancy.org

Correspondence Item No. 2f
Banning Ranch Conservancy
Steve Ray, Executive Director
June 18, 2012

Response 1

The Banning Ranch Conservancy has submitted a letter indicating that there is “significant new information” requiring revisions and recirculation of the Newport Banning Ranch Final EIR. The standards for recirculation of all or portions of an EIR before it is certified is set forth in the State CEQA Guidelines Section 15088.5.

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation include, for example, a disclosure showing that:
 - (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
 - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
 - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

The Conservancy has identified three matters in its letter which it asserts constitute “significant new information” requiring recirculation. It is the City’s conclusion that none of the matters identified by the Conservancy in its letter constitute “significant new information” requiring revisions to or recirculation of the EIR under Section 15088.5 of the State CEQA Guidelines. Each of the matters identified by the Conservancy is addressed in the subsequent responses.

Response 2

The City was informed by the Applicant that the Applicant was meeting with representatives from the U.S. Fish and Wildlife Service (USFWS) and the California Coastal Commission to tour the Project site as part of the resource permitting process that implementation of the proposed Project requires. Contrary to the statements made in the Conservancy letter, the City

has received no comments from either agency or any other resource agency that the exhibits included in the Draft EIR were “wrong”. Neither agency has requested the Applicant or the City to re-map the vegetation. In short, no changes to the vegetation mapping and exhibits in the EIR with respect to biological resources have been requested by any agency and the exhibits in the EIR reflect accurate information with respect to the biological resources on site as evaluated in the EIR.

The Applicant has informed the City that the firm, Dudek is one of the environmental consultants on its project team, and at the June 21, 2012 Planning Commission hearing, the Applicant's representative, Mike Mohler, read into the record a statement from Dudek describing its role, as follows:

I want to offer a few points of clarification regarding Dudek's involvement in the Newport Banning Ranch Project. Dudek has been retained primarily to review and assist in compiling environmental data from existing reports referenced in the draft EIR necessary to support the project's future Coastal Development Permit application process with the California Coastal Commission.

Dudek has not been retained to update the vegetation maps for the City's project environmental impact report, rather Dudek biologists are verifying the existing vegetation maps and vegetation community descriptions in the context of the historic and ongoing site maintenance activities, which have already been considered when environmental baseline was established for the project's environmental review pursuant to CEQA; so I thank you for letting me read that into the record.

The fact that the Applicant is compiling data from existing reports referenced in the EIR in support of an anticipated application to the Coastal Commission is not “significant new information” as that term is defined in Section 15088.5 of the State CEQA Guidelines requiring recirculation of an EIR. The compilation of existing reports and mapping is not a disclosure which shows that:

- a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or
- a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

For these reasons, the City has determined that it has not received nor is it aware of “significant new information” requiring revision and recirculation of the EIR prior to consideration of certification by the City Council.

Response 3

The City has been provided with a copy of correspondence from the Coastal Commission to representatives of Newport Banning Ranch and West Newport Oil Company, dated May 18, 2012 (see attached Coastal Commission letter which follows the responses to the commenter's letter). The letter asserts the position of the Coastal Commission that development in the form of the removal of major vegetation, as those terms are defined under the California Coastal Act, Cal Public Resource Code Section 30000 et seq., has occurred at the Project site, and that such activity requires a Coastal Development Permit from the Coastal Commission. The City

acknowledges that activities on the property can be and are regulated by other State and federal agencies, such as the Coastal Commission, having independent regulatory authority. At this time, the statements in the Coastal Commission letter represent the allegations of the Coastal Commission, and are subject to further investigation by the Coastal Commission.

The Coastal Commission letter does not equate, as the Conservancy asserts, that the unpermitted removal of “major vegetation” with “illegal mowing of environmentally sensitive habitat areas (ESHA)”. As noted in the letter, the “protections provided by the Coastal Act for “major vegetation” as used in the Coastal Act extend to many different vegetative communities, and, under certain circumstances, even to individual plants” Moreover, at this point in time, whether the activities described required a permit as the Coastal Commission letter asserts has not been determined as additional fact-finding will occur as part of the Coastal Commission enforcement process. Further, there is nothing in the letter to support the assertion made by the Conservancy of ongoing “illegal activity”.

For the reasons set forth below, the City does not consider the Coastal Commission letter to be significant new information. First, the letter does not provide information supporting a finding that a new significant environmental impact would result from the proposed Project. The EIR analyzes the proposed Project’s impact on the existing environment. The physical environmental conditions existing at the time that the Notice of Preparation was issued is considered the baseline physical conditions against which the Project’s impacts are analyzed (14 Cal. Code of Regulations, Section 15125(a)). The fact that Banning Ranch is an operating oilfield that has been mowed annually since oil operations commenced in the 1940s was addressed and disclosed in the EIR and Responses to Comments document. It is against these baseline conditions that the Project’s impacts to biological resources were assessed. As noted above, no resource agency has indicated that the vegetation mapping in the EIR was inaccurate. The EIR analyzed the impacts of the Project against the existing vegetation community present on the Project site. Whether the mowing of the site – an activity routinely conducted by the oilfield operators – requires a permit under the Coastal Act is a matter of interpretation of regulatory jurisdiction. It is not an issue concerning the accuracy of the description of the baseline conditions or the analysis of potential environmental impacts. The Coastal Commission letter does not present significant new information disclosing that a new significant environmental impact would result from the Project or from a new mitigation measure proposed to be implemented.

For the same reasons as discussed above regarding the fact that the letter does not disclose a new significant environmental impact, it also does not disclose information that a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. The Coastal Commission letter does not present information regarding the inaccuracy of the baseline, or of the vegetation mapping against which the Project’s impacts were assessed.

Finally, the letter does not describe a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the significant environmental impacts of the Project.

In conclusion, the Coastal Commission letter is not “significant new information” as defined under Section 15088.5 requiring revisions to and recirculation of the EIR.

Response 4

Please refer to the responses to Correspondence Item No. 2b.

Response 5

The first part of this comment references the three matters that the commenter believes constitute “significant new information” requiring recirculation of the EIR. For the reasons discussed in the prior responses, , the City has set forth its basis, as supported by substantial evidence in the record, as to why these assertions – many of which are inaccurate – do not constitute “significant new information” as defined by Section 15088.5 of the State CEQA Guidelines.

The remainder of the comment references City General Plan policies that recognize coordination with State and federal agencies regarding resources under the jurisdiction of other agencies. The City acknowledges that the environmental resources at the Project site fall under the jurisdiction of a number of State and federal agencies, including the Coastal Commission, the USFWS, and the U.S. Army Corps of Engineers (USACE) (see Section 3.14.2, Responsible and Trustee Agencies, in Section 3.0, Project Description, of the EIR. In fact, a number of the Project Design Features identified in the EIR and included in the Mitigation Monitoring and Reporting Program (MMRP) specifically require coordination with and approvals from State and federal agencies. Examples where these policies regarding coordination with State and federal agencies are reflected in the Project Design Features include the following:

- PDF 4.6-2 requires a Habitat Restoration Plan as part of the Master Development Plan. The MMRP identifies the following agencies as being responsible for approval/monitoring/implementation: City, USACE, USFWS, California Department of Fish and Game (CDFG), Coastal Commission, and Regional Water Quality Control Board (RWQCB)
- PDF 4.6-3 requires implementation of a Maintenance and Monitoring Program for the areas restored pursuant to the Habitat Restoration Plan. The MMRP identifies the following agencies as being responsible for approval/monitoring/implementation: City, USACE, USFWS, CDFG, Coastal Commission, and RWQCB.
- MM 4.6-1 requires implementation of a coastal sage scrub habitat preservation and restoration program which is subject to the approval of the USFWS and Coastal Commission, in addition to the City.
- MM 4.6-3 requires implementation of grassland depression feature and fairy shrimp habitat preservation and restoration program which is subject to approval by the City, the USFWS and the Coastal Commission.
- MM 4.6-5 requires a jurisdictional resources/riparian habitat preservation and restoration program which is subject to approval by the City, USACE, CDFG, Coastal Commission, and RWQCB.

These Project Design Features and Mitigation Measures are consistent with and implement the General Plan policies cited in the letter requiring consultation with State and federal resource agencies. The EIR identifies these other agencies as “responsible agencies” which have been consulted on the preparation of the EIR, and which can use the EIR in support of their respective agency actions which is consistent with and carries out the goals of State CEQA Guideline Section 15006(g) and (i) to consult with State and local responsible agencies in preparing the environmental impact report and to integrate CEQA requirements with other environmental review requirements.

For the reasons set forth above, the City has complied with CEQA in preparing the EIR, consulting with other agencies, and disclosing all information relevant to an analysis of the Project's impact on the environment. The City has discussed in the EIR, the requirements of the Coastal Act and described the approvals required from the Coastal Commission to implement the proposed Project, and has also described the approvals from and incorporated into its mitigation measures the responsibilities of other State and federal agencies. Finally, the EIR also includes a consistency analysis that demonstrates the Project's consistency with the City's General Plan.

STATE OF CALIFORNIA -- NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
200 OceanGate, 10th Floor
Long Beach, CA 90802
(562) 590-5071



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT

May 18, 2012

West Newport Oil Company
Attn: Tom McCloskey
1080 West 17th Street
Costa Mesa, CA 92627

Newport Banning Ranch, LLC
Attn: Michael Mohler
1300 Quail Street, Suite 100
Newport Beach, CA 92660

Violation File Number: V-5-11-005

Property Location: Newport Banning Ranch
Newport Beach, Orange County

Unpermitted Development: Removal of major vegetation

Dear Mr. McCloskey and Mr. Mohler:

Thank you, Mr. McCloskey, for taking time today to discuss mowing that is occurring on Newport Banning Ranch and agreeing to halt the mowing in order to allow all the parties involved an opportunity to discuss the issue. As I noted during our telephone conversation, our staff has confirmed that removal of major vegetation¹ has occurred at Newport Banning Ranch, which is located within the Coastal Zone. Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto;

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

V-5-11-005 (Newport Banning Ranch)
May 18, 2012
Page 2 of 3

construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....[emphasis added]

The protections provided by the Coastal Act for “major vegetation” as used in the Coastal Act extend to many different vegetative communities and, under certain circumstances, even to individual plants found in an array of coastal habitats. Vegetation can qualify as “major vegetation” based on its importance to coastal habitats, the presence of sensitive species, or, in the case of rare or endangered vegetation, its limited distribution. Commission staff has reviewed the Draft Environmental Impact Report for the proposed residential and commercial development at Newport Banning Ranch, which describes the vegetation on site that is impacted by the subject mowing. The DEIR identifies a number of sensitive habitats, including habitats for sensitive species, within and adjacent to the mowed areas. The mowing at issue thus involves removal of vegetation that constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, and with limited exceptions not applicable here, constitutes a violation of the Coastal Act.

As noted above, the subject mowing is not exempt from Coastal Act permitting requirements. The DEIR erroneously characterizes the subject mowing as a component of ongoing oil field operations that purportedly began in the 1940s. The DEIR suggests that the existing oil operations, including the mowing, are merely a continuation of those began in the 1940s, and cites authorization for continuation of those oil operations after passage of Proposition 20 under California Coastal Commission South Coast Regional Coastal Zone Conservation Commission Claim for Exemption No. E-7-27-73-144.

To show the locations where these ongoing oilfield operations purportedly occur on the site, the DEIR includes a map of areas subject to ongoing oilfield operations. Commission staff has significant concerns about whether the map accurately depicts the areas subject to oilfield operations. For instance, the map includes areas that the Commission has previously found in a previous action to be Environmentally Sensitive Habitat Areas. Moreover, the subject mowing is impacting vegetation inside and outside of the areas mapped in the DEIR as areas subject to ongoing oilfield operations. Thus, the DEIR acknowledges that, at a minimum, some portions of the mowing are not within the areas subject to ongoing oilfield operation. This activity is therefore non-exempt unpermitted development undertaken in violation of the Coastal Act.

The DEIR appears to also suggest a claim that there is vested right to mow the site. However, there is no established vested right to mow the site, or even an application before the Commission to consider the issue. There is a specific and formal process for establishing a vested right to an activity under the Coastal Act, as set forth in Section 30608 and its implementing regulations. No such application has been filed, and no such vested right has been established, nor does the oilfield operator or property owner assert that it has done such. “A developer who claims exemption from the permit requirement of the [Coastal] act on grounds that he has a vested right to continue his development is required to seek confirmation of his vested right claim ... and may not first assert the claim in defense.” Halaco Engineering Co. v. South Central Coast Regional Commission (1986) 42 Cal.3d 52, 63; see also LT-WR (2007) 152 Cal.App.4th 770, 785; Davis v. CCZCC (1976) 57 Cal.App.3d 700.

V-5-11-005 (Newport Banning Ranch)
May 18, 2012
Page 3 of 3

We would like to work with the parties involved to resolve these issues and would like to discuss with you options to do so. As you agreed to do during our telephone conversation, **please immediately stop all unpermitted development activity on the subject site** and contact me by **May 24, 2012** to discuss resolution of this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

In addition to these other remedies, Section 30812 of the Coastal Act also allows the Executive Director, after providing formal notice and opportunity for a hearing, to record a Notice of Violation of the Coastal Act against the property if this matter is not resolved administratively. We of course would prefer to resolve this matter informally and would like to discuss the options for resolution with you at your earliest convenience by the deadline noted above.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis
Enforcement Analyst
California Coastal Commission

Correspondence Item No. 2g
John Sisker

June 19, 2012

Newport Beach Planning Commission / Patrick Alford
Planning Manager, Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92663

Re: Newport Banning Ranch Draft Environmental Impact Report

Dear Chairman and Planning Commissioners & Mr. Alford:

After due consideration, plus new and additional information that has come to light, I now wish to personally go on official record in reference to the following comments regarding the Newport Banning Ranch Draft Environmental Impact Report.

For the record, I am personally against the Newport Banning Ranch Development, and as such would request that the following concerns be officially included in the record as well.

- If the project does move forward, I feel Bluff Road should be eliminated from 17th to 19th Streets, thus officially terminating at 17th Street. The original plans for Banning Ranch did have the major ingress/egress points for Banning Ranch at 15th, 16th, 17th Streets and Pacific Coast Highway, so why the need for this particular Bluff Road extension to 19th Street now, when many times at related presentations, it was pointed out, that the overall project does not call for it? (Section 4.9 / *Transportation and Circulation*)
- Likewise, and even though not seemingly part of the present Draft Environmental Impact Report, I see no need for the 19th Street Bridge, originally slated to connect at Brookhurst at Banning. In fact, if this Bridge is not crucial to the overall project as claimed at all the presentation meetings, steps also need to be taken by the City of Newport Beach itself to have it officially removed from the Master Plan of Arterial Highways as well? (Section 4.9 / *Transportation and Circulation*)
- In addition, all talk, negotiations and/or future considerations, needs to be totally eliminated of extending Balboa Blvd., at 19th Street, plus widening and extend in a northerly direction to terminate at Victoria just east of that bridge. If the 19th Street Bridge is officially eliminated, why would existing and established developments such as Newport Terrace be used as an alternative to benefit the overall Newport Banning Ranch Development instead? (Section 4.9 / *Transportation and Circulation*)

Sincerely,



John Sisker
11 Moonrise Court
Newport Beach, CA 92663
(949) 791-8302



Correspondence Item No. 2g
John Sisker
June 19, 2012

Response 1

Please refer to the responses to Correspondence Item No. 2d.

Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 21
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Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 21
Vincent Phillippi



Correspondence Item No. 2I
Vincent Phillippi
No date

Response 1

Mr. Phillippi provided photos that he presented during the June 21, 2012 Planning Commission public hearing. Responses are provided in the Planning Commission public comments.

Correspondence Item No. 2m
Bruce Bartram

Staff Report

Pg. 16 – There would be land use incompatibility associated with long-term noise sources and night illumination on the Project including from the Community Park, the latter on those Newport Crest residences immediately contiguous to the Project site.

This impact is considered significant and unavoidable.

Correspondence Item No. 2m
Bruce Bartram

Newport Banning Ranch EIR Responses to Comments

Letter from Cathy Malkemus

Page 3-756:

4.12.8 Environmental Impacts; Impact Analysis - page 4.12-27
The document states that noise barriers could be installed around the second floor balconies of Newport Crest homes and that this measure is feasible. Is the applicant suggesting that we close in our open balconies with walls??

• Specifically, what "barriers" is the DEIR referring to and who determines if they are feasible??

Correspondence Item No. 2m
Bruce Bartram

Newport Banning Ranch EIR Responses to Comments

Response to Letter from Cathy Malkemus

Page 3-759:

Noise barriers for balconies are generally transparent glass or Lucite-like material, often hinged to allow the occupant to choose an open or closed position.

Correspondence Item No. 2m
Bruce Bartram

Inverse Condemnation

Under Cal. Const., art. I, 19, there is liability for any physical injury to realty proximately caused by a public improvement as deliberately designed and constructed, whether or not the injury was foreseeable and in the absence of fault by the public entity. *Ullery v. County of Contra Costa* (1988) 202 Cal. App. 3d 562

An action in inverse condemnation against the state will lie for property owners abutting a highway arising from property damage due to dust, debris, and highway noise. *Harding v. State of California ex rel Dept. of Transportation* (1984) 159 Cal. App. 3d 359.

Correspondence Item No. 2m
Bruce Bartram
No date

Response 1

Mr. Bartram provided a PowerPoint presentation during the June 21, 2012 Planning Commission public hearing. Responses are provided in the Planning Commission public comments.

Correspondence Item No. 2n
Suzanne Forster

HEALTH & SAFETY HAZARDS OF OIL FIELD DEVELOPMENT

- Banning Ranch is a 70-year old operational oil field with nearly 500 wells and unknown levels of crude oil contamination.
- Is NBR Project safe for humans or the environment?

Correspondence Item No. 2n
Suzanne Forster

Combustible Soil Gas Hazard Mitigation
ORANGE COUNTY FIRE AUTHORITY
Planning & Development Services Section



Correspondence Item No. 2n
Suzanne Forster

1. Building Restriction Zone

To the *maximum* extent feasible, the slab or foundation for a proposed building shall not be constructed over or within 10 feet of an abandoned oil/gas well. If specific site characteristics make such a setback unfeasible, construction of structures *may* be allowed within the Building Restriction Zone provided that the following mitigation measures are incorporated. The proposed construction of one- or two-family dwellings within the Building Restriction Zone shall be subject to further evaluation and/or mitigation.

***** THE OCFA ADVISES AGAINST THE
CONSTRUCTION OF ANY STRUCTURE
OVER ANY WELL *****

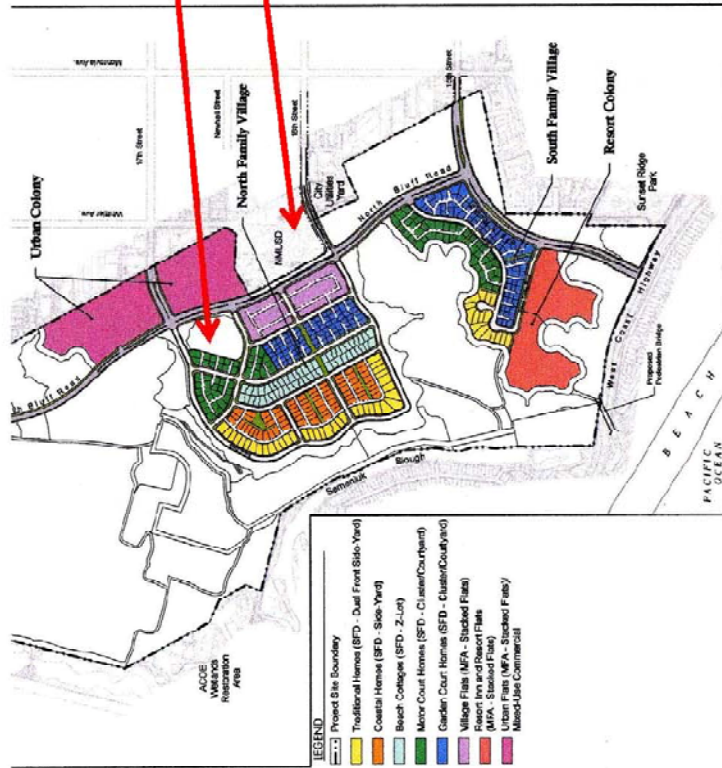
Correspondence Item No. 2n
Suzanne Forster

Historic Oilfield Impacts Map



Correspondence Item No. 2n
Suzanne Forster

NBR Villages & Colonies



Source: FORMA 2011

Exhibit 4.1-3

Villages and Colonies

Newport Banning Ranch EIR

Correspondence Item No. 2n
Suzanne Forster
No date

Response 1

Ms. Forster provided a PowerPoint presentation during the June 21, 2012 Planning Commission public hearing. Responses are provided in the Planning Commission public comments.

Correspondence Item No. 2p
Jan Goerrissen

Jan Goerrissen, Ph.D.
883 Arbor St.
Costa Mesa, CA 92627
jgoerrissen@sbcglobal.net

June 21, 2012

Newport Beach Planning Commission
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663

Dear Council Members and Planning Commissioners of the City of Newport Beach,

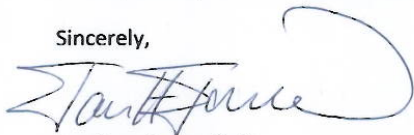
I am writing to express my opposition to the proposed development of the Newport Banning Ranch community. I see a number of reasons to oppose the development, including: 1) subjecting Newport Beach and Costa Mesa residents to a substantial increase in traffic, noise, and air pollution, 2) the loss of additional critical coastal habitat in southern California, 3) the loss of the opportunity to fully maximize the acreage for open space as a recreational attraction for residents and tourists, and 4) the inevitable destruction of critical habitat for several animal species with conservation status.

Due to the now limited extent of public coastal open space and habitat in Orange County and southern California in general, the importance of protecting this area from development cannot be overstated. Of particular importance, the area for proposed development has increased habitat value due to its connectivity with the Talbert Preserve and the Santa Ana River. More open space is needed not only for California flora and fauna, but for long term quality of life for residents in the form of recreation and living in an aesthetically pleasing area. This is a lot to trade off for shorter term gains in potential profits.

The quality of life of *current* residents should be considered in the development of this highly populated area.

Thank you for your time in consideration of my opinions.

Sincerely,



Jan Goerrissen, Ph.D.

Correspondence Item No. 2p
Jan Goerrissen
March 22, 2012

Response 1

The commenter's opposition to the Project is noted. The environmental topics identified by the commenter are addressed in the Final EIR; no new issues have been raised including potential impacts to the clapper rail. No further response is required.

**Correspondence Item No. 2q
The Kennedy Commission**



June 21, 2012

www.kennedycormission.org
17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909
fax 949 263 0647

Chair Michael Torre and Planning Commission Members
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

RE: Newport Banning Ranch Affordable Housing Implementation Plan

Dear Chair Torre and Planning Commission Members:

The Kennedy Commission (the Commission) is a broad based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than \$20,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with jurisdictions in Orange County to create strategic and effective housing and land-use policies that has led to new construction of homes affordable to lower income working families.

With a significant lack of quality affordable homes, it is evident that Orange County is a very expensive place to live in. While the economic downturn has allowed home prices to be at an all time low, many lower income working families are still not able to purchase a home and remain as renters; however, many of these renting families continually struggle financially to live in the city they work in. Over the past year, Orange County had the biggest rental increase in Southern California (13%) and compared to other cities in Orange County,¹ housing costs are significant higher in Newport Beach.²

As the City moves forward in the addressing housing needs for all income segments of the community, the Commission would like to acknowledge and commend the City's leadership in facilitating and encouraging the development of homes affordable to lower income families in the proposed Newport Banning Ranch development. The Commission believes the City is moving in the right direction in implementing an Affordable Housing Implementation Plan (AHIP) for Banning Ranch.

For the 2008-2014 Housing Element planning period, the City's total Regional Housing Needs Assessment (RHNA), including the un-accommodated portion of the 2000-2005 RHNA, for lower income households are: 451 homes at very low-income, 319 homes at low-income and; 442 homes at moderate-income.³ To address the remaining RHNA needs, the City identified Banning Ranch as an opportunity site suitable for residential development. More importantly, Banning Ranch provides a significant opportunity for the City to address its remaining RHNA needs for extremely low-, very low- and low-income households. Between 2010 and 2025, Banning Ranch is projected to represent 48

¹ Rising Rents May Signal a Housing Market Recovery, Los Angeles Times, March 13, 2012

² City of Newport Beach General Plan Housing Element Draft, p. 5-30 and 5-31, August 2011.

³ City of Newport Beach General Plan Housing Element Draft, p. 5-45, August 2011.

Correspondence Item No. 2q
The Kennedy Commission

Chair Torre and Planning Commission Members
June 21, 2012
Page 2 of 2

percent of the City's total new units.⁴ In addition, Banning Ranch (subject to an AHIP), is expected to provide the following: very low-income homes at 5 percent of total units (69 homes) or; low-income homes at ten percent of total units (138 homes) or; moderate-income homes at 15 percent of total units (206 homes) or; a combination of all three income categories.⁵

The Commission supports the City's efforts in planning the development of homes affordable to lower income working families. The proposed AHIP implementation in Banning Ranch will not only provide quality and affordable homes for the City's work force, but it will also build and contribute to a more economically competitive and opportunity rich community.

Please keep us informed of any upcoming meetings and additional information on the proposed Newport Banning Ranch development and the implementation of the AHIP. If you have any questions, feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

1
cont.

Sincerely,



Cesar Covarrubias
Executive Director

cc: Melinda Coy, State Department of Housing and Community Development

⁴ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

⁵ City of Newport Beach Planning Commission Staff Report Agenda Item 3, p. 15, April 19, 2012.

Correspondence Item No. 2q
The Kennedy Commission
Cesar Covarrubias, Executive Director
June 21, 2012

Response 1

The Kennedy Commission's support of affordable housing in the City of Newport Beach is noted.

Correspondence Item No. 2s
Norman Suker

To: City of Newport Beach Planning Commission

From: Norman J. Suker P.E., T.E

Re: June 21, 2012 Public Hearing for the Newport Beach Banning Ranch Development

Dated: June 21, 2012

I object to the approval of the Newport Banning Ranch (NBR) project as proposed and request that all my comments be included in the records of any and all proceedings relating to the Newport Banning Ranch project or its successors.

I request that no action by the Newport Beach Planning Commission be taken at this time regarding the NBR project for the following reasons;

A) The OCTA Board has essentially removed the 19th Street Bridge across the Santa Ana River. The City of Newport Beach representatives at the May 14, 2012 OCTA meeting conceded that the 19th Street Bridge will never be built. See attached email from Gregory R. Nord of OCTA confirming the OCTA Board's action and the Board's Minutes of May 14, 2012.

B) The City of Newport Beach General Plan Circulation Element Policy CE 3.1.3 **Regional Consistency** states "The City of Newport Beach Master Plan of Streets and Highways shall be consistent with the Orange County Master Plan of Arterial Highways". The City's Master Plan is now inconsistent with the OCMPAH.

C) The NBR DEIR traffic section states that if the 19th Street Bridge is removed from the traffic analysis, that the intersection of the proposed Bluff Rd. and West Coast Highway will have an Level Of Service (LOS) of "F". No mitigation measures were proposed.

D) Caltrans has not approved the construction of the Bluff Rd. and West Coast Highway intersection or a traffic signal at the intersection because the City of Newport Beach has not applied for the necessary encroachment permits. Caltrans has stated in correspondence to the City of Newport Beach dated December 9, 2009 regarding the Sunset Ridge Park that "The proposed signalized intersection (Bluff Rd. and West Coast Highway) is not recommended ...". See attached letter.

E) Failure to remove the bridge from the City's Circulation Element will jeopardize Measure "M" funding.

F) The California Coastal Commission has environmental issues with the proposed Bluff Rd. at West Coast Highway that needs to be resolved.

Norman J. Suker, P.E., T.E
Newport Crest Resident

Correspondence Item No. 2s
Norman Suker

Page 1 of 1

Norm

From: Gregory Nord [gnord@octa.net]
Sent: Thursday, June 21, 2012 1:46 PM
To: 'normsuker@sbcglobal.net'
Cc: Kameron Altar
Subject: 19th Street Bridge - 5/14/12 Board Action

Good afternoon,

Thank you for contacting the Orange County Transportation Authority (OCTA) to comment about the 19th Street bridge.

It has been recognized by all of the affected agencies that the 19th Street bridge is not a viable project. This is due to expected environmental impacts, right-of-way impacts, high cost estimates, lack of available funding, and substantial community opposition. However, the OCTA Board of Directors believes it is prudent to evaluate what other roadway improvements are possible to help ease traffic flow in the area before taking final action on this matter. The Board has temporarily suspended the action on the deletion of the bridge from the Master Plan of Arterial Highways until November, in order to allow time to assess alternative traffic solutions.

OCTA staff will facilitate a collaborative effort between the involved cities, the County of Orange, and Caltrans to develop our understanding on what other improvements can help address traffic needs. These alternatives will be presented to the OCTA Board of Directors by November 26, 2012, at which time the deletion action is expected to be final.

Thank you again for taking the time to contact us regarding this issue.

Sincerely,

Gregory R. Nord
Senior Transportation Analyst
Strategic Planning, OCTA
P: 714.560.5885
F: 714.560.5794

The information in this e-mail and any attachments are for the sole use of the intended recipient and may contain privileged and confidential information. If you are not the intended recipient, any use, disclosure, copying or distribution of this message or attachment is strictly prohibited. If you believe that you have received this e-mail in error, please contact the sender immediately and delete the e-mail and all of its attachments.

6/21/2012

Correspondence Item No. 2s
Norman Suker

Minutes of the Meeting of the
Orange County Transportation Authority
Orange County Service Authority for Freeway Emergencies
Orange County Local Transportation Authority
Orange County Transit District
Board of Directors
May 14, 2012

Call to Order

The May 14, 2012, regular meeting of the Orange County Transportation Authority and affiliated agencies was called to order by Chairman Glaab at 10:25 a.m. at the Orange County Transportation Authority Headquarters, Orange, California.

Roll Call

Following the Pledge of Allegiance and invocation, the Clerk of the Board noted a quorum was present, with the following Directors in attendance:

Directors Present: Paul G. Glaab, Chairman
Gregory T. Winterbottom, Vice Chairman
Jerry Amante
Don Bankhead
Patricia Bates
Bill Campbell
Carolyn Cavecche
Larry R. Crandall
William J. Dalton
Lorri Galloway
Don Hansen
Michael Hennessey
Peter Herzog
John Moorlach
Shawn Nelson
Janet Nguyen
Miguel Pulido
Cindy Quon, Governor's Ex-Officio Member

Also Present: Will Kempton, Chief Executive Officer
Darrell Johnson, Deputy Chief Executive Officer
Wendy Knowles, Clerk of the Board
Laurena Weinert, Assistant Clerk of the Board
Kennard R. Smart, Jr., General Counsel
Members of the Press and the General Public

Directors Absent: None

Correspondence Item No. 2s
Norman Suker

Special Calendar

1. Presentation by the Southern California Army Advisory Council

Paddy Gough, Executive Director of Human Resources and Organizational Development, introduced Ron Garcia, Viet Nam veteran and Brea Councilmember, introduced the Chairman of the Southern California Army Advisory Council, Dr. Rebecca Morgan. Dr. Morgan provided background on the Advisory Council and explained how the parachute jump with the Golden Knights came about for March 14.

Dr. Morgan then introduced Army Lieutenant Colonel Hansbarger and Command Sergeant Major Perine, who presented United States Army Airborne wings to Mr. Gough and Chief Executive Officer (CEO), Will Kempton.

2. Southern California Regional Rail Authority Fiscal Year 2012-13 Proposed Budget Presentation

Michael Litschi, Section Manager, Rail and Facilities Division, provided opening comments and introduced Nancy Wieford, Director of Finance for the Southern California Regional Rail Authority (SCRRA).

Ms. Wieford offered a presentation on SCRRA's Fiscal Year 2012-13 Proposed Budget and fielded a brief question-and-answer period.

Directors Bankhead and Hennessey requested that SCRRA perform an analysis on the impact on ridership if fares are increased or decreased.

Director Cavecche stated she is very impressed with and appreciative of the staff in OCTA's Rail Division.

Ms. Wieford thanked Director Cavecche for her work on the Metrolink ad hoc budget committee and assured the Board that Metrolink is not budgeting for merit increases or an increase in headcount for the agency. She also thanked Director Hennessey for his participation.

No action was taken on this item.

3. Consideration of Appeal of the California Environmental Quality Act Exemption Determination for Removal of the 19th Street Bridge from the Master Plan of Arterial Highways

Charlie Larwood, Manager of Transportation Planning, provided opening comments and introduced Joseph Alcock, Transportation Analyst, who offered background on this issue and an update of what actions have been taken by the Board to this time.

Correspondence Item No. 2s
Norman Suker

3. (Continued)

Public comments were heard from:

Robert Hawkins, Attorney-at-Law, offered comments on this issue and stated that he has reviewed the Master Plan of Arterial Highways (MPAH) files, and this project is in the City of Huntington Beach's file. He referred to a letter that requested the removal of the 19th Street Bridge (the Bridge) from the MPAH; he stated there is no traffic study.

Mr. Hawkins referred to the guidance documents and stated that he feels a new cooperative analysis is needed and urged the Board to follow the documents and to affirm the appeal in this matter.

Mr. Hawkins stated that he felt today's agenda Items 4 and 5 (minutes of the special and regular OCTA Board meetings of April 23) should be addressed before this item continues.

Steve Rodansky, Councilmember, City of Newport Beach, stated that there has been a failure to follow the process set down by state law and OCTA's own rules and guidelines. He stated that he had hoped that in the spirit of cooperation, a resolution for the process gridlock would be arrived at. He urged the Board to allow the process to work and direct staff to work with the cities of Huntington Beach, Newport Beach, Costa Mesa, and Fountain Valley to develop an alternative plan of mitigation.

Leonie Mulvihill, Assistant City Attorney for the City of Newport Beach, expressed her concerns for a one-time waiver of OCTA's guidelines without discussion of traffic impacts. She further stated that the use of Measure M funds for financing improvements concerns the City of Newport Beach. She stated there is concern for a unilateral decision by this Board, as it is inconsistent with the OCTA guidelines, and inconsistent with the California Environmental Quality Act (CEQA).

David Webb, City Engineer, City of Newport Beach, stated that his city has begun working with OCTA staff and the other cities and urged the Board to allow the process to go forward. He stated there seems to be cooperation among those involved, which could resolve many issues.

Jim Mosher, resident of Newport Beach, stated that he understands the others' viewpoints, but believes the Bridge will not be built; therefore, there is no urgency to remove it from the MPAH. He urged the Board to reject the recommendations before them at this time.

Ron Frankiewicz, resident of Costa Mesa, stressed his concern for the potential enormous costs that could become involved. He stated that there needs to be clarity on this very soon as development of Banning Ranch is moving forward quickly.

Correspondence Item No. 2s
Norman Suker

3. (Continued)

Bonnie Copeland, resident of Costa Mesa, stated that she opposes the Bridge and emphasized that this issue has gone on much too long and did not want to see a postponement of the inevitable. She urged the Board to remove the Bridge from the MPAH now.

Gary Itano, representing the Banning Ranch Conservancy, urged the Board to involve the community in the mitigation and traffic studies and to approve the recommendations at this time.

Steve Ray, representing the Banning Ranch Conservancy, stated that he supports the recommendations before the Board today and emphasized that it is time for a decision now.

Director Hansen stated that this issue has been under debate for quite some time and provided extensive comments on the history and viewpoints regarding this issue and stated he would take the leadership of Newport Beach at their word. He stated they have all expressed to him that the bridge will never be built; and they've expressed that they want to identify the mitigations and want to have a collaborative agreement. He stated that the City has stated that the mitigations are identified, and the deletion of the bridge is not a problem.

Director Moorlach stated that OCTA is interested in pursuing a traffic study and inquired as to the status of that study.

CEO, Mr. Kempton, responded that staff is engaged in bringing a traffic consultant on board. He stated that given the timeframe indicated through this motion, staff will be looking at getting the consultant hired very quickly, likely someone who is already on an existing list in order to perform this work very soon.

Director Hansen stated that it was now time to make a decision and made a motion to:

1. Deny the appeal.
2. Suspend the Board of Directors' action taken on March 12, 2012, to remove the 19th Street Bridge temporarily until further action by this Board of Directors, with that action being no later than November 26, 2012.
3. Direct staff to work with all the affected agencies, to identify potential impacts, alternative improvements and generate an agreement that identifies those improvements and ultimately agrees to the elimination of the 19th Street Bridge from the Master Plan of Arterial Highways.

Correspondence Item No. 2s
Norman Suker

3. (Continued)

Director Moorlach provided a second and a vote was taken. The motion was declared passed by those present; Director Nguyen abstained from voting on this item.

Vice Chairman Winterbottom thanked Director Hansen for the immense efforts put into this issue.

Consent Calendar (Items 4 through 26)

Chairman Glaab stated that matters on the Consent Calendar would be approved in one motion unless a Board Member or a member of the public requested separate action on a specific item.

Orange County Transportation Authority Consent Calendar Matters

4. Approval of Minutes - Special Board Meeting

A motion was made by Director Nelson, seconded by Director Pulido, and declared passed by those present, to approve the minutes of the Orange County Transportation Authority and affiliated agencies' special meeting of April 23, 2012.

5. Approval of Minutes - Regular Board Meeting

A motion was made by Director Nelson, seconded by Director Pulido, and declared passed by those present, to approve the minutes of the Orange County Transportation Authority and affiliated agencies' regular meeting of April 23, 2012.

6. Fiscal Year 2011-12 Internal Audit Plan, Third Quarter Update

A motion was made by Director Nelson, seconded by Director Pulido, and declared passed by those present, to receive and file the third quarter update to the Orange County Transportation Authority Internal Audit Department Fiscal Year 2011-12 Internal Audit Plan.

7. Investments: Compliance, Controls, and Accounting, July 1 through December 31, 2011

A motion was made by Director Nelson, seconded by Director Pulido, and declared passed by those present, to direct staff to implement recommendation in the Investments: Compliance, Controls, and Accounting, July 1 through December 31, 2011, Internal Audit Report No. 12-501.

Correspondence Item No. 2s

Norman Suker

June 21, 2012

Response 1

Mr. Suker's opposition to the Project is noted. The OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling.

It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Response 2

The "Without Bridge" analysis was conducted for information purposes to identify future peak hour operating conditions in the event the 19th Street Bridge is not built. The results indicate that, in the absence of the planned carrying capacity of the 19th Street Bridge over the Santa Ana River, traffic will choose alternate paths to get across the River, including Victoria Street and Adams Avenue to the north, and West Coast Highway to the south. The results also indicate that nine additional intersections in the study area would operate at a deficient Level of Service, including the intersection of Bluff Road and West Coast Highway. These impacts would be the direct result of removing the 19th Street Bridge, and improvements would need to be identified to mitigate the loss of the carrying capacity of the bridge. To also delete Bluff Road to avoid the deficient Level of Service at the Bluff Road/West Coast Highway intersection, as suggested in this comment, would further exacerbate the impact on levels of service along the remaining alternate paths to cross the Santa Ana River. Bluff Road is a planned roadway, shown on both the City's Circulation Element and the OCTA MPAH. Improvements to the intersection of Bluff Road at West Coast Highway, beyond those originally envisioned, would be needed to mitigate the deletion of the 19th Street Bridge.

Response 3

Please refer to the responses to Letter S2 in the Responses to Comments document. An encroachment permit application has not been filed with Caltrans because no action has yet been taken by the City of Newport Beach with respect to consideration of Project approval.

Response 4

As a point of clarification, in the event the 19th Street Bridge is removed from the OCTA MPAH, the City's Circulation Element would not need to be amended in order to remain eligible for Measure M funding. A city's eligibility for Measure M funding would be in jeopardy if its Circulation Element does not reflect a roadway segment or reflects less roadway capacity than

is shown on the MPAH, but not if it shows more roadways or roadway capacity than is on the MPAH.

Response 5

The City acknowledges Mr. Suter's comment. The California Coastal Commission's future role as a permitting authority is addressed in the Draft EIR and in the Responses to Comments document. No further response is required.

Diane LaDuca

Alford, Patrick

From: dladuca@sbcglobal.net
Sent: Saturday, April 21, 2012 12:28 PM
To: Alford, Patrick
Cc: 'Banning Ranch Conservancy'
Subject: local hazard zones
Attachments: local earthquake hazards.doc

Dear Sir,

Please read the attached and include in the Banning Ranch Report information that applies to the Banning Ranch property from the most recent State hazard information as found in the hazard zone maps and hazard mitigation reports.

Sincerely,

Diane LaDuca

Costa Mesa Resident

Diane LaDuca

Local Earthquake Hazards

Due to new investigative techniques and more intense on-site inspection of the Newport-Englewood, San Andreas and local desert faults, seismologists have recently upgraded the types of earthquakes, their magnitude and frequency. These new techniques also show the increased possibility of tsunamis occurring in areas previously not considered at great risk for tsunamis.

These studies have resulted in upgraded projections of damage caused by liquefaction, collapse of structures due to shaking, landslides and tsunami incursion.

This information is available in new state maps and hazard mitigation reports.

The Banning Ranch is in close proximity to the Newport Englewood Fault, which has recently been upgraded in terms of the frequency of its earthquake occurrence, its possible increased earthquake magnitude and its possibility of generating a tsunami. In the past the Newport Englewood fault was thought to have the type of movement that would be unlikely to generate a tsunami. Recent investigation results indicate that this fault has moved in such a way that it could generate a tsunami.

None of this could happen, or it could happen tomorrow. Because of our geologic reality, new hazard information must be taken into account in local development plans.

I understand that a great percentage of the Banning Ranch is wetlands, and has a fault running through it.

Since development of the Banning Ranch would increase its population density, and place that population in a hazard area, please include in the Banning Ranch Report, any conditions that would place it in a hazardous zone as well as possible effects to life and structures.

It is shocking to see recent State hazard maps placing fairly new residential developments in dangerous liquefaction, tsunami and shaking hazard zones.

It looks as if the planners that approved these developments on wetlands and in tsunami incursion areas were in denial and have placed their residents at great and possibly fatal risk. If one is not in denial, the reality is horrifying.

Hopefully, our current city planners will seriously consider the realities of our environment when making planning decisions that will one day result in great devastation of life and property. All of the seismologists are saying with increased emphasis, it's not if, it's when, and the event could likely be much greater than previously thought.

We are accountable to our present population and all those who come after us. Our geology is not going away. It is here for the long term and that is how we should be planning.

Respectfully submitted,

Diane LaDuca

Costa Mesa Resident.

Diane LaDuca

April 21, 2012

Response 1

With respect to comments regarding active faults on the Project site, earthquake analyses were performed for the Project site as a part of the EIR. The results of these analyses indicate that the proposed development can be safely constructed with the implementation of proper setbacks, foundation design and other regulatory requirements related the development. For reference, these analyses included (1) regional fault evaluation; (2) seismicity and earthquake history analyses; (3) seiche and tsunami hazard analyses; (4) geomorphic analysis; (5) various ground motion analyses; (6) review of past fault trenching and exploration of thousands of feet of new fault trenching using recognized doctoral experts; and (7) an age dating analysis.

The faults found on site are grouped together in zones called the "North Segment Faults" and the "South Segment Faults". All of the individual faults are clearly shown on Exhibit 4.3-3 and shown on the fault trench logs contained in Appendix B of the Draft EIR.

There are setbacks for both the Newport Mesa North and South segment faults including a projected extension of these two fault zones. The setbacks, shown on Exhibit 4.3-3, meet or exceed State standards. All development would be set back from faults within the North branch of the Newport Inglewood fault zone that could not be proven to be inactive in accordance with State law and as per current standards of practice.

Newport Crest Homeowners Association



RECEIVED BY
COMMUNITY
MAY 30 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

Honorable Mayor and Members of the Newport Beach City Council
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

May 10, 2012

Dear Mayor Gardner and Council Members,

Newport Crest is the residential condominium community of 460 units adjacent to the Banning Ranch and Sunset Ridge properties. Our northern, southern and western perimeters border the property. The Newport Crest HOA Board of Directors conducted a survey in March 2012 of Newport Crest owners and residents to obtain their input regarding the development proposed for Banning Ranch. Of those that responded, over 88% answered that they were against the proposed development and preferred the open space alternative. With these survey results in mind, we respectfully submit comments below to include in the City's official record of the proceedings related to the Newport Banning Ranch project and its successors.

1. Regarding the response to a comment submitted by the Newport Heights Improvement Association, reference response page 3-332 where the commenter asks about the 'open space' option for the Banning Ranch property, and that the open space option be evaluated 'in consideration of present economic circumstances and the real value of the property' (and the comment goes on to state) '...and be examined based on the current real assessment of land value and not aged estimates'.

The City's response was:

'In January 2009, the City Council authorized the City to request Measure "M" environmental mitigation funding to acquire the Project site and that request was submitted to Orange County Transportation Authority (OCTA). In August 2009, the City Council received the report on the feasibility of funding acquisition of the Project site for open space, which estimated the cost of property acquisition at \$138,000,000 to \$158,000,000. The City Council directed staff to continue exploring open space acquisition possibilities as the City moves forward with review of the property owner's development application and to continue to monitor funding opportunities and explore potential new alternatives for open space acquisition. (underscored for emphasis)

This response does not address what specific activities the City staff has been engaged in regarding open space acquisition possibilities since 2009. The Crest Board, having received input that Crest owners and residents prefer the open space option, is compelled to put forth this question to the City. The DEIR does not adequately demonstrate that this option has been completely addressed taking into consideration those factors cited by the Newport Heights Improvement Association commenter.

Additionally, the City of Newport Beach 'Quarterly Business Report', October to December 2011 reports the amount spent to date on the Newport Banning Ranch project (page 52 of the QBR) is \$3,158,475. Nowhere in the QBR is there any mention of City budget allocated to explore 'new alternatives for open space acquisition' on Banning Ranch. Is there a budget allocated for this effort? What is the amount allocated for 'new alternatives for open space acquisition' and where can it be found in the budget?

2. Many DEIR commenters challenged the reasonableness of the range of project alternatives evaluated. One comment in particular states:

"The [D]EIR does not explore a reasonable range of alternatives that could eliminate or reduce the unavoidable adverse impacts associated with the project. The alternatives offered in the [D]EIR adhere too closely to a very narrowly defined set of objectives.

HOMEOWNERS ASSOCIATION

201 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433
www.NewportCrest.org

1

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Newport Crest Homeowners Association

CEQA does not require that the alternatives meet all the project objectives, just some of them. None of the [D]EIR alternatives make an earnest effort to reduce project densities. The project proposal for 1,375 dwelling units is the maximum density permitted in the General Plan.

Of the three reduced density alternatives, only one reduces residential density and only by 12%. Please revise the alternatives section of the [D]EIR to more fully explore alternatives that could reduce project impacts to the community. An alternative that would reduce residential densities by 25% to 50% would go a long way to reducing project impacts associated with land use, traffic, aesthetics and noise." (Reference 'Response', Page 3-752)

The City's response to this comment beginning on page 3-753 states in part: 'The commenter states that none of the alternatives make an earnest effort to reduce project densities. However it should be noted that the significant environmental impacts of the Project are not necessarily related to the number of proposed residential units nor would impacts be substantially lessened or avoided by reducing densities by 25 percent or 50 percent as suggested by the commenter.'

The response concludes with: 'In conclusion, because the significant impacts of the Project are not entirely attributable to the number of dwelling units proposed, and would not be substantially lessened or avoided by reducing units by 25 percent or 50 percent, a reduced density alternative would not be required.'

Where is the data to support this conclusion? Newport Crest will be seriously impacted throughout construction and after project completion given the size and density of the proposed development of Banning Ranch. This response is inadequate since it does not provide underlying facts and data that support the conclusion that introducing a project alternative reducing density by 25% to 50% would not reduce impacts. We do not find this to be a good faith attempt at a reasoned response and is unsupported by factual information or data.

3. The noise impacts associated with the proposed Banning Ranch development during the 10 years of construction and when the project is completed are of major concern to Newport Crest. The following comment is representative of many comments stating DEIR deficiencies associated with noise impacts. This comment was submitted by the City's Environmental Quality Affairs Committee (EQAC):

"Page 4.12-14, 1st paragraph. For some very close neighbors of the proposed project (Newport Crest) and a private school (Carden Hall), the noise level will be substantially increased during the construction period and construction noise impacts are considered to be significant and unavoidable and affect a number of the surrounding communities including California Seabreeze, Parkview Circle, Newport Shores, Lido Sands..." as well as several identified mobile home parks in the area and the Coast Community College District's Newport Learning Center, which is currently under construction. Portions of Newport Crest are as close as 5 feet from the proposed project boundary and Carden Hall is within a few hundred feet. Mitigation Measure (MM) 4.12-3 requires that the residents and schools be notified in order for them "to plan their activities to minimize potential disruptive effects of construction noise". This does not reflect a real solution to mitigating "significant short-term noise impacts" on schools and surrounding communities'

The City's response follows to state:

'The Project would comply with the City's Noise Ordinance which apply to all projects in the City and which regulate the days and hours during which construction may occur. Mitigation Measure 4.12-3 in the Draft EIR provides that advance notice be provided by contractors to Carden Hall School, the Coast Community College District's Newport Beach Learning Center (under construction), and residences within 300 feet of noise-generating activities prior to the start of construction-related noise-generating activities as a means of providing advance time for the schools and residents to plan for the occurrence of these activities. The noise mitigation measures proposed for the Project are considered the appropriate feasible measures to minimize construction noise impacts considering the duration of noisy work near sensitive receptors.'

The evaluation and response to public comments is an essential part of the DEIR process. This response falls far short of a being acceptable nor does it 'reflect a real solution to mitigating short-term noise impacts' as the EQAC comment points out. The Project is creating the noise, but doing nothing to mitigate it. The impacted people are expected to "mitigate" their activities in order reduce impacts. An analogy would be a neighbor telling you to go inside and close your windows and doors because they're throwing a party. Given the size, scope and construction timeline for this project, this response is unsatisfactory.

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cont.

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Newport Crest Homeowners Association

Additionally, EQAC specifically asked in a comment that the DEIR needed to be revised to include a project alternative that would reduce the significant and unavoidable impacts to less than significant for Newport Crest. An additional alternative was not identified in the Responses so presumably EQAC's comment was overlooked or ignored. EQAC is a City appointed advisory committee and it concerns the Newport Crest Board that another project alternative was not considered as requested by EQAC.

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cont.

4. Additionally, the DEIR states that construction noise would result in temporary (underscored for emphasis) substantial noise increases at Carden Hall School, Newport Crest, California Seabreeze, Parkview Circle, Newport Shores, etc. (DEIR, pages 4.12-15 to 4.12-16).

The development of Banning Ranch is a 10 year high density construction project with the 1,375 residential units, a 75 room resort, 75,000 square feet of commercial space, and a community sports park all within very close proximity to Newport Crest. Noise impacts will not be 'temporary'.

The City's response follows this comment with:

'While the construction of the entire Project would occur over many years, the periods when heavy construction equipment would be operating near sensitive noise receptors and periods when construction noise barriers may be installed would be considerably shorter.'

Please define "considerably shorter." This response is inadequate and does not provide a fact-based and reasonable response to the comment that fully explains the rationale to define the noise from 10 years of remediation and construction as 'temporary'.

4

5. Mitigation Measures proposed for the temporary noise impacts during construction are barriers up to 12' (DEIR, Section 4.12, Noise), but would only provide noise reduction for exterior and first floor receptors. Therefore, the barriers prescribed by MM 4.12-1 would provide noise reduction for exterior and first floor receptors, but would provide little or no noise reduction for second floor or higher receptors.

The DEIR states the level of significance after mitigation (which is the installation of barriers mentioned above in item #5) as follows: 'Project construction would result in an unavoidable short-term significant impact that would cease upon completion of construction activities. Implementation of MM 4.12-4, limiting the use of heavy equipment near existing residences (which is stated as use of heavy equipment within 25' of any existing off-site residence), would reduce potential vibration impacts to less than significant.'

What is meant by "potential vibration impacts"? Please clarify. What impacts could be expected if the vibration impacts were significant?

In regards to these sited mitigation measures and lack of effectiveness for Newport Crest, a comment was submitted that asked the City to revise the DEIR to include other mitigation measures to reduce these 'short term' significant impacts. The response was as follows (which is the same response provided as referenced in item #4 above):

'While the construction of the entire Project would occur over many years, the periods when heavy construction equipment would be operating near sensitive noise receptors and periods when construction noise barriers may be installed would be considerably shorter.'

Again, please define "considerably shorter." The response draws conclusions rather than giving proof that supports the position that limited use of heavy equipment near sensitive receptors and use of noise barriers will result in shorter periods of significant noise impacts, even though the project is 10 years in duration.

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6. There were a number of DEIR comments regarding the close proximity of Bluff Road to Newport Crest and the significant impacts on the Crest related to air quality, noise and lights. Comments such as those following were submitted:

- "The DEIR document states that future traffic noise to Newport Crest could be reduced by the realignment of Bluff Road but that it is not feasible due to greater impacts on open space and biological resources, as well as the need of additional grading. No studies or back-up were cited in the DEIR or in the responses to comments."

- "At the Costa Mesa City Council joint study session held on October 20, 2011, it was stated by the applicant that North Bluff Road was relocated outward to a distance of 355 feet from the California Seabreeze Community to

6

Newport Crest Homeowners Association

minimize the impact to that community, as depicted in Exhibit 4.1-2b. Why was this not done for the Newport Crest Community? As depicted in Exhibit 4.1-2g, Bluff Road is within 22 feet of the Newport Crest Community. Additionally, Bluff Road is a four-lane divided road, versus the two-lane undivided North Bluff Road. Does the applicant truly believe that building a four-lane road 22 feet from an existing residence is acceptable? Has such a major new roadway ever been built in Orange County in such close proximity to existing residences?"

The response to these comments was in the form of a 'Topical Response on Bluff Road' which summarizes the 'design constraints' to justify the alignment of Bluff Road from 15th Street to West Coast Highway. This topical response does not offer a fact-based study that demonstrates greater impacts on open space and biological resources with a realigned Bluff Road. We do not find this to be a good faith attempt at a reasoned response and is unsupported by factual information. Nor does the response provide a reference to similar major roadways ever being built in Orange County in such close proximity to existing communities. The present location of Bluff Road is a major concern to Newport Crest.

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7. A DEIR comment regarding the Mitigation Program; MM 4.12-6 - page 4.12-42 was submitted as follows: The document states that a noise barrier shall reduce future ground floor and second floor residential noise levels at the Crest. Newport Crest units are three levels. The lowest levels have no windows, are partially below grade and contain the garages. The second levels are the kitchen and living room levels and the third levels are the bedroom levels. Additionally, the second levels are split levels. What is the applicant doing to mitigate noise to the third level of the Crest units? Which elevation of the second level are the measurements referring to?

Newport Crest is gravely concerned about the response to this comment as follows: 'Typically ground floor noise levels are measured at 5 feet above the ground elevation and the second floor at 15 feet above the ground elevation. The acoustic analysis described in Mitigation Measure (MM) 4.12-6 should use specific elevation data corresponding to the actual elevations of the windows and doors at the residences'.

This response makes no attempt to answer the commenter's question about noise impacts to the primary living areas in Crest units. We find this to be an insufficient response.

8. DEIR mitigation measures state that dual pane windows and sliding doors will be offered to Newport Crest residents impacted by noise to reduce the significant and unavoidable noise impacts. As the DEIR states, the reduction in noise assumes these dual pane windows and sliding doors are closed.

This assumption is unreasonable. We are concerned about the safety risks associated with lack of proper air circulation, ventilation and heat build-up, as well as the health impacts related to vapor intrusion from the contaminated dust created by the excavation and grading during construction. As stated in the DEIR, the new residential homes will be built with the proper ventilation and air conditioning systems. This would be a reasonable mitigation for the impacted homes in Newport Crest. Also, relocating sensitive receptors during excavation and grading would help to address the health impacts. The City and Applicant need to go back and revisit this mitigation measure.

9. The size and scope of the proposed development of Banning Ranch and its impacts to Newport Crest include the significant impacts that will occur due to the size and scope of the proposed North Community Park that includes 6 lighted tennis courts, 3 lighted soccer fields, 1 lighted basketball court and baseball fields, a 274 space parking lot in 2 locations within the North Community Park, 19 parking spaces at 16th Street and Monrovia, and a 155 space parking lot at the western end of the park with ingress/egress at North Bluff Road. One commenter asked for a reduced park design due to the significant and unavoidable impacts to Newport Crest such as noise and lighting.

The response to this comment was as follows: 'As a point of clarification, the North Community Park area would be a predominately active park area and the Central and South Community areas would not include improved ball fields or courts. Newport Crest is not adjacent to the North Community Park area.'

The proposed North Community Park area may not be adjacent to Newport Crest but is in very close proximity. Newport Crest will, in fact, be impacted by the noise and lights from this park. This response does not reflect reality. As a Newport Beach City engineer stated in regard to the development of Sunset Ridge Park: If you can see it, you can hear it. We agree and are very concerned about the conclusion drawn by the City and Applicant.

We also object to the inference that Newport Crest will not be impacted by the Central Community area that will adjoin much of Newport Crest property.

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Newport Crest Homeowners Association

Although this area would not have improved ball fields or ball courts it would include picnic areas and open turf areas, and 25 parking spaces adjoining Newport Crest, all of which will result in noise impacts and disturbances to Newport Crest. Will this area be lighted? If so, light impacts must be addressed. Safety and privacy issues created by the crowds who would use the Central Community area are another concern. Perimeter fencing around Newport Crest would be a reasonable way to address these issues.

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cont.

10. Construction noise, dust and debris will continue to be impacts after the project is complete due to traffic from Bluff Road and noise generated by the North Community Park and Central Community area and will be experienced by Newport Crest residents living in the interior courts and not just the perimeter units as the DEIR implies. Newport Crest's design is such that noise is amplified because of the street layout, building structure arrangement and court configuration. Currently, Newport Crest residents are regularly reminded through HOA newsletters and the HOA website about the amplification of noise in the courts and ask residents to be mindful of loud talking and gatherings on decks, balconies, and in courtyard parking areas.

Newport Crest has had to endure the noise, dust and debris generated by the Coast Community College Newport Beach Learning Center construction at 15th Street and Monrovia for the last several months. This project includes a 3-story 55,000 square foot building with a 275 space parking lot and as such, is significantly smaller in size, scope and construction duration than the proposed development of Banning Ranch. The equipment and construction noise, dust and debris generated by the Coastline Community College project has permeated into the interior Crest courts.

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In summary, the City's claims that construction noise, dust and debris will be temporary is egregious, and the inadequacy of responses to concerns about noise mitigation measures during construction and after project development is of grave concern to this Board for all of Newport Crest and not just perimeter or 'front facing' units.

11. We are also concerned about the responses to the DEIR comments on the Air Quality section. For example, a response to a DEIR comment on the Air Quality section states that the use of Tier 4 construction equipment 'Is not required to reduce forecasted emissions to a less than significant level.' This appears to be in direct contradiction to the Air Quality section of the DEIR on page 4.10-28:

'Impact Summary: Significant and Unavoidable. Without mitigation, regional (mass) emissions of NOx are forecasted to exceed applicable thresholds in some construction years, MM 4. 10-1 would reduce the emissions to less than significant. However, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured; thus the impact is potentially significant and unavoidable.'

Another contradiction occurs in the next response statement:

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'It is further noted that, based upon further inquiries to contractors, the City has determined that it would be reasonable to expect that Tier 4 equipment would be available after January 2015 and that, as required by MM 4.10-1, would be included in the project construction equipment inventory.'

Thus, it appears that Tier 4 construction equipment is required to reduce regional mass emissions. The need for this equipment confirms our concerns about pollutant emissions and air quality and raises additional questions about wording that suggests it is 'reasonable to expect' that such equipment would be in the project construction equipment inventory. Given the health hazards associated with exposure to NOx that Newport Crest will experience, this wording is too vague and provides little assurance that Tier 4 equipment will be in the inventory in sufficient amounts or that it will be used during construction.

12. Another response to a DEIR comment on the Air Quality section refers to the Traffic Impact Analysis and states that the analysis is based on "current traffic conditions during the 'shoulder' months (outside the peak beach and tourist season) in accordance with the City of Newport Beach General Plan policy." Given that the peak season creates daily traffic gridlock on the 55 freeway corridor that extends to the City of Newport Beach on Superior Boulevard, Newport Boulevard, PCH, Balboa Peninsula and various other routes to the beach—and because the existence of the 19th Street Bridge on the Master Plan of Arterial Highways is now in question and the subject of possible litigation by the City, the Traffic Impact Analysis does not reflect the true traffic impacts or their severity and must be redone. Without the traffic mitigation afforded by the 19th Street Bridge, nine intersections on Pacific Coast Highway alone will drop to Level of Service-F (LOS-F), which is the equivalent of a failing grade.

12

Newport Crest Homeowners Association

These impacts will directly affect Newport Crest residents, whose only access to the beach is via Superior Avenue, which is already gridlocked in the peak seasons, as well as the residents' access to routes inland, which again necessitates the use of Superior or Newport Boulevard, another gridlocked highway.

Also, the emissions from idling and compacted traffic will add to pollutant levels that the DEIR already acknowledges will be significant and unavoidable--and will expose the residents of Newport Crest to health hazards that are particularly dangerous to the elderly, the infirmed, children and pregnant women.

13. In response to a DEIR comment questioning the accuracy of applying pollutant concentrations found at the Mission Viejo station to the Project Site, the response states that criteria pollutant data are generally regional representations and are not site specific. That response doesn't speak to the question of accuracy nor does it substantiate the DEIR's findings of insignificant impacts, which is especially concerning because in Table 4.10-2, data from 2008 to 2010 is summarized for both these stations, which reveals that state and federal standards for O₃, CO, PM 10 and PM 2.5 have been exceeded in the past.

We do not find this to be a good faith attempt at a reasoned response. Newport Crest is the closest sensitive receptor to this project. The question of accuracy was not satisfactorily addressed in the response.

14. Newport Crest commented that the DEIR must be revised to consider alternative mitigations to what was proposed to include:
- Installing filtering devices in homes to protect residents and pets.
 - Cleaning the homes, decks and common areas of Newport Crest of any contaminated debris.
 - Relocating "Sensitive Air Quality Receptors" during the mass grading phase.
 - Constructing fencing or other structures to help contain and deflect the contaminated air and toxic particles from Newport Crest.

We are concerned about the response to this comment which follows:

'Please refer to Topical Response: Air Quality, and Section 4.10 of the Draft EIR, which explain that localized impacts to nearby residents would be less than significant. No measures or precautions are necessary for residents to protect their health or that of visitors or pets. Analysis of air quality impacts to domestic pets is not prescribed by CEQA. However, a brief literature search indicates that most concerns relative to pet health and air pollutants are related to indoor air quality and the effects of chemicals used in the household. An impact to pets from an outdoor pollutant was noted for fluoride compounds occurring in agricultural areas, which is not relevant to the proposed Project.'

Newport Crest strongly objects to the response because it adds no new information beyond what was presented in the DEIR. Specifically, the contaminated dust and dirt blowing onto Newport Crest from the construction, excavation and grading is of serious concern and creates health and safety issues related to vapor intrusion into Newport Crest residences. This will impact "indoor air quality" especially since the mitigation measures specific to the noise impacts require that Newport Crest residents keep their doors and windows closed. This needs to be addressed by the City and the Applicant in detail.

15. Several DEIR commenters asked for information on the developer and City's intent to open Ticonderoga Street to the Banning Ranch as stated in the 1984 agreement with Newport Crest. The response (which was stated to at least two commenters) was as follows:

'On May 14, 1984, the City Council of the City of Newport Beach adopted Resolution No. 84-38, which vacated Ticonderoga Street. As part of the recitals adopting the resolution, the City Council of the City of Newport Beach found that Ticonderoga Street "is unnecessary to present or prospective public use." While a condition of the vacation does allow Ticonderoga Street to be extended and connected to 15th Street at such time 15th Street and Bluff Road are connected, such an extension is neither proposed by the Project nor provided for in the Master Plan of Streets and Highways of the Circulation Element of the City of Newport Beach General Plan. There is no evidence in the record suggesting that an extension of Ticonderoga Street to 15th Street is proposed, contemplated, desired, or necessary. Therefore, an extension of Ticonderoga Street to 15th Street is speculative and not a reasonably foreseeable consequence of the Project.

As stated in this response, since it is unlikely that this extension will ever take place, Newport Crest requests that the City draw up a new agreement with Newport Crest or amend the current 1984 agreement to state that Ticonderoga Street will always remain a dead-end street at the Banning Ranch end, closed at its westerly terminus and will remain private at the discretion of Newport Crest.

Newport Crest Homeowners Association

16. Regarding the Statement of Overriding considerations, the DEIR has failed to evaluate all feasible options to reduce 'significant and unavoidable' impacts related to noise, lighting and air quality to Newport Crest to 'less than significant'. We understand that CEQA requires that where impacts cannot be reduced to less than significant, the City must identify 'specific economic, legal, social, technological, or other considerations' in the form of a 'Statement of Overriding Considerations' against which the unavoidable adverse environmental impacts are considered when reviewing the project and EIR for City Council approval.

We object and are alarmed that the City is contemplating preparing a 'Statement of Overriding Considerations' that claims the project benefits outweigh the health and well-being of Newport Crest residents. Please carefully evaluate the long term implication of the proposed development of Banning Ranch on Newport Crest and other adjacent communities.

16

In closing, the Newport Crest Homeowners Association objects to the proposed Banning Ranch development because of deficiencies in the DEIR, inadequacy of responses to comments, and project design features. The impacts from ten or more years of heavy construction, excavation and soil remediation and the ongoing air pollution caused by traffic congestion after the project is completed will seriously diminish homeowners and residents of Newport Crest's enjoyment of their property and will diminish property value.

17

We hereby object to the City of Newport Beach certifying the Newport Banning Ranch DEIR and project, and respectfully request that a revised EIR be prepared to adequately address the deficiencies cited above and the deficiencies discussed in comments raised by others.

Thank you.

Newport Crest Homeowners Association
Board of Directors

Mark Gonzalez, President
Steve Porter, Vice President
Sharon Boles, Secretary
Mike Rosenthal, Treasurer
Ginny Lombardi, Member at Large

cc: Chairman Michael Toerge, City of Newport Beach Planning Commission
Patrick Alford, Planning Manager, City of Newport Beach

Newport Crest Homeowners Association

May 10, 2012

Response 1

The Newport Crest Homeowners Association (Newport Crest) expressed opposition to the Project is noted. Newport Crest did not identify an environmental issue but did express his support of the preservation of the property as Open Space. After the close of the June 21, 2012 Planning Commission public hearing, Mike Mohler, representative for the Applicant, indicated there seems to be a consensus that open space and parks are good things and noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

Response 2

Newport Crest repeats comments that were submitted during the public comment period for the Draft EIR regarding whether the City's EIR considered a reasonable range of alternatives. Specifically, the comments stated that more alternatives that reduce Project densities should have been considered. The EIR analyzed six alternatives to the Project including the No Project Alternative which would have resulted in no residential or commercial development. The General Plan Open Space Acquisition Option includes the development of a 20- to 30-acre Community Park and roadway through the property from West Coast Highway to 19th Street. Among the development alternatives, one alternative reduced the commercial square footage and another alternative reduced the residential densities from 1,375 to 1,200 units.

CEQA requires that consideration of alternatives that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project" (CEQA Guidelines Section 15126.6(a)). As the EIR noted, the unavoidable adverse effects of the Project are as follows:

- Aesthetic and land use incompatibility related to night lighting including lighting at the North Community Park;
- Land use incompatibility related to noise impacts from traffic on Bluff Road on adjacent residents;
- Traffic impacts on intersections in the City of Costa Mesa which can be reduced to a level of less than significant but were found to be unavoidable only because the City of Newport Beach could not be assured that the mitigation measures would be implemented by another agency prior to the traffic impacts from the Project occurring;
- Short-term, long-term and cumulative air quality impacts due to the exceedance of certain emission thresholds and greenhouse gas emissions; and
- Noise impacts from long-term traffic for which mitigation measures were identified, but because the City could not be assured that the City of Costa Mesa or private individuals would implement the mitigation measures on a timely basis, it determined these impacts would be unavoidable and adverse.

With the exception of air quality impacts, none of the significant impacts would be avoided or substantially reduced by the reduction in the number of units of the Project. Even impacts such as traffic and noise which often are a function of the density of development are not, with respect to this Project, a function of the number of units proposed by the Project. The noise impacts result from the General Plan alignment of Bluff Road and its location in close proximity to Newport Crest – which is not a function of the Project's density but rather a function of the

siting the road to reduce environmental impacts; this has been previously addressed in the Final EIR (Draft EIR and Responses to Comments document). The traffic impacts, for which feasible mitigation has been identified, are considered significant because timing of implementation by the City of Costa Mesa cannot be assured. These impacts would not be reduced if the number of residential units were halved as requested by the commenter. Moreover, the Project's significant impacts in the area of air quality and greenhouse gas is in part, due to cumulative, not direct project effects, and even if the Project's density were reduced as requested by the commenter, the impacts would still contribute emissions such that on a cumulative basis the impacts would remain significant.

"CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose.... [A]n EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, *or to the location of the project*, which: (1) offer substantial environmental advantages over the project proposal (Pub. Resources Code, §21002); and (2) may be "feasibly accomplished in a successful manner" considering the economic, environmental, social and technological factors involved." (*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350). Because of the nature of the Project's significant impacts, a reduction in the number of units by 25 or 50 percent would not offer substantial environmental advantages over the proposed Project.

Response 3

The comment does not acknowledge that the Project would incorporate mitigation measures (MM) 4.12-1 and 4.12-2 as feasible mitigation to reduce construction noise levels to values consistent with the Federal Transit Administration's construction noise impact guidelines and the construction noise limits established by some jurisdictions. However, the increase in ambient noise would, at times, be substantial when compared with the existing ambient noise level. Therefore, as stated in the Final EIR (Draft EIR and Responses to Comments document), the impact would be significant and unavoidable. MM 4.12-3, the subject of the comment, was included in the Project to assure communication with affected parties in an effort to reduce and minimize the potential disturbance associated with the acknowledged impact.

The commenter has misstated the comment by EQAC. The EQAC asked if there are any alternatives which can reduce impacts to Newport Crest from significant and unavoidable to less than significant (Comment 91). A response was provided in the Responses to Comments document.

Response 4

The loudest construction noise would occur during remediation and grading. The Project schedule estimates that remediation in the first areas would occur for approximately 8 months followed by approximately 1 year in the second area, and 18 months in the third area, for a total of approximately 3 years and 2 months. Grading in the first area would slightly overlap with the end of remediation and would continue for approximately 8 months. Grading in the subsequent areas is estimated at approximately 10 months in each area. Noise from building construction, which follows grading, is generally substantially less because of the reduced use of diesel engine driven equipment. During each of the remediation and grading the work location, and therefore the source of the noise, will vary in distance from residences and other receptors.

The CalEEMod input files were not requested from the City during the public review period for the Draft EIR. The files are available for review at the City Community Development Department

during regular business hours. The dates and durations used for the construction sequencing are shown in the table below.

Activity Name	Activity Type	Activity Start Date	Activity End Date	Days per Week	Activity Days
Remediation 1	Grading	2/1/2014	9/30/2014	5	172
Grading Phase 1	Grading	8/1/2014	5/30/2015	5	216
Remediation 2	Grading	10/1/2014	9/30/2015	5	261
Building Construction Phase 1	Building Construction	2/1/2015	9/30/2017	5	695
Remediation 3	Grading	10/1/2015	3/31/2017	5	392
Grading Phase 2	Grading	8/1/2016	5/30/2017	5	217
Building Phase 2	Building Construction	2/1/2017	1/31/2020	5	783
Grading Phase 3	Grading	8/1/2018	5/30/2019	5	217
Building Phase 3	Building Construction	2/1/2019	12/17/2023	5	1271

Response 5

Potentially significant vibration impacts occur when the vibration is of the magnitude to have the potential for structural damage or if the vibration would be readily perceptible to persons. As explained in the Draft EIR, the 25-foot buffer provides a margin above the potentially significant levels. The periods of use of heavy construction equipment near residences, but not less than 25 feet as required by MM 4.12-4, would likely be a few intermittent periods of a few days each. For example, construction would be near residences for the initial rough grading for a section of Bluff Road, followed by intervals of utilities installation, placement of subgrade materials, and pavement. Equipment considered “heavy” would only be used for part of each of these activities, if at all.

Response 6

Any realignment of Bluff Road to the west of its current alignment would result in greater impacts to biological resources in this area. The resources of greatest value in this area are Drainages C and D, which would incur significantly more impacts if the alignment is shifted to the west.

Response 7

A noise analysis for specific living spaces beyond that in the Draft EIR is not reasonable until detailed grading plans for the road and potential noise barrier location are complete. The City concurs that the detailed noise barrier analysis required by MM 4.12-6 should use specific elevation data corresponding to the levels of each residence that are used for living spaces. Generally, unmitigated noise levels at elevations above the second floor will be similar to those at the second floor. As may be seen in Draft EIR Table 4.12-13, 6- and 8-foot high noise walls at the Newport Crest property line would provide limited or no mitigation at the second floor level. These walls would not be expected to reduce noise at elevations above the second floor. As shown in Draft EIR Table 4.12-13, a 12-foot high noise wall at the edge of the roadway would provide noise reductions to the second floor level. This wall may provide some noise reduction

at higher elevations, but the reduction is likely to be less. As noted in the Draft EIR, location of a noise barrier adjacent to the roadway could limit the access to and use of the proposed Central Community Park located south of Bluff Road.

Response 8

As stated in the Draft EIR, implementation of the noise barrier to be provided by MM 4.12-6 would reduce noise levels to the “Clearly Compatible” and “Normally Compatible” ranges defined in the City of Newport Beach General Plan. Because of the City’s significance criterion for noise increase, MM 4.12-7 provides additional opportunities to Newport Crest homeowners for interior noise reduction. These measures are considered by the City to be reasonable and appropriate for the impact. The retrofitting of homes to provide air conditioning or enhanced ventilation systems or relocating residents during grading are not considered reasonable or feasible. No impacts related to contaminated dust from grading have been identified. Please also refer to Response 14.

Response 9

As addressed in the Section 3.0, Project Description, of the Draft EIR, “...This park area would include picnic areas and open turf areas (no improved play fields or courts) and a public/private parking area (approximately 25 parking spaces)... This parking would be in addition to public parking for the Community Park and would be accessible to park users in non-business hours. Lighting in this area would be limited to the parking area and public safety lighting for and walkways...The 5.0-gross-acre (3.7-net-acre) South Community Park area would include native habitat and interpretative areas; no improved play fields or courts are proposed. Lighting would be limited to that required for public safety. The park access road for the approved but not constructed City of Newport Beach Sunset Ridge Park would traverse the South Community Park”. Environmental issues noted by the commenter are addressed in the Final EIR (Draft EIR and Responses to Comments document). No new issues have been raised.

Response 10

The comments of concern from “all of Newport Crest” are noted. The City has disclosed the anticipated significant and unavoidable construction and operational noise impacts to the Newport Crest community and, as required by CEQA. The Draft EIR has not identified significant impacts at Newport Crest related to dust and debris. The City Council in consideration of action on the proposed Project will have the responsibility of balancing competing public objectives (including environmental, legal, technical, social, and economic factors).

Response 11

As explained in the Topical Response – Air Quality, included in the Responses to Comments document for the Draft EIR, updated construction equipment use data indicates that the provision of all Tier 3 construction equipment would reduce regional NOx emissions to a less than significant level. Nonetheless, the Applicant and construction contractors would be required by mitigation measure 4.10-1 to provide Tier 4 equipment where available, thereby further reducing NOx (and other pollutant) emissions. The Draft EIR identified that local exposure to NOx (i.e., exposure of persons at Newport Crest and other adjacent locales) would be less than significant. The updated data results in forecasted local NOx exposure less than the less than significant levels analyzed in the Draft EIR.

Response 12

As stated in the EIR, the traffic data for the traffic study was collected in accordance with the City of Newport Beach policy which requires that traffic count data at Primary Intersections (as specified in Appendix B of the Traffic Phasing Ordinance) for TPO purposes be collected between February 1 and May 31; and that transportation planning and decisions regarding sizing the circulation system be based on typical traffic levels during the “shoulder season” (the spring and the fall) – and not traffic levels during the summer months. This is per the City policy set forth in the General Plan Circulation Element, which states: “...these policies protect Newport Beach from building oversized roads to serve weekend summer beach traffic or traffic generated outside of our border and our control”. No further response is required.

Response 13

The pollutant monitoring data at the Mission Viejo and Costa Mesa stations is presumed to be quite accurate, as the SCAQMD maintains a thorough quality assurance program. As stated in the responses to comment on the Draft EIR, the accuracy of the data at the Mission Viejo station is not relevant to the analysis of air quality impacts at Newport Crest and other local receptors because the monitored data is not used in the analysis.

Response 14

There is no evidence to indicate that contaminated dust or dirt would blow into Newport Crest. Therefore, the EIR identified no significant impacts related to contaminated dust and dirt blowing into Newport Crest from construction, grading and excavation activities. The Project site would be required to be remediated prior to any grading for development occurring, and therefore the commenter’s assumption that the dust or dirt is contaminated is unfounded. As there would not be significant impacts, there would be no requirement to consider the installation of filtering devices, cleaning of homes and decks, relocation of residents, and the construction of dust barriers or other structures. The Project will be required to comply with dust control measures recommended by the South Coast Air Quality Management District to minimize dust and particulates on neighboring properties (see SC 4.10-01). Vapor intrusion from residential foundations, if it exists in Newport Crest, is not related to the proposed Project. The closing of windows, either existing windows or those provided to reduce traffic noise, is an option for the homeowner. The offering of dual pane windows and doors and balcony barriers is a reasonable and feasible mitigation for traffic noise impacts, as discussed in response 8.

Response 15

The request of the City is noted.

Response 16

The EIR identified those impacts which could not be reduced to below a level of significance, and if the City were to approve the Project, it must balance the “economic, legal, social, technological or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks”. If those benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable” (CEQA Guidelines §15093(a)). The findings made by the City with respect to the balancing of benefits against the impacts of the Project are referred to as the Statement of Overriding Considerations, a draft of which was recommended by the Planning Commission to the City Council if the Council decides to approve the Project.

The EIR evaluated a number of measures to reducing the unavoidable impacts to less than significant, including alternatives to the project and mitigation measures and determined that it was infeasible to reduce these impacts to less than significant. In some instances, avoidance of the impact was not feasible because even though feasible mitigation measures were identified, the City could not guarantee that the measures would be fully implemented. For example, noise impacts from traffic on Bluff Road could be mitigated through the installation of noise reducing features on those residential units closest to the proposed Bluff Road; however, because the residents of the unit may not want the noise-reducing features installed, the City cannot conclude that the impact would be reduced to less than significant. With respect to another impact – night lighting – the avoidance of the impact would frustrate City policy and thus was determined to be infeasible. The Draft EIR rejected as infeasible an alternative that would eliminate night lighting at the public park because “a policy decision was made [during the City’s adoption of the General Plan] on the appropriateness of having night lighting at the Community Park, and an alternative that eliminated the lighting was not carried forward” (Draft EIR on page 7-7). (See *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal. App.4th 957 which states: “[A]n alternative that “is impractical or undesirable from a policy standpoint” may be rejected as infeasible, citing 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 17.29, p. 824.)

Whether the Project is approved or not will be determined by the City Council after consideration of the information presented in the EIR, as well as public comments received on the Project. The concerns expressed in this letter will be provided to the City Council for its consideration prior to taking action on the proposed Project.

Response 17

The opinions of the homeowners association are noted. No new environmental issues have been raised in this letter.

Mesa Consolidated Water District
Paul Shoenberger, General Manager



*District Mission:
Dedicated to Satisfying
our Community's
Water Needs*

June 6, 2012

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WILES & GIANNONE**
Legal Counsel

Mr. Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

Subject: Planning Commission Recycled Water Inquiry

Dear Mr. Alford:

This letter is in response to the City of Newport Beach Planning Commission's inquiry at the April 19, 2012 Planning Commission meeting regarding the availability of recycled water at the Banning Ranch development. Mesa Consolidated Water District (Mesa Water) staff researched the possibility of delivering recycled water to the Banning Ranch site and would like to provide the following information.

Mesa Water staff identified recycled water infrastructure near the Santa Ana River Channel in-line with 19th street. The recycled water infrastructure is sufficient for the projected irrigation demands listed in the Sewer and Water Facilities Plan, prepared by Fuscus Engineering, Inc., dated June 30, 2011. Mesa Water is able to extend the existing recycled water infrastructure to the Banning Ranch site for use.

Utilizing recycled water where available has multiple benefits. The use of recycled water reduces the demand of potable water, increasing its availability for domestic use. Employing recycled water coincides with the California Urban Water Conservation Council MOU, dated September 16, 2009.

Additionally, the inclusion of recycled water at Banning Ranch will assist with regional compliance mandated by the State of California's 20X2020 plan, a reduction of potable water usage by 20% by the year 2020. Therefore, the use of recycled water at Banning Ranch will not only benefit our local resources but will also contribute to the regional compliance. Utilizing recycled water reduces greenhouse gas by 63% when compared to using imported water for irrigation.

1965 Placentia Avenue ♦ Costa Mesa, California 92627
Telephone (949) 631-1200 ♦ FAX (949) 574-1036

www.mesawater.org

Mesa Consolidated Water District
Paul Shoenberger, General Manager



Mr. Patrick J. Alford, Planning Manager
June 6, 2012
Page 2 of 2

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Water Needs*

Furthermore, I would like to use this opportunity to comment on the ability of Mesa Water in providing potable water to Banning Ranch with the least environmental impact when compared with other water service providers. Mesa Water's low-energy potable water for domestic use will ensure environmental conformity for any future development at Banning Ranch.

2

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We thank you for the consideration of our comments and look forward to the Planning Commission addressing this response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul E. Shoenberger', is written over a faint, larger signature.

Paul E. Shoenberger, P.E.
General Manager

PAUL E. SHOENBERGER, P.E.
General Manager

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WILES & GIANNONE**
Legal Counsel

1965 Placentia Avenue ♦ Costa Mesa, California 92627
Telephone (949) 631-1200 ♦ FAX (949) 574-1036

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Mesa Consolidated Water District
Paul Shoenberger, General Manager
June 6, 2012

Response 1

Regarding the availability of reclaimed water at the Project site, it has been reconfirmed that the statement is correct in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR that state "At present, this (reclaimed water) is not feasible, because the City does not have or plan to provide recycled water in the vicinity of the Project site". Staff of the County of Orange Parks Maintenance, Parks Design, and Trails departments and staff at the Orange County Water District confirmed that the only normally publicly available connection for a private user would be from OCWD and MCWD at the Green Acres line located north of Fairview Park which is approximately 9,000 feet (or approximately 1.7 miles) from the Project site.

**JUNE 21, 2012 PLANNING COMMISSION
PUBLIC HEARING COMMENTS**

June 21, 2012 Planning Commission Public Hearing Comments

The following comments were made by public speakers and included in the June 21, 2012 draft meeting minutes and taken from transcripts.

Steve Ray, Banning Ranch Conservancy

Mr. Chair, I'm Steve Ray, Executive Director of the Banning Ranch Conservancy. Thank you for the opportunity to speak. I would like to say that all those wonderful things that the applicant, Mr. Mohler, just addressed about all the wonderful things about Banning, we're actually going to do all those things too with a couple exceptions. We are -- we're actually not going to destroy any of the land. We're not going to take out 2.6 million cubic yards of dirt. We're not going to destroy valuable habitat and ESHA and endangered species. Other than that we're going to do all those wonderful things too, the Banning Ranch Conservancy once we acquire the property.

I would like to point out that we are back here tonight to hear the EIR because of violations made by this Commission at the last hearing when it recommended certification. And while I pointed out at that hearing the violations that this Commission was engaged in and asked that you not go forward, you did. And I know the City does not admit any guilt in any violation of the law. But as they say, we're here again. That is, in fact, a de facto admission by the City that it was an improper at least, if not totally illegal and, therefore, we're back at it again. I would like to point out you tonight that proceeding forward beyond this point will place you in additional legal jeopardy simply because there are issues that we have raised.

I submitted a letter, and it will be read into the record as soon as I speak here. And the letter points out several issues. There were many others. I didn't list them all, only the three major ones that each one of them in and of itself is sufficient cause to delay this hearing and not go forward. But those three issues are such that because of the unique nature of them, including the violation filed by the Coastal Commission including a required remapping of the entire vegetation onsite which will certainly cause a major, major change in the environmental analysis and will result in not just affecting biological resources onsite but could have impacts on many of the other issues as well.

In addition, we've submitted a letter or the Newport Crest Development submitted a letter from Todd Brody which lists many, many different things which basically show that the many aspects of the EIR totally fail.

Given this information, you are required under law to submit that, have to delay this hearing until all of those issues are resolved and you can go forward; so with that, we ask you to please stand up, be responsible not just commissioners but responsible public officials and that you really can't go forward here. Whatever staff is telling you, it's your call. If you feel any queasiness at all about the impropriety of this, I ask you to consider and cancel the hearing tonight. Otherwise, we will be in the same boat again in the future. We'll see you hopefully not then; but if necessary, we'll see you then. Thank you very much.

Response

Mr. Ray did not identify an environmental issue but did express his support of the preservation of the property as Open Space. After the close of the June 21, 2012 Planning Commission public hearing, Mr. Mike Mohler, representative for the Applicant, noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. No further response is required.

The following individuals each read into the record a portion of the Banning Ranch Conservancy's letter dated June 20, 2012 noted above by Mr. Ray: Pamela Barton-Endalte; Ron Franckewicz; Mary Demos; George Demos. Responses to this letter are provided in Correspondence Item No. 2f of the June 21, 2012 Staff Report.

Walter Pasterneck

This is a statement regarding the objection to commissioner's presence. Specifically, I rise to object to the participation of Commissioner Tim Brown in this proceeding. At the March 22nd Planning Commission hearing on Newport Banning Ranch EIR, documentation was entered into the administrative record showing that Commissioner Brown has a predisposed and publicly-stated bias in favor of Newport Banning Ranch Project and opposes efforts by the Banning Ranch Conservancy and other opponents of the Newport Banning Ranch. Based on that publicly published statement and upon his actions and vote at that hearing on March 22nd, we continue to maintain that Commissioner Brown shows a bias and is therefore unable to consider and vote in a fair and impartial manner on the issue at hand. Continuation by Commissioner Brown in the Newport Banning Ranch hearing also serves to taint this proceeding.

Response

After the close of the March 22, 2012 public hearing, Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that Commissioner Brown was unable to be fair and impartial on this decision due to his bias. Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

John Ursini

Mr. Ursini voiced his support for the Project.

Response

Mr. Ursini did not identify an environmental issue but did express his support of the Project. No further response is required.

Dorothy Kraus

My name is Dorothy Kraus, and I'm a resident of Newport Crest. I and a few others will be commenting on a report that was produced by an environmental consultant, Mr. Todd Brody, who was retained by a group of Newport Crest residents to review the Newport Banning Ranch EIR. A copy of this report was delivered to Chairman Toerge at City Hall on Monday June 18, 2012. These comments will address only some of the deficiencies, inconsistencies, an unsubstantiated analyses in the EIR cited in Mr. Brody's 24-page report.

Mr. Todd Brody writes in the opening statement of his request, recognizing that the average citizen has neither the background nor the technical expertise to adequately review the myriad

of disciplines included in an EIR, Dorothy Krause hired Synectecology which is Mr. Brody's firm, to provide due diligence review of the Newport Banning Ranch project with emphasis on air quality and noise. By way of introduction, Synectecology has been providing environmental consulting services since 1994. Its principal, Todd Brody, has been working in the environmental consulting field since 1978 and has prepared well over 600 environmental documents to date. Mr. Brody prepared air quality and/or noise analyses for several of these projects in the City of Newport Beach including Dredging and Habitat Restoration of the Newport Back Bay, Improvements to Buck Gulley, the Realignment of Irvine Avenue, Mariner's Mile, Bay Island Sand Retention Wall and Bridge Refurbishment, Fletcher Jones Mercedes Benz, St. Mark's Presbyterian Church, Olson Homes Conversion from Industrial to Multi-Family Residential, and the Erie Residential Project. Other relevant proximate projects include the Restoration and Development of the Bolsa Chica Wetlands Area, Improvements to the UCI Campus, and the Proposed Stadium at University High School.

With respect to air quality, Mr. Brody's report finds that in many cases its air quality analysis extends construction well beyond the dates included in the project description, thereby avoiding the indication of the potential impacts that are likely to ensue. While the text notes that the project construction follows a schedule provided in the description, the results of the model runs included in the air quality Appendix G show that this isn't so. In fact, the construction schedule was extended by several years from the provided schedule just to reduce the daily emissions impacts. Thank you.

Response

The following individuals each read into the record a portion of Synectecology letter dated April 26, 2012 (cover letter from Dorothy Kraus dated June 18, 2012): Debbie Koken; Dave Sutherland; Natalie Fogerty; Tevis Hill; Terrell Koken; Sheila Koff; Diane Silvers; Jonathan Weiner. Responses to this letter are provided in Correspondence Item No. 2b.

Andrew Ouge

Mr. Ouge voiced his support of the Project.

Response

Mr. Ouge did not identify an environmental issue but did express his support of the Project. No further response is required.

Christopher Danks

Mr. Danks voiced his support of the Project.

Response

Mr. Danks did not identify an environmental issue but did express his support of the Project. No further response is required.

Christina Danks

Ms. Danks voiced her support of the Project.

Response

Ms. Danks did not identify an environmental issue but did express her support of the Project. No further response is required.

Reed Royalty

Mr. Royalty voiced his support of the Project.

Response

Mr. Royalty did not identify an environmental issue but did express his support of the Project. No further response is required.

Suzanne Forster

My name is Suzanne Forster. I'm a resident of Newport Beach, and I'm going to talk about the health and safety hazards of oil field development. (Note: Ms. Forster provided a PowerPoint presentation.) Banning Ranch is a 70-year old operational oil field with nearly 500 wells and unknown levels of crude oil contamination. This is a logo of the Orange County Fire Authority, and this is their guidance for dealing with the hazards of building on oil fields. These are their submittal requirements. The first one defines the building restriction zone. To the maximum extent feasible, the slab or foundation for proposed building shall not be constructed over or within ten feet of an abandoned oil/gas well. At the bottom in bold, the OCFA advises against the construction of any structure over any well. This is the NBR Master Development Plan. The red arrows point to the North Family Village. You can't see the box on this slide unfortunately. And that's just one part of the proposed development.

This is the historic oil field impacts map. The black dots are the abandoned oil wells. The red dots are the active oil wells. By my count there are 19 active oil wells under the North Family Village and well over 100 abandoned wells, closer actually to 150.

This is an overlay map of the Master Development Plan and the oil well map. Please note the oil wells under the North Family Village. The project applicants say that no homes will be built over oil wells, but these are their maps. And if these maps are accurate, it's hard to see how that's possible.

This project is six times as dense as any other large Orange County Coastal Development in recent history. Is it really a good idea to put several hundred homes on top of nearly 200 oil wells?

Crude oil waste, the byproducts of oil production, are horrifically toxic and they are also unregulated. There is no agency, State or Federal, that regulates oil wells. The toxins can damage every system in the human body. Many are carcinogenic and mutagenic, in other words, they cause cancer. Leukemia, lymphoma, Hodgkin's, et cetera. The list is long, and there are many studies to back it up. Oil wastes also cause birth defects, which was shown in a recent landmark study by the University of Texas.

Extracting crude oil from old wells requires injecting water and chemicals into the ground to force the crude to the surface. This creates empty space and pressure that can actually move fault lines. Also extracting oil causes toxic and potentially explosive gases to rise to the surface through fault lines.

Banning Ranch just happens to sit on the second most active fault line in the entire State of California. The EIR describes the potential for landslides and liquefaction should an earthquake occur but has little else to say besides suggesting more studies.

All of this begs the question, whose idea was it to put 1400 homes, a hotel, commercial space, and sports fields over oil wells in the middle of an operational oil field that sits on an active fault line? I could give you example after example of the disasters that occur with developments like this. But my three minutes are almost up, and I'm going to use them to urge the Commissioners to vote against recommending certification of the Draft EIR and the project.

Response

With respect to Ms. Forster's comment that it has been stated that no development would occur over abandoned oil wells, this statement is incorrect. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR and the Newport Banning Ranch Planned Community Development Plan (NBR-PC) Chapter 3.0 Land Use and Development Standards, all habitable structures are required to have a minimum setback of 10 feet from abandoned oil wells and 100 feet from active wells. With implementation of the proposed Project, the only active wells on the Project site would be located within the two oil consolidation sites.

With respect to Ms. Forster's comment that oil wells are not regulated, as addressed in Topical Response: Oilfield Regulatory Oversight and Remediation in the Responses to Comments document, the oilfield operations at Newport Banning Ranch are governed by regulations of the California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). All remediation activities, such as excavating pipelines, are required to be conducted pursuant to State and local requirements. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, any contaminated soil in areas proposed for development would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these soils are safe for human exposure in the future. As noted on page 3-24 of the Draft EIR, contaminated material that cannot be effectively remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. Appendix D of the Draft EIR includes the draft Remedial Action Plan that identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by the Regional Water Quality Control Board (RWQCB) and/or the Orange County Health Care Agency (OCHCA) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site disturbance unrelated to oil remediation activities. Preparation of and compliance with the final RAP would ensure further agency review of any identified contaminants and plans for clean-up.

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. All remediation activities, such as excavating pipelines, are required to be conducted pursuant to State and local requirements. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, any contaminated soil in areas proposed for development would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these soils are safe for human exposure in the future. As noted on page 3-24 of the Draft EIR, contaminated material that cannot be effectively remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. Appendix D of the Draft EIR includes the draft Remedial Action Plan that identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by the Regional Water Quality Control Board (RWQCB) and/or the Orange County Health Care Agency (OCHCA) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for site

disturbance unrelated to oil remediation activities. Preparation of and compliance with the final RAP would ensure further agency review of any identified contaminants and plans for clean-up.

Hydraulic fracturing, commonly called "fracking" has been used in the oil industry for over 40 years in some oilfields and reservoirs. Hydraulic fracturing (fracking) is not used in the oil operations on the Project site.

With respect to comments regarding active faults on the Project site, earthquake analyses were performed for the Project site as a part of the EIR. The results of these analyses indicate that the proposed development can be safely constructed with the implementation of proper setbacks, foundation design and other regulatory requirements related the development. For reference, these analyses included (1) regional fault evaluation; (2) seismicity and earthquake history analyses; (3) seiche and tsunami hazard analyses; (4) geomorphic analysis; (5) various ground motion analyses; (6) review of past fault trenching and exploration of thousands of feet of new fault trenching using recognized doctoral experts; and (7) an age dating analysis.

The faults found on site are grouped together in zones called the "North Segment Faults" and the "South Segment Faults". All of the individual faults are clearly shown on Exhibit 4.3-3 and shown on the fault trench logs contained in Appendix B of the Draft EIR.

There are setbacks for both the Newport Mesa North and South segment faults including a projected extension of these two fault zones. The setbacks, shown on Exhibit 4.3-3, meet or exceed State standards. All development would be set back from faults within the North branch of the Newport Inglewood fault zone that could not be proven to be inactive in accordance with State law and as per current standards of practice.

With respect to Ms. Forster's comment on the density of the Project, the opinion of the commenter is noted. No further response is required.

June Palomino

Good evening. My name is June Palomino, and I'm going to read a rebuttal to the City staff report quoted in the Daily Pilot that was written today. It's an article on the open space remediation entitled "Planning Commission May Approve Banning Ranch Plans", The article states that a report from the project applicant claims an open space remediation would cost the taxpayers \$30 million. This is simply not true and here's why. The cost of open space remediation would be a fraction of the cost for residential-commercial remediation. The project applicant's cost are 30 to 60 million. Open space costs would be a tenth of that or less. With open space remediation, there is no requirement for re-abandoned -- to re-abandon the oil wells at the cost of 80 to 150,000 per well, nor is it necessary to remediate the soil through years of exorbitantly expensive land farming. The petroleum hydrocarbon cleanup criteria for non-residential remediation is based on OCHA requirements is 1,000 to 20,000 parts per million. Residential requirements are 100 parts per million.

Open space remediation is not held to the rigid standards of residential remediation because there is no for-profit motive to build homes or to build any other enclosed structure on an operational oil field and in some cases on top of what are mapped as both active and abandoned wells. Banning Ranch is already self-remediating through a process called phytoremediation. Plants have been -- have miraculous -- have the miraculous ability to clean up the contamination caused by man, no matter how deadly the toxic wastes are that were created by the oil production and that are deadly to humans.

With open space use, it won't be necessary to massively excavate the contaminated soil, 2,600,000 cubic yards of it, nor will it be necessary to alter or eliminate any natural landforms, grade natural bluffs and arroyos or make cuts as deep as 25 feet, all of which the NBR plans to do according to their EIR. With open space use it won't be necessary to destroy the land in order to remediate and develop it as a nature preserve and park including an active sports component. The process with open space use would be to facilitate natural forms of remediation and to preserve and protect virtually all of the land as it exists, a rare and unique ecosystem for the benefit of the public and future generations. Thank you.

Response

The cost of site remediation does not address an environmental issue. Alternative B in the EIR addresses the use of the property consistent with the Open Space land use designation. No further response is required.

Bruce Bartram

The staff report basically repeats the same conclusions of the EIR. The staff report finds that the impacts from noise and the light from the community park to particularly those residences in the crest contiguous to the project site can be mitigated except for the light from the park. That is considered significant and unavoidable. Not discussed, the mitigation measures discussed in the staff report as are discussed in the EIR talked about sound walls and double-paned windows to be installed in the Crest residents affected, but they were not discussed what to do with the noise that was going to enter into second-floor boundaries.

My neighbor, Cathy Malkemus, had this comment. The document states that noise barriers could be installed in the second-floor balconies of the Newport Crest homes and that this measure is feasible. It is the applicant's suggestion that we close in our open balconies with walls. Specifically what barriers is the Draft EIR referring to and who determines if they are feasible?

The mitigation measure from the Banning Ranch proponents, the developers, are noise barriers for balconies, are transparent glass or no sight light material often hinged to allow the occupant to choose an open or closed position. In other words, they're turning their balconies into a lizard's cage. Absolutely. This -- the staff report ignored -- this is a mitigation measure. Now, try to imagine how ugly that will look in addition to the double-paned window and the sound wall which is supposed to be eight feet but according to the Crest's consultant should be perhaps 13 feet. All of that represents an invasion of the properties of the Crest and also affected Costa Mesa residents' homes.

Now, the law, which you gentlemen have ignored continuously, be it CEQA, be it your own Planning Code, provides a cause of action for all those affected residents that are going to be damaged from this project. It's called inverse condemnation, a little law for you gentlemen.

Under Cal Constitution Article I, Section 19, there is liability for any physical injury to realty proximately caused by a public improvement. Allegedly, the Bluff Road Complex Road System of this project is a public improvement of this project. The park is a public improvement.

As deliberately designed and constructed, you're going to approve this thing, whether or not injury are foreseeable, it's definitely foreseeable here, and in absence of fault by the public -- COMMISSIONER TOERGE: Mr. Bartram? MR. BARTRAM: (Inaudible.) COMMISSIONER TOERGE: Mr. Bartram, your time is up, sir. MR. BARTRAM: All right. Well, if you build it, they will sue the City. All you care about is money from the developer's fees. COMMISSIONER

TOERGE: Your time is up, sir. MR. BARTRAM: They're going to come after you. Thank you.

Response

As stated by Mr. Bartram, the installation of transparent, openable barriers around balconies is a feasible method of noise attenuation. With respect to the "perhaps 13 feet" property line sound wall, it is assumed that Mr. Bartram is referring to the Syntectecology comment that, based on Caltrans and FHWA guidance, the wall should be tall enough to break the line of sight to a 11.5-foot-high heavy truck exhaust stack. The Caltrans and FHWA recommendations for noise walls that will break the line of sight to the exhaust stacks of heavy diesel trucks are intended for use on freeways where there is a relatively heavy concentration of heavy diesel trucks and are not applicable in this case where there would be few heavy diesel trucks. Also, as stated in the Draft EIR, property line noise barriers taller than eight feet were not evaluated because they are not considered reasonable for relatively shallow residential yard spaces such as those at Newport Crest.

The Final EIR disclosed and analyzed the anticipated environmental impacts of Project construction and operation including the impacts of construction noise and air quality on sensitive receptors. Mitigation measures were identified to reduce these impacts. However, the City has acknowledged in the EIR that some of the impacts of the Project cannot be reduced to a less than significant level. This fact, however, is not equivalent to the exercise of eminent domain by the City because private property is not being physically taken from the owner for a public purpose. The future of home sales is an economic issue and "economic or social effects of a project shall not be treated as significant effects on the environment" (CEQA Guidelines Section 15131(a)). This comment does not raise any environmental issues not previously addressed in the Final EIR. No further response is necessary.

Kate Klimow

Ms. Klimow voiced her support for the Project.

Response

Ms. Klimow did not identify an environmental issue but did express her support of the Project on behalf of the Orange County Business Council. No further response is required.

Barry Carlson, Mesa Consolidated Water District

And on behalf of Mesa Water, I'd like to thank the Commission for allowing us the time to come and speak to you. I just wanted to update the Commission. I believe it was on the April 19th meeting, Chair Toerge asked staff to research the exact distance of the ability of recycled water to the Banning Ranch site. And at Mesa Water we did that and we found out that there is an available pipe basically right up to the north end of the property for Banning Ranch so recycled water is available.

And with that staff brought out that the City does not currently have any policies to dictate the use of recycled water. Although the City of Newport Beach is a signatory to the California Urban Water Conservation Council, which pretty much says that if recycled water is available, that you should use it. And also, we have in 2009 Assembly Bill 1881 which dictates landscape specifications. But again, I just want to remind the Commission that Mesa Water is neutral to development. We're here to provide water, whether it gets developed or becomes an open space and again, thank the Commission for allowing me this time.

Response

Regarding the availability of reclaimed water at the Project site, it has been reconfirmed that the statement is correct in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR that state "At present, this (reclaimed water) is not feasible, because the City does not have or plan to provide recycled water in the vicinity of the Project site". Staff of the County of Orange Parks Maintenance, Parks Design, and Trails departments and staff at the Orange County Water District confirmed that the only normally publicly available connection for a private user would be from OCWD and MCWD at the Green Acres line located north of Fairview Park which is approximately 9,000 feet (or approximately 1.7 miles) from the Project site.

Mark Tabbert

Good evening. My name is Mark Tabbert, Newport Beach resident since '80- -- '98. I'm here to talk about vernal pools and seasonal wetlands. And there's a first slide. Oh, is there a button? We have it here? Oh, okay. I'm a stand in. (Note: Mr. Tabbert provided visuals.) The president of our group is a doctor and on duty tonight.

Response

The following individuals each read into the record a portion of Mr. Terry Welsh's letter dated June 15, 2012: Mark Tabbert; Cindy Black; Sheila Paquin; Nicole Marie Hocking; Jim Mansfield; Shawn Ray; Michelle Simpson; Jonathan Weiner. Responses to this letter are provided in Correspondence Item No. 2a.

Vincent Phillippi

Hi. My name is Vincent Phillippi. And I want to say thank you for downloading this, the slide show (Note: Mr. Phillippi presented a PowerPoint.) Thank you very much. Okay. I want to start just real quick. Everybody that's talking for the project says that it will benefit everybody. And I can't -- everybody's talking about benefitting from this. And that's what happened. Everybody's talking about more homes and money and this and this. We're down to basically 400 acres now, and last time I was here basically I was shot down, my credibility of my opinion of there being nesting. I had pictures, but I didn't have the birds on the nest.

Okay. These are all new birds. These are all new pictures, in fact. This is right over the top of Banning Ranch, the whole Army Corps and everything. This is the tip of the iceberg. I've spent over 200 hours in the last three months doing the research on this. Okay? This -- they seem to come up with -- you know, you took their report as being credible. And with no nesting in 2008 to 2011 is ridiculous. Okay? My opinion was right. Okay? This is -- this is the birds and you'll see them. You'll even see they're making a nest and everything. Now, this isn't the only species. Okay?

I've captured another species that is more rarer (sic) than this. These two eagles right now are two of three eagles, Osprey eagles. They lived in the back bay area. Okay? Which is actually that five-square mile area. Okay? Now, what they do is they come over to this little 401 acres. This is how pristine this is. Okay. We've got North, we've got Talbert. All these places have been reserved. Okay? We've got Bolsa Chica Reserve.

And now what's happened is this place is so pristine down here, the water goes in and out and everything from the Army Corps. And what they did is all good is that the fishing is so good, and all these birds come there and mate. I followed them from there. I followed them to Banning Ranch. And guess where they come. They come there.

What they did -- until this was built and guess what they did. They started digging and dredging to put in a bigger mouth for drainage water. This pool is right to the left of that. Okay? Now, what they did is they scared them, they spooked them. And that's how fragile it is. Okay?

They spooked them and guess what they did, they abandoned the nest. And I can't find them. Every night -- this is on the land right here. This is their fence right now. This is where -- okay? And the fact is that the other pictures that I got last year were on PCH. Now, I went back there, and they had led me -- because my opinion I thought was right, but I was shot down and now I've done the research. Okay? And basically I've got over 200 hours, like I said. And I've got over four hours of pure video besides this, okay, I have of the mating. But I've also got where they've gone to and when they come there.

I've got other birds. You can go to a big canyon and be there for hours and not see five gray giant egrets, see them mating up in the palm trees and feeding off of the land like they do at 401. I just wish you -- I brought these -- Right there. That guy goes up on the hills every week and eats mice, lizards, everything up on the hills. This is such a small jewel. Okay. And what it is is birds travel to this place. I think that we owe it to ourselves to try and save the bird and habitat.

Response

The Draft EIR acknowledged that the osprey (*Pandion haliaetus*) has been observed on site. Page 4.6-20 states that "raptors (birds of prey) observed on the Project site include osprey (*Pandion haliaetus*), white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), and great horned owl (*Bubo virginianus*)". There is an additional detailed discussion in Section 3.3.4 (Special Status Wildlife) of the Biological Technical Report of 15 various special status raptor species (including the osprey) that are known to occur in the region and their potential to occur on the Project site. The wildlife compendia for the proposed Project also identified 11 raptors (including the osprey) as occurring on site (see Appendix A to the Biological Technical Report in the Draft EIR).

The Draft EIR acknowledged that while there is no suitable foraging habitat for the osprey on the Project site, there is foraging habitat adjacent to the Project site within the USACE salt marsh restoration site and the Santa Ana River. Note that the osprey diet is almost exclusively live fish which would limit its foraging opportunities to offsite areas. The Draft EIR did also acknowledge that the osprey was observed perching on the Project site following off foraging activities.

The evaluation of potential impacts to raptor and other nesting bird species is discussed in several locations of the Draft EIR including page 4.6-56:

Prior to the consideration of mitigation, the Project would contribute to the historical loss of habitats in the coastal areas of the region and may contribute to local extirpation of some wildlife species from the Project site. Unmitigated impacts to habitats in the coastal area would be considered significant. However, with implementation of MM 4.6-1 (Coastal Sage Scrub Habitat Preservation and Restoration), MM 4.6-2 (Grassland Habitat Preservation and Restoration), MM 4.6-3 (Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration), MM 4.6-4 (Marsh Habitat Preservation and Restoration), and MM 4.6-5 (Jurisdictional Resources/Riparian Habitat Preservation and Restoration), this impact would be reduced to a less than significant level.

and

Nesting birds are protected under the provisions of the Migratory Bird Treaty Act (MBTA) and are identified by the List of Migratory Birds (50 CFR 10.13). Suitable habitat for birds protected by the MBTA occurs throughout the Project site. The intentional loss of any active nest through Project implementation would be considered significant. Impact on active nests would be reduced to a less than significant level with the implementation of MM 4.6-6, which establishes protocols for vegetation removal during the migratory bird nesting season.

The osprey nest reported by Mr. Phillippi is located approximately 750 feet southwest of the Banning Ranch Project site. As described above, Mr. Phillippi's observation is consistent with previous observations by professional biologists on site.

After the close of the public hearing, Mike Mohler, representative for the Applicant, noted that the majority of the shots are on the open space area being protected by the Project and acknowledged that the raptor studies indicate that the raptors are dependent on the upper lowlands area which is being preserved, enhanced and cleaned up of oil.

Jennifer Frutig, Banning Ranch Conservancy

I'm Dr. Jennifer Frutig, and I am on the board of the Banning Ranch Conservancy. I've lived in Newport Beach for over 25 years. Banning Ranch in the General Plan is designated as preferred open space. The majority of residents voting for the General Plan update thought that they were voting for open space on Banning Ranch even though there were approximately 15 different items on that particular measure. The proposed development is the largest in recent history along the coast. It is also the most dense, yet the property is covered with oil pipes and capped oil wells as well as portions of it where there's still active oil wells. Is this really a wise development? Is this really a safe development, particularly since it's sitting on top of an earthquake fault? Please retain Banning Ranch as open space in accord with the original General Plan.

Response

With respect to Dr. Frutig's comments regarding active faults on the Project site, earthquake analyses were performed for the Project site as a part of the EIR. The results of these analyses indicate that the proposed development can be safely constructed with the implementation of proper setbacks, foundation design and other regulatory requirements related the development. For reference, these analyses included (1) regional fault evaluation; (2) seismicity and earthquake history analyses; (3) seiche and tsunami hazard analyses; (4) geomorphic analysis; (5) various ground motion analyses; (6) review of past fault trenching and exploration of thousands of feet of new fault trenching using recognized doctoral experts; and (7) an age dating analysis.

The faults found on site are grouped together in zones called the "North Segment Faults" and the "South Segment Faults". All of the individual faults are clearly shown on Exhibit 4.3-3 and shown on the fault trench logs contained in Appendix B of the Draft EIR.

There are setbacks for both the Newport Mesa North and South segment faults including a projected extension of these two fault zones. The setbacks, shown on Exhibit 4.3-3, meet or exceed State standards. All development would be set back from faults within the North branch of the Newport Inglewood fault zone that could not be proven to be inactive in accordance with State law and as per current standards of practice.

Hydraulic fracturing, commonly called "fracking" has been used in the oil industry for over 40 years in some oilfields and reservoirs. Hydraulic fracturing (fracking) is not used in the oil operations on the Project site.

Linda Tang, The Kennedy Commission

Ms. Tang summarized The Kennedy Commission letter dated June 21, 2012 in support of affordable housing.

Response

Ms. Tang did not identify an environmental issue but did express her support of affordable housing in the City. No further response is required.

Patricia Barnes, Sierra Club

Good evening. I am Patricia Barnes and I am the current chairperson of the Orange County Sierra Club, Orange County Group, Angeles chapter. They say our group is strongly opposed to potential certification of this Draft EIR, and we assert along with the Banning Ranch Conservancy that this Draft EIR is woefully inadequate and does not meet the requirements of a satisfactory EIR per the California Environmental Quality Act. The Sierra Club will fully support and join the Conservancy in its efforts to challenge any certification of this Draft EIR if certification does eventually occur. I urge you to recommend to the Newport Beach City Council to reject certification and that the Draft EIR be recirculated honestly, forthrightly, thoroughly, and legally.

And incidentally I'd like to take this opportunity to say, as I am the Orange County Group chairperson of the Sierra Club, it's a long story how I ended up in that particular position, but I'd like to tell you now that the Sierra Club was established in the year 1892 by John Muir. He's the man that is depicted on the back of the California corridor. And in case anyone doesn't realize it, he is the man who is credited with having established the California -- or excuse me, the National Park System. Our motto is to enjoy, explore, and protect our environment. We have just in the Angeles Chapter alone over 40,000 members. And I have led many, many, many hikes for the Orange County Group since I've been in the organization.

And if I were permitted to lead a hike on the Banning Ranch property, I would be able to point out to you the beauty that exists in the vernal pools that are not acknowledged in this particular Draft EIR. I would be able to point out to people the beautiful flowering of encelia and other endangered environmentally sensitive habitat that is not acknowledged in this Draft EIR. And I would also be listening for the songs being sung by the gnatcatchers that pairs of which exist, we know exist, and they're not acknowledged in this Draft EIR.

Of course, I would be required to point out some of the devastation that has occurred from more than 60 years of oil cal- -- excuse me, oil drilling that has occurred partly at the hands and to the profit of organizations such as West Newport Beach Company and Aera Energy, Aera Energy being part of the Newport Banning Ranch LLC who essentially is propagating this Draft EIR that is in front of you. Essentially what is being said in the Draft EIR is being said once again to make profit, to make profit for a very few people. And essentially the vision that is placed forth is not an environmentally sensitive one whatsoever, not to myself and any of the 40,000 members of the Sierra Club. We don't see it that way. We are joining with the Banning Ranch Conservancy who is a group of environmentalists activists. Anyway, we stand for the green vision that is presented by the Banning Ranch Conservancy. Thank you.

Response

Ms. Barnes' opposition to the Project is noted. City staff believes that the Final EIR is adequate; the Planning Commission has recommended certification of the Final EIR. The commenter has not identified any new issues that were not adequately addressed in the Final EIR. No further response is required.

Stan Rosenthal

Stan Rosenthal. I'm a resident of Newport Beach, and I'm just a little confused. We're going to build a hotel. No, we're not going to build a hotel. We're going to build maybe 125 more homes, but we're going to put that on hold. We're going to build a bridge. Maybe we won't build a bridge. But the thing we are going to build is parks, and that's all I hear is we're going to build parks. They're not going to build parks. They're going to build 1,375 homes. The traffic is going to be incredible. If we don't build the bridge, we're going to have 2,600 children probably trying to cross PCH. It's important if they're going to do what they say they're going to do, do it. But if they keep changing their plans, I'm not so sure even about the parks. That could be put on the back burner. The homes will go up first to finance the project, and they will make money. And the City will get money. But you have to consider they're always changing the rules. Either build what you're going to say or don't build it. My advice if they're so interested in building parks, make it one big park and dedicate it to the people that live in Newport Beach. We don't need 1,300 homes, believe me. There's a lot of homes on the market. It's a bad economy. So I hope that you consider not voting for this. Thank you.

Response

Mr. Rosenthal's opinions regarding the Project and parks are noted. No further response is necessary.

Robert Schuman

Robert Shuman, 5901 Seashore Drive, Newport Beach. Our family has lived there since 1951. I've listened with a great deal of interest and concern about the concern that the Commission has about all of the sensitive flora and fauna on the ranch. I have not heard or read in the EIR any inference of a concern for the impact that this bridge will have on the sensitive, small neighborhood of Seashore Drive, mainly 58th and 59th Street. If this bridge is built and I'm presuming, and I will certainly be willing to be corrected if I'm wrong, the only reason it would be built or contemplated to be built is it's going to have a material impact on the number of people that will cross PCH.

The thing that's lacking here, and I really am going to have to ask for your support and consideration, as a potential resident of that sensitive neighborhood, the impact that that bridge will have on that neighborhood, it will flow all of these people over that bridge. None of us knows how many people will go over there, but we know that there's going to be a lot or otherwise why would we go through the process of trying to lobby Caltrans and get the Coastal Commission's support and get the financing.

And I've been a real estate broker for 35 years. I'm a developer. I understand the profit motive. The profit motive is a good motive, and a good deal is a good deal for everybody; however, we cannot have that delicate community along Seashore Drive be sacrificed to underwrite the cost of a hotel that may or may not be built and to accentuate and enhance the accessibility of the residents of Banning Ranch to the beach.

There's lots of access points that are well known. There's no bridge that connects the east side or the other side of Pacific Coast Highway to the coast of Newport Beach. There's one in Huntington Beach. Huntington Beach is a commercial beach with one exception, and that's the development that's just north of the pier. Other than that, it's pure commercial. It has the facilities, it has the parking, it has the beach, it has the paths, everything to accommodate those people that come over from that hotel. This is a very small, sensitive neighborhood with two bathrooms.

When people go to the beach, and I've marketed over 50 homes on the beach alone in my short but unillustrious career, I will guarantee you gentlemen one thing. We all do things sensibly. The shortest point to the beach is the point we're going to take, and that will be 58th Street and 59th Street. And those people will be within three feet of the residences there.

And that's not going to go on just during the construction period. That will go on in perpetuity. It will diminish the life of the quality of life of the people that live in that neighborhood. And it will also materially diminish the property values of those people that live there. So I ask you to take that into account when you're considering the EIR because there was none done there. If there was, that's what it would reflect.

Response

The EIR evaluates potential associated with the proposed pedestrian and bicycle bridge as well bridge and Project impacts to the Lido Sands community. After the close of the April 19, 2012 public hearing, Dana Privitt of Bon Terra Consulting reported that the noise analysis looked at potential noise impact to Lido Sands and found that there would be no significant impact. She clarified that the analysis considered the relationship of the overall project to Lido Sands with other surrounding land uses and addressed compatibility of the project to that area and physical land impact but noted that no new significant impact was identified. As previously addressed in the Responses to Comments document, this comment does not present or raise an issue regarding the adequacy of analysis of the potential environmental impacts of the Project but states the opinion of the commenter. No documentation has been provided to support the suggestion that the Project would negatively affects property values.

W.D. Heidone

Good evening. I'm W.D. Heidone. I live in Newport Terrace at the end of 19th Street. I am a 30-years-plus resident of Newport Beach. I'm strongly opposed to the 19th Street bridge, the connecting of Bluff Road into 19th Street, the connecting of old Balboa Boulevard which is next to Newport Terrace to Victoria. I do not want to live next to a freeway. I'm strongly opposed to the development of 1,375 or any housing in the Banning Ranch. Thousands of people around the Banning Ranch will be negatively impacted by such a development, be it noise, traffic, pollution, et cetera, et cetera.

I am a long-term user of the Santa Ana River trail from Fairview Park, Talbert Reserve to the beach by either jogging, walking, or biking and enjoying the wildlife. I could stand here and could tell you for hours stories about the fish and the seagulls, et cetera. Time will not permit me to do that. I think the marine habitat will be severely impacted by any housing development in the Banning Ranch as you saw the eagles, et cetera. I hope that my son and grandson will enjoy as many happy hours as I have along the river. I hope it will become the Orange Coast River Park.

Planning Commission and City Council's priority was once the assurance of quality of life and the happiness of the citizens of Newport Beach. Let's keep it that way and deny the housing development in the Banning Ranch. Thank you.

Response

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the OCTA MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Mr. Heidone's comments including North Bluff Road, noise, traffic, air quality, and biological resources have not identified any new issues that were not adequately addressed in the Final EIR. His opposition to the Project is noted. No further response is required.

Kevin Nelson

Good evening, Commissioners. My name is Kevin Nelson. I think in view of the fact that today and yesterday was the -- we have a worldwide event going on in Brazil, that is the Sustainability Conference. In that conference scientists and leaders from countries around the world are coming together because all of the facts, all of the real science, not colored by money influence, all of the real science is saying that we are entering a new era.

This era is one in which natural resources are being depleted at a great rate. We have -- you know, we have pollutions of the oceans. We've all heard about the plastic garbage in the ocean. We've heard about the acidifications of the oceans. We've heard about over-industrialized fishing of the oceans. 90 percent of shark populations are gone. I mean, I know it sounds depressing, but this -- these facts along with a vast number of other facts -- If we want to bring home a little bit closer to California, the reason that a bird called the gnat catcher is of such great importance to the Coastal Commission is because they're nearly gone where they were everywhere in that habitat which was core California habitat: The cactus, the native plants called encelia, which grows very extensively out in Banning Ranch, is gone almost everywhere else.

And when we look at those facts and we look at the fact that Banning is such a rare -- that this land is so rare along the entire coast from Santa Monica Mountains, that's pretty good, all the way down to San Diego, there are few places that the marines don't own that are left.

And it seems to me in view of those ideas, that a city like Newport Beach that relies -- that is here, that we're all here and we all enjoy a great quality of life and we have great finances because of the ocean, because of nature right there, and because -- And let's look at the back bay. That -- look at the value that has given to all of the people around here, right? I mean, that's immense. So if we step back a little bit and take a really -- a longer look at this project and really think into the future 20 or 30 years, we might vastly change the evaluation of what is going on here as to what that will offer residents of the future and what it means in addition to the rare

species everywhere.

We have hawks. The gentleman showed those Ospreys. There's so much going on out there on the Banning property, and it's going on because it happens to be a place that's been left alone. It happens to be a place with a diversity of areas, right? The Santa Ana River, the bluffs, everything works together for the species. So I would say let's take the longer view, delay this, let Mr. Basye and Shell and Exxon take a relaxer for about five more years while we really figure out what we're doing because it's not in service to the public of 20, 30 years from now.

Response

Mr. Nelson's opposition to the Project is noted. No further response is required.

Chris Bunion

I wanted to point out that the OTC on November 26th is slated to remove the bridge finally from the Master Plan of Material Highways which means that, and right now they're just going through the mitigation measures, which means that the EIR will have to be recirculated; so your votes tonight would be recanted whether yes or no. That's something that your City Attorney's office should know and it's something you should take into consideration; so we're going to be right back if here I would suspect six months or nine months from today based on the OCTA removing that from the plan.

As a former resident of Costa Mesa, I ran for City Council in 2006 and 2008, I can say that Westside issues, because it was mentioned that this was going to be a plus for Westside residents, there is not one issue on the Westside's residents' minds about traffic. The west side of Costa Mesa is the one area of Costa Mesa that does not have any cut-through traffic. The only selling point for real estate agents and for homeowners over there is that it doesn't have any cut-through traffic. If this plan goes through, the plan of building Banning Ranch, you open those streets up to traffic, noise and other mitigating factors. That's something this Planning Commission should take into effect.

Also, I -- the issues of the 55 Freeway, they don't look like they're going to be cured anytime soon and once again this plan will add more stress to the 19th Street intersections, not to mention 17th Street. And those are issues that until the 55 problems are licked, we can't be adding any more density to the area. So I ask you to take those considerations into effect. Thank you very much.

Response

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. At this point in time, it would require speculation to predict what action OCTA will take with respect to the 19th Street Bridge.

It should also be noted that the Year 2016 traffic study scenario in the EIR does not assume that the 19th Street Bridge is in place because the City recognizes that timing of construction of the bridge is uncertain. Consistent with the City's Master Plan of Streets and Highways and the OCTA MPAH, for the General Plan Buildout analysis provided in the EIR, the proposed Project was analyzed with the 19th Street Bridge. However, an analysis was also provided for the

General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

The traffic impacts of the proposed Project, including the analysis of cumulative impacts which takes into consideration the contribution of traffic from other projects and future growth were considered in the traffic analysis and traffic section of the Final EIR. The impacts on regional facilities such as Pacific Coast Highway and SR-55 were included in the traffic analysis and potential impacts were fully disclosed. The commenter's opinions regarding not allowing future growth until regional circulation systems are addressed will be provided to the City Council for its consideration. Mr. Bunyon has not identified any new traffic or noise issues that have not been previously addressed.

Norman Suker

The gentleman who just spoke just stole some of my thunder here, but I want to preface that I object to the approval of the Newport Beach Banning Ranch Project as proposed and request that all my comments and written comments be included in the records of any and all proceedings related to the Newport Beach Banning Ranch Project or its successors.

I request a new action by the Newport Beach Planning Commission be taken at this time regarding the project for the following reasons: The OCTA Board has essentially removed the 19th Street Bridge across the Santa Ana River. The City of Newport Beach representatives at the May 14, 2012 OCTA meeting conceded that the 19th Street Bridge will never be built. Do you get that? It's not going to be built.

And I have attached a -- an E-mail from Gregory Nord, who is a senior transportation analyst with OCTA. And he said it has been recognized by all of the affected agencies that the 19th Street bridge is not a viable project. This is due to a lot of reasons, but the point is -- the major point I want to make is that the 19th Street Bridge is going to kill this proj- -- this EIR. And I can't see how you could go on with it. The -- the traffic impact analysis, page 77 of the draft EIR, in the section where it says General Plan Buildout Traffic Forecast and 19th Street Bridge, it says all plan buildout scenarios analyzed in this report assumes the completion of the 19th Street bridge as shown on the County MPAH. So basically the traffic study in this draft EIR is worthless. And I can't see how you could approve this tonight. Thank you.

Response

Mr. Suker's opposition to the Project is noted. Mr. Suker's verbal comments and correspondence are a part of the public record for the Project and have been responded to.

The OCTA has suspended its action to remove the 19th Street Bridge as shown on the OCTA MPAH and the City of Newport Beach Master Plan of Streets and Highways. The OCTA will reconsider the removal of the bridge from the MPAH in November 2012 after technical studies of the impact of its removal are completed. Until such time as an action is taken by the OCTA, the bridge remains on the MPAH for purposes of transportation modeling. At this point in time, it would require speculation to predict what action OCTA will take with respect to the 19th Street Bridge.

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analyzed with the 19th Street Bridge. However, an analysis was also provided for the General Plan Buildout conditions with the Project but without the 19th Street Bridge for informational purposes. Intersections that are forecasted to operate at an unacceptable level of service without the 19th Street Bridge are also identified in the EIR.

Jim Mosher

It's been nearly three hours ago I think that you were introduced to a young lady identified as being connected with the Orange County Green Building Council, if I wrote it down correctly, introduced you as the executive director of the newly minted Newport Beach Banning Land Trust. The name of the Green Building Council, I don't always remember things correctly, so I may be not remembering this correctly, but at one of the early study sessions, this might be the study session where the executive director of the Newport Banning -- of the Banning Ranch Conservancy was interrogated so long that no other members of the public had a chance to testify. At that meeting there was a letter in the lobby presented by the applicant from Green Building or Green Neighborhoods Council saying that they had applied for certification as a green community. And I was struck by that letter because I actually read it. And what struck -- maybe they got their certification, because I don't understand what kind of organization it is. But the project before you did not seem to me to meet any of the ideals of the green neighborhoods that this organization supposedly was advocating. Particularly, their core idea was to create communities that are integrated residential and commercial retail and residential together for the purpose of minimizing how many traffic trips you generated. And this project has one element of that, but the main housing thing is purely residential. And since they got the certification, I don't know how. That was one comment.

Second one I wanted to comment on was the three resolutions that are before you tonight in your agenda. And I was going to comment on the middle of the three resolutions only because that's the only one that there was a copy of readily available outside. This is the resolution, I don't know what its number will be, recommending approval of the General Plan amendment, the planned community and so forth. It contains -- it's a six-page document with many statements of fact and so forth and findings, many of which are judgment calls and hard to verify. But it contains one absolute clear statement of fact that is easily verified and that is on the second page, statement of fact, Section 1, number 7. It says hearings were held on March 22nd, April 19th, and June 21st and a notice of the time, place, and purpose of these meetings was given in accordance with Newport Beach Municipal Code. Now, I know as a fact that City staff has recognized that as of March 22nd no meeting before the Planning Commission had been noticed in accordance with the Municipal Code as revised in 2010.

So that one statement that I can look at is false. And my professional experience is that when you find one false statement, it makes you question the reliability of the rest of it. Thank you.

Response

The U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design (LEED) certification programs is addressed in the EIR and the Responses to Comments document (together the Final EIR). No further response is required.

As was addressed after the close of the March 22, 2012 public hearing, Chair Toerge addressed a request of evidence of notification and Mr. Alford noted the concerns were responded to in the comments and added that at the time of the publication of the notice, the dates for study sessions and public hearings were not yet finalized. Mr. Alford affirmed that the notice provided is acceptable.

Olwen Hageman

At a previous meeting Commissioner Tucker made a comment, something to the effect that unlike Newport Coast windfall for the City, Banning Ranch Development will only break even. Would Commissioner Tucker be so kind as to enlarge on that statement at the end of the public hearing? Who exactly is it who will only break even? Is it the City or Exxon, et al.? If it's the City, why would the City create ten years of misery for thousands of its residents living on the periphery just to break even? Is this economically feasible? Who are the real beneficiaries of this project?

Obviously, there are no benefits whatsoever for the thousands of people who live closest, only significant impacts of pollution, noise, lights, parking lots, athletic courts, reduction in appraised property values, and ten years of loss of their natural rights and quiet enjoyment of their homes.

I thought the purpose of good planning was to take everything into consideration and then come to a compromise on what is good for everyone, not just for the few. Hopefully, there could be a win-win situation. So thank you.

Response

The environmental issues of air quality, noise, aesthetics, and land use have been previously addressed in the Final EIR. No documentation has been provided to support the suggestion that the Project would negatively affects property values.

