

CALIFORNIA COASTAL COMMISSION

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



3/1/2013

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. The proposed project includes 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 and that a range of issue areas need to be addressed, as described herein.

Section 13053.5 of the Commission's regulations requires that a permit application shall contain, at a minimum, "an adequate description...of the proposed development, project site and vicinity sufficient to determine whether the project complies with all relevant policies of the Coastal Act. The submitted permit application fails to meet this standard, and does not provide an adequate description sufficient to determine whether or not the project complies with all relevant Coastal Act policies. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for certain types of structures, and various other draft plans for public amenities and habitat restoration. The coastal development permit process is not suited to the type of 'conceptual' approval that is being sought in the proposed application because only in a planning context can the Commission fully evaluate whether development of this scale can comply with Coastal Act policies. Given the scope and complexity of the proposed project, Commission staff has in the past and continues to recommend that the project be considered in the context of a Local Coastal Program review, submitted by the City. This would allow for consideration of significant threshold issues at the planning level, such as the kind, location and intensity of development that would be appropriate for the site given the policies established under the Coastal Act and the constraints present on the site (e.g. biological resources, geologic hazards, archeological resources etc.).

Further, evaluating a project of this scale in a pure CDP context would be inconsistent with section 30604(a) because it will prejudice the local government from preparing a local coastal program that is in conformity with Chapter 3. This is so because the individual evaluation of site-specific resources on the ground on each individual building site would result in an incoherent and unintegrated development scheme where the purpose of a certified LCP is to develop an integrated and coherent development plan for a large area, like the subject area consisting several hundred acres of land. Only with the certification of an LCP for the project site can the Commission fully

evaluate whether a proposed development of this scale complies with all relevant policies of the Coastal Act. Without a planning effort, the Commission is left with a scattershot approach where it will attempt to evaluate each component of development in a unique manner depending on the individual site constraints as they relate to projects on that individual site which will inevitably lead to unworkable and inconsistent results when considering the overall development scheme and its compliance with Chapter 3 of the Coastal Act. Therefore, staff recommends that the applicant withdraw its application for development and work with the local government on developing an integrated and coherent local coastal program that will provide adequate policies, after exhaustive consideration of the coastal resources on the subject site, for future development on the site.

Furthermore, throughout this letter we outline a host of issue areas that need to be addressed, including unresolved unpermitted development, the role that an exemption issued by the Commission in 1973 for certain oil field activities has in the review of the current development proposal, the type and location of biological resources, unresolved questions about geologic conditions and archaeological resources, among others. Each one of these issues must be resolved before a CDP application for any new development plan could be adequately reviewed. We cannot begin to consider the kind, location and intensity of development that is appropriate for the site, especially at the level of detail required in a coastal development permit application, until these fundamental issues/problems are resolved. Thus, we urge you to withdraw this application, work through the issues we are raising, and to wait to submit a CDP application until all of these issues have been fully addressed.

If, on the other hand, despite our advice and admonition, you choose not to withdraw, we do not intend to review further submittals that do not meet the level of cohesiveness only found in a planning document such as a local coastal program. We will withhold any further review and analysis of project details and filing the application complete unless and until the threshold issues are addressed. Once those larger issues are addressed, we will turn to the subsequent detailed review of the ultimate development plan. To the best of our ability we have identified deficiencies related to details of your ultimate development proposal but given the significant unresolved nature of the larger issues mentioned above, your submittal of these details and our review of it should wait until a later time.

A. Exemption / Oil Field Operations

For the purposes of assessing the presence of coastal resources on the site, the application relies on the future state of the project site, after abandonment/relocation/consolidation of the oil operations on the site and after remediation of the site for the specific purpose of the residential development proposed in the application, rather than the current condition of the site (minus impacts of unpermitted development discussed below) to conclude that the project is consistent with the environmental protections of the Coastal Act. The application assumes that all prior and future oil operations and subsequent cleanup/remediation to facilitate the proposed residential development are exempt pursuant to Resolution of Exemption No. E-7-27-73-144 ("the Exemption").

Any development that exceeds the scope of the Exemption requires a coastal development permit from the Commission, unless the Executive Director decides that no permit is legally required. The environmental reports provided with the application assume the legality of the unpermitted removal of major vegetation that has occurred on the site, notably, mowing extensive areas of the site, as

more fully described in staff's correspondence to NBRLLC and/or the oilfield operator dated May 18, 2012, September 9, 2012, and in staff's comments on the Newport Banning Ranch DEIR. As noted in said letters, extensive removal of major vegetation has occurred on the site, purportedly to address fire safety concerns, without the necessary coastal development permits. Fuel modification may be exempt from coastal development permit requirements pursuant to the Exemption, but only if it is demonstrated that such activities qualify as reasonable oilfield maintenance within the scope of the Exemption. Staff has asked for information, documentation and regulations, or any support for the claim that the subject vegetation removal is necessary to oilfield maintenance, but we have received in response only a general assertion that vegetation removal is necessary across the site, in some areas hundreds of feet from any active well, pipeline, or flammable structure, in order to preserve future drilling opportunities. Clearly this assertion is not supported by the Exemption, which expressly limits its application to 340 specific wells in operation or under construction in 1973.

Commission staff is unable to evaluate the validity of all these assumptions with the information that has been provided. Typically the Commission considers the existing state of the site (minus the impacts of any unpermitted development), to determine what the impacts of the proposed project will be. Unpermitted development, such as the vegetation removal noted above,¹ cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, consideration of this application must consider site conditions as if unpermitted development had not occurred. In addition, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted vegetation removal noted above, that has occurred on the site. Your assumptions relative to the 'baseline' state of the site are clearly important and the actual, not assumed, baseline must be determined before we can continue to process this application. Toward that end, please submit the following documents:

- 1) A detailed rationale with evidence for why the Commission might not consider the existing site conditions as the baseline for the impacts of the project.
- 2) The drilling and abandonment plan in place at the time of the resolution of exemption from 1973.
- 3) A copy of the relevant codes and regulations regarding oil field operations, abandonment, remediation, and environmental protection best management practices in oil field operations, from 1973 and from today, and your analysis of what the applicable policy is
- 4) Full documentation of the site conditions at time of the 1973 exemption, including the location and type of all equipment (e.g. wells, pipelines, processing facilities, roads, etc.) and in particular those facilities specifically identified in the exemption (e.g. the 312 existing wells and associated surface facilities and 28 additional wells that were to be drilled in 1973)
- 5) Full documentation of the existing site conditions
- 6) A detailed description of the changes to site conditions and oil operations and facilities between 1973 and today, including but not limited to repair, drilling, re-drilling, closing,

¹ Please note that the description herein of the unpermitted development on the site is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

relocating all wells (e.g. injection wells, oil production wells, etc.) and changes to associated surface facilities to date

7) Documentation of the extent of vegetation removal that has occurred on the site, including annual record of mowing activities and the areal extent of vegetation removal

8) An assessment of habitat characteristics of the site prior to, and if not for, the unpermitted removal of major vegetation noted above, as well as in staff's letters noted above.

9) An explanation of how the development undertaken since the exemption would meet the standard outlined in the exemption that such development is only exempt "...provided that no substantial changes may be made in said development..." and that "...future exploratory drilling within the lease area is not exempted..."

10) Information, documentation, regulations or any support for the claim that the removal of major vegetation noted above is necessary to oilfield maintenance.

11) A letter from the Department of Oil and Gas, and/or other appropriate regulatory entities (e.g. Orange County Health Care Agency), which states what the standard and minimum practices for abandonment and remediation of a site in an environmentally sensitive area would be for different degrees of soil contamination, and for the following land uses [and all potential project alternatives]: a) open space, b) residential development, c) commercial development

13) A complete description and detailed plans describing all development to be undertaken in conjunction with abandonment/relocation/consolidation of the oil operations on the site and remediation (i.e. final Remedial Action Plan) and justification for all such proposed work as may have been required by regulations in 1973 and current requirements. The draft Remedial Action Plan (dRAP), and accompanying graphics appear to significantly oversimplify the type and extent of work to occur in each particular area. For instance, there are many instances where the dRAP graphic depicts vegetated areas that would be subject to unspecified 'remedial activities', yet there are only 'utility' poles in the area. Why would such an extensive area need to be 'remediated' when there is merely a utility pole present? Similarly, there are other areas targeted for unspecified remediation where there are no pipelines, wells, utility poles, or other oil field facility present. If there are no oil field facilities present in these areas, why is remediation required? Another issue that needs to be addressed is whether or not there are alternative methods for remediation that would reduce impacts on resources (e.g. biological resources). For instance, Attachment 26, Map 2, Oil Field Abandonment and Remediation Staging Map, identifies various locations where soil subject to bioremediation would be staged/stockpiled. These soils subject to remediation and the staging/stockpile areas overlap significant biological resource areas. Are there alternatives to bioremediation that would reduce or eliminate the need to excavate and/or stockpile soils (e.g. in-situ or other measures)? Finally, the resource impacts (e.g. biological, water quality, archeological, etc.) to occur as a result of the remedial activities must be identified in detail. These impacts need to be distinguished from the impacts ultimately proposed under the new development plan. The least environmentally damaging alternative should be identified/chosen whenever impacts are identified.

14) If there is a regulatory or other process that must be undertaken to determine the existing state of site contamination and associated clean up/remediation requirements, and all associated development to implement those clean up/remediation requirements that process must be completed consistent with Section 13052 of the Commission's regulations

15) If not captured in the materials above, please submit copies of all documentation provided to the Commission in conjunction with the original exemption request in 1973.

B. Alternatives

1. Status of Primary Open Space Land Use Pursuant to General Plan. The City of Newport Beach's General Plan states that the primary land use of the subject property is Open Space. Clearly, under the Coastal Act, this is the preferred use for the property. Your application states that the General Plan allows the applicant to pursue secondary land uses (i.e. residential, commercial, etc) so long as a certain time period had passed and certain other terms of an agreement between the City and the applicant were satisfied. Please identify the time period and terms of this agreement (and provide a copy of the agreement) and how those requirements were met such that the applicant has been able to pursue the secondary land uses.

2. Resource Constraint Plan. Staff is still developing its delineation of ESHA on the site (and as noted elsewhere in this letter, additional biological resource information is necessary in order for staff to complete this effort); however, based on a review of the submitted materials it is likely that substantial areas of the project site could qualify as wetlands and/or ESHA. To assist in the development and review of alternative project plans, please submit a set of plans identifying areas where each of the following resource constraints exist: 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. Various buffers should also be identified around these areas, including a buffer of 50 feet, 100 feet, and 300 feet. The plan should include a key for each of these categories. A second page of the plans should contain a colored area showing only the areas where there is a lack of the resource constraints identified above. 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).

3. Alternative Access Plans. Based upon earlier review of biological information for the Sunset Ridge Park project, ESHA is located within and adjacent to the proposed Bluff Road in the area where it intersects with Coast Highway. Similarly, based on the information submitted to date, it appears that North Bluff Road also passes through and causes impacts to sensitive coastal resources. 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 projects 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?

C. Biological Resources

1. Further Review Required. The points listed below ask for additional information regarding the biological resources on the site. Prior to completion of the application, staff and the applicant should seek to resolve any disagreement regarding the type and extent of the resources on the ground – what types of vegetation communities or species, and where those communities, species, and wetlands are located.

An ESHA designation is based on site specific circumstances, and, except for the portion of the site that is part of the Sunset Ridge Park project that was heard at the Commission's November 2011 hearing, the Commission staff has not yet performed a formal ESHA delineation for the site. However, the site is known to support significant numbers of sensitive species, and there are likely significant areas of ESHA on the site. ESHA determinations are based on site specific circumstances, which the Commission has not had the ability to review in full. Based on review of additional submitted information and additional visits to the site, a determination of ESHA and wetlands will be made which may affect the allowable locations for development on the site.

2. Past Surveys / Updated Maps. The submitted biological information includes maps which contain just one year of survey data. In review of previous projects on or near the Newport Banning Ranch property (Cease and Desist Order CCC-11-CD-03, Consent and Restoration Order CCC-11-RO-02, and Coastal Development Permit 5-10-168), the Commission staff has reviewed a continuous survey record of gnatcatcher usage from 1992 to 2009. However, only a single year of data is shown for the usage of sensitive species of the property, and of this year of data, only a single point is shown to indicate usage. A single year of data is not sufficient to draw conclusions regarding the usage of habitat on the subject site by sensitive species, as some sensitive species, such as Burrowing Owls, may be absent one winter and present the next. Furthermore, surveyors do not always detect rare species they are searching for, even when individuals are present. Finally, a point does not indicate the range of habitat that was observed by the surveyor, and does not indicate the entirety of the habitat which should be protected.

For these reasons, please submit all known biological surveys regarding sensitive species on the site, and submit updated biological maps which show all known survey data regarding all sensitive species on the site, and which have been updated to indicate the extent of usage.

3. Mowing. The site has been subject to mowing activities, which have in some cases reduced or may have eliminated the ability of the mowed area to provide habitat. Please submit a map showing what areas have been mowed over time. Additionally, please submit all available information regarding the purpose, extent, and timing of mowing activities.

4. Burrowing Owl Surveys. The submitted burrowing owl surveys and reports state that the burrowing owl has been found repeatedly on the site since 2008. However, the survey concludes that, although the owls are there in late January each year, they are not there during mid-February to mid-April. Where is the likely location that they occupy during the breeding season? Given that the owl seems to repeatedly utilize the area, why should or should not the area be considered as habitat that is necessary for the survival of the owls on the site.

5. California Gnatcatcher Survey. The last formal gnatcatcher survey on the site is from 2009. There have been substantial amounts of disturbance on the site associated with mowing and the continuing oil operations. Additionally, the gnatcatcher is a highly mobile species that may utilize one area in one year and not the next, and not all areas utilized by the gnatcatcher will be found in each survey. For these reasons, up to date gnatcatcher surveys are essential to adequately outlining the areas used by this sensitive species. Therefore, please submit a new current protocol gnatcatcher survey and any intervening survey information that may have been collected since the last survey provided in this application.

6. Vernal Pools/Seasonal Pond Surveys.

- a. 2010-2011 Surveys - We are not able to confirm whether protocol surveys were completed for the pools. For a number of the pools there is missing data on data sheets. For example, pool depth is an important piece of information and the depth of the pool at the time of sampling is often missing. In addition, in many cases there are only one or two data sheets. The protocol requires that sampling occur over the entire period of pool inundation and we know that ponding extended well beyond the sampling period documented by the limited number of data sheets. Please address these deficiencies
- b. Some of the pools that had fairy shrimp cysts were identified as not suitable for fairy shrimp because the cysts were not successfully hatched. This does not seem to be a logical conclusion – if cysts are there fairy shrimp have successfully reproduced on the site in the past. Please explain.
- c. Wet Season Sampling – When fairy shrimp cysts (*Brachinecta sp.*) are found, an additional wet season is required. No wet season survey was completed. Please submit a wet season survey.
- d. Has a watershed delineation been completed for each pool which indicates whether the project has the potential to impact the pool? If not, such delineation and analysis must be provided.

7. Vegetation Mapping. Please address the following questions and concerns regarding the submitted vegetation map.

General comments

- a. The discussion of vegetation mapping methods is hard to follow. Please provide explicit details for exactly how the mapping was conducted, how the transect data was collected and used, and how the membership rules for the habitat categories was interpreted.
- b. It is unclear when the “The Manual of California Vegetation” (MCV2) membership rules are applied and whether Dudek is using absolute or relative cover values. This is a problem because the MCV2 membership rules vary for each category of vegetation. This needs to be reviewed and corrected for all cases where data was used to identify habitats.
- c. There seems to be an inconsistency regarding the minimum mapping unit. For instance, the document states that the minimum mapping unit is 0.5 acres for assessing disturbed areas. There are many patches of mapped purple needlegrass that are much smaller than this, which is beneficial because it gives additional information regarding the existing vegetation on the site. However, there are also other large areas mapped as disturbed that contain large patches of disturbed encelia scrub consisting of well beyond the minimum 10% cover threshold. Please explain.

Encelia/Disturbed Habitat

- a. The membership rules for what constitutes “disturbed” are unclear. Please provide a clear definition and membership rules for the various disturbed categories.
- b. While Table 2 provides rules for disturbed encelia scrub categories (this is the only type of disturbed habitat with defined membership rules), we have several concerns including:

1. There appear to be gaps that miss existing disturbed encelia scrub. For instance, there is a gap for anything less than 80% cover that is greater than 1m in height
2. Although the membership rules require 30% relative cover of encelia in order for the vegetation to be classified as encelia, neither Table-7 or 8 appear to include this information as only the absolute cover of encelia is provided. Please clarify. Also, please explain what coverage requirements and other factors determine whether a patch of vegetation qualifies as 'encelia scrub' or 'disturbed encelia scrub'.
3. For all the transects that had 10% or greater native shrubs other than encelia, what were those species?
4. Many areas of the site have been subject to mowing over time, and therefore a portion of habitat could be described as either encelia scrub or disturbed encelia scrub depending on whether the vegetation had been recently mowed at the time of the survey. Please explain whether usage of height in the guidelines for disturbed habitat is consistent with the listed determinations.

Grassland

- a. Native grassland is defined as either characterized by purple needlegrass or salt grass. However, the transect data has areas with significant percentages of native forbs other than purple needlegrass or salt grass that might meet the membership rule for another category of coastal prairie/ native grassland /native habitat.
- b. Bare ground rules are unclear – we need more specificity to understand how bare ground was treated in determining habitat type for grassland (this relates back to the general comment about absolute vs. relative cover).
- c. Are the areas mapped as annual grassland appropriately labeled, or are there instances where mowing of scrub or other habitat resulted in this determination?

8. Environmental Mitigation. The application states that 78.5 acres set aside for future mitigation for “environmental mitigation, offsets, or other habitat sites,” a site for restoration credits (see page IV-2 of CDP Application Letter). Would oil remediation activities not result in the restoration of these areas? Page IV-7 goes as far as to say that the area would be a ‘mitigation bank’. If that is part of the proposal, the terms, conditions, mechanisms, management, etc. need to be identified at this time.

9. Fuel Modification Zones. The proposed fuel modification appears to extend to a minimum 120 feet, and in some instances a much greater distance from the adjacent residences. Does the proposed project minimize the width of required fuel modification zones by usage of alternative means and methods of construction? In areas where there are larger areas of park space between residences and the bluff edge, why does the fuel modification zone extend the same amount into the canyon?

10. Fences / Barriers. Movement of wildlife through the development is essential to preserving the biological integrity of important wildlife habitat at the site. For example, studies have concluded that the presence of the coyote in coastal sage scrub habitat resulted in higher survival rates for the California gnatcatcher due to the coyote’s predation on species that may harm gnatcatchers. What are the potential barriers to wildlife migration around the site, and how will the development ensure that such barriers are minimized?

11. Lighting. The proposed project includes development at topographically high places (bluff tops) that are directly adjacent to topographically low places (wetlands, riparian areas, Semeniouk Slough). How will the proposed project ensure that light, including reflected light, does not result in increased light levels in natural areas?

12. Plant Palette. CLUP policy 4.1.3-1 C states:

C. Prohibit the planting of non-native plant species and require the removal of non-natives in conjunction with landscaping or revegetation projects in natural habitat areas.

The proposed project includes both native and non-native species. Although a non-native species may be non-invasive, non-native species still have the potential to spread from landscaped areas into natural areas. Additionally, non-native species typically require additional irrigation, pesticides, and maintenance than native species, which raises additional concerns regarding adjacent habitat and geologic stability. Please submit an alternative plant palette that utilizes only species native to coastal orange county.

13. Habitat Management Plan. The submitted draft habitat management plan will be further reviewed and further modification will be required upon receipt of additional information regarding biologic information and the scope of the proposed project, as requested in this letter.

14. Changes to Wetland Hydrology. The proposed project will involve significant changes to existing surface drainage patterns, natural water infiltration, and perhaps changes to subsurface water movement. Please provide a biological/hydrological analysis identifying all such anticipated changes and any subsequent impacts to existing wetlands on the site and surrounding the subject site. If impacts are anticipated, please identify appropriate mitigation measures.

15. Current Pacific Pocket Mouse Survey. An assessment of potential Pacific Pocket Mouse habitat, prepared by Dudek, was submitted dated September 25, 2012. This document references past surveys done in 1990 and 1995, but does not include a current survey. The assessment states that based on the prior surveys, no new survey is recommended. However, the assessment goes on to identify potential survey locations should USFWS recommend that new surveys be performed. Since it has been about 18 years since the last survey, conditions may have changed. Therefore, staff believes it would be appropriate for a current survey to be performed, consistent with established professional protocols (e.g. USFWS protocols). Please undertake and submit a current survey. We also request that you consult with USFWS regarding this requirement and include a copy of all correspondence with USFWS on this issue with your submittal. If USFWS decides they would not recommend a new survey, Commission staff may consider modifying or eliminating this requirement.

D. Archaeology

As noted in staff's comment letter on the DEIR, the DEIR confirms that the archaeological consultant, BonTerra Consulting, performed a walk-over on May 13, 2009 and carried out Phase II test excavation and evaluation of the 11 mapped archaeological sites. Specifically, testing activities included brush clearing, excavation of shovel test pits (STPs), and one square meter units. These activities constitute "development" under the Coastal Act. All development, unless otherwise exempt, which is not the case here, requires a Coastal Development Permit (CDP). The DEIR contained no mention of CDPs having been issued for the development. On March 19, 2012 we

received a CD containing Responses to Comments for the Newport Banning Ranch EIR. In response to our request for information regarding any CDPs issued for archaeological excavations the City stated that this information would be provided separately (Newport Banning Ranch EIR, Responses to Comments (RTC), #24, page 3-74). When was this separate submittal made? Please provide this information again.

The NBR site contains 11 mapped archaeological sites. The EIR states that 3 of the sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are eligible for listing in the California Register of Historic Resources (CRHR) as well as the National Register of Historic Places (NRHP). Further, CA-ORA-839 is also considered a "unique archaeological resource" and as such, measures are required to be taken to preserve these resources in place or to leave them undisturbed. Concerning CA-ORA-839, the DEIR is unclear as to whether direct impacts will occur to this unique archaeological resource as a result of the Proposed project. However, it is clear in the DEIR that direct impacts will occur to this archaeological site from the removal of oil field infrastructure. Likewise, CA-ORA-844B and CA-ORA-906 will be impacted, either in whole or in part, by the Proposed project or development associated with the planned removal of oil field infrastructure. Please explain, in detail, the proposed oil field infrastructure removal activities that will impact the archaeological resources. What agency is requiring the removal of the infrastructure? Please provide a copy of such agency correspondence requiring the removal. Are there alternatives that will avoid impacts to the archaeological resources, including, but not limited to, abandonment in place?

In the DEIR, staff questioned the adequacy of the testing that was previously performed to determine the nature, extent and boundaries of existing archaeological sites on the Project site. The DEIR acknowledges, "it is clear that cultural resources still exist within sites on Newport Banning Ranch, and it is not unlikely that previously undetected cultural material and unknown archaeological sites could remain in the subsurface of the Project site." There is no discussion of peer review of the archaeological testing that previously occurred. Although the DEIR states that the local tribes were solicited for consultation, and the DEIR references a solicitation letter, there is no record of the responses. Please provide copies of any such peer review and Native American comments. The DEIR states that the archaeological investigations carried out by BonTerra in 2009 were monitored by members of the Juaneno tribal group. The history/pre-history of the NBR area indicates that this area has a shared use by the Gabrielino/Tongva tribal group, according to the Native American Heritage Commission (NAHC).

In the staff comments to the DEIR we indicated that a CDP should be obtained to carry out a comprehensive archaeological research plan (ARP) in order to provide protection in place of the existing archaeological resources. In the Responses to Comments (RTC), the City indicated that it would advise the applicant to submit an ARP to the Coastal Commission in support of a CDP for the archaeological work (Newport Banning Ranch EIR, Responses to Comments, #25, page 3-74). No such ARP was included in the subject CDP application or separately submitted. Please submit the ARP coastal development permit application, requesting Commission review and approval of the ARP prior to consideration of your proposed Project since the Proposed project (including the removal of oil field infrastructure) will need to be redesigned to allow the existing archaeological resources to remain in place undisturbed. The ARP should not be designed to recover archaeological resources (however should penetrate the soil layers that could contain burials) but be designed to determine the nature, extent and boundaries of existing archaeological resources so that development of the site can be located and designed to leave the archaeological resources in place

and undisturbed. The Coastal Commission requires that an ARP be subject to peer review by at least three qualified archaeologists and review and comment opportunity be extended to the State Historic Preservation Officer, Native American Heritage Commission (NAHC), and Native Americans with cultural ties to the area, as determined by the NAHC. The ARP should also include any subsurface archaeological investigation that was done without a CDP. However, please note that the Commission's enforcement division will consider appropriate steps to fully resolve unpermitted development, including but not limited to the unpermitted excavations noted above, that has occurred on the site.

The DEIR states that the Project would impact three known archaeological sites that are deemed eligible for listing on the State and National registers of historic resources/places and that development activities could also further impact unknown archaeological resources. The two proposed mitigation measures included in the EIR indicate that the proposed measures will mitigate this impact to a level considered less than significant. The mitigation measures (MM 4.13-1 and MM 4.13-2) are not consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources. The mitigation measures call for the salvaging and cataloguing of archaeological resources as opposed to in-situ preservation as the preferred option. Further, the mitigation measures state that some project grading would be monitored by Native American monitors. All grading activities that have the potential to impact Native American resources should be monitored by Native Americans with cultural ties to the area. The mitigation measures do not provide for avoidance of impacts and thus maximum protection of archaeological resources. The mitigation measures call for removal (data recovery) of known archaeological sites in order to make way for Project development, including unspecified removal of oil field infrastructure, as opposed to redesign of the Project in order to protect archaeological resources in place.

At a minimum, the mitigation measure that is most protective of resources, i.e. avoidance should be considered and assessed. To that end, an archaeologist's assessment identifying the locations of all cultural resources discovered on-site and an appropriate setback from these resources must be submitted. The resource locations and the setback area must be delineated on a site plan. A written description substantiating the basis for the setback must be provided. In addition, this assessment must be prepared in consultation with the appropriate Native American groups with ancestral ties to the site as recognized by the Native American Heritage Commission.

Finally, staff received the attached correspondence questioning whether previous excavations at NBR, that have the potential to change the significance of the site, were disclosed. If one or more of the archaeological sites on NBR were a part of a larger off site archaeological site, this information should be disclosed. Please provide your comments regarding the attached correspondence.

E. Development

1. Height Limits. The proposed inn would be four stories and 50 feet high (IV-14). Is this height, and heights of other proposed structures consistent with the City of Newport Beach's zoning code and the City's certified Land Use Plan? Would these proposed heights be a departure from the character of surrounding areas?

2. Pedestrian Bridge. The proposed project includes a pedestrian bridge spanning Coast Highway. Please submit full plans for the proposed structure. Would the proposed structure result in impacts to views from important public viewpoints identified in the City of Newport Beach certified Land Use Plan, or would it obstruct scenic views of coastal bluffs? Please submit view analyses identifying the impact of the proposed structure from vantage points located near and distant from the structure. Would the proposed bridge, or the associated path, be built on the edge of a coastal bluff or on the bluff face?

3. Landform alteration. The project includes modifications to existing bluffs to address erosion (page IV-15 of CDP application, figure 4_4 of development plans). Bluffs naturally erode, and such erosion is a characteristic feature of coastal bluffs. Policy 2.8.6-8 of the Newport Beach Land Use Plan states:

Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

Please explain whether the proposed work to the bluff is necessary and unavoidable and whether such work is consistent with the protection of natural landforms.

Despite the large cuts and fills on the site and the large total amount of grading, the Master Development Plan concludes that no significant landform alteration would occur. Please explain why.

F. Land Division

1. Map of Existing Legal Lots. The application states that the proposed project would subdivide a site currently comprised of 18 legal lots into about 250 legal lots. Please provide a graphic depicting the boundaries and locations of all existing legal lots within the subject site.

2. Tentative Tract Map. The submitted Tentative Tract Map refers to a Bohn-Mack court case decision and required easements. What was this court case and what relevance does it have to the subject permit application? The map also states that various easements run across the property, for utility and other purposes. Which of these easements are existing? Where are they located? Will any of those easement be relocated? If so, where to? The submitted tentative tract map states that it is for condominium purposes. Does the proposed development involve any actual changes to lot lines or splits in the existing lots?

3. Chain of Title. Also, please provide a complete chain of title for all existing legal lots located within the project boundary. The chain of title must include legible copies of all deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, including but not limited to creation of parcels via a recorded tract map, parcel map, official map, lot line adjustment, by grant deeds or other transfer, land grant, patent, etc. A typed copy of all handwritten deeds shall be prepared along with all copies of handwritten deeds

in the chain of title. These documents should be accompanied by any maps or supporting documents to support and clarify when and how the existing parcels were created.

G. Geology/Hazards

1. Bluff Edge Delineation. The submitted project plans include delineations of the bluff edge. However, from the submitted information it is unclear whether these bluff edge determinations are correct as they are plotted on site plans and not on topographic maps. Additionally, the submitted topographic maps appear to be rough or incomplete, as the depicted contour lines are not continuous and appear and disappear in different locations. Please submit a set of detailed topographic plans, with contours represented at an appropriate interval, for example 2 - 5 feet, for all slopes located on the site. The plans should also identify a bluff edge that is consistent with the definition of Bluff edge provided in Section § 13577 (h) "Criteria for Permit and Appeal Jurisdiction Boundary Determination" of Title 14, Division 5.5 of the California Code of Regulations (copied below).

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff, shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and a line coinciding with the general trend of the bluff line along the inland facing portion of the bluff...

Please note that a site visit may be required to determine the appropriate bluff edge.

2. Development Near The Bluff Edge. The July 2011 Geo Report (appendix B, part 1 of EIR) states that setback requirements from the California State Mining and Geology Dept were in the progress of being re-evaluated at the time of writing of the report. Have updated setback requirements been released?

Development, including trails and children's playgrounds, appear to be constructed within the 25 foot blufftop setback (e.g. see North Bluff Park). The geologic report (June 2011 report, page 45 of pdf) recommends only trails, lighting, and minor grading. Please include your analysis of whether picnic areas and playgrounds in this setback area are consistent with Section 30253 of the Coastal Act.

3. Bluff Retreat. July 2011 geo report states that a bluff retreat rate has been approximately 2 feet per year between 1932 and 1965, but that such retreat rates will most likely be much lower in the post-project condition. Did such analysis include the potential effects of sea level rise, according to a range of conservative (high) to modest (low) sea level rise estimates? By how much will the bluff retreat within the next 100 years?

4. Faulting. The Master Development Plan states that no Alquist-Priolo faults are on the site. However, the June 2011 geotechnical report included in the EIR states that there are fault at the

north and south on the eastern portion of the site which could not be determined to be inactive (p 43 of pdf, page 75), and recommends setbacks. The report also recommends additional trenching between the two fault traces.

In the comments to the DEIR, Commission staff stated :

... it is logical to conclude that the area between two segments of an active fault in such close proximity is likely active as well. Accordingly, the fault setback zones should be extended to connect the north and south segments of the Newport Mesa fault unless further study conclusively demonstrates that the area of the fault between these segments is not active as defined by the State of California.

On a site visit on September 11, 2012, Commission staff requested additional trenching to help delineate faulting on the site. No additional studies appear to have been prepared. Please submit an explanation of why. Based upon a review of the submitted material, additional geotechnical investigations may be required.

Please submit an additional fault setback zone map prepared by a qualified professional that has been modified to include a fault setback zone between the north and south segments of the Newport Mesa fault. Please also be sure to coordinate with Commission staff regarding any permitting necessary to carry out additional geologic investigation. Additionally, to help assess how close the fault segments are to proposed development and the risk posed by the fault segments, please submit a set of project plans which include the fault setback zone.

5. Constructed Slopes. The submitted Master Development Plan states that 1.1 million cubic yards of grading for development are required, with cuts from one foot to 25 feet and fills from one foot to 60 feet. Additionally, 1.5 million cubic yards of soil are required for structural stabilization of the site, and includes cuts from one to 30 feet. According to the rough grading plans submitted, this would include fill at or near the bluff edge. However, the submitted plans do not specify where different quantities of cut and fill would occur. In order to analyze the impacts of the proposed grading plan, please submit a copy of a grading plan which includes colored gradations depicting 10 foot intervals of depth of cut and fill.

The proposed cut and fill is of a significant degree, and if not properly done could result in impacts to public health and safety. Therefore, to ensure consistency with Coastal Act Section 30253, please submit a quantitative slope stability analysis for all cut and fill slopes not only for the existing condition, but more importantly, for the proposed development. Essentially, a geotechnical review of the proposed grading plan should be performed to assure stability and structural integrity and that the development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs

6. Hilfiker Wall. Near 18th street is a large gully with significant erosion occurring near existing residences and a large retaining wall. Is any development, including grading, structures, or oil remediation activities occurring in the vicinity of this structure? Would any proposed development change the hydrology of this area? Would the proposed development result in any potential for impacts to the adjacent residences, and have the studies recommended in the July 2011 geologic report been completed?

7. Proposed Roadways. The proposed project appears to include roads across existing riparian areas (e.g. North Bluff Road in the vicinity of 16th street). How would these riparian areas be crossed, and are fill, culverts, bridges, or other means proposed? Please include an analysis of the different options, and identify what is the least environmentally damaging alternative. Has this road alignment been reviewed for geologic stability of the final structure/slope?

8. Pedestrian Bridge. How would the proposed pedestrian bridge across Coast Highway affect the stability of the bluff? Geotech investigation (July 2011, page 52) recommends additional studies for foundations for the bridge. Have these been completed?

9. Sea Level Rise. Please include an analysis of how sea level rise will affect the proposed development, including wetland restoration, roads, trails, utilities and other infrastructure, oil field remediation, and consolidated oil field operations. The analysis should include a range of sea level rise estimates, including the latest guidance from the Ocean Protection Council.

H. Water Quality / Marine Resources

1. Tidally Influenced Areas. Development proposals must first avoid impacts to wetlands. Then, where such impacts cannot be avoided, only the specific allowed types of developments are allowed to result in impacts to wetlands, and those impacts must be mitigated. Based upon the submitted historic aerials, geologic reports, and the location of the lowlands portion of the project in relation to the Semeniuk Slough, it appears as though this area was at one point subject to tidal action. Are any portions of the subject site currently subject to tidal action, or will portions of the project again be subject to tidal action at the conclusion of the project? If there were any allowable impacts to wetlands on the site, could opening up areas to tidal action be a potential mitigation option for said impacts?

2. Wetland Delineation. The wetland jurisdiction maps submitted in the DEIR do not include all areas where fairy shrimp have occurred, and additional data is needed regarding depth of pools and potential for occupation by fairy shrimp. Based upon additional review of the biological and hydrologic information on the site, the determination of the locations of wetlands (as defined by the Coastal Act and the Commission's regulations) on the site may change, which may result in changes to the areas where development on the site would be consistent with the Marine Resources sections of the Coastal Act.

3. WQMP. Have any changes, additions, or updates been made to the preliminary Water Quality Management Plan? Please identify: 1) the types of water quality features and numbers or volumes of such water quality features for each area of development on the site, including roads, and how such features were chosen; 2) what the total area of additional impervious surfaces is; 3) what is the estimated area and throughput of proposed infiltration features; and 4) what is the proposed volume of proposed detention basins.

The submitted drainage plan includes drain lines, but it is unclear whether certain areas are contributing or receiving storm water. Please submit a drainage plan which depicts the stormwater flow from all areas affected by the project, and shows where such runoff would lead.

4. Peak Runoff Rates. The Newport Beach Coastal Land Use Plan Policy 4.3.1-4 states:

Preserve, or where feasible, restore natural hydrologic conditions such that downstream erosion, natural sedimentation rates, surface flow, and groundwater recharge function near natural equilibrium states.

Will the project increase the volume of runoff or peak runoff rate from the development? The preliminary WQMP states that the peak runoff rate will increase, but by less than 5% - 1 cf for a 2 year storm. However, the WQMP also states that the drainage area for the project will decrease by 27.6 acres. How will this decrease occur? If that runoff is instead leading to Coast Highway, where would it ultimately end up and should that flow be incorporated into the amount of total runoff resulting from the development?

5. Runoff Volumes. The proposed development includes detention basins. This would be effective in reducing large increases in flood amounts and erosive potential of rain events – however it is not reducing the total amount of runoff which is delivered to off-site areas. How much of an increase in total discharge to off-site areas would be created by the proposed development? How long would the proposed detention basins take to empty? Would the proposed project create low-volume nuisance flows throughout the summer months?

6. SWPPP. Please submit copies of the Stormwater Pollution Prevention Plan (SWPPP).

7. Storm Water Detention Structures. The proposed detention basins and diffuser basins appear to be handling the majority of the runoff from the site and would discharge into sensitive habitats. What would the structure and function of these features be? What plant species are proposed, and are those species consistent with the continuance of adjacent habitat? Please include an analysis of whether the features 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 Coastal Act Section 30236 regarding substantial alterations to streams? Portions of these features appear to overlay existing ESHA. 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.

I. Public Access

1. Trails and Sea Level Rise. The proposed project includes the installation of trails located adjacent to the Semenouk Slough and the wetland areas located in the lowlands portion of the development. What is the estimated frequency of flooding of the slough, and would the location and design of the proposed trails allow for such flooding?

2. Land Trust. CDP Application states that areas of open space would be managed by Newport Banning Land Trust, and that the NBLT would work out a MOU with the applicant to allow for the long term management of the areas (Page IV-1 CDP App). Does the project proposal include a transfer in title to the trust, or a offer to dedicate an easement? Is there a proposed amount of money or long term source of funding dedicated to maintenance of this area? Is the trust willing to accept such an offer? (Page III-2 of CDP application)

3. Lower Cost Visitor Serving Accommodations The proposed project includes a 75 room resort. Section 30213 of the Coastal Act provides that lower cost visitor and recreational facilities shall be

protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. Coastal LUP policy 2.3.3-1 states:

"Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations."

Lower-cost visitor accommodations are designated as a priority use in the coastal zone. Therefore, please submit an analysis of the demand for lower cost overnight visitor serving accommodations in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone, and whether the proposed resort inn would contain lower to moderate cost overnight accommodations.

4. Time Restrictions. Would restrictions be placed on the hours during which access to public trails, the pedestrian bridge, or other accessways on the site?

5. Proposed Commercial Uses. Please list the types and areas of commercial uses which are proposed on the site. Would the proposed commercial uses create additional public access and visitor serving recreational opportunities? Would the proposed development include adequate commercial establishments (i.e. supermarkets, retail) to reduce vehicle miles traveled for residents within or surrounding the community?

6. Parking. The CDP Application states that 4000 parking spaces will be constructed as a result of the project. The submitted master development plan states that there would be areas designated as public parking spaces within the development that are located separate from the residential development. Will public parking be allowed within residential areas? Please identify all proposed parking restrictions, including time limits, parking fees, and proposed metering of spaces on a site plan.

Please submit a Transportation Demand Management Plan to reduce the amount of parking required and reduce total number of vehicle miles traveled. For instance, are employee transit passes or other methods proposed to minimize the amount of car trips created by the travel of employees to the site? The plan should include alternative forms of transportation, including public transit and bicycling.

Please provide a breakdown of the amounts of parking that will be made available for each use on the site, what the standard requirements for parking for that use are, what amount of the parking for each use will be subject to restrictions, and any requested breaks in parking requirements due to Transportation Demand Management strategies.

7. Pedestrian Bridge. Is parking available for public utilization of the proposed pedestrian bridge? Is the applicant proposing to dedicate an easement or fee title to the pedestrian bridge to the City or other agency?

8. Project Phasing. The current project phasing plan does not adequately prioritize the completion of required mitigation. Please change the construction schedule to indicate that construction of public access amenities, habitat restoration will occur at the first stages of the project.

J. Unpermitted Development

As noted in Sections A and D above, staff believes development has occurred on-site, including but not necessarily limited to unpermitted removal of major vegetation and unpermitted excavations, without benefit of the necessary coastal development permits. In some cases the Coastal Commission has preferred not to proceed with a decision on an application for a coastal development permit until after a pending enforcement action is resolved (e.g. 5-11-068, Shea Homes). This is in part because the Commission does not want to preclude mitigation options available under the Coastal Act which may be most consistent with Chapter 3 of the Coastal Act to remedy the violation. In this regard, applications for proposed development affecting properties with unresolved Coastal Act violations are inherently incomplete because the remedy for those violations, which would establish the baseline condition of the property (i.e. its pre-violation condition), has not been established from which the Commission can make a consistency determination on an application for proposed development. (See, Pub. Res. Code § 30604; see, also, 14 CCR § 13053.5) Thus, the Commission cannot make a determination that the proposed development is consistent with the Coastal Act until the parties remedy the violations. As you know, the Commission's enforcement staff has been in contact with you and the oilfield operator to discuss the issue of unpermitted removal of major vegetation on the site and will be contacting you to address unpermitted excavations on the site.

K. Miscellaneous Policies

1. Agricultural Land. Section 30242 of the Coastal Act requires that lands suitable for agricultural use shall not be converted to nonagricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Agriculture was at one time performed on the site. Please address whether the project would be consistent with Section 30242.

2. Takings Information. Because there are significant constraints on development of the subject property, in terms of impacts to biological resources, among other issue areas, the Commission may find that any significant development of some or all of the subject site would be inconsistent with Coastal Act requirements. In that case, the Commission would be able to approve development of those lots only if it finds that denial of development would constitute a taking of private property without compensation in violation of Constitutional requirements. To allow the Commission to undertake that analysis, please provide the information specified in the enclosed "Takings Information" form.

3. Development Agreement. The submittal contains a copy of a Development Agreement between the applicant and City of Newport Beach. California Government Code Section 65869 states that "...[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code,

unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action." Since the City of Newport Beach does not have a certified local coastal program, any development agreement that pertains to property within the coastal zone must be approved by the Commission. In general, the Commission must either approve or deny the development agreement; there is no process by which the Commission can 'condition' an approval of a development agreement. Since the proposed project is likely to undergo changes in conjunction with the coastal development permit process, we recommend that the development agreement be withdrawn from consideration by the Commission at this time. At a future date, if a local coastal program is certified for the site, and/or when a development plan is approved for the site through the CDP process, the development agreement should be modified to conform to the LCP/CDP and submitted at that time for approval.

L. General Filing Requirements:

1. Approvals from Other Agencies. What is the status of approvals for other agencies which are listed as requiring permits on page I-4 of the CDP application letter? Please demonstrate compliance with Section 13052 of the Commission's regulations. The Executive Director is choosing not to waive any of the requirements of Section 13052, as is allowed under Section 13053. Please also address the following:

- 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)

2. Fees. Based on the information submitted to date, Commission staff has determined that the proposed project will be processed on the Regular Calendar. You have submitted a fee of \$159,150. Please submit a breakdown of the submitted fee, including the amounts submitted for residential and commercial development, and the fee submitted for grading, lot line adjustments and subdivisions. Any fee discrepancies will need to be resolved prior to filing the application complete. Please note that if you are seeking a fee discount in anticipation of LEED certification, you must comply with the Commission's Regulations, Section 13054(h), relative to the discount including but not limited to the required letter of credit. Otherwise, the full fee must be submitted at this time.

3. 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 application states (IV-22) that off-site improvements are needed to provide access to the subject site. This includes development near 15th Street, Sunset Ridge Park, the proposed pedestrian bridge which has a landing on West Newport Park. Are all such improvements located outside of the

subject site included in the subject application? Do the property owners of these off-site areas wish to be a co-applicant for the project? If the development in these off-site areas is included in the application, please provide written evidence that these property owners have granted you written permission to apply for and to undertake development on their property. Please see the attached co-applicant invitation forms.

4. Development Review Process/Detailed project plans. The submitted CDP application relies heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for each type of structure, and draft park plans showing the types of uses that are proposed in each area. In the context of a coastal development permit, the Commission's review of the proposed project has to be of the project which is actually proposed on the site, and not just for the types of land uses or types of structures in each area. The coastal development permit process is not suited to the type of 'conceptual' approval that is being sought in the proposed application.

For a project of this scale, land uses/designations should be identified through a local coastal program prior to any coastal development permit being processed. We strongly urge the applicant to work with the City to make use of this preferred development review process. If, on the other hand, you choose not to follow this advice, you will need to fully develop the proposal into a complete—not concept- project.

Thus, you would need to submit two sets of detailed project plans for all proposed development and structures, including full grading plans, foundation plans, site plans, floor plans, water quality measures associated with each structure, detailed landscaping palettes with all proposed species and their drought tolerancy and whether they are native to coastal Orange County, elevation plans, and full utility plans, and other plans as appropriate.

5. Public Comments on Current Application. Several members of the public have reviewed the current submittal and provided comments on the application. Those comments are attached to this letter. Please review and respond to those comments insofar as the comments raise questions or issues related to the completeness of the application.


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

Attachment: Takings Information Sheet
Co-applicant invitation form

CALIFORNIA COASTAL COMMISSION

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



Takings Information

In some cases, additional application information is needed regarding an applicant's investment-backed expectation (including, but not limited to, cases where development is proposed in environmentally sensitive habitat areas (such as coastal sage scrub habitat and wetlands), other highly sensitive areas (such as critical viewsheds), high hazard areas, etc.

BACKGROUND

If an applicant for a coastal development permit can demonstrate that he or she has a sufficient real property interest in the property to allow the proposed project, and that denial of the proposed project based on application of Coastal Act policies would deprive his or her property of all economically viable use, some development may be allowed even where a Coastal Act policy may otherwise prohibit it, unless the project would constitute a nuisance under State Law. A specific development proposal may still be denied, however, if a more modest alternative proposal could be approvable, and thus assure the property owner of some economically viable use. Any development approved pursuant to this provision must conform to all other applicable Coastal Act requirements.

Information Needed

Since the Coastal Commission must analyze whether its action in denying a permit application would constitute a taking, in order to comply with Section 30010 of the Coastal Act and the California and United States Constitutions, the application filing requirements shall include information about the nature of the applicants' property interest. When an application involves property in which development could potentially be completely prohibited (for example, because the property contains environmentally sensitive habitat areas, is located in the critical viewshed, is subject to coastal hazards, etc.), the applicant shall submit the following information as part of their coastal development permit application:

1. Date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it. Describe the basis upon which the fair market value is derived, including any appraisals done at the time.
4. Changes to general plan, zoning or similar land use designations applicable to the subject property since the time of purchase of the property. If so, identify the particular designation(s) and applicable change(s).
5. At the time the applicant purchased the property, or at any subsequent time, has the property been subject to any development restriction(s) (for example, restrictive covenants, open space easements, etc.), other than the land use designations referred to in question (4) above?

Takings Information

Page 2 of 2

6. Any changes in the size or use of the property since the time the applicant purchased it. If so identify the nature of the change, the circumstance and the relevant date(s).
7. If the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicate the relevant date(s), sales price(s), rent assessed, and nature of the portion of interest sold or leased.
8. Is the applicant aware of any title report, litigation guarantee or similar document prepared in connection with all or a portion of the property? If so, provide a copy of each such document, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.).
9. Has the applicant solicited or received any offers to buy all or a portion of the property since the time of purchase? If so, provide the approximate date of the offer and the offered price.
10. Identify, on an annualized basis for the last five calendar years, the applicant's costs associated with ownership of the property. These costs should include, but not necessarily be limited to, the following:
 - a. property taxes
 - b. property assessments
 - c. debt services, including mortgage and interest costs; and
 - d. operation and management costs;
11. Apart from any rent received from leasing all or a portion of the property (see question #7, above), does the applicant's current or past use of the property generate any income? If the answer is yes, list on an annualized basis for the past five calendar years the amount of generated income and a description of the use(s) that generates or has generated such income.

CALIFORNIA COASTAL COMMISSION

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



Date

Address

Subject: **NOTICE OF APPLICATION SUBMITTAL &
INVITATION TO JOIN AS CO-APPLICANT**
Coastal Development Permit Application No. 5-13-032
Site: 5100 Block of West Coast Highway, Newport Beach, Orange County
Current Applicant: Newport Banning Ranch LLC

Dear Addressee :

On February 1st, 2013, Commission staff received the subject coastal development permit application from Newport Banning Ranch LLC for development located at the site identified above. The proposed development 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. Our records indicate that you have an ownership interest in property upon which the proposed development would occur. Section 30601.5 of the Coastal Act requires that all persons having an interest of record in property that is the subject of a coastal development permit application be notified that an application has been submitted for development on that property. In addition, Section 30601.5 of the Coastal Act requires that these persons are invited to join as co-applicant. Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Please accept this letter as your invitation to join as co-applicant on the Coastal Development Permit Application identified above. Regardless of whether you choose to join as co-applicant, please be advised that the Commission will process this application, and in doing so, may impose special conditions upon any coastal development permit that is approved for the subject property. Since a coastal development permit and any requirements of the permit run with the land and since you have an ownership interest in the land, you would be required to comply with the terms and conditions of the permit if the development authorized by the permit is undertaken. As co-applicant on the application you would be able to actively participate in the permit entitlement process including, but not limited to, whether you wish to accept the terms and conditions of any permit granted by the Commission.

Please advise whether you wish to join as co-applicant by returning the attached form or by submitting written correspondence containing your response by two weeks after the date of this letter. Please call me with any questions at (562) 590-5071.

Sincerely,

John Del Arroz
Coastal Program Analyst

Cc: Current Applicant(s)
Current Applicant(s)'s Agent(s) (if any)
Attachments: Co-Applicant Acceptance/Rejection Form

CALIFORNIA COASTAL COMMISSION

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

**Co-Applicant Response Form**

Coastal Development Permit Application No. 5-13-032

Please check one of the following:

☐ No, please do not add me as co-applicant. Even though I decline to join as co-applicant, I understand that I must comply with the terms and conditions of any coastal development permit issued for the property if any development approved by the permit is undertaken.

☐ Yes, please add me as co-applicant.

If you responded "yes" to the above question, please also notify Commission staff whether any representatives (a.k.a. 'agent') will communicate on your behalf, for compensation, with the Commission or Commission staff. You may authorize the current agent to act as your representative or you may authorize any other agent(s) by filling out the information below:

I hereby authorize _____ to act as my representative and to bind me in all matters concerning this application.

(Co-Applicant's Signature)_____
(Date)

Please return this form to : California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA, 90802