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Pursuant to Government  
Code Section 6103

12 Attorneys for Respondents  
13 CITY OF NEWPORT BEACH and  
CITY OF NEWPORT BEACH CITY COUNCIL

14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
15 COUNTY OF ORANGE – CIVIL COMPLEX CENTER

16 BANNING RANCH CONSERVANCY,  
17 Petitioner,  
18 v.  
19 CITY OF NEWPORT BEACH, CITY OF  
NEWPORT BEACH CITY COUNCIL, and  
20 DOES 1 – 10,  
Respondents.

21 \_\_\_\_\_  
22 NEWPORT BANNING RANCH, LLC; AERA  
ENERGY, LLC; CHEROKEE NEWPORT  
23 BEACH, LLC; and DOES 11 – 50,  
Real Parties in Interest.

) CASE No.: 30-2010-00365758-CU-WM-  
) CXC  
)  
) **RESPONDENTS' ANSWER TO**  
) **VERIFIED PETITION FOR WRIT**  
) **OF MANDATE**  
)  
) [Complex Civil Guidelines, § VIII]  
)  
) Assigned for All Purposes to:  
) The Honorable Gail A. Andler  
) Department CX102  
)  
) Trial Date: TBA  
)  
) Complaint Filed: April 22, 2010

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27 ///  
28

REMY, THOMAS, MOOSE and  
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Sacramento, CA 95814

1 Respondents CITY OF NEWPORT BEACH and CITY OF NEWPORT BEACH CITY  
2 COUNCIL (“Respondents” or “City”) answer the Petition for Writ of Mandate (“Petition”) of  
3 Petitioner BANNING RANCH CONSERVANCY (“Petitioner”) in this action brought  
4 pursuant to the California Environmental Quality Act (“CEQA”) and the Planning and Zoning  
5 Law, challenging the City’s approval of the Sunset Ridge Park Project (“Project”) as follows:

6 **INTRODUCTION**

7 1. Answering Paragraph 1, the City admits that the City Council for the City of  
8 Newport Beach approved the Project on March 23, 2010. The City further admits that, after  
9 holding a public hearing on the Project and on the Environmental Impact Report (“EIR”)  
10 prepared for the Project, the City Council voted to certify the EIR, make findings of fact as  
11 required by the California Environmental Quality Act (“CEQA”), and adopt a mitigation  
12 monitoring and reporting program (“MMRP”) as set out in Resolution No. 2010-29; the Council  
13 subsequently adopted a statement of overriding considerations (“SOC”) and approved the  
14 Conceptual Site Plan for the Project as set out in Resolution No. 2010-30. The City also admits  
15 that, in a separate action item, on the same night, the Council considered whether to approve an  
16 access agreement, which would allow access to be constructed to the Project site over a  
17 neighboring property—the so-called “Banning Ranch” or “Newport Banning Ranch” property—  
18 rather than directly to the Project site from West Coast Highway. The City admits that the  
19 Council voted to approve the access agreement on March 23, 2010. The City contends that  
20 section 423 of the City Charter provides in relevant part as follows: “Voter approval is required  
21 for any major amendment to the Newport Beach General Plan.” The City contends that, in  
22 accordance with that section, the City Council submitted the General Plan Update in relevant  
23 part to the voters in 2006 as set out in Resolution No. 2006-77. The City finally contends that  
24 the General Plan Update, which was subsequently approved by the voters, provides alternative  
25 land use plan categories for Banning Ranch as follows: “The OS(RV) designation is intended  
26 for the preservation of Banning Ranch as open space, restoration of wetlands and other habitats,  
27 development of a community park, and consolidation of oil extraction and processing facilities.  
28 Should the property not be acquired, the designation permits the development of a planned

1 residential community that integrates a mix of single-family detached, single-family attached,  
2 two family, and/or multi-family residential, with supporting schools, parks, community services,  
3 local-serving convenience commercial uses and services, and open spaces. A master or specific  
4 plan is required to depict the uses, street and infrastructure improvements, open spaces,  
5 development standards, design guidelines, and financial plan.” The remaining allegations of  
6 Paragraph 1 contain argument, speculation, and conclusions of law, to which no response is  
7 required. Except as otherwise admitted herein, the City denies each and every allegation of  
8 Paragraph 1.

9           2.       Answering Paragraph 2, the City denies that the roadway features approved for  
10 the 18.9-acre Sunset Ridge Park, including a new access road with a four-lane divided entryway  
11 and signalized intersection, are the same features included in the design plans for the proposed  
12 Newport Banning Ranch Project. The City affirmatively asserts that, as described in the EIR,  
13 the “access road from West Coast Highway for the proposed Sunset Ridge Park Project would  
14 be constructed on the Newport Banning Ranch property and would generally follow the  
15 alignment identified in the City’s General Plan Master Plan of Streets and Highways and the  
16 Orange County MPAH.” The City also affirmatively asserts, as explained in the EIR, that while  
17 both “the Sunset Ridge Park Project and the proposed Newport Banning Ranch project [if  
18 approved] would use the same access roadway from West Coast Highway. However, since the  
19 park requires a smaller roadway, only the eastern half of the access road would be constructed  
20 as a part of the park project. ... Should the Newport Banning Ranch development project be  
21 approved and constructed in the future, the roadway would be widened on the west side of the  
22 access road consistent with the General Plan Master Plan of Streets and Highways and the  
23 Orange County MPAH.” With respect to the allegation that the EIR failed to examine the  
24 projects together, the City denies this allegation and affirmatively asserts that the EIR for the  
25 Sunset Ridge Park Project properly and adequately evaluated the potential impacts of the  
26 separate Newport Banning Ranch Project, should it be approved, within the context of the  
27 cumulative impacts analysis in the EIR for the Sunset Ridge Park Project. The remaining  
28 allegations of Paragraph 2 contain argument, speculation, and conclusions of law, to which no

1 response is required. Except as otherwise admitted herein, the City denies each and every  
2 allegation of Paragraph 2.

3 3. Answering Paragraph 3, the City contends that the allegations in this paragraph  
4 contain argument and conclusions of law, to which no response is required. To the extent further  
5 response is required, the City denies each and every allegation of Paragraph 3.

6 4. Answering Paragraph 4, the City contends that the City's General Plan is a  
7 document in the record and speaks for itself and that the allegations in this paragraph contain  
8 argument and conclusions of law, to which no response is required. To the extent further  
9 response is required, the City denies each and every allegation of Paragraph 4.

10 **PARTIES**

11 5. Answering Paragraph 5, the City lacks information or belief sufficient to enable  
12 an answer, and on that basis denies, each and every allegation of Paragraph 5. To the extent  
13 further response is required, the City denies each and every allegation of Paragraph 5.

14 6. Answering Paragraph 6, the City lacks information or belief sufficient to enable  
15 an answer, and on that basis denies, each and every allegation of Paragraph 6. To the extent  
16 further response is required, the City denies each and every allegation of Paragraph 6.

17 7. Answering Paragraph 7, the City admits the allegations contained in Paragraph 7.

18 8. Answering Paragraph 8, the City admits the allegations contained in Paragraph 8.

19 9. Answering Paragraph 9, the City lacks information or belief sufficient to enable  
20 an answer, and on that basis denies, each and every allegation of Paragraph 9.

21 10. Answering Paragraph 10, the City admits that the Sunset Ridge Park Project  
22 includes access from West Coast Highway via a small corner of the Banning Ranch property.  
23 The City further admits that Newport Banning Ranch, LLC, is a party to an Access Agreement  
24 authorizing this use. The City admits that Newport Banning Ranch, LLC, has applied to  
25 develop a project on its property, which borders on the Sunset Ridge Park Project site, but the  
26 City denies that any part of the Sunset Ridge Park Project is included as part of Newport  
27 Banning Ranch development plan. In all other respects, City lacks information or belief  
28 sufficient to enable an answer, and on that basis denies, each and every allegation of Paragraph

1 10.

2 11. Answering Paragraph 11, City admits that the Aera Energy, LLC, is a party to the  
3 Access Agreement. In all other respects, City lacks information or belief sufficient to enable an  
4 answer, and on that basis denies, each and every allegation of Paragraph 11.

5 12. Answering Paragraph 12, City admits that the Cherokee Newport Beach, LLC, is  
6 a party to the Access Agreement. In all other respects, City lacks information or belief sufficient  
7 to enable an answer, and on that basis denies, each and every allegation of Paragraph 12.

8 13. Answering Paragraph 13, the City lacks information or belief sufficient to enable  
9 an answer, and on that basis denies, each and every allegation of Paragraph 13.

10 **JURISDICTION AND VENUE**

11 14. Answering Paragraph 14, the City contends that the allegations set forth therein  
12 include conclusions of law rather than statements of fact and, therefore, do not require a  
13 response. To the extent that a response is required, the City denies each and every allegation of  
14 Paragraph 14.

15 15. Answering Paragraph 15, the City contends that the allegations set forth therein  
16 include conclusions of law rather than statements of fact and, therefore, do not require a  
17 response. To the extent that a response is required, the City denies each and every allegation of  
18 Paragraph 15.

19 16. Answering Paragraph 16, the City admits that a letter purporting to comply with  
20 the requirements of Public Resources Code section 21167.5 was attached the Petition as Exhibit  
21 A. In all other respects, the City contends that the allegations set forth in Paragraph 16 include  
22 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
23 the extent that a response is required, the City denies each and every allegation of Paragraph 16.

24 17. Answering Paragraph 17, the City contends that the allegations set forth therein  
25 include conclusions of law rather than statements of fact and, therefore, do not require a  
26 response. The City further contends that the City prepared the record lodged in these  
27 proceedings. To the extent that a response is required, the City denies each and every allegation  
28 of Paragraph 17.



1 every allegation of Paragraph 21.

2 22. Answering Paragraph 22, the City admits that the City Council certified a Final  
3 EIR (SCH 2009051036), made findings and determinations as required by CEQA, and approved  
4 an MMRP for the Sunset Ridge Park Project. The City further admits that the City Council  
5 adopted a Statement of Overriding Considerations as required by CEQA and approved a  
6 Conceptual Site Plan for the Sunset Ridge Park Project. The City admits that it approved an  
7 Access Agreement in regards to the Sunset Ridge Park Project. In all other respects, the  
8 remaining allegations of Paragraph 22 contain argument, speculation, and conclusions of law, to  
9 which no response is required. Except as otherwise admitted herein, the City denies each and  
10 every allegation of Paragraph 22.

11 23. Answering Paragraph 23, the City admits the proposed Newport Banning Ranch  
12 Project, as currently proposed, would include up to 1,375 residential units, 75,000 square feet of  
13 commercial space, and a hotel. In all other respects, the remaining allegations of Paragraph 23  
14 contain argument, speculation, and conclusions of law, to which no response is required. Except  
15 as otherwise admitted herein, the City denies each and every allegation of Paragraph 23.

16 24. Answering Paragraph 24, the City contends that the cumulative impacts of the  
17 Sunset Ridge Park Project and the Newport Banning Ranch project were evaluated in the EIR  
18 prepared for the Sunset Ridge Park Project; the EIR is contained in the Administrative Record  
19 and speaks for itself. The City further contends that the General Plan approved by the voters  
20 provides alternative land use plan categories for Banning Ranch as follows: "The OS(RV)  
21 designation is intended for the preservation of Banning Ranch as open space, restoration of  
22 wetlands and other habitats, development of a community park, and consolidation of oil  
23 extraction and processing facilities. Should the property not be acquired, the designation permits  
24 the development of a planned residential community that integrates a mix of single-family  
25 detached, single-family attached, two family, and/or multi-family residential, with supporting  
26 schools, parks, community services, local-serving convenience commercial uses and services,  
27 and open spaces. A master or specific plan is required to depict the uses, street and  
28 infrastructure improvements, open spaces, development standards, design guidelines, and

1 financial plan.” The remaining allegations of Paragraph 24 contain argument, speculation, and  
2 conclusions of law, to which no response is required. Except as otherwise admitted herein, the  
3 City denies each and every allegation of Paragraph 24.

4 Environmental Review

5 25. Answering Paragraph 25, the City admits that on March 18, 2009, the City  
6 prepared and circulated a Notice of Preparation (“NOP”) for an EIR in connection with the  
7 Newport Banning Ranch Project; the City admits that the NOP described roadway  
8 improvements that were proposed as part of the neighboring Sunset Ridge Park Project. The  
9 City further admits that the EIR for the Newport Banning Ranch project is being drafted but has  
10 not yet been released. The remaining allegations of Paragraph 25 contain argument,  
11 speculation, and conclusions of law, to which no response is required. Except as otherwise  
12 admitted herein, the City denies each and every allegation of Paragraph 25.

13 26. Answering Paragraph 26, the City admits that on May 7, 2009, the City finalized  
14 an Initial Study and NOP for an EIR in connection with the Sunset Ridge Park Project; the City  
15 admits that on May 8, 2009, the Initial Study and NOP were circulated for comments from  
16 reviewing agencies and other interested parties. The Initial Study and NOP are contained in the  
17 Administrative Record and speak for themselves. The remaining allegations of Paragraph 26  
18 contain argument, speculation, and conclusions of law, to which no response is required.  
19 Except as otherwise admitted herein, the City denies each and every allegation of Paragraph 26.

20 27. Answering Paragraph 27, the City admits that on May 8, 2009, the City filed NOP  
21 for an EIR in connection with the Sunset Ridge Park Project with the State Clearinghouse.

22 28. Answering Paragraph 28, the City admits it received a comment letter from the  
23 Banning Ranch Conservancy on the NOP for the Sunset Ridge Park Project. That letter is in the  
24 Administrative Record and speaks for itself. The remaining allegations of Paragraph 28 contain  
25 argument, speculation, and conclusions of law, to which no response is required. Except as  
26 otherwise admitted herein, the City denies each and every allegation of Paragraph 28.

27 29. Answering Paragraph 29, the City admits that on October 27, 2009, the City  
28 circulated a Draft EIR for the Sunset Ridge Park Project. The City further admits that BonTerra

1 Consulting was one of the many consultants that worked on the EIR for the Sunset Ridge Park  
2 Project, and that BonTerra Consulting is one of the consultants working on the EIR for the  
3 Newport Banning Ranch Project. The remaining allegations of Paragraph 29 contain argument,  
4 speculation, and conclusions of law, to which no response is required. Except as otherwise  
5 admitted herein, the City denies each and every allegation of Paragraph 29.

6 30. Answering Paragraph 30, the City admits it received several comment letters on  
7 the Draft EIR, including letters indicating that they were submitted on behalf of the Banning  
8 Ranch Conservancy. Those letters are in the Administrative Record and speak for themselves.  
9 The remaining allegations of Paragraph 30 contain argument, speculation, and conclusions of  
10 law, to which no response is required. Except as otherwise admitted herein, the City denies  
11 each and every allegation of Paragraph 30.

12 31. Answering Paragraph 31, the City admits it received several comment letters on  
13 the Draft EIR, including a letter from the California Department of Transportation. Those  
14 letters are in the Administrative Record and speak for themselves. The remaining allegations of  
15 Paragraph 31 contain argument, speculation, and conclusions of law, to which no response is  
16 required. Except as otherwise admitted herein, the City denies each and every allegation of  
17 Paragraph 31.

18 32. Answering Paragraph 32, the City admits it released a Final EIR for the Sunset  
19 Ridge Park Project on March 12, 2010.

20 33. Answering Paragraph 33, the City admits it received letters indicating that they  
21 were submitted on behalf of the Banning Ranch Conservancy after the Final EIR was released.  
22 Those letters are in the Administrative Record and speak for themselves. The remaining  
23 allegations of Paragraph 33 contain argument, speculation, and conclusions of law, to which no  
24 response is required. Except as otherwise admitted herein, the City denies each and every  
25 allegation of Paragraph 33.

26 Project Approval and Subsequent City Actions

27 34. Answering Paragraph 34, the City admits that it held a public hearing on the  
28 Sunset Ridge Park Project EIR and the Project on March 23, 2010. A transcript of that hearing

1 is in the Administrative Record and speaks for itself. The remaining allegations of Paragraph 34  
2 contain argument, speculation, and conclusions of law, to which no response is required.

3 Except as otherwise admitted herein, the City denies each and every allegation of Paragraph 34.

4 35. Answering Paragraph 35, the City admits that, after holding a public hearing on  
5 the Project and on the EIR prepared for the Project on March 23, 2010, the City Council voted  
6 to certify the EIR, make findings of fact as required by the CEQA, and adopt an MMRP as set  
7 out in Resolution No. 2010-29; the Council subsequently adopted a statement of overriding  
8 considerations and approved the Conceptual Site Plan for the Project as set out in Resolution  
9 No. 2010-30. The remaining allegations of Paragraph 35 contain argument, speculation, and  
10 conclusions of law, to which no response is required. Except as otherwise admitted herein, the  
11 City denies each and every allegation of Paragraph 35.

12 36. Answering Paragraph 35, the City admits that on March 23, 2010, the City  
13 Council considered whether to approve an access agreement, which would allow access to be  
14 constructed to the Project site over a neighboring property—the so-called “Banning Ranch” or  
15 “Newport Banning Ranch” property—rather than directly to the Project site from West Coast  
16 Highway. At the conclusion of a hearing on the matter, the Council voted to approve the access  
17 agreement. The Access Agreement is in the Administrative Record and speaks for itself. The  
18 remaining allegations of Paragraph 36 contain argument, speculation, and conclusions of law, to  
19 which no response is required. Except as otherwise admitted herein, the City denies each and  
20 every allegation of Paragraph 36.

21 37. Answering Paragraph 37, the City admits that on March 24, 2010, the City filed a  
22 Notice of Determination for the Sunset Ridge Park Project.

23 38. Answering Paragraph 37, the City admits that on April 13, 2010, the City heard  
24 testimony from members of the Banning Ranch Conservancy, in which the members alleged  
25 that the City violated the Brown Act because the access agreement previously approved on  
26 March 23, 2010, may not have been available on the City’s website prior to its approval. The  
27 City contends that the access agreement was available in the City’s offices for any interested  
28 parties as required by the Brown Act, and that no violation of the Brown Act occurred. The

1 City admits that on April 13, 2010, the Council voted to reconsider the access agreement, and  
2 that on April 27, 2010, the Council reconsidered the access agreement and voted to ratify the  
3 original March 23 approval. The remaining allegations of Paragraph 38 contain argument,  
4 speculation, and conclusions of law, to which no response is required. Except as otherwise  
5 admitted herein, the City denies each and every allegation of Paragraph 38.

6 **FIRST CAUSE OF ACTION**  
7 **(CEQA)**

8 39. In response to Paragraph 39, the City realleges and incorporates by reference  
9 Paragraphs 1 through 38, inclusive.

10 40. In response to Paragraph 40, the paragraph states legal conclusions to which no  
11 response is required. As to any factual allegations contained or implied in Paragraph 40, the City  
12 denies each allegation of Paragraph 40.

13 41. In response to Paragraph 41, the paragraph states legal conclusions to which no  
14 response is required. As to any factual allegations contained or implied in Paragraph 41, the City  
15 denies each allegation of Paragraph 41.

16 42. In response to Paragraph 42, the paragraph states legal conclusions to which no  
17 response is required. As to any factual allegations contained or implied in Paragraph 42, the City  
18 denies each allegation of Paragraph 42.

19 43. In response to Paragraph 43, the paragraph states legal conclusions to which no  
20 response is required. As to any factual allegations contained or implied in Paragraph 43, the City  
21 denies each allegation of Paragraph 43.

22 44. In response to Paragraph 44, lines 4-6, the paragraph states legal conclusions to  
23 which no response is required. To the extent a response is required, the City denies the legal  
24 allegations in Paragraph 44, lines 4-6.

25 (a) In response to Paragraph 44, subdivision (a), the City denies the roadway  
26 improvements approved as part of the Sunset Ridge Park Project were expressly designed to  
27 accommodate the proposed development of the Newport Banning Ranch Project. The  
28 remaining allegations of Paragraph 44, subdivision (a), contain argument, speculation, and

1 conclusions of law, to which no response is required. To the extent a response is required, the  
2 City denies each and every allegation of Paragraph 44, subdivision (a).

3 (b) In response to Paragraph 44, subdivision (b), the City contends that the  
4 allegations set forth in Paragraph 44, subdivision (b), include argument, speculation, and  
5 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
6 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
7 subdivision (b).

8 (c) In response to Paragraph 44, subdivision (c), the City contends that the  
9 allegations set forth in Paragraph 44, subdivision (c), include argument, speculation, and  
10 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
11 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
12 subdivision (c).

13 (d) In response to Paragraph 44, subdivision (d), the City contends that the  
14 allegations set forth in Paragraph 44, subdivision (d), include argument, speculation, and  
15 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
16 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
17 subdivision (d).

18 (e) In response to Paragraph 44, subdivision (e), the City contends that the  
19 allegations set forth in Paragraph 44, subdivision (e), include argument, speculation, and  
20 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
21 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
22 subdivision (e).

23 (f) In response to Paragraph 44, subdivision (f), the City contends that the  
24 allegations set forth in Paragraph 44, subdivision (f), include argument, speculation, and  
25 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
26 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
27 subdivision (f).

28 (g) In response to paragraph 44, subdivision (g), the City contends that the

1 allegations set forth in Paragraph 44, subdivision (g), include argument, speculation, and  
2 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
3 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
4 subdivision (g).

5 (h) In response to Paragraph 44, subdivision (h), the City contends that the  
6 allegations set forth in Paragraph 44, subdivision (h), include argument, speculation, and  
7 conclusions of law rather than statements of fact and, therefore, do not require a response. To  
8 the extent that a response is required, the City denies each and every allegation of Paragraph 44,  
9 subdivision (h).

10 45. In response to Paragraph 45, the City contends that the allegations set forth in  
11 Paragraph 45, include argument, speculation, and conclusions of law rather than statements of  
12 fact and, therefore, do not require a response. To the extent that a response is required, the City  
13 denies each and every allegation of Paragraph 45.

14 46. In response to Paragraph 46, the City contends that the allegations set forth in  
15 Paragraph 46, include argument, speculation, and conclusions of law rather than statements of  
16 fact and, therefore, do not require a response. To the extent that a response is required, the City  
17 denies each and every allegation of Paragraph 46.

18 47. In response to Paragraph 47, the City contends that the allegations set forth in  
19 Paragraph 47, include argument, speculation, and conclusions of law rather than statements of  
20 fact and, therefore, do not require a response. To the extent that a response is required, the City  
21 denies each and every allegation of Paragraph 47.

22 48. In response to Paragraph 48, the City contends that the allegations set forth in  
23 Paragraph 48, include argument, speculation, and conclusions of law rather than statements of  
24 fact and, therefore, do not require a response. To the extent that a response is required, the City  
25 denies each and every allegation of Paragraph 48.

26 49. In response to Paragraph 49, the City contends that the allegations set forth in  
27 Paragraph 49, include argument, speculation, and conclusions of law rather than statements of  
28 fact and, therefore, do not require a response. To the extent that a response is required, the City

1 denies each and every allegation of Paragraph 49.

2 **SECOND CAUSE OF ACTION**  
3 **(State Planning and Zoning Law)**

4 50. In response to Paragraph 50, the City realleges and incorporates by reference  
5 Paragraphs 1 through 49, inclusive.

6 51. In response to Paragraph 51, the paragraph states legal conclusions to which no  
7 response is required. As to any factual allegations contained or implied in Paragraph 51, the City  
8 denies each allegation of Paragraph 51.

9 52. In response to Paragraph 51, the paragraph states legal conclusions to which no  
10 response is required. As to any factual allegations contained or implied in Paragraph 52, the City  
11 denies each allegation of Paragraph 52.

12 53. In response to Paragraph 53, the paragraph states legal conclusions to which no  
13 response is required. As to any factual allegations contained or implied in Paragraph 53, the City  
14 denies each allegation of Paragraph 53.

15 54. In response to Paragraph 54, lines 25-27, the paragraph states legal conclusions to  
16 which no response is required. As to any factual allegations contained or implied in Paragraph  
17 54 lines, 25-27, the City denies each allegation of Paragraph 54, lines 25-27.

18 (a) In response to Paragraph 54, subdivision (a), the City denies that General Plan  
19 Policy LU 3.4 reads as set out in Paragraph 54, subdivision (a). Rather, the City contends that  
20 the General Plan contains a policy LU 3.4, reads in full:

21 Prioritize the acquisition of Banning Ranch as an open space amenity for the  
22 community and region, consolidating oil operations, enhancing wetland and other  
23 habitats, and providing parkland amenities to serve nearby neighborhoods. If the  
24 property cannot be acquired within a time period and pursuant to terms agreed to  
25 by the City and property owner, allow for the development of a compact  
26 residential village that preserves the majority of the site as open space and  
27 restores critical habitat in accordance with Politics 6.3.1 through 6.5.5.

28 In further response to Paragraph 54, subdivision (a), the City contends that the City's General  
Plan is a document in the Administrative Record and speaks for itself and that the allegations in  
this paragraph contain argument and conclusions of law, to which no response is required. To

1 the extent further response is required, the City denies each and every allegation of Paragraph 54,  
2 subdivision (a).

3 (b) In response to Paragraph 54, subdivision (b), the City denies that the quoted  
4 material in this paragraph accurately summarizes the General Plan, Land Use Element, Banning  
5 Ranch "Policy Overview." Rather, the City contends that the General Plan contains Policy  
6 Overview states in full:

7 The General Plan prioritizes the acquisition of Banning Ranch as an open space  
8 amenity for the community and region. Oil operations would be consolidated,  
9 wetlands restored, nature education and interpretative facilities provided, and an  
active park developed containing playfields and other facilities to serve residents  
of adjoining neighborhoods.

10 Should the property not be fully acquired as open space, the Plan provides for the  
11 development of a concentrated mixed-use residential village that retains the  
12 majority of the property as open space. This would contain a mix of housing types  
13 clustered around a "village center" of local-serving commercial uses, small  
14 boutique hotel, active park, and possibly a school. Buildings would be located and  
15 designed and an interconnected street system provided to enhance pedestrian  
16 activity and reduce vehicular trips. Development would be concentrated to  
17 preserve the majority of the property as open space, while oil operations would be  
clustered and wetlands restored. An internal trail system would be developed to  
link uses within its neighborhoods and districts and provide access to adjoining  
neighborhoods. While the Plan indicates the maximum intensity of development  
that would be allowed on the property, this will ultimately be determined through  
permitting processes that are required to satisfy state and federal environmental  
regulatory requirements.

18 (Newport Beach General Plan, page 3-71.) In further response to Paragraph 54, subdivision (b),  
19 the City contends that the City's General Plan is a document in the Administrative Record and  
20 speaks for itself and that the allegations in this paragraph contain argument and conclusions of  
21 law, to which no response is required. To the extent further response is required, the City denies  
22 each and every allegation of Paragraph 54, subdivision (b).

23 (c) In response to Paragraph 54, subdivision (c), the City contends that the City's  
24 General Plan is a document in the Administrative Record and speaks for itself.

25 (d) In response to Paragraph 54, subdivision (d), the City contends that the City's  
26 General Plan is a document in the Administrative Record and speaks for itself.

27 (e) In response to Paragraph 54, subdivision (e), the City contends that the City's  
28 General Plan is a document in the Administrative Record and speaks for itself.



1           3.       As a third, separate affirmative defense, the City alleges that the relief Petitioner  
2 seeks, if granted, would improperly interfere with the City's lawful exercise of its discretion as a  
3 local agency.

4           4.       As a fourth, separate affirmative defense, the City alleges that the relief Petitioner  
5 seeks, if granted, would not confer a public benefit.

6           5.       As a fifth, separate affirmative defense, the City alleges that Petitioner has no  
7 clear, present, and beneficial right to the relief they seek.

8           6.       As a sixth, separate affirmative defense, the City alleges that the relief Petitioner  
9 seeks, if granted, would compel the City to act in a manner contrary to public policy.

10          7.       As a seventh, separate affirmative defense, the City alleges that Petitioner cannot  
11 obtain injunctive relief based on the contentions set forth in the Petition.

12          8.       As an eighth, separate affirmative defense, the City alleges that the Petition fails  
13 to allege facts sufficient to state a claim for which the court may grant relief.

14          9.       As a ninth, separate affirmative defense, the City alleges that Petitioner lacks  
15 standing and capacity to prosecute this action.

16          10.      As a tenth, separate affirmative defense, the City alleges that Petitioner's claims  
17 are not ripe for adjudication.

18          11.      As an eleventh, separate affirmative defense, the City alleges that Petitioner is  
19 barred from recovery herein by virtue of the application of the doctrine of laches.

20          12.      As a twelfth, separate affirmative defense, the City alleges that Petitioner is barred  
21 from bringing this action by the applicable statutes of limitations.

22          13.      As a thirteenth, separate affirmative defense, the City alleges that Petitioner is  
23 barred from bringing this action by the doctrine of waiver.

24          14.      As a fourteenth, separate affirmative defense, the City alleges that Petitioner is  
25 barred from bringing this action by the doctrines of equitable estoppel and/or quasi estoppel.

26          15.      As a fifteenth, separate affirmative defense, the City alleges that Petitioner's  
27 claims and prayers for equitable relief are barred because Petitioner has an adequate remedy at  
28 law.



3 **PROOF OF SERVICE**

4 I am a citizen of the United States, employed in the City and County of Sacramento.  
5 My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am  
6 over the age of 18 years and not a party to the above-entitled action.

7 I am familiar with Remy, Thomas, Moose and Manley, LLP's practice whereby the  
8 mail is sealed, given the appropriate postage and placed in a designated mail collection  
9 area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each  
10 day's business.

11 On October 1, 2010, I served the following:

12 **RESPONDENTS' ANSWER TO**  
13 **VERIFIED PETITION FOR WRIT OF MANDATE**

- 14  On the parties in this action by causing a true copy thereof to be placed in a sealed  
15 envelope with postage thereon fully prepaid in the designated area for outgoing mail  
16 addressed as follows; or
- 17  On the parties in this action by causing a true copy thereof to be delivered via  
18 Federal Express to the following person(s) or their representative at the address(es)  
19 listed below; or
- 20  On the parties in this action by causing a true copy thereof to be delivered by  
21 facsimile machine number (916) 443-9017 to the following person(s) or their  
22 representative at the address(es) and facsimile number(s) listed below; or
- 23  On the parties in this action by causing a true copy thereof to be hand-delivered to  
24 the following person(s) or representative at the address(es) listed below; or
- 25  On the parties in this action by causing a true copy thereof to be electronically  
26 delivered via the internet to the following person(s) or representative at the  
27 address(es) listed below:

28 **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct and that this  
Proof of Service was executed this 1st day of October 2010, at Sacramento, California.

Valorie Wood \_\_\_\_\_

1 *Banning Ranch Conservancy v. City of Newport Beach et al.*  
2 Orange County Superior Court Case No.: 30-2010-003665758-CU-WM-CXC

3 **SERVICE LIST**

4 Steve Ray, Executive Director  
5 Banning Ranch Conservancy  
6 P.O. Box 16071  
7 Newport Beach, CA 92659-6071  
8 Phone: (310) 961-7610  
9 Email: steve.banningranch@hotmail.com

*Pro per*  
*Petitioners*  
BANNING RANCH CONSERVANCY

VIA Email and U.S. Mail

8 Susan K. Hori  
9 Keli N. Osaki  
10 MANATT PHELPS & PHILLIPS  
11 695 Town Center Drive, 14th Floor  
12 Costa Mesa, CA 92626  
13 Phone: (714) 371-2500  
14 Fax: (714) 371-2550  
15 Phone: (714) 371-2528 (direct line Susan)  
16 Fax: (714) 371-2571 (direct fax Susan)  
17 Email: shori@manatt.com  
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*Attorneys for Real Parties in Interest*  
NEWPORT BANNING RANCH, LLC;  
AERA ENERGY, LLC;  
CHEROKEE NEWPORT BEACH, LLC

VIA Email and U.S. Mail

16 **Courtesy Copy:**

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22 San Francisco, CA 94102  
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