

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

June 21, 2012 Meeting

Agenda Item 2

SUBJECT: Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway

- Environmental Impact Report No. ER2009-002
- General Plan Amendment No. GP2008-008
- Code Amendment No. CA2008-004
- Planned Community Development Plan No. PC2008-002
- Master Development Plan No. MP2008-001
- Tentative Tract Map No. NT2008-003
- Development Agreement No. DA2008-003
- Affordable Housing Implementation Plan No. AH2008-001
- Traffic Study No. TS2008-002

APPLICANT: Newport Banning Ranch, LLC

PLANNER: Patrick J. Alford, Planning Manager
palford@newportbeachca.gov

PROJECT SUMMARY

A proposed planned community on a 401.1-gross-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 gross acres of parklands, and approximately 252.3 gross acres of permanent open space.

RECOMMENDATION

- 1) Conduct continued public hearing;
- 2) Adopt Resolution No. ____ (Attachment PC 1) recommending to the City Council certification of Environmental Impact Report No. ER2009-002 (SCH No. 2009031061);
- 3) Adopt Resolution No. ____ (Attachment PC 2) recommending to the City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations; and
- 4) Adopt Resolution No. ____ (Attachment PC 3) recommending to the City Council approval of Development Agreement (DA2008-003).

INTRODUCTION

Background:

The Planning Commission held study sessions on the proposed project on September 13, 2011, January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012. The purpose of the study sessions was to provide the Planning Commission and the public the opportunity to review and discuss details of the proposed project prior to public hearings.

The Commission conducted a public hearing on March 22, 2012, devoted to the EIR, including the Response to Comments. Following the public hearing, the Commission recommended that the City Council certify the EIR.

The Commission conducted a public hearing on April 19, 2012. This hearing focused on the proposed project application, with the exception of the Development Agreement, the terms of which were still under negotiation. The Commission continued the public hearing to May 17, 2012, so that the proposed project could be considered in conjunction with the Development Agreement.

On May 17, 2012, the applicant requested that Commission continue the public hearing to June 7, 2012. The Commission granted the request, but continued it to June 21, 2012.

DISCUSSION

The Commission received comprehensive staff reports on the Environmental Impact Report and the project applications at the previous public hearings (available on the City's website). This report includes an analysis of the proposed Development Agreement and the Statement of Overriding Considerations. This report also provides responses to the questions and comments the Planning Commission directed to staff at the April 19th hearing.

Recommendation to Certify the EIR

Before taking action on the proposed project, staff is recommending that the Commission reaffirm their recommendation that the City Council certify Environmental Impact Report (EIR) No. ER2009-002. This recommendation is due to comments made by some members of the public suggesting that the action taken by the Commission on March 22, 2012 was not clearly understood. Therefore, because of the high level of public interest in draft Final EIR, staff feels reaffirmation of the recommendation would provide the public another opportunity to participate in the review of the draft Final EIR.

This also presents the opportunity for the Commission to consider new, more comprehensive, findings of fact to support certification of Final EIR (Exhibit B of

Attachment PC 1). Finally, this presents an opportunity for the Commission to consider proposed modifications to certain mitigation measures and standard conditions in the Mitigation, Monitoring, and Report Program that are needed to reflect recommended revisions to the project. These revisions are contained in Attachment PC 1-1 and will be discussed later in this report.

Development Agreement

Pursuant to Chapter 15.45 (Development Agreements) of the Municipal Code, a development agreement is required because the proposed project requires a Zoning Code amendment that includes the development of more than fifty (50) residential units. The proposed development agreement (Exhibit A of Attachment PC 3) between the applicant and the City describes the development rights and public benefits to be provided by the applicant. The agreement would vest the proposed project's development approvals to allow build-out of the project site under the development standards and requirements in place at the time of project approval. The term of the agreement would be 25 years.

Public Benefits

The agreement includes two key public benefits. The first is payment of a public benefit fee in the amount of \$30,909 per residential dwelling unit developed as part of the proposed project. This fee is in addition to normal development impact fees.

The second public benefit is the dedication and full-improvement of the North Community Park and the Central Community Park. These parks total 18 net acres. Under the Quimby Act and the Chapter 19.52 (Park Dedications and Fees) of the Municipal Code, the applicant would be required to dedicate only 15.1 acres of park land, pay in-lieu park fees based upon this acreage figure, or a combination of the two. This public benefit is in addition to the system of publically-accessible bluff parks, interpretative parks, open space areas, habitat areas, and trails proposed by the project.

North Bluff Road

The agreement contains provisions regarding the segment of North Bluff Road between 17th Street and 19th Street, which are contingent upon the California Coastal Commission approval the project with that roadway segment. The applicant would offer to dedicate the right-of-way for that segment with first final tract map(s) for that area of the project and deliver it to the City in a rough-graded condition prior to the issuance of the 800th certificate of occupancy for a residential dwelling unit. Furthermore, the improvements for that segment would be constructed with the final phase of the project, which the City may choose to construct or have them constructed by the applicant.

Should the City choose to construct that segment, the applicant would be required to pay a fair share traffic fee based on the estimated cost of the work (including

engineering, design, construction, supervision, and inspection costs), but excluding the costs of the right-of-way, rough grading, and compliance with related environmental mitigation requirements and the applicant's fair share percentage for that improvement, based on the Fair Share Traffic Contribution Ordinance. Should the City choose to have the applicant construct that segment, the City would be required to pay to applicant the entire estimated cost of the improvements less the amount that would have been applicant's fair share.

Areas of Disagreement

The applicant has identified two points of disagreement concerning the language in Section 3.1 in the Development Agreement (see Attachment PC 6). These involve 1) whether the public benefit fee will apply to the affordable housing units built on-site and 2) the date when the first consumer price index (CPI) adjustment to the public benefit fee will occur. Staff will present an update on these issues at the public hearing.

Fair Share Fees

The City has determined that the applicant will be constructing street/transportation improvements in excess of project's fair share traffic fee obligations. Therefore, with the exception of the fair share fees associated with the segment of North Bluff Road between 17th Street and 19th Street, the agreement provides that the applicant is not required to pay any other Fair Share Traffic Contribution Ordinance fees.

Findings

Section 15.45.060 of the Municipal Code establishes required findings that must be made in order to approve a development agreement. These findings and facts in support of findings are provided in Attachment PC 3.

AHIP Revisions

There is an internal inconsistency in the proposed Affordable Housing Implementation Plan (AHIP). AHIP Section 2.3.B provides that the applicant would insure that a minimum of 50 percent of project's affordable housing obligation would be provided on-site. However, AHIP Section 2.3.F provides that the applicant may use land dedication in-lieu of constructing any or all the project's affordable housing obligation. The applicant has affirmed that they will be responsible for the construction of at least 50 percent of the project's affordable housing obligation on-site and agreed to revise the AHIP to clarify this and remove the inconsistency. The revised AHIP is provided as Exhibit J of Attachment PC 2.

Statement of Overriding Considerations

The EIR identified significant environmental impacts that cannot be mitigated to a less than significant level through the adoption of mitigation measures or project alternatives.

Therefore, the City Council, in accordance with the California Environmental Quality Act (CEQA), will need to decide whether the benefits of the proposed project outweigh any identified significant environmental effects that cannot be mitigated to below a threshold of significance. If the City decides that the overriding considerations, including project benefits, outweigh the unavoidable impacts, then the City is required to adopt a Statement of Overriding Considerations, which states the reasons that support its actions.

The draft Statement of Overriding Considerations is provided in Exhibit F of Attachment PC 2. A summary of these public benefits has been incorporated into the draft Statement of Overriding Considerations. The Commission considered the public benefits of the project at the April 19, 2012 hearing. In addition to those public benefits considered by the Commission, the \$30,909 per market rate dwelling unit public benefit fee provided for in the Development Agreement has been included in the list of public benefits to be considered.

Other Issues

In addition to general edits, the Commission directed staff to respond to a number of questions and comments on the proposed project. This section contains staff responses along with recommended revisions to the attached project materials where appropriate.

Is there an opportunity to use reclaimed water on the project site?

The project site is not currently served by reclaimed water facilities as the City does not have any reclaimed water facilities in the project area. The nearest reclaimed water facility is a Mesa Consolidated Water District-operated water line along Adams Avenue, which is located approximately 9,000 feet away from the project boundary; however, this represents a point-to-point distance that would involve an alignment through the Talbert Nature Preserve. Utilizing public right-of-way (Placentia Avenue to 19th Street), the distance is approximately three miles.

During the environmental analysis for the proposed project, the construction of a reclaimed water line was considered and determined to be impractical and was not studied further. Any requirement for the construction of such a line would require additional environmental analysis of the potential impacts to the Talbert Nature Preserve and/or developed areas in the cities of Costa Mesa and Newport Beach.

The cities of Fountain Valley, Huntington Beach, Newport Beach and Santa Ana, and the Mesa Consolidated Water District purchase reclaimed water from the Orange County Water District (OCWD), which owns and operates the infrastructure of the Green Acres Project. The OCWD's Green Acres Project is a water recycling effort that provides reclaimed water for landscape irrigation at parks, schools, and golf courses as

well as for some industrial uses. The Irvine Ranch Water District is the only other water agency in Orange County that produces reclaimed water.

Just prior to the publication of this report, staff received a letter (Attachment PC 6) from the Mesa Consolidated Water District stating that they had identified reclaimed water infrastructure adjacent to the project site. Staff contacted the District and requested more information regarding the exact location of this infrastructure and potential alignments to the project site (see map in Attachment PC 6). Staff is still analyzing this new information and will report on this issue at the public hearing.

How do the project's proposed densities and heights compare with surrounding development?

Table 1 below provides a comparison of the project's proposed residential densities/intensities and height limits with those of adjacent development. Representative areas of the proposed project were selected because of their adjacency to Newport Crest and Newport Shores communities and the West Mesa Bluffs Urban Plan area in the City of Costa Mesa. In each case, both the proposed density/intensity and height limits of the Planned Community Development Plan and the Master Development Plan area provided.

TABLE 1 Comparison of Allowable Densities and Height Limits		
	Density/Intensity	Height
Newport Crest per PC	13.4 DU/AC	± 34 feet ¹
NBR RM District per PC	24 DU/AC	45 feet
South Family Village Garden Court Homes per MDP	8 DU/AC	32 feet
Newport Shores per Zoning Code	18.4 DU/AC	24 feet
NBR RL District per PC	8 DU/AC	36 feet
North Family Village Single-Family-Detached per MDP	6.3 DU/AC	32-36 feet
West Mesa Bluffs Urban Plan (Costa Mesa)	13 DU/AC (Residential) 15-20 DU/AC (Live/Work) 1.0 FAR (Live/Work)	60 feet
NBR MU/R District per PC	40 DU/AC 2.0- 2.5 FAR (Commercial Only)	60 feet
Urban Colony Multi-Family Attached per MDP	34.9 DU/AC	60 feet
PC= Planned Community Development Plan MDP = Master Development Plan		
¹ Newport Crest was approved through a use permit in 1972; no height limit was established other than what was depicted on the proposed building elevations.		

The proposed Garden Court Homes in the South Family Village would be located northeast of the Newport Crest community, separated by Bluff Road, and the Central and South Community Parks. The proposed Garden Court Homes in the South Family Village would have densities and heights lower than what would be permitted under the proposed Medium Density Residential (RM) District. These densities and heights are comparable to those of the adjacent Newport Crest community.

The proposed Single-Family Detached homes in the North Family Village would be located to the northeast of the Newport Shores community and would be horizontally and vertically separated from the North Family Village by North Bluff Park, bluffs, and the Semeniuk Slough. The proposed Single-Family Detached homes in the North Family Village would have densities and heights lower than what would be permitted under the proposed Low Density Residential (RL) District. These densities and heights would be higher than what is permitted in the adjacent Newport Shores community.

The Urban Colony would be located west of the West Mesa Bluffs Urban Plan area in the City of Costa Mesa. Development in the Urban Colony would have the same maximum height as development permitted under the West Mesa Bluffs Urban Plan; however, the Urban Colony would have higher densities and floor area ratios.

The timing of public improvements

The Commission requested a detailed representation of the timing of proposed public improvements. The project phasing, oil field remediation and timing for the completion of the open space and trails, parks, roads, and other public improvements is provided in Table 2 in Attachment PC 4.

Traffic Phasing Ordinance Findings

Although not requested by the Commission, staff has revised the draft facts in support of the required findings for the Traffic Phasing Ordinance traffic study. Staff has removed superfluous language and reorganized the facts to better support the required findings (see Exhibit D of Attachment PC 2).

Should there be a “Window of Opportunity” for the development of the Resort Inn?

The Commission directed staff to investigate the possibility of establishing time period to develop the Resort Inn that would have to elapse before residential units could be proposed on the Resort Inn site. The Commission also indicated that the applicant should be required to provide some form of analysis indicating that the Resort Inn is infeasible.

Option 1 (Applicant's Preference)

In response, the applicant is proposing to revise the PC text to provide that no Site Development Review be submitted for a residential development on Lot 228 in the Resort Colony earlier than three years from the date the Development Agreement is adopted. This timeframe will likely coincide with the Coastal Commission's action on the project. This is intended to provide adequate opportunity to determine economic feasibility of a resort inn on Lot 228.

Option 2 (Staff Recommendation)

Development in the Resort Colony, with or without the Resort Inn, will require Site Development Review approval. Staff recommends revising the PC text to include the following findings that would be required to be made in order to approve Site Development Review application that does not include a resort inn, hotel, or similar visitor accommodation within the VSR/R District (the Resort Colony in the Master Development Plan and Lots 223 and 228 of the Tentative Tract Map):

- a. A resort inn, hotel, or similar visitor accommodation has been approved for development in either the VSR/R District or the MU/R District; or
- b. There is sufficient undeveloped land in the VSR/R District suitable to accommodate a 75-room resort inn, hotel, or similar visitor accommodation; or
- c. An independent feasibility analysis indicates that the development of a 75-room resort inn, hotel, or similar visitor accommodation is incapable of being accomplished in a successful manner within a reasonable period of time, taking into account identifiable economic, environmental, social, and technical factors.

These findings would require that the applicant demonstrate that either a resort inn (or similar accommodation) has been approved in either the Resort Colony or Urban Colony; that there is still suitable land available to accommodate the a resort inn in the Resort Colony; or that the Resort Colony is not economically viable. The feasibility analysis would be prepared by an independent firm under the direction of the Director of Community Development. The selected firm would be required to have prior experience in the preparation of visitor accommodation feasibility analyses and provide an unbiased, neutral opinion as to the feasibility of developing a resort inn, hotel, or similar visitor accommodation on the property. The applicant would be required to pay the total cost of the analysis plus a processing fee equal to 10 percent of the total feasibility analysis cost.

Will bars and cocktail lounges be allowed in the PC?

Staff is recommending revisions to the proposed Planned Community Development Plan that clarifies that bars and cocktail lounges will only be permitted when they are ancillary to a restaurant, hotel, or resort (see Exhibit G of Attachment PC 2).

Is there an opportunity to provide connections to Newport Crest?

Staff has worked with the applicant to allow for a potential connection to the Newport Crest Community. A conceptual plan for this connection is provided in Attachment PC 5. This connection would be in the form of a path that would begin at the terminus of Ticonderoga Street, pass through Central Community Park, and connect with the trail system at Bluff Road. The path would meander westward through the park to avoid dividing the envisioned warm-up fields.

Staff recommends this exhibit be incorporated in the proposed Master Development Plan and include a statement that the connection would require the approval of the Newport Crest Homeowner's Association.

Does the AHIP provide for senior housing?

The proposed project's Affordable Housing Implementation Plan (AHIP) does not contain any special provisions for senior housing, nor does it preclude such housing. There are many factors that need to be considered in determining a site's suitability for senior housing, including its topography and proximity to services and public transportation. Since many of these factors are unknown at this time, staff believes that they should be considered at the project level through the Affordable Housing Implementation Agreement process provided for in the AHIP. Such agreements would be executed and recorded at each development phase of the project that includes affordable units.

What happens if the applicant defaults on the AHIP requirements?

Section 2.5.C of the AHIP requires the applicant post a bond as security for the provision of the affordable housing required by AHIP. The Commission questioned whether this amounted to a de facto in-lieu fee that could be paid to avoid the project's affordable housing obligation under the Housing Element and the Inclusionary Housing Ordinance.

Since the AHIP requires that Affordable Housing Implementation Agreements be executed and recorded with each development phase of development, the City will have a mechanism to insure that the development of market rate units does not advance far ahead of the provision of affordable units. Therefore, Section 2.5.C is intended to serve as a failsafe mechanism under a catastrophic scenario where the applicant is unable to fulfill the affordable housing obligation.

What is the fiscal impact to the City without the Resort Inn?

The project would still result in a net positive fiscal impact if it was developed without the Resort Inn or any other form of lodging. The Fiscal Impact Analysis estimated that lodging would contribute approximately \$400,000 of the \$1,973,000 net fiscal benefit to the City.

The Commission also commented on the likelihood that all of the proposed 75,000 square feet of commercial uses would be developed. The model used in the Fiscal Impact Analysis estimated that retail commercial uses would only contribute \$161,280 towards the net positive fiscal impact. Service commercial uses would contribute less than \$15,000 towards the net positive fiscal impact. Therefore, even if no lodging, retail commercial, or service commercial uses were developed, the project would still have a net fiscal benefit of nearly \$1.4 million (see Table 3 below).

TABLE 3 Fiscal Impact of Lodging and Retail and Service Commercial			
	Revenues	Expenditures	Net (Cost)/Revenue
As Proposed	\$4,688,000.00	(\$2,715,000.00)	\$1,973,000.00
Without Lodging	\$4,197,052.17	(\$2,623,467.99)	\$1,573,584.17
Without Retail	\$4,266,349.19	(\$2,454,629.32)	\$1,811,719.88
Without Service Commercial	\$4,653,536.61	(\$2,695,266.98)	\$1,958,269.62
Without Lodging, Retail, and Service Commercial	\$3,740,937.97	(\$2,343,364.29)	\$1,397,573.67

How was the estimated amount of TOT from residential units determined?

The Fiscal Impact Analysis estimated residential portion of the project would generate \$43,400 in Transient Occupancy Tax (TOT). At the previous hearing, it was suggested that the Fiscal Impact Analysis assumed that the TOT would be generated by the 87 residential units proposed for the Resort Colony. However, this is not correct. The \$43,400 TOT estimate was based on a City-wide average of TOT revenues from residential vacation rentals. TOT revenues average about \$32 per unit for all residential units in the City. Applying this average to the proposed 1,375 units, slightly less than \$44,000 a year in TOT is estimated to be generated by the use of NBR residential units as vacation rentals.

This confusion is understandable given how this discussion is worded in the Fiscal Impact Analysis. Therefore, staff is recommending that the Fiscal Impact Analysis be revised to read as follows when it is presented to the City Council:

Transient Occupancy Tax (TOT): As described in the project description, the analysis assumes an average room rate of \$200 per room and a 70 percent occupancy rate for the 75-lodging units. The City levies a 10 percent TOT tax on room revenues, which would generate \$383,200 per year for the City. Newport Beach also features a large number of ~~residential units that are used as vacation rentals units and the project includes 87 visitor serving residential units.~~ Based on the average of approximately \$32 TOT revenues ~~per year from this source citywide for all residential units in the City,~~ the residential portion of the project could generate another \$43,400 in TOT per year.

Environmental Review

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.).

Public Notice

Notice of the May 17, 2012, Planning Commission hearing was published in the Daily Pilot, mailed to property owners within 1000 feet of the property (300 feet is required by the Zoning Code) and posted at the site a minimum of 10 days in advance of the hearing consistent with the Municipal Code. Since this hearing was continued to a date certain (June 21, 2012) additional notice was not required. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Patrick J. Alford, Planning Manager

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Resolution recommending City Council certification of the Final EIR

- Exh. A Final EIR SCH No. 2009031061 (under separate cover)
- Exh. B Findings and Facts in Support of Findings and Statement of Overriding considerations

PC 1-1 Revised Mitigation, Monitoring, and Reporting Program

PC 1-2 Revised Final EIR Errata

PC 2 Draft Resolution recommending City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002

- Exh. A. Legal Description
- Exh. B. TTM No. 17308 Conditions of Approval
- Exh. C. Required Findings for TTM No. 17308
- Exh. D. Required Findings for Traffic Study No. TS2008-002
- Exh. E. Required Findings for AHIP No. AH2008-001
- Exh. F. Recommended Statement of Overriding Considerations
- Exh. G. NBR-PC (under separate cover) with Recommended Revisions & Errata
- Exh. H. NBR-MDP (under separate cover) with Recommended Revisions & Errata
- Exh. I. Tentative Tract Map No. 17308
- Exh. J. NBR Affordable Housing Implementation Plan
- Exh. K. Project Boundary

PC 3 Draft Resolution recommending City Council approval of Development Agreement No. DA2008-003

- Exh. A. Development Agreement No. DA2008-003

PC 4 Public Improvement Matrix

PC 5 Central Community Park Newport Crest Access

PC 6 Correspondence

Attachment No. PC 1

Draft Resolution recommending City
Council certification of the Final EIR

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH REAFFIRMING A RECOMMENDATION FOR CERTIFICATION OF A DRAFT FINAL ENVIRONMENTAL IMPACT REPORT FOR THE NEWPORT BANNING RANCH PROJECT

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401-gross-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River requesting approval of a Development Agreement; General Plan Amendment to the Circulation Element; Code Amendment; a Pre-annexation Zone Change; Planned Community Development Plan; Master Development Plan; Tentative Tract Map; Affordable Housing Implementation plan; and Traffic Phasing Ordinance Traffic Study.
2. The applicant proposes a planned community, which may include the development of up to 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, and up to 75,000 square feet of commercial uses, and would provide approximately 51.4 gross acres of parklands, and the preservation of approximately gross 252.3 acres of permanent open space.
3. Staff of the City of Newport Beach determined pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, et seq. ("CEQA"), the CEQA Guidelines (14 Cal. Code of Regulations, Sections 15000 et seq.), and City Council Policy K-3, that the Project could have a significant effect on the environment, and thus warranted the preparation of an Environmental Impact Report ("EIR").
4. On March 16, 2009, the City of Newport Beach, as lead agency under CEQA, prepared a Notice of Preparation ("NOP") of the EIR and mailed that NOP to public agencies, organizations and persons likely to be interested in the potential impacts of the proposed Project.
5. On April 2, 2009, the City held two public scoping meetings, one for government agencies and one for the general public, to present the proposed project and to solicit input from interested individuals regarding environmental issues that should be addressed in the EIR.
6. The City thereafter caused to be prepared a Draft Environmental Impact Report ("DEIR"), which, taking into account the comments it received on the NOP, described the Project and discussed the environmental impacts resulting there from, and on September 9, 2011, circulated the Draft EIR for public and agency review and comments.

7. On September 19, 2011 and October 17, 2011, the Environmental Quality Affairs Committee of the City of Newport Beach held meetings to review and comment on the Draft EIR.
8. On November 3, 2011, the Planning Commission held a study session on the Draft EIR process.
9. A 60-day public review and comment period closed on November 8, 2011.
10. On January 19, 2012, February 9, 2012, and February 23, 2012, the Planning Commission held study sessions on the Newport Banning Ranch project.
11. On March 8, 2012, the Planning Commission held a study session on the Draft EIR.
12. Staff of the City of Newport Beach reviewed the comments received on the Draft EIR during the public comment and review period, and prepared full and complete responses thereto, and on March 16, 2012, distributed the responses in accordance with CEQA.
13. Public hearings were held on March 22, 2012, April 19, 2012, and June 21, 2012 in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the aforesaid meeting was provided in accordance with CEQA. The Draft EIR, draft Responses to Comments, draft Mitigation, Monitoring, and Reporting Program, staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at these hearings.
14. On March 22, 2012, the Planning Commission adopted Resolution No. 1873 recommending to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061).
15. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

NOW THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach reaffirms their March 22, 2012 recommendation to the City Council of the City of Newport Beach for the certification of the Newport Banning Ranch Draft Environmental Impact Report (SCH No. 2009031061) attached as Exhibit A based upon the draft Findings of Fact attached as Exhibit B.

PASSED, APPROVED AND ADOPTED THIS 21st DAY OF JUNE, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

Exhibit "A"

Newport Banning Ranch
Environmental Impact Report
(SCH No. 2009031061)

Consists of:

1. Volume I: Draft Environmental Impact Report dated September 9, 2011
2. Volume II: Exhibits dated September 9, 2011
3. Volume III: Appendices A Through F dated September 9, 2011
4. Volume IV: Appendices G Through Z dated September 9, 2011
5. Responses to Comments and Errata dated March 2012
6. Mitigation Monitoring and Reporting Program dated May 2012

EXHIBIT B

FINDINGS AND FACTS IN SUPPORT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE NEWPORT BANNING RANCH PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, NEWPORT BEACH, CALIFORNIA

STATE CLEARINGHOUSE NO. 2009031061

1. INTRODUCTION

The California Environmental Quality Act, Public Resources Code Section 21081, and the State CEQA Guidelines, 14 California Code of Regulations, Section 15091 (collectively, CEQA) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. The State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
 - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
 - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed and considered the Draft Environmental Impact Report (Draft EIR) and the Final Environmental Impact Report (Final EIR) for the Newport Banning Ranch Project, SCH No. 2009031061 (collectively, the EIR), as well as all other information in the record of proceedings on this matter, the following Findings and Facts in Support of Findings (Findings) and Statement of Overriding Considerations (SOC) are hereby adopted by the City of Newport Beach (City) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for the development of the Project. These actions include the approval of the following:

- Final Environmental Impact Report No. ER 2009-002
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008
- City of Newport Beach General Plan Figure I2, Sphere of Influence
- City of Newport Beach Zoning Code Amendment No. CA2008-004
- Pre-Annexation Zone Change
- Newport Banning Ranch Planned Community Zoning No. PC2008-002
- Newport Banning Ranch Master Development Plan No. MP2008-001
- Tentative Tract Map No. NT2008-003
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001

- Development Agreement No. DA2008-003
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance

These actions are collectively referred to herein as the Project.

A. Document Format

These Findings have been organized into the following sections:

- (1) Section 1 provides an introduction to these Findings.
- (2) Section 2 provides a summary of the Project and overview of the discretionary actions required for approval of the Project, and a statement of the Project's objectives.
- (3) Section 3 provides a summary of previous environmental reviews related to the Project area that took place prior to the environmental review done specifically for the Project, and a summary of public participation in the environmental review for the Project.
- (4) Section 4 sets forth findings regarding those environmental impacts which were determined as a result of the Initial Study, Notice of Preparation (NOP) and consideration of comments received during the NOP comment period either not to be relevant to the Project or which were determined to clearly not manifest at levels which were deemed to be significant for consideration at the Project-specific level.
- (5) Section 5 sets forth findings regarding significant or potentially significant environmental impacts identified in the EIR which the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of Project Design Features, standard conditions, and/or mitigation measures. In order to ensure compliance and implementation, all of these measures will be included in the Mitigation Monitoring and Reporting Program (MMRP) for the Project and adopted as conditions of the Project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to Project Design Features and standard conditions, these findings specify how those impacts were reduced to an acceptable level. Section 5 also includes findings regarding those significant or potentially significant environmental impacts identified in the EIR which will or which may result from the Project and which the City has determined cannot feasibly be mitigated to a less than significant level.
- (6) Section 6 sets forth findings regarding alternatives to the proposed Project.
- (7) Section 7 consists of a Statement of Overriding Considerations which sets forth the City's reasons for finding that specific economic, legal, social, technological, and other benefits, including region-wide or statewide environmental benefits, of the Project outweigh the Project's potential unavoidable environmental effects.

B. Custodian and Location of Records

The documents and other materials which constitute the administrative record for the City's actions related to the Project are located at the City of Newport Beach Community

Development Department, 3300 Newport Boulevard, Newport Beach, California 92658. The City of Newport Beach is the custodian of the Administrative Record for the Project.

2. PROJECT SUMMARY

A. Project Location

The Project site is approximately 401.1 acres. Of the 401.1 acres, approximately 40 acres of the Project site are located in the incorporated boundary of the City of Newport Beach (City), and approximately 361 acres are in unincorporated Orange County (County) within the City's Sphere of Influence, as determined by the Local Agency Formation Commission (LAFCO) of Orange County. The entire Project site is within the boundary of the Coastal Zone, as established by the California Coastal Act.

The Project site is generally bound on the north by the County of Orange Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development south of the highway in the City of Newport Beach; on the east by residential, light industrial, institutional, and office development in the Cities of Costa Mesa and Newport Beach; and on the west by the U.S. Army Corps of Engineers (USACE) restored 92-acre salt marsh basin and the Santa Ana River. The City of Huntington Beach is west of the Santa Ana River. At its nearest point, the Project site is less than 0.25 mile inland from the Pacific Ocean. Because the property is an active oilfield, there is no public access to the Project site.

B. Project Description

The Project would allow for the development of the site with residential, commercial, resort inn, and park and recreational uses, and would provide open space uses that would permit the continuance of oil production and consolidation of the oil operations on a portion of the open space area of the Project site. The Project includes infrastructure to support the proposed land uses, including roads, utilities, and public parks to serve future Project residents and the community at large.

The 401-acre Project site is proposed for development with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, and a 75-room resort inn. Approximately 51.4 gross acres are proposed for active and passive park uses including a 21.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) of the 401-acre site are proposed as permanent open space. Of the 252.3 gross acres, approximately 16.5 gross acres would be used for interim oil operations. Upon the future cessation of oil operations, these oil consolidation sites would be abandoned and remediated, and the consolidation sites would be restored as open space. The Project includes the development of a vehicular and a non-vehicular circulation system for automobiles, bicycles, and pedestrians, including a pedestrian and bicycle bridge from the Project site across West Coast Highway.

The City of Newport Beach General Plan (General Plan) was adopted by the City Council on July 25, 2006, and approved by the voters on November 6, 2006. The General Plan (1) establishes criteria and standards for land use development; and (2) provides policy and land use guidance for the City and its Sphere of Influence. A majority of the Project site is located in the unincorporated Orange County area within the City's Sphere of Influence with a County General Plan designation of "Open Space".

As a part of the Project, the unincorporated area within the City's Sphere of Influence is proposed to be annexed to the City.

The Project site has a Newport Beach General Plan land use designation of OS(RV), Open Space/Residential Village. The OS(RV) land use designation establishes a Primary Use of Open Space and an Alternative Use of Residential Village for the Project site, as described below:

Primary Use: Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

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.

The City of Newport Beach General Plan's Land Use Element prioritizes the retention of the Project site for open space. As described in the General Plan, the open space acquisition option could include consolidation of oilfield operations; restoration of wetlands; and the provision of nature education and interpretative facilities and an active park containing playfields and other facilities to serve residents of adjoining neighborhoods.

The City of Newport Beach General Plan specifies that, if the Primary Use (Open Space) is not implemented (i.e., the property is not acquired for open space within a time period and pursuant to terms agreed to by both the City and property owner), the Project site could be developed as a Residential Village (RV) containing a mix of housing types, limited supporting retail, visitor accommodations, a school, and active community parklands with a majority of the property preserved as open space. The General Plan identifies the maximum intensity of development allowed on the property to include up to 1,375 du, 75,000 sf of retail commercial uses oriented to serve the needs of local and nearby residents, and 75 hotel rooms in a small boutique hotel or other type of overnight visitor accommodation. The proposed Project implements the General Plan's Alternative Use for the property.

Both the Master Plan of Streets and Highways in the City of Newport Beach General Plan's Circulation Element and the Orange County Master Plan of Arterial Highways (MPAH) depict roadways through the Project site. Roadways to be constructed as part of the proposed Project include: (a) Bluff Road, a north-south, four-lane divided road extending from West Coast Highway to 15th Street; (b) North Bluff Road, which would transition from a four-lane divided road to a two-lane undivided road extending between 15th Street and 19th Street; (c) an extension of 15th Street, a four-lane divided road, from its existing western terminus at the boundary of the Project site and connecting with North Bluff Road; (d) the extension of 16th Street, a two-lane collector roadway, from its existing terminus at the Project site's eastern boundary to North Bluff Road; and (e) the extension of 17th Street, a four-lane divided primary roadway from its existing terminus at the Project site's eastern boundary and connecting with North Bluff Road.

The Project requires an amendment to the General Plan Circulation Element to delete a second road connection to West Coast Highway through the Project site from 15th Street. The traffic analysis done for the Project demonstrates that this roadway is not needed to serve the traffic demand associated with the proposed Project and subregional development. Therefore, construction of this second road to West Coast Highway has not been identified as a component of the Project or assumed for any of the Project Alternatives.

An amendment to the Orange County MPAH is also required to delete a second connection to West Coast Highway and to redesignate North Bluff Road. The Orange County MPAH designates North Bluff Road as a Primary (four-lane divided) to 17th Street and a Major (six-lane divided) between 17th Street and 19th Street. An amendment to the Orange County MPAH is required to change the designation from a Major to a Secondary (four-lane undivided) between 17th Street and 19th Street.

Half-width roadway improvements on North Bluff Road north of 16th Street for approximately 800 feet are proposed on property owned by the Newport-Mesa Unified School District (School District). There is a Memorandum of Understanding (MOU) between Newport Banning Ranch, LLC (Applicant) and the School District that would permit these improvements.

C. Discretionary Actions

Implementation of the portion of the Project within the City of Newport Beach will require several actions by the City, including

- Final Environmental Impact Report No. ER 2009-002. The Project requires the certification of the environmental document as having been prepared in compliance with the CEQA Statutes, the State CEQA Guidelines, and the *City of Newport Beach Implementation Procedures for the California Environmental Quality Act*. By doing this, the City is certifying that the information from the Final EIR was considered in the final decisions on the Project.
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008. The General Plan Circulation Element's Master Plan of Streets and Highways Element depicts the westerly extension of 15th Street to West Coast Highway through the Project site. An amendment to the Circulation Element of the General Plan would delete the segment of 15th Street west of Bluff Road, which would have provided a second arterial through the Project site connecting to West Coast Highway. General Plan Circulation Element Figure CE1, Master Plan of Streets and Highways, depicts two future Primary (four-lane divided) roads through the Newport Banning Ranch site connecting to West Coast Highway.
- City of Newport Beach General Plan Figure I2, Sphere of Influence. The proposed land uses for the Project site are consistent with the allowable land uses and development intensity set forth in the Newport Beach General Plan. The Project would not require an amendment to the General Plan Land Use Element. The General Plan Land Use Element Sphere of Influence map (General Plan Figure I2) would require an amendment to modify the City boundary to include the entirety of the Newport Banning Ranch site.

- City of Newport Beach Zoning Code Amendment No. CA2008-004. A Zoning Code Amendment would rezone the Project site from Planned Community (PC) 25 to PC-57.
- Pre-Annexation Zone Change. 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. The Newport Banning Ranch Planned Community (NBR-PC) would serve as the zoning regulations for PC-57.
- Newport Banning Ranch Planned Community (NBR-PC) Zoning No. PC2008-002. The NBR-PC would serve as the zoning regulations for the Project. The NBR-PC establishes allowable land uses within each land use district; development regulations for each land use district; general development regulations applicable to all development within the Project site; a plan for circulation and infrastructure facilities to serve development; and procedures for implementing and administering the NBR-PC. The NBR-PC would serve as the zoning and development regulations for both the portion of the Project site located within the City and the portion of the Project site located within the County of Orange but within the City's Sphere of Influence. Following annexation of the areas located within the Sphere of Influence, the NBR-PC would become effective.
- Newport Banning Ranch Master Development Plan No. MP2008-001. Approval of the Master Development Plan would implement the NBR-PC requirement for the Project site by establishing design criteria for each land use component proposed for development and by providing a sufficient level of detail, as determined by the City, to guide the review of subsequent development approvals, including construction-level permits, as required by the NBR-PC. The Master Development Plan is also proposed to provide a sufficient level of detail related to Coastal Act policies so that, pursuant to City approval, and to the maximum extent practicable, the Coastal Commission may approve the Master Development Plan as part of a Coastal Development Permit which would include Coastal Commission approval delegating authority to the City to be the final approving body for subsequent discretionary and ministerial approvals.
- Tentative Tract Map No. NT2008-003. The Project includes a request for approval of Tentative Tract Map (TTM) No. 17308 which establishes lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance that may further subdivide (with additional subdivision maps) these lots for the development of conventional fee lots, planned developments, and/or condominiums. Approval of the TTM would permit rough and precise grading, oilfield facilities consolidation, site remediation, habitat restoration, construction of public roadways, drainage and water quality improvements, backbone infrastructure, and dry utilities, including domestic water and sewer facilities throughout the Project site. Development of all other facilities and land uses would require recordation of a final tract map.
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001. The Newport Banning Ranch AHIP proposes the construction of a minimum of 50 percent of the required affordable housing on the Project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that

would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

- Development Agreement No. DA2008-003. The Development Agreement between the Applicant and the City would vest the Project's development approvals to allow buildout of the Project site under the development standards and requirements in place at the time of Project approval. The Development Agreement includes requirements of the City that would need to be accomplished by the Applicant in return for the vesting of Project approvals. The Development Agreement addresses affordable housing requirements; parkland dedication/in-lieu fee requirements; infrastructure phasing including Traffic Phasing Ordinance (TPO) compliance; permitting by the City pursuant to the Newport Banning Ranch Coastal Development Permit subsequent to approval by the Coastal Commission; vesting of City entitlements and applicable land use regulations; and other issues relevant to the Project in order to describe the development rights of and public benefits to be provided by the Applicant and to outline the terms for annexation of the property to the City. The Development Agreement would not preclude the need for future site plans, tentative tract maps, or other permit processing prior to development. If the City does not have a certified Local Coastal Program by such date on which the Development Agreement is entered into, the Development Agreement would be submitted to the Coastal Commission for its approval.
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance. The City of Newport Beach has adopted a Traffic Phasing Ordinance (Municipal Code Title 15, Chapter 15.40, Traffic Phasing Ordinance) (1) to provide a method of analyzing the traffic impacts of projects on "primary intersections" during the morning and evening peak hours; (2) to identify the near-term impacts of a project's traffic and planned improvements to ensure that development is phased with improvements to address impacts; (3) to ensure that project proponents make or fund circulation system improvements that mitigate impacts at or near the time the project is ready for occupancy; and (4) to ensure that a project's cost of mitigating traffic impacts is roughly proportional to project impacts. Because the Newport Banning Ranch Project is a large project, the TPO requirements direct the TPO traffic analysis to account for full Project completion in five years, which in this case is 2016, as a "worst-case" scenario. The TPO Study also includes an analysis for the Project phasing of construction.

The Final EIR would also provide environmental information to responsible agencies, trustee agencies, and other public agencies which may be required to grant approvals and permits or coordinate with the City of Newport Beach as a part of Project implementation. These agencies include, but are not limited to, those listed below.

- ***Orange County Transportation Authority.*** Amendment to the Orange County Master Plan of Arterial Highways. To redesignate the proposed North Bluff Road just north of 17th Street to 19th Street from a Major (six-lane divided) to a Primary (four-lane divided) and the deletion of a second road through the Project site to West Coast Highway. The amendment would allow for the deletion of the connection from 17th Street westerly to West Coast Highway.
- ***Orange County Health Care Agency.*** Approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation is required from the Regional Water Quality Control Board.

- **Local Agency Formation Commission.** The Local Agency Formation Commission (LAFCO) is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include approximately 361 acres of the 401.1-acre Project site into the City and a change in service district boundaries for water service.
- **Newport-Mesa Unified School District.** An encroachment permit consistent with the MOU for the construction of the extension of 16th Street and North Bluff Road on the School District's property.
- **California Department of Transportation.** Activities located within California Department of Transportation (Caltrans) right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit.
- **California Department of Fish and Game.** The Project would require a Section 1600 Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the *California Fish and Game Code*.
- **Regional Water Quality Control Board.** Issuance of the U.S. Army Corps of Engineers (USACE) Section 404 Permit would require the Santa Ana Regional Water Quality Control Board (RWQCB) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. Waste Discharge Requirements (WDRs) issued by the Santa Ana RWQCB would be required for the fill or alteration of "Waters of the State" on the Project site located under the RWQCB's jurisdiction. Approval of the final Remedial Action Plan (RAP) for the oil well/facility abandonment and site remediation is required from the Santa Ana RWQCB.
- **California Coastal Commission.** The Project would require a Coastal Development Permit from the Coastal Commission, which would include approval of the Master Development Plan and the Development Agreement.
- **State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR).** Oil and gas wells to be abandoned or re-abandoned shall be done in accordance with the current requirements of the DOGGR. The abandonment requirements will be those applied by DOGGR at the time the Remedial Action Plan, including the Combustible Soil Gas Hazard Mitigation Plan, is submitted for review to the Orange County Fire Authority.
- **U.S. Army Corps of Engineers.** The Project would require a USACE Section 404 permit for impacts to areas determined to be "Waters of the U.S.". As a federal agency, the USACE's actions require compliance with NEPA.
- **U.S. Fish and Wildlife Service (USFWS).** Because the Project would require federal agency permits, the USFWS must conduct a Section 7 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the

issuance of a Biological Opinion. As a federal agency, the USFWS' actions require compliance with the National Environmental Policy Act (NEPA).

D. Statement of Project Objectives

The statement of objectives sought by the Project and set forth in the Final EIR is provided as follows:

1. Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area.
2. Preservation of a minimum of 50 percent of the Project site as open space without the use of public funds to be used for habitat conservation, interpretive trails, and development of public parks to meet the recreational needs of the community.
3. 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 the provision of affordable housing to help meet the City's Regional Housing Needs Assessment (RHNA).
4. 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.
5. 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.
6. 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 criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene.
7. Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access.
8. 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.
9. Provide for the consolidation of oil resource extraction and related recovery operations in locations that minimize impacts to sensitive habitat areas and promote compatibility with development of the remainder of the property for residential, resort, commercial, park, and open space uses.

10. 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.
11. 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.
12. Expand public recreational opportunities within the Coastal Zone through development of a public community park and associated parking, and through development of publicly accessible bluff parks, interpretive parks, and trails as part of the Project.
13. 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.
14. 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.
15. 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.
16. Provide compatibility between the Project and existing adjacent land uses.
17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City's Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

3. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

The Final EIR includes the Draft Environmental Impact Report (Draft EIR) dated September 9, 2011, written comments on the Draft EIR that were received during the 60-day public review period, and written responses to those comments and clarifications/changes to the EIR. In conformance with CEQA and the State CEQA Guidelines, the City conducted an extensive environmental review of the Newport Banning Ranch Project:

- Completion of the Notice of Preparation (NOP), which were released for a 30-day public review period from March 18, 2009, through April 17, 2009. The NOP was sent to all responsible agencies, trustee agencies, and the Office of Planning Research and posted at the Orange County Clerk-Recorder's office and on the City's website on March 16, 2009.
- During the NOP review period, two Scoping Meetings were held to solicit additional suggestions on the content of the Newport Banning Ranch EIR. One scoping meeting was held for agencies and one meeting for the general public. Attendees were provided an opportunity to identify verbally or in writing the issues they felt should be addressed in the EIR. The two scoping meetings for the EIR were held on Tuesday, April 2, 2009 at Newport Beach City Hall at 3300 Newport Boulevard,

Newport Beach, CA 92658. The notice of the public scoping meetings was included in the NOP.

- Preparation of a Draft EIR by the City which was made available for a 60-day public review period (September 9, 2011 to November 8, 2011). The Draft EIR consisted of three volumes. Volume I contains the text of the Draft EIR and analysis of the Newport Banning Ranch Project. Volume II contains all Draft EIR graphics. Volume III contains the appendices, including the NOP and comments received in response to the NOP. The Notice of Availability (NOA) for the Draft EIR was published in the September 9, 2011 editions of the Orange County Register and the Daily Pilot, newspapers of general circulation. The NOA was sent to all interested persons, agencies and organizations. The Notice of Completion (NOC) was sent to the State Clearinghouse in Sacramento for distribution to public agencies. The NOA was posted at the Orange County Clerk-Recorder's office on September 9, 2011. Copies of the Draft EIR were made available for public review at the City of Newport Beach Community Development Department, Newport Beach Central Branch Library, Newport Beach Balboa Branch Library, Newport Beach Mariners Branch Library, and Newport Beach Corona del Mar Branch Library. The Draft EIR was available for download via the City's website: <http://www.newportbeachca.gov>.
- Preparation of a Final EIR, including the comments and Responses to Comments on the Draft EIR. The Final EIR/Response to Comments contains: comments on the Draft EIR, responses to those comments, clarifications/revisions to the Draft EIR, and appended documents. The Final EIR Responses to Comments was released on March 16, 2012. In compliance with Section 15088(b) of Title 14 of the California Code of Regulations (State CEQA Guidelines), the City has met its obligation to provide written Responses to Comments to public agencies at least 10 days prior to certifying an EIR.
- The Environmental Quality Affairs Committee (EQAC) held meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR.
- Planning Commission Study Sessions were held for the proposed Project and Draft EIR on November 3, 2011, January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012.
- A notice of the Newport Beach Planning Commission hearing for the Project was published in the Daily Pilot, mailed to all property owners within 1000 feet of the Project Site and to all interested persons, agencies and organizations and posted at the Project Site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.
- Planning Commission public hearings were held on March 22, April 19, and June 21, 2012.
- A notice of the Newport Beach City Council hearing of _____, 2012 for the Project was mailed on ____, 2012 to all property owners of record within 300 feet of the subject site and all individuals that requested to be notified. A notice for the City Council hearing was posted at City Hall as required by established public hearing posting procedures. Additionally, notice for the hearing was published in the Orange County Register on _____

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed Project consists of the following documents and other evidence, at a minimum:

- The City's General Plan, as amended, and all environmental documents relating thereto;
- All information submitted to the City by the Applicant and its representatives relating to the Project and/or the Final EIR including but not limited to the Newport Banning Ranch Master Development Plan, NBR-PC, Tentative Tract Map, AHIP, Development Agreement, and the Traffic Study pursuant to the Traffic Phasing Ordinance.
- NOP and all other public notices issued by the City in conjunction with the proposed Project;
- The two Scoping Meetings held during the 30-day NOP period;
- The Final EIR including the Draft EIR and all appendices, the Responses to Comments document, and all supporting materials referenced therein. All documents, studies, EIRs, or other materials incorporated by reference in the Draft EIR and Final EIR. The reports and technical memoranda included or referenced in the Response to Comments of the Final EIR;
- All written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR and included in the Final EIR Responses to Comments document;
- All responses to written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR;
- The Environmental Quality Affairs Committee (EQAC) meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR. The City responded as a part of the Final EIR Responses to Comments document to EQAC's comment letter submitted during the 60-day public review comment period.
- All testimony provided by agencies and members of the public at the January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012 Planning Commission Study Sessions held subsequent to the 60-day public review comment period on the Draft EIR;
- Planning Commission public hearings on March 22, 2012, April 19, 2012, and June 21, 2012.
- City Council public hearings on _____.
- All final City Staff Reports relating to the Draft EIR, Final EIR, and the Project;
- All other public reports, documents, studies, memoranda, maps or other planning documents relating to the Project, the Draft EIR, and the Final EIR prepared by the City, consultants to the City, or Responsible or Trustee Agencies.
- The Mitigation Monitoring and Reporting Program (MMRP) adopted by the City for the Project; The Ordinances and Resolutions adopted by the City in connection with the proposed Project, and all documents incorporated by reference therein;
- These Findings of Fact and Overriding Considerations adopted by the City for the Project. Any documents expressly cited in these Findings of Fact; and

- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Newport Beach Community Development Department. The custodian for these documents is the City of Newport Beach. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

4. ENVIRONMENTAL EFFECTS WHICH WERE DETERMINED NOT TO BE POTENTIALLY AFFECTED BY THE PROPOSED PROJECT

As a result of the Notice of Preparation circulated by the City on March 16, 2009, in connection with preparation of the EIR, the City determined, based upon the threshold criteria for significance, that the Project would have no impact or a less than significant impact on the following potential environmental effects, and therefore, determined that these potential environmental effects would not be addressed in the Draft EIR. Based upon the environmental analysis presented in the EIR, and the comments received by the public on the Draft EIR, no substantial evidence was submitted to or identified by the City which indicated that the Project would have an impact on the following environmental areas:

- (a) *Agriculture and Forest Resources:* The Project site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the Project site is covered by a Williamson Act Contract. Additionally, the Project site does not include forest resources, including timberlands, and is not zoned for agriculture.
- (b) *Aesthetics and Visual Resources:* The Project area is not adjacent to, nor can it be viewed from a designated State scenic highway.
- (c) *Geology and Soils:* The proposed Project would not use septic systems or alternative waste water disposal systems.
- (d) *Hazards and Hazardous Materials:* The Newport Banning Ranch Project site is not located within an adopted Airport Land Use Plan. The nearest airport/airstrip is the John Wayne Airport, which is located approximately four miles northeast of the Project site. Furthermore, a discussion of this topic is not necessary because there is no private airstrip in proximity to the Project site.
- (e) *Population, Housing, and Employment:* There are no existing residential units on the Project site. The Project proposes the development of up to 1,375 du on the Project site. Therefore, the Project would not displace existing residential units or residents and the Project would not necessitate the need for replacement housing.

5. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS

The following potentially significant environmental impacts were analyzed in the EIR, and the effects of the Project were considered in the EIR. Where as a result of the environmental analysis of the Project and the identification of Project Design Features, compliance with existing laws, codes and statutes, and the identification of feasible mitigation measures (together referred herein as the Mitigation Program), the following potentially significant impacts have been determined by the City to be reduced to a level of less than significant, the City has found in accordance with CEQA Section 21081(a)(1) and State CEQA Guidelines Section 15091(a) (1) that "Changes or alterations have been required in, or incorporated into, the project

which mitigate or avoid the significant effects on the environment,” which is referred to herein as “Finding 1”. Where the potential impact can be reduced to less than significant solely through adherence to and implementation of Project Design Features or standard conditions, these measures are considered “incorporated into the project” which mitigate or avoid the potentially significant effect, and in these situations, the City also will make “Finding 1” even though no mitigation measures are required.

Where the City has determined pursuant to CEQA Section 21081(a)(2) and State CEQA Guidelines Section 15091(a)(2) that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s findings is referred to herein as “Finding 2”.

Where, as a result of the environmental analysis of the Project, the City has determined that either (1) even with the identification of Project Design Features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report,” referred to herein as “Finding 3”.

A. Land Use and Related Planning Programs

(1) Potential Impact: The proposed Project would not physically divide an established community.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no standard conditions of approval or mitigation measures are required or recommended. Project Design Features (PDFs) 4.1-1 through 4.1-5 identify the components of the Project.

Facts in Support of Finding: Consistent with the findings of the City of Newport Beach General Plan EIR, the Project would not physically divide an established community. The Project site is an active oilfield without public access. It is contiguous to existing land uses, and roads through the site would provide planned connections to existing land uses in the Project vicinity.

PDF 4.1-1 Through the implementation of the Master Development Plan, the Project permits a maximum of 1,375 residential dwelling units and a variety of residential housing types to provide opportunities for a range of lifestyles. Housing types include single-family detached, single-family attached, multi-family, and/or residential uses in a mixed-use configuration.

PDF 4.1-2 The Master Development Plan designates areas for a diverse public park system to include active, passive, and interpretive recreation opportunities.

PDF 4.1-3 The Master Development Plan designates more than 240 gross acres of the Project site as Open Space, including wetland restoration/water quality areas, interpretive trails, habitat

restoration areas, and habitat preservation areas. Open Space areas also include 2 sites and a connecting road comprising approximately 17 acres designated for continuing but interim use as oil and gas production sites. At the end of the oilfield's useful life, this area will revert to Open Space land use.

PDF 4.1-4 The Master Development Plan provides for a minimum of 20 gross (17 net) acres for a public Bluff Park as a visual and passive recreational amenity, trail corridor, and a transition between open space and development.

PDF 4.1-5 The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan identify proposed uses adjacent to existing Newport Beach and Costa Mesa residential neighborhoods which are limited to either parks or open space. Proposed uses adjacent to existing commercial and light industrial areas within the City of Costa Mesa "Mesa West Bluffs Urban Plan" overlay area will be a higher density residential and/or mixed-use development of similar height and scale to those prescribed in the "Mesa West Bluffs Urban Plan". Open space and/or park uses will be sited adjacent to the Newport Crest community to provide a visual buffer between that community and Project development areas.

(2) Potential Impact: There would be land use incompatibility associated with long-term noise sources and night illumination on the Project site 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.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the incorporation of Standard Condition (SC) 4.1-1 and Noise Mitigation Measures (MMs) 4.12-5 through 4.12-7. However, the City has determined that while the above-described impact can be partially mitigated by the Mitigation Program identified below, this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: When evaluating the Project as a whole, it would be considered generally compatible with the existing and proposed future off-site land uses as well as compatible with land uses within the Project site. There is one legally non-conforming single-family home located on industrially zoned property in the City of Costa Mesa where there may be potential impacts (shade/shadow, night illumination, and noise); however, the required site plan review process set forth in Standard Condition (SC) 4.1-1 would ensure these impacts would be less than significant.

The proposed Project would have significant and unavoidable construction-related air quality and noise impacts. Although construction impacts would occur over

several years, they would end with the cessation of these activities. Because these significant unavoidable construction impacts would terminate, they are not considered a determinate factor in the compatibility of land uses. Additionally, there would be significant vehicular noise impacts from Bluff Road to Newport Crest residences immediately adjacent to the Project site and to six single-family residences on 17th Street in the City of Costa Mesa. Noise MMs 4.12-5, 4.12-6, and 4.12-7 regarding resurfacing roadways with rubberized asphalt, noise walls/berms, and condominium noise attenuation measures that would mitigate noise impacts to a less than significant level. However, the City cannot require owners of condominium units at Newport Crest to accept and implement improvements on their private property nor can it mandate the implementation of mitigation in another jurisdiction. Therefore, it is speculative to know whether this mitigation, while feasible, is desirable by residents and the Newport Crest Homeowners Association. As such, noise impacts to the identified single-family residences on 17th Street and to a portion of the Newport Crest Condominium development are considered significant and unavoidable. Residences near the active areas of the proposed Community Park may also be adversely impacted by night lighting. As a result, the proposed Project would result in a land use incompatibility with respect to long-term noise impacts and night illumination.

SC 4.1-1 Approval of the Newport Banning Ranch Project would require Project implementation and all future approvals to be subject to all applicable provisions of the *Newport Beach General Plan*; *Newport Banning Ranch Planned Community Development Plan*; all requirements and enactments of federal, State, and local agency authorities; as well as the requirements of any other governmental entities. All such requirements and enactments will, by reference, become conditions of Project approval.

MM 4.12-5 The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15th Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17th Street west of Monrovia Avenue with rubberized asphalt.

MM 4.12-6 Prior to the approval of a grading permit for Bluff Road and 15th Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15th Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry

block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

MM 4.12-7 Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.

B. Aesthetics and Visual Resources

(1) Potential Impact: Development of the proposed Project would alter existing views of the Project site; however, due to extensive site planning, buffers, landscaping and architectural guidelines, the Project would not result in a significant topographical or aesthetic impact. The Project would create public views from the Project site of on-site and off-site scenic resources including the Pacific Ocean that are not currently available because of the property's existing oilfield operations. This is considered a beneficial impact.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Land Use PDF 4.1-4 (set forth above), Aesthetics PDFs 4.2-1 through 4.2-4, and Biological Resources PDF 4.6-4 (set forth below). No mitigation measures were recommended or required.

Facts in Support of Finding: The Project is proposed to be implemented over several years. Project implementation would change the overall visual character and use the Project site from an oilfield to a developed urban infill community. The resulting change in topography/landform and land use would be permanent. Consistent with the General Plan, the majority of the property would be retained in open space (General Plan Land Use Element Goal 3.4 and Policy 6.4.1). Site disturbance would first occur associated with required site remediation efforts. Roadways and utilities (such as water, wastewater, gas, electric, and cable) would be constructed prior to the development of the structures. The transition from graded lots to framed structures to finished buildings with landscaping would occur over each area. As the structures are constructed and finished, the scale of the Project and changes to the visual character of the Project site would become more evident.

Total excavation is estimated to be approximately 2,600,000 cubic yards (cy), including approximately 900,000 cy of cut and fill and 1,455,000 cy of cut and fill corrective grading. Cuts are anticipated to vary from 1 foot to 10 feet with localized cuts up to approximately 25 feet. Fills are anticipated to vary between 1 foot and 30 feet, but may be up to 60 feet associated with bluff repairs with gradients between 2:1 and 3:1. The larger fills would be used for bluffs repair and restoration due to erosion damage, but would allow for the retention of the major topographical features of the Project site including the arroyos.

There is no public access to the Project site because it is private property and an active oilfield. Therefore, the Project site cannot be observed by the public from on-site locations nor can off-site views be observed from the property. 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 and an approximate 50- to 65-foot vertical separation between the Newport Shores residences and the top of the bluff on the western edge of Project site. Because of the difference in elevation, there are uninterrupted views of off-site land uses to the south and west. These views include but are not limited to existing off-site development, the USACE 92-acre wetlands restoration area, the Santa Ana River, and the Pacific Ocean.

The Newport Beach General Plan EIR states:

The Banning Ranch property is currently developed with oil production uses and associated structures, including large storage tanks. However, much of Banning Ranch consists of open space. As such, the existing conditions in Banning Ranch contribute to overall natural aesthetics within the City...If the property cannot be acquired in a timely manner, the development of a compact residential village that preserves the majority of the site as open space and restores critical habitat is allowed in accordance with Policies LU 6.3.1 through 6.5.5. Under both land use options proposed for Banning Ranch, Policies LU 6.5.1 and 6.5.3 would both apply to the area, and would relocate and cluster oil operations, as well as restore and enhance wetlands and wildlife habitats. Both of these policies would improve the overall aesthetic quality of the area. While

both options (open space and high quality residential development) would protect visually important open space components of the existing area, the visual impacts of retaining the site as open space would be less than if development were to be allowed in the area...if the site is ultimately developed, new land uses would include residential, limited commercial, overnight accommodations, and community parks designed in such a way as to provide a cohesive urban form that provides the sense of a complete and identifiable neighborhood (Policy LU 6.4.5). Most importantly, Policy LU 6.5.5 requires that development 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. In addition, as discussed above, the consolidation of oil operations as well as the restoration of wetlands and habitat areas would improve the visual quality of the area. While new development would represent a change from the existing land uses, with implementation of the proposed General Plan Update policies, the potential visual impacts of new development in the Banning Ranch area would be minimized. Consequently, development in Banning Ranch under the proposed General Plan Update would have less-than-significant impacts on the visual quality of the area.

- PDF 4.2-1** As identified in the Master Development Plan, contour grading will be used to minimize impacts to existing public view points from West Coast Highway.
- PDF 4.2-2** Habitable structures will be set back at least 60 feet from the tops of bluff edges, as required in the Newport Banning Ranch Planned Community Development Plan.
- PDF 4.2-3** Implemented through the Master Development Plan, landscaping will be provided around the perimeter of buildings that are proposed adjacent to Open Space Preserve areas to provide a transition.
- PDF 4.2-4** Architectural guidelines included in the Master Development Plan provide for a range of housing types and architectural styles to avoid visual monotony and minimize impacts to existing public views of bluffs. Building architecture will be regulated through provisions contained in the Master Development Plan to ensure high quality designs that are sensitive to the natural resources and compatible with the character of Newport Beach communities within the Coastal Zone. Architectural guidelines require use of a palette of earth tone colors compatible with the open space setting.
- PDF 4.6-4** The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will

restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

(2) Potential Impact: The proposed Project would generate new light sources. The Project would include a “dark sky” lighting concept for development areas adjacent to the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. Consistent with the findings of the General Plan EIR, increased lighting on the Project site is considered a significant, unavoidable impact.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated the incorporation of PDF 4.6-4 (set forth above) and MMs 4.2-1 and 4.2-2 (set forth below), this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Implementation of the Project would create new sources of light and glare that are presently not found on the Project site. Nighttime sources of light would include streetlights, vehicle headlights, lights used within and around buildings including residences, retail areas, and the resort inn, and lights used for the active sports fields in the Community Park.

The Project incorporates “dark sky” lighting standards for HOA land uses and businesses within 100 feet of the Open Space Preserve and Bluff Parks (PDF 4.6.4). Uses within the South and North Bluff Park and Nature Center contiguous to the Open Space Preserve, and non-residential uses in the Villages and Colonies would be required to have: (a) flood lamp shielding and/or City-approved “dark sky” light fixtures/bulbs to reduce the amount of stray lighting into natural resource areas; (b) direct lighting rays confined to the respective residential, resort inn, and commercial lots or park areas upon which the exterior lights are to be installed so that adjacent and nearby areas of the Open Space Preserve are protected from any significant light spillage, intrusion, and glare; and (c) no skyward-casting light fixtures/bulbs. Street lighting would be limited to the lighting of intersections.

However, where not within 100 feet of the Open Space Preserve or the Bluff Parks or for land uses not restricted to dark sky lighting standards within 100 feet of the Open Space Preserve (e.g., private residences), community landscape/common areas, public facilities, streetscapes, parks, and other similar areas may contain accent or other night lighting fixtures. Commercial use lighting would include lighting of parking lots, drive aisles, and building facades subject to the lighting requirements set forth in the NBR-PC.

The North Community Park area is proposed to include lighted tennis courts, lighted soccer fields, a lighted basketball court, youth baseball and softball fields overlaid on the soccer fields, a picnic area or skateboard park, tot lots, fitness/par course, and parking areas. Sports areas would be lit until 10:00 PM. Lighting for athletic playing fields in the Community Park would be required to have light control visors to control spill and glare and to direct light downward onto the playing field. MMs 4.2-1 and 4.2-

2 place lighting orientation and design restrictions on the Community Park and other land uses within the Project site.

Although the Project proposes to restrict lighting in areas of the site, night lighting associated with the Community Park is proposed to have night lighting, and the Project as a whole would introduce new light sources. The findings of this EIR analysis are consistent with the General Plan EIR's determination that the Project's proposed development would result in significant and unavoidable nighttime lighting impacts. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which note that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project.

MM 4.2-1 All public roadways and private development within the Village and Colonies, South and North Bluff Park, Interpretive Parks, and Oil Consolidation sites shall have their "dark sky" lighting system and its components incorporated into the Project and approved by the City of Newport Beach Community Development Director or his/her designated representative prior to the issuance of a building permit for the applicable Village, Colony, Bluff Park, and Nature Center on the Project site. Each lighting plan shall incorporate electrical plans and structural plans that detail the provision of lighting systems for exteriors of all buildings, parking lots, loading areas, walkways, public use areas, any public art displays, fountains, or landscape areas. Lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. No skyward-casting lighting shall be used. Final lighting orientation and design shall be in accordance with the "dark sky" lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible as determined by the Community Development Director or his/her designated representative. Prior to final inspection or issuance of a certificate of occupancy, where applicable, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Project. The inspection shall verify the proper construction and installation of materials within the approved plan; determine the actual light patterns and values through light meter testing and observation; and determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Project.

MM 4.2-2 The lighting plan for the Community Park shall incorporate electrical plans and structural plans that detail the provision of lighting systems for sports field and hard courts; exteriors of buildings; parking lots, walkways, and/or landscape areas. All lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray

lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. Light standards used for lighting playing fields shall be either Musco Lighting™, “Light Structure Green” standards, or another comparable light standard of similar design that reduces light spillage. Final lighting orientation and design shall be in accordance with the “dark sky” lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible, as determined by the Community Development Director. Prior to final inspection, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Community Park. The inspection shall verify the proper construction and installation of materials within the approved plan; shall determine the actual light patterns and values through light meter testing and observation; and shall determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Community Park.

C. Geology and Soils

(1) Potential Impact: The Project site is in a seismically active area with faults within the development area that could not be proven to be inactive. Habitable structures on the Project site near these faults are subject to fault setback zones and seismic design parameters that would appropriately address seismic building standards.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

Facts in Support of Finding: The Project site is not located within an Alquist-Priolo Earthquake Fault Zone. Most of Southern California is subject to ground shaking (ground motion) as a result of movement along active and potentially active fault zones in the region. Three regional fault systems are within approximately six miles of the Project site: the Compton Thrust Ramp, the Newport-Inglewood Fault Zone, and the San Joaquin Hills Blind Thrust Fault. Seismic design of on-site structures (excluding bridges) would be in accordance with the 2007 California Building Code (CBC) criteria; seismic design of the pedestrian and bicycle bridge would be in accordance with Caltrans standards. To accommodate the effects from seismic shaking, all on-site Project structures would be required to comply with the seismic design standards contained within the California Building Code as adopted by the City.

There are two discrete segments of the Newport-Inglewood Fault Zone North Branch (the Newport Mesa North Segment and the Newport Mesa South Segment) potentially within the Project site. Portions of these fault segments were not conclusively shown to have Holocene surface rupture, and therefore are “faults that could not be proved to be inactive”; therefore, Fault Setback Zones were established. Bluff setbacks are in excess of those required by the California Building Code and

would assure no potentially significant impact to Project development from surface fault rupture.

State laws and local ordinances require that, prior to construction, potential seismic hazards are identified and mitigated, as needed, to protect public health and safety from substantial risks through appropriate engineering practices. Compliance with PDF 4.3-1, SCs 4.3-1 and 4.3-2, and MMs 4.3-1 through 4.3-3 (set forth below) would ensure that impacts related to strong seismic ground shaking remain are less than significant.

PDF 4.3-1 Habitable structures will be set back a minimum of 60 feet from the tops of bluff edges, as required in the Master Development Plan and the Newport Banning Ranch Planned Community Development Plan, and will not be constructed within identified fault setback zones.

SC 4.3-1 Prior to the issuance of any grading permits, the City of Newport Beach Community Development Department, Building Division Manager or his/her designee shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within all Land Use Districts and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted in all Land Use Districts and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. If the Applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Building Manager, s/he shall review the plan for a finding of substantial conformance. If the Building Manager finds the plan not to be in substantial conformance, the Applicant shall process a revised tentative map or, if a final map has been recorded, the Applicant shall process a new tentative map. A determination of CEQA compliance shall also be required.

SC 4.3-2 Prior to the recordation of a subdivision map or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the City of Newport Beach Community Development Department, Building Division Manager, the Applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring

encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated.

MM 4.3-1

The Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval, a site-specific, design-level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements and:

- a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies;
- b) Determine structural design requirements as prescribed by the most current version of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults;
- c) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and other surrounding related improvements;

Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site-specific investigations. The structural engineer shall review the site-specific investigations, provide any additional necessary measures to meet Building Code requirements, and incorporate all applicable recommendations from the investigation in the structural design plans and shall ensure that all structural plans for the Project meet current Building Code requirements.

The City's registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical requirements contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits.

The City shall review all Project plans for grading, foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.

MM 4.3-2

Prior to the approval of any applicable final tract map, the Applicant shall have completed, by a qualified geologist, additional geotechnical trenching and field investigations and shall provide a supplemental geotechnical report to confirm the adequacy of Project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. The trenching and report shall be subject to the review and approval of the City of Newport Beach Public Works Director.

MM 4.3-3 Prior to the approval of any applicable final tract map, development setbacks from the Upland fault segments, revised as necessary based upon the findings of additional trenching investigations, shall be incorporated into the Project consistent with requirements set forth in the California Building Code and the *City of Newport Beach General Plan*. Bluff setbacks consistent with the regulatory requirements for habitable structures shall be incorporated into the Project consistent with the beach bluff setback standards in the *City of Newport Beach General Plan*. Where applicable, setback distances consistent with recommendations in the Project's Geotechnical Report (GMU 2010) shall be incorporated. Prior to the preparation of final Project plans and specifications, additional trenching shall be conducted within the 1,300-foot gap between the 2 parts of the existing Fault Setback Zone. This additional trenching shall provide more information about the potential for active faulting in this portion of the Project site. If necessary, the development fault setback zones shall be modified after this information is obtained and analyzed in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. This information shall be subject to the review and approval of the City of Newport Beach Public Works Director and Community Development Director.

(2) Potential Impact: Two fault segments on the Project site have not been confirmed as inactive, and development setbacks have been incorporated into the Project. The fault setback zones would reduce the risk of surface fault rupture. Habitable structures would be restricted to the Upland area, avoiding soils that may liquefy or undergo lateral spreading.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

Facts in Support of Finding: On-site soils subject to liquefaction and lateral spreading are located in the Lowland; no habitable structures are proposed as a part of the Project in the Lowland; this area is proposed for open space, trails, and oil facilities and their associated infrastructure. Residential, commercial, active recreation, and resort inn uses would only occur in the Upland area.

Soils in the Upland (except for existing colluvial deposits when subjected to saturated conditions) are too dense, cemented, or too far above the water table for liquefaction and lateral spreading to occur. Corrective grading would replace unsuitable materials with suitable engineered fill materials over San Pedro Formation or terrace deposits such that they would not be subject to liquefaction. Therefore, the risk associated with seismic-related ground failure and associated liquefaction, lateral spreading, or subsidence is less than significant.

There is no surficial evidence of subsidence on the Project site, and there have been no reports of subsidence-related impacts on oil production facilities. Accordingly, subsidence is not considered a significant risk to or from Project implementation.

(3) Potential Impact: Grading activities would increase the potential for soil erosion and loss of top soil. Best Management Practices (BMPs) would minimize this impact both during construction and long-term use of the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features. No mitigation measures were required or recommended.

Facts in Support of Finding: Grading activities would increase the potential for soil erosion and loss of top soil. There is a risk of shallow slumping on bluff faces associated with surface runoff; however, Project drainage improvements are expected to reduce runoff compared to existing conditions. Upon completion of the Project, soil erosion and the loss of topsoil would be minimized through the use of engineered grading, surface drainage improvements, and landscaping.

Areas within the bluff slope setback zone would contain drainage devices to minimize the surface flow over the bluff slopes. In addition, surface drainage and bluff slope erosion-control plans would be developed in areas where bluff slopes are to remain natural. Construction best management practices (BMPs) would ensure that construction-related impacts on soil erosion would be less than significant, and post-Project operation and occupancy would not generate surface flows that result in loss of topsoil or induce erosion.

Erosion of the bluff face by surface runoff and local drainage has resulted in shallow erosion, slumping, and localized surficial bluff instability. Future bluff retreat rates would be expected to be lower than historic bluff retreat rates since removing oil production activities in the Upland would reduce runoff rates over the bluffs. Project drainage improvements would also reduce surface runoff over the bluffs and resulting bluff face erosion; however, surface runoff from precipitation and nuisance flows would not cease entirely. The Project would also implement subdrain systems to capture infiltrated water and direct it away from the bluff faces on the Project site, thereby reducing the risk of bluff instability related to post-development groundwater.

As sediments within the bluffs possess a fairly high erosion potential, the topographic alteration of the bluffs would take the form of shallow erosion and surficial slumping of bluff faces. The Project includes bluff repair for bluff stability. Areas that have suffered from erosion would require careful grading in order to restore and revegetate the bluff/slope edge and to limit further degradation. The drainage overtopping the bluff/slope edge would be intercepted along the public trail system and redirected into the Project drainage system. Compliance with PDF 4.3-1 (set forth above) and PDFs 4.3-2 and 4.3-3 (set forth below) would significant impacts do not occur.

PDF 4.3-2 The Master Development Plan identifies drainage devices to be constructed along slopes adjacent to the development edge to eliminate existing surface flow over bluffs to the extent feasible. Landscape and irrigation plans will be designed to minimize irrigation near natural areas/slopes through the use of drought-tolerant vegetation and low-flow irrigation.

PDF 4.3-3 The Master Development Plan includes a Bluff/Slope Restoration Plan that requires eroded portions of bluff slopes to be repaired and stabilized. In order to stabilize slopes and help avoid erosion,

bluff areas devoid of vegetation after repair and stabilization efforts will be planted with native vegetation that does not require permanent irrigation.

(4) Potential Impact: On-site soils have a low to medium expansion potential.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.3-1 and 4.3-2 and MMs 4.3-1, 4.3-2, and 4.3-3 (set forth above).

Facts in Support of Finding: Expansion tests indicate the presence of expansive soils. Without correction, expansive soils can be unsuitable for building. Expansive soils can be accommodated through strengthened and stiffened building foundation design that is capable of resisting the effects of expansive soils. The final geotechnical report will include an evaluation of expansive soils and include specific construction and design recommendations, based on Building Code requirements to reduce Project impacts associated with expansive soils.

D. Hydrology and Drainage

(1) Potential Impact: Construction and operation of the Project has the potential to adversely impact water quality in downstream receiving waters through discharge of runoff that contains various pollutants of concern. The Project incorporates detailed low impact development (LID) features into internal site design and transitional areas for sediment, source, and treatment control. Additional site-design, structural, source-control, and treatment-control BMPs would be incorporated into the Project to supplement LID features, ensuring compliance with the Project Water Quality Management Plan and National Pollutant Discharge Elimination System (NPDES) permit. The Project has demonstrated on-site ability to treat all runoff treatment volumes that would be generated from the Project site in addition to runoff entering the site from upstream developed areas within Costa Mesa in compliance with regulatory standards.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features and standard conditions of approval. No mitigation measures were required or recommended.

Facts in Support of Finding: The Project would incorporate a Runoff Management Plan that includes water quality and drainage features designed to treat site runoff for water quality purposes and to reduce runoff volumes or rates where feasible. Water quality features would consist of LID features where feasible (e.g., bioswales, landscaping biocells, permeable pavement, and other improvements designed to promote soil-based infiltration processes) as well as source-control and treatment-control BMPs. One water quality basin and one diffuser basin/habitat area are proposed in the Lowland within the Open Space Preserve to provide treatment of storm water and detention of runoff flowing from on-site areas and off-site urban areas located to the east prior to discharging into the Lowland. The other basin is proposed in the Lowland near the North Family Village to provide energy dissipation of flows prior to entering the Semeniuk Slough. Both of these basins would be planted with native emergent marsh and riparian species to promote water quality cleaning and natural energy dissipation. A second water quality/detention basin is proposed to intercept approximately 48 acres of off-site flows from the 16th Street

Costa Mesa drainage area. The water quality/detention basin is proposed on the Project site at the southeast corner of 16th Street at the Project site boundary.

Drainage improvements would minimize runoff to arroyos, redirect runoff away from bluffs, and reduce flow rates and volumes in the Semeniuk Slough. On-site local drains would be provided to drain each of the on-site subwatersheds under developed conditions. These drainage features would result in an improvement over existing site runoff conditions with respect to water quality, velocities, and volumes.

The Project incorporates Project Design Features (PDFs) to minimize adverse Project effects to water quality, storm water runoff, and groundwater impacts. Site drainage patterns would remain generally consistent with the existing condition, with minor alterations proposed in site subwatershed boundaries in order to manage flows from the Project into Lowland area. The integration of LID features into the Project design would provide sustainable water quality and storm water management capabilities for the site.

- PDF 4.4-1** The Master Development Plan requires that two water quality basins (one in the Community Park and one in the Open Space Preserve) be constructed to treat off-site urban runoff from Costa Mesa and Newport Beach and Project runoff that drains into the Lowland area.
- PDF 4.4-2** The Master Development Plan includes a water quality basin and a diffuser basin located within the Open Space Preserve to provide for storm water control, energy dissipation, and natural water quality treatment.
- PDF 4.4-3** The Master Development Plan requires that public arterials and some selected collector roadways within the Project site be designed with "Green Street" and other Low Impact Development (LID) features, such as bioswales and bio-cells. Green Streets are designed to incorporate sustainable design elements such as narrower pavement widths, canopy street trees, traffic-calming features, and minimal use of street lighting. Landscaping along the street edges will be selectively used to treat storm water runoff from the streets and adjacent development areas.
- SC 4.4-1** All landscape materials and irrigation systems shall be maintained in accordance with the approved Landscape Plan. All landscaped areas shall be kept in a healthy and growing condition and shall receive regular maintenance. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- SC 4.4-2** The development shall be kept free of litter and graffiti. The owner or operator shall provide for removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks.
- SC 4.4-3** Prior to the issuance of grading permits, an SWPPP and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water

Resources Control Board (SWRCB), and made part of the construction program. This SWPPP shall detail measures and practices that would be in effect during construction to minimize the Project's impact on water quality and storm water runoff volumes.

SC 4.4-4 Prior to issuance of grading permits, the Project Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the project, subject to the approval of the Community Development Department, Building Division and Code and Water Quality Enforcement Division. The WQMP shall include appropriate BMPs to ensure project runoff is adequately treated.

SC 4.4-5 Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.

(2) Potential Impact: Local groundwater is not suitable for use as drinking water; therefore, there would be no Project impact to groundwater table due to drawdown.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.4-3 (set forth above) and PDF 4.4-6 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: Groundwater recharge does occur at the Project site and would decrease under Project conditions due to a reduction in pervious surface area. Infiltration BMPs would be incorporated into site design to ensure that site runoff continues to infiltrate to the maximum extent practicable. The Project site is not a designated recharge site for the City. Local groundwater is not suitable for use as drinking water because of mixing with tidal waters. Consequently, the Project's potable water needs would not impact local groundwater levels. Proper design of structural BMPs and LID features would ensure separation of the volumes of water to be treated and the underlying groundwater table, which would ensure no adverse impact to groundwater quality from treatment-control BMPs and LID features. Infiltration BMPs would treat most pollutants within the uppermost soil layers of the BMP facility, reducing pollutant transfer to the groundwater table. Temporary construction impacts associated with removal of oil pipelines in the Lowland would be reduced to a less than significant level with the incorporation of BMPs. PDF 4.4-3, the use of LID standards, and PDF 4.4-6, incorporation of BMPs, would ensure that Project impacts would be less than significant.

PDF 4.4-6 The Master Development Plan requires the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. These BMPs will be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan (WQMP), and Storm Water Pollution Prevention Plan (SWPPP).

(3) Potential Impact: Grading activities would increase the potential for soil erosion and sedimentation to affect water quality. Best Management Practices (BMPs) and Standard Conditions would minimize this impact both during construction and operation.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1 and 4.4-2 (set forth above), PDF 4.4-5 (set forth below) and SCs 4.4-3, 4.4-4, and 4.4-5 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: Sediment-control BMPs would be installed to intercept and filter out soil particles that may have been mobilized by flows during construction activities before these flows discharge into receiving waters. These controls may include installing check dams. These measures would also be placed around areas of soil-disturbing activities, such as grading or clearing, to retain sediments on site.

Compliance with the General Construction Permit and the Orange County Dewatering Permit, the latter if required, would minimize construction impacts from grading/excavation; material stockpiling and dewatering; construction and utilization of access and haul roads; and equipment staging, operation, and fueling. The Project would comply with the most current General Construction Permit and associated local NPDES regulations to ensure that the potential for construction-related erosion and adverse sedimentation effects are minimized through the identification and application of efficient sediment-control BMPs and construction site monitoring. These permits require development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), which would describe construction BMPs that address the measures and controls necessary to ensure that construction site effects on sedimentation and erosion are appropriately minimized and remain less than significant.

Therefore, the Project would not result in adverse erosion or sedimentation impacts on the Project site, in arroyo drainage channels, or to downstream receiving waters. PDFs 4.4-1, 4.4-2, and 4.4-5 and SCs 4.4-3, 4.4-4, and 4.4-5 would ensure that Project construction and operation would maintain flow velocities below erosion thresholds and reduce overall sediment delivery to downstream systems. PDF 4.4-1 requires water quality basins on the Project site to treat urban runoff originating from off-site properties. PDF 4.4-2 identifies that a portion of the Lowland would provide for water quality treatment and storm water detention. PDF 4.4-5 requires the Project's drainage plan to stabilize runoff to West Coast Highway and the Semeniuk Slough. SC 4.4-3 requires a SWPPP in compliance with the General Permit for Construction Activities and SC 4.4-4 requires a WQMP including required BMPs. Post-construction operations must include "good housekeeping" as required in the WQMP (SC 4.4-5).

PDF 4.4-5 The Master Development Plan requires development of a drainage plan to ensure that runoff systems from the Project site to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system.

(4) Potential Impact: Project-induced increases in impervious surfaces would result in an increase in peak flow runoff and runoff volumes from the site that could affect on-site or off-site flooding. Project drainage area modifications would be incorporated into a Runoff Management Plan to ensure that peak flow rates and volumes would not result in adverse flooding impacts to downstream systems.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, 4.4-4, 4.4-5, and 4.4-6 as well as SC 4.4-4 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: During site remediation, grading, and construction, soil would be exposed to wind and water erosion. The implementation of erosion and sedimentation BMPs would control flows on site and would ensure that impacts associated with construction would be properly managed (PDFs 4.4-1, 4.4-2, 4.4-3 and SCs 4.4-2, 4.4-3, 4.4-4, and 4.4-5) to protect water quality and beneficial uses of receiving waters at the Project site from both construction and operational impacts. LID and BMP features would ensure that runoff from the Project site complies with NPDES site discharge requirements for the protection of receiving water quality and beneficial uses. Water quality entering the Lowland area and Semeniuk Slough would not be adversely impacted once these controls are in place. Construction BMPs also contain measures to be implemented to control construction site runoff and storm water.

Site drainage patterns would largely remain the same upon Project completion; drainage would continue to flow from east to west across the site, through the existing arroyos and into either the Semeniuk Slough or the Lowland area. The Project's drainage area for Subwatershed A (in the Lowland) would be reduced by approximately 27 acres from the existing condition. While the proposed Project runoff potential is anticipated to be slightly higher in the Project watershed, the overall results show that this reduction in drainage area maintains flow volumes similar to the existing condition. This is achieved largely through the preservation of open space on the Project site. Modeling results of existing and proposed runoff volumes into the Lowland and USACE-restored salt marsh basin indicate that the combined basin capacity (Lowland and USACE-restored salt marsh basin) can store existing flood volumes up to the 25-year frequency in its current capacity. The proposed condition 25-year runoff volume would be less than the 345 acre-feet storage capacity of the combined USACE-restored salt marsh basin and Lowland area.

In the Upland, all on-site curbs, gutters, and storm drains would be designed in accordance with City standards, thereby minimizing potential impacts of on-site development area flooding. The Project would slightly alter the existing drainage patterns through minor modification in on-site subwatersheds. These minor alterations are consistent with an overall Project storm water management strategy that directs flows to areas that have additional capacity (the Lowland) and decreases flows to areas with minimal or constrained capacity (Semeniuk Slough). Increase in storm water runoff volume delivered to the Lowland area would be accommodated by the storage capacity of the existing Lowland and USACE-restored salt marsh

basin. Sheet flow runoff under the existing condition on the Project site would be replaced with storm drain systems to convey flows to the Lowland area, Semeniuk Slough, and the Caltrans storm drain.

(5) Potential Impact: The proposed Project's modifications in Project drainage patterns and Project drainage features would not exceed the capacity of storm water systems. The Project drainage features would reduce flow rates through the middle and lower sections of the Caltrans reinforced concrete box from existing conditions.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, and 4.4-3 and SCs 4.4-2 through 4.4-5 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: Project site drainage from Subwatershed A would discharge into the existing Caltrans' reinforced concrete box (RCB) storm drain in West Coast Highway. The Project's proposed drainage plan would modify Caltrans' existing storm drain to accommodate a new storm drain system from the Upland. Flow rates were modeled in order to determine the Project's effect on flow rates moving through the storm drain. These modeling results indicate that, overall, the storm drain would experience reduced flood loading compared with the existing condition. Therefore, impacts from the Project on the capacity of the Caltrans' storm drain are less than significant. PDFs 4.4-1 through 4.4-3 and SCs 4.4-2 through 4.4-5 are applicable.

(6) Potential Impact: Inundation of or impact to habitable structures on the Project site by flooding, seiche, mudflow, or tsunami is not expected.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant. No project design features, standard conditions, or mitigation measures were required or recommended.

Facts in Support of Finding: Improvements to the Santa Ana River implemented over recent years by the USACE in partnership with the Counties of Orange, Riverside, and San Bernardino include levee upgrades, improvements to Prado Dam, and construction of Seven Oaks Dam. These improvements protect surrounding residences and communities from the 100-year flood event. Project development is proposed for the Upland area, which is located above the Santa Ana River's 100-year floodplain. While flooding could affect the Lowland, no habitable structures are proposed in this area. There are no permanent standing water bodies in the Upland area and inundation by seiche or mudflow is not anticipated in the Upland area. Due to the Project's proximity to the coast, inundation by tsunami is possible, and the Lowland is located within the tsunami warning area designated in the City's General Plan. The development footprint remains out of the tsunami inundation area and the impacts from potential tsunami effects under a condition of future sea level rise are considered less than significant.

E. Hazards and Hazardous Materials

(1) Potential Impact: The disturbance of potential hazardous materials associated with past oil extraction activities and from demolition of existing structures located on site is a potential impact.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Hydrology and Water Quality PDF 4.4-6 (set forth above), and Hazards PDF 4.5-1, SC 4.5-1, and MM 4.5-1 (set forth below).

Facts in Support of Finding: The Project site is primarily impacted by petroleum hydrocarbons, specifically degraded and weathered crude oil, and that these impacts are generally confined to specific operating areas, including oil well locations, pipelines, tank farms, sumps, and roadways. The Project site also includes road materials made up of varying amounts of gravel, asphalt, crude oil, or crude oil tank sediments, and large amounts of concrete used in oilfield operations and facilities. Some areas of the site contain soils impacted by generally low concentrations of chemicals other than crude oil, such as volatile organic compounds (VOCs) and metals. None of the petroleum hydrocarbons or any other contaminants identified in soil and groundwater were found on the Project site at levels exceeding the hazardous waste criteria, as defined by federal and State regulations. These types of impacts are consistent with oilfields of this age and are similar to other oilfields that have been feasibly and effectively remediated for residential development. That said, the presence of these materials on the Project site has the potential to adversely affect the proposed land uses and persons residing on the Project site and, without appropriate remediation, would be considered a significant impact.

Environmental assessment and cleanup work of the oilfield is conducted under the regulatory oversight of the Regional Water Quality Control Board (RWQCB), Santa Ana Region and/or the Orange County Health Care Agency, Environmental Health Division (OCHCA). This existing oversight is expected to continue through field abandonment and remediation activity because both agencies have the most experience of any agencies with oilfield-to-development projects. It is expected that the RWQCB would continue to be the lead agency until the site receives closure.

All remediation activities, such as excavating pipelines, soil remediation, oil well abandonment and re-abandonment, would be conducted pursuant to State and local requirements. With the exception of the oil consolidation sites (which would remain), any contaminants would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these areas are safe for human exposure in the future. Contaminated material that cannot be efficiently remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements.

As a part of the EIR, a draft Remedial Action Plan (dRAP) was prepared and identifies areas of the property proposed for remediation. The dRAP outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria. In addition to targeted remediation, all development areas would be monitored, tested, and remediated by credentialed third-party experts during mass grading to ensure that nothing is overlooked and all soil impacts are mitigated. Remediation work would be completed and approved by the regulatory oversight agencies before any construction work is initiated in those areas.

The dRAP details the findings of both the Phase I and Phase II Environmental Site Assessment (ESA) which contain initial findings of contaminants on the Project site. It should be noted that, according to the Phase II EA, "at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e.,

concentration levels defined by State and federal guidelines)". Because the soils do not exceed hazardous waste criteria levels, all of the estimated 246,000 cy of remediated soil can be treated and used on site.

Mitigation Measure (MM) 4.5-1 requires the implementation of a comprehensive final Remedial Action Plan (RAP) for oilfield abandonment, clean-up, remediation, and consolidation. The final RAP must be submitted to and approved by RWQCB and/or the OCHCA. With implementation of the requirements of the approved final RAP, there would be less than significant impacts related to historic and ongoing oilfield operations on the Project site.

With respect to the abandonment of oil wells, the oilfield operations on the property are governed by regulations of the California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). The DOGGR has specific guidelines for the abandonment or re-abandonment (the latter as necessary) of oil wells. For oilfields that are abandoned for future development purposes, DOGGR has established a process called "Construction Site Review" that must be followed.

Additional oversight for air and vapor control would be provided by the South Coast Air Quality Management District (SCAQMD) and the Orange County Fire Authority (OCFA). All environmental testing is conducted by third-party consultants and analyzed and validated by State certified laboratories using chain of custody procedures to ensure the integrity of the results.

There is a potential for the presence of lead-based paint (LBP) and asbestos-containing materials (ACMs) in some of the structures and equipment on the Project site. SC 4.5-1 requires the handling and disposal of these substances, if identified, in accordance with applicable State regulations.

PDF 4.5-1 The Master Development Plan requires existing oil operations to be consolidated into two areas within the Open Space Preserve designated as "Interim Oil Facilities", in accordance with the land use districts established for the Project site in the Newport Banning Ranch Planned Community Development Plan, totaling approximately 17 acres including the service access road. This use will ultimately revert to an Open Space land use at the end of the oilfield's useful life.

SC 4.5-1 Prior to demolition, testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos-removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development.

All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited

to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community Development prior to issuance of the first grading permit.

MM 4.5-1

A comprehensive final Remedial Action Plan (final RAP) shall be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) 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. The Applicant shall follow the protocol for the OCHCA Industrial Cleanup Program to develop the site-specific final RAP. The final RAP shall use the draft Remedial Action Plan (dRAP) and the existing clean-up levels that have been in effect since 2001 as the basis of the final RAP consistent with OCHCA requirements. The final RAP shall (1) incorporate the remediation methods to be employed that are described in the dRAP; (2) propose the clean-up criteria for specific areas of the Project site depending upon the land uses for those areas; and (3) provide additional details such as the location of on-site areas for bioremediation. The final RAP shall also require compliance with Orange County Fire Authority Guideline C-03 Combustible Soil Gas Hazard Mitigation.

The clean up criteria shall be approved by the OCHCA as a part of final RAP subject to the review and approval of the RWQCB. The final RAP shall describe the means by which those clean-up standards shall be met per the remediation methods described in the dRAP. Methods described in the dRAP include the use of natural bio-remediation of soils on site; reuse and recycling of treated soils where and when feasible; and removal and recycling of materials such as concrete, gravel, and asphalt-like road materials.

Oil and gas wells to be abandoned or re-abandoned shall be done so in accordance with the current requirements of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). Documentation of final abandonment approval from the DOGGR shall be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division, before issuance of the first certificate of occupancy.

- (2) Potential Impact:** There would be a less than significant impact to the existing schools within ¼-mile of the Project site and/or from off-site haul routes during on-site remedial activities and proposed Project construction. There would be no impact to existing schools within ¼-mile of the Project site from proposed Project operations as continued oil operations are proposed to be limited to two

consolidated oil facilities located along the southwestern portion of the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.5-1 (set forth above) and SC 4.5-2 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach. However, when implemented, haul routes may be within ¼ mile of identified schools or other schools between the Project site and the disposal location, an accident or upset condition during handling and transport could result in the release of contaminated soils into the surrounding environment. As described in SC 4.5-2, any contaminated soils or other hazardous materials removed from the Project site shall be transported only by a Licensed Hazardous Waste Hauler in compliance with all applicable State and federal requirements. Hazardous materials are routinely transported through Southern California, in compliance with State and federal requirements, and accidents and/or releases are quite rare. There would be a less than significant impact related to transport of soils within ¼ mile of existing schools.

SC 4.5-2 Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials.

F. Biological Resources

(1) Potential Impact: The Project would have direct and indirect impacts on habitat and special status species associated with oilfield remediation, grading, construction, and long-term use of the Project site. Grading activities could impact several sensitive natural communities on the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-3, and MMs 4.6-1 through 4.6-16 (set forth below).

Facts in Support of Finding: Approximately 236.32 acres of native and non-native vegetation types and other areas would be impacted by the proposed Project. Permanent Project impacts (approximately 205.83 acres) would occur in areas of the proposed for parks, recreation, residences, the resort inn, commercial uses,

roadways; public trails; and utility infrastructure including the consolidated oil sites, access roads, landscape buffers, fuel modification areas, and water quality basins. Temporary Project impacts (approximately 30.49 acres) would occur in areas that are mapped as Open Space (i.e., existing oil operation roads, bluff repair, oilfield remediation, and the vernal pool interpretative areas). This includes approximately 22.17 acres from non-remediation activities and approximately 8.32 acres from remediation activities. These impacts are considered temporary because the areas would be restored as part of the Project.

Construction activities for oilfield remediation would result in the loss of approximately 38.70 acres of native habitat (coastal sage scrub, disturbed coastal sage scrub, grassland depression features, marshes and mudflats, riparian scrub/forest, disturbed riparian scrub/forest, and cliff) that provide valuable nesting, foraging, roosting, and denning opportunities for a wide variety of wildlife species. In addition, implementation of the proposed Project would result in the loss of approximately 197.62 acres of non-native habitat or non-habitat cover types (non-native grassland, non-native grassland/ruderal, ruderal, giant reed, ornamental, disturbed, and disturbed/developed) that provide lower-quality or no wildlife habitat. The Project would impact substantially more non-native/disturbed or non-habitat types (84 percent) compared to native habitat types (16 percent). However, some of these non-native habitats may provide nesting, foraging, roosting, and denning opportunities for some species.

Removing or altering habitats on the Project site would result in the loss of small mammals, reptiles, amphibians, and other slow-moving animals that live within the Project's direct impact area. More mobile wildlife species that are now using the Project site would be forced to move into the remaining areas of open space, which would consequently increase competition for available resources in those areas. This situation would result in the loss of individuals that cannot successfully compete.

Habitat. The Project would result in impacts to approximately 236.32 acres of non-native and native habitats that provide low to high value habitat for a suite of both common and special status species. Of the 236.32 acres impacted, approximately 97.49 acres contain ornamental, disturbed, and disturbed/developed areas that provide low value wildlife habitat. These impacts are considered adverse but not significant in terms of habitat loss for general wildlife species on a regional basis. The loss of wildlife habitat would not be expected to reduce wildlife populations below self-sustaining levels in the region.

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. 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.

Special Status Plants. Four special status plant species were observed during the surveys: southern tarplant (CNPS List 1B.1), southwestern spiny rush (CNPS List 4.2), California box-thorn (CNPS List 4.2), and woolly seablite (CNPS List 4.2).

Implementation of MM 4.6-7, which requires implementation of a southern tarplant restoration program, would reduce this impact to a less than significant level. The southwestern spiny rush and woolly seablite would be temporarily impacted during oilfield remediation activities and could be impacted. At this time, it is unknown whether all southwestern spiny rush and woolly seablite could be avoided during the remediation activities. All these species are CNPS List 4 species. CNPS List 4 species are "Plants of Limited Distribution – A Watch List", and impacts on these species are not typically considered significant by lead agencies. Project impacts are not expected to have a substantial adverse effect on these species, and no mitigation is required

San Diego Fairy Shrimp. San Diego fairy shrimp was observed on the Project site during surveys. The Project result in permanent impacts to 0.173 acre of habitat occupied by San Diego fairy shrimp and temporarily impact 0.06 acre of vernal pool habitat through pipelines removal activities. Combined permanent and temporary impacts to San Diego fairy shrimp habitat (0.24 acre) is considered significant because the loss of this resource would represent a substantial adverse effect to this species distribution in the region.

These impacts can be mitigated to a less than significant level through the development and implementation of a 3.58-acre vernal pool conservation/restoration area that supports the San Diego fairy shrimp (MM 4.6-3). The Project proposes to also set aside an additional 1.73-acre upland area north and west of the 1.85-acre vernal pool conservation area which would be used for future enhancement to expand the vernal pool conservation area to total 3.58 acres. Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat.

Birds. Potentially suitable foraging and/or nesting habitat for light-footed clapper rail, western snowy plover, Belding's savannah sparrow, and tricolored blackbird is present primarily in the salt and freshwater marsh areas on the Project site, and these species may occur. The Project site provides only potentially suitable foraging habitat for the long-billed curlew and large-billed savannah sparrow. Of these species with potential to occur, only the Belding's savannah sparrow may nest on the Project site. Permanent Project impacts on foraging and/or nesting habitat is expected to be limited, and the habitat for these species, except the tricolored blackbird, would remain as open space following oilfield remediation activities. MMs 4.6-4 and 4.6-8 would reduce the potential impact on these species to a less than significant level. These measures require the restoration and/or preservation of approximately 9.90 acres of marsh habitat either on site or immediately off site and avoidance measures during construction. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the marsh areas and associated wildlife species.

In total, 17 territories (16 pairs and 1 solitary male) of the federally listed Threatened coastal California gnatcatcher have been observed on the Project site (2009 surveys). Revegetation following oilfield remediation activities has the potential to result in higher long-term habitat quality (i.e., invasive species removed, human activity and disturbance related to oilfield operations removed, and larger blocks of contiguous native habitat) available for this species in the open space area. However, Project impacts on this species are significant because of the location and size of the impacted population. MMs 4.6-1 and 4.6-9 require the on-site or off-site

restoration of 47.75 acres of coastal sage scrub habitat at a ratio of 3:1 for coastal sage scrub (including disturbed southern coastal bluff scrub) and 1:1 for disturbed coastal sage scrub (excluding disturbed southern coastal bluff scrub). In addition, approximately 35.16 acres of coastal sage scrub or disturbed coastal sage scrub would be preserved on site. Mitigation includes the required approval from the USFWS to impact the species, and construction avoidance measures to minimize the impacts to the greatest extent practicable. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the coastal sage scrub and associated wildlife species, including, but not limited to the coastal California gnatcatcher.

Two coastal cactus wren territories were observed during 2009 focused surveys for coastal California gnatcatcher. The proposed Project would impact approximately 2.92 acres (2.59 acres permanent, 0.33 acre temporary) of southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub. Impacts on this species would be significant. MMs 4.6-1 and 4.6-10 require the restoration of coastal sage scrub dominated by native cactus species habitat at a ratio of no less than 1:1 and construction avoidance measures to minimize the impacts to the greatest extent practicable. In addition, approximately 35.16 acres of coastal sage scrub would be preserved on site (MM 4.6-1). PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the cacti-dominated coastal sage scrub and associated wildlife species, including, but not limited to the cactus wren.

Two least Bell's vireo territories (both solitary males) were observed during the 2009 focused surveys. The Project would impact approximately 2.74 acres (1.45 acres permanent, 1.29 acres temporary) of undisturbed and disturbed willow riparian scrub and willow riparian forest habitats. The permanent Project impacts on this species' habitat is expected to be limited, and most of the habitat for this species would remain as open space following oilfield remediation activities; these activities could temporarily impact riparian habitats used by this species. Revegetation following oilfield remediation activities would result in a higher long-term habitat quality. MMs 4.6-5 and 4.6-11 require the on-site or off-site restoration of riparian habitat at a ratio from 3:1 to 1:1 depending on the habitat value impacted. The Project also requires approval from the USFWS to impact the species and its habitat. In addition, the Project would preserve approximately 23.03 acres of riparian habitats. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 are applicable.

Suitable foraging and nesting habitat is present on the Project site for the burrowing owl; it is only expected to winter on the Project site. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and 2010. The Project would impact approximately 100.13 acres (97.26 acres permanent, 2.87 acres temporary) of grasslands and ruderal habitat on the Project site. Impacts on occupied and potential habitat for this species would be considered significant. MMs 4.6-2 and 4.6-12 require the restoration of grassland habitat at a ratio of 0.5:1 (approximately 50.07 acres). In addition, the Project would preserve approximately 20.27 acres of grassland areas and include construction avoidance measures to minimize grassland impacts to the greatest extent practicable. PDFs 4.6-1 through 4.6-4 are also applicable.

Suitable foraging habitat is present for a variety of raptor species including Cooper's hawk, sharp-shinned hawk, ferruginous hawk, northern harrier, white-tailed kite, merlin, prairie falcon, American peregrine falcon, and short-eared owl. There is foraging habitat for the osprey adjacent to the Project site within the USACE salt marsh restoration site and the Santa Ana River. The permanent loss of approximately 124.83 acres of foraging habitat for these raptor species would contribute to the ongoing regional and local loss of foraging habitat; this impact is significant. Revegetation following oilfield remediation activities would result in higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. PDFs 4.6-1 through 4.6-4 are also applicable.

Cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. The loss of any active raptor nest would be considered significant. Impacts on active raptor nests would be reduced to less than significant levels with implementation of MM 4.6-13, which provides for construction avoidance measures to minimize the impact to the greatest extent practicable. 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. Impacts 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.

Mammals. Suitable or potentially suitable foraging habitat is present for the pallid bat, hoary bat, western yellow bat, pocketed free-tailed bat, and big free-tailed bat. Hoary bat, pocketed free-tailed bat, and big free-tailed bat also have potential to roost on the Project site. The permanent loss of approximately 124.86 acres of foraging and roosting habitat for these bat species would contribute to the ongoing regional and local loss of foraging and roosting habitat; this impact is significant. Revegetation following oilfield remediation activities would result in a higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 (for approximately 119.56 acres of restoration). In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. PDFs 4.6-1 through 4.6-4 are also applicable.

Indirect Impacts. 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. Bluff Road 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 site for wildlife species. Short-term construction impacts to active least Bell's vireo nests are considered potentially significant. MM 4.6-11 would reduce this impact to a less than significant level.

Seeds from invasive species may escape to natural areas and degrade the native vegetation. Since the Project contains open space that includes high habitat value, this impact is significant. MM 4.6-14 requires monitoring in the oilfield remediation areas and prohibits invasive, exotic plant species to be planted within the areas adjacent to open space to reduce these impacts to less than significant.

Impacts on biological resources in the area could occur as a result of changes in water quality. Adverse water quality effects during construction or operation of the Project could (1) affect populations of insects, tadpoles, and other aquatic prey, which would affect food web interactions related to species that forage in aquatic or riparian areas or (2) cause adverse effects through biomagnification (i.e., the buildup of pesticides to toxic levels in higher trophic levels). The Project Design Features and Standard Conditions identified in Hydrology and Water Quality would preclude significant water quality impacts.

Lighting could inadvertently result in an indirect impact on the behavioral patterns of nocturnal and crepuscular (i.e., active at dawn and dusk) wildlife remaining in the lowland or adjacent areas such as in the USACE salt marsh restoration site or along the Santa Ana River. Wildlife present in these areas may already be somewhat acclimated to current lighting associated with traffic from the adjacent roadways. The Project would introduce new sources of ambient light on the Project site, which could affect small, ground-dwelling animals that use the darkness to hide from predators, owls, and other specialized night foragers and wildlife that primarily move at night. As a part of the Project, no permanent night lighting would be permitted within the Open Space Preserve with the exception of safety lighting in the two Oil Consolidation sites. A “dark sky” lighting concept will be implemented within most areas that adjoin habitat areas. PDF 4.6-4, the Project would restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

Human activity in the Lowland would be limited to the trails; however, the overall increase in human activity across the entire Project site could be potentially significant. MM 4.6-15 requires a fencing and signage plan. Development and park uses built adjacent to natural open space, particularly near the lowland, may create urban-wildlands interface issues. These urban-wildlands interface impacts are significant. MM 4.6-16 requires development and implementation of an urban-wildlands interface brochure and public education program to reduce this impact to a less than significant level.

During remediation and construction, the dust within the development footprint and adjacent areas is expected to increase. The removal of the roads and vehicular traffic associated with oilfield activities and subsequent revegetation of the Lowland with native habitat may result in an increased habitat value. This would be considered a potentially beneficial operational impact of the proposed Project.

As noted in PDF 4.6-1, 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. This would be a beneficial impact for GHG emissions.

PDF 4.6-1 The Master Development Plan designates a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas.

PDF 4.6-2 The Master Development Plan includes a Habitat Restoration Plan (HRP) for the Habitat Areas. The HRP includes provisions for the

preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project.

PDF 4.6-3 As identified in the Master Development Plan, the Habitat Areas to be restored as project design features will be subject to the same five-year Maintenance and Monitoring Program implemented for areas restored as mitigation. Standard Vegetation Monitoring Procedures are outlined in the Biological Technical Report prepared for the EIR and will be implemented consistent with applicable regulatory requirements.

PDF 4.6-4 The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

MM 4.6-1 ***Coastal Sage Scrub Habitat Preservation and Restoration.*** Permanent impacts on coastal sage scrub vegetation (including disturbed southern coastal bluff scrub) (12.32 acres) shall be mitigated at a 3:1 ratio (36.96 acres) on the Project site or off site (nearby) through the restoration of southern coastal bluff scrub and California sagebrush scrub. Permanent impacts on disturbed coastal sage scrub vegetation (excluding disturbed southern coastal bluff scrub) (8.21 acres) shall be mitigated at a 1:1 ratio (8.21 acres) elsewhere on the Project site or off site. In addition, temporary impacts (2.58 acres) to coastal sage scrub and disturbed coastal sage scrub vegetation types shall be mitigated by revegetation with locally occurring native coastal sage scrub species following remediation at a 1:1 ratio. The required restoration is summarized in Table A. In addition to restoration, the Project shall preserve 35.16 acres of coastal sage scrub on site. Coastal sage scrub restoration and preservation on site would total 82.91 acres.

**TABLE A
REQUIRED COASTAL SAGE SCRUB RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	12.32	3:1	36.96
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	8.21	1:1	8.21
Temporary Impact			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	1.92	1:1	1.92
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	0.66	1:1	0.66
Total	23.11		47.75

The Applicant shall be required to plan, implement, monitor, and maintain a coastal sage scrub revegetation program for the Project consistent with the most current technical standards/knowledge regarding coastal sage scrub restoration. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), a detailed restoration program shall be prepared by a qualified Biologist and approved by the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission). The program shall include, at a minimum, the items listed below.

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area or land shall be purchased/obtained immediately off site. Selected sites shall not result in the removal of a biologically valuable resource (i.e., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species planting. Locally occurring native plants and seeds shall be used and shall include species present on site, in adjacent areas, and uncommon species known to occur on site such as California box-thorn and woolly seablite.

4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the gnatcatcher breeding season (February 15 to July 15).
6. **Monitoring plan.** The coastal sage scrub monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects, wildlife monitoring); (c) performance criteria as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The site shall be monitored and maintained for five years to ensure successful sage scrub habitat establishment within the restored and created areas.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall begin coastal sage scrub restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit that allows for ground disturbance (e.g., grading permit). The Applicant shall be fully responsible for implementing the coastal sage scrub revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off).

The Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) program does not authorize Incidental Take resulting from the conversion of habitat occupied by coastal California gnatcatchers in Existing Use Areas. Therefore, the Applicant has elected to seek a Take Authorization through Section 7 of the FESA. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide, a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) to the City that authorizes the removal of coastal sage scrub (i.e., coastal California gnatcatcher habitat). It is anticipated that the USFWS Biological Opinion will contain conservation recommendations to avoid or reduce the Project impact. Although any additional conservation measures identified by the USFWS shall be enforced, at a minimum, the

Construction Minimization Measures listed below also shall be followed.

1. Prior to the commencement of clearing operations or other activities involving significant soil disturbance, all areas of coastal sage scrub habitat to be avoided shall be identified with temporary fencing or other markers that are clearly visible to construction personnel.
2. A USFWS-approved Biological Monitor shall be on site during any clearing of coastal sage scrub. The Applicant shall advise the USFWS at least 7 calendar days—but preferably 14 calendar days—prior to the clearing of coastal sage scrub. The Biological Monitor shall flush avian or other mobile species from habitat areas immediately prior to brush-clearing and earth-moving activities. It shall be the responsibility of the Monitoring Biologist to ensure that identified bird species are not directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities to continue on a timely basis.
3. Following the completion of initial clearing activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other clearly visible, appropriate markers. No construction access, parking, or equipment storage shall be permitted within such marked areas.

The combined restoration and preservation of 82.91 acres of coastal sage scrub would result in a net increase in habitat by 24.64 acres.

MM 4.6-2

Grassland Habitat Preservation and Restoration. Permanent impacts on non-native grassland and ruderal vegetation (100.13 acres) shall be mitigated at a 0.7:1 ratio through on-site or off-site restoration and preservation. These permanent impacts to non-native grassland and ruderal vegetation shall be mitigated by the restoration of 48.63 acres (0.5:1) of grassland and alkali meadow within both the upland and lowland portions of the Project site as summarized in Table B and may include native grassland areas within Fuel Modification Zone C. Temporary impacts (2.87 acres) shall be mitigated by native grassland or alkali meadow revegetation following remediation at a 0.5:1 ratio (1.44 acres). An additional 20.27 acres of grassland habitat shall be preserved on site. The grassland restoration and preservation would total 70.34 acres.

**TABLE B
REQUIRED GRASSLAND RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Non-Native Grassland and Ruderal	97.26	0.5:1	48.63
Temporary Impact			
Non-Native Grassland and Ruderal	2.87	0.5:1	1.44
Total	100.13		50.07

The Applicant shall begin grassland restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be required to plan, implement, monitor, and maintain a native grassland preservation/restoration program for the Project. A grassland preservation/ restoration program shall be (1) developed by a qualified Biologist; (2) submitted for review and approval to the City of Newport Beach (City) prior to the first permit that would allow for site disturbance (e.g., grading permit); and (3) shall be implemented by a qualified Biologist. The grassland mitigation plan shall also provide mitigation for the loss of raptor foraging and burrowing owl habitat; therefore, site selection measures shall include considerations that influence the site’s suitability for burrowing owl and other raptor species. Restoration shall consist of seeding with appropriate needlegrass species and, if appropriate, incorporating seeds collected from special status plant species (southern tarplant) that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the Applicant, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and a qualified Biologist knowledgeable about native grassland restoration, raptors, and the burrowing owl. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be purchased/obtained. The mitigation shall occur entirely in one to two locations to provide the maximum habitat value for the raptors, burrowing owls, and other wildlife species that require contiguous blocks of open habitat types. The site(s) shall consist of level or gently sloping terrain, soil types, and microhabitat conditions suitable

for occupation by raptors and burrowing owl, as determined by a qualified Biologist.

3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. If mammal burrows are limited on the mitigation site(s), the qualified Biologist shall recommend creation of artificial burrows suitable for occupation by the burrowing owl. The burrows shall be constructed using standard specifications established for the owl. Depending on the topography of the site(s) and the availability of natural perches, the qualified Biologist shall make recommendations regarding whether additional perching sites (e.g., large rocks) shall be placed on the mitigation site(s).
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the burrowing owl/raptor breeding season (February 1 to August 31).
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The grassland mitigation site shall be monitored and maintained for five years to ensure successful establishment of native grassland habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for burrowing owl, particularly that they occur in grasslands with openings or lower vegetation coverage; thus, the performance criteria shall include a requirement for openings or a lower percent cover for portions of the mitigation site.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual grassland mitigation plan to ensure the mitigation site is not impacted by future development.

The Project would result in the restoration of 50.07 acres of native grassland and alkali meadow and preservation of 20.27 acres of

non-native grassland areas, for a total of 70.34 acres. Because the value of habitat to be replaced (native grassland and alkali meadow) is higher than those habitat values impacted by the Project, a less than 1:1 mitigation ratio is deemed adequate to compensate for the loss of non-native grassland areas.

MM 4.6-3 ***Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration. Grassland Depression Feature Habitat Preservation and Restoration.***

The proposed Project is designed to protect the two areas previously described as vernal pools that are occupied by San Diego fairy shrimp. The proposed Project would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Because oilfield pipelines are located on top of the soil surface in the pooled areas, their removal would be conducted with the minimum possible soil disturbance and would occur outside the rainy season to reduce direct impacts to this species. However, pipe removal activities would disrupt the soils within the vernal pools in which the San Diego fairy shrimp has been observed and which potentially contain fairy shrimp cysts. Therefore, these pipe removal activities would be considered a potentially significant temporary impact. This impact would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed.

During Project grading, a small area of the surrounding upland portion of the watershed would be impacted, but the Project proposes to replace this portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area. Remediation, restoration and permanent protection of the two pools and protection of its watershed would ensure that Project impacts to these two pools are less than significant. In addition, the Project has identified an additional 1.73 acres of upland area, adjacent to the 1.85-acre area, which would be available for future vernal pool creation, restoration, and/or enhancement. If this additional area is restored, a total vernal pool conservation area of 3.58 acres would be provided by the Project (Table C).

**TABLE C
REQUIRED VERNAL POOL PRESERVATION/RESTORATION**

Feature	Temporary Impact	Permanent Impact	Total Impact	VP1, VP2, and Upland Watershed Preservation	Upland Area Vernal Pool Enhancement Area	Total Preservation/Enhancement Areas
VP1	0.06	0.00	0.06			
VP2	0.00	0.00	0.00			
Feature AD3	0.00	0.007	0.007			
Total for VP1, VP2, and AD3	0.06	0.007	0.067	1.85		
Features E and G (oilfield sumps)	0	0.053	0.053			
Features I and J (grasslands)	0	0.12	0.12			
Total for E, G, I, and J		0.173	0.173		1.73	
Total San Diego Fairy Shrimp Habitat Impacts			0.24			3.58

Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat created as mitigation for Features E, G, I, and J, which support the San Diego fairy shrimp.

Restoration of the pool areas, by removing mule fat and non-native species, would restore the pools to characteristic vernal pool habitat, as vernal pools do not typically support woody vegetation such as mule fat. The restoration program would also provide increased wildlife habitat function for migratory birds that use the pools as a migration stopover, and the increased watershed area would be planted with native alkali meadow or native upland grasses favorable for raptor foraging and would be “counted” toward the approximately 50 acres of grassland habitat.

Impacts to San Diego fairy shrimp detected in Features E and G, which are to be remediated as part of the oilfield clean up and remediation, shall be mitigated by testing the soils, and if the soils are not contaminated to the degree requiring environmental remediation, they shall be removed and relocated to the vernal pool conservation area at a ratio of 1:1. Soils shall also be removed and relocated within features I and J.¹ All mitigation shall occur within the 1.73 acres that have been set aside along with the 1.85-acre conservation area to provide a 3.58-acre vernal pool conservation area.

¹ The final ratio would be determined in consultation with USFWS and would be based on the character of the features known to be occupied. Features such as E and G, which are oilfield sumps would require a lower mitigation ratio than less disturbed pools I and J.

The Applicant shall be required to plan, implement, monitor, and maintain a vernal pool preservation/restoration program for the Project. A vernal pool program shall be developed by a qualified Biologist and shall be submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission) prior to the first action and/or permit which would allow for site disturbance (e.g., issuance of a grading permit). The Applicant shall begin the vernal pool restoration activities (e.g., soil preparation) no later than one year after issuance of the first grading permit. Restoration shall consist of seeding/planting with appropriate vernal pool species and, if appropriate, incorporate seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall be located on the Project site in a dedicated open space area. The mitigation areas shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** Planting shall occur by a qualified Biologist who is monitoring on site rainfall to minimize impacts to existing fairy shrimp.
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting.
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to

ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the vernal pool revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off. The site shall be monitored and maintained for five years to ensure successful establishment of vernal pool habitat within the restored and created areas.

The preservation of the vernal pool habitat and the expansion of the watershed habitat will result in a net increase in habitat occupied by the San Diego fairy shrimp on the site that would also exhibit higher levels of function for the fairy shrimp.

MM 4.6-4

Marsh Habitat Preservation and Restoration. The Project would impact 2.45 acres (0.10 permanent/2.35 temporary) of marshes. Permanent impacts to marshes shall be restored at a replacement ratio of 3:1, totaling 0.30 acre (Table D). Temporary impacts associated with oilfield remediation shall be mitigated at a 1:1 ratio² (totaling 2.35 acres). In addition, 7.25 acres shall be preserved on site, for a total of 9.90 acres of restoration and preservation.

**TABLE D
REQUIRED MARSH/MEADOW/OPEN WATER
HABITAT RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Marsh/Meadow/Open Water	0.10	3:1	0.30
Temporary Impact			
Marsh/Meadow/Open Water	2.35	1:1	2.35
Total	2.45		2.65

The Applicant shall be required to plan, implement, monitor, and maintain a marsh/meadow preservation/restoration program for the Project. A marsh/meadow preservation/restoration program shall be developed by a qualified Biologist, and submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the first action and/or permit that would allow for site disturbance (e.g., grading

² It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

permit). The Applicant shall begin marsh habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit allowing ground disturbance (e.g., grading permit). The marsh/meadow preservation/restoration program shall also mitigate for the potential loss of light-footed clapper rail, western snowy plover, and Belding's savannah sparrow habitat; therefore, site selection measures shall include considerations that influence the site's suitability for these species. Restoration shall consist of seeding with appropriate marsh/meadow species and, if appropriate, incorporation of seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the items listed below.

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** The site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. Locally occurring, native plants and seeds shall be used and shall include species present on site and in adjacent areas, and shall also include uncommon species known to occur on site such as southwestern spiny rush.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the

resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.

7. **Long-term preservation.** Long-term site preservation shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the marsh and mudflat restoration program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful restoration of marsh and mudflat habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow. For example, the light-footed clapper rail requires areas with tidal influence and prefers using cordgrass to build their nests; the western snowy plover nests on bare ground in areas of little to no vegetation coverage; and the Belding's savannah sparrow uses the upper portions of the marsh dominated by pickleweed. Thus, performance criteria shall be tailored to fit different portions of the mitigation site intended for each species.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

- MM 4.6-5** **Jurisdictional Resources/Riparian Habitat Preservation and Restoration.** The Applicant is in the process of obtaining permits/agreements/certifications from the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission that are required for direct or indirect impacts on areas within these agencies' jurisdictions. The Applicant shall be obligated to implement/comply with the mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. Jurisdictional areas shall be restored on the Project site or immediately off site at a minimum replacement ratio of 3:1 for permanent impacts and 1:1 for temporary impacts to ensure no net loss of habitat.³ The

³ It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

jurisdictions of the USACE, CDFG, and California Coastal Commission are not additive areas, as many of the riparian areas on the Project site may be within the jurisdiction of several of these agencies. Therefore, the permits and associated jurisdictional replacement requirements would identify which mitigation areas apply to the corresponding jurisdictions.

Permanent impacts on willow scrub and willow riparian forest (1.42 acres) shall be mitigated at a 3:1 ratio (4.26 acres) on the Project site through restoration of willow habitat. Permanent impacts on all other riparian vegetation types and all temporary impacts to riparian vegetation types (11.51 acres) shall be mitigated at a 1:1 ratio (11.51 acres) on the Project site. In total, as compensation for permanent and temporary impacts to 12.93 acres of riparian habitat, the Project would create 15.77 acres of riparian habitat. In addition, the Project shall preserve 23.03 acres of riparian habitats, for a total of 38.80 acres of restoration and preservation. Details of the restoration required are summarized below in Table E.

**TABLE E
REQUIRED RIPARIAN RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Willow Scrub/Willow Riparian Forest	1.42	3:1	4.26
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.03	1:1	0.03
Mule Fat Scrub	0.47	1:1	0.47
Disturbed Mule Fat Scrub ^a	4.95	1:1	4.95
Temporary Impact			
Willow Scrub/Willow Riparian Forest	0.59	1:1	0.59
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.70	1:1	0.70
Mule Fat Scrub	0.20	1:1	0.20
Disturbed Mule Fat Scrub ^a	4.57	1:1	4.57
Total	12.93		15.77
^a Includes disturbed mule fat scrub, disturbed mule fat scrub/ruderal, and disturbed mule fat scrub/goldenbush scrub.			

Prior to the first permit that would allow for site disturbance, a detailed restoration program shall be prepared for approval by the City of Newport Beach (City) and the resource agencies (i.e., the USACE, the CDFG, the RWQCB, and the California Coastal Commission). The program shall include, at a minimum, the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies (i.e., the USFWS, the CDFG, the RWQCB, and the California Coastal Commission). The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the least Bell's vireo breeding season (March 15 to September 15).
6. **Monitoring plan.** The riparian vegetation/jurisdictional resources monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within marked areas.

The Applicant shall begin riparian habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of

the first grading permit. The Applicant shall be fully responsible for the implementation of the riparian revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful establishment of riparian habitat within the restored and created areas, and the performance criteria shall take least Bell's vireo habitat requirements into consideration. For example, the presence of a shrubby understory is important for this species; thus, performance criteria shall include a requirement for structural complexity.

The Applicant is seeking a Take Authorization through Section 7 of the Federal Endangered Species Act for impacts to habitat for the least Bell's vireo. Prior to issuance of the first action and/or permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide to the City of Newport Beach a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) authorizing the removal of jurisdictional resources (i.e., potential least Bell's vireo habitat). It is anticipated that the USFWS Biological Opinion would contain conservation recommendations to avoid or reduce the Project's impact. Although additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below shall be followed.

1. Activities involving the removal of riparian habitat shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15) unless otherwise directed by the USFWS and the CDFG.
2. Vegetation-clearing activities shall be monitored by a qualified Biologist. The Biological Monitor shall ensure that only the amount of riparian habitat approved during the consultation process shall be removed. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.
3. The use of any large construction equipment during site grading shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to September 15), unless otherwise directed by the USFWS and the CDFG. Construction may be allowed within 500 feet of an active nest if appropriate noise measures are implemented, as approved by the resource agencies.
4. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at specified monitoring locations near active nest(s), as determined by the Biological Monitor. This shall be verified by weekly noise monitoring conducted by a qualified Acoustical Engineer during the breeding season

(March 15 to September 15) or as otherwise determined by a qualified Biological Monitor based on vireo nesting activity.

5. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFG following completion of construction.

MM 4.6-6

Migratory Bird Treaty Act. No vegetation removal shall occur between February 15 and September 15 unless a qualified Biologist, approved by the City of Newport Beach (City), surveys the Project's impact area prior to disturbance to confirm the absence of active nests. If an active nest is discovered, disturbance within a particular buffer shall be prohibited until nesting is complete; the buffer distance shall be determined by the Biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions. Limits of avoidance shall be demarcated with flagging or fencing. The Biologist shall record the results of the recommended protective measures described above and shall submit a memo summarizing any nest avoidance measures to the City to document compliance with applicable State and federal laws pertaining to the protection of native birds.

To protect bird species on site, any front glass railings, screen walls, fences and gates that occur adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.

MM 4.6-7

Special Status Plant Species. The Applicant shall be required to plan, implement, monitor, and maintain a southern tarplant restoration program for the Project consistent with the most current technical standards/knowledge regarding southern tarplant restoration. Prior to the first action and/or permit that would allow for site disturbance (e.g., a grading permit), a qualified Biologist shall prepare a detailed southern tarplant restoration program that would focus on (1) avoiding impacts to the southern tarplant to the extent possible through Project planning; (2) minimizing impacts; (3) rectifying impacts through the repair, rehabilitation, or

restoration of the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the Project; and (5) compensating for impacts by replacing or providing substitute resources or environments. The program shall be reviewed and approved by the City of Newport Beach (City) prior to site disturbance.

Impacts on southern tarplant shall be mitigated by seed collection and re-establishment. The seeds shall be collected and then placed into a suitable mitigation area in the undeveloped or restored portion of the Project site or at an approved adjacent off-site location. The southern tarplant restoration program shall have the requirements listed below.

1. Seed ripeness shall be monitored every two weeks by a qualified Biologist and/or a qualified Seed Collector at the existing southern tarplant locations to determine when the seeds are ready for collection. A qualified Seed Collector shall collect all the seeds from the plants to be impacted when the seeds are ripe. The seeds shall be cleaned and stored by a qualified nursery or institution with appropriate storage facilities.
2. The mitigation site shall be located in dedicated open space on the Project site or at an adjacent off-site mitigation site. The mitigation site shall be prepared for seeding as described in a conceptual restoration plan.
3. The topsoil shall be collected from areas with limited amounts of weeds from the impacted population and re-spread in the selected location, as approved by the qualified Biologist. Approximately 60 to 80 percent of the collected seeds shall be spread in the fall following soil preparation and seed preparation. The remainder of the seeds shall be kept in storage for subsequent seeding, if necessary.
4. The qualified Biologist shall have the full authority to suspend any operation at the site which is, in the qualified Biologist's opinion, not consistent with the restoration program. Any disputes regarding consistency with the restoration program shall be resolved by the Applicant, the qualified Biologist, and the City.

MM 4.6-8

Light-footed Clapper Rail, Western Snowy Plover, Belding's Savannah Sparrow. Due to temporary impacts to marsh habitat in the lowland by oilfield remediation activities, a focused survey shall be conducted for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site. If any of these species are observed, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the initiation of grading or any activity that involves the removal/disturbance of

marsh habitat, including clearing, grubbing, mowing, disking, trenching, grading, or any other construction-related activity on the Project site. If any of these species would be impacted, mitigation for impacts on these species shall include replacement of marsh habitat as described in MM 4.6-4. In addition, the measures listed below shall be implemented.

1. Marsh vegetation shall be removed after September 15 and before March 1.
2. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required.
3. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding's savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat. In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).
4. The limits of disturbance during oilfield cleanup shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

MM 4.6-9 **California Gnatcatcher.** Prior to initiation of grading or any activity that involves the removal/disturbance of coastal sage scrub habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain a Biological Opinion from the U.S. Fish and Wildlife Service to authorize incidental take. Mitigation for impacts on the California gnatcatcher shall include restoration and preservation of 82.91 acres of coastal sage scrub habitat and implementation of the Construction Minimization Measures listed in MM 4.6-1.

MM 4.6-10 **Coastal Cactus Wren.** Impacts on southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub shall be avoided to the maximum extent practicable. If it is determined by the City of Newport Beach (City) during the final grading plan check that impacts on cactus habitat cannot be avoided, the

coastal sage scrub mitigation plan shall incorporate cactus into the planting palette at no less than a 1:1 ratio for impacted cactus areas. The Applicant shall submit the coastal sage scrub mitigation plan to the City to verify that an appropriate amount of cactus has been incorporated into the plan. Mitigation for impacts on the coastal cactus wren shall include replacement of coastal sage scrub habitat and implementation of the Construction Minimization Measures described in MM 4.6-1.

MM 4.6-11 ***Least Bell's Vireo.*** Prior to initiation of grading or any activity that involves the removal/disturbance of riparian habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission). Mitigation for impacts on the least Bell's vireo shall include (1) replacement of riparian and upland scrub and riparian forest habitat and the Construction Minimization Measures described in MM 4.6-5; (2) protection of nests and nesting birds as described in MM 4.6-6; and (3) any additional provisions imposed by the permitting agencies.

MM 4.6-12 ***Burrowing Owl.*** Impacts on known burrowing owl burrows and surrounding non-native grasslands shall be avoided to the maximum extent practicable, as determined by a qualified Biologist in coordination with the City of Newport Beach (City). If impacts on grassland habitat occupied by burrowing owl cannot be avoided, mitigation for impacts on the burrowing owl shall include restoration of native grassland habitat, as described in MM 4.6-2.

Within 30 days prior to any ground-disturbing activity to suitable burrowing owl habitat, a focused pre-construction survey shall be conducted to determine the presence or absence of the burrowing owl on the Project site. If the species is not observed, no further mitigation shall be necessary. Results of the survey shall be provided to the California Department of Fish and Game (CDFG).

If an active burrow is observed during the non-nesting season, a qualified Biologist shall monitor the nest site; when the owl is away from the nest, the Biologist shall exclude the owl from the burrow and then remove the burrow so the owl cannot return.

If an active burrowing owl burrow is observed during the nesting season, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. Peak nesting activity for burrowing owl normally occurs from April to July. To protect the active burrow, the following restrictions to construction activities shall be required until the burrow is no longer active (as determined by a qualified Biologist): (1) clearing limits shall be established within a 300-foot buffer around any active burrow, unless otherwise determined by a qualified Biologist and (2) access and surveying shall be

prohibited within 200 feet of any active burrow, unless otherwise determined by a qualified Biologist. Any encroachment into the buffer area around the active burrow shall only be allowed if the Biologist determines that the proposed activity shall not disturb the nest occupants. Construction can proceed when the qualified Biologist has determined that fledglings have left the nest burrow.

- MM 4.6-13** **Raptor Nesting.** To the maximum extent practicable, habitats that provide potential nest sites for raptors shall be removed from July 1 through January 31. If Project construction activities are initiated during the raptor nesting season (February 1 to June 30), a qualified Biologist shall conduct a nesting raptor survey. Seven days prior to the onset of construction activities, a qualified Biologist shall survey within the limits of the Project disturbance area for the presence of any active raptor nests (common or special status). Any nest found during survey efforts shall be mapped on the construction plans. If no active nests are found, no further mitigation would be required, and survey results shall be provided to the California Department of Fish and Game (CDFG).

If nesting activity is present, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. To protect any nest site, the following restrictions on construction are required between February 1 and June 30 (or until nests are no longer active, as determined by a qualified Biologist): (1) clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest and (2) access and surveying shall be prohibited within 200 feet of any occupied nest. Any encroachment into the 300- and/or 200-foot buffer area(s) around the known nest shall only be allowed if a qualified Biologist determines that the proposed activity shall not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified Biologist has determined that fledglings have left the nest.

- MM 4.6-14** **Invasive Exotic Plant Species.** A qualified Biologist shall monitor any oilfield remediation activities that involve disturbance of native habitat but that would not include removal of the habitat in its entirety. During vegetation removal for remediation activities, the Biological Monitor shall direct the construction crew to remove invasive plant species, including but not limited to pampas grass and giant reed. The Biologist shall also direct the crew on any additional measures that may be needed to eradicate these species, such as removal of roots, painting cut stems with Round-up or other approved herbicide, or follow-up applications of herbicide.

The Applicant shall submit Landscape Plans to the City of Newport Beach (City) for review and approval by a qualified Biologist. The review shall ensure that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided. When the process is

complete, the qualified Biologist shall submit a memo approving the Landscape Plans to the City.

MM 4.6-15 ***Human Activity.*** Prior to issuance of a grading permit, the Applicant shall submit a fencing plan to the City of Newport Beach (City) for review to demonstrate that access to the open space within the lowland shall be limited to designated access points that link to existing trails. To best protect habitat from human activity, fence rails shall be placed along the boardwalk trails. Signs shall be posted along the fence indicating that habitat within the lowland is sensitive because it supports Endangered species. The signage shall also provide information on biological resources within the lowland (e.g., coastal sage scrub, marsh, riparian habitats, and special status species). In addition, signage shall require that dogs be leashed in parks, along trails, and in any areas adjacent to open space.

MM 4.6-16 ***Urban Wildlands Interface.*** To educate residents of the responsibilities associated with living at the wildland interface, the Applicant shall develop a wildland interface brochure. The brochure shall be included as part of the purchase/rental/lease agreements for the Project residents. The brochure shall address relevant issues, including the role of natural predators in the wildlands (e.g., coyotes' predation of pets) and how to minimize impacts of humans and domestic pets on native communities and their inhabitants (e.g., outdoor cats' predation of native birds, lizards, and small mammals). The brochure shall also address invasive species that shall be avoided in landscaping consistent with MM 4.6-14.

(2) Potential Impact: Grading activities could impact several sensitive natural communities on the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-4 and MMs 4.6-1, 4.6-3, 4.6-4, and 4.6-5 (set forth above).

Facts in Support of Finding: The Project would impact approximately 14.18 acres (12.26 acres permanent, 1.92 acres temporary) of special status coastal sage scrub vegetation. Impacts on these coastal sage scrub vegetation types are considered significant because (1) the loss of these vegetation types in the Project region would be considered a substantial adverse effect on the coastal sage scrub community and (2) impacts to these areas would reduce the habitat for the coastal California gnatcatcher and other wildlife species. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 require habitat restoration of permanent impacts to coastal sage scrub (including southern coastal bluff scrub) at a 3:1 ratio and disturbed coastal sage scrub (excluding southern coastal bluff scrub) at a 1:1 ratio either on site or off site. In addition, all temporarily impacted coastal sage scrub would be restored at a 1:1 ratio. In total, 47.75 acres of coastal sage scrub restoration and an additional 35.16 acres of coastal sage scrub would be preserved. MM 4.6-1 also requires the Applicant to follow Construction Minimization Measures TO provide conservation and avoidance actions to reduce the adverse impact to the habitat and associated wildlife species. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat

restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

The Project would significantly impact approximately 14.44 acres of special status riparian habitats (6.62 acres permanent, 7.82 acres temporary). MMs 4.6-4 and 4.6-5 and PDFs 4.6-1 through 4.6-4 require the restoration and preservation of 48.70 acres of riparian habitat as well as habitat restoration/preservation and indirect effect minimization measures.

The Project is designed to protect the two vernal pool areas that are occupied by San Diego fairy shrimp. The would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Pipe removal activities would be a significant temporary impact that would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed. The Project would replace a portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area (MM 4.6-3). PDFs 4.6-1 through 4.6-4 are also applicable.

(3) Potential Impact: Grading and oil remediation activities could impact jurisdictional areas as follows (some jurisdictional areas overlap): USACE—0.32 acre permanent/3.93 acre temporary; CDFG—1.87 acres permanent/0.05 acre temporary; California Coastal Commission—2.47 acres permanent/6.48 acres temporary.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features (PDFs) 4.6-1 through 4.6-4 and Mitigation Measures (MMs) 4.6-3 through 4.6-5.

Facts in Support of Finding: Implementation of MMs 4.6-3, 4.6-4, and 4.6-5, and PDFs 4.6-1 through 4.6-4 would reduce impacts on jurisdictional resources to less than significant levels through habitat restoration and preservation (totaling approximately 52.28 acres). PDFs 4.6-1 through 4.6-4 also require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

(4) Potential Impact: The permanent loss of open space would reduce wildlife movement corridor habitat available for species.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.6-1 through 4.6-5 (set forth above).

Facts in Support of Finding: The Project site is adjacent or proximate to the Talbert Marsh, the Santa Ana River, the USACE salt marsh restoration site, and Talbert Park, as well as extensive urbanization in the Project vicinity. Wildlife movement opportunities between the Project site and large areas of open space in the region are already constrained by extensive urbanization in the Project vicinity, security fencing around the Project site, and ongoing use of the Project site as an operating

oilfield. The Project would permanently reduce the size of coastal open space (existing operating oilfield) by approximately 205.83 acres. Following oilfield remediation activities within the Upland and Lowland, large contiguous areas would be revegetated and remain contiguous with the USACE salt marsh restoration site, the Santa Ana River, and the Talbert Marsh. The revegetation following oilfield remediation activities would result in a higher-quality habitat resulting from invasive species removal; removal of human activity and disturbance related to oilfield operations; and availability of larger blocks of contiguous native habitat in the open space area. With implementation of MMs 4.6-1 through 4.6-5, this impact would be reduced to a less than significant level.

G. Population, Housing, and Employment

(1) Potential Impact: While the Project would result in population growth in the area through the construction of new residences and employment opportunities, the Project would not exceed the growth currently projected for the Project site or exceed regional projections. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 (set forth below) are applicable to the Project.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.7-1 and SC 4.7-2. No mitigation measures were required or recommended.

Facts in Support of Finding: The Project's population, housing, and employment growth are within the overall Orange County Projections (OCP-2006) for Orange County and Regional Statistical Area (RSA) F-39. The Project is expected to directly generate 3,012 residents, which would account for approximately 34 percent of the projected growth in the City by 2025 and approximately 27 percent by 2035. The General Plan Housing Element identifies several areas for future housing opportunities including the Project site.

The Project would provide new jobs associated with the neighborhood commercial and resort inn uses. It is assumed that the housing demand generated by these new jobs would be met by (1) existing units in the City; (2) projected future units in the City; (3) proposed on-site units, including affordable housing; and (4) units located elsewhere in Orange County and the larger SCAG region. Given the mobility of workers within the SCAG region, it is not possible to accurately estimate the housing demand jobs would generate in other parts of the region.

The expected employment generation from the Project would represent approximately 25 percent of the employment generation in the City by 2035; it is expected that the demand for new housing generated from Project employees (422 jobs) could be accommodated by the projected housing growth. Therefore the potential growth associated with Project-generated jobs (construction and operation) would not be significant. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 are applicable to the Project.

PDF 4.7-1 The Master Development Plan includes a range of housing types to meet the housing needs of a variety of economic segments of the community to be designed to appeal to different age groups and lifestyles.

- SC 4.7-1** An Affordable Housing Implementation Plan (AHIP) is required that specifies how the development will meet the City's affordable housing goal.

H. Recreation and Trails

(1) Potential Impact: The Project would increase the demand for park and recreational facilities. The Project includes approximately 51.4 gross acres of parkland, including 21.8 gross acres for a public Community Park, as well as trails through the Project site that connect to the regional trail system. The physical impacts of implementing park and recreational facilities, including the pedestrian and bicycle bridge, are evaluated as part of the overall Project.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth below).

Facts in Support of Finding: The City's Park Dedication Ordinance would require 15.06 acres of park or the payment of in-lieu fees; the City's General Plan requires a 20- to 30-acre community park on the Newport Banning Ranch property, although the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements. The General Plan requires that sufficient acreage be available on the Newport Banning Ranch property to comply with the General Plan. The Project would exceed local Quimby Act and General Plan parkland requirements by providing approximately 51 acres of parkland, including a Community Park, consistent with the General Plan. In addition to parkland, the Project includes multi-use trails for pedestrians and bicyclists, on-street bike lanes, and the bridge over West Coast Highway.

- PDF 4.8-1** The Master Development Plan and Tentative Tract Map provide for approximately 51 gross (42 net) acres of public parkland in the form of an approximately 27 gross acre (22 net acre) public Community Park, 2 bluff parks comprising approximately 21 gross (18 net) acres, and 3 interpretive parks containing approximately 4 gross (3 net) acres. Of the approximately 27 gross acres for the public Community Park, approximately 22 gross (18 net) acres will be offered for dedication to the City which exceeds the City's Municipal Code requirement for park dedication for the 1,375 unit Project, which is approximately 15 acres.
- PDF 4.8-2** The Master Development Plan provides a system of bicycle, pedestrian, and interpretive trails within the developed areas and the Upland and Lowland Open Space areas of the Project.
- PDF 4.8-3** If permitted by all applicable agencies, a pedestrian and bicycle bridge over West Coast Highway will be provided, as set forth in the Master Development Plan, from the Project site to a location south of West Coast Highway to encourage walking and bicycling to and from the beach.
- SC 4.8-1** The Applicant shall comply with the City of Newport Beach Park Dedication and Fees Ordinance (*City of Newport Beach Municipal Code* Chapter 19.52). The City's tentative map review authority

shall determine whether land dedication, an in lieu fee, or a combination of the two shall be required in conjunction with its approval of a tentative map. Land dedications shall be offered at the time of appropriate final map recordation, either on the final map or by separate instrument. The City may further clarify improvement and phasing requirements in a Development Agreement.

(2) Potential Impact: The Project would increase the demand for park and recreational facilities; however, since the new recreational facilities provided by the Project exceed City standards, it would prevent the overuse of existing local recreational facilities.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth above) and MM 4.10-10.

Facts in Support of Finding: The Project would increase the demand for park and recreational facilities; however, the Project includes approximately 51.4 gross (42.1 net) acres of parkland, as well as off-street multi-use trails, on-street bike trails, and a pedestrian and bicycle bridge over West Coast Highway to serve Project residents and the surrounding community (PDFs 4.8-1, 4.8-2, and 4.8-3). Air Quality MM 4.10-10, requires the provision of bicycle spaces as a part of the Project. These recreational facilities provided by the Project would prevent the overuse of existing local recreational facilities. With regard to beaches, trails, and other regional recreational facilities, these facilities are designed to meet the needs associated with countywide projected growth. The Project is consistent with the City's General Plan land use designation for the Project site; therefore, no impact would occur.

MM 4.10-10 Bicycle Facilities. Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.
- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.

- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

I. Transportation and Circulation

- (1) Potential Impact:** The Project would generate traffic that would significantly impact intersections in the cities of Newport Beach and Costa Mesa. The traffic impact analysis identifies significant impacts at one intersection in the City of Newport Beach and up to seven intersections in the City of Costa Mesa.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. PDFs 4.9-1 through 4.9-3, SCs 4.9-2 and 4.9-3, and MM s 4.9-1 and 4.9-2 are applicable. However, Finding 2 identifies that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency”. The City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, traffic improvements that would require the approval of the City of Costa Mesa or Caltrans are considered significant, unavoidable impacts. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: No traffic, other than that associated with limited oilfield operations, is currently generated on or from the Project site. As shown below, multiple traffic scenarios were evaluated. At buildout, the Project is estimated to generate 14,989 trips per day, with 906 trips in the AM peak hour (251 inbound and 655 outbound trips) and 1,430 trips in the PM peak hour (866 inbound and 564 outbound trips). The following summarizes the significant intersection impacts by traffic scenario. Unless mentioned, the Project’s traffic impacts are less than significant and mitigation is not required:

Existing Plus Project – The Project is forecasted to significantly impact three intersections in Costa Mesa.

Year 2016 With Project Traffic Phasing Ordinance (TPO) Analysis – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa.

Year 2016 With Phase 1 Project TPO Analysis – The Project would significantly impact one intersection in Newport Beach and two intersections in Costa Mesa.

Year 2016 Cumulative With Project – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa. Of the intersections in Costa Mesa, one is a State Highway intersection.

2016 Cumulative With Phase 1 Project– The Project would significantly impact to two intersections in Costa Mesa.

General Plan Buildout – The Project would significantly impact to two intersections in Costa Mesa.

The Project's Mitigation Program consists of several measures, including road improvements that would be provided by contributions to the applicable jurisdiction's capital improvement program and funded through fees and/or other methods of financing. Where the Project causes a significant traffic-related impact, the Applicant would be responsible for the required mitigation. Where the Project contributes to a significant impact to an intersection, the Applicant would be required to participate in the funding of improvements at the significantly impacted intersection on a fair-share basis. Funds generated by the fair share traffic impact fees are deposited into the City of Newport Beach's Circulation and Transportation Fund account and are used only to construct circulation system improvements identified in the General Plan Circulation Element. It is also important to recognize that the City's Fair Share Fee Ordinance allows for the dedication of right-of-way or the construction of appropriate arterial improvements in lieu of the payment of the fees. Proposed improvements located outside the City of Newport Beach's jurisdiction require agreements with the affected jurisdictions regarding the timing, cost, and fair-share responsibility of the improvements.

The City of Newport Beach cannot impose mitigation on or mandate the implementation of mitigation in another jurisdiction. The Applicant has reached an agreement with the City of Costa Mesa for the payment of fees associated with impacts occurring in Costa Mesa. In correspondence from the City of Costa Mesa to the Applicant dated November 21, 2011, the City of Costa Mesa identifies that both parties have agreed to a mitigation plan that requires the payment of \$4,388,483 to the City of Costa Mesa. Payments would be made by the Applicant to the City of Costa Mesa prior to the issuance of the (1) 301st residential building permit; (2) 601st residential building permit; (3) 901st residential building permit; and (4) 1,201st residential building permit. However, the City of Newport Beach cannot ensure that improvements would be made concurrent with or preceding the identified intersection impact in the City of Costa Mesa. Therefore, for purposes of CEQA, the impacts to be mitigated by the improvements would remain significant and unavoidable.

PDF 4.9-1 In addition to mitigating traffic impacts of the Project, the transportation improvements included in the Master Development Plan provide arterial highway capacity needed to address existing demand as well as for planned growth in the region through implementing portions of the City's General Plan and the County's Master Plan of Arterial Highways.

PDF 4.9-2 The Development Agreement requires that arterial roadway improvements and contributions toward off-site improvements be provided earlier in the development phasing program than needed to mitigate Project traffic impacts and requires that contributions toward off-site improvements be provided early relative to the development phasing.

PDF 4.9-3 The Master Development Plan includes a new arterial connection between West Coast Highway and 19th Street that will provide enhanced access to and from southwest Costa Mesa which will contribute to the mitigation of the impacts of projected regional growth.

SC 4.9-2 In compliance with Municipal Code Chapter 15.38, Fair Share Traffic Contribution Ordinance, the Applicant shall be responsible

for the payment of fair share traffic fees or right-of-way dedication or traffic improvements or a combination thereof.

SC 4.9-3 **Traffic Management Plan.** Prior to issuance of any grading permit, the Applicant shall prepare for City of Newport Beach Traffic Engineer review and approval a Construction Area Traffic Management Plan for the Project for the issuance of a Haul Route Permit. The Plan shall be designed by a registered Traffic Engineer. The Traffic Management Plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The Plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the Project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions.

The Applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the City of Newport Beach Traffic Engineer. Haul operations shall be monitored by the City of Newport Beach Public Works Department, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. No construction vehicles shall be allowed to stage on off-site roads during the grading and construction period.

MM 4.9-1 Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

MM 4.9-2 Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The

payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

TABLE A
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS

Location	Improvement	Scenario in which Improvements are Needed/Project's Percentage of Fair Share Improvements					
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
9 Newport Blvd/West Coast Hwy	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.	n/a	X (45.1%)	X (9.8%)	n/a	n/a	n/a

n/a: Mitigation measure is not required under this traffic scenario.
Source: Kimley-Horn 2011.

TABLE B
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 9: Newport Boulevard/West Coast Highway					
Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.93	E	0.88	D
2016 TPO, Phase 1	AM	0.91	E	0.86	D
2016 Cumulative	AM	0.96	E	0.91	E
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

n/a: not applicable for the traffic scenario.
Source: Kimley-Horn 2011.

**TABLE C
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
28	<p>Monrovia Ave/ 19th St</p> <p>Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	n/a	X	n/a	X	n/a	n/a
34	<p>Newport Blvd/ 19th St</p> <p>Provide a second southbound left-turn on Newport Boulevard. Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.</p>	n/a	X	n/a	X	n/a	X
36	<p>Newport Blvd/ Harbor Blvd</p> <p>Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.</p>	X	X	X	X	X	X
37	<p>Newport Blvd/ 18th St (Rochester St)</p> <p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p>	X	X	X	X	X	n/a
42	<p>Pomona Ave/ 17th St</p> <p>Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	n/a	X	n/a	X	n/a	n/a

**TABLE C (Continued)
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
43	Superior Ave/ 17 th St Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation. Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.	X	X	n/a	X	n/a	n/a
44	Newport Blvd/ 17 th St Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. Note: The proposed improvement in anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.	n/a	X	n/a	X	n/a	n/a
n/a: Mitigation measure is not required under this traffic scenario. Source: Kimley-Horn 2011.							

TABLE D
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 28: Monrovia Avenue/19th Street					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	36.4	E	0.60	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	39.2	E	0.61	B
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 34: Newport Boulevard/19th Street					
Assumes the addition of a second southbound left-turn lane on Newport Boulevard.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.91	E	0.85	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	0.91	E	0.85	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	AM	1.01	F	0.99	E
Intersection 36: Newport Boulevard/Harbor Boulevard					
Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.					
Existing + Project	PM	1.05	F	0.87	D
2016 TPO	PM	1.14	F	1.01	F
2016 TPO, Phase 1	PM	1.07	F	0.90	D
2016 Cumulative	PM	1.15	F	0.95	E
2016 Cumulative, Phase 1	PM	1.07	F	0.90	D
General Plan Buildout	PM	1.12	F	0.92	E
Intersection 37: Newport Boulevard/18th Street (Rochester Street)					
Assumes the southbound right-turn lane is converted to a southbound shared through/right lane on Newport Blvd.					
Existing + Project	PM	1.05	F	0.88	D
2016 TPO	PM	1.15	F	0.97	E
2016 TPO, Phase 1	PM	1.09	F	0.91	E
2016 Cumulative	PM	1.16	F	0.98	E
2016 Cumulative, Phase 1	PM	1.09	F	0.91	E
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 42: Pomona Avenue/17th Street					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	46.3	E	0.54	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	53.3	E	0.56	A
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

TABLE D
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 43: Superior Avenue/17th Street					
Assumes the westbound approach is converted to provide one left, one shared/left, one through, and one dedicated right-turn lane.					
Existing + Project	PM	0.91	F	0.81	D
2016 TPO	PM	0.98	E	0.87	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.98	E	0.88	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 44: Newport Boulevard/17th Street					
Assumes fourth southbound through lane and one dedicated northbound right-turn lane					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	0.91	E	0.88	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.92	E	0.89	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
n/a: not applicable to the traffic scenario					
Source: Kimley-Horn 2011.					

(2) Potential Impact: Implementation of the proposed Project would not increase traffic hazards due to design features or incompatible land uses and would not result in any significant impacts related to circulation or access. The Project would not significantly impact any emergency response evacuation plans.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SC 4.9-1 (set forth below), SC 4.9-3 (set forth above), and MMs 4.9-3 and 4.9-4 (set forth below).

Facts in Support of Finding: Because the property is an active oilfield, there are no public roads through the site. The Project would construct Bluff Road and North Bluff Road through the site, connecting West Coast Highway to 19th Street, as depicted in the *City of Newport Beach General Plan's* Circulation Element and the Orange County MPAH. Bluff Road would be constructed as a four-lane divided road from West Coast Highway to 15th Street. North Bluff Road would be constructed as a four-lane divided road from Bluff Road to the limits of the development area north of 17th Street and a two-lane road northward to 19th Street. These roadways would intersect with existing local streets to allow for the circulation of Project traffic to/from the Project site and regional traffic through the Project site. Project roads would be designed to be appropriately consistent with the City's Design Criteria, Standard Special Provisions, and Standard Drawings. To facilitate the movement of construction traffic and to minimize potential disruptions, standard conditions and mitigation, would be applicable to the proposed Project. No significant impacts are anticipated.

- SC 4.9-1** Sight distance at all intersections shall comply with City of Newport Beach standards.
- MM 4.9-3** Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments.
- MM 4.9-4** Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the accessway meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.

(3) Potential Impact: The Project includes regulations that require adequate parking for new uses in the Project. The extension of 15th Street consistent with the General Plan would displace parking at an existing office building.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.9-5 (set forth below).

Facts in Support of Finding: Parking is proposed to meet the City's parking requirements as well as the Coastal Commission's requirement for visitor-serving coastal access parking. All local streets would be public and many would allow for on-street parking; parking would not be permitted on arterials. Any modifications to the off-street parking requirements, including the use of off-site parking facilities, joint-use parking, and/or reductions in the required number of off-street parking spaces for any and all land uses, are permitted pursuant to the provisions of Municipal Code Chapter 20.

The extension of 15th Street onto the Project site would displace approximately 25 parking spaces associated with the office building along Monrovia Avenue. MM 4.9-5 requires the Applicant to provide replacement parking for the 25 displaced parking spaces associated with the existing office building in a parking lot in the proposed Community Park site. Replacement spaces would be provided concurrent to or preceding the loss of off-site parking.

- MM 4.9-5** Prior to the displacement of any private parking spaces associated with improvements to 15th Street, the Applicant shall be responsible for the construction of replacement parking on the Project site within the Community Park site or in a location immediately proximate to the existing parking lot.

J. Air Quality

(1) Potential Impact: With respect to potential conflicts with the applicable South Coast Air Quality Management District's (SCAQMD) Air Quality Management Plan (AQMP), the AQMP provides controls sufficient to attain the national and state ozone and particulate standards based on the long-range growth projections for the region. The Project does

not exceed the assumptions in the AQMP. Therefore, the Project is in conformance with the AQMP.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no Project Design Features, standard conditions of approval, or mitigation measures were required or recommended.

Facts in Support of Finding: The AQMP is based on growth projections agreed to the five affected counties and SCAG. If the total population accommodated by a new project, together with the existing population and the projected population from all other planned projects in the subarea, does not exceed the growth projections for that subarea incorporated in the most recently adopted AQMP, the completed project is consistent with the AQMP. The entire County of Orange is considered to be one subarea. The AQMP is region-wide and accounts for, and offsets, cumulative increases in emissions that are the result of anticipated growth throughout the region. The AQMP assumptions for mobile source emissions are based on assumed trip generation and trip distances, which are, in turn, based upon existing uses and general plans. The assumptions in the AQMP are consistent with the General Plan. The proposed Project does not propose development that exceeds the quantities in the General Plan; therefore, the Project does not exceed the assumptions in the AQMP. Because implementation of the proposed Newport Banning Ranch Project would not exceed growth projections for the subarea, the Project is considered consistent with the AQMP.

(2) Potential Impact: Construction emissions would exceed the South Coast Air Quality Management District (SCAQMD) regional threshold for nitrogen oxide (NO_x) in some of the years of construction. Emissions of all other criteria pollutants and NO_x emissions in 2018 and 2020 through 2023 would not exceed the SCAQMD CEQA significance thresholds. The exceedance of the NO_x threshold would occur when remediation in one area of the site would occur concurrently with grading in an area where remediation was completed or not required. Thus, the exceedance would not be continuous for the entire year but limited to periods when the two activities using multiple pieces of heavy equipment would overlap. Localized concentrations of carbon monoxide (CO) concentrations, NO₂, and particulate matter (PM₁₀ and PM_{2.5}) due to construction activities would not exceed regional thresholds.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SCs 4.10-1 and 4.10-2, and MMs 4.10-1 through 4.10-9 (set forth below).

Facts in Support of Finding: Construction emissions were calculated using CalEEMod. Compliance with SCAQMD Rules is required; therefore, it is assumed that construction would be performed in accordance with Rule 403, Fugitive Dust, and Rule 1113, Architectural Coatings (SC 4.10-1 and SC 4.10-2, respectively). To reduce NO_x emissions, MMs 4.10-1 through 4.10-4 are incorporated into the Project. MM 4.10-1 requires the use of advanced design diesel-engine driven construction equipment with Tier 3 and Tier 4 certification. MMs 4.10-2 through 4.10-4 are measures commonly recommended by the SCAQMD as good practice on large construction projects for NO_x emissions reduction; these measures principally require efficient operations of construction equipment and construction traffic.

Emissions reductions with Tier 3 and Tier 4 equipment can be estimated with the CalEEMod model.

Although unmitigated construction emissions would not exceed the CEQA significance thresholds for pollutants other than NOx, MMs 4.10-5 through 4.10-7 provide additional emissions reductions; these measures require dust control, street sweeping, and early road paving to minimize fugitive dust, PM10, and PM2.5 emissions. MMs 4.10-8 and 4.10-9 provide notices to nearby residents of planned grading work and a complaint resolution process.

- SC 4.10-1** **Dust Control.** During construction of the proposed Project, the Project Developer shall require all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
- a. **Clearing and grubbing:** Apply water in sufficient quantity to prevent generation of dust plumes.
 - b. **Cut and fill:** Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
 - c. **Earth-moving activities:** Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
 - d. **Importing/exporting of bulk materials:** Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.
 - e. **Stockpiles/bulk material handling:** Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top⁴ to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.
 - f. **Traffic areas for construction activities:** Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes.

⁴ Refers to a road to the top of the pile.

Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The Project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:

- Be employed by or contracted with the Property Owner or Developer;
- Be on the site or available on site within 30 minutes during working hours;
- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

SC 4.10-2 ***Architectural Coatings.*** Architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. This requirement shall be included as notes on the contractor specifications.

MM 4.10-1 ***Off-road Construction Equipment Engines.*** Prior to issuance of a grading permit, the Applicant/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:

- a. Prior to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 3 off-road emissions standards.
- b. After January 1, 2015: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 4 off-road emissions standards, where available.
- c. A copy of each unit's certified Tier specification shall be provided at the time of mobilization of each applicable unit of equipment.

MM 4.10-2 ***Construction Site Design and Operation.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures or provide information and data that demonstrates that implementation would not be feasible:

- a. Electricity shall come from power poles rather than diesel- or gasoline-fueled generators, compressors, or similar equipment;

- b. Construction parking shall be configured to minimize traffic interference;
- c. Construction trucks shall be routed away from congested streets and sensitive receptors;
- d. Construction activities that affect traffic flow on the arterial system shall be scheduled to off-peak hours to the extent practicable;
- e. Temporary traffic controls, such as a flag person(s), shall be provided where necessary to maintain smooth traffic flow; and
- f. Dedicated turn lanes for movement of construction equipment on- and off-site and signal synchronization shall be provided as necessary to maintain smooth traffic flow.

MM 4.10-3 **Construction Equipment Operation.** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:

- a. All construction equipment shall be tuned and maintained in accordance with the manufacturer's specifications;
- b. Diesel truck idling time shall be five minutes or less, both on- and off-site; and
- c. Work crews shall shut off diesel equipment when not in use.

MM 4.10-4 **Construction Ridesharing and Transit Incentives.** Prior to issuance of a grading permit, the Landowner/Master Developer shall provide copies of construction documents to the City of Newport Beach showing that these documents include a statement that the construction contractors shall support and encourage ridesharing and transit incentives for the construction crews.

MM 4.10-5 **Fugitive Dust – Supplementary Measures.** Prior to issuance of each grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents and grading plans include the following:

- a. The contractor shall suspend grading operations when wind gusts exceed 15 miles per hour;
- b. The contractor shall take measures (such as additional watering or the application of chemical suppressants) to stabilize disturbed areas and stockpiles prior to non-work days if windy conditions are forecasted for a weekend, holiday, or other day when site work is not planned.
- c. The contractor shall re-apply water as necessary during grading and earth-moving to ensure that visible emissions do not extend to residences or schools.

- MM 4.10-6** ***Paving of Bluff Road.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction plans and schedule require the construction and paving of Bluff Road between West Coast Highway and 15th Street as early as feasible in order to minimize dust generation by vehicles using the roadway.
- MM 4.10-7** ***Fugitive Dust – Street Sweeping.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to sweep paved roads within and adjacent to the Project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.
- MM 4.10-8** ***Notification of Receptors.*** The Landowner/Master Developer shall distribute a notice to all residents, schools, and other facilities within 100 feet of the Project site that states the following or similar “the environmental analysis identifies a potential for excess dust pollution for short periods during heavy grading. Extra measures shall be taken to prevent the dust from leaving the Project site, but persons should be aware of the potential for pollution”. This notice may be combined with the notice described in MM 4.10-9.
- MM 4.10-9** ***Construction Complaint Resolution.*** The Landowner/Master Developer shall appoint a person as a contact for complaints relative to construction impacts to the adjacent neighborhoods. A contact telephone number and email address shall be posted on signs at the construction site and shall be provided by mail to all residents within 500 feet of the Project site. Upon receipt of a complaint, the designated contact person shall investigate the complaint and shall develop corrective action, if needed. The designated contact person shall respond to the complainant within two working days to describe the results of the investigation, and submit a report of the complaint and action taken to the City of Newport Beach. The designated contact person shall maintain a log of all complaints and resolutions.

(3) Potential Impact: Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial Project occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile organic compounds (VOC) and CO would exceed the significance thresholds, principally due to vehicle operations. The impacts would be significant and unavoidable even with implementation of the PDFs, compliance with Standard Conditions, and implementation of identified mitigation measures.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-

2 (set forth below), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5 (set forth below); SC 4.11-1 (set forth below); and MMs 4.10-10 through 4.10-12 (set forth below), this impact cannot be mitigated to a less than significant level. Other than the No Development Alternative, there are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Operational emissions would begin as residences are occupied (anticipated to commence in 2015). Between 2015 and the anticipated completion (2023), the occupancy and use of residences, retail uses, and other Project components would continue to increase. Over the same period, vehicle emission factors for most gaseous pollutants are anticipated to decline with improved vehicle fleet emissions. Operational emissions of all criteria pollutants in 2017 and 2020 would be less than the SCAQMD CEQA significance thresholds. In 2023, calculated regional emissions of VOC, NOx, and CO resulting from Project operation would exceed the SCAQMD CEQA significance thresholds. The emissions of SOx, PM10, and PM2.5 would not exceed the thresholds. Vehicle operations would be the principal source of pollutant emissions, with consumer products as a secondary contributor to the total VOC emissions.

- PDF 4.10-1** The Master Development Plan provides for commercial uses, in the Mixed-Use/Residential and Visitor-Serving Resort/Residential Land Use Districts, within walking distance of the proposed residential neighborhoods and nearby residential areas to reduce vehicle trips and vehicle miles traveled.
- PDF 4.10-2** The Master Development Plan provides a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails.
- PDF 4.11-1** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.
- PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.
- PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will

provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.

PDF 4.11-4 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:

- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
- b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
- c. Air conditioning units will be Freon-free.
- d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
- e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
- f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
- g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

PDF 4.11-5 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:

- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.

SC 4.11-1 Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.⁵

MM 4.10-10 ***Bicycle Facilities.*** Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.
- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.
- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

MM 4.10-11 ***Conservation Education – Mobile Sources.*** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on mobile source emission reduction techniques (such as use of alternative modes of transportation and zero- or low-emission vehicles) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow. The homeowners associations shall provide an annual report of conservation educational materials distributed to homeowners to the City of Newport Beach.

MM 4.10-12 ***Conservation Education – Consumer Products.*** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on the positive benefits of using consumer products with low or no-volatile

⁵ Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

organic compounds (VOCs) (such as paint thinners and solvents) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow.

(4) Potential Impact: Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: Because the maximum traffic volumes would be substantially less than the 31,600 vehicles per hour screening level, congested intersections are located where mixing of air would not be limited, and because vehicle mix would not be extraordinary, there would be no potential for a CO hotspot or exceedance of State or federal CO ambient air quality standard. The impact would be less than significant and no mitigation measures are required.

(5) Potential Impact: The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations of O₃ would be cumulatively considerable.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-2 through 4.11-4 (set forth above); SC 4.11-1 (set forth above); and MMs 4.10-10 through 4.10-12 (set forth above), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: The Project region is in nonattainment for ozone (O₃), NO₂, PM₁₀, and PM_{2.5}. After 2020, implementation of the Project could result in long-term emissions of the O₃ precursor VOC and short-term emissions of the O₃ precursor NO_x, which would exceed the SCAQMD mass emissions thresholds for those pollutants. Long-term NO_x emissions would not exceed the threshold but are forecasted to be just less than the threshold. Therefore, the Project would cumulatively contribute to a regional concentrations of O₃ which is a significant, unavoidable impact. PDFs 4.8-3, 4.10-1, 4.10-2, 4.11-2, 4.11-3, and 4.11-4 are applicable. PDF 4.8-3 requires a bridge over West Coast Highway that, if approved, would further reduce VMT. SC 4.11-1 requires construction in accordance with the 2008 Title 24 standards. In order to reduce long-term operational emissions, MM 4.10-10, MM 4.10-11, and MM 4.10-12 would be implemented.

(6) Potential Impact: Health risk associated with Toxic Air Contaminants to both off-site and on-site receptors found the cancer risk, the cancer burden, the chronic hazard risk and the acute hazard risk are all below the SCAQMD thresholds

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no mitigation measures, project design features, or standard conditions of approval were required or recommended.

Facts in Support of Finding: The oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

As a part of the EIR, a human health risk assessment (HHRA) was conducted to determine potential exposure to Toxic Air Contaminants (TACs) emitted from future oilfield operations and from the combination of emissions from the oilfield and the proposed residential and commercial development. TACs are a diverse group of air pollutants that include both organic and inorganic chemical substances that may be emitted from a variety of sources including industrial operations. TACs are different from the “criteria” pollutants in that ambient air quality standards have not been established for TACs.⁶ TACs occurring at extremely low levels may still cause adverse health effects, and it is typically difficult to identify levels of exposure that do not produce adverse health effects. TAC impacts are described by carcinogenic risk, and chronic and acute adverse effects on human health.

The HHRA compared annual TAC emissions to SCAQMD Risk Assessment Procedures Tier 1 thresholds and, where TAC emissions exceed Tier 1 thresholds, a Tier 4 refined air dispersion modeling analysis was conducted to determine TAC exposure concentrations at residential, commercial, and park receptors.⁷ An emissions screening level HHRA was performed using the TAC emissions inventories from the consolidation of oil operations and the proposed residential and commercial operations. The Tier 1 HHRA was performed in accordance with SCAQMD air toxics risk assessment procedures for Rules 1401 and 212.

In accordance with the SCAQMD procedures, where the Tier 1 analysis indicated that TAC emissions exceeded the Tier 1 thresholds, then operational risks were modeled using the USEPA AERMOD dispersion model. Three scenarios were modeled: (1) Baseline Conditions; (2) Proposed Project Conditions (future TAC concentrations at the property’s fence line receptors); and (3) Future Oilfield Impact on Development Area (exposure concentration on the Project’s residential and commercial areas).

TAC emissions that are anticipated to contribute significantly to cancer/chronic or acute risk are included in the risk assessment calculations using CARB’s Hotspots Analysis Reporting Program (HARP). As required by the HARP protocol, the chronic air toxic modeling for fence line, residential, and commercial receptors is conducted for a 70-year period assuming that a person is located at each receptor grid 24 hours per day, 365 days per year for 70 years. The chronic modeling for receptors in

⁶ An exception is that there are ambient standards for lead and vinyl chloride because the CARB classified these pollutants as TACs after they were identified as criteria pollutants.

⁷ SCAQMD risk assessment procedures are defined in tiers. The tiers are designed to be used in order of increasing complexity. If compliance cannot be demonstrated using one tier, the analyst may proceed to an appropriate higher tier.

recreational areas assumes that the maximum exposure time would be 8 hours per day, 245 days per year. The acute air toxic modeling is conducted for the peak one-hour exposure.

The potential impact to existing off-site receptors was calculated by subtracting the baseline risk from the future risks anticipated to occur after completion of the proposed Project's consolidated oilfield, residential, and commercial areas. Incremental chronic cancer risks and non-cancer hazards reflect the increase or decrease of potential exposures under the future conditions relative to the existing baseline. Because there are no on-site residential, commercial, or recreational uses, the baseline risk is zero, and the total risk from the consolidated oilfield to future on-site represents the incremental risk at these locations.

The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. SCAQMD procedures require that when the maximum individual cancer risk (MICR) is greater than one in one million, the cancer burden is calculated. The USEPA SCREEN3 model was used to determine the area of analysis (the area where the cancer risk would be one in one million or greater). The peak cancer risk for the consolidated oilfield on proposed residential and commercial areas was assumed to apply to the entire population within a radius area defined by the distance at which the cancer risk dropped below one in one million.

The Tier 1 analysis was performed for two cases: (1) Net emissions increase (i.e., future conditions minus the baseline) from the consolidated oilfield and the proposed residential, commercial, and hotel development to off-site receptors 100 meters from the Project fence line and (2) emissions from the future consolidated oilfield to receptors within the Project site (the baseline for this case is zero). Because the Tier 1 analysis indicated that at least one applicable screening index is projected to be greater than 1.0 for each scenario, a Tier 4 analysis was performed.

The HHRA Tier 4 analysis was performed using the AERMOD and HARP models. The scenarios considered were similar to those used for the Tier 1 analysis with the following parameters: (1) for the impact from the Project and oilfield emissions to off-site receptors, the receptors were located at the property boundary (fence line). The exposure time for these receptors (HARP protocol) is assumed to be 24 hours per day, 350 days per year, for 70 years; and (2) for the impact from the oilfield emissions to on-site receptors, separate analyses were made for residential and commercial receptors and for recreational areas. The exposure time for the residential and commercial receptors is assumed to be 24 hours per day, 350 days per year, for 70 years; the exposure time for recreation area receptors is 8 hours per day, 245 days per year, for 70 years. The Tier 4 analysis indicates that for all scenarios, the Maximum Incremental Cancer Risk (MICR) would be less than 10 in 1 million and the chronic non-cancer and acute hazard indices would be less than 1.0. None of the TAC impact indicators would exceed SCAQMD significance thresholds.

The proposed oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the existing receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

Although all calculated MICR values are less than the 10 in 1 million SCAQMD threshold, SCAQMD procedures require that when the MICR is greater than one in one million, the cancer burden is calculated. The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. The USEPA SCREEN3 model was used to determine the area of analysis, which is the area where the cancer risk would be one in one million or greater. Drawing a rough boundary around the outer edge of the entire Project site (not just the 20-acre consolidated oilfields) captured 19 census tracts in the Cities of Newport Beach, Costa Mesa, and Huntington Beach. These census tracts have a combined population of approximately 86,000. Assuming that everyone in these tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5. The HHRA used very conservative assumptions. Therefore, no significant impacts are anticipated and no mitigation measures were required or recommended.

(7) Potential Impact: Odors may be perceived from both construction and long-term operations, but these odors would be typical for the land use and operations. Odors from the oilfields are not anticipated to be perceptible at nearby developed sites.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.10-13 (set forth below).

Facts in Support of Finding: Field observation at the existing oilfield operations did not detect objectionable odors between 50 and 100 feet from oilfield machinery. Future residences, parks, and other areas where substantial groups of people would gather would be 200 feet or further from the oilfields. Although no odor impacts area anticipated, MM 4.10-13 would provide a mechanism for future homeowners to register odor complaints.

MM 4.10-13 Odor Complaints. The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

K. Greenhouse Gas Emissions

(1) Potential Impact: The Project would make a cumulatively considerable contribution to the global greenhouse gas (GHG) inventory.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5; SC 4.11-1; and MMs 4.11-1 through 4.11-6 (set forth below), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation

measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: The total annual estimated GHG emissions for the proposed Project are 19,392 million metric tons of carbon dioxide equivalent (MMTCO₂e). The Project would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory and would have a cumulatively significant impact on global climate change.

Temporary impacts would result from Project construction activities. GHGs would be emitted by off-road and on-road construction equipment and worker vehicles including remediation, consolidation, and construction activities. The total construction GHG emissions are estimated at 16,851 MTCO₂e. Operational GHG emissions include mobile sources and operational activities. Reductions would be associated with vehicular reductions that would result from the mixed use, neighborhood walkability, and increased density designs; energy design that would exceed Title 24 requirements; and water conservation design for indoor and outdoor use. These measures would result in an estimated reduction in forecasted buildout annual operational GHG emissions of approximately 25 percent: from 25,359 to 18,949 MTCO₂e/yr.

The proposed Project is anticipated to include the planting of approximately 9,000 trees inclusive of private residential areas, parks, parkways, and medians. The Project would improve the sequestration capacity of the project site by approximately 3,564 MTCO₂e. These emissions, similar to construction emissions, are single-event emissions to be amortized over the Project lifetime.

The Project would be consistent with applicable *City of Newport Beach General Plan* policies that would result in minimization of GHG emissions and with measures recommended by the California Attorney General to reduce GHG emissions. Notwithstanding, the Project would emit quantities of GHGs that would substantially exceed the City's 6,000 MTCO₂e/yr significance threshold. GHG emission reductions resulting from implementation of the SC, PDFs, and the Green and Sustainable Program cannot be reasonably estimated. These reductions would not reduce emissions to less than 6,000 MTCO₂e/yr. Despite application of all feasible mitigation, the Project would make a cumulatively considerable contribution to the global GHG inventory and would have a significant and unavoidable GHG emissions impact.

PDF 4.11-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.

- PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.
- PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.
- PDF 4.11-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:
- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
 - b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
 - c. Air conditioning units will be Freon-free.
 - d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
 - e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
 - f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
 - g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.
- PDF 4.11-5** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:

- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.

SC 4.11-1 Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.⁸

MM 4.11-1 Prior to the issuance of each occupancy permit, the Applicant shall submit for approval to the Community Development Director the plan for the applicable future homeowners association to provide educational information on (1) water conservation; (2) energy conservation, including the use of energy-efficient lighting and the limiting of outdoor lighting; (3) mobile source emission reduction techniques, such as use of alternative modes of transportation and zero- or low-emission vehicles; and (4) the use of solar heating, automatic covers, and efficient pumps and motors for pools and spas to all homeowners prior to individual purchase of property and again annually.⁹

MM 4.11-2 Prior to the issuance of the building permit for the resort inn and each building permit for a multi-family complex with a swimming pool or spa, the Applicant shall submit for approval to the Community Development Director that the plans incorporate energy efficient heating, pumps and motors.

MM 4.11-3 Prior to the issuance of each building permit, the Applicant shall submit for approval to the Public Works Director that light emitting diode (LED) lights shall be used for traffic lights and LED or similar energy-efficient lighting will be used for street lights and other outdoor lighting.

MM 4.11-4 Prior to the issuance of each building permit for multi-family buildings, parks, and other public spaces, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of facilities for the collection of recyclable materials consistent with the recycle requirements of the City and the local waste collection contractor.

⁸ Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

⁹ The requirements in this measure are in addition to those of PDF 4.11-4f, but may be distributed and/or grouped together by the homeowners associations. The mobile source emissions component of this measure is the same as MM 4.10-7.

MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

MM 4.11-6 Prior to the issuance of each building permit for multi-family buildings, commercial building, park, and other public space, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of bicycle parking spaces at each facility. Bicycle spaces for residents and employees shall be easily accessible and secure. Bicycle spaces for visitors and customers, in parks, and in public spaces shall be visible from the primary entrance, illuminated at night, and protected from damage from moving and parked vehicles.

L. Noise

(1) Potential Impact: Construction activities would result in a substantial temporary increase in ambient noise levels to noise sensitive receptors in the vicinity of the Project. This is a significant, unavoidable impact.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by SC 4.12-1 and MMs 4.12-2 through 4.12-3 (set forth below), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Construction noise would be related primarily to the use of heavy equipment during the grading phase of construction. The Project is anticipated to be implemented over approximately 9 years. MMs 4.12-1 and 4.12-2 would 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, even with temporary noise barriers, maximum construction noise events for short periods of time could range up to 40 dBA above the ambient noise levels and average hourly noise levels could be

30 dBA above ambient in areas where the existing ambient noise levels are low (i.e., in the 45 to 50 dBA L_{eq} range) and construction occurs close to a Project boundary. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receivers, and duration of construction activities, the temporary noise increases would be significant. There would be periodic, temporary, unavoidable significant noise impacts that would cease upon completion of construction activities. MM 4.12-3 would provide notification to residents to allow persons to plan activities to minimize the potential disruption that could be caused by the construction noise.

SC 4.12-1 To ensure compliance with Newport Beach Municipal Code Section 10.28.040, grading and construction plans shall include a note indicating that loud noise-generating Project construction activities (as defined in Section 10.28.040 of the Newport Beach Noise Ordinance) shall take place between the hours of 7:00 AM and 6:30 PM on weekdays and from 8:00 AM to 6:00 PM on Saturdays. Loud, noise-generating construction activities are prohibited on Sundays and federal holidays.

MM 4.12-1 Grading plans and specifications shall include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to $\frac{3}{4}$ inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the Project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor.

If preferred by the developer or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height.

A temporary noise barrier shall not be required when it is demonstrated to the Community Development Department, Building Division Manager or his/her designee that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier.

- MM 4.12-2** Prior to the start of grading, the Construction Manager shall provide evidence acceptable to the City of Newport Beach Public Works Director and/or Community Development Director, that:
- a. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard.
 - b. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA L_{eq} .
 - c. Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible.

- MM 4.12-3** At least two weeks prior to the start of any grading operation or similar noise generating activities within 300 feet of residences or the Carden Hall school, the contractor shall notify affected residents and the school of the planned start date, duration, nature of the construction activity, and noise abatement measures to be provided. The notification shall include a contact telephone number for questions and the submittal of any complaints of excess, unanticipated noise.

(2) Potential Impact: The increased traffic volumes on local roads associated with the Project would expose off-site sensitive receptors to increased noise levels in excess of City of Newport Beach standards for changes to ambient noise levels.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. MM 4.12-5 (set forth below) is applicable to noise impacts in the City of Costa Mesa. SC 4.12-4 is applicable to public streets in the City of Newport Beach (set forth below). MMs 4.12-6 and 4.12-7 (set forth below) are applicable to noise impacts on private properties in the City of Newport Beach. However, Finding 2 identifies that "Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency". The City of Newport Beach cannot impose mitigation on another jurisdiction or on private property. Therefore, noise mitigation that would require the approval of the City of Costa Mesa or occur on private property is considered a significant, unavoidable impact. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding – Costa Mesa: Noise sensitive uses adjacent to the 17th Street road segment west of Monrovia Avenue include six single-family

residences that have front yards and side yards facing 17th Street. Because the single-family residences front onto 17th Street and driveway access from the streets to these homes is needed, the construction of sound walls would not be effective because a continuous wall is necessary for noise abatement. MM 4.12-5 provides funds to resurface 17th Street west of Monrovia Avenue and 15th Street west of Placentia Avenue with rubberized asphalt as required. Noise level increases to sensitive receptors adjacent to off-site roadways would be reduced to a less than significant level. However, because the City of Newport Beach does not have the authority to mandate the implementation of mitigation in the City of Costa Mesa, the impact is considered significant and unavoidable.

Newport Beach Public Property. Project traffic noise could significantly impact several residential patios and balconies and apartment units along adjacent to 15th Street west of Placentia Avenue. MM 4.12-5 would require the Applicant would provide funds to the City of Newport Beach for the installation of rubberized asphalt pavement. The estimated 4 dBA noise reduction provided by the pavement would reduce the impact to a less than significant level.

Newport Beach Private Property. The roadways were assumed to be paved with rubberized asphalt in accordance with SC 4.12-4. At Newport Crest, future noise levels would exceed existing noise levels by 8.6 to 16.1 dBA at Newport Crest receptor locations. Because future cumulative noise levels would be 5 or more dBA greater than the existing noise levels, the cumulative impact would be significant. 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 although the forecasted exterior noise level increases of 5 dBA or greater are substantial when compared to existing noise levels. Although exterior and interior noise levels would meet State and local compatibility standards with MM 4.12-6, the degree of noise increases require the consideration of further feasible mitigation. MM 4.12-7 requires windows with improved noise reduction capability and second floor balconies noise barriers. The City cannot mandate improvements on private property. Therefore, for purposes of CEQA, the Project would result in a significant unavoidable noise impact because the City cannot be assured that the recommended mitigation can be implemented. Noise levels at other off-site sensitive land uses would be less than significant.

SC 4.12-4 In accordance with City of Newport Beach standards, rubberized asphalt, or pavements offering equivalent or better acoustical properties shall be used to pave all public arterials on the Project site and all off-site City of Newport Beach roads where improvements would be provided or required as a part of the Project.

MM 4.12-5 The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15th Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17th Street west of Monrovia Avenue with rubberized asphalt.

MM 4.12-6 Prior to the approval of a grading permit for Bluff Road and 15th Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15th Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

MM 4.12-7 Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading

permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.

(3) Potential Impact: Traffic noise levels has the potential to impact certain sensitive (i.e., residential and resort inn) land uses within the Project site.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-3 (set forth below) and SC 4.12-4 (set forth above) and MM 4.12-8 (set forth below).

Facts in Support of Finding: Project-related traffic noise levels to exceed 65 dBA CNEL at exterior receptors within the (1) South Family Village adjacent to Bluff Road and North Bluff Road; (2) North Family Village west of North Bluff Road between 16th Street and 17th Street; and (3) Urban Colony east of North Bluff Road. SC 4.12-3 requires that interior noise levels at new residential and hotel uses to meet the applicable interior noise standards. SC 4.12-4 requires the application of rubberized asphalt for pavement of public arterials within the Project site and off-site public roads where improvements are proposed or required, minimizing noise impacts to adjacent existing and future uses. MM 4.12-8 requires the preparation of an acoustical study to demonstrate that the exterior living areas of proposed residential developments would be exposed to noise levels below 65 dBA CNEL prior to tract map approval for residential uses.

SC 4.12-3 All residential and hotel units shall be designed to ensure that interior noise levels in habitable rooms from exterior transportation sources (including aircraft and vehicles on adjacent roadways) shall not exceed 45 dBA CNEL. This SC complies with the applicable sections of the California Building Code (Title 24 of the *California Code of Regulations*) and, for single-family detached residences, exceeds the requirements of Section 10.26.025 of the Noise Ordinance. Prior to granting of a building permit, the Developer/Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, Project plans and specifications shall include ventilation as required by the California Building Code.

MM 4.12-8 Prior to final map recordation for the residential areas adjacent to Bluff Road and North Bluff Road, including the Urban Colony, the Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer to the City of Newport Beach for review and approval. The analysis shall demonstrate that the residential exterior living areas including, but not limited to swimming pools, playgrounds, and patios, would be exposed to noise levels below 65 dBA CNEL. The acoustical analysis shall also demonstrate that the North Community Park has been designed such that permitted park activities would not exceed the City's Noise Ordinance standards at residential exterior living areas. This can be accomplished through site design or the

construction of noise barriers. Barriers may be constructed using an earth berm, wall, or berm-wall combination. Walls may be masonry block, ¼-inch-thick glass, or other transparent material with sufficient weight per square foot.

(4) Potential Impact: Potential long-term stationary noise impacts would be associated with residential uses, commercial uses at the mixed-use development, operations at the proposed resort inn, the Community Park, and consolidated oil operations.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-2 (set forth below) and MMs 4.12-8 (set forth above) through 4.12-11 (set forth below).

Facts in Support of Finding: Stationary source noise is regulated through the Cities of Newport Beach and Costa Mesa Noise Ordinances; the standards are the same for both cities. Potential stationary-related noise impacts associated with residential uses include the operation of air conditioning units and outdoor activities. Potential long-term stationary noise impacts with the Project's mixed-use residential area would be occur primarily with loading dock activities, including truck deliveries; operation of mechanical equipment, including exterior ground-mounted and rooftop HVAC units; parking lot activity; and noise from restaurant and entertainment establishments. With respect to the resort inn, the closest residential area nearest would be approximately 100 feet north of the northern boundary of the resort inn section of the Resort Colony area. The location of outdoor activity areas at the resort inn has not been defined but because the inn entrance would be at the north end and the most attractive views would be to the south and west, it is likely that outdoor activities would be on the southern portion of the resort inn and separated from the residential areas by both distance and buildings. No impacts to the residential areas are anticipated. Further, compliance with the Noise Ordinance is required for the resort inn operators. With respect to the North Community Park, all field and court lighting would shut off at 10:00 PM; only passive use such as walking would be anticipated to occur from 10:00 PM until 11:00 PM. Activities at the park would not exceed the City of Newport Beach limits included in the City's Noise Ordinance.

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. 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 requires the use of noise reduction strategies to minimize drilling noise.

SC 4.12-2 HVAC units shall be designed and installed in accordance with Section 10.26.045 of the Newport Beach Noise Ordinance, which specifies the maximum noise levels for new HVAC installations and associated conditions.

MM 4.12-9 Truck deliveries and loading dock activities in commercial areas of the Project shall be restricted to between the hours of 7:00 AM and 10:00 PM on weekdays and Saturdays and shall be restricted to between the hours of 9:00 AM and 10:00 PM on Sundays and federal holidays. Moreover, the Project Applicant/Developer or his successors and assignees shall specify in the contract for each

operator of a commercial space that truck deliveries and loading dock activities shall be restricted to these specified hours.

MM 4.12-10 Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.

MM 4.12-11 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.

(5) Potential Impact: Vibration may be noticeable for short periods during construction, but it would be temporary and periodic

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of MM 4.12-4 (set forth below).

Facts in Support of Finding: Construction activities can generate varying degrees of groundborne vibration depending on the construction procedures and equipment used. Groundborne vibration from construction activities rarely reaches levels that can damage structure. Unless there are extremely large generators of vibration, such as pile drivers, or receptors in close proximity to construction equipment, vibration is generally only perceptible at structures when vibration rattles windows, picture frames, and other projects. The existing Newport Crest condominiums and the California Seabreeze residential community adjacent to the Project site would be considered older residential structures for vibration impact assessment. The operation of large bulldozers and vibration rollers operating at the property boundary at ten feet from a residential structure has the potential to cause structural damage. MM 4.12-4 prohibits the operation of large bulldozers and vibratory rollers within 25 feet of any existing residence, and would reduce the potential impact to a less than significant level.

MM 4.12-4 During construction, the operation of large bulldozers, vibratory rollers, and similar heavy equipment shall be prohibited within 25 feet of any existing off-site residence.

M. Cultural and Paleontological Resources

(1) Potential Impact: The Project would not impact any known historical resources. Grading and excavation could impact unknown historical resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MM 4.13-1 (set forth below).

Facts in Support of Finding: The historical resources (eight buildings and their adjacent elements) on the Project site were formally evaluated. None were found to be eligible for listing in the California Register of Historical Resources (CRHR) or the National Register of Historic Places (NRHP). The Project would not impact any known significant historical resources. Although no impacts are anticipated to historical resources, MM 4.13-1 requires that an archaeologist monitor grading and excavation activities in the event that unknown historic resources are uncovered during these activities. The archaeologist would have the ability to temporarily halt or redirect work to permit the sampling, identification, and evaluation of the artifacts and resources.

MM 4.13-1 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant/Contractor, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and Applicant/Contractor, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Community Development Director.

Based on their interest and concern about the discovery of cultural resources and human remains during Project grading, a qualified Native American Monitor(s) shall be retained to observe some or all grading activities.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources.

(2) Potential Impact: Grading and oilfield remediation activities would impact three known archeological sites and could impact unknown resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SC 4.13-1 (set forth below), MM 4.13-1 (set forth above), and MM 4.13-2 (set forth below).

Facts in Support of Finding: The Project site includes 11 archaeological sites including 3 sites that would be impacted by the Project. Archaeological sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are considered eligible for listing on the CRHR and the NRHP. Disturbance activities could also impact unknown resources. The removal of oilfield-related infrastructure would adversely impact portions of CA-ORA-839 and CA-ORA-844B. All reasonable efforts would be made to ensure minimal impact or avoidance as feasible to these archaeological sites. CA-

ORA-906 would be directly impacted by development as well as by oilfield infrastructure removal. MM 4.13-1 requires that an archaeologist monitor grading and excavation activities. MM 4.13-2 is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. There is no indication that there are burials present on the Project site. Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition. In the event that human remains are discovered during grading activities, SC 4.13-1, which addresses procedures to follow in the event of a discovery of suspected human remains. All impacts to these resources can be mitigated to a less than significant level.

SC 4.13-1 In accordance with Section 7050.5 of the *California Health and Safety Code*, if human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner(s), the disposition of the human remains.

MM 4.13-2 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Several possibilities suggested by the State CEQA Guidelines include (1) planning construction to avoid the site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement.

The following is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. Only CA-ORA-839 is also considered a unique archaeological resource. In this instance, mitigation is the same for both types of resources.

CA-ORA-839

It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it. However, it appears that the planned removal of oilfield infrastructure may impact portions of the site. In that event, the site shall undergo a data recovery excavation of those areas that would be impacted.

Research Design/Treatment and Mitigation Plan

A Research Design/Treatment and Mitigation Plan (data recovery plan) shall be prepared by a qualified Archaeologist and approved by the City of Newport Beach Community Development Director prior to any excavation being undertaken. The Plan shall explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer;

Data Recovery

Data recovery excavation shall be completed prior to Project grading and shall be designed to recover the consequential data present on the site. Data recovery shall be sufficient to collect a representative sample of site constituents, including organic materials, to permit additional absolute dating of the deposit. The study shall include:

- a. Excavation of a sufficient number of Control Units and shovel test pits (STPs) to recover a representative sample of site constituents;
- b. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered;
- c. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study; and
- d. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

Capping

In addition, secondary impacts (e.g., increased foot traffic, erosion) could occur at the site after the Project has been constructed; therefore, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;

- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;
- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

CA-ORA-844 Locus B

CA-ORA-844B is not expected to be directly impacted by development. Oil infrastructure removal activities that would occur prior to grading are expected to adversely impact portions of the site. Indirect impacts from additional erosion of the unstable surface and increased population in the vicinity of the site as a result of the future development could cause further damage over time.

Both capping and data recovery excavation are viable options for treating the site; however, because it has been disturbed by erosion and oil extraction activities, capping the deposit would be difficult and possibly more expensive and time consuming and may produce less desirable results than data recovery excavation. Considering these circumstances, two options are provided: (1) successful capping of the site, while likely difficult to accomplish, would be designed to protect the site in perpetuity or, preferably, (2) data recovery shall be undertaken prior to grading to collect the scientifically consequential data that is present in the site since it appears that only a small, yet important, portion of the site remains. Because of the limited size of this site, this option would enable the removal and analysis of the site in its entirety.

Capping the deposit or data recovery would result in temporary impacts to approximately 0.92 acre of coastal sage scrub (0.29 acre of encelia scrub and 0.63 acre of cactus scrub). The Mitigation Program set forth in Section 4.6, Biological Resources, addresses this impact.

Capping

If option 1 is chosen, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations,

excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;
- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;
- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

Data Recovery

If option 2 is selected, data recovery excavation at CA-ORA-844B shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove site constituents. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.

- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

CA-ORA-906

CA-ORA-906 would be directly impacted as a result of development as well as oil infrastructure removal. Data recovery excavation at the site shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove the site constituents. Mitigation shall be in the form of data recovery excavation to collect the scientifically consequential data that the site retains prior to its destruction by Project grading. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.
- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a data recovery excavation/mitigation report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

(3) Potential Impact: Grading and oilfield remediation activities would impact significant paleontological resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.13-3 and 4.13-4 (set forth below).

Facts in Support of Finding: Fossil sites have been recorded in two mapped units that underlie the site. San Pedro Sand and Palos Verdes Sand are considered to have high paleontological sensitivity; the Quaternary younger alluvium is of low paleontological sensitivity. The Project site contains paleontological resources exposed in natural outcrops, borrow areas, and drainages over most of the site. MM 4.13-3 requires that a qualified paleontologist monitor the grading and excavation activities and conduct salvage excavation as necessary. If any scientifically important large fossil remains are uncovered, the paleontologist would have the authority to divert heavy equipment away from the fossil site. MM 4.13-4 requires a paleontological survey be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. Significant impacts can be mitigated to a less than significant level.

MM 4.13-3 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate.

Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains.

If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays.

If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the

Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays.

All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum.

Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes.

MM 4.13-4

Prior to the issuance of the first grading permit and/or action that would allow for Project site disturbance, a paleontological survey shall be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. A qualified Paleontologist shall make collections of exposed fossils from lithologic units of high paleontologic significance, especially in areas where access to fossil sites is not permitted because of slope modification. All vertebrate and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites yielding vertebrates should be excavated, and approximately 2,000 lbs of rock samples shall be collected to process for microvertebrate fossil remains. Dry screening of fossil marine shell horizons in the Quaternary terrace deposits and San Pedro Sand with 1/8-inch archaeological field screens shall be conducted to recover rare types of fossil marine mollusks, bony fish, sharks, reptiles, birds, and marine and terrestrial mammals. All fossil sites shall be tied to detailed measured sections showing sedimentary structures and relationships with over- and underlying rock units.

- a. For San Pedro Sand, prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a qualified Paleontologist shall prepare a detailed mitigation plan to sample the existing paleontological sites that would be affected by slope modification. The plan shall be developed in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) in order to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence must be made. Bulk sampling that is collected from matrix or sediment to recover rare invertebrates, marine

vertebrates, and terrestrial vertebrates must also be part of the mitigation plan.

- b. For Quaternary marine terrace deposits (Palos Verdes Sand), prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a detailed mitigation plan must be developed to sample the existing paleontological sites that would be affected by slope modification. This shall be conducted in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence shall be made. Bulk sampling, collecting, water screening, or dry screening of sediments that contain rare invertebrates, marine vertebrates, and terrestrial vertebrates shall be part of the mitigation plan.
- c. A qualified Paleontologist shall be notified and retained when earth-moving activities are anticipated to impact undisturbed deposits in the San Pedro Sand and Palos Verdes Sand. The designated Paleontologist shall be present during construction activities on a full-time basis to assess whether scientifically important fossils are exposed. Part-time monitoring is recommended in Younger Alluvium. If any scientifically important, large fossil remains are uncovered during earth-moving activities, the Paleontological Monitor shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Monitor shall be equipped to allow for the rapid removal of fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. At the Monitor's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any delay in construction.
- d. All fossils shall be documented in a detailed Paleontological Resources Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the LACM or the San Diego Natural History Museum.
- e. Because of slope modification and restoration of the bluff area, most, if not all, the fossil-bearing exposures of the San Pedro Sand and Quaternary marine terrace deposits would be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved in perpetuity for educational and scientific purposes.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer qualified to monitor for both archaeological and paleontological resources.

N. Public Services and Facilities

(1) Potential Impact – Fire Protection: The majority of the Project site is designated as having a high or moderate fire hazard risk. There is the potential for portions to not be served within City’s established service response times.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.14-1, SCs 4.14-1 through 4.14-3, and MMs 4.14-1 through 4.14-3 (set forth below).

Facts in Support of Finding: With respect to fuel management, based on the State “Draft Fire Hazard Severity Zones in LRA” Local Responsibility Area (LRA) map for Newport Beach dated July 27, 2010, the majority of the Project site is designated LRA High, and small portions of the site are designated LRA Moderate or are not designated at all. None of the Project site is designated LRA Very High. The Project includes a Fire and Life Safety Program. The Program is intended to meet or exceed the requirements set forth in the City of Newport Beach Fire Code and all its amendments to the 2010 California Building Code; the 2010 California Fire Code; and the International Fire Code, 2009 Edition. The Project includes fuel management zones consistent with the fire safety requirements for the Project. Fire protection in landscaped areas would be achieved by avoiding and reducing the use of highly flammable plant materials adjacent to proposed development. This would be accomplished by revegetating these areas with low fuel volume plantings; removing or pruning and thinning native plants; and/or using selective irrigation.

With respect to service response, Fire Station Number 2 cannot serve the entirety of the proposed Project development within the City’s established response time standards. As identified on Table 4.14-2, Site Planning Area 12b, the northerly block of Site Planning Area 10a, and the northerly block of Site Planning Area 10b cannot be served by Station Number 2 within the established response time. In order to maintain appropriate response times, a temporary fire station would be required on the Project Site to serve those areas that cannot be served by existing Station Number 2; the temporary fire station would be required unless a replacement fire station is operational in a location that provides appropriate response times. The temporary fire station would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. It should be noted that in addition to City fire services, Newport Beach participates in Metro Net, a multi-city dispatch center covering Huntington Beach, Newport Beach, Fountain Valley, and multiple cities in North Orange County and has individual automatic aid agreement with the Cities of Costa Mesa, and Huntington Beach, and the OCFA. Together, all fire agencies provide personnel to any emergency. Therefore, the Project can be adequately served through the use of existing/future City of Newport Beach fire and emergency medical services, a temporary fire station on the Project site, as well use of fire and emergency medical services provided through the City’s mutual aid agreement with adjacent jurisdictions.

PDF 4.14-1 The Master Development Plan requires that the Project be designed to provide fire-resistant construction for all structures

adjoining natural open space, including utilizing fire-resistant building materials and sprinklers.

SC 4.14-1 Prior to the issuance of a building permit for the construction of residential and commercial uses, the Applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks.

SC 4.14-2 Prior to City approval of individual development plans for the Project, the Applicant shall obtain Fire Department review and approval of the site plan in order to ensure adequate access to the Project site.

SC 4.14-3 Prior to the issuance of a building permit, the Applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s).

Prior to the issuance of a Certificate of Occupancy, fuel modification shall be installed and completed by the Applicant, and inspected by the Fire Department. This includes physical installation of features identified in the approved Precise Fuel Modification Plan (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Fire Code Official shall provide written approval of completion at the time of this final inspection.

If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved.

The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections.

MM 4.14-1 Certificates of occupancy shall not be issued by the City of Newport Beach for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site

Planning Area 12b until Fire Station Number 2 is rebuilt at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards.

The construction of a replacement Fire Station Number 2 within the boundaries of the existing City Hall site at the northeastern corner of Newport Boulevard at 32nd Street or at an alternative location would be the subject of separate, subsequent environmental review. The replacement Fire Station could only be constructed upon the demolition of existing permanent and temporary structures on the City Hall site. Potential environmental impacts associated with the replacement Fire Station Number 2 would be associated with demolition of the existing Fire Station, and the construction and operation of the replacement Fire Station. Potential environmental effects are anticipated to include short-term construction-related traffic, air quality, and noise impacts during demolition and construction. Because of the proximity between the existing and proposed Fire Stations (approximately 500 feet), this relocation is not anticipated to result in new significant operational impacts.

MM 4.14-2 The Applicant shall pay the City of Newport Beach a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2. The fair share fee shall be based on total number of Project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. The proportionate fee shall be paid prior to the issuance of a building permit for any residential dwelling unit.

MM 4.14-3 Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated site planning areas, then prior to issuance of building permits for any combustible structure in the above site planning areas, the Applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.

(2) Potential Impact – Police Protection: The Project would introduce new structures, residents, workers, and visitors into the Police Department’s service boundaries, thereby potentially increasing the need for police protection, facilities, and personnel.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-4 and 4.14-5 (set forth below). No mitigation was recommended or required.

Facts in Support of Finding: Although the Project would increase demand for the City’s police protection services, this demand would not require the construction of new facilities, nor would it require the expansion of existing facilities that would result in physical environmental impacts. The Police Department’s operating budget is generated through tax revenues, penalties and service fees, and allowed government assistance. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. Tax-base expansion from development of the proposed Project would generate funding for the police protection services. SCs 4.14-4 and 4.14-5 related to site security and building and site safety design recommendations would ensure adequate police protection services can be provided to the Project site.

SC 4.14-4 Prior to issuance of building permits, the City of Newport Beach Police Department shall review development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the Project plans. The Applicant shall prepare a list of Project features and design components that demonstrate responsiveness to defensible space design concepts. The Police Department shall review and approve all defensible space design features incorporated into the Project prior to initiating the building plan check process.

SC 4.14-5 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the Project.

(3) Potential Impact – Schools: The Project would generate new elementary, middle, and high school students into the Newport-Mesa Unified School District (NMUSD).

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-6 and 4.14-7 (set forth below). No mitigation was recommended or required.

Facts in Support of Finding: Using the NMUSD school generation rates, the proposed Project is anticipated to generate 268 K–12 students including approximately 161 elementary, 42 middle, and 65 high school students. The School District found that based on data about available capacity, the NMUSD would not require funds to construct additional capacity to serve the Project-generated students. A district-wide capacity surplus is forecasted by the School District.

SC 4.14-6 Pursuant to Section 65995 of the *California Government Code*, the Applicant shall pay developer fees to the Newport-Mesa Unified School District at the time building permits are issued; payment of the adopted fees would provide full and complete mitigation of school impacts.

SC 4.14-7 New development within the Project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses.

(4) Potential Impact – Library Services: The Project would generate new residents thereby increasing the demand on the Newport Beach Public Library system. No new facilities are required.

Finding: The City hereby makes Finding 1 and determines that the change is Less Than Significant. SC 4.14-1 (set forth above) applies to the Project.

Facts in Support of Finding: Future residents of the Project would be expected to primarily use the Mariners and Balboa Branch Libraries. While expanded library services may be needed to meet this growing demand and the new population expected from the Project, the City has not identified any negative impacts resulting directly from the Project. The Project would not create a need for new or expanded library facilities.

(5) Potential Impact – Solid Waste: The Project would generate solid waste associated with oilfield remediation and construction activities as well as long-term use of the Project site.

Finding: The City hereby makes Finding 1 and determines that the change is Less Than Significant.

Facts in Support of Finding: During the oilfield remediation and oil well closure process, it is estimated that up to approximately 25,000 cubic yards (cy) of material may require disposal at an off-site recycling/treatment facility; such facilities are accessible in Southern and Central California. The Project would generate an estimated 19,456.3 pounds of solid waste per day or approximately 3,540.5 tons of solid waste annually. The development level proposed by the Project is consistent with the growth projections in the Orange County Projections 2006 (OCP-2006), which are used by the County of Orange in their long-term planning for landfill capacity. The County's landfill system has capacity in excess of the required 15-year threshold established by the California Integrated Waste Management Board (CIWMB). There is adequate waste disposal capacity within the permitted County's landfill system to meet the needs of the proposed Project. No significant impacts are anticipated. Greenhouse Gas Emissions PDF 4.11-5 applies to the Project (set forth above). PDF 4.11-5 requires that construction waste diversion be increased by 50 percent from 2010 requirements and that the oilfield clean-up and remediation process recycle and reuse materials on site to minimize off-site hauling and disposal of materials. This PDF would further reduce the amount of solid waste generated by the Project.

O. Utilities

(1) Potential Impact – Water Supply: The Project would increase demand for water supply but would not require new water treatment facilities. Anticipated water demand would require construction of water distribution facilities, the majority of which would occur within the Project's development footprint.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.11-1 and 4.11-4 (set forth above), PDFs 4.15-1 through 4.15-4, and SCs 4.15-1 and 4.15-2 (set forth below). No mitigation measures were recommended or required.

Facts in Support of Finding: The Project's water distribution system would require connections to the City's existing water infrastructure at West Coast Highway, 15th Street, 16th Street, and Ticonderoga Street. Within the Project site, 8- to 12-inch-diameter water mains would provide potable, irrigation, and fire flow water service to the proposed on-site land uses. In addition, a 12-inch domestic water main would extend east of the Project site into the 15th Street right-of-way to the intersection with Monrovia Avenue and connect with an existing 24-inch water line. Another 12-inch water main would extend east of the Project site into 16th Street and connect with an existing 14-inch water line. A pressure-reducing station is proposed adjacent to Bluff Road near West Coast Highway. The construction of these water facilities would primarily occur within the Project's development footprint. Potential impacts are addressed as a component of the overall Project. PDFs 4.15-1 through 4.15-4, PDF 4.11-1, and PDF 4.11-4 are designed to reduce water consumption through measures such as the use of drought-tolerant plants, Smart Controller irrigation systems, and the green building program. SC 4.15-1 and SC 4.15-2 incorporate water conservation and drought-response measures. No significant impacts are anticipated associated with water infrastructure.

The Project's water demand is estimated to be 613.5 acre-feet per year (afy). The water demand for the Project site was included in the City's water demand forecasts (as identified by City staff and the 1999 Water Master Plan) and is reflected in the City's 2005 and 2010 Urban Water Management Plan and in Metropolitan Water District of Orange County (MWD), Orange County Water District (OCWD), and Metropolitan Water District (MWD) planning documents. A Water Supply Assessment (WSA) was prepared for the Project and approved by the Newport Beach City Council on October 12, 2010. The City of Newport Beach 2010 Urban Water Management Plan was adopted by the Newport Beach City Council on June 14, 2011. The Project's WSA is consistent with the assumptions of both the City's 2005 and 2010 Urban Water Management Plans. Based on the WSA, the City, as water purveyor, determined that a sufficient supply is available during average, single-dry, and multiple-dry years to meet the anticipated water demand associated with the Project, in addition to the water demands of existing and planned future uses through year 2030. The Project's contribution to the cumulative impact on water supply is considered less than significant.

PDF 4.15-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of native and/or drought-tolerant landscaping in public common areas to reduce water consumption.

- PDF 4.15-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of Smart Controller irrigation systems in all public and common area landscaping. Community landscape areas will be designed on a “hydrozone” basis.
- PDF 4.15-3** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for a domestic water system designed to take advantage of existing water transmission facilities that connect to the Project site to minimize off-site impacts.
- PDF 4.15-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for the Project’s water system to provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines.
- SC 4.15-1** Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following mandatory permanent water conservation requirements, as summarized, during non-shortage conditions:
- a. No customer shall use potable water to irrigate landscaping unless such irrigation is limited to no more than ten minutes of watering per day per station.
 - b. No person shall use water to irrigate landscaping that causes or allows excessive flow or runoff.
 - c. No person shall use water to wash down hard or paved surfaces, except when necessary to alleviate safety or sanitary hazards.
 - d. No person shall permit excessive use, loss, or escape of water through breaks, leaks, or other malfunctions in the user’s plumbing or distribution system.
 - e. No customer shall use potable water for irrigation during a rainfall event.
 - f. By July 1, 2012, all landscape irrigation systems connected to dedicated landscape meters shall include rain sensors that automatically shut off such systems during periods of rain or include evapotranspiration systems that schedule irrigation based on climatic conditions.
 - g. No customer shall operate a water fountain or other decorative water feature that does not use a recirculating water system.
 - h. No customer shall use water to clean a vehicle, except by use of a hand-held bucket or hand-held hose equipped with a water shut-off nozzle or device.
 - i. Effective January 1, 2010, all new commercial conveyor car wash systems shall have recirculating water systems. By

January 1, 2013, all commercial conveyor car wash systems shall have recirculating water systems.

- j. Eating or drinking establishments shall not provide drinking water unless expressly requested by the patron.
- k. Hotel, motel, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily.
- l. No customer shall install a new, single pass cooling system in a building or on premises requesting new water service.
- m. Effective January 1, 2010, all new washing machines installed in commercial and/or coin-operated laundries shall be *EnergyStar[®]* and *CEE Tier III* qualified. *By January 1, 2014, all washing machines installed in commercial and/or coin-operated laundries shall be EnergyStar[®] and CEE Tier III qualified.*
- n. No customer shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid.
- o. Commercial kitchens shall employ water-conservation practices and technology.
- p. Construction Site Requirements:
 - No person shall use potable water for soil compaction or dust control on a construction site where there is an available and feasible source of recycled water or non-potable water approved by the Department of Public Health and appropriate for such use.
 - No person shall operate a hose within a construction site that is not equipped with an automatic shut-off nozzle, provided that such devices are available for the size and type of hose in use.

SC 4.15-2 Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following four levels of water supply shortage response actions to be implemented during times of declared water shortages.

Water Conservation Level	Requirements
Level One	Limit outdoor watering to scheduled irrigation days
	Cutbacks in water usage (up to 10%)
	Increased response time to fix broken/leaking plumbing (within 72 hours of notification from City)
	Limit filling of ornamental water features/pools (once per week)
Level Two	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (11–25%)
	Increased response time to fix broken/leaking plumbing (within 48 hours of notification from the City)
	Increase limitations for filling of ornamental water features/pools (once every other week)
Level Three	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (26–40%)
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from the City)
	No filling of ornamental water features/pools
Level Four	No outdoor watering
	Increased cutbacks in water usage (more than 40%)
	No new potable water services/meters
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from City)
	No filling of ornamental water features/pools

(2) Potential Impact – Wastewater Treatment: Existing wastewater treatment facilities have sufficient capacity for Project-generated wastewater.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no project design features, standard conditions of approval, or mitigation measures were required or recommended.

Facts in Support of Finding: Total sewage generation is expected to be 0.259 million gallons per day (mgd). Effluent from the development areas would be collected and directed to the Orange County Sanitation District (OCSD) trunk sewer upstream of the Bitter Point Pump Station via 10- and 12-inch pipes. The majority of the wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint. An off-site connection would be required on 16th Street, adjacent to the NMUSD property. No additional direct impacts related to construction and operation of the on-site wastewater system would occur. The April 2006 OCSD Strategic Plan Update assumed Project development generating a higher effluent rate than would occur with the proposed Project. Currently Plant No. 2 is operating at 65 percent of design capacity. The

OCSD has indicated that it has existing and future treatment capacity to serve the proposed Project.

(3) Potential Impact – Energy: The proposed Project would increase the demand for electrical and natural gas service in the Project area.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant with the implementation of PDFs 4.6-4, 4.11-1, 4.11-2, and 4.11-4, and SC 4.11-1 (set forth above) and SC 4.15-3 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: The Project would generate a demand of approximately 12.2 million kilowatt hours (kWh) of electricity and approximately 66.2 cf of natural gas annually. Southern California Edison (SCE) and The Gas Company have indicated an ability to serve the Project without significantly impacting levels of service. The Project includes design consideration to avoid inefficient, wasteful, and unnecessary energy consumption and reduce energy consumption. PDF 4.6-4 (street lights only in certain areas), PDF 4.11-2 (exceeding adopted 2008 Title 24 requirements by 5 percent), PDF 4.11-4 (subdivision map requirements), and PDF 4.11-5 (efficient grading operations). SCs 4.11-1 and 4.15-3 require that energy conservation efforts are incorporated into the Project. PDF 4.11-1 requires the Project to be consistent with a recognized green building program. There is existing facilities within and adjacent to the site that would serve the Project. SCE facilities that may require relocation include an overhead circuit located along 19th Street. Impacts associated with infrastructure installation are a component of the Project.

SC 4.15-3 The proposed Project shall meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards and shall be reviewed and approved by the City of Newport Beach Community Development Department, Building Manager, prior to issuance of building permits.

6. FINDINGS REGARDING ALTERNATIVES

A. Alternatives Considered and Rejected During the Scoping/Project Planning Process

The following is a discussion of the land use alternatives considered during the scoping and planning process and the reasons why they were not selected for detailed analysis in the Draft EIR. Among the factors that can be used to eliminate alternatives from detailed consideration in an EIR are “failure to meet most of the basic Project objectives, infeasibility, or inability to avoid significant environmental impacts” (CEQA Guidelines §15126.6[c]). Alternatives were eliminated during the scoping/planning process either because they were determined to be infeasible or because it could be determined that they would not avoid or eliminate significant environmental impacts when compared to the proposed Project.

1. **Development of the Project site Consistent with the County of Orange General Plan and Zoning Designations**

The zoning for the 361 acres of the Project site within the County jurisdiction would allow for development of up to 2,510 multi-family dwelling units, 225 single-family dwelling units, 50,000 sf of general commercial use, 235,600 sf of general office use, and 164,400 sf of industrial uses. Overlay zones, including Oil Production, Sign Restriction, and Floodplain Zone 2 apply to portions of the property. Development of property pursuant to the County zoning would generate approximately 22,075 average daily trips on the circulation network (Newport Beach 2006a, 2006b). This Alternative was not retained for detailed evaluation in the EIR because it would not reduce identified impacts of the Project and in many cases would result in greater impacts associated with more intense and increased development that could occur under the County’s land use designations for the property. This Alternative would also not achieve several important Project objectives, specifically Objective 1 which is to provide a Project that implements the goals of the General Plan of the City of Newport Beach, and Objective 16 which is to provide a Project compatible with existing adjacent land uses. Consequently, this Alternative has been considered and rejected from further analysis.

2. **Alternative Site**

Development of the Project on an alternative site has been reviewed and eliminated from detailed consideration due to the lack of available alternate sites meeting the majority of the objectives established for the proposed Project. Newport Beach is almost fully developed with no other unentitled property that is suitable for supporting a mixed-use project such as Newport Banning Ranch. Eight areas within the City were identified and considered but no comparably sized parcels would provide for the same mix and range of uses in the City. Alternative sites outside of the City’s jurisdiction were also considered; however, no comparable site within the County’s coastal zone could be identified. Although there may be properties inland that could provide a similar level of development, inland areas would not meet the objectives regarding enhancing coastal access and protection of coastal resources. For these reasons, consideration of developing the Project on an alternative site was not included in the EIR alternatives analysis.

3. Construction of General Plan Roads

Both the City of Newport Beach General Plan Master Plan of Streets and Highways and the Orange County MPAH depict two connections to West Coast Highway through the Project site. One connection is depicted as extending south from 19th Street to West Coast Highway and the second roadway would extend from 15th Street past Bluff Road and connect with West Coast Highway on the western edge of the Project site. The need for these two primary roads was based on the environmental baseline that the 2006 General Plan Update used, which assumed more intense development on the Project site. Based on the reduced density being proposed, only one roadway is needed to serve the travel demand. This Alternative would have had more impacts due to the need for the construction of an additional roadway. This alternate has been rejected from further consideration.

B. Alternatives Selected for Analyses

The State CEQA Guidelines requires that an EIR "describe a range of reasonable alternatives to the Project, or to the location of the Project, which could feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project, and evaluate the comparative merits of the alternatives" (State CEQA Guidelines §15126.6[a]). Six alternatives were evaluated. The alternatives were developed to avoid or minimize impacts associated with implementation of the proposed Project. Given the nature and scale of the Project, complete avoidance of significant impacts was not feasible for any alternative other than the No Project Alternative.

The following alternatives were analyzed:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17th Street.
- Alternative D: Reduced Development and Development Area.
- Alternative E: Reduced Development Area.
- Alternative F: Increased Open Space/Reduced Development Area.

The City's findings and facts in support of findings with respect to each of the alternatives considered are provided below. Consistent with the guidance set forth in State CEQA Guidelines Section 15126.6, the Findings address whether the alternative would feasibly attain most of the basic objectives of the Project; whether it would avoid or substantially lessen any of the significant effects of the Project; and whether the alternative is feasible, as defined by the State CEQA Guidelines Section 15364, as being "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors".

1. **Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses)**

Description: Alternative A is the “no project” alternative required by the State CEQA Guidelines Section 15126.6(e) which allows the decisionmakers to compare the potential impacts of the proposed Project with the potential impacts of not approving the proposed Project. Alternative A assumes existing conditions on the Project site (oil operations) and the continuation and possible expansion of oil exploration and oil production operations within the constraints of the Project site’s existing California Coastal Act regulatory exemption for petroleum production. No uses other than oil operations would occur on the Project site. Oil consolidation, clean-up, and remediation would not occur for the foreseeable future, and public access would not be provided. At the eventual cessation of oil production operations, well abandonment and removal of certain surface equipment and pipelines would occur in accordance with applicable State and local regulations. This Alternative would not require an amendment to the City of Newport Beach General Plan or Orange County MPAH, a zone change, a Coastal Development Permit, or any of the other actions associated with the Newport Banning Ranch Project. The approximate 361 acres of the 401-acre site within the City’s Sphere of Influence would not be annexed into the City of Newport Beach.

Environmental Effects: A full discussion of Alternative A’s environmental impacts as compared to the proposed Project is set forth in Section 7.5.1 of the Final EIR, which is hereby incorporated by reference. The City of Newport Beach has assumed the Project site would ultimately be annexed to the City and has adopted land uses and policies accordingly. Alternative A would have greater impacts than the proposed Project when evaluating consistency with City plans and policies. However, since under this Alternative scenario the site would not be annexed into the City of Newport Beach, the City planning programs would not be applicable to the majority of the property. This Alternative would not have any impacts that are significant and unavoidable when compared to the proposed Project. The proposed Project would have significant and unavoidable impacts associated with land use compatibility (due to noise and lighting impacts), aesthetics, transportation, air quality, cumulative greenhouse gas emissions, and noise. Alternative A would avoid or substantially lessen the significant effects of the proposed Project.

Ability to Achieve Project Objectives: When evaluating the desirability and feasibility of an Alternative, it is also important to evaluate the ability of the Alternative to meet the Project objectives. An Alternative does not need to meet all the Project objectives to be considered potentially feasible. However, Alternative A does not meet any of the Project objectives.

Feasibility: In the short-term, Alternative A is potentially feasible, at least from a technological and legal perspective, as it contemplates the continuation of the existing oil operations. Because the property is privately owned and the extent of petroleum production activities will eventually cease when resources are depleted or when it becomes uneconomical to continue extraction activities with diminishing returns, some form of reuse of the Project site is expected to ultimately occur. Therefore, long-term economic feasibility of this Alternative is questionable.

Finding: While this Alternative would avoid the Project’s significant impacts, it would not achieve any of the objectives established for the Project. From a policy perspective, this Alternative would fail to provide the City with additional housing opportunities, including affordable housing, the latter which is an identified need in the City’s Housing Element,

and would not further the implementation of the City's General Plan. This Alternative would also delay the remediation of the oilfield until the property owner chooses to cease operations sometime in the future. This Alternative would also delay the City's ability to provide a north-south road connection through the property as shown on the City's General Plan Circulation Element Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways. In light of these considerations, this Alternative has been rejected by the City in favor of the proposed Project.

2. Alternative B: Newport Beach General Plan/Open Space Designation

Description: The Project site is designated as OS(RV) in the City of Newport Beach General Plan's Land Use Element. The OS(RV) land use designation allows for both a Primary Use (Open Space) and an Alternative Use (Residential Village) on the Project site. The Land Use Element prioritizes the retention of the Project site for open space. The Project site would have to be acquired through public or private funding by an entity capable of restoring and maintaining the Project site and with the approval of the property owner(s), including the surface rights owners. As described in the General Plan, the open space acquisition option includes consolidation of oil operations; wetlands restoration; construction of roadways; and provision of nature education, interpretative facilities, and an active park that contains lighted playfields and other facilities.

Alternative B would include park and open space uses, including an approximately 31.3-gross acre community park in the central portion of the site. Alternative B also assumes consolidation of the oilfields, remediation of the property, and restoration of habitat including wetlands. Additionally, the following roadways would be constructed consistent with the City of Newport Beach General Plan's Circulation Element: (1) a north-south road with a southern terminus at West Coast Highway and extending to a northern terminus at 19th Street (Bluff Road and North Bluff Road); (2) the extension of 15th Street from its existing terminus to Bluff Road within the Project site; (3) the extension of 16th Street from its existing terminus to Bluff Road within the Project site; and (4) the extension of 17th Street from its existing terminus to Bluff Road within the Project site. As with the proposed Project, Alternative B also assumes the deletion of the future extension of a second road through the Project site and its connection to West Coast Highway; this action would require the approval of a General Plan Amendment to the City's Circulation Element and an amendment to the Orange County MPAH. Consistent with the roadway assumptions for the proposed Project, North Bluff Road (extending from 17th Street to 19th Street) would transition from a four-lane divided to a two-lane undivided road to 19th Street.

With this Alternative, the City would be responsible for implementing the Community Park, including the acquisition of the land designated for this use. However, the acquisition of the remaining portion of the site, as well as funding of all remaining improvements and maintenance, would be the responsibility of a yet unknown third party. In addition to costs associated with site acquisition, funds would also be required to initiate consolidation of oil operations and to address oilfield abandonment and clean-up needs as well as acceptance and mitigation of any long-term liability exposure. Additional funding would be required to implement restoration and long-term management of sensitive habitats and to construct park(s), roadways, and other needed infrastructure (including sewer, water, electrical, gas and storm drain facilities) to support the park(s) and roadways. As with the proposed Project, a Coastal Development Permit would be required to initiate restoration activities and to allow for the future construction of permitted land uses and roadways through the Project site.

Environmental Effects: A full discussion of Alternative B's environmental impacts as compared to the proposed Project is set forth in Section 7.5.2 of the Final EIR, which is hereby incorporated by reference. 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. Alternative B would eliminate significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts when compared to the proposed Project; however, there would still be impacts that could not be reduced to a level considered less than significant. The following areas would have significant, unavoidable impacts:

There would be land use incompatibility with respect to night illumination associated with the development of the property including the Community Park as well as long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be potential long-range noise impacts for residents on 17th Street west of Monrovia Avenue because both Alternative B and the proposed Project include the construction of the roadways consistent with the City's General Plan Circulation Element. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

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. However, in certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations and found that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project.

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.

Ability to Achieve Project Objectives: 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 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).

Feasibility: Although Alternative B appears to be legally, technologically, and socially feasible, its feasibility 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. Consideration by the City of the proposed Project does not

preclude the City or any third party from acquiring the property and initiating site remediation, habitat restoration, park development, and road construction. However, to date, no one or entity has identified sufficient funds to implement the open space acquisition alternative. Therefore, at this time it is difficult for the City to conclude that this Alternative is feasible. Based upon the lack of identified sources of funding and entities to undertake implementation of this Alternative, the City is not assured that property acquisition may be “capable of being accomplished in a successful manner within a reasonable period of time”.

Finding: 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. 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, and to date, no individual or entity including the City, has identified the resources to implement the open space acquisition option. Therefore, the decision makers may determine that this is not a feasible alternative regardless of the potential environmental or other public benefits. For these reasons, the City finds that the proposed Project is preferred over this Alternative.

3. Alternative C: Proposed Project with Bluff Road Extending to 17th Street

Description: Alternative C assumes the same land uses and same development plan as the proposed Newport Banning Ranch Project and would require the same approvals from local, regional, and State agencies. However, that segment of North Bluff Road extending just north of 17th Street to 19th Street would not be constructed under this Alternative. The City of Newport Beach General Plan’s Circulation Element and the Orange County MPAH depict a north-south roadway connection from West Coast Highway to 19th Street through the Project site. Alternative C would provide the development of a north-south connection (North Bluff Road/Bluff Road) from West Coast Highway only to 17th Street. By removing the extension of this segment of the roadway, the open space area would not be bisected as a result of this Alternative. Alternative C does not assume the deletion of North Bluff Road between 17th Street and 19th Street from the City’s General Plan Circulation Element Master Plan of Streets and Highways or the Orange County MPAH. Therefore, although the road would not be constructed as part of this Alternative, it does not preclude the construction of this roadway segment in the future by a party other than the Applicant. Should the road be constructed in the future, the impacts that are avoided at this time would be realized. It should be noted that implementation of the segment of roadway between 17th and 19th Streets would be a separate project and would require separate approvals.

As with the proposed Project, Alternative C assumes an amendment to the Circulation Element to delete a second road through the Project site and its connection to West Coast Highway. An amendment to the Orange County MPAH is required for this deletion as well as to downgrade North Bluff Road from a Major to a Primary. Alternative C is proposed to minimize significant impacts to sensitive habitat areas and landform alteration associated with the extension of North Bluff Road from just north of 17th Street to 19th Street.

Environmental Effects: A full discussion of Alternative C’s environmental impacts as compared to the proposed Project is set forth in Section 7.5.3 of the Final EIR, which is hereby incorporated by reference. Alternative C is the same as the proposed Project,

except that the extension of North Bluff Road between 17th Street and 19th Street would not be constructed. As a result, the nature of the impacts are the same as those identified for the proposed Project, with incremental decreases in impacts associated with the amount of grading and disturbance to native habitat and biological resources, and increased (qualitative and quantitative) opportunities for habitat restoration. There is also a reduction in construction air emissions and impacts to significant archaeological and paleontological resources. This Alternative would also have the benefit of not having the road extension bisecting the open space area. However, Alternative C would result in additional traffic using Bluff Road, which would result in an incremental increase in traffic noise along this segment of roadway. In addition, this Alternative would increase the number of intersections that have Project-related impacts. Should it be determined at some point in the future that the connection of North Bluff Road to 19th Street is required, the City or other entity would be responsible for implementing the improvement. This would not be an expense borne by the developer. Subsequent CEQA analysis would likely be required and permitting may be more difficult because the roadway would bisect lands that had been remediated and were functioning as open space.

Alternative C would not eliminate or substantially lessen any of the significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative C:

There would be land use incompatibility with respect to night illumination associated with the development including the Community Park, as well as 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. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17th Street with rubberized asphalt.

Alternative C would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative C 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.

Alternative C would have impacts on intersections in the City of Costa Mesa. Implementation of MM 4.9-2 would mitigate the impacts to a level considered less than significant. However, Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Alternative C development continues beyond 2020, emissions of volatile organic compounds (VOC) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Alternative C would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O₃).

Alternative C would emit quantities of greenhouse gases (GHGs) that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) significance threshold. Development associated with Alternative C would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

For the *Existing Plus Project, 2016 with Project*, and *General Plan Buildout* traffic scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise level increases in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition of Alternative C. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: Alternative C is a potentially feasible alternative. It is able to meet the Project objectives as effectively as the proposed Project, with the exception of Objective 7. Objective 7 would only be partially achieved with this Alternative. This objective reads: "Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access." Alternative C does not operate as effectively as the proposed Project in meeting this objective because it results in an additional intersection operating at a deficient level of service. Additionally, it does not construct a segment of the local and regional transportation network that is identified in the adopted circulation plans.

Feasibility: This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors..

Finding: Alternative C would incrementally reduce impacts associated with the amount of grading and disturbance to native habitat and biological resources, and would provide increased (qualitative and quantitative) opportunities for habitat restoration. This Alternative would have the same significant unavoidable impacts as the proposed Project. From a policy perspective, this Alternative would not fully implement the City's Master Plan of Streets and Highways or the Orange County Master Plan of Arterial Highways which depict a north-north roadway through the property from West Coast Highway to 19th Street. While this Alternative is feasible, because it would not construct a segment of the local and regional transportation network, the City, therefore, finds that the proposed Project is preferred over this Alternative.

4. Alternative D: Reduced Development and Reduced Development Area (No Resort Inn and 1,200 Units)

Description: Alternative D assumes a reduction in the amount of development that would occur on the Project site and a reduction in the acreage associated with that development. The same roadway system is proposed. When compared to the proposed Project, Alternative D would allow for 1,200 du (compared to 1,375 du), including an affordable housing component per the AHIP¹⁰; 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses (in place of a 75-room resort inn); approximately 39.1 acres of parks including a 24.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands for the proposed Project including a 21.8-gross acre Community Park).¹¹ The 15,000 sf of visitor-serving commercial use would be predominately restaurant uses. Alternative D does not include a Nature Center, trails, or the pedestrian and bicycle bridge. Open space uses would increase from 252.3 gross acres to 269.1 gross acres. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and, upon acceptance, it would be maintained by the City.

Alternative D would require the same discretionary actions as noted for the proposed Project. Alternative D is proposed to reduce impacts associated with the intensity of development (e.g., vehicle trips, vehicle miles travelled, noise and air quality impacts) and the footprint of development (e.g., biological resources).

Environmental Effects: A full discussion of Alternative D's environmental impacts as compared to the proposed Project is set forth in Section 7.5.4 of the Final EIR, which is hereby incorporated by reference. Alternative D would reduce the number of residential units by approximately 13 percent and eliminate the resort inn. The project footprint would be approximately 11 percent smaller. Although the nature of the impacts would be the same as those discussed for the proposed Project, the overall impacts associated with Alternative D would be less due to the reduced amount and area of development. However, it should be noted that this Alternative offers a reduced level of public amenities (i.e., trails, parks, and pedestrian bridge) compared to the proposed Project, and would not provide as much affordable housing as the proposed Project. Although this Alternative would have fewer units and no resort inn, it is projected that there would be a lower number of average daily trips (ADT), an increase in the number of AM peak

¹⁰ The number of required affordable units would be 15 percent of the total number of approved units.

¹¹ Alternative D assumes compliance with Quimby Act, which would require approximately 15 acres of parkland based on 5 acres of park per 1,000 persons; the City assumes 2.19 persons per dwelling unit.

hour trips, and a slight decrease in PM peak hour trips. Moving the location of visitor-serving commercial uses to the Resort Colony from the Urban Colony would result in a redistribution of some trips on the circulation network, with more trips expected to be generated in the southerly portion of the Project site, which would be expected to result in a slightly higher volume of traffic on the southern portion of Bluff Road and use of 15th Street easterly of the Project site.

This Alternative does not eliminate but would substantially lessen the significant impacts of the proposed Project. Construction air emissions would remain significant and unavoidable, but would be lessened. Although not identified as significant and unavoidable, impacts associated with grading, habitat removal, and creation of impervious surfaces would be reduced compared to the proposed Project due to the reduction in the development footprint. The following significant and unavoidable impacts would occur with Alternative D:

There would be land use incompatibility with respect to night illumination associated with development of the property including the Community Park, as well as 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. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17th Street with rubberized asphalt.

Alternative D would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., visitor-serving commercial and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative D 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.

When compared to the proposed Project, Alternative D would have a reduction of average daily trips (ADT), but an increase of trips in the AM peak hour and a decrease trips in the PM peak hour. Based on the lower volume of ADT and PM peak hour volumes, Alternative D would not create additional roadway or intersection deficiencies. Both Alternative D and the proposed Project would be expected to result in a significant impact at one intersection in the City of Newport Beach and seven intersections in the City of Costa Mesa. Impacts to the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach can be mitigated to a level considered less than significant. Alternative D would impact the following Costa Mesa intersections: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However,

the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative D impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be would remain significant and unavoidable.

Alternative D would have construction-related air quality impacts. During grading, large and fine particulate matter (PM10 and PM2.5, respectively) concentrations may exceed the SCAQMD CEQA significance thresholds at the property lines, but would not be likely to exceed ambient air quality standards.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as development continues beyond 2020, emissions of VOCs, CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Alternative D would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Alternative D would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative D would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4), which is an important Coastal Act policy consideration and does not provide as extensive of a public access network (no pedestrian and bicycle bridge over West Coast Highway) as compared to the proposed Project. Further, this Alternative does not include a Nature Center or trails. In addition, it only partially meets the following objectives:

- Development of a residential village of 1,375 residential units, offering a variety of housing types in a range of housing prices for future residents, including provision of

affordable residential dwelling units to help meet the City's Regional Housing Needs Assessment (RHNA) (Objective 3).

- Provide enhanced public access through 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).

Feasibility: This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project and which are important Coastal Act policy considerations. While this Alternative is feasible, because it would not provide as many public benefits and would result in similar significant environmental impacts, the City, therefore, finds that the proposed Project is preferred over this Alternative.

5. Alternative E: Reduced Development Area

Description: Alternative E assumes the same number of residential units (1,375 du) as proposed by the Project within a reduced footprint. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses instead of the resort inn; and approximately 39.1 acres of parks, including a 20.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands with the Project). As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative E would require the same discretionary actions as noted for the proposed Project.

Environmental Effects: A full discussion of Alternative E's environmental impacts as compared to the proposed Project is set forth in Section 7.5.5 of the Final EIR, which is hereby incorporated by reference. Alternative E would reduce the development footprint by approximately 11 percent. Although the nature of the impacts would be the same as those discussed for the proposed Project, the impacts associated grading and project footprint would be incrementally smaller due to the reduced amount of disturbed area (i.e., impacts associated with grading, habitat removal, creation of impervious surfaces, construction air emissions). This Alternative would increase the overall vehicle miles travelled (VMT); therefore, there would be slightly greater long-term air emissions, noise, and traffic.

Although with Alternative E there would be incremental reduction in impacts due to the reduction in development and the area being developed, this Alternative would not eliminate any of the unavoidable significant impacts identified with the proposed Project. The following significant unavoidable impacts would occur with Alternative E:

There would be land use incompatibility with respect to long-term noise impacts and night illumination on those Newport Crest residences immediately contiguous to the Project site. Noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels. Land use compatibility issues from night lighting associated with the Community Park would also be considered significant.

Development would introduce new sources of light on the Project site, which would result in a significant visual impact.

Alternative E would result in impacts to the same intersections as outlined for the proposed Project. Implementation of the Mitigation Program would reduce impacts to less than significant levels. However, the City of Newport Beach cannot guarantee implementation of necessary mitigation within another jurisdiction. Therefore, the impacts in the City of Costa Mesa intersections are assumed to remain significant and unavoidable.

Alternative E would have cumulatively considerable contributions to regional pollutant concentrations of O₃.

Alternative E would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. This would make a cumulatively considerable contribution to the global GHG inventory.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications, but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Costa Mesa's standards. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no control to assure that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia Avenue is considered significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, temporary noise increases would be significant and unavoidable.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objective:

- Provide enhanced public access through 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).

Feasibility: Alternative E is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project. Additionally, it would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. While this Alternative is feasible, because it would not provide as many public benefits, the City, therefore, finds that the proposed Project is preferred over this Alternative.

5. Alternative F: Increased Open Space/Reduced Development Area

Description: Alternative F assumes the same number of residential units (1,375 du) as proposed by the Project within a reduced footprint. The development area (residential and commercial) would decrease from 97.4 gross acres to 84.0 gross acres, an approximate 14 percent reduction compared to the proposed Project. When parkland is factored in, the development footprint for Alternative F is reduced by 20 percent compared to the proposed Project. This alternative does not include a resort inn or visitor-serving commercial uses. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. Open space uses would increase from 252.3 gross acres to 282.4 gross acres. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); and includes approximately 34.7 acres of parks, including a 21.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands). The acreage of the Community Park would be the same for Alternative F and the proposed Project. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative F would require the same discretionary actions as noted for the proposed Project.

Environmental Effects: A full discussion of Alternative F's environmental impacts as compared to the proposed Project is set forth in Section 7.5.6 of the Final EIR, which is hereby incorporated by reference. Alternative F would reduce the development footprint. Although the nature of the impacts would be the same as those discussed for the proposed Project, the overall impacts associated with Alternative F would be fewer due to the reduced amount of disturbed area. Although not identified as significant and

unavoidable impacts, this Alternative would substantially less the impacts associated with grading, habitat removal, and creation of impervious surfaces.

Alternative F would substantially lessen construction air emissions impacts compared to the proposed Project because less development is proposed; the area of disturbance would be smaller; and grading would be reduced by 25 to 35 percent. However, Alternative F would not eliminate any significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative F:

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 interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Alternative F would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative F 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.

Alternative F would be projected to result in a decrease in ADT and peak hour traffic volumes when compared to the proposed Project. This decrease in peak hour volumes would not cause any of the intersections operating at an acceptable level of service with the Project to operate at an unacceptable level of service. Both Alternative F and the proposed Project would be expected to result in deficiencies at the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach which can be mitigated to a level considered less than significant. Alternative F and the proposed Project would significantly impact seven intersections in Costa Mesa: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. If the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative F impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as

development continues beyond 2020, emissions of VOCs and CO would exceed the significance thresholds, principally due to vehicle operations. Alternative F would have a cumulatively considerable contribution to regional pollutant concentrations of O₃.

Alternative F would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative F would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objectives:

- Development of 75,000 square feet of retail commercial uses oriented to serve the needs of local residences and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Provide enhanced public access through 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).

Feasibility: Alternative F is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate any significant impacts of the Project. However, it should be noted that this Alternative does not offer the same level of amenities (i.e., trails, parks, and pedestrian bridge) as the proposed Project. While increasing public access opportunities over the existing condition and compared to Alternatives A and B, Alternative F would not provide the same extent of public access amenities (i.e., pedestrian/bike overcrossing) as compared to the proposed Project, and would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. For these reasons, the City rejects this Alternative in favor of the proposed Project.

STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The City is the Lead Agency under CEQA for preparation, review, and certification of the Final EIR for the Newport Banning Ranch Project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed Project. In making this determination the City is guided by State CEQA Guidelines Section 15093 which provides as follows:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal (sic) project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed Project, none of which both meet the Project objectives and is environmentally preferable to the proposed Project for the reasons discussed in the Findings and Facts in Support of Findings.

The Newport City of Beach City Council, the Lead Agency for this Project, and having reviewed the Final EIR for the Newport Banning Ranch Project, and reviewed all written materials within

the City's public record and heard all oral testimony presented at public hearings, adopts this Statement of Overriding Considerations, which has balanced the benefits of the Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the Project.

Significant Unavoidable Adverse Environmental Impacts

Although most potential Project impacts have been substantially avoided or mitigated, as described in the Findings and Facts in Support of Findings, there remain some Project impacts for which complete mitigation is not feasible. For some impacts, mitigation measures were identified and adopted by the Lead Agency, however, even with implementation of the measures, the City finds that the impact cannot be reduced to a level of less than significant. The impacts and alternatives are described below and were also addressed in the Findings.

The EIR identified the following unavoidable adverse impacts of the proposed Project:

Land Use. The City of Newport Beach Zoning Code (October 2010) defines compatibility as "The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include: intensity of occupancy, pedestrian or vehicular traffic generated, volume of goods handled, and environmental effects (e.g., air pollution, glare, hazardous materials, noise, vibration, etc.)". Therefore, land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that project-related significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended. 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 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 interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Aesthetics and Visual Resources. The proposed Project would include "dark sky" lighting regulations set forth in the Newport Banning Ranch Development Planned Community (NBR-PC) zoning regulations that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. The Project would result in night lighting impacts that 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 Consideration which noted that there were specific economic, social, and other public benefits which outweighed the significant unavoidable impacts associated with the General Plan project.

Transportation and Circulation. The Project would have impacts on select intersections in the City of Costa Mesa. Implementation of Mitigation Measure (MM) 4.9-2 would mitigate the

Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction or agency. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa and the California Department of Transportation (Caltrans) that would ensure that Project impacts occurring in Costa Mesa and State highways would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. The following impacts were identified with the various traffic scenarios evaluated:

- **Existing Plus Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Superior Ave at 17th Street. (This scenario assumes all development occurs at once, which is not an accurate reflection of the timing of development for the proposed Project.)
- **Year 2016 With Project Transportation Phasing Ordinance (TPO)** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard at West Coast Highway.
- **Year 2016 With Phase 1 Project TPO** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Newport Boulevard at West Coast Highway.
- **Year 2016 Cumulative With Project** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street¹²; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard and West Coast Highway.
- **Year 2016 Cumulative With Phase 1 Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.
- **General Plan Buildout with Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.

Air Quality. During periods of grading, localized large and fine particulate matter (PM10 and PM2.5) concentrations may exceed the South Coast Management District's (SCAQMD's) CEQA significance thresholds at the property lines but would not likely exceed ambient air quality standards. Localized concentrations of carbon monoxide (CO) and nitrogen dioxide (NO₂) due to construction activities would not exceed the applicable CEQA thresholds. Regional (mass) emissions of criteria pollutants during construction activities would not exceed the applicable thresholds.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Project development

¹² The Newport Boulevard at 17th Street intersection has a Project-related impact using the Highway Capacity Manual (Caltrans methodology), as well as an impact using the Intersection Capacity Utilization methodology.

continues beyond 2020, emissions of volatile organic compounds (VOCs), CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Feasible mitigation measures would be implemented to reduce operational emissions, although the effects of such mitigation are not quantifiable. Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Greenhouse Gas Emissions. The Project would emit quantities of GHGs that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory affecting Global Climate Change.

Noise. For the *Existing Plus Project, 2016 with Project, and General Plan Buildout* scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue in Costa Mesa, would expose sensitive receptors to noise levels that would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurfacing the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted noise impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest condominium development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications. However, the long-term noise increases at some Newport Crest residences from vehicular traffic noise from Bluff Road due to Project and cumulative traffic levels would remain above the General Plan's 5 A-weighted decibels (dBA) significance criterion. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

In addition, the EIR identified six alternatives to the Project and analyzed whether these alternatives could avoid or substantially lessen the unavoidable environmental impacts of the proposed Project. While some of the alternatives could lessen or avoid some of the unavoidable impacts of the proposed Project, some of the alternatives also resulted in different and in some cases, increased environmental impacts, consequently, for the reasons set forth in Section 6 of these Findings, none of the alternatives were determined to be feasible:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17th Street.
- Alternative D: Reduced Development and Development Area.
- Alternative E: Reduced Development Area.

- Alternative F: Increased Open Space/Reduced Development Area.

The City, after balancing the specific economic, legal, social, technological, and other benefits including region-wide or statewide environmental benefits, of the proposed Project, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed Project, each of which standing alone is sufficient to support approval of the Project, in accordance with CEQA Section 21081(b) and State CEQA Guideline Section 15093.

1. **Long-term protection of over 50 percent of the Project site as natural open space and habitat consistent with the City's General Plan**

The City's General Plan Policy LU 3.4 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region, to enhance wetlands and other habitats and provide parkland amenities to serve nearby neighborhoods. In order to implement this policy, LU 6.3.2 recognizes the need to obtain sufficient funds through private fundraising, State bonds, environmental mitigation fees, or other financing mechanisms, none of which have been identified to date. As the General Plan acknowledges, "due to the significant cost of purchasing the site and habitat restoration, a large amount of revenue would need to be generated to help fund preservation of the majority of the property as open space". (Housing Element at page 5-43)

Consistent with General Plan Policy LU 3.4, the Project will implement a comprehensive Habitat Restoration Plan that encompasses approximately 235 gross acres of the Project site and would provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. **New public and coastal access will be provided**

The Project would make available to the public a site that has been privately-owned and closed to the public since the 1940s. It would provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, access to open space and trails, and a pedestrian and bicycle bridge from the Project site across West Coast Highway to the beach. The Project would also provide approximately 475 new public parking spaces in the coastal zone.

3. **Dedication and improvement of land for public park, recreational, and open space purposes in excess of the requirements of California law and City ordinances**

In addition to the restoration and long-term preservation of natural open space and habitat areas described above in #1, above, the City's General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's Primary Use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The Project provides approximately 21.8 gross acres of public community parkland and improvements. As described below, the Project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the “Quimby Act”) allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. Based on the number of dwelling units proposed, the Project would be required to dedicate approximately 15 acres of parkland only. The Project would both dedicate land and provide improvements to the following parks and recreational trails. The public parks, recreational and open space provided by the Project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 21.8 gross acres (18 net acres);
- The improvement of Bluff Park and the Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres;
- The improvement of a trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately seven miles of trails throughout the Project site; and
- The improvement of coastal public access via a Pedestrian and Bicycle Bridge from the Project site across West Coast Highway to the beach.

4. Comprehensive oilfield abandonment which expedites habitat restoration and protection

The Newport Banning Ranch property is an active, operating oilfield. In addition, as an active, operating oilfield, and as detailed in the City’s General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oilfield to implement the habitat and parkland goals of the City’s General Plan. The Project provides for the consolidation of the existing oil operations into two areas thereby permitting oilfield abandonment and clean up to commence on the remainder of the Project site in advance of when they would have occurred. The costs of the comprehensive oilfield abandonment and remediation are estimated at approximately \$30 million – none of which would have to be funded by the City or the public. In addition, the oil operation consolidation would allow for habitat restoration activities to occur in advance of when it would have absent the Project’s ability to require consolidation.

5. Provision of areawide water quality benefits

The Project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of the Cities of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses. These areas currently drain through the Project site and flow untreated into the Project’s lowland areas and to the Semeniuk Slough. The water quality basin would also capture and treat on-site urban runoff from within the Project. The 103-acre Semeniuk Slough is identified in the City’s Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Semeniuk Slough include water quality degradation and sediment build-up. (Coastal Land Use Plan at pages 4-15 and 4-16) By capturing and treating this urban

runoff, the Project would provide significant water quality benefits to the Semeniuk Slough.

6. Payment to City of a public benefit fee

In addition to any other fee or charge to which the Project would be required to pay, the Project would to the City a public benefit fee of approximately \$30,909 for each market rate residential unit constructed on the property

7. Net fiscal benefits to the City

The Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach prepared by Applied Development Economics concluded that the Project would have a net fiscal benefit of nearly \$2 million per year if all of the proposed land uses are fully developed. Furthermore, even if the resort Inn and retail and service commercial uses are not developed, the Project would have a net fiscal benefit of nearly \$1.4 million per year.

8. Provide a variety of housing opportunities within the City consistent with the City's General Plan

The City's Housing Element establishes as a goal: A balanced residential community, comprised of a variety of housing types, designs, and opportunities for all social and economic segments. (Housing Element Goal H2) The Project would provide a wide range of housing types from single-family detached to higher density attached and multi-family units that would provide a variety of housing opportunities within one site – a feature not available in many other areas of the City or new developments elsewhere in the City due to the limited number of sites and the sizes of parcels available for new residential development. In addition, the Project would provide a minimum of 50 percent of its affordable housing requirements on site which would provide greater opportunities for all segments of the City's population to enjoy living on the Project site.

9. Fire station improvements

The Project would contribute up to \$700,000 towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of a station is not completed by the City prior to development of certain areas of the Project site, the Project would make available an on-site location for a temporary fire station.

10. Sustainable Design

In addition to its emphasis on a mix of uses and housing opportunities, the Newport Banning Ranch Project is designed to be a sustainable and green community that provides energy efficiency and resource conservation to reduce the Project's greenhouse gas emissions, consistent with AB 32. The following Project components implement sustainability:

- The Project would provide a network of public pedestrian and bicycle trails to reduce auto dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails. The Project would coordinate with the Orange County Transportation Authority to allow for transit routing through the Project site.

- The Project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.
- The Project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.
- The Project would implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.
- The Project would exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5 percent.
- The Project would require that all residential development incorporate low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multimetering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.
- The Project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.
- The Project would implement remediation and cleanup of the oilfield, which includes the ability to recycle and properly dispose on-site oilfield materials. Additionally, the treatment and cleaning of impacted soils would be done on site which significantly reduces the potential export of oil field materials and impacted soils.
- The Project would also increase construction waste diversion by 50 percent from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

11. Circulation Improvements

The Project, through an agreement with the City of Costa Mesa, will fund intersection improvements for intersections in that City. Although outside of the City of Newport Beach, these traffic improvements will provide benefits to City of Newport Beach residents who use these streets. The Applicant will incrementally fund the City of Costa Mesa for intersections improvements. At Project build out, the Project will have provided approximately \$4.3 million in contributions to intersection improvements which is more than double the Project's fair share requirements based upon the traffic analysis in the Final EIR.

PC 1 Exhibit A

Final EIR SCH No. 2009031061 (under
separate cover)

PC 1 Exhibit B

Findings and Facts in Support of Findings
and Statement of Overriding
considerations

EXHIBIT B

FINDINGS AND FACTS IN SUPPORT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE NEWPORT BANNING RANCH PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, NEWPORT BEACH, CALIFORNIA

STATE CLEARINGHOUSE NO. 2009031061

1. INTRODUCTION

The California Environmental Quality Act, Public Resources Code Section 21081, and the State CEQA Guidelines, 14 California Code of Regulations, Section 15091 (collectively, CEQA) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. The State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
 - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
 - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
 - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed and considered the Draft Environmental Impact Report (Draft EIR) and the Final Environmental Impact Report (Final EIR) for the Newport Banning Ranch Project, SCH No. 2009031061 (collectively, the EIR), as well as all other information in the record of proceedings on this matter, the following Findings and Facts in Support of Findings (Findings) and Statement of Overriding Considerations (SOC) are hereby adopted by the City of Newport Beach (City) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for the development of the Project. These actions include the approval of the following:

- Final Environmental Impact Report No. ER 2009-002
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008
- City of Newport Beach General Plan Figure I2, Sphere of Influence
- City of Newport Beach Zoning Code Amendment No. CA2008-004
- Pre-Annexation Zone Change
- Newport Banning Ranch Planned Community Zoning No. PC2008-002
- Newport Banning Ranch Master Development Plan No. MP2008-001
- Tentative Tract Map No. NT2008-003
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001

- Development Agreement No. DA2008-003
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance

These actions are collectively referred to herein as the Project.

A. Document Format

These Findings have been organized into the following sections:

- (1) Section 1 provides an introduction to these Findings.
- (2) Section 2 provides a summary of the Project and overview of the discretionary actions required for approval of the Project, and a statement of the Project's objectives.
- (3) Section 3 provides a summary of previous environmental reviews related to the Project area that took place prior to the environmental review done specifically for the Project, and a summary of public participation in the environmental review for the Project.
- (4) Section 4 sets forth findings regarding those environmental impacts which were determined as a result of the Initial Study, Notice of Preparation (NOP) and consideration of comments received during the NOP comment period either not to be relevant to the Project or which were determined to clearly not manifest at levels which were deemed to be significant for consideration at the Project-specific level.
- (5) Section 5 sets forth findings regarding significant or potentially significant environmental impacts identified in the EIR which the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of Project Design Features, standard conditions, and/or mitigation measures. In order to ensure compliance and implementation, all of these measures will be included in the Mitigation Monitoring and Reporting Program (MMRP) for the Project and adopted as conditions of the Project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to Project Design Features and standard conditions, these findings specify how those impacts were reduced to an acceptable level. Section 5 also includes findings regarding those significant or potentially significant environmental impacts identified in the EIR which will or which may result from the Project and which the City has determined cannot feasibly be mitigated to a less than significant level.
- (6) Section 6 sets forth findings regarding alternatives to the proposed Project.
- (7) Section 7 consists of a Statement of Overriding Considerations which sets forth the City's reasons for finding that specific economic, legal, social, technological, and other benefits, including region-wide or statewide environmental benefits, of the Project outweigh the Project's potential unavoidable environmental effects.

B. Custodian and Location of Records

The documents and other materials which constitute the administrative record for the City's actions related to the Project are located at the City of Newport Beach Community

Development Department, 3300 Newport Boulevard, Newport Beach, California 92658. The City of Newport Beach is the custodian of the Administrative Record for the Project.

2. PROJECT SUMMARY

A. Project Location

The Project site is approximately 401.1 acres. Of the 401.1 acres, approximately 40 acres of the Project site are located in the incorporated boundary of the City of Newport Beach (City), and approximately 361 acres are in unincorporated Orange County (County) within the City's Sphere of Influence, as determined by the Local Agency Formation Commission (LAFCO) of Orange County. The entire Project site is within the boundary of the Coastal Zone, as established by the California Coastal Act.

The Project site is generally bound on the north by the County of Orange Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development south of the highway in the City of Newport Beach; on the east by residential, light industrial, institutional, and office development in the Cities of Costa Mesa and Newport Beach; and on the west by the U.S. Army Corps of Engineers (USACE) restored 92-acre salt marsh basin and the Santa Ana River. The City of Huntington Beach is west of the Santa Ana River. At its nearest point, the Project site is less than 0.25 mile inland from the Pacific Ocean. Because the property is an active oilfield, there is no public access to the Project site.

B. Project Description

The Project would allow for the development of the site with residential, commercial, resort inn, and park and recreational uses, and would provide open space uses that would permit the continuance of oil production and consolidation of the oil operations on a portion of the open space area of the Project site. The Project includes infrastructure to support the proposed land uses, including roads, utilities, and public parks to serve future Project residents and the community at large.

The 401-acre Project site is proposed for development with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, and a 75-room resort inn. Approximately 51.4 gross acres are proposed for active and passive park uses including a 21.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) of the 401-acre site are proposed as permanent open space. Of the 252.3 gross acres, approximately 16.5 gross acres would be used for interim oil operations. Upon the future cessation of oil operations, these oil consolidation sites would be abandoned and remediated, and the consolidation sites would be restored as open space. The Project includes the development of a vehicular and a non-vehicular circulation system for automobiles, bicycles, and pedestrians, including a pedestrian and bicycle bridge from the Project site across West Coast Highway.

The City of Newport Beach General Plan (General Plan) was adopted by the City Council on July 25, 2006, and approved by the voters on November 6, 2006. The General Plan (1) establishes criteria and standards for land use development; and (2) provides policy and land use guidance for the City and its Sphere of Influence. A majority of the Project site is located in the unincorporated Orange County area within the City's Sphere of Influence with a County General Plan designation of "Open Space".

As a part of the Project, the unincorporated area within the City's Sphere of Influence is proposed to be annexed to the City.

The Project site has a Newport Beach General Plan land use designation of OS(RV), Open Space/Residential Village. The OS(RV) land use designation establishes a Primary Use of Open Space and an Alternative Use of Residential Village for the Project site, as described below:

Primary Use: Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

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.

The City of Newport Beach General Plan's Land Use Element prioritizes the retention of the Project site for open space. As described in the General Plan, the open space acquisition option could include consolidation of oilfield operations; restoration of wetlands; and the provision of nature education and interpretative facilities and an active park containing playfields and other facilities to serve residents of adjoining neighborhoods.

The City of Newport Beach General Plan specifies that, if the Primary Use (Open Space) is not implemented (i.e., the property is not acquired for open space within a time period and pursuant to terms agreed to by both the City and property owner), the Project site could be developed as a Residential Village (RV) containing a mix of housing types, limited supporting retail, visitor accommodations, a school, and active community parklands with a majority of the property preserved as open space. The General Plan identifies the maximum intensity of development allowed on the property to include up to 1,375 du, 75,000 sf of retail commercial uses oriented to serve the needs of local and nearby residents, and 75 hotel rooms in a small boutique hotel or other type of overnight visitor accommodation. The proposed Project implements the General Plan's Alternative Use for the property.

Both the Master Plan of Streets and Highways in the City of Newport Beach General Plan's Circulation Element and the Orange County Master Plan of Arterial Highways (MPAH) depict roadways through the Project site. Roadways to be constructed as part of the proposed Project include: (a) Bluff Road, a north-south, four-lane divided road extending from West Coast Highway to 15th Street; (b) North Bluff Road, which would transition from a four-lane divided road to a two-lane undivided road extending between 15th Street and 19th Street; (c) an extension of 15th Street, a four-lane divided road, from its existing western terminus at the boundary of the Project site and connecting with North Bluff Road; (d) the extension of 16th Street, a two-lane collector roadway, from its existing terminus at the Project site's eastern boundary to North Bluff Road; and (e) the extension of 17th Street, a four-lane divided primary roadway from its existing terminus at the Project site's eastern boundary and connecting with North Bluff Road.

The Project requires an amendment to the General Plan Circulation Element to delete a second road connection to West Coast Highway through the Project site from 15th Street. The traffic analysis done for the Project demonstrates that this roadway is not needed to serve the traffic demand associated with the proposed Project and subregional development. Therefore, construction of this second road to West Coast Highway has not been identified as a component of the Project or assumed for any of the Project Alternatives.

An amendment to the Orange County MPAH is also required to delete a second connection to West Coast Highway and to redesignate North Bluff Road. The Orange County MPAH designates North Bluff Road as a Primary (four-lane divided) to 17th Street and a Major (six-lane divided) between 17th Street and 19th Street. An amendment to the Orange County MPAH is required to change the designation from a Major to a Secondary (four-lane undivided) between 17th Street and 19th Street.

Half-width roadway improvements on North Bluff Road north of 16th Street for approximately 800 feet are proposed on property owned by the Newport-Mesa Unified School District (School District). There is a Memorandum of Understanding (MOU) between Newport Banning Ranch, LLC (Applicant) and the School District that would permit these improvements.

C. Discretionary Actions

Implementation of the portion of the Project within the City of Newport Beach will require several actions by the City, including

- Final Environmental Impact Report No. ER 2009-002. The Project requires the certification of the environmental document as having been prepared in compliance with the CEQA Statutes, the State CEQA Guidelines, and the *City of Newport Beach Implementation Procedures for the California Environmental Quality Act*. By doing this, the City is certifying that the information from the Final EIR was considered in the final decisions on the Project.
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008. The General Plan Circulation Element's Master Plan of Streets and Highways Element depicts the westerly extension of 15th Street to West Coast Highway through the Project site. An amendment to the Circulation Element of the General Plan would delete the segment of 15th Street west of Bluff Road, which would have provided a second arterial through the Project site connecting to West Coast Highway. General Plan Circulation Element Figure CE1, Master Plan of Streets and Highways, depicts two future Primary (four-lane divided) roads through the Newport Banning Ranch site connecting to West Coast Highway.
- City of Newport Beach General Plan Figure I2, Sphere of Influence. The proposed land uses for the Project site are consistent with the allowable land uses and development intensity set forth in the Newport Beach General Plan. The Project would not require an amendment to the General Plan Land Use Element. The General Plan Land Use Element Sphere of Influence map (General Plan Figure I2) would require an amendment to modify the City boundary to include the entirety of the Newport Banning Ranch site.

- City of Newport Beach Zoning Code Amendment No. CA2008-004. A Zoning Code Amendment would rezone the Project site from Planned Community (PC) 25 to PC-57.
- Pre-Annexation Zone Change. 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. The Newport Banning Ranch Planned Community (NBR-PC) would serve as the zoning regulations for PC-57.
- Newport Banning Ranch Planned Community (NBR-PC) Zoning No. PC2008-002. The NBR-PC would serve as the zoning regulations for the Project. The NBR-PC establishes allowable land uses within each land use district; development regulations for each land use district; general development regulations applicable to all development within the Project site; a plan for circulation and infrastructure facilities to serve development; and procedures for implementing and administering the NBR-PC. The NBR-PC would serve as the zoning and development regulations for both the portion of the Project site located within the City and the portion of the Project site located within the County of Orange but within the City's Sphere of Influence. Following annexation of the areas located within the Sphere of Influence, the NBR-PC would become effective.
- Newport Banning Ranch Master Development Plan No. MP2008-001. Approval of the Master Development Plan would implement the NBR-PC requirement for the Project site by establishing design criteria for each land use component proposed for development and by providing a sufficient level of detail, as determined by the City, to guide the review of subsequent development approvals, including construction-level permits, as required by the NBR-PC. The Master Development Plan is also proposed to provide a sufficient level of detail related to Coastal Act policies so that, pursuant to City approval, and to the maximum extent practicable, the Coastal Commission may approve the Master Development Plan as part of a Coastal Development Permit which would include Coastal Commission approval delegating authority to the City to be the final approving body for subsequent discretionary and ministerial approvals.
- Tentative Tract Map No. NT2008-003. The Project includes a request for approval of Tentative Tract Map (TTM) No. 17308 which establishes lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance that may further subdivide (with additional subdivision maps) these lots for the development of conventional fee lots, planned developments, and/or condominiums. Approval of the TTM would permit rough and precise grading, oilfield facilities consolidation, site remediation, habitat restoration, construction of public roadways, drainage and water quality improvements, backbone infrastructure, and dry utilities, including domestic water and sewer facilities throughout the Project site. Development of all other facilities and land uses would require recordation of a final tract map.
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001. The Newport Banning Ranch AHIP proposes the construction of a minimum of 50 percent of the required affordable housing on the Project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that

would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

- Development Agreement No. DA2008-003. The Development Agreement between the Applicant and the City would vest the Project's development approvals to allow buildout of the Project site under the development standards and requirements in place at the time of Project approval. The Development Agreement includes requirements of the City that would need to be accomplished by the Applicant in return for the vesting of Project approvals. The Development Agreement addresses affordable housing requirements; parkland dedication/in-lieu fee requirements; infrastructure phasing including Traffic Phasing Ordinance (TPO) compliance; permitting by the City pursuant to the Newport Banning Ranch Coastal Development Permit subsequent to approval by the Coastal Commission; vesting of City entitlements and applicable land use regulations; and other issues relevant to the Project in order to describe the development rights of and public benefits to be provided by the Applicant and to outline the terms for annexation of the property to the City. The Development Agreement would not preclude the need for future site plans, tentative tract maps, or other permit processing prior to development. If the City does not have a certified Local Coastal Program by such date on which the Development Agreement is entered into, the Development Agreement would be submitted to the Coastal Commission for its approval.
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance. The City of Newport Beach has adopted a Traffic Phasing Ordinance (Municipal Code Title 15, Chapter 15.40, Traffic Phasing Ordinance) (1) to provide a method of analyzing the traffic impacts of projects on "primary intersections" during the morning and evening peak hours; (2) to identify the near-term impacts of a project's traffic and planned improvements to ensure that development is phased with improvements to address impacts; (3) to ensure that project proponents make or fund circulation system improvements that mitigate impacts at or near the time the project is ready for occupancy; and (4) to ensure that a project's cost of mitigating traffic impacts is roughly proportional to project impacts. Because the Newport Banning Ranch Project is a large project, the TPO requirements direct the TPO traffic analysis to account for full Project completion in five years, which in this case is 2016, as a "worst-case" scenario. The TPO Study also includes an analysis for the Project phasing of construction.

The Final EIR would also provide environmental information to responsible agencies, trustee agencies, and other public agencies which may be required to grant approvals and permits or coordinate with the City of Newport Beach as a part of Project implementation. These agencies include, but are not limited to, those listed below.

- ***Orange County Transportation Authority.*** Amendment to the Orange County Master Plan of Arterial Highways. To redesignate the proposed North Bluff Road just north of 17th Street to 19th Street from a Major (six-lane divided) to a Primary (four-lane divided) and the deletion of a second road through the Project site to West Coast Highway. The amendment would allow for the deletion of the connection from 17th Street westerly to West Coast Highway.
- ***Orange County Health Care Agency.*** Approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation is required from the Regional Water Quality Control Board.

- **Local Agency Formation Commission.** The Local Agency Formation Commission (LAFCO) is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include approximately 361 acres of the 401.1-acre Project site into the City and a change in service district boundaries for water service.
- **Newport-Mesa Unified School District.** An encroachment permit consistent with the MOU for the construction of the extension of 16th Street and North Bluff Road on the School District's property.
- **California Department of Transportation.** Activities located within California Department of Transportation (Caltrans) right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit.
- **California Department of Fish and Game.** The Project would require a Section 1600 Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the *California Fish and Game Code*.
- **Regional Water Quality Control Board.** Issuance of the U.S. Army Corps of Engineers (USACE) Section 404 Permit would require the Santa Ana Regional Water Quality Control Board (RWQCB) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. Waste Discharge Requirements (WDRs) issued by the Santa Ana RWQCB would be required for the fill or alteration of "Waters of the State" on the Project site located under the RWQCB's jurisdiction. Approval of the final Remedial Action Plan (RAP) for the oil well/facility abandonment and site remediation is required from the Santa Ana RWQCB.
- **California Coastal Commission.** The Project would require a Coastal Development Permit from the Coastal Commission, which would include approval of the Master Development Plan and the Development Agreement.
- **State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR).** Oil and gas wells to be abandoned or re-abandoned shall be done in accordance with the current requirements of the DOGGR. The abandonment requirements will be those applied by DOGGR at the time the Remedial Action Plan, including the Combustible Soil Gas Hazard Mitigation Plan, is submitted for review to the Orange County Fire Authority.
- **U.S. Army Corps of Engineers.** The Project would require a USACE Section 404 permit for impacts to areas determined to be "Waters of the U.S.". As a federal agency, the USACE's actions require compliance with NEPA.
- **U.S. Fish and Wildlife Service (USFWS).** Because the Project would require federal agency permits, the USFWS must conduct a Section 7 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the

issuance of a Biological Opinion. As a federal agency, the USFWS' actions require compliance with the National Environmental Policy Act (NEPA).

D. Statement of Project Objectives

The statement of objectives sought by the Project and set forth in the Final EIR is provided as follows:

1. Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area.
2. Preservation of a minimum of 50 percent of the Project site as open space without the use of public funds to be used for habitat conservation, interpretive trails, and development of public parks to meet the recreational needs of the community.
3. 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 the provision of affordable housing to help meet the City's Regional Housing Needs Assessment (RHNA).
4. 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.
5. 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.
6. 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 criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene.
7. Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access.
8. 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.
9. Provide for the consolidation of oil resource extraction and related recovery operations in locations that minimize impacts to sensitive habitat areas and promote compatibility with development of the remainder of the property for residential, resort, commercial, park, and open space uses.

10. 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.
11. 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.
12. Expand public recreational opportunities within the Coastal Zone through development of a public community park and associated parking, and through development of publicly accessible bluff parks, interpretive parks, and trails as part of the Project.
13. 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.
14. 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.
15. 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.
16. Provide compatibility between the Project and existing adjacent land uses.
17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City's Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

3. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

The Final EIR includes the Draft Environmental Impact Report (Draft EIR) dated September 9, 2011, written comments on the Draft EIR that were received during the 60-day public review period, and written responses to those comments and clarifications/changes to the EIR. In conformance with CEQA and the State CEQA Guidelines, the City conducted an extensive environmental review of the Newport Banning Ranch Project:

- Completion of the Notice of Preparation (NOP), which were released for a 30-day public review period from March 18, 2009, through April 17, 2009. The NOP was sent to all responsible agencies, trustee agencies, and the Office of Planning Research and posted at the Orange County Clerk-Recorder's office and on the City's website on March 16, 2009.
- During the NOP review period, two Scoping Meetings were held to solicit additional suggestions on the content of the Newport Banning Ranch EIR. One scoping meeting was held for agencies and one meeting for the general public. Attendees were provided an opportunity to identify verbally or in writing the issues they felt should be addressed in the EIR. The two scoping meetings for the EIR were held on Tuesday, April 2, 2009 at Newport Beach City Hall at 3300 Newport Boulevard,

Newport Beach, CA 92658. The notice of the public scoping meetings was included in the NOP.

- Preparation of a Draft EIR by the City which was made available for a 60-day public review period (September 9, 2011 to November 8, 2011). The Draft EIR consisted of three volumes. Volume I contains the text of the Draft EIR and analysis of the Newport Banning Ranch Project. Volume II contains all Draft EIR graphics. Volume III contains the appendices, including the NOP and comments received in response to the NOP. The Notice of Availability (NOA) for the Draft EIR was published in the September 9, 2011 editions of the Orange County Register and the Daily Pilot, newspapers of general circulation. The NOA was sent to all interested persons, agencies and organizations. The Notice of Completion (NOC) was sent to the State Clearinghouse in Sacramento for distribution to public agencies. The NOA was posted at the Orange County Clerk-Recorder's office on September 9, 2011. Copies of the Draft EIR were made available for public review at the City of Newport Beach Community Development Department, Newport Beach Central Branch Library, Newport Beach Balboa Branch Library, Newport Beach Mariners Branch Library, and Newport Beach Corona del Mar Branch Library. The Draft EIR was available for download via the City's website: <http://www.newportbeachca.gov>.
- Preparation of a Final EIR, including the comments and Responses to Comments on the Draft EIR. The Final EIR/Response to Comments contains: comments on the Draft EIR, responses to those comments, clarifications/revisions to the Draft EIR, and appended documents. The Final EIR Responses to Comments was released on March 16, 2012. In compliance with Section 15088(b) of Title 14 of the California Code of Regulations (State CEQA Guidelines), the City has met its obligation to provide written Responses to Comments to public agencies at least 10 days prior to certifying an EIR.
- The Environmental Quality Affairs Committee (EQAC) held meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR.
- Planning Commission Study Sessions were held for the proposed Project and Draft EIR on November 3, 2011, January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012.
- A notice of the Newport Beach Planning Commission hearing for the Project was published in the Daily Pilot, mailed to all property owners within 1000 feet of the Project Site and to all interested persons, agencies and organizations and posted at the Project Site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.
- Planning Commission public hearings were held on March 22, April 19, and June 21, 2012.
- A notice of the Newport Beach City Council hearing of _____, 2012 for the Project was mailed on ____, 2012 to all property owners of record within 300 feet of the subject site and all individuals that requested to be notified. A notice for the City Council hearing was posted at City Hall as required by established public hearing posting procedures. Additionally, notice for the hearing was published in the Orange County Register on _____

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed Project consists of the following documents and other evidence, at a minimum:

- The City's General Plan, as amended, and all environmental documents relating thereto;
- All information submitted to the City by the Applicant and its representatives relating to the Project and/or the Final EIR including but not limited to the Newport Banning Ranch Master Development Plan, NBR-PC, Tentative Tract Map, AHIP, Development Agreement, and the Traffic Study pursuant to the Traffic Phasing Ordinance.
- NOP and all other public notices issued by the City in conjunction with the proposed Project;
- The two Scoping Meetings held during the 30-day NOP period;
- The Final EIR including the Draft EIR and all appendices, the Responses to Comments document, and all supporting materials referenced therein. All documents, studies, EIRs, or other materials incorporated by reference in the Draft EIR and Final EIR. The reports and technical memoranda included or referenced in the Response to Comments of the Final EIR;
- All written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR and included in the Final EIR Responses to Comments document;
- All responses to written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR;
- The Environmental Quality Affairs Committee (EQAC) meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR. The City responded as a part of the Final EIR Responses to Comments document to EQAC's comment letter submitted during the 60-day public review comment period.
- All testimony provided by agencies and members of the public at the January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012 Planning Commission Study Sessions held subsequent to the 60-day public review comment period on the Draft EIR;
- Planning Commission public hearings on March 22, 2012, April 19, 2012, and June 21, 2012.
- City Council public hearings on _____.
- All final City Staff Reports relating to the Draft EIR, Final EIR, and the Project;
- All other public reports, documents, studies, memoranda, maps or other planning documents relating to the Project, the Draft EIR, and the Final EIR prepared by the City, consultants to the City, or Responsible or Trustee Agencies.
- The Mitigation Monitoring and Reporting Program (MMRP) adopted by the City for the Project; The Ordinances and Resolutions adopted by the City in connection with the proposed Project, and all documents incorporated by reference therein;
- These Findings of Fact and Overriding Considerations adopted by the City for the Project. Any documents expressly cited in these Findings of Fact; and

- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Newport Beach Community Development Department. The custodian for these documents is the City of Newport Beach. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

4. ENVIRONMENTAL EFFECTS WHICH WERE DETERMINED NOT TO BE POTENTIALLY AFFECTED BY THE PROPOSED PROJECT

As a result of the Notice of Preparation circulated by the City on March 16, 2009, in connection with preparation of the EIR, the City determined, based upon the threshold criteria for significance, that the Project would have no impact or a less than significant impact on the following potential environmental effects, and therefore, determined that these potential environmental effects would not be addressed in the Draft EIR. Based upon the environmental analysis presented in the EIR, and the comments received by the public on the Draft EIR, no substantial evidence was submitted to or identified by the City which indicated that the Project would have an impact on the following environmental areas:

- Agriculture and Forest Resources:* The Project site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the Project site is covered by a Williamson Act Contract. Additionally, the Project site does not include forest resources, including timberlands, and is not zoned for agriculture.
- Aesthetics and Visual Resources:* The Project area is not adjacent to, nor can it be viewed from a designated State scenic highway.
- Geology and Soils:* The proposed Project would not use septic systems or alternative waste water disposal systems.
- Hazards and Hazardous Materials:* The Newport Banning Ranch Project site is not located within an adopted Airport Land Use Plan. The nearest airport/airstrip is the John Wayne Airport, which is located approximately four miles northeast of the Project site. Furthermore, a discussion of this topic is not necessary because there is no private airstrip in proximity to the Project site.
- Population, Housing, and Employment:* There are no existing residential units on the Project site. The Project proposes the development of up to 1,375 du on the Project site. Therefore, the Project would not displace existing residential units or residents and the Project would not necessitate the need for replacement housing.

5. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS

The following potentially significant environmental impacts were analyzed in the EIR, and the effects of the Project were considered in the EIR. Where as a result of the environmental analysis of the Project and the identification of Project Design Features, compliance with existing laws, codes and statutes, and the identification of feasible mitigation measures (together referred herein as the Mitigation Program), the following potentially significant impacts have been determined by the City to be reduced to a level of less than significant, the City has found in accordance with CEQA Section 21081(a)(1) and State CEQA Guidelines Section 15091(a) (1) that "Changes or alterations have been required in, or incorporated into, the project

which mitigate or avoid the significant effects on the environment,” which is referred to herein as “Finding 1”. Where the potential impact can be reduced to less than significant solely through adherence to and implementation of Project Design Features or standard conditions, these measures are considered “incorporated into the project” which mitigate or avoid the potentially significant effect, and in these situations, the City also will make “Finding 1” even though no mitigation measures are required.

Where the City has determined pursuant to CEQA Section 21081(a)(2) and State CEQA Guidelines Section 15091(a)(2) that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s findings is referred to herein as “Finding 2”.

Where, as a result of the environmental analysis of the Project, the City has determined that either (1) even with the identification of Project Design Features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report,” referred to herein as “Finding 3”.

A. Land Use and Related Planning Programs

(1) Potential Impact: The proposed Project would not physically divide an established community.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no standard conditions of approval or mitigation measures are required or recommended. Project Design Features (PDFs) 4.1-1 through 4.1-5 identify the components of the Project.

Facts in Support of Finding: Consistent with the findings of the City of Newport Beach General Plan EIR, the Project would not physically divide an established community. The Project site is an active oilfield without public access. It is contiguous to existing land uses, and roads through the site would provide planned connections to existing land uses in the Project vicinity.

PDF 4.1-1 Through the implementation of the Master Development Plan, the Project permits a maximum of 1,375 residential dwelling units and a variety of residential housing types to provide opportunities for a range of lifestyles. Housing types include single-family detached, single-family attached, multi-family, and/or residential uses in a mixed-use configuration.

PDF 4.1-2 The Master Development Plan designates areas for a diverse public park system to include active, passive, and interpretive recreation opportunities.

PDF 4.1-3 The Master Development Plan designates more than 240 gross acres of the Project site as Open Space, including wetland restoration/water quality areas, interpretive trails, habitat

restoration areas, and habitat preservation areas. Open Space areas also include 2 sites and a connecting road comprising approximately 17 acres designated for continuing but interim use as oil and gas production sites. At the end of the oilfield's useful life, this area will revert to Open Space land use.

PDF 4.1-4 The Master Development Plan provides for a minimum of 20 gross (17 net) acres for a public Bluff Park as a visual and passive recreational amenity, trail corridor, and a transition between open space and development.

PDF 4.1-5 The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan identify proposed uses adjacent to existing Newport Beach and Costa Mesa residential neighborhoods which are limited to either parks or open space. Proposed uses adjacent to existing commercial and light industrial areas within the City of Costa Mesa "Mesa West Bluffs Urban Plan" overlay area will be a higher density residential and/or mixed-use development of similar height and scale to those prescribed in the "Mesa West Bluffs Urban Plan". Open space and/or park uses will be sited adjacent to the Newport Crest community to provide a visual buffer between that community and Project development areas.

(2) Potential Impact: There would be land use incompatibility associated with long-term noise sources and night illumination on the Project site 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.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the incorporation of Standard Condition (SC) 4.1-1 and Noise Mitigation Measures (MMs) 4.12-5 through 4.12-7. However, the City has determined that while the above-described impact can be partially mitigated by the Mitigation Program identified below, this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: When evaluating the Project as a whole, it would be considered generally compatible with the existing and proposed future off-site land uses as well as compatible with land uses within the Project site. There is one legally non-conforming single-family home located on industrially zoned property in the City of Costa Mesa where there may be potential impacts (shade/shadow, night illumination, and noise); however, the required site plan review process set forth in Standard Condition (SC) 4.1-1 would ensure these impacts would be less than significant.

The proposed Project would have significant and unavoidable construction-related air quality and noise impacts. Although construction impacts would occur over

several years, they would end with the cessation of these activities. Because these significant unavoidable construction impacts would terminate, they are not considered a determinate factor in the compatibility of land uses. Additionally, there would be significant vehicular noise impacts from Bluff Road to Newport Crest residences immediately adjacent to the Project site and to six single-family residences on 17th Street in the City of Costa Mesa. Noise MMs 4.12-5, 4.12-6, and 4.12-7 regarding resurfacing roadways with rubberized asphalt, noise walls/berms, and condominium noise attenuation measures that would mitigate noise impacts to a less than significant level. However, the City cannot require owners of condominium units at Newport Crest to accept and implement improvements on their private property nor can it mandate the implementation of mitigation in another jurisdiction. Therefore, it is speculative to know whether this mitigation, while feasible, is desirable by residents and the Newport Crest Homeowners Association. As such, noise impacts to the identified single-family residences on 17th Street and to a portion of the Newport Crest Condominium development are considered significant and unavoidable. Residences near the active areas of the proposed Community Park may also be adversely impacted by night lighting. As a result, the proposed Project would result in a land use incompatibility with respect to long-term noise impacts and night illumination.

SC 4.1-1 Approval of the Newport Banning Ranch Project would require Project implementation and all future approvals to be subject to all applicable provisions of the *Newport Beach General Plan*; *Newport Banning Ranch Planned Community Development Plan*; all requirements and enactments of federal, State, and local agency authorities; as well as the requirements of any other governmental entities. All such requirements and enactments will, by reference, become conditions of Project approval.

MM 4.12-5 The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15th Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17th Street west of Monrovia Avenue with rubberized asphalt.

MM 4.12-6 Prior to the approval of a grading permit for Bluff Road and 15th Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15th Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry

block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

MM 4.12-7 Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.

B. Aesthetics and Visual Resources

(1) Potential Impact: Development of the proposed Project would alter existing views of the Project site; however, due to extensive site planning, buffers, landscaping and architectural guidelines, the Project would not result in a significant topographical or aesthetic impact. The Project would create public views from the Project site of on-site and off-site scenic resources including the Pacific Ocean that are not currently available because of the property's existing oilfield operations. This is considered a beneficial impact.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Land Use PDF 4.1-4 (set forth above), Aesthetics PDFs 4.2-1 through 4.2-4, and Biological Resources PDF 4.6-4 (set forth below). No mitigation measures were recommended or required.

Facts in Support of Finding: The Project is proposed to be implemented over several years. Project implementation would change the overall visual character and use the Project site from an oilfield to a developed urban infill community. The resulting change in topography/landform and land use would be permanent. Consistent with the General Plan, the majority of the property would be retained in open space (General Plan Land Use Element Goal 3.4 and Policy 6.4.1). Site disturbance would first occur associated with required site remediation efforts. Roadways and utilities (such as water, wastewater, gas, electric, and cable) would be constructed prior to the development of the structures. The transition from graded lots to framed structures to finished buildings with landscaping would occur over each area. As the structures are constructed and finished, the scale of the Project and changes to the visual character of the Project site would become more evident.

Total excavation is estimated to be approximately 2,600,000 cubic yards (cy), including approximately 900,000 cy of cut and fill and 1,455,000 cy of cut and fill corrective grading. Cuts are anticipated to vary from 1 foot to 10 feet with localized cuts up to approximately 25 feet. Fills are anticipated to vary between 1 foot and 30 feet, but may be up to 60 feet associated with bluff repairs with gradients between 2:1 and 3:1. The larger fills would be used for bluffs repair and restoration due to erosion damage, but would allow for the retention of the major topographical features of the Project site including the arroyos.

There is no public access to the Project site because it is private property and an active oilfield. Therefore, the Project site cannot be observed by the public from on-site locations nor can off-site views be observed from the property. 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 and an approximate 50- to 65-foot vertical separation between the Newport Shores residences and the top of the bluff on the western edge of Project site. Because of the difference in elevation, there are uninterrupted views of off-site land uses to the south and west. These views include but are not limited to existing off-site development, the USACE 92-acre wetlands restoration area, the Santa Ana River, and the Pacific Ocean.

The Newport Beach General Plan EIR states:

The Banning Ranch property is currently developed with oil production uses and associated structures, including large storage tanks. However, much of Banning Ranch consists of open space. As such, the existing conditions in Banning Ranch contribute to overall natural aesthetics within the City...If the property cannot be acquired in a timely manner, the development of a compact residential village that preserves the majority of the site as open space and restores critical habitat is allowed in accordance with Policies LU 6.3.1 through 6.5.5. Under both land use options proposed for Banning Ranch, Policies LU 6.5.1 and 6.5.3 would both apply to the area, and would relocate and cluster oil operations, as well as restore and enhance wetlands and wildlife habitats. Both of these policies would improve the overall aesthetic quality of the area. While

both options (open space and high quality residential development) would protect visually important open space components of the existing area, the visual impacts of retaining the site as open space would be less than if development were to be allowed in the area...if the site is ultimately developed, new land uses would include residential, limited commercial, overnight accommodations, and community parks designed in such a way as to provide a cohesive urban form that provides the sense of a complete and identifiable neighborhood (Policy LU 6.4.5). Most importantly, Policy LU 6.5.5 requires that development 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. In addition, as discussed above, the consolidation of oil operations as well as the restoration of wetlands and habitat areas would improve the visual quality of the area. While new development would represent a change from the existing land uses, with implementation of the proposed General Plan Update policies, the potential visual impacts of new development in the Banning Ranch area would be minimized. Consequently, development in Banning Ranch under the proposed General Plan Update would have less-than-significant impacts on the visual quality of the area.

- PDF 4.2-1** As identified in the Master Development Plan, contour grading will be used to minimize impacts to existing public view points from West Coast Highway.
- PDF 4.2-2** Habitable structures will be set back at least 60 feet from the tops of bluff edges, as required in the Newport Banning Ranch Planned Community Development Plan.
- PDF 4.2-3** Implemented through the Master Development Plan, landscaping will be provided around the perimeter of buildings that are proposed adjacent to Open Space Preserve areas to provide a transition.
- PDF 4.2-4** Architectural guidelines included in the Master Development Plan provide for a range of housing types and architectural styles to avoid visual monotony and minimize impacts to existing public views of bluffs. Building architecture will be regulated through provisions contained in the Master Development Plan to ensure high quality designs that are sensitive to the natural resources and compatible with the character of Newport Beach communities within the Coastal Zone. Architectural guidelines require use of a palette of earth tone colors compatible with the open space setting.
- PDF 4.6-4** The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will

restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

(2) Potential Impact: The proposed Project would generate new light sources. The Project would include a “dark sky” lighting concept for development areas adjacent to the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. Consistent with the findings of the General Plan EIR, increased lighting on the Project site is considered a significant, unavoidable impact.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated the incorporation of PDF 4.6-4 (set forth above) and MMs 4.2-1 and 4.2-2 (set forth below), this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Implementation of the Project would create new sources of light and glare that are presently not found on the Project site. Nighttime sources of light would include streetlights, vehicle headlights, lights used within and around buildings including residences, retail areas, and the resort inn, and lights used for the active sports fields in the Community Park.

The Project incorporates “dark sky” lighting standards for HOA land uses and businesses within 100 feet of the Open Space Preserve and Bluff Parks (PDF 4.6.4). Uses within the South and North Bluff Park and Nature Center contiguous to the Open Space Preserve, and non-residential uses in the Villages and Colonies would be required to have: (a) flood lamp shielding and/or City-approved “dark sky” light fixtures/bulbs to reduce the amount of stray lighting into natural resource areas; (b) direct lighting rays confined to the respective residential, resort inn, and commercial lots or park areas upon which the exterior lights are to be installed so that adjacent and nearby areas of the Open Space Preserve are protected from any significant light spillage, intrusion, and glare; and (c) no skyward-casting light fixtures/bulbs. Street lighting would be limited to the lighting of intersections.

However, where not within 100 feet of the Open Space Preserve or the Bluff Parks or for land uses not restricted to dark sky lighting standards within 100 feet of the Open Space Preserve (e.g., private residences), community landscape/common areas, public facilities, streetscapes, parks, and other similar areas may contain accent or other night lighting fixtures. Commercial use lighting would include lighting of parking lots, drive aisles, and building facades subject to the lighting requirements set forth in the NBR-PC.

The North Community Park area is proposed to include lighted tennis courts, lighted soccer fields, a lighted basketball court, youth baseball and softball fields overlaid on the soccer fields, a picnic area or skateboard park, tot lots, fitness/par course, and parking areas. Sports areas would be lit until 10:00 PM. Lighting for athletic playing fields in the Community Park would be required to have light control visors to control spill and glare and to direct light downward onto the playing field. MMs 4.2-1 and 4.2-

2 place lighting orientation and design restrictions on the Community Park and other land uses within the Project site.

Although the Project proposes to restrict lighting in areas of the site, night lighting associated with the Community Park is proposed to have night lighting, and the Project as a whole would introduce new light sources. The findings of this EIR analysis are consistent with the General Plan EIR's determination that the Project's proposed development would result in significant and unavoidable nighttime lighting impacts. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which note that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project.

MM 4.2-1 All public roadways and private development within the Village and Colonies, South and North Bluff Park, Interpretive Parks, and Oil Consolidation sites shall have their "dark sky" lighting system and its components incorporated into the Project and approved by the City of Newport Beach Community Development Director or his/her designated representative prior to the issuance of a building permit for the applicable Village, Colony, Bluff Park, and Nature Center on the Project site. Each lighting plan shall incorporate electrical plans and structural plans that detail the provision of lighting systems for exteriors of all buildings, parking lots, loading areas, walkways, public use areas, any public art displays, fountains, or landscape areas. Lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. No skyward-casting lighting shall be used. Final lighting orientation and design shall be in accordance with the "dark sky" lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible as determined by the Community Development Director or his/her designated representative. Prior to final inspection or issuance of a certificate of occupancy, where applicable, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Project. The inspection shall verify the proper construction and installation of materials within the approved plan; determine the actual light patterns and values through light meter testing and observation; and determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Project.

MM 4.2-2 The lighting plan for the Community Park shall incorporate electrical plans and structural plans that detail the provision of lighting systems for sports field and hard courts; exteriors of buildings; parking lots, walkways, and/or landscape areas. All lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray

lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. Light standards used for lighting playing fields shall be either Musco Lighting™, “Light Structure Green” standards, or another comparable light standard of similar design that reduces light spillage. Final lighting orientation and design shall be in accordance with the “dark sky” lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible, as determined by the Community Development Director. Prior to final inspection, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Community Park. The inspection shall verify the proper construction and installation of materials within the approved plan; shall determine the actual light patterns and values through light meter testing and observation; and shall determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Community Park.

C. Geology and Soils

(1) Potential Impact: The Project site is in a seismically active area with faults within the development area that could not be proven to be inactive. Habitable structures on the Project site near these faults are subject to fault setback zones and seismic design parameters that would appropriately address seismic building standards.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

Facts in Support of Finding: The Project site is not located within an Alquist-Priolo Earthquake Fault Zone. Most of Southern California is subject to ground shaking (ground motion) as a result of movement along active and potentially active fault zones in the region. Three regional fault systems are within approximately six miles of the Project site: the Compton Thrust Ramp, the Newport-Inglewood Fault Zone, and the San Joaquin Hills Blind Thrust Fault. Seismic design of on-site structures (excluding bridges) would be in accordance with the 2007 California Building Code (CBC) criteria; seismic design of the pedestrian and bicycle bridge would be in accordance with Caltrans standards. To accommodate the effects from seismic shaking, all on-site Project structures would be required to comply with the seismic design standards contained within the California Building Code as adopted by the City.

There are two discrete segments of the Newport-Inglewood Fault Zone North Branch (the Newport Mesa North Segment and the Newport Mesa South Segment) potentially within the Project site. Portions of these fault segments were not conclusively shown to have Holocene surface rupture, and therefore are “faults that could not be proved to be inactive”; therefore, Fault Setback Zones were established. Bluff setbacks are in excess of those required by the California Building Code and

would assure no potentially significant impact to Project development from surface fault rupture.

State laws and local ordinances require that, prior to construction, potential seismic hazards are identified and mitigated, as needed, to protect public health and safety from substantial risks through appropriate engineering practices. Compliance with PDF 4.3-1, SCs 4.3-1 and 4.3-2, and MMs 4.3-1 through 4.3-3 (set forth below) would ensure that impacts related to strong seismic ground shaking remain are less than significant.

PDF 4.3-1 Habitable structures will be set back a minimum of 60 feet from the tops of bluff edges, as required in the Master Development Plan and the Newport Banning Ranch Planned Community Development Plan, and will not be constructed within identified fault setback zones.

SC 4.3-1 Prior to the issuance of any grading permits, the City of Newport Beach Community Development Department, Building Division Manager or his/her designee shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within all Land Use Districts and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted in all Land Use Districts and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. If the Applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Building Manager, s/he shall review the plan for a finding of substantial conformance. If the Building Manager finds the plan not to be in substantial conformance, the Applicant shall process a revised tentative map or, if a final map has been recorded, the Applicant shall process a new tentative map. A determination of CEQA compliance shall also be required.

SC 4.3-2 Prior to the recordation of a subdivision map or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the City of Newport Beach Community Development Department, Building Division Manager, the Applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring

encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated.

MM 4.3-1

The Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval, a site-specific, design-level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements and:

- a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies;
- b) Determine structural design requirements as prescribed by the most current version of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults;
- c) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and other surrounding related improvements;

Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site-specific investigations. The structural engineer shall review the site-specific investigations, provide any additional necessary measures to meet Building Code requirements, and incorporate all applicable recommendations from the investigation in the structural design plans and shall ensure that all structural plans for the Project meet current Building Code requirements.

The City's registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical requirements contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits.

The City shall review all Project plans for grading, foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.

MM 4.3-2

Prior to the approval of any applicable final tract map, the Applicant shall have completed, by a qualified geologist, additional geotechnical trenching and field investigations and shall provide a supplemental geotechnical report to confirm the adequacy of Project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. The trenching and report shall be subject to the review and approval of the City of Newport Beach Public Works Director.

MM 4.3-3 Prior to the approval of any applicable final tract map, development setbacks from the Upland fault segments, revised as necessary based upon the findings of additional trenching investigations, shall be incorporated into the Project consistent with requirements set forth in the California Building Code and the *City of Newport Beach General Plan*. Bluff setbacks consistent with the regulatory requirements for habitable structures shall be incorporated into the Project consistent with the beach bluff setback standards in the *City of Newport Beach General Plan*. Where applicable, setback distances consistent with recommendations in the Project's Geotechnical Report (GMU 2010) shall be incorporated. Prior to the preparation of final Project plans and specifications, additional trenching shall be conducted within the 1,300-foot gap between the 2 parts of the existing Fault Setback Zone. This additional trenching shall provide more information about the potential for active faulting in this portion of the Project site. If necessary, the development fault setback zones shall be modified after this information is obtained and analyzed in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. This information shall be subject to the review and approval of the City of Newport Beach Public Works Director and Community Development Director.

(2) Potential Impact: Two fault segments on the Project site have not been confirmed as inactive, and development setbacks have been incorporated into the Project. The fault setback zones would reduce the risk of surface fault rupture. Habitable structures would be restricted to the Upland area, avoiding soils that may liquefy or undergo lateral spreading.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

Facts in Support of Finding: On-site soils subject to liquefaction and lateral spreading are located in the Lowland; no habitable structures are proposed as a part of the Project in the Lowland; this area is proposed for open space, trails, and oil facilities and their associated infrastructure. Residential, commercial, active recreation, and resort inn uses would only occur in the Upland area.

Soils in the Upland (except for existing colluvial deposits when subjected to saturated conditions) are too dense, cemented, or too far above the water table for liquefaction and lateral spreading to occur. Corrective grading would replace unsuitable materials with suitable engineered fill materials over San Pedro Formation or terrace deposits such that they would not be subject to liquefaction. Therefore, the risk associated with seismic-related ground failure and associated liquefaction, lateral spreading, or subsidence is less than significant.

There is no surficial evidence of subsidence on the Project site, and there have been no reports of subsidence-related impacts on oil production facilities. Accordingly, subsidence is not considered a significant risk to or from Project implementation.

(3) Potential Impact: Grading activities would increase the potential for soil erosion and loss of top soil. Best Management Practices (BMPs) would minimize this impact both during construction and long-term use of the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features. No mitigation measures were required or recommended.

Facts in Support of Finding: Grading activities would increase the potential for soil erosion and loss of top soil. There is a risk of shallow slumping on bluff faces associated with surface runoff; however, Project drainage improvements are expected to reduce runoff compared to existing conditions. Upon completion of the Project, soil erosion and the loss of topsoil would be minimized through the use of engineered grading, surface drainage improvements, and landscaping.

Areas within the bluff slope setback zone would contain drainage devices to minimize the surface flow over the bluff slopes. In addition, surface drainage and bluff slope erosion-control plans would be developed in areas where bluff slopes are to remain natural. Construction best management practices (BMPs) would ensure that construction-related impacts on soil erosion would be less than significant, and post-Project operation and occupancy would not generate surface flows that result in loss of topsoil or induce erosion.

Erosion of the bluff face by surface runoff and local drainage has resulted in shallow erosion, slumping, and localized surficial bluff instability. Future bluff retreat rates would be expected to be lower than historic bluff retreat rates since removing oil production activities in the Upland would reduce runoff rates over the bluffs. Project drainage improvements would also reduce surface runoff over the bluffs and resulting bluff face erosion; however, surface runoff from precipitation and nuisance flows would not cease entirely. The Project would also implement subdrain systems to capture infiltrated water and direct it away from the bluff faces on the Project site, thereby reducing the risk of bluff instability related to post-development groundwater.

As sediments within the bluffs possess a fairly high erosion potential, the topographic alteration of the bluffs would take the form of shallow erosion and surficial slumping of bluff faces. The Project includes bluff repair for bluff stability. Areas that have suffered from erosion would require careful grading in order to restore and revegetate the bluff/slope edge and to limit further degradation. The drainage overtopping the bluff/slope edge would be intercepted along the public trail system and redirected into the Project drainage system. Compliance with PDF 4.3-1 (set forth above) and PDFs 4.3-2 and 4.3-3 (set forth below) would significant impacts do not occur.

PDF 4.3-2 The Master Development Plan identifies drainage devices to be constructed along slopes adjacent to the development edge to eliminate existing surface flow over bluffs to the extent feasible. Landscape and irrigation plans will be designed to minimize irrigation near natural areas/slopes through the use of drought-tolerant vegetation and low-flow irrigation.

PDF 4.3-3 The Master Development Plan includes a Bluff/Slope Restoration Plan that requires eroded portions of bluff slopes to be repaired and stabilized. In order to stabilize slopes and help avoid erosion,

bluff areas devoid of vegetation after repair and stabilization efforts will be planted with native vegetation that does not require permanent irrigation.

(4) Potential Impact: On-site soils have a low to medium expansion potential.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.3-1 and 4.3-2 and MMs 4.3-1, 4.3-2, and 4.3-3 (set forth above).

Facts in Support of Finding: Expansion tests indicate the presence of expansive soils. Without correction, expansive soils can be unsuitable for building. Expansive soils can be accommodated through strengthened and stiffened building foundation design that is capable of resisting the effects of expansive soils. The final geotechnical report will include an evaluation of expansive soils and include specific construction and design recommendations, based on Building Code requirements to reduce Project impacts associated with expansive soils.

D. Hydrology and Drainage

(1) Potential Impact: Construction and operation of the Project has the potential to adversely impact water quality in downstream receiving waters through discharge of runoff that contains various pollutants of concern. The Project incorporates detailed low impact development (LID) features into internal site design and transitional areas for sediment, source, and treatment control. Additional site-design, structural, source-control, and treatment-control BMPs would be incorporated into the Project to supplement LID features, ensuring compliance with the Project Water Quality Management Plan and National Pollutant Discharge Elimination System (NPDES) permit. The Project has demonstrated on-site ability to treat all runoff treatment volumes that would be generated from the Project site in addition to runoff entering the site from upstream developed areas within Costa Mesa in compliance with regulatory standards.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features and standard conditions of approval. No mitigation measures were required or recommended.

Facts in Support of Finding: The Project would incorporate a Runoff Management Plan that includes water quality and drainage features designed to treat site runoff for water quality purposes and to reduce runoff volumes or rates where feasible. Water quality features would consist of LID features where feasible (e.g., bioswales, landscaping biocells, permeable pavement, and other improvements designed to promote soil-based infiltration processes) as well as source-control and treatment-control BMPs. One water quality basin and one diffuser basin/habitat area are proposed in the Lowland within the Open Space Preserve to provide treatment of storm water and detention of runoff flowing from on-site areas and off-site urban areas located to the east prior to discharging into the Lowland. The other basin is proposed in the Lowland near the North Family Village to provide energy dissipation of flows prior to entering the Semeniuk Slough. Both of these basins would be planted with native emergent marsh and riparian species to promote water quality cleaning and natural energy dissipation. A second water quality/detention basin is proposed to intercept approximately 48 acres of off-site flows from the 16th Street

Costa Mesa drainage area. The water quality/detention basin is proposed on the Project site at the southeast corner of 16th Street at the Project site boundary.

Drainage improvements would minimize runoff to arroyos, redirect runoff away from bluffs, and reduce flow rates and volumes in the Semeniuk Slough. On-site local drains would be provided to drain each of the on-site subwatersheds under developed conditions. These drainage features would result in an improvement over existing site runoff conditions with respect to water quality, velocities, and volumes.

The Project incorporates Project Design Features (PDFs) to minimize adverse Project effects to water quality, storm water runoff, and groundwater impacts. Site drainage patterns would remain generally consistent with the existing condition, with minor alterations proposed in site subwatershed boundaries in order to manage flows from the Project into Lowland area. The integration of LID features into the Project design would provide sustainable water quality and storm water management capabilities for the site.

- PDF 4.4-1** The Master Development Plan requires that two water quality basins (one in the Community Park and one in the Open Space Preserve) be constructed to treat off-site urban runoff from Costa Mesa and Newport Beach and Project runoff that drains into the Lowland area.
- PDF 4.4-2** The Master Development Plan includes a water quality basin and a diffuser basin located within the Open Space Preserve to provide for storm water control, energy dissipation, and natural water quality treatment.
- PDF 4.4-3** The Master Development Plan requires that public arterials and some selected collector roadways within the Project site be designed with "Green Street" and other Low Impact Development (LID) features, such as bioswales and bio-cells. Green Streets are designed to incorporate sustainable design elements such as narrower pavement widths, canopy street trees, traffic-calming features, and minimal use of street lighting. Landscaping along the street edges will be selectively used to treat storm water runoff from the streets and adjacent development areas.
- SC 4.4-1** All landscape materials and irrigation systems shall be maintained in accordance with the approved Landscape Plan. All landscaped areas shall be kept in a healthy and growing condition and shall receive regular maintenance. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- SC 4.4-2** The development shall be kept free of litter and graffiti. The owner or operator shall provide for removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks.
- SC 4.4-3** Prior to the issuance of grading permits, an SWPPP and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water

Resources Control Board (SWRCB), and made part of the construction program. This SWPPP shall detail measures and practices that would be in effect during construction to minimize the Project's impact on water quality and storm water runoff volumes.

SC 4.4-4 Prior to issuance of grading permits, the Project Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the project, subject to the approval of the Community Development Department, Building Division and Code and Water Quality Enforcement Division. The WQMP shall include appropriate BMPs to ensure project runoff is adequately treated.

SC 4.4-5 Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.

(2) Potential Impact: Local groundwater is not suitable for use as drinking water; therefore, there would be no Project impact to groundwater table due to drawdown.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.4-3 (set forth above) and PDF 4.4-6 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: Groundwater recharge does occur at the Project site and would decrease under Project conditions due to a reduction in pervious surface area. Infiltration BMPs would be incorporated into site design to ensure that site runoff continues to infiltrate to the maximum extent practicable. The Project site is not a designated recharge site for the City. Local groundwater is not suitable for use as drinking water because of mixing with tidal waters. Consequently, the Project's potable water needs would not impact local groundwater levels. Proper design of structural BMPs and LID features would ensure separation of the volumes of water to be treated and the underlying groundwater table, which would ensure no adverse impact to groundwater quality from treatment-control BMPs and LID features. Infiltration BMPs would treat most pollutants within the uppermost soil layers of the BMP facility, reducing pollutant transfer to the groundwater table. Temporary construction impacts associated with removal of oil pipelines in the Lowland would be reduced to a less than significant level with the incorporation of BMPs. PDF 4.4-3, the use of LID standards, and PDF 4.4-6, incorporation of BMPs, would ensure that Project impacts would be less than significant.

PDF 4.4-6 The Master Development Plan requires the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. These BMPs will be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan (WQMP), and Storm Water Pollution Prevention Plan (SWPPP).

(3) Potential Impact: Grading activities would increase the potential for soil erosion and sedimentation to affect water quality. Best Management Practices (BMPs) and Standard Conditions would minimize this impact both during construction and operation.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1 and 4.4-2 (set forth above), PDF 4.4-5 (set forth below) and SCs 4.4-3, 4.4-4, and 4.4-5 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: Sediment-control BMPs would be installed to intercept and filter out soil particles that may have been mobilized by flows during construction activities before these flows discharge into receiving waters. These controls may include installing check dams. These measures would also be placed around areas of soil-disturbing activities, such as grading or clearing, to retain sediments on site.

Compliance with the General Construction Permit and the Orange County Dewatering Permit, the latter if required, would minimize construction impacts from grading/excavation; material stockpiling and dewatering; construction and utilization of access and haul roads; and equipment staging, operation, and fueling. The Project would comply with the most current General Construction Permit and associated local NPDES regulations to ensure that the potential for construction-related erosion and adverse sedimentation effects are minimized through the identification and application of efficient sediment-control BMPs and construction site monitoring. These permits require development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), which would describe construction BMPs that address the measures and controls necessary to ensure that construction site effects on sedimentation and erosion are appropriately minimized and remain less than significant.

Therefore, the Project would not result in adverse erosion or sedimentation impacts on the Project site, in arroyo drainage channels, or to downstream receiving waters. PDFs 4.4-1, 4.4-2, and 4.4-5 and SCs 4.4-3, 4.4-4, and 4.4-5 would ensure that Project construction and operation would maintain flow velocities below erosion thresholds and reduce overall sediment delivery to downstream systems. PDF 4.4-1 requires water quality basins on the Project site to treat urban runoff originating from off-site properties. PDF 4.4-2 identifies that a portion of the Lowland would provide for water quality treatment and storm water detention. PDF 4.4-5 requires the Project's drainage plan to stabilize runoff to West Coast Highway and the Semeniuk Slough. SC 4.4-3 requires a SWPPP in compliance with the General Permit for Construction Activities and SC 4.4-4 requires a WQMP including required BMPs. Post-construction operations must include "good housekeeping" as required in the WQMP (SC 4.4-5).

PDF 4.4-5 The Master Development Plan requires development of a drainage plan to ensure that runoff systems from the Project site to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system.

(4) Potential Impact: Project-induced increases in impervious surfaces would result in an increase in peak flow runoff and runoff volumes from the site that could affect on-site or off-site flooding. Project drainage area modifications would be incorporated into a Runoff Management Plan to ensure that peak flow rates and volumes would not result in adverse flooding impacts to downstream systems.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, 4.4-4, 4.4-5, and 4.4-6 as well as SC 4.4-4 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: During site remediation, grading, and construction, soil would be exposed to wind and water erosion. The implementation of erosion and sedimentation BMPs would control flows on site and would ensure that impacts associated with construction would be properly managed (PDFs 4.4-1, 4.4-2, 4.4-3 and SCs 4.4-2, 4.4-3, 4.4-4, and 4.4-5) to protect water quality and beneficial uses of receiving waters at the Project site from both construction and operational impacts. LID and BMP features would ensure that runoff from the Project site complies with NPDES site discharge requirements for the protection of receiving water quality and beneficial uses. Water quality entering the Lowland area and Semeniuk Slough would not be adversely impacted once these controls are in place. Construction BMPs also contain measures to be implemented to control construction site runoff and storm water.

Site drainage patterns would largely remain the same upon Project completion; drainage would continue to flow from east to west across the site, through the existing arroyos and into either the Semeniuk Slough or the Lowland area. The Project's drainage area for Subwatershed A (in the Lowland) would be reduced by approximately 27 acres from the existing condition. While the proposed Project runoff potential is anticipated to be slightly higher in the Project watershed, the overall results show that this reduction in drainage area maintains flow volumes similar to the existing condition. This is achieved largely through the preservation of open space on the Project site. Modeling results of existing and proposed runoff volumes into the Lowland and USACE-restored salt marsh basin indicate that the combined basin capacity (Lowland and USACE-restored salt marsh basin) can store existing flood volumes up to the 25-year frequency in its current capacity. The proposed condition 25-year runoff volume would be less than the 345 acre-feet storage capacity of the combined USACE-restored salt marsh basin and Lowland area.

In the Upland, all on-site curbs, gutters, and storm drains would be designed in accordance with City standards, thereby minimizing potential impacts of on-site development area flooding. The Project would slightly alter the existing drainage patterns through minor modification in on-site subwatersheds. These minor alterations are consistent with an overall Project storm water management strategy that directs flows to areas that have additional capacity (the Lowland) and decreases flows to areas with minimal or constrained capacity (Semeniuk Slough). Increase in storm water runoff volume delivered to the Lowland area would be accommodated by the storage capacity of the existing Lowland and USACE-restored salt marsh

basin. Sheet flow runoff under the existing condition on the Project site would be replaced with storm drain systems to convey flows to the Lowland area, Semeniuk Slough, and the Caltrans storm drain.

(5) Potential Impact: The proposed Project's modifications in Project drainage patterns and Project drainage features would not exceed the capacity of storm water systems. The Project drainage features would reduce flow rates through the middle and lower sections of the Caltrans reinforced concrete box from existing conditions.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, and 4.4-3 and SCs 4.4-2 through 4.4-5 (set forth above). No mitigation measures were required or recommended.

Facts in Support of Finding: Project site drainage from Subwatershed A would discharge into the existing Caltrans' reinforced concrete box (RCB) storm drain in West Coast Highway. The Project's proposed drainage plan would modify Caltrans' existing storm drain to accommodate a new storm drain system from the Upland. Flow rates were modeled in order to determine the Project's effect on flow rates moving through the storm drain. These modeling results indicate that, overall, the storm drain would experience reduced flood loading compared with the existing condition. Therefore, impacts from the Project on the capacity of the Caltrans' storm drain are less than significant. PDFs 4.4-1 through 4.4-3 and SCs 4.4-2 through 4.4-5 are applicable.

(6) Potential Impact: Inundation of or impact to habitable structures on the Project site by flooding, seiche, mudflow, or tsunami is not expected.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant. No project design features, standard conditions, or mitigation measures were required or recommended.

Facts in Support of Finding: Improvements to the Santa Ana River implemented over recent years by the USACE in partnership with the Counties of Orange, Riverside, and San Bernardino include levee upgrades, improvements to Prado Dam, and construction of Seven Oaks Dam. These improvements protect surrounding residences and communities from the 100-year flood event. Project development is proposed for the Upland area, which is located above the Santa Ana River's 100-year floodplain. While flooding could affect the Lowland, no habitable structures are proposed in this area. There are no permanent standing water bodies in the Upland area and inundation by seiche or mudflow is not anticipated in the Upland area. Due to the Project's proximity to the coast, inundation by tsunami is possible, and the Lowland is located within the tsunami warning area designated in the City's General Plan. The development footprint remains out of the tsunami inundation area and the impacts from potential tsunami effects under a condition of future sea level rise are considered less than significant.

E. Hazards and Hazardous Materials

(1) Potential Impact: The disturbance of potential hazardous materials associated with past oil extraction activities and from demolition of existing structures located on site is a potential impact.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Hydrology and Water Quality PDF 4.4-6 (set forth above), and Hazards PDF 4.5-1, SC 4.5-1, and MM 4.5-1 (set forth below).

Facts in Support of Finding: The Project site is primarily impacted by petroleum hydrocarbons, specifically degraded and weathered crude oil, and that these impacts are generally confined to specific operating areas, including oil well locations, pipelines, tank farms, sumps, and roadways. The Project site also includes road materials made up of varying amounts of gravel, asphalt, crude oil, or crude oil tank sediments, and large amounts of concrete used in oilfield operations and facilities. Some areas of the site contain soils impacted by generally low concentrations of chemicals other than crude oil, such as volatile organic compounds (VOCs) and metals. None of the petroleum hydrocarbons or any other contaminants identified in soil and groundwater were found on the Project site at levels exceeding the hazardous waste criteria, as defined by federal and State regulations. These types of impacts are consistent with oilfields of this age and are similar to other oilfields that have been feasibly and effectively remediated for residential development. That said, the presence of these materials on the Project site has the potential to adversely affect the proposed land uses and persons residing on the Project site and, without appropriate remediation, would be considered a significant impact.

Environmental assessment and cleanup work of the oilfield is conducted under the regulatory oversight of the Regional Water Quality Control Board (RWQCB), Santa Ana Region and/or the Orange County Health Care Agency, Environmental Health Division (OCHCA). This existing oversight is expected to continue through field abandonment and remediation activity because both agencies have the most experience of any agencies with oilfield-to-development projects. It is expected that the RWQCB would continue to be the lead agency until the site receives closure.

All remediation activities, such as excavating pipelines, soil remediation, oil well abandonment and re-abandonment, would be conducted pursuant to State and local requirements. With the exception of the oil consolidation sites (which would remain), any contaminants would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these areas are safe for human exposure in the future. Contaminated material that cannot be efficiently remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements.

As a part of the EIR, a draft Remedial Action Plan (dRAP) was prepared and identifies areas of the property proposed for remediation. The dRAP outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria. In addition to targeted remediation, all development areas would be monitored, tested, and remediated by credentialed third-party experts during mass grading to ensure that nothing is overlooked and all soil impacts are mitigated. Remediation work would be completed and approved by the regulatory oversight agencies before any construction work is initiated in those areas.

The dRAP details the findings of both the Phase I and Phase II Environmental Site Assessment (ESA) which contain initial findings of contaminants on the Project site. It should be noted that, according to the Phase II EA, "at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e.,

concentration levels defined by State and federal guidelines)". Because the soils do not exceed hazardous waste criteria levels, all of the estimated 246,000 cy of remediated soil can be treated and used on site.

Mitigation Measure (MM) 4.5-1 requires the implementation of a comprehensive final Remedial Action Plan (RAP) for oilfield abandonment, clean-up, remediation, and consolidation. The final RAP must be submitted to and approved by RWQCB and/or the OCHCA. With implementation of the requirements of the approved final RAP, there would be less than significant impacts related to historic and ongoing oilfield operations on the Project site.

With respect to the abandonment of oil wells, the oilfield operations on the property are governed by regulations of the California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). The DOGGR has specific guidelines for the abandonment or re-abandonment (the latter as necessary) of oil wells. For oilfields that are abandoned for future development purposes, DOGGR has established a process called "Construction Site Review" that must be followed.

Additional oversight for air and vapor control would be provided by the South Coast Air Quality Management District (SCAQMD) and the Orange County Fire Authority (OCFA). All environmental testing is conducted by third-party consultants and analyzed and validated by State certified laboratories using chain of custody procedures to ensure the integrity of the results.

There is a potential for the presence of lead-based paint (LBP) and asbestos-containing materials (ACMs) in some of the structures and equipment on the Project site. SC 4.5-1 requires the handling and disposal of these substances, if identified, in accordance with applicable State regulations.

PDF 4.5-1 The Master Development Plan requires existing oil operations to be consolidated into two areas within the Open Space Preserve designated as "Interim Oil Facilities", in accordance with the land use districts established for the Project site in the Newport Banning Ranch Planned Community Development Plan, totaling approximately 17 acres including the service access road. This use will ultimately revert to an Open Space land use at the end of the oilfield's useful life.

SC 4.5-1 Prior to demolition, testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos-removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development.

All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited

to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community Development prior to issuance of the first grading permit.

MM 4.5-1

A comprehensive final Remedial Action Plan (final RAP) shall be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) 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. The Applicant shall follow the protocol for the OCHCA Industrial Cleanup Program to develop the site-specific final RAP. The final RAP shall use the draft Remedial Action Plan (dRAP) and the existing clean-up levels that have been in effect since 2001 as the basis of the final RAP consistent with OCHCA requirements. The final RAP shall (1) incorporate the remediation methods to be employed that are described in the dRAP; (2) propose the clean-up criteria for specific areas of the Project site depending upon the land uses for those areas; and (3) provide additional details such as the location of on-site areas for bioremediation. The final RAP shall also require compliance with Orange County Fire Authority Guideline C-03 Combustible Soil Gas Hazard Mitigation.

The clean up criteria shall be approved by the OCHCA as a part of final RAP subject to the review and approval of the RWQCB. The final RAP shall describe the means by which those clean-up standards shall be met per the remediation methods described in the dRAP. Methods described in the dRAP include the use of natural bio-remediation of soils on site; reuse and recycling of treated soils where and when feasible; and removal and recycling of materials such as concrete, gravel, and asphalt-like road materials.

Oil and gas wells to be abandoned or re-abandoned shall be done so in accordance with the current requirements of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). Documentation of final abandonment approval from the DOGGR shall be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division, before issuance of the first certificate of occupancy.

- (2) Potential Impact:** There would be a less than significant impact to the existing schools within ¼-mile of the Project site and/or from off-site haul routes during on-site remedial activities and proposed Project construction. There would be no impact to existing schools within ¼-mile of the Project site from proposed Project operations as continued oil operations are proposed to be limited to two

consolidated oil facilities located along the southwestern portion of the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.5-1 (set forth above) and SC 4.5-2 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach. However, when implemented, haul routes may be within ¼ mile of identified schools or other schools between the Project site and the disposal location, an accident or upset condition during handling and transport could result in the release of contaminated soils into the surrounding environment. As described in SC 4.5-2, any contaminated soils or other hazardous materials removed from the Project site shall be transported only by a Licensed Hazardous Waste Hauler in compliance with all applicable State and federal requirements. Hazardous materials are routinely transported through Southern California, in compliance with State and federal requirements, and accidents and/or releases are quite rare. There would be a less than significant impact related to transport of soils within ¼ mile of existing schools.

SC 4.5-2 Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials.

F. Biological Resources

(1) Potential Impact: The Project would have direct and indirect impacts on habitat and special status species associated with oilfield remediation, grading, construction, and long-term use of the Project site. Grading activities could impact several sensitive natural communities on the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-3, and MMs 4.6-1 through 4.6-16 (set forth below).

Facts in Support of Finding: Approximately 236.32 acres of native and non-native vegetation types and other areas would be impacted by the proposed Project. Permanent Project impacts (approximately 205.83 acres) would occur in areas of the proposed for parks, recreation, residences, the resort inn, commercial uses,

roadways; public trails; and utility infrastructure including the consolidated oil sites, access roads, landscape buffers, fuel modification areas, and water quality basins. Temporary Project impacts (approximately 30.49 acres) would occur in areas that are mapped as Open Space (i.e., existing oil operation roads, bluff repair, oilfield remediation, and the vernal pool interpretative areas). This includes approximately 22.17 acres from non-remediation activities and approximately 8.32 acres from remediation activities. These impacts are considered temporary because the areas would be restored as part of the Project.

Construction activities for oilfield remediation would result in the loss of approximately 38.70 acres of native habitat (coastal sage scrub, disturbed coastal sage scrub, grassland depression features, marshes and mudflats, riparian scrub/forest, disturbed riparian scrub/forest, and cliff) that provide valuable nesting, foraging, roosting, and denning opportunities for a wide variety of wildlife species. In addition, implementation of the proposed Project would result in the loss of approximately 197.62 acres of non-native habitat or non-habitat cover types (non-native grassland, non-native grassland/ruderal, ruderal, giant reed, ornamental, disturbed, and disturbed/developed) that provide lower-quality or no wildlife habitat. The Project would impact substantially more non-native/disturbed or non-habitat types (84 percent) compared to native habitat types (16 percent). However, some of these non-native habitats may provide nesting, foraging, roosting, and denning opportunities for some species.

Removing or altering habitats on the Project site would result in the loss of small mammals, reptiles, amphibians, and other slow-moving animals that live within the Project's direct impact area. More mobile wildlife species that are now using the Project site would be forced to move into the remaining areas of open space, which would consequently increase competition for available resources in those areas. This situation would result in the loss of individuals that cannot successfully compete.

Habitat. The Project would result in impacts to approximately 236.32 acres of non-native and native habitats that provide low to high value habitat for a suite of both common and special status species. Of the 236.32 acres impacted, approximately 97.49 acres contain ornamental, disturbed, and disturbed/developed areas that provide low value wildlife habitat. These impacts are considered adverse but not significant in terms of habitat loss for general wildlife species on a regional basis. The loss of wildlife habitat would not be expected to reduce wildlife populations below self-sustaining levels in the region.

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. 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.

Special Status Plants. Four special status plant species were observed during the surveys: southern tarplant (CNPS List 1B.1), southwestern spiny rush (CNPS List 4.2), California box-thorn (CNPS List 4.2), and woolly seablite (CNPS List 4.2).

Implementation of MM 4.6-7, which requires implementation of a southern tarplant restoration program, would reduce this impact to a less than significant level. The southwestern spiny rush and woolly seablite would be temporarily impacted during oilfield remediation activities and could be impacted. At this time, it is unknown whether all southwestern spiny rush and woolly seablite could be avoided during the remediation activities. All these species are CNPS List 4 species. CNPS List 4 species are "Plants of Limited Distribution – A Watch List", and impacts on these species are not typically considered significant by lead agencies. Project impacts are not expected to have a substantial adverse effect on these species, and no mitigation is required

San Diego Fairy Shrimp. San Diego fairy shrimp was observed on the Project site during surveys. The Project result in permanent impacts to 0.173 acre of habitat occupied by San Diego fairy shrimp and temporarily impact 0.06 acre of vernal pool habitat through pipelines removal activities. Combined permanent and temporary impacts to San Diego fairy shrimp habitat (0.24 acre) is considered significant because the loss of this resource would represent a substantial adverse effect to this species distribution in the region.

These impacts can be mitigated to a less than significant level through the development and implementation of a 3.58-acre vernal pool conservation/restoration area that supports the San Diego fairy shrimp (MM 4.6-3). The Project proposes to also set aside an additional 1.73-acre upland area north and west of the 1.85-acre vernal pool conservation area which would be used for future enhancement to expand the vernal pool conservation area to total 3.58 acres. Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat.

Birds. Potentially suitable foraging and/or nesting habitat for light-footed clapper rail, western snowy plover, Belding's savannah sparrow, and tricolored blackbird is present primarily in the salt and freshwater marsh areas on the Project site, and these species may occur. The Project site provides only potentially suitable foraging habitat for the long-billed curlew and large-billed savannah sparrow. Of these species with potential to occur, only the Belding's savannah sparrow may nest on the Project site. Permanent Project impacts on foraging and/or nesting habitat is expected to be limited, and the habitat for these species, except the tricolored blackbird, would remain as open space following oilfield remediation activities. MMs 4.6-4 and 4.6-8 would reduce the potential impact on these species to a less than significant level. These measures require the restoration and/or preservation of approximately 9.90 acres of marsh habitat either on site or immediately off site and avoidance measures during construction. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the marsh areas and associated wildlife species.

In total, 17 territories (16 pairs and 1 solitary male) of the federally listed Threatened coastal California gnatcatcher have been observed on the Project site (2009 surveys). Revegetation following oilfield remediation activities has the potential to result in higher long-term habitat quality (i.e., invasive species removed, human activity and disturbance related to oilfield operations removed, and larger blocks of contiguous native habitat) available for this species in the open space area. However, Project impacts on this species are significant because of the location and size of the impacted population. MMs 4.6-1 and 4.6-9 require the on-site or off-site

restoration of 47.75 acres of coastal sage scrub habitat at a ratio of 3:1 for coastal sage scrub (including disturbed southern coastal bluff scrub) and 1:1 for disturbed coastal sage scrub (excluding disturbed southern coastal bluff scrub). In addition, approximately 35.16 acres of coastal sage scrub or disturbed coastal sage scrub would be preserved on site. Mitigation includes the required approval from the USFWS to impact the species, and construction avoidance measures to minimize the impacts to the greatest extent practicable. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the coastal sage scrub and associated wildlife species, including, but not limited to the coastal California gnatcatcher.

Two coastal cactus wren territories were observed during 2009 focused surveys for coastal California gnatcatcher. The proposed Project would impact approximately 2.92 acres (2.59 acres permanent, 0.33 acre temporary) of southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub. Impacts on this species would be significant. MMs 4.6-1 and 4.6-10 require the restoration of coastal sage scrub dominated by native cactus species habitat at a ratio of no less than 1:1 and construction avoidance measures to minimize the impacts to the greatest extent practicable. In addition, approximately 35.16 acres of coastal sage scrub would be preserved on site (MM 4.6-1). PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures, which would provide conservation and avoidance value to the cacti-dominated coastal sage scrub and associated wildlife species, including, but not limited to the cactus wren.

Two least Bell's vireo territories (both solitary males) were observed during the 2009 focused surveys. The Project would impact approximately 2.74 acres (1.45 acres permanent, 1.29 acres temporary) of undisturbed and disturbed willow riparian scrub and willow riparian forest habitats. The permanent Project impacts on this species' habitat is expected to be limited, and most of the habitat for this species would remain as open space following oilfield remediation activities; these activities could temporarily impact riparian habitats used by this species. Revegetation following oilfield remediation activities would result in a higher long-term habitat quality. MMs 4.6-5 and 4.6-11 require the on-site or off-site restoration of riparian habitat at a ratio from 3:1 to 1:1 depending on the habitat value impacted. The Project also requires approval from the USFWS to impact the species and its habitat. In addition, the Project would preserve approximately 23.03 acres of riparian habitats. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 are applicable.

Suitable foraging and nesting habitat is present on the Project site for the burrowing owl; it is only expected to winter on the Project site. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and 2010. The Project would impact approximately 100.13 acres (97.26 acres permanent, 2.87 acres temporary) of grasslands and ruderal habitat on the Project site. Impacts on occupied and potential habitat for this species would be considered significant. MMs 4.6-2 and 4.6-12 require the restoration of grassland habitat at a ratio of 0.5:1 (approximately 50.07 acres). In addition, the Project would preserve approximately 20.27 acres of grassland areas and include construction avoidance measures to minimize grassland impacts to the greatest extent practicable. PDFs 4.6-1 through 4.6-4 are also applicable.

Suitable foraging habitat is present for a variety of raptor species including Cooper's hawk, sharp-shinned hawk, ferruginous hawk, northern harrier, white-tailed kite, merlin, prairie falcon, American peregrine falcon, and short-eared owl. There is foraging habitat for the osprey adjacent to the Project site within the USACE salt marsh restoration site and the Santa Ana River. The permanent loss of approximately 124.83 acres of foraging habitat for these raptor species would contribute to the ongoing regional and local loss of foraging habitat; this impact is significant. Revegetation following oilfield remediation activities would result in higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. PDFs 4.6-1 through 4.6-4 are also applicable.

Cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. The loss of any active raptor nest would be considered significant. Impacts on active raptor nests would be reduced to less than significant levels with implementation of MM 4.6-13, which provides for construction avoidance measures to minimize the impact to the greatest extent practicable. 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. Impacts 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.

Mammals. Suitable or potentially suitable foraging habitat is present for the pallid bat, hoary bat, western yellow bat, pocketed free-tailed bat, and big free-tailed bat. Hoary bat, pocketed free-tailed bat, and big free-tailed bat also have potential to roost on the Project site. The permanent loss of approximately 124.86 acres of foraging and roosting habitat for these bat species would contribute to the ongoing regional and local loss of foraging and roosting habitat; this impact is significant. Revegetation following oilfield remediation activities would result in a higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 (for approximately 119.56 acres of restoration). In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. PDFs 4.6-1 through 4.6-4 are also applicable.

Indirect Impacts. 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. Bluff Road 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 site for wildlife species. Short-term construction impacts to active least Bell's vireo nests are considered potentially significant. MM 4.6-11 would reduce this impact to a less than significant level.

Seeds from invasive species may escape to natural areas and degrade the native vegetation. Since the Project contains open space that includes high habitat value, this impact is significant. MM 4.6-14 requires monitoring in the oilfield remediation areas and prohibits invasive, exotic plant species to be planted within the areas adjacent to open space to reduce these impacts to less than significant.

Impacts on biological resources in the area could occur as a result of changes in water quality. Adverse water quality effects during construction or operation of the Project could (1) affect populations of insects, tadpoles, and other aquatic prey, which would affect food web interactions related to species that forage in aquatic or riparian areas or (2) cause adverse effects through biomagnification (i.e., the buildup of pesticides to toxic levels in higher trophic levels). The Project Design Features and Standard Conditions identified in Hydrology and Water Quality would preclude significant water quality impacts.

Lighting could inadvertently result in an indirect impact on the behavioral patterns of nocturnal and crepuscular (i.e., active at dawn and dusk) wildlife remaining in the lowland or adjacent areas such as in the USACE salt marsh restoration site or along the Santa Ana River. Wildlife present in these areas may already be somewhat acclimated to current lighting associated with traffic from the adjacent roadways. The Project would introduce new sources of ambient light on the Project site, which could affect small, ground-dwelling animals that use the darkness to hide from predators, owls, and other specialized night foragers and wildlife that primarily move at night. As a part of the Project, no permanent night lighting would be permitted within the Open Space Preserve with the exception of safety lighting in the two Oil Consolidation sites. A “dark sky” lighting concept will be implemented within most areas that adjoin habitat areas. PDF 4.6-4, the Project would restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

Human activity in the Lowland would be limited to the trails; however, the overall increase in human activity across the entire Project site could be potentially significant. MM 4.6-15 requires a fencing and signage plan. Development and park uses built adjacent to natural open space, particularly near the lowland, may create urban-wildlands interface issues. These urban-wildlands interface impacts are significant. MM 4.6-16 requires development and implementation of an urban-wildlands interface brochure and public education program to reduce this impact to a less than significant level.

During remediation and construction, the dust within the development footprint and adjacent areas is expected to increase. The removal of the roads and vehicular traffic associated with oilfield activities and subsequent revegetation of the Lowland with native habitat may result in an increased habitat value. This would be considered a potentially beneficial operational impact of the proposed Project.

As noted in PDF 4.6-1, 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. This would be a beneficial impact for GHG emissions.

PDF 4.6-1 The Master Development Plan designates a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas.

PDF 4.6-2 The Master Development Plan includes a Habitat Restoration Plan (HRP) for the Habitat Areas. The HRP includes provisions for the

preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project.

PDF 4.6-3 As identified in the Master Development Plan, the Habitat Areas to be restored as project design features will be subject to the same five-year Maintenance and Monitoring Program implemented for areas restored as mitigation. Standard Vegetation Monitoring Procedures are outlined in the Biological Technical Report prepared for the EIR and will be implemented consistent with applicable regulatory requirements.

PDF 4.6-4 The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

MM 4.6-1 ***Coastal Sage Scrub Habitat Preservation and Restoration.*** Permanent impacts on coastal sage scrub vegetation (including disturbed southern coastal bluff scrub) (12.32 acres) shall be mitigated at a 3:1 ratio (36.96 acres) on the Project site or off site (nearby) through the restoration of southern coastal bluff scrub and California sagebrush scrub. Permanent impacts on disturbed coastal sage scrub vegetation (excluding disturbed southern coastal bluff scrub) (8.21 acres) shall be mitigated at a 1:1 ratio (8.21 acres) elsewhere on the Project site or off site. In addition, temporary impacts (2.58 acres) to coastal sage scrub and disturbed coastal sage scrub vegetation types shall be mitigated by revegetation with locally occurring native coastal sage scrub species following remediation at a 1:1 ratio. The required restoration is summarized in Table A. In addition to restoration, the Project shall preserve 35.16 acres of coastal sage scrub on site. Coastal sage scrub restoration and preservation on site would total 82.91 acres.

**TABLE A
REQUIRED COASTAL SAGE SCRUB RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	12.32	3:1	36.96
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	8.21	1:1	8.21
Temporary Impact			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	1.92	1:1	1.92
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	0.66	1:1	0.66
Total	23.11		47.75

The Applicant shall be required to plan, implement, monitor, and maintain a coastal sage scrub revegetation program for the Project consistent with the most current technical standards/knowledge regarding coastal sage scrub restoration. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), a detailed restoration program shall be prepared by a qualified Biologist and approved by the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission). The program shall include, at a minimum, the items listed below.

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area or land shall be purchased/obtained immediately off site. Selected sites shall not result in the removal of a biologically valuable resource (i.e., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species planting. Locally occurring native plants and seeds shall be used and shall include species present on site, in adjacent areas, and uncommon species known to occur on site such as California box-thorn and woolly seablite.

4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the gnatcatcher breeding season (February 15 to July 15).
6. **Monitoring plan.** The coastal sage scrub monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects, wildlife monitoring); (c) performance criteria as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The site shall be monitored and maintained for five years to ensure successful sage scrub habitat establishment within the restored and created areas.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall begin coastal sage scrub restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit that allows for ground disturbance (e.g., grading permit). The Applicant shall be fully responsible for implementing the coastal sage scrub revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off).

The Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) program does not authorize Incidental Take resulting from the conversion of habitat occupied by coastal California gnatcatchers in Existing Use Areas. Therefore, the Applicant has elected to seek a Take Authorization through Section 7 of the FESA. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide, a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) to the City that authorizes the removal of coastal sage scrub (i.e., coastal California gnatcatcher habitat). It is anticipated that the USFWS Biological Opinion will contain conservation recommendations to avoid or reduce the Project impact. Although any additional conservation measures identified by the USFWS shall be enforced, at a minimum, the

Construction Minimization Measures listed below also shall be followed.

1. Prior to the commencement of clearing operations or other activities involving significant soil disturbance, all areas of coastal sage scrub habitat to be avoided shall be identified with temporary fencing or other markers that are clearly visible to construction personnel.
2. A USFWS-approved Biological Monitor shall be on site during any clearing of coastal sage scrub. The Applicant shall advise the USFWS at least 7 calendar days—but preferably 14 calendar days—prior to the clearing of coastal sage scrub. The Biological Monitor shall flush avian or other mobile species from habitat areas immediately prior to brush-clearing and earth-moving activities. It shall be the responsibility of the Monitoring Biologist to ensure that identified bird species are not directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities to continue on a timely basis.
3. Following the completion of initial clearing activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other clearly visible, appropriate markers. No construction access, parking, or equipment storage shall be permitted within such marked areas.

The combined restoration and preservation of 82.91 acres of coastal sage scrub would result in a net increase in habitat by 24.64 acres.

MM 4.6-2

Grassland Habitat Preservation and Restoration. Permanent impacts on non-native grassland and ruderal vegetation (100.13 acres) shall be mitigated at a 0.7:1 ratio through on-site or off-site restoration and preservation. These permanent impacts to non-native grassland and ruderal vegetation shall be mitigated by the restoration of 48.63 acres (0.5:1) of grassland and alkali meadow within both the upland and lowland portions of the Project site as summarized in Table B and may include native grassland areas within Fuel Modification Zone C. Temporary impacts (2.87 acres) shall be mitigated by native grassland or alkali meadow revegetation following remediation at a 0.5:1 ratio (1.44 acres). An additional 20.27 acres of grassland habitat shall be preserved on site. The grassland restoration and preservation would total 70.34 acres.

**TABLE B
REQUIRED GRASSLAND RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Non-Native Grassland and Ruderal	97.26	0.5:1	48.63
Temporary Impact			
Non-Native Grassland and Ruderal	2.87	0.5:1	1.44
Total	100.13		50.07

The Applicant shall begin grassland restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be required to plan, implement, monitor, and maintain a native grassland preservation/restoration program for the Project. A grassland preservation/ restoration program shall be (1) developed by a qualified Biologist; (2) submitted for review and approval to the City of Newport Beach (City) prior to the first permit that would allow for site disturbance (e.g., grading permit); and (3) shall be implemented by a qualified Biologist. The grassland mitigation plan shall also provide mitigation for the loss of raptor foraging and burrowing owl habitat; therefore, site selection measures shall include considerations that influence the site’s suitability for burrowing owl and other raptor species. Restoration shall consist of seeding with appropriate needlegrass species and, if appropriate, incorporating seeds collected from special status plant species (southern tarplant) that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the Applicant, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and a qualified Biologist knowledgeable about native grassland restoration, raptors, and the burrowing owl. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be purchased/obtained. The mitigation shall occur entirely in one to two locations to provide the maximum habitat value for the raptors, burrowing owls, and other wildlife species that require contiguous blocks of open habitat types. The site(s) shall consist of level or gently sloping terrain, soil types, and microhabitat conditions suitable

for occupation by raptors and burrowing owl, as determined by a qualified Biologist.

3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. If mammal burrows are limited on the mitigation site(s), the qualified Biologist shall recommend creation of artificial burrows suitable for occupation by the burrowing owl. The burrows shall be constructed using standard specifications established for the owl. Depending on the topography of the site(s) and the availability of natural perches, the qualified Biologist shall make recommendations regarding whether additional perching sites (e.g., large rocks) shall be placed on the mitigation site(s).
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the burrowing owl/raptor breeding season (February 1 to August 31).
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The grassland mitigation site shall be monitored and maintained for five years to ensure successful establishment of native grassland habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for burrowing owl, particularly that they occur in grasslands with openings or lower vegetation coverage; thus, the performance criteria shall include a requirement for openings or a lower percent cover for portions of the mitigation site.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual grassland mitigation plan to ensure the mitigation site is not impacted by future development.

The Project would result in the restoration of 50.07 acres of native grassland and alkali meadow and preservation of 20.27 acres of

non-native grassland areas, for a total of 70.34 acres. Because the value of habitat to be replaced (native grassland and alkali meadow) is higher than those habitat values impacted by the Project, a less than 1:1 mitigation ratio is deemed adequate to compensate for the loss of non-native grassland areas.

MM 4.6-3 ***Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration. Grassland Depression Feature Habitat Preservation and Restoration.***

The proposed Project is designed to protect the two areas previously described as vernal pools that are occupied by San Diego fairy shrimp. The proposed Project would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Because oilfield pipelines are located on top of the soil surface in the pooled areas, their removal would be conducted with the minimum possible soil disturbance and would occur outside the rainy season to reduce direct impacts to this species. However, pipe removal activities would disrupt the soils within the vernal pools in which the San Diego fairy shrimp has been observed and which potentially contain fairy shrimp cysts. Therefore, these pipe removal activities would be considered a potentially significant temporary impact. This impact would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed.

During Project grading, a small area of the surrounding upland portion of the watershed would be impacted, but the Project proposes to replace this portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area. Remediation, restoration and permanent protection of the two pools and protection of its watershed would ensure that Project impacts to these two pools are less than significant. In addition, the Project has identified an additional 1.73 acres of upland area, adjacent to the 1.85-acre area, which would be available for future vernal pool creation, restoration, and/or enhancement. If this additional area is restored, a total vernal pool conservation area of 3.58 acres would be provided by the Project (Table C).

**TABLE C
REQUIRED VERNAL POOL PRESERVATION/RESTORATION**

Feature	Temporary Impact	Permanent Impact	Total Impact	VP1, VP2, and Upland Watershed Preservation	Upland Area Vernal Pool Enhancement Area	Total Preservation/Enhancement Areas
VP1	0.06	0.00	0.06			
VP2	0.00	0.00	0.00			
Feature AD3	0.00	0.007	0.007			
Total for VP1, VP2, and AD3	0.06	0.007	0.067	1.85		
Features E and G (oilfield sumps)	0	0.053	0.053			
Features I and J (grasslands)	0	0.12	0.12			
Total for E, G, I, and J		0.173	0.173		1.73	
Total San Diego Fairy Shrimp Habitat Impacts			0.24			3.58

Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat created as mitigation for Features E, G, I, and J, which support the San Diego fairy shrimp.

Restoration of the pool areas, by removing mule fat and non-native species, would restore the pools to characteristic vernal pool habitat, as vernal pools do not typically support woody vegetation such as mule fat. The restoration program would also provide increased wildlife habitat function for migratory birds that use the pools as a migration stopover, and the increased watershed area would be planted with native alkali meadow or native upland grasses favorable for raptor foraging and would be “counted” toward the approximately 50 acres of grassland habitat.

Impacts to San Diego fairy shrimp detected in Features E and G, which are to be remediated as part of the oilfield clean up and remediation, shall be mitigated by testing the soils, and if the soils are not contaminated to the degree requiring environmental remediation, they shall be removed and relocated to the vernal pool conservation area at a ratio of 1:1. Soils shall also be removed and relocated within features I and J.¹ All mitigation shall occur within the 1.73 acres that have been set aside along with the 1.85-acre conservation area to provide a 3.58-acre vernal pool conservation area.

¹ The final ratio would be determined in consultation with USFWS and would be based on the character of the features known to be occupied. Features such as E and G, which are oilfield sumps would require a lower mitigation ratio than less disturbed pools I and J.

The Applicant shall be required to plan, implement, monitor, and maintain a vernal pool preservation/restoration program for the Project. A vernal pool program shall be developed by a qualified Biologist and shall be submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission) prior to the first action and/or permit which would allow for site disturbance (e.g., issuance of a grading permit). The Applicant shall begin the vernal pool restoration activities (e.g., soil preparation) no later than one year after issuance of the first grading permit. Restoration shall consist of seeding/planting with appropriate vernal pool species and, if appropriate, incorporate seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall be located on the Project site in a dedicated open space area. The mitigation areas shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** Planting shall occur by a qualified Biologist who is monitoring on site rainfall to minimize impacts to existing fairy shrimp.
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting.
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to

ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the vernal pool revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off. The site shall be monitored and maintained for five years to ensure successful establishment of vernal pool habitat within the restored and created areas.

The preservation of the vernal pool habitat and the expansion of the watershed habitat will result in a net increase in habitat occupied by the San Diego fairy shrimp on the site that would also exhibit higher levels of function for the fairy shrimp.

MM 4.6-4

Marsh Habitat Preservation and Restoration. The Project would impact 2.45 acres (0.10 permanent/2.35 temporary) of marshes. Permanent impacts to marshes shall be restored at a replacement ratio of 3:1, totaling 0.30 acre (Table D). Temporary impacts associated with oilfield remediation shall be mitigated at a 1:1 ratio² (totaling 2.35 acres). In addition, 7.25 acres shall be preserved on site, for a total of 9.90 acres of restoration and preservation.

**TABLE D
REQUIRED MARSH/MEADOW/OPEN WATER
HABITAT RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Marsh/Meadow/Open Water	0.10	3:1	0.30
Temporary Impact			
Marsh/Meadow/Open Water	2.35	1:1	2.35
Total	2.45		2.65

The Applicant shall be required to plan, implement, monitor, and maintain a marsh/meadow preservation/restoration program for the Project. A marsh/meadow preservation/restoration program shall be developed by a qualified Biologist, and submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the first action and/or permit that would allow for site disturbance (e.g., grading

² It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

permit). The Applicant shall begin marsh habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit allowing ground disturbance (e.g., grading permit). The marsh/meadow preservation/restoration program shall also mitigate for the potential loss of light-footed clapper rail, western snowy plover, and Belding's savannah sparrow habitat; therefore, site selection measures shall include considerations that influence the site's suitability for these species. Restoration shall consist of seeding with appropriate marsh/meadow species and, if appropriate, incorporation of seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the items listed below.

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** The site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. Locally occurring, native plants and seeds shall be used and shall include species present on site and in adjacent areas, and shall also include uncommon species known to occur on site such as southwestern spiny rush.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the

resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.

7. **Long-term preservation.** Long-term site preservation shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the marsh and mudflat restoration program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful restoration of marsh and mudflat habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow. For example, the light-footed clapper rail requires areas with tidal influence and prefers using cordgrass to build their nests; the western snowy plover nests on bare ground in areas of little to no vegetation coverage; and the Belding's savannah sparrow uses the upper portions of the marsh dominated by pickleweed. Thus, performance criteria shall be tailored to fit different portions of the mitigation site intended for each species.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

- MM 4.6-5** **Jurisdictional Resources/Riparian Habitat Preservation and Restoration.** The Applicant is in the process of obtaining permits/agreements/certifications from the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission that are required for direct or indirect impacts on areas within these agencies' jurisdictions. The Applicant shall be obligated to implement/comply with the mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. Jurisdictional areas shall be restored on the Project site or immediately off site at a minimum replacement ratio of 3:1 for permanent impacts and 1:1 for temporary impacts to ensure no net loss of habitat.³ The

³ It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

jurisdictions of the USACE, CDFG, and California Coastal Commission are not additive areas, as many of the riparian areas on the Project site may be within the jurisdiction of several of these agencies. Therefore, the permits and associated jurisdictional replacement requirements would identify which mitigation areas apply to the corresponding jurisdictions.

Permanent impacts on willow scrub and willow riparian forest (1.42 acres) shall be mitigated at a 3:1 ratio (4.26 acres) on the Project site through restoration of willow habitat. Permanent impacts on all other riparian vegetation types and all temporary impacts to riparian vegetation types (11.51 acres) shall be mitigated at a 1:1 ratio (11.51 acres) on the Project site. In total, as compensation for permanent and temporary impacts to 12.93 acres of riparian habitat, the Project would create 15.77 acres of riparian habitat. In addition, the Project shall preserve 23.03 acres of riparian habitats, for a total of 38.80 acres of restoration and preservation. Details of the restoration required are summarized below in Table E.

**TABLE E
REQUIRED RIPARIAN RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
Permanent Impact			
Willow Scrub/Willow Riparian Forest	1.42	3:1	4.26
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.03	1:1	0.03
Mule Fat Scrub	0.47	1:1	0.47
Disturbed Mule Fat Scrub ^a	4.95	1:1	4.95
Temporary Impact			
Willow Scrub/Willow Riparian Forest	0.59	1:1	0.59
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.70	1:1	0.70
Mule Fat Scrub	0.20	1:1	0.20
Disturbed Mule Fat Scrub ^a	4.57	1:1	4.57
Total	12.93		15.77
^a Includes disturbed mule fat scrub, disturbed mule fat scrub/ruderal, and disturbed mule fat scrub/goldenbush scrub.			

Prior to the first permit that would allow for site disturbance, a detailed restoration program shall be prepared for approval by the City of Newport Beach (City) and the resource agencies (i.e., the USACE, the CDFG, the RWQCB, and the California Coastal Commission). The program shall include, at a minimum, the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies (i.e., the USFWS, the CDFG, the RWQCB, and the California Coastal Commission). The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the least Bell's vireo breeding season (March 15 to September 15).
6. **Monitoring plan.** The riparian vegetation/jurisdictional resources monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within marked areas.

The Applicant shall begin riparian habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of

the first grading permit. The Applicant shall be fully responsible for the implementation of the riparian revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful establishment of riparian habitat within the restored and created areas, and the performance criteria shall take least Bell's vireo habitat requirements into consideration. For example, the presence of a shrubby understory is important for this species; thus, performance criteria shall include a requirement for structural complexity.

The Applicant is seeking a Take Authorization through Section 7 of the Federal Endangered Species Act for impacts to habitat for the least Bell's vireo. Prior to issuance of the first action and/or permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide to the City of Newport Beach a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) authorizing the removal of jurisdictional resources (i.e., potential least Bell's vireo habitat). It is anticipated that the USFWS Biological Opinion would contain conservation recommendations to avoid or reduce the Project's impact. Although additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below shall be followed.

1. Activities involving the removal of riparian habitat shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15) unless otherwise directed by the USFWS and the CDFG.
2. Vegetation-clearing activities shall be monitored by a qualified Biologist. The Biological Monitor shall ensure that only the amount of riparian habitat approved during the consultation process shall be removed. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.
3. The use of any large construction equipment during site grading shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to September 15), unless otherwise directed by the USFWS and the CDFG. Construction may be allowed within 500 feet of an active nest if appropriate noise measures are implemented, as approved by the resource agencies.
4. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at specified monitoring locations near active nest(s), as determined by the Biological Monitor. This shall be verified by weekly noise monitoring conducted by a qualified Acoustical Engineer during the breeding season

(March 15 to September 15) or as otherwise determined by a qualified Biological Monitor based on vireo nesting activity.

5. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFG following completion of construction.

MM 4.6-6

Migratory Bird Treaty Act. No vegetation removal shall occur between February 15 and September 15 unless a qualified Biologist, approved by the City of Newport Beach (City), surveys the Project's impact area prior to disturbance to confirm the absence of active nests. If an active nest is discovered, disturbance within a particular buffer shall be prohibited until nesting is complete; the buffer distance shall be determined by the Biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions. Limits of avoidance shall be demarcated with flagging or fencing. The Biologist shall record the results of the recommended protective measures described above and shall submit a memo summarizing any nest avoidance measures to the City to document compliance with applicable State and federal laws pertaining to the protection of native birds.

To protect bird species on site, any front glass railings, screen walls, fences and gates that occur adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.

MM 4.6-7

Special Status Plant Species. The Applicant shall be required to plan, implement, monitor, and maintain a southern tarplant restoration program for the Project consistent with the most current technical standards/knowledge regarding southern tarplant restoration. Prior to the first action and/or permit that would allow for site disturbance (e.g., a grading permit), a qualified Biologist shall prepare a detailed southern tarplant restoration program that would focus on (1) avoiding impacts to the southern tarplant to the extent possible through Project planning; (2) minimizing impacts; (3) rectifying impacts through the repair, rehabilitation, or

restoration of the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the Project; and (5) compensating for impacts by replacing or providing substitute resources or environments. The program shall be reviewed and approved by the City of Newport Beach (City) prior to site disturbance.

Impacts on southern tarplant shall be mitigated by seed collection and re-establishment. The seeds shall be collected and then placed into a suitable mitigation area in the undeveloped or restored portion of the Project site or at an approved adjacent off-site location. The southern tarplant restoration program shall have the requirements listed below.

1. Seed ripeness shall be monitored every two weeks by a qualified Biologist and/or a qualified Seed Collector at the existing southern tarplant locations to determine when the seeds are ready for collection. A qualified Seed Collector shall collect all the seeds from the plants to be impacted when the seeds are ripe. The seeds shall be cleaned and stored by a qualified nursery or institution with appropriate storage facilities.
2. The mitigation site shall be located in dedicated open space on the Project site or at an adjacent off-site mitigation site. The mitigation site shall be prepared for seeding as described in a conceptual restoration plan.
3. The topsoil shall be collected from areas with limited amounts of weeds from the impacted population and re-spread in the selected location, as approved by the qualified Biologist. Approximately 60 to 80 percent of the collected seeds shall be spread in the fall following soil preparation and seed preparation. The remainder of the seeds shall be kept in storage for subsequent seeding, if necessary.
4. The qualified Biologist shall have the full authority to suspend any operation at the site which is, in the qualified Biologist's opinion, not consistent with the restoration program. Any disputes regarding consistency with the restoration program shall be resolved by the Applicant, the qualified Biologist, and the City.

MM 4.6-8

Light-footed Clapper Rail, Western Snowy Plover, Belding's Savannah Sparrow. Due to temporary impacts to marsh habitat in the lowland by oilfield remediation activities, a focused survey shall be conducted for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site. If any of these species are observed, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the initiation of grading or any activity that involves the removal/disturbance of

marsh habitat, including clearing, grubbing, mowing, disking, trenching, grading, or any other construction-related activity on the Project site. If any of these species would be impacted, mitigation for impacts on these species shall include replacement of marsh habitat as described in MM 4.6-4. In addition, the measures listed below shall be implemented.

1. Marsh vegetation shall be removed after September 15 and before March 1.
2. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required.
3. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding's savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat. In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).
4. The limits of disturbance during oilfield cleanup shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

MM 4.6-9 **California Gnatcatcher.** Prior to initiation of grading or any activity that involves the removal/disturbance of coastal sage scrub habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain a Biological Opinion from the U.S. Fish and Wildlife Service to authorize incidental take. Mitigation for impacts on the California gnatcatcher shall include restoration and preservation of 82.91 acres of coastal sage scrub habitat and implementation of the Construction Minimization Measures listed in MM 4.6-1.

MM 4.6-10 **Coastal Cactus Wren.** Impacts on southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub shall be avoided to the maximum extent practicable. If it is determined by the City of Newport Beach (City) during the final grading plan check that impacts on cactus habitat cannot be avoided, the

coastal sage scrub mitigation plan shall incorporate cactus into the planting palette at no less than a 1:1 ratio for impacted cactus areas. The Applicant shall submit the coastal sage scrub mitigation plan to the City to verify that an appropriate amount of cactus has been incorporated into the plan. Mitigation for impacts on the coastal cactus wren shall include replacement of coastal sage scrub habitat and implementation of the Construction Minimization Measures described in MM 4.6-1.

MM 4.6-11 ***Least Bell's Vireo.*** Prior to initiation of grading or any activity that involves the removal/disturbance of riparian habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission). Mitigation for impacts on the least Bell's vireo shall include (1) replacement of riparian and upland scrub and riparian forest habitat and the Construction Minimization Measures described in MM 4.6-5; (2) protection of nests and nesting birds as described in MM 4.6-6; and (3) any additional provisions imposed by the permitting agencies.

MM 4.6-12 ***Burrowing Owl.*** Impacts on known burrowing owl burrows and surrounding non-native grasslands shall be avoided to the maximum extent practicable, as determined by a qualified Biologist in coordination with the City of Newport Beach (City). If impacts on grassland habitat occupied by burrowing owl cannot be avoided, mitigation for impacts on the burrowing owl shall include restoration of native grassland habitat, as described in MM 4.6-2.

Within 30 days prior to any ground-disturbing activity to suitable burrowing owl habitat, a focused pre-construction survey shall be conducted to determine the presence or absence of the burrowing owl on the Project site. If the species is not observed, no further mitigation shall be necessary. Results of the survey shall be provided to the California Department of Fish and Game (CDFG).

If an active burrow is observed during the non-nesting season, a qualified Biologist shall monitor the nest site; when the owl is away from the nest, the Biologist shall exclude the owl from the burrow and then remove the burrow so the owl cannot return.

If an active burrowing owl burrow is observed during the nesting season, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. Peak nesting activity for burrowing owl normally occurs from April to July. To protect the active burrow, the following restrictions to construction activities shall be required until the burrow is no longer active (as determined by a qualified Biologist): (1) clearing limits shall be established within a 300-foot buffer around any active burrow, unless otherwise determined by a qualified Biologist and (2) access and surveying shall be

prohibited within 200 feet of any active burrow, unless otherwise determined by a qualified Biologist. Any encroachment into the buffer area around the active burrow shall only be allowed if the Biologist determines that the proposed activity shall not disturb the nest occupants. Construction can proceed when the qualified Biologist has determined that fledglings have left the nest burrow.

- MM 4.6-13** **Raptor Nesting.** To the maximum extent practicable, habitats that provide potential nest sites for raptors shall be removed from July 1 through January 31. If Project construction activities are initiated during the raptor nesting season (February 1 to June 30), a qualified Biologist shall conduct a nesting raptor survey. Seven days prior to the onset of construction activities, a qualified Biologist shall survey within the limits of the Project disturbance area for the presence of any active raptor nests (common or special status). Any nest found during survey efforts shall be mapped on the construction plans. If no active nests are found, no further mitigation would be required, and survey results shall be provided to the California Department of Fish and Game (CDFG).

If nesting activity is present, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. To protect any nest site, the following restrictions on construction are required between February 1 and June 30 (or until nests are no longer active, as determined by a qualified Biologist): (1) clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest and (2) access and surveying shall be prohibited within 200 feet of any occupied nest. Any encroachment into the 300- and/or 200-foot buffer area(s) around the known nest shall only be allowed if a qualified Biologist determines that the proposed activity shall not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified Biologist has determined that fledglings have left the nest.

- MM 4.6-14** **Invasive Exotic Plant Species.** A qualified Biologist shall monitor any oilfield remediation activities that involve disturbance of native habitat but that would not include removal of the habitat in its entirety. During vegetation removal for remediation activities, the Biological Monitor shall direct the construction crew to remove invasive plant species, including but not limited to pampas grass and giant reed. The Biologist shall also direct the crew on any additional measures that may be needed to eradicate these species, such as removal of roots, painting cut stems with Round-up or other approved herbicide, or follow-up applications of herbicide.

The Applicant shall submit Landscape Plans to the City of Newport Beach (City) for review and approval by a qualified Biologist. The review shall ensure that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided. When the process is

complete, the qualified Biologist shall submit a memo approving the Landscape Plans to the City.

MM 4.6-15 ***Human Activity.*** Prior to issuance of a grading permit, the Applicant shall submit a fencing plan to the City of Newport Beach (City) for review to demonstrate that access to the open space within the lowland shall be limited to designated access points that link to existing trails. To best protect habitat from human activity, fence rails shall be placed along the boardwalk trails. Signs shall be posted along the fence indicating that habitat within the lowland is sensitive because it supports Endangered species. The signage shall also provide information on biological resources within the lowland (e.g., coastal sage scrub, marsh, riparian habitats, and special status species). In addition, signage shall require that dogs be leashed in parks, along trails, and in any areas adjacent to open space.

MM 4.6-16 ***Urban Wildlands Interface.*** To educate residents of the responsibilities associated with living at the wildland interface, the Applicant shall develop a wildland interface brochure. The brochure shall be included as part of the purchase/rental/lease agreements for the Project residents. The brochure shall address relevant issues, including the role of natural predators in the wildlands (e.g., coyotes' predation of pets) and how to minimize impacts of humans and domestic pets on native communities and their inhabitants (e.g., outdoor cats' predation of native birds, lizards, and small mammals). The brochure shall also address invasive species that shall be avoided in landscaping consistent with MM 4.6-14.

(2) Potential Impact: Grading activities could impact several sensitive natural communities on the Project site.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-4 and MMs 4.6-1, 4.6-3, 4.6-4, and 4.6-5 (set forth above).

Facts in Support of Finding: The Project would impact approximately 14.18 acres (12.26 acres permanent, 1.92 acres temporary) of special status coastal sage scrub vegetation. Impacts on these coastal sage scrub vegetation types are considered significant because (1) the loss of these vegetation types in the Project region would be considered a substantial adverse effect on the coastal sage scrub community and (2) impacts to these areas would reduce the habitat for the coastal California gnatcatcher and other wildlife species. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 require habitat restoration of permanent impacts to coastal sage scrub (including southern coastal bluff scrub) at a 3:1 ratio and disturbed coastal sage scrub (excluding southern coastal bluff scrub) at a 1:1 ratio either on site or off site. In addition, all temporarily impacted coastal sage scrub would be restored at a 1:1 ratio. In total, 47.75 acres of coastal sage scrub restoration and an additional 35.16 acres of coastal sage scrub would be preserved. MM 4.6-1 also requires the Applicant to follow Construction Minimization Measures TO provide conservation and avoidance actions to reduce the adverse impact to the habitat and associated wildlife species. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat

restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

The Project would significantly impact approximately 14.44 acres of special status riparian habitats (6.62 acres permanent, 7.82 acres temporary). MMs 4.6-4 and 4.6-5 and PDFs 4.6-1 through 4.6-4 require the restoration and preservation of 48.70 acres of riparian habitat as well as habitat restoration/preservation and indirect effect minimization measures.

The Project is designed to protect the two vernal pool areas that are occupied by San Diego fairy shrimp. The would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Pipe removal activities would be a significant temporary impact that would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed. The Project would replace a portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area (MM 4.6-3). PDFs 4.6-1 through 4.6-4 are also applicable.

(3) Potential Impact: Grading and oil remediation activities could impact jurisdictional areas as follows (some jurisdictional areas overlap): USACE—0.32 acre permanent/3.93 acre temporary; CDFG—1.87 acres permanent/0.05 acre temporary; California Coastal Commission—2.47 acres permanent/6.48 acres temporary.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features (PDFs) 4.6-1 through 4.6-4 and Mitigation Measures (MMs) 4.6-3 through 4.6-5.

Facts in Support of Finding: Implementation of MMs 4.6-3, 4.6-4, and 4.6-5, and PDFs 4.6-1 through 4.6-4 would reduce impacts on jurisdictional resources to less than significant levels through habitat restoration and preservation (totaling approximately 52.28 acres). PDFs 4.6-1 through 4.6-4 also require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

(4) Potential Impact: The permanent loss of open space would reduce wildlife movement corridor habitat available for species.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.6-1 through 4.6-5 (set forth above).

Facts in Support of Finding: The Project site is adjacent or proximate to the Talbert Marsh, the Santa Ana River, the USACE salt marsh restoration site, and Talbert Park, as well as extensive urbanization in the Project vicinity. Wildlife movement opportunities between the Project site and large areas of open space in the region are already constrained by extensive urbanization in the Project vicinity, security fencing around the Project site, and ongoing use of the Project site as an operating

oilfield. The Project would permanently reduce the size of coastal open space (existing operating oilfield) by approximately 205.83 acres. Following oilfield remediation activities within the Upland and Lowland, large contiguous areas would be revegetated and remain contiguous with the USACE salt marsh restoration site, the Santa Ana River, and the Talbert Marsh. The revegetation following oilfield remediation activities would result in a higher-quality habitat resulting from invasive species removal; removal of human activity and disturbance related to oilfield operations; and availability of larger blocks of contiguous native habitat in the open space area. With implementation of MMs 4.6-1 through 4.6-5, this impact would be reduced to a less than significant level.

G. Population, Housing, and Employment

(1) Potential Impact: While the Project would result in population growth in the area through the construction of new residences and employment opportunities, the Project would not exceed the growth currently projected for the Project site or exceed regional projections. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 (set forth below) are applicable to the Project.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.7-1 and SC 4.7-2. No mitigation measures were required or recommended.

Facts in Support of Finding: The Project's population, housing, and employment growth are within the overall Orange County Projections (OCP-2006) for Orange County and Regional Statistical Area (RSA) F-39. The Project is expected to directly generate 3,012 residents, which would account for approximately 34 percent of the projected growth in the City by 2025 and approximately 27 percent by 2035. The General Plan Housing Element identifies several areas for future housing opportunities including the Project site.

The Project would provide new jobs associated with the neighborhood commercial and resort inn uses. It is assumed that the housing demand generated by these new jobs would be met by (1) existing units in the City; (2) projected future units in the City; (3) proposed on-site units, including affordable housing; and (4) units located elsewhere in Orange County and the larger SCAG region. Given the mobility of workers within the SCAG region, it is not possible to accurately estimate the housing demand jobs would generate in other parts of the region.

The expected employment generation from the Project would represent approximately 25 percent of the employment generation in the City by 2035; it is expected that the demand for new housing generated from Project employees (422 jobs) could be accommodated by the projected housing growth. Therefore the potential growth associated with Project-generated jobs (construction and operation) would not be significant. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 are applicable to the Project.

PDF 4.7-1 The Master Development Plan includes a range of housing types to meet the housing needs of a variety of economic segments of the community to be designed to appeal to different age groups and lifestyles.

- SC 4.7-1** An Affordable Housing Implementation Plan (AHIP) is required that specifies how the development will meet the City's affordable housing goal.

H. Recreation and Trails

(1) Potential Impact: The Project would increase the demand for park and recreational facilities. The Project includes approximately 51.4 gross acres of parkland, including 21.8 gross acres for a public Community Park, as well as trails through the Project site that connect to the regional trail system. The physical impacts of implementing park and recreational facilities, including the pedestrian and bicycle bridge, are evaluated as part of the overall Project.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth below).

Facts in Support of Finding: The City's Park Dedication Ordinance would require 15.06 acres of park or the payment of in-lieu fees; the City's General Plan requires a 20- to 30-acre community park on the Newport Banning Ranch property, although the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements. The General Plan requires that sufficient acreage be available on the Newport Banning Ranch property to comply with the General Plan. The Project would exceed local Quimby Act and General Plan parkland requirements by providing approximately 51 acres of parkland, including a Community Park, consistent with the General Plan. In addition to parkland, the Project includes multi-use trails for pedestrians and bicyclists, on-street bike lanes, and the bridge over West Coast Highway.

- PDF 4.8-1** The Master Development Plan and Tentative Tract Map provide for approximately 51 gross (42 net) acres of public parkland in the form of an approximately 27 gross acre (22 net acre) public Community Park, 2 bluff parks comprising approximately 21 gross (18 net) acres, and 3 interpretive parks containing approximately 4 gross (3 net) acres. Of the approximately 27 gross acres for the public Community Park, approximately 22 gross (18 net) acres will be offered for dedication to the City which exceeds the City's Municipal Code requirement for park dedication for the 1,375 unit Project, which is approximately 15 acres.
- PDF 4.8-2** The Master Development Plan provides a system of bicycle, pedestrian, and interpretive trails within the developed areas and the Upland and Lowland Open Space areas of the Project.
- PDF 4.8-3** If permitted by all applicable agencies, a pedestrian and bicycle bridge over West Coast Highway will be provided, as set forth in the Master Development Plan, from the Project site to a location south of West Coast Highway to encourage walking and bicycling to and from the beach.
- SC 4.8-1** The Applicant shall comply with the City of Newport Beach Park Dedication and Fees Ordinance (*City of Newport Beach Municipal Code* Chapter 19.52). The City's tentative map review authority

shall determine whether land dedication, an in lieu fee, or a combination of the two shall be required in conjunction with its approval of a tentative map. Land dedications shall be offered at the time of appropriate final map recordation, either on the final map or by separate instrument. The City may further clarify improvement and phasing requirements in a Development Agreement.

(2) Potential Impact: The Project would increase the demand for park and recreational facilities; however, since the new recreational facilities provided by the Project exceed City standards, it would prevent the overuse of existing local recreational facilities.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth above) and MM 4.10-10.

Facts in Support of Finding: The Project would increase the demand for park and recreational facilities; however, the Project includes approximately 51.4 gross (42.1 net) acres of parkland, as well as off-street multi-use trails, on-street bike trails, and a pedestrian and bicycle bridge over West Coast Highway to serve Project residents and the surrounding community (PDFs 4.8-1, 4.8-2, and 4.8-3). Air Quality MM 4.10-10, requires the provision of bicycle spaces as a part of the Project. These recreational facilities provided by the Project would prevent the overuse of existing local recreational facilities. With regard to beaches, trails, and other regional recreational facilities, these facilities are designed to meet the needs associated with countywide projected growth. The Project is consistent with the City's General Plan land use designation for the Project site; therefore, no impact would occur.

MM 4.10-10 Bicycle Facilities. Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.
- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.

- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

I. Transportation and Circulation

- (1) **Potential Impact:** The Project would generate traffic that would significantly impact intersections in the cities of Newport Beach and Costa Mesa. The traffic impact analysis identifies significant impacts at one intersection in the City of Newport Beach and up to seven intersections in the City of Costa Mesa.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. PDFs 4.9-1 through 4.9-3, SCs 4.9-2 and 4.9-3, and MM s 4.9-1 and 4.9-2 are applicable. However, Finding 2 identifies that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency”. The City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, traffic improvements that would require the approval of the City of Costa Mesa or Caltrans are considered significant, unavoidable impacts. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: No traffic, other than that associated with limited oilfield operations, is currently generated on or from the Project site. As shown below, multiple traffic scenarios were evaluated. At buildout, the Project is estimated to generate 14,989 trips per day, with 906 trips in the AM peak hour (251 inbound and 655 outbound trips) and 1,430 trips in the PM peak hour (866 inbound and 564 outbound trips). The following summarizes the significant intersection impacts by traffic scenario. Unless mentioned, the Project’s traffic impacts are less than significant and mitigation is not required:

Existing Plus Project – The Project is forecasted to significantly impact three intersections in Costa Mesa.

Year 2016 With Project Traffic Phasing Ordinance (TPO) Analysis – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa.

Year 2016 With Phase 1 Project TPO Analysis – The Project would significantly impact one intersection in Newport Beach and two intersections in Costa Mesa.

Year 2016 Cumulative With Project – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa. Of the intersections in Costa Mesa, one is a State Highway intersection.

2016 Cumulative With Phase 1 Project– The Project would significantly impact to two intersections in Costa Mesa.

General Plan Buildout – The Project would significantly impact to two intersections in Costa Mesa.

The Project's Mitigation Program consists of several measures, including road improvements that would be provided by contributions to the applicable jurisdiction's capital improvement program and funded through fees and/or other methods of financing. Where the Project causes a significant traffic-related impact, the Applicant would be responsible for the required mitigation. Where the Project contributes to a significant impact to an intersection, the Applicant would be required to participate in the funding of improvements at the significantly impacted intersection on a fair-share basis. Funds generated by the fair share traffic impact fees are deposited into the City of Newport Beach's Circulation and Transportation Fund account and are used only to construct circulation system improvements identified in the General Plan Circulation Element. It is also important to recognize that the City's Fair Share Fee Ordinance allows for the dedication of right-of-way or the construction of appropriate arterial improvements in lieu of the payment of the fees. Proposed improvements located outside the City of Newport Beach's jurisdiction require agreements with the affected jurisdictions regarding the timing, cost, and fair-share responsibility of the improvements.

The City of Newport Beach cannot impose mitigation on or mandate the implementation of mitigation in another jurisdiction. The Applicant has reached an agreement with the City of Costa Mesa for the payment of fees associated with impacts occurring in Costa Mesa. In correspondence from the City of Costa Mesa to the Applicant dated November 21, 2011, the City of Costa Mesa identifies that both parties have agreed to a mitigation plan that requires the payment of \$4,388,483 to the City of Costa Mesa. Payments would be made by the Applicant to the City of Costa Mesa prior to the issuance of the (1) 301st residential building permit; (2) 601st residential building permit; (3) 901st residential building permit; and (4) 1,201st residential building permit. However, the City of Newport Beach cannot ensure that improvements would be made concurrent with or preceding the identified intersection impact in the City of Costa Mesa. Therefore, for purposes of CEQA, the impacts to be mitigated by the improvements would remain significant and unavoidable.

PDF 4.9-1 In addition to mitigating traffic impacts of the Project, the transportation improvements included in the Master Development Plan provide arterial highway capacity needed to address existing demand as well as for planned growth in the region through implementing portions of the City's General Plan and the County's Master Plan of Arterial Highways.

PDF 4.9-2 The Development Agreement requires that arterial roadway improvements and contributions toward off-site improvements be provided earlier in the development phasing program than needed to mitigate Project traffic impacts and requires that contributions toward off-site improvements be provided early relative to the development phasing.

PDF 4.9-3 The Master Development Plan includes a new arterial connection between West Coast Highway and 19th Street that will provide enhanced access to and from southwest Costa Mesa which will contribute to the mitigation of the impacts of projected regional growth.

SC 4.9-2 In compliance with Municipal Code Chapter 15.38, Fair Share Traffic Contribution Ordinance, the Applicant shall be responsible

for the payment of fair share traffic fees or right-of-way dedication or traffic improvements or a combination thereof.

SC 4.9-3 **Traffic Management Plan.** Prior to issuance of any grading permit, the Applicant shall prepare for City of Newport Beach Traffic Engineer review and approval a Construction Area Traffic Management Plan for the Project for the issuance of a Haul Route Permit. The Plan shall be designed by a registered Traffic Engineer. The Traffic Management Plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The Plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the Project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions.

The Applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the City of Newport Beach Traffic Engineer. Haul operations shall be monitored by the City of Newport Beach Public Works Department, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. No construction vehicles shall be allowed to stage on off-site roads during the grading and construction period.

MM 4.9-1 Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

MM 4.9-2 Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The

payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

TABLE A
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS

Location	Improvement	Scenario in which Improvements are Needed/Project's Percentage of Fair Share Improvements					
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
9 Newport Blvd/West Coast Hwy	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.	n/a	X (45.1%)	X (9.8%)	n/a	n/a	n/a

n/a: Mitigation measure is not required under this traffic scenario.
Source: Kimley-Horn 2011.

TABLE B
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 9: Newport Boulevard/West Coast Highway					
Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.93	E	0.88	D
2016 TPO, Phase 1	AM	0.91	E	0.86	D
2016 Cumulative	AM	0.96	E	0.91	E
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

n/a: not applicable for the traffic scenario.
Source: Kimley-Horn 2011.

TABLE C
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS

Location	Improvement	Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
28	<p>Monrovia Ave/ 19th St</p> <p>Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	n/a	X	n/a	X	n/a	n/a
34	<p>Newport Blvd/ 19th St</p> <p>Provide a second southbound left-turn on Newport Boulevard. Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.</p>	n/a	X	n/a	X	n/a	X
36	<p>Newport Blvd/ Harbor Blvd</p> <p>Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.</p>	X	X	X	X	X	X
37	<p>Newport Blvd/ 18th St (Rochester St)</p> <p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p>	X	X	X	X	X	n/a
42	<p>Pomona Ave/ 17th St</p> <p>Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	n/a	X	n/a	X	n/a	n/a

**TABLE C (Continued)
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
43 Superior Ave/ 17 th St	<p>Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation.</p> <p>Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</p>	X	X	n/a	X	n/a	n/a
44 Newport Blvd/ 17 th St	<p>Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach.</p> <p>Note: The proposed improvement in anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.</p>	n/a	X	n/a	X	n/a	n/a
<p>n/a: Mitigation measure is not required under this traffic scenario. Source: Kimley-Horn 2011.</p>							

TABLE D
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 28: Monrovia Avenue/19th Street					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	36.4	E	0.60	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	39.2	E	0.61	B
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 34: Newport Boulevard/19th Street					
Assumes the addition of a second southbound left-turn lane on Newport Boulevard.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.91	E	0.85	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	0.91	E	0.85	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	AM	1.01	F	0.99	E
Intersection 36: Newport Boulevard/Harbor Boulevard					
Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.					
Existing + Project	PM	1.05	F	0.87	D
2016 TPO	PM	1.14	F	1.01	F
2016 TPO, Phase 1	PM	1.07	F	0.90	D
2016 Cumulative	PM	1.15	F	0.95	E
2016 Cumulative, Phase 1	PM	1.07	F	0.90	D
General Plan Buildout	PM	1.12	F	0.92	E
Intersection 37: Newport Boulevard/18th Street (Rochester Street)					
Assumes the southbound right-turn lane is converted to a southbound shared through/right lane on Newport Blvd.					
Existing + Project	PM	1.05	F	0.88	D
2016 TPO	PM	1.15	F	0.97	E
2016 TPO, Phase 1	PM	1.09	F	0.91	E
2016 Cumulative	PM	1.16	F	0.98	E
2016 Cumulative, Phase 1	PM	1.09	F	0.91	E
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 42: Pomona Avenue/17th Street					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	46.3	E	0.54	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	53.3	E	0.56	A
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

TABLE D
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 43: Superior Avenue/17th Street					
Assumes the westbound approach is converted to provide one left, one shared/left, one through, and one dedicated right-turn lane.					
Existing + Project	PM	0.91	F	0.81	D
2016 TPO	PM	0.98	E	0.87	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.98	E	0.88	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
Intersection 44: Newport Boulevard/17th Street					
Assumes fourth southbound through lane and one dedicated northbound right-turn lane					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	0.91	E	0.88	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.92	E	0.89	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
n/a: not applicable to the traffic scenario					
Source: Kimley-Horn 2011.					

(2) Potential Impact: Implementation of the proposed Project would not increase traffic hazards due to design features or incompatible land uses and would not result in any significant impacts related to circulation or access. The Project would not significantly impact any emergency response evacuation plans.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SC 4.9-1 (set forth below), SC 4.9-3 (set forth above), and MMs 4.9-3 and 4.9-4 (set forth below).

Facts in Support of Finding: Because the property is an active oilfield, there are no public roads through the site. The Project would construct Bluff Road and North Bluff Road through the site, connecting West Coast Highway to 19th Street, as depicted in the *City of Newport Beach General Plan's* Circulation Element and the Orange County MPAH. Bluff Road would be constructed as a four-lane divided road from West Coast Highway to 15th Street. North Bluff Road would be constructed as a four-lane divided road from Bluff Road to the limits of the development area north of 17th Street and a two-lane road northward to 19th Street. These roadways would intersect with existing local streets to allow for the circulation of Project traffic to/from the Project site and regional traffic through the Project site. Project roads would be designed to be appropriately consistent with the City's Design Criteria, Standard Special Provisions, and Standard Drawings. To facilitate the movement of construction traffic and to minimize potential disruptions, standard conditions and mitigation, would be applicable to the proposed Project. No significant impacts are anticipated.

- SC 4.9-1** Sight distance at all intersections shall comply with City of Newport Beach standards.
- MM 4.9-3** Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments.
- MM 4.9-4** Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the accessway meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.

(3) Potential Impact: The Project includes regulations that require adequate parking for new uses in the Project. The extension of 15th Street consistent with the General Plan would displace parking at an existing office building.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.9-5 (set forth below).

Facts in Support of Finding: Parking is proposed to meet the City's parking requirements as well as the Coastal Commission's requirement for visitor-serving coastal access parking. All local streets would be public and many would allow for on-street parking; parking would not be permitted on arterials. Any modifications to the off-street parking requirements, including the use of off-site parking facilities, joint-use parking, and/or reductions in the required number of off-street parking spaces for any and all land uses, are permitted pursuant to the provisions of Municipal Code Chapter 20.

The extension of 15th Street onto the Project site would displace approximately 25 parking spaces associated with the office building along Monrovia Avenue. MM 4.9-5 requires the Applicant to provide replacement parking for the 25 displaced parking spaces associated with the existing office building in a parking lot in the proposed Community Park site. Replacement spaces would be provided concurrent to or preceding the loss of off-site parking.

- MM 4.9-5** Prior to the displacement of any private parking spaces associated with improvements to 15th Street, the Applicant shall be responsible for the construction of replacement parking on the Project site within the Community Park site or in a location immediately proximate to the existing parking lot.

J. Air Quality

(1) Potential Impact: With respect to potential conflicts with the applicable South Coast Air Quality Management District's (SCAQMD) Air Quality Management Plan (AQMP), the AQMP provides controls sufficient to attain the national and state ozone and particulate standards based on the long-range growth projections for the region. The Project does

not exceed the assumptions in the AQMP. Therefore, the Project is in conformance with the AQMP.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no Project Design Features, standard conditions of approval, or mitigation measures were required or recommended.

Facts in Support of Finding: The AQMP is based on growth projections agreed to the five affected counties and SCAG. If the total population accommodated by a new project, together with the existing population and the projected population from all other planned projects in the subarea, does not exceed the growth projections for that subarea incorporated in the most recently adopted AQMP, the completed project is consistent with the AQMP. The entire County of Orange is considered to be one subarea. The AQMP is region-wide and accounts for, and offsets, cumulative increases in emissions that are the result of anticipated growth throughout the region. The AQMP assumptions for mobile source emissions are based on assumed trip generation and trip distances, which are, in turn, based upon existing uses and general plans. The assumptions in the AQMP are consistent with the General Plan. The proposed Project does not propose development that exceeds the quantities in the General Plan; therefore, the Project does not exceed the assumptions in the AQMP. Because implementation of the proposed Newport Banning Ranch Project would not exceed growth projections for the subarea, the Project is considered consistent with the AQMP.

(2) Potential Impact: Construction emissions would exceed the South Coast Air Quality Management District (SCAQMD) regional threshold for nitrogen oxide (NO_x) in some of the years of construction. Emissions of all other criteria pollutants and NO_x emissions in 2018 and 2020 through 2023 would not exceed the SCAQMD CEQA significance thresholds. The exceedance of the NO_x threshold would occur when remediation in one area of the site would occur concurrently with grading in an area where remediation was completed or not required. Thus, the exceedance would not be continuous for the entire year but limited to periods when the two activities using multiple pieces of heavy equipment would overlap. Localized concentrations of carbon monoxide (CO) concentrations, NO₂, and particulate matter (PM₁₀ and PM_{2.5}) due to construction activities would not exceed regional thresholds.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SCs 4.10-1 and 4.10-2, and MMs 4.10-1 through 4.10-9 (set forth below).

Facts in Support of Finding: Construction emissions were calculated using CalEEMod. Compliance with SCAQMD Rules is required; therefore, it is assumed that construction would be performed in accordance with Rule 403, Fugitive Dust, and Rule 1113, Architectural Coatings (SC 4.10-1 and SC 4.10-2, respectively). To reduce NO_x emissions, MMs 4.10-1 through 4.10-4 are incorporated into the Project. MM 4.10-1 requires the use of advanced design diesel-engine driven construction equipment with Tier 3 and Tier 4 certification. MMs 4.10-2 through 4.10-4 are measures commonly recommended by the SCAQMD as good practice on large construction projects for NO_x emissions reduction; these measures principally require efficient operations of construction equipment and construction traffic.

Emissions reductions with Tier 3 and Tier 4 equipment can be estimated with the CalEEMod model.

Although unmitigated construction emissions would not exceed the CEQA significance thresholds for pollutants other than NO_x, MMs 4.10-5 through 4.10-7 provide additional emissions reductions; these measures require dust control, street sweeping, and early road paving to minimize fugitive dust, PM₁₀, and PM_{2.5} emissions. MMs 4.10-8 and 4.10-9 provide notices to nearby residents of planned grading work and a complaint resolution process.

- SC 4.10-1** **Dust Control.** During construction of the proposed Project, the Project Developer shall require all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
- a. **Clearing and grubbing:** Apply water in sufficient quantity to prevent generation of dust plumes.
 - b. **Cut and fill:** Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
 - c. **Earth-moving activities:** Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
 - d. **Importing/exporting of bulk materials:** Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.
 - e. **Stockpiles/bulk material handling:** Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top⁴ to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.
 - f. **Traffic areas for construction activities:** Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes.

⁴ Refers to a road to the top of the pile.

Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The Project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:

- Be employed by or contracted with the Property Owner or Developer;
- Be on the site or available on site within 30 minutes during working hours;
- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

SC 4.10-2 ***Architectural Coatings.*** Architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. This requirement shall be included as notes on the contractor specifications.

MM 4.10-1 ***Off-road Construction Equipment Engines.*** Prior to issuance of a grading permit, the Applicant/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:

- a. Prior to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 3 off-road emissions standards.
- b. After January 1, 2015: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 4 off-road emissions standards, where available.
- c. A copy of each unit's certified Tier specification shall be provided at the time of mobilization of each applicable unit of equipment.

MM 4.10-2 ***Construction Site Design and Operation.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures or provide information and data that demonstrates that implementation would not be feasible:

- a. Electricity shall come from power poles rather than diesel- or gasoline-fueled generators, compressors, or similar equipment;

- b. Construction parking shall be configured to minimize traffic interference;
- c. Construction trucks shall be routed away from congested streets and sensitive receptors;
- d. Construction activities that affect traffic flow on the arterial system shall be scheduled to off-peak hours to the extent practicable;
- e. Temporary traffic controls, such as a flag person(s), shall be provided where necessary to maintain smooth traffic flow; and
- f. Dedicated turn lanes for movement of construction equipment on- and off-site and signal synchronization shall be provided as necessary to maintain smooth traffic flow.

MM 4.10-3 **Construction Equipment Operation.** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:

- a. All construction equipment shall be tuned and maintained in accordance with the manufacturer's specifications;
- b. Diesel truck idling time shall be five minutes or less, both on- and off-site; and
- c. Work crews shall shut off diesel equipment when not in use.

MM 4.10-4 **Construction Ridesharing and Transit Incentives.** Prior to issuance of a grading permit, the Landowner/Master Developer shall provide copies of construction documents to the City of Newport Beach showing that these documents include a statement that the construction contractors shall support and encourage ridesharing and transit incentives for the construction crews.

MM 4.10-5 **Fugitive Dust – Supplementary Measures.** Prior to issuance of each grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents and grading plans include the following:

- a. The contractor shall suspend grading operations when wind gusts exceed 15 miles per hour;
- b. The contractor shall take measures (such as additional watering or the application of chemical suppressants) to stabilize disturbed areas and stockpiles prior to non-work days if windy conditions are forecasted for a weekend, holiday, or other day when site work is not planned.
- c. The contractor shall re-apply water as necessary during grading and earth-moving to ensure that visible emissions do not extend to residences or schools.

- MM 4.10-6** ***Paving of Bluff Road.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction plans and schedule require the construction and paving of Bluff Road between West Coast Highway and 15th Street as early as feasible in order to minimize dust generation by vehicles using the roadway.
- MM 4.10-7** ***Fugitive Dust – Street Sweeping.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to sweep paved roads within and adjacent to the Project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.
- MM 4.10-8** ***Notification of Receptors.*** The Landowner/Master Developer shall distribute a notice to all residents, schools, and other facilities within 100 feet of the Project site that states the following or similar “the environmental analysis identifies a potential for excess dust pollution for short periods during heavy grading. Extra measures shall be taken to prevent the dust from leaving the Project site, but persons should be aware of the potential for pollution”. This notice may be combined with the notice described in MM 4.10-9.
- MM 4.10-9** ***Construction Complaint Resolution.*** The Landowner/Master Developer shall appoint a person as a contact for complaints relative to construction impacts to the adjacent neighborhoods. A contact telephone number and email address shall be posted on signs at the construction site and shall be provided by mail to all residents within 500 feet of the Project site. Upon receipt of a complaint, the designated contact person shall investigate the complaint and shall develop corrective action, if needed. The designated contact person shall respond to the complainant within two working days to describe the results of the investigation, and submit a report of the complaint and action taken to the City of Newport Beach. The designated contact person shall maintain a log of all complaints and resolutions.

(3) Potential Impact: Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial Project occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile organic compounds (VOC) and CO would exceed the significance thresholds, principally due to vehicle operations. The impacts would be significant and unavoidable even with implementation of the PDFs, compliance with Standard Conditions, and implementation of identified mitigation measures.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-

2 (set forth below), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5 (set forth below); SC 4.11-1 (set forth below); and MMs 4.10-10 through 4.10-12 (set forth below), this impact cannot be mitigated to a less than significant level. Other than the No Development Alternative, there are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Operational emissions would begin as residences are occupied (anticipated to commence in 2015). Between 2015 and the anticipated completion (2023), the occupancy and use of residences, retail uses, and other Project components would continue to increase. Over the same period, vehicle emission factors for most gaseous pollutants are anticipated to decline with improved vehicle fleet emissions. Operational emissions of all criteria pollutants in 2017 and 2020 would be less than the SCAQMD CEQA significance thresholds. In 2023, calculated regional emissions of VOC, NOx, and CO resulting from Project operation would exceed the SCAQMD CEQA significance thresholds. The emissions of SOx, PM10, and PM2.5 would not exceed the thresholds. Vehicle operations would be the principal source of pollutant emissions, with consumer products as a secondary contributor to the total VOC emissions.

- PDF 4.10-1** The Master Development Plan provides for commercial uses, in the Mixed-Use/Residential and Visitor-Serving Resort/Residential Land Use Districts, within walking distance of the proposed residential neighborhoods and nearby residential areas to reduce vehicle trips and vehicle miles traveled.
- PDF 4.10-2** The Master Development Plan provides a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails.
- PDF 4.11-1** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.
- PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.
- PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will

provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.

PDF 4.11-4 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:

- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
- b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
- c. Air conditioning units will be Freon-free.
- d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
- e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
- f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
- g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

PDF 4.11-5 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:

- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.

SC 4.11-1 Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.⁵

MM 4.10-10 ***Bicycle Facilities.*** Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.
- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.
- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

MM 4.10-11 ***Conservation Education – Mobile Sources.*** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on mobile source emission reduction techniques (such as use of alternative modes of transportation and zero- or low-emission vehicles) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow. The homeowners associations shall provide an annual report of conservation educational materials distributed to homeowners to the City of Newport Beach.

MM 4.10-12 ***Conservation Education – Consumer Products.*** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on the positive benefits of using consumer products with low or no-volatile

⁵ Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

organic compounds (VOCs) (such as paint thinners and solvents) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow.

(4) Potential Impact: Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: Because the maximum traffic volumes would be substantially less than the 31,600 vehicles per hour screening level, congested intersections are located where mixing of air would not be limited, and because vehicle mix would not be extraordinary, there would be no potential for a CO hotspot or exceedance of State or federal CO ambient air quality standard. The impact would be less than significant and no mitigation measures are required.

(5) Potential Impact: The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations of O₃ would be cumulatively considerable.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-2 through 4.11-4 (set forth above); SC 4.11-1 (set forth above); and MMs 4.10-10 through 4.10-12 (set forth above), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: The Project region is in nonattainment for ozone (O₃), NO₂, PM₁₀, and PM_{2.5}. After 2020, implementation of the Project could result in long-term emissions of the O₃ precursor VOC and short-term emissions of the O₃ precursor NO_x, which would exceed the SCAQMD mass emissions thresholds for those pollutants. Long-term NO_x emissions would not exceed the threshold but are forecasted to be just less than the threshold. Therefore, the Project would cumulatively contribute to a regional concentrations of O₃ which is a significant, unavoidable impact. PDFs 4.8-3, 4.10-1, 4.10-2, 4.11-2, 4.11-3, and 4.11-4 are applicable. PDF 4.8-3 requires a bridge over West Coast Highway that, if approved, would further reduce VMT. SC 4.11-1 requires construction in accordance with the 2008 Title 24 standards. In order to reduce long-term operational emissions, MM 4.10-10, MM 4.10-11, and MM 4.10-12 would be implemented.

(6) Potential Impact: Health risk associated with Toxic Air Contaminants to both off-site and on-site receptors found the cancer risk, the cancer burden, the chronic hazard risk and the acute hazard risk are all below the SCAQMD thresholds

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no mitigation measures, project design features, or standard conditions of approval were required or recommended.

Facts in Support of Finding: The oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

As a part of the EIR, a human health risk assessment (HHRA) was conducted to determine potential exposure to Toxic Air Contaminants (TACs) emitted from future oilfield operations and from the combination of emissions from the oilfield and the proposed residential and commercial development. TACs are a diverse group of air pollutants that include both organic and inorganic chemical substances that may be emitted from a variety of sources including industrial operations. TACs are different from the “criteria” pollutants in that ambient air quality standards have not been established for TACs.⁶ TACs occurring at extremely low levels may still cause adverse health effects, and it is typically difficult to identify levels of exposure that do not produce adverse health effects. TAC impacts are described by carcinogenic risk, and chronic and acute adverse effects on human health.

The HHRA compared annual TAC emissions to SCAQMD Risk Assessment Procedures Tier 1 thresholds and, where TAC emissions exceed Tier 1 thresholds, a Tier 4 refined air dispersion modeling analysis was conducted to determine TAC exposure concentrations at residential, commercial, and park receptors.⁷ An emissions screening level HHRA was performed using the TAC emissions inventories from the consolidation of oil operations and the proposed residential and commercial operations. The Tier 1 HHRA was performed in accordance with SCAQMD air toxics risk assessment procedures for Rules 1401 and 212.

In accordance with the SCAQMD procedures, where the Tier 1 analysis indicated that TAC emissions exceeded the Tier 1 thresholds, then operational risks were modeled using the USEPA AERMOD dispersion model. Three scenarios were modeled: (1) Baseline Conditions; (2) Proposed Project Conditions (future TAC concentrations at the property’s fence line receptors); and (3) Future Oilfield Impact on Development Area (exposure concentration on the Project’s residential and commercial areas).

TAC emissions that are anticipated to contribute significantly to cancer/chronic or acute risk are included in the risk assessment calculations using CARB’s Hotspots Analysis Reporting Program (HARP). As required by the HARP protocol, the chronic air toxic modeling for fence line, residential, and commercial receptors is conducted for a 70-year period assuming that a person is located at each receptor grid 24 hours per day, 365 days per year for 70 years. The chronic modeling for receptors in

⁶ An exception is that there are ambient standards for lead and vinyl chloride because the CARB classified these pollutants as TACs after they were identified as criteria pollutants.

⁷ SCAQMD risk assessment procedures are defined in tiers. The tiers are designed to be used in order of increasing complexity. If compliance cannot be demonstrated using one tier, the analyst may proceed to an appropriate higher tier.

recreational areas assumes that the maximum exposure time would be 8 hours per day, 245 days per year. The acute air toxic modeling is conducted for the peak one-hour exposure.

The potential impact to existing off-site receptors was calculated by subtracting the baseline risk from the future risks anticipated to occur after completion of the proposed Project's consolidated oilfield, residential, and commercial areas. Incremental chronic cancer risks and non-cancer hazards reflect the increase or decrease of potential exposures under the future conditions relative to the existing baseline. Because there are no on-site residential, commercial, or recreational uses, the baseline risk is zero, and the total risk from the consolidated oilfield to future on-site represents the incremental risk at these locations.

The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. SCAQMD procedures require that when the maximum individual cancer risk (MICR) is greater than one in one million, the cancer burden is calculated. The USEPA SCREEN3 model was used to determine the area of analysis (the area where the cancer risk would be one in one million or greater). The peak cancer risk for the consolidated oilfield on proposed residential and commercial areas was assumed to apply to the entire population within a radius area defined by the distance at which the cancer risk dropped below one in one million.

The Tier 1 analysis was performed for two cases: (1) Net emissions increase (i.e., future conditions minus the baseline) from the consolidated oilfield and the proposed residential, commercial, and hotel development to off-site receptors 100 meters from the Project fence line and (2) emissions from the future consolidated oilfield to receptors within the Project site (the baseline for this case is zero). Because the Tier 1 analysis indicated that at least one applicable screening index is projected to be greater than 1.0 for each scenario, a Tier 4 analysis was performed.

The HHRA Tier 4 analysis was performed using the AERMOD and HARP models. The scenarios considered were similar to those used for the Tier 1 analysis with the following parameters: (1) for the impact from the Project and oilfield emissions to off-site receptors, the receptors were located at the property boundary (fence line). The exposure time for these receptors (HARP protocol) is assumed to be 24 hours per day, 350 days per year, for 70 years; and (2) for the impact from the oilfield emissions to on-site receptors, separate analyses were made for residential and commercial receptors and for recreational areas. The exposure time for the residential and commercial receptors is assumed to be 24 hours per day, 350 days per year, for 70 years; the exposure time for recreation area receptors is 8 hours per day, 245 days per year, for 70 years. The Tier 4 analysis indicates that for all scenarios, the Maximum Incremental Cancer Risk (MICR) would be less than 10 in 1 million and the chronic non-cancer and acute hazard indices would be less than 1.0. None of the TAC impact indicators would exceed SCAQMD significance thresholds.

The proposed oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the existing receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

Although all calculated MICR values are less than the 10 in 1 million SCAQMD threshold, SCAQMD procedures require that when the MICR is greater than one in one million, the cancer burden is calculated. The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. The USEPA SCREEN3 model was used to determine the area of analysis, which is the area where the cancer risk would be one in one million or greater. Drawing a rough boundary around the outer edge of the entire Project site (not just the 20-acre consolidated oilfields) captured 19 census tracts in the Cities of Newport Beach, Costa Mesa, and Huntington Beach. These census tracts have a combined population of approximately 86,000. Assuming that everyone in these tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5. The HHRA used very conservative assumptions. Therefore, no significant impacts are anticipated and no mitigation measures were required or recommended.

(7) Potential Impact: Odors may be perceived from both construction and long-term operations, but these odors would be typical for the land use and operations. Odors from the oilfields are not anticipated to be perceptible at nearby developed sites.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.10-13 (set forth below).

Facts in Support of Finding: Field observation at the existing oilfield operations did not detect objectionable odors between 50 and 100 feet from oilfield machinery. Future residences, parks, and other areas where substantial groups of people would gather would be 200 feet or further from the oilfields. Although no odor impacts area anticipated, MM 4.10-13 would provide a mechanism for future homeowners to register odor complaints.

MM 4.10-13 Odor Complaints. The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

K. Greenhouse Gas Emissions

(1) Potential Impact: The Project would make a cumulatively considerable contribution to the global greenhouse gas (GHG) inventory.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5; SC 4.11-1; and MMs 4.11-1 through 4.11-6 (set forth below), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation

measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: The total annual estimated GHG emissions for the proposed Project are 19,392 million metric tons of carbon dioxide equivalent (MMTCO₂e). The Project would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory and would have a cumulatively significant impact on global climate change.

Temporary impacts would result from Project construction activities. GHGs would be emitted by off-road and on-road construction equipment and worker vehicles including remediation, consolidation, and construction activities. The total construction GHG emissions are estimated at 16,851 MTCO₂e. Operational GHG emissions include mobile sources and operational activities. Reductions would be associated with vehicular reductions that would result from the mixed use, neighborhood walkability, and increased density designs; energy design that would exceed Title 24 requirements; and water conservation design for indoor and outdoor use. These measures would result in an estimated reduction in forecasted buildout annual operational GHG emissions of approximately 25 percent: from 25,359 to 18,949 MTCO₂e/yr.

The proposed Project is anticipated to include the planting of approximately 9,000 trees inclusive of private residential areas, parks, parkways, and medians. The Project would improve the sequestration capacity of the project site by approximately 3,564 MTCO₂e. These emissions, similar to construction emissions, are single-event emissions to be amortized over the Project lifetime.

The Project would be consistent with applicable *City of Newport Beach General Plan* policies that would result in minimization of GHG emissions and with measures recommended by the California Attorney General to reduce GHG emissions. Notwithstanding, the Project would emit quantities of GHGs that would substantially exceed the City's 6,000 MTCO₂e/yr significance threshold. GHG emission reductions resulting from implementation of the SC, PDFs, and the Green and Sustainable Program cannot be reasonably estimated. These reductions would not reduce emissions to less than 6,000 MTCO₂e/yr. Despite application of all feasible mitigation, the Project would make a cumulatively considerable contribution to the global GHG inventory and would have a significant and unavoidable GHG emissions impact.

PDF 4.11-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.

- PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.
- PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.
- PDF 4.11-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:
- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
 - b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
 - c. Air conditioning units will be Freon-free.
 - d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
 - e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
 - f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
 - g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.
- PDF 4.11-5** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:

- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.

SC 4.11-1 Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.⁸

MM 4.11-1 Prior to the issuance of each occupancy permit, the Applicant shall submit for approval to the Community Development Director the plan for the applicable future homeowners association to provide educational information on (1) water conservation; (2) energy conservation, including the use of energy-efficient lighting and the limiting of outdoor lighting; (3) mobile source emission reduction techniques, such as use of alternative modes of transportation and zero- or low-emission vehicles; and (4) the use of solar heating, automatic covers, and efficient pumps and motors for pools and spas to all homeowners prior to individual purchase of property and again annually.⁹

MM 4.11-2 Prior to the issuance of the building permit for the resort inn and each building permit for a multi-family complex with a swimming pool or spa, the Applicant shall submit for approval to the Community Development Director that the plans incorporate energy efficient heating, pumps and motors.

MM 4.11-3 Prior to the issuance of each building permit, the Applicant shall submit for approval to the Public Works Director that light emitting diode (LED) lights shall be used for traffic lights and LED or similar energy-efficient lighting will be used for street lights and other outdoor lighting.

MM 4.11-4 Prior to the issuance of each building permit for multi-family buildings, parks, and other public spaces, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of facilities for the collection of recyclable materials consistent with the recycle requirements of the City and the local waste collection contractor.

⁸ Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

⁹ The requirements in this measure are in addition to those of PDF 4.11-4f, but may be distributed and/or grouped together by the homeowners associations. The mobile source emissions component of this measure is the same as MM 4.10-7.

MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

MM 4.11-6 Prior to the issuance of each building permit for multi-family buildings, commercial building, park, and other public space, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of bicycle parking spaces at each facility. Bicycle spaces for residents and employees shall be easily accessible and secure. Bicycle spaces for visitors and customers, in parks, and in public spaces shall be visible from the primary entrance, illuminated at night, and protected from damage from moving and parked vehicles.

L. Noise

(1) Potential Impact: Construction activities would result in a substantial temporary increase in ambient noise levels to noise sensitive receptors in the vicinity of the Project. This is a significant, unavoidable impact.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by SC 4.12-1 and MMs 4.12-2 through 4.12-3 (set forth below), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding: Construction noise would be related primarily to the use of heavy equipment during the grading phase of construction. The Project is anticipated to be implemented over approximately 9 years. MMs 4.12-1 and 4.12-2 would 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, even with temporary noise barriers, maximum construction noise events for short periods of time could range up to 40 dBA above the ambient noise levels and average hourly noise levels could be

30 dBA above ambient in areas where the existing ambient noise levels are low (i.e., in the 45 to 50 dBA L_{eq} range) and construction occurs close to a Project boundary. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receivers, and duration of construction activities, the temporary noise increases would be significant. There would be periodic, temporary, unavoidable significant noise impacts that would cease upon completion of construction activities. MM 4.12-3 would provide notification to residents to allow persons to plan activities to minimize the potential disruption that could be caused by the construction noise.

SC 4.12-1 To ensure compliance with Newport Beach Municipal Code Section 10.28.040, grading and construction plans shall include a note indicating that loud noise-generating Project construction activities (as defined in Section 10.28.040 of the Newport Beach Noise Ordinance) shall take place between the hours of 7:00 AM and 6:30 PM on weekdays and from 8:00 AM to 6:00 PM on Saturdays. Loud, noise-generating construction activities are prohibited on Sundays and federal holidays.

MM 4.12-1 Grading plans and specifications shall include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to $\frac{3}{4}$ inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the Project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor.

If preferred by the developer or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height.

A temporary noise barrier shall not be required when it is demonstrated to the Community Development Department, Building Division Manager or his/her designee that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier.

- MM 4.12-2** Prior to the start of grading, the Construction Manager shall provide evidence acceptable to the City of Newport Beach Public Works Director and/or Community Development Director, that:
- a. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard.
 - b. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA L_{eq} .
 - c. Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible.

- MM 4.12-3** At least two weeks prior to the start of any grading operation or similar noise generating activities within 300 feet of residences or the Carden Hall school, the contractor shall notify affected residents and the school of the planned start date, duration, nature of the construction activity, and noise abatement measures to be provided. The notification shall include a contact telephone number for questions and the submittal of any complaints of excess, unanticipated noise.

(2) Potential Impact: The increased traffic volumes on local roads associated with the Project would expose off-site sensitive receptors to increased noise levels in excess of City of Newport Beach standards for changes to ambient noise levels.

Finding: The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. MM 4.12-5 (set forth below) is applicable to noise impacts in the City of Costa Mesa. SC 4.12-4 is applicable to public streets in the City of Newport Beach (set forth below). MMs 4.12-6 and 4.12-7 (set forth below) are applicable to noise impacts on private properties in the City of Newport Beach. However, Finding 2 identifies that "Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency". The City of Newport Beach cannot impose mitigation on another jurisdiction or on private property. Therefore, noise mitigation that would require the approval of the City of Costa Mesa or occur on private property is considered a significant, unavoidable impact. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

Facts in Support of Finding – Costa Mesa: Noise sensitive uses adjacent to the 17th Street road segment west of Monrovia Avenue include six single-family

residences that have front yards and side yards facing 17th Street. Because the single-family residences front onto 17th Street and driveway access from the streets to these homes is needed, the construction of sound walls would not be effective because a continuous wall is necessary for noise abatement. MM 4.12-5 provides funds to resurface 17th Street west of Monrovia Avenue and 15th Street west of Placentia Avenue with rubberized asphalt as required. Noise level increases to sensitive receptors adjacent to off-site roadways would be reduced to a less than significant level. However, because the City of Newport Beach does not have the authority to mandate the implementation of mitigation in the City of Costa Mesa, the impact is considered significant and unavoidable.

Newport Beach Public Property. Project traffic noise could significantly impact several residential patios and balconies and apartment units along adjacent to 15th Street west of Placentia Avenue. MM 4.12-5 would require the Applicant would provide funds to the City of Newport Beach for the installation of rubberized asphalt pavement. The estimated 4 dBA noise reduction provided by the pavement would reduce the impact to a less than significant level.

Newport Beach Private Property. The roadways were assumed to be paved with rubberized asphalt in accordance with SC 4.12-4. At Newport Crest, future noise levels would exceed existing noise levels by 8.6 to 16.1 dBA at Newport Crest receptor locations. Because future cumulative noise levels would be 5 or more dBA greater than the existing noise levels, the cumulative impact would be significant. 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 although the forecasted exterior noise level increases of 5 dBA or greater are substantial when compared to existing noise levels. Although exterior and interior noise levels would meet State and local compatibility standards with MM 4.12-6, the degree of noise increases require the consideration of further feasible mitigation. MM 4.12-7 requires windows with improved noise reduction capability and second floor balconies noise barriers. The City cannot mandate improvements on private property. Therefore, for purposes of CEQA, the Project would result in a significant unavoidable noise impact because the City cannot be assured that the recommended mitigation can be implemented. Noise levels at other off-site sensitive land uses would be less than significant.

SC 4.12-4 In accordance with City of Newport Beach standards, rubberized asphalt, or pavements offering equivalent or better acoustical properties shall be used to pave all public arterials on the Project site and all off-site City of Newport Beach roads where improvements would be provided or required as a part of the Project.

MM 4.12-5 The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15th Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17th Street west of Monrovia Avenue with rubberized asphalt.

MM 4.12-6 Prior to the approval of a grading permit for Bluff Road and 15th Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15th Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

MM 4.12-7 Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading

permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.

(3) Potential Impact: Traffic noise levels has the potential to impact certain sensitive (i.e., residential and resort inn) land uses within the Project site.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-3 (set forth below) and SC 4.12-4 (set forth above) and MM 4.12-8 (set forth below).

Facts in Support of Finding: Project-related traffic noise levels to exceed 65 dBA CNEL at exterior receptors within the (1) South Family Village adjacent to Bluff Road and North Bluff Road; (2) North Family Village west of North Bluff Road between 16th Street and 17th Street; and (3) Urban Colony east of North Bluff Road. SC 4.12-3 requires that interior noise levels at new residential and hotel uses to meet the applicable interior noise standards. SC 4.12-4 requires the application of rubberized asphalt for pavement of public arterials within the Project site and off-site public roads where improvements are proposed or required, minimizing noise impacts to adjacent existing and future uses. MM 4.12-8 requires the preparation of an acoustical study to demonstrate that the exterior living areas of proposed residential developments would be exposed to noise levels below 65 dBA CNEL prior to tract map approval for residential uses.

SC 4.12-3 All residential and hotel units shall be designed to ensure that interior noise levels in habitable rooms from exterior transportation sources (including aircraft and vehicles on adjacent roadways) shall not exceed 45 dBA CNEL. This SC complies with the applicable sections of the California Building Code (Title 24 of the *California Code of Regulations*) and, for single-family detached residences, exceeds the requirements of Section 10.26.025 of the Noise Ordinance. Prior to granting of a building permit, the Developer/Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, Project plans and specifications shall include ventilation as required by the California Building Code.

MM 4.12-8 Prior to final map recordation for the residential areas adjacent to Bluff Road and North Bluff Road, including the Urban Colony, the Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer to the City of Newport Beach for review and approval. The analysis shall demonstrate that the residential exterior living areas including, but not limited to swimming pools, playgrounds, and patios, would be exposed to noise levels below 65 dBA CNEL. The acoustical analysis shall also demonstrate that the North Community Park has been designed such that permitted park activities would not exceed the City's Noise Ordinance standards at residential exterior living areas. This can be accomplished through site design or the

construction of noise barriers. Barriers may be constructed using an earth berm, wall, or berm-wall combination. Walls may be masonry block, ¼-inch-thick glass, or other transparent material with sufficient weight per square foot.

(4) Potential Impact: Potential long-term stationary noise impacts would be associated with residential uses, commercial uses at the mixed-use development, operations at the proposed resort inn, the Community Park, and consolidated oil operations.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-2 (set forth below) and MMs 4.12-8 (set forth above) through 4.12-11 (set forth below).

Facts in Support of Finding: Stationary source noise is regulated through the Cities of Newport Beach and Costa Mesa Noise Ordinances; the standards are the same for both cities. Potential stationary-related noise impacts associated with residential uses include the operation of air conditioning units and outdoor activities. Potential long-term stationary noise impacts with the Project's mixed-use residential area would be occur primarily with loading dock activities, including truck deliveries; operation of mechanical equipment, including exterior ground-mounted and rooftop HVAC units; parking lot activity; and noise from restaurant and entertainment establishments. With respect to the resort inn, the closest residential area nearest would be approximately 100 feet north of the northern boundary of the resort inn section of the Resort Colony area. The location of outdoor activity areas at the resort inn has not been defined but because the inn entrance would be at the north end and the most attractive views would be to the south and west, it is likely that outdoor activities would be on the southern portion of the resort inn and separated from the residential areas by both distance and buildings. No impacts to the residential areas are anticipated. Further, compliance with the Noise Ordinance is required for the resort inn operators. With respect to the North Community Park, all field and court lighting would shut off at 10:00 PM; only passive use such as walking would be anticipated to occur from 10:00 PM until 11:00 PM. Activities at the park would not exceed the City of Newport Beach limits included in the City's Noise Ordinance.

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. 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 requires the use of noise reduction strategies to minimize drilling noise.

SC 4.12-2 HVAC units shall be designed and installed in accordance with Section 10.26.045 of the Newport Beach Noise Ordinance, which specifies the maximum noise levels for new HVAC installations and associated conditions.

MM 4.12-9 Truck deliveries and loading dock activities in commercial areas of the Project shall be restricted to between the hours of 7:00 AM and 10:00 PM on weekdays and Saturdays and shall be restricted to between the hours of 9:00 AM and 10:00 PM on Sundays and federal holidays. Moreover, the Project Applicant/Developer or his successors and assignees shall specify in the contract for each

operator of a commercial space that truck deliveries and loading dock activities shall be restricted to these specified hours.

MM 4.12-10 Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.

MM 4.12-11 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.

(5) Potential Impact: Vibration may be noticeable for short periods during construction, but it would be temporary and periodic

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of MM 4.12-4 (set forth below).

Facts in Support of Finding: Construction activities can generate varying degrees of groundborne vibration depending on the construction procedures and equipment used. Groundborne vibration from construction activities rarely reaches levels that can damage structure. Unless there are extremely large generators of vibration, such as pile drivers, or receptors in close proximity to construction equipment, vibration is generally only perceptible at structures when vibration rattles windows, picture frames, and other projects. The existing Newport Crest condominiums and the California Seabreeze residential community adjacent to the Project site would be considered older residential structures for vibration impact assessment. The operation of large bulldozers and vibration rollers operating at the property boundary at ten feet from a residential structure has the potential to cause structural damage. MM 4.12-4 prohibits the operation of large bulldozers and vibratory rollers within 25 feet of any existing residence, and would reduce the potential impact to a less than significant level.

MM 4.12-4 During construction, the operation of large bulldozers, vibratory rollers, and similar heavy equipment shall be prohibited within 25 feet of any existing off-site residence.

M. Cultural and Paleontological Resources

(1) Potential Impact: The Project would not impact any known historical resources. Grading and excavation could impact unknown historical resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MM 4.13-1 (set forth below).

Facts in Support of Finding: The historical resources (eight buildings and their adjacent elements) on the Project site were formally evaluated. None were found to be eligible for listing in the California Register of Historical Resources (CRHR) or the National Register of Historic Places (NRHP). The Project would not impact any known significant historical resources. Although no impacts are anticipated to historical resources, MM 4.13-1 requires that an archaeologist monitor grading and excavation activities in the event that unknown historic resources are uncovered during these activities. The archaeologist would have the ability to temporarily halt or redirect work to permit the sampling, identification, and evaluation of the artifacts and resources.

MM 4.13-1 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant/Contractor, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and Applicant/Contractor, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Community Development Director.

Based on their interest and concern about the discovery of cultural resources and human remains during Project grading, a qualified Native American Monitor(s) shall be retained to observe some or all grading activities.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources.

(2) Potential Impact: Grading and oilfield remediation activities would impact three known archeological sites and could impact unknown resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SC 4.13-1 (set forth below), MM 4.13-1 (set forth above), and MM 4.13-2 (set forth below).

Facts in Support of Finding: The Project site includes 11 archaeological sites including 3 sites that would be impacted by the Project. Archaeological sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are considered eligible for listing on the CRHR and the NRHP. Disturbance activities could also impact unknown resources. The removal of oilfield-related infrastructure would adversely impact portions of CA-ORA-839 and CA-ORA-844B. All reasonable efforts would be made to ensure minimal impact or avoidance as feasible to these archaeological sites. CA-

ORA-906 would be directly impacted by development as well as by oilfield infrastructure removal. MM 4.13-1 requires that an archaeologist monitor grading and excavation activities. MM 4.13-2 is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. There is no indication that there are burials present on the Project site. Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition. In the event that human remains are discovered during grading activities, SC 4.13-1, which addresses procedures to follow in the event of a discovery of suspected human remains. All impacts to these resources can be mitigated to a less than significant level.

SC 4.13-1 In accordance with Section 7050.5 of the *California Health and Safety Code*, if human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner(s), the disposition of the human remains.

MM 4.13-2 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Several possibilities suggested by the State CEQA Guidelines include (1) planning construction to avoid the site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement.

The following is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. Only CA-ORA-839 is also considered a unique archaeological resource. In this instance, mitigation is the same for both types of resources.

CA-ORA-839

It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it. However, it appears that the planned removal of oilfield infrastructure may impact portions of the site. In that event, the site shall undergo a data recovery excavation of those areas that would be impacted.

Research Design/Treatment and Mitigation Plan

A Research Design/Treatment and Mitigation Plan (data recovery plan) shall be prepared by a qualified Archaeologist and approved by the City of Newport Beach Community Development Director prior to any excavation being undertaken. The Plan shall explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer;

Data Recovery

Data recovery excavation shall be completed prior to Project grading and shall be designed to recover the consequential data present on the site. Data recovery shall be sufficient to collect a representative sample of site constituents, including organic materials, to permit additional absolute dating of the deposit. The study shall include:

- a. Excavation of a sufficient number of Control Units and shovel test pits (STPs) to recover a representative sample of site constituents;
- b. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered;
- c. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study; and
- d. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

Capping

In addition, secondary impacts (e.g., increased foot traffic, erosion) could occur at the site after the Project has been constructed; therefore, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;

- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;
- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

CA-ORA-844 Locus B

CA-ORA-844B is not expected to be directly impacted by development. Oil infrastructure removal activities that would occur prior to grading are expected to adversely impact portions of the site. Indirect impacts from additional erosion of the unstable surface and increased population in the vicinity of the site as a result of the future development could cause further damage over time.

Both capping and data recovery excavation are viable options for treating the site; however, because it has been disturbed by erosion and oil extraction activities, capping the deposit would be difficult and possibly more expensive and time consuming and may produce less desirable results than data recovery excavation. Considering these circumstances, two options are provided: (1) successful capping of the site, while likely difficult to accomplish, would be designed to protect the site in perpetuity or, preferably, (2) data recovery shall be undertaken prior to grading to collect the scientifically consequential data that is present in the site since it appears that only a small, yet important, portion of the site remains. Because of the limited size of this site, this option would enable the removal and analysis of the site in its entirety.

Capping the deposit or data recovery would result in temporary impacts to approximately 0.92 acre of coastal sage scrub (0.29 acre of encelia scrub and 0.63 acre of cactus scrub). The Mitigation Program set forth in Section 4.6, Biological Resources, addresses this impact.

Capping

If option 1 is chosen, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations,

excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;
- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;
- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

Data Recovery

If option 2 is selected, data recovery excavation at CA-ORA-844B shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove site constituents. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.

- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

CA-ORA-906

CA-ORA-906 would be directly impacted as a result of development as well as oil infrastructure removal. Data recovery excavation at the site shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove the site constituents. Mitigation shall be in the form of data recovery excavation to collect the scientifically consequential data that the site retains prior to its destruction by Project grading. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.
- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a data recovery excavation/mitigation report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

(3) Potential Impact: Grading and oilfield remediation activities would impact significant paleontological resources.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.13-3 and 4.13-4 (set forth below).

Facts in Support of Finding: Fossil sites have been recorded in two mapped units that underlie the site. San Pedro Sand and Palos Verdes Sand are considered to have high paleontological sensitivity; the Quaternary younger alluvium is of low paleontological sensitivity. The Project site contains paleontological resources exposed in natural outcrops, borrow areas, and drainages over most of the site. MM 4.13-3 requires that a qualified paleontologist monitor the grading and excavation activities and conduct salvage excavation as necessary. If any scientifically important large fossil remains are uncovered, the paleontologist would have the authority to divert heavy equipment away from the fossil site. MM 4.13-4 requires a paleontological survey be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. Significant impacts can be mitigated to a less than significant level.

MM 4.13-3 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate.

Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains.

If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays.

If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the

Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays.

All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum.

Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes.

MM 4.13-4

Prior to the issuance of the first grading permit and/or action that would allow for Project site disturbance, a paleontological survey shall be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. A qualified Paleontologist shall make collections of exposed fossils from lithologic units of high paleontologic significance, especially in areas where access to fossil sites is not permitted because of slope modification. All vertebrate and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites yielding vertebrates should be excavated, and approximately 2,000 lbs of rock samples shall be collected to process for microvertebrate fossil remains. Dry screening of fossil marine shell horizons in the Quaternary terrace deposits and San Pedro Sand with 1/8-inch archaeological field screens shall be conducted to recover rare types of fossil marine mollusks, bony fish, sharks, reptiles, birds, and marine and terrestrial mammals. All fossil sites shall be tied to detailed measured sections showing sedimentary structures and relationships with over- and underlying rock units.

- a. For San Pedro Sand, prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a qualified Paleontologist shall prepare a detailed mitigation plan to sample the existing paleontological sites that would be affected by slope modification. The plan shall be developed in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) in order to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence must be made. Bulk sampling that is collected from matrix or sediment to recover rare invertebrates, marine

vertebrates, and terrestrial vertebrates must also be part of the mitigation plan.

- b. For Quaternary marine terrace deposits (Palos Verdes Sand), prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a detailed mitigation plan must be developed to sample the existing paleontological sites that would be affected by slope modification. This shall be conducted in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence shall be made. Bulk sampling, collecting, water screening, or dry screening of sediments that contain rare invertebrates, marine vertebrates, and terrestrial vertebrates shall be part of the mitigation plan.
- c. A qualified Paleontologist shall be notified and retained when earth-moving activities are anticipated to impact undisturbed deposits in the San Pedro Sand and Palos Verdes Sand. The designated Paleontologist shall be present during construction activities on a full-time basis to assess whether scientifically important fossils are exposed. Part-time monitoring is recommended in Younger Alluvium. If any scientifically important, large fossil remains are uncovered during earth-moving activities, the Paleontological Monitor shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Monitor shall be equipped to allow for the rapid removal of fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. At the Monitor's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any delay in construction.
- d. All fossils shall be documented in a detailed Paleontological Resources Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the LACM or the San Diego Natural History Museum.
- e. Because of slope modification and restoration of the bluff area, most, if not all, the fossil-bearing exposures of the San Pedro Sand and Quaternary marine terrace deposits would be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved in perpetuity for educational and scientific purposes.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer qualified to monitor for both archaeological and paleontological resources.

N. Public Services and Facilities

(1) Potential Impact – Fire Protection: The majority of the Project site is designated as having a high or moderate fire hazard risk. There is the potential for portions to not be served within City’s established service response times.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.14-1, SCs 4.14-1 through 4.14-3, and MMs 4.14-1 through 4.14-3 (set forth below).

Facts in Support of Finding: With respect to fuel management, based on the State “Draft Fire Hazard Severity Zones in LRA” Local Responsibility Area (LRA) map for Newport Beach dated July 27, 2010, the majority of the Project site is designated LRA High, and small portions of the site are designated LRA Moderate or are not designated at all. None of the Project site is designated LRA Very High. The Project includes a Fire and Life Safety Program. The Program is intended to meet or exceed the requirements set forth in the City of Newport Beach Fire Code and all its amendments to the 2010 California Building Code; the 2010 California Fire Code; and the International Fire Code, 2009 Edition. The Project includes fuel management zones consistent with the fire safety requirements for the Project. Fire protection in landscaped areas would be achieved by avoiding and reducing the use of highly flammable plant materials adjacent to proposed development. This would be accomplished by revegetating these areas with low fuel volume plantings; removing or pruning and thinning native plants; and/or using selective irrigation.

With respect to service response, Fire Station Number 2 cannot serve the entirety of the proposed Project development within the City’s established response time standards. As identified on Table 4.14-2, Site Planning Area 12b, the northerly block of Site Planning Area 10a, and the northerly block of Site Planning Area 10b cannot be served by Station Number 2 within the established response time. In order to maintain appropriate response times, a temporary fire station would be required on the Project Site to serve those areas that cannot be served by existing Station Number 2; the temporary fire station would be required unless a replacement fire station is operational in a location that provides appropriate response times. The temporary fire station would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. It should be noted that in addition to City fire services, Newport Beach participates in Metro Net, a multi-city dispatch center covering Huntington Beach, Newport Beach, Fountain Valley, and multiple cities in North Orange County and has individual automatic aid agreement with the Cities of Costa Mesa, and Huntington Beach, and the OCFA. Together, all fire agencies provide personnel to any emergency. Therefore, the Project can be adequately served through the use of existing/future City of Newport Beach fire and emergency medical services, a temporary fire station on the Project site, as well use of fire and emergency medical services provided through the City’s mutual aid agreement with adjacent jurisdictions.

PDF 4.14-1 The Master Development Plan requires that the Project be designed to provide fire-resistant construction for all structures

adjoining natural open space, including utilizing fire-resistant building materials and sprinklers.

SC 4.14-1 Prior to the issuance of a building permit for the construction of residential and commercial uses, the Applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks.

SC 4.14-2 Prior to City approval of individual development plans for the Project, the Applicant shall obtain Fire Department review and approval of the site plan in order to ensure adequate access to the Project site.

SC 4.14-3 Prior to the issuance of a building permit, the Applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s).

Prior to the issuance of a Certificate of Occupancy, fuel modification shall be installed and completed by the Applicant, and inspected by the Fire Department. This includes physical installation of features identified in the approved Precise Fuel Modification Plan (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Fire Code Official shall provide written approval of completion at the time of this final inspection.

If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved.

The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections.

MM 4.14-1 Certificates of occupancy shall not be issued by the City of Newport Beach for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site

Planning Area 12b until Fire Station Number 2 is rebuilt at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards.

The construction of a replacement Fire Station Number 2 within the boundaries of the existing City Hall site at the northeastern corner of Newport Boulevard at 32nd Street or at an alternative location would be the subject of separate, subsequent environmental review. The replacement Fire Station could only be constructed upon the demolition of existing permanent and temporary structures on the City Hall site. Potential environmental impacts associated with the replacement Fire Station Number 2 would be associated with demolition of the existing Fire Station, and the construction and operation of the replacement Fire Station. Potential environmental effects are anticipated to include short-term construction-related traffic, air quality, and noise impacts during demolition and construction. Because of the proximity between the existing and proposed Fire Stations (approximately 500 feet), this relocation is not anticipated to result in new significant operational impacts.

MM 4.14-2 The Applicant shall pay the City of Newport Beach a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2. The fair share fee shall be based on total number of Project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. The proportionate fee shall be paid prior to the issuance of a building permit for any residential dwelling unit.

MM 4.14-3 Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated site planning areas, then prior to issuance of building permits for any combustible structure in the above site planning areas, the Applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.

(2) Potential Impact – Police Protection: The Project would introduce new structures, residents, workers, and visitors into the Police Department’s service boundaries, thereby potentially increasing the need for police protection, facilities, and personnel.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-4 and 4.14-5 (set forth below). No mitigation was recommended or required.

Facts in Support of Finding: Although the Project would increase demand for the City’s police protection services, this demand would not require the construction of new facilities, nor would it require the expansion of existing facilities that would result in physical environmental impacts. The Police Department’s operating budget is generated through tax revenues, penalties and service fees, and allowed government assistance. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. Tax-base expansion from development of the proposed Project would generate funding for the police protection services. SCs 4.14-4 and 4.14-5 related to site security and building and site safety design recommendations would ensure adequate police protection services can be provided to the Project site.

SC 4.14-4 Prior to issuance of building permits, the City of Newport Beach Police Department shall review development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the Project plans. The Applicant shall prepare a list of Project features and design components that demonstrate responsiveness to defensible space design concepts. The Police Department shall review and approve all defensible space design features incorporated into the Project prior to initiating the building plan check process.

SC 4.14-5 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the Project.

(3) Potential Impact – Schools: The Project would generate new elementary, middle, and high school students into the Newport-Mesa Unified School District (NMUSD).

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-6 and 4.14-7 (set forth below). No mitigation was recommended or required.

Facts in Support of Finding: Using the NMUSD school generation rates, the proposed Project is anticipated to generate 268 K–12 students including approximately 161 elementary, 42 middle, and 65 high school students. The School District found that based on data about available capacity, the NMUSD would not require funds to construct additional capacity to serve the Project-generated students. A district-wide capacity surplus is forecasted by the School District.

SC 4.14-6 Pursuant to Section 65995 of the *California Government Code*, the Applicant shall pay developer fees to the Newport-Mesa Unified School District at the time building permits are issued; payment of the adopted fees would provide full and complete mitigation of school impacts.

SC 4.14-7 New development within the Project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses.

(4) Potential Impact – Library Services: The Project would generate new residents thereby increasing the demand on the Newport Beach Public Library system. No new facilities are required.

Finding: The City hereby makes Finding 1 and determines that the change is Less Than Significant. SC 4.14-1 (set forth above) applies to the Project.

Facts in Support of Finding: Future residents of the Project would be expected to primarily use the Mariners and Balboa Branch Libraries. While expanded library services may be needed to meet this growing demand and the new population expected from the Project, the City has not identified any negative impacts resulting directly from the Project. The Project would not create a need for new or expanded library facilities.

(5) Potential Impact – Solid Waste: The Project would generate solid waste associated with oilfield remediation and construction activities as well as long-term use of the Project site.

Finding: The City hereby makes Finding 1 and determines that the change is Less Than Significant.

Facts in Support of Finding: During the oilfield remediation and oil well closure process, it is estimated that up to approximately 25,000 cubic yards (cy) of material may require disposal at an off-site recycling/treatment facility; such facilities are accessible in Southern and Central California. The Project would generate an estimated 19,456.3 pounds of solid waste per day or approximately 3,540.5 tons of solid waste annually. The development level proposed by the Project is consistent with the growth projections in the Orange County Projections 2006 (OCP-2006), which are used by the County of Orange in their long-term planning for landfill capacity. The County's landfill system has capacity in excess of the required 15-year threshold established by the California Integrated Waste Management Board (CIWMB). There is adequate waste disposal capacity within the permitted County's landfill system to meet the needs of the proposed Project. No significant impacts are anticipated. Greenhouse Gas Emissions PDF 4.11-5 applies to the Project (set forth above). PDF 4.11-5 requires that construction waste diversion be increased by 50 percent from 2010 requirements and that the oilfield clean-up and remediation process recycle and reuse materials on site to minimize off-site hauling and disposal of materials. This PDF would further reduce the amount of solid waste generated by the Project.

O. Utilities

(1) Potential Impact – Water Supply: The Project would increase demand for water supply but would not require new water treatment facilities. Anticipated water demand would require construction of water distribution facilities, the majority of which would occur within the Project's development footprint.

Finding: The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.11-1 and 4.11-4 (set forth above), PDFs 4.15-1 through 4.15-4, and SCs 4.15-1 and 4.15-2 (set forth below). No mitigation measures were recommended or required.

Facts in Support of Finding: The Project's water distribution system would require connections to the City's existing water infrastructure at West Coast Highway, 15th Street, 16th Street, and Ticonderoga Street. Within the Project site, 8- to 12-inch-diameter water mains would provide potable, irrigation, and fire flow water service to the proposed on-site land uses. In addition, a 12-inch domestic water main would extend east of the Project site into the 15th Street right-of-way to the intersection with Monrovia Avenue and connect with an existing 24-inch water line. Another 12-inch water main would extend east of the Project site into 16th Street and connect with an existing 14-inch water line. A pressure-reducing station is proposed adjacent to Bluff Road near West Coast Highway. The construction of these water facilities would primarily occur within the Project's development footprint. Potential impacts are addressed as a component of the overall Project. PDFs 4.15-1 through 4.15-4, PDF 4.11-1, and PDF 4.11-4 are designed to reduce water consumption through measures such as the use of drought-tolerant plants, Smart Controller irrigation systems, and the green building program. SC 4.15-1 and SC 4.15-2 incorporate water conservation and drought-response measures. No significant impacts are anticipated associated with water infrastructure.

The Project's water demand is estimated to be 613.5 acre-feet per year (afy). The water demand for the Project site was included in the City's water demand forecasts (as identified by City staff and the 1999 Water Master Plan) and is reflected in the City's 2005 and 2010 Urban Water Management Plan and in Metropolitan Water District of Orange County (MWD), Orange County Water District (OCWD), and Metropolitan Water District (MWD) planning documents. A Water Supply Assessment (WSA) was prepared for the Project and approved by the Newport Beach City Council on October 12, 2010. The City of Newport Beach 2010 Urban Water Management Plan was adopted by the Newport Beach City Council on June 14, 2011. The Project's WSA is consistent with the assumptions of both the City's 2005 and 2010 Urban Water Management Plans. Based on the WSA, the City, as water purveyor, determined that a sufficient supply is available during average, single-dry, and multiple-dry years to meet the anticipated water demand associated with the Project, in addition to the water demands of existing and planned future uses through year 2030. The Project's contribution to the cumulative impact on water supply is considered less than significant.

PDF 4.15-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of native and/or drought-tolerant landscaping in public common areas to reduce water consumption.

- PDF 4.15-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of Smart Controller irrigation systems in all public and common area landscaping. Community landscape areas will be designed on a “hydrozone” basis.
- PDF 4.15-3** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for a domestic water system designed to take advantage of existing water transmission facilities that connect to the Project site to minimize off-site impacts.
- PDF 4.15-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for the Project’s water system to provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines.
- SC 4.15-1** Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following mandatory permanent water conservation requirements, as summarized, during non-shortage conditions:
- a. No customer shall use potable water to irrigate landscaping unless such irrigation is limited to no more than ten minutes of watering per day per station.
 - b. No person shall use water to irrigate landscaping that causes or allows excessive flow or runoff.
 - c. No person shall use water to wash down hard or paved surfaces, except when necessary to alleviate safety or sanitary hazards.
 - d. No person shall permit excessive use, loss, or escape of water through breaks, leaks, or other malfunctions in the user’s plumbing or distribution system.
 - e. No customer shall use potable water for irrigation during a rainfall event.
 - f. By July 1, 2012, all landscape irrigation systems connected to dedicated landscape meters shall include rain sensors that automatically shut off such systems during periods of rain or include evapotranspiration systems that schedule irrigation based on climatic conditions.
 - g. No customer shall operate a water fountain or other decorative water feature that does not use a recirculating water system.
 - h. No customer shall use water to clean a vehicle, except by use of a hand-held bucket or hand-held hose equipped with a water shut-off nozzle or device.
 - i. Effective January 1, 2010, all new commercial conveyor car wash systems shall have recirculating water systems. By

January 1, 2013, all commercial conveyor car wash systems shall have recirculating water systems.

- j. Eating or drinking establishments shall not provide drinking water unless expressly requested by the patron.
- k. Hotel, motel, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily.
- l. No customer shall install a new, single pass cooling system in a building or on premises requesting new water service.
- m. Effective January 1, 2010, all new washing machines installed in commercial and/or coin-operated laundries shall be *EnergyStar[®]* and *CEE Tier III* qualified. *By January 1, 2014, all washing machines installed in commercial and/or coin-operated laundries shall be EnergyStar[®] and CEE Tier III qualified.*
- n. No customer shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid.
- o. Commercial kitchens shall employ water-conservation practices and technology.
- p. Construction Site Requirements:
 - No person shall use potable water for soil compaction or dust control on a construction site where there is an available and feasible source of recycled water or non-potable water approved by the Department of Public Health and appropriate for such use.
 - No person shall operate a hose within a construction site that is not equipped with an automatic shut-off nozzle, provided that such devices are available for the size and type of hose in use.

SC 4.15-2 Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following four levels of water supply shortage response actions to be implemented during times of declared water shortages.

Water Conservation Level	Requirements
Level One	Limit outdoor watering to scheduled irrigation days
	Cutbacks in water usage (up to 10%)
	Increased response time to fix broken/leaking plumbing (within 72 hours of notification from City)
	Limit filling of ornamental water features/pools (once per week)
Level Two	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (11–25%)
	Increased response time to fix broken/leaking plumbing (within 48 hours of notification from the City)
	Increase limitations for filling of ornamental water features/pools (once every other week)
Level Three	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (26–40%)
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from the City)
	No filling of ornamental water features/pools
Level Four	No outdoor watering
	Increased cutbacks in water usage (more than 40%)
	No new potable water services/meters
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from City)
	No filling of ornamental water features/pools

(2) Potential Impact – Wastewater Treatment: Existing wastewater treatment facilities have sufficient capacity for Project-generated wastewater.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no project design features, standard conditions of approval, or mitigation measures were required or recommended.

Facts in Support of Finding: Total sewage generation is expected to be 0.259 million gallons per day (mgd). Effluent from the development areas would be collected and directed to the Orange County Sanitation District (OCSD) trunk sewer upstream of the Bitter Point Pump Station via 10- and 12-inch pipes. The majority of the wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint. An off-site connection would be required on 16th Street, adjacent to the NMUSD property. No additional direct impacts related to construction and operation of the on-site wastewater system would occur. The April 2006 OCSD Strategic Plan Update assumed Project development generating a higher effluent rate than would occur with the proposed Project. Currently Plant No. 2 is operating at 65 percent of design capacity. The

OCSD has indicated that it has existing and future treatment capacity to serve the proposed Project.

(3) Potential Impact – Energy: The proposed Project would increase the demand for electrical and natural gas service in the Project area.

Finding: The City hereby makes Finding 1 and determines that this impact is Less Than Significant with the implementation of PDFs 4.6-4, 4.11-1, 4.11-2, and 4.11-4, and SC 4.11-1 (set forth above) and SC 4.15-3 (set forth below). No mitigation measures were required or recommended.

Facts in Support of Finding: The Project would generate a demand of approximately 12.2 million kilowatt hours (kWh) of electricity and approximately 66.2 cf of natural gas annually. Southern California Edison (SCE) and The Gas Company have indicated an ability to serve the Project without significantly impacting levels of service. The Project includes design consideration to avoid inefficient, wasteful, and unnecessary energy consumption and reduce energy consumption. PDF 4.6-4 (street lights only in certain areas), PDF 4.11-2 (exceeding adopted 2008 Title 24 requirements by 5 percent), PDF 4.11-4 (subdivision map requirements), and PDF 4.11-5 (efficient grading operations). SCs 4.11-1 and 4.15-3 require that energy conservation efforts are incorporated into the Project. PDF 4.11-1 requires the Project to be consistent with a recognized green building program. There is existing facilities within and adjacent to the site that would serve the Project. SCE facilities that may require relocation include an overhead circuit located along 19th Street. Impacts associated with infrastructure installation are a component of the Project.

SC 4.15-3 The proposed Project shall meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards and shall be reviewed and approved by the City of Newport Beach Community Development Department, Building Manager, prior to issuance of building permits.

6. FINDINGS REGARDING ALTERNATIVES

A. Alternatives Considered and Rejected During the Scoping/Project Planning Process

The following is a discussion of the land use alternatives considered during the scoping and planning process and the reasons why they were not selected for detailed analysis in the Draft EIR. Among the factors that can be used to eliminate alternatives from detailed consideration in an EIR are “failure to meet most of the basic Project objectives, infeasibility, or inability to avoid significant environmental impacts” (CEQA Guidelines §15126.6[c]). Alternatives were eliminated during the scoping/planning process either because they were determined to be infeasible or because it could be determined that they would not avoid or eliminate significant environmental impacts when compared to the proposed Project.

1. **Development of the Project site Consistent with the County of Orange General Plan and Zoning Designations**

The zoning for the 361 acres of the Project site within the County jurisdiction would allow for development of up to 2,510 multi-family dwelling units, 225 single-family dwelling units, 50,000 sf of general commercial use, 235,600 sf of general office use, and 164,400 sf of industrial uses. Overlay zones, including Oil Production, Sign Restriction, and Floodplain Zone 2 apply to portions of the property. Development of property pursuant to the County zoning would generate approximately 22,075 average daily trips on the circulation network (Newport Beach 2006a, 2006b). This Alternative was not retained for detailed evaluation in the EIR because it would not reduce identified impacts of the Project and in many cases would result in greater impacts associated with more intense and increased development that could occur under the County’s land use designations for the property. This Alternative would also not achieve several important Project objectives, specifically Objective 1 which is to provide a Project that implements the goals of the General Plan of the City of Newport Beach, and Objective 16 which is to provide a Project compatible with existing adjacent land uses. Consequently, this Alternative has been considered and rejected from further analysis.

2. **Alternative Site**

Development of the Project on an alternative site has been reviewed and eliminated from detailed consideration due to the lack of available alternate sites meeting the majority of the objectives established for the proposed Project. Newport Beach is almost fully developed with no other unentitled property that is suitable for supporting a mixed-use project such as Newport Banning Ranch. Eight areas within the City were identified and considered but no comparably sized parcels would provide for the same mix and range of uses in the City. Alternative sites outside of the City’s jurisdiction were also considered; however, no comparable site within the County’s coastal zone could be identified. Although there may be properties inland that could provide a similar level of development, inland areas would not meet the objectives regarding enhancing coastal access and protection of coastal resources. For these reasons, consideration of developing the Project on an alternative site was not included in the EIR alternatives analysis.

3. Construction of General Plan Roads

Both the City of Newport Beach General Plan Master Plan of Streets and Highways and the Orange County MPAH depict two connections to West Coast Highway through the Project site. One connection is depicted as extending south from 19th Street to West Coast Highway and the second roadway would extend from 15th Street past Bluff Road and connect with West Coast Highway on the western edge of the Project site. The need for these two primary roads was based on the environmental baseline that the 2006 General Plan Update used, which assumed more intense development on the Project site. Based on the reduced density being proposed, only one roadway is needed to serve the travel demand. This Alternative would have had more impacts due to the need for the construction of an additional roadway. This alternate has been rejected from further consideration.

B. Alternatives Selected for Analyses

The State CEQA Guidelines requires that an EIR "describe a range of reasonable alternatives to the Project, or to the location of the Project, which could feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project, and evaluate the comparative merits of the alternatives" (State CEQA Guidelines §15126.6[a]). Six alternatives were evaluated. The alternatives were developed to avoid or minimize impacts associated with implementation of the proposed Project. Given the nature and scale of the Project, complete avoidance of significant impacts was not feasible for any alternative other than the No Project Alternative.

The following alternatives were analyzed:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17th Street.
- Alternative D: Reduced Development and Development Area.
- Alternative E: Reduced Development Area.
- Alternative F: Increased Open Space/Reduced Development Area.

The City's findings and facts in support of findings with respect to each of the alternatives considered are provided below. Consistent with the guidance set forth in State CEQA Guidelines Section 15126.6, the Findings address whether the alternative would feasibly attain most of the basic objectives of the Project; whether it would avoid or substantially lessen any of the significant effects of the Project; and whether the alternative is feasible, as defined by the State CEQA Guidelines Section 15364, as being "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors".

1. **Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses)**

Description: Alternative A is the “no project” alternative required by the State CEQA Guidelines Section 15126.6(e) which allows the decisionmakers to compare the potential impacts of the proposed Project with the potential impacts of not approving the proposed Project. Alternative A assumes existing conditions on the Project site (oil operations) and the continuation and possible expansion of oil exploration and oil production operations within the constraints of the Project site’s existing California Coastal Act regulatory exemption for petroleum production. No uses other than oil operations would occur on the Project site. Oil consolidation, clean-up, and remediation would not occur for the foreseeable future, and public access would not be provided. At the eventual cessation of oil production operations, well abandonment and removal of certain surface equipment and pipelines would occur in accordance with applicable State and local regulations. This Alternative would not require an amendment to the City of Newport Beach General Plan or Orange County MPAH, a zone change, a Coastal Development Permit, or any of the other actions associated with the Newport Banning Ranch Project. The approximate 361 acres of the 401-acre site within the City’s Sphere of Influence would not be annexed into the City of Newport Beach.

Environmental Effects: A full discussion of Alternative A’s environmental impacts as compared to the proposed Project is set forth in Section 7.5.1 of the Final EIR, which is hereby incorporated by reference. The City of Newport Beach has assumed the Project site would ultimately be annexed to the City and has adopted land uses and policies accordingly. Alternative A would have greater impacts than the proposed Project when evaluating consistency with City plans and policies. However, since under this Alternative scenario the site would not be annexed into the City of Newport Beach, the City planning programs would not be applicable to the majority of the property. This Alternative would not have any impacts that are significant and unavoidable when compared to the proposed Project. The proposed Project would have significant and unavoidable impacts associated with land use compatibility (due to noise and lighting impacts), aesthetics, transportation, air quality, cumulative greenhouse gas emissions, and noise. Alternative A would avoid or substantially lessen the significant effects of the proposed Project.

Ability to Achieve Project Objectives: When evaluating the desirability and feasibility of an Alternative, it is also important to evaluate the ability of the Alternative to meet the Project objectives. An Alternative does not need to meet all the Project objectives to be considered potentially feasible. However, Alternative A does not meet any of the Project objectives.

Feasibility: In the short-term, Alternative A is potentially feasible, at least from a technological and legal perspective, as it contemplates the continuation of the existing oil operations. Because the property is privately owned and the extent of petroleum production activities will eventually cease when resources are depleted or when it becomes uneconomical to continue extraction activities with diminishing returns, some form of reuse of the Project site is expected to ultimately occur. Therefore, long-term economic feasibility of this Alternative is questionable.

Finding: While this Alternative would avoid the Project’s significant impacts, it would not achieve any of the objectives established for the Project. From a policy perspective, this Alternative would fail to provide the City with additional housing opportunities, including affordable housing, the latter which is an identified need in the City’s Housing Element,

and would not further the implementation of the City's General Plan. This Alternative would also delay the remediation of the oilfield until the property owner chooses to cease operations sometime in the future. This Alternative would also delay the City's ability to provide a north-south road connection through the property as shown on the City's General Plan Circulation Element Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways. In light of these considerations, this Alternative has been rejected by the City in favor of the proposed Project.

2. Alternative B: Newport Beach General Plan/Open Space Designation

Description: The Project site is designated as OS(RV) in the City of Newport Beach General Plan's Land Use Element. The OS(RV) land use designation allows for both a Primary Use (Open Space) and an Alternative Use (Residential Village) on the Project site. The Land Use Element prioritizes the retention of the Project site for open space. The Project site would have to be acquired through public or private funding by an entity capable of restoring and maintaining the Project site and with the approval of the property owner(s), including the surface rights owners. As described in the General Plan, the open space acquisition option includes consolidation of oil operations; wetlands restoration; construction of roadways; and provision of nature education, interpretative facilities, and an active park that contains lighted playfields and other facilities.

Alternative B would include park and open space uses, including an approximately 31.3-gross acre community park in the central portion of the site. Alternative B also assumes consolidation of the oilfields, remediation of the property, and restoration of habitat including wetlands. Additionally, the following roadways would be constructed consistent with the City of Newport Beach General Plan's Circulation Element: (1) a north-south road with a southern terminus at West Coast Highway and extending to a northern terminus at 19th Street (Bluff Road and North Bluff Road); (2) the extension of 15th Street from its existing terminus to Bluff Road within the Project site; (3) the extension of 16th Street from its existing terminus to Bluff Road within the Project site; and (4) the extension of 17th Street from its existing terminus to Bluff Road within the Project site. As with the proposed Project, Alternative B also assumes the deletion of the future extension of a second road through the Project site and its connection to West Coast Highway; this action would require the approval of a General Plan Amendment to the City's Circulation Element and an amendment to the Orange County MPAH. Consistent with the roadway assumptions for the proposed Project, North Bluff Road (extending from 17th Street to 19th Street) would transition from a four-lane divided to a two-lane undivided road to 19th Street.

With this Alternative, the City would be responsible for implementing the Community Park, including the acquisition of the land designated for this use. However, the acquisition of the remaining portion of the site, as well as funding of all remaining improvements and maintenance, would be the responsibility of a yet unknown third party. In addition to costs associated with site acquisition, funds would also be required to initiate consolidation of oil operations and to address oilfield abandonment and clean-up needs as well as acceptance and mitigation of any long-term liability exposure. Additional funding would be required to implement restoration and long-term management of sensitive habitats and to construct park(s), roadways, and other needed infrastructure (including sewer, water, electrical, gas and storm drain facilities) to support the park(s) and roadways. As with the proposed Project, a Coastal Development Permit would be required to initiate restoration activities and to allow for the future construction of permitted land uses and roadways through the Project site.

Environmental Effects: A full discussion of Alternative B's environmental impacts as compared to the proposed Project is set forth in Section 7.5.2 of the Final EIR, which is hereby incorporated by reference. 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. Alternative B would eliminate significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts when compared to the proposed Project; however, there would still be impacts that could not be reduced to a level considered less than significant. The following areas would have significant, unavoidable impacts:

There would be land use incompatibility with respect to night illumination associated with the development of the property including the Community Park as well as long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be potential long-range noise impacts for residents on 17th Street west of Monrovia Avenue because both Alternative B and the proposed Project include the construction of the roadways consistent with the City's General Plan Circulation Element. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

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. However, in certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations and found that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project.

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.

Ability to Achieve Project Objectives: 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 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).

Feasibility: Although Alternative B appears to be legally, technologically, and socially feasible, its feasibility 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. Consideration by the City of the proposed Project does not

preclude the City or any third party from acquiring the property and initiating site remediation, habitat restoration, park development, and road construction. However, to date, no one or entity has identified sufficient funds to implement the open space acquisition alternative. Therefore, at this time it is difficult for the City to conclude that this Alternative is feasible. Based upon the lack of identified sources of funding and entities to undertake implementation of this Alternative, the City is not assured that property acquisition may be “capable of being accomplished in a successful manner within a reasonable period of time”.

Finding: 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. 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, and to date, no individual or entity including the City, has identified the resources to implement the open space acquisition option. Therefore, the decision makers may determine that this is not a feasible alternative regardless of the potential environmental or other public benefits. For these reasons, the City finds that the proposed Project is preferred over this Alternative.

3. Alternative C: Proposed Project with Bluff Road Extending to 17th Street

Description: Alternative C assumes the same land uses and same development plan as the proposed Newport Banning Ranch Project and would require the same approvals from local, regional, and State agencies. However, that segment of North Bluff Road extending just north of 17th Street to 19th Street would not be constructed under this Alternative. The City of Newport Beach General Plan’s Circulation Element and the Orange County MPAH depict a north-south roadway connection from West Coast Highway to 19th Street through the Project site. Alternative C would provide the development of a north-south connection (North Bluff Road/Bluff Road) from West Coast Highway only to 17th Street. By removing the extension of this segment of the roadway, the open space area would not be bisected as a result of this Alternative. Alternative C does not assume the deletion of North Bluff Road between 17th Street and 19th Street from the City’s General Plan Circulation Element Master Plan of Streets and Highways or the Orange County MPAH. Therefore, although the road would not be constructed as part of this Alternative, it does not preclude the construction of this roadway segment in the future by a party other than the Applicant. Should the road be constructed in the future, the impacts that are avoided at this time would be realized. It should be noted that implementation of the segment of roadway between 17th and 19th Streets would be a separate project and would require separate approvals.

As with the proposed Project, Alternative C assumes an amendment to the Circulation Element to delete a second road through the Project site and its connection to West Coast Highway. An amendment to the Orange County MPAH is required for this deletion as well as to downgrade North Bluff Road from a Major to a Primary. Alternative C is proposed to minimize significant impacts to sensitive habitat areas and landform alteration associated with the extension of North Bluff Road from just north of 17th Street to 19th Street.

Environmental Effects: A full discussion of Alternative C’s environmental impacts as compared to the proposed Project is set forth in Section 7.5.3 of the Final EIR, which is hereby incorporated by reference. Alternative C is the same as the proposed Project,

except that the extension of North Bluff Road between 17th Street and 19th Street would not be constructed. As a result, the nature of the impacts are the same as those identified for the proposed Project, with incremental decreases in impacts associated with the amount of grading and disturbance to native habitat and biological resources, and increased (qualitative and quantitative) opportunities for habitat restoration. There is also a reduction in construction air emissions and impacts to significant archaeological and paleontological resources. This Alternative would also have the benefit of not having the road extension bisecting the open space area. However, Alternative C would result in additional traffic using Bluff Road, which would result in an incremental increase in traffic noise along this segment of roadway. In addition, this Alternative would increase the number of intersections that have Project-related impacts. Should it be determined at some point in the future that the connection of North Bluff Road to 19th Street is required, the City or other entity would be responsible for implementing the improvement. This would not be an expense borne by the developer. Subsequent CEQA analysis would likely be required and permitting may be more difficult because the roadway would bisect lands that had been remediated and were functioning as open space.

Alternative C would not eliminate or substantially lessen any of the significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative C:

There would be land use incompatibility with respect to night illumination associated with the development including the Community Park, as well as 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. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17th Street with rubberized asphalt.

Alternative C would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative C 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.

Alternative C would have impacts on intersections in the City of Costa Mesa. Implementation of MM 4.9-2 would mitigate the impacts to a level considered less than significant. However, Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Alternative C development continues beyond 2020, emissions of volatile organic compounds (VOC) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Alternative C would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O₃).

Alternative C would emit quantities of greenhouse gases (GHGs) that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) significance threshold. Development associated with Alternative C would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

For the *Existing Plus Project, 2016 with Project*, and *General Plan Buildout* traffic scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise level increases in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition of Alternative C. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: Alternative C is a potentially feasible alternative. It is able to meet the Project objectives as effectively as the proposed Project, with the exception of Objective 7. Objective 7 would only be partially achieved with this Alternative. This objective reads: "Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access." Alternative C does not operate as effectively as the proposed Project in meeting this objective because it results in an additional intersection operating at a deficient level of service. Additionally, it does not construct a segment of the local and regional transportation network that is identified in the adopted circulation plans.

Feasibility: This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors..

Finding: Alternative C would incrementally reduce impacts associated with the amount of grading and disturbance to native habitat and biological resources, and would provide increased (qualitative and quantitative) opportunities for habitat restoration. This Alternative would have the same significant unavoidable impacts as the proposed Project. From a policy perspective, this Alternative would not fully implement the City's Master Plan of Streets and Highways or the Orange County Master Plan of Arterial Highways which depict a north-north roadway through the property from West Coast Highway to 19th Street. While this Alternative is feasible, because it would not construct a segment of the local and regional transportation network, the City, therefore, finds that the proposed Project is preferred over this Alternative.

4. Alternative D: Reduced Development and Reduced Development Area (No Resort Inn and 1,200 Units)

Description: Alternative D assumes a reduction in the amount of development that would occur on the Project site and a reduction in the acreage associated with that development. The same roadway system is proposed. When compared to the proposed Project, Alternative D would allow for 1,200 du (compared to 1,375 du), including an affordable housing component per the AHIP¹⁰; 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses (in place of a 75-room resort inn); approximately 39.1 acres of parks including a 24.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands for the proposed Project including a 21.8-gross acre Community Park).¹¹ The 15,000 sf of visitor-serving commercial use would be predominately restaurant uses. Alternative D does not include a Nature Center, trails, or the pedestrian and bicycle bridge. Open space uses would increase from 252.3 gross acres to 269.1 gross acres. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and, upon acceptance, it would be maintained by the City.

Alternative D would require the same discretionary actions as noted for the proposed Project. Alternative D is proposed to reduce impacts associated with the intensity of development (e.g., vehicle trips, vehicle miles travelled, noise and air quality impacts) and the footprint of development (e.g., biological resources).

Environmental Effects: A full discussion of Alternative D's environmental impacts as compared to the proposed Project is set forth in Section 7.5.4 of the Final EIR, which is hereby incorporated by reference. Alternative D would reduce the number of residential units by approximately 13 percent and eliminate the resort inn. The project footprint would be approximately 11 percent smaller. Although the nature of the impacts would be the same as those discussed for the proposed Project, the overall impacts associated with Alternative D would be less due to the reduced amount and area of development. However, it should be noted that this Alternative offers a reduced level of public amenities (i.e., trails, parks, and pedestrian bridge) compared to the proposed Project, and would not provide as much affordable housing as the proposed Project. Although this Alternative would have fewer units and no resort inn, it is projected that there would be a lower number of average daily trips (ADT), an increase in the number of AM peak

¹⁰ The number of required affordable units would be 15 percent of the total number of approved units.

¹¹ Alternative D assumes compliance with Quimby Act, which would require approximately 15 acres of parkland based on 5 acres of park per 1,000 persons; the City assumes 2.19 persons per dwelling unit.

hour trips, and a slight decrease in PM peak hour trips. Moving the location of visitor-serving commercial uses to the Resort Colony from the Urban Colony would result in a redistribution of some trips on the circulation network, with more trips expected to be generated in the southerly portion of the Project site, which would be expected to result in a slightly higher volume of traffic on the southern portion of Bluff Road and use of 15th Street easterly of the Project site.

This Alternative does not eliminate but would substantially lessen the significant impacts of the proposed Project. Construction air emissions would remain significant and unavoidable, but would be lessened. Although not identified as significant and unavoidable, impacts associated with grading, habitat removal, and creation of impervious surfaces would be reduced compared to the proposed Project due to the reduction in the development footprint. The following significant and unavoidable impacts would occur with Alternative D:

There would be land use incompatibility with respect to night illumination associated with development of the property including the Community Park, as well as 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. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17th Street with rubberized asphalt.

Alternative D would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., visitor-serving commercial and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative D 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.

When compared to the proposed Project, Alternative D would have a reduction of average daily trips (ADT), but an increase of trips in the AM peak hour and a decrease trips in the PM peak hour. Based on the lower volume of ADT and PM peak hour volumes, Alternative D would not create additional roadway or intersection deficiencies. Both Alternative D and the proposed Project would be expected to result in a significant impact at one intersection in the City of Newport Beach and seven intersections in the City of Costa Mesa. Impacts to the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach can be mitigated to a level considered less than significant. Alternative D would impact the following Costa Mesa intersections: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However,

the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative D impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be would remain significant and unavoidable.

Alternative D would have construction-related air quality impacts. During grading, large and fine particulate matter (PM10 and PM2.5, respectively) concentrations may exceed the SCAQMD CEQA significance thresholds at the property lines, but would not be likely to exceed ambient air quality standards.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as development continues beyond 2020, emissions of VOCs, CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Alternative D would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Alternative D would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative D would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4), which is an important Coastal Act policy consideration and does not provide as extensive of a public access network (no pedestrian and bicycle bridge over West Coast Highway) as compared to the proposed Project. Further, this Alternative does not include a Nature Center or trails. In addition, it only partially meets the following objectives:

- Development of a residential village of 1,375 residential units, offering a variety of housing types in a range of housing prices for future residents, including provision of

affordable residential dwelling units to help meet the City's Regional Housing Needs Assessment (RHNA) (Objective 3).

- Provide enhanced public access through 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).

Feasibility: This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project and which are important Coastal Act policy considerations. While this Alternative is feasible, because it would not provide as many public benefits and would result in similar significant environmental impacts, the City, therefore, finds that the proposed Project is preferred over this Alternative.

5. Alternative E: Reduced Development Area

Description: Alternative E assumes the same number of residential units (1,375 du) as proposed by the Project within a reduced footprint. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses instead of the resort inn; and approximately 39.1 acres of parks, including a 20.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands with the Project). As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative E would require the same discretionary actions as noted for the proposed Project.

Environmental Effects: A full discussion of Alternative E's environmental impacts as compared to the proposed Project is set forth in Section 7.5.5 of the Final EIR, which is hereby incorporated by reference. Alternative E would reduce the development footprint by approximately 11 percent. Although the nature of the impacts would be the same as those discussed for the proposed Project, the impacts associated grading and project footprint would be incrementally smaller due to the reduced amount of disturbed area (i.e., impacts associated with grading, habitat removal, creation of impervious surfaces, construction air emissions). This Alternative would increase the overall vehicle miles travelled (VMT); therefore, there would be slightly greater long-term air emissions, noise, and traffic.

Although with Alternative E there would be incremental reduction in impacts due to the reduction in development and the area being developed, this Alternative would not eliminate any of the unavoidable significant impacts identified with the proposed Project. The following significant unavoidable impacts would occur with Alternative E:

There would be land use incompatibility with respect to long-term noise impacts and night illumination on those Newport Crest residences immediately contiguous to the Project site. Noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels. Land use compatibility issues from night lighting associated with the Community Park would also be considered significant.

Development would introduce new sources of light on the Project site, which would result in a significant visual impact.

Alternative E would result in impacts to the same intersections as outlined for the proposed Project. Implementation of the Mitigation Program would reduce impacts to less than significant levels. However, the City of Newport Beach cannot guarantee implementation of necessary mitigation within another jurisdiction. Therefore, the impacts in the City of Costa Mesa intersections are assumed to remain significant and unavoidable.

Alternative E would have cumulatively considerable contributions to regional pollutant concentrations of O₃.

Alternative E would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. This would make a cumulatively considerable contribution to the global GHG inventory.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications, but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Costa Mesa's standards. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no control to assure that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia Avenue is considered significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, temporary noise increases would be significant and unavoidable.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objective:

- Provide enhanced public access through 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).

Feasibility: Alternative E is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project. Additionally, it would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. While this Alternative is feasible, because it would not provide as many public benefits, the City, therefore, finds that the proposed Project is preferred over this Alternative.

5. Alternative F: Increased Open Space/Reduced Development Area

Description: Alternative F assumes the same number of residential units (1,375 du) as proposed by the Project within a reduced footprint. The development area (residential and commercial) would decrease from 97.4 gross acres to 84.0 gross acres, an approximate 14 percent reduction compared to the proposed Project. When parkland is factored in, the development footprint for Alternative F is reduced by 20 percent compared to the proposed Project. This alternative does not include a resort inn or visitor-serving commercial uses. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. Open space uses would increase from 252.3 gross acres to 282.4 gross acres. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); and includes approximately 34.7 acres of parks, including a 21.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands). The acreage of the Community Park would be the same for Alternative F and the proposed Project. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative F would require the same discretionary actions as noted for the proposed Project.

Environmental Effects: A full discussion of Alternative F's environmental impacts as compared to the proposed Project is set forth in Section 7.5.6 of the Final EIR, which is hereby incorporated by reference. Alternative F would reduce the development footprint. Although the nature of the impacts would be the same as those discussed for the proposed Project, the overall impacts associated with Alternative F would be fewer due to the reduced amount of disturbed area. Although not identified as significant and

unavoidable impacts, this Alternative would substantially less the impacts associated with grading, habitat removal, and creation of impervious surfaces.

Alternative F would substantially lessen construction air emissions impacts compared to the proposed Project because less development is proposed; the area of disturbance would be smaller; and grading would be reduced by 25 to 35 percent. However, Alternative F would not eliminate any significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative F:

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 interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Alternative F would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative F 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.

Alternative F would be projected to result in a decrease in ADT and peak hour traffic volumes when compared to the proposed Project. This decrease in peak hour volumes would not cause any of the intersections operating at an acceptable level of service with the Project to operate at an unacceptable level of service. Both Alternative F and the proposed Project would be expected to result in deficiencies at the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach which can be mitigated to a level considered less than significant. Alternative F and the proposed Project would significantly impact seven intersections in Costa Mesa: Newport Boulevard at 19th Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18th Street/Rochester, Newport Boulevard at 17th Street, Monrovia at 19th Street, Pomona Avenue at 17th Street, and Superior Avenue at 17th Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. If the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative F impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as

development continues beyond 2020, emissions of VOCs and CO would exceed the significance thresholds, principally due to vehicle operations. Alternative F would have a cumulatively considerable contribution to regional pollutant concentrations of O₃.

Alternative F would emit quantities of GHGs that would exceed the City's 6,000 MTCO₂e/yr significance threshold. Similar to the Project, Alternative F would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17th Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 dBA significance criterion in the General Plan. MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

Ability to Achieve Project Objectives: This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objectives:

- Development of 75,000 square feet of retail commercial uses oriented to serve the needs of local residences and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Provide enhanced public access through 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).

Feasibility: Alternative F is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

Finding: While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate any significant impacts of the Project. However, it should be noted that this Alternative does not offer the same level of amenities (i.e., trails, parks, and pedestrian bridge) as the proposed Project. While increasing public access opportunities over the existing condition and compared to Alternatives A and B, Alternative F would not provide the same extent of public access amenities (i.e., pedestrian/bike overcrossing) as compared to the proposed Project, and would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. For these reasons, the City rejects this Alternative in favor of the proposed Project.

STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The City is the Lead Agency under CEQA for preparation, review, and certification of the Final EIR for the Newport Banning Ranch Project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed Project. In making this determination the City is guided by State CEQA Guidelines Section 15093 which provides as follows:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal (sic) project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed Project, none of which both meet the Project objectives and is environmentally preferable to the proposed Project for the reasons discussed in the Findings and Facts in Support of Findings.

The Newport City of Beach City Council, the Lead Agency for this Project, and having reviewed the Final EIR for the Newport Banning Ranch Project, and reviewed all written materials within

the City's public record and heard all oral testimony presented at public hearings, adopts this Statement of Overriding Considerations, which has balanced the benefits of the Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the Project.

Significant Unavoidable Adverse Environmental Impacts

Although most potential Project impacts have been substantially avoided or mitigated, as described in the Findings and Facts in Support of Findings, there remain some Project impacts for which complete mitigation is not feasible. For some impacts, mitigation measures were identified and adopted by the Lead Agency, however, even with implementation of the measures, the City finds that the impact cannot be reduced to a level of less than significant. The impacts and alternatives are described below and were also addressed in the Findings.

The EIR identified the following unavoidable adverse impacts of the proposed Project:

Land Use. The City of Newport Beach Zoning Code (October 2010) defines compatibility as "The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include: intensity of occupancy, pedestrian or vehicular traffic generated, volume of goods handled, and environmental effects (e.g., air pollution, glare, hazardous materials, noise, vibration, etc.)". Therefore, land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that project-related significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended. 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 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 interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Aesthetics and Visual Resources. The proposed Project would include "dark sky" lighting regulations set forth in the Newport Banning Ranch Development Planned Community (NBR-PC) zoning regulations that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. The Project would result in night lighting impacts that 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 Consideration which noted that there were specific economic, social, and other public benefits which outweighed the significant unavoidable impacts associated with the General Plan project.

Transportation and Circulation. The Project would have impacts on select intersections in the City of Costa Mesa. Implementation of Mitigation Measure (MM) 4.9-2 would mitigate the

Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction or agency. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa and the California Department of Transportation (Caltrans) that would ensure that Project impacts occurring in Costa Mesa and State highways would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. The following impacts were identified with the various traffic scenarios evaluated:

- **Existing Plus Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Superior Ave at 17th Street. (This scenario assumes all development occurs at once, which is not an accurate reflection of the timing of development for the proposed Project.)
- **Year 2016 With Project Transportation Phasing Ordinance (TPO)** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard at West Coast Highway.
- **Year 2016 With Phase 1 Project TPO** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Newport Boulevard at West Coast Highway.
- **Year 2016 Cumulative With Project** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street¹²; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard and West Coast Highway.
- **Year 2016 Cumulative With Phase 1 Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.
- **General Plan Buildout with Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.

Air Quality. During periods of grading, localized large and fine particulate matter (PM10 and PM2.5) concentrations may exceed the South Coast Management District's (SCAQMD's) CEQA significance thresholds at the property lines but would not likely exceed ambient air quality standards. Localized concentrations of carbon monoxide (CO) and nitrogen dioxide (NO₂) due to construction activities would not exceed the applicable CEQA thresholds. Regional (mass) emissions of criteria pollutants during construction activities would not exceed the applicable thresholds.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Project development

¹² The Newport Boulevard at 17th Street intersection has a Project-related impact using the Highway Capacity Manual (Caltrans methodology), as well as an impact using the Intersection Capacity Utilization methodology.

continues beyond 2020, emissions of volatile organic compounds (VOCs), CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Feasible mitigation measures would be implemented to reduce operational emissions, although the effects of such mitigation are not quantifiable. Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Greenhouse Gas Emissions. The Project would emit quantities of GHGs that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory affecting Global Climate Change.

Noise. For the *Existing Plus Project, 2016 with Project, and General Plan Buildout* scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue in Costa Mesa, would expose sensitive receptors to noise levels that would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurfacing the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted noise impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest condominium development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications. However, the long-term noise increases at some Newport Crest residences from vehicular traffic noise from Bluff Road due to Project and cumulative traffic levels would remain above the General Plan's 5 A-weighted decibels (dBA) significance criterion. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

In addition, the EIR identified six alternatives to the Project and analyzed whether these alternatives could avoid or substantially lessen the unavoidable environmental impacts of the proposed Project. While some of the alternatives could lessen or avoid some of the unavoidable impacts of the proposed Project, some of the alternatives also resulted in different and in some cases, increased environmental impacts, consequently, for the reasons set forth in Section 6 of these Findings, none of the alternatives were determined to be feasible:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17th Street.
- Alternative D: Reduced Development and Development Area.
- Alternative E: Reduced Development Area.

- Alternative F: Increased Open Space/Reduced Development Area.

The City, after balancing the specific economic, legal, social, technological, and other benefits including region-wide or statewide environmental benefits, of the proposed Project, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed Project, each of which standing alone is sufficient to support approval of the Project, in accordance with CEQA Section 21081(b) and State CEQA Guideline Section 15093.

1. **Long-term protection of over 50 percent of the Project site as natural open space and habitat consistent with the City's General Plan**

The City's General Plan Policy LU 3.4 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region, to enhance wetlands and other habitats and provide parkland amenities to serve nearby neighborhoods. In order to implement this policy, LU 6.3.2 recognizes the need to obtain sufficient funds through private fundraising, State bonds, environmental mitigation fees, or other financing mechanisms, none of which have been identified to date. As the General Plan acknowledges, "due to the significant cost of purchasing the site and habitat restoration, a large amount of revenue would need to be generated to help fund preservation of the majority of the property as open space". (Housing Element at page 5-43)

Consistent with General Plan Policy LU 3.4, the Project will implement a comprehensive Habitat Restoration Plan that encompasses approximately 235 gross acres of the Project site and would provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. **New public and coastal access will be provided**

The Project would make available to the public a site that has been privately-owned and closed to the public since the 1940s. It would provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, access to open space and trails, and a pedestrian and bicycle bridge from the Project site across West Coast Highway to the beach. The Project would also provide approximately 475 new public parking spaces in the coastal zone.

3. **Dedication and improvement of land for public park, recreational, and open space purposes in excess of the requirements of California law and City ordinances**

In addition to the restoration and long-term preservation of natural open space and habitat areas described above in #1, above, the City's General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's Primary Use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The Project provides approximately 21.8 gross acres of public community parkland and improvements. As described below, the Project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the “Quimby Act”) allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. Based on the number of dwelling units proposed, the Project would be required to dedicate approximately 15 acres of parkland only. The Project would both dedicate land and provide improvements to the following parks and recreational trails. The public parks, recreational and open space provided by the Project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 21.8 gross acres (18 net acres);
- The improvement of Bluff Park and the Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres;
- The improvement of a trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately seven miles of trails throughout the Project site; and
- The improvement of coastal public access via a Pedestrian and Bicycle Bridge from the Project site across West Coast Highway to the beach.

4. Comprehensive oilfield abandonment which expedites habitat restoration and protection

The Newport Banning Ranch property is an active, operating oilfield. In addition, as an active, operating oilfield, and as detailed in the City’s General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oilfield to implement the habitat and parkland goals of the City’s General Plan. The Project provides for the consolidation of the existing oil operations into two areas thereby permitting oilfield abandonment and clean up to commence on the remainder of the Project site in advance of when they would have occurred. The costs of the comprehensive oilfield abandonment and remediation are estimated at approximately \$30 million – none of which would have to be funded by the City or the public. In addition, the oil operation consolidation would allow for habitat restoration activities to occur in advance of when it would have absent the Project’s ability to require consolidation.

5. Provision of areawide water quality benefits

The Project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of the Cities of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses. These areas currently drain through the Project site and flow untreated into the Project’s lowland areas and to the Semeniuk Slough. The water quality basin would also capture and treat on-site urban runoff from within the Project. The 103-acre Semeniuk Slough is identified in the City’s Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Semeniuk Slough include water quality degradation and sediment build-up. (Coastal Land Use Plan at pages 4-15 and 4-16) By capturing and treating this urban

runoff, the Project would provide significant water quality benefits to the Semeniuk Slough.

6. Payment to City of a public benefit fee

In addition to any other fee or charge to which the Project would be required to pay, the Project would to the City a public benefit fee of approximately \$30,909 for each market rate residential unit constructed on the property

7. Net fiscal benefits to the City

The Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach prepared by Applied Development Economics concluded that the Project would have a net fiscal benefit of nearly \$2 million per year if all of the proposed land uses are fully developed. Furthermore, even if the resort Inn and retail and service commercial uses are not developed, the Project would have a net fiscal benefit of nearly \$1.4 million per year.

8. Provide a variety of housing opportunities within the City consistent with the City's General Plan

The City's Housing Element establishes as a goal: A balanced residential community, comprised of a variety of housing types, designs, and opportunities for all social and economic segments. (Housing Element Goal H2) The Project would provide a wide range of housing types from single-family detached to higher density attached and multi-family units that would provide a variety of housing opportunities within one site – a feature not available in many other areas of the City or new developments elsewhere in the City due to the limited number of sites and the sizes of parcels available for new residential development. In addition, the Project would provide a minimum of 50 percent of its affordable housing requirements on site which would provide greater opportunities for all segments of the City's population to enjoy living on the Project site.

9. Fire station improvements

The Project would contribute up to \$700,000 towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of a station is not completed by the City prior to development of certain areas of the Project site, the Project would make available an on-site location for a temporary fire station.

10. Sustainable Design

In addition to its emphasis on a mix of uses and housing opportunities, the Newport Banning Ranch Project is designed to be a sustainable and green community that provides energy efficiency and resource conservation to reduce the Project's greenhouse gas emissions, consistent with AB 32. The following Project components implement sustainability:

- The Project would provide a network of public pedestrian and bicycle trails to reduce auto dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails. The Project would coordinate with the Orange County Transportation Authority to allow for transit routing through the Project site.

- The Project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.
- The Project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.
- The Project would implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.
- The Project would exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5 percent.
- The Project would require that all residential development incorporate low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multimetering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.
- The Project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.
- The Project would implement remediation and cleanup of the oilfield, which includes the ability to recycle and properly dispose on-site oilfield materials. Additionally, the treatment and cleaning of impacted soils would be done on site which significantly reduces the potential export of oil field materials and impacted soils.
- The Project would also increase construction waste diversion by 50 percent from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

11. Circulation Improvements

The Project, through an agreement with the City of Costa Mesa, will fund intersection improvements for intersections in that City. Although outside of the City of Newport Beach, these traffic improvements will provide benefits to City of Newport Beach residents who use these streets. The Applicant will incrementally fund the City of Costa Mesa for intersections improvements. At Project build out, the Project will have provided approximately \$4.3 million in contributions to intersection improvements which is more than double the Project's fair share requirements based upon the traffic analysis in the Final EIR.

Attachment No. PC

1-1

Revised Mitigation, Monitoring, and
Reporting Program



MITIGATION MONITORING AND REPORTING PROGRAM

NEWPORT BANNING RANCH PROJECT CITY OF NEWPORT BEACH

STATE CLEARINGHOUSE NO. 2009031061

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June 2012

**NEWPORT BANNING RANCH
MITIGATION MONITORING AND REPORTING PROGRAM**

Date:

CEQA Action: Certification of Final Environmental Impact Report

Project Applicant: Banning Ranch LLC

Project Location and Description:

The Newport Banning Ranch Project site (Project site) encompasses approximately 401.1 acres. Approximately 40 acres are located within the incorporated boundary of the City of Newport Beach (City); the remainder of the Project site is located within unincorporated Orange County, in the City's adopted Sphere of Influence, as approved by the Local Agency Formation Commission of Orange County (LAFCO). The entire site is within the boundary of the Coastal Zone, as established by the California Coastal Act (Coastal Act).

The Project site is generally bound on the north by Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development south of the highway in the City of Newport Beach; on the east by a mix of land uses including residential, light industrial, institutional, and office development in the Cities of Costa Mesa and Newport Beach; and on the west by the U.S. Army Corps of Engineers (USACE)-restored salt marsh basin (a wetlands restoration area) and the Santa Ana River. The City of Huntington Beach is west of the Santa Ana River. At its nearest point, the Project site is less than 0.25 mile inland from the Pacific Ocean.

The 401-acre Project site is proposed for development with a maximum of 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, and a 75-room resort inn. Approximately 51.4 gross acres are proposed for active and passive park uses including a 26.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) of the 401-acre site are proposed for natural resources protection in the form of open space. Of the 252.3 gross acres, approximately 16.5 gross acres would be used for the continued production of oil. Upon the future cessation of oil operations, these oil production sites would be abandoned and remediated, and restored as open space. The Project includes the development of a vehicular and a non-vehicular circulation system for automobiles, bicycles, and pedestrians, including a proposed pedestrian and bicycle bridge from the Project site across West Coast Highway to West Newport Park.

Mitigation Monitoring and Reporting Program

The California Environmental Quality Act (CEQA) requires that all public agencies establish monitoring and/or reporting procedures for mitigation measures (MMs) adopted as conditions of approval in order to mitigate or avoid significant project impacts. Specifically, Section 21081.6(a)(1) states:

The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation.

The State CEQA Guidelines Section 15097 provides clarification of mitigation monitoring and reporting requirements and guidance to local lead agencies on implementing strategies. The reporting or monitoring program must be designed to ensure compliance during project implementation. The City of Newport Beach is the lead agency for the Newport Banning Ranch Project and is therefore responsible for implementing the Mitigation Monitoring and Reporting Program (MMRP).

The Mitigation Program is comprised of the Project Design Features (PDFs), Standard Conditions and Requirements (SCs), and Mitigation Measures (MMs), which serve to avoid, reduce, and/or fully mitigate potential environmental impacts. The Mitigation Program has been identified and recommended through preparation of the Draft EIR with additional mitigation measures and modified measures resulting from one of the following: (1) the City, a Responsible or Trustee Agency, or the Applicant, proposed an alternative or an additional method to mitigate an impact; or (2) additional or modified measures were added in response to public comments. These additional measures have been analyzed and would not create any additional significant impacts, but will lessen impacts anticipated to occur with implementation of the Project. The Mitigation Program has been drafted to meet the requirements of *Public Resources Code* Section 21081.6 as fully enforceable monitoring programs.

The MMRP is comprised of the Mitigation Program and includes measures to implement and monitor the Mitigation Program. The MMRP defines the following for each PDF, SC, and MM:

1. **Timeframe.** In each case, a timeframe for performance of the PDF, SC, and mitigation measure (mitigation), or review of evidence that mitigation has taken place, is provided. The performance points selected are designed to ensure that impact-related components of Project implementation do not proceed without establishing that the mitigation is implemented or assured. All activities are subject to the approval of all required permits from local, State (including the California Coastal Commission), and federal agencies with permitting authority over the specific activity.
2. **Responsible Party or Designated Representative.** In each case, unless where otherwise indicated, the Applicant is the Responsible Party for implementing the mitigation. The City or a Designated Representative will also monitor the performance and implementation of the mitigation measures. To guarantee that the mitigation measure will not be inadvertently overlooked, a supervising public official acting as the Designated Representative is the official who grants the permit or authorization called for in the performance. Where more than one official is identified, permits or authorization from all officials shall be required.
3. **Definition of Mitigation.** In each case (except where a mitigation measure, such as a geotechnical report, is a well-known procedure or term of art), the mitigation measure contains the criteria for mitigation, either in the form of adherence to certain adopted regulations or identification of the steps to be taken in mitigation.

The numbering system corresponds with the numbering system used in the Final EIR. The last column of the MMRP table will be used by the parties responsible for documenting when implementation of the PDF, SC, and/or MM has been completed. The ongoing documentation and monitoring of mitigation compliance will be completed by the City of Newport Beach. The completed MMRP and supplemental documents will be kept on file at the City of Newport Beach Community Development Department.

**NEWPORT BANNING RANCH
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Land Use and Related Planning Programs				
As identified in Master Development Plan	PDF 4.1-1 Through the implementation of the Master Development Plan, the Project permits a maximum of 1,375 residential dwelling units and a variety of residential housing types to provide opportunities for a range of lifestyles. Housing types include single-family detached, single-family attached, multi-family, and/or residential uses in a mixed-use configuration.	Public Works Director and Community Development Director		
As identified in Master Development Plan and Tentative Tract Map No. 17308 Tentative Tract Map Conditions of Approval	PDF 4.1-2 The Master Development Plan designates areas for a diverse public park system to include active, passive, and interpretive recreation opportunities.	Public Works Director and Community Development Director		
Annual Development Agreement As identified in Master Development Plan and Tentative Tract Map No. 17308 Tentative Tract Map Conditions of Approval	PDF 4.1-3 The Master Development Plan designates more than 240 gross acres of the Project site as Open Space, including wetland restoration/water quality areas, interpretive trails, habitat restoration areas, and habitat preservation areas. Open Space areas also include 2 sites and a connecting road comprising approximately 17 acres designated for continuing but interim use as oil and gas production sites. At the end of the oilfield's useful life, this area will revert to Open Space land use.	Community Development Director		
Annual Development Agreement As identified in Master Development Plan and Tentative Tract Map No. 18308 Tentative Tract Map Conditions of Approval Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	PDF 4.1-4 The Master Development Plan provides for a minimum of 20 gross (17 net) acres for a public Bluff Park as a visual and passive recreational amenity, trail corridor, and a transition between open space and development.	Recreation and Senior Services Director; Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
As identified in Master Development Plan Tentative Tract Map Conditions of Approval Application for Site Development Review for development of land uses within Mixed-Use and Residential District and the Parks and Recreation District	PDF 4.1-5 The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan identify proposed uses adjacent to existing Newport Beach and Costa Mesa residential neighborhoods which are limited to either parks or open space. Proposed uses adjacent to existing commercial and light industrial areas within the City of Costa Mesa "Mesa West Bluffs Urban Plan" overlay area will be a higher density residential and/or mixed-use development of similar height and scale to those prescribed in the "Mesa West Bluffs Urban Plan". Open space and/or park uses will be sited adjacent to the Newport Crest community to provide a visual buffer between that community and Project development areas.	Community Development Director		
As identified on Tentative Tract Map No. 17308 and any subsequent tentative subdivision maps for development purposes As identified as a condition of Final Map Approval Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	SC 4.1-1 Approval of the Newport Banning Ranch Project would require Project implementation and all future approvals to be subject to all applicable provisions of the <i>Newport Beach General Plan</i> ; <i>Newport Banning Ranch Planned Community Development Plan</i> ; all requirements and enactments of federal, State, and local agency authorities; as well as the requirements of any other governmental entities. All such requirements and enactments will, by reference, become conditions of Project approval.	Community Development Director		
Aesthetics and Visual Resources				
Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Recreation District Review of grading permit application	PDF 4.2-1 As identified in the Master Development Plan, contour grading will be used to minimize impacts to existing public view points from West Coast Highway.	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Application for Site Development Review for development of land uses within the Residential Districts Visitor-Serving Resort and Residential District; and the Parks and Recreation District	PDF 4.2-2 Habitable structures will be set back at least 60 feet from the tops of bluff edges, as required in the Newport Banning Ranch Planned Community Development Plan.	Community Development Director		
Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	PDF 4.2-3 Implemented through the Master Development Plan, landscaping will be provided around the perimeter of buildings that are proposed adjacent to Open Space Preserve areas to provide a transition.	Community Development Director		
Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	PDF 4.2-4 Architectural guidelines included in the Master Development Plan provide for a range of housing types and architectural styles to avoid visual monotony and minimize impacts to existing public views of bluffs. Building architecture will be regulated through provisions contained in the Master Development Plan to ensure high quality designs that are sensitive to the natural resources and compatible with the character of Newport Beach communities within the Coastal Zone. Architectural guidelines require use of a palette of earth tone colors compatible with the open space setting.	Community Development Director		
Conditions of approval of Tentative Tract Map No. 17308 and any subsequent tentative subdivision maps for development purposes Conditions of approval of Site Development Permits As part of approved Improvement Plans As part of building permits As part of Project CC&Rs	PDF 4.6-4 The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will restrict exterior house lighting to minimize light spillage into adjacent habitat areas.	Public Works Director; Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Conditions of approval of Tentative Tract Map No. 17308 and any subsequent tentative subdivision maps for development purposes</p> <p>Lighting Plan as part of application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>Prior to the issuance of building permits</p> <p>Final inspection prior to issuance of certificates of occupancy</p>	<p>MM 4.2-1 All public roadways and private development within the Village and Colonies, South and North Bluff Park, Interpretive Parks, and Oil Consolidation sites shall have their “dark sky” lighting system and its components incorporated into the Project and approved by the City of Newport Beach Community Development Director or his/her designated representative prior to the issuance of a building permit for the applicable Village, Colony, Bluff Park, and Nature Center on the Project site. Each lighting plan shall incorporate electrical plans and structural plans that detail the provision of lighting systems for exteriors of all buildings, parking lots, loading areas, walkways, public use areas, any public art displays, fountains, or landscape areas. Lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. No skyward-casting lighting shall be used. Final lighting orientation and design shall be in accordance with the “dark sky” lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible as determined by the Community Development Director or his/her designated representative. Prior to final inspection or issuance of a certificate of occupancy, where applicable, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Project. The inspection shall verify the proper construction and installation of materials within the approved plan; determine the actual light patterns and values through light meter testing and observation; and determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Project.</p>	<p>Public Works Director; Community Development Director</p>		
<p>Lighting Plan as a part of Community Park improvement plans</p> <p>Testing: Prior to final inspection</p>	<p>MM 4.2-2 The lighting plan for the Community Park shall incorporate electrical plans and structural plans that detail the provision of lighting systems for sports field and hard courts; exteriors of buildings; parking lots, walkways, and/or landscape areas. All lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the</p>	<p>Recreation and Senior Services Director; Public Works Director; Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>amount of stray lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. Light standards used for lighting playing fields shall be either Musco Lighting™, "Light Structure Green" standards, or another comparable light standard of similar design that reduces light spillage. Final lighting orientation and design shall be in accordance with the "dark sky" lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible, as determined by the Community Development Director. Prior to final inspection, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Community Park. The inspection shall verify the proper construction and installation of materials within the approved plan; shall determine the actual light patterns and values through light meter testing and observation; and shall determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Community Park.</p>			
Geology and Soils				
<p>Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; and the Parks and Recreation District</p> <p>As identified in Master Development Plan and Tentative Tract Map No. 17308</p> <p>As part of applications for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; and the Parks and Recreation District</p> <p>As identified on applications for subsequent tentative subdivision maps for development purposes</p>	<p>PDF 4.3-1 Habitable structures will be set back a minimum of 60 feet from the tops of bluff edges, as required in the Master Development Plan and the Newport Banning Ranch Planned Community Development Plan, and will not be constructed within identified fault setback zones.</p> <p>PDF 4.3-2 The Master Development Plan identifies drainage devices to be constructed along slopes adjacent to the development edge to eliminate existing surface flow over bluffs to the extent feasible. Landscape and irrigation plans will be designed to minimize irrigation near natural areas/slopes through the use of drought-tolerant vegetation and low-flow irrigation.</p>	<p>Community Development Director</p> <p>Community Development Director; Public Works Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Conditions of approval of Tentative Tract Map 17308 and any subsequent tentative subdivision maps for development purposes</p> <p>As part of grading permits for restoration or remediation grading in the Open Space District and as part of grading permits for development in the Parks and Recreation District</p>	<p>PDF 4.3-3 The Master Development Plan includes a Bluff/Slope Restoration Plan that requires eroded portions of bluff slopes to be repaired and stabilized. In order to stabilize slopes and help avoid erosion, bluff areas devoid of vegetation after repair and stabilization efforts will be planted with native vegetation that does not require permanent irrigation.</p>	<p>Public Works Director; Community Development Director</p>		
<p>Prior to the issuance of grading permits</p> <p>Identified in approved grading and construction plans</p>	<p>SC 4.3-1 Prior to the issuance of any grading permits, the City of Newport Beach Community Development Department, Building Division Manager or his/her designee shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within all Land Use Districts and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted in all Land Use Districts and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. If the Applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Building Manager, s/he shall review the plan for a finding of substantial conformance. If the Building Manager finds the plan not to be in substantial conformance, the Applicant shall process a revised tentative map or, if a final map has been recorded, the Applicant shall process a new tentative map. A determination of CEQA compliance shall also be required.</p>	<p>Community Development Department Building Division Manager</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Prior to the recordation of a subdivision map or prior to the issuance of grading permits	<p>SC 4.3-2 Prior to the recordation of a subdivision map or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the City of Newport Beach Community Development Department, Building Division Manager, the Applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated.</p>	Community Development Department Building Division Manager, or designated representative		
<p>Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District As part of applications for grading and building permits</p>	<p>MM 4.3-1 The Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval, a site-specific, design-level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements and:</p> <ul style="list-style-type: none"> a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies; b) Determine structural design requirements as prescribed by the most current version of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults; and c) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and other surrounding related improvements. <p>Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site-specific investigations. The structural engineer shall review the site-specific investigations, provide any additional necessary measures to meet Building Code requirements, and incorporate all applicable recommendations from the investigation in the structural design plans and shall ensure that all structural plans for the Project meet current Building Code requirements.</p> <p>The City's registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical requirements</p>	Community Development Department Building Division Manager Registered Geotechnical Engineer designated by the Community Development Department Building Manager		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits.</p> <p>The City shall review all Project plans for grading, foundations, structural, infrastructure, and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.</p>			
Prior to the approval of a final tract map for development purposes	<p>MM 4.3-2 Prior to the approval of any applicable final tract map, the Applicant shall have completed, by a qualified geologist, additional geotechnical trenching and field investigations and shall provide a supplemental geotechnical report to confirm the adequacy of Project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. The trenching and report shall be subject to the review and approval of the City of Newport Beach Public Works Director.</p>	<p>Community Development Director; Public Works Director</p> <p>Qualified Geologist designated by the Public Works Director</p>		
Prior to approval of a Site Development Review and issuance of building permits	<p>MM 4.3-3 Prior to the approval of any applicable final tract map, development setbacks from the Upland fault segments, revised as necessary based upon the findings of additional trenching investigations, shall be incorporated into the Project consistent with requirements set forth in the California Building Code and the <i>City of Newport Beach General Plan</i>. Bluff setbacks consistent with the regulatory requirements for habitable structures shall be incorporated into the Project consistent with the beach bluff setback standards in the <i>City of Newport Beach General Plan</i>. Where applicable, setback distances consistent with recommendations in the Project's Geotechnical Report (GMU 2010) shall be incorporated. Prior to the preparation of final Project plans and specifications, additional trenching shall be conducted within the 1,300-foot gap between the 2 parts of the existing Fault Setback Zone. This additional trenching shall provide more information about the potential for active faulting in this portion of the Project site. If necessary, the development fault setback zones shall be modified after this information is obtained and analyzed in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. This information shall be subject to the review and approval of the City of Newport Beach Public Works Director and Community Development Director.</p>	<p>Public Works Director; Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Hydrology and Water Quality				
Timing of construction as part of conditions of approval for Tentative Tract Map No. 17308 As part of Community Park Improvement Plans As part of grading permits for open space	PDF 4.4-1 The Master Development Plan requires that two water quality basins (one in the Community Park and one in the Open Space Preserve) be constructed to treat off-site urban runoff from Costa Mesa and Newport Beach and Project runoff that drains into the Lowland area.	Municipal Operations Director; Public Works Director; Community Development Director		
Timing of construction as part of conditions of Approval for Tentative Tract Map No. 17308 As part of grading permit for open space	PDF 4.4-2 The Master Development Plan includes a water quality basin and a diffuser basin located within the Open Space Preserve to provide for storm water control, energy dissipation, and natural water quality treatment.	Municipal Operations Director; Public Works Director; Community Development Director		
Conditions of approval of Tentative Tract Map No. 17308 As part of subdivision improvement plans	PDF 4.4-3 The Master Development Plan requires that public arterials and some selected collector roadways within the Project site be designed with "Green Street" and other Low Impact Development (LID) features, such as bioswales and bio-cells. Green Streets are designed to incorporate sustainable design elements such as narrower pavement widths, canopy street trees, traffic-calming features, and minimal use of street lighting. Landscaping along the street edges will be selectively used to treat storm water runoff from the streets and adjacent development areas.	Public Works Director, Community Development Director		
Conditions of approval of Tentative Tract Map No. 17308 consistent with the approved Habitat Restoration Plan	PDF 4.4-4 The Master Development Plan requires that arroyos be planted with native riparian vegetation as part of the restoration effort to minimize potential erosion and to enhance the water-cleansing function.	Public Works Director; Community Development Director Qualified Biologist designated by the Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Conditions of approval of Tentative Tract Map No. 17308 consistent with the Habitat Restoration Plan Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Recreation District and the Parks and Recreation District</p> <p>As part of subdivision improvement plans</p>	<p>PDF 4.4-5 The Master Development Plan requires development of a drainage plan to ensure that runoff systems from the Project site to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system.</p>	<p>Public Works Director; Community Development Director</p>		
<p>Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes</p> <p>Submission of approved Project-level Water Quality Management Plan and Storm Water Pollution Prevention Plan with application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>As part of Community Park improvement plan</p> <p>As part of subdivision improvement plans</p>	<p>PDF 4.4-6 The Master Development Plan requires the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. These BMPs will be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan (WQMP), and Storm Water Pollution Prevention Plan (SWPPP).</p>	<p>Municipal Operations Director; Public Works Director; Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Condition of approval of Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District As part of building permits City maintenance responsibility for Community Park Ongoing	SC 4.4-1 All landscape materials and irrigation systems shall be maintained in accordance with the approved Landscape Plan. All landscaped areas shall be kept in a healthy and growing condition and shall receive regular maintenance. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.	Public Works Director; Community Development Director		
Prior to the issuance of grading permits	SC 4.4-2 The development shall be kept free of litter and graffiti. The owner or operator shall provide for removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks.	Community Development Director		
Prior to the issuance of grading permits	SC 4.4-3 Prior to the issuance of grading permits, an SWPPP and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Resources Control Board (SWRCB), and made part of the construction program. This SWPPP shall detail measures and practices that would be in effect during construction to minimize the Project's impact on water quality and storm water runoff volumes.	Public Works Director; Community Development Director State Water Resources Control Board (SWRCB)		
Prior to the issuance of grading permits	SC 4.4-4 Prior to issuance of grading permits, the Project Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the project, subject to the approval of the Community Development Department, Building Division and Code and Water Quality Enforcement Division. The WQMP shall include appropriate BMPs to ensure project runoff is adequately treated.	Community Development Director; Water Quality Enforcement Division		
As a part of grading and building permits	SC 4.4-5 Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural	Public Works Director; Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
	BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.				
Hazards and Hazardous Materials					
Prior to the issuance of grading permits As a part of grading and construction permits	PDF 4.4-6 The Master Development Plan requires the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. These BMPs will be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan (WQMP), and Storm Water Pollution Prevention Plan (SWPPP).		Public Works Director; Community Development Director State Water Resources Control Board (SWRCB)		
Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes Prior to issuance of precise grading permits for development and building permits for Residential Districts, Visitor Serving Resort/Residential District, Public Parks/Recreation District, Mixed Use/Residential District Annual Development Agreement review	PDF 4.5-1 The Master Development Plan requires existing oil operations to be consolidated into two areas within the Open Space Preserve designated as "Interim Oil Facilities", in accordance with the land use districts established for the Project site in the Newport Banning Ranch Planned Community Development Plan, totaling approximately 17 acres including the service access road. This use will ultimately revert to an Open Space land use at the end of the oilfield's useful life.		Community Development Director		
Prior to issuance of demolition permit Verification: prior to the issuance of the first grading permit	SC 4.5-1 Prior to demolition, testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos-removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development. All demolition activities that may expose construction workers		Community Development Director South Coast Air Quality Management District (SCAQMD), as applicable		

**NEWPORT BANNING RANCH PROJECT (Continued)
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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited to Title 40 of the <i>Code of Federal Regulations</i> (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the <i>California Code of Regulations</i> §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community Development prior to issuance of the first grading permit.			
Prior to issuance of grading permit	SC 4.5-2 Prior to issuance of grading permits, the Applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials.	Public Works Director; Community Development Director Licensed Hazardous Waste Hauler approved by the Community Development Director		
Submittal of approved final Remedial Action Plan prior to issuance of demolition or grading permit whichever is first Provide documentation of final abandonment approval from the DOGGR prior to issuance of the first certificate of occupancy Ongoing monitoring by DOGGR, OCFA, OCHCA, and RWQCB	MM 4.5-1 A comprehensive final Remedial Action Plan (final RAP) shall be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) 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 related to oil remediation activities. The Applicant shall follow the protocol for the OCHCA Industrial Cleanup Program to develop the site-specific final RAP. The final RAP shall use the draft Remedial Action Plan (dRAP) and the existing clean-up levels that have been in effect since 2001 as the basis of the final RAP consistent with OCHCA requirements. The final RAP shall (1) incorporate the remediation methods to be employed that are described in the dRAP; (2) propose the clean-up	Community Development Director Orange County Health Care Agency (OCHCA) California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) Regional Water Quality Control Board (RWQCB)		

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>criteria for specific areas of the Project site depending upon the land uses for those areas; and (3) provide additional details such as the location of on-site areas for bioremediation. The final RAP shall also require compliance with Orange County Fire Authority Guideline C-03 Combustible Soil Gas Hazard Mitigation.</p> <p>The clean up criteria shall be approved by the OCHCA as a part of final RAP subject to the review and approval of the RWQCB. The final RAP shall describe the means by which those clean-up standards shall be met per the remediation methods described in the dRAP. Methods described in the dRAP include the use of natural bio-remediation of soils on site; reuse and recycling of treated soils where and when feasible; and removal and recycling of materials such as concrete, gravel, and asphalt-like road materials.</p> <p>Oil and gas wells to be abandoned or re-abandoned shall be done so in accordance with the current requirements of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). Documentation of final abandonment approval from the DOGGR shall be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division, before issuance of the first certificate of occupancy.</p>			
<p>Biological Resources</p> <p>As identified on the Master Development Plan and Tentative Tract No. 17308</p> <p>Conditions of approval of Tentative Tract Map No. 17308</p> <p>Annual Development Agreement review</p>	<p>PDF 4.6-1 The Master Development Plan designates a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas.</p>	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
As identified in Master Development Plan Conditions of approval of Tentative Tract Map No. 17308	PDF 4.6-2 The Master Development Plan includes a Habitat Restoration Plan (HRP) for the Habitat Areas. The HRP includes provisions for the preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project.	HRP Approval and Monitoring: Community Development Director U.S. Army Corps of Engineers (USACE) U.S. Fish and Wildlife Service (USFWS) California Department of Fish and Game (CDFG) California Coastal Commission (CCC) Regional Water Quality Control Board (RWQCB) Qualified Biologists		
Conditions of approval of Tentative Tract Map No. 17308	PDF 4.6-3 As identified in the Master Development Plan, the Habitat Areas to be restored as project design features will be subject to the same five-year Maintenance and Monitoring Program implemented for areas restored as mitigation. Standard Vegetation Monitoring Procedures are outlined in the Biological Technical Report prepared for the EIR and will be implemented consistent with applicable regulatory requirements.	HRP and Permit Condition Monitoring: Community Development Director U.S. Army Corps of Engineers (USACE) U.S. Fish and Wildlife Service (USFWS) California Department of Fish and Game (CDFG) California Coastal Commission (CCC) Regional Water Quality Control Board (RWQCB) Qualified Biologist designated by the Community Development Director		

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Conditions of approval of Tentative Tract Map No. 17308 and any subsequent tentative subdivision maps for development purposes</p> <p>Lighting Plan as part of an application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>Lighting Plan as part of Community Park improvement plans</p> <p>As part of building permits</p> <p>Final inspection prior to issuance of certificates of occupancy</p>	<p>PDF 4.6-4 The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will restrict exterior house lighting to minimize light spillage into adjacent habitat areas.</p>	<p>Public Works Director; Community Development Director; Community Development Department Building Division Manager, or designated representatives</p>		
	<p>MM 4.6-1 Coastal Sage Scrub Habitat Preservation and Restoration. Permanent impacts on coastal sage scrub vegetation (including disturbed southern coastal bluff scrub) (12.32 acres) shall be mitigated at a 3:1 ratio (36.96 acres) on the Project site or off site (nearby) through the restoration of southern coastal bluff scrub and California sagebrush scrub. Permanent impacts on disturbed coastal sage scrub vegetation (excluding disturbed southern coastal bluff scrub) (8.21 acres) shall be mitigated at a 1:1 ratio (8.21 acres) elsewhere on the Project site or off site. In addition, temporary impacts (2.58 acres) to coastal sage scrub and disturbed coastal sage scrub vegetation types shall be mitigated by revegetation with locally occurring native coastal sage scrub species following remediation at a 1:1 ratio. The required restoration is summarized in Table A. In addition to restoration, the Project shall preserve 35.16 acres of coastal sage scrub on site. Coastal sage scrub restoration and preservation on site would total 82.91 acres.</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion																												
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<p>Mitigation and restoration plan approval by regulatory agencies: Prior to issuance of first grading permit or demolition permit whichever is first</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>TABLE A REQUIRED COASTAL SAGE SCRUB RESTORATION</p> <table border="1"> <thead> <tr> <th>Permanent Impact</th> <th>Impact (Acres)</th> <th>Ratio Required</th> <th>Restoration Required (Acres)</th> </tr> </thead> <tbody> <tr> <td>Coastal Sage Scrub (including disturbed southern coastal bluff scrub)</td> <td>12.32</td> <td>3:1</td> <td>36.96</td> </tr> <tr> <td>Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)</td> <td>8.21</td> <td>1:1</td> <td>8.21</td> </tr> <tr> <td>Temporary Impact</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Coastal Sage Scrub (including disturbed southern coastal bluff scrub)</td> <td>1.92</td> <td>1:1</td> <td>1.92</td> </tr> <tr> <td>Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)</td> <td>0.66</td> <td>1:1</td> <td>0.66</td> </tr> <tr> <td>Total</td> <td>23.11</td> <td></td> <td>47.75</td> </tr> </tbody> </table> <p>The Applicant shall be required to plan, implement, monitor, and maintain a coastal sage scrub revegetation program for the Project consistent with the most current technical standards/knowledge regarding coastal sage scrub restoration. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), a detailed restoration program shall be prepared by a qualified Biologist and approved by the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission). The program shall include, at a minimum, the items listed below.</p> <ol style="list-style-type: none"> Responsibilities and qualifications of the personnel to implement and supervise the plan. The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified. Site selection. The mitigation site shall be determined in coordination with the City and the resource agencies. The 	Permanent Impact	Impact (Acres)	Ratio Required	Restoration Required (Acres)	Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	12.32	3:1	36.96	Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	8.21	1:1	8.21	Temporary Impact				Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	1.92	1:1	1.92	Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	0.66	1:1	0.66	Total	23.11		47.75	<p>Community Development Director; Community Development Director</p> <p>Qualified Biologist designated by the Community Development Director</p> <p>Habitat Restoration Specialist</p> <p>U.S. Fish and Wildlife Service (USFWS)</p> <p>California Coastal Commission (CCC)</p>		
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**NEWPORT BANNING RANCH PROJECT (Continued)
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	<p>site shall either be located on the Project site in a dedicated open space area or land shall be purchased/obtained immediately off site. Selected sites shall not result in the removal of a biologically valuable resource (i.e., native grassland).</p> <p>3. Site preparation and planting implementation. Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species planting. Locally occurring native plants and seeds shall be used and shall include species present on site, in adjacent areas, and uncommon species known to occur on site such as California box-thorn and woolly seabiite.</p> <p>4. Schedule. A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).</p> <p>5. Maintenance plan/guidelines. The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the gnatcatcher breeding season (February 15 to July 15).</p> <p>6. Monitoring plan. The coastal sage scrub monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects, wildlife monitoring); (c) performance criteria as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The site shall be monitored and maintained for five years to ensure successful sage scrub habitat establishment within the restored and created areas.</p>			

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>7. Long-term preservation. Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.</p> <p>The Applicant shall begin coastal sage scrub restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit that allows for ground disturbance (e.g., grading permit). The Applicant shall be fully responsible for implementing the coastal sage scrub revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off).</p> <p>The Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) program does not authorize Incidental Take resulting from the conversion of habitat occupied by coastal California gnatcatchers in Existing Use Areas. Therefore, the Applicant has elected to seek a Take Authorization through Section 7 of the FESA. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide, a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) to the City that authorizes the removal of coastal sage scrub (i.e., coastal California gnatcatcher habitat). It is anticipated that the USFWS Biological Opinion will contain conservation recommendations to avoid or reduce the Project impact. Although any additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below also shall be followed.</p> <ol style="list-style-type: none"> 1. Prior to the commencement of clearing operations or other activities involving significant soil disturbance, all areas of coastal sage scrub habitat to be avoided shall be identified with temporary fencing or other markers that are clearly visible to construction personnel. 2. A USFWS-approved Biological Monitor shall be on site during any clearing of coastal sage scrub. The Applicant shall advise the USFWS at least 7 calendar days—but preferably 14 calendar days—prior to the clearing of coastal sage scrub. The Biological Monitor shall flush avian or other mobile species from habitat areas immediately prior to 			

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>brush-clearing and earth-moving activities. It shall be the responsibility of the Monitoring Biologist to ensure that identified bird species are not directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities to continue on a timely basis.</p> <p>3. Following the completion of initial clearing activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other clearly visible, appropriate markers. No construction access, parking, or equipment storage shall be permitted within such marked areas.</p> <p>4. The combined restoration and preservation of 82.91 acres of coastal sage scrub would result in a net increase in habitat by 24.64 acres</p>			
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to issuance of first grading permit or demolition permit by City whichever is first</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>MM 4.6-2 Grassland Habitat Preservation and Restoration. Permanent impacts on non-native grassland and ruderal vegetation (100.13 acres) shall be mitigated at a 0.7:1 ratio through on-site or off-site restoration and preservation. These permanent impacts to non-native grassland and ruderal vegetation shall be mitigated by the restoration of 48.63 acres (0.5:1) of grassland and alkali meadow within both the upland and lowland portions of the Project site as summarized in Table B and may include native grassland areas within Fuel Modification Zone C. Temporary impacts (2.87 acres) shall be mitigated by native grassland or alkali meadow revegetation following remediation at a 0.5:1 ratio (1.44 acres). An additional 20.27 acres of grassland habitat shall be preserved on site. The grassland restoration and preservation would total 70.34 acres.</p>	<p>Community Development Director; Community Development Director Qualified Biologist designated by the Community Development Director</p>		

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	<p>The Applicant shall begin grassland restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be required to plan, implement, monitor, and maintain a native grassland preservation/restoration program for the Project. A grassland preservation/restoration program shall be (1) developed by a qualified Biologist; (2) submitted for review and approval to the City of Newport Beach (City) prior to the first permit that would allow for site disturbance (e.g., grading permit); and (3) shall be implemented by a qualified Biologist. The grassland mitigation plan shall also provide mitigation for the loss of raptor foraging and burrowing owl habitat; therefore, site selection measures shall include considerations that influence the site's suitability for burrowing owl and other raptor species. Restoration shall consist of seeding with appropriate needlegrass species and, if appropriate, incorporating seeds collected from special status plant species (southern tarplant) that may be impacted by the Project. A detailed restoration program shall contain the following items:</p> <ol style="list-style-type: none"> 1. Responsibilities and qualifications of the personnel to implement and supervise the plan. The responsibilities of the Applicant, specialists, and maintenance personnel that would supervise and implement the plan shall be specified. 																						

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>2. Site selection. The mitigation site shall be determined in coordination with the City and a qualified Biologist knowledgeable about native grassland restoration, raptors, and the burrowing owl. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be purchased/obtained. The mitigation shall occur entirely in one to two locations to provide the maximum habitat value for the raptors, burrowing owls, and other wildlife species that require contiguous blocks of open habitat types. The site(s) shall consist of level or gently sloping terrain, soil types, and microhabitat conditions suitable for occupation by raptors and burrowing owl, as determined by a qualified Biologist.</p>			
	<p>3. Site preparation and planting implementation. Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. If mammal burrows are limited on the mitigation site(s), the qualified Biologist shall recommend creation of artificial burrows suitable for occupation by the burrowing owl. The burrows shall be constructed using standard specifications established for the owl. Depending on the topography of the site(s) and the availability of natural perches, the qualified Biologist shall make recommendations regarding whether additional perching sites (e.g., large rocks) shall be placed on the mitigation site(s).</p> <p>4. Schedule. A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).</p> <p>5. Maintenance plan/guidelines. The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the burrowing owl/raptor breeding season (February 1 to August 31).</p>			

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
	<p>6. Monitoring plan. The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The grassland mitigation site shall be monitored and maintained for five years to ensure successful establishment of native grassland habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for burrowing owl, particularly that they occur in grasslands with openings or lower vegetation coverage; thus, the performance criteria shall include a requirement for openings or a lower percent cover for portions of the mitigation site.</p> <p>7. Long-term preservation. Long-term preservation of the site shall also be outlined in the conceptual grassland mitigation plan to ensure the mitigation site is not impacted by future development.</p> <p>The Project would result in the restoration of 50.07 acres of native grassland and alkali meadow and preservation of 20.27 acres of non-native grassland areas, for a total of 70.34 acres. Because the value of habitat to be replaced (native grassland and alkali meadow) is higher than those habitat values impacted by the Project, a less than 1:1 mitigation ratio is deemed adequate to compensate for the loss of non-native grassland areas.</p>				
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to issuance of first grading permit or demolition permit by City whichever is first Identify in approved grading and construction plans Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities Implement during grading and</p>	<p>MM 4.6-3 Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration. Grassland Depression Feature Habitat Preservation and Restoration. The proposed Project is designed to protect the two areas previously described as vernal pools that are occupied by San Diego fairy shrimp. The proposed Project would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Because oilfield pipelines are located on top of the soil surface in the pooled areas, their removal would be conducted with the minimum possible soil disturbance and would</p>	Community Development Director Qualified Biologist designated by the Community Development Director Habitat Restoration Specialist U.S. Fish and Wildlife Service (USFWS) California Coastal Commission (CCC)			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
<p>construction Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>occur outside the rainy season to reduce direct impacts to this species. However, pipe removal activities would disrupt the soils within the vernal pools in which the San Diego fairy shrimp has been observed and which potentially contain fairy shrimp cysts. Therefore, these pipe removal activities would be considered a potentially significant temporary impact. This impact would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed.</p> <p>During Project grading, a small area of the surrounding upland portion of the watershed would be impacted, but the Project proposes to replace this portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area. Remediation, restoration and permanent protection of the two pools and protection of its watershed would ensure that Project impacts to these two pools are less than significant. In addition, the Project has identified an additional 1.73 acres of upland area, adjacent to the 1.85-acre area, which would be available for future vernal pool creation, restoration, and/or enhancement. If this additional area is restored, a total vernal pool conservation area of 3.58 acres would be provided by the Project (Table C).</p>				

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures							Responsible for Approval/Monitoring/ Implementation		Completion	
	Feature	Temporary Impact	Permanent Impact	Total Impact	VP1, VP2, and Upland Watershed Preservation	Upland Area Vernal Pool Enhancement	Total Preservation/ Enhancement Areas	Date	Initials		
TABLE C REQUIRED VERNAL POOL PRESERVATION/RESTORATION											
	VP1	0.06	0.00	0.06							
	VP2	0.00	0.00	0.00							
	Feature AD3	0.00	0.007	0.007							
	Total for VP1, VP2, and AD3	0.06	0.007	0.067	1.85						
	Features E and G (oilfield sumps)	0	0.053	0.053							
	Features I and J (grasslands)	0	0.12	0.12							
	Total for E, G, I, and J		0.173	0.173		1.73					
	Total San Diego Fairy Shrimp Habitat Impacts			0.24			3.58				
	<p>Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat created as mitigation for Features E, G, I, and J, which support the San Diego fairy shrimp.</p> <p>Restoration of the pool areas, by removing mule fat and non-native species, would restore the pools to characteristic vernal pool habitat, as vernal pools do not typically support woody vegetation such as mule fat. The restoration program would also provide increased wildlife habitat function for migratory birds that use the pools as a migration stopover, and the increased watershed area would be planted with native alkali meadow or native upland grasses favorable for raptor foraging and would be "counted" toward the approximately 50 acres of grassland habitat.</p> <p>Impacts to San Diego fairy shrimp detected in Features E and G, which are to be remediated as part of the oilfield clean up and remediation, shall be mitigated by testing the soils, and if the soils</p>										

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>are not contaminated to the degree requiring environmental remediation, they shall be removed and relocated to the vernal pool conservation area at a ratio of 1:1. Soils shall also be removed and relocated within features I and J.¹ All mitigation shall occur within the 1.73 acres that have been set aside along with the 1.85-acre conservation area to provide a 3.58-acre vernal pool conservation area.</p> <p>The Applicant shall be required to plan, implement, monitor, and maintain a vernal pool preservation/restoration program for the Project. A vernal pool program shall be developed by a qualified Biologist and shall be submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission) prior to the first action and/or permit which would allow for site disturbance (e.g., issuance of a grading permit). The Applicant shall begin the vernal pool restoration activities (e.g., soil preparation) no later than one year after issuance of the first grading permit. Restoration shall consist of seeding/planting with appropriate vernal pool species and, if appropriate, incorporate seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the following items:</p> <ol style="list-style-type: none"> 1. Responsibilities and qualifications of the personnel to implement and supervise the plan. The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified. 2. Site selection. The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall be located on the Project site in a dedicated open space area. The mitigation areas shall not result in the removal of a biologically valuable resource (e.g., native grassland). 			

¹ The final ratio would be determined in consultation with USFWS and would be based on the character of the features known to be occupied. Features such as E and G, which are oilfield sumps would require a lower mitigation ratio than less disturbed pools I and J.

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>3. Site preparation and planting implementation. Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.</p> <p>4. Schedule. Planting shall occur by a qualified Biologist who is monitoring on site rainfall to minimize impacts to existing fairy shrimp.</p> <p>5. Maintenance plan/guidelines. The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting.</p> <p>6. Monitoring plan. The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.</p> <p>7. Long-term preservation. Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.</p> <p>The Applicant shall be fully responsible for the implementation of the vernal pool revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off. The site shall be monitored and maintained for five years to ensure successful establishment of vernal pool habitat within the restored and created areas.</p> <p>The preservation of the vernal pool habitat and the expansion of the watershed habitat will result in a net increase in habitat occupied by the San Diego fairy shrimp on the site that would also exhibit higher levels of function for the fairy shrimp.</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion																
		Date	Initials	Date	Initials															
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to site disturbance</p> <p>Prior to issuance of first grading permit or demolition permit by City whichever is first</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>MM 4.6-4 Marsh Habitat Preservation and Restoration. The Project would impact 2.45 acres (0.10 permanent/2.35 temporary) of marshes. Permanent impacts to marshes shall be restored at a replacement ratio of 3:1, totaling 0.30 acre (Table D). Temporary impacts associated with oilfield remediation shall be mitigated at a 1:1 ratio² (totaling 2.35 acres). In addition, 7.25 acres shall be preserved on site, for a total of 9.90 acres of restoration and preservation.</p> <p style="text-align: center;">TABLE D REQUIRED MARSH/MEADOW/OPEN WATER HABITAT RESTORATION</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Impact (Acres)</th> <th>Ratio Required</th> <th>Restoration Required (Acres)</th> </tr> </thead> <tbody> <tr> <td>Marsh/Meadow/Open Water</td> <td>3:1</td> <td>0.30</td> </tr> <tr> <td colspan="3" style="text-align: center;">Temporary Impact</td> </tr> <tr> <td>Marsh/Meadow/Open Water</td> <td>1:1</td> <td>2.35</td> </tr> <tr> <td>Total</td> <td></td> <td>2.65</td> </tr> </tbody> </table> <p>The Applicant shall be required to plan, implement, monitor, and maintain a marsh/meadow preservation/restoration program for the Project. A marsh/meadow preservation/restoration program shall be developed by a qualified Biologist, and submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the first action and/or permit that would allow for site disturbance (e.g., grading permit). The Applicant shall begin marsh habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit allowing ground disturbance (e.g., grading permit). The marsh/meadow preservation/restoration program shall also mitigate for the potential loss of light-footed clapper rail, western snowy plover, and Belding's savannah sparrow habitat; therefore, site</p>	Impact (Acres)	Ratio Required	Restoration Required (Acres)	Marsh/Meadow/Open Water	3:1	0.30	Temporary Impact			Marsh/Meadow/Open Water	1:1	2.35	Total		2.65	<p>Public Works Director; Community Development Director, Community Development Department Building Division Manager, or designated representatives</p> <p>Qualified Biologist designated by the Community Development Director</p> <p>Habitat Restoration Specialist</p> <p>U.S. Fish and Wildlife Service (USFWS)</p> <p>California Department of Fish and Game (CDFG)</p> <p>California Coastal Commission (CCC)</p>			
Impact (Acres)	Ratio Required	Restoration Required (Acres)																		
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Total		2.65																		

² It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>selection measures shall include considerations that influence the site's suitability for these species. Restoration shall consist of seeding with appropriate marsh/meadow species and, if appropriate, incorporation of seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the items listed below.</p> <ol style="list-style-type: none"> 1. Responsibilities and qualifications of the personnel to implement and supervise the plan. The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified. 2. Site selection. The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland). 3. Site preparation and planting implementation. The site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. Locally occurring, native plants and seeds shall be used and shall include species present on site and in adjacent areas, and shall also include uncommon species known to occur on site such as southwestern spiny rush. 4. Schedule. A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30). 			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>5. Maintenance plan/guidelines. The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).</p> <p>6. Monitoring plan. The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.</p> <p>7. Long-term preservation. Long-term site preservation shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.</p> <p>The Applicant shall be fully responsible for the implementation of the marsh and mudflat restoration program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.</p> <p>The site shall be monitored and maintained for five years to ensure successful restoration of marsh and mudflat habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow. For example, the light-footed clapper rail requires areas with tidal influence and prefers using cordgrass to build their nests; the western snowy plover nests on bare ground in areas of little to no vegetation coverage; and the Belding's savannah sparrow uses the upper portions of the marsh dominated by pickleweed. Thus, performance criteria shall be tailored to fit different portions of the mitigation site intended for each species.</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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<p>Mitigation and restoration plan approval by regulatory agencies: Prior to site disturbance Prior to issuance of first grading permit or demolition permit by City whichever is first Identify in approved grading and construction plans Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities Implement during grading and construction Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.</p> <p>MM 4.6-5 Jurisdictional Resources/Riparian Habitat Preservation and Restoration. The Applicant is in the process of obtaining permits/agreements/certifications from the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission that are required for direct or indirect impacts on areas within these agencies' jurisdictions. The Applicant shall be obligated to implement/comply with the mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. Jurisdictional areas shall be restored on the Project site or immediately off site at a minimum replacement ratio of 3:1 for permanent impacts and 1:1 for temporary impacts to ensure no net loss of habitat.³ The jurisdictions of the USACE, CDFG, and California Coastal Commission are not additive areas, as many of the riparian areas on the Project site may be within the jurisdiction of several of these agencies. Therefore, the permits and associated jurisdictional replacement requirements would identify which mitigation areas apply to the corresponding jurisdictions.</p> <p>Permanent impacts on willow scrub and willow riparian forest (1.42 acres) shall be mitigated at a 3:1 ratio (4.26 acres) on the Project site through restoration of willow habitat. Permanent impacts on all other riparian vegetation types and all temporary impacts to riparian vegetation types (11.51 acres) shall be mitigated at a 1:1 ratio (11.51 acres) on the Project site. In total, as compensation for permanent and temporary impacts to 12.93 acres of riparian habitat, the Project would create 15.77 acres of riparian habitat. In addition, the Project shall preserve 23.03 acres of riparian habitats, for a total of 38.80 acres of restoration and preservation. Details of the restoration required are summarized below in Table E.</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director Habitat Restoration Specialist U.S. Fish and Wildlife Service (USFWS) U.S. Army Corps of Engineers (USACE) California Department of Fish and Game (CDFG) California Coastal Commission (CCC) Regional Water Quality Control Board (RWQCB)</p>		

³ It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

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**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>2. Site selection. The mitigation site shall be determined in coordination with the City and the resource agencies (i.e., the USFWS, the CDFG, the RWQCB, and the California Coastal Commission). The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).</p> <p>3. Site preparation and planting implementation. Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.</p> <p>4. Schedule. A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).</p> <p>5. Maintenance plan/guidelines. The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the least Bell's vireo breeding season (March 15 to September 15).</p> <p>6. Monitoring plan. The riparian vegetation/jurisdictional resources monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.</p> <p>7. Long-term preservation. Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.</p> <p>The limits of grading shall be clearly marked, and temporary fencing</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within marked areas.</p> <p>The Applicant shall begin riparian habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be fully responsible for the implementation of the riparian revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.</p> <p>The site shall be monitored and maintained for five years to ensure successful establishment of riparian habitat within the restored and created areas, and the performance criteria shall take least Bell's vireo habitat requirements into consideration. For example, the presence of a shrubby understory is important for this species; thus, performance criteria shall include a requirement for structural complexity.</p> <p>The Applicant is seeking a Take Authorization through Section 7 of the Federal Endangered Species Act for impacts to habitat for the least Bell's vireo. Prior to issuance of the first action and/or permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide to the City of Newport Beach a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) authorizing the removal of jurisdictional resources (i.e., potential least Bell's vireo habitat). It is anticipated that the USFWS Biological Opinion would contain conservation recommendations to avoid or reduce the Project's impact. Although additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below shall be followed.</p> <ol style="list-style-type: none"> 1. Activities involving the removal of riparian habitat shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15) unless otherwise directed by the USFWS and the CDFG. 			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
	<p>2. Vegetation-clearing activities shall be monitored by a qualified Biologist. The Biological Monitor shall ensure that only the amount of riparian habitat approved during the consultation process shall be removed. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.</p> <p>3. The use of any large construction equipment during site grading shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to September 15), unless otherwise directed by the USFWS and the CDFG. Construction may be allowed within 500 feet of an active nest if appropriate noise measures are implemented, as approved by the resource agencies.</p> <p>4. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at specified monitoring locations near active nest(s), as determined by the Biological Monitor. This shall be verified by weekly noise monitoring conducted by a qualified Acoustical Engineer during the breeding season (March 15 to September 15) or as otherwise determined by a qualified Biological Monitor based on vireo nesting activity.</p> <p>5. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFG following completion of construction.</p>				
<p>As part of each grading permit and building permit for a subdivision activity scheduled to occur from February 15th through September 15th of any year</p> <p>Where there is an active nest, establish avoidance area prior to disturbance</p>	<p>MM 4.6-6 Migratory Bird Treaty Act. No vegetation removal shall occur between February 15 and September 15 unless a qualified Biologist, approved by the City of Newport Beach (City), surveys the Project's impact area prior to disturbance to confirm the absence of active nests. If an active nest is discovered, disturbance within a particular buffer shall be prohibited until nesting is complete; the buffer distance shall be determined by the Biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions. Limits of avoidance shall be demarcated with flagging or fencing. The Biologist shall record</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to site disturbance Prior to issuance of first grading permit Identify in approved grading and construction plans Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities Implement during grading and construction</p>	<p>the results of the recommended protective measures described above and shall submit a memo summarizing any nest avoidance measures to the City to document compliance with applicable State and federal laws pertaining to the protection of native birds.</p> <p>To protect bird species on site, any front glass railings, screen walls, fences, and gates that occur adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.</p> <p>MM 4.6-7 Special Status Plant Species. The Applicant shall be required to plan, implement, monitor, and maintain a southern tarplant restoration program for the Project consistent with the most current technical standards/knowledge regarding southern tarplant restoration. Prior to the first action and/or permit that would allow for site disturbance (e.g., a grading permit), a qualified Biologist shall prepare a detailed southern tarplant restoration program that would focus on (1) avoiding impacts to the southern tarplant to the extent possible through Project planning; (2) minimizing impacts; (3) rectifying impacts through the repair, rehabilitation, or restoration of the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the Project; and (5) compensating for impacts by replacing or providing substitute resources or environments. The program shall be reviewed and approved by the City of Newport Beach (City) prior to site disturbance.</p> <p>Impacts on southern tarplant shall be mitigated by seed collection</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>and re-establishment. The seeds shall be collected and then placed into a suitable mitigation area in the undeveloped or restored portion of the Project site or at an approved adjacent off-site location. The southern tarplant restoration program shall have the requirements listed below.</p> <ol style="list-style-type: none"> Seed ripeness shall be monitored every two weeks by a qualified Biologist and/or a qualified Seed Collector at the existing southern tarplant locations to determine when the seeds are ready for collection. A qualified Seed Collector shall collect all the seeds from the plants to be impacted when the seeds are ripe. The seeds shall be cleaned and stored by a qualified nursery or institution with appropriate storage facilities. The mitigation site shall be located in dedicated open space on the Project site or at an adjacent off-site mitigation site. The mitigation site shall be prepared for seeding as described in a conceptual restoration plan. The topsoil shall be collected from areas with limited amounts of weeds from the impacted population and re-spread in the selected location, as approved by the qualified Biologist. Approximately 60 to 80 percent of the collected seeds shall be spread in the fall following soil preparation and seed preparation. The remainder of the seeds shall be kept in storage for subsequent seeding, if necessary. The qualified Biologist shall have the full authority to suspend any operation at the site which is, in the qualified Biologist's opinion, not consistent with the restoration program. Any disputes regarding consistency with the restoration program shall be resolved by the Applicant, the qualified Biologist, and the City. 			
<p>Prior to issuance of a grading permit for remediation purposes Refer to MM 4.6-8 for specific requirements and timing if noted species are present</p>	<p>MM 4.6-8 Light-footed Clapper Rail, Western Snowy Plover, Belding's Savannah Sparrow. Due to temporary impacts to marsh habitat in the lowland by oilfield remediation activities, a focused survey shall be conducted for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site. If any of these species are observed, the Applicant shall obtain approvals from the resource</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director U.S. Fish and Wildlife Service (USFWS)</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the initiation of grading or any activity that involves the removal/disturbance of marsh habitat, including clearing, grubbing, mowing, disking, trenching, grading, or any other construction-related activity on the Project site. If any of these species would be impacted, mitigation for impacts on these species shall include replacement of marsh habitat as described in MM 4.6-4. In addition, the measures listed below shall be implemented.</p> <ol style="list-style-type: none"> Marsh vegetation shall be removed after September 15 and before March 1. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding's savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat. In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15). The limits of disturbance during oilfield cleanup shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas. 	California Department of Fish and Game (CDFG) California Coastal Commission (CCC)		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Approved Biological Opinion: Prior to site disturbance in coastal sage scrub habitat</p> <p>Prior to issuance of each grading permit and first building permit for each subdivision</p> <p>Identify in approved grading and construction plans</p> <p>Implement during grading and construction</p>	<p>MM 4.6-9 California Gnatcatcher. Prior to initiation of grading or any activity that involves the removal/disturbance of coastal sage scrub habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain a Biological Opinion from the U.S. Fish and Wildlife Service to authorize incidental take. Mitigation for impacts on the California gnatcatcher shall include restoration and preservation of 82.91 acres of coastal sage scrub habitat and implementation of the Construction Minimization Measures listed in MM 4.6-1.</p>	<p>Community Development Director; Community Qualified Biologist designated by the Community Development Director</p> <p>U.S. Fish and Wildlife Service (USFWS)</p>		
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to site disturbance</p> <p>Prior to issuance of each grading permit and first building permit for each subdivision</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: within one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>MM 4.6-10 Coastal Cactus Wren. Impacts on southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub shall be avoided to the maximum extent practicable. If it is determined by the City of Newport Beach (City) during the final grading plan check that impacts on cactus scrub habitat cannot be avoided, the coastal sage scrub mitigation plan shall incorporate cactus into the planting palette at no less than a 1:1 ratio for impacted cactus areas. The Applicant shall submit the coastal sage scrub mitigation plan to the City to verify that an appropriate amount of cactus has been incorporated into the plan. Mitigation for impacts on the coastal cactus wren shall include replacement of coastal sage scrub habitat and implementation of the Construction Minimization Measures described in MM 4.6-1.</p>	<p>Community Development Director</p> <p>Qualified Biologist designated by the Community Development Director</p>		
<p>Mitigation and restoration plan approval by regulatory agencies: Prior to site disturbance of riparian habitat</p> <p>Prior to issuance of each grading permit and first building permit for each subdivision</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: Within</p>	<p>MM 4.6-11 Least Bell's Vireo. Prior to initiation of grading or any activity that involves the removal/disturbance of riparian habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission). Mitigation for impacts on the least Bell's vireo shall include (1) replacement of riparian and upland scrub and riparian forest habitat and the Construction Minimization Measures described in MM 4.6-5; (2) protection of nests and nesting birds as</p>	<p>Community Development Director</p> <p>Qualified Biologist designated by the Community Development Director</p> <p>U.S. Fish and Wildlife Service (USFWS)</p> <p>California Department of Fish and Game (CDFG)</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>described in MM 4.6-6; and (3) any additional provisions imposed by the permitting agencies.</p>	<p>California Coastal Commission (CCC)</p>		
<p>Mitigation and restoration plan approval by regulatory agencies:</p> <p>Prior to site disturbance</p> <p>Prior to issuance of each grading permit and first building permit for each subdivision</p> <p>Identify in approved grading and construction plans</p> <p>Initiate restoration activities: Within one year of first permit/approval for ground-disturbing activities</p> <p>Implement during grading and construction</p> <p>Monitoring and maintenance for 5 years or as determined by the regulatory agencies</p>	<p>MM 4.6-12 Burrowing Owl. Impacts on known burrowing owl burrows and surrounding non-native grasslands shall be avoided to the maximum extent practicable, as determined by a qualified Biologist in coordination with the City of Newport Beach (City). If impacts on grassland habitat occupied by burrowing owl cannot be avoided, mitigation for impacts on the burrowing owl shall include restoration of native grassland habitat, as described in MM 4.6-2.</p> <p>Within 30 days prior to any ground-disturbing activity to suitable burrowing owl habitat, a focused pre-construction survey shall be conducted to determine the presence or absence of the burrowing owl on the Project site. If the species is not observed, no further mitigation shall be necessary. Results of the survey shall be provided to the California Department of Fish and Game (CDFG).</p> <p>If an active burrow is observed during the non-nesting season, a qualified Biologist shall monitor the nest site; when the owl is away from the nest, the Biologist shall exclude the owl from the burrow and then remove the burrow so the owl cannot return.</p> <p>If an active burrowing owl burrow is observed during the nesting season, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the <i>California Fish and Game Code</i>. Peak nesting activity for burrowing owl normally occurs from April to July. To protect the active burrow, the following restrictions to construction activities shall be required until the burrow is no longer active (as determined by a qualified Biologist): (1) clearing limits shall be established within a 300-foot buffer around any active burrow, unless otherwise determined by a qualified Biologist and (2) access and surveying shall be prohibited within 200 feet of any active burrow, unless otherwise determined by a qualified Biologist. Any encroachment into the buffer area around the active burrow shall only be allowed if the Biologist determines that the proposed activity shall not disturb the nest</p>	<p>Community Development Director</p> <p>Qualified Biologist designated by the Community Development Director</p> <p>California Department of Fish and Game (CDFG)</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
July 1 st through January 31 st Prior to issuance of grading permits and first building permit for each subdivision activity	<p>occupants. Construction can proceed when the qualified Biologist has determined that fledglings have left the nest burrow.</p> <p>MM 4.6-13 Raptor Nesting. To the maximum extent practicable, habitats that provide potential nest sites for raptors shall be removed from July 1 through January 31. If Project construction activities are initiated during the raptor nesting season (February 1 to June 30), a qualified Biologist shall conduct a nesting raptor survey. Seven days prior to the onset of construction activities, a qualified Biologist shall survey within the limits of the Project disturbance area for the presence of any active raptor nests (common or special status). Any nest found during survey efforts shall be mapped on the construction plans. If no active nests are found, no further mitigation would be required, and survey results shall be provided to the California Department of Fish and Game (CDFG).</p> <p>If nesting activity is present, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the <i>California Fish and Game Code</i>. To protect any nest site, the following restrictions on construction are required between February 1 and June 30 (or until nests are no longer active, as determined by a qualified Biologist): (1) clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest and (2) access and surveying shall be prohibited within 200 feet of any occupied nest. Any encroachment into the 300- and/or 200-foot buffer area(s) around the known nest shall only be allowed if a qualified Biologist determines that the proposed activity shall not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified Biologist has determined that fledglings have left the nest.</p> <p>MM 4.6-14 Invasive Exotic Plant Species. A qualified Biologist shall monitor any oilfield remediation activities that involve disturbance of native habitat but that would not include removal of the habitat in its entirety. During vegetation removal for remediation activities, the Biological Monitor shall direct the construction crew to remove invasive plant species, including but not limited to pampas grass and giant reed. The Biologist shall also direct the crew on any additional measures that may be needed to eradicate these species, such as removal of roots, painting cut stems with Round-up</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director California Department of Fish and Game (CDFG)</p>		
As part of grading permit for remediation purposes and during oilfield remediation activities Landscape Plan Submittal (consistent with approved Habitat Restoration Plan) Landscape Plan as part of application for Site Development Review for development of land		<p>Community Development Director Qualified Biologist designated by the Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	or other approved herbicide, or follow-up applications of herbicide. The Applicant shall submit Landscape Plans to the City of Newport Beach (City) for review and approval by a qualified Biologist. The review shall ensure that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided. When the process is complete, the qualified Biologist shall submit a memo approving the Landscape Plans to the City.			
Prior to the issuance of grading permits (consistent with the approved Habitat Restoration Plan)	MM 4.6-15 Human Activity. Prior to issuance of a grading permit, the Applicant shall submit a fencing plan to the City of Newport Beach (City) for review to demonstrate that access to the open space within the lowland shall be limited to designated access points that link to existing trails. To best protect habitat from human activity, fence rails shall be placed along the boardwalk trails. Signs shall be posted along the fence indicating that habitat within the lowland is sensitive because it supports Endangered species. The signage shall also provide information on biological resources within the lowland (e.g., coastal sage scrub, marsh, riparian habitats, and special status species). In addition, signage shall require that dogs be leashed in parks, along trails, and in any areas adjacent to open space.	Community Development Director Qualified Biologist designated by the Community Development Director		
Brochure Preparation: Prior to issuance of first residential building permit Brochure Distribution: A part of purchase/rental/lease agreements	MM 4.6-16 Urban Wildlands Interface. To educate residents of the responsibilities associated with living at the wildland interface, the Applicant shall develop a wildland interface brochure. The brochure shall be included as part of the purchase/rental/lease agreements for the Project residents. The brochure shall address relevant issues, including the role of natural predators in the wildlands (e.g., coyotes' predation of pets) and how to minimize impacts of humans and domestic pets on native communities and their inhabitants (e.g., outdoor cats' predation of native birds, lizards, and small mammals). The brochure shall also address invasive species that shall be avoided in landscaping consistent with MM 4.6-14.	Community Development Director Qualified Biologist designated by the Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
Population, Housing, and Employment					
Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District Annual Development Agreement review	PDF 4.7-1 The Master Development Plan includes a range of housing types to meet the housing needs of a variety of economic segments of the community to be designed to appeal to different age groups and lifestyles.		Community Development Director		
As identified in AHIP as a part of Project approval	SC 4.7-1 An Affordable Housing Implementation Plan (AHIP) is required that specifies how the development will meet the City's affordable housing goal.		City Council Community Development Director		
Recreation and Trails					
As identified on the Master Development Plan and Tentative Tract Map No. 17308 Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes As part of applications for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District Annual Development Agreement review	PDF 4.8-1 The Master Development Plan and Tentative Tract Map provide for approximately 51 gross (42 net) acres of public parkland in the form of an approximately 27 gross acre (22 net acre) public Community Park, 2 bluff parks comprising approximately 21 gross (18 net) acres, and 3 interpretive parks containing approximately 4 gross (3 net) acres. Of the approximately 27 gross acres for the public Community Park, approximately 22 gross (18 net) acres will be offered for dedication to the City which exceeds the City's Municipal Code requirement for park dedication for the 1,375 unit Project, which is approximately 15 acres.		Recreation and Senior Services Director; Public Works Director; Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
As identified on the Master Development Plan and Tentative Tract Map No. 17308 Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps As part of applications for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District Annual Development Agreement review	PDF 4.8-2 The Master Development Plan provides a system of bicycle, pedestrian, and interpretive trails within the developed areas and the Upland and Lowland Open Space areas of the Project.	Recreation and Senior Services Director; Public Works Director; Community Development Director		
As a part of applications for Site Development Review for land uses in the Visitor-Serving Resort District	PDF 4.8-3 If permitted by all applicable agencies, a pedestrian and bicycle bridge over West Coast Highway will be provided, as set forth in the Master Development Plan, from the Project site to a location south of West Coast Highway to encourage walking and bicycling to and from the beach.	Recreation and Senior Services Director; Public Works Director; Community Development Director		
Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes Land dedication at final map recordation In lieu fees prior to issuance of building permits	SC 4.8-1 The Applicant shall comply with the City of Newport Beach Park Dedication and Fees Ordinance (<i>City of Newport Beach Municipal Code</i> Chapter 19.52). The City's tentative map review authority shall determine whether land dedication, an in lieu fee, or a combination of the two shall be required in conjunction with its approval of a tentative map. Land dedications shall be offered at the time of appropriate final map recordation, either on the final map or by separate instrument. The City may further clarify improvement and phasing requirements in a Development Agreement.	Recreation and Senior Services Director; Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Transportation and Circulation				
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	PDF 4.9-1 In addition to mitigating traffic impacts of the Project, the transportation improvements included in the Master Development Plan provide arterial highway capacity needed to address existing demand as well as for planned growth in the region through implementing portions of the City's General Plan and the County's Master Plan of Arterial Highways.	City Traffic Engineer; Public Works Director; Community Development Director		
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	PDF 4.9-2 The Development Agreement requires that arterial roadway improvements and contributions toward off-site improvements be provided earlier in the development phasing program than needed to mitigate Project traffic impacts and requires that contributions toward off-site improvements be provided early relative to the development phasing.	City Traffic Engineer; Community Development Director		
As identified on the Master Development Plan and Tentative Tract Map No. 17308	PDF 4.9-3 The Master Development Plan includes a new arterial connection between West Coast Highway and 19th Street that will provide enhanced access to and from southwest Costa Mesa which will contribute to the mitigation of the impacts of projected regional growth.	City Traffic Engineer; Community Development Director		
As part of subdivision improvement plans	SC 4.9-1 Sight distance at all intersections shall comply with City of Newport Beach standards.	City Traffic Engineer		
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	SC 4.9-2 In compliance with Municipal Code Chapter 15.38, Fair Share Traffic Contribution Ordinance, the Applicant shall be responsible for the payment of fair share traffic fees or right-of-way dedication or traffic improvements or a combination thereof.	City Traffic Engineer; Community Development Director		
Prior to the issuance of grading permits	SC 4.9-3 <i>Traffic Management Plan</i> . Prior to issuance of any grading permit, the Applicant shall prepare for City of Newport Beach Traffic Engineer review and approval a Construction Area Traffic Management Plan for the Project for the issuance of a Haul Route Permit. The Plan shall be designed by a registered Traffic Engineer. The Traffic Management Plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The Plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for	City Traffic Engineer Registered Traffic Engineer designated by the City Traffic Engineer		

**NEWPORT BANNING RANCH PROJECT (Continued)
 MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>the Project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions.</p> <p>The Applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the City of Newport Beach Traffic Engineer. Haul operations shall be monitored by the City of Newport Beach Public Works Department, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. No construction vehicles shall be allowed to stage on off-site roads during the grading and construction period.</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Completion					
		Date	Initials				
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	<p>MM 4.9-1 Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.</p> <p style="text-align: center;">TABLE A CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Location</th> <th>Improvement</th> </tr> </thead> <tbody> <tr> <td>Newport Blvd/ West Coast Hwy</td> <td>Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</td> </tr> </tbody> </table>	Location	Improvement	Newport Blvd/ West Coast Hwy	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.	City Traffic Engineer; Community Development Director	
Location	Improvement						
Newport Blvd/ West Coast Hwy	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.						
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	<p>MM 4.9-2 Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.</p>	City of Costa Mesa; City Traffic Engineer					

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures		Responsible for Approval/Monitoring/ Implementation	Completion	
	Location	Improvement		Date	Initials
	TABLE C CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS				
	28	<p>Monrovia Ave/ 19th St</p> <p>Install a traffic signal.</p> <p>Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required</p>			
	34	<p>Newport Blvd/ 19th St</p> <p>Provide a second southbound left-turn on Newport Boulevard.</p> <p>Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.</p>			
	36	<p>Newport Blvd/ Harbor Blvd</p> <p>Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.</p>			
	37	<p>Newport Blvd/ 18th St (Rochester St)</p> <p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p>			

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures		Responsible for Approval/Monitoring/ Implementation	Completion	
				Date	Initials
	42	Pomona Ave/ 17 th St Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.			
	43	Superior Ave/ 17 th St Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation. Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.			
	44	Newport Blvd/ 17 th St Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. Note: The proposed improvement in anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.			
Prior to issuance of first grading or demolition permit		MM 4.9-3 Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments.	City Traffic Engineer; Fire Chief		
Prior to the issuance of first grading permit As part of subdivision improvement plans		MM 4.9-4 Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the access way meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.	City Traffic Engineer; Fire Chief		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes</p> <p>As part of Community Park improvement plan if located within Community Park</p> <p>As part of subdivision improvement plans</p>	<p>MM 4.9-5 Prior to the displacement of any private parking spaces associated with improvements to 15th Street, the Applicant shall be responsible for the construction of replacement parking on the Project site within the Community Park site or in a location immediately proximate to the existing parking lot.</p>	<p>Recreation and Senior Services Director; City Traffic Engineer; Community Development Director</p>		
Air Quality				
<p>Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>Annual Development Agreement review</p>	<p>PDF 4.10-1 The Master Development Plan provides for commercial uses, in the Mixed-Use/Residential and Visitor-Serving Resort/Residential Land Use Districts, within walking distance of the proposed residential neighborhoods and nearby residential areas to reduce vehicle trips and vehicle miles traveled.</p>	<p>Community Development Director</p>		
<p>Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>Conditions of tentative tract map approval</p> <p>Annual Development Agreement review</p>	<p>PDF 4.10-2 The Master Development Plan provides a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails.</p>	<p>Recreation and Senior Services Director; Community Development Director</p>		
<p>Prior to issuance of each grading permit and building permit</p> <p>Monitor during grading and construction</p>	<p>SC 4.10-1 Dust Control. During construction of the proposed Project, the Project Developer shall require all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with</p>	<p>Community Development Director, Public Works Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:</p> <ul style="list-style-type: none"> a. <i>Clearing and grubbing</i>: Apply water in sufficient quantity to prevent generation of dust plumes. b. <i>Cut and fill</i>: Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities. c. <i>Earth-moving activities</i>: Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete. d. <i>Importing/exporting of bulk materials</i>: Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions. e. <i>Stockpiles/bulk material handling</i>: Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top⁴ to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage. f. <i>Traffic areas for construction activities</i>: Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes. 			
	<p>Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The Project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:</p>			

⁴ Refers to a road to the top of the pile.

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<ul style="list-style-type: none"> Be employed by or contracted with the Property Owner or Developer; Be on the site or available on site within 30 minutes during working hours; Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class. 			
Identify in contractor specifications; monitored by City prior to issuance of first building permit for each subdivision or commercial/mixed use area Identify on approved building construction plans	SC 4.10-2 Architectural Coatings. Architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. This requirement shall be included as notes on the contractor specifications.	Community Development Director		
Prior to the issuance of grading permits Prior to December 31, 2014, all off-road diesel-powered construction equipment greater than 50 hp shall meet Tier 3 standards After January 1, 2015, all off-road diesel-powered construction equipment shall meet Tier 4 standards At mobilization for each unit	MM 4.10-1 Off-road Construction Equipment Engines. Prior to issuance of a grading permit, the Applicant/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures: a. Prior to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 3 off-road emissions standards. b. After January 1, 2015: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 4 off-road emissions standards. c. A copy of each unit's certified Tier specification shall be provided at the time of mobilization of each applicable unit of equipment.	Community Development Director		
Prior to the issuance of grading permits Identify in approved grading and construction plans	MM 4.10-2 Construction Site Design and Operation. Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures or provide information and data that demonstrates that implementation would not be feasible: a. Electricity shall come from power poles rather than diesel- or	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>gasoline-fueled generators, compressors, or similar equipment;</p> <p>b. Construction parking shall be configured to minimize traffic interference;</p> <p>c. Construction trucks shall be routed away from congested streets and sensitive receptors;</p> <p>d. Construction activities that affect traffic flow on the arterial system shall be scheduled to off-peak hours to the extent practicable;</p> <p>e. Temporary traffic controls, such as a flag person(s), shall be provided where necessary to maintain smooth traffic flow; and</p> <p>f. Dedicated turn lanes for movement of construction equipment on- and off-site and signal synchronization shall be provided as necessary to maintain smooth traffic flow.</p>			
<p>Prior to the issuance of grading permits</p> <p>Identify in approved grading and construction plans</p>	<p>MM 4.10-3 Construction Equipment Operation. Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:</p> <p>a. All construction equipment shall be tuned and maintained in accordance with the manufacturer's specifications;</p> <p>b. Diesel truck idling time shall be five minutes or less, both on- and off-site; and</p> <p>c. Work crews shall shut off diesel equipment when not in use.</p>	<p>Community Development Director</p>		
<p>Prior to the issuance of grading permits</p> <p>Identify in approved grading and construction plans</p>	<p>MM 4.10-4 Construction Ridesharing and Transit Incentives. Prior to issuance of a grading permit, the Landowner/Master Developer shall provide copies of construction documents to the City of Newport Beach showing that these documents include a statement that the construction contractors shall support and encourage ridesharing and transit incentives for the construction crews.</p>	<p>Community Development Director</p>		
<p>Prior to the issuance of grading permits</p> <p>Identify in approved grading and construction plans</p>	<p>MM 4.10-5 Fugitive Dust – Supplementary Measures. Prior to issuance of each grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents and grading plans include the following:</p> <p>a. The contractor shall suspend grading operations when wind gusts exceed 15 miles per hour;</p> <p>b. The contractor shall take measures (such as additional</p>	<p>Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	watering or the application of chemical suppressants) to stabilize disturbed areas and stockpiles prior to non-work days if windy conditions are forecasted for a weekend, holiday, or other day when site work is not planned. c. The contractor shall re-apply water as necessary during grading and earth-moving to ensure that visible emissions do not extend to residences or schools.			
Prior to the issuance of grading permits Identified in approved grading and construction plans (i.e., schedule)	MM 4.10-6 Paving of Bluff Road. Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction plans and schedule require the construction and paving of Bluff Road between West Coast Highway and 15 th Street as early as feasible in order to minimize dust generation by vehicles using the roadway.	Public Works Director; Municipal Operations Director		
Prior to the issuance of grading permits Identified in approved grading and construction plans Ongoing maintenance	MM 4.10-7 Fugitive Dust – Street Sweeping. Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to sweep paved roads within and adjacent to the Project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.	Public Works Director; Municipal Operations Director		
Prior to the start of grading and construction activities	MM 4.10-8 Notification of Receptors. The Landowner/Master Developer shall distribute a notice to all residents, schools, and other facilities within 100 feet of the Project site that states the following or similar “the environmental analysis identifies a potential for excess dust pollution for short periods during heavy grading. Extra measures shall be taken to prevent the dust from leaving the Project site, but persons should be aware of the potential for pollution”. This notice may be combined with the notice described in MM 4.10-9.	Public Works Director; Municipal Operations Director		
Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps During grading and construction activities Response to complainant within two working days of the compliant and	MM 4.10-9 Construction Complaint Resolution. The Landowner/Master Developer shall appoint a person as a contact for complaints relative to construction impacts to the adjacent neighborhoods. A contact telephone number and email address shall be posted on signs at the construction site and shall be provided by mail to all residents within 500 feet of the Project site. Upon receipt of a complaint, the designated contact person shall investigate the complaint and shall develop corrective action, if needed. The	Public Works Director; Municipal Operations Director		

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MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>action taken to the City Maintain log of all complaints and resolutions</p>	<p>designated contact person shall respond to the complainant within two working days to describe the results of the investigation, and submit a report of the complaint and action taken to the City of Newport Beach. The designated contact person shall maintain a log of all complaints and resolutions.</p>			
<p>Prior to the issuance of building permits</p>	<p>MM 4.10-10 Bicycle Facilities. Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:</p> <ol style="list-style-type: none"> The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built). Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots. 	<p>Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Prior to the issuance of occupancy permits As a part of annual Development Agreement review	MM 4.10-11 <i>Conservation Education – Mobile Sources.</i> The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on mobile source emission reduction techniques (such as use of alternative modes of transportation and zero- or low-emission vehicles) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow. The homeowners associations shall provide an annual report of conservation educational materials distributed to homeowners to the City of Newport Beach.	Community Development Director		
Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes Incorporate into Project CC&Rs Prior to the issuance of occupancy permits As a part of annual Development Agreement review	MM 4.10-12 <i>Conservation Education – Consumer Products.</i> The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on the positive benefits of using consumer products with low or no-volatile organic compounds (VOCs) (such as paint thinners and solvents) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow.	Community Development Director		
Condition of approval of all Site Development Review and/or Conditional Use Permits for residential uses As part of CC&Rs Prior to the issuance of occupancy permits As a part of annual Development Agreement review	MM 4.10-13 <i>Odor Complaints.</i> The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664).	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Greenhouse Gas Emissions				
Applications and conditions of approval for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District As part of building permits	PDF 4.11-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.	Community Development Director		
Application and conditions of approval for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District As part of building permits	PDF 4.11-2 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent. SC 4.11-1 Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the "2008 Title 24 Energy Efficiency Standards" or the version of these standards current at the time of the issuance of each building permit.	Community Development Director		
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes As part of application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	PDF 4.11-3 The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.	City Traffic Engineer Community Development Director Orange County Transportation Authority (OCTA)		
Conditions of approval of Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District;	PDF 4.11-4 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:	Municipal Operations Director; Community Development Director Building Division Manager, or designated representatives		

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Mixed-Use and Residential District; and the Parks and Recreation District As part of building permits</p>	<p>a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals. b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure. c. Air conditioning units will be Freon-free. d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements. e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually. f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use. g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.</p>	<p>Community Development Director</p>		
<p>Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District During initial project grading activities Incorporated into all grading permit applications</p>	<p>PDF 4.11-5 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City: a. Construction waste diversion will be increased by 50 percent from 2010 requirements. b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.</p>	<p>Community Development Director</p>		

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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Prior to the issuance of occupancy permits Submit plan for the applicable future homeowners association	MM 4.11-1 Prior to the issuance of each occupancy permit, the Applicant shall submit for approval to the Community Development Director the plan for the applicable future homeowners association to provide educational information on (1) water conservation; (2) energy conservation, including the use of energy-efficient lighting and the limiting of outdoor lighting; (3) mobile source emission reduction techniques, such as use of alternative modes of transportation and zero- or low-emission vehicles; and (4) the use of solar heating, automatic covers, and efficient pumps and motors for pools and spas to all homeowners prior to individual purchase of property and again annually. ⁵	Community Development Director		
Prior to the issuance of building permits for the resort inn and each building permit for a multi-family complex	MM 4.11-2 Prior to the issuance of the building permit for the resort inn and each building permit for a multi-family complex with a swimming pool or spa, the Applicant shall submit for approval to the Community Development Director that the plans incorporate energy efficient heating, pumps and motors.	Community Development Director		
Prior to the issuance of building permits	MM 4.11-3 Prior to the issuance of each building permit, the Applicant shall submit for approval to the Public Works Director that light emitting diode (LED) lights shall be used for traffic lights and LED or similar energy-efficient lighting will be used for street lights and other outdoor lighting.	Public Works Director; Municipal Operations Director		
Prior to the issuance of building permits for multi-family buildings, parks, and other public spaces	MM 4.11-4 Prior to the issuance of each building permit for multi-family buildings, parks, and other public spaces, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of facilities for the collection of recyclable materials consistent with the recycle requirements of the City and the local waste collection contractor.	Municipal Operations Director; Community Development Director		
Prior to the issuance of building permits for multi-family buildings and the resort inn	MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes	Community Development Director		

⁵ The requirements in this measure are in addition to those of PDF 4.11-4f, but may be distributed and/or grouped together by the homeowners associations. The mobile source emissions component of this measure is the same as MM 4.10-7.

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	<p>this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.</p>			
<p>Prior to the issuance of building permits for multi-family buildings, commercial building, park, or other public space</p>	<p>MM 4.11-6 Prior to the issuance of each building permit for multi-family buildings, commercial building, park, and other public space, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of bicycle parking spaces at each facility. Bicycle spaces for residents and employees shall be easily accessible and secure. Bicycle spaces for visitors and customers, in parks, and in public spaces shall be visible from the primary entrance, illuminated at night, and protected from damage from moving and parked vehicles.</p>	<p>Community Development Director</p>		
Noise				
<p>As part of grading permit and building permit Implement during grading and construction</p>	<p>SC 4.12-1 To ensure compliance with Newport Beach Municipal Code Section 10.28.040, grading and construction plans shall include a note indicating that loud noise-generating Project construction activities (as defined in Section 10.28.040 of the Newport Beach Noise Ordinance) shall take place between the hours of 7:00 AM and 6:30 PM on weekdays and from 8:00 AM to 6:00 PM on Saturdays. Loud, noise-generating construction activities are prohibited on Sundays and federal holidays.</p>	<p>Community Development Director</p>		
<p>Prior to the issuance of building permits</p>	<p>SC 4.12-2 HVAC units shall be designed and installed in accordance with Section 10.26.045 of the Newport Beach Noise Ordinance, which specifies the maximum noise levels for new HVAC installations and associated conditions.</p>	<p>Community Development Director</p>		
<p>Prior to the issuance of building permits</p>	<p>SC 4.12-3 All residential and hotel units shall be designed to ensure that interior noise levels in habitable rooms from exterior transportation sources (including aircraft and vehicles on adjacent roadways) shall not exceed 45 dBA CNEL. This SC complies with the applicable sections of the California Building Code (Title 24 of the California Code of Regulations) and, for single-family detached residences, exceeds the requirements of Section 10.26.025 of the Noise Ordinance. Prior to granting of a building permit, the</p>	<p>Community Development Director</p>		

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
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	<p>Developer/Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, Project plans and specifications shall include ventilation as required by the California Building Code.</p>			
As part of subdivision improvement plans	<p>SC 4.12-4 In accordance with City of Newport Beach standards, rubberized asphalt, or pavements offering equivalent or better acoustical properties shall be used to pave all public arterials on the Project site and all off-site City of Newport Beach roads where improvements would be provided or required as a part of the Project.</p>	Public Works Director		
Prior to issuance of grading permits Identify in approved grading and construction plans Implement during grading and construction	<p>MM 4.12-1 Grading plans and specifications shall include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to ¾ inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the Project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor.</p> <p>If preferred by the developer or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls</p>	Public Works Director; Community Development Director		

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	<p>of the same height.</p> <p>A temporary noise barrier shall not be required when it is demonstrated to the Community Development Department, Building Division Manager or his/her designee that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier.</p>			
Prior to the issuance of grading permits	<p>MM 4.12-2 Prior to the start of grading, the Construction Manager shall provide evidence acceptable to the City of Newport Beach Public Works Director and/or Community Development Director, that:</p> <ul style="list-style-type: none"> a. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard. b. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA _{L_{eq}}. c. Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible. 	Public Works Director; Community Development Director		
As part of grading permits for grading activities occurring within 300 feet of residences or Carden Hall school	<p>MM 4.12-3 At least two weeks prior to the start of any grading operation or similar noise generating activities within 300 feet of residences or the Carden Hall school, the contractor shall notify affected residents and the school of the planned start date, duration, nature of the construction activity, and noise abatement measures to be provided. The notification shall include a contact telephone number for questions and the submittal of any complaints of excess, unanticipated noise.</p>	Public Works Director; Community Development Director		

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As part of grading permits for grading activities occurring within 25 feet of an off-site residence	MM 4.12-4 During construction, the operation of large bulldozers, vibratory rollers, and similar heavy equipment shall be prohibited within 25 feet of any existing off-site residence.	Public Works Director; Community Development Director		
Prior to the issuance of grading permits for roadway construction of 15 th Street and 17 th Street	MM 4.12-5 The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15 th Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17 th Street west of Monrovia Avenue with rubberized asphalt.	Public Works Director; Community Development Director		
Prior to the issuance of a grading permit for Bluff Road and 15 th Street Identified in the Project plans and specifications	MM 4.12-6 Prior to the approval of a grading permit for Bluff Road and 15 th Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15 th Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.	Public Works Director; Community Development Director		
Concurrent with the issuance of the grading permit for Bluff Road Written notice within 45 days following the receipt of the proposed program from the Applicant Applicant receives reimbursement request from the Association within 60 days following completion of the work The Applicant reimburses the Association for the cost of the work	MM 4.12-7 Prior to the issuance of a grading permit for Bluff Road and/or 15 th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and	Public Works Director; Community Development Director		

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within 30 days of the Applicant's receipt of a final receipt	<p>Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines:</p> <p>(i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.</p>				

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Prior to final map recordation for the residential areas adjacent to Bluff Road and North Bluff Road	MM 4.12-8 Prior to final map recordation for the residential areas adjacent to Bluff Road and North Bluff Road, including the Urban Colony, the Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer to the City of Newport Beach for review and approval. The analysis shall demonstrate that the residential exterior living areas including, but not limited to swimming pools, playgrounds, and patios, would be exposed to noise levels below 65 dBA CNEL. The acoustical analysis shall also demonstrate that the North Community Park has been designed such that permitted park activities would not exceed the City's Noise Ordinance standards at residential exterior living areas. This can be accomplished through site design or the construction of noise barriers. Barriers may be constructed using an earth berm, wall, or berm-wall combination. Walls may be masonry block, ¼-inch-thick glass, or other transparent material with sufficient weight per square foot.	Public Works Director; Community Development Director		
Conditions of approval of Site Development Review and Conditional Use Permit for commercial project within the Visitor Serving Resort/Residential and Mixed Use/Residential Districts	MM 4.12-9 Truck deliveries and loading dock activities in commercial areas of the Project shall be restricted to between the hours of 7:00 AM and 10:00 PM on weekdays and Saturdays and shall be restricted to between the hours of 9:00 AM and 10:00 PM on Sundays and federal holidays. Moreover, the Project Applicant/Developer or his successors and assignees shall specify in the contract for each operator of a commercial space that truck deliveries and loading dock activities shall be restricted to these specified hours.	Public Works Director; Community Development Director		
As part of application for Site Development Review for applicable areas Condition of approval of Site Development Review and Conditional Use Permit for commercial project within the Visitor Serving/Resort and Mixed Use/Residential Districts	MM 4.12-10 Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.	Public Works Director; Community Development Director		

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Prior to the approval of permits by DOGGR	MM 4.12-11 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.	Community Development Director California Department of Conservation, Department of Oil, Gas, and Geothermal Resources (DOGGR)		
Cultural and Paleontological Resources				
Prior to issuance of grading permits County Coroner: within 24 hours of a discovery	SC 4.13-1 In accordance with Section 7050.5 of the <i>California Health and Safety Code</i> , if human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the <i>California Public Resources Code</i> , the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner(s), the disposition of the human remains.	Community Development Director Qualified Archeologist designated by the Community Development Director Native American Heritage Commission (NAHC) (as necessary)		
Prior to issuance of grading permits Attendance of Archeologist at pre-grade meeting Identify in approved grading and construction plans Monitoring during grading/disturbance activities, including monitoring by Native American Monitor as applicable	MM 4.13-1 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Archeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant/Contractor,	Community Development Director Qualified Archeologist designated by the Community Development Director Qualified Native American Monitor as designated by the Community Development Director		

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	<p>procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and Applicant/Contractor, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Community Development Director.</p> <p>Based on their interest and concern about the discovery of cultural resources and human remains during Project grading, a qualified Native American Monitor(s) shall be retained to observe some or all grading activities.</p> <p>Nothing in this mitigation measure precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources.</p>			
<p>Prior to issuance of grading permits for these areas. If impacts are to occur, Research Design/Treatment and Mitigation Plan must be prepared and completed prior to issuance of grading permit</p> <p>Monitoring during grading/ disturbance activities</p>	<p>MM 4.13-2 The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical resources of an archaeological nature, preferably by preserving the resource(s) in place. Several possibilities suggested by the State CEQA Guidelines include (1) planning construction to avoid the site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement.</p> <p>The following is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. Only CA-ORA-839 is also considered a unique archaeological resource. In this instance, mitigation is the same for both types of resources. CA-ORA-839</p> <p>It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it. However, it appears that the planned removal of oilfield infrastructure may impact portions of the site. In that event, the site shall undergo a data recovery excavation of those areas that would be impacted.</p> <p><i>Research Design/Treatment and Mitigation Plan</i></p> <p>A Research Design/Treatment and Mitigation Plan (data recovery plan) shall be prepared by a qualified Archaeologist and approved by the City of Newport Beach Community Development Director prior to any excavation being undertaken. The Plan shall explicitly</p>	<p>Community Development Director Qualified Archeologist designated by the Community Development Director</p>		

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	<p>lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer;</p> <p><i>Data Recovery</i></p> <p>Data recovery excavation shall be completed prior to Project grading and shall be designed to recover the consequential data present on the site. Data recovery shall be sufficient to collect a representative sample of site constituents, including organic materials, to permit additional absolute dating of the deposit. The study shall include:</p> <ol style="list-style-type: none"> Excavation of a sufficient number of Control Units and shovel test pits (STPs) to recover a representative sample of site constituents; Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered; Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study; and 			
	<p><i>Capping</i></p> <p>In addition, secondary impacts (e.g., increased foot traffic, erosion) could occur at the site after the Project has been constructed; therefore, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by Mirafi, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss (NPS 1989, revised 1991).</p> <p>The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:</p> <ol style="list-style-type: none"> An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation; 			

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	<p>b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;</p> <p>c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;</p> <p>d. Archaeological monitoring during placement of the capping material;</p> <p>e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;</p>			
	<p>f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and</p> <p>g. A report detailing the results of the capping effort.</p> <p>CA-ORA-844 Locus B</p> <p>CA-ORA-844B is not expected to be directly impacted by development. Oil infrastructure removal activities that would occur prior to grading are expected to adversely impact portions of the site. Indirect impacts from additional erosion of the unstable surface and increased population in the vicinity of the site as a result of the future development could cause further damage over time.</p> <p>Both capping and data recovery excavation are viable options for treating the site; however, because it has been disturbed by erosion and oil extraction activities, capping the deposit would be difficult and possibly more expensive and time consuming and may produce less desirable results than data recovery excavation. Considering these circumstances, two options are provided: (1) successful capping of the site, while likely difficult to accomplish, would be designed to protect the site in perpetuity or, preferably, (2) data recovery shall be undertaken prior to grading to collect the scientifically consequential data that is present in the site since it appears that only a small, yet important, portion of the site remains. Because of the limited size of this site, this option would enable the removal and analysis of the site in its entirety.</p>			

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	<p>Capping the deposit or data recovery would result in temporary impacts to approximately 0.92 acre of coastal sage scrub (0.29 acre of encelia scrub and 0.63 acre of cactus scrub). The Mitigation Program set forth in Section 4.6, Biological Resources, addresses this impact.</p>			
	<p><i>Capping</i></p> <p>If option 1 is chosen, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by Mirafi, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss (NPS 1989, revised 1991).</p> <p>The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:</p> <ol style="list-style-type: none"> An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation; An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents; Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit; Archaeological monitoring during placement of the capping material; A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help 			

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	<p>stabilize the new land surface and to prevent future erosion at the cap surface;</p> <p>f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and</p> <p>g. A report detailing the results of the capping effort.</p> <p><i>Data Recovery</i></p> <p>If option 2 is selected, data recovery excavation at CA-ORA-844B shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove site constituents. The study shall include:</p> <ol style="list-style-type: none"> Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers <p><u>CA-ORA-906</u></p> <p>CA-ORA-906 would be directly impacted as a result of development as well as oil infrastructure removal. Data recovery excavation at the site shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove the site constituents. Mitigation shall be in the form of data recovery excavation to collect the scientifically consequential</p>			

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	<p>data that the site retains prior to its destruction by Project grading. The study shall include:</p> <ol style="list-style-type: none"> Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered. Completion of a data recovery excavation/mitigation report detailing the results of the study. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers. 			
<p>Prior to issuance of grading permit Attendance of Paleontologist at pre-grade meeting Identify in approved grading and construction plans Monitoring during grading/ disturbance activities</p>	<p>MM 4.13-3 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate.</p> <p>Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All</p>	<p>Community Development Director Qualified Paleontologist designated by the Community Development Director</p>		

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	<p>vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains.</p> <p>If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays.</p> <p>If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays.</p> <p>All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum.</p> <p>Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes.</p>			
Prior to the issuance of grading permits and/or action that would allow for Project site disturbance	<p>MM 4.13-4 Prior to the issuance of the first grading permit and/or action that would allow for Project site disturbance, a paleontological survey shall be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. A qualified Paleontologist shall make collections of exposed fossils from lithologic units of high paleontologic significance, especially in areas where access to fossil sites is not permitted because of slope</p>	Community Development Director Qualified Paleontologist designated by the Community Development Director		

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	<p>modification. All vertebrate and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites yielding vertebrates should be excavated, and approximately 2,000 lbs of rock samples shall be collected to process for microvertebrate fossil remains. Dry screening of fossil marine shell horizons in the Quaternary terrace deposits and San Pedro Sand with ¼-inch archaeological field screens shall be conducted to recover rare types of fossil marine mollusks, bony fish, sharks, reptiles, birds, and marine and terrestrial mammals. All fossil sites shall be tied to detailed measured sections showing sedimentary structures and relationships with over- and underlying rock units.</p> <p>a. For San Pedro Sand, prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a qualified Paleontologist shall prepare a detailed mitigation plan to sample the existing paleontological sites that would be affected by slope modification. The plan shall be developed in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) in order to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence must be made. Bulk sampling that is collected from matrix or sediment to recover rare invertebrates, marine vertebrates, and terrestrial vertebrates must also be part of the mitigation plan.</p>			

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Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
	<p>b. For Quaternary marine terrace deposits (Palos Verdes Sand), prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a detailed mitigation plan must be developed to sample the existing paleontological sites that would be affected by slope modification. This shall be conducted in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence shall be made. Bulk sampling, collecting, water screening, or dry screening of sediments that contain rare invertebrates, marine vertebrates, and terrestrial vertebrates shall be part of the mitigation plan</p> <p>c. A qualified Paleontologist shall be notified and retained when earth-moving activities are anticipated to impact undisturbed deposits in the San Pedro Sand and Palos Verdes Sand. The designated Paleontologist shall be present during construction activities on a full-time basis to assess whether scientifically important fossils are exposed. Part-time monitoring is recommended in Younger Alluvium. If any scientifically important, large fossil remains are uncovered during earth-moving activities, the Paleontological Monitor shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Monitor shall be equipped to allow for the rapid removal of fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. At the Monitor's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any delay in construction.</p> <p>d. All fossils shall be documented in a detailed Paleontological Resources Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and,</p>				

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
	<p>along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the LACM or the San Diego Natural History Museum.</p> <p>e. Because of slope modification and restoration of the bluff area, most, if not all, the fossil-bearing exposures of the San Pedro Sand and Quaternary marine terrace deposits would be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved in perpetuity for educational and scientific purposes.</p> <p>f. Nothing in this mitigation measure precludes the retention of a single cross-trained observer qualified to monitor for both archaeological and paleontological resources.</p>			
Public Services				
Condition of approval of Site Development Review and Conditional Use Permits for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District	PDF 4.14-1 The Master Development Plan requires that the Project be designed to provide fire-resistant construction for all structures adjoining natural open space, including utilizing fire-resistant building materials and sprinklers.	Community Development Director		
As part of building permit				
Prior to the issuance of building permits for residential and commercial uses	SC 4.14-1 Prior to the issuance of a building permit for the construction of residential and commercial uses, the Applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks.	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Prior to approval of applications for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p>	<p>SC 4.14-2 Prior to City approval of individual development plans for the Project, the Applicant shall obtain Fire Department review and approval of the site plan in order to ensure adequate access to the Project site.</p>	<p>Community Development Director</p>		
<p>Condition of approval of for Site Development Review and Conditional Use Permits for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>As part of subdivision improvement plan for portion of North Bluff Road between 17th Street and 19th Street</p> <p>Prior to the issuance of a Certificate of Occupancy fuel modification improvements to be installed, completed, and inspected by Fire Department.</p> <p>Ongoing maintenance</p>	<p>SC 4.14-3 Prior to the issuance of a building permit, the Applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s).</p> <p>Prior to the issuance of a Certificate of Occupancy, fuel modification shall be installed and completed by the Applicant and inspected by the Fire Department. This includes physical installation of features identified in the approved Precise Fuel Modification Plan (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Fire Code Official shall provide written approval of completion at the time of this final inspection.</p> <p>If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved.</p> <p>The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections.</p>	<p>Community Development Director Qualified Biologist designated by the Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
Application for Site Development Review for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District Prior to the issuance of building permits	SC 4.14-4 Prior to issuance of building permits, the City of Newport Beach Police Department shall review development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the Project plans. The Applicant shall prepare a list of Project features and design components that demonstrate responsiveness to defensible space design concepts. The Police Department shall review and approve all defensible space design features incorporated into the Project prior to initiating the building plan check process.	Community Development Director; Police Chief		
Prior to the issuance of first grading permit and/or action that would permit Project site disturbance During grading and construction	SC 4.14-5 Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the Project.	Community Development Director; Police Chief		
Prior to issuance of building permits	SC 4.14-6 Pursuant to Section 65995 of the California Government Code, the Applicant shall pay developer fees to the Newport-Mesa Unified School District at the time building permits are issued; payment of the adopted fees would provide full and complete mitigation of school impacts.	Community Development Director		
Prior to issuance of building permits	SC 4.14-7 New development within the Project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses.	Community Development Director		
Condition of approval of Tentative Tract Map No. 1309 and subsequent subdivision maps for development purposes Prior to the issuance of certificate of occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b	MM 4.14-1 Certificates of occupancy shall not be issued by the City of Newport Beach for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b until Fire Station Number 2 is rebuilt at the existing City Hall site at 23300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. The construction of a replacement Fire Station Number 2 within the	Community Development Director		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
(northerly block only), and Site Planning Area 12b	boundaries of the existing City Hall site at the northeastern corner of Newport Boulevard at 32 nd Street or at an alternative location would be the subject of separate, subsequent environmental review. The replacement Fire Station could only be constructed upon the demolition of existing permanent and temporary structures on the City Hall site. Potential environmental impacts associated with the replacement Fire Station Number 2 would be associated with demolition of the existing Fire Station, and the construction and operation of the replacement Fire Station. Potential environmental effects are anticipated to include short-term construction-related traffic, air quality, and noise impacts during demolition and construction. Because of the proximity between the existing and proposed Fire Stations (approximately 500 feet), this relocation is not anticipated to result in new significant operational impacts.			
Prior to the issuance of building permits; payment of fair share fee	MM 4.14-2 The Applicant shall pay the City of Newport Beach a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2. The fair share fee shall be based on total number of Project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. The proportionate fee shall be paid prior to the issuance of a building permit for any residential dwelling unit.	Community Development Director; Fire Chief		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Condition of approval of Tentative Tract Map No. 1309 and subsequent subdivision maps for development purposes</p> <p>Prior to the issuance of certificate of occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), and Site Planning Area 10b (northerly block only), and Fire Station Number 2 shall be complete and operational at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated site planning areas, then prior to issuance of building permits for any combustible structure in the above site planning areas, the Applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.</p>	<p>MM 4.14-3 Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated site planning areas, then prior to issuance of building permits for any combustible structure in the above site planning areas, the Applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.</p>	<p>Community Development Director; Fire Chief</p>		
Utilities				
<p>Conditions of approval of Site Development Review and Conditional Use Permits for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>As part of approved precise landscape plans</p>	<p>PDF 4.15-1 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of native and/or drought-tolerant landscaping in public common areas to reduce water consumption.</p>	<p>Community Development Director; Community Development Department Building Division Manager; Municipal Operations Director; Public Works Director; or designated representatives</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Conditions of approval for Site Development Review and Conditional Use Permits for development of land uses within the Residential Districts; Visitor-Serving Resort and Residential District; Mixed-Use and Residential District; and the Parks and Recreation District</p> <p>As part of approved precise landscape plans</p>	<p>PDF 4.15-2 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of Smart Controller irrigation systems in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis.</p>	<p>Municipal Operations Director; Public Works Director; Community Development Director</p>		
<p>Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes</p> <p>As part of subdivision improvement plans</p>	<p>PDF 4.15-3 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for a domestic water system designed to take advantage of existing water transmission facilities that connect to the Project site to minimize off-site impacts.</p>	<p>Municipal Operations Director; Public Works Director; Community Development Director</p>		
<p>Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes</p> <p>As part of subdivision improvement plans</p>	<p>PDF 4.15-4 The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for the Project's water system to provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines.</p>	<p>Municipal Operations Director; Public Works Director; Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
<p>Condition of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes to require information in Project CC&Rs</p> <p>Condition of approval of Site Development Review and Conditional Use Permits for all development</p> <p>As part of approved precise landscape plans</p> <p>As part of building permits</p> <p>Ongoing; during non-shortage conditions</p>	<p>SC 4.15-1 Chapter 14.16, Water Conservation and Supply Level Regulations, of the <i>City of Newport Beach Municipal Code</i> establishes the following mandatory permanent water conservation requirements, as summarized, during non-shortage conditions:</p> <ul style="list-style-type: none"> a. No customer shall use potable water to irrigate landscaping unless such irrigation is limited to no more than ten minutes of watering per day per station. b. No person shall use water to irrigate landscaping that causes or allows excessive flow or runoff. c. No person shall use water to wash down hard or paved surfaces, except when necessary to alleviate safety or sanitary hazards. d. No person shall permit excessive use, loss, or escape of water through breaks, leaks, or other malfunctions in the user's plumbing or distribution system. e. No customer shall use potable water for irrigation during a rainfall event. f. By July 1, 2012, all landscape irrigation systems connected to dedicated landscape meters shall include rain sensors that automatically shut off such systems during periods of rain or include evapotranspiration systems that schedule irrigation based on climatic conditions. g. No customer shall operate a water fountain or other decorative water feature that does not use a recirculating water system. h. No customer shall use water to clean a vehicle, except by use of a hand-held bucket or hand-held hose equipped with a water shut-off nozzle or device. i. Effective January 1, 2010, all new commercial conveyor car wash systems shall have recirculating water systems. By January 1, 2013, all commercial conveyor car wash systems shall have recirculating water systems. j. Eating or drinking establishments shall not provide drinking water unless expressly requested by the patron. k. Hotel, motel, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily. l. No customer shall install a new, single pass cooling system in a building or on premises requesting new water service. 	<p>Municipal Operations Director; Public Works Director; Community Development Director</p>		

**NEWPORT BANNING RANCH PROJECT (Continued)
 MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion	
		Date	Initials	Date	Initials
	<p>m. Effective January 1, 2010, all new washing machines installed in commercial and/or coin-operated laundries shall be EnergyStar® and CEE Tier III qualified. By January 1, 2014, all washing machines installed in commercial and/or coin-operated laundries shall be EnergyStar® and CEE Tier III qualified.</p> <p>n. No customer shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid.</p> <p>o. Commercial kitchens shall employ water-conservation practices and technology.</p> <p>p. Construction Site Requirements:</p> <ul style="list-style-type: none"> - No person shall use potable water for soil compaction or dust control on a construction site where there is an available and feasible source of recycled water or non-potable water approved by the Department of Public Health and appropriate for such use. - No person shall operate a hose within a construction site that is not equipped with an automatic shut-off nozzle, provided that such devices are available for the size and type of hose in use. 				

**NEWPORT BANNING RANCH PROJECT (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation		Completion											
		Date	Initials	Date	Initials										
As a part of Project CC&Rs During times of declared water shortage	<p>SC 4.15-2 Chapter 14.16, Water Conservation and Supply Level Regulations, of the <i>City of Newport Beach Municipal Code</i> establishes the following four levels of water supply shortage response actions to be implemented during times of declared water shortages.</p> <table border="1"> <thead> <tr> <th>Water Conservation Level</th> <th>Requirements</th> </tr> </thead> <tbody> <tr> <td>Level One</td> <td>Limit outdoor watering to scheduled irrigation days Cutbacks in water usage (up to 10%) Increased response time to fix broken/leaking plumbing (within 72 hours of notification from City) Limit filling of ornamental water features/pools (once per week)</td> </tr> <tr> <td>Level Two</td> <td>Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day Increased cutbacks in water usage (11–25%) Increased response time to fix broken/leaking plumbing (within 48 hours of notification from the City)</td> </tr> <tr> <td>Level Three</td> <td>Increase limitations for filling of ornamental water features/pools (once every other week) Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day Increased cutbacks in water usage (26–40%)</td> </tr> <tr> <td>Level Four</td> <td>Increased response time to fix broken/leaking plumbing (within 24 hours of notification from the City) No filling of ornamental water features/pools No outdoor watering Increased cutbacks in water usage (more than 40%) No new potable water services/meters Increased response time to fix broken/leaking plumbing (within 24 hours of notification from City) No filling of ornamental water features/pools</td> </tr> </tbody> </table>	Water Conservation Level	Requirements	Level One	Limit outdoor watering to scheduled irrigation days Cutbacks in water usage (up to 10%) Increased response time to fix broken/leaking plumbing (within 72 hours of notification from City) Limit filling of ornamental water features/pools (once per week)	Level Two	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day Increased cutbacks in water usage (11–25%) Increased response time to fix broken/leaking plumbing (within 48 hours of notification from the City)	Level Three	Increase limitations for filling of ornamental water features/pools (once every other week) Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day Increased cutbacks in water usage (26–40%)	Level Four	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from the City) No filling of ornamental water features/pools No outdoor watering Increased cutbacks in water usage (more than 40%) No new potable water services/meters Increased response time to fix broken/leaking plumbing (within 24 hours of notification from City) No filling of ornamental water features/pools	Municipal Operations Director; Public Works Director; Community Development Director			
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**NEWPORT BANNING RANCH PROJECT (Continued)
 MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion	
			Date	Initials
As a part of building permits	SC 4.15-3 The proposed Project shall meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards and shall be reviewed and approved by the City of Newport Beach Community Development Department, Building Manager, prior to issuance of building permits.	Community Development Director		

Attachment No. PC 1-2

Revised Final EIR Errata

CLARIFICATIONS AND REVISIONS

The information in this document is organized by respective sections of the Newport Banning Ranch EIR. Deleted text is shown as ~~strikeout~~ and new text is underlined.

TABLE OF CONTENTS

The Table of Contents has been revised and is incorporated into the Final EIR as follows:

4.14-~~23~~ NMUSD School Capacity and Enrollment for 2010–2011..... 4.14-20

SECTION 1.0: EXECUTIVE SUMMARY

Project Objective 14 on page 1-7 has been corrected and is incorporated into the Final EIR as follows:

Implement a Water Quality Management Program within the Project site that will utilize ~~existing~~ proposed 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.

To further articulate, the following Project Objective is provided and is incorporated into the Final EIR as follows:

17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City’s Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

SECTION 3.0: PROJECT DESCRIPTION

Project Objective 14 on page 3-9 has been corrected and is incorporated into the Final EIR as follows:

Implement a Water Quality Management Program within the Project site that will utilize ~~existing~~ proposed 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.

To further articulate, the following Project Objective is provided and is incorporated into the Final EIR as follows:

17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City’s Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

Page 3-19 has been revised and incorporated into the Final EIR as follows:

Resort Colony Road and Local Road Adjacent to the South Family Village

Resort Colony Road is proposed as a public Local Road that would be accessed from Bluff Road and North Bluff Road. The loop road would provide access to the proposed Resort and Residential land use areas in the southern portion of the Project site. This roadway adjacent to the ~~VSR/R land use area~~ Resort Colony is proposed with one travel

lane in each direction, ~~a pedestrian walkway on the inland side (adjacent to development) of the road, and a meandering trail adjacent to the Bluff Park and eight-foot-wide walkways on each side of the street~~ (Exhibit 3-10e; Cross-Section G-G). Resort Colony Road joins the Local Road adjacent to the ~~Residential (RL and RM) land use areas South Family Village~~ located north of the ~~VSR/R land use area Resort Colony~~. This roadway would be constructed as a public Local Street with one travel lane and one parking lane in each direction and four-foot-wide walkways on each side of the street (Exhibit 3-10f; Cross-Section I-I).

Page 3-22 has been revised and incorporated into the Final EIR as follows:

The Project proposes a Master Plan for Trails and Coastal Access comprised of public pedestrian paths, on-street bicycle trails, and off-street multi-use trails to provide coastal access and public mobility within the Project site. The proposed pedestrian and bicycle trails would provide connectivity among open space, parks, residential, resort, commercial, and mixed-use on-site land uses as well as public access and connections to existing off-site public trails, including the Santa Ana River and trails located in the Talbert Nature Preserve, Fairview Regional Park located further to the north, and existing walks and trails extending along West Coast Highway and the beach located to the south. A Multi-use Trail, Open Space Interpretive Trails, the Bluff Park Trail, the Pedestrian and Bicycle Bridge, On-Street Bicycle Trails, and Pedestrian Walkways are proposed as a part of the Project.

Section 3.7 of the Project Description has been revised and is incorporated into the Final EIR as follows:

Development implementation is designed to ensure efficient use of soil movement to balance landform grading and bluff/slope restoration and to make efficient use of existing infrastructure locations and connection points within and adjacent to the Project site. Development would be tied to corresponding requirements for public parks and Upland and Lowland habitat dedication and restoration, and would have functioning infrastructure.

Following the final approval of the Project by the City and the Coastal Commission, and following consolidation of oil production wells into the OF land use district as describe in the Newport Banning Ranch Planned Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO requesting approval of the annexation of the 361 acre portion of the Project site located in the City's Sphere of Influence to the City of Newport Beach. The annexation pre-application would be consistent with the terms of the Pre-Annexation and Development Agreement between the City and the Applicant approved by the City, with the approved pre-zoning approved by the City for the Project site and with the City's General Plan. Following approval or conditional approval of the annexation application, the entire 361 acres within the Newport Beach Sphere of Influence would be annexed to the City in one phase. Following completion of annexation proceedings, Project implementation may commence according to the following plan (Table 3-3).

The following narrative is incorporated into the Final EIR, Section 3.0, Project Description, as Section 3.14, Annexation, to provide additional explanation regarding the annexation process.

Following the final approval of the Project by the City and the Coastal Commission, and following the consolidation of oil production wells into the OF land use district as described in the Newport Banning Ranch Planned

Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO pursuant to Government Code Section 56000 et seq. (Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000) for annexation of approximately 361 acres of the Project site to the City. The pre-application would be submitted pursuant to the terms of the Pre-Annexation and Development Agreement agreed to by the City and the Applicant and as approved by the City and would be consistent with the approved zoning approved by the City for the Project site and the City’s General Plan. As part of the annexation pre-application, the City would submit a plan for providing public services to include the type, level, range, timing, and financing of services to be extended to the Project site including requirements for infrastructure or other public facilities.

All public services and facilities would be provided to the Project by the City. The majority of the Project site is not currently within the City of Newport Beach service area. As part of the annexation process a change to the organization of the City of Newport Beach retail water agency boundary will be proposed to expand this boundary to incorporate the Project site to provide water service to the Project. The Project site is not within the Costa Mesa Sanitary District boundaries or the boundaries of the City’s sewer service. As part of the annexation process, a change to the organization of the City of Newport Beach sewer service boundaries would be proposed to expand this boundary to incorporate the Project site to provide sewer service for the proposed Project. No other changes of organization affecting any public agencies in the Project area would result from the development of the proposed Project or annexation of the 361 acres of the Project site within the Newport Beach Sphere of Influence to the City of Newport Beach.

Table 3-2, Master Development Plan Statistical Summary, on page 3-35 has been revised to incorporate footnote f and is incorporated into the Final EIR as follows (see following page):

**TABLE 3-2
MASTER DEVELOPMENT PLAN STATISTICAL SUMMARY**

Land Use Designation	Site Planning Area		Gross Acres ^a	Net Acres ^a	Density (du/gross ac)	Units	Retail (sf) ^d	Resort Inn
	No.	Description						
OPEN SPACE PRESERVE								
1. Upland Habitat Conservation, Restoration, and Mitigation Areas								
UOS/PTF	1a	West Coast Highway Bluff Area	15.3	14.3	–	0	0	0
UOS/PTF	1b	Southern Arroyo CSS/Grassland Area	28.3	28.0	–	0	0	0
UOS/PTF	1c	Scenic Bluff CSS/Grassland Area	13.0	13.0	–	0	0	0
UOS/PTF	1d	Vernal Pool Preservation Area	3.2 ^f	3.2 ^f	–	0	0	0
UOS/PTF	1e	South Upland CSS/Grassland Area	19.4	18.1	–	0	0	0
UOS/PTF	1f	Northern Arroyo Grassland Area	5.8	5.5	–	0	0	0
UOS/PTF	1g	North Upland CSS/Grassland Area ^b	16.3	13.5	–	0	0	0
UOS/PTF	1h	Minor Arroyo Grassland Area	1.2	1.1	–	0	0	0
<i>Subtotal</i>			102.5	96.7	–	0	–	0

**TABLE 3-2 (Continued)
MASTER DEVELOPMENT PLAN STATISTICAL SUMMARY**

Land Use Designation	Site Planning Area		Gross Acres ^a	Net Acres ^a	Density (du/gross ac)	Units	Retail (sf) ^d	Resort Inn
	No.	Description						
<p>a. Gross acres of site planning areas are measured to the centerline of all public roads where such roads are shown on the Master Development Plan. Net acres of site planning areas are measured to the edge of the rights-of-way for all public roads where such roads are shown on the Master Development Plan (i.e., net acres exclude public road rights-of-way).</p> <p>b. The Right-of-Way Reservation for the 19th Street extension, from the Project site's easterly boundary to the Santa Ana River, encompasses approximately 3.1 acres, including approximately 0.6 acre of SPA 1g, 2.3 acres of SPA 2a, and 0.2 acre of SPA 3b.</p> <p>c. The Bluff Toe Trail is located within the non-exclusive access easement identified as Site Plan Area (SPA) 5b, Oil Access Road.</p> <p>d. Up to 2,500 sf of commercial may be transferred to a Residential Land Use District in accordance with the provisions of the NBR-PC provided the total area of commercial uses for the Master Development Plan does not exceed 75,000 sf.</p> <p>e. Includes a water quality basin.</p> <p>f. <u>The drainage area tributary to the vernal pool contains approximately 3.6 acres, and is composed not only of the 3.2 net acres in SPA 1d, Vernal Pool Preservation Area, but 0.4 net acre of the 0.6 net acre in SPA 9b, Vernal Pool Interpretive Area. Any and all interpretive planning within SPA 9b shall respect the 3.6-acre Vernal Pool tributary drainage area, and meet with the approval of the State and federal resource agencies and the California Coastal Commission.</u></p>								
Source: FORMA 2011.								

SECTION 4.2: AESTHETICS AND VISUAL RESOURCES

Page 4.2-11 has been corrected and incorporated into the Final EIR as follows:

BP District and IP District Regulations

- Maximum IP District Building Height – 36 feet¹
- Maximum BP District Building Height – 18 feet
- Maximum Building Coverage – ~~40~~ 5 percent of total gross site area

Page 4.2-17 of Section 4.2 has been modified and incorporated into the Final EIR as follows:

Grading and Construction

- The Project is proposed to be implemented over a period of approximately ~~13~~ nine years.

SECTION 4.3: GEOLOGY AND SOILS

Paragraph 2 of page 4.3-6 has been revised and incorporated into the Final EIR as follows:

The Lowland area encompasses approximately 147 acres in the northwest portion of the Project site at an average elevation of 1 to 10 feet ~~above msl.~~ This area consists of remnants of the Santa Ana River floodplain and contains channels conveying drainage from surrounding areas at higher elevations to the Santa Ana River through the Semeniuk Slough (also known as Oxbow Loop) (see Exhibit 3-3, Existing Topographic Site Conditions, Section 3.0, Project Description).

¹ Elevators, mechanical space, chimneys, towers and architectural treatments, intended to add interest and variation to roof design, and that do not exceed 10 percent of the roof area, or exceed the height restriction by more than 12 feet, are permitted.

SECTION 4.4: HYDROLOGY AND WATER QUALITY

Page 4.4-6 has been updated and is incorporated into the Final EIR as follows:

Municipal Storm Water Permitting (MS4 Permit)

The State's Municipal Storm Water Permitting Program regulates storm water discharges from MS4s. MS4 Permits were issued in two phases. Phase I was initiated in 1990, under which the RWQCBs adopted NPDES storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving more than 250,000 people) municipalities. As part of Phase II, the SWRCB adopted a General Permit for small MS4s (serving less than 100,000 people) and non-traditional small MS4s including governmental facilities such as military bases, public campuses, and prison and hospital complexes (WQ Order No. 2003-0005-DWQ).

On May 22, 2009 the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order No. R8-2009-0030, Amended by Order No. R8-2010-0062). Re-issuance of this permit would result in future changes to the OC DAMP and City of Newport Beach LIP and storm water program. This updated fourth-term MS4 Permit includes new requirements pertaining to hydromodification² and low impact development (LID) features associated with new developments and redevelopment projects. As part of the Permit requirements, the County of Orange as the Principal Permittee and the co-permittees including the City were required to develop a new Model Water Quality Management Plan (Countywide Model WQMP) which incorporates feasibility criteria for LID and hydromodification requirements. The 2011 Model WQMP and accompanying Technical Guidance Document was approved by the Santa Ana RWQCB on May 19, 2011 with an effective implementation date of 90 days following the approval (August 17, 2011).

Page 4.4-7 has been updated and is incorporated into the Final EIR as follows:

Orange County Storm Water Program 2003–Drainage Area Management Plan (DAMP)

Section 402(p) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires that municipal NPDES Permits include requirements (1) to essentially prohibit non-storm water discharges into municipal storm sewers and (2) to control the discharge of pollutants from municipal storm drains to the maximum extent practicable. In response to this requirement, the Orange County Drainage Area Management Plan (DAMP) was developed in 1993, which has been updated several times in response to requirements associated with NPDES permit renewals (County of Orange et al. 2003). The City is a permittee covered by the requirements of this permit. The next major update of the OC DAMP is expected in 2012 and would include the incorporation of the 2011 Model WQMP and accompanying Technical Guidance Document.

² Hydromodification is generally defined as the alteration of natural flow characteristics.

Pages 4.4-9 and 4.410 have been updated and are incorporated into the Final EIR as follows:

City of Newport Beach Local Implementation Plan (LIP) and Water Quality Management Plan (WQMP)

The City's Local Implementation Plan (LIP) was prepared as part of a compliance program pursuant to the Third Term NPDES Permit. The LIP presents the actions, activities and programs undertaken by the City, as well as current activities and programs, to meet the requirements of the NPDES Permit and to improve urban water quality. The City updates its LIP annually and the last updated included the Fourth Term NPDES Permit, New Model WQMP and Technical Guidance Document. Although the LIP is intended to serve as the basis for City compliance during the five-year period of the LIP is subject to modifications and updates as the City determines necessary, or as directed by the Santa Ana RWQCB.

~~The LIP, in conjunction with the County DAMP, is the principal policy and guidance document for the City's NPDES Storm Water Program. Sections A.7.0 and A.8.0 of the LIP address new development and significant redevelopment controls for incorporating BMPs into environmental compliance requirements. The LIP also addresses construction requirements for sedimentation and erosion control, as well as on-site hazardous materials and waste management.~~

~~On May 22, 2009, the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order R8-2009-0030). Re-issuance of the fourth term of this permit resulted in changes to the 2003 DAMP and City of Newport Beach LIP and storm water program. This updated Fourth Term permit includes new requirements pertaining to hydromodification and low impact development (LID) features associated with new developments and redevelopment projects. Within 12 months after the permit adoption, the County of Orange, as the Principal Permittee, must finalize a new Model WQMP that incorporates feasibility criteria for LID and hydromodification requirements. Following the Santa Ana RWQCB's approval of the Model WQMP, the City will be required to update their LIP and storm water programs and incorporate the new Model WQMP into their discretionary approval processes for new development and redevelopment projects.~~

The updated Fourth Term MS4 Permit, adopted by the Santa Ana RWQCB on May 22, 2009, includes new requirements pertaining to hydromodification³ and LID features associated with new developments and redevelopment projects. The 2011 Model WQMP and accompanying Technical Guidance Document was developed to incorporate the LID hierarchy criteria and hydromodification requirements. The prescribed hierarchy of treatment for site design and LID features in ranking order includes infiltration, evapotranspiration, harvest/use, biotreatment, and treatment control BMPs. In addition to the LID hierarchy, hydromodification controls for the 2-year storm event have been added for all priority projects....

As required by the City's municipal ordinances on storm water quality management, a project's WQMP must be submitted to the City for approval prior to the City issuing any building or grading permits. Since the proposed Project includes the development in multiple categories listed above (e.g., residential and commercial uses, parking), the Project is subject to the requirements of the City's WQMP. This includes meeting any all of the new requirements of the updated Fourth Term MS4 Permit and associated revised LIP. These updated

³ Hydromodification is generally defined as the alteration of natural flow characteristics.

requirements ~~may~~ will include LID features, hydromodification controls, and erosion/sediment controls.

SECTION 4.5: HAZARDS AND HAZARDOUS MATERIALS

Section 4.5, Hazards and Hazardous Materials has been revised and is incorporated into the Final EIR as follows:

There are two existing schools and one Community College campus (under construction) located within approximately ¼ mile of the Project site:

- Whittier Elementary School, 1800 Whittier Avenue, Costa Mesa; located approximately ¼ mile to the east.
- Carden Hall, 1541 Monrovia Avenue, Newport Beach; located approximately ~~¼~~⁴/₁₀-mile adjacent to the Project site's eastern boundary.
- Coast Community College District's Newport Beach Learning Center, an educational facility for college students, adult education, and high school-aged students, located adjacent to the Project site's eastern boundary. The Learning Center is under construction on the northwest corner of Monrovia Avenue at 15th Street.

...On-site oilfield and other remedial activities would result in potentially greater release of contaminants, predominantly hydrocarbons, into the air during soil disturbance due to aeration during handling (i.e., earth moving) of the contaminated soils than occurs in the existing condition. Section 4.10, Air Quality, of this EIR addresses the construction and operational air quality emissions anticipated from the proposed Project. The air quality analysis determines that there would be less than significant impacts related to emissions during remedial activities on the Project site. Also, the majority of the Project site is located further than ¼ mile from existing kindergarten through 12th grade schools and the under-construction Coast Community College District's Learning Center. Based on these factors, there would be a less than significant impact to existing and proposed schools from temporary handling of contaminated soils on the Project site during oilfield consolidation and remediation.

Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach.... Therefore, with implementation of SC 4.5-1, there would be a less than significant impact related to transport of soils within ¼ mile of existing and under-construction schools.

With proposed Project implementation, the extent of oilfield operations would be consolidated onto 2 areas totaling 16.5 acres, which would be located along the southwestern margin of the Project site and more than ¼ mile from existing schools and the under-construction Learning Center, and the proposed residential, commercial, recreational, visitor-serving, and open space land uses would not emit or otherwise handle hazardous materials, substances, or wastes (see PDF 4.5-1). The nature of anticipated future oilfield operations in the consolidated area would not be different than the existing operations. Therefore, operation of the proposed Project would result in a less than significant impact to schools in the Project vicinity.

Impact Summary: Less than Significant. There would be a less than significant impact to the existing schools and the under-construction Learning Center within ¼ mile of the Project site and/or from off-site haul routes during on-

site remedial activities and proposed Project construction with implementation of SC 4.5-2. There would be no impact to existing and under-construction schools within ¼ mile of the Project site from proposed Project operations as continued oil operations are proposed pursuant to PDF 4.5-1 to be limited to two consolidated oil facilities located along the southwestern portion of the Project site.

SECTION 4.6: BIOLOGICAL RESOURCES

MM 4.6-6 has been revised to address potential bird strike issues as follows:

MM 4.6-6 *Migratory Bird Treaty Act...* To protect bird species on site, any front glass railings, screen walls, fences and gates that occur adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.

SECTION 4.8: RECREATION AND TRAILS

Pages 4.8-4 through 4.8-5 has been revised and is incorporated into the Final EIR as follows:

The City of Huntington Beach is located immediately west of and across the Santa Ana River from the Project site. City recreational facilities within two miles of the Project site include Gisler Park, Bauer Park, Burke Park, Sowers Park, Edison Park, Seeley Park, Eader Park, Le Bard Park, and Hawes Park. These park facilities offer a variety of recreational amenities including picnic areas, athletic fields, and tot lots. While these parks are located near the Project site, their main function is to serve the residents of the City of Huntington Beach, and they are not intended to serve the recreational demand of residents outside of the City.

SECTION 4.9: TRANSPORTATION AND CIRCULATION

Page 4.9-27 has been revised and incorporated into the Final EIR as follows:

~~Minor~~ Improvements on 19th Street would be required to connect...

Mitigation Measures (MM) 4.9-1 and 4.9-2 have been revised and are incorporated into the Final EIR as follows:

MM 4.9-1 Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's

fair-share responsibility for the improvements. The resulting levels of service are identified in Table B...

**TABLE B
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
Intersection 9: Newport Boulevard/West Coast Highway					
Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.93	E	0.88	D
2016 TPO, Phase 1	n/a AM	0.91	E	0.86	D
2016 Cumulative	AM	0.96	E	0.91	E
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
n/a: not applicable for the traffic scenario. Source: Kimley-Horn 2011.					

MM 4.9-2 Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.....

**TABLE C
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
28	<p>Install a traffic signal.</p> <p>Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required</p> <p>Provide a second southbound left-turn on Newport Boulevard.</p>	n/a	X	n/a	X	X <u>n/a</u>	n/a
34	<p>Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.</p> <p>Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.</p>	n/a	X	n/a	X	n/a	X
36	<p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p> <p>Install a traffic signal.</p> <p>Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	X	X	X	X	X	X
37	<p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p> <p>Install a traffic signal.</p> <p>Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	X	X	X	X	X	n/a
42	<p>Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.</p> <p>Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.</p> <p>Install a traffic signal.</p> <p>Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.</p>	n/a	X	n/a	X	X <u>n/a</u>	n/a

**TABLE C (Continued)
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

		Scenario in which Improvements are Needed					General Plan Buildout
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	
43	Superior Ave/ 17 th St	X	X	n/a	X	✗ n/a	n/a
	<p>Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation.</p> <p>Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</p>						
44	Newport Blvd/ 17 th St	n/a	X	n/a	X	✗ n/a	n/a
<p>n/a: Mitigation measure is not required under this traffic scenario. Source: Kimley-Horn 2011.</p>							

Table 4.9-38 has been changed and incorporated into the Final EIR to reflect the following corrections:

**TABLE 4.9-38
GENERAL PLAN BUILDOUT WITH PROJECT AND 19TH STREET BRIDGE:
MPAH NETWORK ALTERNATIVE**

Intersection		Control	AM Peak Hour		PM Peak Hour		
			ICU/ Delay	LOS	ICU/ Delay	LOS	
Newport Beach	1	Monrovia Ave/16th St	S	0.31	A	.35	A
	2	Placentia Ave/15th St	S	0.50	A	0.56	A
	3	Superior Ave/15th St	S	0.51	A	0.51	A
	4	Superior Ave/Placentia Ave	S	0.63	B	0.50	A
	5	Newport Blvd/Hospital Rd	S	0.63	B	0.75	C
	6	Orange St/W. Coast Hwy	S	0.74	C	0.77	C
	7	Prospect St/W. Coast Hwy	S	0.88	D	0.81	D
	8	Superior Ave/W. Coast Hwy	S	0.90	D	0.85	D
	9	Newport Blvd/W. Coast Hwy ^a	S	0.89	D	0.69	C B
	10	Riverside Ave/W. Coast Hwy	S	0.74	C	0.90	D
	11	Tustin Ave/W. Coast Hwy	S	0.61	B	0.84	D
	12	Dover Dr/W. Coast Hwy	S	0.79	C	0.90	D
Huntington Beach	13	Magnolia St/Hamilton Ave	S	0.73	C	0.74	C
	14	Bushard St/Hamilton Ave	S	0.51	A	0.63	B
	15	Brookhurst St/Hamilton Ave (Victoria St)	S	0.77	C	1.00	E
	16	Magnolia St/Banning Ave	S	0.61	B	0.51	A
	17	Bushard St/Banning Ave	S	0.69	B	0.76	C
	18	Brookhurst St/Banning Ave	S	0.45	A	0.51	A
	19	Magnolia St/Pacific Coast Hwy	S	0.82	D	1.18	F
	20	Brookhurst St/Bushard St	S	0.30	A	0.32	A
	21	Brookhurst St/Pacific Coast Hwy	S	0.73	C	0.91	D E
Costa Mesa	22	Placentia Ave/Victoria St	S	0.71	C	0.81	D
	23	Pomona Ave/Victoria St	S	0.70	B	0.82	D
	24	Harbor Blvd/Victoria St	S	0.66	B	0.77	C
	25	Newport Blvd/Victoria St	S	0.48	A	0.44	A
	26	Newport Blvd /Victoria St (22nd St)	S	0.86	D	0.53	A
	27	Whittier Ave/19th St	S	0.84	D	0.78	C
	28	Monrovia Ave/19th St	S	0.79	C	0.75	C
	29	Placentia Ave/19th St	S	0.54	A	0.57	A
	30	Pomona Ave/19th St	S	0.57	A	0.73	C
	31	Anaheim Ave/19th St	S	0.57	A	0.68	B
	32	Park Ave/19th St	S	0.53	A	0.60	A
	33	Harbor Blvd/19th St	S	0.49	A	0.63	B
	34	Newport Blvd/19th St	S	1.08	F	1.03	F
	35	Newport Blvd/Broadway	S	0.69	B	0.87	D
	36	Newport Blvd/Harbor Blvd	S	0.78	C	1.12	F
	37	Newport Blvd/18th St (Rochester St)	S	0.82	D	1.09	F
	38	Placentia Ave/18th St	S	0.46	A	0.48	A
	39	Whittier Ave/17th St	S	0.41	A	0.52	A
	40	Monrovia Ave/17th St	S	0.34	A	0.44	A
	41	Placentia Ave/17th St	S	0.39	A	0.49	A

**TABLE 4.9-38 (Continued)
GENERAL PLAN BUILDOUT WITH PROJECT AND 19TH STREET BRIDGE:
MPAH NETWORK ALTERNATIVE**

Intersection			Control	AM Peak Hour		PM Peak Hour	
				ICU/ Delay	LOS	ICU/ Delay	LOS
Costa Mesa	42	Pomona Ave/17th St	S	0.51	A	0.54	A
	43	Superior Ave/17th St	S	0.80	C	0.80	C
	44	Newport Blvd/17th St	S	0.83	D	0.93	E
	45	Orange Ave/17th St	S	0.42	A	0.61	B
	46	Santa Ana Ave/17th St	S	0.43	A	0.51	A
	47	Tustin Ave/17th St	S	0.44	A	0.57	A
	48	Irvine Ave/17th St	S	0.64	B	0.91	E
	49	Placentia Ave/16th St	S	0.25	A	0.30	A
	50	Superior Ave/16th St	S	0.57	A	0.50	A
	51	Newport Blvd/16th St	S	0.68	B	0.75	C
	52	N. Bluff Rd/Victoria St	S	0.93	E	0.87	D
On-Site	53	N. Bluff Rd/19th St	S	0.64	B	0.72	C
	54	N. Bluff Rd/17th St	S	0.58	A	0.59	A
	55	Bluff Rd/16th St	U	0.25	A	0.33	A
	56	Bluff Rd/15th St	S	0.29	A	0.35	A
	57	Bluff Rd/West Coast Hwy	S	0.79	C	0.82NA	D
	57a	17 th St/West Coast Hwy	S	0.71	C	0.80 0.82	C
	57b	17 th St/15 th St	S	0.31	A	0.43	A

Notes: S = Signalized, U=Unsignalized
Bold and shaded values indicate intersections operating at LOS E or F.
 Intersection operation is expressed in volume-to-capacity (v/c) for signalized intersections using the ICU Methodology.
^a CMP intersection
 Source: Kimley-Horn 2011.

The names of two of the SR-55 alternatives have been changed on pages 4.9-133 and -134 and are incorporated into the Final EIR as follows.

Vertical Terminal Enhancement Elevated Turn Lanes Alternative

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative proposes improvements in increments, by first addressing 17th and 19th Streets and Superior Avenue to improve congestion within the corridor. This alternative would study whether improvements at the two ends of the corridor are adequate to address congestion along the entire corridor, and determine the effects of such a strategy.

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative represents a constrained network with improved mobility to 19th Street on the west side of Newport Boulevard by adding:

- A ramp braid at the southbound Newport Boulevard tie-in at the SR-55;
- A free-right turn lane from Newport Boulevard to 19th Street (existing bus turn-out to the west would be relocated); and,
- An eastbound 19th Street to northbound SR-55 flyover structure.

Cut/Cover Freeway Along Newport Boulevard Cut and Cover Alternative

The **Cut/Cover Freeway Along Newport Boulevard Cut and Cover** Alternative would involve the construction of an entirely new structure below Newport Boulevard. The alternative would provide a four-lane controlled access freeway under Newport Boulevard from 19th Street to Industrial Way and an interchange at 19th Street. Newport Boulevard would be maintained as an eight-lane arterial with side street access.

SECTION 4.10: AIR QUALITY

The references to URBMEIS has been changed to CalEEMod in the Final EIR as follows:

Page 4.10-7

Fugitive dust emissions (PM10) were calculated using ~~the URBEMIS model~~ CalEEMod, USEPA’s AP-42, and SCAQMD’s CEQA Air Quality Handbook.

Emissions from operation of the residential, commercial, and other Project development after completion were calculated using ~~URBEMIS~~ CalEEMod. TAC emissions were determined from the generated PM10 and VOC emissions.

Page 4.10-20

The results of the ~~URBEMIS~~ CalEEMod calculations for Project construction are shown in Table 4.10-7, which shows the estimated maximum daily emissions for each construction year. Appendix G of the EIR includes the CalEEMod model output details, including unmitigated and mitigated emissions on site and off site for each construction activity for each year; Table 4.10-7 summarizes the findings. The data are compared with the SCAQMD mass daily thresholds.

Revised Tables 4.10-7 and 4.10-8 have been revised and are incorporated into the Final EIR as follows:

**TABLE 4.10-7 (REVISED MARCH 2012)
ESTIMATED MAXIMUM DAILY
CONSTRUCTION EMISSIONS: UNMITIGATED^a**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>20.13</u>	<u>157.107</u>	<u>93.64</u>	<0.5	44	<u>11.9</u>
2015	<u>29.22</u>	<u>178.127</u>	<u>123.130</u>	<0.5	<u>48.57</u>	<u>13.11</u>
2016	<u>25.19</u>	<u>145.104</u>	<u>108.116</u>	<0.5	<u>29.39</u>	<u>10.8</u>
2017	<u>34.26</u>	<u>165.125</u>	<u>154.175</u>	<0.5	<u>37.55</u>	<u>11.10</u>
2018	<u>27.12</u>	<u>82.61</u>	87	<0.5	<u>15.20</u>	5
2019	<u>32.19</u>	<u>103.82</u>	<u>128.142</u>	<0.5	<u>22.36</u>	6
2020	<u>17.14</u>	<u>53.48</u>	<u>87.111</u>	<0.5	<u>17.32</u>	3
2021	<u>12.6</u>	<u>25.22</u>	<u>45.53</u>	<0.5	<u>9.16</u>	1
2022	<u>11.6</u>	<u>23.20</u>	<u>44.51</u>	<0.5	<u>9.16</u>	1
2023	<u>11.6</u>	<u>22.19</u>	<u>42.49</u>	<0.5	<u>9.16</u>	1
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	Yes	No	No	No	No

VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter.
Notes: Detailed data in Appendix G.
^a In pounds per day

**TABLE 4.10-8 (REVISED MARCH 2012)
ESTIMATED MAXIMUM DAILY
CONSTRUCTION EMISSIONS: MITIGATED – TIER 3 CONSTRUCTION
EQUIPMENT^a**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>8.9</u>	<u>42.59</u>	<u>93.67</u>	<0.5	<u>40.41</u>	<u>7.8</u>
2015	17	<u>60.82</u>	<u>128.136</u>	<0.5	<u>43.57</u>	<u>8.10</u>
2016	16	<u>57.73</u>	<u>118.124</u>	<0.5	<u>26.39</u>	<u>7.9</u>
2017	<u>21.24</u>	<u>83.100</u>	<u>165.186</u>	<0.5	<u>34.49</u>	<u>8.11</u>
2018	<u>23.12</u>	<u>44.53</u>	<u>95.93</u>	<0.5	<u>13.21</u>	<u>4.5</u>
2019	<u>28.20</u>	<u>68.79</u>	<u>139.150</u>	<0.5	<u>22.38</u>	<u>6.8</u>
2020	<u>17.15</u>	<u>48.51</u>	<u>92.114</u>	<0.5	<u>18.33</u>	<u>3.4</u>
2021	<u>11.7</u>	<u>24.25</u>	<u>47.55</u>	<0.5	<u>10.17</u>	2
2022	<u>11.7</u>	<u>24.25</u>	<u>46.53</u>	<0.5	<u>10.17</u>	2
2023	<u>11.7</u>	<u>23.24</u>	<u>45.51</u>	<0.5	<u>10.17</u>	2
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	No	No	No	No	No
VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter. Notes: Detailed data in Appendix G. ^b In pounds per day						

The following mitigation measure is proposed and incorporated into the Final EIR as follows:

MM 4.10-13 Odor Complaints. The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

The impact summary is revised and incorporated into the Final EIR as follows:

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.~~

SECTION 4.11: GREENHOUSE GAS EMISSIONS

To further encourage the use of electric vehicles, MM 4.11-5 has been revised and is incorporated into the Final EIR as follows:

MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at

the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

SECTION 4.12: NOISE

Page 4.12-10 has been revised and is incorporated of the Final EIR. Mitigation Measure 4.12-1, which is included in the Project to reduce construction noise to sensitive noise receptors, would also be applicable to the Learning Center. Exhibit 4.12-3 has also been updated.

Activities usually associated with sensitive receptors include, but are not limited to, talking, reading, and sleeping. Land uses often associated with sensitive receptors include residential dwellings, hotels, hospitals, day care centers, and educational facilities. The surrounding noise-sensitive receptors adjacent to the Project site are described below and shown in Exhibit 4.12-3.

...**East:** Residential developments, including single-family residences on the southwestern corner of 17th Street and Monrovia Avenue; multi-family residences and mobile homes on 15th Street west of Placentia; the California Seabreeze and Parkview Circle communities, located generally between 19th Street and 18th Street in the City of Costa Mesa contiguous to the Project site; and several mobile home parks, including a development at 17th and Whittier....

Coast Community College Newport Beach Learning Center, under construction, on the northwest corner of 15th Street at Monrovia Avenue (an educational facility for high school-aged students, college students, and adult education)....

MM 4.12-10 has been revised and is incorporated into the Final EIR as follows:

MM 4.12-10 Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.

SECTION 4.14: PUBLIC SERVICES AND FACILITIES

On pages 4.14-2 to 4.14-12 of Section 4.14, the term "mutual aid" has been changed and is incorporated into the Final EIR with the term "automatic aid".

Page 4.14-3, the second sentence under *Methodology* been changed and is incorporated into the Final EIR as follows:

To assist the Fire Department, the City retained the firm, Fire Force One, to evaluate the City's ability to provide adequate response to the Project site as part of the evaluation of existing fire station sites and three potential locations for future fire station sites ~~as well as to the West Newport area and the City as a whole.~~

Page 4.14-3, under *Existing Conditions* has been changed and is incorporated into the Final EIR as follows:

The Costa Mesa Fire Department provides fire protection services through an ~~automatic aid~~ a cooperative agreement to the Newport Terrace residential community located north of 19th Street in the City of Newport Beach.

Page 4.14-4, the first paragraph under *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department's Policy Manual, ~~approved~~ updated by the Fire Department in January 2010, identifies policies of the Fire Department related to operating procedures including but not limited to response time objectives. Policy 3.A.100, Department Goals, of the Fire Department's Policy Manual identifies the standard operating procedures for the Fire Department and states "Provide a safe, effective and expeditious response to requests for assistance" (NBFD 2010).

Page 4.14-6, the first paragraph under *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City's "turnout time" and "travel time" values are based upon national standards published by the National Fire Protection Association (NFPA) in its Standard 1710, "Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments", 2010 edition. The City has adopted the response time goals identified in NFPA Standard 1710 which states "the fire department's fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4" (Fire Force One 2010). The maximum response times are intended to be met 90 percent of the time. Acceptable delays that can be attributed to the remaining 10 percent include units out of service for training and maintenance, the closest unit is already assigned to another call, fire inspections in which the crew is a distance away from their apparatus and similar instances.

Table 4.14-3 has been revised and is incorporated into the Final EIR as follows:

**TABLE 4.14-3
NEWPORT-MESA UNIFIED SCHOOL DISTRICT
SCHOOL CAPACITY AND ENROLLMENT FOR 2010–2011**

School (Grade Level)	Net School Capacity ^a	Enrollment ^b	Available Capacity
Elementary (K–6)	12,112 <u>12,478</u>	11,528	584 <u>950</u>
Secondary (7–12)	11,361	10,275	1,086
District Total	23,473 <u>23,839</u>	21,803	1,670 <u>2,036</u>
^a Zareczny 2010 <u>2011</u> . ^b Zareczny 2010 <u>2011</u> . Note: Ungraded elementary and secondary students are included into calculations.			

Table 4.14-4 has been revised and is incorporated into the Final EIR as follows:

**TABLE 4.14-4
AVAILABLE CAPACITY AT EXISTING NEWPORT-MESA UNIFIED SCHOOL
DISTRICT SCHOOLS NEAREST TO THE PROJECT SITE**

School Name	Net School Capacity ^a	Enrollment ^b	Available Capacity	Distance to the Project Site (mi)
Elementary Schools				
Newport Elementary	437 <u>445</u>	429	8 <u>16</u>	2.2
Newport Heights Elementary	553 <u>584</u>	637	(84) <u>(50)</u>	2.8
Pomona Elementary	483 <u>485</u>	518	(35) <u>(33)</u>	2.6
Rea Elementary	530 <u>577</u>	445	85) <u>(132)</u>	2.8
Victoria Elementary	345 <u>365</u>	384	(39) <u>(19)</u>	3.2
Whittier Elementary	806 <u>804</u>	799	7 <u>5</u>	2.4
Middle Schools				
Ensign Middle	1,228	1,079	149	2.0
High School				
Newport Harbor High	2,844	2,511	333	2.3
<i>Subtotal Elementary Schools</i>	3,154 <u>3,260</u>	3,212	(58) <u>48</u>	N/A
<i>Subtotal Middle Schools</i>	1,228	1,079	149	N/A
<i>Subtotal High School</i>	2,844	2,511	333	N/A
Total Capacity	7,226 <u>7,332</u>	6,802	424 <u>434</u>	N/A
Note: The distances were taken from the crossing of West Coast Highway at Industrial Park Way in Newport Beach.				
a. Zareczny 2010 2011.				
b. Zareczny 2010 2011 (Ungraded elementary and secondary students are included into calculations).				

Page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In accordance with SB 50, the construction of new schools requires a school district to match State funds. The local match is typically provided by such funds as developer fees, local General Obligation bonds, and/or Mello-Roos CFD ("Special Taxes" that can be levied on property owners of newly constructed homes within a CFD). ~~The NMUSD participates in the State funding program and obtained funding for expansion of Sonora Elementary in Costa Mesa in 2008.⁴ The NMUSD pursues the opportunity for facilities funding whenever it is eligible in the State funding program. In June 2010, the District was awarded \$1,431,274 for modernization and new construction at Costa Mesa High School.~~

⁴ ~~Although the application for funding of the Sonora Elementary School expansion was approved, funding has not been released due to the State budget crisis. However, due to the current state budget crisis, funding for the Costa Mesa High School Projects has not been released. The total cost of the projects is \$7,456,294.64.~~

The second paragraph under the heading “Local Funding” on page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In November 2005, residents within the boundaries of the NMUSD passed a local Measure F authorizing the sale of \$282 million in General Obligation bonds. In a resolution adopted by the School Board on June 13, 2006, the School District approved the tax rate of \$18.87 for every \$100,000 of assessed values for the repayment of the bonds. Measure F is the second successful General Obligation bond in the School District. Measure A was passed by the NMUSD voters in June 2000 and authorized the sale of \$110 million in General Obligation bonds. Measure A funds are used by the School District to modernize every school campus throughout the district and to expand school capacity district wide were used by the School District to modernize every K-12 school campus throughout the District for ADA compliance, Fire Life Safety, Utility, Technology Upgrades and Interior/Exterior improvements. Measure A projects were completed in 2007.

Page 4.14-12 has been revised and is incorporated into the Final EIR as follows:

Therefore, following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City, the entire Project can be adequately served through the use of existing City of Newport Beach fire and emergency medical services as well use of fire and emergency medical services provided through the City’s mutual aid agreement with adjacent jurisdictions, the latter as needed. The plan for provision of fire protection and emergency medical services to the Project site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable fire protection and emergency medical services to the Project. No significant impacts are anticipated.

Page 4.14-16 has been revised and is incorporated into the Final EIR as follows:

The Police Department’s operating budget is generated through tax revenues, penalties and service fees, and allowed government assistance. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. Tax-base expansion from development of the proposed Project would generate funding for the police protection services. Implementation of SCs 4.14-4 and 4.14-5 related to site security and building and site safety design recommendations would ensure adequate police protection services can be provided to the Project site following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable police protection services to the Project. Therefore, the Project’s impact on police protection services would be less than significant.

Page 4.14-19 has been revised and is incorporated into the Final EIR as follows:

The State is also involved in deciding the structure of local schools. For example, in August 1996, the State Senate passed SB 1777 (1996–1997 Class Size Reduction Program) and SB 1789 (Class Size Reduction Facilities Funding Program). These programs together (1) provide incentive monies to local school districts to lower class sizes for kindergarten through the third grades (K–3) to a ratio of 20 students to 1 teacher and (2) provide funds for additional teaching stations. However, the loading factor that the State uses to calculate school building capacity is 25 students per elementary classroom (K–6) and 27 students

per middle and high school classroom (grades 7–12) (OPSC 2008). The NMUSD implements Class Size Reduction policies in grades K–3. For the purposes of analyzing school impacts herein, NMUSD’s Net Capacity is used. It is defined as the total number of classrooms with ~~25 students in each classroom; these classrooms do not include protected program classrooms (Zareczny 2009).~~⁵ 20 students in classrooms grade Kindergarten through 3rd grade and 33 students in classrooms grades 4th through 12th.

Page 4.14-26 has been revised and is incorporated into the Final EIR as follows:

The Library has also indicated that the Project would not create a need for new or expanded library facilities. As a result, there would be no significant physical impacts to library facilities resulting from the proposed Project following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. As identified in SC 4.14-1, the Applicant shall pay the required Property Excise Tax to the City for public improvements and facilities associated with the City of Newport Beach Public Library. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code Section 56668 as the City of Newport Beach can provide continuous and reliable library services to the Project.

SECTION 4.15: UTILITIES

The first sentence in the second paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

As part of the regulation management of groundwater supplies, the OCWD is ~~responsible for recharging local groundwater basins (including the La Habra Basin, the San Juan Basin, the Laguna Canyon Basin, and the Lower Santa Ana River Basin),~~ recharges the Orange County Groundwater Basin which generally involves recharge with Santa Ana River flows, recycled water, and imported water to maintain groundwater levels.

The last sentence in the first full paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

The OCWD ~~regulates~~ manages the use of groundwater supplies through a Groundwater Basin Management Plan. A Groundwater Management Plan 2009 Update was considered and adopted by the OCWD Board of Directors on July 15, 2009 (Miller OCWD 2009).

The third sentence in the third paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

OCWD’s 2009 ~~Draft~~ Groundwater Management Plan Update estimates groundwater replenishment supplies of 61,000 afy (OCWD 2009).

⁵ Protected program classroom uses include special education, science labs, resource support programs, music, libraries, and computer labs.

Page 4.15-26 has been revised and incorporated into the Final EIR as follows:

Capacity Assurance, Management, Operation, and Maintenance Program

In January 2001, the USEPA published a proposed rule intended to clarify and expand permit requirements under the Clean Water Act to further protect public health and the environment from impacts associated with sanitary sewer overflows. The proposed rule is generally referred to as the “Capacity Assurance, Management, Operation, and Maintenance Program Regulation”. The proposed Program’s regulation requires development and implementation of programs intended to meet the performance standard of eliminating sanitary sewer overflows; to provide overflow emergency response plans, system evaluations, and capacity assurance plans; to conduct program audits; and to implement public communication efforts. The proposed rule was not adopted. In 2002, the Regional Water Quality Control Board, Santa Ana Region, adopted Waste Discharge Requirements for sewer system owners followed by the State of California’s adoption of statewide Waste Discharge Requirements.

Page 4.15-27 has been updated and is incorporated into the Final EIR as follows:

In the vicinity of the Project site, the OCSD operates facilities in West Coast Highway as well as the Bitter Point Pump Station and three force mains located within the Project site, all of which flow to Wastewater Treatment Plant 2.... The OCSD also provides up to ~~40~~ 4G 104 mgd of treated wastewater to the OCWD for further processing for landscape irrigation and injection into the groundwater seawater intrusion barrier.

Page 4.15-27 has been revised and incorporated into the Final EIR as follows:

In addition to these on-site facilities, sanitary sewer facilities exist in the Project vicinity... The City of Newport Beach operates wastewater facilities adjacent to the Project site on West Coast Highway, along 19th Street, and on Ticonderoga Street.... ~~The City of Costa Mesa~~ Costa Mesa Sanitary District also has facilities near the Project site.

Page 4.15-29 has been revised and is incorporated into the Final EIR as follows:

Effluent from the development areas would be collected and directed to the OCSD trunk sewer upstream of the Bitter Point Pump Station via ~~8-~~, 10- and 12-inch pipes. The majority of the proposed wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint evaluated throughout this EIR. ~~An off-site connection would be required on sewer stub is proposed near 16th Street to provide future service to the adjacent to the Newport-Mesa Unified School District property. However, the connection proposed sewer stub would occur within the proposed off-site road and grading footprint evaluated throughout this EIR. an existing oil access road and would not result in significant environmental effects beyond those addressed as part of this EIR.~~ Therefore, no additional direct impacts related to construction and operation of the on-site wastewater system would occur.

SECTION 5.0: CUMULATIVE IMPACTS

Table 5-2 on page 5-18, the first two rows are modified and incorporated into the Final EIR.

Table 5-3 has been revised and incorporated into the Final EIR.

Exhibit 5-4 has been updated and incorporated into the Final EIR to reflect changes to the location of several City of Huntington Beach cumulative projects.

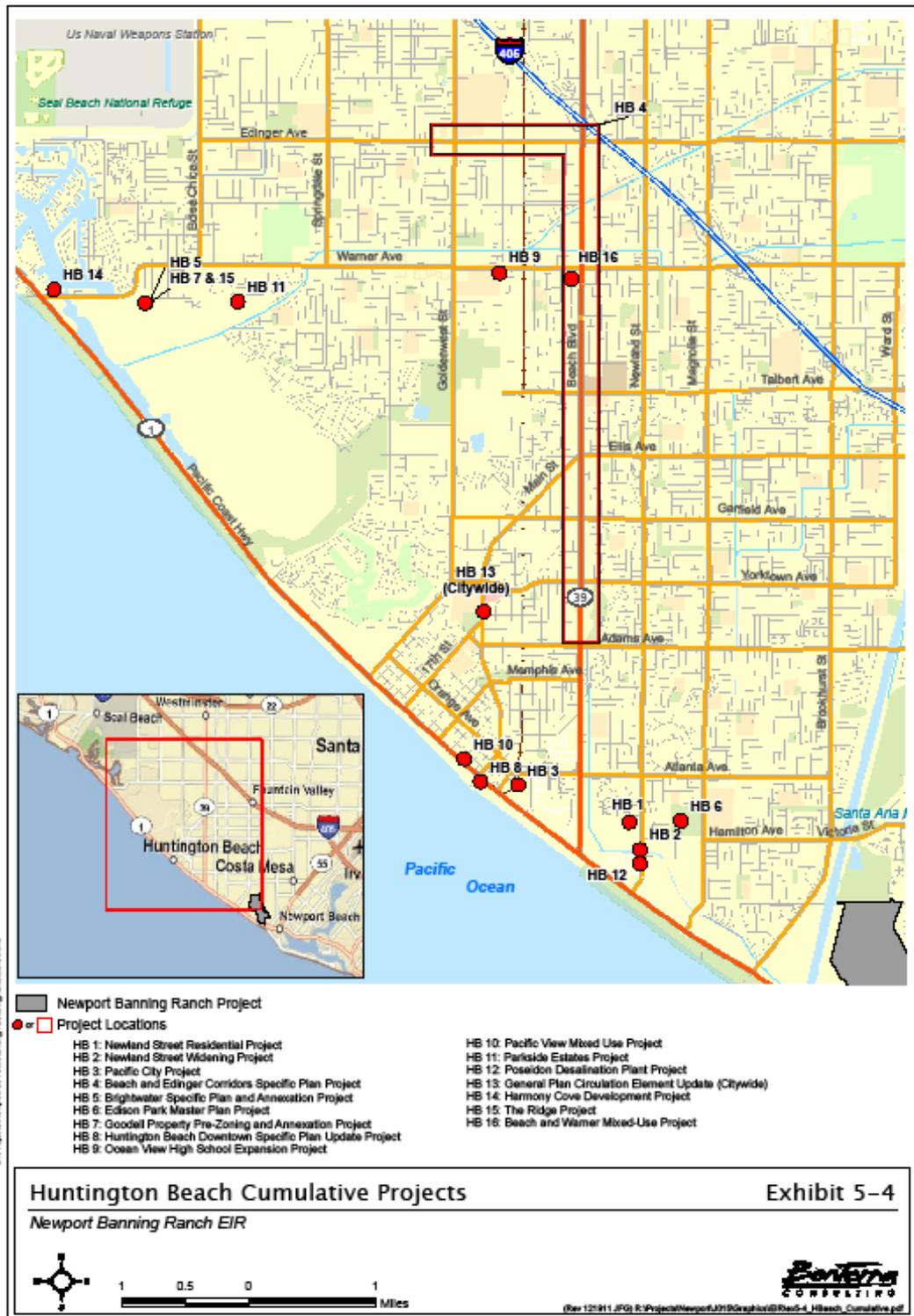


TABLE 5-2

<p>Newland Street Residential</p>	<p>The project would develop and subdivide a former industrial site into a residential development with 204 multi-family residential units and an approximate 2-acre public park.</p>	<p>21471 Newland St; south of Lomond Dr; west of Newland St, north of the terminus of Hamilton Ave; 4 miles to the northwest.</p>	<p>Final EIR was certified in August 2006. The project has been completed is under construction. Please note that this project is now commonly referred to as Pacific Shores.</p>	<ul style="list-style-type: none"> • GP Amendment • Zoning Map Amendment • TTM • CUP • Final Tract Map
<p>Newland Street Widening</p>	<p>The project would widen Newland St from Pacific Coast Hwy to Hamilton Ave, widen the reinforced concrete bridge at Huntington Channel, install storm drain improvements in Newland St, and raise the profile of Newland St to improve traffic visibility. The proposed widening would also address stopping sight distance deficiency by raising the road grade at the Huntington Channel and providing a left-turn lane at the intersection of Newland St and Edison Way.</p>	<p>Newland St from Pacific Coast Hwy to Hamilton Hwy; 2 miles to the west.</p>	<p>IS/MND approved in April 2007. The project is under construction has been completed.</p>	<ul style="list-style-type: none"> • IS/MND approval • No other discretionary actions were identified

TABLE 5-3

CITY OF HUNTINGTON BEACH																	
Projects Where Construction Has Been Initiated or Completed																	
Brightwater Specific Plan and Annexation	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	Yes
Huntington Beach Downtown Specific Plan Update	LS	S	S	S	S	N/A	S	LS	LS	U	U	U	U	U	U	S	Yes
Newland Street Residential	S	U	S	U	LS	S	U	S	S	S	S	S	S	S	S	S	Yes
Newland Street Widening	LS	LS	LS	LS	LS	S	S	LS	LS	LS	LS	LS	LS	LS	LS	LS	Yes
Ocean View High School Expansion	LS	N/A	LS	LS	LS	LS	LS	LS	N/A	LS	LS	LS	LS	LS	N/A	LS	Yes
Pacific City	LS	S	S	S	S	S	LS	LS	LS	LS	LS	LS	LS	LS	S	S	Yes
Projects With Approved CEQA Documentation																	
Beach and Edinger Corridors Specific Plan	LS	S	S	S	S	S	S	LS	LS	U	U	U	U	U	U	U	Yes
Edison Park Master Plan	LS	S	LS	LS	LS	S	LS	LS	S	N/A	LS	LS	LS	LS	LS	LS	Yes
Goodell Property Pre-Zoning and Annexation	LS	LS	LS	LS	LS	S	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	Yes
Pacific View Mixed-Use	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	Yes
Parkside Estates	LS	S	S	S	S	S	S	S	N/A	S	S	S	S	S	S	S	Yes
Poseidon Desalination Plant	LS	S	S	S	S	S	S	S	N/A	S	U	S	S	S	S	S	Yes
The Ridge	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	Yes
Projects Without Approved CEQA Documentation																	
General Plan Circulation Element Update	U	LS	LS	LS	LS	U	U	U	U	U	U	U	U	U	U	U	Yes
Harmony Cove Residential Development	S	LS	S	S	LS	S	LS	LS	LS	LS	LS	LS	LS	S	LS	LS	Yes
Beach and Warner Mixed-Use Project	LS	LS	LS	LS	LS	S	LS	LS	LS	S	U	S	S	S	LS	LS	Yes

Page 5-74, the first paragraph under *Cumulative Impact Analysis Fire Protection* has been changed and incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department serves existing development (inclusive of past and present projects) through the facilities and staff identified in Section 4.14. The proposed Project assumes the provision of fire protection services is based on a combination of existing and planned City of Newport Beach fire services and the use of ~~mutual~~ automatic aid. The City participates in Central Net, an automatic ~~mutual~~ aid system with the Cities of Costa Mesa, Santa Ana, and Huntington Beach, and the Orange County Fire Authority (OCFA). Together, these cities and the County provide personnel to any emergency. As part of this ~~mutual~~ automatic aid agreement, ~~the closest~~ an emergency response unit is dispatched to the emergency, regardless of jurisdictional boundary. As such, all projects in the Cities of Newport Beach, Costa Mesa, and Huntington Beach would be assumed in the cumulative analysis for fire protection services.

SECTION 9.0: REFERENCES

Newport Banning Ranch LLC. 2011a (August). Newport Banning Ranch Master Development Plan. Newport Beach, CA.

_____. 2011b (August). Newport Banning Ranch Planned Community Development Plan. Newport Beach, CA.

Orange County Water District (OCWD). 2009 Miller, C. 2009 (October 29). Personal communication. Telephone conversation between C.G. Miller (OCWD) and J. Marks (BonTerra Consulting) regarding the Groundwater Management Plan 2009 Update.

PC 2 Exhibit A

Legal Description

EXHIBIT A
Legal Description

Real property in the unincorporated area of the County of Orange, State of California, described as follows:

PARCEL 1:

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN LOTS "A" AND "B" OF SAID BANNING TRACT, WHICH POINT IS THE POINT OF INTERSECTION OF THE CENTER LINE OF NINETEENTH STREET AND THE NORTHWESTERLY LINE OF THE FIRST ADDITION TO THE NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 26' 55" WEST ALONG THE NORTHERLY LINE OF SAID LOT "B", 3315.29 FEET TO THE NORTHWESTERLY CORNER OF LOT "B" OF SAID BANNING TRACT; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF LOT "B" OF SAID BANNING TRACT, THE FOLLOWING COURSES AND DISTANCES: SOUTH 1 DEGREE 45' WEST 462.00 FEET; THENCE SOUTH 34 DEGREES IS' WEST 462.95 FEET; THENCE SOUTH 6 DEGREES IS' EAST 1058.48 FEET; THENCE SOUTH 19 DEGREES 45' WEST 529.21 FEET; THENCE SOUTH 34 DEGREES 30' WEST 463.08 FEET; THENCE SOUTH 42 DEGREES 45' WEST 397.00 FEET; THENCE SOUTH 4 DEGREES 45' WEST 462.00 FEET; THENCE SOUTH 21 DEGREES IS' WEST 198.50 FEET TO THE SOUTHWEST CORNER OF LOT "B", AS SHOWN ON SAID MAP OF THE BANNING TRACT, WHICH CORNER IS ALSO STATION NO. 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; THENCE SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; THENCE NORTH 20 DEGREES 06' IS" EAST 539.49 FEET; THENCE NORTH 51 DEGREES 48' EAST 405.76 FEET; THENCE NORTH 74 DEGREES 07' EAST 722.86 FEET; THENCE SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; THENCE SOUTH 27 DEGREES 46' EAST 498.37 FEET; THENCE SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; THENCE SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHINIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST; THENCE NORTH 0 DEGREES 36' 01" WEST ALONG THE SAID PROLONGATION OF WHINIER AVENUE, 3061.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION

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TO NEWPORT MESA TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT, 2706.70 FEET TO THE MOST WESTERLY CORNER OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT; THENCE NORTH 19 DEGREES 01' 55" EAST ALONG THE NORTHWESTERLY LINE OF THE LAST MENTIONED TRACT, 1065.62 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF LOT "B" OF SAID BANNING TRACT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EASTERLY LINE OF THE 300-FOOT STRIP OF LAND FOR SANTA ANA RIVER CHANNEL, AS DESCRIBED IN THE DEED TO THE NEWBERT PROTECTION DISTRICT, RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, WHICH POINT IS NORTH 71 DEGREES 20' EAST 510.47 FEET FROM THE SOUTHWEST CORNER OF SAID LOT "B", WHICH LAST MENTIONED CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE EASTERLY LINE OF SAID 300-FOOT STRIP OF LAND, 660 FEET; THENCE SOUTH 76 DEGREES 35' EAST 660 FEET; THENCE SOUTH 13 DEGREES 25' WEST 660 FEET; THENCE NORTH 76 DEGREES 35' WEST 660 FEET TO THE POINT OF BEGINNING, AS CONDEMNED BY THE CITY OF NEWPORT BEACH IN THE ACTION ENTITLED "CITY OF NEWPORT BEACH, A MUNICIPAL CORPORATION, PLAINTIFF VS. TOWNSEND LAND COMPANY AND OTHERS, DEFENDANTS", BEING CASE NO. 34747 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF THE FINAL JUDGMENT HAVING BEEN RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS OF ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LOT "B" IN SAID BANNING TRACT CONVEYED BY THE TOWNSEND LAND COMPANY TO THE NEWBERT PROTECTION DISTRICT FOR A RIVER CHANNEL, 300 FEET WIDE, BY DEED RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT "B" OF THE BANNING TRACT, SOUTH 84 DEGREES 45' EAST 135.84 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT "B", WHICH CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY SIDE OF SAID 300-FOOT RIGHT OF WAY, 946.75 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 42 DEGREES 45' EAST 38.70 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 34 DEGREES 30' EAST 462.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 19 DEGREES 45' EAST 528.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE STILL ALONG SAID WESTERLY LINE, NORTH 6 DEGREES 15' WEST 723.17 FEET TO A POINT IN THE WESTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY LINE OF SAID RIGHT OF WAY, 607.27 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 34 DEGREES 15' EAST 148.48 FEET TO AN ANGLE IN SAID LINE; THENCE NORTH 1 DEGREE 45' EAST 436.44 FEET TO THE NORTHWEST CORNER OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE SOUTH 13 DEGREES 25' WEST 3831.55 FEET TO THE SOUTHERLY LINE OF SAID LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 45' WEST 303.08 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM, THE PORTIONS THEREOF INCLUDED WITHIN A STRIP OF LAND 30 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT WHERE THE EASTERLY BOUNDARY LINE OF THE RANCHO LAS BOLSAS BETWEEN STATIONS 78 AND 79 OF THE SAID BOUNDARY LINE IS INTERSECTED BY THE LINE WHICH BEARS NORTH 13 DEGREES 26' 3D" EAST FROM THE POINT ON THE SOUTH LINE OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER SECTION CORNER OF SAID SECTION, SAID BEGINNING POINT BEING ON THE SURVEYED CENTER LINE OF THE SANTA ANA-ANAHEIM JOINT OUTFALL SEWER; THENCE FROM SAID POINT OF BEGINNING, SOUTH 13 DEGREES 26' 3D" WEST ALONG SAID CENTER LINE TO STATION 187+74.49, BEING THE POINT ON THE SOUTH LINE OF SAID SECTION 18, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 13 DEGREES 26' 3D" WEST ALONG SAID SURVEYED CENTER LINE, 2795.66 FEET TO STATION 215+70.15; THENCE SOUTH 16 DEGREES 27' 3D" WEST ALONG SAID CENTER LINE, 1050.35 FEET TO A

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POINT 15.30 FEET SOUTH 84 DEGREES 45' EAST FROM STATION 68 OF THE RANCHO LAS BOLSAS, TOGETHER WITH THE STRIP OF LAND OF VARYING WIDTHS LYING BETWEEN THE EASTERLY LINE OF THE ABOVE DESCRIBED 3D-FOOT STRIP AND THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SANTA ANA RIVER THROUGH THE NEWBERT PROTECTION DISTRICT, AS CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCELS D3-121.1 AND D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH, AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE WAS RECORDED JANUARY 3D, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RENDERED AUGUST 4, 1965 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED "COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VS. SECURITY FIRST NATIONAL BANK, ETC., AND OTHERS" (CASE NO. 123141), A CERTIFIED COPY OF WHICH ORDER WAS RECORDED AUGUST 5, 1965 IN BOOK 7620, PAGE 215 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT B OF THE BANNING TRACT, AS SHOWN ON A MAP FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT B; THENCE SOUTHERLY ALONG

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THE WESTERLY BOUNDARY OF SAID LOT B, SOUTH 01 DEGREE 45' 00" WEST 462.00 FEET TO RANCHO LAS BOLSAS, STATION 75, AND SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET TO RANCHO LAS BOLSAS, STATION 74, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, SOUTH 06 DEGREES 15' 00" EAST TO THE WESTERLY LINE OF THE STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SANTA ANA, RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE INTERSECTION WITH THAT CERTAIN COURSE HEREINABOVE CITED AS "SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET"; THENCE ALONG SAID CERTAIN COURSE, SOUTH 34 DEGREES 15' 00" WEST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, UPON, OVER AND BENEATH THE SURFACE OF SAID LAND, AT ALL TIMES TO EXPLORE FOR, EXTRACT AND REMOVE ANY OF SAID MINERALS LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228, AS AMENDED BY THE DEED AND AGREEMENT EXECUTED BY HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665, ALL IN OFFICIAL RECORDS, ORANGE COUNTY.

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN LAND AS DESCRIBED IN PARCEL 1 IN DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, ALSO BEING THE SOUTHWEST CORNER OF LOT "B" OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA, WHICH CORNER IS ALSO STATION 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; NORTH 51 DEGREES 48' EAST 405.76 FEET; NORTH 74 DEGREES 07' EAST 722.86 FEET; SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; SOUTH 27 DEGREES 46' EAST 498.37 FEET; SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF

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SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE FIRST ADDITION TO NEWPORT MESA TRACT RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST, WHICH POINT IS THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 404.46 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THAT CERTAIN STRIP OF LAND 250 FEET IN WIDTH, AS DESCRIBED IN PARCEL 1, ARTICLE II OF SAID DEED RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE ALONG THE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND NORTHERLY LINE OF SAID PARCEL 1, ARTICLE II, THROUGH THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1300.00 FEET, THROUGH AN ANGLE OF 9 DEGREES 36' 54", A DISTANCE OF 218.16 FEET TO A LINE TANGENT THERETO; THENCE NORTH 65 DEGREES 56' WEST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT EAST THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250 FEET DISTANT WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH THE NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT WESTERLY AND NORTHWESTERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET; NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND

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300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY, SAID POINT BEING THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE NORTH 64 DEGREES 06' 50" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK C OF EL MORO TRACT, 16.02 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF CALIFORNIA STATE HIGHWAY; THENCE NORTH 54 DEGREES 02' WEST ALONG SAID HIGHWAY RIGHT OF WAY LINE, 145.48 FEET TO THE CENTER LINE OF SAID 300-FOOT RIVER CHANNEL EASEMENT; THENCE NORTH 13 DEGREES 25' EAST ALONG SAID CENTER LINE, 390.57 FEET TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED DATED DECEMBER 30, 1929 FROM JOSEPH BANNING JR. AND OTHERS, TO JAMES H. MACKLIN, RECORDED JANUARY 29, 1930 IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 74 DEGREES 17' WEST 289.47 FEET TO A POINT IN THE SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF SAID RANCHO SANTIAGO DE SANTA ANA, WHICH POINT IS ALSO THE NORTHWEST CORNER OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 15 DEGREES 43' EAST ALONG THE SAID SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, 119.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION OR PORTIONS OF SAID ABOVE DESCRIBED LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, OR WITHIN THE EXTERIOR BOUNDARY LINES OF GOVERNMENT LOT 1, SECTION 19; GOVERNMENT LOT 1, SECTION 20; AND GOVERNMENT LOT 1, SECTION 29, ALL IN TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE RECORDED JANUARY 20, 1962, BOOK 5993, PAGE 441, OFFICIAL RECORDS, ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 3:

A STRIP OF LAND 250 FEET WIDE, DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF BLOCK C OF EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH

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WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS; THENCE SOUTH 64 DEGREES 06' 50" EAST, ALONG THE NORTHERLY LINE OF SAID EL MORO TRACT, 154.24 FEET; THENCE CONTINUING ALONG THE LAST MENTIONED NORTHERLY LINE, SOUTH 60 DEGREES 52' 34" EAST 151.04 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30.00 FEET IN WIDTH, AS SHOWN ON THE MAP OF SAID EL MORO TRACT, SAID POINT BEING IN THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON A MAP FILED IN AND ANNEXED TO THE COMPLAINT IN CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTH 78 DEGREES 02' EAST ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, 517.61 FEET; THENCE CONTINUING ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, SOUTH 66 DEGREES 42' 20" EAST 644.09 FEET TO A POINT IN THE NORTHERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY AND NORTHEASTERLY ALONG THE NORTHERLY AND NORTHWESTERLY LINE OF SAID TRACT NO.772, THE FOLLOWING COURSES AND DISTANCES: SOUTH 88 DEGREES 25' EAST 105.91 FEET; NORTH 72 DEGREES 45' EAST 268.62 FEET; NORTH 42 DEGREES 06' EAST 228.36 FEET; NORTH 29 DEGREES 06' EAST 306.31 FEET TO A POINT IN THE SAID CENTER LINE OF THE SANTA ANA RIVER; THENCE ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, THE FOLLOWING COURSES AND DISTANCES: NORTH 20 DEGREES 06' 15" EAST 267.71 FEET; NORTH 51 DEGREES 48' EAST 117.09 FEET; NORTH 74 DEGREES 07' EAST 254.30 FEET; SOUTH 45 DEGREES 20' 28" EAST 298.02 FEET; SOUTH 27 DEGREES 46' EAST 331.04 FEET; SOUTH 13 DEGREES 35' 40" EAST 665.36 FEET; SOUTH 1 DEGREE 38' 25" WEST 1205.19 FEET; SOUTH 10 DEGREES 47' 30" EAST 116.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 19 DEGREES 20' 43" EAST; THENCE ALONG THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: EASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 950.00 FEET, A DISTANCE OF 209.67 FEET; SOUTH 83 DEGREES 18' EAST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 318.26 FEET; SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 216.09 FEET; SOUTH 54 DEGREES 08' 30" EAST 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 950.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 264.46 FEET; SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 527.80 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF LOT D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1980 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID CALIFORNIA STATE HIGHWAY, NORTH 39 DEGREES 43' 45" EAST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT D OF BANNING TRACT, 265.74 FEET TO A POINT, BEING 250.00 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SAID 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 70 DEGREES 05' 30" WEST, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, 49.03 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A.E.S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 26 DEGREES 10' 42" WEST; THENCE ALONG THE BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 373.48 FEET, A DISTANCE OF 176.40 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND, NORTH 5 DEGREES 44' 28" WEST 104.32 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY, PARALLEL WITH THE

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SAID NORTHEASTERLY AND NORTHERLY LINE OF SAID STATE HIGHWAY, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 70 DEGREES 05' 3~" WEST 376.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 194.87 FEET; NORTH 54 DEGREES 08' 3D" WEST, TANGENT TO SAID CURVE, 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 267.55 FEET; NORTH 65 DEGREES 56' WEST, TANGENT TO THE SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHWESTERLY LINE OF TRACT NO. 772, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORa TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET, AND NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF SAID EASEMENT 300.00 FEET WIDE, FOR PURPOSE OF MAINTAINING THE SANTA ANA RIVER CHANNEL; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING GENERALLY SOUTHERLY OF THE AGREED BOUNDARY LINE DESCRIBED IN EXHIBIT "E" ATTACHED TO THAT CERTAIN SETTLEMENT AND BOUNDARY LINE AGREEMENT, STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE PORTION OR PORTIONS OF SAID LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, THE PATENT FOR WHICH WAS RECORDED JUNE 28, 1884 IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND AS ESTABLISHED BY SAID HEREINABOVE DESCRIBED SETTLEMENT AND BOUNDARY LINE AGREEMENT, OR WITHIN THE EXTERIOR BOUNDARIES OF LOT 1 OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 10 WEST; LOT 1 OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 10 WEST; AND LOT 1 OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, THE PATENT FOR WHICH LOTS WAS RECORDED APRIL 19, 1893 IN BOOK 1, PAGE 66 OF PATENTS,

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RECORDS OF ORANGE COUNTY, CALIFORNIA, OR WITHIN ACCRETIONS OF SAID RANCHO OR SAID LOTS.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE PARCEL OF LAND DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH FINAL ORDER WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THE PORTION INCLUDED WITHIN THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS PARCEL 73170-1 IN THAT CERTAIN FINAL DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 667539, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032786 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 30% INTEREST IN AND TO THE IDLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED FROM SAID LAND LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, AS AMENDED BY THE DEED DATED NOVEMBER 29, 1961 FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 70% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 4:

THOSE PORTIONS OF LOTS C AND D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, BEING ALSO A PORTION OF LOT 1 OF TRACT NO. 463, AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND A PORTION OF TRACT NO. 2250, AS SHOWN ON A MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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BEGINNING AT THE MOST EASTERLY CORNER OF TRACT NO. 15, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WHICH CORNER IS IN THE CENTER LINE OF SUPERIOR AVENUE, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, AND ALSO IN THE SOUTHEASTERLY LINE OF SAID LOT D IN THE BANNING TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. 15, AND ALONG THE SOUTHWESTERLY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, 3691.50 FEET TO A POINT IN THE EASTERLY LINE OF WHITTIER AVENUE, 60 FEET IN WIDTH, AS SHOWN ON SAID MAP OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SOUTHERLY PROLONGATION OF THE SAID EASTERLY LINE OF WHITTIER AVENUE, SAID PROLONGATION BEING THE EASTERLY LINE OF PARCEL 1 AS DESCRIBED IN DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, 3465.51 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE ON A CURVE CONCAVE TO THE SOUTHWEST, 250.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT OF INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1300.00 FEET, 49.39 FEET; THENCE SOUTH 54 DEGREES 08' 30" EAST, TANGENT TO SAID CURVE, 387.05 FEET TO BEGINNING OF CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, 194.87 FEET; THENCE SOUTH 70 DEGREES 08' 30" EAST, TANGENT TO SAID CURVE, 376.41 FEET TO A POINT IN THE WESTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM THE FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A. E. S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE ALONG THE WESTERLY, NORTHERLY AND NORTHEASTERLY BOUNDARY LINE OF SAID 2.7827-ACRE PARCEL, THE FOLLOWING COURSES AND DISTANCES: NORTH 5 DEGREES 44' 28" WEST 160.43 FEET TO THE MOST WESTERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS NORTH 20 DEGREES 20' 15" WEST; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 450.00 FEET, 235.10 FEET; THENCE NORTH 39 DEGREES 43' 45" EAST, TANGENT TO THE LAST MENTIONED CURVE, 75.42 FEET TO THE MOST NORTHERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS SOUTH 29 DEGREES 30' 33" WEST; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 730.00 FEET, A DISTANCE OF 130.21 FEET; THENCE SOUTH 50 DEGREES 16' 15" EAST, TANGENT TO THE LAST MENTIONED CURVE, 122.00 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SUPERIOR AVENUE, 60 FEET IN WIDTH, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, WHICH POINT BEARS NORTH 39 DEGREES 43' 45" EAST 35.24 FEET FROM THE MOST EASTERLY CORNER OF LOT 1 IN BLOCK 1 OF SAID TRACT NO. 15; THENCE SOUTH 50 DEGREES 16' 15" EAST 30.00 FEET TO THE CENTER LINE OF SAID SUPERIOR AVENUE; THENCE ALONG THE CENTER LINE OF SAID SUPERIOR AVENUE, NORTH 39 DEGREES 43' 45" EAST 705.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND: THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH

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THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING: THAT PORTION OF LOT 1 AND ALL OF LOT 2 OF TRACT NO. 463 AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF FIFTEENTH STREET WITH THE CENTER LINE OF MONROVIA AVENUE, AS SHOWN ON A MAP RECORDED IN BOOK 65, PAGES 31 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 0 DEGREES 37' 24" EAST, ALONG THE CENTER LINE OF SAID MONROVIA AVENUE, 440.93 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT NO. 463; THENCE NORTH 29 DEGREES 26' 43" WEST ALONG SAID NORTHEASTERLY LINE, 272.61 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID NORTHEASTERLY LINE, 1288.43 FEET TO THE CENTER LINE OF SUPERIOR AVENUE; THENCE SOUTH 39 DEGREES 41' 15" WEST, ALONG SAID CENTER LINE OF SUPERIOR AVENUE, 705.55 FEET; THENCE NORTH 50 DEGREES 18' 45" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN A DEED TO A. E. S. CHAFFEY AND OTHERS, RECORDED IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND THE SOUTHEASTERLY PROLONGATION THEREOF, 152.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 730.00 FEET; THENCE NORTHWESTERLY 130.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 13' 12" TO A POINT IN THE NORTHEASTERLY LINE OF PARCEL 1, AS DESCRIBED IN A DEED RECORDED IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 63 DEGREES 11' 16" WEST 1160.70 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 100.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LAND DESCRIBED IN ANNEXATION NO. 54 TO THE CITY OF NEWPORT BEACH, DECEMBER 30, 1963; THENCE ALONG SAID PARALLEL LINE, NORTH 0 DEGREES 38' 10" WEST 734.93 FEET TO A LINE THAT BEARS SOUTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" EAST 1110.58 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, ANY PORTION INCLUDED WITHIN WHITTIER AVENUE AND SIXTEENTH STREET, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA. ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE LAND DESCRIBED IN THE DEED TO THE CITY OF NEWPORT BEACH, RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237652 OF OFFICIAL RECORDS.

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ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND, AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

ALSO EXCEPTING THEREFROM ALL THE MINERALS, INCLUDING WITHOUT LIMITATION ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER THE HEREINAFTER DESCRIBED LAND LYING 500 VERTICAL FEET BELOW THE SURFACE OF SAID LAND WAS QUITCLAIM TO ARMSTRONG PETROLEUM CORPORATION, A CALIFORNIA CORPORATION BY AN INSTRUMENT RECORDED MAY 5, 1997 AS INSTRUMENT NO. 19970206789 OF OFFICIAL RECORDS.

APN: 114-170-24, 114-170-43, 114-170-49, 114-170-50, 114-170-52, 114-170-56, 114-170-72, 114-170-73, 114-170-75, 114-170-77, 114-170-79, 114-170-83 and 424-041-04

PC 2 Exhibit B

TTM No. 17308 Conditions of Approval

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Note:

The following is a list of acronyms used in the Conditions of Approval for Tentative Tract Map No. 17308:

- DA – Development Agreement
- FEIR SCH No. 2009031061- Newport Banning Ranch Final Environmental Impact Report, State Clearinghouse Number 2009031061
- MM – Mitigation Measure, project specific measures recommended by the FEIR and adopted as part of the approval of the project to reduce potentially significant environmental effects to a level considered less than significant and stated at the end of a condition as a reference between the condition and a mitigation measure recommended in the FEIR.
- MMRP – Mitigation Monitoring and Reporting Program, the monitoring and reporting procedures for the Mitigation Measures identified in the FEIR and adopted as part of project approval pursuant to Section 21081.6(a)(1) of the California Environmental Quality Act
- NBMC – Newport Beach Municipal Code
- NBR- Newport Banning Ranch
- OCLAFCO- Orange County Local Agency Formation Commission, the agency responsible for reviewing and approving proposed jurisdictional boundary changes
- PDF – Project Design Feature, specific design elements proposed by the applicant that have been incorporated into the project to prevent the occurrence of, or reduce the significance of, potential environmental effects and stated at the end of a condition to reference a PDF in the FEIR.
- SC- Standard Condition, a condition of approval based on local, State, or federal regulations or laws that are frequently required independent of the California Environmental Quality Act review to offset or prevent specific impacts and stated at the end of a condition to reference a Standard Condition in the FEIR.

General Conditions

1. City Council approval of Tentative Tract Map No. 17308 is in conjunction with its approval of Development Agreement No. DA2008-003 for the same project (the “DA”). Pursuant to Sections 2.2 and 2.4 of the DA and the terms used therein that are defined in Section 1 of the DA, the “Term” of the DA becomes effective on the “Effective Date” of the DA. Tentative Tract Map No. 17308 and the DA comprise parts of a single integrated action and are not severable from one another. Accordingly, notwithstanding any other provision set forth in Tentative Tract Map No. 17308 to the contrary, in no event shall the owner, lessee, or other occupant or any person or entity holding any interest in the subject property acquire any right to develop or use the subject property as authorized or provided herein unless and until the Effective Date in the DA occurs and the Term of the DA commences. In the event the DA is terminated for any reason before the Effective Date of the DA occurs, including without limitation as a result of the mutual termination of the DA by the

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Parties thereto, the occurrence of an uncured material default under the DA by either Party and a termination of the DA by the non-defaulting Party, or the failure of the Effective Date of the DA to occur prior to the deadline set forth in the DA, as said deadline may be extended by mutual agreement of the Parties to the DA, then in such event Tentative Tract Map No. 17308 automatically shall become null and void and of no further force or effect, without any need or requirement for the City to schedule any public hearings or take any affirmative action or actions to revoke or rescind the same.

2. Notwithstanding any provision expressly or impliedly to the contrary, in the event of any conflict or inconsistency between any of the terms or conditions of Tentative Tract Map No. 17308 and the DA, the terms and conditions of the DA shall control. In the event of any conflict or inconsistency between or among the conditions of Tentative Tract Map No. 17308, the Director of Community Development shall determine the controlling condition.
3. The applicant shall comply with all applicable provisions of NBMC Chapter 19.40, General Dedication Requirements.
4. The applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, pursuant to the requirements of the Development Agreement.
5. The applicant shall comply with all applicable provisions of NBMC Chapter 15.40, Traffic Phasing Ordinance (TPO), but not limited to the following conditions:
 - a. Pursuant to NBMC Section 15.40.030(B)(2) ~~of the Newport Beach Municipal Code~~, construction of the TPO required traffic mitigation improvements shall be completed no more than 60 months from the date of final approval of the Project (as defined in General Condition 8, below). (PDF 4.9-2)
 - b. The traffic study as a part of FEIR SCH No. 2009031061 shall be valid for the duration of the term of the Development Agreement. This approval shall be deemed exercised by the issuance of a grading permit to construct the proposed project.
6. The applicant shall comply with all applicable provisions of NBMC Chapter 15.42, Major Thoroughfare and Bridge Fee Program.
7. The applicant shall comply with all applicable provisions of NBMC Chapter 19.44, General Reservation Requirements, but not limited to the following conditions:
 - a. Subdividers are required to reserve sites, appropriate in area and location, for the North and Central Community Park including a water quality management basin, and other public facilities to be offered for dedication to the City including but not limited to roadways, water and sewer facilities, and storm drains. Subdividers are required to set aside sites appropriate in area and location for the —open space— preserve, the South Community Park, Bluff Pparks,

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~~Interpretive Parks, recreation facilities,~~ trails, drainage devices for bluff restoration and protection, water quality management facilities, storm drains, water and sewer facilities, roadways, and other public facilities consistent with ~~Newport Banning Ranch Planned the NBR Planned~~ Community Development Plan, ~~Newport Banning Ranch Master~~NBR Master Development Plan, and the ~~Newport Banning Ranch Mitigation Monitoring and Reporting Program (MMRP)~~. The requirement is based on the adopted policies and standards for the above listed uses and facilities and the required reservations are in accordance with those policies and standards. (PDF 4.1-1, 4.1-2, 4.1-3, 4.1-4, 4.6-1, 4.8-1)

8. Tentative Tract Map No. 17308 shall expire 24 months from the date of approval pursuant to NBMC Chapter 19.16.010, which date of approval shall be the date of completion and approval of annexation of the project site to the City of Newport Beach by the ~~Orange County Local Agency Formation Commission (OCLAFCO)~~, as set forth in Government Code Section 56658 and summarized in OCLAFCO's Project Processing Policies and Procedures Manual, unless:
 - a. A Final Map is recorded; or
 - b. An extension is otherwise granted by the City for the period of time provided for in the Development Agreement pursuant to the provisions of California Government Code 66452.6 (a).
9. The development of the project is subject to compliance with all applicable submittals approved by the City and all applicable City ordinances, policies, and standards, subject to modifications by these Conditions of Approval.
10. Development of the project shall comply with the requirements of the NBR Planned Community Development Plan and be in substantial conformance with the approved NBR Master Development Plan and Tentative Tract Map 17308 dated June 30, 2011. (Except as modified by applicable conditions of approval and the DA.) (PDF 4.1-5, 4.7-1, 4.8-1, PDF 4.9-1, PDF 4.9-3)
11. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the City's approval of the Newport Banning Ranch project including, but not limited to, the approval of the Tentative Tract Map No.17308, NBR Master Development Plan No.MP 2008-001, NBR Planned Community Development Plan No. PC 2008-002, General Plan Amendment No. GP2008-008, and/or the City's related California Environmental Quality Act determinations, the certification of the Final Environmental Impact Report SCH No.2009031061, the adoption of a Mitigation Monitoring and Reporting Program,

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and/or statement of overriding considerations adopted for the project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand, from time to time, any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. The provisions herein shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City, or the City's officers, officials, agents, employees, or representatives.

12. The applicant shall comply with all project design features, mitigation measures, and standard conditions contained within the approved Mitigation—Monitoring—and Reporting Program—MMRP of the—Final—Environmental—Impact—Report—FEIR, SCH No. 2009031061 for the project.
13. The applicant shall have the sole obligation to fund or arrange funding for the planning, design, engineering, construction, supervision, inspection and all other costs associated with site remediation, oil field consolidation, open space and habitat restoration, construction of the Community Park, Bluff Park, Interpretive Parks, and Open Space Interpretive Trails and all public infrastructure, as further described in subsequent conditions of approval, including but not limited to roads, water and sewer facilities, storm drain, and water quality management facilities including facilities to treat on-site and off-site flows, to serve residential, resort and commercial development and the open space preserve as defined within the NBR Master Development Plan.
14. Within 10 years following the completion of annexation of the project site into the City, all continuing surface oil operations shall be consolidated into Lots 190, 6,7, and 226 comprising the OF land use district as designated in the NBR Planned Community Development Plan. (PDF4.5-1)
15. New development within the project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses. (SC 4.14-7)
16. The applicant shall submit pay to the City upon demand, from time to time, a deposit in an amount acceptable to the Community Development Director for the preparation of documentation necessary to reconcile the NBR General Plan Amendment, NBR-Planned Community Development Plan, the NBR Master Development Plan, and Tentative Tract Map No. 17308 with the Newport Banning Ranch Coastal Development

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Permit. Documentation shall be in a form acceptable to the Director of Community Development ~~Director~~ and City Attorney, and said document shall be approved by the City prior to issuance of the first grading permit for the project.

17. All improvements to Lots 194-196 (North Community Park) and Lots 231 and 232 (Central Community Park) shall be constructed by the applicant and approved by the City. Completion of these improvements shall be in accordance with the terms and schedule stated in the Development Agreement.

18. Full width improvement of North Bluff Road from the northern boundary of Lot 1 to 19th Street and improvements to 19th Street from North Bluff Road to the easterly boundary of the project, as determined by the Director of Public Works, shall be constructed by the applicant and completed pursuant to the terms and schedule stated in the Development Agreement.

Prior to Final Map Approval

Note: Multiple final Tract maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions ~~1819~~ through ~~2526~~ apply to the project area included on the applicable map.

~~18.~~19. Prior to Final Map approval the applicant shall obtain written verification of the availability of sufficient water supply from the City Municipal Operations Department consistent with the requirements of Section 66473.7 (b) of the Subdivision Map Act. The applicant shall provide a deposit of funds as identified by the Director of the Municipal Operations Department in an amount sufficient to cover the costs of any studies required by the Municipal Operations Department as part of the preparation of the written verification of water availability.

~~19.~~20. Prior to Final Map approval, the applicant shall submit for review by the Director of Community Development and shall obtain the approval of the City Attorney, for Covenants, Conditions and Restrictions (CC&Rs) prepared by an authorized professional and which generally provide for the following:

- a. Creation of a Master Association, and/or Sub-associations, and/or a conservancy for the purpose of providing for control over and maintenance of common area improvements not otherwise offered for dedication to the City, which include but are not limited to the following unless otherwise approved by the Director of Public Works: Community walls and fencing, slopes, ~~open space and open space trails~~, fuel modification zones within the interior of the tract, the South Community Park, bluff parks and interpretive parks including all park facilities, maintenance buildings and offices, trails and pedestrian paths within the bluff parks, ~~and~~ interpretive parks, median and parkway landscaping and irrigation, pedestrian paseos and greenbelts, bioswales, common area

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landscaping, irrigation and sidewalks, exterior lighting, walls and fencing within the interior of the tract, off-street parking areas, trash areas and structures, private alleys, slope drains, sewer laterals, water laterals, private residential park and recreational facilities within the interior of the project, and reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses.

- b. A statement that all homeowners and residents will be provided, upon purchase closing or signing of rental agreement, the information and requirements for water conservation pursuant to NBMC Chapter 14.16, Water Conservation and Supply Level Regulations. ([refer to SC 4.15-1](#))
- c. A statement that the Master Association and/or responsible Sub-Association will be responsible for funding –the City’s maintenance of the pedestrian bridge spanning West Coast Highway, if constructed.
- d. A statement that all homeowners be provided educational information upon purchase closing and annually after the close of escrow on mobile source emission reduction techniques, including but not limited to, alternative modes of transportation and use of zero or low emission vehicles. As part of this statement provisions shall be made that the Association provide to the Director of Community Development an annual report of conservation educational materials distributed to homeowners. (refer to MM 4.10-11)
- e. A statement that all homeowners shall be provided educational information upon purchase closing on the positive benefits of using consumer products with low or no-volatile organic compounds (VOCs) such as paint thinners and solvents.
- f. A statement that all homeowners be provided educational information upon purchase closing and annually thereafter regarding the energy saving benefits of using of solar heating, automatic pool and spa covers, and efficient pumps and motors for pools and spas.
- g. A statement that all common area yards, pedestrian paseos, [South Community Park](#), bluff parks, interpretive parks, median and parkway landscaping, greenbelts, bioswales, walls and fencing within the interior of the tract, off-street parking areas, fuel modification areas [within the interior of the tract](#), trash areas, maintenance buildings and office structures, exterior lighting, sewer and water laterals, alleys, slopes, slope drains, reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses and private residential park and recreation areas within the interior of the tract are private and shall be maintained by the Master Association, or Sub-Association(s) unless otherwise approved by the Director of Public Works.
- h. A statement that the Association shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664).
- i. Information to be provided to homeowners on the established setback and height requirements for additions and accessory structures conforming to the requirements of the approved NBR Planned Community Development Plan.

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- j. A statement that all homeowners and residents within 100 feet of open space areas shall be provided written information upon close of purchase or signing of rental agreement, regarding the applicable requirements of Mitigation Measure MM 4.2-1 regarding the “dark sky” lighting program for the project. (PDF 4.6-4)
 - k. A statement indicating that Lots 8, 189,191-193,199, 203,224,227,229,230, 233, and Lettered Lot F shall be retained by deed restriction as designated public park in perpetuity and maintained by a Master Association, a Sub-Association, ~~conservancy~~ and/or other approved and appropriate agency, and that no structures, development or encroachment shall be permitted within the designated park area except as shown on the Final Map, approved Site Development Review, approved landscape and park improvement plans, or as otherwise approved by the City.
 - l. Provisions that following recordation of each Final Map, each Association formed for the subdivision shall submit to the Director of Community Development a list of all current Officers of the Association.
 - m. A statement indicating that proposed amendments to the CC&Rs shall be submitted for review to the Director of Community Development or designee, and shall be approved by the City Attorney prior to the amendments being valid.
 - n. A statement that the City has the right, but not the obligation, to enforce any of the provisions of the CC&Rs.
 - o. An agreement between the applicant and the Association that on an annual basis by June 1 of each year reports will be furnished to the Director of Public Works in compliance with the reporting requirements of codes and ordinances adopted by the City with respect to the NPDES program.
 - p. A reference to the plan for maintenance of fuel modification zones in accordance with the approved Fire and Life Safety Program for the project.
- ~~20-21.~~ 21-22. Prior to Final Map approval the applicant shall reflect on the Final Map or prepare separate instruments to the satisfaction of the Director of Public Works all public access easements, deed restrictions or other instruments including but not limited to those providing for permanent public access to the open space interpretive trails including the Bluff Toe Interpretive Trail, the Southern Arroyo Interpretive Trail, the Upland Interpretive Trail, and the Lowland Interpretive Trail and those providing City access for maintenance of storm drains. (PDF 4.8-2)
- ~~21-22.~~ 24-25. Prior to Final Map approval, the applicant shall submit an open space management plan for approval by the Director of Community Development, for the long term funding and management of Lettered Lot Q, the Talbert Trailhead Interpretive Park, and the open space preserve within the Open Space District of the NBR Planned Community Development Plan which includes the right-of-way reservation for 19th Street, Lettered lots A through E, Lettered Lots G through P and R, and all public interpretive trail easements. The open space management plan shall also include provisions for the inclusion of Lots 6,7,190, and 226, which comprise the interim oil facilities area, at such time that oil operations on these lots cease and the lots are remediated and restored as permanent open space. The open space management plan shall identify all entities responsible for ownership, management

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and maintenance of the open space preserve and their credentials which qualify the entity as capable of management and maintenance of the open space preserve and able to implement all applicable mitigation measures identified in the MMRP of the FEIR SCH No. 2009031061. The open space management plan shall specify the timeline for commencement of implementation of the management plan by the management entity for the open space preserve. ~~The open space management plan shall describe the method of financing and funding the management and maintenance of the open space preserve in perpetuity.~~ Approval by the City of the long term management plan is a condition precedent to recordation of a final map. (PDF4.6-2) The open space management plan shall include but not be limited to identification of funding, management responsibilities, and maintenance activities in perpetuity for but not limited to the following:

- a. Maintenance and periodic repair and replacement of park facilities in the Talbert Trailhead Interpretive Park, ~~and Vernal Pool Interpretive Park,~~ all open space interpretive trails, and associated appurtenances including but not limited to landscaping, restrooms, trail routes and surfaces, fences, benches and other facilities.
- b. Maintenance of all repaired and restored bluff slopes pursuant to the NBR Bluff Restoration Plan as described in the NBR Master Development Plan. (PDF 4.3-3)
- c. On-going habitat protection, restoration, and maintenance, including on-site supervision of trail and habitat areas by qualified personnel, operation of interpretive trails, signs and displays, and funding for any public outreach programs.
- d. Maintenance of drainage systems, water quality management systems, and other devices required to protect on-site habitat and water quality within the open space preserve. The drainage system maintenance program shall include a statement that prior to conducting any maintenance activities for the water quality treatment basin located in Lot I, the open space preserve management entity shall post a written notification of temporary trail closure dates and times at key points along the Upland Interpretive Trail to accommodate maintenance vehicles using the right of way adjacent to the trail. The written notice shall be posted at least 48 hours prior to the scheduled maintenance and shall state the hours and duration of the trail closure.
- e. Maintenance of fuel modification zones within the open space preserve in accordance with the NBR Fire and Life Safety Program approved for the project.
- f. The five year Maintenance and Monitoring Program for all restored habitat areas pursuant to the Standard Vegetation Monitoring Procedures outlined in the project FEIR SCH No. 2009031061. (PDF4.6-3)

22-23. Prior to Final Map approval, the applicant shall pay all applicable development and Final Map fees associated with but not limited to Community Development Department, Public Works Department, and City Attorney review of CC&Rs, map and plan check, hydrology review, geotechnical and soils reports review, parks

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improvement plan review, grading plan review, traffic and transportation, and construction inspection.

~~23-24.~~ Prior to Final Map approval, the applicant shall submit to the Director of Community Development for review and shall obtain the approval of the City Attorney for, a buyer's notification disclosure form, to be given to all buyers upon purchase closing, which indicates the location, if applicable, of any abandoned oil production facility within 10 feet of the residential lot and the existence, operations, and characteristics of continuing oil production activities within the boundaries of the project as well as notification of potential exposure to nuisance, noise, risk of upset and hazards, and/or objectionable odors of continued oil production activities.

~~24-25.~~ Prior to Final Map approval for residential, resort, and/or commercial development the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for each, but not limited to, the public and private improvements for the each of the following separately:

- a. Street improvements, monuments, sidewalks, traffic signal, striping and signage, trail and park improvements, street lights, sewer systems, water systems, storm drain and water quality management systems, erosion control landscaping and irrigation in public rights of way, private slopes and common area recreational areas, and off-site improvements required as part of the project.

~~25-26.~~ Prior to each Final Map approval, the applicant shall complete geotechnical trenching and field investigations, consistent with all adopted state codes in effect at the time, by a qualified geologist, and shall submit a geotechnical report for review and approval by the Director of Community Development, to confirm the adequacy of any proposed project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. (MM 4.3-2)

Prior to Recordation of Final Map

Note: Multiple Final Maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions ~~26-27~~ through ~~3233~~ apply to the project area included on the applicable map.

~~26-27.~~ Prior to recordation of the Final Map(s), the applicant shall submit for review, and shall obtain ~~the~~ approval ~~of~~by the County Surveyor ~~for~~of a digitized map pursuant to applicable Orange County ordinance. The applicant shall pay for all costs of said digital submittals, including supplying digital copies to the City of the final County Surveyor approved digital map.

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~~27-28.~~ Prior to recordation of the Final Map, the applicant shall make an irrevocable offer of dedication of all fire protection access easements consistent with Tentative Tract Map 17308, to the City of Newport Beach.

~~28-29.~~ Prior to recordation of the Final Map, the applicant shall submit for review and shall obtain approval of the Director of Public Works for all utility maintenance easements and make an irrevocable offer of dedication of the appropriate easements to the City of Newport Beach.

~~29-30.~~ Prior to applicable final map recordation the applicant shall provide documentation of acquisition or option to acquire the full right of way width of North Bluff Road between 16th Street and the southerly boundary of Lot 2 and of 16th Street between North Bluff Road and the easterly boundary of the project as identified on Tentative Tract Map No. 17308.

~~30-31.~~ Prior to applicable final map recordation, the applicant shall either provide documentation of acquisition or option to acquire adequate right of way width of 15th Street from the easterly project boundary to a point east of the project boundary, as determined by the Director of Public Works or shall enter into an agreement with City pursuant to the terms of the DA for the City's acquisition of the right-of-way and applicant's payment of the entire cost of acquisition.

~~31-32.~~ Prior to final map recordation the applicant shall provide an irrevocable offer of dedication to the City for the following as identified on Tentative Tract Map No. 17308:

- a. Full right of way for Bluff Road and North Bluff Road from West Coast Highway to the northern boundary of Lot 1, right of way adjacent to the project site at West Coast Highway, and the full right of way for 15th Street, 16th Street, and 17th Street within the project boundaries.
- b. Partial right of way as determined by the Director of Public Works for North Bluff Road from the northern boundary of Lot 1 to 19th Street (from North Bluff Road to the eastern terminus of the existing roadway.)
- c. Lots 231 and 232 (Central Community Park), and Lots 194-196 (North Community Park).

~~32-33.~~ Prior to applicable final map recordation the applicant shall establish right way reservations as identified on Tentative Tract Map No. 17308 for the southerly half section of 19th Street from the Santa Ana River to the eastern terminus of the existing roadway.

Prior to Issuance of Demolition or Grading Permits

Note: Grading permits as noted in this section do not apply to grading activities required for oil field remediation.

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33. Prior to the issuance of grading permits, the applicant shall pay any unpaid City administrative costs and unpaid costs incurred by City retained consultants associated with the processing of this application to the City.
34. Prior to issuance of grading permits for improvements permitted by the Director of Community Development to commence pursuant to approval of Tentative Tract Map No. 17308, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Community Development for 100% of estimated grading cost, as prepared by a Registered Civil Engineer and approved by the Director of Community Development.
35. Prior to the issuance of grading permits the applicant shall pay all applicable City fees which may include but are not limited to map and plan check, water connection, sewer connection, hydrology review, geotechnical and soils reports review, grading plan review, traffic and transportation, and construction inspection.
36. Prior to the issuance of grading permits, the City of Newport Beach shall be provided the authority by the County of Orange to issue grading permits in the unincorporated area of the project site. If said authorization is not provided to the City, prior to issuance of grading permits, the annexation of the unincorporated area of the project site to the City of Newport Beach shall be completed and approved by the OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.
37. Prior to the issuance of grading permits the applicant shall obtain all necessary permits required by the California Coastal Commission pursuant to the requirements of the California Coastal Act.
38. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Community Development that consultation with the U.S. Fish and Wildlife Service has been completed.
39. Prior to the issuance of grading permits within areas subject to the jurisdiction of the California Department of Fish and Game, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 1600 Streambed Alteration Agreement, pursuant to Section 1602 of the California Fish and Game Code, has been obtained.
40. Prior to the issuance of grading permits within areas subject to the jurisdiction of the US Army Corps of Engineers, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 404 permit has been obtained.
41. Prior to the issuance of grading permits within areas subject to the jurisdiction of the Santa Ana Regional Water Quality Control Board, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Santa Ana

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Regional Water Quality Control Board has issued a Water Quality Certification pursuant to Section 401 of the federal Clean Water Act.

42. Prior to the issuance of demolition or grading permits, whichever is first, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Orange County Health Care Agency (OCHCA) Santa Ana Regional Water Quality Control Board, the Orange County Fire Authority, and/or the California Department of Oil, Gas, and Geothermal Resources has~~ve~~ approved a final Remedial Action Plan for the project with the concurrence of the Regional Water Quality Control Board-Santa Ana Region.
43. Prior to the issuance of grading permits within Caltrans right of way, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all Caltrans encroachment permits have been obtained for the widening and improvement of West Coast Highway as indicated on Tentative Tract Map No. 17308.
44. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all existing survey monuments are located in the field in compliance with AB 1414 for restoration by the Registered Civil Engineer or Land Surveyor in accordance with Section 8771 of the Business and Professions Code.
45. Prior to the issuance of grading permits the limits of grading shown on Tentative Tract Map No. 17308 must be verified by a Geotechnical Engineer. Grading shall not be permitted to extend beyond the limits as indicated on Tentative Tract Map No. 17308 without approval of the Director of Community Development.
46. Prior to issuance of grading permits a list of “good housekeeping” practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.(SC 4.4-5)
47. Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of

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Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials. (SC 4.5-2)

48. Prior to the issuance of any grading permits, the Director of Community Development shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted within and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. Grading plans shall incorporate contour grading techniques to minimize impacts to existing public view points from West Coast Highway. (PDF 4.2-1) If the applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Director of Community Development, the Director of Community Development shall review the plan for a finding of substantial conformance. If the Director of Community Development finds the plan not to be in substantial conformance, the applicant shall process a revised tentative map or, if a final map has been recorded, the applicant shall process a new tentative map. A determination of CEQA compliance shall also be required. (SC 4.3-1)
49. Prior to issuance of grading permits the applicant shall provide evidence satisfactory to the Director of Community Development, that the applicant shall provide for monitoring of grading activities to comply with Section 7050.5 of the *California Health and Safety Code*, regarding the discovery of human remains. If human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The designated Native American representative shall complete their inspection within 48 hours of being granted access to the site. The

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designated Native American representative would then make recommendations to the applicant on the disposition of the human remains. (SC4.13-1)

50. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and applicant, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Director of Community Development. Based on their interest and concern about the discovery of cultural resources and human remains during project grading, a qualified Native American Monitor(s) shall be retained to observe the grading activities for which an archaeological monitor is present. Nothing in this condition precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources. (MM 4.13-1)
51. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate. Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains. If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading

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Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays. All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum. Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes. (MM 4.13-3)

52. Prior to the issuance of the first grading permit and/or action that would allow for project site disturbance, the applicant shall provide written evidence that a paleontological survey has been conducted pursuant to the requirements of Mitigation Measure 4.13-4 of the ~~FEIR, Mitigation Monitoring and Reporting Program of FEIR-SCH No. 2009031061.~~ (MM 4.13.-4)
53. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the project. (SC4.14-5)
54. Prior to issuance of applicable grading permits the applicant shall submit for review and approval by the Director of the Municipal Operations Department, a 1"=200' Utilities Master Plan prepared by a Registered Civil Engineer consistent with the NBR Master Development Plan showing all existing and proposed public and private sewer pump stations, force mains, laterals, mains and manholes, domestic water service facilities including gate and butterfly valves, pressure reducing stations, pressure zones, fire hydrants, and meters; storm drain facilities to include storm drain mains, laterals, manholes, catch basins, inlets, detention and retention basins, water quality basins and energy dissipaters, outlets, pipe sizes, pipe types ~~and any other related facilities as identified by the Director of the Municipal Operations Department,~~ fiber optics, electricity, gas and telephone/telecommunications and any other related facilities as identified by the Director of the Municipal Operations Department,. The Master Utilities Plan shall provide for the following:
- a. All public utilities shall be constructed within dedicated public rights of way and/or easements or as approved by the Director of Public Works.
 - b. The water quality basin and diffuser basin within the development as described on lots I and L respectively shall be maintained by the entity identified in the open space management plan. The water quality basin within the Community Park as described on lot 194 shall be constructed as part of the Community

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- Park, offered for dedication to the City as part of the Community Park, and upon acceptance by the City shall be publicly maintained.
- c. Domestic water plans shall be designed to take advantage of existing City of Newport Beach water transmission facilities that connect to the project site to minimize off-site impacts. (PDF4.15-3)
 - d. Domestic water plans shall provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines. (PDF 4.15-2)
55. Prior to issuance of applicable grading permits the applicant shall submit a Park and Trails Implementation Plan to be reviewed and approved by the Director of Community Development, Director of Public Works, and Recreation and Senior Services Director. The Park and Trails Implementation Plan shall include at a minimum:
- a. Community Park Improvement Plans for the North and Central Community Park.
 - b. A project schedule describing the sequencing of construction of park and trail improvements and the timing for the design, construction, and dedication or recordation of public easements of all parks and trails within the project.
56. Prior to issuance of applicable grading permits, the applicant shall submit a construction management and delivery plan for each phase of construction to be reviewed and approved by the Director of Public Works. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan. (SC 2.12-1) The construction management plan shall include, at a minimum, the following:
- a. Construction phasing plan
 - b. Parking plan for construction vehicles and plan for equipment storage
 - c. Construction area traffic management plan for the project for the issuance of a haul route permit. The traffic management plan shall be designed by a registered Traffic Engineer. The traffic management plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The traffic management plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions. The applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the Director of Public Works. Haul operations shall be monitored by the Department of Public Works, and additional restrictions may be applied if traffic congestion

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- problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. (SC 4.9-3)
- d. A construction and equipment staging area plan which shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.
 - e. A construction fencing plan to include installation of a six-foot-high screen and security fence to be placed around the construction site during construction.
 - f. A 24 hour hotline number shall be provided at all construction sites for complaints or questions regarding construction activities. (refer to MM 4.10-9)
 - g. Construction mitigation measures as required by the ~~MMRP Mitigation Monitoring and Reporting Program for FEIR SCH No. 2009031061~~.
 - h. A statement that all grading and construction shall comply with NBMC Section 10.28.040 (Noise Ordinance). (SC 4.12-1)
 - i. A statement to requiring construction contractors to sweep paved roads within and adjacent to the project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.
 - j. A statement that all grading plans and specifications include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 consecutive working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to $\frac{3}{4}$ inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor. If preferred by the applicant or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height. A temporary noise barrier shall not be required when it is demonstrated to the Director of Community Development that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier. (MM 4.12-1)
 - k. A statement that contractors be required to implement the following measures:
 - i. Construction waste diversion will be increased by 50 percent from 2010 requirements.

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- ii. To the extent practical, during the oilfield clean-up and remediation process, the contractors will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic. (PDF4.11-5)
- I. A statement to be provided to all construction contractors that requires all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
 - i. *Clearing and grubbing:* Apply water in sufficient quantity to prevent generation of dust plumes.
 - ii. *Cut and fill:* Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
 - iii. *Earth-moving activities:* Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
 - iv. *Importing/exporting of bulk materials:* Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.
 - v. *Stockpiles/bulk material handling:* Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top to the top of the pile to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.
- m. *Traffic areas for construction activities:* Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes. Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:
 - Be employed by or contracted with the applicant;
 - Be on the site or available on site within 30 minutes during

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working hours;

- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

(SC4.10-1)

- n. A statement that all construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA L_{eq} . Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible. (MM 4.12-2)
- o. A statement that contractors shall be required to provide a minimum two week notification to affected residents within 300 feet and the Carden Hall school of the start date, duration, and nature, and noise abatement measures of any grading operation or similar noise generating activity. (MM 4.12-3)
- p. A notification for contractors that the operation of large bulldozers, vibratory rollers, and similar heavy equipment is prohibited within 25 feet of any existing off-site residence. (MM 4.12-4)

57. Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of ~~ing~~ dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer of retrofit shall only apply 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) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall ~~would~~ be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The applicant shall be responsible for the implementation of the Program ~~noted upgrades~~ pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the applicant within 45 days following receipt of the proposed Program from the applicant, that the owner wants to participate in the program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the applicant shall obtain a cost

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~~estimate and submit provide the Association with~~ written specifications ~~and a Bid Estimate~~ from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the applicant shall enter into a contract with the windows/sliders shall be installed by a qualified, and licensed and bonded third-party contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall program pursuant to a ~~the~~ contract between the applicant and the contractor. ~~Newport Crest Homeowners Association (Association) and such third-party;~~ (v) ~~to ensure architectural compatibility and obtain the Association shall provide written approval of such work prior to the execution of a contract with the contractor and Association;~~ (vi) the total cost of the Program shall be paid window/slider replacement, to be reimbursed by the Applicant on behalf of the Owner to the Association for all Owners shall in an amount not exceed the total cost identified in the Bidcost Estimate approved by the applicant.; ~~and (vii) provided the applicant receives the reimbursement request from the Association within 60 days following completion of the work, the applicant shall reimburse the Association for the cost of the work within 30 days of the applicant's receipt of a final receipt, bill or invoice from the Association evidencing that window/slider replacement work was completed pursuant to the approved estimate. (MM 4.12-7) Nothing in this condition shall prohibit the City from issuing a grading permit for Bluff Road or 15th Street in the event any or all Owners decline to participate in the Program.~~

58. Prior to issuance of applicable grading permits for roadway improvements, the applicant shall submit a "dark sky" lighting plan consistent with the requirements of the NBR-PC to be reviewed and approved by the Director of Public Works. The "dark sky" lighting plan shall indicate the location of street lights which may only be utilized at key intersection locations as approved by the Public Works Department. (PDF 4.6-4)
59. Prior to issuance of grading permits, if determined necessary by the Director of Community Development ~~Department Building Division Manager~~, the applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated. (SC 4.3.2)
60. Prior to the issuance of grading permits, the applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the Construction General Permit and submit the above to the State Water Quality Control Board for approval and made part of the construction program. The applicant shall provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. The SWPPP shall detail measures and

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practices that will be in effect during construction to minimize the project's impact on water quality.

61. Prior to issuance of grading permits, the applicant shall prepare and submit a Final Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Director of Community Development and Director of Public Works. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur. The WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
62. Prior to issuance of precise grading permits for any residential, commercial, resort or park development area the applicant shall commence implementation of the NBR Habitat Restoration Plan as described in the NBR Master Development Plan which includes designation of a minimum of 220 gross acres as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas. . (PDFs 4.6.-1 and 4.6-2)
63. Prior to the issuance of grading permits, the applicant shall submit a planting plan for the arroyos for review and approval by a qualified biologist designated by the Director of Community Development. The arroyos planting plan shall identify the use of native riparian vegetation consistent with the NBR Master Development Plan, Appendix A, Habitat Restoration Plan. (PDF4.4-4)
64. Prior to issuance of applicable grading permits adjacent to bluff slopes the applicant shall submit for review and approval by the Director of Community Development, a grading plan to implement the Bluff/Slope Restoration Plan as described in the NBR Master Development Plan that identifies eroded portions of bluff slopes to be repaired and stabilized and ~~The Bluff/Slope Restoration Plan shall include~~ identifies a planting plan utilizing native vegetation that does not require permanent irrigation. (PDF-4.3-3)

Prior to Issuance of Demolition and Building Permits

65. Prior to issuance of building permits for applicable portions of the project, subject to grading permits, site remediation activities consistent with the Final RAP shall be completed to the satisfaction of all state and local agencies with oversight responsibility as identified in the Final RAP.
66. Prior to the issuance of a building permit for the construction of residential and commercial uses, the applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks. (SC 4.14-1)

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67. Prior to the issuance of building permits the applicant shall obtain approval of a plan stating that water for firefighting purposes and an all weather fire access road shall be in place before any combustible materials are placed on site. Fire access roads shall be designed to support the 75,000 pound load of fire apparatus for year round weather conditions.
68. Prior to the issuance of any residential building permit, the applicant shall submit for review and shall obtain the approval of the Director of Community Development, plans indicating the location and type of unit address lighting to be installed.
69. Prior to the issuance of building permits, the applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s). (SC 4.14-3)
70. Prior to the issuance of building permits, the applicant shall pay applicable fees to the Newport-Mesa Unified School District Pursuant to Section 65995 of the *California Government Code* Payment of the adopted fees would provide full and complete mitigation of school impacts. (SC 4.14-6)
71. Prior to the issuance of building permits for any residential unit, the applicant shall pay the City of Newport Beach the applicable portion of a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2, as may be further defined in the DA. The fair share fee shall be based on total number of project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. (MM 4.14-2)
72. Prior to issuance of any demolition permit testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development. All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community

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Development prior to issuance of the first grading permit. (SC 4.5-1)

73. Prior to issuance of applicable building permits, the applicant shall submit to the Director of Community Development for review and approval, architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, project plans and specifications shall include ventilation as required by the California Building Code. (SC4.12-3)
74. Prior to issuance of applicable building permits, the applicant shall submit for review and approval by the City of Newport Beach Police Department, development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the project plans. The applicant shall prepare a list of project features and design components that demonstrate responsiveness to defensible space design concepts. (SC 4.14-4)
75. Prior to the issuance of building permits plans shall be submitted to the satisfaction of the Director of Community Development to include requirements that all contractor specifications include a note that architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. (SC 4.10-2)
76. Prior to the issuance of building permits the applicant shall submit for review and approval by the Director of Community Development building plans designed to meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards. (SC 4.15-3)
77. Prior to the issuance of building permits for any residential, commercial, visitor serving, or park and recreation use, annexation of the unincorporated area of the project site approved for residential, commercial, visitor serving and ~~community~~ park and recreation purposes to the City of Newport Beach shall be completed and approved by the OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.
78. Prior to the issuance of building permits for any residential, commercial, visitor serving, or park and recreation use, the applicant shall provide evidence satisfactory to the Fire Department that adequate permanent or temporary fire protection facilities

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are in place on the job site and are tested prior to placing any combustible material on the job site.

79. Prior to the issuance of each building permit for multi-family residential dwelling units with subterranean parking and the resort inn, the applicant shall submit plans for approval by the Director of Community Development, that provide for the following:

- a. The designation of a minimum of three percent of the total parking spaces provided as electric or hybrid vehicle parking spaces; and
- b. Installation of facilities for Level 2 electric vehicle recharging, unless it can be demonstrated to the satisfaction of the Director of Community Development that the technology for these facilities or availability of the equipment current at the time renders installation of these facilities infeasible. (MM 4.11-5)

80. Prior to the issuance of each building permit for residential dwelling units with attached garages, the applicant shall submit plans for approval by the Director of Community Development that provide for the following:

- a. Identification of a specific place or area within each residential dwelling unit where a Level 2 electric vehicle charging station could be safely installed by the homeowner after purchase;
- b. The installation by the residential builder of the conduit necessary for the future installation of a Level 2 charging station in each residential dwelling unit; and
- c. Evidence that the electrical load of each residential dwelling unit is designed to accommodate a Level 2 charging station. (MM 4.11-5)

Prior to Issuance of Certificates of Use and Occupancy

~~78-81.~~ Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at the existing City Hall site at 23300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. (MM 4.14-1) In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated Site Planning Areas, then prior to issuance of building permits for any combustible structure in the above Site Planning Areas, the applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the project limits of disturbance approved as a part of the project such that no new environmental effects would occur. (MM 4.14-3)

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79.82. Prior to issuance of certificate of use and occupancy for any residential, resort or commercial use, the applicant shall complete construction of all applicable roadways, parkways, median and median landscaping, sidewalks, intersection street lights, streets, alleys, traffic signals and signage and utilities including but not limited to water, water quality management, sewer, storm drain, fiber optics, gas, electricity, telephone and telecommunications necessary to serve the use ~~shall be completed~~ and the above facilities shall be operational to serve the use, the extent of which shall be determined by the Director of Public Works and the Director of the Municipal Operations Department.

80.83. Prior to the issuance of a certificate of use and occupancy for the ~~last 350th~~ residential dwelling unit in the North Family Village, i) the following park improvements shall be ~~constructed~~completed by the applicant: (i) for the Vernal Pool Interpretive Park within Lot F; and, ~~(ii) park improvements~~ for the Nature Center Interpretive Park within Lot 233, and ii) CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.

81.84. Prior to the issuance of the ~~first 350th~~ certificate of use and occupancy for any residential use in either the North Family Village or Urban Colony, the construction of improvements to the Talbert Trailhead Staging Area Interpretive Park ("Talbert Trailhead") within Lot Q shall be completed by the applicant, and public access easements, CC&Rs, deed restrictions or other instrument providing for public access and permanent maintenance for the Talbert Trailhead in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Director of Community Development.

82.85. Prior to the issuance of the first certificate of use and occupancy for Lot 1, Urban Colony, ~~the applicant shall~~ the construction of all improvements to North Bluff Park, Lot 189, including all trail and recreational improvements shall be completed by the applicant, and deed restrictions, access easements, or other instruments providing for public access and use of this portion of North Bluff Park in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Community Development Director.

86. Prior to the issuance of the a certificate of use and occupancy for the ~~last 350th~~ residential dwelling unit in either the North Family Village or the Urban Colony whichever is first, the construction of the Lowland, Upland, and Bluff Toe Interpretive Trails shall be completed by the applicant, and CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.

87. Prior to the issuance of a certificate of use and occupancy for the 209th residential

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dwelling unit in the North Family Village, the construction of the Southern Arroyo Trail shall be completed by the applicant, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of the facility in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Director of Community Development.

~~88.~~ Prior to the issuance of certificates of use and occupancy, applicable fuel modification shall be installed, and completed by the applicant, and inspected by the Fire Department. This includes physical installation of features identified in the approved NBR Fire and Life Safety Program (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Official shall provide written approval of completion at the time of this final inspection. If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved. The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections to ensure that the landscape palette will be maintained as approved. (SC 4.14-3)

~~83-89.~~ Prior to the issuance of certificates of use and occupancy the applicant shall demonstrate to the satisfaction of the Director of Public Works that applicable street name signs have been installed.

~~90.~~ Prior to the issuance of certificates of use and occupancy permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all street improvements damaged during construction have been repaired or replaced.

~~84-91.~~ Prior to the issuance of a certificate of use and occupancy for any model home complex, the applicant shall complete construction of roadway improvements adequate to serve the model home complex to the satisfaction of the Director of Public Works and the Director of Community Development.

~~85-92.~~ Prior to the issuance of the first certificate of use and occupancy, (excepting model home complexes) for the South Family Village or Resort Colony, whichever is first, the construction of the following roadways shall be complete, consistent with the roadway sections indicated on Tentative Tract Map No. 17308:

- a. West Coast Highway improvements within the full length of right of way adjacent to the project frontage to include median reconstruction, design

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- and installation of the traffic signal at Bluff Road and West Coast Highway, construction of full roadway improvements including sidewalk along the inland half section, and restriping of the intersection of West Coast Highway and Newport Boulevard to provide for one southbound right turn lane, one shared right turn/ left turn lane, and one left turn lane.
- b. Full width right of way improvements for Bluff Road and North Bluff Road from West Coast Highway to 16th Street.
 - c. Full width right of way improvements for 15th Street from Bluff Road to the point approved by the Director of Public Works where 15th Street tapers to meet road improvements existing at the easterly project boundary.
 - d. Partial improvements for 15th Street from the easterly project boundary to Monrovia Avenue sufficient to provide at a minimum, a functional two lane roadway as determined by the Director of Public Works. .
 - e. Full improvements if feasible, or partial improvements providing at a minimum a functional two lane roadway as determined by the Director of Public Works, for 16th Street between North Bluff Road and the existing terminus at the easterly project boundary.
 - f. Construction of a traffic signal at the intersection of 15th Street and Bluff Road.

86.93. Prior to the issuance of the first certificate of use and occupancy for the North Family Village and/or Urban Colony, (excepting model home complexes) whichever is first, the applicant shall complete construction of the following roadways consistent with the sections indicated on Tentative Tract Map No. 17308:

- a. Full width improvement of North Bluff Road from 16th Street to 17th Street.
- b. Partial improvement to North Bluff Road from 17th Street to the northern boundary of Lot 1, including establishment of the eastern curb line in a location compatible with implementation of a full Primary Arterial with the extent of remaining improvements to be determined by the Director of Public Works.
- c. Full width improvement of 16th Street from North Bluff Road to the easterly boundary of the Project.
- d. Full width improvement of 17th Street from North Bluff Road to a point at the easterly boundary of the Project where 17th Street tapers to meet existing off-site improvements as determined by the Director of Public Works.
- e. Construction of a traffic signal at the intersection of North Bluff Road and 17th Street

~~87. Prior to the issuance of the 209th certificate of use and occupancy for the North Family Village and/or Urban Colony, (excepting model home complexes) whichever is first, the functional completion consistent with the roadway sections indicated on Tentative Tract Map No. 17308 of the following roadways shall be complete:~~

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- ~~a. Full width improvement of North Bluff Road from the northern boundary of Lot 1 to 19th Street.~~
- ~~b. Improvements to 19th Street from North Bluff Road to the easterly boundary of the project, as determined by the Director of Public Works.~~

~~88-94.~~ Prior to the issuance of the first certificate of use and occupancy for any residential, commercial, or resort use in the project all applicable master infrastructure improvements identified in the Final SWPPP and WQMP including debris basins, bio-swales, energy dissipaters, drainage pipes, water quality basins and other improvements shall be constructed and the applicant shall provide all necessary dedications, deed restrictions, covenants or other instruments for the long term maintenance of the facilities in a manner meeting the approval of the Director of Public Works.

95. Prior to the issuance of the certificate of use and occupancy for the 101st residential dwelling unit in the South Family Village and Resort Colony combined, or prior to the issuance of the first certificate of occupancy for the Resort Inn facility, whichever comes first, the applicant shall complete construction of all improvements to South Bluff Park including all trail and recreational improvements, and deed restrictions, access easements, or other instruments providing for public access and use of the South Bluff Park, in perpetuity, and including the timing for opening of the South Bluff Park for public use, shall be recorded to the satisfaction of the City Director of Community Development.

~~89-96.~~ Prior to the issuance of the certificate of use and occupancy for the 150th residential dwelling unit in the South Family Village and Resort Colony combined, the applicant shall complete construction of all improvements to the South Community Park including all recreational improvements, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of South Community Park in perpetuity, and including the opening of South Community Park for public use, shall be recorded to the satisfaction of the Director of Community Development.

~~90-97.~~ Prior to the issuance of the certificate of use and occupancy for the 209th residential dwelling unit in the North Family Village, the applicant shall complete construction of all improvements to North Bluff Park adjacent to the North Family Village including all trail and recreational improvements, and CC&R's, deed restrictions, access easements, or other instruments providing for public access and use of the North Bluff Park in perpetuity, and including the timing for opening of the North Bluff Park for public use, shall be recorded to the satisfaction of the City Director of Community Development.

94-98. Prior to issuance of certificates of use and occupancy for Lots 1, 10-88, 128-162, 184, 185, and 187 the applicant shall construct the water quality basin located in

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Lot I and this facility shall be operational to the satisfaction of the Director of Public Works. (PDF 4.4-2)

~~92-99.~~ Prior to issuance of certificates of use and occupancy for Lots 89-125, 163-183, 186 and 188 the applicant shall construct the water quality basin and a diffusing basin located in Lot L and these facilities shall be operational to the satisfaction of the Director of Public Works. (PDF4.4-2)

100. Prior to issuance of certificates of use and occupancy for the resort inn within Lot 228, the applicant shall demonstrate to the satisfaction of the Director of Public Works that the applicant has submitted an application to Caltrans for approval of all required Caltrans permits for the construction by the applicant of the pedestrian/bicycle bridge spanning West Coast Highway as indicated on Tentative Tract Map No. 17308. If the applicant receives approval from Caltrans for construction of the pedestrian bridge, the applicant shall subsequently submit improvement plans for review and approval by the Director of Public Works, Director of Community Development and Director of Recreation and Senior Services for the construction of the pedestrian bridge. (PDF4.8-3) –In the event all approvals are obtained for construction of the pedestrian/bicycle bridge, the applicant shall complete construction of the bridge prior to issuance of the final certificate of use and occupancy for the resort inn. Nothing in this condition shall prohibit the City from issuing a certificate of use and occupancy for the resort ~~use-inn~~ in the event that CalTrans does not approve the applicant’s request for permit approval for construction of the pedestrian bridge. Nothing in this condition shall prohibit the City from issuing a certificate of use and occupancy for Lot 228 in the event the resort inn is not developed, pursuant to the provisions of the NBR Planned Community Development Plan, and subsequently, applications for a pedestrian/bicycle bridge are not submitted to Caltrans.

101. Prior to the issuance of the first certificate of use and occupancy including for the first model home complex, the applicant shall submit an application for a Master Sign Program to the Director of Community Development. Approval of the Master Sign Program by the Planning Commission pursuant to the provisions of NBR Planned Community Development Plan Section 4.13, “Community Master Sign Program,” is required prior to issuance of the first certificate of use and occupancy.

102. Prior to the issuance of certificates of use and occupancy for any residential, commercial, visitor serving, or park and recreation use, fire hydrants shall be installed and tested.

Subdivision Improvement Plans

~~93-103.~~ All subdivision improvement plans shall identify the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm

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water and non-storm water management, and waste management/pollution control. The BMP's identified for implementation shall demonstrate that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan and Storm Water Pollution Prevention Plan. (PDF4.4-6)

~~94.~~104. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.24 (Subdivision Design), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.

~~95.~~105. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.28 (Subdivision Improvement Requirements), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.

~~96.~~106. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with Chapter 19.32(Improvement Plans).

~~97.~~107. Approval of improvement plans shall in no way relieve the applicant or the applicant's engineer of responsibility for the design of the improvements or from any deficiencies resulting from the design, nor from compliance with any tentative map condition of approval.

~~98.~~108. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.36 (Completion of Improvements).

~~99.~~109. All subdivision improvement plans for arterial roadways within the Project and all off-site City of Newport Beach roadways shall include the use of rubberized asphalt, or pavement offering equivalent or better acoustical properties in accordance with City standards. (SC4.12-4)

~~100.~~110. All new utility lines to serve the project shall be installed in underground trenches.

~~101.~~111. Intersection design shall be approved by the Director of Public Works and comply with City's sight distance standards.

~~102.~~112. All subdivision improvement plans shall include the use of light emitting diode (LED) lights for street lights.

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- ~~403.~~113. Subdivision improvement plans shall provide for the design and construction of Ethernet traffic signal communication network improvements linking the new traffic signal locations to the existing City traffic signal management system.
- ~~404.~~114. Subdivision improvement plans for roadway systems within the Project shall be coordinated with the Orange County Transit Authority OCTA and the City to identify locations, as applicable, for bus stops within the internal roadway system. If bus turnout locations are identified during consultation with OCTA, the subdivision improvement plans shall be designed to include the bus turnouts. (PDF 4.11-3)
- ~~405.~~115. Subdivision improvement plans for Streets A, B, C, E, F, G, I and K shall be designed to incorporate "Green Street" and other Low Impact Development features such as bioswales and bio-cells, canopy street trees, traffic calming features and minimal use of street lighting consistent with the requirements of the NBR Master Development Plan, Appendix D, "Green and Sustainable Program." (PDF4.4-3)
- ~~406.~~116. All subdivision improvement plans shall include a drainage plan approved by the Director of Public Works and Director of Community Development which is designed to ensure that runoff systems from the Project to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system. (PDF 4.4-5)
- ~~407.~~117. Prior to approval of improvement plans for the pedestrian/bicycle bridge spanning West Coast Highway, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for the construction of the pedestrian bridge.
- ~~408.~~118. All subdivision improvement plans shall conform to the following Fire Department requirements:
- a. Detailed plans of underground fire service mains shall be submitted to the Fire Department for approval prior to installation. These plans shall be a separate submittal to the Fire Department.
 - b. Blue hydrant identification markers shall be placed with new hydrants.
 - c. All weather access roads designed to support the 75,000 pound imposed load of fire apparatus for year round weather conditions shall be installed and made serviceable prior to and during time of construction for emergency personnel.
 - d. Fire apparatus access roads designed to support the 75,000 pound imposed load of fire apparatus for year round weather conditions shall be ~~designed,~~ maintained, and identified as per Newport Beach Guideline C.01 Emergency Fire Access and C.02 Fire Lane Identification.
 - e. All security gates shall have knox locks for after hours emergency personnel access to the construction site.

Release of Financial Security

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~~409.~~119. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works and the Director of Community Development that the Project CC&Rs have been approved by the City Attorney and the appropriate Association(s) has been formed.

~~410.~~120. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all survey monuments damaged or destroyed are restored.

~~414.~~121. Prior to the release of financial security, the applicant shall submit as-built plans prepared by a Registered Civil Engineer depicting all street, traffic signal, sewer, water, and storm drain improvements and street signage and signage placements, traffic markings and painted curbing, and all other required improvements shall be completed to the satisfaction of the Director of Public Works.

~~412.~~122. Prior to the release of financial security, all domestic water and sewer systems shall be fully tested in the presence of a City staff representative, to verify system performance in accordance with design specifications.

~~413.~~123. Prior to the release of financial security the applicant shall execute an agreement to the satisfaction of the Director of Public Works and the Director of Community Development which designates the maintenance responsibilities for all landscaping and irrigation systems in the Project.

~~414.~~124. Prior to the release of financial security the applicant shall submit as built plans at an appropriate scale to the Director of Recreation and Senior Services showing as-built grading, trails, park improvements, and pedestrian bridge landing areas on both sides of West Coast Highway (if the bridge is constructed).

125. Prior to the release of financial security the applicant shall demonstrate to the satisfaction of the Director of the Municipal Operations Department that all underground public utilities necessary for the construction of residential, resort, park or commercial uses to proceed as indicated on Tentative Tract Map No. 17308 have been completed in accordance with the approved Utilities Master Plan and that the as-built plans for said improvements, prepared by a Registered Civic Engineer have been submitted and approved by the Director of the Municipal Operations Department.

121. Prior to the release of financial security, Sheet 1 of Tentative Tract Map No. 17308 shall be revised to indicate the home owner association (HOA) as responsible for the maintenance of Lot 230 (South Community Park), indicating only the HOA as responsible for the maintenance of Lot 233, and to indicate the proposed land use for Lots F and Q as "Interpretive Park."

PC 2 Exhibit C

Required Findings for TTM No. 17308

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

- A-1. The proposed tentative tract map provides lot configurations consistent with the land uses, densities, and intensities of the Open Space/Residential Village (OS/RV) land use designation established by the General Plan.
- A-2. The proposed tentative tract map allows the development of a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, and active community parklands, with a majority of the property preserved as open space.
- A-3. The proposed tentative tract map provides for the development of a cohesive planned community with a connective street system, pedestrian walkways and trails.
- A-4. The proposed tentative tract map provides public bluff top parks, which sets development back from bluff faces and provides public views of the ocean, wetlands, and surrounding open spaces.
- A-5. The arterials and streets on the proposed tentative tract map are consistent with the roadway specifications of the Master Plan of Streets and Highways of the Circulation Element of the General Plan.
- A-6. The proposed tentative tract map provides for the dedication of 21.8 gross acres (18 net acres) of community parkland, which exceeds the project's obligation under the Park Dedication Fee Ordinance and contributes towards the 20 to 30-acre community park specified by the Land Use Element and Recreation Element of the General Plan.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Facts in Support of Finding:

- B-1. The project site contains topographic and natural habitat constraints. However, the proposed tentative tract map provides for development that is sited away or buffered from the arroyos and bluffs and wetlands and other habitat areas.
- B-2. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.
- B-3. The project site is a producing oil field. However, the project site would be remediated and all the existing oil operations will be consolidated into two locations.
- B-4. There are no geologic or physical constraints that would prevent the development of the site at the density proposed, or require variances or deviations from the applicable City development standards.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

- C-1. The design of the subdivision locates the majority of the development in the eastern portion of the project site and adjacent to the developed areas, which preserves larger, intact areas of high value habitat.
- C-2. The proposed project would have direct and indirect impacts on habitat that supports special status species. However, the draft environmental impact report prepared for the project concluded that significant impacts to these habitats can be mitigated to a less than significant level through mitigation measures. Even though the project has no significant impacts to biological resources, the City has identified specific project benefits and will adopt a statement of overriding considerations if it decides to approve the project.

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems*

Facts in Support of Finding:

- D-1. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.
- D-2. While the project site is currently impacted primarily by petroleum hydrocarbons, following testing, no contaminant levels were found to exceed the hazardous concentration levels defined by State and federal guidelines.
- D-3. The project site will be remediated and all the existing oil operations will be consolidated into two locations.
- D-4. The project is conditioned to comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. The project site contains existing public utilities easements. However, the design of the subdivision and the type of improvements proposed present no conflict with these easements. Existing easements will remain in their current designated locations or will be modified to be substantially equivalent to ones previously acquired by the public.

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

- F-1. The project site does not contain prime farmland, unique farmland, or farmland of statewide importance and no portion of the project site is covered by a Williamson Act contract.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The project is not located in a specific plan area.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

- H-1. The proposed tentative tract map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.
- H-2. Single-family detached residential roofs, commercial building roofs, and homeowners association-owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1 The Affordable Housing Implementation Plan (AHIP) for the proposed project proposes the construction of a minimum of 50 percent of the required affordable housing on the project site. The remaining affordable housing obligation may be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication for affordable housing; or a combination thereof.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. The City has adequate sewer system capacity to serve the requirements of the proposed project. The proposed project would be able to tie into the existing sewer system without adversely affecting the system or causing any water quality affects or violating existing requirements prescribed by the Regional Water Quality Control Board.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The project site is entirely within the Coastal Zone, but is not located within a certified Local Coastal Program. The City has a certified Coastal Land Use Plan

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

(CLUP), but not a certified Implementation Plan. The CLUP designates the project site as a Deferred Certification Area; therefore, the policies of the CLUP area not applicable to the project site.

- K-2. The proposed subdivision design conforms with the public access and recreation policies of the Chapter Three of the Coastal Act.
- a. The proposed project would provide several miles of off-street multi-use public trails, on-street public bike trails, and pedestrian paths for pedestrians and bicyclists.
 - b. The trails would provide connections to on-site land uses and habitat areas and would connect to the existing regional trail system, other parks, and open space areas.
 - c. The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach.
 - d. The public parks, trails, and interpretive areas would be available for active and passive recreation uses by residents and visitors.
 - e. To facilitate public access, public parking areas will be provided at park and recreational areas and along most streets within the project site.

PC 2 Exhibit D

Required Findings for Traffic Study No.
TS2008-002

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

In accordance with Section 15.40.030 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *That a traffic study for the project has been prepared in compliance with this chapter and Appendix A [Chapter 15.30 NBMC].*

Facts in Support of Finding:

- A-1. A traffic study, entitled Traffic Impact Analysis for Newport Banning Ranch in the City of Newport Beach, prepared by Kimley-Horn and Associates, Inc., 2011(traffic study), was prepared for the project in compliance with Municipal Code Chapter 15.40 (Traffic Phasing Ordinance and Appendix A).

Finding:

- B. *That, based on the weight of the evidence in the administrative record, including the traffic study, one of the findings for approval in subsection (B) [Section 15.40.030.B NBMC] can be made.*

Facts in Support of Finding:

- B-1. Based on the weight of the evidence in the administrative record, including the traffic study, mitigation measures, and the conditions of approval, all of the findings for approval in Section 15.40.030.B.2 can be made. Section 15.40.030.B.2 NBMC states:
2. *The project is a Comprehensive Phased Land Use Development and Circulation System Improvement Plan with construction of all phases not anticipated to be complete within sixty (60) months of project approval; and*
 - a. *The project is subject to a development agreement which requires the construction of, or contributions to, circulation improvements early in the development phasing program, and*
 - b. *The traffic study contains sufficient data and analysis to determine if that portion of the project reasonably expected to be constructed and ready for occupancy within sixty (60) months of project approval satisfies the provisions of subsections (B)(1)(a) or (B)(1)(b), and*
 - c. *The Land Use and Circulation Elements of the General Plan are not made inconsistent by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when*

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Ordinance, and

d. *The project is required, during the sixty (60) month period immediately after approval, to construct circulation improvement(s) such that:*

(1) *Project trips will not cause or make worse an unsatisfactory level of traffic service at any impacted primary intersection for which there is a feasible improvement,*

(2) *The benefits resulting from circulation improvements constructed or funded by, or contributions to the preparation or implementation of a traffic mitigation study made by, the project proponent outweigh the adverse impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that would, if implemented, fully satisfy the provisions of Section 15.40.030 (B)(1)(b). In balancing the adverse impacts and benefits, only the following improvements and/or contributions shall be considered with the greatest weight accorded to the improvements and/or contributions described in subparagraphs (a) or (b):*

(a) *Contributions to the preparation of, and/or implementation of some or all of the recommendations in, a traffic mitigation study related to an impacted primary intersection that is initiated or approved by the City Council,*

(b) *Improvements, if any, that mitigate the impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that, if implemented, would fully satisfy the provisions of Section 15.40.030 (B)(1)(b),*

(c) *Improvements that mitigate the impacts of project trips on any impacted primary intersection in the vicinity of the project,*

(d) *Improvements that mitigate the impacts of project trips on any impacted primary intersection operating, or projected to operate, at or above 0.80 ICU.*

B-2. The proposed project meets the requirements for a Comprehensive Phased Land Use Development and Circulation System Improvement Plan as the project is subject to conditions of approval that require the construction of, or contributions to, circulation improvements early in the development phasing program.

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

B-3. The traffic study analyzed the worst-case scenario where the proposed project would be completed within 60 months, which was considered in the study as being 2016.

B-4. The traffic study found that the following intersection is projected to exceed the Level of Service (LOS) "D" standard in the City of Newport Beach:

- Newport Boulevard at West Coast Highway (AM LOS E: project Impact 0.024)

and the following intersections are projected to exceed the LOS D standard in the City of Costa Mesa:

- Newport Boulevard at Victoria Street/22nd Street (AM: LOS F; no project impact)
- Monrovia Avenue at 19th Street (AM: LOS E; project impact to unsignalized intersection)
- Newport Boulevard at 19th Street (AM: LOS E; project impact: 0.051)
- Newport Boulevard at Harbor Boulevard (PM: LOS F; project impact: 0.079)
- Newport Boulevard at 18th Street/Rochester Street (PM: LOS F; project impact: 0.080)
- Pomona Avenue at 17th Street (PM: LOS E; project impact to unsignalized intersection)
- Superior Avenue at 17th Street (PM: LOS E; project impact: 0.165)
- Newport Boulevard at 17th Street (PM: LOS E; project impact: 0.036)

B-5. The traffic study found the following improvements to the intersection of Newport Boulevard at West Coast Highway would result in the project not causing or making worse an unsatisfactory level of service at this intersection:

- Restripe southbound approach to provide one exclusive right-turn lane, shared right/left-turn lane, and one exclusive left-turn lane on Newport Boulevard.

B-6. The traffic study found the following improvements to the intersections identified as being significantly impacted by the proposed project in Costa Mesa would

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

result in the project not causing or making worse an unsatisfactory level of service at these intersections:

- Monrovia Avenue/19th Street: Install signal
- Newport Boulevard/19th Street: Add a second southbound left-turn lane on Newport Boulevard
- Newport Boulevard/Harbor Boulevard: Add fourth southbound through lane on Newport Boulevard
- Newport Boulevard/18th Street (Rochester St): Convert southbound right-turn lane to a shared through/right lane on Newport Boulevard
- Pomona Avenue/17th Street: Install signal
- Superior Avenue/17th Avenue: Convert westbound approach to provide one left, one shared/left, one through, and one dedicated right-turn lane
- Newport Boulevard/17th Street: Add fourth southbound through lane and one dedicated northbound right-turn lane

B-7. Mitigation Measure MM 4.9-2 of the Mitigation, Monitoring, and Reporting Program requires the applicant to make best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements for the seven intersections within Costa Mesa that were identified as being significantly impacted by the proposed project. Furthermore, Mitigated Measure MM4.9-2 is intended to require the applicant to either pay fees and/or construct the required improvements during the 60 months immediately following final approval of the proposed project. However, because the City cannot impose improvements to the Costa Mesa intersections, for purposes of the City's Traffic Phasing Ordinance, the subject intersections are being treated as though there are not feasible improvements.

B-8. The proposed restriping the southbound approach of Newport Boulevard at West Coast Highway to provide a right-turn lane, shared right/left turn lane and left-turn lane is an improvement identified in the Circulation Element of the General Plan, and therefore a feasible improvement under the Traffic Phasing Ordinance. The conditions of approval require the restriping occur in the early phase of development, upon issuance of a certificate of occupancy for the first building constructed in the South Family Village or Resort Colony areas of the project. The traffic study determined, based on sufficient data and analysis, that the proposed project under a worst-case scenario of full build-out by 2016, when taken together with the circulation improvement, will not cause nor make worse

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

an unsatisfactory level of traffic service at Newport Boulevard and West Coast Highway.

- B-9. The proposed project does not result in an inconsistency between the Land Use Element and the Circulation Element of the General Plan by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Code. The development included in the proposed project is consistent with the General Plan. Off-site mitigation improvements proposed within the City of Newport Beach are also included in the Circulation Element.
- B-10. Based on the public benefits outlined in the Statement of Overriding Considerations, the proposed project will result in benefits that outweigh the project's impact on the City's circulation system

Finding:

- C. *That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Facts in Support of Finding:

- C-1. Concept plans depicting the recommended on-site arterial improvements are included in the resolution of approval and conditions of approval for the Tentative Tract Map for the proposed project.
- C-2. Mitigation Measure MM 4.9-1 the Mitigation, Monitoring, and Reporting Program requires the applicant to implement the City transportation improvement mitigation program for the project and identifies the applicant's fair-share responsibility for the improvements.
- C-3. Mitigation Measure MM 4.9-2 of the Mitigation, Monitoring, and Reporting Program require that the applicant make best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa.

PC 2 Exhibit E

Required Findings for AHIP No. AH2008-001

EXHIBIT E
Required Findings
Affordable Housing Implementation Plan No. AH2008-001

In accordance with Section 19.54.070.D (Alternatives to On-Site Construction) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The purpose of this chapter (Chapter 19.54) would be served by the implementation of the proposed alternative.*

Facts in Support of Finding:

- A-1. The applicant has submitted an Affordable Housing Implementation plan (AHIP) that contains alternative methods to on-site construction of affordable units.
- A-2. The AHIP proposes the construction of a minimum of 50 percent of the required affordable units on the project site. The remaining affordable housing obligation may be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication for affordable housing; or any combination these methods.
- A-3. The AHIP serves the purpose of the City's Inclusionary Housing Ordinance by providing a range of strategies, including on-site new construction, off-site new construction, rehabilitation of existing units, payment of in-lieu fees, and/or land dedication to provide a variety of housing types and opportunities for all social and economic segments, including very low-, low-, and moderate-income households.

Finding:

- B. *The units provided are located within the City and are consistent with the requirements of this chapter [Chapter 19.54 NBMC].*

Facts in Support of Finding:

- B-1. The project site is proposed to be annexed to the City and the project will not be implemented unless the annexation occurs.
- B-2. The AHIP requires any affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, to be located within the boundaries of the City of Newport Beach.
- B-3. The AHIP complies with the affordability requirement of Section 19.54.040.A NBMC by providing that 15 percent of all new housing units constructed by the

EXHIBIT E
Required Findings
Affordable Housing Implementation Plan No. AH2008-001

project be affordable to moderate income households. Section 19.54.040.A.1 provides that a lower percent of affordable units may be approved as part of an AHIP, if the project includes units for very low-income households. The AHIP provides that the affordable units be comprised of either 5 percent Very Low Income or 10 percent Low Income or 15 percent Moderate Income or a combination of all of these income levels.

- B-4. The AHIP requires all affordable units provided will be restricted, as enforced through a Affordable Housing Implementation Agreement with the City, to ensure that the unit remains affordable to very low-, low-, or moderate-income households for a 30-year period.
- B-5. Affordable Housing Implementation Agreements will be executed and recorded at each phase of development for affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid.
- B-6. The AHIP requires that renovation of existing off-site units to affordable units to comply with the requirements of Section 19.54.070.B NBMC.
- B-7. The AHIP requires that any land dedications for affordable housing to comply with requirements of Section 19.54.070.C NBMC.

Finding:

- C. *It would not be feasible or practical to construct the units on site.*

Facts in Support of Finding:

- C-1. The AHIP requires that a minimum of 50 percent of the required affordable units be construction on site.
- C-2. The project site is constrained by the topography and sensitive habitat areas. Furthermore, policies of the General Plan require that a majority of the project site be preserved as open space. Therefore, the project site has limited area for residential development.
- C-3. Implementation of the AHIP will be evaluated at each development phase which will include consideration of off-site affordable units, dedication of land or the payment of in-lieu fees. The conclusion of this evaluation will be subject to an Affordable Housing Implementation Agreement between the applicant and the City of Newport Beach.

PC 2 Exhibit F

Recommended Statement of Overriding
Considerations

EXHIBIT F

STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The City is the Lead Agency under CEQA for preparation, review, and certification of the Final EIR for the Newport Banning Ranch Project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed Project. In making this determination the City is guided by State CEQA Guidelines Section 15093 which provides as follows:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal (sic) project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed Project, none of which both meet the Project objectives and is environmentally preferable to the proposed Project for the reasons discussed in the Findings and Facts in Support of Findings.

The Newport City of Beach City Council, the Lead Agency for this Project, and having reviewed the Final EIR for the Newport Banning Ranch Project, and reviewed all written materials within the City's public record and heard all oral testimony presented at public hearings, adopts this Statement of Overriding Considerations, which has balanced the benefits of the Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the Project.

Significant Unavoidable Adverse Environmental Impacts

Although most potential Project impacts have been substantially avoided or mitigated, as described in the Findings and Facts in Support of Findings, there remain some Project impacts for which complete mitigation is not feasible. For some impacts, mitigation measures were identified and adopted by the Lead Agency, however, even with implementation of the measures, the City finds that the impact cannot be reduced to a level of less than significant. The impacts and alternatives are described below and were also addressed in the Findings.

The EIR identified the following unavoidable adverse impacts of the proposed Project:

Land Use. The City of Newport Beach Zoning Code (October 2010) defines compatibility as "The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include: intensity of occupancy, pedestrian or vehicular traffic generated, volume of goods handled, and environmental effects (e.g., air pollution, glare, hazardous materials, noise, vibration, etc.)". Therefore, land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that project-related significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended. 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 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 interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Aesthetics and Visual Resources. The proposed Project would include "dark sky" lighting regulations set forth in the Newport Banning Ranch Development Planned Community (NBR-PC) zoning regulations that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. The Project would result in night lighting impacts that 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 Consideration which noted that there were specific economic, social, and other public benefits which outweighed the significant unavoidable impacts associated with the General Plan project.

Transportation and Circulation. The Project would have impacts on select intersections in the City of Costa Mesa. Implementation of Mitigation Measure (MM) 4.9-2 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction or agency. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa and the California Department of Transportation (Caltrans) that would ensure that Project impacts occurring in Costa Mesa and State highways would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. The following impacts were identified with the various traffic scenarios evaluated:

- **Existing Plus Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Superior Ave at 17th Street. (This scenario assumes all development occurs at once, which is not an accurate reflection of the timing of development for the proposed Project.)
- **Year 2016 With Project Transportation Phasing Ordinance (TPO)** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard at West Coast Highway.
- **Year 2016 With Phase 1 Project TPO** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18th Street/Rochester Street; and (3) Newport Boulevard at West Coast Highway.
- **Year 2016 Cumulative With Project** – Intersections identified as deficient are: (1) Monrovia Avenue at 19th Street; (2) Newport Boulevard at 19th Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18th Street/Rochester Street; (5) Pomona Avenue at 17th Street; (6) Newport Boulevard at 17th Street¹; (7) Superior Avenue at 17th Street; and (8) Newport Boulevard and West Coast Highway.
- **Year 2016 Cumulative With Phase 1 Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.
- **General Plan Buildout with Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18th Street/Rochester Street.

Air Quality. During periods of grading, localized large and fine particulate matter (PM10 and PM2.5) concentrations may exceed the South Coast Management District's (SCAQMD's) CEQA significance thresholds at the property lines but would not likely exceed ambient air quality standards. Localized concentrations of carbon monoxide (CO) and nitrogen dioxide (NO₂) due to construction activities would not exceed the applicable CEQA thresholds. Regional (mass) emissions of criteria pollutants during construction activities would not exceed the applicable thresholds.

¹ The Newport Boulevard at 17th Street intersection has a Project-related impact using the Highway Capacity Manual (Caltrans methodology), as well as an impact using the Intersection Capacity Utilization methodology.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile organic compounds (VOCs), CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Feasible mitigation measures would be implemented to reduce operational emissions, although the effects of such mitigation are not quantifiable. Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Greenhouse Gas Emissions. The Project would emit quantities of GHGs that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory affecting Global Climate Change.

Noise. For the *Existing Plus Project, 2016 with Project*, and *General Plan Buildout* scenarios, the increased traffic volumes on 17th Street west of Monrovia Avenue in Costa Mesa, would expose sensitive receptors to noise levels that would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurfacing the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted noise impact to residents of 17th Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest condominium development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications. However, the long-term noise increases at some Newport Crest residences from vehicular traffic noise from Bluff Road due to Project and cumulative traffic levels would remain above the General Plan's 5 A-weighted decibels (dBA) significance criterion. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the Project. 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.

In addition, the EIR identified six alternatives to the Project and analyzed whether these alternatives could avoid or substantially lessen the unavoidable environmental impacts of the proposed Project. While some of the alternatives could lessen or avoid some of the unavoidable impacts of the proposed Project, some of the alternatives also resulted in different and in some cases, increased environmental impacts, consequently, for the reasons set forth in Section 6 of these Findings, none of the alternatives were determined to be feasible:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17th Street.
- Alternative D: Reduced Development and Development Area.

- Alternative E: Reduced Development Area.
- Alternative F: Increased Open Space/Reduced Development Area.

The City, after balancing the specific economic, legal, social, technological, and other benefits including region-wide or statewide environmental benefits, of the proposed Project, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed Project, each of which standing alone is sufficient to support approval of the Project, in accordance with CEQA Section 21081(b) and State CEQA Guideline Section 15093.

1. **Long-term protection of over 50 percent of the Project site as natural open space and habitat consistent with the City's General Plan**

The City's General Plan Policy LU 3.4 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region, to enhance wetlands and other habitats and provide parkland amenities to serve nearby neighborhoods. In order to implement this policy, LU 6.3.2 recognizes the need to obtain sufficient funds through private fundraising, State bonds, environmental mitigation fees, or other financing mechanisms, none of which have been identified to date. As the General Plan acknowledges, "due to the significant cost of purchasing the site and habitat restoration, a large amount of revenue would need to be generated to help fund preservation of the majority of the property as open space". (Housing Element at page 5-43)

Consistent with General Plan Policy LU 3.4, the Project will implement a comprehensive Habitat Restoration Plan that encompasses approximately 235 gross acres of the Project site and would provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. **New public and coastal access will be provided**

The Project would make available to the public a site that has been privately-owned and closed to the public since the 1940s. It would provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, access to open space and trails, and a pedestrian and bicycle bridge from the Project site across West Coast Highway to the beach. The Project would also provide approximately 475 new public parking spaces in the coastal zone.

3. **Dedication and improvement of land for public park, recreational, and open space purposes in excess of the requirements of California law and City ordinances**

In addition to the restoration and long-term preservation of natural open space and habitat areas described above in #1, above, the City's General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's Primary Use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The Project provides approximately 21.8 gross acres of public community parkland and improvements. As described below, the Project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the “Quimby Act”) allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. Based on the number of dwelling units proposed, the Project would be required to dedicate approximately 15 acres of parkland only. The Project would both dedicate land and provide improvements to the following parks and recreational trails. The public parks, recreational and open space provided by the Project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 21.8 gross acres (18 net acres);
- The improvement of Bluff Park and the Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres;
- The improvement of a trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately seven miles of trails throughout the Project site; and
- The improvement of coastal public access via a Pedestrian and Bicycle Bridge from the Project site across West Coast Highway to the beach.

4. Comprehensive oilfield abandonment which expedites habitat restoration and protection

The Newport Banning Ranch property is an active, operating oilfield. In addition, as an active, operating oilfield, and as detailed in the City’s General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oilfield to implement the habitat and parkland goals of the City’s General Plan. The Project provides for the consolidation of the existing oil operations into two areas thereby permitting oilfield abandonment and clean up to commence on the remainder of the Project site in advance of when they would have occurred. The costs of the comprehensive oilfield abandonment and remediation are estimated at approximately \$30 million – none of which would have to be funded by the City or the public. In addition, the oil operation consolidation would allow for habitat restoration activities to occur in advance of when it would have absent the Project’s ability to require consolidation.

5. Provision of areawide water quality benefits

The Project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of the Cities of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses. These areas currently drain through the Project site and flow untreated into the Project’s lowland areas and to the Semeniuk Slough. The water quality basin would also capture and treat on-site urban runoff from within the Project. The 103-acre Semeniuk Slough is identified in the City’s Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Semeniuk Slough include water quality degradation and sediment build-up. (Coastal Land Use Plan at pages 4-15 and 4-16) By capturing and treating this urban

runoff, the Project would provide significant water quality benefits to the Semeniuk Slough.

6. Payment to City of a public benefit fee

In addition to any other fee or charge to which the Project would be required to pay, the Project would to the City a public benefit fee of approximately \$30,909 for each market rate residential unit constructed on the property

7. Net fiscal benefits to the City

The Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach prepared by Applied Development Economics concluded that the Project would have a net fiscal benefit of nearly \$2 million per year if all of the proposed land uses are fully developed. Furthermore, even if the resort Inn and retail and service commercial uses are not developed, the Project would have a net fiscal benefit of nearly \$1.4 million per year.

8. Provide a variety of housing opportunities within the City consistent with the City's General Plan

The City's Housing Element establishes as a goal: A balanced residential community, comprised of a variety of housing types, designs, and opportunities for all social and economic segments. (Housing Element Goal H2) The Project would provide a wide range of housing types from single-family detached to higher density attached and multi-family units that would provide a variety of housing opportunities within one site – a feature not available in many other areas of the City or new developments elsewhere in the City due to the limited number of sites and the sizes of parcels available for new residential development. In addition, the Project would provide a minimum of 50 percent of its affordable housing requirements on site which would provide greater opportunities for all segments of the City's population to enjoy living on the Project site.

9. Fire station improvements

The Project would contribute up to \$700,000 towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of a station is not completed by the City prior to development of certain areas of the Project site, the Project would make available an on-site location for a temporary fire station.

10. Sustainable Design

In addition to its emphasis on a mix of uses and housing opportunities, the Newport Banning Ranch Project is designed to be a sustainable and green community that provides energy efficiency and resource conservation to reduce the Project's greenhouse gas emissions, consistent with AB 32. The following Project components implement sustainability:

- The Project would provide a network of public pedestrian and bicycle trails to reduce auto dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails. The Project would coordinate with the Orange County Transportation Authority to allow for transit routing through the Project site.

- The Project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.
- The Project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.
- The Project would implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.
- The Project would exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5 percent.
- The Project would require that all residential development incorporate low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multimetering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.
- The Project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.
- The Project would implement remediation and cleanup of the oilfield, which includes the ability to recycle and properly dispose on-site oilfield materials. Additionally, the treatment and cleaning of impacted soils would be done on site which significantly reduces the potential export of oil field materials and impacted soils.
- The Project would also increase construction waste diversion by 50 percent from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

11. Circulation Improvements

The Project, through an agreement with the City of Costa Mesa, will fund intersection improvements for intersections in that City. Although outside of the City of Newport Beach, these traffic improvements will provide benefits to City of Newport Beach residents who use these streets. The Applicant will incrementally fund the City of Costa Mesa for intersections improvements. At Project build out, the Project will have provided approximately \$4.3 million in contributions to intersection improvements which is more than double the Project's fair share requirements based upon the traffic analysis in the Final EIR.

PC 2 Exhibit G

NBR-PC (under separate cover) with
Recommended Revisions & Errata

Exhibit G

NBR Planned Community Development Plan Revisions and Errata

Page 2-2

Revise Section 2.2.1.3 as follows:

2.2.1 Planned Community Districts

3. Visitor-Serving Resort/Residential District, to allow for a maximum 75-room resort inn to include ancillary uses such as restaurants, ~~and bars~~ spas, fitness centers, meeting and banquet facilities, retail shops, and other similar complementary visitor-serving commercial uses or free standing visitor serving retail uses without a resort inn component. Bars and cocktail lounges shall be permitted in the Visitor Serving Resort/Residential District only when ancillary to a restaurant, inn, or hotel. This district also allows for resort-oriented residential units of up to 40.0 dwelling units per gross acre if developed in conjunction with the resort inn. In the event a resort inn is not developed this land use district allows the development of residential land uses of up to 9.0 dwelling units per gross acre within the entire district, with or without visitor-serving commercial uses or visitor serving commercial uses alone.

~~1.5.~~ **Mixed-Use/Residential District**, to allow for the mixed use development of residential uses of up to 40.0 dwelling units per gross acre and a maximum of 75,000 square feet of neighborhood serving commercial uses as vertical mixed use with commercial uses on the ground floor and residential above, or as horizontal mixed use with commercial uses and residential uses in separate buildings designed as a cohesive and unified development. The residential component of mixed use development may include residential single family attached or multi-family residential dwelling units and ancillary private recreational facilities to serve the residents of the development. The neighborhood serving commercial component of mixed use development may include a grocery market (s), restaurants, personal services, and professional offices. Other allowable uses in the Mixed Use/Residential District include hotels and inns which could include a restaurant. Bars and cocktail lounges shall be permitted only when ancillary to a restaurant, inn, or hotel.

Page 2-4

Change the acreage assigned to Community Park as follows:

2.4.1 Community Park District (CP)

Approximately 26.8 gross acres designated as CP shall be developed as a public Community Park as part of the Project. Approximately 21.8 gross acres of the CP district comprising the public Community Park shall be offered for dedication to the City to serve the active recreational needs of the Project residents and the community at large. The remaining approximately 5.0 gross acres of the CP district comprising the public Community Park shall be privately

maintained by the Project and made permanently available for public use through a deed restriction and/or recorded public easement.

Page 2-5

Add the following text to Section 2.5, Visitor Serving Resort/Residential District (VSR/R), first paragraph as follows:

The purpose of the Visitor-Serving Resort/Residential District is to designate approximately 11.3 gross acres to allow for development of a resort inn and resort oriented residential uses within the NBR-PC. In the event a resort inn is not developed in this land use district pursuant to NBR-PC Sections 4.4.4 “Findings for Approval of a Master Development Plan,” or 4.5.3 (Site Development Review) “Application Review,” the NBR-PC allows for development of residential uses and/or visitor serving commercial uses within the land use district subject to the provisions of NBR-PC Section 4.18.b, “Transfer of Residential Dwelling Units.”

Page 2-5

Revise Section 2.5.1 as follows:

2.1. Resort Inn and Resort Oriented Residential Uses

A resort inn ~~of up to~~ with a maximum of 75 overnight accommodations (guest rooms) with a lobby and related guest areas, along with support commercial uses ancillary to a resort, such as, restaurant(s), ~~and bars~~ gift and sundry shops, business center(s), fitness center(s), spa/salon/treatment rooms, swimming pools and recreation facilities, banquet and meeting rooms, areas for food and beverage preparation, administrative offices, housekeeping areas, maintenance areas, and employee facilities. Ancillary commercial uses are those uses customary and proportional to the resort. ~~Visitor serving~~ Commercial uses included as part of ancillary to resort inn development shall not be counted as part of the maximum 75,000 square feet of commercial area permitted within the NBR-PC.

Page 2-5

Add the following text to Section 2.5.3 referencing the NBR-PC provisions for transfer of residential dwelling units into the VSR/R district as follows:

2. Residential Uses

~~Up to~~ In the event a resort inn is not developed in the VSR/R district, pursuant to NBR-PC Sections 4.4.4 “Findings for Approval of a Master Development Plan,” or 4.5.3 (Site Development Review) “Application Review,” development of a maximum of 100 conventionally-owned residential dwelling units is allowed pursuant to the provisions Section 4.18, “Transfer of Residential Dwelling Units,” of the NBR-PC. ~~, in the event a resort inn is not developed in the VSR/R district.~~ These residential dwelling units shall be counted as part of the maximum 1,375 residential dwelling units permitted within the NBR-PC.

Page 2-5

Add the following text to Section 2.5.4 referencing the NBR-PC provisions allowing for transfer of visitor serving commercial uses to the VSR/R district and ~~delete~~ clarify “bars” as a visitor serving commercial use:

3. Visitor Serving Commercial Uses

In the event a resort inn is not developed in the VSR/R district pursuant to NBR-PC Sections

4.4.4 "Findings for Approval of a Master Development Plan," or 4.5.3 (Site Development Review) "Application Review," development of visitor-serving commercial uses independent of a resort ~~use inn-such as, to include but not limited to~~ restaurant(s) ~~and bars,~~ gift and sundry shops, business centers, fitness centers, spas and salons, swimming pools and recreation facilities and similar uses are permitted subject to the provisions of Section 4.19, "Transfer of Commercial Area from MU/R District to VSR/R District," of the NBR-PC. Bar and cocktail lounges shall- be permitted only when ancillary to a restaurant. This type of All visitor serving commercial use developed independently of a resort inn shall be counted as part of the maximum 75,000 square feet of commercial area permitted within the NBR-PC.

Page 3-1, Add the following text to the last sentence of the second paragraph of Section 3.2.1, "Oil Operations," as follows:

All surface oil production facilities located in areas outside of the OF District in existence after the effective date of the NBR-PC shall be legal non-conforming structures, and subject to NBMC Chapter 20.38, "Nonconforming Uses and Structures," ~~and subject solely to the provisions of NBMC Sections 20.38.010 through 20.38.050 of Chapter 20.38~~ and may continue for a maximum period of ten years following completion of annexation of the unincorporated County areas of the Project Site to the City .

Page 3-3

Add the following requirement:

Retaining walls over 8 feet in height shall incorporate strategies to visually soften and/or minimize their appearance from public views. Strategies for visual softening may include the use of stepped retaining walls, the use of crib walls, and/or landscape screening.

Page 3-4

Delete the following text from Section 3.3 Landscape Regulations:

~~-.The design and improvement of all developer-installed public parks, including landscape and irrigation plans, within the Project Site shall be subject to approval of a Site Development Review by the City pursuant to Section 4.5 of the NBR-PC, "Site Development Review."~~

Page 3-12

Revise Section 3.9.7, "Legal Non-Conforming Uses, "as follows:

3.9.7 Legal Non-Conforming Uses

Any use within the Project Site lawfully existing at the time of the effective date of the NBR-PC including, without limitation, surface and subsurface oil and natural gas production operations, maintenance and operation of existing easements and pipelines, surface leases for storage yards, and other oil-related buildings, structures, and maintenance areas shall be considered legal non-conforming uses and may be continued subject to NBMC Chapter 20.38.010 through 20.38.050, "Nonconforming Uses and Structures," for up to ten years following the completion of annexation of areas located in the unincorporated County to the City, notwithstanding any omission of a particular such use in Table 3-1, "Allowable Uses." ~~Legal non-conforming uses are not permitted to be expanded.~~

Pages 3-14 and 3-15

Revise Table 3-1, Allowable Uses as follows:

1. Delete Bars and Nightclubs
2. Add Bars and cocktail lounges when ancillary to a hotel, resort inn, or restaurant as conditionally permitted in VSR/R and MU/R.
3. Delete Breweries, micro ~~as a conditionally permitted use in the VSR/R district.~~
4. Delete Residential Care Facilities 6 or fewer unlicensed as a conditionally permitted use in the RL, RL/M and RM districts.
5. Delete "Eating and drinking establishments sit down dining" and "Eating and drinking establishments, sit down dining no alcohol service".
6. Add "Restaurants with alcoholic beverage service and/or live entertainment" as conditionally permitted.
7. Add "Restaurants" as permitted.

Page 4-4

Revise Section 4.4.4, "Findings for Approval of a Master Development Plan," adding finding number 6 as follows:

6. An application for a Master Development Plan which does not include a resort inn, hotel, or similar visitor accommodation, within the VSR/R District, cannot be approved without first adopting of one of the following three findings:

1. A resort inn, hotel, or similar visitor accommodation has been approved for development in either the VSR/R District or the MU/R District; or
2. There is sufficient undeveloped land in the VSR/R District adequate to accommodate a 75-room resort inn, hotel, or similar visitor accommodation; or
3. An independent feasibility analysis prepared by an independent consultant selected by the Director of Community Development and paid for by the applicant, indicates that the development of a 75-room resort inn, hotel, or similar visitor accommodation is not economically viable taking into account any one or all of the following identifiable factors 1) economic, 2) environmental, 2) social, and/or 3) physical site constraints.

Page 4-5

Revise Section 4.4.6, "Requirement for Site Development Review" as follows:

~~4.4.6 Requirement for Site Development Review~~

4.4.6 Development Activities Pursuant to Approved MDP and Recordation of Final Map

4.4.6.1 Activities Subject to Community Park Improvement Plan Approval

The following development activities are permitted pursuant to approval of the MDP for the Project Site, subject to recordation of a final subdivision map, approval of a Community Park Improvement Plan, and approval of all required permits from local, State (including Coastal Commission), and Federal agencies:

1. Construction of public park and recreational facilities in the CP district that are to be offered for dedication to the City.

4.4.6.2 Activities Subject to Requirement for Site Development Review Approval

The following development activities are permitted pursuant to approval of the MDP for the Project Site subject to recordation of a final subdivision map, City approval of Site Development Review, as described in Section 4.5, "Site Development Review," of the NBR-PC, , and approval of all required permits from local, State (including Coastal Commission), and Federal agencies:

1. Development of land uses within the Residential Districts, Visitor Serving Resort and Residential District, Mixed Use and Residential District, ~~Park and Recreation District~~. Bluff Park District, Interpretive Park District, and areas of the Community Park District not offered for public dedication.

Page 4-6

Revise Section 4.5.3 "Application Review," as follows:

1. Applications for Site Development Review shall be submitted and reviewed in accordance with NBMC Chapter 20.52.080 "Site Development Reviews," Sections C through H.

In addition to the above, an application for Site Development Review which does not include a resort inn, hotel, or similar visitor accommodation, within the VSR/R District, cannot be approved without first adopting of one of the following three findings:

- a. A resort inn, hotel, or similar visitor accommodation has been approved for development in either the VSR/R District or the MU/R District; or
- b. There is sufficient undeveloped land in the VSR/R District adequate to accommodate a 75-room resort inn, hotel, or similar visitor accommodation; or
- c. An independent feasibility analysis prepared by an independent consultant selected by the Director of Community Development and paid for by the applicant, indicates that the development of a 75-room resort inn, hotel, or similar visitor accommodation is not economically viable taking into account any one or all of the following identifiable factors 1) economic, 2) environmental, 2) social, and/or 3) physical site constraints.

Page 4-7

Add a new Section 4.6, Community Park Improvement Plan, and renumber subsequent sections accordingly.

4.6 Community Park Improvement Plan

4.6.1 Purpose and Intent

The purpose of a Community Park Improvement Plan is to provide for the review of specific park design prior to construction of public park and recreational facilities within areas of the CP district that are to be offered for public dedication.

4.6.2 Applicability

Approval by the City of a Community Park Improvement Plan is required as described in Section 4.4.6 “Development Activities pursuant to Approved MDP and Recordation of Final Map” prior to any construction activity within the portion of the CP District to be offered for dedication to the City.

4.6.3 Review and Approval

A Community Park Improvement Plan shall include, a comprehensive site plan for the community park, floor plans and elevations for any community facility buildings and restrooms, landscape and irrigation plans, lighting plans, plans for play fields and passive recreation areas, parking layout, and other public facilities to be located within the Community Park, grading plans, infrastructure improvement plans, and any other information deemed necessary for review by the Director of Recreation and Senior Services. The Community Park Improvement Plan shall be reviewed and approved by the Director of Recreation and Senior Services.

Page 4-8

Revise the last paragraph in Section 4.8 “Coastal Development Permit ,” as follows:

When any CDP(s) or MCDP is approved by the Coastal Commission that varies from the approval granted by the City for the same application, ~~said CDP(s) or MCDP shall be resubmitted and reviewed by the City as a new application.~~ the applicant shall submit a request for determination of substantial conformance to the Director. The Director has the authority to refer any request for substantial conformance to the City Council for consideration and final action on the request.

Page 4-11

Revise Section 4.8, “Subdivision Maps,” to add the following text:

In addition to the above, an application for a subdivision map which does not include a resort inn, hotel, or similar visitor accommodation, within the VSR/R District, cannot be approved without first adopting of one of the following three findings:

1. A resort inn, hotel, or similar visitor accommodation has been approved for development in either the VSR/R District or the MU/R District; or
2. There is sufficient undeveloped land in the VSR/R District adequate to accommodate a 75-room resort inn, hotel, or similar visitor accommodation; or
3. An independent feasibility analysis prepared by an independent consultant selected by the Director of Community Development and paid for by the applicant, indicates that the development of a 75-room resort inn, hotel, or similar visitor accommodation is not economically viable taking into account any one or all of the following identifiable factors 1) economic, 2) environmental, 2) social, and/or 3) physical site constraints.

Page 4-14 through 4-17

Delete Section 4.16, "Land Use Acreage Refinement, Transfer of Residential Dwelling Units, and Transfer of Commercial Area," Delete Section 4.17, "Minor Modifications," as follows

:

4.16 Land Use Acreage Refinement, Transfer of Residential Dwelling Units, and Transfer of Commercial Area

~~Land use acreage refinements, transfer of planned residential dwelling units, and transfer of commercial square footage from that described in Exhibit 2-2, "Planned Community Development Table," may be approved within the NBR-PC in accordance with the provisions of Section 4.17, Minor Modifications."~~

4.17 Minor Modifications

~~This Section describes activities that constitute minor modifications to the NBR-PC and establishes the procedure for approving minor modifications to the NBR-PC. The following are considered minor modifications to the NBR-PC, including Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table."~~

4.17.1 Land Use Acreage Refinements

~~A change in the Land Use District boundary lines as illustrated on Exhibit 2-1, "Planned Community Development Plan," and corresponding change in the Gross Acres for the respective Land Use District as described on Exhibit 2-2, "Planned Community Development Table," is permitted as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided the requested change does not result in:~~

- ~~1. An increase in gross acres or gross density of more than fifteen percent (15%) of the land use district for which the change is requested;~~
- ~~2. A reduction in the total area allocated to the Lowland Open Space/Public Trails and Facilities District to less than 115 gross acres;~~
- ~~3. A reduction in the total area allocated to the Upland Open Space /Public Trails and Facilities District to less than 85 gross acres;~~
- ~~4. A reduction in the total area allocated to the CP District to less than 28 gross acres; and~~
- ~~5. The total area within the Project Site boundary does not exceed 401.1 gross acres.~~

4.17.2 Transfer of Residential Dwelling Units

~~A change in the planned number of residential dwelling units for any Land Use District as described on Exhibit 2-2, "Planned Community Development Table," resulting from a transfer of residential dwelling units from one Residential Land Use District to another, is permitted as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided:~~

- ~~1. The transfer does not result in an increase of more than fifteen percent (15%) in the total number of planned dwelling units described on Exhibit 2-2, "Planned Community Development Table," for the Land Use District receiving additional dwelling units;~~
- ~~2. The total number of dwelling units for the Project Site does not exceed 1,375; applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the housing types planned for development;~~
- ~~4. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer~~

~~than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer.~~

~~5. The total number of dwelling units within the MU/R Land Use District does not exceed 730; and~~

~~6. A corresponding subdivision map is approved by the City if the transfer results in a change to any previously approved subdivision map.~~

~~4.17.3 Transfer of Commercial Area from MU/R District to VSR/R District~~

~~In the event a resort inn is not developed in the VSR/R District, a portion of the total commercial area described in Exhibit 2-2, "Planned Community Development Table," may be transferred from the MU/R District to the VSR/R District for development of ancillary visitor-serving commercial uses such as restaurants, bars, visitor and tourist-oriented retail shops, a fitness facility, a full-service health spa, park and recreation facilities, and similar uses provided:~~

~~1. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.~~

~~2. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer. The visitor-serving commercial uses can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations commercial development within in the VSR/R land use district.~~

~~4.17.4 Review Authority~~

~~The review authority for a minor modification to the NBR-PC shall be the same review authority as established in this Chapter with authority to approve or conditionally approve the development application being considered in conjunction with a request for a minor modification. A minor modification to the NBR-Planned Community Development Plan and/or Planned Community Development Table shall be processed in accordance with the following procedures:~~

~~1. An application to revise the Planned Community Development Plan and/or Planned Community Development Table shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval of a subdivision map or a Site Development Review;~~

~~2. An application for a minor modification to revise the Planned Community Development Plan and/or Planned Community Development Table shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined by the Director; and~~

~~3. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.~~

Page 4-14

Add a new Section 4.17, "Substantial Conformance," as follows:

4.17 Substantial Conformance

Changes in the Land Use District boundary lines as illustrated on Exhibit 2-1, "Planned Community Development Plan," and a corresponding change in the Gross Acres for the respective Land Use District as described on Exhibit 2-2, "Planned Community Development Table," as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, is considered to be in substantial conformance with the NBR-PC provided the change complies with the following:

1. Any resulting increase in gross acres or gross density is no more than fifteen percent (15%) of the land use district for which the change is requested;
2. There is no resulting reduction in the total area designated as Open Space District;
3. There is no resulting reduction in the total area allocated to the Public Parks/Recreation District; and
4. The total area within the Project Site boundary does not exceed 401.1 gross acres.

Page 4-15

Add a new Section 4.18, "Transfer of Residential Dwelling Units," as follows:

4.18 Transfer of Residential Dwelling Units

4.18.1 General Requirements

A request for a change in the planned number of residential dwelling units for any Land Use District as described on Exhibit 2-2, "Planned Community Development Table," resulting from a transfer of residential dwelling units from one Residential Land Use District to another, may be approved as part of the review of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided the requested change complies with the following:

1. The requested transfer does not result in an increase of more than fifteen percent (15%) in the total number of planned dwelling units described on Exhibit 2-2, "Planned Community Development Table," for the Land Use District receiving additional dwelling units;
2. The total number of dwelling units for the Project Site does not exceed 1,375;
3. All dwelling units planned within the Land Use District can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the residential land use planned for development;
4. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer.
5. The total number of dwelling units within the MU/R Land Use District does not exceed 730;
6. A corresponding subdivision map is approved by the City if the transfer results in a change to any previously approved subdivision map.

4.18.2 Requirements for Residential Transfers to the VSR/R District

In addition to the requirement of Section 4.18.1 above, a request to transfer residential dwelling units to the VSR/R District shall comply with the provisions of NBR-PC Section 4.4.4 or NBR-PC Section 4.5.3, as applicable.

4.18.3 Review Requirements

1. A request to transfer residential dwelling units shall be subject to the following requirements:
 - a. The request for a transfer of residential dwelling units from one land use district to another shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval of a subdivision map or a Site Development Review;
 - b. The request for a transfer of residential dwelling units from one land use district to another shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-16

Add a new Section 4.19, "Transfer of Commercial Area from MU/R to VSR/R," as follows:

4.19 Transfer of Commercial Area from MU/R District to VSR/R District

4.19.1 General Requirements

In the event a resort inn is not developed in the VSR/R District, a request to transfer a portion of the total commercial area as described in Exhibit 2-2, "Planned Community Development Table," from the MU/R District to the VSR/R District for development of ancillary visitor-serving commercial uses such as restaurants visitor and tourist oriented retail shops, a fitness facility, a full service health spa, park and recreation facilities, and similar uses may be approved as part of the review of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided:

1. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.
2. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved

in the transfer. The visitor serving commercial uses can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations." for commercial development within in the VSR/R land use district.

3. All commercial uses planned for development within the VSR/R district can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the type of commercial use planned for development.

4. 19.2 Requirements Transfer of Commercial Area to the VSR/R District

In addition to the requirement of Section 4.19.1 above, a request to transfer commercial area to the VSR/R District shall comply with the provisions of NBR-PC Section 4.4.4 or NBR-PC Section 4.5.3, as applicable.

4.19.3 Review Requirements

A request for transfer of commercial square footage from the MU/R District to the VSR/R District shall be subject to the following requirements.

- a. The request shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval of a subdivision map or a Site Development Review;
- b. The request shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-17

Add a new Section 4.20, "Transfer of Commercial Area from MU/R District to RL/M or RM District," as follows:

4.20 Transfer of Commercial Area from MU/R District to RL/M or RM District

A request to transfer a maximum of 2,500 square feet of commercial square footage to either the RL/M or RM district may be approved as part of the review of a Site Development Review or subdivision map application submitted for the Project Site, in accordance with the following provisions:

1. The requested transfer is for the development of convenience commercial uses to serve the residential community.
2. Approval of the requested transfer of square footage to either the RL/M or RM district is a one-time allowable transfer and no additional transfers may be approved for any other residential district.

3. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.
4. The commercial uses planned for development within either the RL/M or RM district can be developed pursuant to the applicable development regulations established in Section 3.14, "Commercial Regulations," of the NBR-PC.

A request for transfer of commercial square footage from the MU/R District to the RL/M or RM District shall be subject to the following requirements.

a. The request shall be submitted as part of an application for approval of either a subdivision map or a Site Development Review.

b. The request shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-17, Renumber Section 4-18 to Section 4-20 and revise text as follows:

4.18 20 Amendments

All proposed changes to the NBR-PC other than those identified in Section 4.17, "Minor Modifications," 4.18, "Transfer of Residential Dwelling Units," Section 4.19, "Transfer of Commercial Area from MU/R to VSR/R District," and/or Section 4.20 "Transfer of Commercial Area from MU/R to RL/M or R/M District," of the NBR-PC, or as otherwise provided for within the NBR-PC, shall be considered amendments to the NBR-PC and shall be reviewed pursuant to the provisions of NBMC Chapter 20.56.050 "Planned Community District Application Procedures."

Chapter 5 – Definitions

Add the following new definitions to Chapter 5:

Restaurants: Establishments principally engaged in serving prepared food or beverages for consumption on or off the premises.

Bars and Cocktail Lounges: Establishments licensed by the California Department of Alcohol Beverage Control and principally engaged in selling or serving alcoholic beverages for consumption on the premises and with all of the following characteristics:

1. Is ancillary to a primary use such as a restaurant, resort, inn, hotel, or other visitor accommodation as defined in the NBMC, and is limited in area to no more than thirty percent (30%) of the floor area of the primary use.
2. Provides an area for sales, service, and consumption of alcoholic beverages that is operated during the same hours as the primary use.

PC 2 Exhibit H

NBR-MDP (under separate cover) with
Recommended Revisions & Errata

Exhibit H

NBR Master Development Plan Revisions and Errata

Page 3-3

Revise Section 3.2.2 as follows:

3.2.2. Parklands

- 1. Public Community Park comprising approximately ~~26.8~~ 21.8 gross/~~21.7~~ 18.0 net acres in SPAs ~~7a~~, 7b, and 7c**, which shall be developed for public active and passive recreation as part of the Project and offered for dedication to the City and Public Community Park comprising approximately 5.0 gross/3.7 net acres in SPA 7a, which shall be developed for public park purposes, privately maintained, and made permanently available for public use through deed restriction and/or recorded easement.

Page 3-29

Change Section 3.5.2 as follows:

3.5.2 Public Community Park Development Plans

As part of the Project, a ~~26.8~~ 21.8 gross-/~~21.7~~ 18.0 net-acre Community Park (North Community Park and Central Community Park) will be developed and offered for dedication to the City of Newport Beach. The development plan for the Community Park (SPAs ~~7a~~, 7b, and 7c) is a Project Development Plan providing a sufficient level of design detail for Coastal Commission approval of a Coastal Permit for this park. The Public Community Park site to be offered for dedication to the City is comprised of the ~~three~~ two subareas as described below:

- **The North Community Park Project Development Plan, illustrated in Exhibit 3-6a**, contains 15.9 gross/13.5 net acres and will be improved as an active park to include lighted turf sports fields, lighted hard courts, picnic facilities, age-specific playground, restrooms, off-street public parking, and may include synthetic turf.
- **The Central Community Park Project Development Plan, illustrated in Exhibit 3-6b**, contains 5.9 gross/4.5 net acres and will be improved as a passive recreational area, including picnic areas, informal open play turf areas, and off-street public parking.

As part of the Project, a 5.0 gross/ 3.7 net acre Community Park (South Community Park) will be developed, privately maintained and made permanently available for public use through a deed restriction and/or recorded easement. The development plan for the Community Park (SPA 7a) is a Project Development Plan providing a sufficient level of design detail for Coastal Commission approval of a Coastal Permit for this park. The South Community Park is described below.

Section 3.5

Page 10-3

Revise Section 10.6.2 as follows:

10.6.2 Activities Requiring Subsequent Site Development Review Approval

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of Site Development Review pursuant to NBR-PC Section 4.5, "Site Development Review," any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of residential, commercial, and visitor serving resort uses in all Villages and Colonies;
2. Construction of Bluff Parks and Interpretive Parks; and
3. Construction of South Community Park

Page 10-3

Add new Section 10.6.3 as follows:

10.6.3 Activities Requiring Community Park Improvement Plan

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of a Community Park Improvement Plan, pursuant to NBR-PC Section 4.4.6.1 "Activities Subject to Community Park Improvement Plan Approval," any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of the public Community Park (North and Central Community Park).

Page 10-5

Revise Section 10.7.3 as follows:

10.7.3 Authorization for City to Issue Construction-Level Permits as part of MCDP

The MCDP shall authorize the City to be the final review authority for any subsequent planning development permits and construction level permits, as required by the NBR-PC, for implementation of those activities described in Section 10.6 of the NBR-MDP and within the areas illustrated on Exhibit 10-1, without additional Coastal Development Permits, provided the subsequent permits are consistent with the NBR-MDP Project Development

Plans. Subsequent required planning development permits and construction level permits shall include, but are not limited to, Site Development Review, Community Park Improvement Plan Approval, Use Permits, Final Tract Maps, final grading permits, model home permits, building permits, and other required permits.

Page 10-10

Add new Section 10.12, "Community Park Improvement Plan," as follows:

10.12 Community Park Improvement Plan

Approval by the Director of Recreation and Senior Services of a Community Park Improvement Plan, in accordance with the provisions of NBR-PC Section 4.6, "Community Park Improvement Plan," shall be required prior to construction of the public Community Park.

Page 10-10

Renumber Section 10.12 and revise text as follows:

~~10.12 Minor Modifications~~

10.13 Substantial Conformance

The following ~~are considered minor modifications to~~ constitute substantial conformance with the NBR-MDP including Exhibit 1-4, "Site Planning Areas Map," Exhibit 3-1, "Master Development Plan," and Exhibit 3-2, "Master Development Table."

Land Use Acreage Refinements

A change in the Site Planning boundary lines as illustrated on Exhibit 1-4 "Site Planning Areas Map," and corresponding change in the Gross Acres for the respective Site Planning Area as described on Exhibit 1-5, "Site Planning Areas Table," of up to fifteen percent (15%) ~~are as approved permitted as part the approval~~ of either a Site Development Review, or subdivision map application submitted for the Site Planning Area, provided the refinement(s) to Gross Acres does not result in:

- ~~1. A reduction in the total area allocated to the Lowland Open Space/Public Trails and Facilities District to less than 115 gross acres;~~
 - ~~2. A reduction in the total area allocated to the Upland Open Space/Public Trails and Facilities District to less than 85 gross acres;~~
 - ~~3. A reduction in the total area allocated to the Public Parks/Recreation District to less than 28 gross acres;~~
1. A reduction in the total acreage allocated to Open Space;
 2. A reduction in the total area allocated to the Parklands;
 3. The total area within the Project Site boundaries exceeding 401.1 gross acres;

4. Less than two roadway access points from North Bluff Road into the North Family Village; and/or
5. Less than two roadway access points into both the South and North Family Village.

Page 10-10

Renumber and Revise Section 10.12.2 as follows:

~~10.12.2~~ 10.14 Transfer of Residential Dwelling Units

A change in the number of residential dwelling units for any Site Planning Area as described on Exhibit 1-5, "Site Planning Areas Table," resulting from a transfer of residential dwelling units from one Site Planning Area to another, and as approved pursuant to the provisions of NBR-PC Section 4.18. "Transfer of Residential Dwelling Units," is permitted as part of the approval of a Site Development Review provided:....

Page 10-11

Renumber and Revise Section 10.12.14 as follows:

~~10.12.14~~ ~~Additional Minor Modifications~~

10.15 Modifications to Approved Project Development Plans

The following constitute ~~additional allowable minor~~ modifications to the NBR-MDP Project Development Plans which may be approved as part of Site Development Review or subdivision review, and not requiring an amendment to the NBR MDP:

1. Change in utility or public service provider as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans;"
2. Change in roadway alignment of any roadway illustrated on the "Master Roadway Plan" of the NBR-MDP when the change results in a centerline shift of 150 feet or less;
3. Change to roadway sections as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans as approved by the Director of Public Works;
4. Refinements to the Architectural Design Guidelines pursuant to Section 10.10;
5. Refinements to the mix, distribution, and design of architectural products ~~with as a part of subsequent Site Development Review and construction drawings~~ provided that:
 - a. The character and style of the architecture remains consistent with the intent of the Project's architectural style;
 - b. The nominal lot size dimensions and nominal building square footages do not exceed 20% of the original architecture proposed within the Site Planning Area; and
 - c. All applicable development regulations and standards set forth in the NBR-PC are complied with.

Page 10-12

Delete the following text:

~~10.12.4 Applications for Minor Modifications~~

~~1. Applications for minor modifications to the NBR-MDP shall include the following information:~~

- ~~a. Text revisions to the NBR-MDP submitted to the City in a “track changes” format to note the insertion(s) and/or deletion(s) of text for each changed page;~~
- ~~b. Revised applicable NBR-MDP exhibit(s) reflecting the proposed change(s) and in the case of land use acreage refinements or transfer of residential dwelling unit, a revised Site Planning Areas Table;~~
- ~~c. A summary of: (1) the number of dwelling units, commercial square footage, and overnight accommodations previously approved on all Tentative and all recorded Final Tract Maps; and (2) the number of dwelling units, commercial square footage, and overnight accommodations under construction or completed/occupied at the time of the proposed minor modification;~~
- ~~d. Identification of the ownership of the Site Planning Area(s) to be affected by the minor modification;~~
- ~~e. Analysis of consistency with the NBR-PC; and~~
- ~~f. Any additional background and/or supporting information which the Director deems necessary.~~

~~10.12.5 Review of Applications for Minor Modifications~~

~~Applications for minor modifications shall be reviewed in conjunction with a development application for a Site Development Review and/or a subdivision map approval. The review authority for a minor modification to the NBR-MDP shall be the same review authority as established in the NBR-PC with authority to approve or conditionally approve the development application being considered in conjunction with a request for a minor modification.~~

Page 10-13

Renumber and revise Section 10.13 as follows:

~~10.13~~ 10.16 Amendments to the NBR-MDP

All proposed changes to the NBR-MDP other than those identified in Section ~~10.12~~, “~~Minor Modifications~~,” ~~10.14~~ Transfer of Residential Dwelling Units and Section ~~10.15~~ “Modifications to Approved Project Development Plans,” shall be considered amendments to the NBR-MDP and shall be reviewed in accordance with the provisions of NBR-PC Section 4.4 “Master Development Plan.” When any CDP(s) or MCDP is approved by the

Coastal Commission that varies from the approval granted by the City for the NBR-MDP or any approved amendment, the applicant shall submit a request for determination of substantial conformance to the Director or Community Development. The Director of Community Development has the authority to refer any request for substantial conformance to the City Council for consideration and final action on the request.

Page 10-13

Renumber and revise Section 10.14 as follows:

~~10.14~~ 10.17 Amendments to the Master CDP

Amendments to the MCDP are considered to be those changes considered as amendments to the NBR-MDP pursuant to NBR-MDP Section ~~10.13~~ 10.16. Following City approval of any amendment to the NBR-MDP a corresponding application for an amendment to the MCDP shall be submitted for approval to the California Coastal Commission.

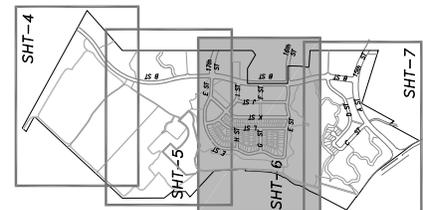
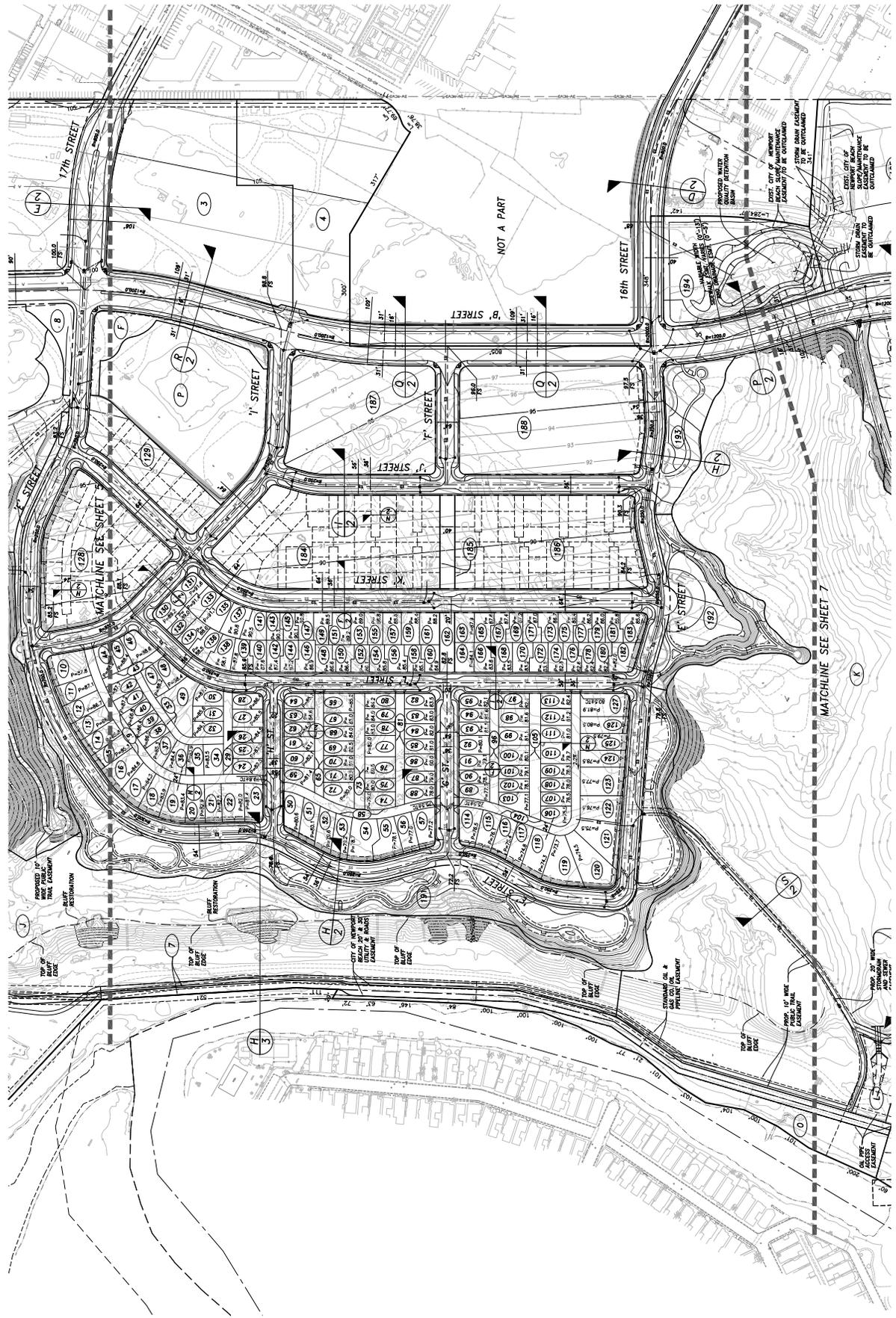
Exhibit 10-1, Master Entitlements and Subsequent Approvals Map

Add the following text to the notations:

Land Use Development per City-approved Master Development Plan and CCC-approved Master Coastal Development Permit. Additional Site Development Review, and/or Community Park Improvement Plan Approval, by City is required, but additional Coastal Development Permit is not required, prior to Land use Development and construction permits.

PC 2 Exhibit I

Tentative Tract Map No. 17308



SHEET		6	
OF		7	
TENTATIVE TRACT NO. 17308			
16745 Van Kesteren, Suite 100 Houston, Texas 77058 Tel: 281.416.1100 Fax: 281.416.1315 www.fuscoeng.com			
APPROVED	REVISIONS	CHECKED BY:	JD
DESIGNED BY:			
NO.	DATE		



PC 2 Exhibit J

NBR Affordable Housing Implementation
Plan

**Newport Banning Ranch (NBR)
Affordable Housing Implementation Plan (AHIP)
Revised June 2012**

1.0 Introduction

1.1 Background

This Affordable Housing Implementation Plan (AHIP) has been prepared in order to comply with the Housing Element of the Newport Beach General Plan as well as Chapter 19.54 of the Newport Beach Municipal Code, Inclusionary Housing, which provides that an AHIP must be prepared by Applicant to set forth a plan for meeting the City's goal of providing a balanced residential community comprised of a variety of housing types and opportunities for all social and economic segments of the community including very low, low and moderate income households. This AHIP is provided in fulfillment of those requirements and details Applicant's approved strategies for meeting City requirements.

Chapter 19.54.060 of the Municipal Code provides that "Residential subdivision projects of 51 dwelling units or more shall be required to submit an AHIP." Tentative Tract Map (TTM) 17308 is an element of Applicant's entitlement package. This map provides for a maximum of 1,375 dwelling units and meets the minimum threshold for submittal of a mandatory AHIP for City review and adoption.

1.2 Project Description

The Newport Banning Ranch (NBR) is a 401-acre master planned community regulated by the City of Newport Beach (City) and other stakeholder governments. The master plan, following extensive community outreach and facilitation, was crafted by a multi-disciplinary team of architects, engineers, planners, and environmental specialists to implement the entitlement standards provided under the Alternative Use option of the Newport Beach General Plan as approved by voters in November, 2006.

The Alternative Use option provides for 1,375 dwelling units, 75,000 square feet of retail and convenience commercial, and a 75-room coastal inn with spa facilities and services. More than half of the property is to be set aside for open space for public parks and playgrounds as

well as protected areas for environmentally sensitive and other habitats. Oil production facilities now on the site will be consolidated into two drilling and production areas.

2.0 Affordable Housing Plan

2.1 Definitions

The Inclusionary Housing Ordinance provides further guidance on the preparation of an AHIP and the City's published housing guidelines and rules including definitions. A number of those definitions, especially definitions about rentals, are relevant to the NBR AHIP including:

- A. Affordable Housing Agreement. The Agreement entered into is to be in compliance with Section 19.54.080, which provides legal restrictions by which the affordable units shall be restricted to ensure that the unit remains affordable to very low-, low-, or moderate-income households, as applicable. With respect to rental units, rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property;
- B. Affordable Housing Cost. Affordable housing cost for very low income households shall not exceed 30 percent of 50 percent of area median income adjusted for family size. Affordable housing cost for low income households shall not exceed 30 percent of 70 percent of area median income adjusted for family size. Affordable housing cost for moderate income households shall not be less than 28 percent of the gross income of the household, nor exceed 35 percent of 110 percent of area median income adjusted for family size. In determining the maximum household income for a given affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).
- C. Affordable Rent. An annual rent that does not exceed 30 percent of maximum income levels for very low-, low-, and moderate-income households, as adjusted for household size. In determining the maximum household income for a given

affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).

- D. Affordable Unit. An ownership or rental housing unit, including senior housing, affordable to households with very low-, low-, and moderate income as defined in Section 9.54.020 of the Newport Beach Municipal Code.
- E. Applicant. Newport Banning Ranch LLC, including any successor(s)-in-interest.
- F. City. The City of Newport Beach.
- G. Low-Income. Income between 50% and 80% of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.
- H. Moderate Income. Income between 80% and 120% of the Orange County median income, adjusted for actual household size as established annually by the California Department of Housing and Community Development.
- I. Very Low Income. Income 50% or less of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.

2.2 Affordable Housing Obligation

- A. Number of Units/Income Levels. The City's Housing Element includes a goal that an average of 15% of all new housing units in the City be affordable to very low, low and moderate income households. The Applicant's affordable housing obligation shall be 15% of the total number of units developed. A maximum of 1,375 units are proposed⁴. The Affordable Units shall be comprised of either:
 - 1. Five Percent Very Low Income (69 units); or
 - 2. Ten Percent Low Income (138 units); or

⁴~~The unit count may vary based on final project approvals. The relative percentage of affordable units shall remain the same.~~

~~3. Fifteen Percent Moderate Income (206 units); or~~

~~4. A combination of the above.~~

~~For the purpose of calculating the number of affordable units in the event a combination of units is to be provided, a Very Low Income Unit shall be deemed to be the equivalent of three Moderate Income Units and two Low Income Units. A Low Income Unit shall be the equivalent of 1.5 Moderate Income Units. For example if 20 Very Low Income Units are provided either 146 Moderate Income Units or 98 Low Income Unit would be required to complete the affordability requirement.~~

~~For purposes of meeting this affordable housing obligation, each Very Low Income Unit provided shall be deemed to be the equivalent of three Affordable Units; each Low Income Unit provided shall be deemed the equivalent of 1.5 Affordable Units; and each Moderate Income Unit provided shall be deemed the equivalent of one Affordable Unit.~~

~~B. If for any reason the number of approved market rate units authorized is not constructed, or cannot be constructed due to the operation of law or economic conditions, then the number of affordable units provided or the fees paid in lieu of providing rentals shall be reduced proportionally so that Applicant's obligation does not exceed the percentage requirement.~~

CB. Excess Affordable Units. In the event that Applicant constructs affordable units in excess of the maximum required amount, Applicant may be entitled to such additional incentives pursuant to the City's Density Bonus ordinance codified in Newport Beach Municipal Code Chapter 20.32, as the same may be amended from time to time. Such incentives shall be proposed and approved through an Affordable Housing Implementation Agreement (See Section 2.5.A).

2.3 Methodology

A. Options. Applicant shall comply with its affordable housing obligation by any combination of the following:

1. Constructing the new Affordable Units on-site or offsite.
 2. The renovation and restriction of existing off-site housing units.
 3. The payment of the City's In-lieu Fee.
 4. The dedication of land for affordable housing.
- B. Minimum Onsite Requirement. A minimum of 50% of Affordable Housing Obligation shall be provided on Site. Applicant and City agree that regardless of the permissible measures employed by Applicant to meet Affordable housing objectives and the mandates of the AHIP, including fee payments and/or land dedications, Applicant will insure that at least 50% of the ~~AHIP~~ Affordable Housing Obligation will be constructed on site as either for sale housing or rentals.
- C. Off-site Location. Affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, shall be located within the boundaries of the City of Newport Beach.
- D. Off-Site Renovation. Renovation of existing off-site units to affordable units shall meet the following requirements:
1. The interiors and exteriors of the units shall be substantially renovated to improve the livability and aesthetics of the units for the duration of the affordability period.
 2. The units shall be returned to the City's housing supply as decent, safe and sanitary housing and meet all applicable Housing and Building Code requirements.
 3. Renovations shall include energy conserving retrofits that will contribute to reduced housing costs for future occupants of the units.
 4. The units shall not already be subject to affordability income restrictions unless such restrictions are set to expire in three years or less. In such

cases, the affordability covenant shall provide for thirty (30) years in addition to any existing covenant time.

E. In-Lieu Fee. Applicant shall, at Applicant's election, be permitted to pay an in-lieu fee for each unit constructed in order to fulfill up to 50% of the ~~Inclusionary Housing Program requirements~~ Affordable Housing Obligation.

1. The per dwelling unit in-lieu fee will be paid at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.
2. The per dwelling unit in-lieu fee will be paid in the amount in effect at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.
3. There shall be no such Inclusionary Housing Program fees required for Commercial, Institutional, or Resort buildings, including lodging buildings.

F. Land Dedication. ~~In addition to the provision of on-site affordable units for eligible households provided by Applicant or Applicant's agents,~~ The Applicant may also propose to dedicate land to the City or to a City-designated housing developer for the provision of affordable units ~~in lieu of constructing any or all of the affordable units required by City regulations~~ in order to fulfill up to 50% of the Affordable Housing Obligation.

1. The land offered for dedication shall be of sufficient size to construct the number of ~~a~~Affordable ~~u~~Units that Applicant would otherwise be required to ~~construct~~ provide.
2. In the event that Applicant cannot dedicate such land in time to fulfill City requirements for a particular sequence of market rate housing, then Applicant shall post improvement security subject to approval by City guaranteeing such dedication by a time certain.
3. Any land offered for dedication shall be assumed to accommodate 40 units per acre.

4. Any land offered for dedication shall have suitable topography and sufficient vehicular access and infrastructure to accommodate 40 units per acre.
5. The location and size of the land to be dedicated shall be subject to the approval of the City Council, which approval shall not be unreasonably withheld.

2.4 Term

City and Applicant understand and acknowledge that any affordable units provided as qualified Inclusionary Housing Program units shall be restricted for a period of not less than thirty (30) years; and, that such the Affordable Housing Cost or Affordable Rent can be adjusted annually to reflect any changes to the Median Family Income for Orange County as determined by California HCD. Such requirements shall be recorded in a rental agreement or affordable housing covenant against the applicable property as provided in the Municipal Code.

2.5 Regional Housing Needs Assessments (RHNA)

- A. Requirements. City and Applicant agree that any units constructed and or renovated to meet City Inclusionary Housing Ordinance Requirements shall also meet Southern California Association of Governments (SCAG) Regional Housing Needs Assessments (RHNA) specifications for qualified affordable housing.
- B. Income Limits for California. The California Department of Housing and Community Development (HCD) publishes income limits for California counties adjusted for family size. The most recent edition of the Income limits was published June 13, 2011 and established an Orange County Area Median Income of \$84, 200 for a family of four (4) persons. HCD further adjusted permissible income limits for the various income categories defined by HCD including:
 - Extremely Low \$27,700
 - Very Low Income \$46,150

- Lower Income \$73,850
- Median Income \$84,200
- Moderate Income \$101,050

2.6 Implementation

- A. Affordable Housing Implementation Agreement. An Affordable Housing Implementation Agreement (AHIA) will be executed and recorded at each development phase of development for any affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid, or for any other permissible measure or measures for compliance with City's Inclusionary Housing Program.
- B. Authority. Each AHIA shall be approved by the Community Development Director in conjunction with the approval of any Tract Map and/or Site Development Review for NBR development phases.
- C. Unit Production Security. As security for the provision of the affordable housing provided for in the Affordable Housing Agreement Applicant shall post compliance security bond guaranteeing the subsequent construction of required affordable units for that phase, or an appropriate land dedication or a combination of such measures as permitted by this AHIP. The bond shall be in the amount of in-lieu fee in effect at that time for each dwelling unit to be constructed.
- D. Timing. AHIA shall be executed and recorded, and security posted at each appropriate final map. Security will be released when a certificate of use and occupancy is issued for the related affordable rate units.

2.7 Sequencing

- A. The affordable units provided or arranged for to be phased as follows:

1. Certificate of use and occupancy for Fifty percent of market rate units: commence construction on, or payment for fees/dedication of lands for one-third of required units.
2. Certificate of use and occupancy for Seventy Five percent of the market rate units commence construction on, or payment of fees/dedication of lands for the next one-third of required units.
3. After issuance of certificate of occupancy for Seventy Five percent of the market rate unit, a reconciliation process will be created to determine the final number of affordable housing units required to be constructed and/or payment of fees/dedication of land
4. At the earlier to occur of certificate of use and occupancy for the last market rate: commence construction on, or payment of fees/dedication of lands for final required units.

3.0 Administration

3.1 Modification of Requirements

If the requirements of Chapter 19.54 of the Newport Beach Municipal Code are modified by the City Council during the term of the AHIP agreement to eliminate the requirement for the payment of in lieu affordable housing fees for the privilege of constructing market rate housing, then Applicant shall be entitled to a waiver of any further fee obligations for the provision of affordable housing units for fees not already paid, or for buildings not already constructed and/or renovated and occupied.

3.2 Amendments

This AHIP may be amended by mutual agreement of the City and Applicant. Such an amendment, so long as it is consistent with the Housing Element of the General Plan and with the Development Agreement, shall not require an amendment to the General Plan itself, the Coastal Development Permit or to the Development Agreement.

PC 2 Exhibit K

Project Boundary

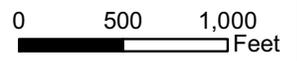
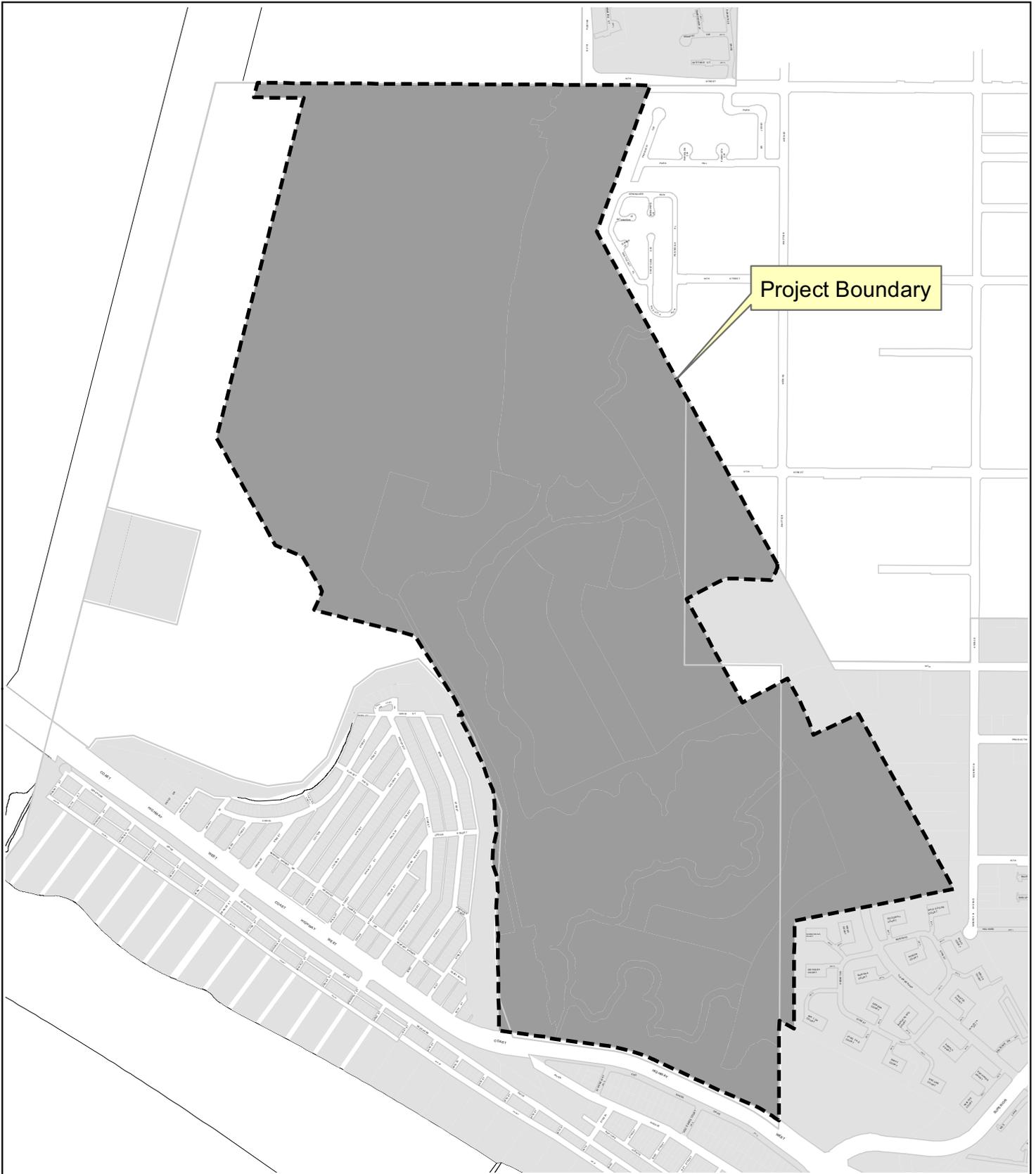


Exhibit K

Newport Banning Ranch Project Boundary

Name: *Banning_Ranch_Reso_Exhibit*

Attachment No. PC 3

Draft Resolution recommending City
Council approval of Development
Agreement No. DA2008-003

RESOLUTION NO. #####

**A RESOLUTION OF THE PLANNING COMMISSION
RECOMMENDING ADOPTION OF DEVELOPMENT
AGREEMENT NO. DA2008-003 FOR A 401-GROSS-
ACRE PLANNED COMMUNITY LOCATED AT
BANNING RANCH (PA2008-114)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401.1-gross-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River requesting approval of a Development Agreement; General Plan Amendment to the Circulation Element; Code Amendment; a Pre-annexation Zone Change; Planned Community Development Plan; Master Development Plan; Tentative Tract Map; Affordable Housing Implementation plan; and Traffic Phasing Ordinance Traffic Study.
2. The applicant proposes a planned community, which may include the development of up to 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, and up to 75,000 square feet of commercial uses, and would provide approximately 51.4 gross acres of parklands, and the preservation of approximately 252.3 gross acres of permanent open space.
3. A Development Agreement is required because the project requires a Zoning Code amendment that includes the development of more than fifty (50) residential units.
4. The subject property is located within the City of Newport Beach Planned Community (PC-25) Zoning District and the County of Orange Zoning Suburban Multi-family Residential (R-4), Local Business Commercial (C-1), Light Industrial (M-1) with Oil Production (O), Sign Restriction (SR), and Floodplain Zone (FP-2) Overlays.
5. The City of Newport Beach General Plan Land Use Element category is Open Space/Residential Village (OS/RV).
6. The subject property is located within the coastal zone. The Coastal Land Use Plan (CLUP) designates this property as a Deferred Certification Area; therefore, the policies of the CLUP do not govern the development of the project site.
7. Study sessions were held on January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California.
8. Public hearings on the project application were held on March 22, 2012, April 19, 2012, and June 21, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard,

Newport Beach, California. A notice of time, place and purpose of these meetings was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. A draft Environmental Impact Report (SCH No. 2009031061) (DEIR) has been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The DEIR was circulated for a 60-day comment period beginning on September 9, 2011, and ending on November 8, 2011. The Final EIR (FEIR), consisting of the DEIR, comments, responses to the comments, and Mitigation Monitoring and Report Program, was considered by the Planning Commission in its review of the proposed project.
3. On March 22, 2012, the Planning Commission adopted Resolution No. 1873 recommending to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061).
4. On June 21, 2012, the Planning Commission adopted Resolution No. ____ reaffirming its recommendation to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061).

SECTION 3. FINDINGS.

1. In accordance with Municipal Code Section 15.45.020.A.2.a, a development agreement is required in conjunction with the City approval because the project requires a Zoning Code amendment that includes the development of more than fifty (50) residential units.
2. The Development Agreement includes all the mandatory elements for consideration.
 - a. The Development Agreement specifies a twenty-five (25) year term; and
 - b. The Development Agreement specifies a development plan that includes permitted uses of the property, the density or intensity of the uses, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and conditions, terms, restrictions, and requirements for subsequent discretionary actions; and
 - c. The Development Agreement provides specified times for the construction and completion of certain improvements on the North Community Park, Central Community Park, and the segment of North Bluff Road between 17th Street and 19th Street.

3. The Development Agreement includes public benefits that are appropriate to support conveying the vested development rights.
 - a. The Development agreement provides for the payment of a public benefit fee in the sum of thirty thousand, nine hundred and nine dollars (\$30,909.00) per residential dwelling unit developed as part of the project, including an annual adjustment to the public benefit fee.
 - b. The Development Agreement provides for park land dedication and improvements in excess of the Quimby Act Requirement.
4. Consistent with Government Code Section 65867.5, the Development Agreement provides vested rights and public benefits for the proposed development, which is consistent with the General Plan. Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061) included a consistency analysis that concluded that proposed project is consistent with the goals and policies of the General Plan.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Development Agreement No. DA2008-001 as attached as Exhibit "A".

PASSED, APPROVED AND ADOPTED THIS 21st DAY OF JUNE, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

PC 3 Exhibit A

Development Agreement No. DA2008-003

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT NO. DA2008-003

by and between

CITY OF NEWPORT BEACH

and

AERA ENERGY LLC AND CHEROKEE NEWPORT BEACH, LLC

(CONCERNING NEWPORT BANNING RANCH PROPERTY)

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the __ day of _____, 2012 (the "Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City"), and AERA ENERGY, LLC and CHEROKEE NEWPORT BEACH, LLC (collectively, "Landowner"). City and Landowner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. The two entities comprising Landowner are the fee owners of that certain real property consisting of approximately four hundred one (401) gross acres of land area commonly referred to as the Newport Banning Ranch (the "Property"). Approximately 40 acres of the Property is located within the incorporated boundary of the City of Newport Beach and the remainder of the Property (the "County Property") is located within unincorporated Orange County, in City's sphere of influence, as approved by the Local Agency Formation Commission of Orange County. The Property is bounded generally on the north by Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development in the City of Newport Beach; on the east by residential, light industrial, and office development in the cities of Costa Mesa and Newport Beach; and on the west by the United States Army Corps of Engineers wetlands restoration areas and the Santa Ana River. The entire Property is within the Coastal Zone as established by the California Coastal Act. The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B. The County Property is depicted on the site map attached hereto as Exhibit B-1.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute"). The Development Agreement Statute authorizes a city to enter into development agreements with persons or entities having a legal or equitable interest in real property located within the city's jurisdiction or within its sphere of influence, provided that a development agreement may not become operative as to property located in the city's sphere of influence until annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement, Landowner has agreed to provide the following significant public benefits (collectively, the “Public Benefits”) as consideration for this Agreement, which benefits are in excess of the obligations and requirements that City would be entitled to unilaterally impose on Landowner as a condition of development consistent with applicable provisions of law:

- Comprehensive oil field abandonment and remediation of the Property at an estimated cost of approximately Thirty Million Dollars (\$30,000,000).
- Provision and perpetual protection of natural open space at no cost to the public.
- Capture and treatment of offsite surface water drainage in accordance with Best Management Practices, resulting in significant water quality benefits to the Property and downstream properties, including the Semeniuk Slough.
- Dedication of the North Community Park and the Central Community Park, totaling approximately 21.8 gross acres and 18 net acres of land area, and the improvement of those public parks in accordance with Exhibits 3-6a and 3-6b, respectively, of the approved Master Development Plan for the Project (the “Park Conceptual Design Plans”), which Public Benefits are well in excess of the requirements of California law (e.g., Government Code Section 66477 [the so-called “Quimby Act”]) and implementing City ordinances and regulations.
- Improvement of private open space and recreational amenities in the Project that will be open and available for public use in accordance with the approved Master Development Plan, including (i) the approximately 5.0 gross/3.7 net acre South Community Park, (ii) the approximately 24.6 gross/20.4 net acre Bluff Park and Interpretive Parks, (iii) a trail system through open space areas within the Property, and (iv), if the resort inn is constructed and subject to approvals required from other public agencies, including the California Department of Transportation and the California Coastal Commission, a coastal public access to be provided via a pedestrian and bicycle bridge from the Property across West Coast Highway to the beach.
- Payment to City of a Public Benefit Fee in the sum of Thirty Thousand Nine Hundred Nine Dollars (\$30,909.00) for each residential unit constructed on the Property.
- Construction/installation of public street/traffic improvements in excess of the Project’s obligation for payment of “fair share” traffic fees.

E. This Agreement is consistent with the City of Newport Beach General Plan, as the same is being amended on or before the Agreement Date. The General Plan was adopted by the City Council of City on July 25, 2006, and the land use plan in the General Plan was approved by City’s voters on November 6, 2006. The General Plan land use designation for the Property is OS(RV), Open Space/Residential Village, which establishes Open Space as the Primary Use and Residential Village as the Alternative Use for the Property. In particular, the General Plan provides that “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.” Additionally, General Plan Land Use Policy 6.5.2 anticipates that the Property will “[a]ccommodate 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.” The General Plan identifies the maximum intensity of development allowed under the Property under the Alternative Use as one thousand three hundred seventy-five (1,375) residential dwelling units, seventy-five thousand (75,000) square feet of retail commercial uses oriented to serve the needs of local and nearby residents, and seventy-five (75) hotel rooms and associated ancillary uses in a small boutique hotel. The development project (referred to herein as the “Project”) Landowner will be entitled to develop during the Term of this Agreement is consistent with the Alternative Use for the Property described in the General Plan. By its approval of this Agreement, the City Council of City finds and determines that City has no source of funds to acquire the Property for open space purposes, that City has no ability to negotiate with Landowner to acquire the Property for its fair market value, that the Primary Use of the Property described in the General Plan is infeasible, and, accordingly, that the Alternative Use of the Property is the appropriate and legally authorized use. Finally, subject to completion of City’s planning and public hearing process and the approval of the Orange County Transportation Authority, the Parties anticipate the Circulation Element of City’s General Plan will be amended on or before the Effective Date to delete the westerly extension of 15th Street to West Coast Highway through the Property and to make certain other revisions to the previously planned master plan circulation system within the Property such that the Project as approved will be consistent with the Circulation Element of the General Plan as so amended.

F. In recognition of the significant public benefits that this Agreement provides, the City Council finds and determines by its approval of this Agreement that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the Agreement Date; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City’s police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119), the Final Environmental Impact Report for the Newport Banning Ranch Project (the “Project EIR”) that has been certified or is being certified for approval by the City Council of City on or before the Agreement Date, and all findings, conditions of approval, and mitigation measures (including the mitigation monitoring program) relating thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code Section 65867 and City of Newport Beach Municipal Code Chapter 15.45.

G. On June 21, 2012, City’s Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 2012, the City Council also held a public hearing on this Agreement and considered the Planning Commission’s recommendations and the testimony and information submitted by City staff, Landowner, and members of the public. On

_____, 2012, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the “Adopting Ordinance”), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Landowner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

“Action” shall have the meaning ascribed to that term in Section 8.10 of this Agreement.

“Adopting Ordinance” shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

“Agreement” shall mean this Development Agreement No. DA2008-003, as the same may be amended from time to time.

“Agreement Date” shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

“CDP” shall mean a coastal development permit issued by the California Coastal Commission pursuant to California Public Resources Code Section 30600 *et seq.* and the implementing regulations promulgated by the Commission.

“CEQA” shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Section 15000 *et seq.*), as the same may be amended from time to time.

“City” shall mean the City of Newport Beach, a California charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed to that term in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed to that term in Section 10.1 of this Agreement.

“County Property” shall mean that portion of the Property that as of the Agreement Date is located within unincorporated territory of the County of Orange and within City’s sphere of influence.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest

geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code Sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean all of the land use entitlements, approvals, and permits approved by the City Council for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals, and permits include, without limitation, the following: (i) General Plan Amendment No. GP2008-008 (amending the Circulation Element of the City’s General Plan as referred to in Recital E of this Agreement); (ii) Zoning Code Amendment No. CA2008-004 (removing that portion of the Property previously located within the PC-25 zone and changing the zoning for this area to PC-57, approving a pre-annexation zone change for the portion of the Property located within the unincorporated County territory to PC-57, and approving an amendment to Section 20.65 of the Zoning Code to allow for a maximum height limit of 60 feet (as calculated in accordance with applicable provisions of City’s Municipal Code) in the Mixed-Use/Residential land use area of the Project site); (iii) Planned Community Development Plan No. PC2008-002 (approving the Newport Banning Ranch Planned Community Development Plan that will serve as the zoning and development regulations for the Property (as to the portion of the Property currently within City’s sphere of influence, upon the effective date of the annexation of said portion of the Property into the City)); (iv) the Newport Banning Ranch Master Development Plan No. MP2008-001 (which implements the NBR-PC requirements for the Property by establishing design criteria for each land use component proposed for

development within the NBR-PC and provides a sufficient level of detail, as determined by City, to guide the review of subsequent development approvals, including construction-level permits, as required by the NBR-PC); (v) Tentative Tract Map No. NT2008-003 (subdividing the Property for development purposes and establishing lots for public dedication or conveyance, easements for trails and public utilities, lots for residential development and conveyance to merchant builders and/or homebuyers, and lots for financing and conveyance that may be either developed on a single family or residential condominium basis or for hotel and commercial uses); (vi) Affordable Housing Implementation Plan (“AHIP”) No. AH2008-001 (which, if complied with, satisfies the Project’s requirements for provision of affordable housing); (vii) Traffic Study No. TS2008-002 for the Project; (viii) the Project EIR; and (ix) all conditions of approval and all mitigation measures approved for the Project on or before the Agreement Date, including without limitation all of the provisions in the adopted Mitigation Monitoring and Reporting Program approved for the Project pursuant to the Project EIR and applicable provisions of CEQA.

“Development Regulations” shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Landowner’s rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Landowner in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments (provided that this exclusion of taxes and assessments from the definition of Development Regulations shall not be interpreted to authorize City to impose Development Exactions on the Property in excess of the amount of such Development Exactions that would be authorized by applicable law in the absence of this Agreement and nothing in this Agreement is intended to or shall be interpreted to constitute a waiver by Landowner of its right to protest or contest the imposition of taxes or assessments against the Property that are not in effect as of the Agreement Date); (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is

certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; (iv) the date on which annexation into the City of the portion of the Property currently located in City's sphere of influence becomes effective, and subject to the Parties' understanding and agreement that if Landowner elects to defer annexation into the City of all or a portion of the Oil Well Operational Area, as permitted by Section 2.5 of this Agreement, the condition in this clause (iv) will be satisfied on a phased basis, with the condition in this clause (iv) being deemed satisfied as to the portion of the Property initially annexed into the City (together with the portion of the Property already located in the City) on the date the first annexation of the portion of the County Property, excluding the Oil Well Operational Area (or portion thereof) becomes effective, and the condition in this clause (iv) being deemed satisfied as to the Oil Well Operational Area (or portion thereof) as to which annexation is so deferred on such later date, if at all, that the annexation of such area into the City becomes effective; (v) the date on which both of the following have occurred: (A) the City Council of City has amended the Circulation Element of City's General Plan to delete the most westerly extension of 15th Street to West Coast Highway (at the southwest corner of the Property) through the Property and to make certain other revisions to the previously planned master plan circulation system within the Property, such that the Project as approved is consistent with the Circulation Element of the General Plan as so amended (with the understanding that City reserves its full legislative discretion with respect thereto); and (B) the Orange County Transportation Authority has approved such amendment or amendments to the Orange County Master Plan of Arterial Highways ("MPAH") necessary to make the Development Plan and Development Regulations consistent therewith; and (vi) the date on which the California Coastal Commission approves a CDP for the Project consistent with the Development Plan and Development Regulations. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property (or the portion thereof as to which the Effective Date has occurred consistent with clause (iv) in the immediately preceding sentence) memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic

Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“Fire Station No. 2 Fee” shall have the meaning ascribed to that term in Section 3.5 of this Agreement.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, and approved by City’s voters in the November 7, 2006, general municipal election, as amended by General Plan Amendment No. __ included within the Development Plan, and excluding any amendment to City’s General Plan adopted or approved after the Agreement Date that impairs or restricts Landowner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is agreed to in writing by Landowner.

“Hazardous Substances” shall mean any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Landowner” shall mean Aera Energy LLC, a California limited liability company, as to an undivided one-half (1/2) interest in the Property, and Cherokee Newport Beach, LLC, a Delaware limited liability company, as to an undivided one-half (1/2) interest in the Property, and any successor or assignee to all or any portion of the right, title, and interest of Aera Energy LLC and Cherokee Newport Beach, LLC, in and to ownership of all or a portion of the Property. In this regard, Landowner has represented to City that Landowner previously granted to Newport Banning Ranch Limited Liability Company, a California limited liability company in which Aera Energy LLC and Cherokee Newport Beach, LLC, are the sole voting members (“NBR”), the exclusive right and option to purchase the Property from Landowner pursuant to that certain Restated and Amended Purchase Option Agreement dated as of December 20, 2005, and City acknowledges that if NBR acquires fee title to the Property pursuant to said agreement or otherwise NBR will at that time become the “Landowner” as referred to herein.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Oil Well Operational Area” shall mean the approximately twenty (20) acre portion of the Property upon which oil drilling operations are permitted in accordance with the City Charter. The Oil Well Operational Area is depicted in Exhibit A to the City Charter.

“Park Conceptual Design Plans” shall have the meaning ascribed to that term in Recital D of this Agreement.

“Party” or “Parties” shall mean either City or Landowner or both, as determined by the context.

“Permitted Transferee” shall mean any person, partnership, joint venture, corporation, or other business entity to whom Landowner sells, transfers, or assigns all or any portion of the Property pursuant to the terms set forth in Section 11 of this Agreement. In the event of a Transfer to a Permitted Transferee, all references in this Agreement to “Landowner” shall be deemed to refer to the Permitted Transferee with respect to the Property or the portion thereof so Transferred.

“Project” shall mean all on-site and off-site improvements that Landowner is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Project EIR” shall mean Final Environmental Impact Report SCH No. 2009031061 prepared and certified for the Project on or before the Agreement Date.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed to that term in Section 3.1 of this Agreement.

“Public Financing” shall mean the capital financing raised through the issuance of bonds or other public financing mechanisms.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Landowner is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Agreement Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

“Term” shall have the meaning ascribed to that term in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed to that term in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed to that term in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City's zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

From and after the Effective Date and for the Term of this Agreement, the Property (or the portion of the Property for which the Effective Date has occurred pursuant to this Agreement) shall be subject to this Agreement and Development of the Property is authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Landowner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Landowner and each person executing this Agreement on behalf of Landowner hereby represents and warrants to City as follows: (i) that Landowner is the owner of the fee simple title to the Property; (ii) if Landowner or any co-owner comprising Landowner is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Landowner or any co-owner comprising Landowner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Landowner to enter into this Agreement have been taken and that Landowner has the legal authority to enter into this Agreement; (v) that Landowner's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Landowner or any person or entity comprising Landowner has to any third party; (vi) that neither Landowner nor any co-owner comprising Landowner is the subject of any voluntary or involuntary petition in bankruptcy, nor is Landowner or any such co-owner insolvent or unable to pay its debts and perform its obligations when due; (vii) that all persons executing this Agreement on behalf of Landowner are authorized to do so and their signatures on this Agreement are sufficient to make this Agreement a legally binding obligation of Landowner; and (viii) that Landowner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting Landowner's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if (i) the Effective Date does not occur as to the entire Property, excepting only all or part of the Oil Well Operational Area, within sixty (60) months after the Agreement Date or (ii) either Party reasonably determines that the Effective Date of this Agreement will not occur as to the entire Property, excepting only all or part of the Oil Well Operational Area, because one or more of the

conditions precedent to the occurrence of the Effective Date have been disapproved by the governmental agency having jurisdiction with respect thereto, or (iii) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (iv) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations, costs, or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Landowner's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable. Such termination shall not affect the validity or enforceability of those Development Regulations otherwise applicable to the Property or portions thereof that would survive independent of this Agreement.

If the Effective Date timely occurs as to the entire Property, excepting only all or a portion of the Oil Well Operational Area, the Effective Date of this Agreement as to the Oil Well Operational Area (or portion thereof) may be deferred until the annexation of such area into the City becomes effective, which may occur at any time prior to the Termination Date.

The Termination Date (as to the entire Property, including the Oil Well Operational Area) shall be the earliest of the following dates: (i) the twenty-fifth (25th) anniversary of the Agreement Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Section 3.3, Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute, as the same may be applicable; (iii) as to any separate legal lot within the Property (but not as to the balance of the Property or the portion thereof that remains subject to this Agreement at such time), upon the "Lot Termination Date" (defined below); or (iv) completion of the Project in accordance with the terms of this Agreement, including Landowner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term "Lot Termination Date" for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year) to a Permitted Transferee, a member of the public, or other ultimate user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot; and (iii) as to any lot that is to be dedicated to City or other applicable governmental agency, the date on which an irrevocable offer of dedication or other conveyance instrument reasonably satisfactory to City has been recorded against said lot, all improvements that are required to be Developed on and with respect to said lot by Landowner have been completed to the satisfaction of City, a Notice of Completion has been recorded with respect to such improvements, and the time period for the filing/recordation of any stop notices or lien claims shall have expired and all stop notices or lien claims timely filed/recorded shall have been satisfied or bonded against to the reasonable satisfaction of City.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Landowner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

2.5 Annexation of County Property.

Subject to the provisions set forth in the immediately succeeding paragraph, from and after the Agreement Date, Landowner at its sole cost and expense shall diligently pursue to completion all necessary proceedings before the Orange County Local Agency Formation Commission (“LAFCO”) for the annexation of the County Property into the City. Landowner and City shall cooperate with LAFCO in connection with the annexation of the County Property, at no cost to City.

Notwithstanding the foregoing, Landowner shall have the right to defer annexation of one or both of the Oil Well Operational Areas into the City (and, thereby, to phase the annexation of the County Property into the City) as long as (i) Landowner determines in its sole and absolute discretion that such areas will or may continue to be used for a period of time for oil drilling and related purposes and (ii) such a phased annexation is consistent with applicable statutes and LAFCO rules and regulations and will not hinder or delay annexation of the balance of the County Property into the City.

In addition to the foregoing, the Parties mutually acknowledge and agree that Landowner shall not be required to consent to completion of the annexation of any portion of the County Property into City prior to the date that the California Coastal Commission approves a Coastal Development Permit for the Project consistent with the Development Plan and such approval becomes “final.” As used herein, the Coastal Commission’s approval of the Coastal Development Permit for the Project shall be deemed to be “final” on the later of the following dates, as applicable: (i) the day after the date on which the statute of limitations for filing a judicial challenge to the California Coastal Commission’s approval of the Coastal Development Permit expires without any such judicial challenge being timely filed; or (ii) if a judicial challenge to the California Coastal Commission’s approval of the Coastal Development Permit is timely filed, the last of the following dates: (A) the date upon which such judicial action is dismissed with prejudice; (B) the date upon which such judicial action is dismissed without prejudice and the statute of limitations for re-filing the same or similar action challenging the California Coastal Commission’s approval of the Coastal Development Permit expires without such action being re-filed, (C) or the date upon which such judicial action is successfully resolved in a manner which results in the California Coastal Commission’s approval of the Coastal Development Permit being upheld, either by a final non-appealable judgment or final binding settlement agreement.

It is understood that the Property is “uninhabited” within the meaning of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code Section 56046) and Landowner agrees to promptly provide all necessary approvals, written consents, and waivers of protest or election rights as may be necessary and appropriate to cause said annexation to be completed at the earliest feasible date; provided, however, that (i) nothing in this paragraph is intended to modify or limit Landowner’s right to defer annexation of one or both of the Oil Well Operational Areas, as hereinabove set forth, and (ii) Landowner shall not be

required to provide such approvals, consents, and waivers of protest or election rights if, as a condition to the annexation of the County Property (or applicable portions thereof) to the City, LAFCO subjects the County Property to any conditions or burdens inconsistent with the terms and conditions set forth in this Agreement.

Upon receipt of Landowner's written request, City agrees to support Landowner's annexation application(s) with LAFCO by means of a written letter or City Council resolution, and City further agrees to cooperate with Landowner with respect to such application(s), all at no cost to City. City also agrees to timely perform all of its statutory duties as the "conducting authority" with respect to annexation of the County Property or applicable portions thereof.

The Parties agree that the Development Regulations for the Property satisfy the requirements of Government Code Sections 65859 and 56375 with respect to rezoning of the County Property.

3. Public Benefits.

3.1 Public Benefit Fee.

Subject to the provisions set forth in the next paragraph below and in Sections 3.2 and 3.3, and as consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner shall pay to City a fee, referred to herein as the "Public Benefit Fee," in the sum of Thirty Thousand Nine Hundred Nine Dollars (\$30,909.00) per residential dwelling unit Developed as part of the Project (including all on-site market rate and affordable units). The Public Benefit Fee shall be paid on a per unit basis as a condition to the issuance of each residential building permit.

The amount of the Public Benefit Fee shall be increased (as to residential dwelling units for which the Public Benefit Fee has not previously been paid) based upon percentage increases in the CPI Index. The first CPI adjustment to the Public Benefit Fee shall occur on the third anniversary of the Agreement Date of this Agreement (the first "Adjustment Date") and subsequent CPI adjustments shall occur on each anniversary of the first Adjustment Date thereafter until expiration of the Term of this Agreement (each, an "Adjustment Date"). The amount of the CPI adjustment on the first Adjustment Date shall be the percentage increase in the CPI Index between the second anniversary of the Agreement Date and the third anniversary of the Agreement Date. The amount of the CPI adjustment on each subsequent Adjustment Date shall be the percentage increase between said Adjustment Date and the immediately preceding Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the first Adjustment Date occurs on July 1, 2016, and the most recently available CPI Index figure on that date is the CPI Index for May 2015 (2 months prior to the first Adjustment Date), the percentage increase in the CPI Index on the first Adjustment Date shall be calculated by comparing the CPI Index for May 2014 with the CPI Index for May 2015. In no event, however, shall application of the CPI Index on any Adjustment Date reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to that Adjustment Date. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1.

Landowner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Landowner's vesting rights to be acquired hereunder, and that Landowner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Landowner's default, if Landowner, including any Permitted Transferee, shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to (i) withhold issuance of the occupancy permit and any other building, inspection, or development permit or approval for the unit for which the Public Benefit Fee remains unpaid or (ii) withhold issuance of building, occupancy, and other building or development permits for any other portion of the Project that at that time is under common ownership with the defaulting Landowner or Permitted Transferee, as applicable.

City shall have the right to spend the Public Benefit Fee on any public purpose that City determines to be in the public interest, as designated by City in its sole and absolute discretion. The Public Benefit Fee is not intended to constitute a Development Exaction, is in addition to the Development Exactions applicable to the Project (i.e., except as otherwise expressly set forth in Section 3.3 of this Agreement, Developer shall not be entitled to a credit against the Public Benefit Fee for the amount of any Development Exaction paid or performed by Developer and vice versa), and is not subject to restrictions on the use of various forms of Development Exactions.

3.2 Renegotiation of Public Benefit Fee if Development Plan Is Not Approved by California Coastal Commission.

The Parties recognize that subsequent to the Agreement Date and prior to the commencement of Development of the Project on the Property City and/or Landowner will be required to apply to the California Coastal Commission ("Commission") for approval of a CDP for the Project pursuant to applicable provisions of the California Coastal Act and that no assurances can be provided as of the Agreement Date that the Commission will approve that CDP application consistent with the Development Plan approved by City. The Parties further acknowledge they have negotiated the amount and level of the Public Benefit Fee set forth in Section 3.1 of this Agreement based upon the Development Plan approved by City. Accordingly, and in addition to the fact that the Effective Date is conditioned upon the Commission approving the CDP consistent with the Development Plan approved by City, in the event the Commission's approval of the Project is issued subject to conditions or requirements that (i) the number of residential dwelling units in the Project be reduced to a number less than 1,375, (ii) the net developable acreage of the Project on the Property be reduced below the amount of net developable acreage approved by City as of the Agreement Date, or (iii) imposing any other conditions or requirements on Landowner's development rights that Landowner, in its sole and absolute discretion, determines materially increases the cost of Development above the costs that would be incurred by Landowner to Develop the Project pursuant to the Development Plan approved by City as of the Agreement Date, then, in such event, the Parties agree to negotiate in good faith regarding a reduction in the amount of the Public Benefits and/or the

Public Benefit Fee. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to commit City to approve a reduction in the amount of the Public Benefits or the Public Benefit Fee, and City reserves the right to approve or disapprove such a reduction in its sole and absolute discretion, and if the Parties are unable to agree upon such a reduction Landowner's sole and exclusive remedy shall be to terminate this Agreement by delivering written notice of termination to City. In such event, the provisions set forth in Article 10 and Section 13.10 (as well as any other Landowner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive such termination. In addition, Landowner recognizes and agrees that since all of the City actions relating to the items comprising the Development Plan are being approved conditionally and contingent upon Landowner's performance of its obligations set forth in this Agreement, Landowner's termination of this Agreement automatically will result in the termination of the Development Plan and Landowner's right to Develop the Project pursuant to the Development Plan.

3.3 Park Land Dedication and Improvements in Excess of Landowner's Quimby Act Requirement; City Option to Develop North and Central Community Parks; Possible Increase or Decrease in Public Benefit Fee.

Based upon the number of residential dwelling units approved in the Development Plan (1,375), City has calculated that Landowner's Quimby Act obligation for the Project would be to dedicate to City 15.1 net useable acres of park land within the Property in a rough graded condition, with full improvement of adjacent public street access and all utility lines stubbed in to a location approved by City (herein, "Rough Grade Condition"), to pay in-lieu park fees to City based upon said acreage figure, or a combination of the two. Notwithstanding such limitations on Landowner's Quimby Act obligations, and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner agrees to dedicate to City and City agrees to accept two public parks within the Property comprising a total of approximately 18 net useable acres (21.8 gross acres) of land area (the North Community Park and the Central Community Park) in a Rough Grade Condition.

In addition to the foregoing, and notwithstanding the aforescribed limitations on Landowner's Quimby Act obligations, and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner agrees to improve the North and Central Community Parks in accordance with the Park Conceptual Design Plans (as the same may be supplemented or revised from time to time by City) and the final plans and specifications for the North and Central Community Park improvements as approved by City in accordance with City's Development Regulations. In this regard, prior to issuance of the fiftieth (50th) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project Landowner shall prepare, submit to City, and obtain City approval of (i) final plans and specifications for the North and Central Community Park improvements and (ii) a detailed line-item cost estimate for said park improvements based on the approved final plans and specifications together with adequate supporting information to justify the amount and reasonableness of each line item (collectively, the "Park Improvement Cost Estimate"). The only costs included in Landowner's Park Improvement Cost Estimate shall be those costs Landowner reasonably determines it will incur after (but not before) the Agreement Date to design, engineer, construct, install, supervise, and inspect the North and Central Community Park improvements and maintain such improvements prior to the time City accepts the North and Central Community Parks for maintenance purposes, including any permit and inspection fees to

be paid to City with respect thereto and the cost of obtaining and maintaining in effect security instruments for the work (collectively, the “Eligible Estimated Park Improvement Costs”). The Eligible Estimated Park Improvement Costs shall not include any costs that Landowner anticipates it will incur to deliver the North or Central Community Park in a Rough Grade Condition. Construction management fees included in Eligible Estimated Park Improvement Costs shall not exceed five percent (5%) of the estimated “hard cost” of construction/installation and no other costs for developer profit, overhead, or similar charges, by whatever name called, shall be included in Eligible Park Improvement Costs. The contingency amount included in Eligible Estimated Park Improvement Costs shall not exceed ten percent (10%) of the sum of the other costs. In the event Landowner retains third party contractors, planners, engineers, landscape architects, or other contractors and consultants to perform work with respect to construction of the North and Central Community Parks, on the one hand, and other elements of the Project, on the other hand, Landowner shall fairly allocate costs between Eligible Park Improvement Costs and other (non-eligible) costs.

City shall have the right to review and approve the final plans and specifications for the North Park and Central Community Park improvements, the Park Improvement Cost Estimate, and the Eligible Estimated Park Improvement Costs, including without allocation the reasonableness of any allocation of costs between Eligible Estimated Park Improvement Costs and other non-eligible costs. City shall unreasonably delay, deny, or condition approval of any of said matters.

Prior to the later of (i) City’s issuance of a building permit for Development of the one hundredth (100th) residential dwelling unit (excluding model homes) within the Project and (ii) City approval of the final specifications for the North and Central Community Parks, the Park Improvement Cost Estimate, and the Eligible Estimated Park Improvement Costs, City shall have the right, but not the obligation, to deliver a written notice to Landowner informing Landowner that City has elected to construct/install the North and Central Community Park improvements itself (the “City Park Notice”). City’s failure to timely deliver the City Park Notice by said deadline shall conclusively be deemed to constitute an election by City to not construct/install the North Park and Central Park improvements and to require Landowner to construct/install the same.

If City timely delivers the City Park Notice, the following obligations shall apply: (i) within thirty (30) days after City’s delivery of the City Park Notice Landowner shall deliver or cause to be delivered to City (A) ownership and true and correct copies of all plans, drawings, specifications, surveys, and other records in the possession of Landowner and any contractor or consultant retained directly or indirectly by Landowner with respect to the North and Central Community Park improvements (collectively, the “Park Plans”), free and clear of any claim of any third party that would restrict City’s free and unfettered right to use the same, but without any representation or warranty by Landowner as to the completeness or adequacy of the same or suitability for City’s intended use, and (B) a written assignment of all of Landowner’s right, title, and interest in and to the Park Plans; (ii) upon Landowner’s satisfaction of all of the requirements set forth in clause (i) Landowner’s obligation with respect to the North and Central Community Parks shall be limited to delivering such parks to City in a Rough Grade Condition, which Landowner shall do at least one (1) year prior to the estimated date upon which Landowner (including Permitted Transferees) will be requesting the two hundredth (200th) certificate of occupancy for a residential dwelling unit within the Project, and thereafter

Landowner shall be released from any further obligation under this Agreement and any of the Development Regulations to improve the North and Central Community Park Improvements; (iii) the amount of the Public Benefit Fee payable by Landowner to City shall be increased by the sum of Eight Million Dollars (\$8,000,000) total (Five Thousand Eight Hundred Eighteen Dollars and Eighteen Cents [\$5,818.18] per residential dwelling unit [1,375 DUs X \$5,818.18 = \$8,000,000], with such \$8,000,000 sum increased by the percentage increases in the CPI Index commencing with the first Adjustment Date referred to in Section 3.1 (and with the amount of the increase(s) calculated in the same manner as provided in Section 3.1) and on each Adjustment Date thereafter through the date on which Landowner has fully performed its obligations set forth in clauses (i) and (ii) (but not earlier than the date on which City has issued the two hundredth (200th) certificate of occupancy for a residential dwelling unit, excluding model homes, within the Project), and with said increased Public Benefits Fee also payable on a per building permit basis as provided in Section 3.1; and (iv) subject to Section 9 of this Agreement, City shall exercise commercially reasonable diligence to complete the Development of the North and Central Community Park improvements within one (1) year of the date upon which Landowner fully performs its obligations set forth in clauses (i) and (ii).

Notwithstanding the City's right to construct/install the North and Central Community Park improvements, if City delivers the City Park Notice but it thereafter fails to timely commence either or both of said improvements, Landowner shall have the right, but not the obligation, to elect to construct/install said improvements itself. If Landowner desires to exercise this "self-help" remedy, it shall be required to deliver a written "Notice of Default" to City, which Notice of Default shall clearly state that Landowner is electing to take over and perform the work of constructing/installing the park improvements that are the subject of the Notice of Default if City does not cure the "Default" within the "Cure Period" applicable thereto (see Section 8.1 below for definitions of those terms). If City fails to cure its Default during the applicable Cure Period, then Landowner shall be authorized to proceed to construct/install the park improvements that were the subject of the Notice of Default as though City had never delivered the City Park Notice.

If City does not timely deliver the City Park Notice, the following obligations shall apply: (i) if the City-approved Estimated Eligible Park Improvement Costs are equal to or less than Eight Million Dollars (\$8,000,000), with said sum adjusted in accordance with the percentage increases in the CPI Index commencing with the first Adjustment Date referred to in Section 3.1 (and with the amount of the increase(s) calculated in the same manner as provided in Section 3.1) and on each Adjustment Date thereafter through the date on which City has issued the two hundredth (200th) certificate of occupancy for a residential dwelling unit, excluding model homes, within the Project (herein, the "Landowner's Estimated Cost Cap"), then Landowner shall plan, design, engineer, construct, install, supervise, and inspect the North and Central Community Park improvements and maintain such improvements prior to the time City accepts the North and Central Community Parks for maintenance purposes, including payment of any permit and inspection fees to be paid to City with respect thereto and the cost of obtaining and maintaining in effect security instruments for the work, all at Landowner's sole cost and expense, and regardless of whether the actual costs incurred by Landowner for said purposes actually exceed the Landowner's Cost Cap; (ii) if the City-approved Eligible Park Improvement Costs exceed the Landowner's Estimated Cost Cap, then Landowner's Public Benefit Fee shall be decreased by the difference between the City-approved Eligible Park Improvement Costs and the Landowner's Estimated Cost Cap such that, for example (and without taking CPI adjustments

into account), if the Landowner's Estimated Cost Cap is \$9,000,000 and the Eligible Park Improvement Costs equal \$10,000,000, Landowner would be entitled to a \$1,000,000 reduction in its Public Benefit Fee or a reduction in said fee per residential unit that is equal to \$1,000,000 divided by the number of residential units that are ultimately vested in Landowner for development on the Property (\$727.27 per residential unit assuming Landowner is vested with the right to develop 1,375 on-site residential units); (iii) Landowner shall commence construction of the North and Central Community Park improvements no later than City's issuance of the two hundredth (200th) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project and Landowner shall complete construction of the North and Central Community Park improvements in strict conformance with the City-approved final park plans and specifications and applicable Development Regulations and otherwise to the reasonable satisfaction of City no later than City's issuance of the three hundredth (300th) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project; and (iv) promptly after Landowner submits a written request to City for acceptance of the completed North and Central Community Park improvements (with the understanding that such a request may be submitted separately for each park), together with a certification by Landowner's design professional that the improvements satisfy the requirements for acceptance set forth herein, City shall consider such request and, if construction of the applicable Park improvements has been satisfactorily completed, City shall accept the completed improvements in accordance with applicable Development Regulations, provided that City's acceptance of the completed improvements shall be subject to whatever rights City would normally have under its applicable Development Regulations in the absence of this Agreement with respect to reservation of claims for defective work and resort to any improvement security held by City relating thereto.

From time to time during the progress of Landowner's (and Permitted Transferees') Development of the Project and upon Landowner's written request, City shall promptly advise Landowner of the status of the number of certificates of occupancy for residential dwelling units that City has issued, in order to enable Landowner to plan the timing of its performance obligations set forth in this Section 3.3 with respect to the North and Central Community Park improvements. Said City obligation shall terminate when City has advised Landowner that City has issued the 300th certificate of occupancy for a residential dwelling unit within the Project.

The aforescribed obligations of Landowner with respect to the North and Central Community Parks shall be in addition to its obligations to dedicate, develop, and/or restore other public and private trails, park, habitat areas, and park/open space improvements on other portions of the Property.

City acknowledges that Landowner's performance of its obligations set forth in the Development Regulations and this Agreement will satisfy all of Landowner's Quimby Act obligations for the dedication and improvement of park and recreational land and payment of in-lieu fees relating thereto.

3.4 Transportation Improvements; Fair Share Traffic Fee Credit; Acquisition of 15th Street Right-of-Way.

If the California Coastal Commission approves the Project so as to authorize construction/installation of the portion of Bluff Road between 17th Street and 19th Street the Parties agree (subject to any contrary conditions that may be imposed by the California Coastal

Commission) that said road improvements shall be constructed/installed in conjunction with the final phase of Landowner's Project. Landowner shall offer to dedicate the right-of-way needed for said road improvements on the first final tract map(s) that include(s) the portion of the Property within which said portion of Bluff Road is located and Landowner shall deliver said right-of-way to City in a rough graded condition on or before the date on which the 800th certificate of occupancy is issued for a residential unit on the Property.

If the California Coastal Commission approves the construction/installation of the portion of Bluff Road between 17th Street and 19th Street, said road improvements (beyond the rough grading stage of Development) may be constructed/installed either by Landowner or by City, as City may elect. City shall make such election by delivering written notice to Landowner sufficiently in advance of the date that such construction/installation will need to commence in order to enable each Party to timely plan to fulfill its responsibilities with respect thereto and, in this regard, the Parties agree to consult and cooperate with one another during the course of Landowner's Development of the Project consistent with that objective. If City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street, Landowner shall pay to City a fair share traffic fee for said improvement based on (i) the amount, reasonably estimated by City, to be the estimated cost of said work (including the cost to engineer, design, construct, supervise, and inspect all improvements within the dedicated right-of-way, but excluding the cost/value of the right-of-way, the rough grading cost, and the cost of complying with any environmental mitigation requirements attributable to the grading required for said roadway and construction/installation of the roadway itself and whether such environmental mitigation requirements are imposed by City or some other federal, state, or local agency with jurisdiction, which costs shall all be Landowner's sole responsibility) and (ii) Landowner's fair share percentage for said improvement, which shall be calculated by City in accordance with the standard methodology used by City in allocating fair share percentages for other road improvements used to determine City's fair share traffic fee, and otherwise City shall be responsible to construct said road improvements at City's sole cost and expense. If City elects to have Landowner construct/install said road improvements, City shall pay to Landowner the entire estimated cost of said improvements less the amount that would have been Landowner's fair share fee for said improvements (calculated in accordance with the preceding sentence). The Party obligated to pay the other Party (depending upon which Party is responsible to perform the work) shall make such payment to the other Party in cash within ten (10) days after the Party performing the work submits to the Party obligated to make payment (i) an invoice requesting payment and (ii) satisfactory evidence that the Party responsible to perform the work has entered into a construction contract to complete the work and said Party's contractor has commenced work pursuant to said construction contract. It is understood and agreed that Landowner's fair share traffic fee payment to City (if City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street) or City's cash payment to Landowner for said improvements (if City elects to have Landowner construct/install the same) shall be based on the City's estimated cost of said roadway and not the actual construction/installation cost.

If City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street, City shall accept Landowner's offer of dedication of the right-of-way for said roadway in accordance with applicable Development Regulations promptly after Landowner submits a written request therefor, together with a certification by Landowner's civil engineer that the lines and grades of the graded road extension conform to the plans therefor and City verifies the work has in fact been satisfactorily completed. If City elects to have Landowner construct/install said

road improvements, City shall accept Landowner's offer of dedication of the right-of-way and improvements for said roadway in accordance with applicable Development Regulations promptly after Landowner submits a written request therefor, together with a certification by Landowner's civil engineer that the lines and grades of the graded road extension and the improvements conform to the plans therefor and City verifies the work has in fact been satisfactorily completed. In either case, City's acceptance shall be subject to whatever rights City would normally have under its applicable Development Regulations in the absence of this Agreement with respect to reservation of claims for defective work and resort to any improvement security held by City relating thereto.

Except as set forth in the preceding paragraph, the Parties agree that Landowner shall not be obligated to pay a "fair share traffic fee" pursuant to City's Fair Share Traffic Contribution Ordinance (Chapter 15.38 of City's Municipal Code) based upon City's determination that Landowner will be constructing street/transportation improvements with public benefits in excess of Landowner's fair share traffic fee obligation even if, for whatever reason, the California Coastal Commission requires the Development Plan to be modified to delete construction of the portion of Bluff Road between 17th Street and 19th Street. Landowner shall not be entitled to a refund or reimbursement for the cost of constructing/installing the street/transportation improvements required as part of the Project in excess of what its fair share traffic fee would be in the absence of this Agreement, nor shall Landowner be entitled to any other fee credit based on its estimated or actual costs incurred to construct/install street/transportation improvements for the Project, whether on-site or off-site.

In addition to the foregoing, Landowner shall be responsible for paying the entire cost of obtaining the offsite right-of-way needed to widen 15th Street in accordance with the Project EIR and applicable Development Regulations, including, if applicable, City's cost of acquisition. If Landowner fails to acquire the needed right-of-way for the 15th Street widening prior to recordation of the first final tract map within the Property that authorizes development of residential units, City and Landowner shall enter into an agreement pursuant to Government Code Sections 66462 and 66462.5 which provides for City's acquisition of the right-of-way and Landowner's payment of the entire cost therefor, including without limitation all of City's legal, appraisal, engineering, and other costs, all amounts of compensation paid to the persons and entities having a compensable interest in the right-of-way, City's litigation expenses and court costs, and City payroll costs for the time spent working on said acquisition by in-house City staff.

3.5 Landowner's Contribution Toward Cost of Redevelopment of Fire Station No. 2.

In order to implement Mitigation Measure 4.14-2 in the Project EIR relating to redevelopment of City's Fire Station No. 2 and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Fire Station No. 2 Fee") in the sum of Five Hundred Ten Dollars (\$510) per residential dwelling unit, with the per/unit fee to be paid upon the issuance of a building permit for each residential unit developed within the Project. The amount of said Fire Station No. 2 Fee shall be increased (as to residential dwelling units for which the Fire Station No. 2 Fee has not previously been paid) on each Adjustment Date in accordance with changes in the CPI Index, calculated at the same times and in the same manner as set forth in Section 3.1 of

this Agreement for CPI adjustment to the Public Benefit Fee. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Fire Station No. 2 Fee except pursuant to the CPI Index as stated in this Section 3.5. Landowner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Fire Station No. 2 Fee, that its obligation to pay the Fire Station No. 2 Fee is an essential term of this Agreement and is not severable from City's obligations and Landowner's vesting rights to be acquired hereunder, and that Landowner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Landowner's default, if Landowner, including any Permitted Transferee, shall fail to timely pay any portion of the Fire Station No. 2 Fee when due City shall have the right to (i) withhold issuance of the occupancy permit and any other building, inspection, or development permit or approval for the unit as to which the Fire Station No. 2 Fee remains unpaid or (ii) withhold issuance of building, occupancy, and other building or development permits for any other portion of the Project that at that time is under common ownership.

4. Development of Project.

4.1 Applicable Regulations; Landowner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Landowner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit, prevent, or delay development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, (iv) approval, conditional approval, or denial of any modifications or amendments to the Development Regulations as may be required in order to conform to or comply with the action taken by the California Coastal Commission with respect to the Coastal Development Permit approved by the Commission with respect to the Project; or (v) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(v) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Landowner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding

or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Landowner has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Landowner represents and City acknowledges that Landowner would not make these expenditures without this Agreement, and that Landowner is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Landowner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic than the Project as approved as of the Agreement Date and, in addition, Landowner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

Notwithstanding any other provision set forth in this Agreement, nothing in this Agreement is intended or shall be interpreted to place an affirmative obligation on Landowner to proceed with or Develop the Project; provided, that if Landowner does elect to do so it shall do so in strict conformity with the provisions set forth in this Agreement and the Development Plan (as the same may be amended from time to time consistent herewith).

4.2 No Conflicting Enactments.

Subject to City's reserved right to reconsider the Development Regulations for the Project if and to the extent the California Coastal Commission does not approve a CDP consistent therewith and except to the extent City otherwise reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Landowner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Landowner deems appropriate within the exercise of Landowner's sole subjective business judgment and notwithstanding adoption by

City's electorate of an initiative or referendum to the contrary after the Agreement Date; provided, however, that (i) any such Development shall occur in accordance with this Agreement and the Development Regulations and (ii) nothing in this Agreement is intended as a representation or warranty by City to Landowner that a referendum will not be filed or approved that overturns one or more of the elements of the approved Development Plan or this Agreement prior to the time the same become final and effective. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative, referendum (excepting a referendum that overturns one or more of the elements of the approved Development Plan prior to the time the same become final and effective), or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Landowner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Landowner shall be required to pay all applicable processing and permit fees that are charged on a non-discriminatory basis to similarly situated development projects in City as needed to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Landowner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Landowner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Landowner shall be required to satisfy and pay all Development Exactions that are in effect as of the Agreement Date at the time performance or payment is due in the amounts that would apply to Landowner and the Project at that time in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction or charge has been established and fixed by City in Sections 3.3-3.5 of this Agreement (with respect to Quimby Act dedication/in-lieu fee requirements, fair share traffic fees, and the Fire Station No. 2 Fee) or the conditions of approval for any of the Development Regulations

approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Landowner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Landowner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facilities district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Landowner's vested rights set forth in this Agreement, including without limitation the provisions of the California Coastal Act, shall apply to the Property, together with any non-discriminatory City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Landowner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that is not consistent with the provisions of this Agreement or otherwise prevents or precludes compliance with any provision of this Agreement, City or Landowner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Landowner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Landowner agree to preserve the terms of this Agreement and the rights of Landowner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Landowner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Landowner. City also agrees to process in a prompt manner Landowner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that City reasonably determines is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety shall apply to the Property, even though the application of the ordinance, resolution, rule regulation,

program, or official policy would result in the impairment of Landowner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Landowner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 Water and Wastewater Utility Service. City covenants to provide water and wastewater utility services to the Project on a non-discriminatory basis (i.e., on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Newport Beach from time to time, as and when service connections are provided and service commences). While City represents that as of the Agreement Date City has adequate capacity to provide water and wastewater services to the Project if the Project were fully built out as of the Agreement Date, City makes no representation or warranty to Landowner that the infrastructure needed to provide water and wastewater services will be sufficient at the time Landowner Develops the Project, City is not hereby committing to improve or upgrade existing water or wastewater utility infrastructure for the benefit of Landowner or the Project, City does not warrant or represent that adequate water supplies or wastewater treatment capacity will be available to serve Landowner or the Project at the time Development occurs, and, with the exception of City's commitment that after the Agreement Date it will not adopt or enforce any discriminatory City laws or regulations (as defined above) against the Project relating to the provision of water or wastewater utility services.

If water or wastewater utility services are provided to the Project by an entity other than City, City shall not impose any conditions or restrictions on the provision of such services to any parcel or lot within the Property in excess of the restrictions imposed by the service provider; provided, that City is not representing, warranting, or guaranteeing that any other entity has the capacity, willingness, or ability to provide such services.

4.4 Tentative Subdivision Maps

Any tentative subdivision map for the Project shall comply with the provisions of California Government Code Sections 66473.7.

City agrees that Landowner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code Sections 66498.1-66498.9 and City of Newport Beach Municipal Code Chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code Section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, together with any Subsequent Development Approval, shall be extended for the Term of this Agreement.

4.5 Responsibility for Processing Application for Coastal Development Permit; Costs

Within ninety (90) days after the Agreement Date, Landowner shall prepare and submit to the California Coastal Commission a complete application for approval of a Coastal Development Permit for the Project consistent with the Development Regulations and this Agreement and thereafter Landowner shall exercise commercially reasonable diligence in an effort to obtain an acceptable final decision by the California Coastal Commission with respect to said application as soon as is reasonably practicable. Landowner shall be responsible for all costs and expenses incurred with respect to said application. City agrees to reasonably cooperate with and support Landowner in the processing of said application, at no cost to City; provided, that City's cooperation shall not require City to agree to perform any obligations in excess of or inconsistent with the Development Regulations or this Agreement, nor shall City be required to waive Landowner's full compliance with any of Landowner's obligations set forth in the Development Regulations or this Agreement. Landowner shall reimburse City for all of City's reasonable costs and expenses incurred with respect to Landowner's CDP application (including without limitation City's payroll costs and costs for outside counsel and consultants (if required), prorated with respect to City staff time for the periods of time that City staff devote to said application) within thirty (30) days after receipt of invoices and supporting information. Landowner shall not be liable to City for any City staff time spent with respect to the CDP application following the date of City's receipt of Landowner's written notice to City that Landowner has abandoned the application for the CDP.

Notwithstanding any other provision set forth in this Agreement to the contrary, if the California Coastal Commission does not approve a CDP for the Project as submitted and City is called upon to consider a revised Project or revised conditions of approval or mitigation measures in response to the Commission's action, City shall not be deemed to be in violation of any of its obligations set forth herein.

4.6 Public Financing

Upon receipt of Landowner's written request, City shall consider in good faith any requests for Public Financing to assist in Landowner's Development of the Project; provided, however, that (i) in no event shall City be responsible to pay any costs or incur any liabilities in connection therewith and, to the extent City will be required to incur any such costs, Landowner shall advance or reimburse the same pursuant to a subsequent agreement to be entered into by City and Landowner; (ii) in no event shall any City funds or property be used as a source of payment or security for any such Public Financing; (iii) City reserves its full legislative discretion with respect to the formation of any Public Financing districts (including without limitation a community facilities district or assessment district), issuance of bonds secured by the Property (or portions thereof), and all matters relating thereto, including without limitation the total amount of Public Financing to be provided, the eligible improvements for such Public Financing, provisions as to how any special taxes or assessments shall be allocated by means of the rate and method of apportionment or engineer's report, the term of any bonds to be issued, the minimum value-to-lien ratio to be used in sizing the bonds, and such other bond-related matters as the identity of consultants, issuance costs, and the amount of capitalized interest and reserve fund requirements; and (iv) in no event shall City be deemed to be in Default of its obligations set forth in this Agreement if it fails or refuses to form a Public Financing district,

issue bonds, or take any other related action requested or desired by Landowner with respect thereto.

5. Amendment or Cancellation of Agreement

Except as expressly set forth herein, including without limitation Sections 3.2 and 8.3, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and City of Newport Beach Municipal Code Section 15.45.060 or by unilateral termination by City in the event of an uncured default of Landowner.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code Section 65869.5, this Agreement shall be enforceable by either Party in accordance with its terms and without regard to any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

In the event of any inconsistency or conflict between the terms set forth in this Agreement and any of the documents comprising the Development Plan, the terms and conditions set forth in this Agreement shall govern.

7. Annual Review of Landowner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Landowner (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Landowner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Landowner is required to demonstrate good faith compliance with the terms of the Agreement in accordance with the provisions of the Development Agreement Ordinance and City's generally applicable policies and procedures. Landowner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Landowner has, for the period under review,

complied with the terms of this Agreement. If the City Council finds that Landowner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Landowner has not so complied, written notice shall be sent to Landowner by first class mail of the City Council's finding of non-compliance, and Landowner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Landowner, Landowner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Landowner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Landowner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Landowner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions; Notice of Default and Cure Period; Judicial Reference for Resolution of Certain Disputes.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder, not less than thirty (30) days in the event of non-monetary Defaults excepting only a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice, as referred to in Section 3.3, and ninety (90) days if the Default relates to a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default as to all non-monetary Defaults other than a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice, and in no event later than ninety (90) days after City receives a Notice of Default with respect to its failure to timely commence construction/installation of the North and/or Central Community Park improvements, and thereafter the defaulting Party shall diligently pursue said cure to completion.

Notwithstanding the foregoing, in the event City and Landowner cannot resolve any dispute arising under either Section 3.3 or 3.4 of this Agreement within thirty (30) days following either Party's delivery of a Notice of Default to the other Party, then either Party shall have the right thereafter to submit such dispute to a reference judge for a binding decision. Such dispute shall be heard by a reference proceeding from the Orange County Superior Court pursuant to California Code of Civil Procedure Section 638 et seq. A single referee shall try all issues arising under Section 3.3 and/or 3.4, as applicable (but not issues arising under any other provision of this Agreement unless the Parties so agree in writing at the time of such judicial reference, with each Party reserving the right in its sole and absolute discretion to decline to submit to judicial reference any dispute not arising under Section 3.3 or 3.4), whether of fact or law, and report a finding and judgment thereon, and issue all relief appropriate under the circumstances of the controversy before him/her (and subject to the limitations on remedies set forth in Sections 8.6-8.10). The referee may be asked to issue orders for the settlement, cure, correction, or remedy of any such Default, or to enforce any covenant or agreement in Section 3.3 or 3.4 herein (or other covenant or agreement set forth in this Agreement if and only if the Parties subsequently agree in writing to submit it to judicial reference), to issue mandatory or prohibitory injunctions, to issue a writ of mandamus, issue a declaration in any declaratory relief action, or to grant any other remedies consistent with the limitations on remedies set forth in Sections 8.6-8.10 and the purposes of this Agreement. All decisions of the referee within the permitted scope of the judicial reference shall be final and binding on the Parties. From the date of the filing of a complaint or petition with respect to any dispute that is subject to resolution by judicial reference, as set forth above, until the date upon which the one referee chosen by Landowner and City agree to serve and in fact begins serving, the Orange County Superior Court Judge sitting as the writs and receivers judge shall be the referee for the purposes of issuing all orders in any proceedings hereunder. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Immediately upon the service of a complaint that is subject to judicial reference, as set forth above, counsel for Landowner and City shall be obligated to cooperate in good faith to select and formally retain the services of a referee, in writing, through the services of the Judicial Arbitration and Mediation Service. If Landowner and City are unable to agree on the identity of a referee within ten (10) days of the service of such a complaint, either Party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640. The cost of such reference proceeding shall initially be borne equally by the Parties, but the prevailing party shall ultimately be awarded a judgment for its share of such costs.

8.2 Default by Landowner.

If Landowner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Landowner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Landowner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Landowner's appeal the City Council concludes that Landowner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Landowner's appeal is communicated in writing to Landowner.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Landowner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Landowner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Landowner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Landowner. Any such judicial challenge must be brought within sixty (60) days of service on Landowner, by personal delivery, delivery by a reputable overnight delivery service (such as Federal Express) that provides a receipt confirming delivery, or by certified mail, return receipt required, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Landowner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Landowner may, in accordance with the provisions in Section 8.3 above, pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Landowner's performance hereunder shall neither be a Landowner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Landowner's option (and provided Landowner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Landowner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Landowner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Landowner or City for such efforts. For the above reasons, City and Landowner agree that damages would not be an adequate remedy if either City or Landowner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate

Landowner if City fails to carry out its obligations under this Agreement or to compensate City if Landowner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party or for any acts or omissions by a Party arising out of this Agreement; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees, Landowner's 14% fair share traffic fee for City's construction of Bluff Road from 17th Street to 19th Street in accordance with Section 3.4 (if applicable), and the Fire Station No. 2 Fee at such time that said fees are due from Landowner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for Landowner's Default.

In the event of any Default by Landowner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Landowner's Default without recourse from Landowner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents or Landowner Members, Managers, Employees, or Agents.

No City official, employee, or agent and no member, manager, officer, employee, or consultant of Landowner or of any of Landowner's respective members shall have any personal liability hereunder for a Default by City or Landowner, as applicable, of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots

or similar hostilities, acts of terrorism, strikes or other labor difficulties, state or federal regulations, court actions, acts or omissions of the other Party, third party lawsuits, initiatives, and referenda. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the deadline for commencement of the Term of this Agreement or the Termination Date. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Landowner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Landowner.

10.1 Indemnity Arising From Acts or Omission of Landowner.

Except to the extent caused by the intentional misconduct or gross negligence of City or one or more of City's officials, employees, agents, attorneys, lessees, or contractors (collectively, "City's Affiliated Parties"), Landowner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) that may arise, directly or indirectly, from the acts, omissions, or operations of Landowner or Landowner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Landowner relating to the Property or pursuant to this Agreement (collectively, a "Claim"). City shall have the right to select and retain counsel reasonably acceptable to Landowner to defend any Claim filed against City and/or any of City's Affiliated Parties, and Landowner shall pay the reasonable cost for defense of any Claim, but in any event Landowner shall only be obligated to pay the fees and costs of one counsel irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Landowner shall indemnify, defend (with one counsel selected by City and reasonably acceptable to Landowner, irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties), and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, and court costs. City shall promptly notify Landowner of any such Claim and City shall cooperate with Landowner in the defense of such Claim. If City fails to promptly notify Landowner of such Claim, Landowner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Landowner is so notified and if City fails to cooperate in the defense of a Claim Landowner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel reasonably acceptable to Landowner to represent City against the Claim and the City's defense costs for its separate counsel shall be

included in Landowner's indemnity obligation, provided that such counsel shall reasonably cooperate with Landowner in an effort to minimize the total litigation expenses incurred by Landowner. In the event either City or Landowner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Landowner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Landowner shall indemnify, defend (with one counsel selected by City and reasonably acceptable to Landowner, irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties), and hold harmless City and City's Affiliated Parties from and against any and all third party Claims filed against City and/or City's Affiliated Parties for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Landowner in connection with Landowner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement.

Notwithstanding any provision set forth in this Section 10.3 to the contrary, Landowner's obligation to indemnify, defend, and hold harmless City and City's Affiliated Parties with respect to Environmental Laws and Hazardous Substances shall not apply to any Claims arising out of the actual or alleged acts or omissions of any person or entity other than Landowner or any of Landowner's members, directors, officials, employees, agents, attorneys, lessees, or contractors (collectively, "Landowner's Affiliated Parties") with respect to oil drilling or extraction operations conducted by, on, or from the non-contiguous portion of the Oil Well Operational Area comprised of approximately 7.219 acres of land area that is closest to Pacific Coast Highway and has been under City's control for a number of years prior to the Agreement Date.

The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Landowner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Landowner's fee title to the Property, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become the "Landowner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided,

however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of Landowner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Landowner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Landowner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Landowner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Landowner assigns to the successor Landowner and the successor Landowner assumes from the transferring Landowner all of the rights and obligations of the transferring Landowner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Landowner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Landowner under this Agreement with respect to the portion of the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Landowner with respect to the balance of the Property.

Notwithstanding any Transfer, the transferring Landowner shall continue to be jointly and severally liable to City, together with the successor Landowner, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Landowner shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Landowner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Landowner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Landowner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Landowner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Landowner to City to secure performance of the successor Landowner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Landowner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Landowner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Landowner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Landowner or other affirmative covenants of Landowner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Landowner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Landowner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of said cure period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within said cure period, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to: City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO LANDOWNER: Aera Energy LLC
Attn: Newport Banning Ranch LLC
3030 Saturn Street, Suite 101
Brea, California 92821
Attn: George L. Basye

TO LANDOWNER: Cherokee Investment Partners
Attn: Cherokee Newport Beach, LLC
111 E. Hargett Street, Suite 300
Raleigh, NC 27601
Attn: Bret Batchelder

With a copy to: Newport Banning Ranch LLC
1300 Quail Street, Suite 100
Newport Beach, California 92660
Attn: Michael A. Mohler

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no

partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default. Such estoppel certificates may be relied upon only by the Parties, their respective successors and assigns, and, in the event of an estoppel certificate issued by City, a Mortgagee of Landowner, including a Permitted Transferee and its actual or prospective Mortgagee. City shall be entitled to payment/reimbursement for its actual and reasonable costs of investigation and preparation of an estoppel certificate prior to issuing the same.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt (assuming, in the case of an estoppel certificate to be issued by City, Landowner has paid City the cost thereof, as provided above).

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; “shall” is mandatory; and “may” is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party’s right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Landowner shall not receive any of the benefits of this Agreement if any of Landowner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Landowner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Landowner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Landowner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Landowner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Landowner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each

successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Landowner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property
B-1	Depiction of County Property

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT**

“LANDOWNER”

AERA ENERGY LLC,
a California limited liability company

By: _____

Its: _____

By: _____

Its: _____

CHEROKEE NEWPORT BEACH, LLC, a
Delaware limited liability company

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the unincorporated area of the County of Orange, State of California, described as follows:

PARCEL 1:

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN LOTS "A" AND "B" OF SAID BANNING TRACT, WHICH POINT IS THE POINT OF INTERSECTION OF THE CENTER LINE OF NINETEENTH STREET AND THE NORTHWESTERLY LINE OF THE FIRST ADDITION TO THE NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 26' 55" WEST ALONG THE NORTHERLY LINE OF SAID LOT "B", 3315.29 FEET TO THE NORTHWESTERLY CORNER OF LOT "B" OF SAID BANNING TRACT; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF LOT "B" OF SAID BANNING TRACT, THE FOLLOWING COURSES AND DISTANCES: SOUTH 1 DEGREE 45' WEST 462.00 FEET; THENCE SOUTH 34 DEGREES 15' WEST 462.95 FEET; THENCE SOUTH 6 DEGREES 15' EAST 1058.48 FEET; THENCE SOUTH 19 DEGREES 45' WEST 529.21 FEET; THENCE SOUTH 34 DEGREES 30' WEST 463.08 FEET; THENCE SOUTH 42 DEGREES 45' WEST 397.00 FEET; THENCE SOUTH 4 DEGREES 45' WEST 462.00 FEET; THENCE SOUTH 21 DEGREES 15' WEST 198.50 FEET TO THE SOUTHWEST CORNER OF LOT "B", AS SHOWN ON SAID MAP OF THE BANNING TRACT, WHICH CORNER IS ALSO STATION NO. 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; THENCE SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; THENCE NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; THENCE NORTH 51 DEGREES 48' EAST 405.76 FEET; THENCE NORTH 74 DEGREES 07' EAST 722.86 FEET; THENCE SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; THENCE SOUTH 27 DEGREES 46' EAST 498.37 FEET; THENCE SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; THENCE SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND

NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST; THENCE NORTH 0 DEGREES 36' 01" WEST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 3061.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO NEWPORT MESA TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT, 2706.70 FEET TO THE MOST WESTERLY CORNER OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT; THENCE NORTH 19 DEGREES 01' 55" EAST ALONG THE NORTHWESTERLY LINE OF THE LAST MENTIONED TRACT, 1065.62 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF LOT "B" OF SAID BANNING TRACT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EASTERLY LINE OF THE 300-FOOT STRIP OF LAND FOR SANTA ANA RIVER CHANNEL, AS DESCRIBED IN THE DEED TO THE NEWBERT PROTECTION DISTRICT, RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, WHICH POINT IS NORTH 71 DEGREES 20' EAST 510.47 FEET FROM THE SOUTHWEST CORNER OF SAID LOT "B", WHICH LAST MENTIONED CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE EASTERLY LINE OF SAID 300-FOOT STRIP OF LAND, 660 FEET; THENCE SOUTH 76 DEGREES 35' EAST 660 FEET; THENCE SOUTH 13 DEGREES 25' WEST 660 FEET; THENCE NORTH 76 DEGREES 35' WEST 660 FEET TO THE POINT OF BEGINNING, AS CONDEMNED BY THE CITY OF NEWPORT BEACH IN THE ACTION ENTITLED "CITY OF NEWPORT BEACH, A MUNICIPAL CORPORATION, PLAINTIFF VS. TOWNSEND LAND COMPANY AND OTHERS, DEFENDANTS", BEING CASE NO. 34747 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF THE FINAL JUDGMENT HAVING BEEN RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS OF ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LOT "B" IN SAID BANNING TRACT CONVEYED BY THE TOWNSEND LAND COMPANY TO THE NEWBERT PROTECTION DISTRICT FOR A RIVER CHANNEL, 300 FEET WIDE, BY DEED RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT "B" OF THE BANNING TRACT, SOUTH 84 DEGREES 45' EAST 135.84 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT "B", WHICH CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY SIDE OF SAID 300-FOOT RIGHT OF WAY, 946.75 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 42 DEGREES 45' EAST 38.70 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 34 DEGREES 30' EAST 462.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 19 DEGREES 45' EAST 528.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE STILL ALONG SAID WESTERLY LINE, NORTH 6 DEGREES 15' WEST 723.17 FEET TO A POINT IN THE WESTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY LINE OF

SAID RIGHT OF WAY, 607.27 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 34 DEGREES 15' EAST 148.48 FEET TO AN ANGLE IN SAID LINE; THENCE NORTH 1 DEGREE 45' EAST 436.44 FEET TO THE NORTHWEST CORNER OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE SOUTH 13 DEGREES 25' WEST 3831.55 FEET TO THE SOUTHERLY LINE OF SAID LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 45' WEST 303.08 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM, THE PORTIONS THEREOF INCLUDED WITHIN A STRIP OF LAND 30 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT WHERE THE EASTERLY BOUNDARY LINE OF THE RANCHO LAS BOLSAS BETWEEN STATIONS 78 AND 79 OF THE SAID BOUNDARY LINE IS INTERSECTED BY THE LINE WHICH BEARS NORTH 13 DEGREES 26' 30" EAST FROM THE POINT ON THE SOUTH LINE OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER SECTION CORNER OF SAID SECTION, SAID BEGINNING POINT BEING ON THE SURVEYED CENTER LINE OF THE SANTA ANA-ANAHEIM JOINT OUTFALL SEWER; THENCE FROM SAID POINT OF BEGINNING, SOUTH 13 DEGREES 26' 30" WEST ALONG SAID CENTER LINE TO STATION 187+74.49, BEING THE POINT ON THE SOUTH LINE OF SAID SECTION 18, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 13 DEGREES 26' 30" WEST ALONG SAID SURVEYED CENTER LINE, 2795.66 FEET TO STATION 215+70.15; THENCE SOUTH 16 DEGREES 27' 30" WEST ALONG SAID CENTER LINE, 1050.35 FEET TO A POINT 15.30 FEET SOUTH 84 DEGREES 45' EAST FROM STATION 68 OF THE RANCHO LAS BOLSAS, TOGETHER WITH THE STRIP OF LAND OF VARYING WIDTHS LYING BETWEEN THE EASTERLY LINE OF THE ABOVE DESCRIBED 30-FOOT STRIP AND THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SANTA ANA RIVER THROUGH THE NEWBERT PROTECTION DISTRICT, AS CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCELS D3-121.1 AND D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH, AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO

THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RENDERED AUGUST 4, 1965 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED "COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VS. SECURITY FIRST NATIONAL BANK, ETC., AND OTHERS" (CASE NO. 123141), A CERTIFIED COPY OF WHICH ORDER WAS RECORDED AUGUST 5, 1965 IN BOOK 7620, PAGE 215 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT B OF THE BANNING TRACT, AS SHOWN ON A MAP FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT B; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY OF SAID LOT B, SOUTH 01 DEGREE 45' 00" WEST 462.00 FEET TO RANCHO LAS BOLSAS, STATION 75, AND SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET TO RANCHO LAS BOLSAS, STATION 74, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, SOUTH 06 DEGREES 15' 00" EAST TO THE WESTERLY LINE OF THE STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SANTA ANA, RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE INTERSECTION WITH THAT CERTAIN COURSE HEREINABOVE CITED AS "SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET"; THENCE ALONG SAID CERTAIN COURSE, SOUTH 34 DEGREES 15' 00" WEST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, UPON, OVER AND BENEATH THE SURFACE OF SAID LAND, AT

ALL TIMES TO EXPLORE FOR, EXTRACT AND REMOVE ANY OF SAID MINERALS LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228, AS AMENDED BY THE DEED AND AGREEMENT EXECUTED BY HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665, ALL IN OFFICIAL RECORDS, ORANGE COUNTY.

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN LAND AS DESCRIBED IN PARCEL 1 IN DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, ALSO BEING THE SOUTHWEST CORNER OF LOT "B" OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA, WHICH CORNER IS ALSO STATION 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; NORTH 51 DEGREES 48' EAST 405.76 FEET; NORTH 74 DEGREES 07' EAST 722.86 FEET; SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; SOUTH 27 DEGREES 46' EAST 498.37 FEET; SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE FIRST ADDITION TO NEWPORT MESA TRACT RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL

LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST, WHICH POINT IS THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 404.46 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THAT CERTAIN STRIP OF LAND 250 FEET IN WIDTH, AS DESCRIBED IN PARCEL 1, ARTICLE II OF SAID DEED RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE ALONG THE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND NORTHERLY LINE OF SAID PARCEL 1, ARTICLE II, THROUGH THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1300.00 FEET, THROUGH AN ANGLE OF 9 DEGREES 36' 54", A DISTANCE OF 218.16 FEET TO A LINE TANGENT THERETO; THENCE NORTH 65 DEGREES 56' WEST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT EAST THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250 FEET DISTANT WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH THE NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT WESTERLY AND NORTHWESTERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET; NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH

WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY, SAID POINT BEING THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE NORTH 64 DEGREES 06' 50" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK C OF EL MORO TRACT, 16.02 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF CALIFORNIA STATE HIGHWAY; THENCE NORTH 54 DEGREES 02' WEST ALONG SAID HIGHWAY RIGHT OF WAY LINE, 145.48 FEET TO THE CENTER LINE OF SAID 300-FOOT RIVER CHANNEL EASEMENT; THENCE NORTH 13 DEGREES 25' EAST ALONG SAID CENTER LINE, 390.57 FEET TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED DATED DECEMBER 30, 1929 FROM JOSEPH BANNING JR. AND OTHERS, TO JAMES H. MACKLIN, RECORDED JANUARY 29, 1930 IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 74 DEGREES 17' WEST 289.47 FEET TO A POINT IN THE SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF SAID RANCHO SANTIAGO DE SANTA ANA, WHICH POINT IS ALSO THE NORTHWEST CORNER OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 15 DEGREES 43' EAST ALONG THE SAID SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, 119.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION OR PORTIONS OF SAID ABOVE DESCRIBED LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, OR WITHIN THE EXTERIOR BOUNDARY LINES OF GOVERNMENT LOT 1, SECTION 19; GOVERNMENT LOT 1, SECTION 20; AND GOVERNMENT LOT 1, SECTION 29, ALL IN TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE RECORDED JANUARY 20, 1962, BOOK 5993, PAGE 441, OFFICIAL RECORDS, ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 3:

A STRIP OF LAND 250 FEET WIDE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF BLOCK C OF EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS; THENCE SOUTH 64 DEGREES 06' 50" EAST, ALONG THE NORTHERLY LINE OF SAID EL MORO TRACT, 154.24 FEET; THENCE CONTINUING ALONG THE LAST MENTIONED NORTHERLY LINE, SOUTH 60 DEGREES 52' 34" EAST 151.04 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30.00 FEET IN WIDTH, AS SHOWN ON THE MAP OF SAID EL MORO TRACT, SAID POINT BEING IN THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON A MAP FILED IN AND ANNEXED TO THE COMPLAINT IN CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTH 78 DEGREES 02' EAST ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, 517.61 FEET; THENCE CONTINUING ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, SOUTH 66 DEGREES 42' 20" EAST 644.09 FEET TO A POINT IN THE NORTHERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY AND NORTHEASTERLY ALONG THE NORTHERLY AND NORTHWESTERLY LINE OF SAID TRACT NO.772, THE FOLLOWING COURSES AND DISTANCES: SOUTH 88 DEGREES 25' EAST 105.91 FEET; NORTH 72 DEGREES 45' EAST 268.62 FEET; NORTH 42 DEGREES 06' EAST 228.36 FEET; NORTH 29 DEGREES 06' EAST 306.31 FEET TO A POINT IN THE SAID CENTER LINE OF THE SANTA ANA RIVER; THENCE ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, THE FOLLOWING COURSES AND DISTANCES: NORTH 20 DEGREES 06' 15" EAST 267.71 FEET; NORTH 51 DEGREES 48' EAST 117.09 FEET; NORTH 74 DEGREES 07' EAST 254.30 FEET; SOUTH 45 DEGREES 20' 28" EAST 298.02 FEET; SOUTH 27 DEGREES 46' EAST 331.04 FEET; SOUTH 13 DEGREES 35' 40" EAST 665.36 FEET; SOUTH 1 DEGREE 38' 25" WEST 1205.19 FEET; SOUTH 10 DEGREES 47' 30" EAST 116.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 19 DEGREES 20' 43" EAST; THENCE ALONG THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: EASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 950.00 FEET, A DISTANCE OF 209.67 FEET; SOUTH 83 DEGREES 18' EAST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 318.26 FEET; SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 216.09 FEET; SOUTH 54 DEGREES 08' 30" EAST 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 950.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 264.46 FEET; SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 527.80 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF LOT D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1980 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE

OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID CALIFORNIA STATE HIGHWAY, NORTH 39 DEGREES 43' 45" EAST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT D OF BANNING TRACT, 265.74 FEET TO A POINT, BEING 250.00 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SAID 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 70 DEGREES 05' 30" WEST, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, 49.03 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A.E.S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 26 DEGREES 10' 42" WEST; THENCE ALONG THE BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 373.48 FEET, A DISTANCE OF 176.40 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND, NORTH 5 DEGREES 44' 28" WEST 104.32 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY, PARALLEL WITH THE SAID NORTHEASTERLY AND NORTHERLY LINE OF SAID STATE HIGHWAY, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 70 DEGREES 05' 30" WEST 376.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 194.87 FEET; NORTH 54 DEGREES 08' 30" WEST, TANGENT TO SAID CURVE, 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 267.55 FEET; NORTH 65 DEGREES 56' WEST, TANGENT TO THE SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHWESTERLY LINE OF TRACT NO. 772, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06 WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES

THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET, AND NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF SAID EASEMENT 300.00 FEET WIDE, FOR PURPOSE OF MAINTAINING THE SANTA ANA RIVER CHANNEL; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING GENERALLY SOUTHERLY OF THE AGREED BOUNDARY LINE DESCRIBED IN EXHIBIT "E" ATTACHED TO THAT CERTAIN SETTLEMENT AND BOUNDARY LINE AGREEMENT, STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE PORTION OR PORTIONS OF SAID LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, THE PATENT FOR WHICH WAS RECORDED JUNE 28, 1884 IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND AS ESTABLISHED BY SAID HEREINABOVE DESCRIBED SETTLEMENT AND BOUNDARY LINE AGREEMENT, OR WITHIN THE EXTERIOR BOUNDARIES OF LOT 1 OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 10 WEST; LOT 1 OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 10 WEST; AND LOT 1 OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, THE PATENT FOR WHICH LOTS WAS RECORDED APRIL 19, 1893 IN BOOK 1, PAGE 66 OF PATENTS, RECORDS OF ORANGE COUNTY, CALIFORNIA, OR WITHIN ACCRETIONS OF SAID RANCHO OR SAID LOTS.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE PARCEL OF LAND DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH FINAL ORDER WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THE PORTION INCLUDED WITHIN THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS PARCEL 73170-1 IN THAT CERTAIN FINAL DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 667539, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032786 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO ORANGE COUNTY SANITATION DISTRICT, A COUNTY SANITATION DISTRICT ORGANIZED AND EXISTING PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 4700 ET SEQ. AS DISCLOSED BY ON DOCUMENT RECORDED AUGUST 30, 2006 AS INSTRUMENT NO. 2006000582598 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 30% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED FROM SAID LAND LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, AS AMENDED BY THE DEED DATED NOVEMBER 29, 1961 FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 70% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 4:

THOSE PORTIONS OF LOTS C AND D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, BEING ALSO A PORTION OF LOT 1 OF TRACT NO. 463, AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND A PORTION OF TRACT NO. 2250, AS SHOWN ON A MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF TRACT NO. 15, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WHICH CORNER IS IN THE CENTER LINE OF SUPERIOR AVENUE, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, AND ALSO IN THE SOUTHEASTERLY LINE OF SAID LOT D IN THE BANNING TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. 15, AND ALONG THE SOUTHWESTERLY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, 3691.50 FEET TO A POINT IN THE EASTERLY LINE OF WHITTIER AVENUE, 60 FEET IN WIDTH, AS SHOWN ON SAID MAP OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SOUTHERLY

PROLONGATION OF THE SAID EASTERLY LINE OF WHITTIER AVENUE, SAID PROLONGATION BEING THE EASTERLY LINE OF PARCEL 1 AS DESCRIBED IN DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, 3465.51 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE ON A CURVE CONCAVE TO THE SOUTHWEST, 250.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT OF INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1300.00 FEET, 49.39 FEET; THENCE SOUTH 54 DEGREES 08' 30" EAST, TANGENT TO SAID CURVE, 387.05 FEET TO BEGINNING OF CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, 194.87 FEET; THENCE SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 376.41 FEET TO A POINT IN THE WESTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM THE FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A. E. S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE ALONG THE WESTERLY, NORTHERLY AND NORTHEASTERLY BOUNDARY LINE OF SAID 2.7827-ACRE PARCEL, THE FOLLOWING COURSES AND DISTANCES: NORTH 5 DEGREES 44' 28" WEST 160.43 FEET TO THE MOST WESTERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS NORTH 20 DEGREES 20' 15" WEST; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 450.00 FEET, 235.10 FEET; THENCE NORTH 39 DEGREES 43' 45" EAST, TANGENT TO THE LAST MENTIONED CURVE, 75.42 FEET TO THE MOST NORTHERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS SOUTH 29 DEGREES 30' 33" WEST; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 730.00 FEET, A DISTANCE OF 130.21 FEET; THENCE SOUTH 50 DEGREES 16' 15" EAST, TANGENT TO THE LAST MENTIONED CURVE, 122.00 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SUPERIOR AVENUE, 60 FEET IN WIDTH, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, WHICH POINT BEARS NORTH 39 DEGREES 43' 45" EAST 35.24 FEET FROM THE MOST EASTERLY CORNER OF LOT 1 IN BLOCK 1 OF SAID TRACT NO. 15; THENCE SOUTH 50 DEGREES 16' 15" EAST 30.00 FEET TO THE CENTER LINE OF SAID SUPERIOR AVENUE; THENCE ALONG THE CENTER LINE OF SAID SUPERIOR AVENUE, NORTH 39 DEGREES 43' 45" EAST 705.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND: THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF

ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING: THAT PORTION OF LOT 1 AND ALL OF LOT 2 OF TRACT NO. 463 AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF FIFTEENTH STREET WITH THE CENTER LINE OF MONROVIA AVENUE, AS SHOWN ON A MAP RECORDED IN BOOK 65, PAGES 31 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 0 DEGREES 37' 24" EAST, ALONG THE CENTER LINE OF SAID MONROVIA AVENUE, 440.93 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT NO. 463; THENCE NORTH 29 DEGREES 26' 43" WEST ALONG SAID NORTHEASTERLY LINE, 272.61 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID NORTHEASTERLY LINE, 1288.43 FEET TO THE CENTER LINE OF SUPERIOR AVENUE; THENCE SOUTH 39 DEGREES 41' 15" WEST, ALONG SAID CENTER LINE OF SUPERIOR AVENUE, 705.55 FEET; THENCE NORTH 50 DEGREES 18' 45" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN A DEED TO A. E. S. CHAFFEY AND OTHERS, RECORDED IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND THE SOUTHEASTERLY PROLONGATION THEREOF, 152.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 730.00 FEET; THENCE NORTHWESTERLY 130.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 13' 12" TO A POINT IN THE NORTHEASTERLY LINE OF PARCEL 1, AS DESCRIBED IN A DEED RECORDED IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 63 DEGREES 11' 16" WEST 1160.70 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 100.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LAND DESCRIBED IN ANNEXATION NO. 54 TO THE CITY OF NEWPORT BEACH, DECEMBER 30, 1963; THENCE ALONG SAID PARALLEL LINE, NORTH 0 DEGREES 38' 10" WEST 734.93 FEET TO A LINE THAT BEARS SOUTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" EAST 1110.58 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, ANY PORTION INCLUDED WITHIN WHITTIER AVENUE AND SIXTEENTH STREET, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE LAND DESCRIBED IN THE DEED TO THE CITY OF NEWPORT BEACH, RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237652 OF OFFICIAL RECORDS.

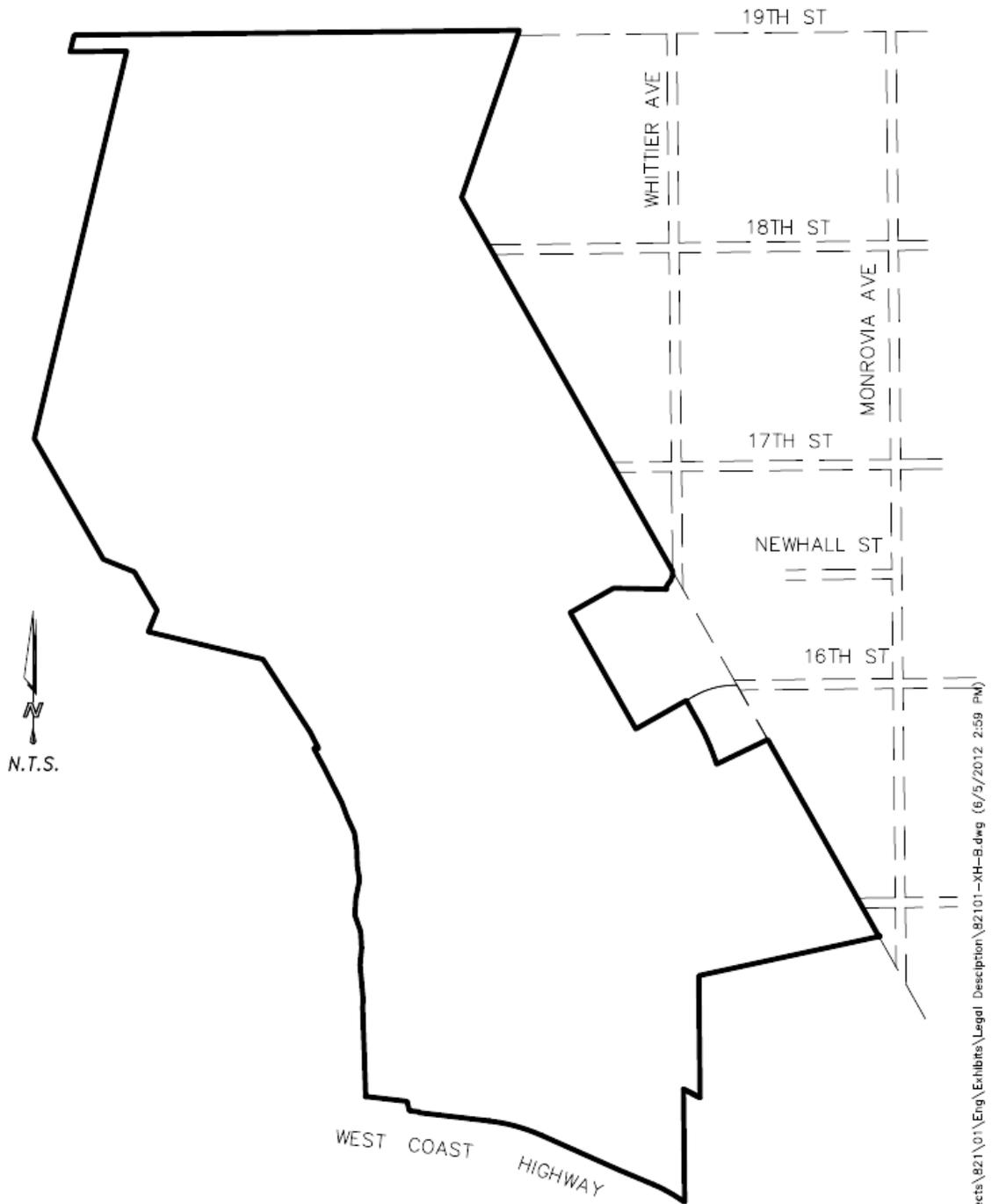
ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND, AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

ALSO EXCEPTING THEREFROM ALL THE MINERALS, INCLUDING WITHOUT LIMITATION ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER THE HEREINAFTER DESCRIBED LAND LYING 500 VERTICAL FEET BELOW THE SURFACE OF SAID LAND WAS QUITCLAIM TO ARMSTRONG PETROLEUM CORPORATION, A CALIFORNIA CORPORATION BY AN INSTRUMENT RECORDED MAY 5, 1997 AS INSTRUMENT NO. 19970206789 OF OFFICIAL RECORDS.

APN: 114-170-24, 114-170-43, 114-170-49, 114-170-50, 114-170-52, 114-170-56, 114-170-72, 114-170-73, 114-170-75, 114-170-77, 114-170-79, 114-170-83 and 424-041-04

EXHIBIT B

DEPICTION OF PROPERTY



P:\Projects\B21\01\Eng\Exhibits\Legal_Description\B2101-XH-B.dwg (6/5/2012 2:59 PM)

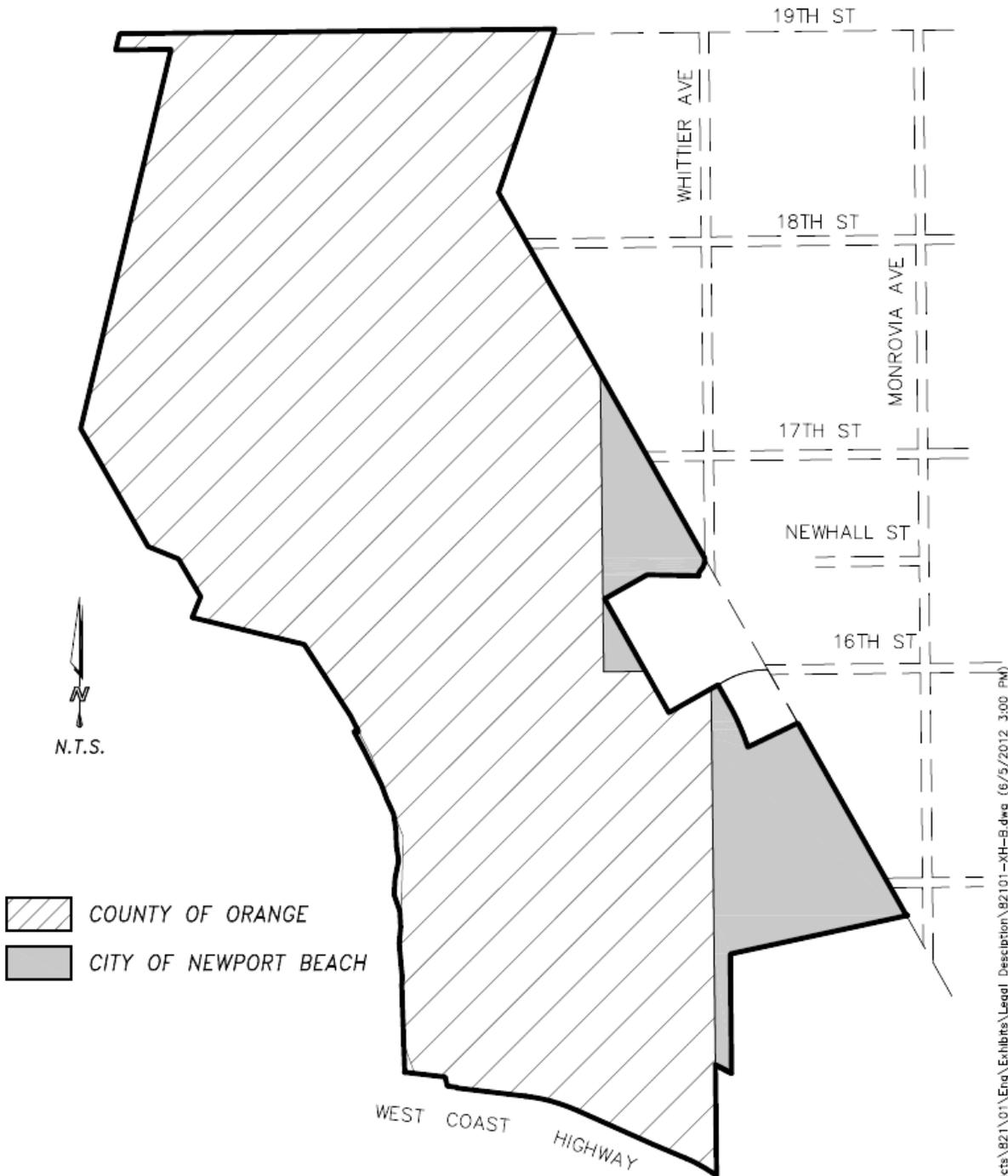


SITE MAP
EXHIBIT 'B'
JUNE 6, 2012



EXHIBIT B-1

DEPICTION OF COUNTY PROPERTY



P:\Projects\821\01\Eng\Exhibits\Legal Description\82101-XH-B.dwg (6/5/2012 3:00 PM)



EXHIBIT 'B-1'
JUNE 6, 2012



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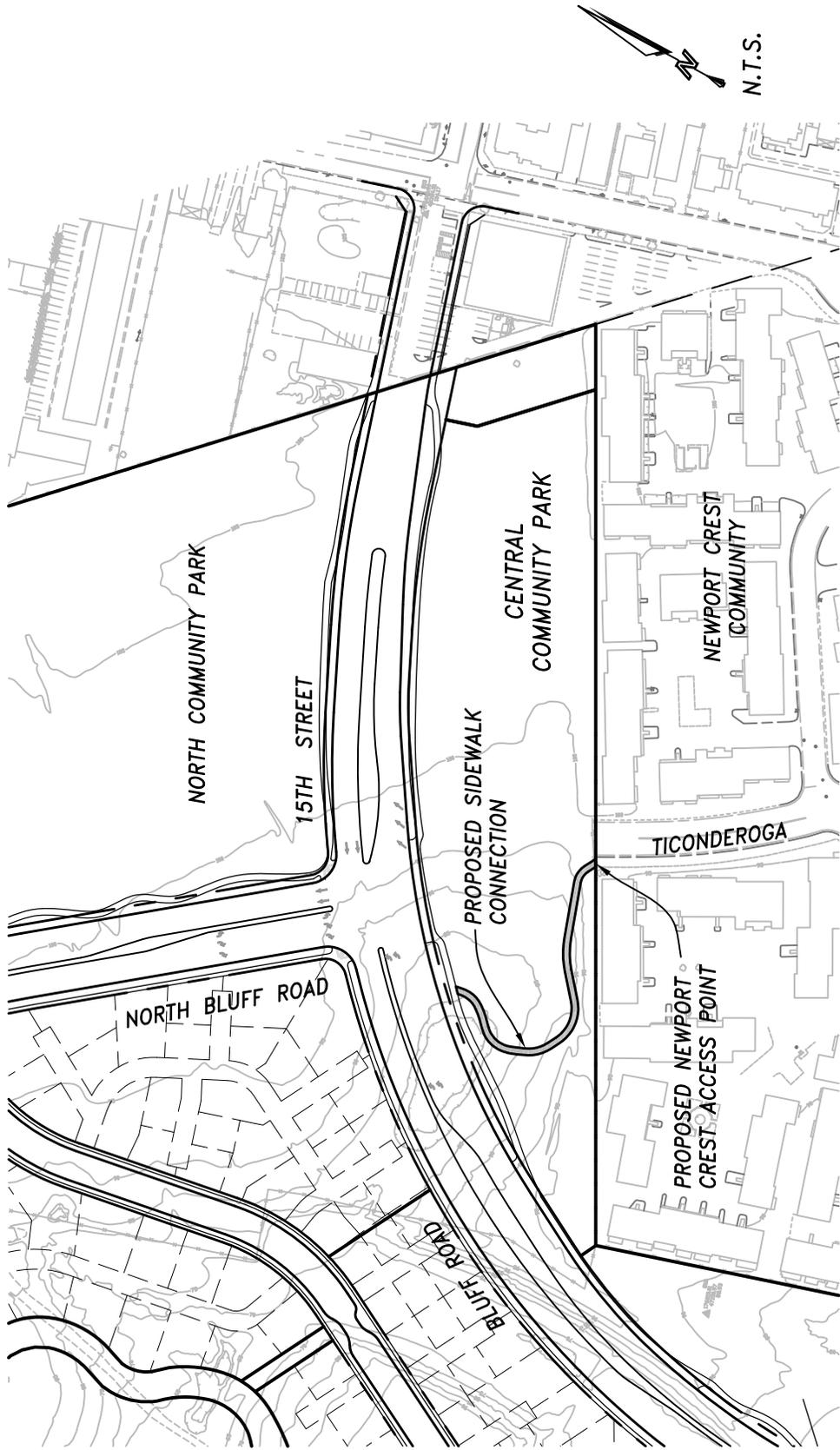
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Attachment No. PC 4
Public Improvement Matrix

TABLE 2				
IMPROVEMENT	RESORT COLONY	SOUTH FAMILY VILLAGE	NORTH FAMILY VILLAGE	URBAN COLONY
Oil Field Remediation and Clean-Up				
Annexation per Development Agreement	After Vesting of CDP by Coastal Commission			
Oil Field Remediation	After Vesting of CDP by Coastal Commission and prior to mass grading			
Oil Field Consolidation	Within 10 years of annexation			
Open Space and Trails				
Talbert Trailhead Staging Area Interpretative Park	Prior to the 350th Certificate of Occupancy			
Southern Arroyo Trail	Prior to the 209th Certificate of Occupancy			
Lowland Trails	Prior to the 350th Certificate of Occupancy			
Upland Trail	Prior to the 350th Certificate of Occupancy			
Bluff Toe Trail	Prior to the 350th Certificate of Occupancy			
Nature Center Interpretative Park	Prior to the 350th Certificate of Occupancy			
Vernal Pool Interpretative Park	Prior to the 350th Certificate of Occupancy			
Pedestrian Bridge	Final Certificate of Occupancy for Resort Inn			
Parks				
South Community Park	Prior to the 150th Certificate of Occupancy			
Central Community Park ¹	Commence No later than the 200th Certificate of Occupancy & Complete by the 300th Certificate of Occupancy			
North Community Park ¹	Commence No later than the 200th Certificate of Occupancy & Complete by the 300th Certificate of Occupancy			
South Bluff Park/Trail	Prior to the 101st Certificate of Occupancy, or prior to first Certificate of Occupancy for Resort Inn			
North Bluff Park/Trail (North Family Village)	Prior to the 209th Certificate of Occupancy			
North Bluff Park Lot 189 (Urban Colony)	Prior to the first Certificate of Occupancy on Lot 1			
Roads				
Costa Mesa Roadway Fees	Fees paid to Costa Mesa at issuance of residential building permits			
West Coast Hwy	Prior to 1st Certificate of Occupancy for any structure			
Bluff Rd from WCH to North Bluff Rd	Prior to 1st Certificate of Occupancy for any structure			
North Bluff Rd from Bluff Rd to 16th St	Prior to 1st Certificate of Occupancy for any structure			
16th St from North Bluff Rd to project boundary (partial)	Prior to 1st Certificate of Occupancy for any structure			
Newport Blvd/WCH intersection restriping	Prior to 1st Certificate of Occupancy for any structure			
15th St/Bluff Rd Signal	Prior to 1st Certificate of Occupancy for any structure			
15th St from Bluff Rd to project boundary	Prior to 1st Certificate of Occupancy for any structure			
15th St from project boundary to Monrovia Ave	The later of two years following acquisition of right-of-way or prior to 1st Certificate of Occupancy for any structure			
North Bluff Road from 16th St to northern property line of Lot 1	Prior to 1st Certificate of Occupancy for any structure			
16th St from North Bluff Rd to project boundary (full)	Prior to 1st Certificate of Occupancy for any structure			
17th St from North Bluff Rd to project boundary	Prior to 1st Certificate of Occupancy for any structure			
North Bluff Rd/17th St Signal	Prior to 1st Certificate of Occupancy for any structure			
North Bluff Rd from Lot 1 to 19th St	Prior to the 800th Certificate of Occupancy (grading only)			
19th St from North Bluff Rd to project boundary	Prior to 209th Certificate of Occupancy for any structure			
Other				
Public Benefit Fee	Defined by Development Agreement, at issuance of building permits			
Newport Crest Noise Mitigation	Prior to issuance of grading permit for Bluff Rd. and/or 15th Street			
Fire Station No 2 Redevelopment	Fees paid to City at issuance of residential building permits			
Lot I Water Quality Basin	Prior to Certificates of Occupancy for Lots 1, 10-88, 128-162, 184, 185 and 187			
Lot L Water Quality Basin	Prior to CofO for Lots 89-125, 163-183, 186 and 188			
Notes:				
References to certificates of occupancy are for residential uses unless otherwise noted.				
References to certificates of occupancy covering more than one village or colony shall mean the total number of units in each area individually or combined.				
References to certificates of occupancy do not include model home complexes in the South Family Village or the Resort Colony.				
References to the Pedestrian Bridge are dependent upon CalTrans approval.				
¹ City may elect to build Central and North Community Parks. this must occur prior to the issuance of the 100th Building Permi				

Attachment No. PC 5

Central Community Park Newport Crest
Access



NOTE:
 CONCEPT ALIGNMENT SHOWN. FINAL
 ALIGNMENT IS SUBJECT TO COMMUNITY
 SERVICES MANAGER REVIEW AND
 APPROVAL.

**CENTRAL COMMUNITY PARK
 NEWPORT CREST ACCESS
 MAY 3, 2012**



Attachment No. PC 6

Correspondence

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

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.



NEWPORT CREST
NEWPORT BEACH

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.

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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.

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.

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'.

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.

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

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.

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.

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 privacies 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.

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.

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:

'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.

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.

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.

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.

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

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

June 6, 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

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

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.

Mr. Patrick J. Alford, Planning Manager
June 6, 2012
Page 2 of 2

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our Community's
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.

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We thank you for the consideration of our comments and look forward to the Planning Commission addressing this response.

Sincerely,



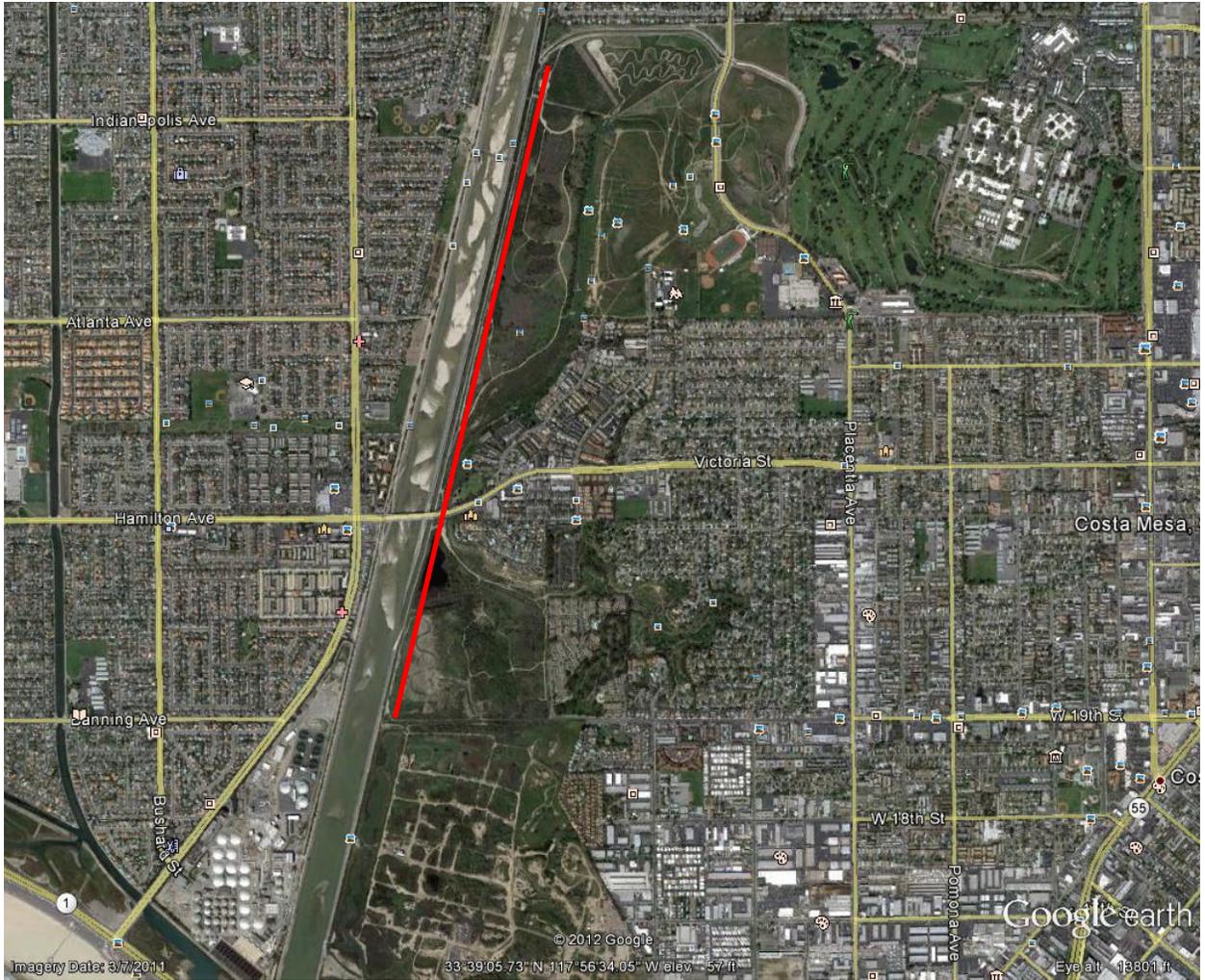
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Legal Counsel



From: Michael Mohler [<mailto:mohler@brooks-street.com>]
Sent: Tuesday, June 12, 2012 11:08 AM
To: Wisneski, Brenda
Cc: G. Basye ; Mulvihill, Leonie; Jeff Donfeld; Oderman, Jeff
Subject: NBR Development Agreement

Brenda,

In response to your requests in the email below, please note:

We desire to move forward with the Planning Commission recommendations on June 21, 2012, but we also we believe it would be appropriate to identify the differences between the City position and NBR position in two areas of Section 3.1 in the Development Agreement, and inquire whether the Planning Commission has any additional comment. The two issues are:

1. **Section 3.1 (first paragraph):** We have asked the City to consider elimination of the Public Benefit Fee only on Affordable Housing units built onsite. The provision of Affordable Housing Units is economically a losing proposition. The suggested imposition of the Public Benefit Fee to onsite Affordable Units makes such an effort financially punitive. Provision of the onsite Affordable Housing is, in and of itself, a public benefit. Elimination of the Public Benefit Fee removes a major obstacle to provision of and should encourage more onsite Affordable Units.
2. **Section 3.1 (second paragraph):** We have asked the City to consider the revising the language for the initial CPI adjustment, as follows:
 - a. Existing language: *The first CPI adjustment to the Public Benefit Fee shall occur on the third anniversary of the Agreement Date of this Agreement....*
 - b. Revised language: *The first CPI adjustment to the Public Benefit Fee shall occur on the sooner to occur of the Effective Date of this Agreement or the fifth anniversary of the Agreement Date of this Agreement.*
3. **Section 10.3:** With the assumption of a favorable resolution of Section 3.1, we would withdraw any remaining concerns over this section.

Please note it is our intention obtain the required signatures prior to the City Council meeting.

Respectfully,

Mike Mohler