

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
2000 Ocean Gate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



June 5, 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: Construct 258 acres of habitat preservation, open space and trails, 32 acres of parks, 11 acres of new road network and 83 acres of mixed use development including: 1,375 residential units, 75,000 square feet of commercial space, 75 unit coastal inn and more than 400 public parking spaces and 17 acres of remaining oil production on an existing oil field operations site of 401 acres. Current proposal includes: clearance of vegetation, 2.5 million cubic yards of grading, landform alteration, fill of seasonal pools and riparian areas, subdivision and lot divisions, habitat restoration and approval of a development agreement.

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

Dear Mr. Mohler,

Thank you for sending additional information about your project 5-13-032 on May 6, 2014. Commission staff has been accessible to NBR representatives and through the meetings since Feb. 7, 2014 (Feb. 19, March 7, March 13, March 28, April 18, and May 1) we have worked to improve communication and clarify key issues of concern. Thank you for clarifying that the proposal now reflects the CCC Alternative Project 2 as the preferred alternative¹. As discussed previously with you and your staff, the application is incomplete pending resolution of the 'Threshold Issues', however the applicant has decided to continue to work on completing the application with regard to the other details of the proposal. The submittal on May 6, 2014 was largely focused on these other details, and did not attempt to address the 'Threshold Issues' in any significant way. Thus, Commission staff's comments below are similarly focused. We request additional information regarding the following items:

I. Threshold Issues

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. Please see the NOIA dated December 6, 2013 for the details of the requested information regarding Threshold Issues.

¹ Note: All plans, such as site plans, that depict the project will need to be revised to reflect the new proposal.

1. Consolidation Area.

Regarding planning:

The 30% grading plan that was submitted May 6, 2014 indicates that 2 water quality features will require development through and under the "consolidated oil production site" (consolidation area). The pipes leading from the northern subdivision to the large water quality basin located in the low lands are shown going through the consolidation site. As submitted, it is unclear how the storm water from the Southern Arroyo exits the arroyo and enters the Semeniuk slough. Does it sheet flow over the top of the road and into the slough (which is not appropriate for water quality)? If not, a pipe or culvert under the road of the consolidation area is necessary. These are examples of development occurring in the oil consolidation area (not covered by an exemption) and do require a CDP. Because both of these examples are related to the current CDP application, we continue to require additional information regarding proposed development in the consolidation area.

Regarding enforcement:

Even if no new development is proposed for this area, the existing development within the consolidation area may or may not be authorized, or otherwise exempt, and will need to be evaluated in conjunction with the pending enforcement action. If we determine, as a result of the enforcement action, that unpermitted installation of wells and/or accessory structures and/or unpermitted vegetation removal was undertaken in this area, 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 development 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.

2. Vegetation and Fuel Modification Zone.

Please work with CCC enforcement staff and WNOC to develop appropriate Fuel Modification plans. See our December 6, 2013 NOIA for more details.

II. Planning Issues

A. Alternatives

Thank you for submitting the alternative development plan that does not include access from West Coast Highway. We recognize you have concerns with the elimination of this proposed road. To help us understand your concerns, please provide the revised traffic data and alternatives analysis that is mentioned in your May submittal when they are available.

Although the May 6, 2014 cover letter listed the types of vegetation that would be eliminated by the construction of this section of the road, staff is reluctant to concur as we continue to work on remapping several areas of vegetation. Once the remapped vegetation has been completed, the plant communities in the path of this road will be clarified.

Thank you for providing the alternatives suggested by CCC staff that show reduced grading and landform alteration in key areas, compared with the initial proposal. However, significant landform alteration remains part of the plan under the newly identified preferred alternative. Staff believes that grading and landform alteration could be reduced further. For example, grading inside the 60 foot bluff edge setback could be avoided; the grading of the hillside between the northern housing development and the oil consolidation site could be reduced or avoided by relocating the trail; or the footprint of the housing and resort or commercial space could be further concentrated. These alternatives should be explored further.

Additionally, staff has received public comment letters (enclosed) that highlight concerns about the use of the term "open space" throughout the proposal. Please define what is included in the 258 identified acres of "open space" and provide a breakdown of acreage that represents in detail the following categories (one figure/exhibit should be provided for each):

1. acreage of land not being graded or impacted in any way by development nor remediation (land outside the limits of work),
2. the acreage of land that is proposed to be impacted by development and/or remediation activities but restored and considered habitat conservation area,
3. the total acreage of land that will be developed with roads, homes, commercial and resort space, and the oil consolidation area,
4. the total acreage of land that will developed as parks, trails, landscaping and fuel modification areas, and water quality basins,
5. Lastly, please provide a map showing these areas as "impacted" and "non-impacted."

B. Biology

1. HCCMP. 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 submitting the hand-written ACOE Wetland determination data forms. We understand that the site will be surveyed for Vernal Pool/Wet Season Surveys (USFWS Protocol) and consider this report necessary to complete the application. Public comments regarding the thoroughness of these surveys have indicated that there may be as many as 50 additional pools that were not surveyed specifically for Fairy shrimp (enclosed letter). Please include these additional pools in the future Vernal Pool Surveys.

Given the new preferred alternative, please clarify if any vernal pools and/or seasonal wetlands will be filled or impacted and please send an updated exhibit map overlaid with the outline of the limits of grading to reflect this.

3. Vegetation Mapping. Staff remains concerned that Dudek's category for "disturbed" vegetation may include areas that should be described as "disturbed native scrub" vegetation, based on our site visit observations. We plan to arrange additional field work days to visit the respective "disturbed" vegetation category locations to observe current on-the-ground conditions and request assistance in adjusting the mapping as necessary.
4. Burrowing Owl. Thank you for submitting the Wintering Owl Habitat Survey. Public comments regarding the thoroughness of these surveys have indicated that there may have been oversight during the survey and the actual number of owl sightings was inaccurate. Please see the enclosed letters and respond accordingly.
5. Field Lighting. We understand field lighting is no longer included in this proposal.
6. Roadways. Thank you for providing a preferred alternative that reduces fill of riparian and wetland areas for the construction of roadways. It appears that the bridge spanning the southern arroyo may still require grading, and possibly fill, on the Northern side bridge abutment. Please confirm if the construction of the bridge completely avoids impacting the arroyo? If not, can it be constructed in a way that does?
7. Storm Water Retention. The new location of the large water quality basin in the lowlands would not allow for a necessary wetlands buffer. We maintain that installing these features in environmentally sensitive areas is not consistent with the Coastal Act. Please identify

alternative locations for this basin that will not impact environmentally sensitive areas and would allow for a necessary buffer. Please see 'Infiltration' below for additional details needed regarding storm water retention devices.

8. Fuel Modification Areas.

Thank you for submitting the information regarding the fuel modification zones. Please confirm that the fuel modification zones B and C activities, vegetation clearing or thinning, will not impact the bluff edge nor bluff face.

9. Constraint Maps. As stated in our last letter, 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.

10. Remediation Plan. Thank you for supplying a draft of the Remediation Plan to Cassidy Teufel of our Energy and Ocean Resources Unit. As you have discussed with staff of the Energy and Ocean Resource Unit, there may be components of your proposed remediation plan (e.g., down-hole well abandonment work, removal of some surface infrastructure and pads) that may fall within the scope of Exemption E-7-27-73-144. However, after conferring with the State Department of Oil, Gas and Geothermal Resources (DOGGR) staff, we have concluded that most of the activities proposed in your Remediation Plan (e.g., bioremediation) do not fall within the scope of this Exemption. We are happy to assist you in discerning which activities proposed in your Remediation Plan must be a part of the CDP application. Please also provide the following:

- A. Please revise your CDP application project description to include the activities proposed in your Remediation Plan.
- B. It's our understanding that the work proposed in the Remediation Plan is not being required by the Regional Water Quality Control Board (RWQCB), the Department of Toxics and Substance Control or any other agency, but is being proposed to support the applicant's desired residential and commercial development project. The remediation activities, as proposed, may result in potentially significant adverse habitat impacts. Therefore, we need to understand more fully the scope of remediation alternatives considered by the applicant and the reasoning for the remediation options chosen. Please describe how the proposed remediation is the least environmentally damaging alternative for each development type (residential, commercial, parks and open space) and provide details on what other alternatives are available and have been considered.
- C. Given sensitive species onsite, please address in your Remediation Plan the location and size of buffers planned at each specific remediation site. Identify specific circumstances and areas where pipe and surface facility removal can be performed without any impacts to sensitive species.

C. Geology

1. Bluff Edge Delineation. Thank you for submitting the revised bluff edge delineation maps.

- A. The base map is unclear with extraneous lines (grading lines) and lines that appear to cross contours in some locations. Please provide the bluff edge delineation revisions on a clean topographic base map.
- B. On sheet 2, near the southern edge of the sheet is an arroyo (also shown near the northern edge of sheet 3). Note that Commission staff disagrees with the location of the bluff edge in that area and believe it needs to be placed higher.

- C. Currently, the bluff edge delineation ends just before the footprint of the proposed northern housing development. However, there is development (e.g. grading, road, trails) proposed further to the north of this point and the bluff edge setback should be determined according to the bluff edge delineation. Please continue the bluff edge delineation to the north, to include the most northern point of any proposed development (including grading).
 - D. Please determine the bluff edge of the arroyos and canyons using the same criteria as for coastal bluff edge as defined in CCR section 13577(h).
2. Bluff Retreat Rate. Thank you for providing the analysis of bluff retreat rate, Sea Level Rise and the information regarding flooding from the Santa Ana River. We maintain that the minimum average bluff retreat rate is not appropriate for the analysis of the tidal bluffs, but require nothing further at this time. However, we do request an analysis evaluating the bluff/slope retreat rate of the arroyos and canyons on the site.
 3. Alteration of Natural Landform. Thank you for submitting the 30% grading plans. It appears that there is fill extending over the canyon edge at several locations (an arroyo/canyon bluff edge delineation is necessary to confirm this), including the northern abutment of the bridge spanning the southern arroyo. Please clarify by providing the bluff edge delineation of the arroyos and provide further alternatives that completely avoid fill in riparian areas. Also provide alternatives that reduce or eliminate grading the slope between the northern housing development and the consolidation area.
 4. Pedestrian Bridge. Would the construction of the abutments for the pedestrian bridge spanning Coast Highway require caissons? Please provide preliminary foundation plans for this item. Additionally, please provide an alternative location for the proposed bridge that would not impact the bluff edge and/or bluff face.
 5. Fault Setback Area. Please confirm that no structures for human habitation will be constructed in the fault setback area identified on attachment 30 of the CDP resubmittal of May 17 2013 by providing the most recent development footprint overlaid on a similar exhibit showing the fault setback area.
- D. Development
1. Project Heights. Thank you for submitting the mapped heights of surrounding structures. Please note that while we do have floor plans for the proposed buildings, we do not have complete conceptual plans for the residential, mixed-use, and commercial structures showing foundations, elevations, square footage, and height. This information is particularly important for the retail/commercial space and the resort as it relates to visual qualities, parking and other coastal concerns. Please provide complete conceptual plans for these use areas.
 2. Pedestrian Bridge. Thank you for submitting additional information regarding the proposed pedestrian bridge. We still need to identify what impact the elevator structure will have on the bluff edge. Please submit a brief discussion from an engineer describing: how many cubic yards of cut of the bluff are required for this structure; how deep the cut will be; what specific alternatives have been explored that are less environmentally damaging? Are there alternative locations that are appropriate for the structure that are a minimum of 25 feet away from the bluff? Please have a biologist confirm whether there are any sensitive vegetation and/or wildlife occupying this area and/or within 50 feet of the bluff.
 3. Takings Information. Thank you for clarifying your position regarding the potential takings of the property. No further information is requested at this time.

4. Development Agreement. No further information is requested at this time.
5. Other Agency Approvals. Staff is interested in learning more about the details of the pending ACOE Section 404 permit. Please provide when available to our Federal Consistency staff.

Please provide details about your in-process approval from other agencies, specifically Cal F&W, RWQCB, USFWS, OC Heath Dept., and DOGGR. Please include the status of approvals from Caltrans for off-site improvements in the public park related to the construction of the pedestrian bridge.

6. Co-Application Invitation. Nothing further is required at this time.
7. Chain of Title. No further information is needed at this time.
8. Parking. See the below discussion regarding the TDM Plan.
9. Infiltration. Please provide the dimensions, construction specifications, and cross sections for all water quality basins. Staff also requests to see information regarding the following:

A. Lowland Water Quality Basin.

- i. In the Water Quality Management Plan (Exhibits 9-1 and 9-2) show the large 'Perimeter Zone Water Quality Basin' in the lowlands will be treating runoff from the residential area of the northern housing development as indicated by the two 20' wide storm drain easements between the development drainage areas D and E. Are these storm drain easements open bioswales, channels, underground pipes or other?
- ii. Please provide details for the capacity needs of the development run-off and existing run-on water and the sizing requirements of this basin, as well as the drainage paths in/out.

B. Community Basins. There are 15 detention/infiltration water quality treatment basins labeled "community basins" in Exhibit 9-2. Please provide the specifics regarding these basins such as: size and capacity, drainage paths in/out, and construction specifications. Please specify the originating location of runoff that they are designed to treat. Many of these community basins are located in the parkway areas along the bluff top, between the housing development and the bluff edges. Given their proximity to the bluff edge, how will these be designed to prevent bluff instability and erosion? Some of the community basins are depicted within individual parcels, possibly in individual homeowners' backyards and front yards. Please clarify the details of these basins and provide updated maps to indicate where these will be placed, and provide details regarding how they will be maintained if on individual parcels.

C. Bio-cells. Where will the bio-cell enhancement and green street bioswales be constructed, and how many are proposed? Please provide a map showing these items in the development. Are the proposed bioswales on B, K, G streets enough to capture runoff for the whole development? Should bioswales be constructed on all streets? If the bioswales were located on L, J, S, E streets and at the entry of I street, they would avoid the bluff top and potential erosion in the future. Please revise.

D. Perimeter Zone water quality Basins (in lowlands and near 16th St.).

- i. The design calculations for the two large water quality basins (capture volume and drainage area) are based on models. Please provide the actual calculations based on the development plans and capacity needs, as well as the construction specifications for both basins.

E. BMPs.

- i. Thank you for providing the information on the HSC water quality BMPs. Please provide the extended details and indicate if these details change, and how, due to the requested alternative location of the large water quality basin located in the lowlands.
- ii. Please provide specific commercial and resort space water quality BMPs based on the most recent alternative. If there will be any delivery service areas, what procedures will be in place to protect water quality, specify containments, prevent spills etc.? Please indicate how the ongoing operations and maintenance of all BMPs associated with these development areas will be carried out.

- F. Diffuser basin in Arroyo. How will the runoff from the southern arroyo enter into the Semeniuk Slough? Will there be an underground culvert? Will the water sheet flow over the existing road? Please provide detailed plans for this.

10. Dedication of Preserve Areas. 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. Before the completion of the application, please clarify which funding mechanism(s) will be part of the agreement.

11. Archeology. The CDP application does not include a request for approval and implementation of an Archaeological Research Plan (ARP). Although the construction of the proposed preferred alternative will not impact the current known locations of cultural resources, it is unclear whether deconstruction of the oil field operations and the subsequent oil remediation will have impacts to known archaeological sites.

Based on past Commission experience with other properties containing mapped archaeological sites, human burials and artifacts have been found outside of the boundaries of the mapped archaeological sites. Therefore, we continue to request that you submit as part of this CDP application a request to perform the necessary ARP to determine how best to avoid any known, as well as unknown, archaeological resources that exist on the project site. Methods of removal of oil field infrastructure that would have the least impact to any known or unknown buried archaeological resources should be explored.

12. Trails. Given the recent conclusions regarding BRR and impacts of SLR, can the geologists of the site confirm that the bluff trails will remain in existence for the economic life (75 to 100 years) of the development and need not be relocated inland? Would space be available for such relocation?

13. TDM. The submitted TDM plan lacks sufficient information for the urban colony, resort and commercial space, and does not address topics such as: 24-hour valet service for resort guests, bike rack in all parks and parking lots, commercial and resort area circulation patterns, etc. Will resort guests and the public have access to rental bikes? Will employees of the shopping center and resort be offered discounted public transportation to get to work or offered a carpool program? Give the sites proximity to the beach, how will public parking be handled in the shopping area: Paid parking, 2-hour time limits, validation, etc. Although

the City of Newport Beach will not require these items until a later date, staff considers it necessary to complete the application.

The project description implies that additional parking will be available to the public using the parks, trails, and other public facilities proposed. However, it is not clear if the proposed number of parking spaces is adequate without the details of the TDM plan.

Additionally, the number of retail spaces, the square footage of each store, the use of each store, and the square footage of the main resort areas are all factors in determining the number of necessary parking spaces for the proposed development. Please provide these details.

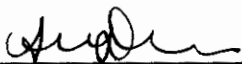
14. Proposed Commercial Uses. While we understand that the City of Newport Beach has preferences for commercial uses, we continue to request an analysis that includes a breakdown of approximate square footage that will be used for visitor-serving commercial and retail related to the nearby residents. In the letter received May 6, 2014, it is stated that the proposed Coastal Inn and retail space will require their own CDPs; however these structures are included in the project description of the application and we must consider that information at this time, under the current CDP application. To date, complete conceptual plans with foundations, floor plans, square footage, etc. for the retail and resort have not been received. Please provide this information as part of this CDP application.

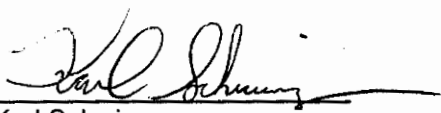
Accordingly, please submit detailed conceptual plans for the proposed resort and the retail space. How many retail spaces are proposed and what is the square footage of each store? What percentage of the resort rooms will be offered at a low-cost to the public? What is the square footage of the spa and restaurant and other multi-purpose rooms in the resort? Will these amenities be open to the public or for resort guests only? How many parking spaces are proposed for the resort and how many are proposed for the commercial space? Where are these parking spaces located?

15. Public Comments. Public comments regarding items above have been received and are enclosed here. Please respond to the concerns presented in these letters.
16. Filing Fees. Please provide a copy of the "Conditional Approval of the LEED ND plan" which is received after registration with LEED. This will provide enough details ensuring the entire project (neighborhoods), not building by building, will qualify for LEED.

We encourage the NBR team and representatives to continue to work with CCC staff and resolve the outstanding planning issues; however the resolution of the threshold issues and the establishment of the baseline condition of the site is essential to the CDP process. As you are aware, the resolution of the threshold issues is a significant part of the application and the fulfillment of the outstanding remaining planning issues will not result in a complete 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.

Sincerely,


Amber Dobson
Coastal Program Analyst


Karl Schwing
Coastal Program Manager