

1 RACHEL B. HOOPER (State Bar No. 98569)
AMY J. BRICKER (State Bar No. 227073)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
Hooper@smwlaw.com
5 Bricker@smwlaw.com

6 Attorneys for Petitioner Banning Ranch
Conservancy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CIVIL COMPLEX CENTER
10

11 Banning Ranch Conservancy,

12 Petitioner,

13 v.

14 City of Newport Beach, City of Newport
Beach City Council, and DOES 1-10,

15 Respondents.

16 Newport Banning Ranch, LLC; Aera Energy,
17 LLC; Cherokee Newport Beach, LLC; and
DOES 11-50,

18 Real Parties in Interest.
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

CCP § 1085 (§ 1094.5); California
Environmental Quality Act "CEQA"; State
Planning and Zoning Law

INTRODUCTION

1. This action challenges the March 23, 2010 decisions of the City of Newport Beach ("City") and City of Newport Beach City Council (collectively, "Respondents") to approve the Sunset Ridge Park project, including approval of the associated resolutions (Resolution Nos. 2010-29 and 2010-30) for the adoption of the Conceptual Site Plan and certification of the Environmental Impact Report ("EIR"), and adoption of the related Access Agreement (collectively, "Project"). The Project site is a gateway to the Banning Ranch property, a rare and ecologically significant piece of undeveloped coastal land of approximately 400 acres. Banning Ranch, which sits at the mouth of the Santa Ana River, is rich in wildlife and habitat and serves as a key corridor to publicly owned open spaces on three sides. Although the voters approved an initiative directing the City to preserve the Banning Ranch as open space, the City's approved Project sounds the death knell for this option; in fact, this City approval provides the first step towards a massive residential and commercial development already proposed for the Banning Ranch property (the Newport Banning Ranch project).

2. The roadway features approved for the 18.9-acre Sunset Ridge Park, including a new access road with a four-lane divided entryway and signalized intersection, are *the same features* included in the design plans for the proposed Newport Banning Ranch ("NBR") project. Yet astonishingly, the EIR fails to examine these projects together, resulting in an improper segmentation of environmental review and an incomplete and inaccurate project description. Further, the EIR fails to adequately analyze or mitigate the Project's numerous environmental impacts, including, but not limited to, biological, land use, traffic, air quality, water quality, noise, aesthetic, cultural resources, health and safety, cumulative, and growth-inducing impacts. The EIR also fails to evaluate a reasonable range of alternatives to the Project, including an alternative that allows for park uses without the construction of the roadway improvements or with an alternative roadway design with fewer environmental impacts. By approving the Project on the basis of this flawed and fragmented environmental analysis, Respondents made a decision without all of the information that they and the public needed to properly weigh the consequences of the City's actions.

3. Respondents' actions in approving the Project thus violated the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000 et seq., and the CEQA Guidelines, Title 14, California Code of Regulations sections 15000 et seq.

4. Respondents also violated the State Planning and Zoning Law by adopting the Project, which is inconsistent with numerous goals and policies in the City's General Plan, including those calling for protection of Banning Ranch as open space. Indeed, the City's planning documents and processes have repeatedly recognized the importance of protecting Banning Ranch's natural resources. Notwithstanding these pronouncements, the Project, as approved, paves the way for development that will severely degrade and irreparably impair this sensitive environment.

PARTIES

5. Petitioner Banning Ranch Conservancy is a California nonprofit public benefit corporation that is exempt from federal and state income tax as an organization described in section 501(c)(3) of the federal Internal Revenue Code and section 23701 of the California Revenue and Taxation Code. The Banning Ranch Conservancy is a community-based organization dedicated to the preservation, acquisition, conservation and maintenance of the entire Banning Ranch as a permanent public open space, park, and coastal nature preserve. The interests that the Banning Ranch Conservancy seeks to further in this action are within the purposes and goals of the organization. Supporters of the Banning Ranch Conservancy are residents and taxpayers of Orange County and the City of Newport Beach who will be adversely affected by the Project's environmental impacts, including but not limited to biological, land use, traffic, air quality, water quality, noise, aesthetic, cultural resources, health and safety, and cumulative impacts, as well as by the Project's potential to facilitate further development of the Banning Ranch property.

6. The Banning Ranch Conservancy and its supporters have a direct and beneficial interest in the City's compliance with CEQA, the CEQA Guidelines, and the State Planning and Zoning Law. These interests will be directly and adversely affected by the Project, which violates provisions of law as set forth in this Petition and which would cause substantial and

1 irreversible harm to the natural environment. The maintenance and prosecution of this action
2 will confer a substantial benefit on the public by protecting the public from the environmental
3 and other harms alleged herein. The Banning Ranch Conservancy submitted comments to the
4 City objecting to and commenting on the Project and EIR.

5 7. Respondent City of Newport Beach is a municipal corporation organized and
6 existing under and by virtue of the laws of the State of California, and is located within Orange
7 County. The City has declared that it is the CEQA "lead agency" for the Project, and authorized
8 the Notice of Determination for the Project filed March 24, 2010. The City is responsible for
9 preparation of an initial study, environmental impact report and other environmental documents
10 under CEQA that must fully describe the Project and its impacts, and evaluate mitigation
11 measures and/or alternatives to lessen or avoid the Project's significant environmental impacts.
12 The City is also responsible for adopting findings concerning the Project's significant impacts
13 and all changes or alterations that might mitigate the Project's impacts, and for otherwise
14 complying with CEQA and the CEQA Guidelines. The City governs land use decisions within
15 its jurisdiction and is responsible for complying with the State Planning and Zoning Law. The
16 City is also a party to the Access Agreement Between the City of Newport Beach and Newport
17 Banning Ranch, LLC Regarding Sunset Ridge Park ("Access Agreement").

18 8. Respondent City of Newport Beach City Council is the governing body of the
19 City, which approved the Project on March 23, 2010. The City of Newport Beach City Council
20 is also responsible for complying with the provisions of CEQA, the CEQA Guidelines, and the
21 State Planning and Zoning Law.

22 9. Petitioner does not know the true names and capacities, whether individual,
23 corporate, associate or otherwise, of Respondents DOE 1 through DOE 10, inclusive, and
24 therefore sues said Respondents under fictional names. Petitioner alleges, upon information and
25 belief, that each fictionally named Respondent is responsible in some manner for committing the
26 acts upon which this action is based. Petitioner will amend this Petition to show their true
27 names and capacities if and when the same have been ascertained.

1 10. Petitioner is informed, and on that basis alleges, that Real Party in Interest
2 Newport Banning Ranch, LLC (a) is the owner of and/or has an interest in the Newport Banning
3 Ranch property, which constitutes a portion of the Project site, and (b) is a party to the Access
4 Agreement. Newport Banning Ranch, LLC is also the applicant for the proposed NBR project,
5 which borders the Sunset Ridge Park and includes portions of the Project in its development
6 plan. Petitioner is informed, and on that basis alleges, that Newport Banning Ranch, LLC is a
7 company incorporated in the State of California and doing business in the State of California.

8 11. Petitioner is informed, and on that basis alleges, that Real Party in Interest Aera
9 Energy, LLC (a) is the owner of and/or has an interest in the Newport Banning Ranch property,
10 which constitutes a portion of the Project site, and (b) is a party to the Access Agreement.
11 Petitioner is informed, and on that basis alleges, that Aera Energy, LLC is a company
12 incorporated in the State of California and doing business in the State of California.

13 12. Petitioner is informed, and on that basis alleges, that Real Party in Interest
14 Cherokee Newport Beach, LLC (a) is the owner of and/or has an interest in the Newport
15 Banning Ranch property, which constitutes a portion of the Project site, and (b) is a party to the
16 Access Agreement. Petitioner is informed, and on that basis alleges, that Cherokee Newport
17 Beach, LLC is a company incorporated in the State of Delaware and doing business in the State
18 of California.

19 13. Petitioner does not know the true names and capacities, whether individual,
20 corporate, associate or otherwise, of Real Parties in Interest DOE 11 through DOE 50, inclusive,
21 and therefore sues said Real Parties in Interest under fictional names. Petitioner alleges, upon
22 information and belief, that each fictionally named Real Party in Interest is responsible in some
23 manner for committing the acts upon which this action is based or has material interests affected
24 by the Project or by the City's actions with respect to the Project. Petitioner will amend this
25 Petition to show their true names and capacities if and when the same have been ascertained.

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20. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondents to set aside their approval of the Project. In the absence of such remedies, Respondents' approval will remain in effect in violation of state law.

26 | The Project

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1 related facilities in the Park, an access road extending from West Coast Highway through the
2 Newport Banning Ranch property and related roadway improvements, a parking lot, and
3 associated grading and construction activities, including the net export of approximately 34,000
4 cubic yards of dirt fill to the neighboring NBR property. Of the 18.9 acres that constitute the
5 Project site, approximately 13.7 acres are located within the boundary of and owned by the City,
6 and approximately 5.7 acres are on the Newport Banning Ranch property located in
7 unincorporated Orange County and owned by Real Parties in Interest. The Project site is in an
8 environmentally sensitive coastal area. For example, portions of the Project site are designated
9 as critical habitat for the endangered California Gnatcatcher.

10 22. The Project includes the City's approval of the Conceptual Site Plan for the Sunset
11 Ridge Park, the certification of a Final EIR (SCH No. 2009051036), the making of findings and
12 determinations thereto, the approval of a Mitigation Monitoring and Reporting Program for the
13 Sunset Ridge Park, the adoption of a Statement of Overriding Considerations, and the approval
14 of a related Access Agreement, which is necessary for the construction of the elements of the
15 Sunset Ridge Park that occur on the Banning Ranch property.

16 23. The Project as approved clearly will facilitate development of the neighboring
17 Banning Ranch property. In particular, the Project's construction of an access road and
18 signalized intersection are a portion of the first phase of development for the proposed NBR
19 project, which includes up to 1,375 residential units, 75,000 square feet of commercial space,
20 and a hotel.

21 24. The Project and related NBR project will lead to severe environmental
22 consequences. As Petitioner and others pointed out throughout the administrative process, the
23 Project will lead to increased traffic congestion, noise, air pollution, hazardous materials
24 exposure, and impacts to endangered species, among other impacts. Moreover, the Project
25 conflicts with several policies and goals in the General Plan calling for protection of natural
26 resources in the Banning Ranch planning area. For example, Land Use Policy 3.4, which was
27 approved by a voter initiative, clearly states that the City shall "[p]rioritize the acquisition of
28 Banning Ranch as an open space amenity for the community and region, consolidating oil

1 operations, enhancing wetland and other habitats, and providing parkland amenities to serve
2 nearby neighborhoods.” By allowing the first step in development of the NBR project, the
3 City’s approvals clearly conflict with this General Plan policy.

4 Environmental Review

5 25. On or about March 18, 2009, the City prepared and circulated a Notice of
6 Preparation (“NOP”) with respect to the NBR project, which included a description of the
7 roadway improvements from West Coast Highway being constructed as a portion of the Sunset
8 Ridge Park project. The draft environmental impact report for the NBR project is being drafted
9 and has not yet been released.

10 26. On or about May 8, 2009, the City prepared an Initial Study for the Project,
11 finding that it may have a significant effect on the environment, including but not limited to
12 potentially significant impacts on aesthetics, air quality, land use and planning, noise, traffic,
13 public services, utilities and service systems, recreation, and cumulative impacts.

14 27. On or about May 8, 2009, the City filed an NOP regarding the Draft
15 Environmental Impact Report for the Project with the State Clearinghouse.

16 28. The Banning Ranch Conservancy submitted comments on the NOP, urging the
17 City to evaluate an alternative for the Park that did not involve construction of a road through
18 the Banning Ranch property and thereby preserving conservation options for the property.

19 29. On or about October 27, 2009, the City circulated a Draft Environmental Impact
20 Report (“DEIR”) for the Project. The environmental consultant the City used to prepare the
21 DEIR is the same environmental consultant preparing the draft EIR for the NBR project.

22 30. Several representatives and consultants of the Banning Ranch Conservancy
23 submitted extensive written comments regarding the inadequacies of the DEIR. These
24 comments noted that the DEIR’s project description was incomplete and unstable because it: (a)
25 failed to include or reference the proposed NBR project, which borders the Sunset Ridge Park
26 and incorporates portions of it, (b) failed to include the provisions of the Access Agreement,
27 which is a necessary component of various Project features, and (c) provided a “shifting”
28 description of the project throughout the DEIR and with respect to the NOP. The Banning

1 Ranch Conservancy also commented that the DEIR failed to adequately analyze or mitigate the
2 Project's significant environmental impacts, including but not limited to impacts on biological
3 resources, traffic, air quality, land use planning, cultural resources, water quality, health and
4 safety, aesthetics, and noise. For example, a professional biologist submitted comments on
5 behalf of the Banning Ranch Conservancy demonstrating that the DEIR grossly underestimated
6 the Project's biological and water quality impacts, including impacts to wetlands, the
7 endangered California Gnatcatcher, the Burrowing Owl, and Cactus Wrens, among other
8 impacts. Petitioner also commented that the DEIR failed to analyze a reasonable range of
9 alternatives to the Project, including alternatives that either (a) did not include an on-site parking
10 lot or access road, or (b) utilized an alternative roadway and/or parking lot configuration with
11 less severe environmental impacts. Additionally, the Banning Ranch Conservancy commented
12 that the DEIR failed to adequately analyze the Project's growth-inducing and cumulative
13 impacts. Finally, Petitioner's representatives informed the City that the Project conflicts with
14 several policies and goals in the General Plan, including those calling for the preservation of
15 Banning Ranch as open space.

16 31. Numerous individual residents of the area and several organizations and
17 government agencies also commented on the inadequate environmental review in the DEIR. To
18 take but one example, the California Department of Transportation ("CalTrans") and numerous
19 others (including Petitioner) commented on their concerns regarding the traffic and other
20 impacts from the Project's planned addition of a signalized intersection on the Pacific Coast
21 Highway. Yet, the DEIR failed to adequately examine or mitigate these impacts, failed to
22 evaluate feasible Project alternatives that would avoid or lessen these impacts, and failed to
23 disclose to the public that jurisdiction regarding the signal's approval and conditions would
24 likely change from CalTrans to the City as a result of AB 344.

25 32. On or about March 12, 2010, the City released a Final Environmental Impact
26 Report ("FEIR") for the Project.

27 33. The Banning Ranch Conservancy submitted comments on the FEIR, noting that
28 the FEIR did not adequately respond to or correct the inadequacies of the DEIR that were

1 identified by the Petitioner and others during the review process. Petitioner also commented
2 that because the FEIR included significant new information regarding changes in the Project and
3 Project impacts and mitigation, it should have been recirculated for public review.

4 Project Approval and Subsequent City Actions

5 34. On or about March 23, 2010, the City Council held a public hearing regarding the
6 Project. Representatives of the Banning Ranch Conservancy attended the public hearing and
7 objected to the Project.

8 35. At the hearing, the City Council adopted two resolutions (Resolution Nos. 2010-
9 29 and 2010-30). Resolution No. 2010-29 provides for the certification of the Final EIR (SCH
10 No. 2009051036), the making of findings and determinations thereto, and the approval of a
11 Mitigation Monitoring and Reporting Program for the Sunset Ridge Park. Resolution No. 2010-
12 30 provides for the adoption of a Statement of Overriding Considerations and the approval of
13 the Conceptual Site Plan for the Sunset Ridge Park.

14 36. Further, at the hearing on or about March 23, 2010, the City purported to approve
15 an Access Agreement with Real Parties in Interest Newport Banning Ranch, LLC; Aera Energy,
16 LLC; and Cherokee Newport Beach, LLC, which Agreement provides, *inter alia*, for the City's
17 access to the Newport Banning Ranch property in connection with Project components on that
18 property, including construction of a road and parking lot, hauling and dumping of dirt, and
19 mitigation of impacts from the road and park construction. The Access Agreement also
20 provides for Newport Banning Ranch LLC's use of the access road, at no charge, for their
21 proposed development project and obligates the City to install a traffic signal to serve such
22 development, if CalTrans approves the signal. However, the EIR does not adequately analyze
23 these components or mitigate the environmental impacts of the Access Agreement, and the City
24 failed to circulate the Access Agreement for public review before, or even during, the hearing.
25 Therefore, the public was not given an adequate opportunity to raise objections to it either orally
26 or in writing prior to the approval of the Project.

27 37. The City filed its Notice of Determination for the Project on or about March 24,
28 2010.

38. On or about April 13, 2010, the City Council held a public hearing at which it considered a letter submitted by the Banning Ranch Conservancy, as well as oral comments by representatives of the Banning Ranch Conservancy, that the City Council's March 23, 2010 approval of the Access Agreement violated the Brown Act. The City Council unanimously decided to reconsider the Access Agreement at its April 27, 2010 City Council meeting, which will occur subsequent to the filing of this action. While the legal status of the Access Agreement may be clarified at the April 27, 2010 City Council meeting, at the present time the legal status is uncertain. Thus, Petitioner includes its challenge to the March 23, 2010 approval of the Access Agreement as part of the present action in order to preserve its rights.

FIRST CAUSE OF ACTION

(Violations of CEQA)

39. Petitioner hereby realleges and incorporates paragraphs 1 through 38, inclusive.

40. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including, but not limited to, the requirement to analyze the project's potentially significant environment impacts. The EIR must provide sufficient environmental analysis such that the decisionmakers can intelligently consider environmental consequences when acting on the proposed project. Additionally, the EIR must analyze feasible mitigation measures and a reasonable range of alternatives to the project.

41. CEQA also mandates that the lead agency adopt feasible and enforceable mitigation measures that would reduce or avoid any of a project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars the lead agency from approving a project if a feasible alternative is available that would meet the project's objectives while avoiding or reducing its significant environmental impacts.

42. CEQA further mandates that a lead agency may approve a project that would have significant, unavoidable environmental impacts only if the agency finds that the project's benefits would outweigh its unavoidable impacts.

1 43. CEQA requires that an agency's findings for the approval of a project be (a)
2 supported by substantial evidence in the administrative record, and (b) provide an explanation of
3 how the record evidence supports the conclusions the agency has reached.

4 44. Respondents violated CEQA by certifying an EIR for the Project that is inadequate
5 and fails to comply with the requirements of CEQA and the CEQA Guidelines. Among other
6 defects, the EIR:

7 a. Improperly segmented environmental review of the Sunset Ridge Park
8 project from review of the proposed NBR project, even though the roadway improvements being
9 constructed as part of the Project were designed expressly to accommodate the proposed
10 development on Banning Ranch. By chopping the project into smaller segments, the City failed
11 to consider, and thereby minimized, the full range of environmental impacts from the entire
12 project.

13 b. Relied on an incomplete and unstable description of the Project by failing
14 to include a description of the proposed development for the Banning Ranch property and the
15 provisions of the Access Agreement with the Newport Banning Ranch property owners, and by
16 providing a shifting description of the Project's components;

17 c. Failed to adequately disclose or analyze the Project's significant impacts on
18 the environment, including, but not limited to, the Project's impacts related to biological
19 resources, transportation and circulation, air quality, noise, land use planning, cultural resources,
20 water quality, parks and recreation, hazardous materials and safety, and aesthetics;

21 d. Failed to identify, analyze, or adopt feasible and enforceable mitigation
22 measures to reduce or avoid the impacts of the Project, including, but not limited to, feasible
23 measures proposed to reduce land use, traffic, air quality, aesthetic, health and safety, noise, and
24 biological resources impacts;

25 e. Failed to adequately disclose, analyze, or mitigate the Project's significant
26 growth-inducing impacts, primarily, but not exclusively, by ignoring the fact that the Project
27 will facilitate and induce growth on the Banning Ranch property, resulting in severe
28 environmental impacts, and that such immediate growth would almost certainly stimulate further

1 economic activity in this previously undeveloped area, thus spurring further growth and
2 environmental impacts;

3 f. Failed to adequately disclose, analyze, or mitigate the Project's significant
4 cumulative impacts;

5 g. Failed to adequately consider a reasonable range of alternatives, including
6 alternatives provided by the Banning Ranch Conservancy; and

7 h. Improperly deferred mitigation measures and analysis of Project impacts,
8 including, but not limited to, the mitigation and analysis of biological, traffic, and air and water
9 quality impacts.

10 45. Respondents also violated CEQA by failing to adequately respond to comments on
11 the EIR, including, but not limited to, ignoring or dismissing in a cursory fashion requests for
12 additional information and suggestions of feasible mitigation measures and alternatives for
13 consideration by the City.

14 46. Respondents further violated CEQA by failing to recirculate the EIR after adding
15 (a) significant new information regarding changes in the Project, including, but not limited to,
16 the provisions of the Access Agreement, and (b) significant new information regarding the
17 Project's impacts and mitigation, including, but not limited to, air quality, biological resources,
18 health and safety, and water quality impacts and mitigation measures.

19 47. Respondents violated CEQA by adopting findings and a statement of overriding
20 considerations that are inadequate as a matter of law in that they are not supported by substantial
21 evidence in the record. For example, the City's assertions that the Project would be compatible
22 with the preservation of Banning Ranch as open space and that the Project's traffic signal and
23 roadway improvements are necessary for park uses are not supported by substantial evidence in
24 the record.

25 48. Respondents further violated CEQA by adopting findings that do not provide the
26 reasoning, or analytic route, from facts to conclusions as required by law. For example, the City
27 concluded in rote fashion that many feasible mitigation measures and alternatives with less
28 severe environmental impacts will not meet the Project objectives.

49. As a result of the foregoing defects, Respondents prejudicially abused their discretion by approving the Sunset Ridge Park project, certifying an EIR, making findings, and taking related actions that do not comply with the requirements of CEQA. As such, Respondents' approval of the Project must be set aside.

SECOND CAUSE OF ACTION

(Violations of State Planning and Zoning Law)

50. Petitioner hereby realleges and incorporates the allegations set forth in paragraphs 1 through 49, inclusive.

51. Government Code section 65300 requires the legislative body of each city and county to adopt a general plan for the physical development of the city or county, and any land outside its boundaries that bears relation to its planning. The general plan serves as a charter for future development to which all other land use decisions must conform.

52. The general plan must contain a statement of development policies, one or more diagrams, and text setting forth objectives, principles, standards, and plan proposals. In addition, the plan must include seven mandatory elements: land use, circulation, housing, conservation, open space, noise and safety. The minimum requirements for each element are specified in Government Code section 65302. Government Code section 65300.5 requires the general plan and the elements and parts thereof to comprise an integrated, internally consistent and compatible statement of policies.

53. Under state and local law, decisions of the City affecting land use and development, including but not limited to approvals of public works projects, must be consistent with the general plan. See, e.g., Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, 1182-86; Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 998.

54. Numerous goals, policies, and statements in the City's General Plan not only call generally for protection of the environment and natural resources in the City and its sphere of influence, but also specifically provide for the protection of the Banning Ranch area. The

1 following goals, policies and statements from the General Plan are particularly relevant to the
2 Project:

3 a) Policy LU 3.4: Prioritize the acquisition of Banning Ranch as an open space
4 amenity for the community and region, consolidating oil operations, enhancing wetland and
5 other habitats, and providing parkland amenities to serve nearby neighborhoods. . . .

6 b) Land Use Element, Banning Ranch "Policy Overview": The General Plan
7 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and
8 region. Oil operations would be consolidated, wetlands restored, nature education and
9 interpretative facilities provided, and an active park developed containing playfields and other
10 facilities to serve residents of adjoining neighborhoods. . . .

11 c) Goal LU 6.3 regarding Banning Ranch: Preferably a protected open space
12 amenity, with restored wetlands and habitat areas, as well as active community parklands to
13 serve adjoining neighborhoods.

14 d) Policy LU 6.3.1 regarding Primary Land Use for Banning Ranch: Open space,
15 including significant active community parklands that serve adjoining residential neighborhoods
16 if the site is acquired through public funding.

17 e) Policy LU 6.3.2: Support active pursuit of the acquisition of Banning Ranch as
18 permanent open space, which may be accomplished through the issuance of state bonds,
19 environmental mitigation fees, private fundraising, developer dedication, and similar techniques.

20 55. Additional related General Plan policies and goals calling for the protection of
21 natural, scenic, and environmental resources are implicated by the Project, including, *inter alia*:
22 Policies LU 1.3, LU 1.6, LU 3.7, LU 5.6.4, LU 6.5.3, NR 3.20, NR 10.4-10.6, NR 20.4, and HB
23 8.20; and Goals LU 3 and NR 10.

24 56. The Project as approved is inconsistent with the City's General Plan, including,
25 but not limited to, the goals, policies, and statements listed above. Specifically, because the
26 Project provides the first step in the development of the Banning Ranch property and will cause
27 severe environmental impacts in a sensitive and scenic coastal area, the Project is inconsistent
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1 with the General Plan's provisions for the protection of Banning Ranch as open space, and the
2 protection of environment and natural and scenic resources generally.

3 57. Respondents' approval of the Project was thus arbitrary and capricious and a
4 prejudicial abuse of discretion. Because Respondents did not proceed in the manner required by
5 law and their decision was not supported by substantial evidence, the approval of the Project
6 should be set aside.

7 PRAYER FOR RELIEF

8 WHEREFORE, Petitioner prays for judgment as follows:

9 1. For alternative and peremptory writs of mandate directing Respondents to vacate
10 and set aside the approval of the Project, including the adoption of the Conceptual Site Plan for
11 the Sunset Ridge Park; the certification of the EIR; the making of findings and determinations
12 thereto; the approval of a Mitigation Monitoring and Reporting Program; the adoption of a
13 Statement of Overriding Considerations; and the approval of a related Access Agreement;

14 2. For alternative and peremptory writs of mandate directing Respondents to comply
15 with CEQA, the CEQA Guidelines, and State Planning and Zoning Law, and to take any other
16 action as required by Public Resources Code section 21168.9;

17 3. For a temporary stay, temporary restraining order, and preliminary and permanent
18 injunctions restraining Respondents and Real Parties in Interest and their respective agents,
19 servants, and employees, and all others acting in concert with Respondents or Real Parties in
20 Interest on their behalf, from taking any action to implement the Project, pending full
21 compliance with the requirements of CEQA, the CEQA Guidelines, and State Planning and
22 Zoning Law;

23 4. For costs of the suit;

24 5. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
25 other provisions of law; and

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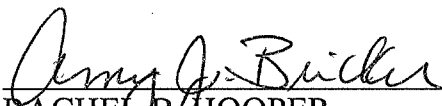
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1 6. For such other and future relief as the Court deems just and proper.

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3 DATED: April 22, 2010

SHUTE, MIHALY & WEINBERGER LLP

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5 By: 
6 RACHEL B. HOOPER
7 AMY J. BRICKER

8 Attorneys for Petitioner Banning Ranch Conservancy

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EXHIBIT A

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
AMANDA R. GARCIA
* SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

AMY J. BRICKER
BRICKER@SMWLAW.COM
(415) 552-7272 EXT. 236

April 21, 2010

Via Facsimile and U.S. Mail

Mayor Curry and Members of the City Council
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

Re: Banning Ranch Conservancy v. City of Newport Beach, et al.

Dear Mayor Curry and Members of the City Council:

This letter is to notify you that the Banning Ranch Conservancy will file suit against the City of Newport Beach and City of Newport Beach City Council (collectively "City") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in the City's March 23, 2010 decision to approve the Sunset Ridge Park project, including approval of: 1) Resolution No. 2010-29, certifying the Final Environmental Impact Report (SCH No. 2009051036), making of findings and determinations thereto, and approving a Mitigation Monitoring and Reporting Program for the Sunset Ridge Park; 2) Resolution No. 2010-30, adopting a Statement of Overriding Considerations and approving the Conceptual Site Plan for the Sunset Ridge Park; and 3) an Access Agreement Between the City of Newport Beach and Newport Banning Ranch, LLC Regarding Sunset Ridge Park. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,
SHUTE, MIHALY & WEINBERGER LLP


Amy J. Bricker

cc: Leilani I. Brown, City Clerk
Leonie Mulvihill, Acting City Attorney

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DECLARATION OF SERVICE

Banning Ranch Conservancy v. City of Newport Beach, et al.
Orange County Superior Court

I am a citizen of the United States, over the age of 18 years, and am not a party to the above-entitled action. I am employed in the City and County of San Francisco, California, with the law firm of Shute, Mihaly & Weinberger LLP ("firm"), located at 396 Hayes Street, San Francisco, California 94102. On this date, I served the following document(s):

Letter to Mayor Curry and Members of the City Council, City of Newport Beach
re: Notice of Intent to Sue Pursuant to Public Resources Code Section 21167.5

on the parties identified below in the following manner:

By First Class Mail. I am familiar with the firm's practice for collecting and processing correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service on the same day such correspondence is collected. I placed true and correct copies of the document(s) listed above in sealed envelope(s) addressed as shown below and affixed with first-class postage. I caused such envelope(s) to be collected for mailing in accordance with the firm's ordinary business practice.

By Facsimile. I caused the document(s) listed above to be transmitted via facsimile from (415) 552-5816 to the office of each addressee at the appropriate facsimile number shown below. The transmission was reported as complete and without error. A true and correct copy of the transmission report, which was properly issued by the transmitting machine, is attached hereto.

Mayor Curry and Members of the City Council Leonie Mulvihill, Acting City Attorney City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92658 Fax: 949-644-3039	Leilani I. Brown Office of the City Clerk P.O. Box 1768 Newport Beach, CA 92658 Fax: 949-644-3039
--	---

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on April 21, 2010 at San Francisco, California.



Natalia Thurston

**** Transmit Confirmation Report ****

P.1
SHUTE MIHALY WEINBERGE Fax:415-552-5816

Apr 21 2010 11:47am

Name/Fax No.	Mode	Start	Time	Page	Result	Note
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SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

306 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

FAX COVER SHEET

Date Sent: April 21, 2010

Client: 149

Number of Pages: 2
(including cover sheet)

Sent By: met

Original to Follow: Via U.S. Mail

Time Sent: 11:40 am

TO:

Mayor Curry and Members of the City Council, City of Newport Beach Fax: 949-644-3039

FROM:

Amy J. Bricker

Phone: (415) 552-7272 Ext: 236
Fax: (415) 552-5816

MESSAGE:

Attached: Correspondence from attorney Amy J. Bricker re: *Banning Ranch Conservancy v. City of Newport Beach, et al.*

P:\BRC\Sunset\met003 (fax cover sheet to City).doc

The attached fax may contain confidential information that is intended only for the recipient(s) identified above. Unless you are an individual named hereon (or authorized to receive the attached file for such an individual), you may not read, copy, use or distribute it. If you have received this communication in error, please advise Shute, Mihaly & Weinberger LLP immediately by telephone at (415) 552-7272 (collect) or by fax at (415) 552-5816 and promptly return it via the U.S. postal service. We will gladly reimburse any costs you incur.

If there are any problems or questions related to this fax, please call our Receptionist at (415) 552-7272

EXHIBIT B

SHUTE, MIHALY & WEINBERGER LLP
ATTORNEYS AT LAW

E. CLEMENT SHUTE, JR.*
MARK I. WEINBERGER (1946-2005)
FRAN M. LAYTON
RACHEL B. HOOPER
ELLEN J. GARBER
TAMARA S. GALANTER
ANDREW W. SCHWARTZ
ELLISON FOLK
RICHARD S. TAYLOR
WILLIAM J. WHITE
ROBERT S. PERLMUTTER
OSA L. WOLFF
MATTHEW D. ZINN
CATHERINE C. ENGBERG
AMY J. BRICKER
GABRIEL M.B. ROSS
DEBORAH L. KEETH
WINTER KING
AMANDA R. GARCIA
*SENIOR COUNSEL

396 HAYES STREET
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 552-7272
FACSIMILE: (415) 552-5816
WWW.SMWLAW.COM

HEATHER M. MINNER
ERIN B. CHALMERS
KRISTIN B. BURFORD
MARY J. REICHERT
BRIANNA R. FAIRBANKS

LAUREL L. IMPETT, AICP
CARMEN J. BORG, AICP
URBAN PLANNERS

AMY J. BRICKER
BRICKER@SMWLAW.COM
(415) 552-7272 EXT. 236

April 22, 2010

Via U.S. Mail

Edmund G. Brown
Attorney General's Office California
Department of Justice
1300 "I" Street
Sacramento, CA 95814

Re: Banning Ranch Conservancy v. City of Newport Beach, et al.

Dear Attorney General Brown:

Enclosed please find a copy of the Petition for Writ of Mandate in the above-captioned action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

Enclosure

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