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STAFF REPORT: REGULAR CALENDAR

Application No.: **5-13-032**

Applicant: **Newport Banning Ranch, LLC**

Agent: **Mike Mohler, Brook Street Consulting**

Project Location: **5100 Block of Pacific Coast Highway, Newport Beach, Orange County**

Project Description: Abandon oil operations; clean and remediate soil; and construct a housing and mixed-use development including: Subdivision of the 401 acre site into 159 residential lots; one commercial lot; two mixed use/residential lots; two resort lots; 20 open space lots; 10 park lots; and 13 public street lots. Grading includes 3.544 million cu.yds.; Residential and Commercial development on approximately 94 acres, including approx. 17 acres of roads, 72 acres of residential with 1,375 residential units; 75,000 sq.ft. of commercial use, 4 acres of retail, 6 acres of resort with a 75 room hotel and 8-10 bed hostel; 30 acres of parks and public trails and 261 acres of Natural Open Space Preserve with a Habitat Conservation and Conceptual Mitigation Plan (HCCMP) including 30 acres of a third party mitigation bank; Oil operations on 16.5 acres.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

Banning Ranch consists of 401 acres and is the largest and last remaining privately owned lands of its size along the coast in southern California. The Banning Ranch property is located partly in the City of Newport Beach and partly within unincorporated Orange County. The site is bordered by the Santa Ana River and an Army Corps of Engineers wetlands restoration area to

the west, the Talbert Regional Park/Nature Preserve to the north, commercial and residential development in the City of Costa Mesa to the northeast, residential properties and Superior Avenue in the City of Newport Beach to the southeast, and Pacific Coast Highway to the south. The Pacific Ocean is approximately 1000 feet to the southwest of the site at its closest point. The applicant, Newport Banning Ranch LLC (NBR), is proposing to build 1375 residential units, a 75 room resort hotel with 8-10 bed hostel, 75,000 sq.ft. of commercial/retail space, several parks, a public trail network, and establish a 261 ac. nature preserve on the property.

The subject site has been used for oil production since the 1940s. Peak annual oil and gas production on the site occurred in the early 1980s with roughly 1.2 million barrels of oil from over 300 active wells and has declined steadily until recent years when it appears to have stabilized at roughly 90,000 barrels produced from less than 60 active wells. The abandonment and remediation proposed for the Banning Ranch site at this time is voluntary and has been proposed in order to accelerate the remediation process and facilitate the topographical changes the applicant has identified as necessary to prepare the site for the proposed residential and commercial development. It is not required by any regulatory agency. It has been estimated that approximately 271,000 cubic yards of contaminated soil remediation would occur during the abandonment and remediation activities on the Newport Banning Ranch site when oil operations cease, now or in the future, regardless of the future land use for the site. In contrast, the total soil disturbance (remediation, cut and fill, and grading) that is proposed for the site by the applicant (NBR) is more than 1.3 million cubic yards of soil. This amount of soil disturbance is almost 5 times the amount that would be required for oil clean up on the property if the residential/commercial development were not proposed.

When the oil production ceases (either through the termination of use of single wells or the entire operation), a variety of regulations come into play mandating that proper oilfield abandonment and infrastructure removal activities be conducted and completed. Compliance with these requirements is typically the obligation of the oilfield operators on the site. However, in this case, the applicant, NBR, has entered into an agreement with the operator of the Banning Oilfield Lease and assumed responsibility for carrying out the abandonment process in exchange for the oil operator's cooperation in relocating its operations into a 16.5-acre area of the site that is proposed to remain in use for oil production. Without NBR's current proposal to carry out commercial and residential development on the site, the oilfield operator would be required to carry out oilfield shut-down, infrastructure removal, and clean-up activities at a future date when it discontinues oil production.

At this time, no local, state, or federal agency has directed that abandonment and remediation of oil and gas production activities on the Banning Oilfield Lease occur in the proposed timeframe, or determined that NBR's proposed method of accomplishing this abandonment and remediation would be successful or appropriate. In fact, both of the key resource agencies reviewing the proposed Remedial Action Plan (RAP) (the plan that sets the cleanup standards and establishes the cleanup locations and methods), the Orange County Health Care Agency and Regional Water Quality Control Board (RWQCB) , continue to have significant questions about the plan despite several years of effort providing NBR with both formal and informal input and guidance. During the review and ultimate acceptance of the proposed Remedial Action Plan (RAP), the scope and standards for remediation activities has the potential to change significantly, thus

affecting the number of proposed clean-up locations, the excavation depths of these areas, the amount of soil needing treatment or disposal, and the scale of proposed soil treatment activities.

Despite its history of oil development, the NBR site has an incredibly unique array of sensitive coastal species and habitats, including nesting habitat for the threatened California Gnatcatcher, a very rare vernal pool system, and one of the few remaining significant areas of native grassland in the coastal zone. A revised development plan for the property could acknowledge the unique habitat value that exists even with the past disturbance from oil production and propose an intensity of use that is both economically viable and compatible with the resource values of the property.

Banning Ranch has diverse topography with a lowlands area consisting of approximately 130 acres of brackish and fresh water marsh habitat and an upper mesa (coastal terrace) that covers approximately 262 acres consisting of scrub habitats, grasslands, and vernal pools. The upper mesa is a generally flat level plateau with steep slopes along the edge that are cut in several places by small canyons that open onto the lower mesa. The upper mesa supports two main canyons that are referred to as "arroyos" which contribute to the topographic diversity of the site and subsequent biological diversity. The largest canyon, referred to as the "southern arroyo", runs diagonally across the site in a southwest – northeast direction and includes several side canyons that split off from it. The other canyon, referred to as the "north-south arroyo," is located in the middle of the property terminating as it merges with the southern arroyo. Both arroyos have riverine channels that meander along the bottom. The head of the north-south arroyo supports an extensive vernal pool complex with vernal pools and riparian habitat scattered along the entire arroyo bottom. The slopes of both arroyos are characterized by patches of coastal scrub habitat.

The subject site is presently used for oil extraction and includes a network of pipelines and paved and unpaved roads that wind to various well heads, storage facilities, and other oil processing equipment areas spread across the site. Despite these disturbances, rare habitat co-exists with the oil operation, including seasonal wetlands/vernal pools, brackish and freshwater wetlands, purple needlegrass grassland, southern coastal bluff scrub, maritime succulent scrub, and coastal sage scrub. Rare wildlife use these habitat areas including California gnatcatcher and various raptors including burrowing owl. The site also provides habitat for other more common wildlife including birds such as osprey and animals such as bobcats, mule deer, coyote, and red fox, among others.

The Commission's staff ecologists have identified a significant portion of the site as Environmentally Sensitive Habitat Area (ESHA) based on the presence of the above-described rare plant and animal life. There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site. The coincidence of upland mesa incised by arroyos and lowland wetlands creates an area abundant in wildlife that is not unlike the well-known Bolsa Chica wetlands complex located about 6 miles north. The presence of vernal pools at Banning Ranch adds a layer of diversity not even present at Bolsa Chica. In fact, it appears the subject site is the only area like it anywhere within the Santa Ana River watershed between the sea and the Santa Ana Mountains located 20 miles inland. The remainder has been heavily urbanized.

In addition to sensitive biological resources, other development constraints are also present on the property. For instance, the site is underlain by an earthquake fault that runs roughly north-south near the easterly side of the site. Habitable structures must be located outside of the fault zone, which is assumed to extend 50 feet from fault traces unless conclusively demonstrated to be more narrow. The site is also known to contain archeological resources. While the current proposal accounts for these constraints, some uncertainty remains. For example, the precise location and extent of archeological resources is often difficult to accurately identify. The Commission has encountered several cases where the location of archeological resources was thought known (Brightwater at Bolsa Chica, Hellman Ranch in Seal Beach), only to discover during grading how highly inaccurate those estimates were. In-situ preservation of archeological resources is preferred whenever significant resources are encountered.

The proposed project would have significant adverse impacts upon terrestrial and vernal pool ESHA, including impacts to important/rare upland habitats and wildlife species that are an important part of the existing functioning ecosystem that includes both the uplands and lowlands habitat areas. The project would also result in significant landform alteration, in particular the grading and fill of the north-south arroyo.

Commission staff recognize that the proposed project offers some benefits, including condensing the oil production to a portion of the property and subsequently cleaning-up the remainder; establishing a coordinated habitat restoration and conservation plan for the south arroyo and lowlands wetlands; and developing public parks, public trails, and a visitor-serving resort. However, these benefits are entwined with substantial impacts to highly sensitive resources and permanent loss of a very rare and valuable ecosystem that cannot be replicated. These benefits could be incorporated into a less intense development plan that recognizes the resource value of the property.

Several alternatives to the proposed remediation process exist and the amount of proposed remediation and proposed standards and thresholds have not yet been approved or affirmed by the key agencies that regulate these types of clean-up activities. In addition, the applicant has not yet provided sufficient information for the USACE and the RWQCB to identify accurately the “Waters of the U.S.” present on the site and the USFWS in consultation with the USACE, has not yet prepared a biological opinion which will identify critical habitat for the San Diego fairy shrimp and delineate the vernal pools and watersheds present on the property.

Neither the City of Newport Beach nor the County of Orange has a certified Local Coastal Program that includes the Newport Banning Ranch site. The suitability of the site as a mixed use development has not been addressed through any LUP or through a certified Local Coastal Program. For a project of this scale, typically the land uses/designations would be identified through a local coastal program prior to any coastal development permit being processed. In this particular case, the County of Orange and the City of Newport Beach were not willing to process and LCP amendment to incorporate this property. The proposed development is not consistent with the resource protection policies of the Coastal Act or the certified City of Newport Beach Land Use Plan which is used for guidance. Therefore, approval of the development would prejudice the development of a certifiable LCP for this area.

Without the development plan, we can assume that the oil operation will continue. In addition, consolidation of the existing active wells, as proposed, could occur at any time. As a result of the actions of the Commission's enforcement program, and the oversight of various other State and Federal agencies, the Commission and the public at large can be assured that the existing resources on the site are protected and allowed to flourish. Future oil clean up can be targeted toward the areas where it is required as an alternative to the proposed project which contemplates a far more intrusive plan developed in order to allow for the intensity of development that is not consistent with Chapter 3 policies.

Thus, Commission staff has concluded that the proposed project is inconsistent with Coastal Act Sections 30240, 30233, 30231, 30253, 30210, 30251 of the Coastal Act due to adverse impacts upon natural landforms, adverse impacts upon biological resources including wetlands and vernal pools; adverse visual impacts related to landform alteration and the project's consistency with 30252, 30213 and 30250 cannot be determined based on the information provided. Therefore, staff recommends that the Commission DENY the proposal.

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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No.5-13-032 for the development proposed by the applicant.

Staff recommends a **NO** vote. Passage of this motion will result in **denial** of the permit and adoption of the following resolution and findings.

Resolution:

*The Commission hereby **DENIES** Coastal Development Permit 5-13-032 for the proposed development on the ground that the development will not conform to the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.*

II. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & BACKGROUND

Location & Current Ownership

Banning Ranch (BR) is a 401.1 acre site in Orange County at the borders of Newport Beach, Huntington Beach and Costa Mesa (**Exhibit 1**). The site is bounded on the west by the Santa Ana River and the Semeniuk Slough, a remnant channel of the Santa Ana River that adjoins 92 acres of restored salt marsh basin owned and managed by the US Army Corps of Engineers; on the south by Pacific Coast Highway; on the east by a residential area and Sunset Ridge Park in the City of Newport Beach, and parcels partially occupied by storage that are owned by the Newport Mesa Unified School District; and to the north by the City of Costa Mesa Talbert Nature Preserve, an approximate 180-acre nature preserve and wilderness park owned and operated by Orange County Parks. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, while the remainder of the project site is located within unincorporated Orange County. The City of Newport Beach has intentions of annexing the property, demarcating it in the City's "Sphere of Influence." The City of Newport Beach issued local approvals for the development project and was the Lead Agency for the Environmental Impact Report (EIR) CEQA document. The site is listed as "deferred certification" in the City of Newport Beach's Coastal Land Use Plan (LUP), and presumably, the City would create a plan for the site after annexation. All 401 acres of the site are in the Coastal Zone.

The applicant for the proposal is Newport Banning Ranch LLC (NBR), a partnership that includes Aera Energy, Cherokee Investment Partners, and the real estate company Brooks

Street, which owns the surface rights to the site. The underlying mineral rights are held by Horizontal Development, LLC, and oilfield operations are carried out by their operating affiliate the West Newport Oil Company (WNOC). In addition, the City of Newport Beach operates approximately 16 wells and an oil processing facility at the southwest corner of the site adjacent to Pacific Coast Highway.

Site History

Natural History
Banning Ranch has a rich natural history that included both ecological functions as well as cultural functions. The site was once occupied by Native Americans. Adjacent to the Santa Ana River and the Pacific Ocean, the site likely offered productive habitat, fresh water, and hunting and foraging resources. Cultural recourses have been found on the BR site and many more resources are likely still present, yet to be found. At the time of European contact, the Santa Ana plain was occupied by the Gabrielino Native Americans. Central Orange County was shared by both the Juaneño and the Gabrielino tribes. An area called "Genga" is located in what today is Talbert Regional Park, immediately inland of the Banning Ranch (BR) site.

BR is just one of many sites in Orange County that were occupied by Native Americans. Among the more significant sites known along the northern coast of Orange County is the complex of sites surrounding Bolsa Chica, including the "Cog Stone" site or the "Griset Site". As with Bolsa Chica, Newport Bay also is surrounded by a number of prehistoric sites. The sites along the southern Orange County coast in the San Joaquin Hills include multi-component complexes at Bonita Mesa, Pelican Hill, and Shady Canyon.

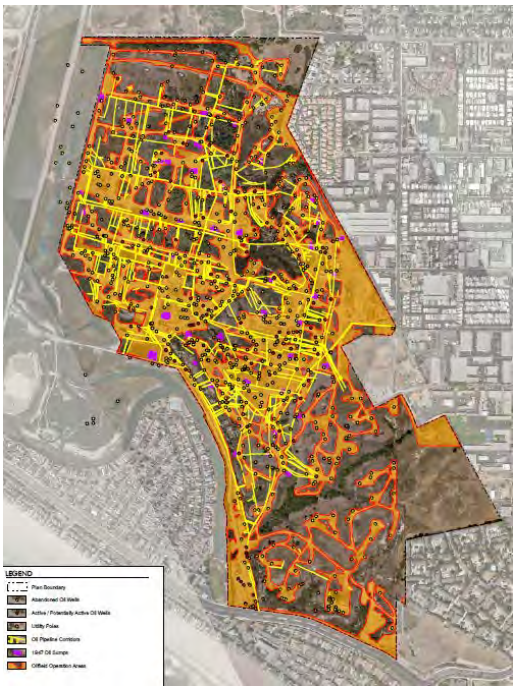
In 1801, all the land that lay east of the Santa Ana River, from the Pacific Ocean and inland for 25 miles to the mountains was used for grazing cattle and eventually became known as the *Rancho Santiago de Santa Ana,* totaling over 62,000 acres, which included the BR site. The land was later sold to Mary Hollister Banning in 1874. From there, the site was referred to as the Banning Ranch. Over the years, portions of the property were leased to local farmers.

It wasn't until 1939 that 1,750 acres of the Banning Ranch, including the subject site, were leased for drilling operations by the Thompson Company, an independent operator. Parts of the Banning Ranch were sold off and/or developed. Today, the subject 401 acre remainder of Banning Ranch still supports an extensive network of ecological habitats, as described by the City of Newport Beach's General Plan Land Use Element:

Although the Banning Ranch site contains an assemblage of diverse habitats that have been historically disturbed, when this area is considered with the contiguous Semeniuk Slough and restored wetlands, it provides wildlife with a significantly large, diverse area for foraging, shelter, and movement. Biological studies performed for Banning Ranch indicate that, while disturbance associated with oil activities diminishes the quality of existing habitat to some extent, overall, the area should be regarded as relatively high-quality wildlife habitat due to its size, habitat diversity, and continuity with the adjacent Semeniuk Slough and federally-restored wetlands.

Recent Uses

The Banning Ranch project site is also known to some as the Banning Oilfield Lease. The site has supported ongoing oil and gas production operations since approximately 1944. Over 470 oil and natural gas production and steam and water injection wells have been drilled during 71-years of operations and access roads, pipelines, power lines, and other associated infrastructure have been installed and used. As described in more detail below, there has been a disagreement between Commission staff and parties involved in the oilfield operation regarding whether all of these operations have received the necessary authorizations from the Commission. Over time, as operational practices changed and evolved and oil formations at different depths and locations on the site were targeted, wells and infrastructure were abandoned, removed, relocated, and replaced across the site. Peak annual oil and gas production on the site occurred in the early 1980s with roughly 1.2 million barrels of oil from over 300 active wells and has declined steadily until recent years when it appears to have stabilized at roughly 90,000 barrels from less than 60 active production wells.



The result of this expanding, contracting, and shifting use pattern has been that approximately half of the 400-acre site has experienced some level of use within the last seven decades. Some of these areas – particularly the key ingress/egress points and primary operation centers – have experienced near continual use while others have likely not been accessed in the many decades that have elapsed since the wells they support were taken offline and abandoned. The figure provided to the left and in **Exhibit 21** indicates the combined total footprint of all historic and current oilfield operations that have occurred since 1944.

This figure was developed by NBR based on a review of oilfield history and historic aerial photographs and includes the over 400 wells that have already been abandoned on the site and many of the well pads, pipeline corridors, and access roads that have been covered with vegetation over the years and no longer support above-ground infrastructure. The figure is not a current snapshot of existing disturbance, but instead an aggregation of all the areas that NBR's historic research has suggested have been affected by oil production operations at some time during the past 71 years.. As indicated by the locations on this figure that still support pipelines and active wells (marked by the yellow lines and red dots), the vast majority of operations carried out currently and in recent years, are concentrated in the central portion of the site – including the lowland area and northern part of the upland mesa.

Regulatory History

As noted above, oil production operations on the site extend back into the 1940s and thus pre-date passage of the Coastal Act. In 1973, an exemption (E-7-27-73-144) was granted to one of the previous oilfield operators, General Crude Oil and G.E. Kadane & Sons, by the California Coastal Zone Conservation Commission for continuation of the oil production activities occurring or in development at the time, including the use of the 328 wells that existed onsite and

the 28 additional wells that were in development. In addition, the "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" was exempted from coastal development permit requirements.

While certain well abandonment and surface equipment removal activities are exempted from coastal development permit requirements, these activities are limited in type and scope. The exemption states that the abandonment of wells and the removal of surface equipment and pipelines carried out according to the State Division of Oil and Gas (currently known as the California Department of Conservation's Division of Oil, Gas and Geothermal Resources or DOGGR) authorization is exempt. However, none of the proposed abandonment activities currently contemplated have been required or authorized by DOGGR. In addition, typical well abandonment activities considered by DOGGR are limited to the capping of active wells and the removal of oil infrastructure and clean-up of visible areas of oil. The extensive onsite soil and concrete processing, treatment, and disposal element of NBR's proposal significantly exceeds the scope of what DOGGR would require under it oilfield restoration regulations and is therefore not exempt. Further, as described in greater detail, the Commission has additional authority to review the proposed project under its federal consistency regulations and NBR has included the entirety of the proposed project in its CDP application. Finally, any development that results in impacts to ESHA is not exempt and is subject to Coastal Commission review and approval, which is the case here.

Summary of Recent Commission Actions
(see **Appendix B** for more complete list)
In the 1980's the Commission reviewed permit applications for development located on the site. This includes one in 1985 that WNOC applied for,CDP No. E-85-001 to authorize 3 new exploratory wells, and another in 1986, CDP No. 5-86-588, which authorized WNOC to remove dredge material that had been placed in a wetland on site by the Orange County Environmental Management Agency pursuant to an agreement with WNOC, but without necessary authorization from the Coastal Commission. These actions and others are discussed in more detail in Appendix B.

Consent Cease and Desist and Restoration Orders Nos. CCC-11-CD-03 and CCC-11-RO-02
In 2011, the Commission issued Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02, addressing unpermitted removal of major vegetation (including vegetation comprising native plant communities and habitat for the federally threatened coastal California gnatcatcher – a bird species) and the results thereof; the unpermitted placement of solid material, including placement of numerous significant stacks of pipe conduits, vehicles, mechanized equipment, and construction materials; and grading, in violation of the Coastal Act. The details of this action are discussed more fully in **Appendix B**.

Consent Cease and Desist and Restoration Orders Nos. CCC-15-CD-01 and CCC-15-RO-01
In 2015, the Commission issued Consent Cease and Desist No. CCC-15-CD-01 and Consent Restoration Order No. CCC-15-RO-01 to address drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land that had occurred on the site.

Commission Ecologist Dr. Jonna Engel conducted a site-specific analysis to assess the likely status, prior to the unpermitted development that was the subject of the 2015 Consent Orders, of the biological resources in areas impacted by the unpermitted development that remain disturbed as a result of those activities. According to the Dr. Engel's analysis, some of the vegetative communities immediately adjacent to areas on the site impacted by the unpermitted development consist of various native plant communities and wildlife habitats that the Commission has consistently treated as ESHA. The Commission concurred with Dr. Engel's general conclusion that at least some of the areas that were affected by unpermitted development constituted ESHA.

Over the few years preceding the 2015 Consent Orders, disagreements arose between Coastal Commission staff and NBR regarding the interpretation of the scope and application of the oil operations exemption E-7-27-73-144 granted to General Crude Oil and G.E. Kadane & Sons. The Consent Orders provided a mutually-agreeable resolution of the disagreements regarding the interpretation and application of the exemption and clarified obligations for activities at the site going forward, without requiring either party to concede its position. Further details about the content of the 2015 Consent Orders is contained in **Appendix B**. The Consent Orders do not resolve the Commission's claims against the oil field operator, WNOC, for the alleged Coastal Act violations described herein. During the year-long stay in the litigation with WNOC described below, Staff is continuing to work with WNOC to review permitting options for the consolidation of its operations in the Oil Remainder Areas on the site.

Litigation with WNO
On August 12, 2014, WNOC filed suit against the Commission, seeking declaratory relief to affirm its interpretation of the Exemption and confirm that "[a]ll wells and other development within the Oil Field occurring since 1973 for which a [CDP] has not been sought have been developed in a manner consistent with the vested rights . . . and the Resolution." This litigation is active and pending, however, the parties have stipulated to stay the action until after the Commission's June 2016 hearing. During that time period, Staff is working with WNOC to review permitting options for the consolidation of its operations in the Oil Remainder Areas on the site, and WNOC has agreed not to undertake any new oilfield activities or undertake the large scale mowing operations previously conducted on the site.

B. PLANNING BACKGROUND & STANDARD OF REVIEW

Approximately 40 acres of the site are under the jurisdiction of the City of Newport Beach and 361 acres are under the jurisdiction of the County of Orange. The City of Newport Beach Coastal Land Use Plan (LUP) was certified by the Commission in 1982, and was updated in 2005 and 2009. The current LUP designation for the site remains "deferred certification" (**Exhibit 5).** The City is currently pursuing the Implementation Plan for their LUP. The LUP states:

1.1 Purpose- *The Coastal Land Use Plan sets forth the goals, objectives, and policies that govern the use of land and water in the coastal zone within the City of Newport Beach and its sphere of influence, with the exception of Newport Coast and Banning Ranch… Banning Ranch is a deferred certification area due to unresolved issues relating to land use, public access and the protection of coastal resources.*

2.2.4-1- *Designate the Banning Ranch Property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.*

The 40 acres of the site within the City of Newport Beach's boundaries are included in the City's General Plan as a "planned community." Despite the fact that the entire site is not formally a part of the City of Newport Beach, the City's general plan (not certified by CCC) includes a designation for the site and prioritizes the site as open space, or alternatively as open space with residential, which was added and voter-approved in 2006. The approximately 361 acres under the jurisdiction of Orange County have a land use designation of Open Space and zoning designations of light industrial, residential, business, and an overlay zone allowing for oil production (not certified by CCC) (**Exhibit 5)**. The entire Project site has a *County of Orange General Plan Land Use Element* designation of Open Space (**Exhibit 5)**. Neither the City of Newport Beach nor the County of Orange has a certified Local Coastal Program that includes the Newport Banning Ranch site.

Despite the current land use designations in the County and City General Plans of priority as open-space, the project includes proposed new land-use designations for mixed use development. The policies of the Coastal Act encourage and protect higher priorities uses, which include areas for open space, lower cost recreation, and visitor serving development. Additionally, the site is not formally annexed to the City of Newport Beach, which is in the process of creating an implementation plan and certifying their LCP. Approval of this project under a coastal development permit, because it is inconsistent with the policies of the Coastal Act, would effectively prejudice the ability of the local government to certify their LCP.

The EIR describes a development agreement between the applicant and the City of Newport Beach with contingencies for annexation:
Pursuant to the City Code and Section 65864 et seq. of the California Government Code, a development agreement is proposed between the Project Applicant and the City of Newport Beach in order to describe the development rights of and public benefits to be provided by the Applicant, and outline the terms for annexation of the property to the City.11 Section 65865(b) allows a city to enter into a development agreement for property in unincorporated territory with the city's Sphere of Influence; however, the validity of the agreement is contingent upon completion of annexation proceedings. The Pre-Annexation and Development Agreement (Development Agreement) between the Applicant and the City would vest the Project's development approvals to allow buildout of the Project site under the development standards and requirements in place at the time of Project approval. The Development Agreement includes requirements of the City that would need to be accomplished by the Applicant in return for the vesting of Project approvals. The Development Agreement addresses affordable housing requirements; parkland dedication/in lieu fee requirements; infrastructure phasing including Traffic Phasing Ordinance (TPO); permitting by the City pursuant to the Newport Banning Ranch Master Coastal Development Permit subsequent to approval by the Coastal Commission; vesting of City entitlements and applicable land use regulations; and other issues relevant to the Project in order to describe the development rights of and public benefits to be provided by the Applicant and to outline the terms for annexation of the property to the City. The Development Agreement would not preclude the need for future site plans, tentative tract maps, or other permit processing prior to development. If the City does not have a certified Local Coastal Program by such date on which the Development Agreement is entered into, the

Development Agreement would be submitted to the Coastal Commission for its approval.

Neither the City of Newport Beach nor the County of Orange has a certified Local Coastal Program that includes the Newport Banning Ranch site. The suitability of the site as a mixed use development has not been addressed through any LUP or through a certified Local Coastal Program. 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. The standard of review is Chapter 3 of the Coastal Act. Preceding submittal and again upon submittal of the subject CDP application to the Commission, staff advised the applicant that any development plan for Banning Ranch should be addressed in the context of an LCP. The applicant's original submittal, relied heavily on conceptual land uses, draft project plans, including footprints, conceptual plans for each type of structure, and general depictions of the types of uses that are proposed in each area. Staff explained that, 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 was being sought in the proposed application. In response, the applicant was asked to pursue a certified land use plan for the site in collaboration with either, or both, the City of Newport Beach and the County or Orange. Letters from both agencies were received that indicated that the local governments were unable or unwilling to seek certification of an LCP for the subject area or, at minimum, seek certification of a coastal LUP. Thus, the applicant decided to proceed with the CDP application and submitted additional detail about the project. Nonetheless, many details about the proposal remain vague.

C. PROJECT DESCRIPTION

The proposed project includes abandoning oil operations, the onsite clean-up and disposal of contaminated soil and debris material, and constructing a housing and mixed-use development on 385 acres of the 401 acre site. The project also involves mass grading, a habitat impact mitigation and conservation proposal, and a subdivision. Upon completion of the clean-up, the development proposal includes 265 acres of open space, 25 acres of parks, 9.5 acres of public trails, 17 acres of roads, 72 acres of residential with 1,375 residential units, 4 acres of retail, and 6 acres of resort with a 75 room hotel and 8-10 bed hostel (**Exhibit 2**). Active oil operations would remain on 16.5 acres of the site. Details of the proposal are described further below.

Proposed Oilfield Abandonment and Remediation
Since the site is both an active and historic oilfield, the applicant is proposing to prepare it for the proposed commercial and residential development by shutting down most of the current oil operation, removing all associated equipment and treating all areas in which hydrocarbons or other contaminants are present in the soil. To guide this proposed work, NBR has developed both an Oil Field Abandonment Plan (Abandonment Plan) and a Remedial Action Plan (RAP).

Generally speaking, the Abandonment Plan describes NBR's proposed approach for shutting down oilfield operations and collecting and disposing of oilfield infrastructure and the RAP describes the clean-up standards and thresholds that NBR proposes to use to guide its treatment of contaminated soils and other materials that have been identified on the site. As noted in the RAP, these standards and thresholds, and the nature and extent of remediation that needs to be carried out on the site, "will depend on the ultimate reuse of the property." In other words,

while there is no area on the site that requires remediation under its present use as an operating oilfield, NBR has concluded that its proposal to bring commercial and residential development to the site would trigger the need for an extensive soil treatment and/or removal effort – specifically, the proposed remediation of an estimated 271,000 cubic yards of soil including 163,000 cubic yards anticipated to contain some level of hydrocarbons and 108,000 cubic yards estimated to be made up of road materials such as asphalts, gravels, and concrete remnants. If some other level or type of development were proposed for the site, the relevant clean-up standards and the resulting scope, location, and type of remediation activities that would need to be carried out would be substantially different than what NBR has currently proposed.

Infrastructure Collection and Removal

The first elements of the partial oil field closure is the abandonment of approximately 66 active or idle oil wells and the investigation and potential re-abandonment of historically abandoned wells. This would be followed by infrastructure collection and removal that includes the removal of pipelines and oil infrastructure, power poles, tanks and vessels; the demolition and removal of roads and oil pads; the demolition of office buildings and storage structures; the removal of historic oil sumps and other areas that NBR has designated as having potential environmental concern (PECs) and the processing and disposal of existing onsite concrete debris piles and existing soil treatment stockpiles. The anticipated maximum disturbance footprint associated with these activities is shown in **Exhibit 4**. While the removal and collection activities could be carried out in a variety of different manners, there is limited flexibility in their siting as they would need to be located in the areas that currently contain the materials and infrastructure needing to be removed.

As part of the proposed removal activities, approximately 230,000 linear feet of two to four inch diameter pipelines are proposed to be removed after being emptied of usable product and flushed with clean water. Smaller above ground pipes would be removed by hand and pulled out of the vegetation, while larger pipe systems will be cut into 20 foot sections and drained into catch basins and transported to one of the proposed onsite staging areas for salvage, recycling, or transport offsite. The vast majority of pipes are above-ground but in locations where the pipelines cross access roads or work areas, they may be buried up to three feet underground. The lines in these locations would be excavated and removed. Areas surrounding the pipes are proposed to be surveyed for visible surface oil and any visible areas would also be excavated and treated.

In addition to the pipelines, the site also includes approximately 306 wooden power poles with lengths of 35 to 40 feet, as well as several electrical panels and transformers. These poles are proposed to be cut at ground level and transported to an onsite staging area for onsite recycling or offsite disposal. Belowground pole sections would be excavated or abandoned in place, depending on their location. All power lines, transformers, and panels would be removed and taken to onsite staging areas for re-use or transport offsite.

Ten steel tanks and vessels are also proposed to be dismantled and removed. Proposed removal would involve isolation from power and fluid sources, draining, disconnection of all valves and fittings, and dismantling or demolition. Recyclable sections would be stockpiled onsite and the remainder would be transported offsite for disposal.

Thirteen buildings, garages, and structures would also be demolished and cleared from the site. Prior to demolition, inspections would be carried out for lead and asbestos and all salvageable metals, wires, and materials would be collected. Demolition would be accomplished using heavy equipment such as an excavator equipped with hydraulic cutting shears. Demolished building materials would be collected and transported offsite to a disposal facility.

Five existing concrete debris piles – covering an area of 2.35 acres – would also be targeted during removal operations. The material in these areas would be combined with any additional concrete removed from building foundations, well pads, road beds, or pump supports and brought to one of the two proposed onsite concrete crushing areas. At these sites, concrete is proposed to be crushed into small material. Once crushed, the concrete would be dumped into one of the three proposed onsite excavations for disposal. These excavations, part of the soil treatment operations, are proposed to provide both a source of clean fill material to support the grading and construction preparation of the site and a burial/disposal site for treated soil and other material such as concrete waste.

Other material that may also be collected, treated, and buried similar to the concrete waste, is the asphalt-like material present on some of the existing access roads. As described in NBR's Abandonment Plan:

> *Many sections of the oil field roads have used traditional asphalt paving materials. Historically some roads may have used crude oil impacted tank sediments (tank bottoms) from when the facility tanks were cleaned out, combined with gravels or aggregate to pave roadways. Over time the tank bottom materials became heavily weathered leaving only the heaviest (or longest chain) hydrocarbons similar to normal asphalts. These materials are referred to as Asphalt Like Materials (ALM) and are shown on Exhibit 13. All the roadways that have these materials will be scraped by tracked bulldozers to accumulate the operations related materials and will be transported to the concrete/road processing areas. Any larger sections will be broken up and crushed to a structurally compactable size. These crushed materials will be placed in the deeper sections of the soil borrow pits and if necessary replaced with clean borrow pit soil. Most road and work areas are not expected to require any clean soil backfill.*

The site also contains 48 areas in which historic in-ground oil collection or containment areas (sumps) may have been used. These areas are proposed to be located based on historic photographs and tested to determine if excavation and treatment of hydrocarbon impacted soil may be necessary. If contaminated soil is found, it would be transported to the proposed bioremediation areas for treatment. Upon verification that the sump sites have met the appropriate clean-up levels, the excavations would be backfilled with clean soils from the proposed upland soil borrow pits.

Soil Treatment

NBR's proposed soil treatment plan includes several key elements: bioremediation (spreading the estimated 270,000 cubic yards of hydrocarbon contaminated soil across large areas to facilitate the natural breakdown of hydrocarbons by native soil bacteria); excavating contaminated soil and soil with roadbed materials; excavating soil for use as clean fill; soil and material stockpiling; concrete and asphalt road crushing; and underground disposal/burial of

concrete waste, asphalt, and treated soil. The proposed location and configuration of these elements is shown in **Exhibit 3**.

As this figure shows, these areas include three replicate soil borrow/placement sites, three "clean soil flip" sites, two replicate concrete processing sites, and two replicate bioremediation areas in addition to a staging/stockpiling area. Apart from the staging/stockpiling area, all of the other areas would be located on the upper mesa portion of the site, within the proposed footprint of the residential and commercial development. In total, these areas on the upper mesa are proposed to take up over 53 acres, the majority of which (over 30 acres) would be dedicated to (1) the excavation of pits to provide onsite dumpsites for treated materials and wastes and provide a sources for clean backfill soil and (2) the subsequent stockpiling of this soil (referred to by NBR as "clean soil flip" areas). The remaining 23 acres are proposed to support bioremediation activities for hydrocarbon impacted soil (19.3 acres), concrete processing (3.3 acres) and equipment staging and materials stockpiling.

NBR's proposal to use these areas to treat and dispose of the contaminated soil, concrete waste, and roadbed material that exists on the site involves several steps: (1) the excavation and removal of roadbed material, concrete, and oil impacted soil from throughout the site; (2) transport of this material to either the concrete processing area (as an interim step) or to one of the two proposed soil bioremediation areas; (3) the excavation of deep borrow/placement pits; (4) the stockpiling of clean soil from the deep borrow/placement pits in the adjacent "clean flip sites"; (5) the dumping of concrete waste and roadbed material into the deep borrow/placement pits; (6) the dumping of the treated soil from the bioremediation areas into the deep borrow/placement pits; and (7) the replacement of the stockpiled clean soil from the "clean flip sites" back into the deep borrow/placement pits on top of the waste materials as a clean cap. NBR proposes this cap to be at least ten feet thick over treated soil and 15 feet thick over concrete. Some of the clean soil excavated from the borrow/placement pits would also be used to backfill areas from which oil impacted soil or roadbeds were removed.

NBR has selected the size of the borrow/placement pits based on its estimated need for clean soil and disposal capacity. The three proposed sites would provide 75,000 cubic yards, 270,000 cubic yards, and 115,000 cubic yards of clean soil, respectively, and allow for the disposal of 30,000 cubic yards, 270,000 cubic yards, and 80,000 cubic yards of waste material, respectively.

NBR's proposed method of bioremediation simply relies on mixing and watering to stimulate the growth and action of natural soil microbes that break-down hydrocarbons. As described in the Abandonment Plan:

> *The impacted soil accumulated at the bioremediation logistics areas will be spread out across the bioremediation cells and soil processing equipment will work on the top 12 to 36-inches of soil, referred to as "lifts", to initiate the bioremediation process. The lifts will be disced and sprayed with water as needed to create optimal conditions for the natural and indigenous bacteria to grow and degrade the hydrocarbons within the soil. Disking and watering has proven to accelerate the bacteria to grow and breakdown the hydrocarbon molecule chains. This process could take from 2 to 6 weeks per lift and each lift will be tested in a routine manner until testing indicates that the approved remediation criteria have been achieved. Additionally, watering and moisture control measures will be employed to control dust and potential odors during the process.*

> *Once the appropriate remediation standards have been achieved, the now remediated soil lift will be moved into clean soil stockpiles for further verification testing by third party laboratories before recycle placement.*

The proposed siting and sizing of these processing, treatment, borrow, and disposal areas on the site has been proposed in order to accelerate the proposed remediation process and facilitate the topographical changes NBR has identified as necessary to prepare the site for the proposed development. For example, as NBR notes in its March 5, 2015 letter to Commission staff, its geotechnical study indicated that soils in these sites were comprised of less compacted alluvium fill materials that would require clean-out and re-compaction in order to prepare them to support the proposed housing and commercial development. Additionally, in order to achieve the desired level grade in the area south of the arroyo, NBR would need to fill the existing excavation site in this area that was created by an abandoned Caltrans road cut that dates back to the 1960s. The proposed disposal of treated soil, concrete waste, and roadbed material into this excavation would increase its final elevation and bring it to the desired grade with surrounding area. Offsite treatment and disposal of contaminated materials would require more transportation and could take more than five years to complete (for the amount of material NBR has identified as potentially needing treatment), while the proposed onsite treatment (if effective) would take approximately two to three years.

Finally, with regard to the oil field, the formal application does not include the proposal to consolidate the existing surface oil facilities onto a 16.5 acre site. Nonetheless, it would happen as a result if the current proposal was approved. Consolidation activities and development on the 16.5 acre site is outside the scope of NBR's proposal and would require a separate coastal development permit, likely by WNOC.

Grading

Mass grading is proposed to prepare the site for the ultimate project. Over-excavation and cut and fill associated with the development plan includes grading for parks, roads, underground utilities, and development lots. Grading is proposed in the Open Space Preserve to establish trail grades, prepare mitigation areas and provide maintenance access and water quality basin creation areas. Estimated total grading for the Project is approximately 622,000 cubic yards of cut and fill for mass grading, and 1,030,000 cubic yards of remedial grading for the housing development proposed, which would involve removal and recompaction of 3-5 feet of soil on the mesa. The project requires a total of 3,544,000 cubic yards of grading (**Exhibit 8**).

Subdivision

The applicant has indicated that the subject property is currently comprised of 4 legal lots. The applicant is proposing Tentative Tract Map No. 17308 to subdivide the 401 acre site into 209 numbered lots for residential and commercial development and certain parks and open space dedications, 14 additional lettered lots for open space dedications and a water quality basin, and 14 street dedications. The applicant has indicated that the property is currently contains 4 legal lots. Subdivisions, lot line adjustments, etc. within the coastal zone are considered development which requires a coastal development permit to be valid in the coastal zone. The applicant is proposing to subdivide the 401 acre site into 159 residential lots, 1 commercial lot, 2 Mixed Use Residential lots, 2 resort lots, 20 open space lots, 10 park lots, and 13 public street lot (**Exhibit 7**).

Residential and Commercial Development
The project was approved by the Newport Beach City Council and an Environmental Impact Report was certified by the City of Newport Beach in August 2012. The project does not have local approval from the County of Orange.

On approximately 94 acres would be 17 acres of roadways and 77 acres of housing, retail/commercial space, and resort development. These development areas would include 1,375 residential dwelling units, 75,000 square feet of commercial uses, a 75-room visitor-serving coastal inn, and an 8-10 bed hostel, divided into the following "neighborhoods": South Family Village (single family residential), North Family Village (single family residential), Urban Colony (mixed-use of high density multi-family residential and retail and commercial space), Resort Colony (75 room hotel and an 8-10 bed hostel and retail space) and the Resort Villas (high density multi-family residential). Proposed commercial and retail uses include visitor-serving retail and restaurant establishments, as well as general neighbor-serving commercial uses. The entire project is proposed to meet the standards of LEED-ND (Leadership in Energy and Environmental Design, Neighborhood Design).

Description of Proposed Uses

Description	Square Footage	Proposed Height Without Architectural Features	Height of Architectural Features
Traditional Homes (Low Density)	3,900 – 4,150 sq. ft. (livable area excluding 2-car garage)	36'	3'
Coastal Homes (Low Density)	2,550 – 3,750 sq. ft. (livable area excluding 2-car garage)	36'	3'
Beach Cottages (Low Med Density)	2,250 – 2,500 sq. ft. (livable area excluding 2-car garage)	45'	3'
Motor Court Homes (Low Med Density)	2,200 – 3,000 sq. ft. (livable area excluding 2-car garage)	45'	3'
Garden Court Homes (Low Med Density)	1,650 – 2,050 sq. ft. (livable area excluding 2-car garage)	45'	3'
Village Flats (Med Density)	1,900 – 2,100 sq. ft. (livable area excluding parking)	45'	3'
Urban Lofts (Mixed Use)	1,150 – 1,550 sq. ft. (livable area excluding parking)	60'	3'
Resort Flats/Resort Villas (Resort Residential)	1,900 – 2,100 sq. ft. (livable area excluding parking)	50'	3'
Hotel/Resort	Not Provided	50'	15'
Commercial	75,000 sq. ft.	60'	15'

Table compiled from information contained in "Newport Banning Ranch Master Development Plan" provided by applicant 2/1/13

Description of Proposed Areas

Proposed Use	North Village Area	Urban Colony Area	South Village Area	Resort Colony Area
Traditional Homes	35	0	0	0
Coastal Homes	70	0	0	0
Beach Cottages	39	0	0	0
Motor Court Homes	46	0	32	0
Garden Court Homes	73	0	63	0
Village Flats	154	0	0	0
Urban Lofts	0	730	0	0
Resort Flats/Villas	0	0	0	87
Commercial/Retail	0	29,900 sq. ft. retail	45,100 sq. ft.	0
Hotel	0	0	0	75 rooms
Hotel Ancillary Uses	0	0	0	48,500 sq. ft.
Hostel	0	0	0	8-10 beds

Commercial and retail space totaling 75,000 sq. ft. would include 59,000 sq. ft. of visitor serving uses and 16,000 sq. ft. neighborhood uses, including the following proposed spaces:

Urban Colony **Commercial Use**	**Visitor Serving**	**Square footage**
Artist Studio		1,000
Financial Institution		2,500
Health/Fitness		5,000
Restaurant	X	4,250
Retail Sales		2,500
Instruction Studios		3,000
Visitor Serving Retail	X	11,650

South Village **Commercial Use**	**Visitor Serving**	**Square footage**
Art Gallery	X	3,000
Bicycle Rentals	X	3,000
Commercial/Personal Services		2,000

Health/Fitness	X	3,000
Offices		1,500
Restaurants	X	6,750
Tourist Info Center	X	100
Visitor Serving Retail	X	25,750

The multi-family homes and mixed-use development areas toward the North of the site within the Urban Colony would contain 3 parking structures for residential and commercial uses. A fourth parking structure would be located immediately next to the resort area.

A revised project description for the proposed development plan submitted September 11, 2015 indicates that an 8-10 bed hostel is proposed in the resort colony. The overnight rates for the proposed hotel were not submitted. The overnight rates for the proposed hostel were not submitted. Conceptual elevations and depictions of the hotel have been submitted, but complete elevations, site plans, and draft architectural plans for both the hotel and hostel were not submitted.

Roads and Infrastructure
The 17 acres of proposed roads include 2-lane, 2-way entrances to the site from Pacific Coast Highway, 15th, 16th and 17th Streets. Interior 2-lane, 2-way roads proposed, Bluff Road and Scenic Drive, provide for circulation around the housing and commercial developments. A bridge is proposed to span the main large arroyo toward the south of the site to create a continuous connection for Bluff Road between the North and South colonies. All roads are proposed to be public and interior roads would provide public parking opportunities. Five-foot-wide minimum on- street bicycle lanes are proposed for both sides of arterial roadways and all streets would have sidewalks separated from the street. Onsite public parking resources would be provided to support access to the parklands and trail system. No hours, maximum parking times, or fees were identified for the public parking and/or parks and trails. Any such restrictions would require separate approval from the Commission.

Utility development would include: New infrastructure and utilities, including water, sewer, and storm drain facilities to serve the proposed development, would be constructed. New water, sewer and stormdrain facilities would connect to existing City and County facilities located adjacent to the property.

Water Quality Systems
Approximately 5 acres would be used for Water Quality Basins to control runoff into the wetlands, largely from the proposed housing developments. The Project includes the construction of new drainage, flood control, and water quality facilities as set forth in the Project's Master Drainage Plan and Water Quality Management Plan (**Exhibit 11**). The proposed plans would curtail excessive runoff to arroyos, redirect runoff away from bluffs, and reduce flow rates and volumes of untreated runoff to the Semeniuk Slough and the Santa Ana River. Water basins and diffusers would be constructed to treat existing storm water runon flowing across the project site from offsite areas to the east as well as storm water runoff from the project site. The basins will treat proposed housing development runoff, as well as approximately 46 acres of off-site runoff from adjacent commercial and light industrial areas.

Perimeter Basins
The project proposes water quality basins along the perimeter of the development areas adjacent to the bluff tops. For these water quality basins, infiltration is not recommended due to adjacency to the bluff and the potential for subsurface seepage through the arroyo canyon walls. Therefore, these basins would be lined, and treated flows would be discharged in a controlled manner to the arroyo canyon bottom for evapotranspiration and habitat benefits.

Regional Water Quality Basin (Mesa)
One water quality/detention basin is proposed near the site entrance at 16th Street to accommodate treatment of urban runoff from adjacent off-site areas to the Main Arroyo. The off-site drainage area located within the City of Costa Mesa and the City of Newport Beach encompasses approximately 48 acres and is completely developed. This regional water quality basin would provide treatment for approximately 2.3 acre-feet of water quality treatment, which represents all urban runoff (dry weather) and almost the entire first-flush storm water event. In addition, the basin would also provide detention capabilities to reduce peak flow velocities that discharge into the Main Arroyo.

Water Quality/Diffuser Basins (Lowland)
An on-site water quality treatment basin is proposed within the lowland, just north of the North Family Village. This basin would be located above the 100-year floodplain and would also serve as a diffuser basin to control the rate at which water drains from the upland down to the lowland. Although this basin would have sufficient treatment capacity to treat all flows from the upstream drainage area (6 acre-feet of treatment volume) in combination with the established treatment efficiency of the upstream LID features, only 2.3 acre-feet of treatment capacity would actually be required. Treated flows from this basin would remain on site and would be discharged into the lowland for infiltration, evapotranspiration, and habitat nourishment benefits. An additional diffuser basin is proposed in the lowland, which would collect flows from development areas adjacent to the Main Arroyo and provide energy dissipation of flows prior to entering the Semeniuk Slough. Both of the lowland basins would be planted with native emergent marsh and riparian species to promote water quality cleaning and natural energy dissipation.

The water quality basins proposed in most cases are in and adjacent to wetland habitat. Construction plans for the water quality basins were not provided in the application materials. Construction specifications are needed to evaluate the basins' effectiveness for the proposed development and for the impacts the construction of these basins would have on ESHA and wetland habitat. The same is true for the proposed energy dissipaters located in the arroyo.

Water quality improvements consist of Low Impact Design (LID) features such as bioswales, landscaping biocells, and permeable pavement, where feasible, as well as source-control and treatment-control Best Management Practices (BMPs). New infrastructure and utilities, including water, sewer, and storm drain facilities to serve the proposed development, would be constructed. New water, sewer and storm drain facilities would connect to existing City and County facilities located adjacent to the property.

Parking
Public parking would be provided throughout the project site to support access to and use of the proposed parklands and trail system (**Exhibit 10**). More than 200 on-street public parking

spaces would be provided on Scenic Drive, and more than 150 off-street public parking spaces would be provided within the Community Park areas. In addition, public off-street parking would be provided as shared parking within the Resort Inn and the Urban Colony mixed-use commercial/residential development within the Project site, including for use by coastal recreationists and park users as capacity permits.

A site plan submitted August of 2015 indicates that there may be 3 parking structures proposed in the mixed-use Urban Colony. The total number of parking spaces, complete elevations for the Urban Colony and draft architectural plans were not submitted. The site plan also indicates that the resort colony may also contain a parking structure. Again, the total number of parking spaces, complete elevations for the Urban Colony and draft architectural plans were not submitted.

Habitat Conservation and Mitigation Plan
Most of the impacts to the site would be a result of the proposed remediation plan (RAP) and the mass grading to prepare the site for the housing development. The applicant is proposing compensatory mitigation in another location for most of these impacts, as opposed to restored in place. The plan for the mitigation is the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). The HCCMP presents a program for the onsite compensatory mitigation that is designed to mitigate the biological impacts caused as a result of the proposed project. The HCCMP was prepared as a mitigation proposal and assumes that the underlying impacts to the sensitive resources would be approvable under the Coastal Act. The policy analysis is discussed below in the ESHA and Wetlands Sections of this report. .

The HCCMP for the mitigation associated with the Newport Banning Ranch Project addresses on-site wetland/riparian establishment mitigation, restoration and enhancement, vernal pool establishment mitigation and enhancement, as well as upland scrub and grassland restoration, for impacts to jurisdictional waters, riparian habitat, vernal pool and seasonal features, and scrub and grassland habitat resulting from proposed oil field clean up and implementation of the development project (**Exhibit 9**).

The HCCMP includes a 30 acre Third Party “mitigation bank” in the lowlands of the site. Within the lowlands, approximately 30 acres of the proposed 265 acre Natural Open Space Preserve are proposed for designation as a third-party mitigation area to allow opportunities for additional habitat establishment, restoration and/or enhancement by parties other than the Applicant requiring environmental mitigation, offsets, or other habitat sites within the region.

Open Space
The development proposal includes a total of 265 acres as Open Space called the “Natural Open Space Preserve.” Approximately 30 acres would be made available for third-party wetland mitigation banking. The total areas of open space under the proposed 265 acre “Natural Open Space Preserve” are as follows:

Preserved Land	Developed Open Space	Trails and Parks
not graded, not impacted by development, not impacted by RAP; primarily in the lowlands	subject to impacts and restoration, includes proposed mitigation areas	Includes fuel mod. zones, landscaping, and Water Quality Basins
approximately 120 acres	approximately 100 acres	approximately 45 acres

The 265-acre "Natural Open Space Preserve" will remain protected as permanent natural lands and open space through the establishment of a conservation easement, and is anticipated to be managed by the Newport Banning Land Trust (NBLT), an independent, non-profit organization established in 2012 with a mission to provide long-term stewardship of the Open Space. NBLT has negotiated a Memorandum of Understanding (MOU) with NBR that would provide the framework for the anticipated transaction to allow the NBLT to assume stewardship responsibility for the Natural Open Space Preserve. Funding for preservation of these open space areas would likely be provided by the Homeowners Association established for the proposed housing developments.

Trails

The proposal includes 9.5 acres of public trails in areas adjacent to wetlands and ESHA. The trails would include improvements for a Talbert Trailhead, a Nature Center, and a Vernal Pool Interpretative area, which would be managed by the NBLT. The proposal includes public trails throughout the site that would connect to the larger Santa Ana River Regional Trail System and Talbert Nature Preserve.

A diverse system of public interpretive trails would be developed within the Natural Open Space Preserve. This trail system would provide connections to the proposed North and South Bluff Park located on the mesa, Santa Ana River Regional Trail System, and Talbert Nature Reserve. The Trail System would include 2.0-mile-long lowland Interpretive Trail connecting to the existing Santa Ana River Regional Trail System and Talbert Nature Preserve located adjacent to the Project Site; a 0.3-mile-long Southern Arroyo Trail would connect to open space with trails and footpaths planned for development in the North and South Bluff Park; a 0.4-mile-long Bluff-toe Trail would be located almost entirely within the non-exclusive access easement and which is also used as the Oil Access Road and Orange County Sanitation District easement connecting the two remainder oil operations sites. This trail parallels the Semeniuk Slough and connects to the Bluff Park Trail System adjacent to the Resort Colony and Family Villages; and a 0.8-mile-long Upland Interpretive Trail would connect the Talbert Trailhead/Staging Area with the corner of Talbert Nature Preserve and the Project's lowland Interpretive Trail. Trails are largely proposed to follow existing oil roads within the project site to the extent feasible. The 9.5 acres of Public Interpretive Trails would be located within 10-foot-wide public easements as designated on the Project subdivision map. Within the 10-foot-wide trail easements, generally six feet would be trail surface area and a maximum two-foot transition to native ground would be provided adjacent to each side of the trail surface for a maximum total improved area of 10 feet. The trail surface would consist of native soil or

decomposed granite and would meander and/or become narrower or incorporate sections of elevated walkways as necessary to avoid identified special-status habitats.

The Project would also include construction of a pedestrian and bicycle bridge from Bluff Park spanning over West Coast Highway (PCH) that would facilitate public coastal access from the site to the shoreline. The pedestrian and bicycle bridge would be accessible for both resort guests and the public, and would include provisions for ADA access. The bridge would connect the site to a City of Newport Beach public park on the seaward side of PCH.

On Street Bicycle paths are proposed throughout the project. Five-foot-wide on-street bicycle trails are proposed for both sides of arterial roadways including Bluff Road, North Bluff Road, 17th Street, and 15th Street. Bike racks would be provided as a part of the proposed neighborhood retail center, parks, and the multi-family residential uses.

All streets within the project site are proposed to have public sidewalks separated from the street. Sidewalks would vary in width from four to eight feet.

Parks
The project would eventually include development of approximately 25 acres of active and passive public parks, although park plans are not included in the current development proposal. The proposed development includes parklands dedication to the City of Newport Beach (within the 40 acres currently in the City limits) of approximately 11 acres for development of Public Community Parks and a 14-acre Bluff Park. The design plans for the public parks are not yet finalized and would be proposed by the City of Newport Beach at a later date. Public parking would be included. The applicant has indicated that the park plans would utilize “dark-sky” technology in the lighting plan.

Proposed Interpretive Parks would be located on the periphery of the Natural Open Space Preserve and would incorporate active and passive recreation facilities, including a vernal pool interpretive area and trailheads for the Interpretive Trail System in the Natural Open Space Preserve. The Interpretative Parks would contain viewing decks interpretive exhibits and signage with information on the history of the Project Site and on the native plants and wildlife of the area.

The Vernal Pool Interpretive Area Park would provide public access via a walkway near the edge of the vernal pool restoration complex sign kiosks and displays so visitors could experience and learn about the ecology of vernal pools and San Diego fairy shrimp. The Vernal Pool Interpretive Area Park would be planted with native grasslands providing a vegetated buffer between the vernal pool restoration complex and adjacent development. It appears on the site plan that the interpretative vernal pool complex may contain a pedestrian footpath around, and in some cases through, the vernal pools. Construction plans for the vernal pool complex have not been provided.

Located along the Upland Interpretive Trail west of North Bluff Road, the proposed 0.1-acre Talbert Trailhead Area would serve as an informational stop for pedestrians and bicyclists using the Natural Open Space Preserve Interpretive Trail system. The trailhead would provide a viewing platform to the Natural Open Space Preserve and interpretive signage providing directional information on the Upland and lowland Interpretive Trails and the points of

connection from the Interpretive Trail system to existing regional trails located adjacent to the Project Site.

Bluff Park would be an approximately 14 acre linear park, bordering the housing development and overlooking the main arroyo. The park would have maintained landscaping and serve as a fuel modification zone. The park would be developed and maintained by the City of Newport Beach. Bluff Park would include approximately two miles of public pedestrian trails. Bluff Park is comprised of two subareas referred to as South Bluff Park and North Bluff Park.

South Bluff Park extends along the perimeter of the Resort Colony and South Family Village adjacent to the Natural Open Space Preserve. South Bluff Park is proposed as a passive park providing view opportunities from the Resort Colony edge toward the Pacific Ocean and views of open space from the South Family Village edge. Public facilities would include scenic view overlooks with public seating, a pedestrian trail with connections to the open space interpretive trail system, and a multi-use trail that links to the pedestrian and bicycle bridge across West Coast Highway. Interpretive signage would be provided along the length of the multi-use trail.

North Bluff Park extends along the perimeter of the North Family Village adjacent to the Natural Open Space Preserve and east of North Bluff Road along the northern edge of the Urban Colony. North Bluff Park is proposed to provide active recreational facilities including informal play areas for children, tot lots, and a public amphitheater. Passive recreational facilities would include a pedestrian trail with connections to the Natural Open Space Preserve Interpretive Trail system, picnic areas, and scenic view overlooks to be provided along the length of the pedestrian trail. A trail connecting the Mesa to the lowlands of the site would be developed upon a heavily graded slope on the northwest side of the "North Family Village" housing development.

D. OTHER AGENCY APPROVALS

Review of the project is required by several other federal, state, and local agencies.

U.S. Fish and Wildlife Service (USFWS). The project requires federal agency permits, including a Clean Water Act Section 404 permit from the US Army Corps of Engineers),thus the USFWS must conduct a Section 7 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the issuance of a Biological Opinion. As a federal agency, the USFWS' actions require compliance with the National Environmental Policy Act (NEPA). No Biological Opinion has been issued as of the date of this staff report.

California Department of Fish and Wildlife (CDFW). The project would require a Section 1600 Streambed Alteration Agreement from the CDFW pursuant to Section 1602 of the *California Fish and Wildlife Code.* The applicant has applied for a streambed alteration agreement. The application did not include sufficient information for CDFW to determine the streambeds on the project site, and there cannot issue the Streambed Alteration Agreement.

Regional Water Quality Control Board. Issuance of the US Army Corps of Engineers Section 404 Permit would require the Santa Ana Regional Water Quality Control Board (RWQCB) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. Waste

Discharge Requirements issued by the Santa Ana RWQCB would be required for the fill or alteration of "Waters of the State" on the Project site located under the RWQCB's jurisdiction. Additionally, approval of the final RAP for the oil well/facility abandonment and site remediation is required from the Santa Ana RWQCB. The RWCQB has issued a "Denial without Prejudice" for the water quality certification. The application did not include sufficient information for the RWCQB to identify accurately the "Waters of the State" present on the site. Therefore, RWCQB cannot issue approval for the Final RAP proposed for the site.

*U.S. Army Corps of Engineers (*USACE). The project would require Clean Water Act Section 404 permit from the USACE for impacts to areas determined to be "Waters of the U.S." While NBR has applied for the project to be considered under a general Nationwide Permit, USACE is still in the process of determining if this approach would be appropriate or if a more extensive review under the Individual Permit process would be required. As a federal agency, the USACE's actions require compliance with NEPA. Again, the application did not include sufficient information for the USACE to identify accurately the "Waters of the U.S." present on the site. The Jurisdictional Delineations (JDs) submitted by the applicant contained conflicting and incomplete information. Additionally, USFWS in consultation with the USACE, cannot issue a biological opinion without accurate JDs. Once it has accepted the JDs for the site, the USACE would proceed with its review along either the Nationwide Permit or Individual Permit process. Final decisions on these matters are anticipated within the next several months.

State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). Oil and gas wells to be abandoned or re-abandoned shall be done in accordance with the current requirements of the DOGGR. The abandonment requirements will be those applied by DOGGR at the time the RAP, including the Combustible Soil Gas Hazard Mitigation Plan, is submitted for review to the Orange County Fire Authority. In addition, DOGGR has standards and requirements for comprehensive oilfield abandonment. These include the review and approval of a field restoration plan that indicates the amount and location of aboveground infrastructure proposed to be removed. DOGGR staff have not received an application for field restoration or a field restoration plan from NBR.

Orange County Health Care Agency. Approval of the final RAP for the oil well/facility abandonment and site remediation is required from the RWQCB. The OC Health Care Agency, due to lack of staffing, has requested assistance from RWQCB for determinations on the RAP. As stated earlier, RWCQB cannot issue approval for the Final RAP proposed for the site due to the lack of a water quality certification.

Local Agency Formation Commission. The Local Agency Formation Commission (LAFCO) would review the project when the City of Newport Beach formally requests annexation of the 361 acres in unincorporated Orange County. LAFCO is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include a change in service district boundaries for water service.

Orange County Transportation Authority. Amendment to the Orange County Master

Plan of Arterial Highways would be required for the circulation proposed on the site. The applicant would be asking to remove a road segment that appears on the plan along North Bluff Road just north of 17th Street connection to 19th Street and to redesignate the remaining southern section of North Bluff Road from a Major (six-lane divided street) to a minor 2-lane divided street and the deletion of a second road through the project site to West Coast Highway. The amendment would include deleting the connection from 17th Street westerly to West Coast Highway.

Newport-Mesa Unified School District. An encroachment permit would be required for the construction of the extension of 16th Street and North Bluff Road on the School District's property.

California Department of Transportation. Activities located within California Department of Transportation (Caltrans) right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit. Caltrans has not yet issued approval for these elements of the project.

In the preparation of these findings, the Commission staff consulted with the most of the above agencies listed. In particular staff consulted with USFWS, CDFW, RWQCB, USACE, and the OC Health Care Agency regarding the sensitive biological resources and waters onsite. None of these agencies have yet issued approvals of the project.

Federal Consistency
As noted above, in order to proceed with the proposed project, NBR needs a permit from the USACE pursuant to Section 404 of the Federal Water Pollution Control Act of 1972, as amended (33 USC § 1344). Because this Section 404 permit is listed in the California Coastal Management Program among those federal agency permit activities that reasonably can be expected to affect any land or water use or natural resource of the coastal zone, Section 307(c)(3)(A) of the Coastal Zone Management Act requires that it be subject to the certification process for consistency with the California Coastal Management Program. As provided in Section 307(c)(3)(A):

Any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all the necessary information and data.

Therefore, before USACE can issue its Section 404 permit for any part of the project, the Commission must concur with a consistency certification for the project, finding that it would be carried out consistent with the California Coastal Management Program. Although NBR initially submitted a CDP application that did not include those aspects of the project for which it was

seeking a Section 404 permit from the USACE, Commission staff worked with NBR to revise its application to include the entirety of the proposed project. This was done to consolidate the Commission's CDP review and federal consistency review of the project because the Commission's approval of a CDP that covered the whole project would duly meet the requirements of the Coastal Act and Section 307(c)(3)(A) of the Coastal Zone Management Act.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30240 of the Coastal Act states:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Coastal Act section 30107.5 defines environmentally sensitive area:

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The Coastal Act thus establishes a high standard for protection of areas that are identified as environmentally sensitive. Only resource-dependent uses, such as habitat restoration, are allowed within an environmentally sensitive area (ESHA), and all development within or adjacent to an ESHA must be sited and designed to prevent significant disruption of ESHA.

Under the Coastal Act, if an ESHA is identified, it must be avoided unless the proposed development is "a use dependent on the resource." This fundamental requirement of the Act was confirmed in the *Bolsa Chica* case, wherein the Court found:

> *Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA....*

Environmentally Sensitive Habitat Areas (ESHA) are areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Summary of Habitats
On the Newport Banning Ranch site there are several different habitat types that contribute the ecosystem on the site and to the surrounding sites. Because the project site is bordered by the Santa Ana River, the site contains a unique watershed in the lowlands and on the mesa. The historic path of the Santa Ana River before being channelized was vast and had a network of ever-changing outlets into the pacific ocean. This wide pattern between the fresh water of the river and salt water of the sea created an estuary of marsh and wetland communities. The Semeniuk slough and the wetlands controlled by USACE adjacent to the site are a few remaining examples of the wetland watershed complex in the area. While the wetlands remaining on the Newport Banning Ranch site have been impacted by heavy use of the site for oil operations since the 1940s, and before that for agriculture, the wetlands persist on the site because of the underlying watershed and the site's proximity to both the river and the ocean. The site also represents just one part of a large wildlife corridor following the Santa Ana River. This corridor is one of the few passageways left for wildlife and migrating birds to travel across southern California from the mountains to the ocean.

The site has been documented to be remarkably self-sufficient. The ecosystem on the site is a vast complex of interrelated habitats and species. The site supports a rich seed bank. Once development ceases on the site, the watershed, animals and plants are able to rebound without intentional restoration. The CLUP states that the Banning Ranch site: *contains a number of sensitive habitat types including southern coastal bluff scrub, alkali meadow, southern coastal salt marsh, southern coastal black willow forest, coastal brackish marsh, and vernal pools. The property also contains steep coastal bluffs along the southern and western edges of the mesa. The bluff faces have eroded in some areas to form a number of gullies and ravines.*

The Newport Banning Ranch site is largely divided into 2 areas topographically (**Exhibit 6**): the lowlands consist of approximately 130 solid acres of wetlands ranging from 0 -10 feet above mean sea level; and the mesa which contains 4 "arroyo" streambeds, one drainage area, a vernal pool complex, and multiple seasonal wetlands, all of which together control the flow of water across the site. The mesa ranges in elevation from 10 -105 ft above mean sea level and includes coastal bluffs and canyons along the bluff edges of the riparian areas. The site does receive run-on from areas North and East of the mesa and the arroyos on the mesa direct the water down to the lowlands and into the Slough. The water then perpetuates the wetlands in the lowlands. Tidal influence from the ocean entering the Slough can also reach the wetlands in the lowlands. This mix of fresh and salt water again creates not only the wetlands of the site, but also contributes to the large areas of salt grass flat marshlands on the site. All of these elements are extremely rare habitats in Southern California.

The EIR describes the site conditions, summarized here:
The site contains 45 vegetation types, including 20 types of coastal sage scrub; 9 types of pools, marshes and mudflats; 8 riparian types; and 8 grassland areas. In general, coastal sage scrub is located along the eastern and southern portions of the project site on the Mesa. The marshes and mudflats occur within the Lowland and are subject to tidal influence. Seasonal features and vernal pools are located in the Upland adjacent to grasslands. Riparian resources are found in portions of the Lowland and Upland. Grassland and disturbed vegetation are found throughout the project site. The project site also supports several special status plants and wildlife species. The federally listed threatened coastal California gnatcatcher and the coastal cactus wren and the San Diego fairy shrimp are present on the project site.

The Lowland (Wetlands) supports wetland habitats, including areas of salt marsh that support the State-listed Endangered Belding's savannah sparrow; they also support willow scrub and willow riparian forest that support the State- and federally listed Endangered least Bell's vireo and a variety of special status nesting raptors including the white-tailed kite. Additionally, the Lowland supports special status plants, including substantial populations of southern tarplant. Riparian and wetland habitat on the site includes willow riparian forest, willow scrub, alkali meadow, mudflats, freshwater marsh, and salt marsh.

The Mesa of Newport Banning Ranch, therefore must also be viewed in the larger context of its role in the upland/wetland ecosystem. Similar to the Bola Chica wetlands and mesa near Huntington Beach, which according to both the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, the Mesa and the lowland wetlands are biologically interdependent. Together, the wetlands in the lowlands and the mesa with the riparian arroyos and vernal pool complexes, combine to make this area an important upland-wetland ecosystem. These biological interdependencies are vital to maintaining biological productivity and diversity. The Memo. by Dr. Jonna Engle describes in detail the different habitats present on the site, as summarized below (**Exhibit 12**).

Vernal Pools
A number of plant and animal species are endemic to (found only in) vernal pools. Wetlands that provide habitat to plants and wildlife only found in vernal pools are wetlands that may rise to the level of ESHA. Coastal terraces or mesas are exactly where vernal pools occur in southern California and are expected on the NBR site (e.g. More Mesa and Carpinteria Bluffs in Santa Barbara County, Kearney Mesa and Clairemont Mesa in San Diego County). Vernal pools were documented on the adjacent property, Newport Mesa Unified School District. There are 39 Vernal pools present on the site.

Rare Plant Communities
Coastal sage scrub in southern California provides habitat for about 100 rare species, many of which are also endemic to limited geographic regions[1]. Southern Coastal Bluff Scrub and Maritime Succulent Scrub are two (considered "very threatened") rare coastal scrub communities found on the bluffs and canyons of the site. Patches of Purple Needle Grass appear throughout the NBR site. Not only are purple needle grass grassland rare habitats, they also provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species of mammals, birds, and reptiles. Burrowing owls, red-tailed hawks, Cooper's hawks, American kestrels, and peregrine falcons have been observed perching and foraging at various locations within and in the vicinity of the purple needlegrass grassland across the entire site. The Riparian habitat found adjacent to drainage areas on the NBR site is greatly reduced in extent from its historical distribution and it supports rare and endangered species such as the least Bell's vireo.

Rare Wildlife
The site also supports rare, threatened, and endangered animal species. California Gnatcatchers (CAGN) live in Coastal Sage Scrub plant communities. In the last 60 years extensive southern California suburban sprawl has reduced and fragmented coastal scrub habitats, resulting in a significant decline in California gnatcatcher populations. CAGN is a federally-listed species.

[1] Westman (1981) op. cit.

Coastal Cactus Wren are extremely rare. They rely on the prickly pear patches and other cacti found on the NBR site. Historically, Cactus Wren were documented on the NBR site but have not been seen since 2009. Burrowing Owls have been seen on the mesa of the NBR site. They are a Species of Special Concern and they often forage in the open grasslands. Other sensitive species that have been seen on the NBR site include: Loggerhead shrike, yellow warbler, yellow-breasted chat, least Bell's vireo, Belding's savannah sparrow, white-tailed kite, and northern harrier.

Other Biological Factors
Annual grasslands, although dominated by non-native species, provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species of mammals, birds, and reptiles including burrowing owls and many species of raptors. Burrowing owls as well as several species of raptors including red-tailed hawks, Cooper's hawks, and American kestrels, have been observed perching and foraging at many locations. The animals that forage on the site, including Ospreys and other raptors, as well as large mammals like coyotes, all play an important role in the ecosystem of the site.

Riparian Habitat
One of the connections linking the Newport Banning Ranch upper mesa and lowlands are the riparian areas and drainages. The applicant has documented four main drainages on the site. According to the HCCMP, the "small arroyo" is located near the northeastern corner of the site, originating at the eastern property boundary where a concrete culvert discharges stormwater runoff and flows onto the site. Dominant species include riparian vegetation: arroyo willow, black willow, and southern cattail, and mulefat communities. The small arroyo drains into the northernmost portion of the lowland wetlands and supports minimal riparian vegetation at the toe of slope. The small arroyo supports a denser and healthier riparian black willow and mulefat thicket along the northernmost boundary of the lowlands, which supports sensitive species such as the least bell's vireo. The arroyo may be impacted by abandonment and remediation activities, but is outside of the proposed development footprint.

The Middle Arroyo is located in the upper portion of the site, originating at the eastern property boundary where a concrete culvert discharges stormwater runoff and flows onto the site. Dominant native species include arroyo willow, black willow, and mulefat, as well as some non-natives. The hydrology flows toward the lowland wetlands. The arroyo may be impacted by abandonment and remediation activities, but is outside of the proposed development footprint.

The Southern Arroyo (also called the Main or Large Arroyo), is a high-functioning drainage located near the southern portion of the project site, and includes one tributary swale. This arroyo is the least disturbed drainage on site. Dominant vegetation includes arroyo willow, black willow, mulefat, some non-natives. The Main Arroyo is largely avoided by the development proposal, except for the bridge that spans the arroyo on Bluff Road proposed to connect the South Family Village to the North Family Village. The bridge foundational supports would fill a minor portion of the arroyo and would result in bluff face and bluff edge impacts to the arroyo's canyon bluffs.

Drainage D is a riparian erosional feature covering about 0.45 acre. The feature is located near the southern boundary of the property in a north-south trending canyon that was created in connection with regional highway improvements during the 1960s. The feature originates

approximately 1,000 feet from the property boundary at Pacific Coast Highway (PCH), extending toward PCH for approximately 700 feet. Approximately 200 linear feet of this feature contains riparian vegetation, consisting of arroyo willow and mulefat, however, much of this feature also supports dense patches of non-natives. Drainage D is proposed to be filled and developed with an access road connecting the site to PCH, Bluff Road.

A final drainage area exists on the site that is not acknowledged in any of the application materials. Topographical evidence and ponding suggest there is a "North-South Arroyo" on the mesa. Additionally, the presence of coastal bluff scrub and riparian vegetation within the footprint of this feature also suggest that it is another arroyo on the site. The feature is depicted on the National Wetlands Inventory, although it is difficult to recognize on the site today due to heavy disturbances from oil operations. The Arroyo begins just south of the Vernal Pool watershed and runs south toward the Main Arroyo, serving as a tributary to the Main Arroyo. Mapping of the North-South Arroyo was not completed, nor was complete watershed mapping of the site. The arroyo, although not acknowledged as such in any application materials or site studies, is proposed to be filled as the "remediated soil placement location," heavily graded and developed with the proposed North Family Village.

Defining ESHA

ESHA, as defined in Section 30107.5 of the Coastal Act, is "…any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities." Thus, Section 30107.5 sets up a two part test for determining what constitutes ESHA. The first part is determining whether an area includes plants, animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5.

Defining "rare"

There are several types of rarity, but each of them is fundamentally related to threats to the continued existence of species that naturally occur in larger or more widespread populations. Increasing numbers of species have become absolutely rare, having been reduced to a few hundreds or thousands of individuals. The prognosis for these species is very poor. Another common pattern is for species to be globally rare but locally abundant. Such species only occur at a few places either as a result of natural processes or human perturbations. The remaining populations of tidewater goby and coastal California gnatcatcher, for example, appear to be constrained in their natural distribution as a result of widespread loss of suitable habitat areas. Some species, such as the Pacific pocket mouse, are characterized as "narrow endemics" because they have evolved adaptations to a very limited range of environmental variables (e.g., soil type, temperature, humidity, availability of shelter and forage species etc.), which restrict their spatial distribution. Many other species, such as the least Bell's vireo and San Diego fairy shrimp, have restricted distributions as a result of human activities, especially agricultural and urban development that results in habitat loss. Many natural endemics have also suffered such habitat loss – compounding the risk to them. All these species may be abundant in the few areas where they still occur. However, regardless of the cause of their restricted distribution, the survival of these species is at elevated risk because localized impacts may affect a large proportion of the population with devastating effects. At the other end of the spectrum of rarity are species such as

steelhead that are geographically widespread, but are everywhere in low abundance. Some species naturally occur in this pattern and have life-history characteristics that enable them to persist. However, naturally abundant species that have been reduced to low density throughout their range are at heightened risk of extinction, although their wide distribution may increase their opportunities for survival.

Defining "especially valuable"
All native plants and animals and their habitats have significant intrinsic value. However, the "especially valuable" language in the Coastal Act definition of ESHA makes clear that the intent is to protect those species and habitats that are out of the ordinary and special, even though they may not necessarily be rare. As in all ESHA determinations, this requires a case-by-case analysis. Common examples of habitats that are especially valuable due to their role in the ecosystem are those that support rare, threatened, or endangered species, and those that provide important breeding, feeding, resting or migrating grounds for some stage in the life cycle of animal species and that are in short supply (e.g., California sage scrub provides forage and nesting habitat for the coastal California gnatcatcher and vernal pools and coastal lagoons and estuaries provide nursery habitat for steelhead and the tidewater goby). Habitats may also be especially valuable because of their special nature. Examples include those rare instances of communities that have remained relatively pristine, areas with an unusual mix of species, and areas with particularly high biological diversity (vernal pools for example).

Site Specific ESHA Analyses
The reason ESHA analyses are all site-specific is that there is no simple rule that is universally applicable. For example, a plot of a rare habitat type that is small, isolated, fragmented and highly degraded by human activities would generally not meet the definition of ESHA because such highly impacted environments are so altered that they no longer fit the definition of their historical habitat type. Larger, less isolated, more intact areas that are close to or contiguous with other large expanses of natural habitat are more likely to have a special nature or role in an ecosystem and hence meet the ESHA definition, but "large," "isolated," "intact," and "close to" are all terms that are relative to the particular species or habitat under consideration. What is spatially large to a Pacific pocket mouse is small to a mountain lion or bald eagle. What is isolated for a dusky footed woodrat may not be for a coastal California gnatcatcher. Similarly, an area supporting one or a few individuals of a rare species might not meet the definition of ESHA because scattered individuals might be common and not significant to the species. However, this is relative to the actual distribution and abundance of the species in question. If a few individuals of a species previously thought to be extinct were found, the area would clearly meet the definition. Whereas, if the same number of individuals of a species with a population of 25,000 were found in an isolated, degraded location, the area would probably not meet the definition. A conclusion of whether an area meets the definition of ESHA is thus based on a site- and species-specific analysis that generally includes a consideration of community role, life-history, dispersal ability, distribution, abundance, population dynamics, and the nature of natural and human-induced impacts. The results of such analysis can be expected to vary for different species.

Case-by-case analysis of ESHA necessarily occurs at discrete moments in time. However, ecological systems and the environment are inherently dynamic. One might expect, therefore, that the rarity or sensitivity of species and their habitats will change over time. For example, as species or habitats become more or less abundant due to changing environmental conditions, they may become more or less vulnerable to extinction. In addition, our scientific knowledge and

understanding of ecosystems, specific species, habitat characteristics and so forth is always growing. Large numbers of new species are discovered every year. The California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California grew from approximately 1400 listings in 1974 to over 2100 listings in 2001. New legal requirements, such as the numerous environmental laws adopted in the 1970s, may be adopted that reflect changes in our values concerning the current conditions of natural resources. Consequently, ESHA evaluations may change over time. Areas that were once not considered ESHA may become ESHA. It is also possible that rare species might become less so, and their habitats may no longer be considered ESHA. Because of this inherent dynamism, the Commission must evaluate resource conditions as they exist at the time of the review, based on the best scientific information available.

Federally Designated Critical Habitat as ESHA
The definition of environmentally sensitive area in Section 30107.5 of the Coastal Act shares a common focus with the Endangered Species Act definition of critical habitat for those species listed as threatened or endangered. Specifically, critical habitat for a threatened or endangered species is defined in section 3(5)(A) of the Endangered Species Act (ESA) as:

(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and
(ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Additionally, the term "endangered species" is defined in the ESA as "any species which is in danger of extinction throughout all or a significant portion of its range" and the term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

In other words, critical habitat includes those habitat areas in which species imminently or foreseeably at risk of becoming extinct are located that may require special protection and that are essential to the conservation of those species; or those areas not directly occupied by threatened or endangered species but that otherwise have been determined to be essential for the existence of those species.

This definition of critical habitat is similar to the Coastal Act definition of ESHA because endangered and threatened species can, by definition, also be expected to be rare. This common focus on rare species would ensure that those portions of critical habitat so designated due to the presence of a threatened or endangered species would also qualify as ESHA. Additionally, it is often true that those species listed, protected and designated with critical habitat under the Endangered Species Act are recognized as being under imminent threat of extinction due to human induced habitat loss or degradation, or, as stated in the Coastal Act definition of ESHA, "easily disturbed or degraded by human activities."

For those areas determined to be critical habitat due to the second provision of the critical habitat definition, "specific areas outside the geographic area occupied by a species at the time it is

listed" but determined to be "essential for the conservation of the species" it can reasonably be assumed that these areas meet the ESHA definition's meaning of "especially valuable based on their special nature or role in an ecosystem" due to the recognized importance of these areas to the conservation of a species threatened with extinction and the often critical role that endangered species play in the ecosystems that support them. Thus, although the Commission is not limited to designated critical habitats when defining ESHA, the Commission can rely on critical habitat designations as one of the components supporting an ESHA determination.

As detailed below, the Commission finds that those areas within the coastal zone portion of the proposed project area that are currently or have previously been specifically designated as critical habitat by the U.S. Fish and Wildlife Service (FWS) due to the recognized and established presence of federally listed threatened or endangered species and/or the importance of these areas to the conservation of threatened or endangered species also qualify as environmentally sensitive habitat areas, ESHAs.

ESHA Determination

The memo by Dr. Jonna Engle, included as **Exhibit 12**, indicates that there is a significant amount of ESHA on the NBR site. Dr. Engel determined that areas of the site do rise to the level of environmentally sensitive habitat areas: *the site supports a surprising amount of native habitat that in turn supports native plant and animal species, much of which rises to the level of ESHA. The ESHA on the site includes California brittle brush sage scrub, southern coast bluff and maritime succulent scrub, purple needle grass grassland, and vernal pools. The California brittle brush sage scrub supports the federally threatened coastal California gnatcatcher who also forages within the southern coast bluff and maritime succulent scrub and surrounding habitats. The lowlands on the site support saltwater, brackish, and freshwater marsh wetlands and riparian habitat. The saltwater and brackish marsh support the federally and state endangered least Bell's vireo. These habitats, which spread across the entire NBR site, are rare, and in turn support rare plants and animals, and Coastal Act sections 30233 and 30240 place important restrictions on the use of these areas.*

Purple Needlegrass Grassland

The site is covered in patches of purple needlegrass. The memo from Dr. Engle states that purple needlegrass grasslands have become increasingly rare in California. Purple needlegrass (*Nassella pulchra*), as a native perennial grassland, is now exceedingly rare in California. The purple needle grass grassland on NBR meets the definition of ESHA because it is a rare habitat that also provides an especially valuable ecosystem function as foraging habitat for many animals and birds including the burrowing owl which is a Species of Special Concern and numerous raptor species, and because it is easily disturbed and degraded by human activities and development.

Riparian Habitat

The riparian habitat, totaling approximately 61 acres, borders drainage areas and arroyos on the site and is found in areas of the lower mesa and in the arroyos on the upper mesa. Riparian habitat is greatly reduced in extent from its historical distribution in southern California. The riparian habitat on the site rises to the level of ESHA because it is a rare habitat type, it supports rare and endangered species such as the least Bell's vireo, and is easily disturbed and degraded by human activities and development.

Coastal Bluff Scrub and Maritime Succulent Scrub
Southern Coastal Bluff Scrub and Maritime Succulent Scrub are recognized as rare plant communities[2]. Both plant communities perform important functions by serving as habitat for special status species. In addition, this vegetation community is easily disturbed. Therefore, both Coastal Bluff Scrub and Maritime Succulent Scrub meet the definition of ESHA pursuant to the Coastal Act.

Burrowing Owl

Western burrowing owls (*Athene cunicularia*) are a California Species of Special Concern that are rare in Orange County due to loss of suitable grasslands to development, especially near the coast. Western burrowing owls are often found in burrows created by ground squirrels, of which there are countless in the project location. Most Western burrowing owls nesting in California remain at their breeding grounds throughout the winter, sometimes staying in the same burrows and sometimes wandering within the region.[3] Burrowing owls were thought to have been extirpated in all of Orange County (and most of coastal Southern California), except for a small breeding population in Seal Beach. Two large earthen berms on the project site provide habitat for the burrowing owls near vernal pools H, I, J, & K. The Commission finds this area to rise to the level of ESHA because the area supports wintering burrowing owls, a rare species, and because the area is easily disturbed and degraded by human activities and development. The burrowing owl winter survey data for the two southern portions of the property suggest that these areas are not frequently occupied by over-wintering burrowing owls and while they represent sensitive areas they do not rise to the level of ESHA.

Coastal Sage Scrub and California Gnatcatcher Habitat
Much of the Coastal Sage Scrub (CSS) on the property is still within the area designated as critical habitat for California Gnatcatchers (CAGN) and provides them with valuable foraging area and offers connectivity with the CSS vegetation on the adjacent property. Several biological surveys of the project area have documented CAGN nests and foraging areas. CSS communities on the NBR site are rare habitats, provide an especially valuable ecosystem service when occupied by the coastal California gnatcatcher or other rare species, and are easily disturbed and degraded by human activities. Therefore the coastal sage scrub meets the definition of ESHA. The CAGN, a federally listed species which must be protected under the Endangered Species Act, relies on the habitat provided by CSS in the project site. Because the CSS provides habitat for CAGN and can easily be disturbed by development, they are both are considered ESHA.

Vernal Pools
Wetlands that provide habitat to plants and wildlife only found in vernal pools are wetlands that may rise to the level of ESHA. There is approximately 0.35 acres total of vernal pool habitat on the NBR site. Environmentally sensitive habitat area means any area 1) in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and 2) which could be easily disturbed or degraded by human activities and developments. The vernal pools on the site meet the definition of ESHA because they are rare, because *they are aggregated and form vernal pool complexes which play an especially valuable*

[2] CNDDB, 2002
[3] Henderson, 2013.

ecosystem role, and because they are easily disturbed and degraded by human activities and development.

The HCCMP acknowledges that the interconnection between the pools, noting that there is a potential for long-term dispersal of sensitive plants and animals between the vernal pools. Unfortunately, the entire watershed on the site has not been mapped. Several agencies other than the Coastal Commission have requested mapping of the complete watershed of the site. Particularly the complete vernal pool watershed has not been mapped. Without this information, the review of the projects impacts are limited to impacts on individual pools and wetlands, rather than the review of the impacts to the entire watershed, which is afforded protection under the Coastal Act.

Significant Disruption of Habitat Values of ESHA

Considered alone, the proposed commercial and residential development would affect approximately 158 acres on the site, including significant and permanent impacts to over 31 acres of ESHA (**Exhibit 13**). Roughly half of these 158 acres would overlap with and also be affected by the proposed oilfield abandonment and remediation activities, proposed to occur on approximately 175 acres with adverse impacts to nearly 21 additional acres of ESHA.

Abandonment and Remediation Activities

While there are a variety of regulations[4] mandating that proper oilfield abandonment and infrastructure removal activities be conducted and completed as part of both individual well shutdowns and full oilfield closures, compliance with these requirements is typically the obligation of the oilfield operators on the site. However, in this case, NBR has entered into an agreement with the operator of the Banning Oilfield Lease and assumed responsibility for carrying out the abandonment process in exchange for the operator's cooperation in relocating its operations into the 16.5 acre area of the site that is proposed to remain in use for oil production. Without NBR's current proposal to carry out commercial and residential development on the site, the oilfield operator would be required to carry out oilfield shut-down, infrastructure removal, and clean-up activities at a future date when it discontinues oil production. This latter approach is the more typical and standard process for oil field abandonment.

While the removal of equipment and materials that pose a potential threat to human health and safety or environmental resources is required as part of abandonment, the intensity, scope, and type of clean-up operations required to be carried out often varies and can depend also on the planned future use of the site. The future use of the site will determine soil and groundwater contamination cleanup levels. For example, a site designated as open space would likely have a less stringent cleanup standard than one designated for future residential uses. In addition to the clean-up standards, the level of contamination, and presence of sensitive resources also plays a large part in the determining how and where remediation activities will be carried out. Site by site evaluations are carried out at each target clean-up location with consideration of the

[4] These regulations include those of state agencies such as the California Division of Oil, Gas, and Geothermal Resources, the California Department of Toxic Substances Control, and the Regional Water Quality Control Board as well as relevant local agencies such as the Orange County Health Care Agency. The specific governing regulations depend on a variety of factors including the location of the operation, the type of operation, presence of contaminated material, and presence of environmental resources.

contamination and specific resources on the ground and the relevant resources agencies coordinate to establish the most appropriate and least environmentally damaging approach. These approaches typically follow a gradient from the least extreme – natural attenuation (often supplemented by planting certain types of vegetation capable of extracting target pollutants) – to the most extreme – wholesale excavation, removal and backfill. In and around sensitive resource areas, excavation is typically only used for soils with high levels of potentially dangerous pollutants that are causing ongoing damage to those resources or pose a human health and safety risk. Where excavation of contaminated soils is the chosen method, the Coastal Commission then requires the site to be restored.

In past permit actions, the Commission has directed that removal/remediation activities be carried out in a manner that minimizes their associated disturbance footprint and potential for adverse impacts, including by requiring that cranes be used instead of access roads in sensitive resource areas, by requiring the use of hand tools and labor in place of heavy equipment whenever feasible, by imposing seasonal restrictions near seasonally sensitive biological or recreational resources, and in certain circumstances by allowing infrastructure to be "abandoned in place" rather than removed. For example, in CDP No. E-10-009, the Commission approved the abandonment in place of pipeline segments located within sensitive habitat areas and wetlands and required through Special Conditions that the project disturbance footprint adjacent to sensitive areas be minimized and that the permittee develop and implement a restoration plan to mitigate for unavoidable impacts to wetland habitat.

Because other state and local agencies also have requirements and policies that regulate oilfield abandonment operations, the Commission coordinates its review process and the development of permit conditions with these agencies to ensure that compliance with them would not present the permittee with an issue of conflicting agency requirements. Commission staff has a long history of working collaboratively with staff of the Regional Water Quality Control Boards and California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR) to ensure that oil field abandonment and clean-up operations are designed to avoid, minimize, and mitigate for adverse impacts to any wetlands or environmentally sensitive habitat areas that may be present in or adjacent to potential work areas. For unavoidable impacts, this process typically results in significant in-kind, on-site restoration to address these impacts, for example by often requiring mitigation at a 3:1 ratio for lost native grassland habitat and mitigation at a 4:1 ratio for lost wetland habitat.

Impacts to ESHA from Proposed Oil Facility Removal and Material Treatment and Disposal Operations

All elements of the proposed process detailed in the Abandonment Plan involve removal and disturbance of ESHA. This includes during the proposed removal of oilfield equipment, infrastructure, and contaminated soils, and the development and use of the proposed onsite clean soil excavation and waste material processing, treatment, and disposal areas. Removal operations would impact 42.1 acres of ESHA and material treatment and disposal operations would impact 19.7 acres of ESHA. In combination, both of these elements would adversely affect a total of nearly 54.4 acres of ESHA[5] on the project site.

[5] Because these two operations are proposed to have some overlap, this combined total is slightly less than the 61.8 acres that would result from simply adding 19.7 acres to 42.1 acres.

Impacts to ESHA from Development of Material Treatment and Waste Material Disposal Sites
NBR's siting, sizing, and configuration of onsite clean soil excavation and waste material processing, treatment, and disposal areas is shown in **Exhibit 3**. While two small areas totaling approximately 3.25 acres are proposed to be located within the lowland portion of the site and used for equipment staging and stockpiling, the majority of proposed material treatment and disposal activities would be located within the upper mesa area of the site. In this area, NBR proposes to develop a concrete and roadbed waste crushing/processing facility, two contaminated soil bioremediation areas, a variety of material stockpile, staging, recycling and processing sites and three extensive excavation and clean soil stockpile areas. In total approximately 53 acres[6] of the site's upper mesa would be used for these areas.

As shown in **Exhibit 18**, this 53 acre area includes many sites identified by both Commission staff and NBR as containing sensitive biological resources. Because these sites are proposed to be extensively graded and excavated down to bare earth in preparation for their use during clean soil excavation and waste material processing, treatment, and disposal operations, ESHA in these areas would be completely removed as part of this element of the proposed Abandonment Plan. Although as discussed in the memo from the Commission's staff ecologist provided as **Exhibit 12**, the Commission's staff ecologist's review of the studies, surveys, and technical reports available for the site indicate that NBR's identification of sensitive habitat areas significantly underestimates the actual size and number of these areas, NBR's own analysis[7] concludes that nearly nine acres of sensitive native vegetation (areas that would meet the Coastal Act definition of ESHA) would need to be removed in order to create the proposed configuration of onsite clean soil excavation and waste material processing, treatment, and disposal areas.

In addition, prior to the grading and preparation of the onsite clean soil excavation and waste material processing, treatment, and disposal areas, some locations within their proposed footprint would also be disturbed during the proposed oilfield equipment, roadbed and contaminated material removal operations. Within the approximately 53 acre proposed footprint of the material treatment and disposal operations areas, NBR estimates that a maximum of approximately 25.6 acres may be disturbed during the collection and removal of oilfield equipment, road bed material, and contaminated soil. In calculating the nine acres of sensitive habitats that would be removed as part of the development and use of the treatment and disposal areas, NBR subtracted out all those impacts that would occur in these areas as part of removal operations. NBR's analysis essentially assumes that any ESHA lost as part of removal operations should not be considered further. However, as noted in the introduction to this section above and further discussed below, this is an inappropriate assumption to make. In the Commission's authorization of oilfield abandonment and infrastructure removal projects in the past – including many that have occurred in the central coast area over the past several decades – it has used the avoidance, minimization, and mitigation approach to address removal activities within sensitive resource areas such as ESHA. Use of this approach has ensured that ESHA is protected against significant disruption of habitat values during removal and remediation

[6] In its March 5, 2015 letter to Commission staff, NBR calculates the total area proposed to be occupied by the northern, central, and southern treatment and processing areas as 53.1 acres (4.9 acres for the northern area, 28.3 for the central area, 16.6 acres for the southern area, and 3.3 acres for the concrete processing area).

[7] In its March 5, 2015 letter to Commission staff, NBR calculates that 3.52 acres of sensitive habitat would be removed for the southern treatment area and 5.25 acres would be removed for the concrete processing area and northern and central treatment areas (3.52 + 5.25 = 8.77 acres).

activities. In those cases where significant impacts to ESHA were unavoidable, the Commission has considered the Coastal Act's conflict resolution policy (Section 30007.5) and the conflict between the "resource dependent use" requirement of Coastal Act Section 30240 and the "protection against the spillage of crude oil, gas, petroleum products, and hazardous materials" requirements of Coastal Act Section 30232 to determine the course of action that would be most protective of coastal resources. When the Commission has authorized impacts to ESHA in those cases, it has limited the location, type, and level of clean-up actions to only those necessary to protect and maintain ESHA against greater damage and required that such impacts are mitigated through in-kind, in-place restoration using the appropriate mitigation ratios whenever possible. Use of this approach with the proposed removal activities that NBR has proposed would result in a significant reduction of overall impacts because it would ensure that the wholesale excavation of contaminated soils – the most extreme and impactful clean-up approach – would only be carried out to the minimum extent and as a last resort once all other less impactful methods (including natural attenuation, phytoremediation, and heat treatment) had been found to be infeasible to meet a cleanup goal established by the Regional Water Quality Control Board or other agency(s) with authority to establish cleanup standards.

In this case, no agency has yet approved a Remedial Action Plan and established cleanup standards for the site, but in this application NBR has assumed that all areas of known or potential contamination at the site, including all areas in which historic operations may once have occurred, must be excavated. Using NBR's own analysis (with the caveats described in **Exhibit 12** regarding its underestimation of sensitive habitats), the approximately nine acres of impacts to ESHA would be increased by another four acres for a total of 13 acres of impacts to ESHA that would result from the proposed sizing and siting of the onsite clean soil excavation and waste material processing, treatment, and disposal areas. Using the more conservative analysis of onsite biological resources developed by the Commission's ecologist and described within **Exhibit 12**, this area of impacts to ESHA would total approximately 19.7 acres.

Although Coastal Act Section 30240 does allow certain resource dependent uses within areas designated as ESHA, the proposed excavation of clean soil, placement and use of bioremediation cells, materials stockpiling and processing, and waste material disposal, are not considered resource dependent uses because they are, ultimately, being proposed to accommodate the proposed residential, commercial and visitor serving development. Further, as noted previously, the proposed siting and sizing of the onsite clean soil excavation and waste material processing, treatment, and disposal areas is not mandated or proposed in response to any regulations governing these activities but, rather, is being done to accommodate its overall residential, commercial and visitor serving development plan. NBR has the flexibility to site and size these areas throughout the site and may consider many alternative locations and configurations that would not result in impacts to ESHA.

For example, the applicants propose to have two or three duplicate excavation, treatment and disposal areas both on the north and south side of the main arroyo that bisects the upper mesa portion of the site. The site to the south of the arroyo would take up approximately 16.6 acres, less than one quarter of which would potentially be affected by some level of disturbance associated with oilfield removal operations. Because all the wells in in the upland area south of the arroyo have already been abandoned and only minimal pipelines, access roads, and power poles exist there (primarily those serving the temporary office trailers concentrated within a portion of this site), the anticipated disturbance footprint associated with removal activities in

this area is minimal. Specifically, as shown in **Exhibit 19** there appear to be no active wells, only 13 wooden power poles, less than one thousand linear feet of pipeline and less than one mile of roads potentially containing asphalt-like material or pavement in the upland area south of the arroyo. Despite the lack of infrastructure to be removed in this area and presence of only minimal amounts of potentially contaminated material to be treated there, NBR proposes extensive soil excavation and grading activities in this location in order to achieve its target topography and grade and to provide a disposal location for waste material generated from removal activities on the northern portion of the site. Although these are important considerations from the perspective of NBR's desired residential and commercial development project, NBR's proposed remediation activities at the southern treatment and disposal area are not resource dependent uses of and, therefore, must avoid the adverse impacts on ESHA in that area. Thus, the applicant's proposed use of the southern treatment and disposal area is inconsistent with section 30240 of the Coastal Act.

In response to Commission's staff's request that NBR evaluate project alternatives that would include the consolidation of material treatment and disposal operations on only the north side of the arroyo, NBR indicated that it rejected such alternatives because of its desire to minimize truck trips across the arroyo and because it needed the capacity of the proposed southern disposal site in order to bury material from the northern part of the site. Because the current proposal includes the transport of 20,000 to 45,000 cubic yards of material from the northern portion of the site to the disposal area that would be located south of the arroyo, NBR is already proposing to carry out up to 4,500 truck trips (assuming a truck capacity of 10 cubic yards) across the arroyo. In contrast, NBR estimates that as few as 3,500 truck trips may be needed to remove the limited amount of material proposed to be collected in the area south of the arroyo. If these amounts are accurate, the use of the disposal area south of the arroyo may actually result in an increase in truck traffic across the arroyo of up to 1,000 trips.

Impacts to ESHA from Removal Activities

Because oil and natural gas production activities on the project site have declined significantly from the historic maximums reached several decades ago, many of the areas that once supported active use have been formally or informally abandoned and have not been used for many years. For example, over 400 of the oil wells on the site have been abandoned and are no longer in use, often meaning that the access roads and pipelines serving these wells have also not been used or maintained for an extended period. In many of the areas surrounding the older historic operations areas, native vegetation has recolonized and recovered and brought with it associated wildlife uses such as foraging, breeding, and nesting. As indicated in **Exhibit 20** some of the vegetation communities and habitat uses that have developed in these areas now support their designation as ESHA.

In order to prepare the site for the proposed residential and commercial development and support the largest range of potential future uses, NBR is proposing to carry out the comprehensive infrastructure, contaminated material, and road bed collection and removal activities described in the Abandonment Plan. This includes extensive activities either within or adjacent to designated ESHA. Such activities would be associated with the abandonment or re-abandonment of wells, the removal of asphalt like material from roads, and the removal of pipelines, power poles, metal tanks, vessels, structures, pumps, and equipment. In addition, NBR also proposes to excavate and remove soil from all areas known or anticipated to contain contaminants. These areas are referred to as areas with Recognized Environmental Concerns or

Potential Environmental Concerns (RECs/PECs). As part of its proposal, NBR has assumed the maximum worst case level and extent of abandonment and removal activities would be carried out. The worst case disturbance footprint from these activities is shown in **Exhibit 21**.

Although the California Department of Conservation's Division of Oil, Gas and Geothermal Resources (DOGGR) does not require re-abandonment of wells unless their condition poses a risk to human or environmental health, because NBR is proposing to introduce increased human use and habitation on the site, it expects to work with DOGGR to review all the previously abandoned wells within 25 feet of habitable structures to determine if the condition of these wells meets current abandonment standards (established in the 1970s). Any wells that do not meet these standards are proposed to be re-abandoned in accordance with proposed practices that would be reviewed and approved by DOGGR through the issuance of an abandonment job permit. These proposed practices include removing all subsurface pumping equipment from the well hole, using cement to seal off the oil production zone and fill the casing to the surface, and cutting off the well casing six feet below the ground surface. As part of its planning for worst case conditions, NBR's Abandonment Plan includes an assumption that re-abandonment activities would be carried out on the over 400 abandoned wells located throughout the site – despite the fact that most of these wells have been abandoned according to current standards.

NBR has taken a similar approach with access road removal activities. NBR's Abandonment Plan assumes the worst case scenario that all existing and historic access roads on the site have asphalt like materials or other road bed materials that would need to be removed through grading of the road bed with a tractor and collection of the graded material. Regardless of whether or not such materials have been observed during site investigations or if the historic road alignment now supports sensitive vegetation or habitat, NBR proposes to grade and extract roadbed material from all of the locations on the site that once supported access roads (based on NBR's review of historic aerial photographs). In total, NBR estimates that up to 108,000 cubic yards of roadbed material would be collected during this effort. This material would be taken to the proposed onsite concrete crushing/processing area to be broken down before being dumped in the proposed disposal pits and covered with a clean soil cap that is 10 to 20 foot deep.

Based on the historical investigations and soil testing it has carried out, NBR estimates that there are 27 areas on the site that have recognized or potential environmental concerns (RECs/PECs). Seven of these areas showed crude oil contamination at the surface or in shallow soils and one area was identified as a historic oil containment sump. The other areas were identified because the historic activities that occurred there may have resulted in the release of oil or other contaminants into the soil. Such activities include the current or historic presence of stream or air injection facilities, stockpile areas, sumps, workshops, storage sheds, electrical transformers, fueling areas, and field offices. As part of its Abandonment Plan, NBR proposes to carry out additional testing and investigation of these areas and to excavate and remove any contaminated soils that are found within them. Based on the level and type of contamination, this removed soil would be taken to the onsite bioremediation areas for treatment and onsite disposal (burial in the disposal pits) or transported offsite for disposal at a certified receiving facility. NBR's current estimate is that up to 163,000 cubic yards of contaminated material would be excavated from these sites and other select area around historic oil sumps and wells. NBR has indicated in its Abandonment Plan that "no hazardous concentrations have been found in the soils on the property during the initial or subsequent investigations."

Although Commission staff requested detailed information and quantification from NBR regarding the anticipated worst case impacts to onsite biological resources that would result from the proposed abandonment and removal activities described above, this information was only provided in very general terms. For example, in response to Commission staff's request for quantification of project impacts to biological resources and habitats, NBR provided five tables with the generic titles, "Native Scrub," "Grasslands," "Vernal Pools," "Seasonal Features," and "Streambed/Riparian and Wetland."

Although NBR acknowledges impacts to 37 vernal pools, 21.53 acres of native vegetation, one acre of riparian habitat, and over 22 acres of wetlands, the exact composition of these resources and manner in which they would be impacted during implementation of the Abandonment Plan is not clear. Based on a comparison with the more specific information NBR provided regarding its analysis of impacts associated with development and use of the material processing, treatment, and disposal areas, NBR's information indicates the proposed removal of oilfield equipment, infrastructure, and contaminated materials would result in adverse impacts to at least 8.5 acres of native habitats and over 22 acres of wetlands. It is unclear, though, if NBR associates the impacts to the 37 vernal pools and one acre of riparian habitat with the removal operations or development of the material treatment areas.

As noted previously, however, the Commission's staff ecologist has carried out an extensive review of the survey data, technical reports, and other available biological information for the site and developed a map of the onsite resources that meet the definition of ESHA. Overlaying this map with the proposed disturbance map that NBR developed for its removal operations, in the manner shown in **Exhibit 22**, indicates that the proposed removal operations, which is a non-resource dependent use, will take place in ESHA alone would result in adverse impacts to over 42 acres of ESHA, which is inconsistent with section 30240 of the Coastal Act.

Reliance on Worst Case Impacts for Abandonment Plan Design
Although NBR has assumed the worst case level and spatial extent for removal activities – including "all areas used by oil operations at any time during the 70 year oil field history" - before proceeding with removal work, it would carry out a field process to refine and ground-truth the inclusion of all these areas in the work plan. This would be an onsite review conducted on foot using primarily visual methods but supplemented with laboratory testing if NBR deems it appropriate. NBR states in its Abandonment Plan:

> *The ground-truthing efforts may reveal some impact areas that do not actually contain either infrastructure items (including gravels, road materials, and crude oil asphaltic materials) or crude operations impacts (those constituents required to be remediated per the approved RAP) and thus can be avoided and reclassified as no impact. The results of this effort will give a realistic footprint of the actual historic oil operations areas.*

This ground-truthing effort is best carried out prior to, not after, developing an Abandonment Plan. Such a detailed site characterization effort may result in reduced impacts to ESHA and should be carried out before the resource agencies permit abandonment and remediation work on the site. For example, a potential reduction in the volume of roadbase and soil contamination to be removed resulting from a more refined on-the-ground assessment of the actual clean-up and removal needs of the site may also significantly reduce the size of the bioremediation site(s). Alternative remediation methods such as in situ treatment or offsite disposal may be

feasible or preferable, thus avoiding impacts to ESHA, as required under section 30240 of the Coastal Act for the proposed uses in ESHA which are not resource dependent. Considering that well over a third of the volume of material (108,000 of 271,000 cubic yards) that the Abandonment Plan has been designed to address through onsite processing and disposal is asphalt like roadbed material that NBR assumes to have been placed onsite in the 1940s and 1950s – subsequently subjected to 60 to 70 years of weathering, erosion, and mechanical breakdown from natural processes and vehicle impacts –a more detailed inspection of the site would likely result in a reduction in material volumes.

As noted previously, because the proposed Abandonment Plan was proposed to support the speculative development of the site for residential and commercial uses and not as part of the typical end-of-operations shut-down and clean-up of an oilfield, it does not contain the level of refinement and detail that would be expected for such a project and does not integrate the typical process of avoiding impacts to ESHA , as required under section 30240 of the Coastal Act for the proposed uses in ESHA which are not resource dependent.

Impacts of Development Plan
Because most of the site contains ESHA in some form, approximately 31 acres of ESHA would be impacted due to the development plan (**Exhibit 13**). The following are approximations of the total acres of ESHA that would be impacted by the development plan. The impacts of the development plan are described as impacts, as a whole, and not by individual development areas or categories of housing or commercial or resort areas.

Vernal Pools
VP1, VP2, VP3, G, H, I, and J are occupied by the federally listed San Diego Fairy Shrimp (SDFS). These features are proposed to be protected within the proposed "vernal pool complex." Vernal pools A, W, and II will be protected from impact from both abandonment and remediation and the development plan. Combined, these pools amount to 33,597 square feet of vernal pool habitat. Vernal Pool E is occupied by the SDFS, will be impacted by remediation and is within the development footprint of the North Family Village. Vernal Pool E is 2,129 sq. ft. The applicant proposes to mitigate the impacts to the pool.

The remaining vernal pools would be impacted by abandonment and remediation activities and are within the proposed development footprint: pools B, C, D, M, N, P, Q, R, S, T, Z, CC, DD, EE, FF, GG, and PP. The applicant proposes to mitigate the impacts. Combined these pools contain 5,562 sq. ft. of vernal pool habitat. Vernal pools BB, and a portion of KK, LL, MM are proposed to be filled and graded in order to prepare the site for the housing development. Combined these pools contain 996 sq. ft. of vernal pool habitat. The applicant proposes to mitigate the impacts.

Purple Needlegrass Grassland
Almost all of the PNG on the site is within the footprint of the abandonment and remediation activities and development plan. Although scattered across the site there is over 11 acres of PNG total. The development plan would impact approximately 6.92 acres. A small patch of PNG is proposed to be created to mitigate for the complete loss of the grasslands.

Riparian
The Small Arroyo and the Middle Arroyo contain ESHA riparian habitat that may be impacted by abandonment and remediation activities, however these impacts are proposed to be restored in place. While there is documented riparian vegetation in the North-South Arroyo, the acreage of riparian habitat has not been provided. The North-South Arroyo is proposed to be completely filled and graded and developed with the North Family Village.

Multiple impacts to riparian habitat scattered across the site would result from the abandonment and remediation activities and the development plan. The riparian corridor in the far southeast of the site (Drainage D) contains valuable riparian habitat that would be impacted by the proposed Bluff Road connecting the development site to PCH. Approximately 2.26 acres of riparian and wetland habitat would be removed from the site due to the proposed development plan. Additionally, the Bluff Road bridge spanning the Southern Arroyo would have bridge supports that would impact the riparian habitat in the arroyo. The exact acreage of impact is unknown.

CAGN areas and scrub communities
CAGN specifically prefers to nest and feed in CSS on the mesa. CSS and the other scrub communities, including southern coastal scrub and maritime succulent scrub, would be significantly impacted by the development plan. The amount of scrub habitat that would be impacted is 4.18 acres.

Mitigation Proposal
Most of the impacts to the site would be a result of the proposed soil remediation and the mass grading to prepare the site for the housing development. Most of these impacts are proposed to be mitigated for, as opposed to restored in place. The plan for the mitigation is the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). The HCCMP presents a program for the onsite compensatory mitigation that is designed to mitigate the biological impacts caused as a result of the proposed project. The HCCMP for the mitigation associated with the Newport Banning Ranch Project addresses on-site wetland/riparian establishment mitigation, restoration and enhancement, vernal pool establishment mitigation and enhancement, as well as upland scrub and grassland restoration, for impacts to jurisdictional waters, riparian habitat, vernal pool and seasonal features, and scrub and grassland habitat resulting from proposed oil field clean up and implementation of the development project. As described previously, under previous permits and past Commission actions regarding oil well abandonment and remediation, the Commission has required applicants to restore the habitat impacts in place. In this case, the applicant proposes not to restore, but to mitigate for these impacts in the lowlands and wetlands that are not suitable for development and the proposed open space areas.

The mitigation proposed for the impact to 29 vernal pools restore the temporary impacts to vernal pools and would establish new vernal pool habitat in a 6-8 vernal pool complex on the mesa, surrounded by newly established purple needle grass.

Permanent impacts are proposed to occur to Purple needle grass grasslands (PNG), an extremely rare native grass, under the proposed remediation plan and the development plan totaling 9.13 acres, and the total mitigation proposed is less than the impact acreage at 4.57 acres. Similarly, the temporary impacts to PNG would be .035 acres, and the total mitigation proposed is less than the impact acreage at 0.18 acres. This is not adequate mitigation for these impacts.

Permanent impacts are proposed to occur to CAGN habitat totaling 11.85 acres, and the total mitigation proposed is 17.57 acres. Temporary impacts are proposed to CAGN habitat totaling 9.76 acres, and the total mitigation proposed in the open space area is 9.76 acres.

While the HCCMP does detail the impacts to the CAGN territories containing scrub, it does not detail the impacts that would be caused to rare scrub communities on the site, coastal bluff scrub and maritime succulent scrub. These communities are rare and sensitive and afforded protection under the Coastal Act regardless of whether or not they support listed bird species. See Dr. Engle's Memo (**Exhibit 12**) for more information.

The HCCMP includes a Third Party Mitigation 30 acre "mitigation bank" in the lowlands of the site. Within the lowlands, approximately 30 acres of the proposed 261 acre Natural Open Space Preserve are proposed for designation as a third-party mitigation area to allow opportunities for additional habitat establishment, restoration and/or enhancement by parties other than the Applicant requiring environmental mitigation, offsets, or other habitat sites within the region. The third-party mitigation area is primarily a salt marsh and alkali meadow wetland area located within the lowland area, contiguous with the USACE-restored salt marsh basin along the Santa Ana River which has also served as a third-party mitigation site.

The HCCMP was prepared as a mitigation proposal and assumes that the underlying impacts to the sensitive resources would be approvable under the Coastal Act. Sections of the Coastal Act that protect ESHA and Wetlands have specific uses (only resource dependent uses) which allow for impacts to these resources, and may as a result of the allowed impact, require restoration in place or mitigation for those impacts. While the applicant has proposed mitigation for the impacts of the proposed project (including abandonment and remediation activities and proposed project development), the project may not be an allowable use in ESHA and Wetlands, and therefore, complete avoidance of these sensitive resources may be required, as opposed to mitigation for the projects impacts.

Potential Impacts from Development Adjacent to ESHA

Coastal Act Section 30240 requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade ESHA, and shall be compatible with the continuance of ESHA. The proposed project would reduce the ability of the ESHA onsite and in surrounding areas to serve as habitat, through both direct and indirect, as well as temporary and long-terms impacts, as described above.

The project may result in a significant change in the type of use and the level of human activity on the site, which have the potential to cause significant impacts to ESHA.

Activities on the site that result in additional noise or disturbance impacts would negatively impact the sensitive avian species, habitat areas, the water quality of the wetlands, and the presence of rare native vegetation.

Buffers

To ensure compliance with Section 30240 of the Coastal Act, development (aside from resource dependent uses) must be located outside of all environmentally sensitive habitat areas and must not cause significant disruption of the habitat values within those areas. Further, development adjacent to an ESHA must be sited to prevent impacts to the ESHA that would significantly

degrade those areas, in part through the provision of a setback or buffer between the ESHA and the development.

A buffer, in the context of the Coastal Commission, is a barrier, "safe zone", or bordering strip of natural habitat or land between ESHA and development or human disturbance. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. Buffers may also provide ecological functions essential for species in the ESHA. The width buffers vary depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to the particular kind of disturbance.

The memo concludes that all of the ESHA on the site should be avoided from development and assigned buffers for protection:
Buffers are important for preserving the integrity and natural function of individual species and habitats. The purpose of a buffer is to create a zone where there will be little or no human activity; to "cushion" species and habitats from disturbance and allow native species to go about their "business as usual". A buffer area is not itself a part of the ESHA or wetland, but a "buffer" or "screen" that protects the habitat area from adverse environmental impacts caused by development. Buffer areas are essential open space between development and ESHA. The existence of open space ensures that development will not significantly degrade ESHA. Habitat buffers provide many functions including keeping human disturbances such as noise, arificial lighting and domestic animals at a distance; reducing the hazards of herbicides, pesticides and other pollutants; and preventing or reducing shading and the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development.

The Commission has typically imposed buffers of 100 feet for ESHA. The memo. states:
I recommend that 100-ft buffers be established around the salt marsh, brackish marsh and seasonal freshwater wetlands (including vernal pools), and around terrestrial ESHA defined by coastal California gnatcatcher use areas or by the presence of rare upland vegetation communities. The Commission has found that these standards are adequately protective of wetlands, sensitive vegetation, and California gnatcatcher nesting habitat in past actions[8] . In the special case of vernal pools, I recommend that the buffer be 100 feet or the edge of the pool's watershed, whichever is larger. A buffer that includes the watershed is necessary to account for natural changes in the basin dimensions over time in response to varying hydrological conditions and to prevent alterations to the watershed that could impact the duration and extent of ponding. In order to avoid disturbance to burrowing owls, the California Burrowing Owl Consortium and the California Department of Fish and Wildlife recommend 50-m buffers during the non-breeding season.[9] Given that the existing use at Banning Ranch is by wintering and migrant birds, I recommend that a 50-m (164-ft) buffer be established around the defined burrowing owl habitat, which is in accord with previous Commission action.[10]

[8] For example, Brightwater 5-05-020, Marblehead 5-03-013, and the Malibu Local Coastal Program
[9] California Burrowing Owl Consortium. April 1993. Burrowing Owl survey protocol and mitigation guidelines. California Department of Fish and Game. September 25, 1995. Staff Report on Burrowing Owl Mitigation.
[10] Brightwater 5-05-020

The applicant proposes to impact as significant amount of ESHA and does not provide any buffers for the sensitive resources. The current proposal for the development is inconsistent with Coastal Act Section 30240, which requires development adjacent to ESHA to be consistent with the continuance of ESHA areas. A minimum of 100-foot buffers around the designated ESHA on the site is required, with 164 ft. buffer around ESHA burrowing owl habitat.

The location of the proposed water quality basin in the lowlands is inconsistent with Coastal Act Section 30233, requiring the protection of wetlands. A minimum of 100-foot buffers around the designated wetlands on the site is required.

Any impact to the recommended minimum 100-foot buffers would result in the degradation of the ability of the buffers to mitigate impacts to ESHA. The Commission has typically required buffers to be protected in perpetuity to prevent future development from impacting the ability of the buffer to protect adjacent ESHA. Without adequate protection of buffers, future development may impact the ability of the buffer to protect ESHA from impacts associated with adjacent development. Such impacts would be inconsistent with Coastal Act Section 30240 regarding protection of environmentally sensitive habitat areas.

Conclusion

The project is inconsistent with policies to minimize impacts to ESHA. The project is inconsistent with section 30240. Dr. Engel determined that the burrowing owl, and CAGN habitat, the vernal pools, and the scrub communities, and native grasslands all rise to the level of ESHA. The proposed project would have significant impacts on ESHA for the abandonment and remediation activities and a proposed housing and commercial development, non-resource dependent uses, with impacts to the ESHA defined on the site. The proposed project cannot be approved under Coastal Act Section 30240 and must be denied.

F. MARINE RESOURCES AND WETLANDS

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233 of the Coastal Act states, in relevant part:

> *(a) The diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> > *(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
> > *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
> > *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
> > *(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
> > *(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
> > *(6) Restoration purposes.*
> > *(7) Nature study, aquaculture, or similar resource dependent activities.*
>
> *(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.*

Wetlands

Seasonal Wetlands often occur under Mediterranean climate conditions of the West coast. Seasonal wetlands have a natural lining of bedrock or a lining of hard clay that prevents water from infiltrating into the soil. During rain events, a shallow layer of water covers the depression in the soil and "awakens" the seeds, eggs, and/or cysts present. During a wet season, a seasonal pool may fill and dry out several times and in years of drought, it may not fill at all. The seeds, eggs, and cysts can survive the drought conditions until the pool fills again.

If the seasonal wetlands contain species that are endemic to that habitat, they are called 'vernal pools' and may rise to the level of ESHA. A total of 39 wetlands on the project site are considered vernal pools. Approximately 90% of vernal pools in California have already been lost.[11] These vernal pools are subject to protection under Section 30240 of the Coastal Act *and* under section 30233.

Title 14 California Code of Regulations ("CCR") section 13577(b) defines "wetlands":
Wetlands shall be defined as land where the water table is at, near or above the land surface long enough to promote the formation for hydric soils or to support the growth of hydrophytes.

[11] Vernal Pools. US EPA.

There are 130 acres of wetlands on the site in the lowlands. The proposed project would impact the wetlands in the lowlands only with the abandonment and remediation activities, as the development plan is largely limited to the mesa. Of the 39 vernal pools primarily on the mesa, all but 11 would be impacted by both the abandonment and remediation activities and the development plan (**Exhibit 13**). A CDP issued for the abandonment plan detailing the above impacts would require restoration of these impacts in place, after the removal of oil well infrastructure and soil remediation. The Commission historically has considered the proposed removal of several sections of abandoned oil transport pipeline and required through conditions that the project disturbance footprint near sensitive areas be minimized to the maximum extent feasible and that the permittee develop and implement a restoration plan to mitigate for unavoidable impacts to wetland habitat and other habitats.

While there would be overlap between the abandonment and remediation activities and the development plan, there would be oversight requiring the impacts due to remediation are minimized and are restored in place. The development plan, therefore, could not take place without impacting the vernal pools. Housing and commercial development is not an allowed use under section 30233.

The project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling or dredging in a wetland must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by the project. The project does not meet the list of limited approvable projects for fill of wetlands under section 30233, nor is it the least environmentally damaging alternative. Lastly the project does not propose any mitigation for the impacts.

1) Allowable Use

The proposed project is not included in the uses listed above, No. 1-7 of section 30233. Thus, the proposed project is not an allowable use. Therefore, the proposed development is inconsistent with Section 30233 of the Coastal Act with regard to uses allowed within wetlands.

2) Alternatives

No alternatives to the proposed wetlands impacts have been given substantial consideration with this proposal. Possible alternatives include: a significantly reduced development footprint to avoid wetlands and seasonal features; a designation as open space and site restoration; and/or abandonment and remediation activities alternatives allowing for natural attenuation, or the least environmentally damaging alternative for remediation, as opposed to fill and soil disturbances. The development plan would need to be designed to avoid fill of the vernal pools and the vernal pool watershed on the site. Additionally, in the lowlands an alternative location for the water quality basin would need to be identified. In each of these alternatives, there would be no fill of the wetlands or vernal pools, and therefore each alternative constitutes a less environmentally damaging alternative than the proposed project. Therefore, the proposed alternative is inconsistent with Section 30233's requirement that fill of wetlands must be the least environmentally damaging alternative.

3)Mitigation
Section 30233 of the Coastal Act requires that wetland projects include feasible mitigation measures to minimize adverse environmental effects. The proposed abandonment and remediation plan includes mitigation and restoration, in some cases, in the lowland- wetlands.

The development plan would preserve only 11 of the 39 vernal pools identified on the site. Because a vernal pool mapped watershed was not preformed the exact border of the vernal pool watershed is unknown. The development footprint would likely impact the entire vernal pool watershed and therefore, the 11 pools preserved, could gradually be degraded.

Because the proposed project is not an allowed use under 30233, the project has not been conditioned to include mitigation. Therefore, the project is inconsistent with Section 30233 of the Coastal Act with regard to the provision of adequate mitigation.

Although not all wetlands are within the project footprint, all wetlands, including those in the lowlands, need to be protected under the Coastal Act section 30233. The project does not meet the list of limited approvable projects for fill of wetlands, nor is it the least environmentally damaging alternative, nor does the project propose adequate mitigation for the impacts. The project is inconsistent with Coastal Act section 30233 and must be denied.

Buffers
Section 30231 states that the quality of wetlands shall be maintained without *interference with surface water flow*. As stated above, because a vernal pool mapped watershed was not preformed the exact border of the vernal pool watershed is unknown. Therefore, the development footprint would likely impact the entire vernal pool watershed and interfere with surface flow of the watershed.

Section 30231 also states that wetlands shall be maintained with natural vegetation buffer areas. The Commission has typically required buffers of at least 100 feet for development adjacent to wetlands. The project did not provide appropriate buffers around the wetlands onsite. It is for these reasons that a minimum 100-foot buffer is strongly enforced with development occurring in and around wetlands.

Thus, the proposal is inconsistent with Section 30231 of the Coastal Act and must be denied.

Marine Resources
The proposed development plan could have an impact on the marine resources, including the tidal slough, riparian features, and wetlands, on and off the site. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. As such, appropriate measures must be taken to assure that adverse effects on water quality are minimized. The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters, both during Construction and Post-Construction.

Pre-Construction
The applicant has provided a Storm Water Pollution Prevention Plan (SWPPP) that describes the pre-construction and during construction management of site water and protection of the marine and sensitive water resources on and off site.

Potential sources of pollution during construction include abandonment and remediation, storage and handling of construction materials, clearing and construction related activities that have the potential to discharge, improper dumping, spills, or leakage. Dewatering activities involving shallow groundwater are anticipated at the site during construction. The Santa Ana RWQCB requires a permit for discharges from activities involving groundwater extraction or discharge within the Santa Ana Region.

The SWPPP provides specifications and guidelines for reducing the sediment loading into receiving water bodies that could occur during the construction and operation of Newport Banning Ranch. Although some erosion and soil loss is unavoidable during land-disturbance activities, the proper siting and design of erosion and sediment controls will reduce the amount of sediment transported off-site. Effective site management minimizes excessive soil erosion by keeping the soil stabilized and by directing runoff from disturbed areas to locations where sediments are removed prior to discharge to receiving water bodies. The following information identifies the specific construction BMPs that are implemented at Newport Banning Ranch.

Erosion Control
Erosion Control measures will be designed to prevent soil particles from being transported into the storm water runoff. Erosion Control BMPs protect the soil surface by covering and/or binding the soil particles. All inactive soil disturbed areas on the project site, and most active areas prior to the onset of rain, must be protected from erosion.

Methods of Erosion Control proposed include: Scheduling grading for dry months, Preservation of Existing Vegetation, using mulch and hydroseed, and placing rolled erosion control products on the site.
Additionally, earth dikes and drainage swales will be used to convey surface runoff down sloping land, intercept and divert runoff to avoid sheet flow over sloped surfaces, direct runoff towards a stabilized watercourse, and intercept runoff from paved surfaces.

Velocity dissipation devices, shall be used at new outlets of pipes, drains, culverts, slope drains, diversion ditches, swales, conduits, or channels. This includes outlets at the bottom of mild to steep slopes, discharge outlets that carry continuous flows or short, intense flows, and areas where lined conveyances discharge to unlined conveyances.

Slope drains shall be used where concentrated flow of surface runoff must be conveyed down a slope. This includes, drainage for top of slope diversion dikes and swales, drainage for top of cut and fill slopes where water can accumulate, and emergency spillway for a sediment basin. Disturbed stream channels, streambanks, and associated riparian areas shall be stabilized with vegetation, hydroseeding, hydraulic mulch, geotextiles & mats, and/or other erosion control measures.

Soil Preparation/Roughening can include soil testing (for seed base, soil characteristics, or nutrients), as well as roughening surface soils by mechanical methods (including sheeps foot

rolling, track walking, scarifying, stair stepping, and imprinting) to prepare soil for additional BMPs, or to break up sheet flow. Soil Preparation can also involve tilling topsoil to prepare a seed bed and/or incorporation of soil amendments, to enhance vegetative establishment. Soil preparation is most effective when used in combination with erosion controls. Soil Roughening is suitable for use as a complementary process for controlling erosion on a site. Non-vegetative stabilization include use of decomposed granite (DG), degradable mulches, gravel mulch and geotextiles and mats for temporary erosion control on areas prone to erosion where vegetation is not feasible, such as vehicular or pedestrian traffic areas, arid environments, rocky substrates, or where vegetation will not grow adequately within the construction time frame.

Sediment Control
Temporary sediment control materials will be maintained on-site throughout the duration of the project, to allow implementation of temporary sediment controls in the event of predicted rain, and for rapid response to failures or emergencies. This includes implementation requirements for active areas and non-active areas before the onset of anticipated rain events. Examples of proposed sediment controls include: Silt Fence, Sediment Basin, Sediment Trap, Check Dams, Fiber Rolls, Gravel Bag Berms, Street Sweeping & Vacuuming, Sandbag Barrier, and Storm Drain Inlet Protection.

Tracking Control
Tracking controls would be considered and implemented year round and throughout the duration of the project, at all access (ingress/egress) points to the project site where vehicles and/or equipment may track sediment from the construction site onto public or private roadways. Construction entrances shall be stabilized at all points of site ingress and egress. The pad of aggregate would have minimum dimensions of 50 feet in length and 30 feet in width. Rumble racks (i.e. shaker plates) will be included to provide additional sediment removal and reduce potential for off-site tracking of sediment. Areas that are graded for construction vehicle transport and parking shall be stabilized. Roadway can be stabilized using aggregate, asphalt concrete, or concrete.

Wind Erosion Control
Wind erosion control BMPs would be considered and implemented year-round and throughout the duration of the project on all disturbed soils on the project site that are subject to wind erosion, and when significant wind and dry conditions are anticipated during project construction. The objective of wind controls is to prevent the transport of soil from soil disturbed areas of the project site, off-site by wind.

Dust control measures shall be used to stabilize soil from wind erosion, primarily in the form of construction watering (i.e. wet suppression). This BMP should be considered in the following areas of activity: (1) construction vehicle traffic on unpaved roads, (2) drilling and blasting activities, (3) soil and debris storage piles, (4) batch drop from front-end loaders, (5) un-stabilized soil, and (6) final grading. The project site should be inspected daily to determine the need to implement this BMP and water trucks will be on-site during all active grading activities. In addition, wind screen fencing will be implemented along the perimeter of the project site.

Non-Storm Water Management
Examples of non-storm water management BMPs include: Water Conservation Practices, Proper Management of Dewatering Operations, Proper set up of Temporary Stream Crossings, Clear

Water Diversion, Illicit Connection/ Discharge, Potable Water/Irrigation, Vehicle and Equipment Cleaning, Vehicle and Equipment Fueling, and Vehicle and Equipment Maintenance.

Additionally, the proposal includes avoid overspraying of curing compounds. Should runoff be generated, cure water shall be directed away from inlets to areas for infiltration or collection and disposal. Protect drain inlets prior to the application of curing compounds. Should runoff be generated, water from blasting operations shall be directed away from inlets to areas for infiltration or collection and disposal. Debris from blasting operations should be swept up at the end of each shift. Secure all materials to prevent discharges to receiving waters via wind. Comply with all necessary permits required for construction within or near the watercourse. Use covers, equipment attachments or platforms to collect debris.

Stockpile accumulated debris and waste generated during demolition away from watercourses. Construct temporary batch plants downwind of existing developments whenever possible. Temporary batch plant facilities (including associated stationary equipment and stockpiles) should be located at least 300 ft from any recreational area, school, residence, or other structure not associated with the construction project. Construct continuous interior AC or PCC berms around batch plant equipment (mixing equipment, silos, concrete drop points, conveyor belts, admixture tanks, etc.) to facilitate proper containment and cleanup of releases. Rollover or flip top curbs or dikes should be placed at ingress and egress points.

Material and Waste Management
Waste management consists of implementing procedural and structural BMPs for collecting, handling, storing and disposing of wastes generated by a construction project to prevent the release of waste materials into storm water discharges. Wastes are going to be generated during construction; however, the methods in which the wastes are collected, stored, and removed will determine the success of the waste management activities. Construction site wastes can range from residues collected from non-storm water discharges to general site litter and debris.

The proposal includes: Proper Management of Material Delivery and Storage, Material Use, Stockpile Management Spill Prevention and Control Solid Waste, Management Hazardous Waste, Management Contaminated Soil, Management Concrete Waste, Management Sanitary/Septic Waste, Management Liquid Waste Management.

Post-Construction
The proposed water quality management design will include a variety of water quality features. Low Impact Development (LID) Best Management Practices (BMPs) are proposed to ensure that water quality within the surrounding region remains protected. Throughout the seventeen (17) Drainage Management Areas (DMAs) proposed within the development footprint, multiple BMPs including hydrologic source controls (HSCs), harvest and reuse systems and various bio-treatment mechanisms will be utilized.

HSCs - hydrologic source controls
Water quality control will start with the individual residential and commercial lots. Four typical single family detached residential types were analyzed including traditional homes, motor court homes, garden court homes and beach cottages. For each product type, typical hardscape and softscape were presented along with a typical grading concept for the landscape areas including the proposed area drain systems. The HSCs proposed include: Two rain barrels for each single

family home strategically located near roof downspouts and backyard landscaping to capture runoff from roof downspouts during rain events and detain that runoff for later reuse for irrigating landscaped areas. The letter from Fuscoe Engineering dated September 3, 2015[12] indicates that *the temporary storage of roof runoff reduces the runoff volume from a property and may reduce the peak runoff velocity for small, frequently occurring storms. In addition, by reducing the amount of storm water runoff that flows overland into a storm water conveyance system, less pollutants are transported through the conveyance system into the Santa Ana River and the Pacific Ocean. The reuse of detained water for irrigation purposes leads to conservation of potable water and also acts as a sustainable educational opportunity.*

The proposed home lots will include impervious areas dispersion, directing runoff from impervious areas onto the surface of adjacent pervious areas. The combination of the rain barrels and impervious area dispersion techniques will result in an average 42% runoff reduction of the annual runoff volume of water for each product type (see Table 1 for the various residential product types in letter[13]). HSC's will also be implemented for all areas of development including higher density residential (multi-family attached), resort villas and retail/resort areas.

Harvest and Reuse Area BMPs
Harvest and reuse BMPs would capture and store storm water runoff for later use. These BMPs would create stored water to be used for water demands, such as landscape irrigation, after a rain event has occurred. Harvest and reuse BMPs include both above-ground and below-ground cisterns, with a storage volumes that achieve 40% capture or higher. Harvest and reuse cisterns may be designed to overflow to biotreatment BMPs.

Seven DMAs would implement harvest and reuse systems. The Urban Colony, Parks, and portions of the Resort Colony and North Village Flats will implement harvest and reuse cisterns (see Table 2 in letter[14]). The cisterns will be designed to hold the full capacity of the design capture volume. DMAs 3 and 4 in the proposed Park area have a capture efficiency of 50% whereas all other DMAs meet the 40% capture efficiency. Overflow would flow into a connected biotreatment system (modular wetland system – MWS) to maintain water quality.

The MWS units are connected to the harvest and reuse systems to treat the overflow runoff once the cistern capacity is reached. The combination of harvest and reuse cisterns and MWS units were preliminarily proposed throughout each DMA based on the proposed grading plan and identified low points. Storm drain flows will flow into localized catch basins and into the proposed storm drain lines. The storm drain lines will include low-flow diversion structures which will direct water quality flows to the harvest and reuse cisterns. The cisterns will include a pre-treatment device that can remove particulates sufficient for pre-treating Total Suspended Solids and associated heavy metals attached to sediment. In addition, all internal roads within Harvest and Reuse areas would include bi-weekly street sweeping to prevent build-up of sediments and associated pollutants on streets and parking areas. The water stored in the cisterns would be connected to a pump system and irrigation line to allow for landscape irrigation. Any additional treatment needed during frequent storm events will be provided by the MWS units connected to the harvest and reuse cisterns.

[12] *Newport Banning Ranch, Newport Beach, Water Quality Approach Memo.* by Fuscoe Engineering, Inc, 9-3-15
[13] Ibid
[14] Ibid

Biotreatment Area BMPs
Biotreatment BMPs would reduce storm water volume and treat storm water using various treatment mechanisms characteristic of biologically active systems, and discharge water to the downstream storm drain system or directly to receiving waters. According to the letter, treatment mechanisms include media filtration, vegetative filtration, general absorption processes, biologically-mediated transformations, and other processes to address both suspended and dissolved constituents.

Examples of biotreatment BMPs include bioretention with underdrains, vegetated swales, constructed wetlands, and biotreatment systems. Stand-alone biotreatment BMPs will be implemented in the regions where harvest and reuse is not feasible. The biotreatment areas include 10 DMAs throughout the majority of the North Village and a portion of the South Village and BMPs implemented on the streets and parkways throughout the entire site.

The community water quality basins would be located throughout 10 DMAs at the NBR project site. The letter[15] explains, *these basins would be landscaped shallow depressions that capture and filter stormwater runoff. These facilities act as a plant-based filtration device that removes pollutants through physical, biological, and chemical treatment processes. The facilities normally consist of a ponding area, mulch layer, planting soils, and plants. As stormwater passes down through the panting soil, pollutants are filtered, adsorbed, biodegraded, and sequestered by the soil and plants. The flow-through planters along the streets and parkways have similar characteristics to the biotreatment basins…*

The basins would be located at low-points in each DMA where a dedicated water quality low flow storm drain line will collect initial flows and deliver the storm water to the basins during rain events. After biotreatment, flows will be collected back into the main line for conveyance to the Lowlands for additional natural treatment including infiltration, evapotranspiration and plant uptake.

Flow-through planters and MWS units will be incorporated into the streets and parkways BMP design. Flow-through planters act similarly to the biotreatment basins.

Off-site Runoff Treatment
Implementation of the plan would include an on-site water quality treatment basin for the sole purpose of treating off-site runoff (water that runs on to the site from adjacent areas). Approximately 46 acres of off-site runoff from the City of Costa Mesa and Newport Beach including commercial, light industrial and residential will be treated.

The system would provide an expected reduction in annual pollutant loads and annual pollutant concentrations. In addition the treatment of flows, the basin will also serve as a dissipation feature to control flows into the Southern Arroyo. Controlling flows into the Arroyo will serve to reduce erosion of the Arroyo, reduce sediment transport to the Seminiuk Slough and improve habitat establishment along the bank.

[15] Ibid

The water quality basins proposed in most cases are in and adjacent to wetland habitat. Construction plans for the water quality basins were not provided in the application materials. Construction specifications are needed to evaluate the basins' effectiveness for the proposed development and for the impacts the construction of these basins would have on EHSA and wetland habitat. The same is true for the proposed energy dissipaters located in the arroyo.

Water quality improvements consist of Low Impact Design (LID) features such as bioswales, landscaping biocells, and permeable pavement, where feasible, as well as source-control and treatment-control Best Management Practices (BMPs). New infrastructure and utilities, including water, sewer, and storm drain facilities to serve the proposed development, would be constructed. New water, sewer and storm drain facilities would connect to existing City and County facilities located adjacent to the property.

Conclusion
The proposed water quality plans for Pre-construction and Post-construction protection of marine resources would be consistent with Coastal Act Sections 30230 and 30231. However, the development plan as a whole, for which the above described water quality systems are designed, is not consistent with the protection of vernal pools and wetlands, is inconsistent with Sections 30231, 30233, and 30255 of the Coastal Act. Therefore, the proposed development project must be denied.

G. HAZARDS

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and 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...

Geologic Hazards
The NBR site is located on the Orange County Coastal Plain and adjacent Newport MesaPart of the Newport Mesa forms the eastern, upland portion of the NBR site.. The Orange County Coastal Plain is one of the coastal alluvial basins of the Los Angeles Sedimentary Basin. The Orange County Coastal Plain is bounded to the north by the Puente Hills, to the east by the Santa Ana Mountains, to the west by the San Gabriel River, and to the southwest by the San Joaquin Hills and the Pacific Ocean.

The central portion of the coastal plain forms the broad alluvial floodplain of the Santa Ana River. The Santa Ana River originates in the San Bernardino Mountains. The river flows approximately 100 miles from the San Bernardino Mountains to the NBR site where it discharges into the Pacific Ocean.

The mesa consists of consolidated alluvial sediments which have been uplifted along a fault zone. The lowland portion of the NBR consists of recent alluvial sediments. The active Newport-

Inglewood fault zone, locus of the 1933 M_w 6.4 Long Beach Earthquake, is located along the southern boundary of the NBR, and is a principal hydrogeologic feature in the area, acting as a barrier to ground-water flow in the aquifers below the uppermost water-bearing units. The water-bearing formations in the Orange County water basin are composed of three intra-connected confined aquifer systems: the Lower, Middle, and Upper aquifer systems.

The NBR site is hydraulically bounded to the west by the mouth of the Santa Ana River and to the south by marsh channels, the former course of the Santa Ana River where it once flowed into Newport Bay. The marsh channels are connected by a culvert to the mouth of the Santa Ana River. As water in the Santa Ana River mouth and marsh channel is directly connected to the Pacific Ocean, the aquifer located below the site is in direct connection with sea water. Depth to ground water at the NBR is approximately equal to mean sea level and is influenced by tidal fluctuations. The ground-water flow at the site is from the uplands zone toward the Santa Ana River in the northern portion of the site and from the mesa toward the Pacific Ocean in the southern portion of the site.

Geotechnical investigations were performed for the site by Guptill and Heath(1981), Woodward-Clyde Consultants (1985), the Earth Technology Corporation (1986), Pacific Soils Engineering, Inc. (1993), Leighton (1997), and Earth Consultants (1997). The studies conducted by Guptill and Heath and the Earth Technology were mainly related to the geological evaluation of splays of the Newport-Inglewood fault. Two distinct zones of faulting were identified within the site. The main active trace of the Newport-Inglewood fault is less than 1 mile from the site and the Palos Verdes fault is within 11 miles from the site. The above-mentioned faults are capable of generating significant ground shaking at the site. Converse Consultants (1994) discovered a second active fault on the site called the “West Mesa Fault.” This fault traverses the NBR site. It has been encountered in trenches in two distinct areas, and building setbacks have been established so that habitable structures are not built across this fault. Conservatively, these two areas are assumed to be connects, and building setbacks have been established between these areas as well.

The West Mesa Fault and the Newport-Inglewood fault system should be considered likely sources for future earthquakes that would generate strong ground motions at the site. In addition, surface rupture at the site is possible along the West Mesa Fault.

Several splays of the active Newport-Inglewood fault zone have been mapped across the site and in the site vicinity. Faults that break the ground surface during an earthquake can do considerable damage to structures built across them. Therefore, fault studies are typically designed to evaluate whether a fault is active. If a fault is deemed active, structures cannot be placed across the trace of the fault (Alquist-Priolo Earthquake Fault Zoning Act).

The studies by Woodward-Clyde Consultants and Pacific Soils Engineering, Inc., covered other geotechnical aspects including liquefaction and settlement. Both studies concluded that the upper 10 to 12 feet of the subsurface soils in the lowland areas were highly susceptible to liquefaction. Below 10 to 12 feet, localized zones of liquefiable soils were encountered, In addition, the study by Woodward-Clyde found that the upper 4 to 10 feet of the subsurface materials contained soft, highly plastic clay that might not be suitable for use as structural fill.

Additional information was provided regarding the coastal bluff edges and the coastal canyon bluff edge erosion rates. Commission staff geologist, Dr. Mark Johnsson, concluded that the bluff edge determination was appropriate and that, with the proposed 60 foot bluff edge setback for all structures, the development would be safe from slope instability and bluff erosion for the economic life of the project.

Based on the above information the applicant has developed the current proposal. The proposal includes residential development outside of the 50 foot setback from the fault zones. Additionally, the grading plans include remedial grading for development proposed in the upland area, which would involve removal and recompaction of the upper three to five feet of the soil horizon as well as locally compressible and/or porous zones within the terrace deposits. Grading includes 1,808,000 cubic yards of cut, and 1,736,000 cubic yards fill, for a total of 3,544,000 cubic yards of grading. This represents one of the largest grading projects in the Coastal Zone of California in recent years.

The development, as proposed, would likely be safe from geologic hazard and could, with certain conditions, be found consistent with section 30253 which requires that development: *assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site…* However, the current development proposal includes elements that render the project as a whole inconsistent with the biological and visual resources policies of the Coastal Act. For instance, a total of 3,544,000 cubic yards of grading impacts sensitive resources and results in fill of a significant arroyo on the site. Therefore, the proposed development cannot be found consistent with the Coastal Act and must be denied.

H. ARCHAEOLOGICAL RESOURCES

Section 30244 of the Coastal Act protects cultural resources in the coastal zone and states:
Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact identified archaeological resources. These resources may be sacred lands, traditional cultural places and resources, and archaeological sites. There is no indication that there are burials present on the Project site, however remedial grading of the Mesa proposes to remove the first 3-5 feet of the soil. Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition.

The Project site is located on the northern end of the Peninsular Range Geomorphic Province. These rocks are composed of pre-Cretaceous (more than 65-million-year-old) igneous and metamorphic rock with limited exposures of post-Cretaceous sedimentary deposits. However, these sedimentary deposits in coastal Orange County are considered to be some of the most important fossil-producing formations in the world (similar to the sites at Bolsa Chica).

Eight prehistoric and three historic resources are recorded on the Project site, and five cultural resources studies have been conducted on the site. There have been 17 cultural resources investigations within a 1-mile radius of the site.

As a part of the EIR, a Prehistoric and Historical Archaeological Resources Assessment and a Paleontological Resources Assessment were prepared. Evaluation of 11 archaeological sites on the NBR property resulted in a finding that 3 of the sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are deemed eligible for listing in CRHR and the NRHP as historical resources. While original site locations could be verified, several sites had been heavily impacted by ongoing oilfield operations. Only one (CA-ORA-839) qualifies as a unique archaeological resource. During the EIR process, a coastal development permit for the resources assessment, including excavation through shovel test pits and hand units, was not secured. Additionally, some recovered resources, such as fire-affect rock, were discarded. However, the applicant states that a representative of the Juaneño Band of Mission Indians, Acjachemen Nation, was present on site during all archaeological excavations preformed during the EIR process.

The applicant proposes to mitigate for any impacts caused to any additional archeological resources by excavating (data recovery or salvage) the resources and donating them to the Cooper Center. However, this mitigation option is not most protective of the cultural resource and it is not an appropriate response. All known archeological sites, would be avoided by the development proposal. Complete avoidance of resources during the abandonment and remediation activities is appropriate for the site and could be achieved through a proposal to cap known resources.

Instead the applicant proposes to remove the resources if impacted by abandonment and soil remediation. Capping of the resource site is only proposed as a secondary measure, to prevent further impacts to the site from foot traffic, erosion, etc. The EIR states: *because [*CA-ORA-844B] *has been disturbed by erosion and oil extraction activities, capping the deposit would be difficult and possibly more expensive and time consuming and may produce less desirable results than data recovery excavation*. The same is proposed for CA-ORA-839, which would also be impacted by soil remediation.

CA-ORA-906 could be impacted as a result of the oil infrastructure removal. Data recovery excavation, again, is proposed for this resource as opposed to capping or redesign of the project to avoid the impacts. The applicant's plans do not include capping resources, including any human burials found during grading.

The proposal includes Mitigation measures which require that a qualified paleontologist monitor the grading and excavation activities and conduct salvage excavation as necessary. Additionally, A Native American representative is proposed to be present onsite during all grading and excavation activities. Native American groups may have knowledge about cultural resources in the area and may have concerns about adverse effects on cultural resources caused by the proposed development. Because the project involves significant grading, there is a high likelihood of discovering additional resources that are currently unknown, especially since the test pits, to date, have been largely outside of the proposed development footprint.

Conclusion
The information provided in the application materials was not sufficient for complete assessment of potential impacts to archaeological resources. The application does not include a request for approval and implementation of an Archaeological Research Plan (ARP), nor did it include an after-the-fact request for approval for the archaeological testing and recovery that was conducted on the site through the EIR process. The goal of the ARP is to determine where development can be allowed that will avoid impacts to archaeological resources and that those resources can be preserved in place. The ARP must be peer reviewed and be subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups. Native American monitor(s) shall also be present during implementation of the ARP. The ARP must also include the preparation and submittal of a final report. The final report would also be subject to the same review and comment of the ARP. Lastly, the application did not include an assessment of the potential locations of unknown cultural resources, which would have been provided in the ARP.

The application materials state 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. If capping was proposed for all three resources, then the resources would not be impacted by the abandonment activities. The two proposed mitigation measures (recovery and monitoring) are not consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources. The mitigation measure that is most protective of resources, redesign of the project to avoid significant impacts, would be consistent with previous Commission action (CDP 5-97-367, Hellman and HNB-MAJ-1-12, Ridge). The proposed project, which results in avoidable impacts to cultural resources, is not consistent with the Coastal Act must be denied.

I. PUBLIC ACCESS AND RECREATION

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of public coastal recreational. The following policies which encourage public access and recreational use of coastal areas are applicable to the proposal:

Section 30210 of the Coastal Act states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30222

> *The use of private lands suitable for visitor-serving commercial recreation facilities design to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30252 of the Coastal Act states, in part:

> *The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation….(6) assuring that the recreational needs to new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

Parking

Public parking would be provided throughout the Project site to support access to and use of the proposed parklands and trail system (**Exhibit 10**). More than 200 on-street public parking spaces would be provided on Scenic Drive, and more than 150 off-street public parking spaces would be provided within the Community Park areas. In addition, public off-street parking would be provided as shared parking within the Resort Inn and the Urban Colony mixed-use commercial/residential development within the Project site, including for use by coastal recreationists and park users as capacity permits.

A site plan submitted August of 2015 indicates that there may be 3 parking structures proposed in the mixed-use Urban Colony. The total number of parking spaces, complete elevations for the Urban Colony and draft architectural plans were not submitted.

The site plan also indicates that the resort colony may also contain a parking structure. Again, the total number of parking spaces, complete elevations for the Urban Colony and draft architectural plans were not submitted. Because the total number of parking spaces was not provided for the project, staff cannot evaluate if the proposed development provides enough parking for the development types and uses. Therefore, staff cannot evaluate the proposed project's consistency with Section 30252 of the Coastal Act.

Open Space and Trails

The 265-acre "Natural Open Space Preserve" will remain protected as permanent dedicated public lands and open space through the establishment of a conservation easement, and is anticipated to be managed by the Newport Banning Land Trust (NBLT). The open space would include the wetlands, the restored areas, and the network of trails.

The 9.5 acres of public trails proposed, approximately 10 feet wide, are in areas through and adjacent to wetlands and ESHA, however trails are generally considered a resource dependent use. The trail surface would consist of native soil or decomposed granite and would meander and/or become narrower or incorporate sections of elevated walkways as necessary to avoid identified special-status habitats.

The Trail System would include 2.0-mile-long lowland Interpretive Trail connecting to the existing Santa Ana River Regional Trail System and Talbert Nature Preserve located adjacent to the Project Site; a 0.3-mile-long Southern Arroyo Trail would connecting to open space with trails and footpaths planned for development in the North and South Bluff Park; a 0.4-mile-

long Bluff-toe Trail would be located almost entirely within the non-exclusive access easement and which is also used as the Oil Access Road and Orange County Sanitation District easement connecting the two remainder oil operations sites. This trail parallels the Semeniuk Slough and connects to the Bluff Park Trail System adjacent to the Resort Colony and Family Villages; and a 0.8-mile-long Upland Interpretive Trail would connect the Talbert Trailhead/Staging Area with the corner of Talbert Nature Preserve and the Project's lowland Interpretive Trail. Trails are largely proposed to follow existing oil roads within the project site to the extent feasible.

Pedestrian Bridge
The Project would also include construction of a pedestrian and bicycle and pedestrian bridge from Bluff Park spanning over West Coast Highway (PCH) that would facilitate public coastal access from the site to the shoreline. The pedestrian and bicycle bridge would be accessible for both resort guests and the public, and would include provisions for ADA access. The bridge would connect the site to a City of Newport Beach public park on the seaward side of PCH. The bike bridge would connect to the network of bike lanes proposed throughout the development. Bike racks would be provided as a part of the proposed neighborhood retail center, parks, and the multi-family residential uses. The pedestrian bridge would have impacts to the bluff face and to ESHA coastal scrub communities.

Parks
The project would eventually include development of approximately 25 acres of active and passive public parks, although park plans are not included in the current development proposal. The proposed development includes parklands dedication to the City of Newport Beach of approximately 11 acres for development of Public Community Parks and a 14-acre Bluff Park. The 11 acres of Community parks would impact 1 of 2 areas on the site that supports Burrowing owls. It would also impact large semi-contiguous patches of PNG.

The Vernal Pool Interpretive Area Park would provide public access via a walkway near the edge of the vernal pool restoration complex sign kiosks and displays so visitors could experience and learn about the ecology of vernal pools and San Diego fairy shrimp. The Vernal Pool Interpretive Area Park would be planted with native grasslands providing a vegetated buffer between the vernal pool restoration complex and adjacent development. The interpretative vernal pool complex may contain a pedestrian footpath around, and in some cases through, the vernal pools. This would impact the ESHA vernal pools in the complex. Construction plans for the vernal pool complex have not been provided.

Bluff Park would be an approximately 14 acre linear park, bordering the housing development and overlooking the main arroyo. The park would have maintained landscaping and serve as a fuel modification zone. The park would be developed and maintained by the City of Newport Beach. Bluff Park would include approximately two miles of public pedestrian trails. Bluff Park is comprised of two subareas referred to as South Bluff Park and North Bluff Park.

South Bluff Park extends along the perimeter of the Resort Colony and South Family Village providing view opportunities from the Resort Colony edge toward the Pacific Ocean and views of open space from the South Family Village edge. Public facilities would include scenic view overlooks with public seating, a pedestrian trail with connections to the open space interpretive trail system, and a multi-use trail that links to the pedestrian and bicycle bridge across West Coast Highway.

North Bluff Park extends along the perimeter of the North Family Village east of North Bluff Road along the northern edge of the Urban Colony. North Bluff Park is proposed to provide active recreational facilities including informal play areas for children, tot lots, and a public amphitheater. Passive recreational facilities would include a pedestrian trail with connections to the Natural Open Space Preserve Interpretive Trail system, picnic areas, and scenic view overlooks to be provided along the length of the pedestrian trail. A trail connecting the Mesa to the lowlands of the site would be developed upon a heavily graded slope on the northwest side of the North Family Village housing development. Bluff park would impact several acres of ESHA maritime succulent scrub and coastal bluff scrub, as well as coastal sage scrub communities that line the Southern Arroyo, a prime space for CAGN habitat. Small patches of PNG in this area would also be impacted by the development of Bluff Park.

Resort Colony
The Resort Inn is proposed to be a 75 room resort, 50 feet tall, with architectural elements up to 75 feet tall. The Resort would be developed in conjunction with visitor serving commercial and retail space, and a parking garage. The resort would include a lobby, a spa, a kitchen, a restaurant, and a pool. The approximate square footage per guest room would be 900 sq. ft and there would be some number of suites. The Resort Colony would also include a 8-10 bed hostel. Proposed overnight rates for these accommodations have not been provided.

The Resort Colony would be located on the mesa of a coastal bluff overlooking PCH. The Resort would impact 4 vernal pools and patches of PNG, and ESHA scrub communities and portions of CAGN habitat areas. As discussed in Finding E. ESHA, these impacts cannot be found consistent with Section 30240 of the Coastal Act.

Conclusion
While the project may provide public recreational opportunities in the form of trails, public open space, parking, visitor serving retail, and a resort colony, the project does not do so consistent with the protection of the natural resources on the site. Several elements of the project proposed for public access and recreation would have direct impacts to ESHA. The project may be consistent with section 30222, but is inconsistent with Section 30210 which requires that the development of public recreational opportunities shall not be at the expense of the overuse of natural resources, and the project's consistency with Section 30252 by proving adequate parking cannot be determined with the information provided in the application. Therefore, the Commission cannot approve the development project as consistent with the above policies of the Coastal Act and must deny the project.

J. LOWER COST VISITOR SERVING FACILITIES

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of lower cost visitor and recreational facilities.

Section 30213 of the Coastal Act states:

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

> *The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low to moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

The Coastal Act section 30213 state that lower cost overnight visitor accommodations shall where feasible, be provided. The applicant has proposed development of a 75 room resort and an 8-10 bed hostel on the project site. Room rate information was not provided, but the applicant described the hostel as a "lower cost overnight accommodation."

Historically, the Commission has approved new hotel developments along the coastline because they are visitor-serving facilities. These hotels, however, are often exclusive because of their high room rates, particularly in recent years. Often, the Commission has secured public amenities when approving these hotels to address the Coastal Act priorities for public access and visitor support facilities. The Commission has also required mitigation for the use of land that would have been available for lower cost and visitor serving facilities (e.g. NPB-MAJ-1-06A). The expectation of the Commission, based upon several recent decisions, is that developers of sites suitable for overnight accommodations will provide facilities which serve the public with a range of incomes [HNB-MAJ-2-06-(Huntington Beach-Timeshares); A-6-PSD-8-04/101 (San Diego-Lane Field); A-5-RPV-2-324 (Rancho Palos Verdes-Long Point); RDB-MAJ-2-08 (Redondo Beach); SBV-MAJ-2-08 (Ventura); 5-98-156-A17 (Long Beach-Pike Hotel); LOB-MAJ-1-10 (Long Beach-Golden Shore)].

Lodging opportunities for more budget-conscious visitors to the coast are increasingly limited. As the trend to demolish or convert low-cost hotels/motels continues, and only new luxury hotels are being built, persons of low and moderate incomes will make up fewer of the guests staying overnight in the coastal zone. Without low-cost lodging facilities, a large segment of the population will be excluded from overnight stays at the coast. By forcing this economic group to lodge elsewhere (or to stay at home), there will be an adverse impact on the public's ability to access the beach and coastal recreational areas. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a larger segment of the population will have the opportunity to visit the coast. Access to coastal recreational facilities, such as the beaches, harbor, piers, and other coastal points of interest, is enhanced when lower cost overnight lodging facilities exist to serve a broad segment of the population. In this case, the applicant proposes to construct a lower cost overnight accommodation, in the form of a hostel, on the site.

Defining Lower Cost

In a constantly changing market, it sometimes can be difficult to define what price point constitutes low cost and high cost accommodations for a given area. In its previous actions, the Commission has addressed what are appropriate terms for defining low cost and high cost hotels (Coastal Development Permit Nos. 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, 5 A-253-80, and A-69-76, A-6-IMB-07-131, 3-07-002, 3-07-003). More recent Commission actions have utilized a formula that can be used to determine low and high cost overnight accommodations for a specific part of the coast (SBV-MAJ-2-08). The formula is based on California hotel and motel accommodations (single room, up to double occupancy), and does not incorporate hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not provide the same level of accommodation as hotels and motels. Hostels, RV parks and campgrounds are

inherently lower cost, and are the type of facilities that a mitigation fee for the loss of existing lower cost over-night accommodations or the failure to provide new lower cost facilities would support.

The formula compares the average daily rate of lower cost hotels in a specific coastal zone area (e.g., city or bay) with the average daily rates of hotels and motels across the entire State of California. Under this formula, low-cost is defined as the average room rate for all hotels within a specific area that have a room rate less than the statewide average room rate.

To determine the statewide average daily room rate, the statewide average daily room rates collected monthly by Smith Travel Research were used, and are available on the California Travel and Tourism Commission's website: http://www.industry.visitcalifornia.com, under the heading "California Lodging Reports." Smith Travel Research data is widely used by public and private organizations. To be most meaningful, peak season (summer) rates were utilized for the formula. To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA rated properties were included in the survey. According to the AAA website, "to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member expectations – cleanliness, comfort, security and safety." AAA assigns hotels ratings of one through five diamonds.

The statewide average daily room rate in California in 2008 for the months of July and August was $133.00. The most recent data available (March 2015) for the statewide average daily room rate reported was $145.01. The data shows that the *annual* average room rate in California reflected market and economic changes, where rates peaked in 2008 and again in 2012, and increased even higher in 2013 and 2014. In 2014, the *annual* average daily room rate in California was higher than ever at $140.16.[16]

Using the formula, a study for the City of Ventura defined lower cost accommodations as those charging approximately 25% less than the statewide average daily room rate, in this case $105 and less ($140 – 25%), and higher cost accommodations are defined as those hotels with daily room rates 25% higher than the statewide average, in this case $175 and up per night ($140 +25%) (SBV-MAJ-2-08). Values in-between are considered moderate cost.

A recent inventory survey of hotels and motels in the Newport Beach area [17] concludes that there is a sufficient amount of lower cost overnight accommodations available in Newport Beach and the surrounding areas, approximately 34% of hotels surveyed, and therefore, the development of a new high cost hotel within Newport Beach will not impact the existing supply of lower cost rooms. Further, the report indicates that an average daily rate of $175 or more is considered is high cost.

The Commission has found in past actions that, under most circumstances, where low cost alternatives are not included onsite, a mitigation fee would apply to 25% of the high cost rooms constructed in recent Commission action. Although the actual provision of lower-cost accommodations in conjunction with a specific project is preferable, in past action, the Commission has also found that when this approach is not feasible, then the requirement of in-lieu fees to provide

[16] Source: 2014-15 Smith Travel Research, Inc.
[17] *Analysis of Market Price and Supply for Accommodations in the vicinity of the City of Newport Beach, CA* by PFK Consulting USA, February 2015.

new lower-cost opportunities constitutes adequate mitigation for the loss or reduction of lower cost overnight accommodations.

While the applicant proposes to construct a hostel, the Commission has typically required that lower cost overnight accommodations amount to 25% of the number of hotel rooms proposed. 25% of a 75 unit report would amount to 18 or 19 accommodations. Therefore, to avoid the conditioned in-lieu fee the hostel accommodations should provide 18 or 19 beds. The applicant has proposed development of a hostel with 8-10 beds.

Conclusion
Rates for the Resort and the hostel were not proposed. Without proposed rates, the project's consistency with Section 30213 of the Coastal act cannot be determined. Further, because the development of both the resort and the hostel would permanently impact ESHA, the proposed project is inconsistent with multiple policies of the Coastal Act and must be denied.

K. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states [emphasis added]:

> *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Landform Alteration
Based on the applicant's 30% grading plans prepared by Fusco Engineering dated 8/28/2015, the proposed project would involve 1,808,000 cubic yards of cut, and 1,736,000 cubic yards fill, for a total of 3,544,000 cubic yards of grading (**Exhibit 8**). This would constitute one of the largest grading projects to be undertaken in the Coastal Zone of California in recent years. Large areas of cut and fill are proposed to create level terraces for the construction of homes, commercial development, and the active and passive parks. There would also be areas excavated for the construction of the primary access onto the site from Pacific Coast Highway (PCH) known as Bluff Road and grading along the bluff overlooking PCH for the construction of a pedestrian bridge to extend from the site to the seaward side of the highway. The primary concern relative to landform alteration is the grading that would result in the filling of the North-South arroyo and an unnamed gulch along the northwestern boundary of the proposed 'north village' residential development. In addition to visual impacts, the landform alterations would require grading that has impacts upon biological resources within the arroyos and upon the mesa, impacts upon habitat buffer areas, and adverse changes to wetlands hydrology. These impacts resulting from the proposed landform alteration are discussed more fully elsewhere in these findings in the "ESHA" and "Wetlands" sections.

The proposed project calls for the construction of three large terraces for development designed to accommodate hundreds of housing units, the commercial retail and resort components. The grading for the largest terrace for the north village, encompassing about 42 acres, would result in the complete filling of an approximately 700 foot long, up to 50 foot deep gulch at the northwest boundary of the north village. In addition, the north-south arroyo, which is between 10 to 50 feet deep, approximately 1500 feet long, and up to 800 feet wide is proposed to be filled. This arroyo would be completely filled with soil from the oil field remediation project plus a layer of clean soil for ultimate development of the north village.

The second of the three large terraces is for the south village residential area and resort colony. This pad is approximately 27 acres in extent and is located upon the relatively level mesa located between the bluffs overlooking PCH to the south and the main arroyo that separates this area from the north village. Grading within this area is largely confined to levelling out small changes in topography present on the mesa. However, there would be some grading along the edges of the main arroyo that result in filling the upper reaches of various spurs off the arroyo, particularly in the area where bridge abutments would be constructed to support a bridge for a portion of Bluff Road that would cross the main arroyo. A 20 foot deep, 150 foot long, and 50 foot wide gulch would be filled along the bluff that overlooks the new proposed intersection at PCH and Bluff Road. Another area along that same bluff but further west would be graded for the pedestrian bridge described above.

The third large area of grading is along the eastern property boundary, and is for the 14.4 acre Urban Colony that includes multifamily residential and a commercial retail area. Grading in this area would involve land levelling and ranges between 10 to 20 feet of cut and fill.

The proposed fill of a gulch and one major arroyo for the north village would change the landform from gently to steeply sloping natural grades to a relatively flat manufactured mesa. This proposed development would degrade the natural landform appearance of the site and does not minimize the alteration of natural landforms as required under Section 30251 of the Coastal Act.

There are alternatives to the grading and filling of landscape features on the project site. For instance, development could be confined to existing more level areas along the eastern boundary of the property. Or, building pads could be fashioned to accommodate individual building footprints such that mass grading could be minimized or avoided. In this way, the character of the existing arroyo and other landscape features could be maintained.

The Commission finds that the proposed project does not minimize landform alteration. There is ample space on the project site where development could be accommodated without the substantial alteration of existing landscape features including arroyos. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and must be denied.

Visual Resources

The coastal bluffs of the NBR site contain natural bluff formations as well as rare coastal bluff scrub vegetation. The natural resources are visible from Coast Highway and do comprise a visual resources. Pacific Coast Highway is known as a highly scenic area. The proposed development

would include a 60 foot high resort (with architectural elements for a structure up to 75 feet high) atop of the coastal bluffs facing PCH as well as pedestrian bridge spanning PCH.

The visual analysis that was provided for the proposed pedestrian bridge shows that the bridge does not block public coastal views from the scenic highway. There are similar pedestrian bridges in nearby cities, Huntington Beach and Dana Point, but the proposed bridge would be higher than 35 feet high and does not conform to the character of the area.

The visual analysis of the proposed resort shows that the resort would be visible from PCH. The height of the proposed resort is not consistent with the character of the area. The surrounding developments are limited to 35 feet in height. The structures immediately seaward of the resort and bridge are within the City of Newport Beach's Shoreline Height Limitation Zone, which limits the height of all structures to 35 feet high. Development is required to be visually compatible with the character of the surrounding areas. Because of the significant height differences, the proposed developments would not be consistent with the character of the areas, and therefore is inconsistent with section 30251 of the Coastal Act.

Product Type Name: Resort Inn
Maximum Allowed Height: 50'

The lower Santa Ana River Trail near the Pacific Ocean runs parallel to the NBR site. A visual analysis of views from the Santa Ana River Trail has not been provided. The Coastal Act protects public views in scenic coastal areas. The development plan may have significant view impacts from the trail. It cannot be determined if the development plan would be consistent with the protection of coastal views, but ultimately the development proposed is inconsistent with the character of the area. Therefore, the project is inconsistent with section 30251 of the Coastal Act.

L. WATER SUPPLY

Section 30250 of the Coastal Act states:

> *(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, it other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be smaller than the average size of surrounding parcels.*
>
> *(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.*
>
> *(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

Section 30250 of the Coastal Act requires that new development be supported by adequate services, including water supply, waste water capacity, and adequate road circulation.

Urban Water
The Urban Water Management Plan (UWMP) which is required to be updated every five years. Water suppliers to the City of Newport Beach include Municipal Water District of Orange County (MWDOC) which receives its water supplies from Metropolitan Water District (Metropolitan). Local urban water providers, including the City of Newport Beach, are also required to prepare an UWMP to be updated every five years. Each UWMP is required to analyze the reliability of water sources available to the water provider over a 20-year planning horizon considering normal, dry, and multiple dry years.

In 2005, Metropolitan adopted a 2005 Regional Urban Water Management Plan (Regional UWMP), and MWDOC adopted a 2005 UWMP. The City subsequently adopted its 2005 UWMP which was prepared through coordination and planning with MWDOC and Metropolitan to maintain consistent assumptions in projecting supply and demand.

The Water Supply Assessment (WSA) for the proposed development identifies the sources of the City's water supply and provides information relevant to the supply of water received by the City to be used by the project based on information provided in the City's 2005 UWMP. The WSA also utilizes water supply information contained in the 2005 Metropolitan Regional UWMP and the 2005 MWDOC UWMP relevant to the City's water supply. A combination of water sources were explored for the project.

Imported Water
The City receives imported water from MWDOC, of which the City is a member agency. In turn, MWDOC receives much of its supply from Metropolitan, of which MWDOC is a member agency. Metropolitan's 2005 Regional UWMP contains a water supply reliability assessment with a detailed evaluation of the supplies necessary to meet demands of its member agencies,

including MWDOC, over a 25-year period in average, single dry-year and multiple-dry year periods. Metropolitan uses the Southern California Association of Governments (SCAG) regional growth forecast in calculating regional water demand projections for southern California.

Groundwater
The City obtains groundwater pumped from four wells owned and operated by the City and managed by Orange County Water District (OCWD.) The City's wells are located in the City of Fountain Valley, approximately five miles north of Newport Beach. OCWD regulates the supply of groundwater to the City through a Groundwater Basin Management Plan that is updated every five years with the most current plan adopted in 2009. The only constraints affecting groundwater supply to the City are the pumping capacity of the wells and pumping limitations established by OCWD to maintain the groundwater basins.

Recycled Water
The City purchases some recycled water from OCWD. The City has programs and policies in place to promote increased recycled water use in future years including financial incentives as identified in the City's 2005 UWMP. The NBR-WSA includes a summary of the historical and projected water supply for the City provided from all three of the above sources through the year 2030 based on information contained in the City's 2005 UWMP. As described in the WSA, the City's water supply from all three sources has steadily increased annually beginning with 17,820 acre feet per year in 2005 and is projected to continue to increase annually up to 21,716 acre feet per year until the year 2030 with the greatest percentage increase in supply occurring from groundwater sources.

The total average annual water demand for the proposed project is estimated to be 613.5 acre feet per year, or 0.55 million gallons per day (mgd), substantially less than the average 1,005 acre feet per year demand planned for in the City's 2005 UWMP. The WSA includes an evaluation of estimated future normal year, single dry-year, and multiple dry-year conditions. The evaluation demonstrated that City water supplies will be sufficient to meet future demands during single and multiple dry-year period conditions through the year 2030.

Approval of the WSA does not entitle the Newport Banning Ranch project any water rights, priority or allocation to any supply, capacity or facility, or affect the City's obligation to provide service to its existing customers or any potential future customers. The City Council’s approval of the WSA does not constitute an entitlement to water rights or service for the project or a "will serve" commitment for water to the proposed project. The WSA is not the final water supply analysis that will be required for this project, from the City’s perspective, and subsequent water supply evaluations are required for implementation of the project.

Commission staff requested additional information from the applicant showing that the project could be developed with adequate water supply, given the extreme drought conditions and the time elapsed since the WSA was first drafted. On April 30, 2015, the Banning Ranch Conservancy (on file) submitted a comment letter to the Coastal Commission regarding the adequacy of the 2010 Newport Banning Ranch WSA. The comment letter focused on two major points: 1) The WSA is outdated and should be invalid and 2) the region’s water supply reliability and variability has changed significantly due to the current drought.

The letter from the applicant *(Response to Banning Ranch Conservancy Newport Banning Ranch Water Supply Assessment* by Charles Marr Consulting submitted in August 2015) in response to the request for additional information and the Comment letter indicates that there is no legal requirement to update the WSA report, which at the time it was prepared, was required by law to utilize the most up-to-date data available which was the 2005 UWMP at that time.

Instead of updating the WSA report, the response letter defends the original report, based on 2005 data, despite the fact that newer, more accurate data is available. Ultimately, it is unknown if the development can adequately be supported by the water supply available without recent information.

The Conservancy's letter stated that there is less water supply, especially in the Orange County Water District's groundwater basin which was noted to be decreased by 60% from 1999-2014, and that demands within the region are increasing further suggesting it's inappropriate for allowing new development. The response letter from the applicant states that the City of Newport Beach water demands have decreased over the last 10 years.

The response letter from the applicant indicates that the proposed development will "provide opportunities for people to move into more efficient developments and out of older structures which are more water and energy-use intensive." This wrongly assumes that the older structures will not also be occupied. Further, it completely obfuscates that there is a difference between Per capita goals of the City and overall ability to adequately supply water for the entire development. Ultimately, the response does not address the City's ability to meet the demand; regardless of whether the demand per captia increases or decreases. Based on the information submitted to date, it is unknown if the proposed development can be supported by adequate water supply. As such, the proposed project's consistency with Section 30250 of the Coastal Act cannot be determined.

M. TAKINGS ANALYSIS

As discussed above, the proposed project is fundamentally inconsistent with several Chapter 3 policies of the Coastal Act. When the Commission denies a project, however, a question may arise as to whether the denial results in an unconstitutional "taking" of the applicant's property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

> *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their 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 therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Commission must assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project while still complying with Section 30010. If the Commission concludes that its action might constitute a

taking, then Section 30010 requires the Commission to approve some level of development, even if the development is otherwise inconsistent with Coastal Act policies or LCP policies, if applicable. In this situation, the Commission finds that some level of development could likely be allowed on the portions of the site identified in the Alternatives section, below. The Applicant's proposed project is inconsistent with Chapter 3 policies of the Coastal Act, however, and the Commission therefore denies the project as proposed and suggests that the Applicant work with staff on an alternative project located on the portions of the site identified in the Alternatives section, below, that may be more consistent with the Chapter 3 policies of the Coastal Act.

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation." Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner."

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* ((1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp*. (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission's actions here would be evaluated under the standards for a regulatory taking because the Commission is not authorizing a physical occupation of the subject property in its action.

In recent takings cases, the United States Supreme Court (Court) has identified two circumstances in which a regulatory taking might occur. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved (*Id*.). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (Id. at pp. 1016-1017 [emphasis in original]) (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 [regulatory takings occur only under "extreme circumstances"]).[18]

[18] Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra,* 505 U.S. at pp. 1028-1036).

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co.* (*Penn Central*) *v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the sufficiency of the applicant's property interest, its economic impact, and its interference with reasonable, investment-backed expectations (*Id*. at p. 134; *Ruckelshaus v. Monsanto Co*. (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (see *id*. [rejecting *Lucas* categorical test where property retained some development value following regulation and did not leave the property "economically idle" but remanding for further consideration under *Penn Central*]).

Final Government Determination

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, the landowner must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property (*e.g*., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (Id. at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

In this case, although the Commission denies the project proposed by the Applicant, there are areas, as identified in the Alternatives section, below, that provide for visitor serving, mixed-use commercial and residential uses of the property. Thus, even with the constraints identified in the staff report, the Commission believes that some alternative project could be constructed on the portions of the site identified in the Alternatives section, below, that would likely be more consistent with the Chapter 3 policies of the Coastal Act than the proposed project. This is because the sites identified below are of sufficient size in the aggregate—18.9 acres--to accommodate a visitor-serving use, mixed-use commercial development and residential use and a project on these sites would have fewer resource impacts compared to other portions of the proposed project site. The Commission advises the Applicant to work with Commission staff to develop an alternative proposal for development on the sites identified below in the Alternatives section. In these circumstances, the Commission has not made a final and authoritative decision about the use of the subject property, as it is clear that some development could be allowed on the subject property to avoid a taking of private property without just compensation. This decision does not preclude the Applicant from applying for some other development or use of the site, such as a smaller-scale development project that still proposes visitor serving, mixed-use commercial and residential uses but more carefully addresses the site's constraints.

Conclusion

The Commission finds that the project, as proposed, is inconsistent with the Chapter 3 policies of the Coastal Act identified in the staff report and must therefore be denied. The Commission also finds, however, that an alternative project could be approved on the portions of the site identified in the Alternatives section, below. Thus, this denial is not a final adjudication by the Commission

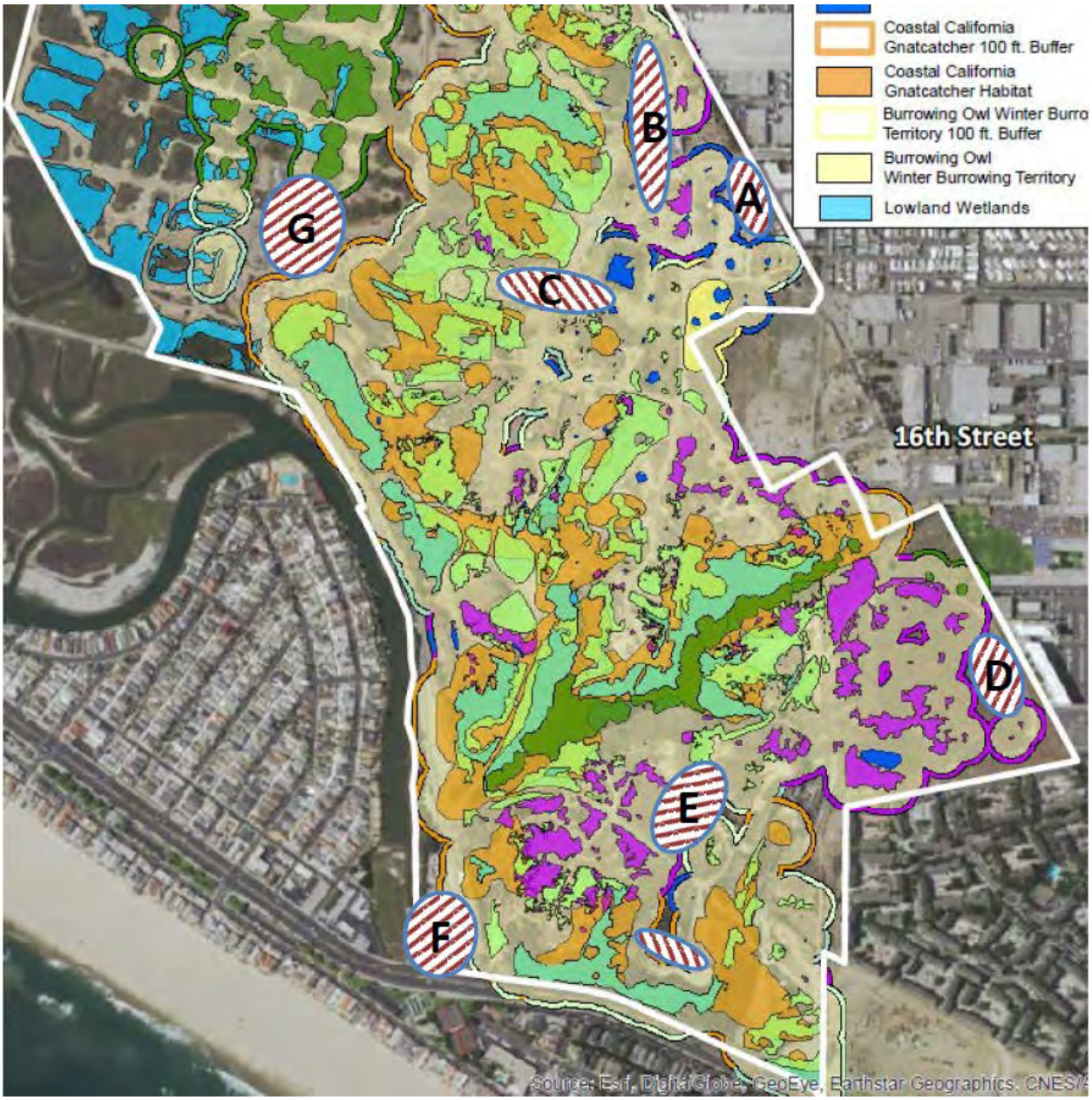
of the potential for development on a portion of the project site, as it does not preclude the Applicant from applying for some other development or use of the site, such as a smaller-scale development project that proposes visitor serving, mixed-use commercial and residential uses and more carefully addresses the applicable Coastal Act policies.

N. ALTERNATIVES

Development Alternatives

There are feasible development alternatives that would provide the applicant with a reasonable economic use of the site. As shown in Figure xx, there are approximately 19 acres of land that are potentially not constrained by wetlands, ESHA, their 100 foot buffers, or steep slopes, and that, with careful planning, would likely be accessible without significant disruption to surrounding habitats. These areas are labeled A-G on the exhibit. Locations F and G are the two areas that have been identified by the applicant as locations for consolidating existing oil development and provide approximately 7 acres of unconstrained land. The approximate acreages of each potential development area are shown in the Table below. More detailed mapping is needed to determine the exact acreages. These areas assume that the Commission would require a 100 foot buffer around all identified ESHAs and wetland areas.

AREA	ACREAGE
A	2
B	1.5
C	1.5
D	3
E	3.5
F	3.0
G	4.4
TOTAL Developable Area	**18.9**



It appears that development in each of these locations could be potentially accessed by roads from the east and south of the property, on or near existing dirt road alignments. These road alignments likely could be sited to avoid any direct impacts to wetlands and ESHA. In several locations the Commission would need to accept a reduction in the 100 foot Gnatcatcher habitat buffer, as long as a functionally equivalent buffer was available, such as a sound and visual barrier (wall) along the road's edge.

Area E provides the greatest development potential with approximately 3.5 acres of contiguous unconstrained land available. This area is located where the applicant is proposing to develop a hotel complex, and provides for development of a significant portion of the area currently proposed for development (the applicant's proposal allocates 6 acres for a hotel and 5.1 acres for "resort villas"). It could accommodate various intensities and configurations of development, provided there is sufficient road capacity, and could be a good location for siting low-impact

visitor-serving development, including lower-cost overnight accommodations such as environmental camping, tent cabins, or cabins. The site is relatively flat with views to the ocean. Potential visual impacts to PCH and other public viewing locations would need to be carefully evaluated with such a proposal.

Figure 1.Monterey Beach Hotel, ≈4 acre footprint, 4 stories, 196 rooms

In the alternative, Area E could provide a clustered development of approximately 10-15 cabins or yurts, or perhaps a more traditional campground layout of approximately 30 campsites. This area could accommodate, for example, a facility similar to the environmental cabins operated by State Parks at Steep Ravine in Marin County, which has a footprint of approximately 3 acres; or the Treebones Yurt camping facility in Big Sur, which has 16 yurts and 5 campsites on approximately 5 acres. If any development is designed and authorized for this ocean front terrace location, it should be reserved for priority visitor-serving development or public access and recreation and open space consistent with the public access and recreation policies of the Coastal Act.

Figure 2.Steep Ravine Environmental Cabins, ≈2.75 acres, 10 cabins

Areas A and B are located where the applicant proposes the Urban Colony mixed-use commercial development. The total area of approximately 3.5 acres (≈25% of the area proposed for mixed use development by the applicant) would need to be carefully configured to avoid the buffer and watersheds of the vernal pool complex, as well as purple needle grass habitat. The applicant's proposal suggests 731 units within the 14.4 acre Urban Colony, yielding an intensity of 51 units per acre. Using that density, and provided sufficient road capacity were available, l, these areas could potentially support 178 units (3.5 x 51 units) of multi-family residential and commercial development Again, road access to and through this area appears feasible without direct impacts to identified resources.

Figure 3.Treebones, 16 yurts, 5 campsites, ≈5 acres

Area C provides approximately 1.5 acres for development. If carefully designed, this smaller area could provide some residential development, particularly more dense condominium or multi-family housing. This area is highly constrained by surrounding gnatcatcher habitat and vernal pools buffers, and the total developable area is substantially smaller than the large footprint for 1300 residential lots proposed by the applicant for this area. This area is feasibly accessed from the east.

Finally, Area D provides about 3 acres potentially suitable for development and accessible from 15th street. This area is proposed for open space and road access by the applicant but it is a relatively flat site and residential, commercial, or visitor-serving development may be appropriate if carefully designed to avoid purple needle grass and habitat buffers.

Overall, while not as extensive as the applicant's proposal, with careful planning it appears feasible to design and locate significant visitor-serving, commercial and residential development (particularly higher density) on portions of this highly constrained site. In conjunction with the proposed consolidation of the oil operation, the NBR property could provide significant protected coastal habitat, open space and passive recreational use, and substantial development. The Commission has also found that there are feasible alternatives which would avoid such impacts. The Commission must deny the project.

O. UNPERMITTED DEVELOPMENT

Unpermitted development, which is described in Appendix A, occurred on the site prior to submission of this permit application, and the Commission has taken action to address the applicant's liability for all unpermitted development that was the subject of the 2015 Consent Orders, which is also further detailed in Appendix A. The 2015 Consent Orders did not resolve the Commission's claims against the oil operator, WNOC, for the alleged Coastal Act violations described in the 2015 Consent Orders. Staff is continuing discussions with WNOC during the stay in the litigation described in Appendix A to resolve their situation at the site.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the unpermitted development that has occurred on the site, although, as noted above, the Commission has already taken action to address the applicant's liability for the unpermitted development that was the subject of the 2015 Consent Orders, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

P. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

> *(a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.*

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 2005 and in October 2009. The project site is listed as "deferred certification" in the LUP.

The majority of the site is under the jurisdiction of the County of Orange. Neither the County of Orange nor the City of Newport Beach has a certified Local Coastal Program that includes the project site. The City is in the process of creating an implementation plan for the Coastal Land Use Plan and certifying their LCP. Approval of this project under a coastal development permit would effectively prejudice the ability of the local government to certify their LCP because it is inconsistent with the policies of the Coastal Act and the City has expressed intent to annex the site in the future. Thus, pursuant to Section 30604(a) of the Coastal Act, the Commission must deny the project.

Q. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is not the least environmentally damaging alternative. Through the CEQA process, the Lead Agency issued a 'statement of overriding consideration' to enable the project to be consistent with CEQA. The EIR describes several alternatives for the project including Alternative B, Open Space and Park: *Alternative B would have fewer impacts than the proposed Project because it would involve less grading and site disturbance. This Alternative would have less demand on public services and utilities. However, this Alternative would not assist the City in meeting its RHNA housing requirements or implementing the General Plan Housing Element. Alternative B would able to avoid the significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts, when compared to the proposed Project.* Ultimately Alternative B was not proposed due to assumed economic restrictions, however under CEQA it is a less environmentally damaging alternative. Under Section 21080.5(d)(2)(A) of CEQA, the proposed project cannot be approved and cannot be issued a coastal development permit.

As explained above and as incorporated here by reference, the proposed project is inconsistent with Sections 30240, 30233, 23231, 32055, 30253, 30210, 30251 of the Coastal Act due to adverse impacts upon natural landforms, adverse impacts upon biological resources including wetlands and vernal pools; adverse visual impacts related to landform alteration and the project's consistency with 30252, 30213 and 30250 cannot be determine based on the information provided. The Commission has also found that there are feasible alternatives which would avoid such impacts. The Commission must deny the project.

APPENDIX A

Substantive Files:

See CDP file 5-13-032.

APPENDIX B
Coastal Commission Permits, Enforcement Actions and Related

Coastal Development Permit No. E-85-001
In 1985, WNOC applied for and obtained CDP No. E-85-001 (Exhibit 5) to authorize 3 new exploratory wells on the subject site. Special Condition No. 2 of CDP No. E-85-001 states:

> *Limitation to Exploratory Drilling. This permit allows the drilling of up to 3 exploratory wells, no other drilling or commercial or oil production activities are authorized by this permit. Upon discovery of oil, the applicant shall submit to the Executive Director the results of testing including drill logs and production estimates within 60 days after removal of the well drilling equipment. A separate coastal development permit from the Coastal Commission shall be required for oil production beyond these three wells.*

The body of the staff report further describes the requirement to obtain a CDP for additional wells. The Commission noted that further drilling could have potential subsurface and surface impacts on coastal resources and found in relation to additional drilling that :

> *The three areas identified for drilling by the applicant are surrounded by existing oil production equipment and minimal grading (max. 1 foot) is proposed. The applicant proposes that up to 10 development wells be approved on each site yielding a total of 30 wells to the deeper horizon. Concerns for subsidence, erosion hazards, and uncertain potential siting of wells on bluffs require that the proposed project be limited to exploration at three well locations. Another coastal permit shall be required for production and the addition of any more wells (beyond the three approved subject to conditions by this permit).*

After issuance of CDP No. E-85-001, WNOC wrote to staff to acknowledge and agree to Special Condition No. 2 of the CDP. In its April 4, 1986 letter, WNOC agreed that "The applicants shall, upon discovery of oil, submit to the Executive Director the results of testing including drill logs and production estimates which shall be kept confidential by the Commission, with 60 days after removal of drilling equipment. The applicants recognize that a separate coastal development permit shall be required for oil production beyond these three wells."

CDP No. 5-86-588
Also in 1986, the Coastal Commission approved CDP No. 5-86-588, which authorized WNOC to remove dredge material that had been placed in a wetland on site by the Orange County Environmental Management Agency pursuant to an agreement with WNOC, but without necessary authorization from the Coastal Commission and, as alleged by the U.S. Environmental Protection Agency, in violation of the federal Clean Water Act. In approving removal of the wetland fill, the Commission found that the site, part of the subject site, "is part of approximately 200 acres of coastal salt marsh wetlands identified on the USFWS National Wetland Inventory Maps." The Commission cited the provisions included above in finding that fill of wetlands must be limited to the types of development types enumerated in Section 30233. The Commission further noted that "Development in coastal wetlands is subject to special scrutiny under the Coastal Act. Wetlands are highly diverse and biologically productive coastal resources. Their variety of vegetation and substrates produce far greater possibilities for marine and terrestrial wildlife feeding, nesting, and spawning than is found in less diverse areas."

California Regional Water Quality Control Board Cleanup and Abatement Order No. 01-77
In 2001, the California Regional Water Quality Control Board issued an order to require WNOC, Aera Energy, and Rancho Santiago to prepare a plan for restoring 2.87 acres of wetlands that had been destroyed by the discharges, that were the subject to the cleanup order, and to mitigate for the temporal loss of the beneficial uses of these wetlands for the time period of the illegal discharges. According to Board communications provided to staff, the parties have fulfilled the obligation to restore 2.87 acres of wetlands. Many of these impacted wetland areas were impacted as a result of the unpermitted development that was the subject of the 2015 Consent Orders, described below, and compensation for habitat lost as a result of the wetland fill noted above was, in large part, incorporated into the requirements of the Consent Orders.

Consent Cease and Desist and Restoration Orders Nos. CCC-11-CD-03 and CCC-11-RO-02
In 2011, the Commission issued Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02, addressing unpermitted removal of major vegetation (including vegetation comprising native plant communities and habitat for the federally threatened coastal California gnatcatcher – a bird species) and the results thereof; the unpermitted placement of solid material, including placement of numerous significant stacks of pipe conduits, vehicles, mechanized equipment, and construction materials; and grading, in violation of the Coastal Act.

The unpermitted development that was the subject of the above-noted consent orders commenced in 2004 and continued regularly into 2006. It was performed by a contractor undertaking a utility undergrounding in nearby locations off the Properties, utilizing and impacting portions of the subject site.

Pursuant to the terms of the Consent Orders, NBR, the contractor, and the utility agreed to, among other things: 1)) restore 1.01 acres of the site impacted by the unpermitted development at issue by planting coastal sage scrub vegetation native to Orange County that provides foraging and breeding habitat for the coastal California gnatcatcher and 2)conduct a mitigation project involving revegetation of no less than 2.5 acres of the site with native coastal sage scrub plant species that provides foraging and breeding habitat for the coastal California gnatcatcher. The restoration described above has commenced and the restoration project is currently within the monitoring and adaptive management phase, as required by the Consent Orders.

Consent Cease and Desist and Restoration Orders Nos. CCC-15-CD-01 and CCC-15-RO-01
In 2015, the Commission issued Consent Cease and Desist No. CCC-15-CD-01 and Consent Restoration Order No. CCC-15-RO-01 to address drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land that had occurred on the site.

Commission Ecologist Dr. Jonna Engel conducted a site-specific analysis to assess the likely status, prior to the unpermitted development that was the subject of the 2015 Consent Orders, of the biological resources in areas impacted by the unpermitted development that remain disturbed as a result of those activities. According to the Dr. Engel's analysis, some of the vegetative communities immediately adjacent to areas on the site impacted by the unpermitted development

consist of various native plant communities and wildlife habitats that the Commission has consistently treated as ESHA. Dr. Engel determined that several of the areas impacted by the unpermitted development contained or were immediately adjacent to coastal scrub and/or grassland habitat prior to the development at issue, and those areas therefore met the definition of ESHA under the Coastal Act or were adjacent to areas that met that definition at the time they were affected by the Subject Activities. The Commission concurred with Dr. Engel's general conclusion that at least some of the areas that were affected by unpermitted development constituted ESHA.

Over the few years preceding the 2015 Consent Orders, disagreements arose between Coastal Commission staff and NBR regarding the interpretation of the scope and application of the oil operations exemption E-7-27-73-144 granted to General Crude Oil and G.E. Kadane & Sons. The Consent Orders provided a mutually-agreeable resolution of the disagreements regarding the interpretation and application of the exemption and clarified obligations for activities at the site going forward, without requiring either party to concede its position. The Consent Orders do not resolve the Commission's claims against the oil field operator, WNOC, for the alleged Coastal Act violations described herein. During the year-long stay in the litigation with WNOC described below, Staff is continuing to work with WNOC to review permitting options for the consolidation of its operations in the Oil Remainder Areas on the site.

By entering into the 2015 Consent Orders, NBR, although not admitting to any wrongdoing or liability under the Coastal Act, agreed 1) to remove certain allegedly unpermitted wells and either apply for after-the-fact authorization or remove other allegedly unpermitted wells, such that all allegedly unpermitted wells located outside of two areas of the site under WNOC's control, i.e. the "Oil Remainder Areas", will be removed or addressed in an after-the- fact CDP application(s); 2) restore many acres affected by the disputed activities and restore additional acres as mitigation, with the combined restoration totaling 18.45 acres; 3) deed restrict 24.6-acres of the site for open space and restoration; and 4) not to engage in the large-scale mowing activities previously undertaken by the oilfield operator that spanned much of the upland areas of the Properties that have resulted in impacts to native habitats. The cessation of mowing activities has allowed for many more acres of the site to begin to recover from this activity. In many previously mowed areas, natural habitat, such as coastal sage scrub, is beginning to flourish after the cessation of mowing.

As noted above, the 2015 Consent Orders address existing oilfield operations on the site. It is staff's understanding that 85[19] wells remain active or idle on the site (apart from the City operated wells in a portion of one of the Oil Remainder Areas). As a component of the 2015 Consent Orders, the Commission and NBR agreed that roughly 32 of these 85 wells are exempt (20 outside the Oil Remainder Areas and 12 within), and these wells were not ordered to be removed pursuant to the 2015 Consent Orders. Whether the Commission authorized the remaining 53 of the 85 wells has been disputed by Commission staff and parties to oilfield operation. 41 of these 53 disputed wells are located outside the WNOC-controlled Oil Remainder Areas, and, thus, were subject to the 2015 Consent Orders. Although not waiving its position with regard to these wells, NBR agreed, through the 2015 Consent Orders to remove 17 of these wells and apply for or remove the remaining 24 (see table below).

[19] This total, and the quantifications within this paragraph and the following table, are staff's best approximations of the number of oil wells on the site, but the totals do not necessarily reflect the applicant's estimates precisely.

85 Active or Idle Wells on Site	
32 Undisputed Exempt Wells	53 Disputed Wells
↓	↓
•20 wells Outside the Oil Remainder Areas, 12 within.	•All well outside the Oil Remainder Areas (41) will be removed or reviewed by the Commission per the CDP process.
•Continue in place under the Exemption.	↓
	•17 wells will be removed outright.
	•24 wells will be applied for ATF or removed.

The Consent Orders are intended in part to resolve NBR's liability for alleged unpermitted development on the site to provide clarity for permitting actions, such as the present application, in part by providing for active restoration of certain impacted areas and passive restoration of the remainder of the impacted areas through the cessation of activities that disturbed these areas, thus allowing for an accurate analysis of the resources on site, and in part by clarifying that the potential liability for alleged violations has been addressed. Although the Consent Orders do help to lay the groundwork for review of this application, the obligations of the Consent Orders are independent of the Commission's action on the application; NBR is bound to perform the restoration and mitigation activities required by the Consent Orders regardless of the Commission's action.

Staff is currently reviewing the restoration plan, which proposes planting of native plant species in disturbed areas across the site, that NBR has prepared pursuant to the Consent Orders. Although these areas have not yet been restored, through the Consent Orders, NBR and the Commission have agreed to immediately treat the restoration areas as if the areas are restored with native habitat. In addition, NBR agreed, by signing the Consent Orders, that it shall not use the restoration or mitigation projects described in the Consent Orders for the purpose of generating mitigation or restoration credits to satisfy any State or Coastal Commission requirement for restoration or mitigation.

Litigation with WNO
On August 12, 2014, WNOC filed suit against the Commission, seeking declaratory relief to affirm its interpretation of the Exemption and confirm that "[a]ll wells and other development within the Oil Field occurring since 1973 for which a [CDP] has not been sought have been developed in a manner consistent with the vested rights . . . and the Resolution." This litigation is active and pending, however, the parties have stipulated to stay the action until after the Commission's June 2016 hearing. During that time period, Staff is working with WNOC to review permitting options for the consolidation of its operations in the Oil Remainder Areas on the site, and WNOC has agreed not to undertake any new oilfield activities or undertake the large scale mowing operations previously conducted on the site.

APPENDIX C

CORRESPONDANCE:

Letters of Opposition

Dear sir,

I'm writing this letter in opposition to the proposed "development" of the Banning Ranch area. I put the word "development" in quotes because what it really is is destruction.

I'm from here (Corona Del Mar 1944-2010), and coastal California is as sacred to me as the Black Hills (Paha Sapa) are to the Lakota people.

I recently got the shock of my life when I had to go down to The Guitar Shoppe in Laguna Beach: all the land on the inland side of the highway between CDM and Laguna was covered, all the way up ~~to~~ the top of the cliffs, by contiguous housing. I had never seen this before and just about had a heart attack.

As to my erstwhile hometown itself, it's been destroyed; all the old "soul houses" (California Vernacular Beach Architecture) have been bulldozed and in their place have arisen what one writer for The New Yorker called "mansionettes", aircraft carrier-sized, butt-ugly joints that cover every square inch of their lots.

The foremost eco-terrorist in my area

is Donald Bren, head of the Irvine Co., who was once heard to say "I like to think of the land as my canvas". Well, someone should tell the schmuck that he's finger-painting over a Rembrandt.

In short, my sacred land has been sacrificed on the Altar of Mammon, whitey's one True God. What part of "enough" (to say nothing of "too much") don't they get? Why is "leave it alone" not even in their lexicon? This culture is in need of a huge spiritual overhaul.

My sister Gail put it best years ago when she said "Every native californian knows exactly how the Indians felt."

Gentlemen, I'm asking you to use your muscle to squelch this latest proposed atrocity and keeping them from destroying the Banning Ranch area, one of the few natural bits we have left.

Wopila (many thanks),

Norman Frahm of the Menominee Nation

1924 Beryl Lane
Newport Beach CA 92660

cCRPA **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

5-13-032

Del Arroz, John@Coastal

From: Sheila Pfafflin <spfafflin@gmail.com>
Sent: Saturday, June 08, 2013 3:57 PM
To: Del Arroz, John@Coastal
Subject: Banning Ranch -proposed development-negative impacts on 17th street

Dear Mr. Del Arroz:

Residents on the Westside of Costa Mesa (indeed, throughout Costa Mesa), are very concerned about the negative impact which the proposed development will have on our city. Among our concerns is the impact of allowing this development to have access to Costa Mesa by opening West 17th street to Bluff Road. West 17th Street is already heavily traveled east of Monrovia Street, and there is a new College on Monrovia, south of 17th, and a large condominium complex being built there which will add to the traffic. There are several mobile home parks located on or near 17th Street west of Monrovia Street, occupied largely by senior citizens. The increased traffic from this development is going to seriously degrade their quality of life, and may force some of them to lose the independence they now have. We therefore request that the proposed access to 17th Street from Bluff Road be deleted from the plan for the project.

Sincerely,

Sheila M. Pfafflin
1750 Whittier Ave., Sp. 42
Costa Mesa, CA 92627
(949) 646-3123
spfafflin@gmail.col

Kathleen Cray
405 Canal Street
Newport Beach, CA 92663

March 14, 2015

Honorable Andrew Willis and Coastal Commission:

The Santa Ana River historically flows from the San Bernardino Mountains to the sea. I think this "fact" helps explain the diversity of wildlife that is greater than Back Bay. For example, the cliff area and canyon area at Banning Ranch attract the cactus wren, many California gnatcatchers, coyotes, and monarch butterflies.

Every day I see endangered Belding savannah sparrows on my deck; I often see several, or flocks, of least tern flying over the savannah or fishing the waters. Eight baby Great-blue herons were hatched in the palm trees by the clubhouse six years ago. I have seen many king fishers, great terns, cooper hawks, red tail hawks, vultures, thousands of greater and snowy egrets, night herons, green herons, hundreds of Great blue herons, hundreds of pelicans, a few white pelicans, eight white swans flying with fabulous sound to the marsh. There are thousands of humming birds: anna's and allen's.

Following is a list of other critters/species I have seen while living on the canal for twenty-one years. (It would be interesting to get a survey of wild life seen by residents of Newport Shores and Sea Cliff: I am not an expert, just a joyful fan.)

1. Bullock's orioles
2. Owls
3. Bob cats
4. Frogs (especially March to July)
5. Turtles
6. Baby seals, and recently, three large seals
7. Many and different species of sandpipers
8. Many species of ducks
9. Many Pacific loons
10. Two golden eagles (one neighbor by the cliff has also seen them)
11. One peregrine falcon
12. Hundreds of cormorants
13. Plovers
14. American avocets
15. Grebes
16. Coots
17. Ravens
18. Black birds
19. Tanagers (cliff area)
20. Yellow finches (cliff area)

21. Many different kinds of sparrows and red finches (cliff area and everywhere)
22. Many single and paired osprey hunting over the savannah and pickle grass
23. Two osprey nests are built on the utility platforms (my neighbors and I have seen osprey nesting there)
24. Many Canadian geese
25. One Santa Ana sucker (endangered fish)
26. Many purple sea cows, muscles, clams
27. Thousands of anchovies
28. Small sharks
29. Too many crows (they eat eggs and baby birds)

Honorable Andrew Willis and Coastal Commission, please save the last piece of coastal open space in Orange County: it has a diversifying marsh, savannah, cliff area, and flat land with ancient flora and Indian artifacts (all of which are sacred to the Native Americans). The biggest plus is an adjacent that river that flows from the mountains to the sea.

Please vote "NO": no hotel, no impacted housing, and no strip mall.

Respectfully yours,

Kathleen Cray

Kathleen Cray

P.S. Please put up NO TRESSPASSING signs because people and dogs are invading and walking on the marsh, destroying habitat.

July 3, 2015

Dear Honorable Chair Kinsey, Commissioners and Staff,

Thousands of residents of the densely packed communities surrounding Banning Ranch share grave concerns about the impacts of the proposed development of the Banning Ranch site. Many of these impacts are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report (http://www.newportbeachca.gov/index.aspx?page=2096).

Despite the severity of the impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at huge risk. They will also result in the destruction of the Ranch's rare and finite natural resources.

Residents of Newport Beach, Costa Mesa, Huntington Beach, and beyond request your attention to the following concerns (partial list):

- 2.5 million cubic yards of soil must be excavated and stockpiled to prepare the land for development, exposing the public to unknown levels of toxins.

- Air pollution from construction and traffic will exceed state standards.

- Increased water demands for drinking, cooking, cleaning, landscaping, and general maintenance have not been adequately addressed.

- Greenhouse gas emissions will contribute considerably to the global greenhouse gas emission (GHG) inventory, impacting global climate change.

- TRAFFIC: 15,000 more car trips on our roads, daily!

- Noise, congestion and light pollution from traffic and other sources.

- Severe loss and destruction of habitat and wildlife.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely,

Constance Pescosolido
Newport Crest homeowner
1 Robon Court
Newport Beach, CA 92663

1929 Whittier Ave
Costa Mesa, CA 92627
July 3, 2015

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach CA 90802-4325

Dear Sir or Madam,

Please **do not support** the development of Banning Ranch in Newport Beach.

The only advantage to this project moving forward is money in the pocket of the developers.

There are many negatives to allowing this project to go forward.

To the people of Orange County this brings nothing positive. Nothing. I'm sure others have expanded on this topic, pointing out the amount of building and traffic and the complete ruin of this large and last expanse of land near the coast.

It will have a huge impact on wildlife.

I almost didn't write this letter, as it seems in all things those with the most money get to do what they want.

I am hoping that you will see the sense of blocking this project so that other, more reasonable directions will be taken.

Sincerely,

Terry Powell

1929 Whittier Ave
Costa Mesa, CA 92627
July 3, 2015

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach CA 90802-4325

Dear Sir or Madam,

Please **do not support** the development of Banning Ranch in Newport Beach.

The only advantage to this project moving forward is money in the pocket of the developers.

There are many negatives to allowing this project to go forward.

To the people of Orange County this brings nothing positive. Nothing. I'm sure others have expanded on this topic, pointing out the amount of building and traffic and the complete ruin of this large and last expanse of land near the coast.

It will have a huge impact on wildlife.

I almost didn't write this letter, as it seems in all things those with the most money get to do what they want.

I am hoping that you will see the sense of blocking this project so that other, more reasonable directions will be taken.

Sincerely,
Mike Powell
Mike Powell

California Coastal Commission
South Coast Division Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Banning Ranch CDP (application 5-13-0332)

Dear Coastal Commission Staff,

When I first became involved in saving Banning Ranch in 2006, the developers claimed that no vernal pools existed on the property. The developers known as Newport Banning Ranch (NBR) stated the only pool of water on the property was a man made hole that was originally used for softball for oil workers. Presently the NBR is claiming that vernal pools do, in fact, exist, however, several identified, proven vernal pool should be disqualified on the basis that the photographers or sources of are unqualified. It was because of these "amateur like" photos that the USFWS ordered surveys of six (6) of these vernal pools which proved the presence of San Diego Fairy Shrimp and thirty (30) with Versatile Fairy Shrimp.

Citing qualification standards such as "an exhaustive laboratory test" and then retaking the test to renew the certification is padding to their rejection of proven vernal pools. NBR refers to the vernal pools as "puddled areas" saying the photo does not gauge pool depth; however, NBR has continuously refused to survey vernal pools that were named. While the aerial photographs do not determine depth; instead they determine the exact locations. The aerial photos have been powerful in identifying and locating vernal pools; the pools existence was denied by NBR. Requests made to NBR to survey vernal pools after seasonal rain were denied. NBR disputes the existence of several vernal pools therefore will not admit the existence of San Diego Fairy Shrimp(SDFS). NBR should respond to this letter by guaranteeing access, immediately following rain, to inspect vernal pools that NBR is claiming are just puddles.

It is also believed that vernal pools have been filled in with soil as to cover them. Scrapes have been done to some vernal pools on Banning Ranch. One vernal pool, had the existence of SDFS, was scraped and then filled in. These vernal pools stand in the way of the developer's project and since the public is not permitted onto the property then the developers have been free to disturb pools.

Since 90% of California's vernal pools have been destroyed then the CCC must zealously endeavor to preserve existing vernal pools and rehabilitate damaged vernal pools on the Banning Ranch property and not let the developers dictate and determine what vernal pools exist.

Truly,

Christopher S. Bunyan
Banning Ranch Defenders, President
714.865.9746

California Coastal Commission
San Francisco/Long Beach, Calif

July 15/2015

RE: Banning Ranch Proposed Development Newport Beach

Dear Commissioners:

Based on the following, please vote NO on the proposed development of Banning Ranch.

A 2006 voter approved General Plan calls for preservation of Banning Ranch.

Open space extinction of an environmentally sensitive habitat area will threaten wildlife species, coastal wetlands and vernal pools, each anathema to the Coastal Act.

The proposed development would impair or destroy the untouched and sculpted coastal bluffs, the abundant wildlife and adjacent wetland, where the Santa Ana River enters the Pacific.

Banning Ranch's 400 acres represents 3/100 of 1% of Newport's 15 million land acres. Yet, for what can only be described as a craven demand for money, Newport's Planning Commission voted to render this last remaining open space extinct in favor of 1,375 homes, a hotel and a commercial center.

The EIR documents the traffic, noise, crowds and substantial impact on wildlife but no regard is given the impact on residents and visitors denied the priceless value of open space.

A cue should be taken from the Irvine Company who recognizes land as a resource for the benefit of the public by devoting 60% of their 93,000 acres to open space.

The drought should make any responsible person reconsider developing every last acre.

Memorial Day, July 4th and Labor Day traffic, congestion and thrill seekers already make the area uninhabitable for many residents. The burden added by the proposed development will subject the 7 intersection area of Newport Beach/Costa Mesa to becoming an unthinkable Ft Lauderdale or Daytona Beach.

Third District Supervisor Todd Spitzer has it right, the great quality of life we enjoy in Orange County stems from those who had the foresight to value open space as much as development.

Does anyone ever regret the efforts to preserve open space?

Thank you

FM Booth
314 62nd St
Newport Beach, Calif.

Richard Alexander
347 Vista Baya
Costa Mesa, California 92627
rich@richalex.net
(949)722-7889

California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, CA 94105-2219

Subject: Proposed development of Banning Ranch

To the Coastal Commission:

The Banning Ranch has been an oil-drilling site for years and years, including back to when environmental awareness what of no concern. And even since then, enforcement of environmental laws has been lax. It is certain the property has been subjected to a wide variety of environmental destruction, and contains tons of un-remediable toxic waste.

The development proposed for this property requires upheaval of a large amount of dirt that is best left undisturbed.

I'm not opposed to development. I am opposed to the magnitude of this proposed development because of the excessive amount of earth-moving it requires on land that is guaranteed to be toxic.

Yours truly,

Richard Alexander

cc:
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

ORANGE COUNTY
COASTKEEPER.
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.Coastkeeper.org

September 24, 2015

Amber Dobson
Coastal Program Analyst
California Coastal Commission
South Coast Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Comments on Banning Ranch Water Quality Management Plan

Dear Ms. Dobson,

Orange County Coastkeeper ("Coastkeeper") is a nonprofit clean water organization with the mission to protect and promote sustainable water resources that are swimmable, drinkable, fishable and sustainable. Coastkeeper does not take positions supporting or opposing development projects, so our comments on this project focus on the potential water quality impacts and the project Water Quality Management Plan. After meeting with the project engineers on two occasions and reviewing the documents related to water quality for the Banning Ranch Coastal Development Permit, we have the following comments:

1. The proposed BMPs for the built areas of the development are appropriate. They eliminate dry weather runoff from the project and capture and treat storm water from a typical storm event. The reuse of stormwater for irrigation is an example of what should be required of all new projects in California.

2. We are concerned that the project does not treat run-on to the property at the Northern Arroyo and from the storm drain outlet from the adjacent condominium project. The run-on in these areas should be treated to reduce pollutant loads and erosion impacts on the Banning Ranch property. We were told by the project engineers that the agencies did not want any treatment BMP to be located on the ESHA area. It is our opinion that appropriately sized treatment BMPs would occupy a very minimal footprint and the benefits of treatment would far exceed the loss of any ESHA. A treatment BMP could be below ground and require maintenance only once annually.

3. During the oilfield remediation process, the project is proposing to use a detention basin built to contain a ten-year storm event for their main soil bioremediation and stockpiling area. Given the nature of the contaminated materials that the basin is meant to capture we think that is sized too small. We suggest that the Commission require a basin that can contain a twenty-year storm event at a minimum. Keep in mind that our typical rain events

can occur in the form of a 5-year storm event each day for several consecutive days. A sized basin for a twenty-year rain event would provide better assurance the basin would not be overwhelmed with both storm water and sediment.

4. During the oilfield remediation process, the project is also proposing to stockpile contaminated soil at a location very near the ACOE wetlands area. We suggest that the Commission require that no soil is stockpiled in this area during the wet season to avoid contaminated soil being washed into the wetlands during storm events.

In closing we believe that the development proposes well designed BMPs for the built areas. The project needs to address the run on in the north part of the site and improve BMPs used for the oilfield remediation. Coastkeeper is always concerned with the accumulative impacts of development to a wetland. We ask the Commission to provide the maximum protection to these areas. Thank you for your consideration of our views.

Regards,

Garry Brown
Executive Director
Orange County Coastkeeper

Dobson, Amber@Coastal

From: Ted Mumm <ted@3mumms.org>
Sent: Wednesday, September 23, 2015 12:54 PM
To: Dobson, Amber@Coastal
Subject: Banning Ranch Application, Newport Beach

California Coastal Commission
45 Fremont Street,
Suite 2000
San Francisco, CA 94105

September 23, 2015

RE: Banning Ranch Proposal, Newport Beach
Meeting of Wednesday, October 7, 2015
Agenda Item 9b: Application No. 5-13-032 (Newport Banning Ranch, LLC, Newport Beach)

Honorable Commissioners:

I am a private citizen who has lived in Newport Beach since1969.

I'm writing to you today to plead with you to **deny** the above application.

There is so little natural space left in our community, the outright destruction of this last bit of wildlife habitat would be a devastating tragedy.

Additionally, its noise, pollution, traffic and overcrowding would diminish our quality of life.

We citizens voted overwhelmingly for the General Plan back in 2006, which states in the Land Use Element, "Prioritize the acquisition of Banning Ranch as an open space amenity for the community and region -----".

We wanted the area to be maintained as a natural preserve for the abundant and endangered wildlife currently living there, and as a natural park for future generations to enjoy.

Instead, this huge, unwanted and unnecessary development and has been crammed down our throats.

Now you are our only hope.

Please deny the above Application not only for the good of the City of Newport Beach but also for the memory of what our glorious coast used to be, and even more for the Gnatcatchers, the Coastal Cactus Wrens, the Burrowing Owls, the Vernal Pools of San Diego Fairy Shrimp, and for all the other wildlife, endangered or not, who call Banning Ranch their home.

Sincerely,

Carl Mumm
319 Cedar Street
Newport Beach, CA 92663

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report

(http://www.newportbeachca.gov/index.aspx?page=2096).

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

- Banning Ranch is the only remaining large unprotected coastal open space in Orange County. When it's gone, it's gone forever.

- 2.5 million cubic yards of soil will be excavated and stockpiled to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.

- The destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—none of which is allowed by the Coastal Act.

- ONGOING RECORD DROUGHT: the Project's water demands will place a significant burden on our scarce water supply, increasing water shortages.

- Where's the water coming from? The Project's Water Supply Assessment Report is flawed and outdated by its own admission.

- TRAFFIC: 15,000+ more car trips on our roads, daily! Expect double and triple commutes, gridlocked intersections.

- POLLUTION: Air pollution from construction and traffic will exceed state standards.

- POLLUTION: Noise from traffic and other sources will double allowable noise thresholds.

- POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely, Susana Guerrero

Susana M. Guerrero
8554 Catalina Ave.
Whittier, CA 90605

Ronald E. Frankiewicz
950 W. 19th St.
Costa Mesa, CA 92627

Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

Dear Honorable Chair Kinsey, Commissioners and Staff,

I really am not sure what the duties of the Coastal Commission are. As I see more massive developments along the coast (Newport Beach, Huntington Beach, etc.) I am concerned that we are losing our coast. Now Banning Ranch comes around to add a massive development to the last remaining Coastal stretch in Orange County. I am just an individual who will be impacted by the development, along with the wildlife habitat and local fauna. However I know it is hard to get the ear of you commissioners. It seems the developers have you ear but please listen to the silent majority of people that truly want to protect this last remaining bit of coastal property.

The massive scale of the project will increase air & water pollution, stretch our water supplies and release dangerous contaminates into the air.

Many people work thus cannot always be at the Coastal Commission meetings that at times are far away from us. Please note that the developers can attend these meetings because they are paid to do so.

I wish we could get the Nature Conservancy involved to help protect this land because I am in fear that you will let it be destroyed. Please do not allow this to happen.

Thank you.

Ron

Ron Frankiewicz
949-233-3656

California Coastal Commission
Long Beach CA

Sept. 17, 2015

Dear Honorable Chair Kinsey, Commissioners, and Staff:

I am opposed to the Banning Ranch Development approved by the City of Newport Beach for many reasons I'm sure you have heard before: loss of open space, destruction of endangered species habitat, water scarcity, pollution and noise, etc. (We should be re-thinking all new development in Southern California because of the drought.) However, because I live on the Balboa Peninsula, my primary concern is traffic. With 1375 homes times 2 cars each that's 2750 cars that will be using Pacific Coast Highway. Then add the hotel and a school and there will be a big traffic jam on PCH. And in parts of PCH in Newport Beach there is no way to widen the road without the cost of massive relocation of businesses.

The other thing that concerns me is that the City of Newport Beach, in their zeal to build an unnecessarily big City Hall, approved this supposedly income-producing project in violation of our recently adopted General Plan.

Please deny approval of Banning Ranch Development.

Sincerely,

Elaine Sinkoff
1760 E. Ocean Blvd.
Newport Beach CA 92661
949-673-6037

1893 Parkview Circle
Costa Mesa, CA 92627-4536
Phone: (949) 642-2841
email: mamalili@pacbell.net

September 19, 2015

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

Re: Banning Ranch proposed development project

Dear Honorable Chair Kinsey, Commissioners and Staff,

My husband and I own our home on Parkview Circle, Costa Mesa, one of the locations singled out in the Banning Ranch development project EIR as particularly affected by the adverse impacts of the proposed project. If this project is approved as proposed, my home and all my neighbors' will be rendered uninhabitable by toxic dust and other emissions from the project site for at least 10 years, and probably longer. Ours is a long-established neighborhood. This project would make our million-dollar homes worthless, and where would we go?

Please don't approve this project unless it is very greatly modified to protect public health and safety. Please don't drive us from our homes, and don't let development dollars overwhelm your concern for the public whom you serve, and your own sense of decency.

Sincerely yours,

Eleanor M. Egan

Eleanor Egan

★Costa Mesans For RESPONSIBLE GOVERNMENT

September 20, 2015

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Honorable Chair Kinsey and Coastal Commissioners,

Thank you for taking the time to read this letter.

Costa Mesans for Responsible Government is a grassroots organization of Costa Mesa residents who are concerned with issues that affect our quality of life. We have watched the planning process for Banning Ranch and respectfully offer the following comments:

We ask you to please deny the Coastal Development Permit and instead, please offer your support to protect and preserve all of Banning Ranch as open space of Southern California Coastal Scrub. It is a very special place with unique environmental features. If the Coastal Commission supports preservation of the whole property as open space, it will be your legacy to posterity.

Please note there are no acceptable solutions to the traffic problems and resulting air quality impacts this development would cause Costa Mesa. As you know, CAL-TRANS denied traffic access to Coast Highway in Newport Beach. This means all the traffic will be routed through Costa Mesa. Costa Mesa is already dealing with congestion severe enough to delay emergency response times at intersections that would be significantly affected by the proposed project. It would exacerbate intersection ratings that are already near or at technical failure.

There is no reasonably feasible mitigation. In layman's terms, "Significant and unavoidable" often translates into "Just deal with it!". The Banning Ranch proposal

may well provoke extreme measures like seizing private property to widen streets, which would be devastating to Costa Mesa property owners and residents.

Also unacceptable are negative impacts on human beings from toxic dust generated by clean-up of the contaminated oil fields. As you know from the environmental analysis, there are hazardous chemicals and carcinogen particles that would become part of the air we breathe. The condition would exist for a long period after excavation and have persistent negative health impacts on residents from seniors to infants. Particles will settle on land and buildings, then be stirred up again when strong winds blow or the soil is disturbed. Our area is visited by frequent Santa Ana winds.

For these reasons, and many others that have been factually and eloquently communicated to you by others, we respectfully ask you, as a Coastal Commissioner, to support actions that will preserve all of Banning Ranch as open space for generations to come. Please deny the application for a Coastal Development Permit. Instead, pave the way for a conservation or environmental group to purchase the land and protect and preserve forever this little bit of amazing California Coastal ecology.

Thank you for your time and attention,

Robin Leffler

Robin Leffler
President
Costa Mesans for Responsible Government

April 27, 2015
Mr. Karl Schwing
Ms. Amber Dobson
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Dear Mr. Schwing and Ms Dobson,

According to the City of Newport Beach's own assessment, the development being proposed for Banning Ranch will require 613.6 acre feet of water per year. (reference: Newport Banning Ranch EIR, Table 4.1 Newport Banning Ranch Water Supply Assessment). That's about 200 MILLION gallons of water per year – every year!

Meanwhile, because of the drought, the City and the State are poised to mandate a 32% cut in Newport's water use, up from the 20 % cut we are absorbing now. We have been told to cut our home landscape watering to 2 days a week. We agree that this mandate is essential and think it's the right thing to do.

Some of us wonder, though. Why would we proceed with this water guzzling project consisting of 1375 homes, a 75 room hotel, a shopping center, and an active sports park while we are in the middle of the worst drought in California history? Will all the water the residents are able to save just be handed over to developers?

What message does this send to residents who are struggling to make these necessary cuts in water use?

Andrea Lingle
Andylingle@gmail.com

CCRPA **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.

September 15, 2015

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105

Honorable Chair Kinsey, Commissioners and Staff:

We are writing to express our concerns regarding the proposed Banning Ranch project in the City of Newport Beach. Banning ranch is the only remaining large unprotected coastal open space in Orange County. As such it not only contains important natural resources but significant archaeological sites. To date 90 percent of all coastal archaeological sites in Orange County have been destroyed due to development. At one time 11 archaeological sites were recorded within the Banning Ranch project area. Today only three have escaped total destruction due to oil field development, CA-ORA-839, CA-ORA-844B, and CA-ORA-ORA-906. These sites have been determined eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR), and under AB 52 (effective July 1, 2015), meet the criteria as Tribal Cultural Resources. If this project is approved they will be destroyed by the development including ground disturbing activities associated with planned removal of oilfield-related infrastructure.

In the past it was considered appropriate to "mitigate" significant archaeological sites through archaeological excavations to recover scientific data. AB 52 was passed in recognition that archaeological sites have cultural and religious values for Native American descendants and these values cannot be mitigated through archaeological excavations. It establishes that a project that may cause a substantial adverse effect to a tribal cultural resources is a project that may have a significant effect on the environment and requires the lead agency to consult with any California Native American tribe that is traditionally and culturally affiliated with the proposed project. This has not happened.

As a professional archaeologist, I am concerned with the cumulative losses of significant archaeological sites. Archaeology as it is practiced today is a destructive process and the public gets no benefits from the archaeological excavations designed as mitigation prior to total destruction. Most important, Native American descendants consider the cumulative losses of their ancestral sites to be akin to cultural genocide.

The three remaining archaeological sites are all that is left of an important prehistoric settlement that has cultural and religious values for Native American descendants and can provide important information to be retrieved by archaeologists in the future using non-destructive technology. This makes it all the more important that they be protected and preserved.

CCRPA 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.

Given the losses of open space, and natural and cultural resources in coastal southern California, we add the cultural values to the natural values that are in need of protection at Banning Ranch and urge the Commission to reject the proposed development. A preservation-focused use of the property would be respectful to Native American descendants, and extremely beneficial to the public and future generations.

Sincerely,

Patricia Martz, Ph.D.
President

September 16, 2015
Via Electronic Mail

RE: Newport Banning Ranch

Dear California Coastal Commission,

I write to you today as a concerned environmental law student, surfer, and lifelong resident of Newport Beach. After spending a summer assessing water quality plans for public interest litigation, I was disturbed to read what is planned for Banning Ranch. I urge the California Coastal Commission to stay true to its mission of defending California's coastal area through the upholding of the Coastal Act, and to reject Newport Banning Ranch's (NBR's) plan to pollute our wetlands, the Santa Ana River, and the receiving waters of the Pacific Ocean.

In this letter, I describe in detail Newport Banning Ranch's (NBR's) plan to use the wetlands habitat, and then the Santa Ana River, as a dumping ground for NBR's polluted runoff. NBR also plans to grade the wetlands habitat in order to allow the runoff to more effectively drain into the Santa Ana River. Even worse, NBR's plan to remove over a football field full of oil-contaminated dirt from the project site means that toxic, oily runoff from this excavation will also be diverted to the wetlands, Santa Ana River, and nearby beaches. This water quality plan needs a serious revision that involves infiltration basins and containment polluted water on site.

NBR's proposed plan most likely violates Coastal Act Section 30231 on biological productivity and water quality. NBR's project will increase polluted runoff, which threatens "the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health".[1] In addition, NBR's failure to keep its polluted runoff on site means that it is not "minimizing adverse effects of waste water discharges and entrainment, (and) controlling runoff".[2] Finally, NBR's plans to use Environmentally Sensitive Habitat Area (ESHA) wetlands as a water quality management area is not "maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams", and instead is a plan to actively destroy ESHA wetlands.[3] Therefore, I ask that the California Coastal Commission protect the biological productivity and water quality of the Banning Ranch ESHA wetlands, the Santa Ana River, and the receiving waters of the Pacific Ocean by upholding the Coastal Act and rejecting NBR's destructive water quality plan.

I. Increase in Polluted Water Sent to Wetlands

Although urban runoff currently flows to Banning Ranch's wetlands, NBR's proposal will send more polluted water there. NBR's major water quality Best Management Practice (BMP) is a proposed 5-acre Diffuser Basin in the wetlands habitat area. This has been identified as ESHA habitat. Therefore, water quality management is not allowed under

[1] California Coastal Act § 30231.
[2] Id.
[3] Id.

the Coastal Act.[4] This diffuser basin will effectively use five acres of wetland as a detention basin before the runoff drains into the rest of the lowland wetlands, the Salt Marsh, the Santa Ana River, and the Pacific Ocean.[5] Since this water quality management will not involve an infiltration basin, but will only be a diffuser/detention basin, it is likely that much of the released water will still be polluted by urban runoff from the project site and the surrounding neighborhoods. This is because detention basins are not designed to remove all pollution from runoff, but are designed instead to help with flood control.

In addition, NBR wants to grade the lowland wetlands in order to facilitate tidal circulation and increase flood control capacity.[6] This means that the storm water entering the diffuser basin will go into the wetlands and then enter the tidal circulation. This will cause pollutants from the developed area to enter the Salt Marsh, Newport Slough, and the Santa Ana River more quickly than would currently occur.

NBR responded to Orange County Coastkeeper's concerns about using the wetlands as flood control by arguing that since urban run-on currently enters the wetlands, there would be no net change after NBR's development and BMPs. However, the proposed development will change the developed part of the project site from 10% impervious to 65% impervious, which will result in more urban run-off and pollution than currently exists.[7] Since there are no infiltration basins planned for the developed area, this means that polluted water will enter the diffuser basin and then the wetlands.

NBR is considering building a water quality basin at the end of 16th Street to limit off-site flows into the project site. However, NBR admits that the proposed water quality basin at 16th Street would not stop all run-on from entering the project site.[8]

II. Oil-Contaminated Runoff from Excavation

NBR estimates that 182,000 cubic yards of oil-contaminated soil will have to be remediated during the construction phase of the project.[9] This soil will be watered down to avoid dust, which may create contaminated run-off. Given that moving this amount of soil will take a substantial amount of time, it is likely that some of it will run off during rains or watering down. Since there are no infiltration basins, this means that oil-contaminated run-off will enter the wetlands and the Santa Ana River. There is no acceptable amount of oil pollution under the Clean Water Act Construction Permit, so this may constitute an oil spill.

In addition, NBR plans to move 900,000 cubic yards of cut and fill for mass gradings and 1,455,000 cubic yards of soil for remedial grading. This will likely take years to complete. Since there will be no infiltration basins, sediment run-off levels could be high during construction. The final destination of this sediment-laden storm water would be the wetlands and Santa Ana River. It is therefore likely that the wetlands habitat would suffer from the increased turbidity and sediment.

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[4] Newport Banning Ranch, "Response to California Coastal Commission: Notice of Incomplete Application" November 8, 2013, pg. 31.
[5] Newport Banning Ranch, "Storm Water Pollution Prevention Plan", January 28, 2015, pg. 9.
[6] Newport Banning Ranch, "Draft Watershed Assessment Report", August 1, 2008, pg. 20.
[7] Newport Banning Ranch, "Storm Water Pollution Prevention Plan", January 28, 2015, pg. 13.
[8] Newport Banning Ranch, "Preliminary Water Quality Plan", February 3rd, 2012, pg. 29.
[9] Newport Banning Ranch, "Remediation Action Plan: Newport Banning Ranch Oil Field Abandonment", February 18, 2015, pg. 25.

Thank you for taking the time to read my letter and to re-assess NBR's deficient water quality plan. I know that the California Coastal Commission will follow its guiding mission and the policies of the Coastal Act, and reject NBR's plan in order to protect Newport Beach's wetlands, the Santa Ana River, and the Pacific Ocean.

Sincerely,

Robert Moddelmog
J.D. Candidate, Class of 2017
University of California, Irvine School of Law
robertmoddelmog@gmail.com

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

September 7, 2015

VIA ELECTRONIC MAIL

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
amber.dobson@coastal.ca.gov

RE: Banning Ranch Coastal Development Permit, Newport Beach (October 7-8, 2015)

Dear Chairperson Kinsey and Members of the Commission:

Endangered Habitats League (EHL) urges denial of this permit application. For your reference, EHL is Southern California's only regional conservation group.

While additional conflicts with the Coastal Act are present, we wish to focus on inconsistency with Environmentally Sensitive Habitat Areas (ESHA) requirements. On-site resources on the mesa that qualify as ESHA (or coastal seasonal wetlands) include:

- The vernal pool complex, and supporting watersheds
- Burrowing owl burrows and foraging area to support the 1 - 3 wintering pair
- Coastal sage and cactus scrub, particularly that used by the California gnatcatcher or cactus wren for nesting and foraging
- Purple needlegrass
- Least Bell's vireo use areas

The proposed project footprint shows substantial direct overlap and/or indirect impact via edge effects with these ESHA resources. Yet, *avoidance* is required unless the proposed use is resource-dependent, which this project is not. Furthermore, balancing tests between Coastal Act purposes are not applicable here. The Banning Ranch complex of coastal wetlands and sensitive uplands at the mouth of the Santa Ana River is of great importance to the California coast and merits the full benefit of ESHA protections.

Thank you for considering our views.

Yours truly,

Dan Silver
Executive Director

Dobson, Amber@Coastal

From: anne polkingharn <annep@cox.net>
Sent: Friday, September 11, 2015 12:58 PM
To: Dobson, Amber@Coastal
Subject: Banning development from anne and don polkingarn

September 11, 2015

We strongly oppose the development of the Banning Ranch and especially the consequences of 1375 homes and a resort hotel.

We have been friends with the entire Banning family for over 45 years and they never would have wanted such dense use of this land. The environmental, traffic, and visual distraction of such development would add to an already congested area.

Thank you for studying this proposal and seeing the consequences.

Anne and Don Polkingharn

annep@cox.net

The Dangers of the Proposed Banning Ranch Roads

Dear Amber Dobson and Karl Schwing:

I listed my home that adjoins Banning Ranch for sale this summer and everyone who saw it, loved it. They said it is one of the nicest remodeled homes they've seen in the area, but no one made an offer. They said it was because of the uncertainty of the development. So, I cancelled the listing and, by default, I say that I am now an "investor" in Banning Ranch, but with no opportunity for a share in the profits. *(Those of us who live on the perimeter should be compensated by the developer if they proceed. I estimate my losses will be in excess of $300,000.)*

I understand the incentive for the developer and the City of Newport Beach. Each stands to gain a lot of money. The developer turns a $30 million dollar liability into a $1 billion gain and the city gets a new revenue stream to fund their fairy tale salaries and life-time benefits. They don't live here and have demonstrated that they don't care about the negative consequences. Overall, they have been deceitful and dishonest, but they can't hide the fact that Banning Ranch is mostly land-locked and the access roads can't support a development and certainly not one of this magnitude. There are zero access options from the entire northern border to Huntington Beach and to the south/west facing PCH. These areas are blocked-off by the aqueduct, the wet lands, active oil fields, and the Newport Shores neighborhood. Their only option is to extend the small access roads to the east, 15th, 16th, 17, and 18th Streets. And to the south/west, there is only one possible access location onto PCH, which is dangerously close to the intersection of Superior Blvd.

For 12 years now, I've been attending these Banning Ranch meetings hosted by the city and the developer. I have many thoughts and anecdotes to share, but will tell you of the one that I think is most revealing of the climate. Several years back, I attended a meeting hosted by a traffic congestion consultant hired by the City of Newport Beach who did a comprehensive analysis of the impact, if developed; Banning Ranch would have on Newport Beach and Costa Mesa cities. He proceeded to show slides of the before and after impacted "choke points." It was no surprise that all the main intersections had dramatic increases in car traffic congestion. So I asked two questions. The first question was about the Superior Blvd. and 17th Street intersection in Costa Mesa. If you know the area, 17th Street is a key route we use to zig-zag our way to the 55 Freeway. When I commented about that particular intersection, he mockingly said, "That's Costa Mesa's problem." He had nothing to say, when I replied, "But we all have to drive that way." My next question was a follow-up, "What impact did your study have on the designs of the development?" His reply was, "No impact."

15th, 16th, 17, 18th Streets are low capacity roads that have to be accessed through several zig-zags. 15th Street in particular would have to be squeezed between the new Junior College and Kobe Bryant's commercial building which is so tight; they will need to confiscate and pave over the north end of Kobe's parking lot! This isn't just a poor idea; it's mean, but not nearly as bad as the PCH proposal. There, people WILL get hurt. Stand at the intersection of PCH and Superior and observe your average weekend beach traffic and the thought of adding a new traffic light is insanity. And if they don't go all the way through the divided highway and just do an entrance road, everyone coming or going will eventually be required to make a U-Turn. This is a pile of law suits just waiting to happen. BTW, that proposed road entrance location on PCH is a 50 mph speed zone, with a bike lane and a bus stop.

A few other comments:

1. Because of the wet lands, arroyos and active oil activity, the majority of Banning Ranch land is usable for development. Yet the developer was always promising "50% open space." I always found that line sleazy.
2. The soil is carcinogenic and will be weaponized once airborne. The steady ocean breeze will send this toxic cloud inland into densely populated communities.
3. The development design is so mid-20th century. With all that we know today, it is so disappointing that these professional city planner are proposing new roads leading to more on-the-grid buildings.

Please call if you would like to discuss anything further (925) 408-5595

Robert Orbe

14 Goodwill Court

Dobson, Amber@Coastal

From: Darrylin Girvin <dkgirvin@verizon.net>
Sent: Saturday, September 12, 2015 3:51 PM
To: Dobson, Amber@Coastal
Subject: Banning Ranch Conservancy

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report

(http://www.newportbeachca.gov/index.aspx?page=2096).

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

- **Banning Ranch is the only remaining large unprotected coastal open space in Orange County. When it's gone, it's gone forever.**

- **2.5 million cubic yards of soil will be excavated and stockpiled to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.**

- **The destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—none of which is allowed by the Coastal Act.**

- **ONGOING RECORD DROUGHT: the Project's water demands will place a significant burden on our scarce water supply, increasing water shortages.**

- **Where's the water coming from? The Project's Water Supply Assessment Report is flawed and outdated by its own admission.**

- **TRAFFIC: 15,000+ more car trips on our roads, daily! Expect double and triple commutes, gridlocked intersections.**

- **POLLUTION: Air pollution from construction and traffic will exceed state standards.**

- **POLLUTION: Noise from traffic and other sources will double allowable noise thresholds.**

- **POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.**

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and

unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely,

Darrylin Girvin

1216 Glenneyre St.

Laguna Beach Ca. 92651

Additional references:

City of Newport Beach EIR, Section 4.6.7, Biological Resources, Environmental Impacts

City of Newport Beach EIR, Section 4.9, Transportation and Circulation

City of Newport Beach EIR, Section 4.10, Air Quality (Table 4.10-7 Estimated Maximum Daily Construction Emissions: Unmitigated)

City of Newport Beach EIR, Section 6.0, Long Term Implications of the Proposed Project

NEWPORT CREST
NEWPORT BEACH

September 11, 2015

Via Email and U.S. Mail

Chairman Steve Kinsey and Honorable Commissioners
c/o Mr. Karl Schwing, Orange County Area Supervisor
California Coastal Commission
220 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Ms. Amber Dobson, Coastal Program Analyst
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Newport Banning Ranch Project – Application 5-13-032

Dear Coastal Commissioner Chair Kinsey, Commissioner and Staff,

The Newport Crest Homeowners Association Board of Directors represents 460 condominium owners. Our community is located immediately adjacent to the proposed Banning Ranch development, bordered on the west, southwest and eastern perimeters.

Should the Banning Ranch project be approved, we are very concerned with the impacts on Newport Crest residents such as, but not limited to, air pollution, noise, traffic, lighting, and impacts to our overall quality of life during the 10 year development period which includes demolition, excavation, soil remediation on site, grading, construction and ongoing impacts after the project is completed.

The mitigation or elimination of these impacts through special conditions is required for the Commission to find the project consistent with the California Coastal Act. For example, the close proximity to Newport Crest of the extension of 15th Street is of great concern to us since it runs parallel to our property at a distance of less than 100'. Elimination of 15th Street to Bluff Road from the project would eliminate both the road's possible impacts to ESHA as well as its adverse traffic, congestion and air quality impacts on Newport Crest and other local residents. We urge staff to recommend removal of the proposed 15th Street extension.

HOMEOWNERS ASSOCIATION
210 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433
www.NewportCrest.org

NEWPORT CREST
NEWPORT BEACH

The Banning Ranch project will also require mass grading resulting in the movement of thousands of cubic yards of sediments. Even if all of this dirt is retained on-site, grading will require the use of large diesel trucks that emit harmful diesel particulate matter, exposing Newport Crest residents to harmful airborne sediments. Considering the long history of oil exploration on the Banning Ranch site, the potential spread of toxic contaminants is a major concern to our resident's health. Minimization of grading at Banning Ranch and the imposition of enforceable conditions regarding the testing of airborne contaminants is required.

Similarly, the project proposes lighted sports fields. Maintaining the sports fields but eliminating the night lights would greatly reduce negative impacts on Newport Crest. Otherwise, special conditions limiting the direction, intensity and hours of use would provide some measure of protection for the quality of life for nearby residents.

We believe the health and well-being of our Newport Crest community will be at risk should this project proceed. Mitigations for our concerns need to be addressed. We are asking the Coastal Commission to take our concerns into consideration when you deliberate the scope and impact of the project on our community.

This emailed copy will be followed by a hard copy with original signatures of the Newport Crest Board of Directors.

We request notice of any changes in the proposed hearing date and location.

Please feel free to contact us if you have any further questions.

Sincerely,

Mark Gonzalez, President

Ginny Lombardi, Vice President

Sharon Boles, Secretary

Mike Rosenthal, Treasurer

June Palomino, Member at Large

HOMEOWNERS ASSOCIATION
210 Intrepid Street · Newport Beach, CA 92663 · 949.631.0925 · Fax 949.631.5433
www.NewportCrest.org

SOME INFORMATION ABOUT THE RESIDENTIAL AREA ADJACENT TO THE BANNING RANCH PROPOSED PROJECT FROM A CONCERNED RESIDENT

LIVING AND WORKING - LOCATION

- There is a public elementary school and several housing tracts, located right on Whittier Blvd, the shared border of West Costa Mesa and the proposed Banning Ranch development.

- On that same street there are several mobile home parks, 55 +.

- One block away, on Monrovia St., there is another elementary school, a community college and a large senior residence.

- On Pomona, two blocks from Monrovia, there is yet another large senior residence, and another elementary school, as well as the senior center.

- Hoag Hospital, a major Orange County health facility is located a mile and a half from Banning Ranch.

- Whittier, Pomona, 17th, 18h and 19th Streets are two lanes, needing parking on both sides of the street for residents and the many existing businesses.

PEDESTRIANS & BICYCLES & TRAFFIC

- This immediate area has a huge pedestrian population.

- The intersections at 19th and Placentia, 18th, 17th and Placentia, 16th and Placentia, as well as their intersections at Harbor and Newport Blvd, are high impact intersections. The intersection at Superior and Placentia is almost impossible to cross. After nearly being hit crossing, I don't even try anymore. Newport and 19th is where the CA 55 freeway ends, unloading traffic going east, west and south. Old Newport runs parallel to the 55, and also unloads at the corner of 19th and the 55. Trying to cross at this intersection is horrendous and dangerous. At rush hour, it's a parking lot.

- Families walk their children to and from school, as well as to the two shopping centers within two and three blocks of Costa Mesa's shared boundary with Banning Ranch.

- Seniors and handicapped people commute around the immediate area by walking or using other adaptive motorized vehicles.

- Many people commute to and from work by walking or riding bikes and skate boards.

- Because of a brain injury due to a stroke, my main mode of transportation is walking on these "connecter" streets. I'm on these streets at least 5 times a week.

- The traffic is heavy, loud, giving off much exhaust, and is pretty much in your face.

- Crossing the intersections is difficult. The whole pedestrian community I mentioned, as well as the cyclists deal with this traffic situation on a regular basis.

- Because the streets are fairly narrow, it is inconceivable that we pedestrians would be in a safe environment if we have to deal with the 15,000 or so, extra car trips the Ranch will dump on the Costa Mesa "connector" streets.

- If you consider the 6 or 7 new housing projects just erected within this same area, i.e. Placentia, 16th, 17th and 18th Sts., that 15,000 extra car trip estimate will skyrocket. More developments are planned for this same area.

EMERGENCY VEHICLES/PREPAREDNESS

- Because the proposed connector streets are narrow, two lane streets, with parking on both sides of the street, and the intersections are already congested, it calls into question the ability rescue vehicles would have negotiating the area in an emergency.

- The West Side and the Banning Ranch sit on the Newport Inglewood Fault, so a major emergency in our area is not an "if; it is a "when." The latest information on the Newport Inglewood fault is that it is leaking helium gas, which is being released from the fault which extends through the earth's crust to and perhaps through to the earth's mantel. And it is capable of generating a magnitude 8 quake. Emergency Vehicles must be able to negotiate passage, and that will not happen if the proposed development is built.

DETRIMENTAL EFFECTS OF PROPOSED BANNING RANCH

Air Pollution

The pollution that will be released to the atmosphere during the proposed development is well documented.

- Because we have a wonderful ocean, on shore and off shore breeze, the poisonous, chemical pollution released by the construction on the proposed oil well Ranch site, will be disseminated, not only throughout West Costa Mesa, but also to our neighboring cities.

- Our lives will be grievously affected by the generated, poisonous pollution.

- We seniors and the children may even die from it. If the deleterious effects don't show up in the children immediately, they will show up in the future. Stronger adults are not immune to the poisonous effects of pollution.

- Mothers breathing in mercury, one of the chemicals reported to be released are likely to pass it on through nursing to their newborns. Respiratory illnesses, as well as cancer are on the table.

Temperature

- The vegetation of the Banning Ranch provides a cooling effect to the atmosphere, concrete, blacktop, and structures raise the temperature of the surrounding atmosphere.

- We need the air purification that the plant life Banning Ranch area provides, we need the water it absorbs, and we need its cooling effect.

- The ecological web at the Banning Ranch is vast. History has shown that destroying webs has unpredictable bad effects, either immediately or in the future.

Wildlife

- The coyote packs, raccoons, skunks, possums, snakes ,birds, butterflies, insects, humming birds, hawks, vultures, Great White Egrets, Heron, and other animals will be displaced. Where will they go?

- Our neighbor cities, Huntington Beach and Seal Beach have serious coyote problems. Coyote intrusion into populated areas has become a major issue in Orange County. Small dogs are snatched off of leashes, as coyotes are in the neighborhoods. Two coyotes attacking a dog in a fenced yard, jumped over a 13 foot fence when the dog's owner came out to the yard. Thank goodness it wasn't his children. Residents in Huntington Beach see coyotes going through the parking lots of shopping centers.

    - At present, our coyote population is pretty much contained in the Banning Ranch and Talbert Preserve open space where there is still an ecological balance that supports them, and, therefore, keeps them out of residential developments.

- Since our animal populations are provided for by the Banning Ranch and the adjoining Talbert Preserve. Destroying their habitat will drive them into the neighborhoods we live in, and will have long lasting effects on all of us, which are not going to be good for them or us. These effects may never be remedied.

- A natural environment adds to the health and welfare of the community as well as the planet. The health is spiritual as well as physical. People seek it out to refresh and renew their lives.

- Our country has a history of what ignorant use of the land has done to its citizens as well as our water and air. We need to use our land intelligently to benefit those who live on it now and who will live on it in the future.

- I'm 77 years old now.
  I grew up in Buffalo, New York. I saw Love Canal and know what it finally did to children and adults. I saw tons dead fish floating in Lake Erie, and piled on the lake shore. Lake Erie was declared dead for a long time, because we ignored pollution. The Niagara River was polluted as well. The chemicals are still in the lake and river bottom. The lake and river supply the area drinking water. Prevention is easier than clean up, which may not be possible or affordable.

- I'm afraid and worry that large corporations can still be allowed to pursue their projects, regardless of the cost to the surrounding environment.

- I thought our consciousness had risen regarding the world around us. I thought we had gained wisdom. This Banning Ranch Project is a throw back to the days of our ignorance regarding the environment and the health of our citizens.

- I implore you to consider the good of our whole environment when you make your decision regarding the Banning Ranch project. I implore you to be guided by the knowledge and wisdom we have gained about the environment and our planet over the past decades.

Respectfully submitted, September 12, 2015
Diane LaDuca
28 year resident of
939 W 19th St. B4
Costa Mesa Ca. 92627 714 296 9334

APPENDIX D
EX PARTE COMMUNICATIONS

1. Wendy Mitchell signed 9/22/15
2. Martha McClure signed 9/9/15
3. Carole Groom signed 8/8/13
4. Carole Groom signed 7/7/14
5. Greg Cox signed 7/2/14
6. Steve Kinney signed 2/13/14
7. Steve Kinney signed 3/2/14
8. Robert Uranga signed 8/21/15
9. Mary Luevano received 9/17/15

RECEIVED
South Coast Region

SEP 24 2015

CALIFORNIA
COASTAL COMMISSION

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication:	**September 21, 2015 11:30 am**
Location of communication:	**Sherman Oaks**
Person(s) initiating communication:	**Mike Mohler, George Basye & Chris Yelich, Newport Banning Ranch - Dave Neish, Neish Planning**
Person(s) receiving communication:	**Wendy Mitchell**
Name or description of project:	**CDP 05-13-032 Newport Banning Ranch**
Detailed substantive description of content of communication:	

NBR Representatives indicated their understanding and disappointment that CCC staff will be recommending denial on October 7th.. There appears to be strong disagreement in areas of site conditions and possible ESHA recommendations.

Mr. Mohler highlighted what the project accomplishes in a summary fashion – including:

1. Oil Field Issues – the only way for it to be cleaned up is through the development of this project. There is no other money to do the clean up or incentive on the part of the oil companies.
2. Public Access and Recreation-there will be 7 miles of trails as part of the project.
3. Habitat Protection and Restoration-they have done successfully done habitat restoration on site.
4. Visitor-Serving Uses-There will be restaurants and visitor serving uses onsite.
5. Low Cost Affordable Overnight Lodging – Unlike other projects, instead of paying into the mitigation fund, they are actually doing hostel onsite that will have 8-10 beds.
6. Water Quality – The project will improve water quality with a state of the art water treatment system. Current run off is not treated and goes straight into the ocean.

9/22/15
Date

Commissioner

FORM FOR DISCLOSURE

OF EX PARTE

COMMUNICATION

Date and time of communication:	**September 8, 2015 6 pm**
Location of communication:	**Arcata, CA**
Person(s) initiating communication:	**Mike Mohler, George Basye – Newport Banning Ranch LLC, Dave Neish**
Person(s) receiving communication:	**Martha McClure**
Name or description of project:	**CDP 05-13-032 Newport Banning Ranch**

Detailed substantive description of content of communication:

NBR Representatives provided an overview of the project plan, purpose and benefits and discussed the application history to date.

There was a discussion and description of onsite affordable overnight accommodations – as well as visitor-serving retail concepts.

NBR Representatives expressed their expectation that the Commission will hear the CDP application in October 2015 in Long Beach – and noted their understanding that CCC staff will oppose the application – based on staff interpretations of potential ESHA.

NBR Representatives emphasized their goal was to clean up an aging oil field and to create a reuse plan dominated by natural open space, trails, parks - with a mixed use development on less than 25% of the property. NBR Representatives believe they have provided a balanced plan that benefits the environment while providing enough development to pay for the oil cleanup, habitat restoration and public access. They also state that many of the issues the Commission wrestles with – such as affordable access and affordable overnight accommodations – are provided for onsite.

Further, they discussed other recent actions by the Commission that allowed development to occur – despite claims of ESHA, Notices of Violation and other potential roadblocks. Among the names mentioned were the Pebble Beach approval which allowed the removal of Monterey Pine ESHA and the Trump National Flag Pole matter that witnessed the Commission working with the Applicant to overcome NOV issues.

Sept 9, 2015
Date

Martha McClure
Commissioner

DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of receipt of communication:
August 8, 2013 at 12:00 pm

Location of communication:
In person

Type of communication:
In person

Person(s) in attendance at time of communication:
David B. Neish, David J. Neish, Michael Mohler, Chris Yelich, George Basye

Person(s) receiving communication:
Carole Groom

Description of project:
Application No. 5-13-032 Newport Banning Ranch (5100 West Coast Highway, Newport Beach)

Description of communication:

Applicants described project proposal and property history. They indicate the property has had almost 500 oil wells and 40 miles of pipeline since the 1940s. It is 90% unincorporated Orange County and 10% City of Newport Beach. Banning Ranch Conservancy is opposed to project, though unanimously approved by City of Newport Beach. Proposal involves over 300 acres of open space and trails,97 acres of mixed use development and wetland restoration.

Applicants indicate that on August 7, they received third Notice of Incomplete Application from Coastal Commission and there is an impasse until issues are addressed through dispute process. Applicants indicated they are meeting with Coastal Commission staff on August 29.

Unresolved issues include:
Interpretation of exemption that had been granted when grandfathered in.
Exemption termination date – applicants indicate that lease expiration date with oil company was in 1994, however because it was bought out by landowner, applicants maintain expiration date should not be applicable.
Abandonment and remediation are covered by exemption – applicants maintain remediation applies to both surface and ground cleanup.
Consolidation of oil operations to limited area.
Oil field best management practices.
City of Newport Beach does not have LCP.

Date: 8-8-13

Signature of Commissioner: Carole Groom

DISCLOSURE OF EX PARTE COMMUNICATIONS

RECEIVED
South Coast Region

JUL 0 8 2014

CALIFORNIA
COASTAL COMMISSION

Date and time of receipt of communication:
June 25, 2014 at 10:00 am

Location of communication:
Redwood City

Type of communication:
In person

Person(s) in attendance at time of communication:
David B. Neish, David J. Neish, Michael Mohler, George Basye

Person(s) receiving communication:
Carole Groom

Description of project:
Application No. 5-13-032 Newport Banning Ranch (5100 West Coast Highway, Newport Beach)

Description of communication:

Applicants explained changes that have been made to the project since its initial proposal. These changes include reducing the acres of development from 97 to 83 acres in order to preserve the southernmost vernal pool and reducing the four lane road to a two lane road, with an exit on 17th street instead of 19th street.

However, applicants expressed continued disagreement with staff regarding interpretation of the oil exemption and its termination date, consolidation of oil operations to a limited area, vegetation maintenance, abandonment and bioremediation on the oil fields. Applicants indicated they have filed a dispute resolution.

All materials provided will be shared with Coastal Commission staff.

Date: July 7 2014

Signature of Commissioner: Carole Groom

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION

Date and time of communication:	**June 27, 2014 11 AM**
Location of communication:	**San Diego, CA Meeting**
Person(s) initiating communication:	**David Neish, Dave Neish Jr., Mike Mohler, George Basye, Chris Yelich,**
Person(s) receiving communication:	**Greg Cox and staff Greg Murphy**
Name or description of project:	**Newport Banning Ranch**

Detailed substantive description of content of communication:

Applicants' project team provided an overview of the project plan and discussed the application history to date. Changes from the original plan to the new plan were discussed including the elimination of a road section, changing the roads from 4 lanes to 2 lanes, and moving the development away from sensitive areas. The development envelope has been reduced from 97 acres in the old plan to 84 in the new plan.

The applicants' project team then discussed the dispute resolution they filed on June 12th and the likely hearing in July. They explained that the dispute resolution is in regard to four main threshold issues that concern the 1973 oil field exemption. The four issues are the number of oil wells, abandonment and remediation, consolidation of oil field operations, and vegetation maintenance.

A briefing booklet was provided that went into detail explaining the oil field operations over the last 70+ years. Aerial photos documenting the oil field since the 1920's were provided as was as a CDP timeline of the property showing the various interaction with the CCC over the years. A historical well count slide explained that at no time during the history of the site has the well count ever exceeded 340 active wells. A slide regarding vegetation maintenance explained fuel modification activities similar to those on the adjacent Sunset Ridge Park site have been ongoing for decades. A slide regarding abandonment explained the State and local agencies involved in the process.

In conclusion, the applicants explained their frustration in having to file dispute with the CCC but that they feel these threshold issues must be decided before the application can proceed. They feel that there is an impasse with the staff because the applicants believe the exemption is valid and all oil field operations have been authorized and Coastal Staff feels that the violations have occurred on the site. They want the Commission to have the opportunity to determine that the exemption is valid and give the project a firm baseline moving forward.

7/2/14
Date

Greg Cox
Signature of Commissioner

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

From:

Date and time of communication: Wednesday Feb. 5, 2014 2:00 pm

Location of communication: Conf. Call
(If communication was sent by mail or facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: David Neish, Mike Reilly

Identity of person(s) receiving communication: Steve Kinsey

Name or description of project: Newport Banning Ranch CDP

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Mr. Reilly and Neish indicated that they have a meeting scheduled with Dr. Heister and upper management of CCC Staff on February 19, and were hopeful that a resolution to having their application ~~incomplete~~ being deemed complete ~~with~~ would come out of that discussion on a specific strategy suggested by staff in order to deem it complete. They also indicated that they were hopeful of moving forward with their development proposal and separating it from the oil operators violations that are pending.

2/13/14
Date

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

From:

Date and time of communication: February 19, 2014 5:30 pm

Location of communication: Marin, CA Meeting

Person(s) initiating communication: David Neish, David Neish Jr., Mike Mohler, George Basye, Chris Yelich, Mike Reilly

Person(s) receiving communication: Steve Kinsey

Name or description of project: Newport Banning Ranch

Detailed substantive description of content of communication:

Applicants' project team provided an update of the meeting with CCC Staff in San Francisco. Main items discussed at the meeting included recent NOV, remaining unresolved issues included in Notice of Incomplete Applications, and future meeting dates with staff to try and move the project forward.

The applicants' project team displayed a frustration with the application process and a general concern that the project was not moving forward in a timely fashion. They also expressed concern over new items being included in NOI's that typically would be included as conditions of approval. Items included a building height study for surrounding areas, a lighting study for the ball fields, and engineering plans for the pedestrian bridge over PCH. Applicant also asked why an alternative plan that took out access from PCH was needed as a requirement to deem the application complete.

Regarding the NOV, the applicant stated it is trying to work with West Newport Oil, the oil operator, but that NBR was not directly involved in the past violations. They indicated ongoing meetings with WNO, NBR, and CCC Staff were planned in the near future.

Other upcoming meetings planned include an on-site meeting with CCC Staff biologist on March 3rd as well as another meeting planned with CCC enforcement staff in the near future. The applicant also expressed a strong desire to have a Commission field trip in June when the CCC hearings are in Huntington Beach.

Lastly, the Applicant expressed its regret that CCC Meeting Public Comments are currently the only fully sanctioned method of talking to the Commission and reiterated their desire to have CCC Staff and the Commission restore normal communications with the Commission.

3/2/14
Date

S. J. Kinsey
Signature of Commissioner

FORM FOR DISCLOSURE

OF EX PARTE

COMMUNICATION

Date and time of communication:	**August 19, 2015 11:00 am**
Location of communication:	**Newport Beach/Costa Mesa, CA**
Person(s) initiating communication:	**Mike Mohler, George Basye, Chris Yelich – Newport Banning Ranch LLC**
Person(s) receiving communication:	**Roberto Uranga**
Name or description of project:	**CDP 05-13-032 Newport Banning Ranch**
Detailed substantive description of content of communication:	

Met Applicants (NBR Representatives) at the Newport Banning Land Trust Offices (NBLT) at 1010 17th Street, Costa Mesa – just outside the gates of the Newport Banning Ranch (NBR) Property. NBR Representatives gave a quick tour of the NBLT nursery.

NBR Representatives provided an overview of the project plan, purpose and benefits and discussed the application history to date.

NBR Representatives provided a tour of Newport Banning Ranch property (NBR). NBR Representatives provided the identical handout used by CCC staff when conducting the June 2104 public tour – and stopped at the same points that the public did. Additionally, we toured the lowland areas and northeast restoration site.

There was a discussion and description of on-site affordable overnight accommodation – as well as visitor-serving retail concepts.

NBR Representatives also expressed their expectation that the Commission will hear the CDP application in October 2015 in Long Beach.

08/21/15
Date

Commissioner

From: Tom Darden <tdarden@cherokeefund.com>
Date: September 14, 2015 at 9:05:03 PM PDT
To: Mary Luevano, Michelle Amt <mamt@mcdonough.com>
Cc: Bill McDonough <William@mcdonough.com>
Subject: Re: Meeting on the 17th

Mary, cc Bill and Michelle:

I wanted to reach out with some added information about Bill's and my roles, and with more background on the meeting. As it turns out, I will not be there -- I had planned to come because I had another reason to be in Southern CA, but that has cancelled so Bill will be coming alone.

Second, Bill works broadly as an advisor to Cherokee on sustainability matters. In such role, he helps formulate and guide our policies and procedures for all our projects, and it is our goal to act within the environmental principles that Bill broadly articulates and defines. He is quite familiar with Banning Ranch because he has shared our frustration that after decades, the site remains polluted, unrestored and unused. And, he has thought about the project a great deal. But, he does not work specifically for the Banning Ranch team.

As general background, Cherokee began its history as a pollution cleanup technology firm, then morphed into buying polluted land and cleaning it up for reuse. We focus especially on badly contaminated sites, where the remediation costs would be in the tens of millions of dollars. We have owned approximately 550 sites in the U.S., Europe and Canada. Pollution cleanup, wetlands restoration, etc, on our projects have cost a few hundred million dollars over the years, and at times we estimate that we have been the largest private pollution cleanup entity in the U.S. Our goal is to restore polluted brownfields to productive reuse.

I won't go into Bill's background because I am sure you are familiar with it. While most of Cherokee's work is below the ground, we do have to choose what projects are suitable for future reuse, and we sometimes plan or even develop what gets built on one of our brownfields. So, Bill has been a great guide for us on these matters.

I hope this is helpful as background for the meeting, and I hope it goes well. I look forward to seeing you some other time when I am there.

Thanks.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Mary Luevano
Sent: Monday, September 14, 2015 7:44 PM
To: Michelle Amt
Reply To: Mary Luevano
Cc: Darden Thomas F.; Marcie Siegel
Subject: Re: Meeting on the 17th

Hi Michelle,

Assuming Tom and Bill are ok with the ex parte requirement, I am available on Thursday morning anytime before 1pm. Santa Monica might be easiest but I could also meet closer to LAX. All the best, Mary

Sent from my iPhone