



January 10, 2014

Mr. Karl Schwing
California Coastal Commission
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302

**Re: Coastal Development Permit Application 5-13-032
("Application")
Newport Banning Ranch ("Project")**

Dear Mr. Schwing:

Please let this letter and response package serve as our reply to Coastal Commission Staff's Notice of Incomplete Application (NOIA) Letter dated December 6, 2013. We have now nearly reached the one-year mark for this pending CDP application.

The Coastal Development Permit application was filed on February 1, 2013. Since then the NBR Project Team has worked with CCC Staff to have the Application deemed complete:

- NBR Filed CDP Application – February 1, 2013
- CCC Staff Response – March 1, 2013
- NBR Response to CCC Staff February 1, 2013 letter – May 17, 2013
- CCC Staff Response – June 14, 2013
- NBR Response – July 3, 2013
- CCC Staff Response – August 7, 2013
- NBR Letter to CCC Staff requesting a meeting – August 21, 2013
- Meeting with CCC Staff – August 29, 2013
- Meeting with CCC Staff – October 3, 2013
- NBR Response to CCC Staff – November 8, 2013
- CCC Staff response – December 6, 2013
- Meeting with CCC Energy Staff – December 11, 2013

Coastal Development Permit Application 5-13-032 Newport Banning Ranch

A tremendous amount of work has been put in by both NBR and CCC representatives. NBR has responded to requests for additional information, made modifications and submitted alternative plans in connection with our application and continued to meet with and work with a number of CCC Staff members on issues. We believe the proper level of information and a path to move forward exists, and our application is complete.

As noted in our previous responses, the majority of the Threshold Issues pertain to the 1973 Exemption. NBR is aware that you are continuing separate discussions with WNOC, the current oil operator, regarding this matter. As we have stated before, and reiterate now, CCC Staff should separate out the questions that it has regarding the Exemption, and the CDP application should be evaluated independent of final resolution of CCC Staff issues concerning the 1973 Exemption.

Purpose of this Correspondence:

1. Provide further response/clarification to questions related to resolving the “Threshold Issues” that should enable Coastal Commission Staff to deem complete the Newport Banning Ranch CDP Application.
2. Address those remaining issues in Section II, recognizing the potential for obvious overlap from the identified Threshold Issues. As with prior correspondence to you, we first identify your comment, followed by our response.
3. Request a meeting with CCC Staff, including staff biologist Jonna Engel, to review the biological constraints map included in this response, HCCMP and discuss vegetation mapping questions. In order to assist Staff deeming the application complete, NBR believes this meeting would be most beneficial if it occurs within the next three weeks.
4. Provide clarification and exhibits related to biological constraints as previously discussed in the “Narrowed Interpretation Impact Analysis” in the NBR November 8, 2013 letter. The first three exhibits listed below are provided for informational purposes only as the abandonment process is covered by the 1973 Exemption. In an effort to be responsive we have included these documents. The balance of the exhibits are provided for Coastal Analysis to determine to impacts associated with the Project. The HCCMP mitigates all impacts associated with the required abandonment process and Project. Below is a detailed description of what is included.

Exhibits:

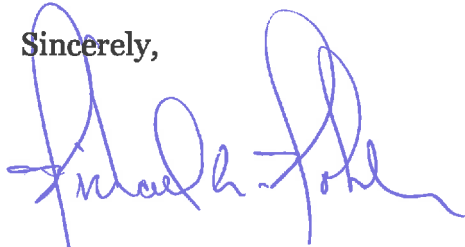
- All Constraints – All Special Status Birds
 - The exhibit reflects all the jurisdictional delineations for riparian areas and wetlands, scrub, disturbed scrub, native grasslands that have been historically maintained, rare plant species, seasonal features and special status birds

- Constraints Setbacks
 - Uses the Constraints map above and illustrates 50' buffers from riparian areas, wetlands, scrub and seasonal features occupied by San Diego fairy shrimp
- Constraints Oil Field Abandonment and Soil Remediation Area
 - Uses the All Constraints – All Special Status Birds exhibit referenced above, and overlays the oil field abandonment and site remediation footprint to graphically illustrate the impacts to vegetation associated with the abandonment process
 - The majority of the impacts created by the abandonment process on the Upper Mesa occur within the historic footprint of the oil operation, fragmented and isolated patches of scrub, and historically maintained grassland areas
 - The HCCMP mitigates for all impacts related to the abandonment process
- Constraints After Oil Field Abandonment and Soil Remediation
 - Reflects the remaining constraints on the site once a comprehensive abandonment process has been completed
 - This exhibit reflects the baseline from which Project impacts should be analyzed
- Constraints CCC Alternative #2 Project Impacts after Oil Field Abandonment and Soil Remediation
 - Uses the map above and overlays CCC Alternative #2 Project footprint to graphically illustrate the impacts to vegetation associated with the project
 - The majority of the impacts to scrub created by the Project on the Upper Mesa occur in very fragmented and isolated areas, and historically maintained grassland areas
 - The HCCMP mitigates for all impacts related to CCC Alternative #2 Project
- Pending Map: Protected, Enhanced and Established Vegetation Communities After HCCMP Implementation
 - This map graphically illustrates riparian areas and wetlands, scrub, disturbed scrub, native grasslands, rare plant species and seasonal features that will be protected in place, enhanced or established by implementation of the HCCMP
 - The vegetation communities noted above, totaling 257 acres (64% of the property), are proposed to be
 - Permanently protected
 - Maintained in perpetuity at no cost to the general public
 - Accessible via a network of trails

Coastal Development Permit Application 5-13-032
Newport Banning Ranch

With the responses provided in this letter, we respectfully request that you agree to move forward immediately with consideration of our application as complete.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Mohler", with a stylized flourish at the end.

Michael A. Mohler
Newport Banning Ranch LLC

ATTACHMENTS

Constraints Exhibits – PRINTED

- All Constraints – All Special Status Birds
- Constraints Setbacks
- Constraints Oil Field Abandonment and Soil Remediation Area
- Constraints After Oil Field Abandonment and Soil Remediation
- Constraints CCC Alternative #2 Project Impacts after Oil Field Abandonment and Soil Remediation
- Pending Map: Protected, Enhanced and Established Vegetation Communities After HCCMP Implementation

Attachments

1. Habitat Conservation and Conceptual Mitigation Plan - **PRINTED**
2. 2001 RWQCB Cleanup and Abatement
3. 2001 Environmental Assessment
4. Letter from City of Newport Beach
5. Adjacent Uses and Densities
6. Coastal Act Consistency Analysis
7. USFWS Medak Correspondence
8. Lighting Specifications
9. Bluff Edge Delineations – **PRINTED**
10. City of Newport Beach Approvals
11. Chain of Title
12. Newport Banning Land Trust Letter and Memorandum of Understanding
13. TDM
14. Summary of the General Plan Public Participation Process

I. THRESHOLD ISSUES

1. Number of Wells.

As noted in our previous responses, the majority of the Threshold Issues pertain to the 1973 Exemption. NBR is aware that you are continuing separate discussions with WNOC, the current oil operator, regarding this matter. As we have stated before, and reiterate now, CCC Staff should separate out the questions that it has regarding the Exemption, and the CDP application should be evaluated independent of final resolution of CCC Staff issues concerning the 1973 Exemption.

2. Exemption expiration.

See response under I. Threshold Issues, 1. Number of Wells.

3. Remediation.

See response under I. Threshold Issues, 1. Number of Wells.

The Exemption specifically states that **the abandonment of wells (which in Section 12a includes associated surface facilities) and removal of surface equipment and pipelines is exempted and must be conducted per state and local agency requirements.**

These state and local agencies require environmental testing and remediation in the abandonment process ("Abandonment Process"), thus it is also an exempted activity. The state agency, DOGGR, whose oversight and expertise is the oil operations and not remediation standards, does not outline specific standards for cleanup and instead refers to other state and local agencies that have authority and expertise. The local agencies, who require remediation of an abandonment operation, are the Regional Water Quality Control Board (RWQCB) and Orange County Health Care Agency (OCHCA).

A comprehensive oil field Abandonment Process includes the removal of pipelines, facilities, infrastructure, roads, debris, sumps, associated oil wastes, historic soil impacts and imported structural materials. The goal of the Abandonment Process is to properly plug all wells and remove all vestiges of the oil operations from the surface and near surface soils to reduce associated environmental impacts and inconveniences to the urban neighbors.

Additionally, the cleanup and closure processes of the RWQCB and the OCHCA require third party, state certified confirmation testing and serve as the official approval that all oil operations equipment, infrastructure and impacts have been removed and remediated.

Coastal Development Permit Application 5-13-032 Newport Banning Ranch

The nearby Huntington Beach/Bolsa Chica oil field was issued an exemption at the same time as the 1973 [NBR] Exemption. We understand the CCC Energy Staff took the position on that project that “cleaning up historic oil impacts during the abandonment process (a pipeline in that case) was an exempted and expected activity.”

For reference, the NBR HCCMP has been included in this submittal (Attachment 1). While the oil field Abandonment Process is an exempt activity, other state and federal agencies have jurisdiction over the impacts created by the process. The HCCMP delineates those impacts and any measures required to mitigate those impacts.

For informational purposes and as indicated in our November 8, 2013 response, NBR has included a biological constraints map (see attached Constraints Exhibits) and exhibit with the oil field abandonment process footprint overlaid on the biological constraints map (see attached Constraints Exhibits).

As requested in your December 6, 2013 letter, we are providing further additional information regarding questions posed by CCC Staff in the August 7, 2013 letter, please see below:

Q1: Is the remediation included in the application, if not, why not, and is there any certainty that the remediation would be undertaken with all appropriate approvals in place?

The abandonment of the oil operations of the NBR oil field is covered by a 1973 California Coastal Zone Conservation Commission Exemption (now the California Coastal Commission) which states that the removal of surface equipment and pipelines is exempted and must be conducted per state and local agency requirements. This stipulation, in the list of exempted activities, that the abandonments be conducted per state and local agency requirements intended that any abandonment requirements by those agencies would also be exempted activities so that the process would be completed as one single project. The state and local agencies, specifically the Regional Water Quality Control Board (RWQCB) and the Orange County Health Care Agency (OCHCA) require environmental testing and remediation as part of a comprehensive oil field closure and Abandonment Process, thus it is part of the exempted abandonment. These agencies are the appropriate oversight agencies for the abandonment and their approval of the RAP and final closure constitute completion of the abandonment process. .

Q2: Copies of the 2001 Regional Water Quality Control Board (RWQCB) document referenced.

The 2001 RWQCB Cleanup and Abatement (CAO) document stipulates a remedial action cleanup criteria be used for oil field abandonment and remediation (Attachment 2). The cleanup criteria detailed in the attached is the current remediation standard.

Coastal Development Permit Application 5-13-032 Newport Banning Ranch

Q3: Letters and/or approvals from the respective agencies, including DOGGR, on the remediation standards which must be met.

While DOGGR does not select remediation standards, they do require the abandonment work to be completed in compliance with other state and local agency oversight. RWQCB has set out remediation standards as part of the 2001 CAO. These are the current standards. The draft RAP outlines the process to obtain formal ratification of those remediation criteria with both the RWQCB and the OCHCA as a condition of Project approval. Ultimately a site closure or, “no further action,” sign-off from these agencies documents the conclusion of a properly executed Abandonment Process.

Q4: A written analysis with evidence detailing the type of remediation required (see June 4, 2013 letter for further detail)

The 2001 Environmental Assessment (EA) was a comprehensive Phase II investigation of the site that included an analysis of the nature and extent of impacts and the areas where remediation would likely be required. A 2008 Phase I ESA updated site details but found no significant changes to the historical impact levels. The August 2009 Draft Remedial Action Plan outlined the type of remediation methods that would be appropriate for the site. These documents have been previously forwarded to CCC Staff for review as part of the initial submittal in February 2013 – they are included as part of the Project EIR – please see Appendix D of the EIR for the Phase I and Draft Remedial Action Plan, the EA is included with this response (Attachment 3).

Q5: Further detail on the level of contamination on the site...it is not clear how the applicant determined these areas require remediation... the level of contamination...the extent. The submitted documentation further expresses that remediation in excess of what is described may be required based upon further testing. Therefore there is not sufficient information....

The referenced 2001 EA report has been forwarded to CCC Staff for review. It fully outlines the extensive site testing, how the impacted areas were determined, the levels of impacts found and the aerial extent. Though the 2001 EA was a thorough and comprehensive testing of the site, the statement that “remediation in excess of what is described may be required” is a standard acknowledgment that during remediation the boundaries of each area may be larger than originally estimated as not every square-foot of the site can be tested in the assessment. During remediation, as defined above and overseen by RWQCB and OCHCA, third-party monitoring, independent lab testing and related documentation establishes the ultimate footprint limits of the Abandonment Process.

Q6: What is the potential harm to habitat from the existing contamination and what is the potential harm to habitat from required and recommend remediation? This information is necessary to determine whether the proposed project would avoid impacts to sensitive habitats where possible and whether it constitutes the least environmentally damaging alternative.

Coastal Development Permit Application 5-13-032 Newport Banning Ranch

For reference, the NBR HCCMP was previously submitted on November 8, 2013 and has been included in this submittal. While the oil field Abandonment Process is an exempt activity, other state and federal agencies have jurisdiction over the impacts created by the process. The HCCMP delineates those impacts and any measures required to mitigate those impacts.

For informational purposes and as indicated in our November 8, 2013 response, NBR has included a biological constraints map (see attached Constraints Exhibits) and exhibit with the oil field abandonment process footprint overlaid on the biological constraints map (see attached Constraints Exhibits).

The Abandonment Process is a regulated and required step, not a recommendation.

Q7: A revised graphic depiction of impacts to establish what the temporary and permanent impacts to habitat are from the proposed development.

Included is a map of the development footprint overlaid on the biological constraints map (see attached Constraints Exhibits).

Q8: Further explanation on the feasibility of alternatives to the planned remediation.

Alternative in-situ methods, which are often used in non-urban areas where the impacts tend to include lighter oils at greater depths below surface, were reviewed and deemed not appropriate for this site. These methods are not appropriate at NBR due to the shallow depths of impacts and the mid and heavier components of those impacts. In-situ methods could also present safety concerns at such shallow depths. Examples of the alternative methods include:

- In-situ heat and steam methods
- In-situ vapor recovery or air sparging
- In-situ bioremediation
- Phytoremediation

The excavation and bioremediation of surface and near surface soils (generally to 10 feet below surface) has been used extensively and successfully at other oil field abandonment projects, notably at the nearby Huntington Beach/Bolsa Chica oil field. The overarching goals of the bioremediation process are:

- Use natural and indigenous bacteria to assist with the degradation and cleanup of hydrocarbon impacted soils to achieve concentration levels mandated by the RAP.
- Clean, recycle and reuse as much of the soils and materials onsite as possible to reduce offsite hauling, traffic congestion and backfilling of remediation sites with non-native soils as possible.

Coastal Development Permit Application 5-13-032 Newport Banning Ranch

- Onsite remediation and reuse reduces truck traffic, related air quality emission impacts, related safety incident concerns, impacts to regional land fill capacity, and dust impacts.
- Use onsite clean soils for backfill of the surface and near surface remediation excavation areas, and use remediated soils to replace clean soil borrow areas below 10 feet.

Offsite disposal and treatment methods were reviewed and dismissed primarily due to the required truck hauling traffic. The Environmental Assessment (EA) of the property indicated that up to 271,000 cubic yards of soil and materials require some level of remediation. Any alternative that required these materials to be hauled offsite would entail a massive amount of truck traffic and the associated additional air emissions that would be deemed unacceptable by the nearby communities and local and regional agencies. A summary of the magnitude of truck traffic includes:

- 27,100 truck trips out of the property to haul materials off
 - This would require 7 trucks an hour exiting the property, 56 trucks each day, and require two years of continuous traffic
- A minimum of 16,300 truck trips back in to the property would be required to backfill the excavations to return them to safe level sites
 - An additional 4 trucks per hour, 32 per day would run for two years.

Combined, the offsite disposal/treatment hauling traffic and backfill import truck traffic, in this already urban area, would require continuous operations for two to three years and would generate intense opposition when a more environmentally friendly and acceptable onsite method was readily available.

4. Consolidation.

Based on the progress in our recent meetings it appears that this issue too is unrelated to the NBR CDP application. The Project can be considered independent of a lengthy examination of the history of consolidation activities. Much like the third-party mitigation areas, this is not part of the CDP application for the Project.

For clarification: as previously stated, “Consolidation Areas” are really “remainder oil operations areas” (after cleanup of the balance of the NBR property) and that “consolidation” has occurred in the past and will continue to occur for the life of the oil field. The proposed Project would accelerate this process and allow the site to be open to the public in the near term with considerable public amenities as opposed to some undefined time in the future while continued oil operations occur with no incentive to clean up the property and no assurance that the site would be open to the public or improved.

5. Vegetation and Fuel Modification.

This is not part of the NBR Project. See response under I. Threshold Issues, 1. Number of Wells.

The information NBR received from CCC Staff in your December 6, 2013 regarding maintenance practices has been forwarded to West Newport Oil Company.

6. LUP/LCP Planning.

The majority of the Project site is within the jurisdiction of the County of Orange, and a smaller portion of the site is under the jurisdiction of the City of Newport Beach. Because of this highly unusual situation, neither jurisdiction has prepared or intends to prepare a LCP or LUP for the property. Enclosed with this response are letters from the County of Orange (in process) and City of Newport Beach (Attachment 5) indicating that an LCP or LUP will not be prepared for this site.

CCC Staff questions whether the type, location and intensity of development are appropriate for the surrounding area; whether the proposed land uses are compatible with the surrounding land uses and consistent with the Coastal Act and priorities established by the Coastal Act. The City of Newport Beach considered the appropriateness of the land uses as well as the compatibility of the proposed project with surrounding land uses in the certified Environmental Impact Report ("EIR") prepared for the Newport Banning Ranch project.

CCC Staff is referred to the land use compatibility analysis in the EIR. The proposed land uses on the Newport Banning Ranch project are consistent with the City's General Plan land use designations for this property. (Although the majority of the project site is not within the City's jurisdiction, it is within the City's land use planning sphere of influence and therefore the City has the ability and authority to adopt land uses and zoning for the property.) An analysis of the project's consistency with Coastal Act policies was also included in the EIR.

With respect to CCC Staff's question regarding whether adequate area in the project has been reserved for higher priority uses, the project emphasizes the three high priority uses in the Coastal Act. The majority of acreage of the project site is devoted to public access, open space and visitor-serving uses.

First, and of highest priority in the Coastal Act itself, is public access. Currently the property is a private, oil field that is fenced and for which no public access is provided. The project will identify two areas in the current operating oil field for future operations and the remainder of the property will be open to the public and public access provided. Public access

components include new streets, new trails, new public parks (active and passive) and public parking. The project includes visitor serving uses, such as commercial uses and a coastal inn.

The second high priority land use in the project is resource protection. Over half of the acreage of the project site alternatives submitted in prior NBR responses to Coastal letters, will be designated open space, and habitat will be protected and restored.

Although not as high of a priority as public access and resource protection, the project also provides for the continuation of energy production consistent with Coastal Act Section 30260 and 30262. The oil production activities being conducted on the project site are a coastal-dependent use, and no disruption of the oil and gas production activities will result from project implementation.

- 1) Are the type, location, and intensity of development appropriate for the surrounding area?

As part of this response, an exhibit of adjacent uses and densities has been prepared (Attachment 6). The exhibit shows that the proposed Project and adjacent uses are compatible. Examples of this include, the creation of a nature preserve and open space area that will provide ultimately for over 1,000 acres of public native open space, public parks adjacent to educational facilities and residential adjacent to existing residential – all in place of an existing oil field/industrial use. The Project drives this solution.

- 2) Are the proposed land uses compatible with the surrounding land uses?

See above response.

- 3) Are the proposed land uses consistent with the Coastal Act?

The Applicant is aware that the Chapter 3 policies of the Coastal Act will be applied to the application (see above response). The Project was planned with Chapter 3 in mind, the prior response to the CCC includes a listing of examples how the Project is in compliance with Chapter 3. These include:

- Protection and enhancement of public access to the coast and enhancement of shoreline and upland recreation areas in the Coastal Zone.
- Restored and protected wetland and ESHA habitat on the site that will provide enhanced and contiguous habitat contributions to the broader Santa Ana River ecosystem, and will ensure that

the critical wildlife movement corridors supporting several special-status species within the coastal zone have sufficient areas of high-quality habitat necessary for species survival restored and protected in perpetuity.

- Restoration and conservation of habitat with improved ecological function and value.
- Designation of more than 252 acres of the Project site as a Natural Open Space Preserve, including wetland restoration/water quality areas, interpretive trails, habitat restoration and preservation areas, providing educational opportunities for individuals utilizing the Project's trail system.
- Protected and enhanced water quality of stormwater runoff and for both onsite and adjacent receiving waters.
- New Coastal Access by connecting the NBR site and inland areas to the Coast via public roadway extensions of 15th, 16th and 17th Streets through the Project site to West Coast Highway.
- Development of a number of new coastal trails (with the potential opportunity to designate certain segments as a portion of the California Coastal Trail) and a variety of parklands, which would maximize public access and recreation opportunities in the Project area for both residents and visitors with diverse backgrounds, interests, ages, and abilities.
- Development of a number of support facilities throughout the site to support access to and use of trails and parklands, where limited support facilities are currently available, including public parking, trailhead improvements, interpretive amenities, trash receptacles, restrooms, and picnic areas.
- Greatly enhanced public access through the construction of a pedestrian and bicycle bridge that would span West Coast Highway that would provide north-south access to the site and the Pacific Ocean without having to cross West Coast Highway at the street level, and would encourage walking and bicycling to and from the beach.

- 4) Are the proposed land uses, and the areas allocated to each use, consistent with the priorities established by the Coastal Act?

See above response and previously provided Coastal Act Consistency Analysis, included again with this response (Attachment 7).

- 5) Has adequate area within the potential developable area been reserved for higher priority uses? What portion of proposed commercial development will be primarily visitor serving?

This does not go to the completeness of the application.

A currently developed, 401-acre, 70+ year old oil field will be restricted to 17 acres, and the balance abandoned, remediated and opened to the public, creating coastal access, more than 300 acres of open space, linkages to over 1000 acres of adjacent parks and open space, over 7 miles of trails, a bridge linking to the beach, public parking and view corridors.

The proposed commercial will serve visitors to the site, open spaces and parks, as well as beach goers. Additionally, there will be opportunities within the resort for overnight stays and associated goods and services for visitors to the area.

II. OTHER ISSUES

A. ALTERNATIVES

Alternatives with reduced project densities were analyzed in the City's EIR which was submitted as part of the CDP application. Alternatives that do not provide access from West Coast Highway were determined to be infeasible because they would conflict with the City's General Plan Circulation Element and County Master Plan of Arterial Highways that provide for a connection that accesses and traverses the Banning Ranch property from West Coast Highway to Newport Blvd

B. BIOLOGY

The oil consolidation/remainder areas are not new areas of oil operation – they are in fact existing oil operation areas within the current oil field which will remain once a reuse plan for the remainder of the Banning Ranch oil field is implemented. These areas are part of the existing oil field operations; they are not a component of the Project. Notwithstanding their location, they are currently used for oil operations and will continue to be used for oil operations in the future.

1. HCCMP.

The HCCMP was analyzed using CCC Alternative Project 2 and mitigates for all impacts, including those related to oil field abandonment and remediation.

Included in this response is a complete file and print-out of the HCCMP.

2. Vernal Pool Sampling.

Wet season surveys are being conducted now and commenced after the first rain event of the 2013 – 2014 season. Our biological consultant is in receipt of CCC Staff comments.

3. Vegetation Mapping.

The vegetation mapping was conducted by professional biologists with extensive experience in the Coastal Zone. It is their professional judgment that in many cases, bare dirt was an ADDITIONAL factor in determining if an area is “disturbed,” and in other cases bare dirt was THE factor in determining if an area is “disturbed.” Please see the previously submitted Vegetation Reports.

There have been three vegetation surveys, including one by DUDEK, conducted on site since 2009. Each of these surveys reaches similar conclusions regarding areas of disturbed categories of vegetation. Surveys since the early 90s have also used “disturbed” as a category of vegetation and relate to similar polygons on the site, however not the same exact locations, as the site is an operating oil field and site conditions change.

The areas noted as “disturbed,” regardless of their inclusion of native species, do not provide for better habitat value, as the nature of the disturbance is that they are maintained frequently, as part of the ongoing oil operations, making the differentiation between simply being “disturbed,” or “disturbed native” irrelevant.

Areas on the site are identified for the occurrence of cactus species. Individual stands of isolated and fragmented cactus below the minimum mapping size have not been mapped because of their isolation and fragmentation from other similar habitats. It is more than uncommon to map individual plants that are not listed species. Moreover, individual stands of cactus do not constitute patches or habitats of coast prickly pear scrub.

4. Gnatcatcher Survey.

We are aware of your request for a “new protocol gnatcatcher survey...” The protocol for CAGN surveys states that The Protocol should be followed for all surveys unless otherwise authorized by the USFWS in writing. The survey that has been submitted, as you indicate, was specifically requested by Christine Medak of the USFWS. In correspondence with Ms. Medak, (Attachment 8), she outlines the methods developed in coordination with USFWS to specifically identify the number of gnatcatcher pairs on the site. We were directed to perform modified surveys as has been requested for similar projects where known largish populations of CAGN are known to occur and location or pair number precision is required for analysis and avoidance purposes (e.g., Montebello Hills (2005, 2007, 2008), Chevron West Coyote Hills (2009), South Orange County Wastewater Authority (2011), and this project (2013)). **USFWS has determined that these methods are more precise than the official survey protocol which is intended to determine presence or absence only.**

The survey submitted provides a better data-set than what a protocol survey would, and as such, the application is complete for this topic.

5. Burrowing Owl.

We are conducting a wintering survey.

As we have stated previously, our prior response does clearly indicate that wintering habitat is necessary for the survival of migratory bird species, please note that we draw a distinction in that response with wintering habitat for burrowing owl given: 1) the variable migratory behavior of the species, in which some individuals migrate away from their breeding habitat in winter while others remain in the same area year-round, 2) there have been a number of years since 2001 where wintering burrowing owls were not present onsite, and 2) burrowing owls have demonstrated behavioral plasticity in their migratory patterns, in which they choose to migrate some years but not others. Burrowing owls have not been observed during the various breeding season surveys conducted in 2008, 2009, 2010 and 2012. In addition, there is no evidence that burrowing owl occur year-round on site as a significant number of other surveys have been conducted during the breeding season and burrowing owl has never been observed anecdotally during the surveys. Further, all burrowing owls, from the Mississippi River to Pacific Ocean, from Canada to Mexico are considered to be part of the same population – migrating not only between seasons and years, but even within the same season.

For these reasons, our response indicates that distinct wintering habitat may be less important for the burrowing owl than for species that are strictly migratory. CCC Alternative Project #2 is included again in this submittal which expands the proposed Open Space Preserve in upland areas of the site which have the highest documented use for burrowing owl wintering habitat, thereby providing additional wintering habitat on the site. In addition, focused pre-construction surveys in accordance with the 2012 CDFG Staff Guidelines would be required as part of the Project, with buffering and relocation requirements implemented during construction for any positive findings.

6. Field Lighting

This matter is noted that it may be a topic of further discussion in the CCC Staff recommendation on the CDP. Until an ESHA determination has been made on the site it is premature to prepare a lighting analysis. This issue does not go to the completeness of the application.

It should also be noted, (and as has been included in previous responses), that the proposed lighting referenced in the question pertains to the ball field lighting proposed for the North Community Park where improved

ball fields are proposed to be located. In addition to the light control visors described in the previous responses, 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. Included herein are sample specifications and analysis for field lighting (Attachment 9).

7. Mitigation Banking.

COMPLETE

8. Wildlife Mobility.

COMPLETE

9. Pacific Pocket Mouse Survey.

COMPLETE

10. Known Biological Surveys.

COMPLETE

11. Roadways.

Working drawings for the roadways and bridge are a post-CDP action. The bridge will be a clear span of the arroyo and will have abutments on either side. The abutments and required remedial grading will be designed to ensure no impact to delineated jurisdictional wetlands and sensitive native plant species. Regarding the three areas of fill referred to, it does not appear that it goes to the completeness of the application. Further, our team would like to reiterate our willingness to discuss these types of issues with CCC Staff.

12. Storm Water Detention.

The water quality basin in the lowlands has impacts to wetlands. NBR believes the benefits associated with the water quality basin outweigh the impacts associated with the basin construction. Any impacts created by the water quality basin will be mitigated for within the project boundaries. At this time, an ESHA determination has not been made by the Commission, and it is premature to predict ESHA impacts as a result of this water quality basin. The project team looks forward to discussion the water quality basin, the benefits and possible alternatives.

With respects to specific Coastal Act Section consistency, please see below:

Section 30231

The water quality basin is consistent with this Section. The water discharged from this basin will be “cleaner” than when it entered, and as it enters coastal waters and wetlands the quality will improve over what is occurring today. Additionally, the basin will control runoff and prevent depletion of ground water supplies.

Section 30233

The Project is consistent with this Section in that it will mitigate for any impacts, thus enhancing and expanding wetlands on the site.

Section 30236

This Section does not apply to the Project as no alterations to rivers or streams are being made.

13. Fuel Modification Areas.

Nothing to report.

C. GEOLOGY

1. Bluff edge delineation.

- a) be based on a topographic map of existing conditions on the site, rather than proposed conditions
- b) with legible elevations and symbols,
- c) be at a suitable scale for evaluation
- d) show the bluff edge and bluff top setback

The bluff edge exhibits have been revised as requested. We also carefully monitored the reprographic process to assure that the elevations and topographic lines are legible. As a reminder, we are available to meet at the site to review the bluff edge condition.

(Attachment 10).

2. Bluff Retreat Rate.

The bluff retreat rate submitted previously was established based on the professional judgment of the geotechnical engineer. The higher bluff retreat rates that currently and in the past have existed are a result of a number of factors, including erosion and damaged by oil field activities over the past seven decades (e.g., pipelines, oil by-products, overtopping, etc.), resulting in a higher bluff retreat rate. Most importantly, the historic bluff retreat rates determined from the analysis are heavily influenced by

conditions which are either no longer present (i.e. Santa Ana River Flooding) or will be mitigated as part of the Project (uncontrolled run-off from oil field activities). This is especially true for the upper portions of the rate range. Thus, the lower end of the range represents the best, and yet still conservative (i.e. it still contains the effects of conditions that will not be present), estimate of bluff retreat going forward.

As previously stated, the site's bluffs are not typical coastal bluffs with erosive wave forces at the toe.

a) effects of sea level rise and storm surges

It is important to recognize the conservative assumptions and limitations of the 2009 Pacific Institute sea level rise study used to project future sea level rise and storm inundation. The digital terrain model was based on smoothed or averaged surface elevations from raw elevation data and did not accurately depict breaks in elevation that occur at vertical separations such as cliffs, walls or berms. In addition, the analysis did not account for any levees, flap gates, or other structures that would significantly influence inundation areas under existing or proposed conditions.

Examples of these study limitations are clearly demonstrated within the project boundary. The Pacific Institute's sea level rise map shows the baseline 100-year flood inundation at elevation 10' which as noted in the Commission's response letter, would show inundation at the base of the bluffs under existing condition. This analysis does not account for the more accurate terrain, berms and structural features that control storm flows and inundation areas. Under a more detailed study (and previously reported in the EIR technical appendix), the maximum inundation level for the 100-year storm under existing conditions is elevation 6.9'. This is more than 3' feet lower than the Pacific Institute Study and inundation levels do not come close to the existing base of the bluffs. This is confirmed by the most current FEMA FIRM Map (2009) which shows even lower levels of flooding/inundation than the project specific study inundation level of 6.9'.

Based on this revised and more accurate baseline elevation, the project location has the ability to incur future projected sea level rise and storm inundation with minimal threat to the existing base of the slopes and no significant impact is expected.

b) demonstrate that anticipated sea level rise and storm surge levels will not require the construction of protective devices to protect the bluff

In the previous response it was stated that to add a safety factor in regards to sea level rise and storm surge levels that armoring of the slope toe with rip rap could be used to mitigate any bluff retreat accelerated by toe-of-slope erosion. This was ONLY recommended should sea level rise EXCEED that postulated by the climate change model. At this point, given the economic life of the project and the predicted sea level rise, it is not possible to predict solutions to problems that are not expected to occur.

Additionally, the bluff toe will not be impacted even under climate change model predications and the fact that the Santa Ana River has been channelized, the bluffs are essentially inland bluffs which happen to lie in the coastal zone. Consequently, typical coastal bluff failure mechanisms such as “Block failure of overhanging bluffs and sea caves” as discussed in Johnsson, 2005 are not applicable.

- c) does not rely on grading of the bluff or other landform alteration

Please see response under 3. Alteration of Natural Landforms. The project does not rely on grading the bluff or other landform alternation.

- d) incorporates a bluff retreat rate based on the average rate of erosion, rather than the minimum

As previously state, the only applicable bluff retreat mechanism is the “more gradual, or grain-by-grain erosion” described in Johnsson, 2005. As discussed by Johnsson, this was evaluated by reviewing historical air photos and by overlaying historic topographic contours to determine past rates. It is the best and only rationale approach that can be used for the bluffs at this site. Further, the elimination of pipelines and the proposed bluff restoration will result in reducing short and long term erosion.

Regarding, the stability of the proposed parks and trails, there are not setback criteria established as there is for structures. It is expected that the maintenance entity will maintain the trail and park features throughout the lifetime of the project to optimize access and use.

With respects to the amount of erosion over the economic life of the proposed development, the professional opinion of the geotechnical engineer is that the proposed improvements a) will not be threatened; b) there would not be a need for sufficient room to relocate the improvements; and c) the bluff erosion will not result in a hazardous condition for the public using these improvements. Upon issuance of a CDP for the Project a Special Condition could be created that requires further bluff retreat analysis once the Project footprint is known.

3. Alteration of Natural Landforms.

The landforms proposed to be altered have been eroded and damaged by oil field activities over the past seven decades (e.g., pipelines, oil by-products, overtopping, etc.), resulting in portions of the bluff being unnaturally degraded. The Project proposes a “surgical” bluff restoration program to repair these areas. Stabilization of the degraded bluff will significantly reduce sedimentation and related water quality impacts to adjacent receiving waters. This would be in compliance with Section 30251 of the Coastal Act by enhancing the visual quality in degraded areas, thus, restoring the views of this area and creating visual compatibility with the surrounding areas. If CCC Staff objects to limited bluff restoration, the grading can be adjusted accordingly without impacting the setback lines. This issue does not go to the completeness of the application and upon the application being deemed complete the NBR team is available for further discussions on this topic.

Thirty-percent (30%) grading plans are premature at this stage in the process without a CCC approved project footprint. A Special Condition should be created that requires thirty-percent (30%) grading plans prior to the issuance of a CDP.

D. DEVELOPMENT

1. Project Heights.

This matter does not go to completeness of the application.

In review of the City’s LUP and consultation with city staff, the statement that residential heights are to be no greater than 28’ is not correct. This is not a policy, rather the context of certain areas in the Coastal Zone, see 4.4.2-1 of the City’s CLUP.

It must be noted that adjacent residential in the Coastal Zone to the Project site is NOT located in the 28’ height limit area and has varying building heights, some in excess of 35’. Additionally, there are other examples of residential heights in excess of 50’ in the Coastal Zone in Newport Beach, including the former “Santa Barbara Condo” project in Newport Center – approved by the Coastal Commission in 2007.

2. Pedestrian Bridge.

Detailed plans and engineering studies have not been prepared for the pedestrian bridge. The pedestrian bridge as proposed will clear span West Coast Highway (approximately 30’ above the highway). Due to the long span, a steel truss or steel arch bridge are the most feasible. There are not

feasible alternatives that will avoid a structure, landing or trail within the bluff face on the Project side of West Coast Highway (“WCH”). The bridge provides additional coastal access from an inland property, linkages to a larger trail and open space network on the inland side of West Coast Highway, and would establish a way for pedestrians and bicyclists to cross WCH without interfacing with vehicular traffic.

The bridge will be conveyed to the City of Newport Beach after construction, as detailed in the City’s Project approval – previously submitted with the initial NBR CDP Application.

3. Takings Information.

CCC Staff requests the applicant to complete and submit the Takings Form that requests the applicant to provide information as to when the property was purchased, the purchase price, the fair market value of the property, changes to the property since the time of purchase, and any development restrictions, such as easements or restrictive covenants, as well as other information listed in the Commission’s Takings Form. CCC Staff has indicated that this information is needed in order to deem the application complete and to allow the Commission staff and Commission to assess whether its action may violate Coastal Act Section 30010.

The Applicant previously responded to CCC Staff’s request for this information by noting that whether a governmental regulatory decision results in a takings that must be compensated pursuant to the Fifth Amendment of the U.S. Constitution are constitutional determinations under takings jurisprudence. The Coastal Commission has no jurisdiction to make constitutional adjudications, nor to force applicants to submit information in support of such an adjudication. The weighing and balancing of constitutional determinations is beyond the Commission’s authority. “[T]he Commission is authorized to make and enforce rules and decides whether to grant permits. It is not an adjudicatory body authorized to decide issues of constitutional magnitude.” *Healing v. California Coastal Commission* (1994) 22 Cal.App.4th 1158, 1178.

We have reviewed CCC Staff reports cited by staff in its Notice of Incomplete Application. We note that in each situation the staff concluded that the denial of the requested permits did not result in an unconstitutional takings. Given the analysis in each of the referenced staff reports, we do not believe that the Applicant’s submittal of the Takings Form application would in any way change the analysis that CCC Staff applied in both of the cited reports in finding that the denial of a permit does not constitute a taking, and therefore, we do not believe that the information requested is necessary for the Commission staff to (1) conduct an analysis of the permit; or to (2) conduct a takings analysis of any potential denial of the permit.

First, applying the standard articulated in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, the Commission staff concluded that in both situations there was no “categorical” taking, in that the Commission’s action – even those that denied the requested permits – did not result in a denial of all economically viable use of the property, and that the property was rendered “valueless.” Given that the property is the site of oil extraction activities, we would assume that the Commission staff would conclude similarly – that even if the requested CDP were denied, the denial would not result in a “categorical” taking. Secondly, in both of the cited staff reports, the Commission staff further determined that the denial of the requested CDPs did not result in an “ad hoc” taking applying the rule articulated in *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, in which the Commission examines the reasonable investment-backed expectations of the applicant, the economic impact of the denial of a permit, and the character of the Commission’s action.

Given the CCC Staff’s questions, we assume that the last component of the Penn Central test can be addressed without the applicant completing the Takings Form, as similar to the staff’s finding in A-3-SCO-08-029. CCC Staff appears to assert that should the Commission deny the Newport Banning Ranch CDP, it would be doing so in order to promote important policies that protect coastal resources.

With respect to the other two criteria, the property contains no development restrictions, such as restrictive covenants or open space easements that would have informed the applicant of any limitations on the ability to develop the property. The property has not changed in size and in use – but as discussed elsewhere – has been operating continuously as an oil field since the 1940s, and none of the property has been sold.

Finally, the Applicant has neither solicited nor received any offers to purchase the property; however, the City’s General Plan identifies acquisition of the property as an option and an appraisal was prepared in connection with the City’s implementation of its General Plan. No offers were received by the City for acquisition of the site.

We also note that the both the staff reports referenced by CCC Staff concluded that even with the denial of the requested permits, in order for the applicant/landowner to establish a takings, the government must have made a final determination – and in both cases the CCC Staff determined that despite the denial, because the applicant can resubmit, the takings claim is not “ripe” and even if the claim were “ripe,” the Commission’s denial does not constitute a taking under the Penn Central analysis.

In conclusion, for the reasons set forth in the referenced staff reports, we do not believe that completion of the Takings Form will provide any

information not already in the possession of the Commission staff to conduct a takings analysis and to apply the same logic and reasoning applied in both of the cited cases to reach the conclusion that denial of a permit does not result in an unconstitutional takings.

4. Development Agreement.

The applicant understands that staff may recommend denial of the development agreement, but does not wish to withdraw it at this time. Depending upon the nature of the changes that staff intends to propose, the development agreement may or may not be inconsistent with the staff recommendation. For this reason, we believe that the more appropriate course would be to keep the development agreement as part of the application, and make the determination whether to keep it as part of the application at such time staff makes its recommendation and the Commission concludes its deliberation of the staff recommendation on the CDP and decide whether to withdraw the development agreement prior to the Commission vote as permitted by Commission regulation, 14 CCR § 13071.

5. Other Agency Approvals:

All other agency approvals are detailed in the HCCMP.

Caltrans and OCTA will issue separate approvals related to the Project after the issuance of a CDP. These include an amendment to the Orange County Master Plan of Arterial Highways, and a subsequent encroachment permit after the receipt of a CDP for the pedestrian bridge.

Please see responses 1 through 5 under I. Threshold Issues. The information requested on these permits pertains to exempted oil activities.

Any other permits or approvals were detailed in our May 17, 2013 response letter.

6. Co-Applicant Invitation.

No development will occur on land owned by private property owners. Further, no additional city approvals are required for off-site improvements. For reference copies of the City approvals on this topic have been included (Attachment 11).

7. Chain of title.

The most recent chain of title has been provided with this response (Attachment 12). No subsequent subdivisions have occurred.

8. Parking.

All proposed residential on the Project site includes two parking spaces per unit.

9. Infiltration.

The geotechnical report and the Preliminary WQMP identify restrictions to infiltration due to the presence of underlying bedrock within the development footprint on the mesa. The introduction of water into the soil structure would result in “perched” water on top of the bedrock and would eventually seep towards the bluff face and cause local slope instability and increased erosion. Therefore, implementation of regional water quality BMPs that collect and consolidate storm water to specific areas for treatment will be designed to restrict infiltration to avoid seepage and perched water conditions. This design requirement to restrict infiltration for the regional water quality BMPs applies to the entire project footprint on the mesa.

However, when evaluating infiltration at the lot by lot scale, all lots will include the use of site design features and hydrologic source control (HSC) measures will promote incidental infiltration by directing from impervious areas such as walkways to pervious areas such as landscaping and turf. Enhanced sub-drain systems will likely be required for lots closest to the bluff face to reduce the potential for subsurface water seepage related to site design features and HSCs. See additional details below on implementation of HSCs and effects on long term average annual runoff reduction.

All lots will include hydrologic source control (HSC) measures to provide additional water quality treatment and runoff control. HSC measures are a class of LID BMPs integrated with site design that retain storm water runoff and reduce the volume and rate of storm water discharge to the downstream system. They are recognized in the County of Orange 2011 Model WQMP and accompanying Technical Guidance Document as a tool to reduce the volume of runoff that would result from a drainage area with a given imperviousness compared to what would result if the HSCs were not used. HSCs are differentiated from retention and biotreatment classes of LID BMPs by their higher level of integration with a site. They are not sized according to engineering design criteria, and they do not typically result in a distinct facility. Consequently, they are usually regarded as site design practices, as opposed to structural treatment control BMPs. Examples of HSCs planned for the project lots include localized on-lot shallow infiltration, impervious area dispersion, street trees, and residential rain barrels (optional).

The overall contribution of HSCs is quantified in terms of inches of the design capture storm depth (d_{HSC}) and the percentage of average annual runoff volume that is reduced. This can then be deducted from the sizing criteria for downstream BMPs. For the Newport Banning Ranch Project, the 85th percentile storm event is 0.7" and all regional downstream BMPs are sized in accordance with the 0.7" treatment criteria. When an HSC is incorporated upstream of the downstream regional BMP, it can treat a portion of the 0.7" requirement and theoretically the downstream BMP can be downsized by the same amount. For the NBR project, the use of upstream HSCs will not be used to downsize the downstream BMPs, but will be used to enhance and provide treatment and runoff reduction **above** the accepted requirements.

For example, a common HSC that will be used within the NBR project is HSC-2: Impervious Area Dispersion. This HSC refers to the practice of routing runoff from impervious areas, such as rooftops, walkways, and patios onto the surface of adjacent pervious or landscaping areas. Per the TGD criteria, the amount of volume retained by HSC-2 is a function of the ratio of impervious to pervious area. For example, if 350 sf of patio surface is directed towards a 500 sf turf area, the pervious to impervious ratio is 1.4. Using the criteria, this represents a d_{HSC} of 0.7 inches which is equivalent to the 85th percentile storm. Under this scenario, the 350 impervious patio surface is thus adequately treated for both water quality and runoff reduction, and could be removed from the impervious surface calculations for sizing downstream BMPs. However, as stated previously, HSCs will be used to enhance water quality treatment and not for the purpose of reducing downstream BMP sizes.

The NBR project includes low density residential, visitor resort residential, medium density residential and mixed use residential land use types. The use of HSCs and their effectiveness differs with each residential type. A summary of the proposed HSCs per residential lot and their combined benefit to water quality/runoff reduction are provided in the table below. A variety of HSCs will be incorporated as a treatment train approach, with initial runoff being directed to the HSC features for primary treatment/runoff control prior to draining to the proposed downstream regional BMPs.

**Coastal Development Permit Application 5-13-032
Newport Banning Ranch**

Hydrologic Source Control Feature Summary						
Residential Lot Type	Hydrologic Source Control Features					
	HSC-1: On-lot Infiltration	HSC-2: Impervious Areas Dispersion	HSC-3: Street Trees	HSC-4: Rain Barrels (Optional)	Minimum HSC Treatment Train Total (Rain Barrel not included)	Capture Efficiency by HSC's (Long Term Average Runoff Reduced)
Low-Density	10 cf/1000 sf Impervious Areas / dhsc = 0.10"	0.5 Pervious/Impervious Ratio / dhsc = 0.25"	Perennial Canopy 5% / .001	55 Gallon Barrel (1) / dhsc = 0.07"	0.36"	50%
Visitor Resort Residential	10 cf/1000 sf Impervious Areas / dhsc = 0.10"	0.5 Pervious/Impervious Ratio / dhsc = 0.25"	Perennial Canopy 10% / .01	55 Gallon Barrel (1) / dhsc = 0.07"	0.35"	50%
Medium Density	5 cf/1000 sf Impervious Areas / dhsc = 0.05"	0.35 Pervious/Impervious Ratio / dhsc = 0.18"	Perennial Canopy 5% / .001	55 Gallon Barrel (1) / dhsc = 0.07"	0.23"	40%
Mixed Use	5 cf/1000 sf Impervious Areas / dhsc = 0.05"	0.35 Pervious/Impervious Ratio / dhsc = 0.18"	Perennial Canopy 5% / .001	55 Gallon Barrel (1) / dhsc = 0.07"	0.23"	40%

In summary, the use of HSC's in the form of a treatment train approach will have a significant influence on runoff reduction measures at the lot by lot approach. On average, 40% to 50% of the long term average annual runoff will be reduced through the use of HSC's. Coupled with the downstream regional BMPs sized for the full 85th percentile (assuming no HSC upstream reductions), the sizing of both the large-scale and lot-scale water quality measures are appropriate for the anticipated amount of runoff for the project.

Additional design information in relation to infiltration and water quality will be provided once the application is deemed complete and an alternative development footprint is further analyzed.

10. Dedication of Preserve Areas.

Please see letter and Memorandum of Understanding from Newport Banning Land Trust (Attachment 13).

11. Archaeology.

- A. The cultural resources map has been revised. As revised, impacts to ORA-906 by the construction of North Bluff Road would be avoided.
- B. Under Alternative 2, the Project will avoid impacts to the three archaeological sites because they are in areas proposed for open space.
- C. Please see responses under I. Threshold Issues, not a part of this application and covered under the 1973 Exemption.
- D. As noted above, Alternative 2 would avoid impacts to ORA-906 and therefore an ARP would not be required for consideration of the proposed Banning Ranch CDP.
- E. The comments received from Dr. Mikel Hogan were addressed in NBR's May, 2013 response. They are provided below for your convenience:

The comments from Professor Hogan – a cultural anthropologist in the Department of Human Services (not Anthropology) – pertain to the adequacy of the City's FEIR cultural resources analysis. Hogan identifies nine concerns regarding the Archaeological Resources Assessment contained at Appendix J of the FEIR. The first eight concerns all pertain to whether the references in the technical report are outdated and whether expansion of the cultural context of archaeological sites in coastal Orange County should have been

included in the technical report. Inclusion of this information would not have altered the findings as to the site boundaries, or the sites' remaining integrity, or their significance. Hogan's ninth concern pertains to the Native American monitors. As CCC Staff and Hogan are aware, the project site is in an area of overlapping tribal boundaries and both the Juanenos and Gabrielinos have historically inhabited this region. All factions of both tribes were contacted by the City pursuant to SB 18. Given the overlapping use, selection of a monitor from the Juanenos was appropriate.

12. Trails.

Based on the Watershed Assessment Report (previously provided) the 100 year storm is accommodated within the wetland areas that are intersected by the existing oil road network (proposed trail system). As a result, portions of the trail system will be impacted by runoff during rainfall events but will be passable shortly after the storm passes. With regards to sea level rise, the Pacific Institute's Sea Level Rise Map indicates that the lowland area could be inundated. Assuming the postulated sea level rise occurs, it will be infeasible for the proposed trail system to remain in place, it is speculative at best to determine if this would occur during the economic life of the project. The Newport Banning Land Trust, charged with oversight of the open space areas, would have the authority to adjust the trail locations when financially feasible and as permissible by the resource agencies within existing open space areas on higher ground.

13. TDM.

This does not go the completeness of the application. We are in the process of having discussions and meetings with OCTA on this matter.

A conceptual TDM has been prepared (Attachment 15). The initial conclusions are:

Access to the regional bicycle network and the popularity of telecommuting has the potential to reduce vehicle trips by approximately 122 in the a.m. peak hour and 193 in the p.m. peak hour, which is 13.5 percent of the vehicle trip generation. It is not recommended that residential parking requirements be reduced. A separate TDM plan, specific to the final design for the Urban Colony, will be prepared after NOI approval by the Coastal Commission, consistent with City requirements and may recommend reduced parking requirements within the Urban Colony.

Specific information regarding bus stop locations is not available because OCTA planning will not be completed until after NOI

approval by the Coastal Commission. It is possible that ridership levels will be a constraint limiting bus service through Newport Banning Ranch. Newport Banning Ranch remains committed to providing necessary bus stops and/or shelters if OCTA plans to reroute bus service through Newport Banning Ranch.

14. Proposed Commercial Uses.

The commercial uses were determined for the site as part of the City's General Plan Update Process. Attached is a document submitted by the City with the LUP that details this process, *Summary of the General Plan Public Participation Process* (Attachment 16). This process included multiple committees made up of elected and appointed officials, city staff, community leaders, homeowner groups and property owners.

Additionally, see the discussion above under Item 13. TDM.

Additionally, the Project proposes trails, bike and pedestrian linkages/lanes, as well as a design layout that encourages getting people out of their cars. The neighborhood commercial, as well as open spaces, parks and existing neighboring uses – shops, community center, and schools will also compliment this.

15. Public Comments.

As we have previously indicated in prior responses, we are in receipt of the public comments on the application. It was our understanding that, based on the results of prior meeting discussions that occurred with CCC Staff and the NBR Project Team, no response to the public comment letters received on the application materials is required for purposes of reviewing the application materials for completeness, and that the Project Team will be available to prepare and provide responses as determined necessary by CCC Staff, during the Project review process.

16. Filing Fees.

Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) is a rating system includes in the U.S. Green Council's consensus based approach to land development of whole neighborhoods. LEED-ND is a collaborative effort between Congress for the New Urbanism (CNU), Natural Resources Defense Council (NRDC) and U.S. Green Building Council with the intent to unite principals of smart growth, new urbanism, and green building to provide a common framework for evaluating and rewarding environmentally-superior neighborhood development practices. There are levels of Certification among all the LEED rating systems ranging from basic Certification to Silver, Gold and finally Platinum level Certification, representing the

highest performing projects. These levels are consistent even in the LEED-ND rating system, in which the Newport Banning Ranch Project is pursuing LEED-Platinum Certification, a level above Gold Certification.

Additionally, it is anticipated that a minimum of two individual buildings within the overall Project will pursue separate and individual LEED for New Construction (LEED-NC) or LEED for Homes Certification (LEED-H). These additional Certifications that will be pursued are why '2' was noted under the Project Registration Form with U.S. Green Building Council as the number of buildings that will be certified. The specific LEED-ND certification process certifies an entire project or neighborhood and therefore the program covers a broader scale (an entire neighborhood) than individual building or space certification such as the other LEED programs, by nature of the program. Part of the requirement for Certification under LEED-ND is for at least one individual home or building achieve Certification under another applicable individual LEED program, but projects can choose to ALSO certify additional individual buildings or homes, which is the case for Newport Banning Ranch. More importantly, it would not be applicable at this stage of the planning process with Newport Banning Ranch to Register and pursue Gold Certification for an individual building under LEED-NC or a residence under LEED-H.

The requirement for fee-reduction is noted as follows:

The California Coastal Commission is now offering a 40% discount on application fees for projects certified by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) at a "Gold" level, or an equivalent Green Building certification.

The entire Newport Banning Ranch property will be a project certified by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) at a minimum "Gold" level, while at this time Platinum level is anticipated.

NBR has provided CCC Staff with a Letter of Credit in the amount of the 40% discount.