



# AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

April 15, 2009

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 20 2009

CITY OF NEWPORT BEACH

**Subject: Newport Banning Ranch**

Dear Ms.Linn:

Thank you for the opportunity to provide comments on the proposed Program Environmental Impact Report (EIR) for the Newport Banning Ranch Project. The project is a proposal for the development of up to 1,375 residential dwelling units, 75,000 square feet of commercial uses, and a 75-room resort on approximately 91 acres of the project's 401 acres. The proposed project area is not located within Noise Impact Zones, Notification Area, or Obstruction Imaginary Surfaces for John Wayne Airport (JWA). Therefore, the Airport Land Use Commission (ALUC) for Orange County has no comment on proposed Program EIR related to land use, noise or safety compatibility with the *Airport Environs Land Use Plan (AELUP) for JWA*.

Although the proposed development is located outside of the Airport Planning Areas, please be aware that development proposals which include the construction or alteration of a structure more than 200 feet above ground level, require filing with the Federal Aviation Administration (FAA). Projects meeting this threshold must comply with procedures provided by Federal and State law, with the referral requirements of the ALUC, and with all conditions of approval imposed or recommended by the FAA and ALUC including filing a Notice of Proposed Construction or Alteration (FAA Form 7460-1). The draft Program EIR should address these requirements if building heights in excess of 200 feet above ground level are to be permitted. In order to accurately identify if the proposed project surpasses the 200 feet above ground level threshold, the project description should include the proposed project elevations of each building using North American Vertical Datum 1988 (NAVD88).

In addition, the draft EIR should identify if the project allows for heliports as defined in the *Orange County AELUP for Heliports*. Should the development of heliports occur within your jurisdiction, proposals to develop new heliports must be submitted through

the city to the ALUC for review and action pursuant to Public Utilities Code Section 21661.5. Proposed heliport projects must comply fully with the state permit procedure provided by law and with all conditions of approval imposed or recommended by FAA, by the ALUC for Orange County and by Caltrans/Division of Aeronautics.

Thank you again for the opportunity to provide comments for the proposed Program EIR. Please contact Lea Umnas at (949) 252-5123 or via email at [lumnas@ocair.com](mailto:lumnas@ocair.com) should you have any questions related to the Orange County Airport Land Use Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kari A. Rigoni".

Kari A. Rigoni  
Executive Officer

**From:** ASHABI, MINOO [mashabi@ci.costa-mesa.ca.us]

**Sent:** Wednesday, April 01, 2009 1:50 PM

**To:** Debby Linn

**Subject:** Public Comment - Newport Banning Ranch

**Importance:** High

Hello Debby, we have received the following comment from a Costa Mesa resident opposing the 19<sup>th</sup> Street access and additional traffic.

Thank you.

**Minoo Ashabi, AIA**

Senior Planner

City of Costa Mesa

77 Fair Drive, Costa Mesa, 92628

Ph. (714) 754-5610 Fax. (714) 754-4856

[mashabi@ci.costa-mesa.ca.us](mailto:mashabi@ci.costa-mesa.ca.us)

**From:** Koken, Debby [HMA] [mailto:dkoken@hmausa.com]

**Sent:** Wednesday, April 01, 2009 8:28 AM

**To:** CMCouncil

**Subject:** Protect Banning Ranch

Although Banning Ranch has fallen into the Newport Beach sphere of influence, the City of Costa Mesa must demand a say in an issue that will severely impact our streets and environment. Please take any steps necessary to prevent a bridge from being built at 19<sup>th</sup> Street and thousands of additional vehicles impacting Newport Blvd. and the 55 freeway.

Debby Koken

1778 Kenwood Place

Costa Mesa, CA 92627

949-574-0333

April 16, 2009

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 17 2009

CITY OF NEWPORT BEACH

RE: Newport Banning Ranch Notice of Preparation Comments

Dear Ms. Linn:

I am writing on behalf of Sea and Sage Audubon Society. We appreciate the opportunity to comment on the Notice of Preparation for the Draft Environmental Impact Report for Newport Banning Ranch, City of Newport Beach, California.

We have concerns that development of this property will severely reduce the rich biological resources and habitats found here. We support the complete acquisition alternative that would protect the entire property as identified an option in the City's General Plan. In addition would like to request that the following alternatives and considerations be addressed in the Draft Environmental Impact Report.

#### **Various Road Easements**

In the Notice of Preparation (NOP) and at the Public Scoping Hearing it is indicated that several road alignments which bisect proposed open space areas remain as easements for future construction, even though they will not be built immediately as part of the proposed project. Any alternative that shows any one, or more, of these easements must base all biological resource and traffic impact assessments on the premise that the roads will be built. The assessments of impacts cannot be completed without consideration of the roads, because they are directly connected to the project and it must be assumed that they will be built. Impacts to the natural resources would be greatly increased by the construction of any or all the roads identified. Mitigation after the fact would not be possible.

Alternative analysis that assumes no impacts from any or all of the roads should only be considered if the road easements are permanently removed and identified as removed in that particular alternative analysis.

#### **19<sup>th</sup> Street Extension**

The City of Costa Mesa has historically opposed the extension of 19<sup>th</sup> Street across the and into Huntington Beach, while the City of Newport Beach has been overwhelmingly supportive of the extension. The annexation of the Banning Ranch Property into the City

of Newport Beach will therefore have a direct effect outcome of the extension of 19<sup>th</sup> Street and it would be perfectly reasonable to assume that the extension will be pursued because of the annexation and this project. The extension of 19<sup>th</sup> Street would be a clear and foreseen cumulative impact of the project.

However, at the NOP Scoping Hearing the City of Newport indicated that the extension of 19<sup>th</sup> Street will not be included in the DEIR analysis. We feel that the DEIR must include both an assessment of the impacts of the extension, and should identify any and all decision making processes and communications about why or why not to include and consider the extension of 19<sup>th</sup> Street. To simply state that the extension is not going to be considered is inadequate and inappropriate. To intentionally ignore the impacts of the road extension would be very poor public policy.

### **Biology**

Impacts to the biological resources at Banning Ranch, including all sensitive birds, must be analyzed inclusively, in all alternatives and models, with all the features of the associated habitats on the Newport Banning Ranch properties included in the analysis, in an easy to understand format. Impacts cannot be adequately analyzed by considering independently, separate micro habitat features or sub associations of plant communities, or any other system that does not recognize the ecological connection between the organisms and all the features that make up these communities on the property. Many of the sensitive species that will be analyzed are dependent upon interactions with multiple habitats, including degraded and non-native plant communities and habitats.

Impacts to sensitive birds and other wildlife species that have been noted only irregularly on the property must be assessed, in all alternatives, as if the species exist year round, unless there have been regular surveys completed year round that indicate otherwise. It would create an unscientific bias to consider species as a visitors based on only a limited number of observations.

Included with the complete assessments of impacts to listed, protected, and identified sensitive species, including but not limited to California Gnatcatchers, White-tailed Kites, Least Bell's Vireos, and Burrowing Owls, the DEIR needs to identify the impacts and risks to Coastal Cactus Wrens, which are widely recognized by conservation organizations and wildlife agencies as suffering from unprecedented declines. Newport Banning Ranch has a robust satellite population of Cactus Wrens. Currently there is much concern that larger reserves in Orange County are failing to protect the species as designed and there is reasonable concern that the species may need further protection. It would be unjustified to ignore impacts to Coastal Cactus Wrens from development at Newport Banning Ranch while determinations about the larger population in southern California are in doubt.

### **ESHA**

All habitats should be assessed in compliance with the California Coastal Act provisions. All areas deemed Environmentally Sensitive Habitat Areas (ESHA) must be treated as such under the Coastal Act including full protection and proper setbacks and buffers in the wetlands, riparian areas, grasslands, coastal sage scrub communities, and the disturbed habitats that interconnect them all.

### **Development Footprint**

The footprint of the proposed development in the upland habitats, as shown in NOP maps, grossly bisects the upland habitats into basically three distinct units, with very little upland connection between the areas. An alternative that reduces the fragmentation of these areas should be included.

### **Vernal Pools**

The NOP maps and discussion, place development and roads completely surrounding an established vernal pool. It is unconceivable that an adequate DEIR could address the impacts to the vernal pool and include such an alternative. A vernal pool cannot function surrounded by walls as if it were a swimming pool. In addition to innumerable threats to the pool itself such as run-off, pollution, disturbance from human and pets, non-native species intrusions and isolation from other natural features, the function of the pool as a water source for all the other wildlife existing on the Newport Banning Ranch is cut-off. None of the alternatives should include a configuration as shown in the current NOP maps.

### **Biologically Superior Alternatives**

In addition to the complete acquisition alternative, which is the most biologically superior alternative, other alternatives should include a fully functioning and non-isolated vernal pool system, combined with a much smaller overall development footprint, with greatly reduced fragmentation of the uplands, less impact on Coastal Sage Scrub and associated habitats, less impacts on upland grasslands, the removal of road easements, and a fully inclusive assessment of all biological and ecological impacts.

Thanks you for your considerations

Scott Thomas  
Conservation Director, Sea and Sage Audubon Society  
(949)261-7962  
Redtail@cox.net

# Nature's Last Stand



# Save Banning Ranch



**Banning Ranch is the last open space on the Orange County Coast that has not been developed.** The owner, a unit of Exxon Mobil, the world's richest corporation, wants to build 1375 housing units, a hotel and 75,000 square feet of retail space in buildings as high as 65 feet. It will add thousands of cars, clog neighborhood streets, pollute our air and destroy valuable plant and wildlife habitats - forever.

**What can we do?**

- Save Banning Ranch by purchasing all 401 acres, at fair market value, from the owners.
- Create a coastal nature park and preserve with hiking and biking trails and recreation areas for kids and adults.
- Restore the native plant and animal habitats, build a Nature Center, develop educational and interpretive programs.

**What can you do?**

- Check out the photos and maps of Banning Ranch, schedule a tour and get more information on our website.
- Vote for your preference of a coastal nature park for people versus more development. Go to our website.
- Take a hike along Banning Ranch with the Sierra Club on May 2nd. Meet at Costa Mesa's Fairview Park at 9:00am.
- Join us in the effort to save Banning Ranch. Complete the form below, clip and mail to the address shown.

[www.savebanningranch.org](http://www.savebanningranch.org)

I want to help. Please contact me.

- I want to join:
- Individual (\$20)
  - Family (\$30)
  - Friend (\$100)
  - Sponsor (\$250)
  - Patron (\$500)
  - Other \$ \_\_\_\_\_

Please make your tax deductible check payable and mail to:

**Banning Ranch Conservancy**  
 P.O. Box 16071  
 Newport Beach, CA 92569  
 (714)432-1385

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Banning Ranch\_Matt Erwin.txt

From: Matthew Erwin [jonfox7@yahoo.com]  
Sent: Saturday, April 18, 2009 1:08 PM  
To: dlinn@city.newport-beach.ca.us  
Subject: Banning Ranch

Dear Ms. Linn,

I hope the City offers its own unique opinion on the boundaries of "the property" reflecting the public as sovereign over tidelands and river banks, rights not limited by "travers[ing]" and long extending to "lowlands 1 to 10 feet above sea level" in a "tidal coastal salt marsh." Moreover, these "remnant channel[s] of the Santa Ana River Delta," naturally a "flood plane zone" well up their "sloping hillsides," are indeed "unique farmland" for the "shrimp" and "ducks," as well as the crabs perhaps too disturbed to show for the owners now.

Best wishes,

Matt Erwin  
1 Kialoa Ct.

**From:** Bruce Bartram [b.bartram@verizon.net]

**Sent:** Thursday, April 16, 2009 8:25 AM

**To:** Debby Linn

**Cc:** Sandra Genis; Jan Vandersloot; Terry Welsh; joann@jalcps.com; Matt Irwin; evenkeel4@sbcglobal.net; Jim Cassidy; Chris McEvoy; jessp77@gmail.com; Dorothy Kraus; James Quigg; Jim Mansfield; Evan Volkl; Robb Hamilton; Debby Koken; Melanie Schlotterbeck; Jean Watt; Save Banning Ranch; redtail1@cox.net; Teresa Barnwell; bnerhus@gmail.com; Margaret Royall; Patricia Weber; mezzohiker@msn.com; Ed Guilmette; Brian Burnett; Cynthia Breatore; Chris Bunyan; Sherry Kallab; Sherry Kallab; Kevin Nelson; Patrick Conlon

**Subject:** Newport Banning Ranch EIR Scope and Contents

Dear Ms. Linn:

The proposed Environmental Impact Report (EIR) to be prepared in connection with the Newport Banning Ranch Project (Project) must include as part of its contents an analysis as to how construction of the Project would be consistent with Newport Beach General Plan which as is stated in the City's Notice of Preparation (NOP) was approved by the voters in 2006. According to the NOP:

"The Newport Banning Ranch Project (Project) proposes the development of up to 1,375 residential dwelling units, 75,000 square feet of commercial uses, and 75 overnight resort accommodations on a Project site of approximately 401 acres. These uses are consistent with the description of the proposed land uses for this property in the Newport Beach General Plan,...."

According to the Newport Beach Chamber of Commerce sponsored Coalition for General Plan Accountability website.....

"members of the General Plan Advisory Committee or GPAC – developed this (general plan) after thorough study of input from thousands of their neighbors that was received during the most extensive public outreach in the City's history.

After receiving community input, GPAC developed a "Vision Statement" – a description of the City that residents want Newport Beach to be now and in 2025 – to serve as a blueprint for this General Plan Update. GPAC, with the assistance of planning professionals and using the Vision Statement as a guide, then developed this General Plan to ensure that the City achieves the vision by, among many other things, doing the following (including):

- Reducing traffic citywide by nearly 30,000 trips each day over the life of the plan;
- Reducing potential new commercial and office space by more than 2,000,000 sq. ft.;
- Supporting efforts to acquire Banning Ranch for permanent open space ;
- Taking strong action to prevent or reduce water pollution in the bay and ocean;
- Enhancing natural resources such as Upper Newport Bay;
- Preserving public views of the ocean, harbor and bay; "

The NOP states that the Project has been identified as having a "Potential Significant Impact" in the following areas, including "Land Use and Planning." Obviously, the Project's scope will seriously impact the City's attainment of the voter approved General Plan goals listed above. The weblink to the Coalition for General Plan Accountability webpage stating the above is: [http://www.generalplanaccountability.org/planPriorities/?\\_c=xvnz4yj1wlxk0d](http://www.generalplanaccountability.org/planPriorities/?_c=xvnz4yj1wlxk0d).

In addition, the EIR must include the fact that the General Plan was amended by Newport Beach voters on February 5, 2008 by Measure B. The ballot measure approved the construction a new civic center on a 12-acre site in Newport Center that was slated to become a park. According to the City Attorney's analysis of the ballot measure the "zoning regulations identify the property as open space, including a 4 acre public park as a permitted use." This property is now slated to be the new Civic Center and not open space. Thus, the Project's impact on the now diminishing open space availability and possible City acquisition must also be addressed in the EIR. The weblink to the City Attorney's analysis of Measure B is: <http://ocvote.com/election/pri0208/NB%20WEBVERSION.pdf>.

Please let me know your thoughts concerning the above.

Very truly yours,

Bruce Bartram  
2 Seaside Circle  
Newport Beach, CA 92663

----- Original Message -----

**From:** [Debby Linn](#)  
**To:** [Bruce Bartram](#)  
**Sent:** Monday, March 30, 2009 10:57 AM  
**Subject:** RE: Newport Banning Ranch NOP

[Dear Mr. Bartram,](#)

Thank you for your comments. The project application was deemed incomplete in October 2008, primarily due to the fact that a Tentative Tract Map and Master Site Plan to accompany the Planned Community Development Plan had not been submitted at that time. These documents were submitted to the City in January 2009 and are being reviewed along with the Planned Community Development Plan. During the review of these documents, supplemental materials may be requested by the City from the applicant as part of the project application, however based on the application submitted to date, the City has determined that an EIR is required for the project. The NOP is the first step in the environmental review of a project, and is intended to solicit comments and input from public agencies and the public for consideration during the preparation of the EIR. The City determined that sufficient information was provided as part of the project application to prepare a project description for NOP purposes.

Please let me know if I can be of further assistance.

Sincerely,  
Debby Linn

-----Original Message-----

**From:** Bruce Bartram [mailto:b.bartram@verizon.net]  
**Sent:** Tuesday, March 24, 2009 2:45 PM  
**To:** dlinn@city.newport-beach.ca.us  
**Cc:** Save Banning Ranch  
**Subject:** Newport Banning Ranch NOP

Dear Ms. Linn:

According to the City of Newport Beach's website concerning the Banning Ranch's project status, the Applicant's Application was deemed "incomplete." The Case Log and Planning Activities web page states that you, Debby Linn, on October 13, 2008 sent a letter to the Project Applicant advising them of their application incompleteness. Since that date there has been no indication that the Project Application has been "completed." The link to the above webpage is: [http://www6.city.newport-beach.ca.us/website/PlanningCaseLog/PlanningActivityEVT\\_DetlSing.asp?NUMBER\\_KEY=PA2008-114](http://www6.city.newport-beach.ca.us/website/PlanningCaseLog/PlanningActivityEVT_DetlSing.asp?NUMBER_KEY=PA2008-114).

CEQA Guideline 15082 states that a Notice of Preparation of an Environmental Impact Report (NOP) must include " a description of the project..." My question is how can the City of Newport Beach issue an NOP for the Banning Ranch Project when the Project's Application is "incomplete?" The nature, scope and extent of the project might be changed as part of the "completing" of Project's Application and render the Project's description in the NOP inaccurate and/or misleading. As such the circulation of the NOP is premature.

Please let me know your thoughts concerning the above.

Very truly yours,

Bruce Bartram  
2 Seaside Circle  
Newport Beach, CA 92663

**From:** Debby Linn [linnassociates@verizon.net]

**Sent:** Monday, March 30, 2009 9:57 AM

**To:** Bruce Bartram

**Subject:** RE: Newport Banning Ranch NOP

Dear Mr. Bartram,

Thank you for your comments. The project application was deemed incomplete in October 2008, primarily due to the fact that a Tentative Tract Map and Master Site Plan to accompany the Planned Community Development Plan had not been submitted at that time. These documents were submitted to the City in January 2009 and are being reviewed along with the Planned Community Development Plan. During the review of these documents, supplemental materials may be requested by the City from the applicant as part of the project application, however based on the application submitted to date, the City has determined that an EIR is required for the project. The NOP is the first step in the environmental review of a project, and is intended to solicit comments and input from public agencies and the public for consideration during the preparation of the EIR. The City determined that sufficient information was provided as part of the project application to prepare a project description for NOP purposes.

Please let me know if I can be of further assistance.

Sincerely,  
Debby Linn

-----Original Message-----

**From:** Bruce Bartram [mailto:b.bartram@verizon.net]

**Sent:** Tuesday, March 24, 2009 2:45 PM

**To:** dlinn@city.newport-beach.ca.us

**Cc:** Save Banning Ranch

**Subject:** Newport Banning Ranch NOP

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CEQA Guideline 15082 states that a Notice of Preparation of an Environmental Impact Report (NOP) must include " a description of the project..." My question is how can the City of Newport Beach issue an NOP for the Banning Ranch Project when the Project's Application is "incomplete?" The nature, scope and extent of the project might be changed as part of the "completing" of Project's Application and render the Project's description in the NOP inaccurate and/or misleading. As such the circulation of the NOP is premature.

Please let me know your thoughts concerning the above.

Very truly yours,

Bruce Bartram  
2 Seaside Circle  
Newport Beach, CA 92663

**From:** denny bean [bennydean@adelphia.net]

**Sent:** Thursday, April 16, 2009 2:43 PM

**To:** dlinn@city.newport-beach.ca.us

**Subject:** banning ranch

banning ranch has been an item of interest for a long time. it is a very large part of an even bigger plan for open space. in a congested heavily populated and trafficked area, open space is needed in all the forms that it takes being wetlands, hills, beaches, canyons, etc, we need it to assuage our aching souls. short periods spent away from bumper to bumper traffic, a demanding job, or vexing family life can pay off big time. we need a respite every once in a while to ease our minds and a walk in the wild will do it most every time.

more than that, we don't need more development. the water shortage is here with diminished supply and rising water prices, i want to say no to growth. we're the largest state in the nation and the majority of that population right here in southern california while, what water there is, is in the northern part of the state. unless you want to count all the states and one country vying for the colorado river supply. the colorado river supply that is the lowest its been due to suffering from an eight year drought and heavy competition for its supply.

denny bean  
fullerton

**From:** Olson, Gaylene [Olson@city.newport-beach.ca.us]

**Sent:** Tuesday, April 14, 2009 4:14 PM

**To:** Linn, Debby

**Cc:** Alford, Patrick

**Subject:** EIR for Banning Ranch - Comments

Debby,

Please see the email below from a resident concerning Banning Ranch.

Thanks,

Gaylene Olson

**City of Newport Beach**

Planning Department

Economic Development-Department Assistant

3300 Newport Blvd

Newport Beach, CA 92663

(949) 644-3225 - phone

(949) 644-3229 - fax

[www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us)

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**From:** sharon boles [mailto:sharon.boles@roadrunner.com]

**Sent:** Tuesday, April 14, 2009 5:12 PM

**To:** Olson, Gaylene

**Subject:** EIR for Banning Ranch

Dear Ms. Olson,

I would like to add my comment concerning the EIR for Banning Ranch.

As a resident and board member of the Newport Crest HOA, I am asking that any roadways that would be constructed on the Banning Ranch property be located as far away from the adjoining property of Newport Crest as is feasible.

Thank you for your consideration.

Sharon Boles

12 Kamalii Court



May 29, 2009  
Page 2

Please provide these corrected maps for public viewing ASAP on your website.

The current project does not address impacts from greenhouse gasses, which contribute to global warming. I feel that the traffic impacts of the project would be unfair and unhealthful for the residents of Newport Beach as well as surrounding cities.

I do agree with the cities list of "Probable Environmental Effects of the Proposed Project" though I believe this current proposed project would have several "Potential Significant Impacts".

I look forward to viewing all of the data on sensitive habitat, birds and animals in compliance with all current laws. I believe that the city and residents will be happy and excited with the possibilities for preservation and the opportunity for learning about our environment this land holds! And very little mitigation of sensitive areas will be needed to keep this as true open space for the public.

This gorgeous piece of property would make an absolutely perfect "California State Park". And could very well be a "year round" destination for visitors to Newport Beach and Orange County.

If properly planned along with the owners, and in schedule with their current use of oil drilling, as the land becomes available, and cleaned of oil operations the owner, county, cities and residents could come to an agreement together, then, with public conservation groups and individuals we could raise funds from grants and other sources to preserve this land (in it's entirety) in perpetuity and allow it's natural (already abounding) beauty to survive and thrive.

Thank you,

Cynthia C. Breatore  
*Address on file*

**From:** cynthia breatore [cbreatore@yahoo.com]

**Sent:** Thursday, March 19, 2009 10:11 AM

**To:** dlinn@city.newport-beach.ca.us

**Subject:** Newport Banning Ranch N.O.P. Draft Environmental Impact Report

hi debby,

*please find my comments below sent to costa mesa city council members re:*

The Newport Banning Ranch Notice of Preparation Draft Environmental Impact Report

hi costa mesa council members,  
(Please see attachment)

just curious; how does this sit with each one of you? i would really like to know.

doesn't this property sit entirely in the coastal zone? are we going to allow 5,000+ auto trips a day to go through our neighborhoods?

tell me you aren't actually considering a bridge at 19th street again are you? i hope not. and if you are, i really hope you give the opportunity for costa mesa residents input....

PLEASE dont accept any promises of public utilities or the like from the "developer" aera energy (exxon-mobil) in exchange for this development deal.

i know this is a "spere of influence" project for newport beach.... give me a break.

aera energy has taken advantage of the citizens of california at every turn-- we have more roads, more cars, more smog and sprawl and our state is out of money??

i grew up in los angeles area which once once a gorgeous place too.

please help the citizens of our state who have a right to clean air and some nature.

dont let them take our precious resources---- sensitive habitat, endangered speices, view corridor. i could go on and on.

thanks,

cynthia c. breatore

costa mesa

[cbreatore@yahoo.com](mailto:cbreatore@yahoo.com)

949-645-8735

**From:** cynthia breatore [cbreatore@yahoo.com]  
**Sent:** Monday, April 06, 2009 7:02 AM  
**To:** dlinn@city.newport-beach.ca.us  
**Subject:** Banning Ranch NOP Comments- w/o attachment

hi Debbie--

i'm resending my comments to you without the word attachment.... i didn't know if you may have a problem with the other doc...

Please find my comments for the NOP to be sent to all applicable parties, including the coastal commision--

also, i sent my address info in my other email --- please add me to list of contacts.

thanks again!

Cynthia C. Breatore

address on file

Costa Mesa, CA

949-645-8735

[cbreatore@yahoo.com](mailto:cbreatore@yahoo.com)

Thanks! Cyn ----

here are the comments:

April 4, 2009

The City of Newport Beach Planning Department  
Attn: Debbie Linn, Contract Planner  
3300 Newport Boulevard  
Newport Beach, CA 92658

### **Re: Notice of Preparation EIR for Banning Ranch Project**

Dear Ms. Linn,

Please submit my responses to all appropriate parties including the Coastal Commission. In the Newport Banning Ranch Project Summary, the project is listed as being adopted by the City and its electorate in 2006. As I recall the vote was made in favor of keeping the entire project site as open space. I noticed though that over time the project has been amended many times to include changes in zoning. I don't know that the project as described in this current summary would have received a yes vote from the City of Newport Beach electorate.

I have been trying to research this project via public records from my home and have had quite a few issues with finding information. I hope future information will be easier to access on the Internet from the cities' web site.

I previously read that an "open space" option would be the first priority of the project and that any other versions would only be pursued after that option had been exhausted. I read that a fair dollar assessment of the value of the property would be available to the public. The current

assessment is based on mitigation and future loss of oil production revenue; but per my telephone conversations with Sharon Wood, City of Newport Beach and David Myerson, Resource Opportunity Group, I was told that oil production would continue somewhere on the land "for the next 30-40 years". Is the published assessment based on the purchase of the entire property including currently abandoned wells?

Per the Coastal Commissions staff comments re: the cities current LCP, (from the Coastal Commissions' Agenda for April) though Banning Ranch is not included in the LCP, they did make the following suggestions:

***NPB-MAJ-1-07***

***(Suggested  
Modifications Page 13  
of 77)***

*CCC Staff Suggested Modification No. 12: In consultation with the Coastal Commission's mapping unit, modify all maps that depict the coastal zone boundary in the Banning Ranch area to accurately depict the location of the coastal zone boundary.*

#### **4. Mapping Issues**

*Maps submitted with the land use plan amendment inaccurately depict the coastal zone boundary in the vicinity of the Banning Ranch property. Thus, those maps must be denied as submitted.*

Please provide these corrected maps for public viewing ASAP on your website. The current project does not address impacts from greenhouse gasses, which contribute to global warming. I feel that the traffic impacts of the project would be unfair and unhealthful for the residents of Newport Beach as well as surrounding cities.

I do agree with the cities list of "Probable Environmental Effects of the Proposed Project" though I believe this current proposed project would have several "Potential Significant Impacts".

I look forward to viewing all of the data on sensitive habitat, birds and animals in compliance with all current laws. I believe that the city and residents will be happy and excited with the possibilities for preservation and the opportunity for learning about our environment this land holds! And very little mitigation of sensitive areas will be needed to keep this as true open space for the public.

This gorgeous piece of property would make an absolutely perfect "California State Park". And could very well be a "year round" destination for visitors to Newport Beach and Orange County.

Or, if properly planned along with the owners, and in schedule with their current use of oil drilling, as the land becomes available, and cleaned of oil operations the owner, county, cities and residents could come to an agreement together, then, with public conservation groups and individuals we could raise funds from grants and other sources to preserve this land (in it's entirety) in perpetuity and allow it's natural (already abounding) beauty to survive and thrive.

Thank you,

Cynthia C. Breatore

*address on file*

Costa Mesa, CA

949-645-8735

cbreatore@yahoo.com

Dear Debby Linn,

Thank you so much for letting us send in our comments about the scope of the EIR report for Banning Ranch. I have a few things that I would like to bring up.

1. Please have the people responsible for the Banning Ranch EIR look at the vegetation and wildlife at Fairview Park, Talbert Nature Preserve, The Santa Ana River, the Army Corps wetlands, and other neighboring ecosystems that will be affected by this project. I think they should look at all of the previous studies that have been commissioned for these areas and realize that any kind of urban development on Banning Ranch will, without a doubt, have an enormous negative impact on the surrounding ecosystems. I have personally seen predatory birds hunt in all of these areas. It's clear to me that this development would decrease the food supply for threatened and endangered animals that live not just on Banning Ranch, but the surrounding nature preserves and ecosystems.
2. Please take into consideration the historical significance as well. We are missing out on an opportunity to save the last piece of what was a much larger Banning Ranch at one time. A lot of people have no idea why this area is even called Banning Ranch. It also is famous for protecting California from a Japanese invasion during World War II with it's 2 155mm panama mount guns. It's officially listed as gun battery #8 in Costa Mesa. At that time Banning Ranch was considered to be part of Costa Mesa. It also has Native American significance. I can just imagine the tribe that lived there looking out over Catalina and thinking, if we had a canoe and the wind was just right, we could make it!
3. Last but not least. This area is beautiful. It makes life worth living. The owner has a price tag on it but the value of this as open space is priceless. We need areas like this to feel human again and get in touch with ourselves. Human beings need this designated as a nature preserve just as much as the wildlife that lives there. It reminds us that we are not robots. Without it, it's hard to remember a time before electricity, the internet, traffic, and urbanization.

Thanks again for the opportunity to send in my comments,

Sincerely,

Brian Burnett

P.S. Can you let me know if you received this? I want to make sure I got the address right and it doesn't show up in junk mail.



# California Native Plant Society

ORANGE COUNTY CHAPTER

P.O. Box 54891  
Irvine, CA 92619-4891  
occnps.org

April 12, 2009

The California Native Plant Society is a non-profit organization dedicated to the understanding and appreciation of California's native plants and how to conserve them and their natural habitats through education, science, advocacy, horticulture and land stewardship.

OCCNPS focuses that dedication on the native plants and remaining areas of natural vegetation in Orange County and adjacent Southern California.

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 16 2009

RE: NOP for Newport Banning Ranch Project

CITY OF NEWPORT BEACH

Dear Ms. Linn:

The Orange County Chapter of the California Native Plant Society (OCCNPS) has long had an interest in Banning Ranch. Despite its long-degraded condition, it still contains quite a variety of functioning native coastal upland, riparian and wetland habitats, including vernal pools. These habitats support a number of special status species, including one of the largest remaining population of cactus wrens (a CDFG Species of Special Concern) in Orange County. The City and citizens of Newport Beach wisely showed their appreciation of the Ranch's existing and potential natural values when they approved Banning Ranch's priority use to be Open Space in the 2006 *City of Newport Beach General Plan*. OCCNPS concurs that the highest and best use of Banning Ranch would be to be fully restored to its native habitat, and be both the community and natural asset that it can be.

#### Comments on the NOP:

1. The NOP does not include a standard environmental checklist. The narrative discussions touch on only some of the impact areas, listed on pp. 20-21, that are required to be considered in the checklist. The discussions' information would be better presented in a standard checklist tabular format that includes information on all the impact areas.

2. OCCNPS is concerned that approximately 75 acres (58% of the approximately 131 acres designated Lowland Open Space/Public Trails and Facilities) are designated as "Third-party Mitigation Area ... to be used by entities outside of the Project site for restoration and/or payment for restoration in exchange for compensation for impacts from projects outside Newport Banning Ranch." The following aspects of this designation are not clear in the NOP and must be explained in detail in the EIR:

- a) What is the rationale for putting 75 acres into a mitigation bank rather than restoring all 131 acres?
- b) Why are those particular acres being banked, rather than other acres or configurations of acres within the 131-acre area?
- c) Are any outside entities currently known or expected to cover restoration of the 75 acres? In what timeframe?
- d) Will invasive non-natives be removed from the 75 acres, and that removal maintained while awaiting restoration by outside entities? The 75 acres are upwind of most of the restoration areas outlined in the *Overview of Habitat Program* (presented in Part V, Appendix A). All that program's work, or any other restoration work, will be for naught if seeds of invasives growing in the 75 acres are continually wind-borne into the restoration areas over the time (months? years?) those acres await restoration.

Thank you for the opportunity to comment on the Newport Banning Ranch Project NOP.

Respectfully,



Celia Kutcher  
Conservation Chair

cc:  
CNPS Conservation Team



**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.**

April 14, 2009

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 17 2009

CITY OF NEWPORT BEACH

RE: Notice of Preparation Newport Banning Ranch Program Environmental Impact Report

Dear Ms. Linn,

The California Cultural Resources Preservation Alliance, Inc.(CCRPA) is against the development of Banning Ranch. The CCRPA is a 501 ( c ) 3 non-profit organization of archaeologists, historians, Native Americans, and individuals who are concerned about the continuing loss of archaeological and cultural properties. In addition to the open space, endangered species and wetland values, we believe that the property contains significant archaeological and cultural values, including the potential for the presence of Native American burials. The proposed development will have a disastrous effect on these significant values and the Banning Ranch property should be preserved as open space.

Prehistoric villages tend to be situated along the Santa Ana River and particularly on bluffs and mesas overlooking wetlands. It should be noted that archaeological sites and human remains have been found in similar environmental situations, even within those that have been used for oil production.

Please refer to the Sacred Sites bill, Senate Bill 18, regarding the notification of Native Americans when land is rezoned. In addition, SB 18 amended Government Code 66560 to include open space for the protection of cultural places as an allowable purpose of the open space element.

Sincerely,

Patricia Martz, Ph.D.  
President

Cc: Dave Singleton  
California Native American Heritage Commission

**From:** Patricia Martz [p.martz@cox.net]  
**Sent:** Thursday, April 16, 2009 11:20 AM  
**To:** dlinn@city.newport-beach.ca.us  
**Subject:** Banning Ranch Notice of Preparation  
A hard copy on letterhead was mailed yesterday.

14, 2009 April

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

RE: Notice of Preparation Newport Banning Ranch Program Environmental Impact Report

Dear Ms. Linn,

The California Cultural Resources Preservation Alliance, Inc.(CCRPA) is against the development of Banning Ranch. The CCRPA is a 501 ( c ) 3 non-profit organization of archaeologists, historians, Native Americans, and individuals who are concerned about the continuing loss of archaeological and cultural properties. In addition to the open space, endangered species and wetland values, we believe that the property contains significant archaeological and cultural values, including the potential for the presence of Native American burials. The proposed development will have a disastrous effect on these significant values and the Banning Ranch property should be preserved as open space.

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Please refer to the Sacred Sites bill, Senate Bill 18, regarding the notification of Native Americans when land is rezoned. In addition, SB 18 amended Government Code 66560 to include open space for the protection of cultural places as an allowable purpose of the open space element.

Sincerely,

Patricia Martz, Ph.D.

**President**

**Cc: Dave Singleton  
California Native American Heritage Commission**

**DEPARTMENT OF TRANSPORTATION**

District 12  
3337 Michelson Drive, Suite 380  
Irvine, CA 92612-8894  
Tel: (949) 724-2267  
Fax: (949) 724-2592



*Flex your power!  
Be energy efficient!*

**FAX & MAIL****April 15, 2009**

Ms. Debby Linn  
City of Newport Beach  
Planning Department  
3300 Newport Blvd.  
Newport Beach, CA. 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 20 2009

CITY OF NEWPORT BEACH

File: IGR/CEQA  
SCH#: 20090031061  
Log #: 2235  
SR-1

**Subject: Newport Banning Ranch Project**

Dear Ms. Linn,

Thank you for the opportunity to review and comment on the **Notice of Preparation for the Newport Banning Ranch Project**. The proposed project calls for the development of 1,375 residential dwelling units, 75,000 square feet of commercial uses, and a 75 room resort on approximately 91 acres of the 401 total acres. Approximately 243 acres would be in open space, trails, and consolidated oil facilities, the latter comprising approximately 20 acres. Park facilities would be provided on approximately 45 acres; roadways would occupy approximately 22 acres. Roadways would be extended through the site to provide a north-south connection from West Coast Highway to 19<sup>th</sup> Street; additional roadway connections would be provided to 15<sup>th</sup> and 16<sup>th</sup> Streets. The nearest State routes to the project site are I-5, SR-55.

**The California Department of Transportation (Department), District 12 is a commenting agency on this project and has the following comments:**

1. If any project work (e.g. storage of materials, street widening, emergency access improvements, sewer connections, sound walls, storm drain construction, street connections, etc.) will occur in the vicinity of the Department's Right-of-Way, an encroachment permit is required prior to commencement of work. Please allow 2 to 4 weeks for a complete submittal to be reviewed and for a permit to be issued. When applying for an Encroachment Permit, please incorporate Environmental Documentation, SWPPP/ WPCP, Hydraulic Calculations, Traffic Control Plans, Geotechnical Analysis, Right-of-Way certification and all relevant design details including design exception approvals. For specific details on the Department's Encroachment Permits procedure, please refer to the Department's Encroachment Permits Manual. The latest edition of the manual is available on the web site:  
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>
2. The Department's Traffic Operations Branch requests all applicants to use the method outlined in the latest version of the Highway Capacity Manual (HCM) when analyzing traffic impacts on State Transportation Facilities. The use of HCM is preferred by the Department because it is

an operational analysis as opposed to the Intersection Capacity Utilization (ICU) method, which is a planning analysis. In the case of projects that have direct impacts on State Facilities, the Department recommends that the traffic impact analysis be based on HCM method. Should the project require an encroachment permit, Traffic Operations may find the Traffic Impact Study based on ICU methodology inadequate resulting in possible delay or denial of a permit by the Department. All input sheets, assumptions and volumes on State Facilities including ramps and intersection analysis should be submitted to the Department for review and approval. The EIR should include appropriate mitigation measures to offset any potential impacts.

The traffic impact on the state transportation system should be evaluated based on the Department's Guide for the Preparation of Traffic Impact Studies which is available at: <http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf>.

3. Trips generated by the project should be based on ITE trip generation rates.
4. The EIR should include Traffic Analysis for existing and future (2040) conditions.

Please continue to keep us informed of this project and any future developments, which could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,



Christopher Herre, Branch Chief

Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

Claire Flynn city of costa mesa.txt

From: FLYNN, CLAIRE [CFLYNN@ci.costamesa.ca.us]  
Sent: Friday, March 27, 2009 2:58 PM  
To: cbreatore@yahoo.com  
Cc: dlinn@city.newport-beach.ca.us; dlinn@ci.newport-beach.ca.us;  
BRANDT, KIMBERLY; ASHABI, MINOO  
Subject: FW: newport beach and aera energy plans for banning ranch

Dear Ms. Breatore:

Thank you for your comments on the proposed Newport Banning Ranch project. We have forwarded them to the City of Newport Beach, as they are the Lead Agency for this project.

However, the City of Costa Mesa will be closely following the entitlement process. We will be commenting on the environmental document to ensure that traffic impacts to the City of Costa Mesa are minimized to the fullest extent possible. We would be opposed to any development scenario that would result in significant adverse impacts to our City streets or necessitate the construction of the 19th Street Bridge. It is important that any impacts to Costa Mesa (i.e. construction, land use, traffic, air quality, noise, etc.) will be minimized or properly mitigated.

Thank you again for your comments.

Thanks.

Claire L. Flynn, AICP  
Principal Planner  
77 Fair Drive, Costa Mesa, 92628  
Ph. (714) 754-5278 Fax. (714) 754-4856  
cflynn@ci.costamesa.ca.us

-----Original Message-----

From: Cynthia Breatore [mailto:cbreatore@yahoo.com]  
Sent: Thursday, March 19, 2009 9:19 AM  
To: CMCouncil  
Cc: aprilily@gmail.com; bmlserv@juno.com; bnerhus@gmail.com;  
brian@savebannngranch.org; Brian Burnett; christopherbunyan@yahoo.com;  
dkoken@hmausa.com; evan@volklinvestmentsinc.com; hiliarydbl@aol.com;  
jennhamlin@gmail.com; jonv3@aol.com; jtmansfield@ca.rr.com; jwatt4@aol.com;  
knelson@web-conferencing-central.com; Lauracurran@mac.com;  
margaret.royal@gmail.com; melanie@schlotterbeck.net; mezzohiker@msn.com; Pat  
Conlon; james quigg; r.hageman@sbcglobal.net; redtail1@cox.net;  
savebannngranch@yahoo.com; slgenis@stanfordalumni.org;  
steveray4surfcity@hotmail.com; Terry Welsh  
Subject: newport beach and aera energy plans for banning ranch

hi costa mesa council members,  
(Please see attachment)

just curious; how does this sit with each one of you? i would really like to know.

doesn't this property sit entirely in the coastal zone? are we going to allow 5,000+ auto trips a day to go through our neighborhoods?

tell me you aren't actually considering a bridge at 19th street again are you? i hope not. and if you are, i really hope you give the opportunity for costa mesa residents input....

PLEASE dont accept any promises of public utilities or the like from the "developer" aera energy (exxon-mobile) in exchange for this development deal.

Claire Flynn city of costa mesa.txt

i know this is a "sphere of influence" project for newport beach.... give me a break.

aera energy has taken advantage of the citizens of california at every turn-- we have more roads, more cars, more smog and sprawl and our state is out of money??

i grew up in los angeles area which once once a gorgeous place too.

please help the citizens of our state who have a right to clean air and some nature.

dont let them take our precious resources----- sensitive habitat, endangered speices, view corridor. i could go on and on.

thanks,

cynthia c. breatore  
costa mesa  
cbreatore@yahoo.com  
949-645-8735

**From:** Villasenor, Jennifer [JVillasenor@surfcity-hb.org]  
**Sent:** Thursday, April 16, 2009 5:58 PM  
**To:** dlinn@city.newport-beach.ca.us  
**Subject:** Newport Banning Ranch project - City of HB - Additional NOP Comments  
**Debby,**

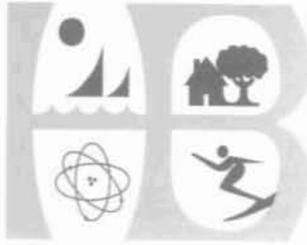
**Below are additional comments from the City of Huntington Beach on the Newport Banning Ranch project.**

- 1. The Santa Ana River is on the draft 303d list for “Impacted Bodies of Water.” This list is currently scheduled to be adopted later this month by the State Water Quality Resources Control Board. Since this body of water is directly downstream of the proposed development, potential adverse impacts on the Santa Ana River as a result of the proposed project should be addressed in the EIR.**
- 2. The NOP states, “Approximately 1,600,000 cy of additional, corrective soil is anticipated” to be imported to the site. Any hauling through the City of Huntington Beach in excess of 5,000 cy requires a Haul Route permit from the City of Huntington Beach Public Works Department. This should be a consideration, if applicable, in the draft EIR.**
- 3. The draft EIR should address the project’s impacts on water supply. Given the major reductions in current and future MWD import supply to our Southern California region, how will the City of Newport Beach plan to either locate new sources of water for this project, or justify sufficient water conservation efforts to allow for such significant increase in development and water use?**

**Please confirm that you received these comments. Thank you.**

**Jennifer Villasenor**

**City of Huntington Beach  
Planning Department**



# City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING

April 15, 2009

Debby Linn, Contract Planner  
Planning Department  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 20 2009

CITY OF NEWPORT BEACH

**Subject: Notice of Preparation of the Newport Banning Ranch Program EIR**

Dear Ms. Linn:

The City of Huntington Beach has reviewed the Notice of Preparation (NOP) for the proposed Newport Banning Ranch project. The City of Huntington Beach has the following comments and requests that these issues be addressed in the Draft Environmental Impact Report (EIR) that will be prepared for this project.

### **Traffic Transportation**

- The revised study area for traffic analysis appears to be adequate, but needs to be verified using the methodology identified in the draft scope of work for the project.
- The City of Huntington Beach requests that the City's methodology for evaluating intersection level of service and determining impact significance be used on all study intersections within the City, including Caltrans intersections. The City agrees that Caltrans methodology should also be used on Caltrans intersections.

Thank you for the opportunity to comment on the NOP. We look forward to reviewing the Draft Environmental Impact Report when it is available.

Sincerely,

Jennifer Villasenor  
Associate Planner

Cc: Mary Beth Broeren, Planning Manager

To: Debby Linn  
Contract Planner  
City of Newport Beach Planning Department  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

20 April 2009

From Environment Quality Affairs Citizens Advisory Committee (EQAC)

Subject: Comments on NOP for Newport Banning Ranch

Dear Ms. Linn:

The Environmental Quality Affairs Citizens Advisory Committee (“EQAC”) of the City of Newport Beach (“City”) thanks you for the opportunity to comment on the Notice of Preparation (“NOP”) for the Newport Banning Ranch Project (“Project”) and the scope and content of the Program Environmental Impact Report (“EIR”) that the City plans to prepare. EQAC’s comments are outlined below and relate to a number of areas, including, but not limited to, aesthetics, biological resources, cultural resources, geology, hazards, hydrology, land use, noise, and transportation.

First and foremost, the EIR needs to consider the General Plan’s clear preference that the entire Banning Ranch be preserved as permanent open space, along with the implementing strategy of actively pursuing the acquisition of the site as permanent open space. In addition, EQAC specifically requests that, where the EIR refers to the General Plan and its discussion of Banning Ranch, the EIR should cite to and quote the General Plan specifically.

Project Site. According to the City’s General Plan, Banning Ranch encompasses approximately 518 acres of primarily undeveloped land with some historic oil extraction infrastructure, including oil wells, pipelines, and buildings (General Plan, pp. 3-67 – 3-68). The General Plan states that “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” (General Plan, p. 3-68). Banning Ranch provides wildlife with a “significantly large, diverse area for foraging, shelter, and movement” (General Plan, p. 3-68). The site contains about 69 acres with a habitat value rank of “1” with a high biological resource value, 96 acres with a rank of “2,” and 118 acres with a rank of “3.” In addition, “Banning Ranch exhibits distinctive topography that is a physical and visual resource for the community” (General Plan, p. 3-71).

Land Use. For these and other reasons, the General Plan “prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region. Oil operations would be consolidated, wetlands restored, nature education and interpretative facilities provided, and an active park developed containing playfields and other facilities to serve residents of adjoining neighborhoods” (p. 3-71). To further this policy, the General Plan contains a strategy to “support active pursuit of the acquisition of Banning Ranch as permanent open space, which may be accomplished through the issuance of state bonds,

environmental mitigation fees, private fundraising, developer dedication, and similar techniques” (Strategy LU 6.3.2). If acquisition for open space is not successful, then the site may be developed as a high-quality residential community with supporting uses that provide revenue to restore and protect wetlands and important habitats (Goal LU 6.4).

Accordingly, the EIR must address the General Plan’s policy prioritizing the acquisition of Banning Ranch as an open space amenity for the community and region (Policy LU 3.4). Given the General Plan’s clear preference that the entire site be preserved as permanent open space, the EIR must discuss this preference..

Aesthetics. As stated in the General Plan, “Banning Ranch exhibits distinctive topography that is a physical and visual resource for the community,” and the site provides “an important visual backdrop from West Coast Highway” (p. 3-71). EQAC further understands that the undeveloped nature of the site is considered an asset by adjoining communities including Newport Shores, Newport Crest, and Lido Sands as well as residents, commuters and passers-by along West Coast Highway and parts of the Cities of Costa Mesa and Huntington Beach. Accordingly, the EIR must consider whether the Project will have a substantial adverse effect on scenic vistas, whether it will damage scenic resources, and whether it will substantially degrade the existing visual character or quality of the site and its surroundings.

Biological Resources. As discussed above, the General Plan states that “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” (General Plan, p. 3-68). In addition, the City has identified Banning Ranch as an Environmentally Sensitive Habitat Area that contains one or more sensitive plant communities and many species of wildlife (General Plan, p. 10-8). The Natural Resources Element of the General Plan call for the protection of the sensitive and rare resources that occur on Banning Ranch; and, if future development is permitted, requires that an assessment be prepared delineating sensitive and rare habitat and wildlife corridors. The Natural Resources Element further requires “that development be concentrated to protect biological resources and coastal bluffs, and structures designed to not be intrusive on the surrounding landscape. Require the restoration or mitigation of any sensitive or rare habitat areas that are affected by future development” (General Plan, p. 10-27). Given the significant biological resources present at Banning Ranch, the EIR must consider whether the project would (1) have a substantial adverse effect on protected species, (2) have a substantial adverse effect on riparian habitats or other sensitive natural communities, (3) have a substantial adverse effect on federally protected wetlands, and (4) interfere substantially with the movement of any native or migratory fish or wildlife species or with established wildlife corridors.

Cultural Resources. The General Plan recognizes that Banning Ranch contains significant fossils and known paleontological deposits, including at least 14 documented sites of high significance (General Plan, p. 10-15). The EIR should consider whether the Project would cause a substantial adverse change in the significance of historical and

archaeological resources, whether it would directly or indirectly destroy unique paleontological resources, or disturb human remains.

Geology and Soils. Banning Ranch contains significant coastal bluffs, some of which are highly erodible and have experienced sliding over the years (General Plan, p. 3-71). The site is also located adjacent to the Newport-Inglewood Fault (NOP, p. 5). We understand the Project also calls for the restoration of some coastal bluffs (NOP, p. 18). The EIR will need to consider whether the Project would expose people or structures to potential adverse effects involving an earthquake fault and landslides, and whether the Project would result in substantial soil erosion or potentially result in landslides.

Hazards. Oil extraction activities at Banning Ranch date back at least 75 years (General Plan, p. 3-68). The Project contemplates that existing oil wells within the proposed development and open space areas would be abandoned with those areas remediated (NOP, p. 11). In addition, oil production would be allowed to continue within about 20 acres of the Project site within two specific consolidation sites (NOP, p. 15). Given the historic oil production at the site and the expected continuation of oil production, the EIR will need to consider (1) whether the existing oil infrastructure would create hazards to the public or the environment, and (2) whether the continued operation of oil wells will create any significant hazard to the public or the environment through reasonably foreseeable accident conditions.

Hydrology and Water Quality. Drainage from upland areas in and adjoining the City of Costa Mesa have formed a number of arroyos with riparian habitats at Banning Ranch (General Plan, p. 3-71). We also understand that some stormwater drains pass through or under the Project site. The EIR will need to consider whether the Project would substantially alter the existing drainage pattern of the area, including the alteration of streams, and whether it would create or contribute runoff water that would exceed the capacity or existing or planned stormwater drainage systems.

Noise. The Project proposes 1375 dwelling units, 75,000 square feet of commercial use, 75 hotel rooms, and passive and active park uses, all of which will contribute to increased noise levels in a currently undeveloped area. We understand that increased noise levels are of particular concern to the nearby Newport Shores, Newport Crest and Lido Sands communities. Therefore, the EIR will need to consider whether the Project would (1) result in exposure of persons to noise levels in excess of established standards, and (2) result in a substantial permanent or temporary increase in ambient noise levels in the Project vicinity.

Traffic. The Project proposes an intersection into the Project site from West Coast Highway, the possible widening of West Coast Highway, the construction of Bluff Road from a southern terminus at West Coast Highway to a northern terminus at 19<sup>th</sup> Street, and the extension of 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> Streets. The EIR must consider whether these planned road improvements and extensions would (1) cause a substantial increase in traffic, (2) exceed established levels of service (either individually or cumulatively), (3) result in inadequate emergency access, or (4) result in inadequate parking capacity.

Cumulative Impacts. The EIR must consider all of these issues on a individual project-level basis. In addition, the EIR must consider the cumulative impacts of the project, especially noise, traffic and land use. The City will soon be considering an EIR for the proposed Sunset Ridge project, located immediately to the south east of the Project site. Because of their proximity both in time and location and their potential to significantly affect the neighboring communities, the environmental effects of both Banning Ranch and Sunset Ridge (and any other projects) must be considered together. Under the California Environmental Quality Act, “[t]he full environmental impact of a proposed ... action cannot be gauged in a vacuum.” *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408. Thus, “[t]he requirement for a cumulative impact analysis must be interpreted so as to afford the fullest possible protection of the environment within the reasonable scope of the statutory and regulatory language.” *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431-432. Therefore, “[i]t is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.” *Id.* at 431.

Alternatives. An EIR must describe a reasonable range of alternatives to the project that could feasibly attain most of the objectives of the project while avoiding or substantially lessening any of the significant effects of the project. 14 Cal. Code Regs., § 15126.6. The NOP discusses an open space alternative, a no action/no development alternative, and a circulation alternative. In order to provide a reasonable range of alternatives for the public to consider, the EIR should include a “reduced footprint” alternative that would consist of development but at a reduced level lower than the proposed 1375 dwelling units.

We hope you find these comments helpful. Please contact the EQAC Committee should you have any questions.



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

April 15, 2009

Ms. Debby Linn  
City of Newport Beach  
Planning Department  
3300 Newport Blvd.  
Newport Beach, CA 92658

**Subject: Notice of Preparation for Draft EIR – Newport Banning Ranch**

Dear Ms. Linn

Thank you for the opportunity to provide comments on the Notice of Preparation of the Draft Environmental Impact Report related to Newport Banning Ranch Development. The proposed development borders City of Costa Mesa on the north and on the east. In addition, the proposed circulation system is directly connected to the City of Costa Mesa's major thoroughfares and the proposed master plan includes extension of s Bluff Road to West 19<sup>th</sup> Street, which could have a direct impact on the Costa Mesa residential community of SeaBreeze.

The City of Costa Mesa encourages you to address the following comments in the environmental analysis for the Banning Ranch project:

## 1. Aesthetics:

- a. The development of this property offers a good opportunity to remove the manmade berm of dirt/construction debris in the area bordering the SeaBreeze Community.
- b. It is critical to include analysis of staggered building heights from 3 to 5 stories in proposed mixed-use areas, away from the westerly corporate limits of Costa Mesa. (Westside has 2- story height limit, with 4 stories allowed in overlay zones).
- c. It is important to include visual simulations of the proposed project from different vantage points in the SeaBreeze Community. The environmental analysis should identify potential view impacts as a result of proposed 50 feet height (resort) and 65 feet height (mixed-use) limits.

## 2. Air Quality:

- a. Please include a detailed analysis of air quality impacts from the proposed extension of Bluff Road to West 19<sup>th</sup> Street on the adjacent SeaBreeze Residential Community for the proposed project and during various construction stages of the project.

## 3. Biological Resources:

- a. The EIR analysis should identify cumulative impacts to wildlife in general and biological resources in Talbert Park specifically as a result of proposed development.
- b. Given the significance of the project site, the EIR should consider the Coastal Commission thresholds for impacts to wild life and endangered species rather than City of Newport Beach standards.

**4. Land Use:**

- a. Considering the proposed high-density development at the mixed-use areas, it is critical to include analysis of low to moderate intensity mixed-use development area to serve as a gradual transition of land use intensity between the Banning Ranch development and the industrial and residential uses in Westside Costa Mesa.

**5. Noise:**

- a. Since the proposed Bluff Road is in proximity to established residential neighborhoods, it is important to include analysis of traffic noise impacts from the proposed extension of Bluff Road to West 19<sup>th</sup> Street on the adjacent SeaBreeze Residential Community.
- b. The noise analysis should also include analysis of operational noise impacts of commercial uses in the proposed mixed-use development areas to the SeaBreeze Community.

**6. Population/Housing:**

- a. To the extent possible, the EIR should analyze the housing demand for low- to moderate-income households as a result of the new jobs created in the proposed mixed-use development.

**7. Public Services:**

- b. Given the magnitude of this development, it is important to include analyses of potential impacts to Newport Mesa Unified School District facilities, emergency/hospital services, and public services. The City encourages you to work with NMUSD to apply the appropriate student generation rate for this development versus a general standard.
- c. The EIR should include analysis related to potential increase in crime and projected need for increased police protection services as a result of proposed high-density mixed use project areas along the Costa Mesa boundaries.

**8. Recreation:**

- a. While the proposed development will include parkland and recreational trails, it is likely that park demand be increased for the parks in the City of Costa Mesa's jurisdiction. The environmental document should include analysis related to recreational demand per residential unit specifically for the mixed used units, potential impacts to regional parks (i.e., Fairview Park and Talbert Park), and identify appropriate mitigation measures
- b. In the Alternatives discussion, explore opportunities where a joint-use public/private parking lot could be a gateway between the Cities of Costa Mesa and Newport Beach to access the open space areas in Banning Ranch.

**9. Transportation/Traffic:**

- a. Trip Generation – The City of Costa Mesa is concerned about the factors that would be applied for interaction between the proposed uses. The City requests that in order to provide a conservative analysis, such reductions be minimized. In addition, the trip generation analysis for live-work units should be developed separately for live" portion and "work" portion separately, assuming residential and commercial rates.

- b. Trip Distribution – The City is concerned about the circulation system provided for the site. Primary access for a majority of proposed development would be from Costa Mesa via 19<sup>th</sup> Street, 17<sup>th</sup> Street and 16<sup>th</sup> Street. The proposed concentration of high-intensity development at the City's boundary and the proposed circulation plan would result in disproportionately high impacts to the City of Costa Mesa. It is anticipated that approximately 75 percent of project trips will be routed through Costa Mesa streets resulting in impacts to many minor close by residential streets, as well as at several intersections throughout the City. The proposed distribution should be reviewed by the City prior to use in the study. The project should also consider additional access to the Pacific Coast Highway to reduce impacts to Costa Mesa streets.
- c. Circulation System/MPAH Revision –The proposed circulation system is significantly different from the County's Master Plan of Arterial Highways (MPAH). The City of Newport Beach should pursue the Orange County Transportation Authority's (OCTA) downgrade process of the arterials as proposed in the Banning Ranch proposal and incorporate any mitigation measures determined as part of that study.
- d. 19<sup>th</sup> Street Bridge – Several alternatives are proposed for analysis with and without the 19<sup>th</sup> Street Bridge. The mitigation measures should be determined based on assumption that the 19<sup>th</sup> Street Bridge is not implemented.
- e. SR-55 Freeway Extension – The MPAH currently shows the extension of SR-55 Freeway south of 19<sup>th</sup> Street to Industrial Way. However, as this project is being reviewed through various studies, an actual implementation of any given alternative is 10 to 15 years out. Accordingly, the mitigation measures for the impacts of the Banning Ranch proposal should be conditioned based on current conditions of Newport Boulevard, including improvements currently under construction.
- f. Traffic Study Procedure – The traffic analysis should include analysis of all intersections identified by the City of Costa Mesa, as well as, all intersections (signalized and un-signalized) where the project would add 50 or more peak hour trips. Signalized intersections within Costa Mesa jurisdiction should be analyzed with the Intersection Capacity Utilization (ICU) methodology. All intersections under the State of California Department of Transportation (Caltrans) jurisdiction, as well as all un-signalized intersections should be analyzed using the Highway Capacity Manual (HCM) methodology.

10. Construction Impacts:

- a. The City will experience much of the adverse impacts from this proposed development during construction. The City believes that a reasonably developed construction management plan should be included in the environmental document. While detailed analysis may not be possible at this time, the City discourages deferring this analysis or applying generic mitigation measures due to the magnitude of this phased development project.

We appreciate your consideration of the noted comments in preparation of the draft EIR and we look forward to participating in additional reviews.

Sincerely,



Kimberly Brandt, AICP  
Assistant Development Services Director

cc: Peter Naghavi  
Raja Sethuraman  
Claire Flynn  
Minoo Ashabi

Mike Mohler  
Newport Banning Ranch, LLC  
1300 Quail Street, Ste. 100  
Newport Beach, CA 92660

**From:** Steve Coyne [scoyne@smcoynecompany.com]  
**Sent:** Sunday, March 22, 2009 11:14 AM  
**To:** dlinn@city.newport-beach.ca.us  
**Subject:** FW: Banning Ranch Notice of Preparation (NOP) released Wednesday  
Dear Ms. Linn,

As a lifelong resident of Newport I really like the plan to develop the Banning Ranch. I think this NOP is informative and depicts a well thought out plan. I was wondering if there is any type of Development Agreement or Owner Participation Agreement that is also planned as part of the development. Knowing the high cost of development of coastal property I would think the developers would be requesting some form of assistance in this process...and nothing is mentioned in this NOP.

Thanks,

Steve Coyne  
The SM Coyne Company  
1400 Quail Street, Suite 260  
Newport Beach, CA 92660  
949-300-9632

---

**From:** Save Banning Ranch [mailto:info@savebanningranch.org]  
**Sent:** Friday, March 20, 2009 10:37 PM  
**To:** savebanningranch@yahoo.com  
**Subject:** Banning Ranch Notice of Preparation (NOP) released Wednesday

The Notice of Preparation (NOP) for a large residential and commercial development at Banning Ranch in Newport Beach was just released Wednesday.

[http://www.city.newport-beach.ca.us/PLN/Banning\\_Ranch/Environmental/NBR%20NOP-031609\\_1.pdf](http://www.city.newport-beach.ca.us/PLN/Banning_Ranch/Environmental/NBR%20NOP-031609_1.pdf)

The 412 acre Banning Ranch is the last large privately owned parcel of coastal open space remaining in Orange County.

It is USFWS-declared critical habitat for the California gnatcatcher and San Diego Fairy Shrimp, as well as habitat for the largest remaining population of Cactus Wrens in coastal Orange County.

The release of the NOP is a road we have not crossed before in our ten year effort to preserve the entire Banning Ranch as open space.

While we have some "open space veterans" in our effort, many of us are new to NOPs. We have

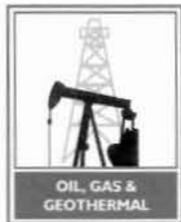
## 30 days to submit comments

I would encourage everyone who is interested in the preservation, acquisition, conservation, restoration and maintenance of the ENTIRE Banning Ranch as a permanent public open space, park and coastal nature preserve to review Banning Ranch NOP and submit appropriate comments. There are 16 areas of concern, listed on pages 20 and 21 of the NOP.

Please contact us if you need guidance.

If you would also, please review the entire development application with all its appendices and studies and give us specific advice on what to submit (or submit your own comments). This can be viewed by going to the Newport Beach website:

[http://www.city.newport-beach.ca.us/PLN/Banning\\_Ranch/BanningRanchInfo.asp](http://www.city.newport-beach.ca.us/PLN/Banning_Ranch/BanningRanchInfo.asp)



# DEPARTMENT OF CONSERVATION

## DIVISION OF OIL, GAS AND GEOTHERMAL RESOURCES

5816 Corporate Avenue • Suite 200 • CYPRESS, CALIFORNIA, 90630-4731

PHONE 714 / 816-6847 • FAX 714 / 816-6853 • WEBSITE [conservation.ca.gov](http://conservation.ca.gov)

RECEIVED BY  
PLANNING DEPARTMENT

MAR 26 2009

CITY OF NEWPORT BEACH

March 24, 2009

Ms. Debby Linn, Contract Planner  
City of Newport Beach, Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

Subject: Notice of Preparation of a Program Environmental Impact Report for the Newport Banning Ranch Project, SCH 2009031061

Dear Ms. Linn:

The Department of Conservation's Division of Oil, Gas, and Geothermal Resources (Division) has reviewed the above referenced project. We offer the following comments for your consideration.

The Division is mandated by Section 3106 of the Public Resources Code (PRC) to supervise the drilling, operation, maintenance, and plugging and abandonment of wells for the purpose of preventing: (1) damage to life, health, property, and natural resources; (2) damage to underground and surface waters suitable for irrigation or domestic use; (3) loss of oil, gas, or reservoir energy; and (4) damage to oil and gas deposits by infiltrating water and other causes. Furthermore, the PRC vests in the State Oil and Gas Supervisor (Supervisor) the authority to regulate the manner of drilling, operation, maintenance, and abandonment of oil and gas wells so as to conserve, protect, and prevent waste of these resources, while at the same time encouraging operators to apply viable methods for the purpose of increasing the ultimate recovery of oil and gas.

The scope and content of information that is germane to the Division's responsibility are contained in Section 3000 et seq. of the Public Resources Code (PRC), and administrative regulations under Title 14, Division 2, Chapter 4, of the California Code of Regulations.

The proposed project is located within the administrative boundaries of the West Newport oil field. There are numerous active, idle, plugged and abandoned wells within or in proximity of the project boundaries. The wells are identified on Division map 136 and in Division records at the Cypress office. The Division recommends that all wells within or in close proximity to project boundaries be accurately plotted on future project maps.

No building intended for human occupancy should be located near any active well unless suitable safety, fire protection measures and setbacks are approved by the local fire department. For public safety, it is recommended that fencing required by the Division enclose oil operations (perimeter fencing) or all active/idle wells and associated equipment (individual fencing) within the project site. The proposed development must ensure that adequate access is maintained to all tank settings and

**Ms. Debby Linn, Contract Planner for the City of Newport Beach**

March 24, 2009

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well locations. Suitable secure gates and roads must be provided which are capable of allowing large workover equipment access into the well sites. The grade within the enclosed areas should be constructed so that potential spillage will be confined to the enclosure. To restrict access, the Department recommends that the placement of climbable landscaping around the perimeter of the oilfield facility be avoided.

Building over or in the proximity of idle or plugged and abandoned wells should be avoided if at all possible. If this is not possible, it may be necessary to plug or re-plug wells to current Division specifications. Also, the State Oil and Gas Supervisor is authorized to order the reabandonment of previously plugged and abandoned wells when construction over or in the proximity of wells could result in a hazard (Section 3208.1 of the Public Resources Code). If abandonment or reabandonment is necessary, the cost of operations is the responsibility of the owner of the property upon which the structure will be located. Finally, if construction over an abandoned well is unavoidable an adequate gas venting system should be placed over the well.

Furthermore, if any plugged and abandoned or unrecorded wells are damaged or uncovered during excavation or grading, remedial plugging operations may be required. If such damage or discovery occurs, the Division's district office must be contacted to obtain information on the requirements for and approval to perform remedial operations.

To ensure proper review of building projects, the Division has published an informational packet entitled, "Construction Project Site Review and Well Abandonment Procedure" that outlines the information a project developer must submit to the Division for review. Developers should contact the Division Cypress district office for a copy of the site-review packet. The local planning department should verify that final building plans have undergone Division review prior to the start of construction.

Thank you for the opportunity to comment on the Notice of Preparation. If you have questions on our comments, or require technical assistance or information, please call me at the Cypress district office: 5816 Corporate Avenue, Suite 200, Cypress, CA 90630-4731; phone (714) 816-6847.

Sincerely,



Paul Frost  
Associate Oil & Gas Engineer, District 1 - Cypress  
Division of Oil, Gas and Geothermal Resources

cc: Ms. Adele Lagomarsino – Division Headquarters  
Sacramento

State Clearinghouse  
P.O. Box 3044  
Sacramento, CA 95812-3044



State of California – The Resources Agency  
**DEPARTMENT OF FISH AND GAME**

<http://www.dfg.ca.gov>  
 South Coast Region  
 4949 Viewridge Avenue  
 San Diego, CA 92123  
 (858) 467-4201

April 13, 2009

Debby Linn  
 City of Newport Beach  
 3300 Newport Boulevard  
 Newport Beach, CA 92685  
 Phone (949) 718-1848  
 Fax (949) 644-3229

ARNOLD SCHWARZENEGGER, *Governor*



RECEIVED BY  
 PLANNING DEPARTMENT

APR 14 2009

CITY OF NEWPORT BEACH

**Subject: Notice of the Preparation of a Draft Environmental Impact Report for Newport Banning Ranch, Orange County (SCH # 2009031061)**

Dear Ms. Linn:

The Department of Fish and Game (Department) has reviewed the above-referenced Notice of Preparation (NOP), for a Draft Environmental Impact Report relative to impacts to biological resources. The Project encompasses land located within the City of Newport Beach and unincorporated Orange County. The Project site is bound on the north by Talbert Nature Reserve that is part of the reserve system for the Department administered Orange County Natural Community Conservation Program (NCCP). The NCCP classified the project site as an Existing Use Area within the Coastal Sub-region. Bordering the site on the south and east are transportation roads, residential, commercial, and industrial land uses. Located west of the site is the United States Army Corps of Engineers wetlands restoration area and the Santa Ana River.

The project proposes to develop 68 acres for residential dwelling units, 45 acres of parks, 22 acres for roadways, 18 acres for mixed residential commercial zone, and 5 acres for resort with overnight visitor accommodations. The proposed Project designates approximately 243 acres of the project site's 401 acres for open space uses. The open space would comprise three categories: (1) Lowland Open space/Public Trails and Facilities; (2) Upland Open Space/Public Trails and Facilities; and (3) Consolidated Oil Facilities. The majority of existing oil wells within proposed development and open space areas would be abandoned and the area would be remediated. However, 20 acres of project open space would be utilized to consolidate two oil fields and would be subject to continuing oil extraction operations.

Native vegetation on the Project site is maritime succulent scrub and southern bluff scrub. Sensitive animal and plant species known to occur are the California gnatcatcher (*Polioptila californica californica*), coastal cactus wren (*Campylorhynchus brunneicapillus cousei*), and southern tarplant (*Centromadia parryi ssp australis*). Habitat is present on the lowlands for State Endangered Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), least Bell's Vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and nesting raptors. Vernal pools are documented on site and may be occupied by federally listed San Diego fairy shrimp (*Branchinecta sandiegoensis*).

To enable Department staff to adequately review and comment on the proposed project we recommend the following information, where applicable, be included in the Draft Environmental Impact Report:

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April 8, 2009  
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1. A complete, recent assessment of flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, and locally unique species and sensitive habitats (Attachment 1).
  - a. A thorough recent assessment of rare plants and rare natural communities, following the Department's Guidelines for Assessing Impacts to Rare Plants and Rare Natural Communities (Attachment 2).
  - b. A complete, recent assessment of sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Recent, focused, species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and U.S. Fish and Wildlife Service.
  - c. Rare, threatened, and endangered species to be addressed should include all those which meet the California Environmental Quality Act (CEQA) definition (see CEQA Guidelines, Section 15380).
  - d. The Department's Wildlife Habitat Data Analysis Branch in Sacramento should be contacted at (916) 322-2493 to obtain current information on any previously reported sensitive species and habitats, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code. Also, any Environmentally Sensitive Habitats or any areas that are considered sensitive by the local jurisdiction that are located in or adjacent to the project area must be addressed.
2. A thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. This discussion should focus on maximizing avoidance, and minimizing impacts.
  - a. CEQA Guidelines, Section 15125(a), direct that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.
  - b. Project impacts should also be analyzed relative to their effects on off-site habitats and populations. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas are of concern to the Department and should be fully evaluated and provided. The analysis should also include a discussion of the potential for impacts resulting from such effects as increased vehicle traffic, outdoor artificial lighting, noise and vibration.
  - c. A cumulative effects analysis should be developed as described under CEQA Guidelines, Section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
  - d. Impacts to migratory wildlife affected by the project should be fully evaluated

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- including proposals to removal/disturb native and ornamental landscaping and other nesting habitat for native birds. Impact evaluation may also include such elements as migratory butterfly roost sites and neo-tropical bird and waterfowl stop-over and staging sites. All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA.
- e. Impacts to all habitats from City or County required Fuel Modification Zones (FMZ). Areas slated as mitigation for loss of habitat shall not occur within the FMZ.
  - f. Proposed project activities (including disturbances to vegetation) should take place outside of the breeding bird season (February 1- September 1) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). If project activities cannot avoid the breeding bird season, nest surveys should be conducted and active nests should be avoided and provided with a minimum buffer as determined by a biological monitor (the Department recommends a minimum 500-foot buffer for all active raptor nests).
3. A range of alternatives should be analyzed to ensure that alternatives to the proposed project are fully considered and evaluated. A range of alternatives which avoid or otherwise minimize impacts to sensitive biological resources including wetlands/riparian habitats, alluvial scrub, coastal sage scrub, Joshua tree woodlands, etc. should be included. Specific alternative locations should also be evaluated in areas with lower resource sensitivity where appropriate.
- a. Mitigation measures for project impacts to sensitive plants, animals, and habitats should emphasize evaluation and selection of alternatives which avoid or otherwise minimize project impacts. Compensation for unavoidable impacts through acquisition and protection of high quality habitat elsewhere should be addressed with offsite mitigation locations clearly identified.
  - b. The Department considers Rare Natural Communities as threatened habitats having both regional and local significance. Thus, these communities should be fully avoided and otherwise protected from project-related impacts (Attachment 2).
  - c. The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Department studies have shown that these efforts are experimental in nature and largely unsuccessful.
4. A California Endangered Species Act (CESA) Permit must be obtained, if the project has the potential to result in "take" of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance, and restore State-listed threatened or endangered species and their habitats. Early consultation is encouraged, as significant modification to the proposed project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, require that the

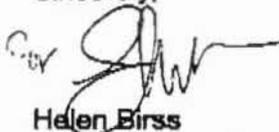
Ms. Debby Linn  
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Department issue a separate CEQA document for the issuance of a CESA permit unless the project CEQA document addresses all project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit. For these reasons, the following information is requested:

- a. Biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA Permit.
  - b. A Department-approved Mitigation Agreement and Mitigation Plan are required for plants listed as rare under the Native Plant Protection Act.
5. The Department opposes the elimination of watercourses (including concrete channels) and/or the canalization of natural and manmade drainages or conversion to subsurface drains. All wetlands and watercourses, whether intermittent, ephemeral, or perennial, must be retained and provided with substantial setbacks which preserve the riparian and aquatic habitat values and maintain their value to on-site and off-site wildlife populations. The Department recommends a minimum natural buffer of 100 feet from the outside edge of the riparian zone on each side of a drainage.
- a. The Department requires a Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The Department's issuance of a SAA may be a project that is subject to CEQA. To facilitate our issuance of the Agreement when CEQA applies, the Department as a responsible agency under CEQA may consider the local jurisdiction's (lead agency) document for the project. To minimize additional requirements by the Department under CEQA the document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the Agreement. Early consultation is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources.

Thank you for this opportunity to provide comment. Please contact Mr. Matt Chirdon, Environmental Scientist, at (760) 757-3734 if you should have any questions and for further coordination on the proposed project.

Sincerely,



Helen Birss  
Environmental Program Manager  
South Coast Region

Attachments (2)

cc: Ms. Helen Birss, Las Alamos  
HabCon-Chron  
Department of Fish and Game  
State Clearinghouse, Sacramento

## Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities

State of California  
THE RESOURCES AGENCY  
Department of Fish and Game  
December 9, 1983  
Revised May 8, 2000

The following recommendations are intended to help those who prepare and review environmental documents determine **when** a botanical survey is needed, **who** should be considered qualified to conduct such surveys, **how** field surveys should be conducted, and **what** information should be contained in the survey report. The Department may recommend that lead agencies not accept the results of surveys that are not conducted according to these guidelines.

1. Botanical surveys are conducted in order to determine the environmental effects of proposed projects on all rare, threatened, and endangered plants and plant communities. Rare, threatened, and endangered plants are not necessarily limited to those species which have been "listed" by state and federal agencies but should include any species that, based on all available data, can be shown to be rare, threatened, and/or endangered under the following definitions:

A species, subspecies, or variety of plant is "endangered" when the prospects of its survival and reproduction are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, over-exploitation, predation, competition, or disease. A plant is "threatened" when it is likely to become endangered in the foreseeable future in the absence of protection measures. A plant is "rare" when, although not presently threatened with extinction, the species, subspecies, or variety is found in such small numbers throughout its range that it may be endangered if its environment worsens.

Rare natural communities are those communities that are of highly limited distribution. These communities may or may not contain rare, threatened, or endangered species. The most current version of the California Natural Diversity Database's List of California Terrestrial Natural Communities may be used as a guide to the names and status of communities.

2. It is appropriate to conduct a botanical field survey to determine if, or to the extent that, rare, threatened, or endangered plants will be affected by a proposed project when:

- a. Natural vegetation occurs on the site, it is unknown if rare, threatened, or endangered plants or habitats occur on the site, and the project has the potential for direct or indirect effects on vegetation; or
- b. Rare plants have historically been identified on the project site, but adequate information for impact assessment is lacking.

3. Botanical consultants should possess the following qualifications:

- a. Experience conducting floristic field surveys;
- b. Knowledge of plant taxonomy and plant community ecology;
- c. Familiarity with the plants of the area, including rare, threatened, and endangered species;
- d. Familiarity with the appropriate state and federal statutes related to plants and plant collecting; and,
- e. Experience with analyzing impacts of development on native plant species and communities.

4. Field surveys should be conducted in a manner that will locate any rare, threatened, or endangered species that may be present. Specifically, rare, threatened, or endangered plant surveys should be:

- a. Conducted in the field at the proper time of year when rare, threatened, or endangered species are both evident and identifiable. Usually, this is when the plants are flowering.

When rare, threatened, or endangered plants are known to occur in the type(s) of habitat present in the project

area, nearby accessible occurrences of the plants (reference sites) should be observed to determine that the species are identifiable at the time of the survey.

b. Floristic in nature. A floristic survey requires that every plant observed be identified to the extent necessary to determine its rarity and listing status. In addition, a sufficient number of visits spaced throughout the growing season are necessary to accurately determine what plants exist on the site. In order to properly characterize the site and document the completeness of the survey, a complete list of plants observed on the site should be included in every botanical survey report.

c. Conducted in a manner that is consistent with conservation ethics. Collections (voucher specimens) of rare, threatened, or endangered species, or suspected rare, threatened, or endangered species should be made only when such actions would not jeopardize the continued existence of the population and in accordance with applicable state and federal permit requirements. A collecting permit from the Habitat Conservation Planning Branch of DFG is required for collection of state-listed plant species. Voucher specimens should be deposited at recognized public herbaria for future reference. Photography should be used to document plant identification and habitat whenever possible, but especially when the population cannot withstand collection of voucher specimens.

d. Conducted using systematic field techniques in all habitats of the site to ensure a thorough coverage of potential impact areas.

e. Well documented. When a rare, threatened, or endangered plant (or rare plant community) is located, a California Native Species (or Community) Field Survey Form or equivalent written form, accompanied by a copy of the appropriate portion of a 7.5 minute topographic map with the occurrence mapped, should be completed and submitted to the Natural Diversity Database. Locations may be best documented using global positioning systems (GPS) and presented in map and digital forms as these tools become more accessible.

5. Reports of botanical field surveys should be included in or with environmental assessments, negative declarations and mitigated negative declarations, Timber Harvesting Plans (THPs), EIR's, and EIS's, and should contain the following information:

- a. Project description, including a detailed map of the project location and study area.
- b. A written description of biological setting referencing the community nomenclature used and a vegetation map.
- c. Detailed description of survey methodology.
- d. Dates of field surveys and total person-hours spent on field surveys.
- e. Results of field survey including detailed maps and specific location data for each plant population found. Investigators are encouraged to provide GPS data and maps documenting population boundaries.
- f. An assessment of potential impacts. This should include a map showing the distribution of plants in relation to proposed activities.
- g. Discussion of the significance of rare, threatened, or endangered plant populations in the project area considering nearby populations and total species distribution.
- h. Recommended measures to avoid impacts.
- i. A list of all plants observed on the project area. Plants should be identified to the taxonomic level necessary to determine whether or not they are rare, threatened or endangered.
- j. Description of reference site(s) visited and phenological development of rare, threatened, or endangered plant(s).
- k. Copies of all California Native Species Field Survey Forms or Natural Community Field Survey Forms.
- l. Name of field investigator(s).
- m. References cited, persons contacted, herbaria visited, and the location of voucher specimens.

### Sensitivity of Top Priority Rare Natural Communities in Southern California

Sensitivity rankings are determined by the Department of Fish and Game, California Natural Diversity Data Base and based on either number of known occurrences (locations) and/or amount of habitat remaining (acreage). The three rankings used for these top priority rare natural communities are as follows:

- S1.# Fewer than 6 known locations and/or on fewer than 2,000 acres of habitat remaining.
- S2.# Occurs in 6-20 known locations and/or 2,000-10,000 acres of habitat remaining.
- S3.# Occurs in 21-100-known locations and/or 10,000-50,000 acres of habitat remaining.

The number to the right of the decimal point after the ranking refers to the degree of threat posed to that natural community regardless of the ranking. For example:

- S1.1 = very threatened
- S2.2 = threatened
- S3.3 = no current threats known

#### Sensitivity Rankings (February 1992)

<u>Rank</u>	<u>Community Name</u>
S1.1	Mojave Riparian Forest Sonoran Cottonwood Willow Riparian Mesquite Bosque Elephant Tree Woodland Crucifixion Thorn Woodland Allthorn Woodland Arizonan Woodland Southern California Walnut Forest Mainland Cherry Forest Southern Bishop Pine Forest Torrey Pine Forest Desert Mountain White Fir Forest Southern Dune Scrub Southern Coastal Bluff Scrub Maritime Succulent Scrub Riversidean Alluvial Fan Sage Scrub Southern Maritime Chaparral Valley Needlegrass Grassland Great Basin Grassland Mojave Desert Grassland Pebble Plains Southern Sedge Bog Cismontane Alkali Marsh

- S1.2 Southern Foredunes  
Mono Pumice Flat  
Southern Interior Basalt Flow Vernal Pool
- S2.1 Venturan Coastal Sage Scrub  
Diegan Coastal Sage Scrub  
Riversidean Upland Coastal Sage Scrub  
Riversidean Desert Sage Scrub  
Sagebrush Steppe  
Desert Sink Scrub  
Mafic Southern Mixed Chaparral  
San Diego Mesa Hardpan Vernal Pool  
San Diego Mesa Claypan Vernal Pool  
Alkali Meadow  
Southern Coastal Salt Marsh  
Coastal Brackish Marsh  
Transmontane Alkali Marsh  
Coastal and Valley Freshwater Marsh  
Southern Arroyo Willow Riparian Forest  
Southern Willow Scrub  
Modoc-Great Basin Cottonwood Willow Riparian  
Modoc-Great Basin Riparian Scrub  
Mojave Desert Wash Scrub  
Engelmann Oak Woodland  
Open Engelmann Oak Woodland  
Closed Engelmann Oak Woodland  
Island Oak Woodland  
California Walnut Woodland  
Island Ironwood Forest  
Island Cherry Forest  
Southern Interior Cypress Forest  
Bigcone Spruce-Canyon Oak Forest
- S2.2 Active Coastal Dunes  
Active Desert Dunes  
Stabilized and Partially Stabilized Desert Dunes  
Stabilized and Partially Stabilized Desert Sandfield  
Mojave Mixed Steppe  
Transmontane Freshwater Marsh  
Coulter Pine Forest  
Southern California Fellfield  
White Mountains Fellfield
- S2.3 Bristlecone Pine Forest  
Limber Pine Forest



Linda S. Adams  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Maziar Movassaghi, Acting Director  
5796 Corporate Avenue  
Cypress, California 90630



Arnold Schwarzenegger  
Governor

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PLANNING DEPARTMENT

APR 08 2009

CITY OF NEWPORT BEACH

April 6, 2009

Ms. Debby Linn  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92685  
dlinn@city.newport.ca.us

### NOTICE OF PREPARATION FOR A PROGRAM ENVIRONMENTAL IMPACT REPORT FOR NEWPORT BANNING RANCH PROJECT, (SCH# 2009031061), CITY OF NEWPORT BEACH, ORANGE COUNTY

Dear Ms. Linn:

The Department of Toxic Substances Control (DTSC) has received your submitted Initial Study and Notice of Preparation (NOP) for a subsequent Program Environmental Impact Report (EIR) No. 507 for the above-mentioned Project. The following project description is stated in your document: "The Newport Banning Ranch Project (Project) proposes the development of up to 1,375 residential dwelling units, 75,000 square feet of commercial uses, and 75 overnight resort accommodations on the Project site of approximately 401 acres. These uses are consistent with the description of the proposed land uses for this property in the Newport General Plan, adopted by the City and its electorate. The Project site is generally bounded on the north by Talbert Nature Preserve/Regional Park; on the south by West Coast Highway, on the east by residential, light industrial, and office development; on the west by the U.S. Army Corps of Engineers (ACOE) wetlands restoration area and the Santa Ana River. The Project site is primarily undeveloped but has been in active operation as an oil field since the mid-1940s. Although the Project site has been disturbed by historic and ongoing permitted oil operations and is largely dominated by non-native vegetation, it contains diverse flora and fauna." DTSC has the following comments:

- 1) The EIR should identify the current or historic uses at the project site that may have resulted in a release of hazardous wastes/substances, and any known or potentially contaminated sites within the proposed Project area. For all identified sites, the EIR should evaluate whether conditions at the site may pose a threat to human health or the environment. Following are the databases of some of the pertinent regulatory agencies:
  - National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).

- Envirostor: A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).
  - Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.
  - Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.
  - Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.
  - Leaking Underground Storage Tanks (LUST) / Spills, Leaks, Investigations and Cleanups (SLIC): A list that is maintained by Regional Water Quality Control Boards.
  - Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.
  - The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS).
- 2) The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents. Please see comment No. 11 below for more information.
  - 3) All environmental investigations, sampling and/or remediation for the site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found should be clearly summarized in a table.
  - 4) Proper investigation, sampling and remedial actions overseen by the respective regulatory agencies, if necessary, should be conducted at the site prior to the new development or any construction. All closure, certification or remediation approval reports by these agencies should be included in the EIR.

- 5) If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.
- 6) Project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.
- 7) Human health and the environment of sensitive receptors should be protected during the construction or demolition activities. If it is found necessary, a study of the site and a health risk assessment overseen and approved by the appropriate government agency and a qualified health risk assessor should be conducted to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.
- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.
- 9) If during construction/demolition of the project, the soil and/or groundwater contamination is suspected, construction/demolition in the area should cease and appropriate health and safety procedures should be implemented.
- 10) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

Ms. Debby Linn  
April 6, 2009  
Page 4 of 4

- 11) DTSC can provide guidance for cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see [www.dtsc.ca.gov/SiteCleanup/Brownfields](http://www.dtsc.ca.gov/SiteCleanup/Brownfields), or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

If you have any questions regarding this letter, please contact Mr. Rafiq Ahmed, Project Manager, at [rahmed@dtsc.ca.gov](mailto:rahmed@dtsc.ca.gov) or by phone at (714) 484-5491.

Sincerely,



Greg Holmes  
Unit Chief  
Brownfields and Environmental Restoration Program - Cypress Office

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

CEQA Tracking Center  
Department of Toxic Substances Control  
Office of Environmental Planning and Analysis  
1001 I Street, 22nd Floor, M.S. 22-2  
Sacramento, California 95814  
[nritter@dtsc.ca.gov](mailto:nritter@dtsc.ca.gov)

CEQA# 2520

April 9, 2009

SCANNED

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PLANNING DEPARTMENT

APR 09 2009

Attn: Debby Lynn and Planning Commission  
Subject: Banning Ranch Development

CITY OF NEWPORT BEACH

Dear Ms. Lynn,

I am a long time resident of Newport Crest and I am very concerned about the impact of the proposed development of the area west of us on the Banning Ranch oil fields and adjacent areas.

I am in favor of maintaining this area as open space, as are many residents of Newport Beach and environmental groups.

I am particularly concerned about the following issues.

1. The proposed location of the "Bluff Road" adjacent to the community of Newport Crest will create problems with noise and lighting issues. The community of Harbor View Hills was able to have the Bonita Canyon road moved away from the homes to mitigate the noise impact to the homes. Would Newport Crest be afforded the same consideration with the proposed road to our west border?
2. Many of our homes have ocean views. How will these views be protected ?
3. The grading and mitigation of the oil fields will create a great deal of dust and particulate matter in the air, which I feel will not be healthy for the surrounding areas.
4. Some of these areas are unstable bluff areas with a fault running close to this area. Is this being considered in the evaluations?

I am very concerned that the quality of life we have enjoyed for so long in Newport Crest and our health will be negatively impacted by the development.

Sincerely,



Natalie Fogarty  
Summerwind Court

Monique Friend.txt

From: melody f. [maddiesmelody@yahoo.com]  
Sent: Tuesday, April 14, 2009 5:09 PM  
To: dlinn@city.newport-beach.ca.us  
Subject: Banning Ranch

April 14, 2009

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

Dear Ms. Linn,

I am against the development of Banning Ranch because it is one of the few open spaces for endangered species and it is in part a wetland. It also probably has archaeological deposits that haven't even been properly explored let alone preserved! This is land that was certainly occupied by the first peoples prior to the European invasion and that means it is culturally valuable!!! Do you know for sure that it doesn't have any burials there? Has it even been checked?? The development plan would destroy everything that makes it valuable other than a money maker for the developers. Do you care at all?

Banning Ranch should be studied, preserved and valued for something other than a space to exploit!  
I know that the first people built villages on the bluffs and mesas all along the Santa Ana River. So what makes you think they are not there? Do you know for sure? If you don't, there shouldn't be any development until those questions can be answered and the Native Americans agree!  
I mean maybe you don't mind letting people build homes on graves but I think it's WRONG!

Has any one even talked to any of the local tribes about this? Are the developers ignoring laws or are you allowing them to be broken behind our backs?

Do the right thing now and re-think these development plans because as they are now, they are really inconsiderate and destructive. Set a precedent and be the good guy. Someone has to start.

Monique Friend



# GABRIELINO-TONGVA TRIBE

*A California Indian Tribe historically known as San Gabriel Band of Mission Indians*

501 Santa Monica Blvd., Ste. 500, Santa Monica, CA 90401-2490  
www.gabrielinotribe.org • tel: (310) 587-2203 • fax: (310) 587-2281

April 6, 2009

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658

RECEIVED BY  
PLANNING DEPARTMENT

APR 08 2009

CITY OF NEWPORT BEACH

Reference: Newport Banning Ranch  
Native American Monitoring/Most Likely Descendant

Dear Debby:

The above referenced project is in a highly sensitive cultural area and the project can have potentially significant impacts to archaeological resources, paleontological resources and burial sites. Due to the fact it is our concern that the City of Newport Beach appoints Native American Monitors from the largest faction of the Tribe to represent this project.

We are the largest faction of the Gabrielino-Tongva Tribe, with over 85% of descendants of the historic Gabrielino Tribe. We have approximately 1,600 members and the next largest faction has less than 150 members. A membership Table is enclosed to help guide you through the various factions of the Tribe.

We strongly recommend the City of Newport Beach hire Native American monitors approved by our faction. The contact information for the six approved six monitors is enclosed. Their work is arranged through our administrative headquarters which is staffed fulltime.

The Tribe has had continuing problems in the past with Native American monitors that are not approved by the Tribe, including Anthony Morales, Sam Dunlap & Robert Dorame.

Native American Monitoring projects under the supervision of monitors not approved by our Tribe have been delayed, have caused controversy, and have lead to difficult inter- and intra-tribal relationships.

In particular, the above stated individuals and other Most Likely Descendents misrepresent our Tribe by failing to consult with our Tribe on sensitive archaeological findings and reburial issues. These controversies have been extremely painful for our elders who were not invited to participate in reburials for our ancestors.

#### Tribal Council

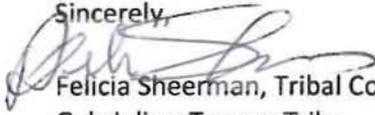
Hon. Bernie Acuna  
Hon. Charles Alvarez  
Hon. Linda Candelaria

Hon. Martha Gonzalez Lemos  
Hon. Felicia Sheerman

Tribal Administrator: Barbara Garcia  
Tribal Controller: Steven K. Johnson

Please also see the attached most updated NA Contact List from the Native American Heritage Commission. We're requesting the City of Newport Beach in making the ethical choice in selecting a Native American Monitor/MLD for your project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Felicia Sheerman', written over the word 'Sincerely,'.

Felicia Sheerman, Tribal Councilwoman  
Gabrielino-Tongva Tribe

Enclosures



From left to right: Councilman Charles Alvarez, Councilwoman Linda Candelaria, Councilwoman Martha Gonzalez, Councilwoman Felicia Sheerman, Councilman Bernie Acuna

<b>Name of Tribal Faction</b> <b>(Updated on January 29, 2009)</b>	<b>Class B Members</b> <b>(BIA documentation)</b>	<b>Class C Members</b> <b>(no documentation)</b>
<b>Gabrielino-Tongva Tribe, a California Indian Tribe historically known as San Gabriel Band of Mission Indians (<a href="http://www.gabrielinotribe.org">www.gabrielinotribe.org</a>) (1630 members, 85.7% of all members)</b>	<b>646 (87 %)</b>	<b>984 (85%)</b>
Gabrielino/Tongva Nation (Sam Dunlap, Virginia Carmelo, <a href="http://www.tongvatribenet.net">www.tongvatribenet.net</a> ) (238 members, 12.5% of all members)	65 (9%)	173 (15%)
Gabrielino-Tongva Indians of San Gabriel Band, (Anthony Morales, <a href="http://www.tongva.com">www.tongva.com</a> ) (28 members, 1.5% of all members)	28 (4%)	None (0%)
Beaumont Group (no formal name, no website) (6 members, 0.32% of all members)	None (0%)	6 (1/2%)
Coastal Gabrielinos & Dieguenos (no formal name, no website)	Unknown	Unknown
<b>Totals (1902 All Members)</b>	<b>739 (100%)</b>	<b>1163 (100%)</b>

**List of Approved Native American Monitors/Most Likely Descendant**

- 1) Robert Dominguez
- 2) Bernie Acuna
- 3) Charles Alvarez
- 4) Linda Candelaria
- 5) Martha Gonzalez Lemos
- 6) Felicia Sheerman

**Please use the following contact information for all Monitors:**

Gabrielino-Tongva Tribe  
501 Santa Monica Blvd, Suite 500  
Santa Monica, CA 90401  
Phone: (310) 587-2203  
Cell: (310) 428-7720  
Fax: (310) 587-2281

**Most Likely Descendant Approved by the Native American Heritage Commission:**

Bernie Acuna, Gabrielino-Tongva, Most Likely Descendant

**Please use the following contact information for MLD:**

Gabrielino-Tongva Tribe  
501 Santa Monica Blvd, Suite 500  
Santa Monica, CA 90401  
Phone: (310) 587-2203  
Cell: (310) 428-7720  
Fax: (310) 587-2281

## Native American Contact

Los Angeles County

March 26, 2009

Ti'At Society  
Cindi Alvitre  
6515 E. Seaside Walk, #C  
Long Beach, CA 90803  
calvitre@yahoo.com  
(714) 504-2468 Cell

Gabrielino

Gabrielino Tongva Indians of California Tribal Council  
Robert Dorame, Tribal Chair/Cultural Resources  
P.O. Box 490  
Bellflower, CA 90707  
gtongva@verizon.net  
562-761-6417 - voice  
562-925-7989 - fax

Gabrielino Tongva

Tongva Ancestral Territorial Tribal Nation  
John Tommy Rosas, Tribal Admin.  
tattnlaw@gmail.com  
310-570-6567

Gabrielino Tongva

Gabrielino-Tongva Tribe  
Felicia Sheerman  
501 Santa Monica Blvd, # 500  
Santa Monica, CA 90401  
(310) 587-2203  
(310) 428-7720 - cell  
(310) 587-2281 FAX  
fsheerman1@GabrielinoTribe.org

Gabrielino/Tongva San Gabriel Band of Mission  
Anthony Morales, Chairperson  
PO Box 693  
San Gabriel, CA 91778  
(828) 286-1262 -FAX  
(626) 286-1632  
(626) 286-1758 - Home  
(626) 286-1262 Fax

Gabrielino Tongva

Gabrielino Tongva Nation  
Sam Dunlap, Tribal Secretary  
P.O. Box 86908  
Los Angeles, CA 90086  
samdunlap@earthlink.net

Gabrielino Tongva

(909) 262-9351 - cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed Telecommunications Facility Project No. IE25736-A; located in the City of Walnut; Los Angeles County, California for which a Sacred Lands File search and Native American Contacts list were requested.

April 17, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 17 2009

CITY OF NEWPORT BEACH

Debby Linn, Contract Planner  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92685-8915

Via e-mail to [dlinn@city.newport-beach.ca.us](mailto:dlinn@city.newport-beach.ca.us) and hand delivered

Subject: NOP, Newport Banning Ranch (PA 2008-114)

Dear Ms. Linn,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for an environmental impact report (EIR) (SCH# 2009031061) for the Newport Banning Ranch project (PA 2008-114) located on a 401-acre at the northwesterly edge of the City of Newport Beach, Orange County, California. These comments are submitted on behalf of the Banning Ranch Conservancy and myself.

The project involves development of up to 1,375 dwelling units, 75,000 square feet of commercial uses, and 75 overnight resort visitor accommodations. Oil well operations currently occurring on the site will be consolidated and contaminated sites will be remediated. Earth movement will include 1,200,000 cubic yards of grading for project development and 1,600,000 cubic yards of grading for what is described as "corrective/remedial grading" (NOP p. 18) As noted on Page 19 of the NOP, the project will entail approval of:

- Potential amendment of Circulation Element Master Plan of Streets and Highways
- Pre-zoning to designate the site as Planned Community (CA 2008-004)
- Amendment to the Banning-Newport Ranch PlannedCommunity (PC-25) District Regulations to remove the site from the boundaries of PC-25.
- Amendment to the City of Newport Beach Municipal Code Chapter 20.65, Height Limits, to permit a maximum building height of 50 feet in the Visitor-Serving Resort District and Residential District and a maximum height of 65 feet within portions of the Mixed-Use/Residential Land Use District of the project site.
- Planned Community Development Plan including land use districts/permitted land uses, community regulations, site development standards/regulations, and design guidelines.
- Master Site Plan, anticipated to include: habitat restoration plan, fuel management plan, master grading, master roadway improvements, master infrastructure and utilities, master water quality plans, master landscape plans, master architectural design, and community transition/interface plans.
- Traffic Phasing Ordinance (TPO) analysis.
- Pre-Annexation and Development Agreement.
- Vesting Tentative Tract Map.

The City of Newport Beach will be the lead agency for the project. Approximately 40 acres of the site are currently within the City with the remainder in unincorporated Orange County. As noted on Page 20 of the NOP, approval of the Local Agency Formation Commission will be required in order to annex the unincorporated portion of the site into Newport Beach.

Responsible agencies include:

- California Department of Fish and Game
- United States fish and Wildlife Service
- United States Army Corps of Engineers
- California Coastal Commission
- Regional Water Quality Control Board
- Local Agency Formation Commission
- Caltrans
- California Department of Conservation, Division of Oil, Gas and Geothermal Resources
- Orange County Transportation Authority
- Orange County Health Care Agency:

The EIR must provide sufficient information to enable each of the responsible agencies to evaluate the environmental ramifications of agency action on this project. Analyses based on protocols and criteria utilized by each responsible agency must be provided.

### **The NOP**

No Initial Study (IS) accompanies the NOP. Inclusion of an Initial study with a NOP is optional. However, in accordance with Section 15082 (a) of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA), at a minimum, a notice of preparation shall include:

- (A) Description of the project,
- (B) Location of the project, and
- (C) Probable environmental effects of the project.

An IS is often utilized to fulfill the function of (C) above.

While the NOP includes a lengthy project description and location map, discussion of probable environmental effects of the project is for the most part lacking. The NOP merely indicates that the following broad topics are proposed to be examined in the EIR:

- Aesthetics/visual resources
- Air quality
- Biological resources
- Climate change
- Cultural resources
- Geology and soils
- Hazards/hazardous materials

- Hydrology/water quality
- Land use/planning
- Mineral resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation/traffic
- Utilities and Service Systems

and that the following topic is not:

- Agricultural resources

Existing environmental conditions of the site are briefly described in approximately one page of the NOP, but probably environmental effects are not. Thus, agencies receiving the NOP would have little knowledge of the potential for impacts to such resources. These include such diverse areas of study as transportation and cultural resources. For example, while the NOP mentions potential need for alteration of West Coast Highway, another potentially affected State roadway, Newport Boulevard, is not mentioned at all. Because project tracking and degree of scrutiny by the agencies may be established at the NOP stage, this omission is significant. The NOP must be revised to include a description of probable environmental effects of the proposed project consistent with Guidelines Section 15082(a) and re-circulated.

The NOP states that agriculture is the only topic which will be excluded from consideration in the EIR, and lists sixteen general topics to be examined. However, it is not clear what impacts the EIR is anticipated to address. No exclusions other than agriculture are mentioned. Is one to assume, then, that every aspect of a given subject is considered potentially significant and will be exhaustively examined? Sample questions on the Environmental Checklist included in Appendix G to the Guidelines address a range of hazards, including but not limited to ground rupture, liquefaction, flooding, expansive soils, and routine transport of hazardous materials. Based on the broad brush approach of the NOP, one would assume that all of these would be addressed in the EIR, but what if that assumption is incorrect? It must not be assumed that if those responding to the NOP fail to address an issue that the respondent is not concerned that an impact may occur. Rather, respondents may easily assume that it is not necessary to call out specifics where a subject area is listed globally.

### **Project Alternatives**

The EIR must include a meaningful, good-faith analysis of alternatives. In addition to the proposed project, no project, and open space alternatives, the following must be examined:

1. No “remedial/corrective grading” of bluffs, with all development set back from bluff faces adequately to provide for continued erosion over the economic life of the project.
2. Development within existing zoning height districts established by Newport Beach Municipal Code Chapter 20.65 for residential and commercial development, including

adherence to the 24/28 foot height limit for single family residential development, 28/32 height limit for multi-family residential development, and 32/50 foot height limit for non-residential development, with no provision for additional building height.

3. Alternate sites, including transfer of development to other locations in Newport Beach, such as the airport area, or development at former military bases in Orange County.
4. Preservation of all habitat, whether degraded or not.
5. Provision of minimum 100 meter buffers for all habitat.
6. Preservation of archaeological resources in place, with adequate drainage diversion to minimize damage to any such sites.
7. Project LEED certified at the Platinum level.

### **Project Description**

A stable, complete, and accurate project description is the most basic and important factor in preparing a lawful EIR. It is the denominator of the document and, thus, of the public's and decision-maker's review. It is critical that the project description be as clear and complete as possible so that the issuing agency and other responsible agencies may make informed decisions regarding the proposed project. This must include not only the project itself but related infrastructure necessary for successful implementation of the proposed development, whether on or off the project site.

All offsite areas subject to project activities must be identified. These include but are not limited to any off-site infrastructure improvements, storage or staging areas, haul routes for construction materials and oil field residues, and disposal sites for oil field residues.

The project description must identify any construction staging areas, including staging areas for infrastructure improvements. The EIR must identify areas outside the anticipated building footprints that will be subject to construction activities, whether for storage of materials, grading, or other activities. Any construction related activities which will occur in areas designated for open space must be identified.

As stated in the NOP (p.19), the project will potentially entail approval of habitat restoration plan, fuel management plan, master grading, master roadway improvements, master infrastructure and utilities, master water quality plans, master landscape plans, master architectural design, and community transition/interface plans. The EIR must provide sufficient information about each of these plans to allow decision makers and the public generally to fully understand the environmental implications of each of these plans.

### **Potential Impacts**

Based on the limited information included in the NOP, it is anticipated that, at a minimum, all of those topics and subtopics included in the City's Environmental Checklist will be examined in the EIR. The following highlights concerns regarding specific impacts which must be examined in the EIR, but is not intended to exclude those issues normally provided in an EIR for a project of this scale and implied by the global listing of subject areas on Page 19 of the NOP.

## **Aesthetics**

The proposed project will result in loss of open space and landform alteration over a large area. The applicant proposes to develop structures at higher than the typical height permitted in the area.

While it is expected that visual renderings of the site will be provided, such renderings may not include all important vantage points. Therefore, it is requested that story poles be erected on the project site reflecting the maximum potential building envelope. The story poles must remain in place for at least thirty days, preferably longer, so that people living, working, and visiting the area may be afforded the opportunity to see potential impacts for themselves, absent the filter of another observer. A few balloons left blowing in the wind for a few hours will not suffice.

In addition, the following must be addressed:

1. The analysis must address impacts to bluffs and other landforms.
2. Aesthetic analyses must include impacts from public waterways as well as from land based viewing areas, such as West Coast Highway, Sunset Ridge Park, West Newport Park, the Santa Ana River bicycle trail, and surrounding residential and commercial areas.
3. Rendered photographs from these various vantage points must be provided.
4. The EIR must address the potential that 65-foot tall structures in the Mixed Use area will wall off areas to the north and east in Costa Mesa. Potential mitigation must be identified and windows to the ocean must be provided wherever possible.
5. Potential for light and glare must be addressed, with special attention given to any large expanses of glass.
6. Aesthetic effects of shade and shadow must be analyzed, with the analysis focused on times of day that people are most likely to be utilizing affected outdoor areas, e.g. after school hours for parks and playing fields, morning and evening hours for residential areas where, at mid-day most residents are at work, school or other locations away from home. This would differ from shade and shadow impacts related to use of solar energy, when mid-day impacts are of greatest concern.

## **Air Quality**

The project site is located in proximity to residential uses, healthcare facilities including senior/convalescent residential facilities, a public school, and two private schools. Thus, any localized impacts on air quality are important. The EIR must take these facilities into consideration.

In addition, the following must be addressed:

1. Air quality analyses must address both existing air quality standards and those that are adopted and slated to go into effect within the time frame for this project.
2. Localized micro climates must be included in air quality analyses and local air pollution hot spots must be identified and mitigated, including any hot spots created or

exacerbated as a result of additional traffic created by the proposed project. Effects on children, the elderly and other sensitive individuals are of special concern.

3. The analysis must address localized emissions, particularly during construction. This includes fugitive dust and diesel emissions from on-site construction equipment as well as any hot spots along haul routes or those created due to construction congestion or detours.
4. Emissions associated with consolidation of oil field operations and remediation must be addressed.
5. Odors associated with consolidation of oil field operations and remediation must be addressed.
6. If below grade parking is contemplated, the analysis must address potential venting of any below grade parking, particularly any areas where concentrations of garage exhaust may vent toward neighbors.
7. Realistic trip lengths must be utilized in calculating vehicle emissions.
8. Emissions from out-of-state vehicles must be included when calculating mobile emissions, particularly when applied to visitor-serving facilities.
9. Air quality analyses must include increased emissions due to increased traffic congestion.
10. Emissions due to consumption of natural gas and generation of electricity from the grid to be consumed within the proposed project must be addressed.

### **Biological Resources**

Potential project approvals include a habitat restoration plan. Any efforts to restore existing habitat are applauded. However, removal of habitat and “restoration” of habitat elsewhere is not consistent with the Coastal Act and should not be contemplated.

As stated in *Bolsa Chica Land Trust v. The Superior Court of San Diego County*, (71 Cal. App. 4th 493; 83 Cal. Rptr. 2d 850)

the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects *the area* of an ESHA from uses which threaten the habitat values which exist in the ESHA. 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.

In addition, habitat must not be discounted because it is fragmented or degraded. The site is not so large that birds and other fauna cannot easily make their way from one section of the site to another. Again from *Bolsa Chica*:

section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA... section 30240 does not itself provide Commission power to alter its strict limitations. (12 Cal. App. 4th at p. 617.) There is simply no reference in section 30240 which can be

interpreted as diminishing the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection

Thus, habitat areas that are degraded or small and disconnected must not be dismissed. Rather the project should include restoration of degraded habitat and provision of connecting corridors to habitat areas which are isolated.

At a minimum, all surveys must be conducted according to protocols established by the various resource agencies. Multi-year surveys are preferred. This is especially critical for wetlands, due to recent drought conditions.

In addition, the following must be addressed:

1. All high interest species must be addressed, whether or not they are formally listed as rare, threatened, or endangered.
2. Adequate buffers must be identified and provided.
3. Glass walls which can create a hazard for birds must not be utilized.
4. The EIR must examine impacts on habitat due to increased human activity.
5. The EIR must examine impacts on habitat due to consolidation of oil field operations.
6. The EIR must examine impacts on avifauna due to reflective surfaces.
7. Impacts due to noise and night lighting must be examined.
8. The EIR must examine impacts due to increased predation on sensitive species as upland forage areas are developed with housing.
9. Impacts on biological resources due to impacts on water quality must be addressed.

### **Climate Change**

The EIR must address not only greenhouse gas emissions but the effects of greenhouse gas emissions as they relate to the project. As stated in Assembly Bill 32, also known as the California Global Warming Solutions Act of 2006:

The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(California Health and Safety Code Section 38501(a))

Greenhouse gases and climate change must be addressed in terms of:

1. Greenhouse gases to be generated by the proposed project.
2. Increased demand for electricity and natural gas with associated increase in greenhouse gas emissions due to shade and shadow in the surrounding area.

3. Increased flood peaks, including placement of structures to avoid expanded flood hazard areas and retention of stormwater on-site to reduce runoff.
4. Reduced availability of water due to reduced snowpack
5. Provision of areas for habitat retreat as sea level rises and portions of existing lowland habitat are inundated.
6. Measures to address increased stress on habitat including reducing non-climate stressors on ecosystems, controlling opportunistic invasive species, and accommodating sea level rise through provision of adequate buffers.
7. Oil operations must not be consolidated in any areas which will likely be inundated under State-predicted rises in sea level.

### **Cultural Resources**

Bluff top sites throughout the area, including Fairview Park, Bolsa Chica, and sites adjacent to Newport Bay have been found to contain a wealth of archaeological resources. Preservation in place is the preferred alternative and must be pursued to the fullest extent feasible. Any remains or artifacts must be treated with respect.

During World War II gun turrets were placed on the site. It is not known if any of these remain. This should be investigated as part of the EIR process.

### **Geology and Soils**

Bluff areas would be considered unique physical features. Any impacts on landform/bluffs must be examined, whether direct or indirect, i.e. erosion.

In addition, the following must be addressed:

1. The EIR must include grading plans and representative cross sections.
2. Adequate setbacks must be provided from any areas potentially subject to ground rupture or other hazards.
3. Impacts on off-site areas must be addressed including debris flows and effects on nearby areas due to earthmoving activities or vibration.
4. The EIR must address land instability due to landscape irrigation.
5. On-site areas must not be utilized as fill or borrow sites simply because it would be convenient to obtain additional fill or dispose of cut materials on portions of the site that would otherwise remain undisturbed.
6. Any areas where blasting may be necessary must be identified and all impacts of blasting, including noise, vibration and potential for property damage must be examined
7. Any areas where pile driving may be necessary must be identified and all impacts of pile driving, including noise, vibration and potential for property damage must be examined

### **Hazards/Hazardous Materials**

The subject property has been used for oil extraction for decades. Thus hazards associated with current and past oil field activities are of great importance.

In addition, the following must be addressed:

1. The EIR must address materials which may be released into the air or water during oil field consolidation.
2. The EIR must examine the effect of construction activities on evacuation routes and emergency response.
3. The EIR must address any toxic or hazardous materials that may be on the property from previous uses and examine how residual contaminants in the soil will be removed.
4. The EIR must consider potential hazards from methane gas as have occurred elsewhere in the area.
5. The EIR must examine the effects of increase traffic on emergency response.
6. Any increase in response times must be mitigated.
7. The EIR must examine the effect of construction activities on evacuation routes.
8. Underground streams have created sink holes from time to time in the southwest area of Costa Mesa. The EIR must address this potential hazard on the project site.

### **Hydrology/Water Quality**

Water quality in lowland areas near the mouth of the Santa Ana River, including Semeniuk Slough, has long been of concern to local residents. Factors include poor circulation, urban runoff and oil field operations. The EIR must examine impacts on water quality in the area as well as opportunities to improve existing problems.

1. The analysis must address impacts due to ongoing oil operations and proposed consolidation of these operations.
2. Impacts due to urban runoff must be addressed.
3. The EIR must identify any construction or placement of fill in floodways or floodplains which could result in any increase in flood levels elsewhere. This must be considered for the specific Banning Ranch project and for cumulative development in the watershed.
4. The EIR must address how the project will comply with Santa Ana Regional Water Quality Control Board (SARWQCB) Order No. R8-2002-0010/ NPDES No. CAS618030/Tentative Order No. R8-2008-0030/NPDES No. CAS618030.

### **Land Use/Planning**

While the California Environmental Quality Act (CEQA) is designed to address the quality of the physical environment, this does not mean that economic and social issues are to be completely excluded from the environmental review process. On the contrary, the Guidelines for the Implementation of CEQA and judicial history indicate that economic and social factors are important on two scores:

- Economic and social factors may bear on the significance of a physical change; and
- Economic and social effects of a project may result in physical changes which are themselves significant.

Guidelines Sections 15064(e), 15382, and 15131 (b) all recognize the importance of social and economic effects in determining the significance of a project's actual physical effects on the environment.

In accordance with Guidelines Section 15131(a):

An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes.

In *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 [217 Cal.Rptr. 893], the court held that:

...the lead agency shall consider the secondary or indirect environmental consequences of economic and social changes, but may find them to be insignificant. Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered... subdivision (f) [of Guidelines Sec. 15064, since re-enumerated] expressly gives the agency discretion to determine whether the consequences of economic and social changes are significant, which is not the same as discretion to not consider these consequences at all... Indeed, **the physical change caused by economic or social effects of a project may be regarded as a significant effect in the same manner as any other physical change resulting from the project may be regarded as a significant effect.** [emphasis added]

Thus, the Court very clearly required that the public agency address the potential that physical blight would be caused by the proposed project.

The City of Costa Mesa has been working to improve the area of southwest Costa Mesa known as the "West Side". Blighting conditions have been identified in the area and City programs have been adopted to eliminate that blight. A key factor mentioned by many public officials has been taking advantage of the proximity to the ocean and provision of bluff top views. The EIR must address how development of a 65-foot-tall affordable housing project will affect these efforts. The EIR must examine how increased cut through traffic, shade, shadow, and creation of a visual barrier to points south and west may contribute to blight on the West side.

In addition, the following must be addressed:

1. The EIR must examine the precedent the proposed project will represent with regard to its increase in allowable building height and the cumulative impact that could result.
2. The EIR must discuss any inconsistencies between the proposed project and existing planning programs. A litany of policies with which the project conforms is neither required nor necessary, only identification of potential inconsistencies.
3. The EIR must identify any off-site land that will be needed for roadways or other infrastructure.

4. The EIR must identify any existing uses that will be displaced in order to provide for roadways of other infrastructure.

## **Noise**

Noise will be generated during construction of the proposed project. In addition, noise will be generated by vehicular traffic during both construction and operation of the project. These must be examined as follows:

1. SENELs as well as CNELs must be addressed.
2. Noise must be addressed in terms disturbance or discomfort to humans, not just conformance with ordinances that may exempt certain types of noise from regulation.
3. Temporary relocation of sensitive receptors must be considered as mitigation.
4. The EIS/EIR must address increased vehicle noise resulting from increased traffic generated or facilitated by the proposed project.
5. Noise analyses must address specific frequencies that may carry or resonate to a greater degree, such as certain helicopter noise.

## **Transportation/Traffic**

The proposed project is planned to take access via 19<sup>th</sup> Street in Costa Mesa, among other locations. The street currently ends east of the Santa Ana River. The Orange County Master Plan of Arterial Highways includes a connection over the Santa Ana River from 19<sup>th</sup> Street in Costa Mesa to Banning Avenue in Huntington Beach. However, the cities of Costa Mesa and Huntington Beach, the cities where any bridge and approaches to the bridge would be located, have both gone on record in opposition to construction of a bridge at that location. In addition, numerous hurdles would exist to bridge construction, including but not limited to biological, geological, and economic constraints. It is quite possible that the bridge may never be constructed, and it is certain that the bridge would not be built by the time development of the proposed project is planned to occur. Thus, traffic analyses must not rely on the presence of a 19<sup>th</sup> Street/Banning Avenue bridge or similar connection in order for traffic to flow adequately. Analysis of future traffic conditions must include a “no bridge” scenario.

In addition, the following must be addressed:

1. Impacts on haul routes must be addressed.
2. Impacts on emergency response and evacuation routes must be addressed.
3. Mitigation strategies must provide for adequate access during construction along West Coast Highway
4. The EIR must evaluate sight distance including such factors as roadway grades and curves.
5. The EIR must address any increase in hazards on existing roads due to increased traffic from the project.
6. The EIR must address stacking at any access gates, whether during construction or upon occupancy of the project.

7. Any need for new surface transportation infrastructure must be examined and responsibility for implementation of improvements assigned.
8. Infrastructure improvements must be phased with development so that improvements do not lag behind impacts sustained by the community.
9. Mitigation measures must include means of reducing traffic and must be practical and verifiable.
10. Traffic impacts must be examined in the light of the Congestion Management Plan and other adopted transportation plans.
11. Analyses must not be limited to only the largest intersections listed in the Congestion Management Plan, but must include other intersections in the vicinity that operate or are anticipated to operate at unacceptable levels.
12. Analyses must not be limited to only Newport Beach, but must include intersections in the adjacent communities of Costa Mesa and Huntington Beach.
13. The EIR must address changes in traffic patterns due to construction of new roadways, particularly cut-through traffic on east-west trending roadways in Costa Mesa. This includes the Dover-Mariners-19<sup>th</sup> Street route.
14. The EIR must address how the proposed project may increase demand for construction of a 19<sup>th</sup> Street/Banning Avenue bridge.
15. The EIR must address how the proposed project may increase demand for extension of the 57 Freeway further south.
16. The EIR must address how the proposed project may increase passenger loads and demand for additional flights at John Wayne/Orange County Airport.

### **Population and Housing**

The project must be evaluated in light of local and regional growth policies. The EIR must address:

1. City policies regarding inclusionary housing.
2. The project must be evaluated in light of housing requirements in the coastal zone stipulated in Section 65590 of the California Government Code.
3. The EIR must identify any housing or other uses which may be displaced by construction on West Coast Highway.
4. Jobs/housing balance must be addressed in terms of the anticipated demographic profile of persons to be employed at future commercial uses and future housing.

### **Public Services**

Direct physical impacts as well as indirect, growth inducing impacts of installation of infrastructure in conjunction with the proposed project must be examined. The EIR must address:

1. Impacts on public services, including but not limited to police protection, fire protection, paramedics, schools, and libraries.
2. Any potential for disruption of public services and utilities during construction.

## **Recreation**

Impacts on nearby recreation facilities such as Sunset Ridge Park and local bicycle trails must be examined, including construction impacts such as noise and dust. Streets within the project must be available to the public and public parking must be provided for recreational amenities on-site.

## **Utilities and Service Systems**

Analyses in the EIR must utilize realistic utility consumption rates, based on actual historic use for similar uses in the community. Unreasonably optimistic consumption rates must not be used to calculate impacts on utilities and service systems.

Likewise, analysis of utility availability must not be unrealistically optimistic. Analysis of water availability required pursuant to SB 221 (Kuehl, 2001) and SB 610 (Costa, 2001) must take into consideration State estimates regarding future reduction in snowpack and reductions in available water from northern California due to habitat needs in the Sacramento Delta.

## **Growth Inducing Impact**

The project includes amendment of Newport Beach Municipal Code Section 20.65 to permit a maximum building height of 50 feet in the Visitor-Serving Resort District and Residential District and a maximum height of 65 feet within portions of the Mixed-Use/Residential Land Use District. The EIR must address how this might set a precedent for additional height elsewhere in the City. This is especially critical as the City moves to implement mixed use zoning in areas within the Coastal Zone. A 65 foot height limit must not become the standard for mixed use throughout the City.

The project will include connections between West Coast Highway and various streets in Costa Mesa. Improvements to West Coast Highway are also contemplated as part of the project. The EIR must address how the additional roadways could remove obstacles to growth and facilitate growth elsewhere that could significantly affect the environment, either individually or cumulatively. This would apply to any other additional infrastructure, such as water facilities, as well.

The EIR must examine how the proposed project would increase demand for new infrastructure such as construction of the 19<sup>th</sup> Street/Banning Avenue bridge or the Poseidon desalination plant in Huntington Beach. Construction of these facilities could in turn foster additional growth.

## **Cumulative Impacts**

All impacts must be examined in the light of other past, present and reasonably foreseeable growth in the area, both within the City of Newport Beach and in nearby communities. This must not be limited only to projects that have been identified to have significant impacts on their own, but include other projects which may have individually insignificant but greater than minimal impacts. Individual and cumulative impacts must be fully mitigated. This must be

presented in a manner that makes clear the impacts to be created by the proposed project alone as well as with cumulative development.

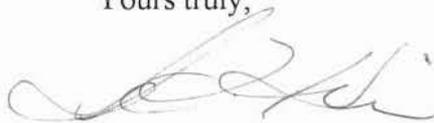
**EIR Process**

The city anticipates a 45-day public review period for the Draft EIR. The Newport Banning Ranch project is one of the largest projects ever contemplated by the City of Newport Beach. It is located on the last major undeveloped parcel along the Orange County coast and is of regional significance. The project is highly complex. By the applicant's own admission, the developer's team has been studying the site for at least two years. A 45-day period for review of environmental documentation for a project of this scope and complexity is not adequate. A sixty to ninety day public review period must be provided for the Draft EIR.

Thank you for this opportunity to comment. Please include these comments and all other comments on the NOP and a transcript of the Scoping Meeting in the Draft EIR.

Please keep us informed as the project moves forward. We look forward to reviewing the DEIR when it becomes available.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', written in a cursive style.

Sandra L. Genis

APR 20 2009  
NEWPORT BANNING RANCH ENVIRONMENTAL IMPACT REPORT  
PUBLIC SCOPING MEETING  
APRIL 2, 2009

CITY OF NEWPORT BEACH

(PLEASE PRINT)

NAME PAUL GOLD EMAIL PLYGOLD@CS.COM

ADDRESS 1833 NANTUCKET PLACE, COSTA MESA

REPRESENTING \_\_\_\_\_

(This identification will be placed on the City's mailing list for this project, unless otherwise noted.)

I have the following comment(s) regarding the scope of the environmental analysis, alternatives evaluation, or mitigation measures that should be addressed in the Newport Banning Ranch EIR.

I want to say I do like the Project that the owners of Banning Ranch have proposed to us. AS LONG AS the open space that is promise to the public is going to happen and be protected.

I do not like the add of A ROAD to 19<sup>th</sup> St. == this was never spoken about @ the meetings! It's going to spoil all the effort made to keep open space,

Not to mention the ADDED NOISE AND TRAFFIC through Costa MESA down 19<sup>th</sup> Street.

the Lights AND Pollution From the street will destroy my way of life AND the Peaceful OPEN SPACE we enjoy on the Bluff.

Please do not Place A ROAD to 19<sup>th</sup> street. Thank you for doing what you can to protect the Public's Right For OPEN SPACE,

PAUL GOLD

If you have comments and do not wish to speak during the Scoping Meeting, please take the opportunity to fill out this Comment Sheet. Comment Sheets will be collected at the end of this Scoping Meeting. They can also be mailed to the City of Newport Beach by folding, stapling, and sending this card to the address on the reverse.

**J. Edward Guilmette**  
P.O. 1187  
Costa Mesa, CA 92628  
949.645.7322 E-mail: chivatoed@yahoo.com

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April 16, 2009

RECEIVED BY  
PLANNING DEPARTMENT

APR 16 2009

City of Newport Beach  
Planning Department  
3300 Newport Blvd.  
Newport Beach, CA 92658  
Att: Debby Linn, Contract Planner

CITY OF NEWPORT BEACH

Subject: Newport Banning Ranch NOP comments

My comments pertain to the technical files, Volume III, Draft Sewer and Water Facilities Plan. My comments concern two subjects:

- Storm water impacts and flooding in Oxbow Loop
  - ESHA impacts: lowlands and saltwater marsh sites
- 1) The EIR should examine the impacts of rising sea levels associated with global warming and the carrying capacity of Oxbow Loop. Direct observations show very little reserve capacity in Oxbow Loop for increased storm water flows when compared to computer modeling. Source Section 3.2.2: "According to the field reconnaissance and conversations with the residents along the Oxbow Loop, the channel floods when high tide and large storms occur at the same time".
  - 2) The EIR should prove the assumption that the lowlands will provide 123 acres for flood storage. Many of the plant communities in the lowlands are considered facultative wetland and facultative species. The impacts of flooding (roots under water) for multiple days on these communities needs to be carefully studied
  - 3) The EIR should examine and justify the creation of flood storage structures/basins in ESHA sites. Alternatives to these structures should be clearly identified.
  - 4) The EIR should examine whether runoff from the lowlands will degrade storage capacity in the Saltwater Marsh and Oxbow Loop and increase the danger of flooding in Newport Shores.
  - 5) The EIR should examine the effect of ESHA on the salt marsh, Oxbow Loop and the lowlands. Using these areas for flood storage needs to be clearly justified. Modifying the lowlands to create flood control basins need to be justified.

**J. Edward Guilmette**

P.O. 1187

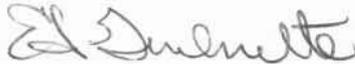
Costa Mesa, CA 92628

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- 6) The EIR should investigate and explain the impact of lowered salinity levels in the salt-water marsh and Oxbow Loop due to closed Tidal Gates and increased floodwater storage. Specifically, the impact to marine organisms used as food sources for many species, including some that are endangered, needs to be carefully studied.
- 7) The EIR should investigate the impact of the proposed construction of two diffuser basins on water quality issues. Basins and forebays have been shown to concentrate pollutants, especially bacteria and pathogens. Source: S.B. Grant, et al. 2001. Generation of Enterococci Bacteria in a Coastal Saltwater Marsh and Its Impact on Surf Zone Water Quality. The county has reported that Oxbow Loop frequently has high bacterial counts at Lancaster and Grant Streets, and it is suspected that these bacterial concentrations may contribute to warnings and beach closures on both sides of the Santa Ana river outlet to the ocean.
- 8) The EIR should carefully investigate impacts of on-site pollutants in the oil fields, including potential sources on groundwater leeching, prior to completing pollution assessments for storm water runoff.

Sincerely,



J. Edward Guilmette

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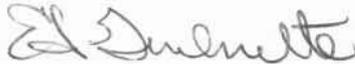
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Sincerely,



J. Edward Guilmette

**From:** Gary Gumbert [gumbert@gte.net]

**Sent:** Wednesday, April 08, 2009 10:11 AM

**To:** dlinn@city.newport-beach.ca.us

**Subject:** Banning Ranch project

I am opposed to the proposed Banning Ranch project. After the project is built the traffic in the area will be a nightmare. One more reason for people to move out of the area.

Thank you,

Gary Gumbert