

CALIFORNIA COASTAL COMMISSION

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June 14, 2013

Ms. April Winecki
Dudek
621 Chapala Street
Santa Barbara, CA 93101

Re: **NOTICE OF INCOMPLETE APPLICATION**
Application No.5-13-032
Site Address: Newport Banning Ranch Site
5100 Block of West Coast Highway, Newport Beach, Orange County.

Dear Ms. Winecki:

On February 1st, 2013, our office received the subject coastal development permit application. On March 1, 2013, Commission Staff sent a Notice of Incomplete Application. On May 17th, 2013, Commission staff received a submittal of additional information. The proposed project is 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, and 52 acres of parks. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your application please submit the following:

I. Threshold issues

Staff requires that the following should be addressed first, in order to clarify the fundamental questions on which the rest of the project development relies. The fundamental issue that would be addressed by fully responding to the requests, below, is the establishment of the baseline coastal resource setting of the subject site which will provide the lens through which the Commission will evaluate the proposed development as it relates to this baseline. Staff requires that, only after the following issues have been satisfied, should the remaining issues detailed in Section II, below, be addressed.

A. Wells

1. The Resolution of Exemption No. E-7-27-73-144, issued by California Coastal Zone Conservation Commission, South Coast Region on October 30, 1973 (Exemption Resolution) states:

Continued operation and maintenance of existing oil producing and injection wells and associated surface facilities. The "existing" wells to be defined as the 312 wells either drilled or in progress as of Nov. 8, 1972.

The exemption resolution references the specific wells in the specific locations that were in place at the time of the exemption, and the 28 additional wells which were planned to be completed soon after the exemption as depicted in an approved plan. The exemption resolution provided an exemption for drilling, redrilling and repairs to the 312 existing wells and the 28 planned wells. The exemption resolution did not exempt relocation of the existing wells. Thus, the relocation or reorganization of wells would not be included in the definition of "the 312 wells either drilled or in progress as of Nov. 8, 1972, and therefore, would be subject to Coastal Development Permit requirements.

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Please identify the locations of a) the specific 312 wells which were drilled or in the progress of being drilled as of Nov 8, 1972, b) the locations of the 28 additional wells named by the exemption and their dates of drilling, and c) the locations of any wells or pipelines on the site which are not encompassed by part b, and which have been drilled or installed since November 9, 1972.

Please submit copies of permits which were issued for the 340 wells either drilled or in progress as of Nov. 8, 1972.

Please submit documentation that the landowner and/or oil field operator received from the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) for the wells subject to the exemption resolution that have been abandoned which indicates that such abandonment is compliant with DOGGR standards and regulations, including, but not limited to sections 3228, 3229, 3230 and 3232 of the California Public Resources Code.

2. Please state what vegetation types or habitat existed surrounding the wells which have been installed since November 9, 1972, and what vegetation types or habitat currently surrounds the wells.
3. The exemption resolution requires that development is only exempt 'provided that no substantial changes may be made in said development'. The submitted NBR history document details changes in the type of secondary production which has occurred on the site over time, which have required the installation or expansion of existing structures on the site. Please provide copies of permits for these expansions.
4. The exemption resolution, exemption application, and subsequent correspondence indicate that the exemption lasted until 1994, when the lease expired. However, oil production on the site has continued since that time (for the past 19 years). Please address what occurred regarding the lease on the site in or around 1994, what has occurred since that time, and the consistency of the intervening years of oil production and development to the exemption. Please include a copy of the lease, and any records regarding any extensions or transfers of the lease.
5. To help clarify the status of well operations which have occurred since the exemption resolution, please submit copies of all relevant permits from DOGGR since November 8, 1972.

B. Remediation

1. The exemption resolution states:
*Claim of exemption No. E-7-27-73-144 is hereby granted as to the following development:
Continued production and operations on the 480 acre "Banning Lease" per the attached items: ...*
*g. Abandonment of wells in accordance with requirements and approval of the State
Division of Oil and Gas and removal of surface equipment and pipelines per state and local
agency requirements.*

The exemption resolution includes an allowance for abandonment of wells, and the removal of surface equipment and pipelines. However, the exemption resolution does not include authorization for remediation of the area surrounding the well or other areas on the site. Furthermore, while the DOGGR regulations do include requirements for closing of wells, they do not include requirements for environmental remediation of the well or areas a certain distance from any well. Since remediation to the extent which you are identifying is not covered in the list of activities specifically

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exempted from Coastal Development Permit requirements, any future remediation on the site requires a Coastal Development Permit.

The proposed development appears to rely on the oil field remediation. Please clarify whether such remediation is included in the project application. If not, why not? The Commission wouldn't be able to proceed with review of the ultimate development plan without certainty that any required remediation would be undertaken with all appropriate approvals in place.

2. Standards for remediation. The resubmittal letter states "Clean-up standards for NBR are part of the 2001 RWQCB CAO" Please provide this document.

The submitted information does not include specific standards for remediation which must be met, or letters from respective agencies detailing the type of remediation that would be required. Other documents included in the application, including regulations submitted (Attachment 6 to the resubmittal), and environmental assessments (Appendix D to the EIR) also do not go into any detail regarding these requirements or recommendations. Therefore, please submit a written analysis with evidence (such as letters from relevant state or local agencies and citation to applicable standards) detailing what is a) required by the relevant agencies for the abandonment of a well, b) required by the relevant agencies for the cessation of oil activities on the site, c) standards recommended by the relevant agencies for abandonment of wells d) recommended by the relevant agencies for cessation of oil activities on the site, e) required to allow for development of each type of proposed land use (i.e. park, residential, commercial, open space) on the site, or f) recommended to allow for development of each type of proposed land use on the site.

3. Contamination and effects of remediation. As stated above, remediation of the site requires a Coastal Development Permit. Therefore, such remediation needs to be analyzed for consistency with the Coastal Act. Therefore, please address the following: a) what is the level of contamination on the site b) what is the potential harm to habitat areas from leaving the contamination on site; c) what the effects would be to habitat areas from the required remediation; and d) what effects would occur to habitat due to the recommended remediation.

4. The 3/1/13 Notice of Incomplete application, requested 1) a detailed identification of impacts to coastal resources expected to occur as part of the remediation activities, 2) a detailed identification of impacts to coastal resources proposed for the final development plan, and 3) identification of the least environmentally damaging alternative wherever impacts are identified. The 5/17/13 submittal included Attachment 4, a graphic depiction of impacts to habitat resources on the site. However, attachment 4 does not distinguish between the temporary and permanent impacts of the proposed development. Please revise attachment 4 accordingly.

5. As mentioned above, further information is required regarding the standards required for remediation. However, the only alternative to whole site remediation identified by the letter included a) removal of soil and trucking off site, or b) a reduced remediation footprint, which would require "an agreement to a full written closure" "from the resource agencies, and a securitized release." Please provide 1) an explanation of the rationale behind this statement, 2) further detail, such as a sample document, of the type of agreement that would be required. After review of these materials, additional information regarding such agreement may be required, such as letters from the applicable agencies regarding their willingness to enter into such an agreement. Further detail regarding additional potential options to address any contaminated materials will likely be required after review of the additional information regarding remediation standards requested above.

6. To ensure compliance with CCC regulation 13052, please state whether the approvals of other agencies are required in order to determine the existing state of site contamination and remediation requirements, or carry out the development necessary to implement oil field remediation. If so, those approvals must be submitted prior to the completion of the application.

C. Consolidation

1. Based on our review of the information submitted to date, a Coastal Development Permit is required for installation of new wells, pipelines, or facilities required to relocate oil operations to the consolidated oil site(s). Please state whether such development is included in the application. If not, why not? How could the ultimate development plan proceed without this important element being resolved?
2. To ensure compliance with CCC regulation 13052, please state whether the approvals of other agencies are required in order to consolidate oil field operations. If so, those approvals must be submitted prior to the completion of the application.

D. Unpermitted development.

1. Fuel modification. In your 5/17/13 letter the criteria given for why areas have been subject to fuel modification include: a 100 ft. radius surrounding oil facilities / structures, a 20 foot radius surrounding pipeline maintenance corridors, 20 foot surrounding utility poles, and a general requirement to clear areas for oil field safety or security. Please provide a map depicting the areas which are located within: a) 100 ft radius surrounding oil facilities, b) a 20 foot radius surrounding pipeline maintenance corridors, and c) a 20 foot surrounding utility poles.
2. The 3/1/13 letter requested an assessment of habitat characteristics if not for unpermitted development. The 5/17/13 letter stated that no assessment was provided as no unpermitted development occurred on the site. As mentioned, above, to support this claim that no unpermitted development has occurred on the subject site, please submit documentation that the landowner and/or oil field operator received from the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) for the wells subject to the exemption resolution that have been abandoned which indicates that such abandonment is compliant with DOGGR standards and regulations including, but not limited to, sections 3228, 3229, 3230 and 3232 of the California Public Resources Code. Further, please provide permits that were issued to the landowner and/or oil field operator for any development that occurred beyond the development exempted in the exemption resolution.
3. Please provide an assessment of the quality of habitat on the site if clearance of vegetation had not occurred beyond 100 feet from oil facilities or 20 feet from pipelines or utility poles since November 8, 1972 for the areas subject to Prop 20 and January 1, 1976 for the areas not subject to Prop. 20 (See former PRC Section 27404).
4. Our 3/1/13 letter requested all available information regarding the purpose, extent, and timing of mowing activities. In the 5/17/13 letter, it is stated that previous oil operators did not keep records for vegetation maintenance. Please provide any available evidence regarding mowing activities,

including receipts from companies which may have done mowing, or descriptions of operations from the current or previous operators, pictures or any other relevant evidence. In addition, please provide an interpretation of the photographic record by a qualified professional, outlining the areas of the site which have been subject to fuel modification over time.

E. Land Use Planning

1. Land Use Planning. Staff still believes that the adoption of an LCP, or at minimum adoption of an LUP with additional LUP policies which pertain to the subject area should be undertaken prior to the Coastal Development Permit process for the entire development, for the reasons laid out in previous communications, including the comments to the Draft EIR and the 3/1/2013 notice of incomplete application. These include the fundamental land use issues, such as the type, location, and intensity of development, its compatibility with the surrounding land uses, and the consistency with the Coastal Act, including consistency with the identified priority land uses. These issues remain unresolved and will need to be resolved prior to filing any application. Whether through the LCP planning process, or the CDP process, you will need to demonstrate that the proposed uses, and area allocated to each use, conforms to the priorities established under the Coastal Act. These higher priorities include areas for open space, lower cost recreation, and visitor serving development. The proportion of area you have identified as developable (which still needs to be ascertained based on all applicable constraints such as biological resources) and which is allocated for lower priority residential uses is high (nearly 92 acres are devoted to residential, compared with just 5.7 acres for visitor serving commercial). Your application has not yet demonstrated whether adequate area (within the potential developable area) has been reserved on site for higher priority uses.

The 5/17/2013 letter states that the relevant local governments are unable or unwilling to seek certification of an LCP for the subject area or, at minimum, seek certification of an LUP. Please provide letters from the City of Newport Beach and Orange County addressing whether and why they are declining to pursue certification of an LCP, or at minimum a land use plan for the subject site.

II. Other Issues

To the best of our ability we have identified deficiencies related to details of your ultimate development proposal to give you notice that the following items remain incomplete but given the significant unresolved nature of the issues mentioned in section I, above, your submittal of these details and our review of it should wait until a later time. Note that the following list is not complete. Further review and clarifications will be required in the future.

A. Alternatives

1. Alternatives Analysis: Thank you for the submittal of the alternative development plan, which included a project design that did not include an extension of North Bluff Road to 19th Street. Please note that Attachments 14 and 15 appear to be the same document. Was a difference between these documents intended?

Although the 5/17/13 letter states that reduction in project intensity would reduce public access options, evaluation of all project alternatives by the Commission is required in order to ensure that the Commission is able to determine the least environmentally damaging feasible alternative. Therefore, please submit alternative project designs, including redesigned access and reduced project densities, that do not rely on the proposed Bluff Road access from Coast Highway and/or north Bluff Road from 19th Street. Also, if 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 circulation 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?

B. Biological Resources:

1. Vernal Pools/Seasonal Pond Surveys

a. Wet Season Sampling – When fairy shrimp cysts (*Brachinecta* sp.) are found during a dry season survey (2012), an additional wet season survey is required. No wet season survey was completed after this dry survey for features C, D, K, L, M, N, P, R, Q, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, , NN, OO, PP and QQ.

i. The laboratory hatching of a sampling of cysts found during a dry season survey is neither to protocol nor sufficient in determining species present (features C, D, M, X, Y, Z, CC, DD, EE, FF, GG, HH, KK, LL, MM, OO, PP). This technique allows for a) sampling error in missing cysts or b) not obtaining an adequate sampling all cysts that are present, or c) preferential hatching of certain fairy shrimp species.

ii. Assuming that co-occurrence of the two species of known fairy shrimp on site will not occur is not permitted as sound science (feature N, P, B, T). Though co-occurrence has not been seen at this site before, it cannot be assumed to be consistent with the amount of cross contamination of the seasonal features on site that occurs due to maintenance.

iii. Assuming seasonal feature failed cyst hatchings to be of a certain species due to the surrounding seasonal feature findings is unacceptable. This is primarily due to the level of cross contamination of the seasonal features on site that occurs due to maintenance.

iv. Feature W was not addressed.

For the reasons above, a wet season protocol survey is required in order to delineate the location of wetlands and sensitive habitat. Please submit a wet season protocol survey

b. A preliminary Vernal Pool Approximate watershed Study was conducted to determine the watershed boundaries for the eight (8) seasonal features known to contain the federally-endangered San Diego fairy shrimp. This should also be done for the rest of the features on the site. Also, whether the overall development project will/has the potential to impact these pools still remains to be addressed.

2. Vegetation mapping of encelia/disturbed habitat

Encelia/Disturbed Habitat The membership rules for what constitutes "disturbed" are unclear. Please provide a clear definition and membership rules for the various disturbed categories.

The rules for what constitutes “disturbed” and what constitutes disturbed native vegetation remain unclear. First, while bare ground is identified as a factor for determining disturbed areas, a quantitative value for what amount of bare ground relegates a particular area into a “disturbed” category is not provided. Second, the criteria for whether an area is labeled disturbed or disturbed native shrub vegetation is not provided. According to Sawyer et al. (2009), the criteria for shrub cover to be considered shrub vegetation is that the absolute cover (total cover) must be 20% or greater. We believe that this is a logical criteria for distinguishing “disturbed” from “disturbed native vegetation”. In areas where the absolute cover is 20% or greater the MCV2 membership rules can be applied to determine the type of disturbed native shrub cover. Once the 20% absolute cover bar is passed for native shrub vegetation, relative cover must be used for evaluating the type of disturbed native shrub vegetation because the MCV2 membership rules are based on relative cover. We believe that Dudek’s practice of using absolute cover when using the MCV2 membership rules in disturbed areas is wrong; the membership rules cannot be applied using a different metric from the one they are designed around.

Third, the only native shrub that is currently considered when evaluating disturbed areas is California brittle brush (CBB). Singling out this plant results in many areas with native shrubs, that are important members of California sage scrub (CSS) habitat, being categorized as “disturbed” when they could be categorized as disturbed habitat that is a particular subset of CSS based on the MCV2 membership rules. The data for running this analysis has been collected; 76 vegetation transects were sampled by Dudek in disturbed areas in the second vegetation mapping pass. The transect data provides the information necessary to determine the particular disturbed native shrub habitat using the MCV2 membership rules.

For instance, in transect D-01, found in Appendix F of *Vegetation Mapping Transects-Data Sheets* dated June 18, 2012, there was 28% absolute native cover. So there is at least 20% native cover, the amount required by Sawyer et al. to be considered native shrub vegetation. And within that the relative cover of deerweed is 57% and the relative cover of CBB is 28%. Under Dudek’s current rules, this area was identified as disturbed because it didn’t meet the 30% or greater MCV2 rules for California brittle brush scrub and because Dudek does not include any other category of disturbed native vegetation. However, using the transect data that identifies deerweed¹ as having 57% relative cover, the area would be more appropriately identified as deerweed scrub (the MVC2 membership rules for deerweed scrub is that there be 50% or greater relative cover of deerweed). Whether the area would be categorized as disturbed needs to be clarified based on a criteria for the amount of bare space in a particular area.

Another example is transect D-09 where the native absolute cover was 44%, and the deerweed relative cover was 60%, and the CBB was 15%. This disturbed area was categorized as disturbed when it would more appropriately have been categorized as deerweed shrub. Again, whether the area would be categorized as disturbed deerweed scrub needs to be clarified based on a criteria for the amount of bare space in a particular area.

Finally, while patches of iceplant, below the minimum mapping unit, have been mapped across the entire site, similar size patches of prickly pear cactus (indicator species of coast prickly pear scrub which is a rare plant community) located within polygons mapped as “disturbed” were not mapped. We believe that these patches of prickly pear cactus must be mapped.

¹ Sawyer et al. (2009) identifies deerweed, *Lotus scoparius*, as a shrub, not a forb, as it is identified by Dudek.

3. Oil Field Consolidation. The submitted materials appear to exclude data located within the oil field consolidation area. As mentioned above, such consolidation is subject to Coastal Development Permit requirements. Additionally, the consolidation areas are located directly adjacent to habitat areas, and sensitive species mapped within oil consolidation areas likely utilize habitat directly adjacent to the oil consolidation areas. For these reasons, please submit updated figures which include biological information for the entirety of the project site.

4. Gnatcatcher Surveys.

a. Thank you for the submittal of the updated gnatcatcher survey map. However, the submitted map appears to include less known pairs and territories than what has been identified in previous survey consolidation efforts (e.g. see Exhibit 7, Figure 18 for CDP No. 5-11-302). Have any data been excluded from the map? Please explain.

b. Please provide the latest gnatcatcher survey in full, including the accompanying report.

5. Burrowing Owls. Thank you for the additional information regarding the burrowing owl. Your response clearly states that wintering habitat is very important to the survivability of migratory bird species. Though burrowing owls, in general, exhibit variable migratory behavior, the submitted burrowing owl surveys and reports conclude that this species uses this site only as wintering habitat. None of the breeding season surveys (March/April 2008, May 2009, March 2010, and 2012) have ever detected any signs of burrowing owls, while all wintering season surveys (January 2008, January 2009, and January 2010) have found birds on site. Although there has not been burrowing owls identified during the breeding season, the submitted information indicates that the burrowing owl habitat within this site is important and necessary for the migratory patterns of the burrowing owl. Therefore, please submit a new current protocol wintering season survey to aid in the understanding of the site's current use by the burrowing owl.

6. Field lights – The submitted materials state that lighting is proposed until 10 pm. Would the proposed lighting result in impacts to migratory birds, or is the subject site located within the Pacific Flyway? If the site constitutes a migrational stop site, a lighting plan to minimize impacts to migratory birds may be required

7. Mitigation Banking. Please state whether a mitigation bank is proposed as part of this application for the 78.5 acres set aside for future mitigation. If so, additional information, including documentation of the location of the mitigation bank and the accepting body will be required prior to completion of the file.

8. Wildlife movement. The proposed development appears to create significant obstacles to wildlife movement, especially between the southern and northern portions of the site. Project alternatives and mitigation measures to address this issue need to be identified.

9. Plant Palette. Thank you for the submittal of the modifications to the landscaping palette. However, it appears that the landscaping palette still contains species that are not native to Coastal Orange County. If you choose not to provide the alternative plant palette, changes in the landscaping palette will likely be required through the Coastal Development Permit process.

10. Pocket Mouse Surveys. Thank you for the notification of forthcoming pocket mouse surveys. Submittal and review of new surveys will be required prior to the completion of the file.

11. Known Biological Surveys. We asked in the previous incomplete for: "*all known biological surveys regarding sensitive species on the site*" Although you have submitted a compilation figure of sensitive species, the submitted information did not include a) more than one year of data for some species, such as the cactus wren, and b) the copies of the full surveys, with associated reports. Please provide the full surveys / reports.

12. Resource Constraints Map. Thank you for the submittal of the Resource Constraints map. However, the submitted map does not appear to include identification of the areas not subject to resource constraints. Please provide a second page to the resource constraints map which identifies the areas where there is a lack of the resource constraints (i.e. wetlands, vernal pools, coastal sage scrub occupied by the California gnatcatcher, raptor foraging habitat used by sensitive species, burrowing owl burrow areas or foraging habitat, purple needlegrass grassland, and any areas occupied by sensitive plant or animal species, and buffers around these areas) After review of the resource constraint plan, further alternative development plans will need to be identified, in conjunction with the filing of the application, to ensure avoidance of ESHA and wetlands (and any other significant coastal resources that are identified).

13. Roadways. The submitted cut/fill map indicates that a riparian canyon would be filled to allow for the construction of North Bluff Road (either near 18th Street or between 16th and 17th Streets. Coastal Act Section 30233 limits fill to wetlands to certain allowable uses, and only when there is no feasible less environmentally damaging alternative, and when mitigation is provided. Coastal Act Section 30236 limits substantial alterations of rivers and streams to certain allowable uses, which do not include roadways. Please submit an alternative road plan which does not require the filling of riparian corridors and/or wetlands.

14. Storm Water Detention. Prior to completion of the file, please provide an analysis of whether the proposed stormwater detention structures would be consistent with Coastal Act Section 30231, requiring maintenance of biological productivity of streams and wetlands, Coastal Act Section 30233, regarding diking or filling of open coastal waters and wetlands and movement of sediment, and Coastal Act Section 30236 regarding substantial alterations to streams ? Portions of these features appear to overlay existing ESHA. Please note that in similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities is consistent with the Coastal Act or Local Coastal Programs. Please also provide detailed plans for the proposed stormwater detention structures, including depth of the structures, their composition, and important elements such as energy dissipators, riprap etc.

15. Fuel Modification Areas. Thank you for your comments regarding potential future reductions in proposed fuel modification areas. We look forward to reviewing revised fuel modification proposals prior to completion of the file.

C. Geology.

1. Bluff edge delineation. Thank you for the submittal of the slope analysis/bluff delineation exhibit. However, the submitted plan does not appear to be of precision sufficient to assess the bluff edge lines delineated by the applicant. The depicted bluff edge is discontinuous, appears to cross areas of steep (>20%) slopes, and does not appear to accurately depict the bluff edge in the northern part of the property. Please submit a set of large-scale topographic maps, with contours at an appropriately detailed interval, for example 2 - 5 feet, to allow for the assessment of the plotted bluff edges. Such

contours should cover the entire property. In addition, please provide a plot of the surveyed bluff edge referred to in your 17 May 2013 letter.

2. Bluff Retreat Rate. The estimated bluff retreat of 45 feet over the lifetime of the development was justified by multiplying the minimum historic bluff retreat rate measured by 75 years. Other estimates based on the historical bluff retreat rates would include greater distances likely subject to erosion over the lifetime of the development. Although the 5/17/13 letter regarding effects of sea level rise stated that sea level rise would not affect bluff erosion, the submitted exhibits showed that sea level rise would affect the base of the bluff. Please clarify. Please estimate what the future bluff retreat rate over the next 75 years is likely to be, considering climate change and sea level rise, and provide a rationale for that estimate. Although structures appear to be located at least 60 feet from the bluff edge (see Master Development Plan included with 2/1/13 submittal), the parks and trails which are proposed to improve public access appear to be located within the area of the bluff estimated to erode. Please address whether the stability of proposed park and trails along the bluff edge would be assured over the lifetime of the development.

3. Alteration of Natural Landforms. The 5/17/13 letter states that bluff remediation is not required to: a) protect existing development, or b) to protect proposed development, but rather to address erosion of the bluff. Bluffs are naturally subject to erosion, and new development should take such erosion into account by avoiding areas of hazard as much as possible. Drainage improvements might limit anthropogenic erosion without the need for grading of the bluff face or edge. The proposed project does not include sufficient justification for the need to alter the existing landform by grading of the bluff face or edge.

D. Development.

1. Project Heights. CLUP section 4.4.2 states: *Outside of the Shoreline Height Limitation Zone, heights up to 50 feet are permitted within the planned community districts.* However, the proposed structures appear to exceed 50 feet due to parapets. Please submit alternative plans which include heights of all structures on all plans, and which do not include any portions of the structure greater than 50 feet height.

Additionally, the 5/17/13 letter states that the proposed heights of the structures proposed in this Coastal Development Permit application would be consistent with the character of the surrounding areas, and uses as reference various structures located in the vicinity of the project site. Please provide a map of the structures chosen, along with their respective heights, and an assessment of the average height of the buildings in each area.

2. Lower Cost Visitor Serving Overnight Accommodations. The proposed hotel does not appear to provide low to moderate cost overnight accommodations. Mitigation such as the provision of such lower cost accommodations on-site and/or payment of an in-lieu fee will likely be required through the coastal development permit process.

3. Pedestrian Bridge. If the pedestrian bridge is proposed as part of the project, the following will be required prior to the completion of the file: 1) detailed plans and engineering studies 2) view simulations from multiple perspectives, both near and far away, and 3) clarification of whether the proposed structure would be located on the bluff face or within the blufftop setback, or in any way result in alteration to natural land forms.

4. Takings Information. Section 30010 of the Coastal Act provides that the Coastal Act does not authorize the Commission, "acting pursuant to the [Coastal Act] to exercise [its] power to grant or

deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor...." To assure compliance with section 30010, the Commission, at times, must adopt findings consistent with section 30010 if the a development application warrant a closer look at the risk of a potential Commission action that may tread close to an unconstitutional taking, in violation of section 30010. In no way is an action by the Commission that includes a regulatory takings analysis a final adjudication of such an issue. Rather, findings that include a regulatory takings analysis is required if the Commission has to permit development notwithstanding the proposed development's inconsistencies with Chapter 3 policies of the Coastal Act because to deny such a proposal may violate section 30010. Therefore, in order to fully assess whether or not the Commission's action may violate section 30010, an application submittal must include the information included in the Takings Form to better assess the risk of whether or not a Commission action would constitute an unconstitutional taking. For more information regarding takings proceedings, please refer to the staff report for CDP No.s 4-10-040 through 045, or A-3-SCO-08-029, which are available on the Commission's website. Please note that submittal of the takings information sheet will be required prior to completion of the application.

5. Development Agreement. Thank you for your comments regarding the development agreement. For clarity, please state whether the development agreement is a formal part of the subject application, or whether the agreement is excluded from the subject application and will be submitted as a separate application.

6. Approvals from other agencies. Please provide the status of the approvals process for each of the agencies listed on page 1-4 of the CDP application letter. The CDP Application states that the majority of the site is currently located within unincorporated Orange County. What approvals are necessary from Orange County and have those approvals been received? Please provide a copy of the Statement of Intent filed with the Local Agency Formation Commission (LAFCO)

7. Co-Applicant Invitation: The sole applicant identified in the permit application is Newport Banning Ranch LLC (NBR LLC). Two other entities, Aera Energy LLC and Cherokee Newport Beach LLC, were identified as property owners. If there are any other entities that have any property interest in the area proposed for development, those entities must also give NBR LLC the authority to apply for and to undertake the proposed development. Furthermore, please demonstrate that all individuals signing on behalf of any LLC (or similar type entity) have the legal authority to do so on behalf of those LLCs.

The submitted evidence for the authority to undertake development off-site include the City of Newport Beach Council resolutions, City of Costa Mesa Traffic Mitigation Agreement (which according to a public comment received has been postponed from the June 4th hearing), and MOU between NBR LLC and the Newport-Mesa Unified School District. Proof of the authority to undertake development on off-site locations does not appear to have been submitted for: 1) the footing of the pedestrian bridge on the seaward side of Coast Highway, or CalTrans approval (if required) for encroaching over the highway 2) approvals from property owners for the widening of 15th, 16th, and 17th Streets. Please state whether the applicant has the authority to undertake development in these areas.

Please distribute the co-applicant invitation form to any party which has a property interest in the subject site or the areas subject to off-site development, and return the completed forms stating whether those parties wish or do not wish to be a co-applicant.

Also please note that the proposed road leading from the subject site to Sunset Ridge Park may require a separate proof of authority to undertake development from the City of Newport Beach (as it is located outside of the public right of way). Additionally, the proposed road would likely require an amendment to Coastal Development Permit No. 5-11-302.

8. Tentative map approval As part of the proposal, staff interprets the application submittals as including approval of a land division(s) as part of the proposed development. In light of this, the Commission requires strict compliance with the Subdivision Map Act (SMA) before it considers approval of divisions of land subject to SMA regulation. The submitted Tentative Tract Map No. 17308 for Condominium Purposes includes the subdivision of the subject property into approximately 251 lots. The application proposes 1,375 residential units, with some commercial units mixed into that matrix. In consideration of this, please provide documentation that the applicant has complied with the SMA for all proposed divisions of land necessary for the proposed development, including but not limited to, approved tentative maps for all subdivisions to accommodate development of all proposed residential development. In addition, please provide any resolutions adopted by relevant local governments that have approved tentative tract maps related to the proposed development. The submitted Tentative Tract Map No. 17308 for Condominium Purposes does not include such resolution, approving the map.

9. Chain of title. Thank you for the notification that the chain of title requested in the 3/1/13 notice of incomplete application is forthcoming. Please note that submittal of the chain of title information will be required prior to completion of the application.

10. Plans. The submitted plans are unclear as to the landscaping species proposed, the total amounts of impervious surface, and what water quality management features are proposed on each lot. Please submit an analysis of the amount or locations of water which can safely be infiltrated into the soils, and detailed plans detailing the water quality management features². Additionally, the plans should depict the amounts of landscaping on the site, with a clear note that the plant palette will be consistent with the plant palette requested above. Please also clarify whether the garden court homes (which appear to include 2 separate garages), and each of the other dwelling units on site, include 2 parking spaces per unit?

11. Agriculture. Please clarify whether any grading or soil remediation would occur at any of the potential agricultural lands identified in the 5/17/13 submittal. Is the maintenance of agricultural lands possible in any of these areas through the introduction of agriculture, such as creation of a community garden?

12. Mitigation Phasing. Please note that the Coastal Development Permit process will address the phasing of different parts of the development. Specifically, the required mitigation will likely be required at the first stages of the project, and/or at certain points such as prior to the construction of residences, and/or prior to the issuance of the certificate of occupancy. Therefore, staff recommends that the project schedule be modified to ensure that completion of mitigation will be prioritized.

² For instance, will the project include any measures such as the construction of driveways and walkways using porous materials (crushed gravel, concrete grid, cobblestones) to allow increased percolation of runoff into the ground? Direct runoff from impervious surfaces to sheet flow through a biofilter (such as a landscaped area) or other filtration oriented BMP?; Maximize on-site percolation of runoff?; Use infiltration trenches to collect and retain runoff, allowing it to seep into the ground, thereby reducing or preventing off-site flows?; Use retention structures or design rooftops to store runoff?; Install rain gutters and orient them towards permeable surfaces (such as landscaped areas) rather than driveways or impermeable surfaces in order to facilitate infiltration and reduce the amount of stormwater leaving the property?; Design curbs, berms or the like so as to avoid isolation of permeable or landscaped areas? Include the use of rain barrels to minimize irrigation requirements?

- Can we ask for how they might minimize the size of the end of line detention basins, or have those already been minimized?

13. Land Trust. In order for the Commission to recommend a special condition which requires a property be conveyed to another party, it must first be able to a) identify the anticipated recipient of the conveyance, and b) have evidence that the anticipated recipient is willing to accept the transfer. Therefore, submittal of the information necessary to determine the exact type of conveyance, and information showing that the anticipated recipient would accept the conveyance, will be required prior to completion of the file. Additionally, the Commission's recommendation would likely include a requirement for long term maintenance of areas adjacent to developed areas to ensure that the development does not result in negative impacts to adjacent habitat. For example, the Commission may require that trash collection or other routine maintenance occur throughout the lifetime of the development. Therefore, identification of a funding source and the mechanism of funding should also be included prior to the completion of the file.

E. Archaeological Resources

1. The submitted letter states that archaeological site ORA 906 would be impacted by the construction of North Bluff Road, but that there are alternative road designs that do not impact ORA 906. Avoidance of impact is a type of reasonable mitigation that may be required for development projects which would impact archaeological resources. If there is an alternative project designs that would avoid impacts to sensitive resources, staff recommends that the applicant incorporate the alternative into the project proposal.
2. The submitted letter states:
According to the City's consultant, BonTerra Consulting, its work plan for the archaeological investigations that it conducted was not peer reviewed;
Although the City's consultant believes that its study is suitable to address the archaeological resources on the site, the peer review process is designed to ensure that all relevant factors have been considered in the review. To ensure that the submitted archaeological information provides the most accurate depiction of the archaeological resources on the site, a peer review of the archaeological investigation is necessary. Therefore, please submit a peer review of the archaeological investigation. The archaeological investigations on the site proceeded without benefit of a Coastal Development Permit. The proposed project should address the unpermitted development through the enforcement or CDP process prior to the completion of the file. This will ensure that the unpermitted development on the site is resolved, and that the proposed project would not in any way rely on existing unpermitted development.
- 3. Remediation Work And Impacts To Archaeological Resources. As discussed above, remediation work on the site requires a Coastal Development Permit. However, even if some remediation work were included in the scope of the exemption resolution, and thus impacts to sensitive resources associated with the remediation were not subject to Commission review, subsequent development of the site may result in further impacts to archaeological resources. For example, while disturbance associated with oil remediation activities may be relatively shallow, project associated grading or construction of utility trenches may result in significantly deeper disturbance. Please submit a review of the subsurface testing which has occurred on the site to determine whether the subsurface testing has been conducted to a depth necessary to ensure that deep archaeological resources, such as burials, have been detected if they are present.

- 4. Archaeological Research Plan. An ARP must be prepared, approved and implemented prior to consideration of a CDP for development prior to the completion of the file. This is to ensure that the results of the ARP are used to determine the appropriate development footprint that would be proposed in the CDP application. Without an ARP, such footprint cannot be determined, and it cannot be determined whether the project would be the consistent with the protection of coastal resources.
- 5. Please address the comments included in the June 11, 2013 letter from Dr. Mikel Hogan, and the June 10th letter from Patricia Martz of the California Cultural Resource Preservation Alliance (attached).

F. Public Access

- Trails and Sea Level Rise. Thank you for your comments regarding trail design. Please provide analysis of how often trails will be subject to flooding, whether the trails are expected to last at least 75-100 years, and what design features of the trails are included to ensure that trails in flood prone locations will be able to withstand occasional flooding. Would the location of proposed trails allow for gradual landward migration of wetlands with increases in sea level over time? Similarly, is space provided for the gradual landward migration of the trails as well?
- A full Transportation Demand Management Plan, with analysis by a qualified professional, will be required prior to completion of the project. Please provide all agreements between the applicant and any governmental entity that would contribute to meeting the goals in the final TDM plan, including but not limited to, an agreement that will ensure compliance with section 30252(1) of the Coastal Act of "facilitating the provision or extension of transit service." Your resubmittal refers to a commitment to coordinate with OCTA for a transit route. Please submit evidence of this commitment.
- Proposed Commercial Uses. What is the estimated square footage of the proposed commercial uses? What portion of that would be primarily visitor serving, and what portion would be primarily resident serving? Would the commercial uses accommodate a variety of price ranges? Please provide an analysis of how the total amount of commercial and visitor serving commercial uses were determined to be appropriate for the amount of residential uses on the site and in the surrounding area, and how the proposed amounts of these uses would be sufficient to reduce vehicle miles traveled.
- Parking. Does the Guest parking indicated on attachment 33 to the 5/17/13 letter composed of parking which is available to the general public, or to the specific owners of the residential units?
- Pedestrian Bridge. Thank you for the additional information regarding the pedestrian bridge. Please note that the method of conveyance of the pedestrian bridge, and documentation of the proposed receiving agency will be required prior to completion of the file.

G. Miscellaneous

- Public comments. The 3/1/13 Notice of Incomplete Application asks for a response to the public comments attached to the notice which pertain to the filing of the application. At our 3/15 meeting in Long Beach, the applicant requested that we clarify the scope of this request and work with the applicant to narrow down the public comments to those which needed a response.

Notice of Incomplete Application
Application No. 5-13-032
Page 15 of 15

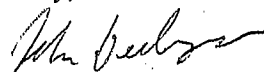
Staff has reviewed each of the public comments which were attached to the notice of incomplete, and the following reference those comments which have not yet been addressed and which are not addressed by the other questions included in this Notice of Incomplete Application. These include:


- Dr. M. Hogan's letter received on 2/26 regarding existence of archaeological sites not analyzed in the CDP application, including the existence of 'cogged stones'.
 - M. and D. Krauss email dated 2/25/2013, regarding consistency of the project with Coastal Act Section 30253 (c)
 - S. Forster email dated 2/25/2013 regarding additional fault traces which are not analyzed in the CDP application
 - R. Hamilton Letter dated 1/28/2013 requesting an independent third party review
- *Fees.* Based on the information submitted to date, Commission staff has determined that the proposed project will be processed on the Regular Calendar. The fee for processing the proposed project is \$ 265,250. You have submitted a fee of \$159,150, and requested a reduction in permit fees pursuant to California Code of Administrative Regulations Section 13055 (h) (3). This section states, in part:
After registering a project with an approved third-party certification program, applicants expecting to obtain a certification that qualifies for the above-mentioned fee reduction must submit 60% of the filing fee required pursuant to section 13055 and a letter of credit or other cash substitute approved by the executive director in the amount of the remainder of the required filing fee.
Please submit either: 1) proof that you have registered your project with an approved third-party certification program and a letter of credit or other cash substitute for the approval of the Executive Director, or 2) the balance of the remaining permit fee, at \$106,100. Please note that this is the fee based on the current fee schedule. Fees are adjusted annually based on CPI. The required fee will continue to be adjusted until the application is deemed 'filed'.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,


John Del Arroz
Coastal Program Analyst


Karl Schwing
Supervisor Regulation and Planning

cc: File

Attachments: Letter from Dr. Mikel Hogan
Letter from Dr. Patricia Martz of the California Cultural Resource Preservation Alliance

Del Arroz, John@Coastal

From: OHOGAN7@aol.com
Sent: Wednesday, June 12, 2013 2:02 PM
To: Del Arroz, John@Coastal
Cc: ohogan7@aol.com
Subject: Response to Banning Ranch--Revised CDP Application
Attachments: Banning Ranch June 11 Response to CCC.docx

Dear John, attached is my response to the revised CDP application. Thank you for all that you do, Mikel Hogan

June 11, 2013

Response to Newport Banning Ranch—Revised CDP Application

Dear John Del Arroz,

I am responding to the Revised CDP Application for Banning Ranch. First, I will mention my qualifications to assess the archaeological section of the DEIR submitted by BonTerra Consulting. As I stated in my first response to the Newport Banning Ranch, Coastal Development Permit Application in relation to Appendix J, "Cultural and Paleontological Resources", I am an applied anthropologist with over 30 years teaching, research, and field experience. I was educated in the four fields of Anthropology (Archaeology, Cultural, Physical, and Linguistics) and I have taught Anthropology at both Cal State Fullerton (for about 27 years, until 2007 when I became the Chair of the Department of Human Services) and Coastline Community College (for about 30 years), where I continue to teach Anthropology (which encompasses Archaeology). In 2004-2007, I was hired by Coast Learning Systems as the content expert/adviser for eleven educational films to be used in the Anthropology Telecourse at Coastline College. Six of the eleven films that I worked on covered paleoarchaeology about "The Evolving Human." This series received an Emmy Award in 2008 (from the 60th Los Angeles Area Emmy Awards, September 6, 2008).

Item 26, page 58-59: Adequacy of archaeological testing (D. Archaeology, Page 10) and Item 28, Mitigation of potential impacts to archaeological resources on the project sites (D. Archaeology, Page 11)

In relation to the "Peer Review" & "Local Tribes Solicited" sections—contrary to the assertion on pages 58 & 59, I believe the conclusions would have been different if the work plan for the archaeological investigation had been peer reviewed and local Gabrielino/Tongva had provided feedback. A peer review would likely have drawn attention to the great significance of Banning Ranch prehistory as I described in my synthesis of the archaeological excavations dating back to the 1930's WPAF that I submitted with my letter to you in February 2013. The conclusions of the workplan for the archaeological investigation was incomplete and thus minimized and distorted the great significance of the archaeology of Banning Ranch. Comments by local knowledgeable Gabrielino/Tongva would have revealed the relationship of Banning Ranch with Bolsa Chica—both are sacred coggled stone sites, as the archaeology record testifies. There are local knowledgeable Gabrielino/Tongva members in this area of Southern California involved in Gabrielino/Tongva archaeology, such as the Pima Archaeology Field School on Catalina Island.

Item 29, Comments made by Professor Hogan on the Archaeological Resources assessment prepared for the Project (D. Archaeology, Page 10)

Mikel Hogan, Ph.D., CSU Fullerton
mhogan@fullerton.edu

First, the introduction to this letter describes my qualifications to critically comment on the adequacy of the Archaeological Resources Assessment prepared for the project.

Second, inclusion of the archaeological context of Banning Ranch (that I provided) most certainly would have altered the conclusion about the significance of the site. It was the site of a complex of villages associated with the larger village of Genga (as I documented in my submission to you in February). Preserving the Banning Ranch site will allow possible exploration of the relationship between Banning Ranch and Bolsa Chica prehistory (both sacred cog stone sites).

Third, since Gabrielino/Tongva members in the area are actively engaged in the archaeology of their past, they need to be included as monitors to bring their expertise and insights to any project.

Thank you for taking the time to read my response to Newport Banning Ranch—Revised CDP Application, Mikel Hogan

Del Arroz, John@Coastal

From: Martz, Patricia <pmartz@exchange.calstatela.edu>
Sent: Monday, June 10, 2013 11:58 AM
To: Del Arroz, John@Coastal
Subject: Banning Ranch - Revised CDP Application
Attachments: ccrpa letter to Coastal Commission.doc; Draft EIR ccrpa ltr pg 2.doc

Dear Mr. Del Arroz,

Please review the attached letter.

Thank you,

Patricia Martz, Ph.D.



California Cultural Resource Preservation Alliance, Inc.

P.O. Box 54132
Irvine, CA 92619-4132

An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.

June 10, 2013

John Del Arroz
California Coastal Commission

Dear Mr. Arroz:

We are writing to express our opposition to the proposed Newport Banning Ranch Project development not only because it will impact significant archaeological sites, but also because of the impacts to endangered species and habitat. Given the loss of so many significant archaeological sites in Orange County due to development, it is tragic that only three out of 11 archaeological sites in the Newport Banning Ranch Project area have escaped total destruction. All three sites have been determined eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR). This makes it all the more important that the three archaeological sites CA-ORA-839, CA-ORA-844B, and CA-ORA-906 be protected and preserved and not "mitigated".

Having registered our opposition to the proposed project, the remainder of this letter will address the specifics of the proposed mitigation plans. While BonTerra Consulting is to be commended for recommending preservation of portions of two of the sites through site capping and the City is to be commended for incorporating the recommendations into their mitigation plan, we question why all of the remaining portions of the NRHP and CRHR eligible sites cannot be preserved.

According to the mitigation measures in the environmental document (MM 4.13.2), an unknown portion of CA-ORA-839 will be impacted by planned removal of oilfield-related infrastructure prior to grading. It is not clear why, if the road will not impact the site, "planned removal of oilfield infrastructure that may impact portions of the site." is necessary. What is the justification for the removal? Leaving it in place is not only cost effective, as removal of the oilfield infrastructure and archaeological data recovery are time consuming and expensive; but given the magnitude of losses to the prehistoric site inventory on the property, the significance of the site, and the inadequacy of data recovery excavations as mitigation for destruction, preservation should be mandatory. It is also troubling that the areal extent of the impacts is not identified and therefore, the portion of the site to be capped could be very minimal.

The MM 4.13-2 should describe the areal extent of the portion of the site described as "the vast majority of the site" and the areal extent that would be impacted by the planned removal of the oilfield infrastructure. Saying that "It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it." is not sufficient. The MM 4.12.2 should identify the extent of the area to be preserved and state that the site will be capped following guidance provided by the

National Park Service's brief #5 Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss (NPS 1989, revised 1991).

CA-ORA-844B would not be directly impacted by the proposed development. The proposed road would be 400 feet east of the archaeological site. It will be impacted by oil infrastructure removal activities prior to grading. Again why does the oil infrastructure have to be removed? What is the grading for if the road would be approx 400 ft east of the site? Also indirect impacts from additional erosion of the unstable surface and the increased population on the site as a result of the future development could cause further damage over time. Mitigation of the Project's adverse effects is required. What mitigation? Data recovery? Why not preservation through site stabilization and capping?

CA-ORA-906 will be directly impacted as a result of road construction and oilfield infrastructure removal.

Bottom line: Out of 11 archaeological sites, only 3 have not been destroyed to the extent that they retain the potential to provide information important in prehistory and therefore are eligible. But due to the proposed development, all three will be impacted. "The impact would be mitigated to a level considered less than significant with implementation of MMs 4.13-1 and 4.13-2." This statement reflects the outdated thinking that the only value of an archaeological site is scientific information. If you recover the information through data recovery excavations, you are good to go. This does not take into consideration Native American cultural, heritage, and religious values. It also does not recognize the fact that the time and monetary constraints of archaeological excavation, and the current science of archaeology, are not capable of recovering sufficient information before the site is destroyed.

In recognition of this, federal historic preservation laws no longer allow a "no adverse effect determination" or in CEQA parlance "reduction of potential impacts to a level considered less than significant" through data recovery mitigation. Archaeological sites are fragile and non-renewable. Archaeology as it is practiced today is a destructive process. It is essential that the remaining areas of these highly significant archaeological sites be preserved for future generations with advanced archaeological techniques that are non-destructive and that can provide answers to questions that we can't answer with today's technology.

In summary, the proposed project is not in the public interest, and the 3 remaining archaeological sites should be avoided, capped, and preserved. If you have any questions, please contact me at (949) 559-6490.

Sincerely,

Patricia Martz, Ph.D.
President

