

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



February 7, 2014

Michael A. Mohler
Managing Director
Newport Banning Ranch, LLC
1300 Quail Street, Suite 100
Newport Beach, CA 92660

Subject: Notice of Incomplete Application

Coastal Development Permit Application Number 5-13-032
Newport Banning Ranch Site, 5100 Block of West Coast Highway, Newport Beach, Orange County

Project Description: grading, lot splits, clearance of major vegetation, bluff stabilization, fill of wetlands, construction of 1,375 residential units, 75,000 square feet of commercial space, 75 unit resort inn, 52 acres of parkland, a pedestrian bridge, and approval of a development agreement.

Summary of Activities: Application received February 1, 2013. Notices of Incomplete Application (NOIA) have been sent on March 1, 2013, June 14, 2013, August 7, 2013, February 7, 2014, and December 6, 2013. Supplemental letters and materials provided on May 17, 2013, July 8, 2013, November 8, 2013 and January 10, 2014.

Dear Mr. Mohler,

Thank you for sending additional information about your project 5-13-032 on January 10, 2014 as requested by our Coastal Program Analyst John Del Arroz. Mr. Del Arroz transferred to another department in the Coastal Commission and I have been assigned the application for the Newport Banning Ranch site. I understand that there have been several incomplete application notices in the past; I have read through them and all the responses. In addition to requesting the information needed for a complete application, I hope to clarify a few key issues of concern in this letter. As always, please feel free to contact either myself or Karl Schwing with any additional questions or concerns at the number above. For continuity, I have used headings used in previous letters to describe the information we are requesting: the specific information requested is **bolded**.

Given the comments in your letter dated January 10, 2014, it seems necessary to explain the permit application process and the intention and meaning of the term: "incomplete application." Every item requested in the incomplete letters must be submitted prior to the application being deemed complete by staff. Although the application completion process for this particular project has been lengthy, it is absolutely necessary to review all requested documentation before proceeding in order for staff to make a thorough analysis and a thoughtful recommendation of the project to the Commission. In your January 10th letter, several times you mention: "this item does not go to the completeness of our application." We would not have requested the information, and continue to do so, if it was not needed to complete the application.

I. Threshold Issues

We highly recommend that you resolve the outstanding threshold issues before proceeding with the remainder of your application. As has been stated in previous NOIAs, outstanding issues not related to the Threshold Issues and the completeness of the application are inherently based on the pending Threshold Issues and cannot be resolved until the Threshold Issues are resolved.

The questions regarding the permitted and unpermitted wells onsite cannot be resolved separately from this application. The land-use and restoration procedures that may be required of the pending enforcement action and the resulting vegetation, habitat and wildlife onsite of such actions (the baseline condition) will directly impact the footprint and intensity of possible development in the future. We request that NBR LLC, as the landowner, be involved in the discussions with WNOC and CCC enforcement regarding these issues and we feel it is in the best interest of NBR LLC to resolve these issues as they will continue to result in an incomplete application without resolution, as is stated in the recent Notice of Violation.

Please see the NOIA dated December 6, 2013 for the details of the requested information regarding Threshold Issues. In addition the information regarding the enforcement action, please supply the materials below.

1. Consolidation.

Section 13053.4 (a) of the California Coastal Commission Regulations states "*To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept for filing a second application for the development which is the subject of a permit application already pending before the commission.*"

Therefore, before this application can be deemed complete, the pending and/or future development on the "consolidated oil production site" (consolidation area) of the property must be included in this application and is subject to the same requirements as the rest of the property. Development, as defined by Section 30106, includes any of the following activities: paving, grading, moving oil pipelines, constructing roads, installing fences, mowing, vegetation removal, any change in land use intensity (even a reduction) etc. It seems highly likely that any one of these activities constituting development will inevitably take place as a result of the consolidation of the oil operations. **Accordingly, please submit the plans for any proposed development on the consolidation area.** If you insist that no new development will take place in this area, then please confirm this in writing. If new development does, in fact, take place on the site without a prior issued permit, then this would constitute a violation of the Coastal Act and is subject to a notice of violation.

Along those same lines, we have yet to determine if the proposed consolidation area contains permitted wells covered by the original exemption and/or subsequent exemptions. *Even if no new development is proposed for this area*, the existing development within the consolidation area may or may not be permitted and will need to be evaluated in conjunction with the pending enforcement action. If we determine, as a result of the enforcement action, that this area was subject to unpermitted development with the installation of unpermitted wells and/or accessory structures and/or unpermitted vegetation removal, then this site is subject to the same mitigation and restoration efforts as the remainder of the property. **Therefore, please submit plans for existing and, if applicable, proposed development specifically for the consolidation area.** Please work with WNOC and CCC Enforcement staff to determine the scope of the property covered by the exemption(s) and the particular permitted and/or unpermitted development of the consolidation area to determine the site constraints *before* including the proposed development of the consolidation area as a part of your pending application.

In addition, if the existing development is found to be unpermitted and/or if there is new development proposed in the consolidation area, as part of the current application, the consolidation area is subject to the same conditions as the remainder of the property and will need the same supporting documentation such as, all biological surveys performed onsite. **Please submit all related documentation specifically for this area, and submit updated reports including the area.**

2. Vegetation and Fuel Modification Zone.

The Coastal Commission is cognizant of the obligations of property owners to address potential fire hazards on their property and has supported appropriate fuel modification activities conducted on the site consistent with Orange County Fire Authority requirements to address legitimate fire safety concerns in a manner that is most protective of sensitive habitat, limited to the minimum amount and least intrusive methods necessary to abate a fire hazard. Please work with CCC enforcement staff and WNOC to develop appropriate Fuel Modification plans. See our December 6, 2013 NOIA for more details.

3. LUP/LCP Planning.

We understand that the City of Newport Beach and Orange County do not wish to or are unable to perform this land use planning due to certain constraints. Letters from both agencies have been received by staff in regards to this issue. Thank you for submitting the type, location and intensity of development; the compatibility of the proposed land uses with surrounding land uses; and the compatibility of proposed land uses with the Coastal Act. No additional information is requested at this time.

II. Other Issues

As stated earlier, please resolve the Threshold Issues before attending to the following "other issues."

A. Alternatives

Please respond with an alternatives analysis for the development plan that does not include access from West Coast Highway. Staff understands very clearly that this alternative may not be consistent with local plans, however, staff also understands that local plans may be adjusted in light of development projects such as this one. You indicated in the January 10, 2014 response letter that you are expecting an amendment to the Orange County Master Plan of Arterial Highways. If an amendment was needed, this could be perused as part of the request. Note that the alternatives analysis should take into account the constraints onsite and should include the intensity of development appropriate for the site, based on the constraints, not based on the intensity of development *desired* for the proposed development. This concept is what the following questions, asked in the NOIA dated December 6, 2013, attempt to address:

If the roadway access to the site were limited to just one of the projections from 15th, 16th, or 17th streets, what is the maximum amount of development that could occur on the site given circulations and other requirements? In other words, if a roadway from Coast Highway, and/or 19th street is prohibited, and/or access to the site is limited to either 15th, 16th, or 17th streets (and combinations thereof) what is the maximum amount of development that could be accommodated on the site with these constraints? **Please submit alternative plans that do not rely on access from West Coast Highway and North Bluff Road and state what alterations would be required to the project's density. Please respond to the above questions.**

B. Biology

As noted in your last letter, we understand that the site is currently being (or will shortly be) surveyed for the following biological reports: Wintering Owl Habitat and Vernal Pool/Wet Season Surveys (USFWS Protocol). We expect to see these reports when they are complete and consider them necessary to complete the application. Thank you, in advance, for these materials.

As noted earlier in this NOIA letter, **we also need to see updated biological surveys and reports that include the consolidation area.** This area is located directly adjacent to habitat areas, and sensitive species mapped within oil consolidation areas likely utilize habitat directly adjacent to, and outside of the oil consolidation areas. Therefore, please submit updated figures which include biological information for the entirety of the project site.

1. HCCMP. Thank you for sending the HCCMP. We have had our staff biologist Jonna Engel review that plan and she has concluded that because the plan discusses mitigation for impacts to wetlands and ESHA based on the proposed development, and the intensity and/or footprint of the proposed development may change as a result of resolving the Threshold Issues, analysis of the plan is premature. Resolving the Threshold Issues may lead to future studies, surveys and reports that will likely impact the current HCCMP. While we appreciate your effort and the work involved in preparing the HCCMP, we continue to believe that the Commission's review of this document is premature. As stated in our December 6, 2013 NOIA:

The HCCMP discusses mitigation for impacts to wetlands and sensitive habitat based on the existing proposed footprint of the development. This development footprint may be subject to significant changes through the discussion of Threshold Issues, and further analysis of the wetlands, sensitive habitat, and archeological resources on the site. The mitigation ratios, methods of mitigation, and other elements of the plan are also likely to change, as the sensitivity of the various resources on the site are determined.....Further comments on mitigation plans for the subject site will occur throughout the Coastal Development process.

Nothing further is needed for the HCCMP at this point, but may be required at a later date.

2. Vernal Pool Sampling. Thank you for conducting wet season sampling to complete the vernal pool protocol level survey requirements. Unfortunately, southern California has been experiencing lower than normal rainfall the last several years and predictions for this "wet" season are a continuation of below average rainfall. This may prove problematic because wet season vernal pool protocol surveys require a minimum of 3 cm of standing water 24 hours after a storm to conduct sampling. Only when the wet season is over and we receive and review the wet season survey report will we be able to determine whether we have all the information necessary for making vernal pool determinations for the site.

As stated in our December 6, 2013 NOIA, the Commission protects seasonal ponds under section 30233 of the Coastal Act if they meet the Coastal Commission one parameter definition of a wetland. Per our request during our May 2012 site visit, your consulting biologist conducted wetland sampling at all areas on the site that had the potential to support Commission wetlands. While we have reviewed the May 2013 "Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch" submitted to Newport Banning Ranch by Dudek and find that the report is comprehensive and covers the biological information we need to make wetland boundary determinations for the site, we would like to obtain copies of the original field data sheets. **Please send copies of the original hand-written ACOE "Wetland Determination Data Form – Arid West Region" sheets.**

3. Vegetation Mapping. We remain concerned that Dudek's category for "disturbed" vegetation may include areas that should be described as "disturbed native scrub" vegetation. We believe this is the case based on our site visit observations, vegetation type membership rules in MCV21[1], and Dudek's transect data. Rather than continuing to request that the applicant re-analyze the areas defined "disturbed", we will analyze Dudek's transect data and make revision decisions in accordance with the MCV2 membership rules. In addition, we will arrange to visit the respective "disturbed" vegetation category locations to observe current on-the-ground conditions. During our site visit, we will also review the areas identified as "disturbed" to determine if we can discern a threshold value for the

1[1] Sawyer, J.O., T. Keeler-Wolf and J.M. Evens. I. 2009. A Manual of California Vegetation (Second Edition). California Native Plant Society Press. Sacramento, CA. 1300 pgs.

amount of bare ground that relegates an area into the "disturbed" category; and if so, whether we concur with the threshold value for bare ground.

We do not agree with the rationale in the response letter dated January 10, 2014 for not adjusting the vegetation mapping to include stands of prickly pear cactus. Another goal of a site visit will be to observe and map patches of coast prickly pear as we remain concerned that areas of maritime succulent scrub, a rare plant community, may have been overlooked. **We will contact the applicant to schedule a site visit. We request that the Dudek biologists who conducted the vegetation mapping accompany us on the site visit.**

4. California Gnatcatcher Survey. In our March 1, June 14, and December 6, 2013 NOIA we requested that a current protocol gnatcatcher survey be conducted for the site as the last protocol level survey for the site was performed by Bonterra in 2009. In your January 10, 2014 response letter, you state that during correspondence with USFWS biologist Christine Medak she requested a modified gnatcatcher protocol survey be performed in order to better identify pairs and pair locations. We pointed out in our last NOIA that:
...to be effective, the modified protocol survey should occur in January or February when the males are setting up territories and are very noisy. However, the modified protocol surveys took place in April after territories would be expected to have been established and the gnatcatchers would be quieter. More importantly, we requested the protocol surveys, because they are the formal vetted method and in order to compare to the results to the majority of the surveys conducted in the past which have utilized these protocols.

The modified protocol level gnatcatcher survey performed in 2013 identified a total of 10 pairs on the site^{2[2]}. The USFWS has determined that 19 is the average number of pairs the site supports based on data that spans over 20 years. Ten pairs is significantly below the average number for the site. A number of factors are likely involved in this reduction of gnatcatcher pairs but we believe that three years of drought conditions and reduction of critical habitat due to mowing are important contributors. While we continue to believe that a protocol gnatcatcher survey for this year would provide important data and additional insights, given the fact that we are looking at a much lower than average rainfall wet season as well as the fact that we have gnatcatcher survey data that spans over 20 years for the site, we believe we have enough information and data to make a gnatcatcher habitat ESHA determination for the site. Nothing further is required regarding this issue at this time.

5. Burrowing Owl. **We look forward to reviewing the future Wintering Owl Habitat Survey** and consider it necessary to complete the application.
6. Field Lighting. We do not agree that it is premature to prepare a lighting analysis and we feel it is necessary as part of a complete application. **We look forward to reviewing a lighting analysis when it is complete.** If you choose not to submit the required information for the field lighting, then consider removing the proposed ball fields from the CDP application and notify us in writing that it will no longer be included in the application.
7. Mitigation Banking, Wildlife Mobility, Pocket Mouse Survey, Known Biological Surveys. These items need no further attention at this time.

^{2[2]} It is important to note that the modified protocol surveys were not to protocol in that they were performed in April when the modified protocol surveys are designed to occur in January and February.

8. Roadways. Thank you for your analysis of consistency with the Coastal Act, section 30236. **Please provide an alternative plan that does not require the filling of riparian and wetland areas that is less environmentally damaging. Additionally, please submit plans for the proposed bridge over the riparian area.**
9. Storm Water Retention. Thank you for providing the analysis of whether the proposed stormwater detention structures are consistent with Coastal Act. We maintain that installing these features in environmentally sensitive areas is not consistent with the Coastal Act. **Please provide alternative plans for the storm water retention that does not impact these areas and provide the detailed plans requested in the NOIA dated December 6, 2013.**
10. Fuel Modification Areas. **We look forward to reviewing the current fuel modification plans and the proposed plans for the consolidation area**, as stated earlier in this NOIA letter, when they are complete.
11. Constraint Maps. Thank you for submitting the series of Constraints Maps for the site. We expect that the constraints listed will vary significantly after resolving the Threshold Issues. In determining permitted from unpermitted wells, we can determine which wells will require remediation and which will require restoration and mitigation. While the constraint maps attempt to reflect any remaining constraints after the abandonment and restoration have been completed, they significantly under-represent the sensitive species onsite. Our staff biologist, Jonna Engel, will be reviewing all of the biological information submitted by the applicant as well as all past biological information available for the site to make a site-wide ESHA determination. Our ESHA determination will be used to develop a biological constraints map that includes our biologist's buffer recommendations that we believe reflects the sensitive species and habitat onsite and provides the appropriate protection for these sensitive resources.

The "Oilfield Abandonment and Soil Remediation Area" constraints map indicate where soil remediation will take place, in some cases under, through, and within the buffer space of documented sensitive bird species, San Diego Fairy shrimp habitats, and documented sensitive vegetation. **Please provide the plans for the "Abandonment and Soil Remediation" process and explain a) how this footprint of soil remediation is appropriate for the site remediation process and the designated wells; b) and how the plan for remediation meets the requirements of abandonment and soil remediation processes as required by other agencies. What exactly does the soil remediation process entail and can the effects be minimized, or are there alternatives, so as not to remove sensitive vegetation, habitat area, and impact sensitive species on site?**

C. Geology

1. Bluff Edge Delineation. Thank you for submitting the revised bluff edge delineation maps.
2. Bluff Retreat Rate. We understand that the historical conditions of the site may not be typical of future conditions regarding the bluff retreat rate (BRR). In fact, the BRR is likely to increase compared to historical conditions, regardless of use, due to inevitable sea level rise and many other unpredictable factors associated with climate change. For more information on this topic, we can arrange a conversation between the consulting engineer and our engineering staff to discuss the issue. Coastal bluff retreat is temporally episodic due to a variety of external and internal factors. External factors include tides, episodic wave events (spurred by either local or distant storms), episodic rainfall events, El Niño-Southern Oscillation events, major earthquakes, and long-term climate change on a multidecadal to

century scale. Internal factors include the autocyclicality inherent to many bluff failure mechanisms and bluff response to continued toe erosion [3]. The Newport Banning Ranch site is subject to many of these potential events in the future. **Therefore, please provide an updated analysis of the BRR based on the historical average, not the minimum, rate of erosion.**

- a. Effects of Sea Level Rise and Storm Surges on BRR. Note that the effects of sea level rise and storm surges are applicable to the bluffs onsite and the analysis will affect our review of the appropriate setbacks for the proposed development and public improvements. The bluffs onsite are adjacent to the Santa Ana River, channels, and wetlands and are subject to tidal action. **Please address these effects and submit a revised analysis.** Also address in the analysis the items listed in the December 6, 2013 NOIA:
 - b. *Demonstrate that the anticipated sea level rise and storm surges will not require construction of bluff protective devices.*
 - c. *Demonstrate that the anticipated sea level rise and storm surges will not rely on grading and/or landform alteration.*
 3. Alteration of Natural Landform. The proposed plans include alteration of the natural landform, which is addressed in the Coastal Act section 30251. The information requested regarding the grading plans is needed to complete the application. **Please include revised "30% grading plans" showing legible elevations, symbols, clearly marked areas of cut and fill for all areas of grading onsite.** This cannot be requested through a special condition.
- D. Development
1. Project Heights. Because the project is in an area of deferred certification, CCC staff must analyze if the proposed development will be consistent with the visual protection policies of the Coastal Act and the Newport Beach LUP. **Please submit detailed plans showing the height of all existing structures in the surrounding area, overlaid with any current regulation on height limitations.** This will be used to compare the proposed structures with the existing and anticipated future conditions in the community.
 2. Pedestrian Bridge. **Please submit detailed plans and engineering studies for the proposed bridge, if it is still a part of this application. If you choose not to submit the plans at this time, please notify us in writing that you withdraw the Pedestrian Bridge from the current CDP application.**
 3. Takings Information. Thank you for clarifying your position regarding the potential takings of the property, stating in your most recent response letter dated January 10, 2014 "even if the requested CDP were denied, the denial would not result in a 'categorical' taking" because the site is still economically viable with oil extraction activities. No further information is required at this time.
 4. Development Agreement. While we do not agree that the Development Agreement should be included in this application at this time, please note that it may incur significant modifications at a later date.

3[3] Johnsson, Mark J. 2002. Establishing development setbacks from coastal bluffs in *Proceedings, California and the World Ocean*, Magoon, ed., Orville, CA 21 p.

5. Other Agency Approvals. **Please submit local and state agency approvals prior to the completion of the application** as these agencies may require additional changes to the proposed development. We see that these approvals are listed in the HCCMP, however we need actual approvals, not just the acknowledgement that you are aware they are required. If the approvals are still in-process, please provide an anticipated date. See the December 6, 2013 NOIA for more details.
6. Co-Application Invitation. Thank you for clarifying this issue. No approvals for off-site improvements related to the pedestrian bridge have been received. **Please either submit these or withdraw this item from the application**, as stated earlier in this NOIA.

Additionally, as noted in our December 6, 2013 NOIA, because the proposed project requires a Section 404 permit from the Army Corps of Engineers, **you must also submit a federal consistency certification to the Commission for this project.** To date, we have not received this federal consistency certification and this requirement remains unfulfilled. It is our understanding that you may believe that the 1973 Exemption affects your need to submit this federal consistency certification. Federal consistency is, however, a requirement of federal law, not State law, in which applicants for federal agency permits, such as U.S. Army Corps of Engineers permits, must conduct their activities in a manner consistent with the California Coastal Management Program (CCMP). This allows the Commission to authorize federally permitted activities in a way that minimizes impacts to coastal resources and is consistent with the CCMP. The processes established to implement this requirement is called a consistency certification for federal permits and licenses, and no federal permit listed in the CCMP can be issued by the federal agency until either (1) the Commission concurs with a consistency certification prepared by the applicant, (2) the Commission's concurrence is conclusively presumed; or (3) the Secretary of Commerce, on appeal from a Commission objection, overrides the objection. The 1973 Exemption, even if it applied to this proposed development, which it does not, would not obviate the need for Commission concurrence with a consistency certification before the Army Corps could issue a Section 404 permit for your proposed activities.

In order to comply with the federal consistency requirements of the Coastal Zone Management Act, you must provide, in your application to the U.S. Army Corps, a certification of consistency. The certification must include a variety of required elements and must also be submitted to the Commission along with necessary data and information. The supporting information shall include a copy of the federal permit application, a detailed description of the proposal, its associated facilities, its coastal effects, and comprehensive data and information sufficient to support your consistency certification. The consistency certification must also include an evaluation of the consistency of the project and its associated facilities with the enforceable policies of the CCMP, Chapter 3 of the California Coastal Act. The most efficient way for you meet this requirement is to include your consistency certification in your application for a CDP for this project.

7. Chain of Title. Thank you for submitting the updated Chain of Title. We will review the information and may request additional information at a later date. No further information is needed at this time.
8. Parking. Thank you for the clarifications. No further information is needed at this time. See the below discussion regarding the TDM Plan.
9. Infiltration. Thank you for providing the information regarding the proposed infiltration features, the Hydrologic Source Control Features (HSC), and related BMPs. **Please provide preliminary infiltration plans for each type of development showing exactly**

where HSCs would be installed and what types, as requested in the NOIA dated December 6, 2013. For example, HSC "Impervious Areas" could be considered bioswales, permeable pavement, rain gardens, etc. Please indicate which types in the plans. Please also indicate where the rain barrels would be installed. Are they for commercial and residential?

10. Dedication of Preserve Areas. Thank you for submitting the MOU between NBR LLC and the Newport Banning Ranch Land Trust. We understand that NBR LLC will provide the funding necessary for the implementation of the HCCMP, land transfer, and for the long-term maintenance and management of the site after such a time that NBLT will be responsible for these costs. **Please clarify the timeline for the change in funding responsibilities and clarify the projected sources of funding for the required activities. Please clarify whether the transfer will be either fee title or conservation easements.**
11. Archeology. The CDP application does not include a request for approval and implementation of an Archaeological Research Plan (ARP). **Before the Commission can approve development on a site that contains cultural resources, the applicant must obtain a CDP to carry out an ARP.** The goal of the ARP is to determine where development can be allowed that will avoid impacts to archaeological resources and that those resources can be preserved in place. The ARP must be peer reviewed and be subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups. Native American monitor(s) shall also be present during implementation of the ARP. The ARP must also include the preparation and submittal of a final report. The final report would also be subject to the same review and comment of the ARP.

Statements have been made in recent correspondence that an alternative proposal will not impact archaeological resources. However, the EIR distinguishes between impacts caused by the proposed project and impacts caused by removal of oilfield infrastructure. **Please clarify if any development will result in impacts to archaeological resources and what the alternatives are that will avoid impacts.**

12. Trails. Given the changes in Sea Level Rise and your comments confirming if "the postulated sea level rise occurs, it will be infeasible for the proposed trail system to remain in place," **please submit alternative plans showing where the trails would be located landward if they were moved to avoid impacts from sea level rise and/or where the Newport Banning Land Trust would have to relocate them to prevent these impacts.** Please be sure these plans do not impact areas of documented sensitive species. If Newport Banning Land Trust does propose trail and open space maintenance, **will you be submitting long-term land management and maintenance plans for these areas as part of this application? Are these included in the HCCMP?** If not, note that these programs also constitute development and will require a CDP application at a later date. **Additionally, please address the questions listed in the NOIA dated December 6, 2013: How will the rolling easements be designed with the property owner? Is the landward relocation of the trails feasible given the current footprint of proposed development? Will the above plans and measures ensure the trails last for the economic life of the development?**
13. TDM. **We look forward to reviewing the updated, final version of the TDM plan**, which should include: the conceptual conclusions, agreements with OCTA, details regarding the urban colony, and the number of people who will use TDM strategies, what impact the

strategies will have on reducing vehicle trips, and whether the proposed measures will reduce the need for parking for the subject development.

14. Proposed Commercial Uses. Thank you for submitting the information regarding the commercial uses in partnership with the City. **Please be sure that the submitted documentation addresses the reduced number of vehicle trips and presents clear, quantifiable methods for meeting this.** Be sure to include a thorough analysis determining if the proposed amount of commercial and visitor serving commercial uses are appropriate for the amount of residential onsite and in the surrounding areas and how this relates to a reduction in vehicle miles traveled.
15. Public Comments. Staff prefers that comment letter from the public regarding the proposed project are replied to before the completion of the application, as it is possible that the points raised could influence the plans for development. **If you chose not to respond to public comments before the application filing, please explain how you plan to address their concerns and respond to their comments without the intention of changing your proposed plans.** For the most recent list of outstanding public comments, see the NOIA letter dated December 6, 2013. Also note that public opposition to a project can impact Commission decision-making before and during a hearing.
16. Filing Fees. We understand that the project may qualify for LEED platinum when complete. Given the nature of the Commission's discount program for the LEED Certification, at this time **we ask that you submit the entirety of the application fee balance.** Upon submission of the revised registration form showing that the entire project (other than 2 individual buildings) will be LEED certified, or upon actual certification, a refund will be issued.

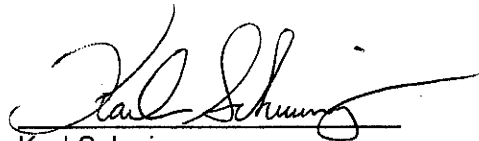
Lastly, we acknowledge there may be challenges to implementation of the proposed development presented by the recent court finding that this development proposal is inconsistent with City of Newport's general plan. Should any further changes to the proposed development result because of the court's finding, please submit these changes and all appropriate documentation as part of the application.

As always, please feel free to submit any information beyond the requested items above. You may submit any information you feel may assist the Commission staff in gaining a clear understanding of the scope of the project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Sincerely,



Amber Dobson
Coastal Program Analyst



Karl Schwing
Coastal Program Manager