

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
200 Oceangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT**

May 18, 2012

West Newport Oil Company
Attn: Tom McCloskey
1080 West 17th Street
Costa Mesa, CA 92627

Newport Banning Ranch, LLC
Attn: Michael Mohler
1300 Quail Street, Suite 100
Newport Beach, CA 92660

Violation File Number: V-5-11-005

Property Location: Newport Banning Ranch
Newport Beach, Orange County

Unpermitted Development: Removal of major vegetation

Dear Mr. McCloskey and Mr. Mohler:

Thank you, Mr. McCloskey, for taking time today to discuss mowing that is occurring on Newport Banning Ranch and agreeing to halt the mowing in order to allow all the parties involved an opportunity to discuss the issue. As I noted during our telephone conversation, our staff has confirmed that removal of major vegetation¹ has occurred at Newport Banning Ranch, which is located within the Coastal Zone. Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto;

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

construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... [emphasis added]

The protections provided by the Coastal Act for "major vegetation" as used in the Coastal Act extend to many different vegetative communities and, under certain circumstances, even to individual plants found in an array of coastal habitats. Vegetation can qualify as "major vegetation" based on its importance to coastal habitats, the presence of sensitive species, or, in the case of rare or endangered vegetation, its limited distribution. Commission staff has reviewed the Draft Environmental Impact Report for the proposed residential and commercial development at Newport Banning Ranch, which describes the vegetation on site that is impacted by the subject mowing. The DEIR identifies a number of sensitive habitats, including habitats for sensitive species, within and adjacent to the mowed areas. The mowing at issue thus involves removal of vegetation that constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development activity conducted in the Coastal Zone without a valid coastal development permit, and with limited exceptions not applicable here, constitutes a violation of the Coastal Act.

As noted above, the subject mowing is not exempt from Coastal Act permitting requirements. The DEIR erroneously characterizes the subject mowing as a component of ongoing oil field operations that purportedly began in the 1940s. The DEIR suggests that the existing oil operations, including the mowing, are merely a continuation of those began in the 1940s, and cites authorization for continuation of those oil operations after passage of Proposition 20 under California Coastal Commission South Coast Regional Coastal Zone Conservation Commission Claim for Exemption No. E-7-27-73-144.

To show the locations where these ongoing oilfield operations purportedly occur on the site, the DEIR includes a map of areas subject to ongoing oilfield operations. Commission staff has significant concerns about whether the map accurately depicts the areas subject to oilfield operations. For instance, the map includes areas that the Commission has previously found in a previous action to be Environmentally Sensitive Habitat Areas. Moreover, the subject mowing is impacting vegetation inside and outside of the areas mapped in the DEIR as areas subject to ongoing oilfield operations. Thus, the DEIR acknowledges that, at a minimum, some portions of the mowing are not within the areas subject to ongoing oilfield operation. This activity is therefore non-exempt unpermitted development undertaken in violation of the Coastal Act.

The DEIR appears to also suggest a claim that there is vested right to mow the site. However, there is no established vested right to mow the site, or even an application before the Commission to consider the issue. There is a specific and formal process for establishing a vested right to an activity under the Coastal Act, as set forth in Section 30608 and its implementing regulations. No such application has been filed, and no such vested right has been established, nor does the oilfield operator or property owner assert that it has done such. "A developer who claims exemption from the permit requirement of the [Coastal] act on grounds that he has a vested right to continue his development is required to seek confirmation of his vested right claim ... and may not first assert the claim in defense." Halaco Engineering Co. v. South Central Coast Regional Commission (1986) 42 Cal.3d 52, 63; see also LT-WR (2007) 152 Cal.App.4th 770, 785; Davis v. CCZCC (1976) 57 Cal.App.3d 700.

We would like to work with the parties involved to resolve these issues and would like to discuss with you options to do so. As you agreed to do during our telephone conversation, **please immediately stop all unpermitted development activity on the subject site** and contact me by **May 24, 2012** to discuss resolution of this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

In addition to these other remedies, Section 30812 of the Coastal Act also allows the Executive Director, after providing formal notice and opportunity for a hearing, to record a Notice of Violation of the Coastal Act against the property if this matter is not resolved administratively. We of course would prefer to resolve this matter informally and would like to discuss the options for resolution with you at your earliest convenience by the deadline noted above.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis
Enforcement Analyst
California Coastal Commission