PLANNING COMMISSION AGENDA (REVISED)

CITY OF NEWPORT BEACH
COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD
Thursday, April 19, 2012
Regular Meeting – 6:30 p.m.

MICHAEL TOERGE
Chair

BRADLEY HILLGREN
Vice Chair

FRED AMERI
Secretary

TIM BROWN

KORY KRAMER

JAY MYERS

LARRY TUCKER

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

BRENDA WISNESKI, Deputy Community Development Director

LEONIE MULVIHILL, Assistant City Attorney **TONY BRINE, City Traffic Engineer**

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200. The agendas, minutes, and staff reports are also available on the City's web site at: http://www.newportbeachca.gov.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

NEWPORT BEACH PLANNING COMMISSION AGENDA (REVISED)
Council Chambers – 3300 Newport Boulevard
Thursday, April 19, 2012
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.

E. REQUEST FOR CONTINUANCES

F. CONSENT ITEMS

ITEM NO. 1 Minutes of April 5, 2012

ACTION: Approve and file.

G. PUBLIC HEARING ITEMS

ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE (3) MINUTES ON ALL ITEMS. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one (1) minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours.

ITEM NO. 2 Newport Place Affordable Housing Amendment - (PA2011-215)
Area generally bound by MacArthur Boulevard, Jamboree Road, Birch Street, and Bristol Street North.

SUMMARY: Amendment to the Newport Place Planned Community Development Plan (PC-11) to implement Housing Programs 3.2.2 and 3.2.3 found in the 2008-2014 Housing Element. The amendment would permit residential development that includes a minimum of 30 percent of the units affordable to lower-income households with the approval of a Site Development Review. Developments meeting this criteria will also be eligible for a waiver of the minimum 10-acre site area required. The amendment would also establish minimum development regulations including building height, setbacks, and parking requirements.

CEQA COMPLIANCE: A Negative Declaration (SCH No. No. 2011091088) was prepared for the 2008-2014 Housing Element, which includes Housing Programs HP3.2.2 and 3.2.3, in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA), State CEQA Guidelines, and City Council Policy K-3. The document was made available for public review and comment during a 30-day review period from September 30 to October 31, 2011 and subsequently adopted by the City Council on November 22, 2011. The document is on file with the Community Development Department. A subsequent negative declaration for the project is not required to be prepared pursuant to CEQA Guidelines Section 15162 because the proposed amendment implements Housing Programs HP3.2.2 and 3.2.3, and does not constitute "substantial changes" that would involve new significant environmental effects or result in the

adoption of mitigation measures. Future residential development that could occur pursuant to the proposed amendment would be subject to further site-specific environmental evaluations.

ACTION:

1) Conduct public hearing; and

2) Adopt the draft resolution recommending City Council adoption of the Newport Place Planned Community Development Plan Amendment.

ITEM NO. 3 Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway

SUMMARY: A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space.

CEQA COMPLIANCE: An Environmental Impact Report (EIR) SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The EIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation of CEQA (California Code of Regulations, Title 14, Section 15000 et seq.).

ACTION:

1) Conduct public hearing; and

2) Adopt Resolution No. ___ (Attachment PC 1) recommending to the City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations; and

3) Continue the public hearing to May 3, 2012 to consider the Development Agreement (DA2008-003).

H. NEW BUSINESS

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 Community Development Director's report.

ITEM NO. 5 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

ITEM NO. 6 Request for excused absences.

ADJOURNMENT

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, April 5, 2012
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER - The meeting was called to order at 6:44 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Commissioner Tucker

C. ROLL CALL

PRESENT: Brown, Hillgren, Kramer, Myers, Toerge and Tucker
ABSENT: Ameri (arrived at 7:15 p.m.)

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; and Leonie Mulvihill, Assistant City Attorney

D. PUBLIC COMMENTS

Jim Mosher referenced written comments submitted regarding the recent Newport Banning Ranch portion of the Planning Commission meeting of March 22, 2012. He expressed concern that there was no hint on the notice or agenda that the Commission was contemplating votes on the EIR noting that the agenda implied the public hearing would be continued to April 5, 2012, and that all of those wishing to address the Commission were not given the opportunity. Mr. Mosher indicated that once the motions were made, no public comment was invited and felt that serious omissions were made. He recommended voiding the actions due to possible Brown Act violations and that a discussion of the propriety of previous votes on the Banning Ranch EIR is added to the next agenda and that a properly noticed and conducted hearing is scheduled.

Dan Purcell presented photographs of the Coast Business Center who recently received approval from the Zoning Administrator for additional building signage. He also presented photos of other buildings on East Coast Highway near Corona del Mar Plaza. He felt that the subject building is substantially exceeding the limit of signage and does not preserve the community appearance. He asked the Planning Commission to consider the issue.

Chair Toerge stated the comments from the public are duly noted and that if the Banning Ranch comment has any merit, the City Attorney would address it accordingly.

E. REQUEST FOR CONTINUANCES

Community Development Director Brandt reported there were no requests for continuances at this time.

F. CONSENT ITEMS

ITEM NO. 1 Minutes of March 22, 2012

Chair Toerge noted there were comments circulated regarding the minutes.

ACTION: Approve and file.

Motion made by Vice Chair Hillgren to approve and file the minutes of March 22, 2012, as corrected.

Chair Toerge invited comments from the public.

Jim Mosher referenced the availability of a verbatim transcript of the March 22, 2012, meeting hoping that it would be available whether the issue was challenged in court or not. He stated that he found it disturbing that the hesitation of two (2) Commissioners regarding the item was not indicated relative to the ability of making a motion on the item at said meeting. He reiterated concerns over voting at that meeting rather than approving the recommended action of continuing the item until the meeting of April 5, 2012. He suggested correction of the minutes to indicate the Commission acted on

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the advice of staff as follows, "Discussion followed regarding the propriety of voting on the EIR when the agenda indicated that the item would be continued to April 5th. Staff assured the Commission that such a vote had been properly agendized and recommended continuance to April 19th.

Chair Toerge stated the recommended continuance to April 19th was for the project, not the EIR.

Seeing and hearing no one else wishing to address the Commission, Chair Toerge closed the public hearing.

It was noted that the minutes were corrected according to the written comments submitted by Members of the Commission and that no further amendments were necessary.

The motion was seconded by Commissioner Brown and carried (5 - 0 - 1 - 1), with Commissioner Kramer, abstaining and Commissioner Ameri, absent.

AYES:	Brown, Hillgren, Myers, Toerge, and Tucker
NOES:	None.
ABSENT:	Ameri
ABSTAIN:	Kramer

G. PUBLIC HEARING ITEMS

ITEM NO. 2 Alternative Setback Determination (PA2012-015)
211 Orchid Avenue

Chair Toerge read the title to the aforementioned item, opened the public hearing, and called for a report from staff.

Assistant Planner Kay Sims presented details of the report addressing location, previous subdivision and reorientation, subjection to standard City setbacks and comparison to neighboring properties. She added that the application of standard setbacks results in a small buildable area and less total square footage than can be built on other properties. Ms. Sims noted that the application for an alternative setback determination is for the purpose of establishing more appropriate setbacks for the property and was continued by the Commission at its March 8th meeting so that staff could meet with the applicant and neighbors to develop additional setback proposals for the Commission to consider. She stated that at the previous meeting, the Commission expressed general support for setbacks that would result in a .95 Floor Area Ratio (FAR).

Ms. Sims reported that since that meeting, staff has met with the applicant's representative who submitted an alternative proposal and also met with neighboring property owners. She presented details of the applicant's alternative proposal noting it results in an FAR of .96 as well as three (3) alternative proposals developed by staff resulting in an FAR range between .87 and .92. She noted two (2) of the alternatives have staggered front and rear setbacks. Ms. Sims reported that staff also calculated three (3) other alternatives that resulted in an FAR range between .78 and .82, but did not include them in the staff report since they provide less buildable areas than staff's original recommendation resulting in an FAR of .85.

Chair Toerge invited the applicant or his representative to address the Commission.

Troy Davis, applicant representative, referenced previous discussions on this item including developing a possible variable setback across the front of the property. He stated that comments from the Commission were considered in developing alternatives and addressed compromises made in consideration of adjacent neighbors. He listed alternatives that would be acceptable to the applicant.

Interested parties were invited to address the Commission at this time.

Karl Drews, representing property owners of 3516 Ocean Boulevard, referenced a previous meeting with staff and neighbors and stated opposition to recommendation number 2. He addressed unique configuration of the lot upon its subdivision and challenges with obtaining a FAR that equals other properties in the area. Mr. Drews addressed the orientation of homes and pointed out that FAR is a guideline, not an ordinance, and should not dictate when there are negative impacts to adjacent properties. Mr. Drews stated support for developments that conform to existing ordinances and opposition to any setbacks that negatively impose on the property owners he represents.

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Seeing and hearing no one else wishing to address the Commission, Chair Toerge closed the public hearing.

Discussion followed regarding clarification of acceptable alternative setbacks.

Commissioner Myers reported visiting the site and simulating views from adjacent properties. He suggested a slight modification of Exhibit 1, changing the rear setback to seven (7) feet which would result in an FAR of .91. He added the only difference to the applicant's proposed setback would be in a change to the front setback to a split of 46.5 feet and 46.5 feet.

Chair Toerge indicated that he visited the site and suggested a staggered setback and felt the proposal by the applicant is not sufficient, adding that the 20-foot setback should be maintained for at least half of the lot to maintain the integrity and views of adjacent neighbors. He added that to consider the FAR issue is not unfair, and it had been his hope that continuing the previous hearing, that the possibility of it being enhanced without negatively impacting the neighbors or opposition could be addressed. He agreed with Mr. Drews' statement regarding the FAR being a guide and stated support for Exhibit 1.

It was noted that the only benefit to the seven (7) foot setback is that it raises the FAR.

Commissioner Kramer felt that the issue is being complicated and indicated Exhibit 3 is the most simple, elegant, and reasonable alternative.

Commissioner Tucker stated agreement with Commissioner Kramer and addressed the proposal that the applicant would find acceptable. He indicated preference for accepting the applicant's recommendation or Exhibit 3.

Brief discussion followed regarding the orientation of the lot, setbacks, and compromises made by the applicant.

Motion by Commissioner Kramer and seconded by Commissioner Tucker to approve Exhibit 3.

Substitute motion by Chair Toerge and seconded by Vice Chair Hillgren and carried (4 - 2 - 1 - 0) with Commissioner Kramer and Commissioner Tucker, opposing and Commissioner Ameri, absent to approve Exhibit 1 with modification of the portion of the rear setback that was 10 feet to become a seven (7) foot rear setback as discussed and proposed by Commissioner Myers.

AYES:	Brown, Hillgren, Myers, and Toerge
NOES:	Kramer and Tucker
ABSENT:	Ameri
ABSTAIN:	None.

H. NEW BUSINESS

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 3 Community Development Director's report.

Community Development Director Brandt reported that Council considered proposed changes to the Zoning Code related to fences, hedges and wall heights and accepted the Planning Commission's recommendations and will be going forward to a second reading. In addition, Council considered a General Plan amendment and rezone for the laundromat which will be going forward for a second reading.

ITEM NO. 4 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Chair Toerge addressed the Dry Dock Restaurant noting that it had restrictions in the conditions of approval prohibiting the restaurant from operating as a bar. He stated they have an annual review process and reported the name of the restaurant has been changed to Dive Bar. He suggested that if the City limits establishments of an operation from being a bar, it may want to consider limiting it from being called a bar.

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Community Development Director Brandt indicated that is something that could be considered in conjunction with a Conditional Use Permit application in terms of appropriate conditions of approval that relate to the operation and how a business is signed in advertising. She added that normally, the City does not regulate copy for signs.

Chair Toerge referenced a property on the southwest corner of First Street and Carnation where there is a home under construction and requested that the project be reviewed by the Commission in terms of setbacks. He stated that it looks odd and felt that there have been mistakes regarding how the setbacks were calculated. He stressed the importance of avoiding what has occurred on that property in future developments.

He addressed the right of appeal the decision of the Zoning Administrator regarding signage noting that any of the Commissioners have that right. In addition, Chair Toerge stated that, it would be appropriate to schedule another review of rules and procedures relative to the Planning Commission. He encouraged Members of the Commission review them and provide input to staff.

Commissioner Kramer stated that he would like the opportunity for the Commission to discuss the issues expressed earlier by Mr. Purcell regarding the use of signage and asked staff to provide some background on the issue.

Community Development Director Brandt stated that staff is not in a position to provide a staff presentation on the Zoning Administrator approval at present since it is not in the agenda. The item would need to be placed in a future agenda. She noted a fourteen (14) day appeal period stating it expires that April 10, 2012. Should any Commissioner decide to review the issue, it would need to be called out and placed on the agenda.

Assistant City Attorney Mulvihill reported that there is a written requirement and reported that the Zoning Administrator's action and report is available on line for review and suggested Members review it and contact the appropriate staff member for the requirements which are mainly the basis for an appeal.

ITEM NO. 5 Request for excused absences.

There were no requests for excused absences.

Commissioner Ameri arrived 7:15 p.m.

ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Toerge adjourned the meeting at 7:16 p.m.

The agenda for the Regular Meeting was posted on March 30, 2012, at 9:10 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

_____
Michael Toerge, Chairman

_____
Ex-Officio Secretary

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CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
April 19, 2012 Planning Commission Hearing
Agenda Item No. 2

SUBJECT: Newport Place Affordable Housing Amendment - (PA2011-215)

- Planned Community Amendment No. PD2011-005

APPLICANT: City of Newport Beach

PLANNER: Melinda Whelan, Assistant Planner
949-644-3221, mwhelan@newportbeachca.gov

PROJECT SUMMARY

Amendment to the Newport Place Planned Community Development Plan (PC-11) to implement Housing Programs 3.2.2 and 3.2.3 found in the 2008-2014 Housing Element. The amendment would permit residential development that includes a minimum of 30 percent of the units affordable to lower-income households with the approval of a Site Development Review. Developments meeting this criteria will also be eligible for a waiver of the minimum 10-acre site area required. The amendment would also establish minimum development regulations including building height, setbacks, and parking requirements.

RECOMMENDATION

1) Conduct a public hearing and;

2) Adopt the draft resolution recommending City Council adoption of the Newport Place Planned Community Development Plan Amendment (Attachment No. PC 1).

VICINITY MAP

GENERAL PLAN

ZONING

LOCATION	GENERAL PLAN	ZONING	USE
Area Bounded by MacArthur Blvd., Jamboree Rd., Bristol St. North, and Birch St.	Includes Mixed-Use Horizontal (MU-H2), General Commercial Office (CO-G) and General Commercial (C-G) parcels	Newport Place Planned Community Development Plan (PC-11)	Various commercial and general office
Proposed Residential Overlay within PC-11	Only on MU-H2 parcels within PC-11	Adds residential overlay to PC-11 to facilitate development of affordable housing	No change to existing uses. Amendment adds opportunity for affordable housing development.

Background

As part of the 2006 comprehensive General Plan update, the Airport Area was identified as a new area for housing opportunities and was designated Mixed-Use Horizontal (MU-H2), which allows for mixed-use and multi-family residential. With its density ranging from 30 to 50 du/acre, the Airport Area was also identified in the 2008-2014 Housing Element as an area to potentially accommodate affordable housing. During review of the 2008-2014 Housing Element, the California Department of Housing and Community Development (HCD) identified two constraints to the development of affordable housing within the Airport Area that needed to be addressed prior to their finding that the Housing Element meets state law requirements.

The first constraint recognized by HCD is General Plan Policy LU 6.15.6 that requires residential neighborhoods in the Airport Area to contain a minimum of ten (10) contiguous acres centered on a neighborhood park and other amenities. To address this constraint, staff worked with HCD to develop a new Housing Element program (HP 3.2.2) requiring the City to create a waiver or exception provision to the minimum 10-acre site requirement for affordable housing projects.

The second constraint identified by HCD relates to the zoning of the sites within the Airport Area. Although the General Plan permits residential development on sites designated mixed-use within the Airport Area, the sites remain zoned only for commercial and industrial land uses by the Koll Center (PC-15) and Newport Place (PC-11) Planned Communities[1]. To address this issue, Housing Element program HP 3.2.3 was developed that requires Planned Community text amendments to allow residential developments that include: 1) a minimum of 30 percent of the units affordable to lower-income households; and 2) include densities between 30 du/acre and 50 du/acre consistent with the General Plan land use designation and policies for the Airport Area. Residential developments meeting these requirements will be permitted subject to a Site Development Review (Attachment No. PC 2).

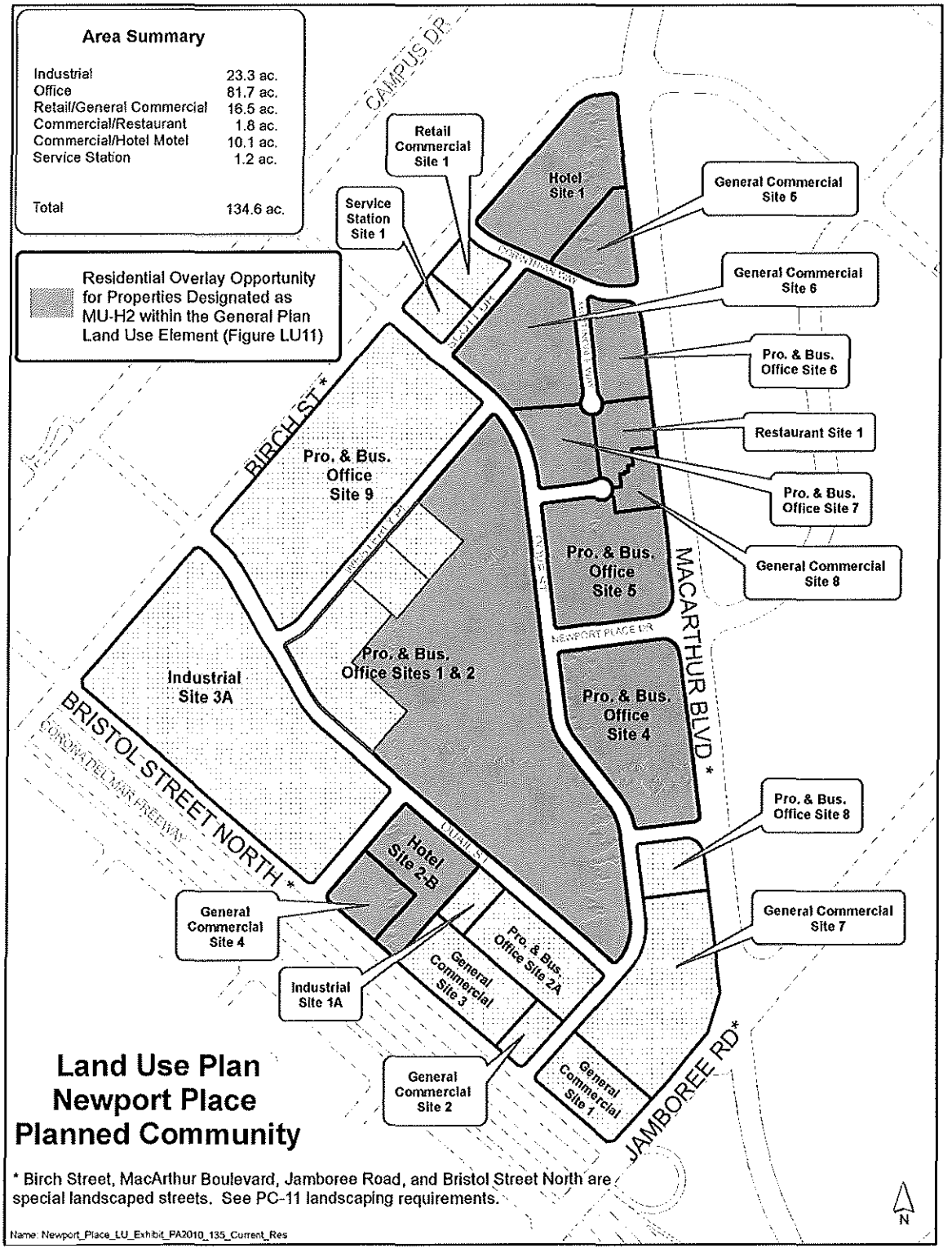
HCD has found the 2008-2014 Housing Element compliant with State Housing Element Law with the adoption of Housing Programs 3.2.2 and 3.2.3 (Attachment No. PC 3) by the City and contingent upon implementation of these new programs.

Newport Place Planned Community

Newport Place is a Planned Community in the Airport Area that was originally designed in the early 1970's with clusters of office parks and industrial uses. The area has evolved with light industrial uses being replaced overtime with commercial support retail and office uses within the original design. The introduction of the MU-H2 land use classification created an opportunity for residential uses. The boundary of PC-11 begins at Macarthur Boulevard extending westerly bounded by Jamboree Road, Bristol Street North, and Birch Street as depicted on the vicinity map. The residential overlay opportunity spans only across parcels that have the General Plan Land Use designation

[1] An Amendment for Koll Center (PC-15) will be processed at a future date.

of MU-H2 as depicted on the map on the next page which is incorporated into the revised PC text.


Area Summary
Industrial 23.3 ac.
Office 81.7 ac.
Retail/General Commercial 16.5 ac.
Commercial/Restaurant 1.8 ac.
Commercial/Hotel Motel 10.1 ac.
Service Station 1.2 ac.
Total 134.6 ac.
Residential Overlay Opportunity for Properties Designated as MU-H2 within the General Plan Land Use Element (Figure LU11)
CAMPUS DR
Retail Commercial Site 1
Service Station Site 1
Hotel Site 1
General Commercial Site 5
General Commercial Site 6
Pro. & Bus. Office Site 6
Restaurant Site 1
Pro. & Bus. Office Site 7
General Commercial Site 8
BIRCH ST *
Pro. & Bus. Office Site 9
Pro. & Bus. Office Site 5
MACARTHUR BLVD *
NEWPORT PLACE DR
Pro. & Bus. Office Sites 1 & 2
Industrial Site 3A
Pro. & Bus. Office Site 4
BRISTOL STREET NORTH *
CORONA DEL MAR FREEWAY
Pro. & Bus. Office Site 8
Hotel Site 2-B
General Commercial Site 4
General Commercial Site 7
Pro. & Bus. Office Site 2A
General Commercial Site 3
Industrial Site 1A
General Commercial Site 2
General Commercial Site 1
JAMBOREE RD*
Land Use Plan
Newport Place
Planned Community
* Birch Street, MacArthur Boulevard, Jamboree Road, and Bristol Street North are special landscaped streets. See PC-11 landscaping requirements.
N
Name: Newport_Place_LU_Exhibit_PA2010_135_Current_Res

Newport Place Affordable Housing Amendment

The Amendment creates an opportunity for affordable housing projects to be developed within a new residential overlay but does not remove or change other components of the existing Planned Community text. Additionally, a few minor changes were made throughout the PC-11 text to update references to City Departments. The revised PC-text is found in the draft Resolution as Exhibit "A" (Attachment No. PC 1)

Residential Overlay

The residential overlay provides for the opportunity to develop affordable residential projects. Affordable residential projects that qualify for the residential overlay would be permitted subject to a Site Development Review process per Zoning Code Section 20.52.080. Notwithstanding, the review authority for site development review listed in Table 5-2 of the Newport Beach Zoning Code, the review authority for site development review shall be the Planning Commission regardless the number of dwelling units proposed. A Site Development Review provides a process to ensure consistency with General Plan policies related to the preservation of established community character, and expectations for high quality development and to ensure proper integration of the project with the area. To qualify for the residential overlay projects must provide the following:

- A density 30 to 50 dwelling units per acre.
- A minimum of 30 percent of the units must be affordable to lower-income households for a minimum of 30 years.
- Must meet the basic site development standards of the residential overlay.
- Residential dwellings shall be permitted *only* as replacement of existing nonresidential uses pursuant to General Plan Policy LU 6.15.5. The number of peak hour trips generated by new development could not exceed the number of trips that result from the existing nonresidential uses.

Residential developments that qualify for the residential overlay are subsequently exempt from General Plan Land Use Policy LU 6.15.6 and have no minimum site area requirement.

Development Standards of Residential Overlay

The existing Planned Community text does not provide residential development standards. The existing PC text allows for a range of heights depending on the site from 50 feet to 167 feet or 9 stories. Staff consulted with affordable housing developers to determine that a height limit of 55 feet is appropriate to facilitate a four-story building that typically can accommodate the 30 to 50 unit per acre density range. The 55-feet may be exceeded with the approval of the Site Development Review if additional findings can be made pursuant to Zoning Code Section 20.30.060 C.3 (Attachment No. PC 4). The Planned Community text does include commercial setback and landscape

standards including special landscaped streets (Jamboree Road, Bristol Street North, Birch Street, and MacArthur Boulevard) which are maintained in the proposed residential overlay to preserve the existing development pattern of the PC.

Staff recommends using the Zoning Code Multiple Residential (RM) standards including additional landscaping, parking and signs where appropriate. There is no floor area limit proposed as development would be limited sufficiently by other development standards. The residential overlay also includes development standards related to projects providing sufficient amenities, integration of projects within the existing PC, and integration of the affordable units within a specific project.

Airport Land Use Commission

Projects requiring Zoning Code amendments including Planned Community amendments that are located within the Airport Environs Land Use Plan (AELUP) Airport Planning Area must be referred to the Orange County Airport Land Use Commission (ALUC) for a determination of consistency with the AELUP prior to adoption by the City. The Airport Land Use Commission is scheduled to review the PC Amendment at the ALUC meeting on May 17, 2012. Staff anticipates ALUC will find the project consistent with AELUP since they reviewed the 2006 General Plan update and the MU-H2 designations were deemed consistent with the ALEUP. Additionally, ALUC found the 2008-2014 Housing Element including programs and implementation consistent with the AELUP. The proposed height limits within the PC text are required to comply with the requirements of Zoning Code Section 20.30.060.E. (Airport Environs Land Use Plan for John Wayne Airport and the Airport Land Use Commission Review Requirements).

Environmental Review

A Negative Declaration (SCH No. No. 2011091088) was prepared for the 2008-2014 Housing Element, which includes Housing Programs HP3.2.2 and 3.2.3, in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA), State CEQA Guidelines, and City Council Policy K-3. The document was made available for public review and comment during a 30-day review period from September 30 to October 31, 2011 and subsequently adopted by the City Council on November 22, 2011. The document is on file with the Community Development Department. A subsequent negative declaration for the project is not required to be prepared pursuant to CEQA Guidelines Section 15162 because the proposed amendment implements Housing Programs HP3.2.2 and 3.2.3, and does not constitute "substantial changes" that would involve new significant environmental effects or result in the adoption of mitigation measures. Future residential development that could occur pursuant to the proposed amendment would be subject to further site-specific environmental evaluations.

Public Notice

Notice of this hearing was published in the Daily Pilot, posted at City Hall a minimum of 10 days in advance of this hearing consistent with the Municipal Code, mailed to all property owners within PC-11, and to all property owners within the 300' radius of the boundaries of PC-11. The notice was e-mailed to all parties on the housing interest list. Finally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

Melinda Whelan
Assistant Planner

Submitted by:

Brenda Wisneski
Deputy Community Development Director

ATTACHMENTS

PC 1	Draft Resolution including Exhibit A Revised PC text
PC 2	Housing Programs 3.2.2 and 3.2.3
PC 3	HCD compliance letter
PC 4	Zoning Code Section 20.30.060C.3.

Attachment No. PC 1

Draft Resolution

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL ADOPTION OF THE NEWPORT PLACE AFFORDABLE HOUSING AMENDMENT (PD2011-005) AUTHORIZING RESIDENTIAL DEVELOPMENT THAT INCORPORATES AFFORDABLE HOUSING. (PA2011-215)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. The 2006 General Plan identifies several key areas in the City as locations for future housing opportunities, including the Airport Area. Given the allowed densities of between 30 and 50 dwelling units per acre, the Airport Area has also been identified in the City's 2008-2014 Housing Element has having the potential to accommodate the City's Regional Housing Needs Assessment (RHNA) for lower-income households.

2. The Department of Housing and Community Development (HCD) reviewed the 2008-2014 Housing Element update and found it in full compliance with State housing element law on December 29, 2011. HCD also identified successful implementation of Housing Element Programs HP 3.2.2 and HP 3.2.3 as necessary to facilitate affordable residential development in the Airport Area.

3. The 2008-2014 Housing Element update including Housing Programs HP 3.2.2 and HP 3.2.3 was adopted by City Council on November 22, 2011.

4. General Plan Policy LU6.15.6 requires residential neighborhoods in the Airport Area to contain a minimum of ten (10) contiguous acres centered on a neighborhood park and other amenities. Housing Element Program HP3.2.2 requires the City to create a waiver or exception provision to the minimum 10-acre site area requirement of General Plan Land Use Policy 6.15.6 for affordable housing projects.

5. Housing Element Program HP3.2.3 requires the City to amend the Newport Place Planned Community (PC-11) text to permit residential developments that include: 1) a minimum of thirty (30) percent of the units affordable to lower-income households; and 2) include densities between 30 du/acre and 50 du/acre consistent with the General Plan land use designation and policies for the Airport Area.

6. The Newport Place affordable housing amendment implements Housing Programs HP3.2.2 and 3.2.3 and provides adequate provisions and review to ensure that the policies of the General Plan are implemented appropriately. Additionally, a few minor changes were made throughout the PC-11 text to update references to City Departments.

7. The area of land regulated by PC-11 is located within the Airport Area of the City and generally bounded by MacArthur Boulevard, Jamboree Road, Birch Street, and Bristol Street North.

8. The subject property is not located within the coastal zone.

9. A public hearing was held on April 19, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

A Negative Declaration (SCH No. No. 2011091088) was prepared for the 2008-2014 Housing Element, which includes Housing Programs HP3.2.2 and 3.2.3, in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA), State CEQA Guidelines, and City Council Policy K-3. The document was made available for public review and comment during a 30-day review period from September 30 to October 31, 2011 and subsequently adopted by the City Council on November 22, 2011. The document is on file with the Community Development Department. A subsequent negative declaration for the project is not required to be prepared pursuant to CEQA Guidelines Section 15162 because the proposed amendment implements Housing Programs HP3.2.2 and 3.2.3, and does not constitute "substantial changes" that would involve new significant environmental effects or result in the adoption of mitigation measures. Future residential development that could occur pursuant to the proposed amendment would be subject to further site-specific environmental evaluations.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves this Resolution recommending City Council adoption of the Newport Place Affordable Housing Amendment (PD2011-005), as provided in Exhibit A of this resolution, which is attached hereto and incorporated by reference.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF APRIL, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

EXHIBIT "A"

Revised Newport Place Planned Community Development Plan

PLANNED COMMUNITY DEVELOPMENT STANDARDS

NEWPORT PLACE

Emkay Development Company, Inc.
Newport Beach, California

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ATTACHED EXHIBITS

Exhibit A	Land Use [1,5,8, 37]
Exhibit B	Grading & Roads [1]
Exhibit C	Storm Drain [1]
Exhibit D	Sewer & Water [1]
Exhibit E	Topography [1]
Exhibit F	Traffic Analysis [1]

Planned Community Development Standards for Newport Place
Ordinance No. 1369 adopted by the City of Newport Beach
December 21, 1970

Amendment No. 1 Approved on December 13, 1971 by Resolution No. 7572 (A-305)

Amendment No. 2 Approved on June 12, 1972 by Resolution No. 7706 (A-325)

Amendment No. 3 Approved on October 24, 1972 by Resolution No. 7846 (A-341)

Amendment No. 4 Approved on January 8, 1983 by Resolution No. 7901 (A-349)

Amendment No. 5 Approved on July 23, 1973 by Resolution No. 8054 (A-369)

Amendment No. 6 Approved on June 10, 1974 by Resolution No. 8262 (A-429)

Amendment No. 7 Approved on September 8, 1975 by Resolution No. 8588 (A-450)

Amendment No. 8 Approved on February 9, 1976 by Resolution No. 8693 (A-462)

Amendment No. 9 Approved on April 11, 1977 by Resolution No. 9050 (A-488)

Amendment No. 10 Approved on May 23, 1977 by Resolution No. 9091 (A-490)

Amendment No. 11 Approved on April 10, 1978 by Resolution No. 1003 (A-504)

Amendment No. 12 Approved on July 11, 1978 by Resolution No. 9393 (A-510)

Amendment No. 13 Approved on November 27, 1978 by Resolution No. 9472 (A-514)

Amendment No. 14 Approved on June 11, 1979 by Resolution No. 9563 (A-530)

Amendment No. 15 Approved on March 23, 1982 by Resolution No. 10003 (A-560)

Amendment No. 16 Approved on March 26, 1984 by Resolution No. 84-22 (A-604)

Amendment No. 17 Approved on April 23, 1984 by Resolution No. 84-30 (A-597)

Amendment No. 18 Approved on June 25, 1984 by Resolution No. 84-58 (A-607)

Amendment No. 19 Approved on July 23, 1984 by Resolution No. 84-79 (A-608)

Amendment No. 20 Approved on January 12, 1987 by Resolution No. 87-1 (A-637)

Amendment No. 21 Approved on March 9, 1987 by Resolution No. 87-30 (A-638)

Amendment No. 22 Approved on March 14, 1988 by Resolution No. 88-17 (A-658)

Amendment No. 23 Approved on August 14, 1989 by Resolution No. 89-94 (A-684)

Amendment No. 24 Approved on July 22, 1991 by Resolution No. 91-83 (A-740)

Amendment No. 25 Approved on March 9, 1992 by Resolution No. 92-20 (A-749)

Amendment No. 26 Approved on June 8, 1992 by Resolution No. 92-58 (A-745)

Amendment No. 27 Approved on September 13, 1993 by Resolution No. 93-69 (A-783)

Amendment No. 28 Approved on January 22, 1996 by Resolution No. 96-10 (A-833)

Amendment No. 28.1 Approved on September 9, 1996 by Resolution No. 96-78 (A849)

Amendment No. 28.2 Approved on March 24, 1997 by Resolution 97-25 (A858)

Amendment No. 28.3 Approved on July 28, 1997 by Ordinance No. 97-29 (A861)

Amendment No. 29 Approved on June 18, 1998 by Ordinance No. 98-16 (A 875)

Amendment No. 30 Approved on January 11, 1999 by Ordinance No. 98-28 (A-877)

Amendment No. 31 Approved on February 8, 1999 by Ordinance No. 99-4 (A-880)

Amendment No. 32 Approved on April 12, 1999 by Ordinance No. 99-11 (A-883)

Amendment No. 33 Approved on March 26, 2002 by Ordinance No. 2002-6 (PD2001-002)

Amendment No. 34 Approved on June 14, 2005 by Ordinance No. 2005-8 (PD2004-003)

Amendment No. 35 Approved on September 14, 2010 by Ordinance No.2010-16 (PD2010-002)

Amendment No. 36 Approved on October 25, 2011 by Ordinance No. 2011-24 (PD2011-002)

Amendment No. 37 Approved on November 22, 2011 by Ordinance No. 2011-25 (PD2010-007)

Amendment No. 38 Planned Community Text revisions (Ordinance No. 2011-__), adopted Insert Date.

GENERAL NOTES

1. The Newport Project, a planned community development is a project of Emkay Development Company, Inc., a subsidiary of Morrison-Knudsen Company, Inc. The area is most appropriate for commercial and light industrial use because of its central location, ideal topography, availability to four freeways, accessibility to two railroads and its relation to the Orange County Airport. Attached drawings indicate land use, grading and roads, storm drains, water and sewer, topography and traffic analysis. This area was also identified in the 2006 General Plan as a key area for future housing opportunities. [38]

2. Water within the Planned Community area will be furnished by the City of Newport Beach.

3. Sewerage Disposal facilities within the Planned Community area are by the City of Newport Beach.

4. Prior to or coincidental with the filing of any tentative map or use permit, the developer shall submit a master plan of drainage to the Director of Public Works.

5. The height of all buildings and structures shall comply with FAA criteria.

6. Except as otherwise stated in this ordinance, the requirements of the Zoning Code, City of Newport Beach, shall apply.

   The contents of this supplemental text notwithstanding, no construction shall be proposed within the boundaries of this Planned Community District except that which shall comply with all provisions of the Building Code and the various mechanical and electrical codes related thereto.

7. Phasing of Development.

   1,799,941 sq. ft. of development was existing or under construction as of October 1, 1978. The additional allowable development in the total approved development plan is 566,423 square feet. Any further development subsequent to October 1, 1978, in excess of 30% of the additional allowable development, being 169,927 sq. ft. shall be approved only after it can be demonstrated that adequate traffic facilities will be available to handle that traffic generated by the project at the time of occupancy of the buildings involved. Such demonstration may be made by the presentation of a phasing plan consistent with the Circulation Element of the Newport Beach General Plan. (Phasing Plan approved by City Council March 12, 1979 for all development subject to this regulation.)[13]

DEFINITIONS

Advertising Surface:

The total area of the face of the structure, excluding supports.

Area of Elevation:

Total height and length of a building as projected to a vertical plane.

Building Line:

An imaginary line parallel to the street right-of-way line specifying the closest point from this street right-of-way line that a building structure may be located (except for overhangs, stairs and sunscreens).

Public Safety Area:

A strip of land twenty (20) feet in width and running parallel with street rights-of-way.

Right-of-Way Line:

When reference is made to right-of-way line it shall mean the line which is then established on either the adopted Master Plan of Streets and Highways or the filed Tract Map for Minor Roads as the ultimate right-of-way line for roads or streets.

Side and Front of Corner Lots:

For the purpose of this ordinance, the narrowest frontage of a lot facing the street is the front, and the longest frontage facing the intersecting street is the side, irrespective of the direction in which structures face.

Sign:

Any structure, device or contrivance, electric or non-electric and all parts thereof which are erected or used for advertising purposes upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

Site Area:

The total land area of the land described in the use or other permit.

Special Landscaped Street:

Special landscaped streets are designated as MacArthur Boulevard, Jamboree Road, Bristol Street North and Birch Street. The landscaping requirements for special landscaped streets and for the remaining streets are described in the following text.

Streets - Dedicated and Private:

Reference to all streets or rights-of-way within this ordinance shall mean dedicated vehicular rights-of-way. In the case of private or non-dedicated streets, a minimum setback from the right-of-way line of said streets of ten (10) feet shall be required for all structures. Except for sidewalks or access drives, this area shall be landscaped according to the setback area standards from dedicated streets herein.

STATISTICAL ANALYSIS

PART I. INDUSTRIAL*

A. Building Sites

Site 1A 2.0 acres [3, 9]
Site 3A 21.3 acres [2.4].....23.3 acres [9, 35]

B. Building Area

Site 1A 34,130 sq. ft.....0.8 ac. [3, 9]
**Site 3A 297,798 sq. ft.....6.8 ac. [2, 4, 14, 33]
331,928 sq. ft.....7.6 ac. [9, 14, 31, 33, 35]

The following statistics are for information only. Development may include but shall not be limited to the following.

C. Parking (Criteria: 3 spaces/1000 sq. ft. @ 363 sq. ft/space)

Site 1A 102 cars.....0.9 acres [3, 9]
Site 3A 894 cars..... 7.5 ac. [2, 4, 14, 33]
996 cars.....8.4 ac. [9, 14, 31, 33, 35]

D. Landscaped - Open Space

Site 1A.....0.30 acres [3, 9]
Site 3A.....6.5 acres [2,4,14,33]
6.8 acres [9,14,31, 33, 35] Net Open
-3.8 acres.....Space.....3.0 ac. *[14, 31, 33, 35]

* 3.8 acres have been allotted for service stations exclusive of permitted building acres and subject to use permit.

** Industrial Site 3A has been reduced by 20,000 sq. ft. with the reduction allocated to the allowable building area for Parcel No. 3 of Resubdivision 529. The allowable building area for Parcel No. 3 of Resubdivision 529 is now 61,162 sq. ft. [14].
Industrial Site 3A was then increased by 1,590 square feet in 2002 [33].

STATISTICAL ANALYSIS

PART II. COMMERCIAL/PROFESSIONAL & BUSINESS OFFICES

A. Building Sites

Site 1 & 2.....38.5 acres[1]
Site 2A.....3.9 acres [31]
Site 4.....9.0 acres
Site 5.....7.4 acres[2]
Site 6.....1.9 acres
Site 7.....2.5 acres
Site 8.....1.64 acres
Site 9.....16.9 acres [35]
81.74 acres [20, 35]

B. Building Area

Site 1 & 2.....860,884 square feet [5, 14, 17, 30]
Site 2A.....109,200 square feet [31]
Site 4.....228,214 square feet [32]
Site 5.....268,743 square feet [16, 19, 21, 24, 25]
Site 6.....42,420 square feet
Site 7..... 55,860 square feet
Site 8.....54,000 square feet [20]
Site 9..... 288,264 square feet [35]
1,907,585 square feet [21, 30, 31, 32, 33, 35]

The following statistics are for information only. Development may include, but shall not be limited to the following.

C. Typical Building Mix/Site Utilization

Typical site areas for buildings of varying heights are provided for purposes of illustration. Development of any of the Sites indicated may include any number of combinations of building types, characterized by number of stories, within the range of building types indicated for that site.

---

[1]Commercial/Professional and Business Office Site 1 and 2 have been reduced by 36,119 feet with the reduction allocated to the allowed building area for Parcels 1 & 2 of Resubdivision 585. The allowable building area for Parcel 1 & 2 of Resubdivision 585 is now 272,711 square feet. [14]

[2]If commercial uses are constructed on Commercial/Professional and Business Office Site 5 which are ancillary to and in the same building as office uses, additional development up to a maximum of 294,600 sq. ft. may be developed, so long as office use does not exceed 268,743 sq. ft. [21, 24, 25]

Site 1 & 2.....860,884 square feet [5, 14, 17, 30]

a. Two Story..... 8.42 acres
b. Three Story..... 5.61 acres
c. Four Story..... 4.21 acres
d. Five Story..... 3.37 acres
e. Six Story..... 2.81 acres

Site 2A.....109,200 square feet [31]

a. Two Story.....1.25 acres
b. Three Story .....0.84 acres
c. Four Story ..... 0.63 acres
d. Five Story ..... 0.51 acres

Site 4..... 228,214 square feet [32]

a. Two Story.....2.31 acres
b. Three Story..... 1.54 acres
c. Four Story..... 1.15 acres
d. Five Story.....0.92 acres
e. Six Story.....0.77 acres

Site 5.....268,743 square feet [16, 19, 21, 25]

a. Two Story.....1.90 acres
b. Three Story.....1.27 acres
c. Four Story.....0.95 acres
d. Five Story.....0 76 acres
e. Six Story.....0.63 acres
f. Nine Story.....0.50 acres

Site 6 ..... 42,420 square feet

a. Two Story.....0.49 acres
b. Three Story..... 0.32 acres
c. Four Story..... 0.24 acres
d. Five Story.....0.19 acres
e. Six Story..... 0.16 acres

Site 7 .....55,860 square feet

a. Two Story..... 0.64 acres
b. Three Story..... 0.43 acres
c. Four Story.....0.32 acres
d. Five Story.....0.26 acres
e. Six Story.....0.21 acres

Site 8.....54,000 square feet [20]

a. Four Story.....0.30 acres

Site 9.....288,264 square feet [35]

a. Two Story.....3.31 acres
b. Three Story..... .....2.21 acres
c. Four Story..... 1.65 acres
d. Five Story.....1.32 acres
e. Six Story.....1.10 acres

D. Parking (Criteria: 1 space/225 sq. ft. @ 363 sq. ft/space)

Site 1 & 2..... 3,827 cars..... 31.89 acres [5, 14, 30]
Site 2A ..... 474 cars*..... 1.26 acres[1] [31]
Site 4..... 905 cars..... 7.54 acres [32]
Site 5.....1,234 cars..... 6.13 acres [21]
Site 6..... 188 cars..... 1.57 acres
Site 7..... 248 cars..... 2.07 acres
Site 8..... 231 cars..... 1.34 acres [20]
Site 9.....1,281 cars.....10.68 acres [35]
8,388 cars 62.48 acres[2] [21,31, 32, 33, 35]

E. Landscaped - Open Space

Site 1 & 2 [5,14]

Gross Site..... 38.5 acres
Parking.....27.17 acres
Net.....11.33 acres

Two Story.....8.42 acres.....2.91 acres
Three Story.....5.61 acres.....5.72 acres
Four Story.....4.21 acres.....7.12 acres
Five Story.....3.37 acres.....7.96 acres
Six Story.....2.81 acres.....8.52 acres

Site 2A [31]

Gross Site ..... 3.9 acres
Parking ..... 1.26 acres
Net ..... 2.68 acres

Two Story ..... 1.25 acres ... 1.43 acres.
Three Story ..... .84 acres ... 1.84 acres

---

[3] Includes surface parking and first floor of existing parking structure only, does not include upper levels of parking structure. [31].

Four Story ..... .63 acres ... 2.05 acres
Five Story ..... .51 acres ... 2.17 acres

Site 4 [32]

Gross Site..... 9.00 acres
Parking..... .7.54 acres
Net.....1.46 acres

Two Story.....2.31 acres..... N/A
Three Story.....1.54 acres..... 0.01 acres
Four Story.....1.15 acres..... 0.40 acres
Five Story..... 0.92 acres..... 0.63 acres
Six Story..... 0.77 acres..... 0.78 acres

Site 5

Gross Site.....7.4 acres
Parking.....6.13 acres
Net.....1.27 acres

Two Story.....1.90 acres..... N/A
Three Story.....1.27 acres..... .00 acres
Four Story.....0 .95 acres..... 0.32 acres
Five Story..... 0.76 acres. ..... 0.51 acres
Six Story..... 0 .63 acres..... 0.64 acres
Nine Story..... 0.50 acres.....0 .77 acres [21]

Site 6

Gross Site.....1.90 acres
Parking.....1.57 acres
Net.....0.33 acres

Two Story..... .49 acres..... N/A
Three Story..... .32 acres..... 0.01 acres
Four Story.....24 acres..... 0.09 acres
Five Story..... .19 acres..... 0.14 acres
Six Story.....16 acres..... 0.17 acres

Site 7

Gross Site.....2.50 acres
Parking.....2.07 acres
Net..... 0.43 acres

Two Story..... 0.64 acres..... N/A
Three Story..... 0.43 acres..... 00 acres
Four Story..... 0.32 acres..... 0.11 acres
Five Story.....0.26 acres..... 0.17 acres
Six Story..... 0.21 acres..... 0.22 acres

Site 8

Gross Site.....1.64 acres
Parking.....1.34 acres

Net..... .30 acres

Four Story..... .30 acres..... N/A [20]

Site 9 [35]

Gross Site.....16.90 acres
Parking.....10.68 acres

Net..... 6.22 acres

Two Story.....3.31 acres..... 2.91 acres
Three Story.....2.21 acres.....4.01 acres
Four Story.....1.65 acres.....4.57 acres
Five Story.....1.32 acres.....4.90 acres
Six Story.....1.10 acres.....5.12 acres

F. Building Height [5, 12, 15, 21, 31]

Maximum building height shall not exceed six (6) stories above ground level except for Parcel No. 1 of Resubdivision No. 585 which shall have a maximum building height of ten (10) stories above ground level, for Parcel No. 2 of Resubdivision No. 585 which shall have a maximum building height of seven (7) stories above ground level, and for Site 5 which shall have a maximum of nine (9) stories/167 feet above ground level. Maximum building height for Professional & Business Office Site 2A shall not exceed 95 feet above ground level.

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STATISTICAL ANALYSIS

PART II RETAIL COMMERCIAL/PERMITTED USES - Part II, Section II, Group II.E

A. Building Sites

Site 1 1.4 acres

The following statistics are for information only. Development may include but shall not be limited to the following.

B. Building Area

Site 1.....10,000 sq. ft. .22 acres

C. Parking (Criteria: 5/spaces/1000 sq. ft.@ 363 sq. ft./ space)

Site 1.....50 cars .41 acres

D. Landscaped - Open Space

Site 1 .77 acres

E. Building Height

Building height of structures shall be limited to a height of thirty-five (35) feet.

STATISTICAL ANALYSIS

PART II COMMERCIAL/RESTAURANTS

A. Building Sites

Site 1 1.80 acres
1.80 acres..... 1.80 acres [5, 20, 37]

The following statistics are for information only. Development may include but shall not be limited to the following.

B. Building Area

Site 1....15,000 square feet .....34 acres
15,000 square feet.....34 acres [5, 20]

C. Parking (Criteria: 300 occupants/10,000 sq. ft.)
1 space/3 occupants
363 sq. ft./space

Site 1 133 cars ..... 1.11 acres
133 cars..... 1.11 acres [5, 20, 37]
Restaurant Site 1 and General Commercial Site 8 have shared parking arrangements per the 1972 Reciprocal Parking & Management Agreement [37]

D. Landscaped - Open Space

Site 1... 0.46 acres
0.46 acres..... 0.46 acres [5, 20, 37]

E. Building Height

Building height of structures shall be limited to a height of thirty-five (35) feet.

STATISTICAL ANALYSIS

PART II COMMERCIAL/HOTEL & MOTEL

A. Building Site [26,31]

Site 1 -	6.35 acres
Site 2B -	3.7 acres [31]
	10.05 acres [31]

B. Hotel Room Limit [18,25,31]

Site 1 -	349 rooms[1]
Site 2B -	256 rooms [31, 37]

The following statistics are for information only. Development may include but shall not be limited to the following.

C. Building Area (Site 1 - 349 units @ 400 sq.ft./unit) (Site 2B – 256 units @ 517 net sq. ft./unit).[18, 25, 31, 37]

Site 1 -	3.2 acres	-	3.2 acres
Site 2B -	3.0 acres (total enclosed area is 4.5 acres)		

D. Parking (Criteria: 1 space/unit @ 363 sq. ft./space)[18, 26, 31, 37]

Site 1 -	349 parking spaces	-	2.9 acres
Site 2B -	128 parking spaces[2]		2.5 acres (total)

E. Landscaping - Open Space [18]

---

[1]Use permits approved as of November 14, 1983, allow 468 hotel rooms with related restaurant, conference area, and other support facilities. Hotel suites included as part of the hotel room count may be converted to standard hotel rooms consistent with the specified hotel room limit, so long as the approved site plan is maintained. Location and size of restaurant, conference area, and other support facilities may also be revised if the plans meet the intent of the approved site plan and other conditions of approval. [1, 18]

[2] Based on one space/2 guest rooms per Page 20.66-8, Off-Street Parking and Loading Requirements, of the City of Newport Beach Planning and Zoning Code. [31]

The following is intended to show some of the variations possible.

Site 1

One Story Development	-	0.92 acres
Two Story Development	-	2.98 acres
Three Story Development	-	3.67 acres
Four Story Development	-	4.02 acres
Five Story Development	-	4.22 acres
Six Story Development		4.36 acres
Seven Story Development	-	4.46 acres
Eight Story Development	-	4.53 acres
Nine Story Development	-	4.59 acres
Ten Story Development	-	4.64 acres
Eleven Story Development	-	4.67 acres
Twelve Story Development	-	4.71 acres
Thirteen Story Development	-	4.73 acres

The above analysis does not include support facilities utilized in many hotel operations. These facilities would also require parking not reflected in the parking requirement criteria.

F. Building Height [31]

Building height on Site 2B shall not exceed 60 feet. [31]

STATISTICAL ANALYSIS

PART II GENERAL COMMERCIAL PERMITTED USES [8, 9]

Part II, Section II, Group II A & F

A. General Commercial Building Sites [8, 26, 28.3, 31, 37]

Site 1	-	3.0 acres
Site 2	-	1.0 acres [9]
Site 3	-	3.9 acres [9]
Site 4	-	2.0 acres [9]
Site 5	-	2.45 acres[5] [26]
Site 6		5.8 acres [25, 28.3]
Site 7		8.2 acres
Site 8		1.11 acres [37]
		27.46 acres [37]

B. Building Area [26, 27, 28.3, 37]

Site 1	-	35,000 sq. ft. -	0.80 acres
Site 2[1]	-	11,700 sq. ft. -	0.27 acres [9]
Site 3[2]	-	49,380 sq. ft. -	1.13 acres [27]
Site 4[3]	-	20,870 sq. ft.[19]-	0.57 acres [9]
Site 5[1]	-	31,362 sq. ft. -	0.72 acres [26]
Site 6		50,000 sq. ft	1.14 acres [28.3]
Site 7		140,720 sq. ft.	3.23 acres [37]
Site 8		12,351 sq. ft.[11] [37]	0.28 acres [37]
		350,163 sq. ft.[37]	8.14 acres [26, 27, 28.3, 37]

---

5 A recorded reciprocal easement shall be provided for ingress, egress and parking for mutual benefit between Hotel Site 1 and General Commercial Site 5·

6 Restaurants are permitted uses in Sites 1, 2, 3, 5 and 6, subject to a use permit. [9, 23, 26, 27, 28.3]

7 Ibid

8 If the development of General Commercial Site 4 is limited solely to Professional and Business Office use, then the allowable Building Area shall not exceed 30,000 sq. ft. (19)

9 Restaurants are permitted uses in Sites 1,2,3,5

10 257 surface parking spaces; minimum 100 parking spaces in parking structure

11 Of 12,351 square feet, 5,000 square feet shall be allocated for food service uses and 7,351 square feet shall be allocated for general commercial uses. [37]

The following statistics are for information only. Development may include, but shall not be limited to the following. [8]

D. Parking (Criteria 4 spaces/1,000 sq.ft. @ 363 sq.ft./space [9, 26, 28.3]

Site 1	-	140 cars	-	1.17 acres
Site 2	-	47 cars	-	0.39 acres
Site 3	-	193 cars	-	1.61 acres
Site 4	-	100 cars	-	0.83 acres
Site 5	-	167 cars	-	1.39 acres
Site 6	-	250 cars	-	2.08 acres
Site 7	-	353 cars	-	2.94 acres[10] [37]
Site 8	-	81 cars [12]		0.54 acres [37]
				10.95 acres

E. Landscaping - Open Space [9, 26, 28.3]

Site 1	-	1.03 acres
Site 2	-	0.34 acres
Site 3	-	1.18 acres
Site 4	-	0.60 acres
Site 5 (1 & 2 story)	-	0.24 acres
Site 6	-	2.58 acres
Site 7	-	2.14 acres
Site 8		0.24 acres [37]
	Sub Total	8.35 acres [37]
Site 5 (3 story)	-	0.49 acres
	Sub Total	8.84 acres [37]
Site 5 (4 story)	-	0.75 acres
	Grand Total	9.59 acres [37]

F. Building Height [8, 9, 26, 31, 28.3, 37]

Building height of structures on General Commercial Site 1, 2, 3, 4 , 6, and 8 shall be limited to a height of thirty-five (35 ft.) and on General Commercial Site 5 shall be limited to a height of fifty feet (50 ft.). Height of buildings on Site 7 shall be limited to fifty-five (55) feet except that the vertical projection of a building element intended to provide architectural interest and/or integrate the project identification sign and not for occupancy may be up to seventy-five (75) feet in height.

[12] 65 on-site spaces and 16 off-site spaces [37]

STATISTICAL ANALYSIS

PART II COMMERCIAL/SERVICE STATION**

A. Building Site

Site 1 - 1.2 acres - 1.2 acres

STATISTICAL ANALYSIS

PART III RESIDENTIAL

A. Building Sites

For the purposes of this statistical analysis, 74.43 acres of commercial and industrial sites may be utilized for multi-unit residential development as identified within the Residential Overlay. This acreage is for statistical purposes only. The multi-unit residential site size shall be determined at the time a site development review is approved.

~~H~~

PART I. INDUSTRIAL

Section I. Minimum Site Area

A. Thirty Thousand (30,000) square feet.

B. Exception: [11]

The Planning Commission may authorize an exception to the minimum site area. Application for any such exception shall be made at the time of the filing of a tentative map by the applicant. In order for an exception to be granted, the Planning Commission shall find the following facts with respect thereto:

1. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity.

2. That the development considerations and intent of this Planned Community Development Standards are substantially met.

Section II. Permitted Uses

Group I. Light Industrial

A. To allow uses primarily engaged in research activities, provided that such activities are confined within a building or buildings that do not contribute excess noise, dust, smoke, vibration, odor, toxic, or noxious matter to the surrounding environment nor contain a high hazard potential, due to the matter of the product material or processes involved. Such activities may include but shall not be limited to research laboratories and facilities, developmental laboratories and facilities and compatible light manufacturing related to the following list of examples:

1. Bio-Chemical
   Chemical
   Film and Photography
   Medical and Dental
   Metallurgy
   Pharmaceutical
   X-Ray

**Reference Page 4, Part I, Item D.

2. Manufacture, research assembly, testing and repair of components, devices, equipment and systems and parts and components such as but not limited to the following list of examples:

   Coils, Tubes, Semi-Conductors
   Communication, Navigation Control, Transmission and Reception Equipment, Control Equipment and Systems, Guidance Equipment and Systems
   Data Processing Equipment and Systems
   Glass Edging, Beveling, and Silvering
   Graphics, Art Equipment
   Metering Instruments
   Optical Devices, Equipment and Systems
   Phonographs, Audio Units, Radio Equipment and Television Equipment
   Photographic Equipment
   Radar, infra-red and Ultra-Violet Equipment and Systems
   Scientific and Mechanical Instruments
   Testing Equipment

B. To allow the location of offices and areas associated with and accessory to the permitted uses listed under A.

1. Administrative, professional and business offices.

2. Regional or home offices of industries which are limited to a single use.

3. Blueprinting, Photostatting, photo engraving, printing, publishing and bookbinding, provided that no on-site commercial services is associated with said uses.

4. Cafeteria, cafe, restaurant or auditorium.

5. Service stations will be permitted, subject to a use permit provided that no on-site commercial service is associated with said uses.

* & **6. (Transferred to Part II – Commercial, Section II, Group I) [28.2, 35]

C. Service stations subject to a use permit.

Group II. Medium Industrial and Industrial Service and Support Facilities.

A. To allow the location of general manufacturing activities, provided that such activities are confined within a building or buildings and do not contribute excessive noise, dust, smoke, vibration, odor, toxic or noxious matter to the surrounding environment nor contain a high hazard potential due to the nature of the products, material or processes involved.

1. Manufacture and/or assembly of the following or similar products:

Aircraft and Related Components
Clocks and Watches
Coffins
Ceramic Products
Concrete Products
Electrical Appliances
Farm Equipment
Heating & Ventilating Equipment
Linoleum
Machinery & Machine Tools
Musical Instruments
Neon Signs
Novelties
Oil Well Valves & Repairs
Optical Goods
Refrigeration
Screw Machine Products
Sheet Metal Products
Shoes
Silk Screens
Sporting Goods
Springs
Stencils
Toys
Trailers
Trucks

2. The manufacture of products or products made from the following or similar materials:

Aluminum
Bags, except Burlap Bags or Linoleum
Sacks
Batteries
Boxes, Paper
Brass
Iron
Matches
Mattresses
Paper
Steel

Cans	Tin
Copper	Tools
Glass	Wool
Grinding Wheels	Yarn

3. The manufacturing, compounding, processing or treatment of the following or similar items:

Acids, Non-Corrosive	Lubricating Oil
Candles	Pharmaceutical
Cigarettes & Cigars	Products
Detergents	Plastics
Disinfectants	Toiletries
Dye	Vitamin Products
Food Products	Waxes and Polishes

4. Woodworking Shops, such as: (Provided that, if a planer, router, sticker or moulder is maintained, all doors and windows in the outside walls of the room in which said machinery is located shall be kept closed while said machinery is in use.)

   Box
   Furniture
   Wood Products

5. Distribution and Warehousing Plants

B. To allow the location of general manufacturing activities, service industry and activities related to contractor and construction industry, provided that such activities are confined within a building or buildings and do not contribute excessive noise, dust, smoke, vibration, odor, toxic or noxious matter to the surrounding environment nor contain a high hazard potential due to the nature of the products, materials or processes involved.

   1. Service industries or those industries providing a service as opposed to the manufacture of a specific product, such as the repair and maintenance of appliances or component parts, tooling, printers, testing shops, small machine shops, shops engaged in the repair, maintenance and servicing of items excluding automobile repair, providing that such industries are not the point of customer delivery or collection.

   2. Contractor and construction industries relating to building industry, such as general contractors, electrical contractors, plumbing contractors.

C. To allow a combination of general industry, business and professional offices, and industrial support activities, provided that such activities are confined within a building or buildings, and do not contribute excessive noise, dust, smoke, vibration, odor, toxic or noxious matter to the surrounding environment nor contain a high hazard potential due to the nature of the products, materials or processes involved.

The industrial support activities shall be defined as and limited to the sale of products or services relating only to the immediate industrial complex. Any activity, which could be classified as retail commercial, shall be restricted to activities strictly accessory and/or supplementary to the industrial community.

1. All uses permitted under A, B, and D.

   a. Business and Professional Offices.
   b. Industrial Support Facilities, to include activities limited to the sale of products or services related to only the industrial complex. Activities of a commercial nature shall be restricted in scope so as to service and to be accessory and/or supplementary to the industrial complex.
   c. Service stations subject to a use permit.

2. Except as herein indicated, the General Development Standards for Industry shall apply.

   a. Sign Area
      Industry Support Facilities and Business and Professional Offices.

      Only one (1) facia mounted identification sign shall be permitted per street frontage for each individual business or office.

      No sign shall exceed an area equal to one and one-half (1-1/2) square feet of sign for each one (1) foot of lineal frontage of the building or store. However, no sign shall exceed two hundred (200) square feet in area per face.

   b. Site Identification Ground Sign

      One (1) site identification sign listing only the name of the site or major tenant on the site shall be allowed. Said sign shall be limited to a maximum height of four (4) feet and a width of eight (8) feet and may be double faced.

   c. Pedestrian Access

      It is required of all developments in the industrial support facility area to submit a plan of pedestrian access to the Planning ~~Department~~ Division prior to the issuance of building permits. Said plan will detail consideration for pedestrian access to the subject property and to adjacent properties, and shall be binding on subsequent development of the property. The plan shall show all interior walkways and all walkways in the public right of way, if such walkways are proposed or necessary.

D. To allow for the location of a storage facility for new car inventory. Located within Industrial Site 1A between Quail Street on the east, adjacent to Auto Center Sites 2A and 2B on the south, and Bristol Street on the west This use shall be subject to a use permit. [3]

D. (Deleted)[2,4]

Section III. General Development Standards for Industry

Maximum building areas shall be as noted in the Statistical Analysis, Part I.A and Part I.B.

A. Building Height [22]

Building heights of structures shall be limited to a height of thirty-five (35) feet; provided, however, that on Parcel 1 and Parcel 2 of Parcel Map 86-33-34 (Resubdivision No. 529) in Industrial Site 3A, the Planning Commission or the City Council on review or appeal may approve a structure up to a maximum height of 50 feet after the approval of a use permit.

The Planning Commission or City Council in granting any use permit for structures in excess of thirty-five (35) feet shall find that each of the following four points have been complied with:

(a) The increased building height would result in more public visual open space and views than is required by the basic height limit. Particular attention shall be given to the location of the structure on the lot, the percentage of ground cover, and the treatment of all setback and open areas.

(b) The increased building height would result in a more desirable architectural treatment of the building and a stronger and more appealing visual character of the area than is required by the basic height limit.

(c) The increased building height would not result in undesirable or abrupt scale relationships being created between the structure and existing developments or public spaces. Particular attention shall be given to the total bulk of the structure including both horizontal and vertical dimensions.

(d) The structure shall have no more floor area than could have been achieved without the use permit. [22]

B. Setbacks

All setbacks shall be measured from the property line. For the purpose of this ordinance, a street side property line is that line created by the ultimate right-of-way line of the frontage street.

1. Front Yard Setback

Thirty (30) feet minimum, except that unsupported roofs or sunscreens may project six (6) feet into the setback area.

2. Side Yard Setback

Ten (10) feet, except that unsupported roofs and sunscreens may project three (3) feet into the setback area.

In the case of a corner lot, the street side setback shall be thirty (30) feet, except that unsupported roofs and sunscreens may project six (6) feet into the setback area. Interior lot lines for a corner lot shall be considered side lot lines.

3. Rear Yard Setback

No rear yard setback is required except on a through-lot in which case the required front yard setback shall be observed.

C. Site Coverage

Maximum building coverage of fifty (50) percent is allowed. Parking structures shall not be calculated as building area, however, said structures shall be used only for the parking of company vehicles, employee's vehicles, or vehicles belonging to persons visiting the subject firm.

D. Signs

1. Sign Area

Only one (1) single faced or double-faced signs shall be permitted per street frontage. No sign or combination of signs shall exceed one (1) square foot in area for each six-hundred (600) square feet of total site area. However, no sign shall exceed two hundred (200) square feet in area per face. An additional twenty (20) square feet shall be allowed for each additional business conducted on the site.

2. Sale or Lease Sign

A sign, advertising the sale, lease, or hire of the site shall be permitted in addition to the other signs listed in this section. Said sign shall not exceed a maximum area of thirty-two (32) square feet.

3. Ground Sign

All ground signs shall not exceed four (4) feet above grade in vertical height. Also, ground signs in excess of one-hundred fifty (150) square feet in area (single face) shall not be erected in the first twenty (20) feet, as measured from the property line, of any street side setback area. However, the above standards shall not apply to the Community Directional Sign and Special Purpose Sign.

4. Special Purpose Sign

Signs used to give directions to traffic or pedestrians or give instructions as to special conditions shall not exceed a total of six (6) square feet (single face) in area and shall be permitted in addition to the other signs listed in this section.

5. Wall Signs

Wall signs shall not comprise more than ten (10) percent of the area of the elevation upon which the sign is located. Said signs shall be fixture signs; signs painted directly on the surface of the wall shall not be permitted.

In the instance of a multiple tenancy building, each individual industry may have a wall sign over the entrance to identify the industry. Said sign shall give only the name of the company and shall be limited to four (4) inch high letters. Said sign must be oriented toward the parking area for that building.

6. Construction Sign

One (1) construction sign denoting the architects, engineers, contractor, and other related subjects, shall be permitted upon the commencement of construction. Said sign shall conform with the requirements of Item 3 above, Ground Sign, and will be permitted until such time as a final inspection of the building(s) designates said structure(s) fit for occupancy, or the tenant is occupying said building(s), whichever occurs first.

7. Future Tenant Identification Sign

A sign listing the name of the future tenant, responsible agent or realtor, and identification of the industrial complex shall be permitted. Said sign shall

conform with the requirements of Item 3 above, Ground Sign, and will be permitted until such time as a final inspection of the building(s) designates said structure(s) fit for occupancy or tenant is occupying said building(s), whichever occurs first.

8. Community Directional and/or Identification Sign

Permanent directional and identification signs, not exceeding two-hundred fifty (250) square feet (single face), shall be permitted but subject to use permit.

E. Sign Standards

1. Signs visible from the exterior of any building may be lighted, but no signs or any other contrivance shall be devised or constructed so as to rotate, gyrate, blink or move in any animated fashion.

2. Signs shall be restricted to advertising only the person, firm, company or corporation operating the use conducted on the site or the products or sold thereon.

3. A wall sign with the individual letters applied directly shall be measured by a rectangle around the outside of the lettering and/or the pictorial symbol and calculating the area enclosed by such line.

4. All signs attached to the building shall be flush mounted.

F. Parking

Adequate off-street parking shall be provided to accommodate all parking needs for the site. The intent is to eliminate the need for any on-street parking.

Required off-street parking shall be provided on the site of the use served, or on a contiguous site or within three hundred (300) feet of the subject site. Where parking is provided on other than the site concerned, a recorded document shall be approved by the City Attorney and filed with the Building and Planning ~~Departments~~ Divisions and signed by the owners of the alternate site stipulating to the permanent reservation of use of the site for said parking.

The following guide shall be used to determine parking requirements:

Office

One (1) space for each 225 square feet of net floor area. The parking requirement may be lowered to one (1) space for each 250 square feet of net floor area upon review and approval of the modification committee.

Manufacture, Research and Assembly

Two (2) parking spaces for each three (3) employees, but in no event less than three (3) spaces for each one thousand (1000) square feet of gross floor area.

Warehouse

Two (2) parking spaces for each three (3) employees, but in no event less than one (1) space for each one thousand (1000) square feet of gross floor area for the first twenty thousand (20,000) square feet; one (1) space for each two thousand (2,000) square feet of gross floor area for the second twenty thousand (20,000) square feet; one (1) space for each four thousand (4,000) square feet of gross floor area for areas in excess of the initial forty thousand (40,000) square feet of floor area of the building.

If there is more than one shift, the number of employees on the largest shift shall be used in determining parking requirements.

G. Landscaping

Detailed landscaping and irrigation plans, prepared by a landscaping architect, licensed contractor of architect shall be submitted to and approved by the ~~Planning~~ Community Development Director prior to issuing of building permit and installed prior to issue of Certificate of Use and Occupancy.

All landscaping referred to in this section shall be maintained in a neat and orderly fashion.

1. Front Yard Setback Area

a. General Statement

Landscaping in these areas shall consist of an effective combination of street trees, trees, ground cover and shrubbery. All unpaved areas not utilized for parking shall be landscaped in a similar manner.

b. Special Landscaped Street

The entire area between the curb and the building setback line shall be landscaped, except for any access driveway in said area.

c. Other Streets

The entire area between the curb and a point ten (10) feet in back of the front property line shall be landscaped, except for any access driveway in said area.

2. Side and Rear Yard Setback Area

a. General Statement

All unpaved areas not utilized for parking and storage, shall be landscaped utilizing ground cover and/or shrub and tree materials.

b. Undeveloped Areas

Undeveloped areas proposed for future expansion shall be maintained in a weed free condition but need not be landscaped.

c. Screening

Areas used for parking shall be landscaped and/or fenced in such a manner as to interrupt or screen said areas from view from access streets, freeways, and adjacent properties. Plant materials used for this purpose shall consist of lineal or grouped masses of shrubs and/or trees.

3. Parking Areas

Trees, equal in number to one (1) per each five (5) parking stalls shall be provided in the parking area.

4. Sloped Banks

All sloped banks greater than 5-1 or 6 feet in vertical height and adjacent to public right-of-way shall be stabilized, planted and irrigated in accordance with plans submitted and approved by Planning Director.

H. Loading Areas

~~1.~~ On other than special landscaped streets street side loading shall be allowed provided the loading dock is set back a minimum of seventy (70) feet from

1. the street right-of-way line or one hundred ten (110) from the street centerline, whichever is greater. Said loading area must be screened from view from adjacent streets.

I. Storage Areas

1. All outdoor storage shall be visually screened from access streets, freeways, and adjacent property. Said screening shall form a complete opaque screen up to a point eight (8) feet in vertical height but need not be opaque above that point.

2. Outdoor storage shall be meant to include all company owned and operated motor vehicles, with the exception of passenger vehicles.

~~2.~~3. No storage shall be permitted between a frontage street and the building line.

J. Refuse Collection Areas

1. All outdoor refuse collection areas shall be visually screened from access streets, freeways, and adjacent property by a complete opaque screen.

1. No refuse collection areas shall be permitted between a frontage street and the building line.

K. Telephone and Electrical Service

All "on-site" electrical lines (excluding lines in excess of 12 KV) and telephone lines shall be placed underground. Transformers or terminal equipment shall be visually screened from view from streets and adjacent properties.

L. Sidewalks

The requirement for sidewalks in the Planned Community District may be waived by the Planning Director if it is demonstrated that such facilities are not needed. However, the City retains the right to require installations of sidewalks if, in the future, a need is established by the City.

M. Nuisances

No portion of the property shall be used is such a manner as to create a nuisance to adjacent sites, such as but not limited to vibration, sound, electro-mechanical disturbance and radiation, electro-magnetic disturbance, radiation, air or water pollution, dust, emission of odorous, toxic or noxious matter.

PART II. COMMERCIAL

Section I. Minimum Site Area

A. Thirty Thousand (30,000) square feet

B. Exception: [11]

The Planning Commission may authorize an exception to the minimum site area. Application for any such exception shall be made at the time of the filing of a tentative map by the applicant. In order for an exception to be granted, the Planning Commission shall find the following facts with respect thereto:

1. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity.

2. That the development considerations and intent of this Planned Community Development Standards are substantially met.

Section II. Permitted Uses

Group I. Professional and Business Offices.

To allow the location of commercial activities engaged in the sale of products or services relating to and supporting the Development Plan, provided that such activities are confined within a building or buildings.

A. Professional Offices

1. Accountants
2. Attorneys
3. Doctors, dentists, optometrists, oculists, chiropractors and others licensed by the State of California to practice the healing arts.
4. Engineers, architects, surveyors and planners.
5. Any other general professional offices. [30]

B. Business Offices

1. Advertising agencies
2. Banks
3. Economic consultants
4. Employment agencies
5. Escrow offices
6. Insurance agencies
7. Laboratories:
   a. Dental

b. Medical
c. X-Ray
d. Biochemical

e. Film, wholesale only
f. Optometrical

8. Stock Brokers
9. Studios for interior decorators, photographers, artists and draftsmen.
10. Telephone answering services
11. Tourist information and travel agencies and ticket reservation services but not to include any airline terminal services or facilities for the transport of passengers, baggage or freight. [2]
12. Business and trade schools subject to the approval of a ~~Director's~~ Minor Use Permit [29]
13. Any other general business offices. [31]

* & ** 14. Remedial driving instruction and counseling facility, subject to a use permit in each case. [28.2, 35]

*This use shall be limited to Professional and Business Offices Site 9 only. [28.2, 35]

**That all uses, including remedial driving instruction/counseling facilities, located within Professional and Business Offices Site 9 shall be limited to providing services to adult clientele only, any use dedicated to serving school aged and minor children shall be prohibited.[28.2,35]

C. Support Commercial [21]

1. Retail sales and services, so long as said retail sales are of a convenience nature ancillary to the operation and use of office facilities including tobacco stores, card shops, confectionery and newspaper stands, and other uses which, in the opinion of the Planning Commission are of a similar nature. Retail uses shall be located in the basement or on the first floor of a building. Storage for such uses shall be within a building.

2. Service uses which are for building tenants and patrons, such as a car wash and gymnasium/health club facilities. Car washes shall drain into the sanitary sewer system.

3. Restaurants - outdoor restaurants and take-out restaurants - subject to securing a use permit in each case.

Group II. Commercial Uses

A. Automobile Center, subject to a use permit. [28]

1. Automobile dealership selling only new cars. The sale of used cars, automobile repair, and automobile detailing may be permitted in conjunction with the sales of new vehicles but only accessory uses.

2. Service stations subject to the issuance of the use permit and a finding that the use is supportive of the principal uses permitted in the Newport Place Planned Community text.

3. Vehicle storage facility shall be permitted in Hotel Site 2-B subject to the issuance of a use permit.[36]

B. Hotels and Motels, subject to a use permit.

C. State, County and Municipal Facilities [2]

D. Service Stations & Mechanical Car Wash within Service Station Site #1, subject to a use permit. [4]

E. Retail Commercial uses such as:

1. Restaurants, including outdoor, drive-in or take-out restaurants shall be permitted subject to the securing of a use permit. except as noted under "a" and "b" below: [7]

   a. Restaurants, other than outdoor, drive-in or take-out restaurants, shall be permitted in Retail-Commercial Site 1 without a use permit provided that the net floor area of all restaurant uses does not exceed 20% of the net floor area of the retail-commercial center.

   b. Outdoor, drive-in or take-out restaurants shall be designed and located so as to be an integral element of the retail-commercial center and shall not be permitted as a free-standing independent use in any case.

2. Barber shop and beauty parlor
3. Book and stationery store
4. Blueprinting and photostatics
5. Camera shop
6. Delicatessen store
7. Florist
8. Shoe store or repair shop

9. Tailor
10. Tobacco store
11. Office equipment retail and repair
12. Pharmacies

13. Tourist information and travel agencies and ticket reservation services, but not to include any airline terminal services or facilities for the transport of passengers, baggage or freight
14. Instructional dance facility for adults and related retail sales, subject to a use permit (28.1)
15. Other uses similar to the above list

F. General Commercial [8, 9, 23, 26, 28.3, 37]

1. New car dealership, subject to a use permit, including ancillary uses listed under Part II, Section II, Group II, A.
2. Service stations subject to a use permit.
3. Restaurants, including outdoor, drive-in or take-out restaurants, shall be subject to a use permit. Restaurant uses are permitted within General Commercial Sites 1, 2, 3, 5 and 6 not permitted within General Commercial Site 4.
   a. Restaurants, consisting 1,000 square feet of take-out service - limited use, and 4,000 square feet of food service use shall be permitted in General Commercial Site 8 in accordance to the Municipal Code, for General Commercial District Site 8. [37].

4. Hobby, Arts and Crafts, including:
   a. Sporting goods store
   b. Camera store
   c. Art gallery
   d. Craft store
   e. Pet store
   f. Bicycle store
   g. Other uses of similar nature
5. Book and Office Support Stores, including:
   a. Book store
   b. Office supplies
   c. Other uses of similar nature
6. Retail stores and professional service establishments, including:
   a. Pharmacies
   b. Specialty food
   c. Fabric shops
   d. Jewelry shops
   e. Furrier

f. Formal Wear
g. Barber and hair styling
h. Clothing store
i. Liquor store
j. Tourist information and travel agencies and ticket reservation services, but not to include any airline terminal services or facilities for the transport of passengers, baggage or freight.
k. Other uses of similar nature

7. Home and Office Furnishings, including:
   a. Home furniture store
   b. Office furniture store
   c. Interior decorators
   d. Home appliances
   e. Antique store
   f. Other uses of similar nature
8. Athletic Clubs, including:
   a. Spa
   b. Health club
   c. Recreation facility
   d. Other uses of similar nature
9. Home improvement stores, including:
   a. Hardware store
   b. Paint store
   c. Wallcovering store
   d. Other uses of similar nature
10. Retail nursery subject to a use permit
11. Institutional, instructional and educational uses, subject to a use permit in each case. (28.3)

*12. Professional and Business Offices - see Part II, Section II, Group I for permitted uses.

*Office uses are permitted within General Commercial Sites 3, 4, 5, 6, and 8 and not permitted within General Commercial Sites 1 and 2. [9, 26, 28.3, 31, 37]

Section III. General Development Standards for Commerce

Maximum building areas and building heights shall be noted in the Statistical Analysis, Part II.A and Part II.B.

A. Setbacks

All setbacks shall be measured from the property line. For the purpose of this ordinance, a street side property line is that line created by the ultimate right-of-way line of the frontage street.

1. Front Yard Setback

Thirty (30) feet minimum; except that unsupported roofs or sunscreens may project six (6) feet into the setback area.

Hotel/Motel uses: Seventeen (17) feet and six (6) inches minimum, provided that the average setback for all buildings along the linear street frontage is thirty (30) feet. [31]

2. Side Yard

Side yard setbacks will be required only when any one of the following conditions exist:

a. Corner lot: Thirty (30) feet (street side setback only), except that unsupported roofs and sunscreens may project three (3) feet into setback area.

Hotel/Motel uses: Fourteen (14) feet and six (6) inches minimum, provided that the average setback for all buildings along the linear street frontage is twenty-seven (27) feet. [31]

b. Where property abuts other than commercially zoned property, a ten (10) foot setback is required. Unsupported roofs and sunscreens may project three (3) feet into the setback area.

Hotel/Motel uses: Ten (10) feet minimum setback for all buildings along the property line. [31]

3. Rear Yard

None required except on a through-lot in which case the required front yard setback shall be observed.

B. Signs

1. Sign Area: General Standard

Building identification shall be limited to a single (1) entity. Building identification signs shall have an area not to exceed 1 1/2 square feet of surface for each one (1) foot of lineal frontage of building. However, no sign shall exceed two hundred (200) square feet per face. Building identification signs shall be limited to two (2) facades.

2. Pole Sign:

One (1) identification pole sign site will be allowed for the following commercial businesses:

a. Restaurant

b. Cocktail lounge and/or bar

c. Motel and hotel

If a pole sign is utilized, it shall be in lieu of other identifications signs allowed by ordinance. Pole signs shall be limited to maximum height of twenty (20) feet and a maximum area of fifty (50) square feet per face, double faced.

3. Wall Sign:

In no event shall an identification sign placed on a wall comprise more than ten (10) percent of the area of the elevation upon which the sign is located. Said signs shall be fixture signs. Signs painted directly on the surface of the wall shall not be permitted.

4. Ground Sign:

An identification ground sign shall not exceed four (4) feet above grade in vertical height. Also, ground signs in excess on one-hundred and fifty (150) square feet in area (single face) shall not be erected in the first twenty (20) feet, as measured from the property line, of any street side setback. However, the above standards shall not apply to the Community Directional Sign and Special Purpose Sign.

5. Multi-Tenant Directory Sign:

One (1) directory sign listing only the name of the firms or businesses on a site shall be allowed. Said sign shall be limited to a maximum height of

twenty (20) feet. Panels identifying each individual story shall be no longer than one (1) foot in width and five (5) feet in length.

6. Special Purpose Sign:

Subject to the standards established in Part I, Section III, Item D.4.

7. Construction Sign:

Subject to the standards established in Part I, Section III, Item D.6.

8. Future Tenant Identification:

Subject to the standards established in Part I, Section III, Item D.7.

9. Community Direction and/or Identification Sign:

Subject to the standards established in Part I, Section III, Item C.8.

C. Sign Standards

Except as noted above, the same sign standards as outlined in Sub-Section D, Section III, Part I of this ordinance, shall prevail for developments in this area.

D. Parking

1. Medical and Dental

Five (5) spaces for each doctor or one (1) space for each 200 square feet of gross floor area whichever is greater.

2. Professional Offices

One (1) space for each 225 square feet of net floor area. The parking requirement may be lowered to one (1) space for each 250 square feet of net floor area upon review and approval of the modification committee.

Exceptions: [35]
The following parking requirements are applicable to Professional and Business Office Site No. 9.

- One (1) space for each 281 square feet of net floor area.
- Changes to the on-site parking plans shall be reviewed by the Planning Director.

3. Lodge, Halls, Private Clubs, Union Headquarters

One (1) space for each 75 square feet of gross floor area plus one (1) space for each 250 square feet of gross office floor area.

4. Restaurants, Outdoor, Drive-In and Take-Out Restaurants. [7]

Restaurant parking shall be in accordance with Section ~~20.38.030(d)~~ 20.40.040 of the Newport Beach Municipal Code, except as noted under "b" and "c" below. [37]

b. Restaurants other than outdoor, drive-in or take-out restaurants within Retail-Commercial Sites 1 and 2 shall provide one (1) space for each 200 square feet of net floor area and one (1) loading space for each 10,000 square feet of gross floor area, to the extent that the net floor area of all restaurants does not exceed 20% of the net floor area of the retail-commercial center. In the event that any restaurant causes the total of all restaurant uses in the retail-commercial center to exceed 20% limitation noted above, that entire restaurant and any subsequent restaurants shall provide parking as noted under "a" above.

c. Parking for restaurants (take-out service - limited use, food service with/without alcohol, with/without late hour) within General Commercial Site 8 shall be in accordance with the Newport Beach Municipal Code [37].

5. Retail Commercial

One (1) space for each 200 square feet of net floor area. One (1) loading space for each 10,000 square feet of gross floor area.

6. Hotels and Motels [6]

Parking for Hotel and Motel guestrooms; all related restaurants, cocktail lounges, banquet and meeting rooms, retail shops; and all employees shall be based on a demonstrated formula to be reviewed and approved by the Planning Commission.

The parking formula shall contain the minimum parking which would be required for each of the separate uses evaluated independently. Any

reductions from this minimum parking requirement must be based on the joint usage of the facilities by hotel and motel patrons. [10]

7. General Commercial [8, 9]

a. One (1) space for each 250 sq.ft. of net floor area. One (1) loading space for each 10,000 sq.ft. of gross floor area.

b. If the development of General Commercial Site 3 or 4 is limited solely to Professional and Business Office use, the parking shall be: One (1) space for each 225 sq.ft. of net floor area.

The parking requirements may be lowered to one (1) space for each 250 sq.ft. of net floor area upon review and approval of the modifications committee.

c. Specific parking requirements shall be developed for uses such as furniture stores, athletic clubs, theaters, bowling alleys, home improvement stores, retail nurseries or tire stores based upon functions and occupancies within these uses. Parking shall be in conformance to existing City of Newport Beach requirements for said occupancies, or at a demonstrated formula agreeable to the ~~Director of~~ Community Development Director. In the event that any use described above is converted to another use parking requirements for the new use shall be subject to review by the ~~Director of~~ Community Development Director.

d. For restaurant parking see Part II, Section III, D.4.

E. Landscaping

Detailed landscaping and irrigation plans, prepared by a landscaping architect, licensed landscaping contractor or architect shall be submitted to and approved by the ~~Planning~~ Community Development Director~~Director~~ prior to issuing of Building Permits and installed prior to issue of Certificate of Use and Occupancy.

All landscaping referred to in this section shall be maintained in a neat and orderly fashion.

1. Front Yard Setback Area

a. General Statement

Landscaping in these areas shall consist of an effective combination of street trees, trees, ground cover and shrubbery.

c. Special Landscaped Street

The entire area between the curb and the building setback line shall be landscaped, except for any driveway in said area.

c. Other Streets

The entire area between the curb and a point ten (10) feet in back of the front property line shall be landscaped except for any driveway in said area.

2. Side Yard and Rear Yard

a. General Statement

All unpaved areas not utilized for parking and storage, shall be landscaped utilizing ground cover and/or shrub and tree materials.

b. Undeveloped Areas
Undeveloped areas proposed for future expansion shall be maintained in a weed free condition, but need not be landscaped.

c. Screening
Areas used for parking shall be screened from view or have the view interrupted by landscaping and/or fencing from access streets, freeways, and adjacent properties. Plant materials used for screening purposes shall consist of lineal or grouped masses of shrubs and/or trees.

d. Boundary Areas
Boundary landscaping is required on all interior property lines. Said areas shall be placed along the entire length of these property lines or be of sufficient length to accommodate the number of required trees. Trees, equal in number to one (1) tree per twenty-five (25) lineal feet of each property line, shall be planted in the above defined areas in addition to required ground cover and shrub material.

e. All landscaped areas shall be separated from adjacent vehicular areas by a wall or curb, at least (6) inches higher that the adjacent vehicular area.

3. Parking Areas
Trees, equal in number to one (1) per each five (5) parking stalls shall be provided in the surface parking area (31).

F. Loading Areas

1. Street side loading on other than special landscaped streets, shall be allowed providing the loading dock is set back a minimum of seventy (70) feet from the street right-of-way line, or one hundred ten (110) feet from the street center line, whichever is greater. Said loading area must be screened from view from adjacent streets.

G. Storage Areas

1. All outdoor storage shall be visually screened from access streets, freeways and adjacent property. Said screening shall form a complete opaque screen up to a point eight (8) feet in vertical height but need not be opaque above that point.

2. Outdoor storage shall be meant to include all company owned and operated motor vehicles, with the exception of passenger vehicles.

3. No storage shall be permitted between a frontage street and the building line.

H. Refuse Collection Areas

1. All outdoor refuse collection areas shall be visually screened from access streets, freeways and adjacent property. Said screening shall form a complete opaque screen.

2. No refuse collection area shall be permitted between a frontage street and the building line.

I. Telephone and Electrical Service

All "on-site" electrical lines (excluding lines in excess of 12KV) and telephone lines shall be placed underground. Transformer or terminal equipment shall be visually screened from view from streets and adjacent properties.

J. Pedestrian Access

It is required of all developments in the commercial areas to submit a plan of pedestrian access to the Planning ~~Department~~ Division prior to the issuance of building permits. Said plans will detail consideration for pedestrian access to the subject property and to adjacent properties, and shall be binding on subsequent development of the property. The plan shall show all interior walkways and all walkways in the public right-of-way, if such walkways are proposed or necessary.

PART III. RESIDENTIAL OVERLAY

Section I. Minimum Site Area

None. Pursuant to General Plan Program HP3.2.2, residential development meeting requirements in the following Section II. A. shall be exempt from the minimum 10-acre site requirement specified in General Plan Policy LU6.15.6.

Section II. Density

1. Minimum – 30 du/acre
2. Maximum – 50 du/acre

Chapter 20.32 of the Zoning Code provides for density bonus which allows affordable housing projects to achieve increased densities up to a maximum 35 percent of the base density. The provision also includes the opportunity for incentives.

Section III. Definitions

Very Low–Income Household: 50 percent or less of the area median income, as adjusted for family size by the United States Department of Housing and Urban Development.

Low-Income Household: 50–80 percent of the area median income, as adjusted for family size by the United States Department of Housing and Urban Development.

Moderate-Income Household: 80–120 percent of the area median income, as adjusted for family size by the United States Department of Housing and Urban Development.

Above Moderate–Income Household: 120+ percent of the area median income, as adjusted for family size by the United States Department of Housing and Urban Development.

Lower-IncomeHousehold: Includes all that qualify under low and very- low income definitions.

Section IV. Permitted Residential Uses

A. To allow residential development that supports the City's need for lower-income households. Residential development shall be permitted by right subject to the following requirements:

1. Limited to multi-unit residential development and subject to Site Development Review pursuant to Section 20.52.080 of the Newport Beach Zoning Code.

2. Notwithstanding, the review authority for site development review listed in Table 5-2 of the Newport Beach Zoning Code, the review authority for site development review shall be the Planning Commission.

3. A minimum of 30 percent of the units within the residential development shall be affordable to lower-income households and subject to a 30-year affordability covenant.

4. Densities shall be limited to a minimum of 30 dwelling units per acre and a maximum of 50 dwelling units per acre.

5. Sites shall be located such that any noise, dust, smoke, vibration, odor, toxic or noxious matter that may be generated by existing commercial or industrial uses in the surrounding environment would not negatively impact future residents of the development.

6. Residential dwellings shall be permitted as replacement of existing nonresidential uses. The number of peak hour trips generated by the development of the site shall not exceed the number of trips that would have resulted from the existing development of the underlying permitted nonresidential uses. A standardized set of conversion rates provided by the City Traffic Engineer shall be utilized.

7. Residential development shall be subject to the maximum development allocation for the Airport Area established by General Plan Land Use Policy 6.15.5.

Section V. General Development Standards for Residential

Residential development shall be subject to the development standards applicable to the Multi-Unit (RM) residential zoning district as specified in the Newport Beach Zoning Code, except as specified below:

A. Building Height

Maximum building heights shall be limited to a height limit of 55 feet. The height of a structure can be increased up to a maximum height limit of 300 feet, with the approval of a site development review and subject to required findings specified in Section 20.30.060.C.3 of the Newport Beach Zoning Code. Heights shall also comply with the requirements of Section 20.30.060.E of the Newport Beach Zoning Code (Airport Environs Land

Use Plan for John Wayne Airport and the Airport Land Use Commission Review Requirements).

B. Floor Area Limit

None.

C. Setbacks

All setbacks shall be measured from the property line. For the purpose of this ordinance, a street side property line is that line created by the ultimate right-of-way line of the frontage street.

1. Street Setback

Thirty (30) feet minimum, except that unsupported roofs or sunscreens may project six (6) feet into the setback area.

2. Interior Setback

Ten (10) feet, except on a through-lot in which case the required street setback shall be observed.

3. Footprint Lots (6)

Except as required by the Building Code there shall be no additional setback requirements for buildings within footprint lots. Provided, however, that buildings within footprint lots shall be so located as to observe the setbacks from streets and existing lot lines required under Part III, Section III.B.1, 2 and 3.

D. Signs

All signage shall be as specified in Chapter 20.42 of the Newport Beach Zoning Code.

E. Amenities and Neighborhood Integration

Due to the potential land use incompatibility with other uses within the established commercial or industrial area, residential development shall incorporate sufficient amenities (e.g., parks, clubhouse, pool, etc.) for the use of the residents and incorporate necessary improvements (e.g., pedestrian walkways, open space, recreational space, pedestrian and bicycle connections) to allow integration into the existing community and larger residential development that may occur in the future. The number and type of amenities required and necessary improvements shall be determined

through the Site Development Review process based on the size, density, location, and any other factors deemed relevant.

Affordable units shall be designed and distributed within the residential development as follows:

1. Number of Bedrooms. Affordable units shall reflect the range of numbers of bedrooms provided in the residential development project as a whole;
2. Comparable Quality and Facilities. Affordable units shall be comparable in the facilities provided (e.g., laundry, recreation, etc.) and in the quality of construction and exterior design to the market-rate units;
3. Size. Affordable units may be smaller and have different interior finishes and features than the market-rate units; and
4. Location. Affordable units shall be dispersed throughout the residential development, unless clustering is allowed by the review authority.

F. Parking

Parking shall comply with the requirements and standards specified in Chapter 20.40 of the Newport Beach Municipal Code for multi-unit residential development.

G. Landscape

All landscaping shall comply with the requirements specified in Chapter 20.36 of the Newport Beach Municipal Code for multi-unit residential development, with the following exceptions:

1. Special Landscaped Street

The entire area between the curb and the building setback line shall be landscaped, except for any driveway in said area. Tree size to be no less than 24-inch box.

2. Other Streets

The entire area between the curb and a point ten (10) feet back in the front property line shall be landscaped except for any driveway in said area. Tree size to be no less than 24-inch box.

FOOTNOTES

[1] Planned Community Text Amendment No. 1, dated December 13, 1971, incorporating a revised land use plan.

[2] Planned Community Text Amendment No. 2, dated June 12, 1972, incorporating the following changes:

a. Relocation of Fire Station site.

b. Limitation of tourist information, travel agencies and ticket reservations within Retail Commercial sites.

c. Addition of specific restaurant density within Retail Commercial sites.

[3] Planned Community Text Amendment No. 3, dated October 24, 1972, permitting Auto Centers as an additional use within Industrial Site 2B.

[4] Planned Community Text Amendment No. 4, dated January 8, 1973, incorporating the following changes:

a. Provision for a Mechanical Car Wash within Service Station Site No. 1.

b. Eliminate provision for a Fire Station within Industrial Site 3A.

[5] Planned Community Text Amendment No. 5, dated July 23, 1973, incorporating the following changes:

a. Rearrangement of Office Site 3 and Restaurant Site 2 and reapportionment of land allotted to each.

b. Reduce allowable building area in Office Sites 1 and 2 and increase allowable building area in Office Site 3A.

c. Increase allowable building height in Office Site 3A to 8 stories.

[6] Planned Community Text Amendment No. 6, dated June 10, 1974, establishing parking requirements for Hotels and Motels based on a demonstrated formula.

[7] Planned Community Text Amendment No. 7, dated September 8, 1975, revising off-street parking requirements for restaurants to conform with existing City Standards.

[8] Planned Community Text Amendment No. 8, dated February 9, 1976, permitting General Commercial uses on Auto Center Site 1a and 2b.

FOOTNOTES (Cont.)

[9] Planned Community Text Amendment No. 9, dated April 11, 1977, incorporating the following changes:

a. Expand the permitted uses for General Commercial.

b. Re-designate General Commercial Site 1-A and 2-B to General Commercial Sites 1, 2 and 3.

c. Expand General Commercial Site 3 to include one half of Industrial Site 1A.

d. Convert Industrial Site 2A to General Commercial Site 4.

e. Restrict the allowable building area and the permitted uses for General Commercial Sites 1, 2, 3 and 4.

[10] Planned Community Text Amendment No. 10, dated May 23, 1977, incorporating the following change:

a. Delete the provision added by Resolution No. 8261 adopted by the City Council on June 10, 1974 from Section III, D, 6.

[11] Planned Community Text Amendment No. 11, dated April 10, 1978, incorporating the following change:

a. Establish guidelines for an exception to the minimum site area.

[12] Planned Community Text Amendment No. 12, dated July 11, 1978, incorporating the following change:

a. Revised the allowable building height for Parcel No. 1 of Resubdivision No. 585.

[13] Planned Community Text Amendment No. 13, dated November 27, 1978, incorporating the following change:

a. Requirement that a Phasing Plan be approved by the Planning Commission for seventy (70) percent of the undeveloped allowable building area existing as of October 1, 1978.

[14] Planned Community Text Amendment No. 14, dated June 11, 1979, incorporating the following changes:

a. Reduce the allowable building area of Industrial Site 3A.
b. Reduce the allowable building area of Commercial/Professional and Business Office Site 1 and 2.

FOOTNOTES (Cont.)

[15] Planned Community Text Amendment No. 15, dated March 23, 1981, incorporating the following changes:

a. Specification of a maximum building height of seven (7) stories on Parcel No. 2 of Resubdivision No. 585.

[16] Planned Community Text Amendment No. 16, dated March 8, 1984 incorporating the following change:

a. Increase of 16,154 square feet of office space in Professional and Business Offices Site 5.

[17] Planned Community Text Amendment No. 17, dated April 23, 1984, incorporating the following change:

a. Increase of 1,091 square feet of office space in Professional and Business Offices Sites 1 and 2.

[18] Planned Community Text Amendment No. 18, dated June 25, 1984, incorporating the following changes:

a. Establish a specific limit on hotel rooms in Hotel Sites 1A and 1B.

[19] Planned Community Text Amendment No. 19, dated July 23, 1984, incorporating the following changes:

a. Transfer of 4,130 square feet of allowable building area from General Commercial Site 4 to Professional and Business Offices Site 5.

[20] Planned Community Text Amendment No. 20, dated January 12, 1987, incorporating the following changes:

a. Add Professional and Business Offices Site 8, with 54,000 square feet allowed.

c. Delete Restaurant Site 2A, with 8,400 square feet deleted.

FOOTNOTES (Cont.)

[21] Planned Community Text Amendment No. 21, dated March 9, 1987, incorporating the following change:

a. Increase allowed development in Professional and Business Offices Site 5 to 241,570 square feet; allow additional support retail uses up to 294,600 square feet total; add support commercial as permitted land use. (21)

[22] Planned Community Text Amendment No. 22, dated February 4, 1988, incorporating the following change:

a. Allow structures located within a portion of Industrial Site 3A to be constructed in excess of the 35-foot height limit up to a maximum of 50 feet, subject to the approval of a use permit.

[23] Planned Community Text Amendment No. 23, dated July 6, 1989 incorporating the following change:

a. Allow restaurant uses on General Commercial Site 1, subject to the approval of a use permit in each case.

[24] Planned Community Text Amendment No. 24, dated June 6, 1991, incorporating the following change:

a. Increase the allowable office development in Professional Business Offices, Site No. 5 to 257,287 square feet, and reduce the allowable retail development to 37,315 square feet.

[25] Planned Community Text Amendment No. 25, approved by the City Council on March 9, 1992, incorporating the following change:

a. Increase the allowable office development in Professional Business Offices, Site No. 5 to 268,743 square feet, and reduce the allowable retail development to 25,857 square feet.

[26] Planned Community Text Amendment No. 26, approved by the City Council on June 8, 1992, incorporating the following changes:

a. Redesignate the Sheraton Hotel Site from Hotel Site 1A and 1B to Hotel Site 1 and General Commercial Site 5.

b. Reduce the hotel room entitlement on Hotel Site 1 by 119 rooms and establish a development entitlement of 31,362 square feet for General Commercial Site 5.

c. Establish a height limit of 50 feet within General Commercial Site 5.

FOOTNOTES (Cont.)

d. The Requirement for a reciprocal easement to provide ingress, egress, and parking for mutual benefit between Hotel Site 1 and General Commercial Site 5.

[27] Planned Community Text Amendment No. 27, approved by the City Council on September 13, 1993, incorporating the following changes:

a. Increase the allowable commercial development in General Commercial Site 3 from 48,300 square feet to 49,380 square feet.

b. Delete the provision which counts one square foot of floor area devoted to restaurants as two square feet of permitted commercial floor area in General Commercial Sites 2, 3, and 5.

c. Delete the provision which restricts the maximum amount of gross floor area devoted to restaurants to 8,000 square feet each in General Commercial Sites 3 and 5.

[28] Planned Community Text Amendment No. 28, approved by the City Council on January 22, 1996, incorporating the following changes.

a. Restricting automobile repair and detailing as an accessory use only in conjunction with sales of new vehicles.

d. Eliminate other permitted uses.

[28.1] Planned Community Text Amendment No. 28.1, approved by the City Council on September 9, 1996.

a. To add 'Instructional Dance Facility for Adults and Related Retail Uses' to the list of 'Retail Commercial' uses for Newport Place.

[28.2] Planned Community Text Amendment No. 28.2, approved by the City Council on March 24, 1997, incorporating the following changes:

a. Change the list of permitted uses of "Industrial Site No. 4" to allow establishment of remedial driving instruction and counseling facility.

[28.3] Planned Community Text Amendment No. 28.3, approved by the City Council on August 11, 1997, incorporating the following changes:

a. Redesignate "Retail Commercial Site 1" (MacArthur Square) to "General Commercial Site No. 6."

b. Redesignate "Retail Commercial Site 2" to "Retail Commercial Site 1"

FOOTNOTES (Cont.)

[29] Planned Community Text Amendment No. 29, approved by the City Council on July 27, 1998, incorporating the following change:

a. Permit Business and Trade Schools within Profession and Business Office Site 3A, subject to the approval of a Planning Director's Use Permit.

[30] Planned Community Text Amendment No. 30, approved by the City Council on January 11, 1999, incorporated the following changes:

a. Establish the permitted Gross Floor area for Professional and Business Offices Sites 1 and 2 at 860,884 square feet.

[31] Planned Community Text Amendment No. 31, approved by the City Council on February 8, 1999, incorporating the following changes:

a. Redesignating Auto Center Site 2A to Commercial/Professional & Business Offices Site 2A.

b. Redesignating Industrial Site 2B to Commercial/Hotel & Motel Site 2B.

c. Expand the permitted uses for Professional & Business Offices to include general professional and general business offices.

d. Establish a height limit of 95 feet within Professional & Business Office Site 2A.

e. Establish a height limit of 60 feet within Hotel & Motel Site 2B.

f. Establish a front yard setback for Hotel/Motel "uses a 17 ½ foot minimum, provided that the average setback for all buildings along the linear street frontage is 30 feet.

g. Establish a side yard, corner lot setback for Hotel/Motel uses of a 14 1/2 foot minimum, provided that the average setback for all buildings along the linear street frontage is 27 feet.

h. Establish a side yard setback for Hotel/Motel uses of a ten (10) foot minimum.

i. Provide that landscaping in parking areas be provided in surface parking areas.

[32] Planned Community Text Amendment No. 32, approved by the City Council on April 12, 1999, incorporated the following changes:

a. Establish the permitted gross floor area for Professional and Business Offices Site 4 at 228,214 square feet.

FOOTNOTES (Cont.)

[33] Planned Community Text Amendment No. 33, introduced at the City Council meeting on March 26, 2002 and adopted on the 9th of April 2002:

a. Update The Industrial Statistical Analysis by allowing a 1,590 square foot building addition at the subject property identified as 1811 Quail Street.

[34] Planned Community Text Amendment No. 34,adopted on the 14th of June 2005:

a. Revising the *Land Use Plan, permitted uses,* and *development standards* of the Newport Place Planned Community as they relate to the Newport Lexus Dealership.

[35] Planned Community Text Amendment No. 35, adopted on September 14, 2010:

a. Re-designate Industrial Site 4 to Professional and Business Offices Site 9.

b. Change the parking requirement for office uses within Professional and Business Offices Site No. 9 to one space per 281 square feet, which allows all of the buildings to be occupied with office uses.

c. Add a provision that requires Planning Director review of the parking configuration in Professional and Business Offices Site No. 9.

d. Revising the Land Use Plan, permitted uses and development standards of the Newport Place Planned Community as they relate to the Newport Commerce 16.9 acre site bounded by Birch Street, Dove Street, Westerly Place and Quail Street.

[36] Planned Community Text Amendment No. 36, adopted on October 25, 2011:

a. Add vehicle storage facility as a permitted use on Hotel Site 2-B subject to the issuance of a use permit and a finding that the use is supportive of the principal uses permitted in the Newport Place Planned Community text.

[37] Planned Community Text Amendment No. 37, adopted on November 22, 2011:

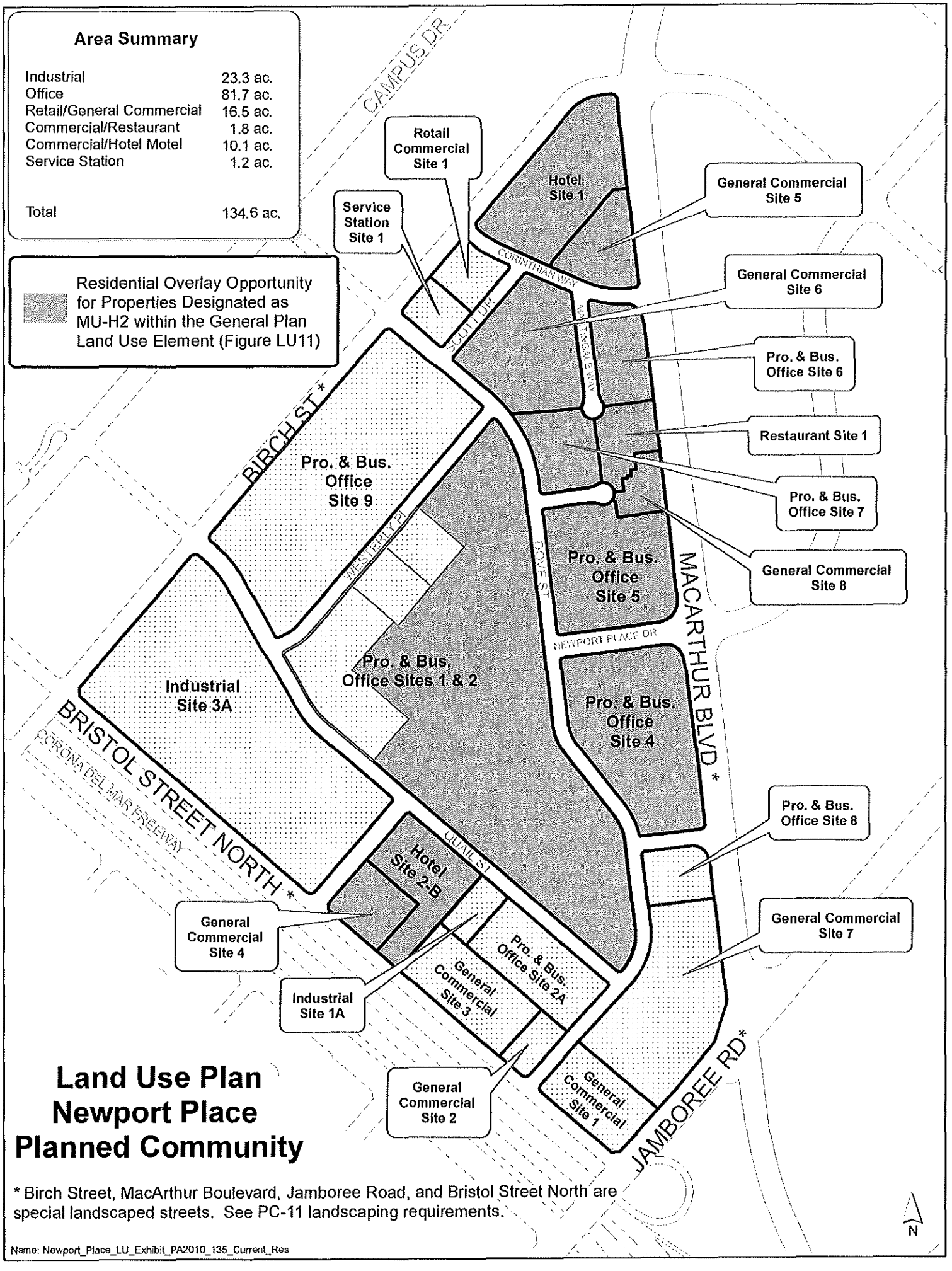
a. Change the zoning designation of the subject property from "Restaurant Site 1" to "General Commercial Site 8."

b. A transfer of development rights to allow the transfer of 48 unbuilt hotel units, which equates to Storage Facility at 1301 Quail Street and 1,620 square feet from General Commercial Site 7 (Lexus Dealership at 3901 MacArthur Boulevard) for a total of 5,529 square feet to the subject site, pursuant to Chapter 20.46 (Transfer of Development Rights) of the Municipal Code.

[38] Planned Community Text revisions (Ordinance No. 2011-__), adopted Insert Date, to allow the following changes:

a. To establish a residential development overlay where multi-unit residential developments, which include a minimum of 30 percent of the units affordable to lower income households, are permitted subject to site development review.

b. Revised references to the *Planning Director*, *Planning Department*, *Building Department*, and *Director of Parks, Beaches, and Recreation* to *Community Development Director*, *Planning Division*, *Building Division*, and *Director of Municipal Operation Department*, to reflect changes in the City's organizational structure.



Land Use Plan Newport Place Planned Community

* Birch Street, MacArthur Boulevard, Jamboree Road, and Bristol Street North are special landscaped streets. See PC-11 landscaping requirements.

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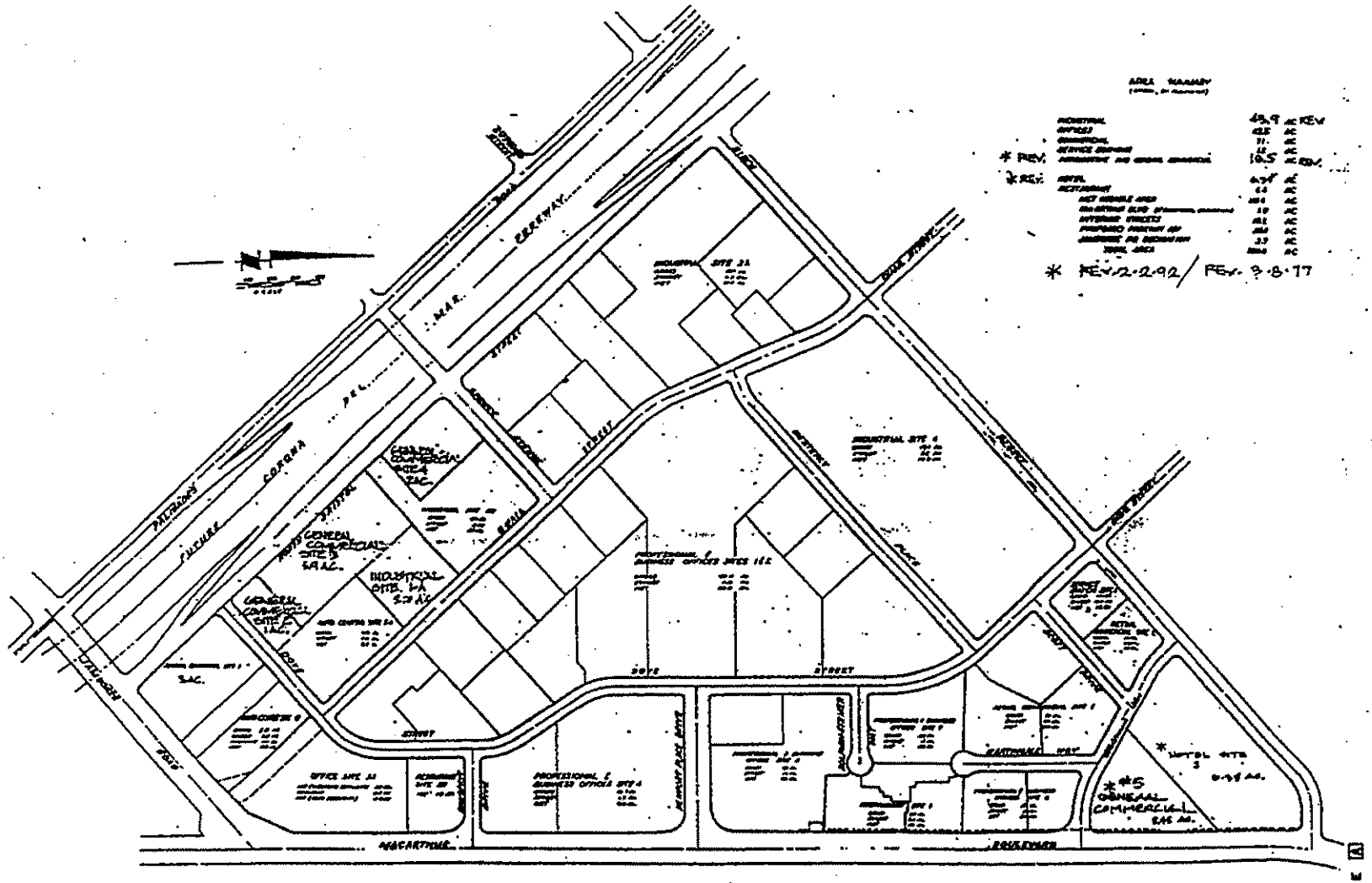


LAND USE

NEWPORT BEACH, CALIFORNIA

FOR

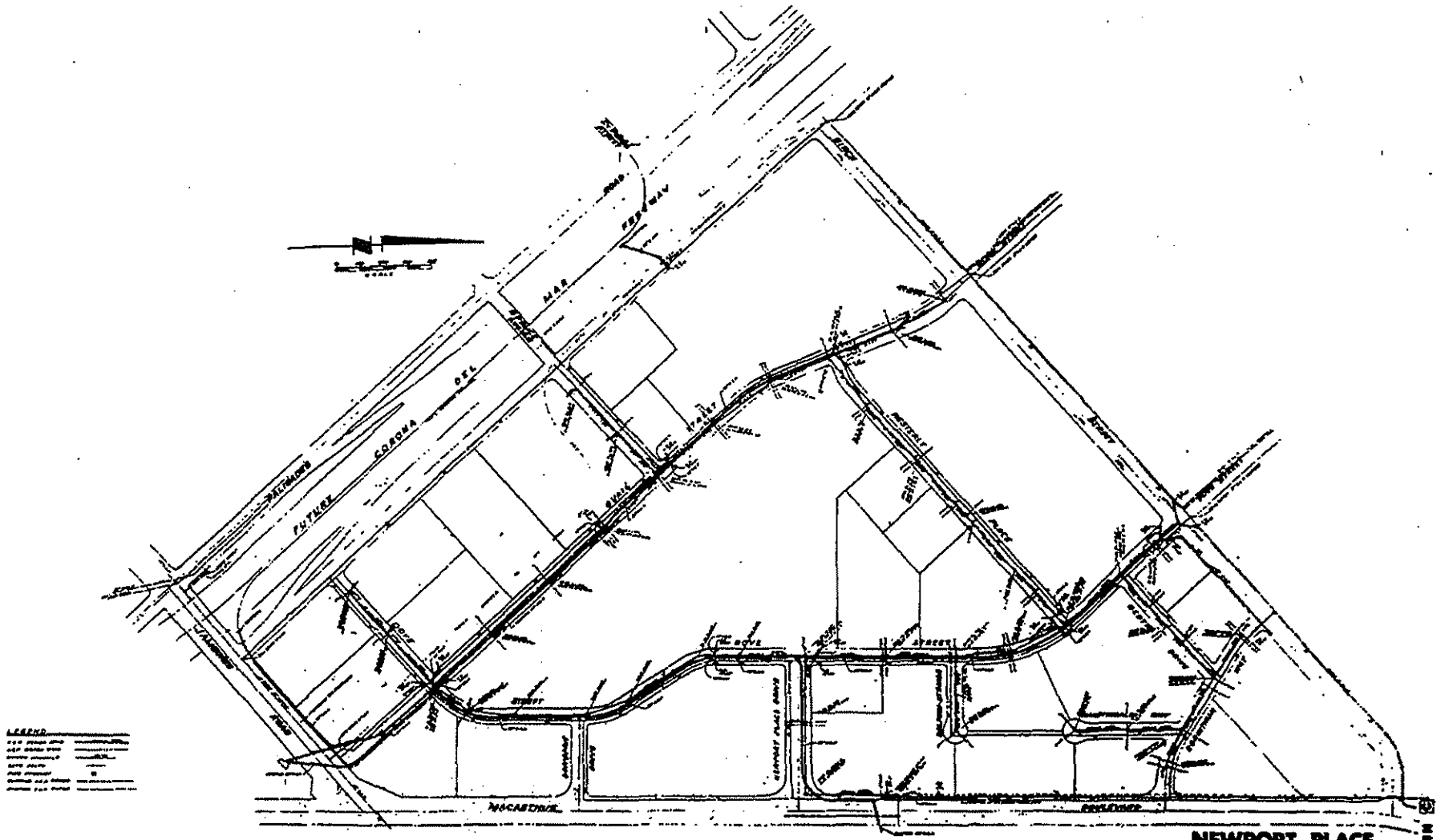
EMKAY DEVELOPMENT AND REALTY COMPANY

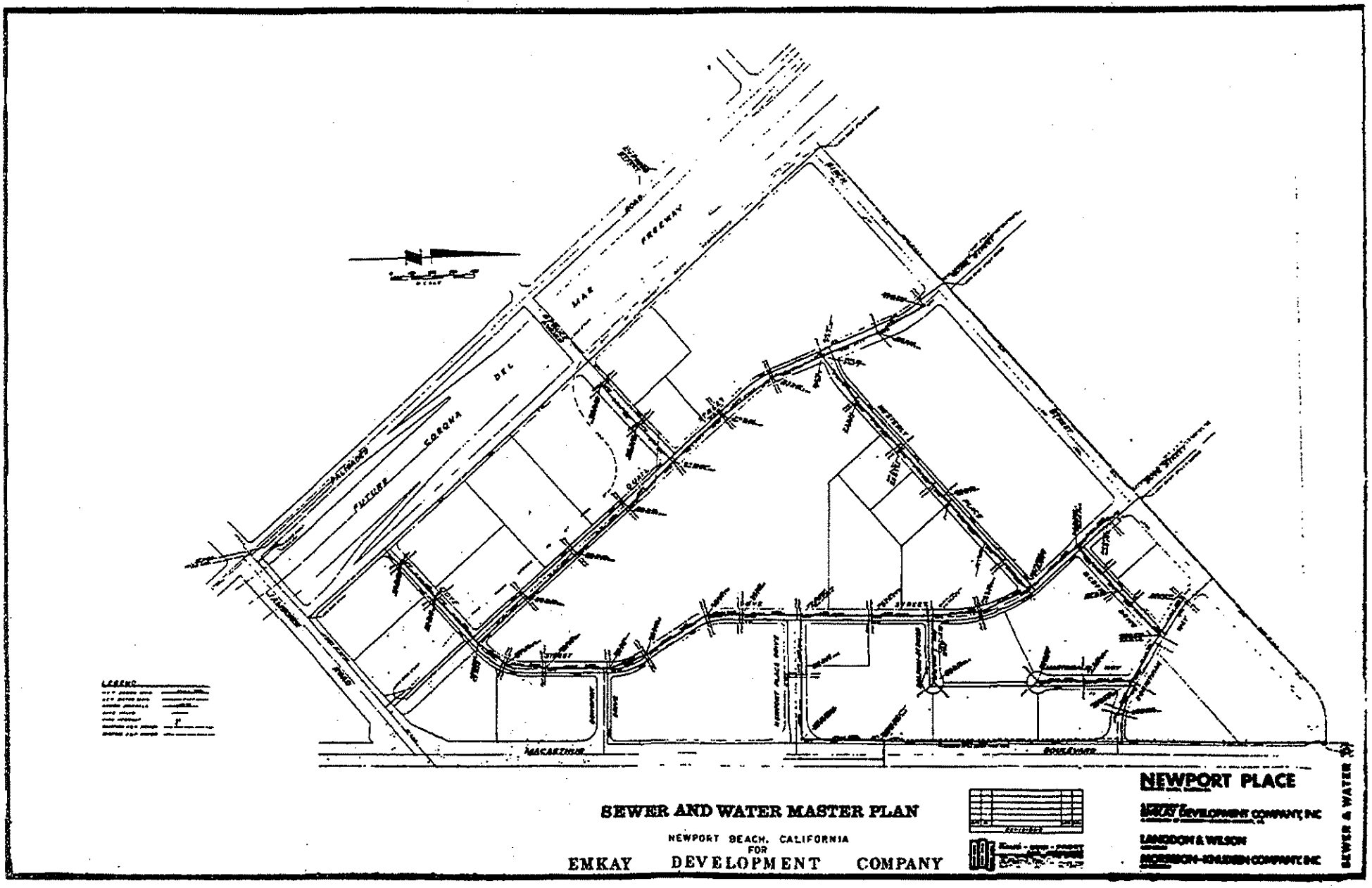
NEWPORT PLACE

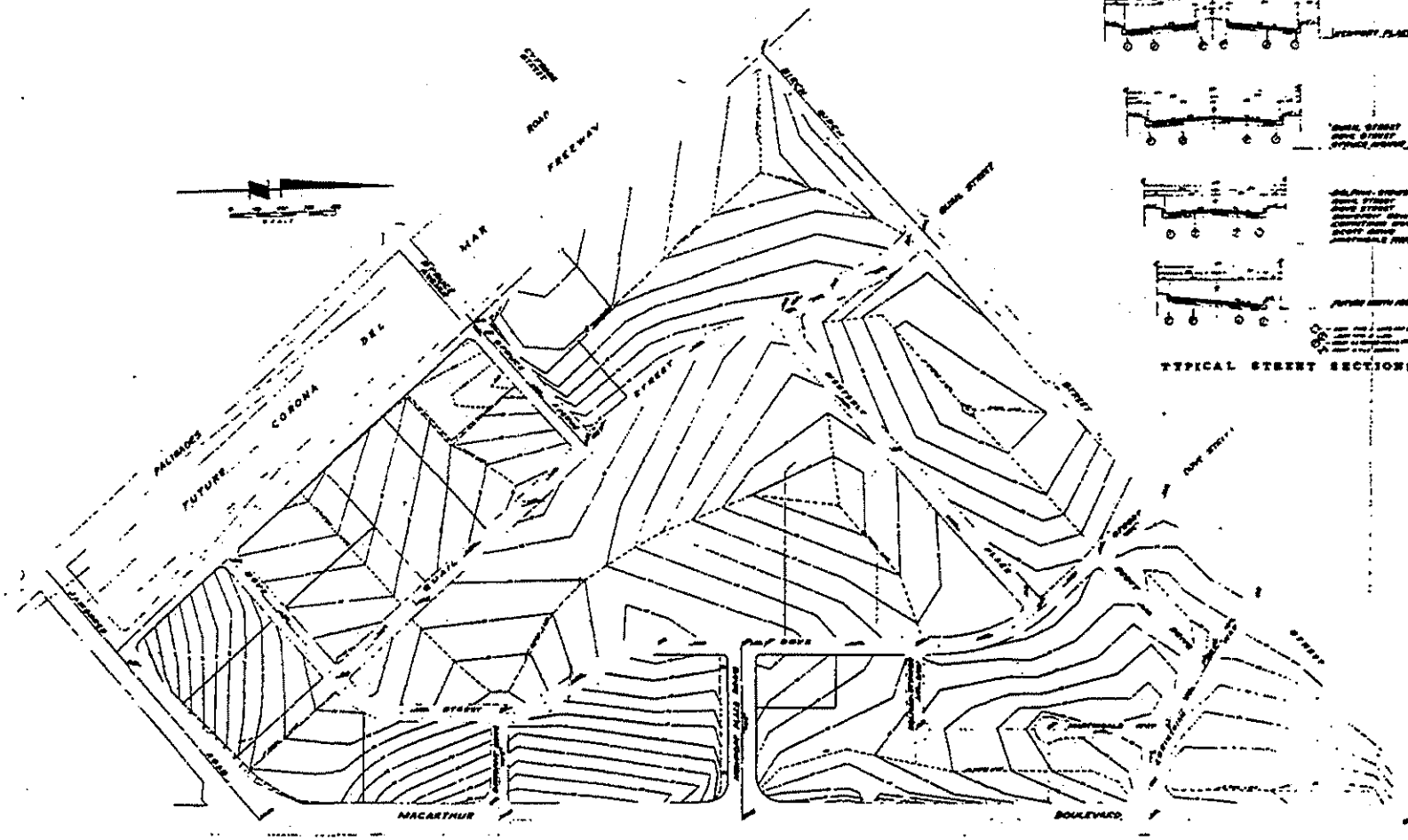
EMKAY DEVELOPMENT AND REALTY COMPANY

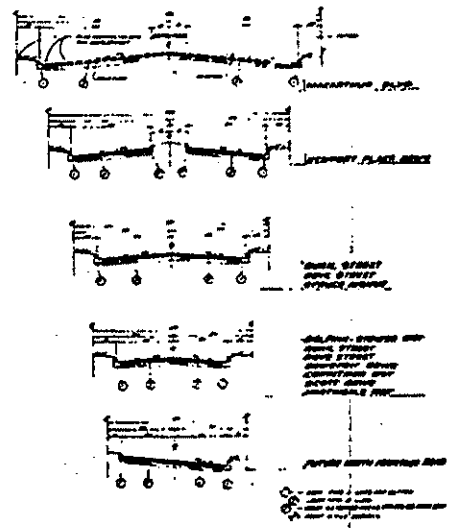
LARSON & WILSON

LAND USE


NEWPORT PLACE
STORM DRAIN MASTER PLAN
NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY
LANDDON & WILSON
STORM DRAIN


SEWER AND WATER MASTER PLAN
NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY
NEWPORT PLACE
EMKAY DEVELOPMENT COMPANY, INC
LANGDON & WILSON
MORRISON-KNUDSEN COMPANY, INC
SEWER & WATER
FUTURE CORONA DEL MAR FREEWAY
MACARTHUR BOULEVARD
LEGEND





TYPICAL STREET SECTIONS

GRADING & ROADS

NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY

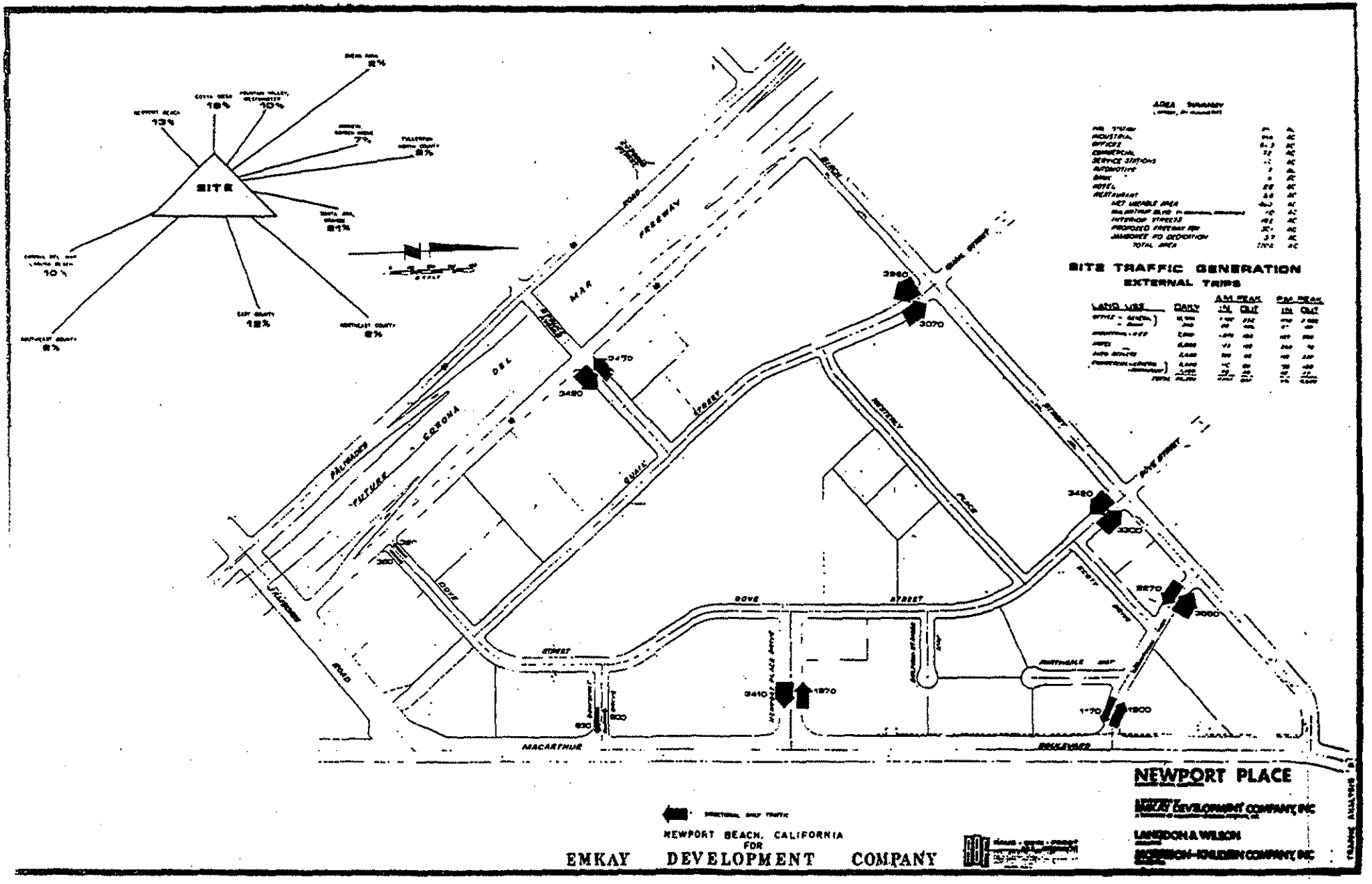
NEWPORT PLACE

EMKAY DEVELOPMENT COMPANY, INC

LANDDON & WILSON

MORRISON-KNUDSEN COMPANY, INC

GRADING, ROADS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EXTERNAL TRIPS
LAND USE
DAILY
AM PEAK
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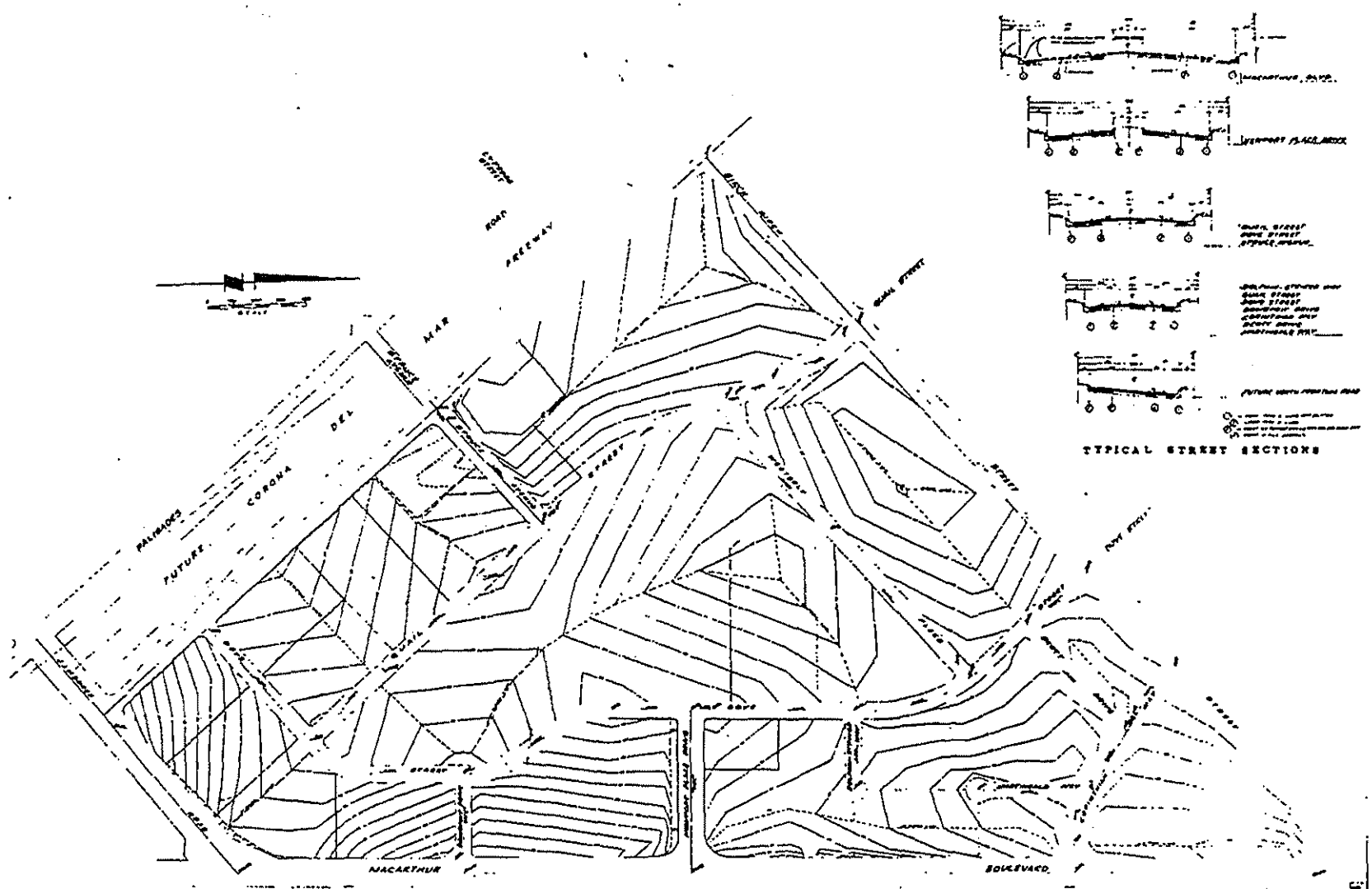
FUTURE
PALISADES
QUAIL
STREET
DOVE
STREET
MACARTHUR
BOULEVARD
NEWPORT PLACE
NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY
NEWPORT PLACE
EMKAY DEVELOPMENT COMPANY, INC
LANGDON & WILSON
MORRISON-KNUDSEN COMPANY, INC

NEWPORT PLACE
LANGDON & WILSON
TOPOGRAPHY & BOUNDARY



GRADING & ROADS

NEWPORT BEACH CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY

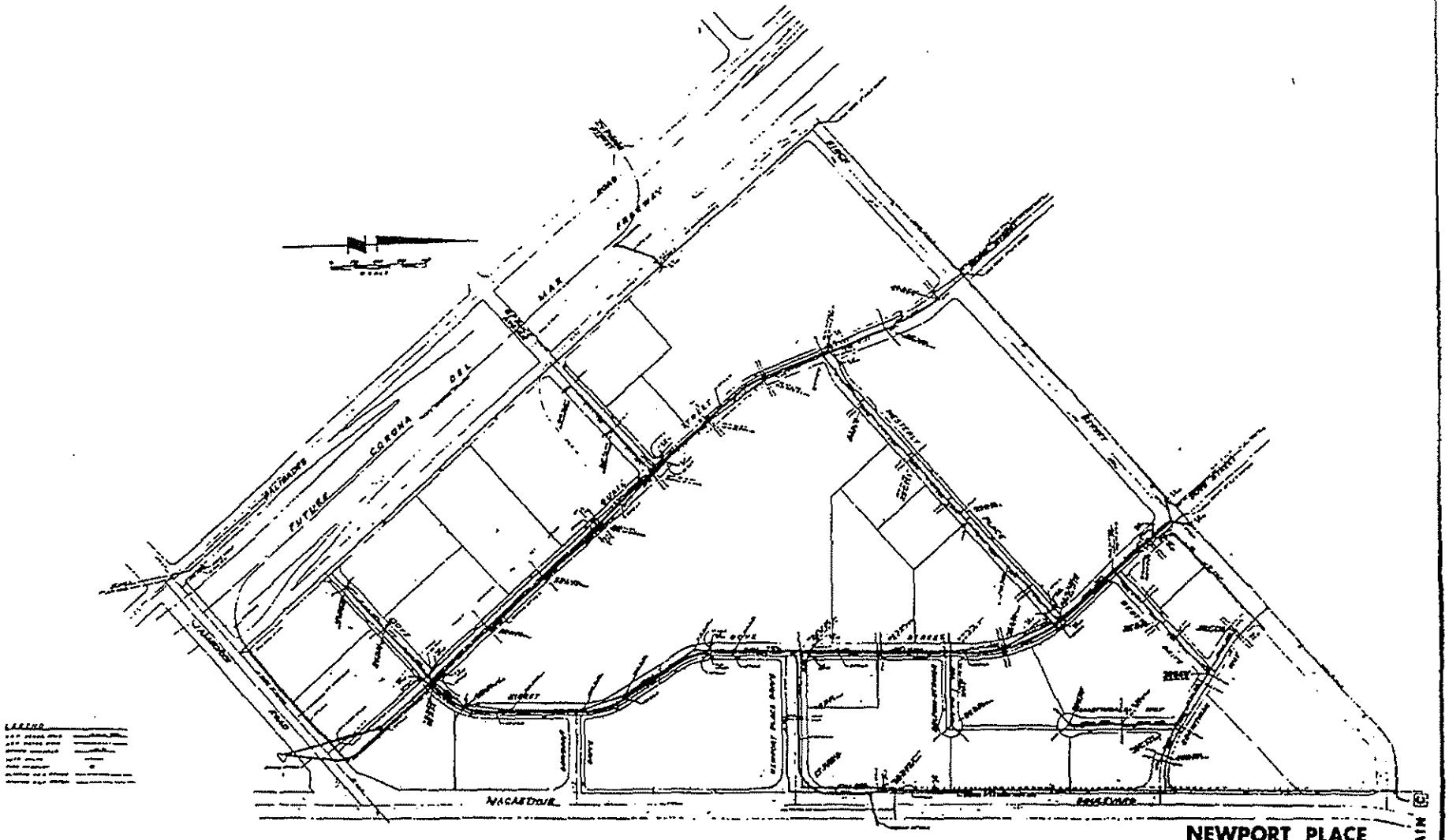
NEWPORT PLACE

EMKAY DEVELOPMENT COMPANY, INC

LANGDON & WILSON

MORRISON-KNUDSEN COMPANY, INC

GRADING, ROADS III



STORM DRAIN MASTER PLAN

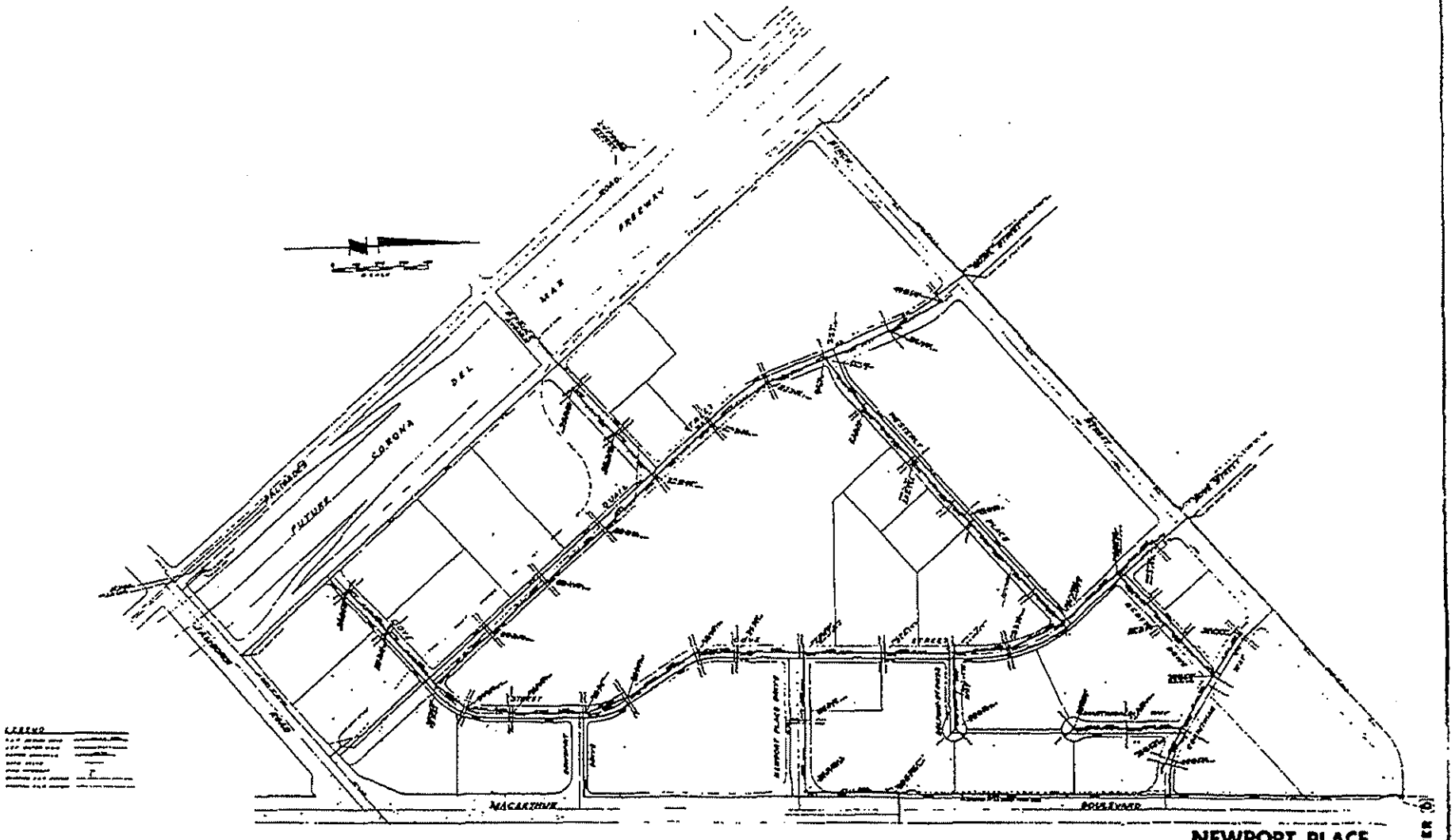
NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY

NEWPORT PLACE

EMKAY DEVELOPMENT COMPANY, INC

LANDDON & WILSON

MORRISON-KNUDSEN COMPANY, INC



SEWER AND WATER MASTER PLAN

NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY

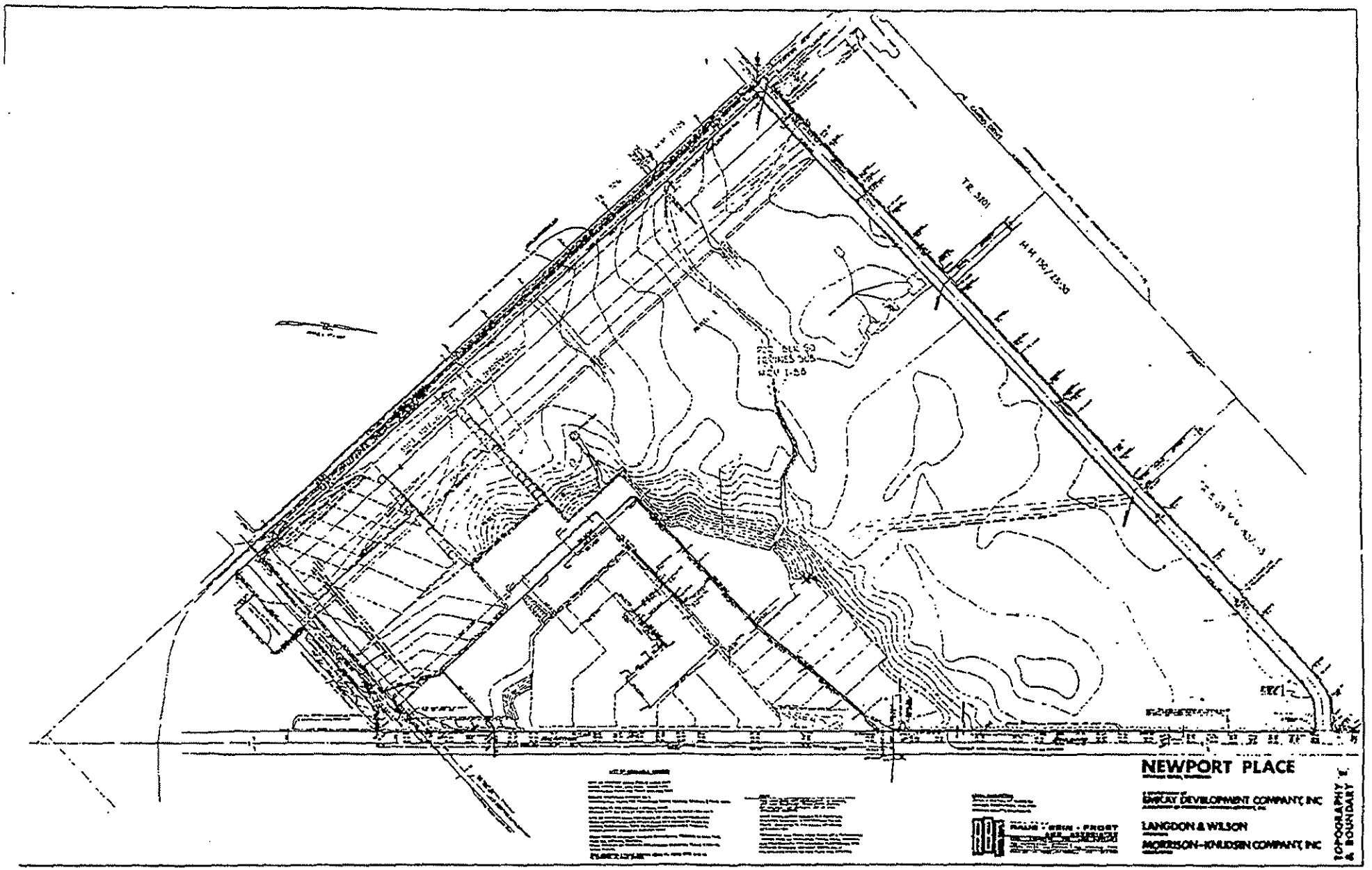
NEWPORT PLACE

EMKAY DEVELOPMENT COMPANY, INC

LANGDON & WILSON

MORRISON-KNUDSEN COMPANY, INC

SEWER & WATER (9)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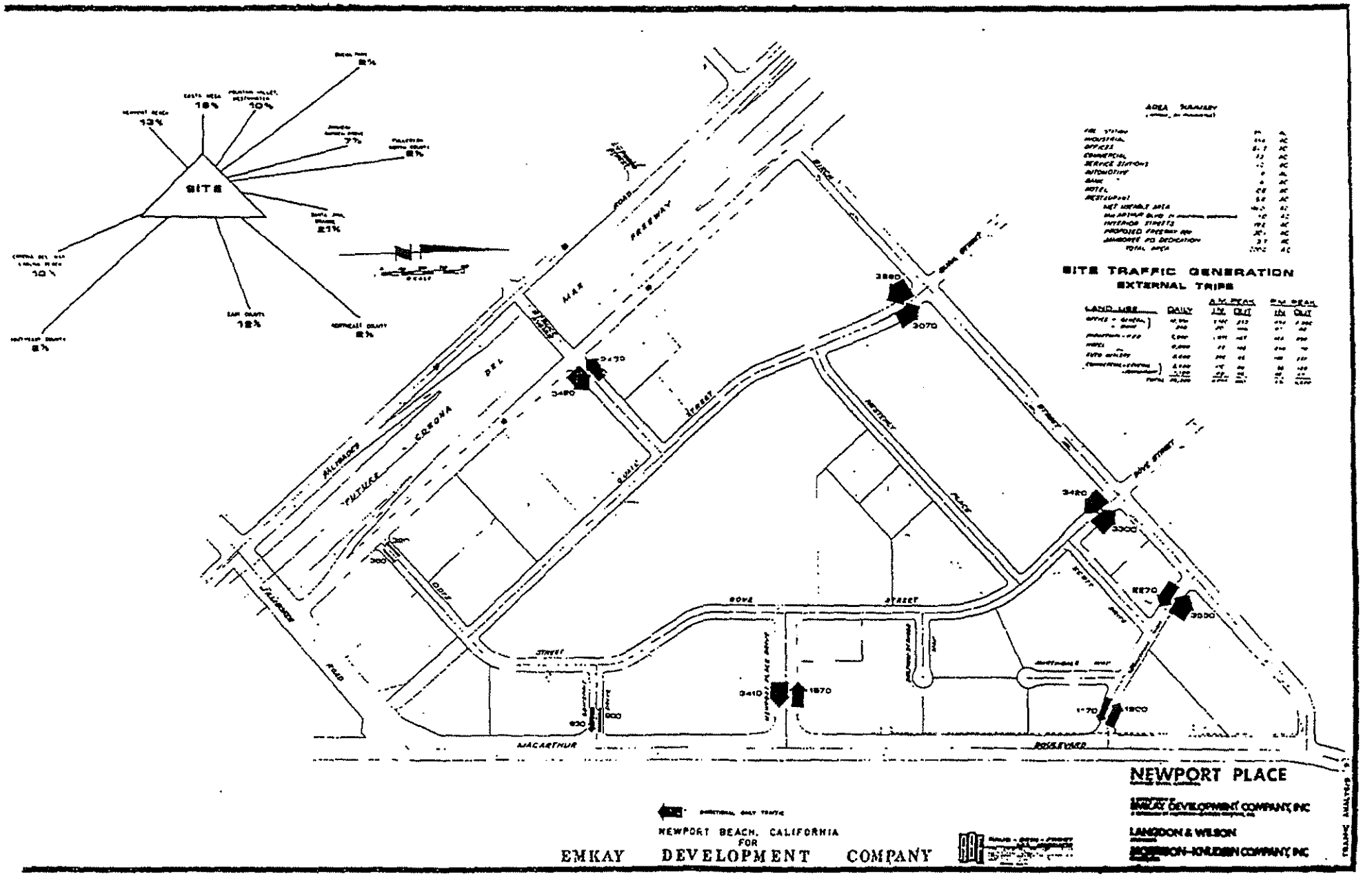
LANGDON & WILSON
MORRISON-KNUDSEN COMPANY, INC
TOPOGRAPHY & BOUNDARY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FUTURE CORONA DEL
MACARTHUR
BOULEVARD
NEWPORT PLACE
EMKAY DEVELOPMENT COMPANY, INC
LANGDON & WILSON
MORRISON-KNUDSEN COMPANY, INC
NEWPORT BEACH, CALIFORNIA
FOR
EMKAY DEVELOPMENT COMPANY

Attachment No. PC 2

Housing Programs 3.2.2 and 3.2.3

Housing Program 3.2.2 Recognizing that General Plan Policy LU6.15.6 may result in a potential constraint to the development of affordable housing in the Airport Area, the City shall amend the General Plan and/or establish a waiver or exception to the minimum 10-acre site requirement. It is recognized that allowing a smaller scale development within an established commercial and industrial area may result in land use compatibility problems and result in a residential development that does not provide sufficient amenities (i.e. parks) and/or necessary improvements (i.e. pedestrian walkways). Therefore, it is imperative that the proposed waiver include provisions for adequate amenities, design considerations for the future integration into a larger residential village, and a requirement to ensure collaboration with future developers in the area. *(Imp 25.1)*

Responsibility: *Planning Division, Planning Commission and City Council*

2008-2014 Objective: *Staff shall study and develop a plan for the City Council's consideration by Spring 2012.*

Housing Program 3.2.3 The City shall amend the Newport Place (PC 11) and Koll Center (PC 15) Planned Community texts to allow residential developments that include: 1) a minimum of 30 percent of the units affordable to lower-income households; and 2) densities between 30 du/acre and 50 du/acre consistent with the MU-H2 General Plan land use designation and policies for the Airport Area. It is recognized that adding residential as a permitted use where it was not allowed previously might require additional design attention to integrate uses. Therefore, the Planned Community Amendments will add residential uses as permitted by right subject to a site plan review to ensure integration within the existing area.

The City will monitor commercial redevelopment within the Airport Area to ensure sufficient residential capacity remains to accommodate the City's RHNA for lower-income households. Should residential capacity be reduced to a level that cannot accommodate the City's remaining need for lower-income households citywide, the City will identify and zone, if necessary, sufficient sites in an alternative location to accommodate the City's RHNA *(Imp 25.1)*

Responsibility: *Planning Division, Planning Commission and City Council*

2008-2014 Objective: *Staff shall prepare a City initiated Planned Community Amendment for Planning Commission and City Council review by Spring of 2012.*

Attachment No. PC 3

HCD compliance letter

STATE OF CALIFORNIA -BUSINESS, TRANSPORTATION AND HOUSING AGENCY EDMUND G. BROWN JR., Governor
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
1800 Third Street, Suite 430
P. O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3177 / FAX (916) 327-2643
www.hcd.ca.gov

December 29, 2011

Mr. David Kiff, City Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

RE: Review of the City of Newport Beach's Adopted Housing Element

Dear Mr. Kiff:

Thank you for submitting Newport Beach's housing element adopted November 22, 2011 and received for review on November 30, 2011. The Department is required to review adopted housing elements and report the findings to the locality pursuant to Government Code Section 65585(h).

As you know, the Department's September 8, 2011 review found Newport Beach's revised draft housing element addressed the statutory requirements of housing element law. As the adopted element is substantially the same as the revised draft, we are pleased to find the element in full compliance with State housing element law (Article 10.6 of the Government Code).

Successful implementation of Program 3.2.2, to remove the 10-acre minimum site requirement and Program 3.2.3, to allow by-right development for multifamily housing affordable to lower-income households are critical to facilitate residential development within the John Wayne Airport Area (PC 11 and PC15). The City must monitor and report on the results of these and other programs through the annual progress report, required pursuant to Government Code Section 65400.

The Department acknowledges Newport Beach's commitment to encourage the development of a variety of housing types for lower-income households and workers through the implementation of Program 2.1.5 providing regulatory and financial incentives to meet the housing needs of extremely low-income households and Program 3.1.4 to facilitate the development of residential on mixed-use sites. Such strategies facilitate more compact development to address climate change, energy conservation and air quality objectives, maximize existing land resources, and promote the feasibility of developing housing for lower-income families and workers while strengthening the local economy.

The Department is pleased to report Newport Beach now meets specific requirements for several State funding programs designed to reward local governments for compliance with State housing element law. For example, the Housing Related Parks (HRP) Program, Local Housing Trust Fund and the Building Equity and Growth in Neighborhoods (BEGIN) programs include housing element compliance either as a threshold or competitive factor in rating and ranking applications. Details about these and other programs are available at this website at http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf.

Specifically, the HRP Program, authorized by Proposition 1C, is an innovative new program rewarding local governments for the approval of housing for lower-income households and provides grant funds to eligible local governments for every qualifying housing start, beginning calendar year 2010. Additional information on the HRP Program can be obtained from this website http://www.hcd.ca.gov/hpd/hrpp/.

The Department appreciates the assistance provided by Messrs. Jamie Murillo and Gregg Ramirez throughout the course of the review and looks forward to receiving Newport Beach's adopted housing element. Their dedication to the housing element update process was instrumental in creating a valuable tool to address the community's housing and community development objectives. We wish Newport Beach success in implementing its housing element and look forward to following its progress through the General Plan annual progress reports pursuant to Government Code Section 65400. If the Department can provide assistance in implementing the housing element, please contact Melinda Coy, of our staff, at (916) 445-5307.

Sincerely,

Glen A. Campora
Assistant Deputy Director

Attachment No. PC 4

Zoning Code Section 20.30.060C.3

20.30.060 C.3. (Required Findings for an increase in height)

3. Required Findings. The review authority may adopt a Planned Community District, adopt a specific plan, or approve a planned development permit or site development review to allow an increase in the height of a structure above the base height only after first making all of the following findings in addition to the findings required for the discretionary permit application:

a. The project applicant is providing additional project amenities beyond those that are otherwise required. Examples of project amenities include, but are not limited to:

i. Additional landscaped open space;

ii. Increased setback and open areas;

iii. Enhancement and protection of public views; and

b. The architectural design of the project provides visual interest through the use of light and shadow, recessed planes, vertical elements, and varied roof planes;

c. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed structure(s) and existing adjacent developments or public spaces. Where appropriate, the proposed structure(s) provides a gradual transition to taller or shorter structures on abutting properties; and

d. The structure will have no more floor area than could have been achieved without the approval of the height increase.

Correspondence
Item No. 2a
Newport Place Affordable Housing Amendment
PA2011-215

Memorandum

To: Planning Commission

CC: File PA2011-215

From: James Campbell, Principal Planner

Date: 04/16/2012

Re: Planning Commission Agenda Item No. 2 - April 19, 2012

Newport Place Affordable Housing Amendment - (PA2011-215)

Due to a desire to devote as much time as possible to the Newport Banning Ranch application, Chairman Toerge requests that the Newport Place Affordable Housing Amendment be postponed to May 17, 2012. This will require a motion to continue the item at the meeting. If you have any questions, please contact Kimberly Brandt at 949-644-3226 or myself at 949-644-3210.

Correspondence
Item No. 2b
Newport Place Affordable Housing Amendment
PA20011-215

JULIE A. AULT
ATTORNEY AT LAW

SEVEN CORPORATE PLAZA
NEWPORT BEACH, CA 92660
TELEPHONE: (949) 719-7212
FACSIMILE: (949) 719-7210

RECEIVED BY
COMMUNITY
APR 18 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

April 18, 2012

Via Courier and Fed Ex

Ms. Kimberly Brandt
Director of Community Development Department
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, California 92658-8915

RE: Proposed Residential Development at the Koll Center and Planning Commission Meeting Scheduled for April 19, 2012

Dear Ms. Brandt:

My client, OCRC Capital Corporation ("OCRC"), owns a building, located at 4910 Birch St. within the Koll Center office park. OCRC likewise owns easements for parking, access and property rights to enforce development standards under the recorded documents showing property ownership, recorded covenants, conditions and restrictions ("CC&Rs"). This correspondence shall serve as our opposition and objection to the Proposed Residential Development at the Koll Center which is scheduled to be voted on during the Planning Commissions, April 19, 2012, regular meeting.

We have been informed by other property owners within the office park, of the Koll Company's proposed residential development. We understand that the City has a duty to insure that it has properly noticed all of the relevant property owners regarding this proposal and that all of the property owners are in agreement or, at the very least, are included in the development at this office park. To date, we have not received notice from the City of Newport Beach (the "City") or the Koll Company regarding its proposal to integrate the existing master planned business park with a massive residential development.

In addition, as the City is well aware, there are deficiencies in Koll's application for a Planned Community Text Amendment and Environmental Impact Report, which documents have been provided to the City. Our opposition is also based on the fact that the Koll Company has failed to obtain the required consent from Koll Center property owners and has failed to make any attempt to comply, as required, with the CC&Rs. Finally, neither the Koll Company, nor the City has contemplated or evaluated the

negative impact, impairment of property values and the denial of my client's rights as a landowner in the city of Newport Beach.

Therefore, regardless of City Code requirements, and in an effort to protect our client's property rights, we request that Planned Community Amendment scheduled to be voted on during the April 19, 2012 Planning Commission Regular Meeting, be rejected until the issues surrounding Koll's application, the Environmental Impact Report and Koll's failure to properly notify and comply with the relevant CC&Rs are satisfactorily and properly resolved.

Very truly yours,

Marisa Poulos

Marisa D. Poulos
Associate Counsel

Cc: Greg Merage
John Condas
Igor Olenicoff
S. Jacoby

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
April 19, 2012 Meeting
Agenda Item 3

SUBJECT: Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway
- Environmental Impact Report No. ER2009-002
- General Plan Amendment No. GP2008-008
- Code Amendment No. CA2008-004
- Planned Community Development Plan No. PC2008-002
- Master Development Plan No. MP2008-001
- Tentative Tract Map No. NT2008-003
- Development Agreement No. DA2008-003
- Affordable Housing Implementation Plan No. AH2008-001
- Traffic Study No. TS2008-002

APPLICANT: Newport Banning Ranch, LLC

PLANNER: Patrick J. Alford, Planning Manager
palford@newportbeachca.gov

PROJECT SUMMARY

A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space.

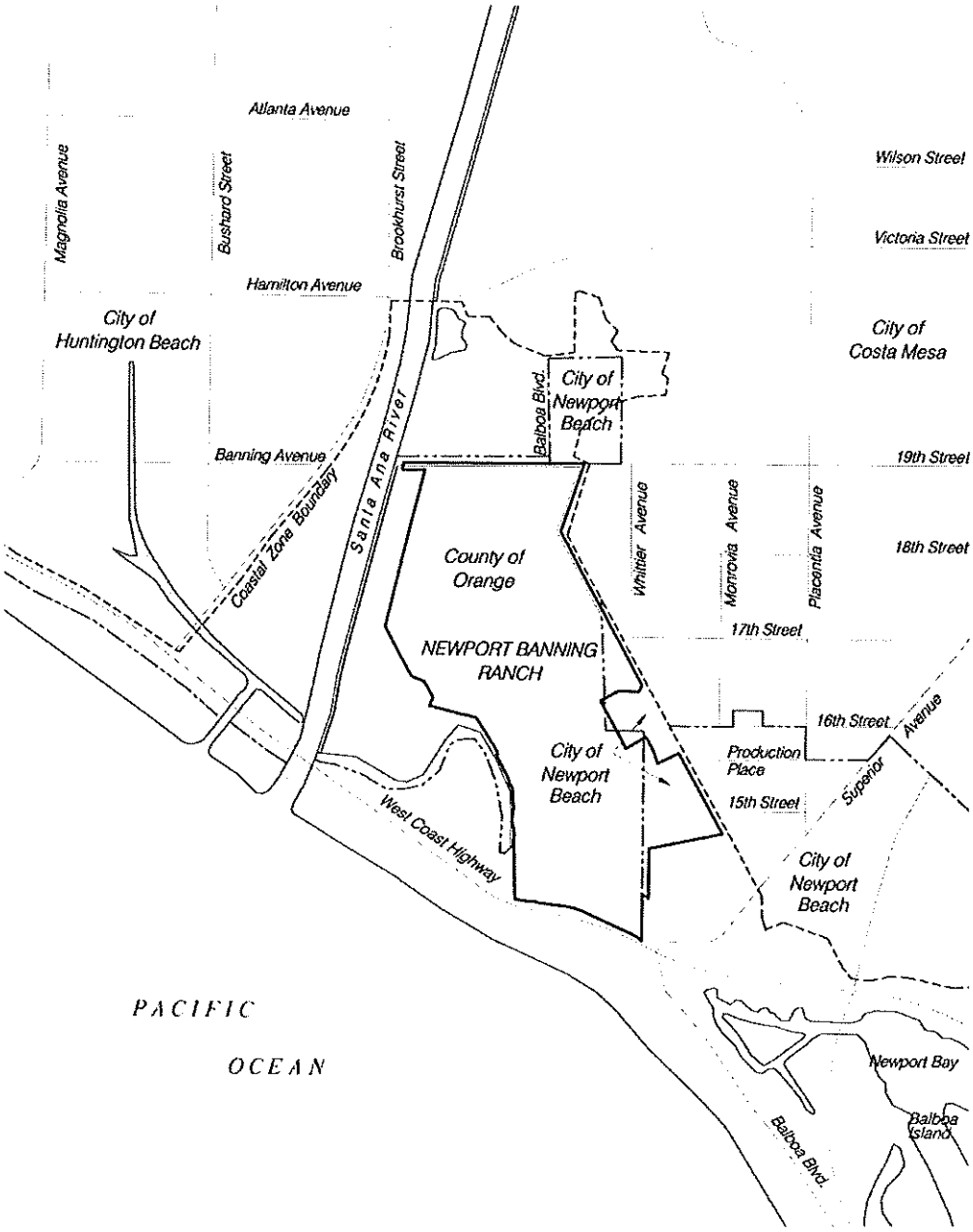
RECOMMENDATION

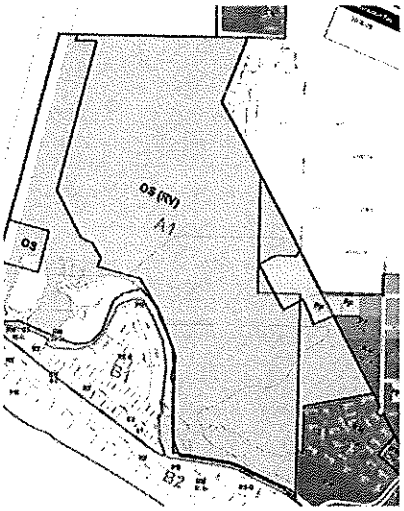
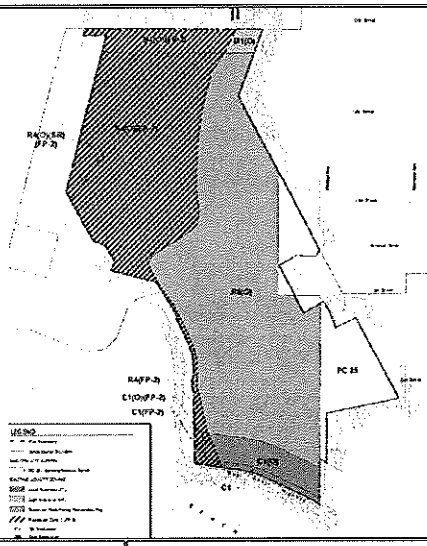
1) Conduct a public hearing; and

2) Adopt Resolution No. ___ (Attachment PC 1) recommending to the City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations; and

3) Continue the public hearing to May 3, 2012 to consider the Development Agreement (DA2008-003).

VICINITY MAP



EXISTING GENERAL PLAN	EXISTING ZONING
	

LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Open Space/Residential Village (OS (RV))	Planned Community (PC-25); County Zoning Suburban Multi-family Residential (R-4), Local Business Commercial (C-1), Light Industrial (M-1) with Oil Production (O), Sign Restriction (SR), and Floodplain Zone (FP-2) Overlays	Open space, oil production
NORTH	Multi-unit Residential (RM), Parks and Recreation (PR); Costa Mesa General Plan Public/Institutional	Planned Community (PC-16), Costa Mesa Zoning Institutional and Recreational	Open space, multi-unit residential
SOUTH	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residential detached
EAST	Parks and Recreation (PR), Multi-Unit Residential (RM), General Industrial (IG), Private Institutions (PI), and Public Facilities (PF); Costa Mesa General Plan Light Industry and Medium Density Residential	Parks and Recreation (PR), Planned Community (PC-14), Multi-Unit Residential (RM), Industrial (IG), Private Institutions (PI), Public Facilities (PF); Costa Mesa Zoning General Industrial and Multiple Family Residential	Single-unit detached residential, light industrial, educational facilities, multi-unit residential and vacant
WEST	Open Space (OS) and Single-Unit Residential Detached (RS-D)	Open Space (OS) and Single-Unit Residential (R-1)	Open space and single-unit residential detached

INTRODUCTION

Project Setting

The project site consists of approximately 401.1 acres. Approximately 40 acres are located within the incorporated boundary of the City and the remainder is located within unincorporated Orange County, in the City's adopted Sphere of Influence, as approved by the Local Agency Formation Commission of Orange County (LAFCO).

The site's topography is characterized by two primary topographic areas: the lowland area in the northwestern portion and the upland area, located on the southwest edge of Newport Mesa, in the southern and eastern portions. The upland area has been incised to form three arroyos, with the largest being the Southern Arroyo and the second largest being the Northern Arroyo. A very small arroyo feature (Minor Arroyo) is located in the northeastern-most portion of the project site.

Although the project site has experienced disturbance associated with oil production operations, the site contains 45 vegetation types, including 20 types of coastal sage scrub and disturbed coastal sage scrub; vernal and ephemeral pools, marshes and mudflats; 8 types of undisturbed and disturbed riparian resources; and non-native grassland and ruderal, and disturbed/developed areas.

The project site is currently a producing oilfield with approximately 489 oil well sites and buildings and oil facility infrastructure, including oil processing facilities, pipelines, storage tanks, utility poles, and machinery. Related facilities include graded roads and equipment areas surfaced with gravel, asphalt, crude oil, or crude oil tank sediments, as well as old sumps which held produced oil and fluids in in-ground surface impoundments.

The project site is generally bound on the north by Talbert Nature Preserve/Regional Park in the City of Costa Mesa and Newport Terrace residential community; on the south by West Coast Highway and Lido Sands residential community south of the highway; on the east by a mix of land uses, including the California Seabreeze residential community and light industrial uses in the City of Costa Mesa, a vacant Newport-Mesa Unified School District-owned parcel, the City of Newport Beach Utilities Yard, Carden Hall day school, Coast Community College Newport Beach Learning Center (under construction), office and light industrial uses, the Newport Crest residential community, and the Sunset Ridge Park site; and on the west by the U.S. Army Corps of Engineers-restored salt marsh basin and the Santa Ana River.

Project Description

The project is a proposed 401.1-acre planned community for development of up to 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000

square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space.

The application consists of the following components:

- General Plan Amendment No. GP2008-008. An amendment to the Circulation Element of the General Plan to delete the planned segment of 15th Street west of Bluff Road.

- Code Amendment No. CA2008-004. A code amendment to rezone the portion of the project site currently within the incorporated boundary of the City from Planned Community (PC-25) to Planned Community (PC-57) and prezone those portions of the project site located within the City's Sphere of Influence from County zoning to PC-57.

- Planned Community Development Plan No. PC2008-002. A planned community development plan that would establish the allowable land uses, general development regulations, and implementation and administrative procedures, which would serve as zoning for the project site.

- Master Development Plan No. MP2008-001. A plan to establish detailed design criteria for each land use component to guide the review of subsequent development approvals.

- Tentative Tract Map No. NT2008-003. A tentative tract map to establish lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance.

- Development Agreement No. DA2008-003. A Development Agreement between the applicant and the City of Newport Beach describing development rights and public benefits.

- Affordable Housing Implementation Plan No. AH2008-001. A program specifying how the proposed project would meet the City's affordable housing requirements.

- Traffic Study No. TS2008-002. A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance).

- Environmental Impact Report No. ER2009-002. An Environmental Impact Report (EIR) SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project.

Background:

The Planning Commission held study sessions on the proposed project on September 13, 2011, January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012. The purpose of the study sessions was to provide the Planning Commission and the public the opportunity to review and discuss details of the proposed project prior to public hearings.

The Planning Commission conducted a public hearing on March 22, 2012, which focused on Environmental Impact Report No. ER2009-002 (SCH No. 2009031061). Following the public hearing, the Commission recommended that the City Council certify the EIR.

DISCUSSION

This item was continued from March 22, 2012. The Commission determined that a minimum of two public hearings on the proposed project was warranted. The March 22nd hearing was devoted to the EIR, including the Response to Comments. This report will focus on the proposed project application.

Analysis

General Plan

Future development decisions must be consistent with the goals and policies of the City's General Plan. Goals and polices are fundamental components of the General Plan. Goals are very general and broad descriptions of ideal future conditions for a particular topic and policies provide guidance to assist the City as it makes decisions relating to each goal.

The EIR provides a consistency analysis in Section 4.1 (Land Use and Related Programs) and in the respective technical sections of the EIR. The EIR concluded that when evaluating the proposed project as a whole, it would be considered generally compatible with the existing and proposed future off-site land uses as well as compatible with land uses within the project site. While an analysis of the individual goals and policies is important in determining consistency with the General Plan, an examination of the project in its entirety is warranted to determine if it is consistent with the General Plan's vision for Banning Ranch.

Land Use Element Policies

Land Use Element Goal LU 6.4 states that if acquisition for open space is not successful, Banning Ranch should be developed as "a high-quality residential community with supporting uses that provides revenue to restore and protect wetlands and important habitats." The vision for this community can be summarized by a few key elements:

- A concentrated mixed-use residential village with a mix of housing types clustered around a "village center" of local-serving commercial uses, small boutique hotel, active park, and possibly a school. The residential village should provide a cohesive form with identifiable neighborhoods.

- Relocated and consolidated oil operations.

- The majority of the property preserved as open space with restored and enhanced wetlands and wildlife habitats, interpretative facilities, a bluff top linear park, and an active community park.

- A street and trail system linking uses and neighborhoods and providing access to adjoining neighborhoods.

- The use of sustainable and environment-protective development practices.

The proposed project would provide a mixed-use residential village and a variety of housing types are permitted. All of the specified land uses are provided for within the density and intensity limits of the General Plan. The proposed subdivision design and the architectural design guidelines and landscaping plans provide the community cohesion and neighborhood identity called for by the General Plan. However, the "village center" envisioned by the General Plan is less identifiable, as the local-serving commercial uses are proposed for the Urban Colony on the periphery of the project. Likewise, the community park is located at the edges of the project and spread out over three areas. This appears to be the consequence of the topographic/habitat constraints and land use compatibility concerns. Nevertheless, the proposed project does meet the objective of providing a concentrated mixed-use residential village.

The proposed project provides for the consolidation of the existing oil operations into two areas totaling approximately 16.5 acres; thus, meeting the General Plan requirement of consolidated oil operations.

The proposed 252.3-acre Open Space Preserve would comprise a majority of the project site and would include approximately 220.9 gross acres for habitat conservation, restoration, and mitigation. Interpretative facilities would be provided at the 3-acre Vernal Pool Area and 2.2-acre Nature Center and approximately 9.5 acres are proposed for interpretive trails. These areas and facilities meet the General Plan requirements for open space preservation and interpretative facilities.

Approximately 21 acres of bluff top parks are proposed for the North Residential Village and the South Residential Village. The proposed North Community Park and Central Community Park would provide approximately 17 acres of community parkland. Although the total acreage is short of the 20 to 30-acre community park called for by the General Plan, these proposed parklands would be in excess of the project's

approximately 15-acre obligation under the Quimby Act and Parkland Dedication and Fee Ordinance. Furthermore, while these parks would be separated by a primary arterial (15th Street), their size, configuration, and topography are sufficient to accommodate the program recommended by the Recreation and Senior Services Department. Overall, the proposed bluff parks and community parks meet the General Plan parkland requirements.

The proposed project's Master Roadway Plan would provide a system of local residential streets with the villages and colonies connected by arterials. More importantly, the proposed project's Master Trails and Coastal Access Plan would provide over seven miles of trails linking residential, mixed-use, resort, parkland, and open space areas. The trail and access plan also provides for a pedestrian/bicycle bridge across West Coast Highway that would connect the project with the West Newport community. Together, these plans provide the connectivity called for by the General Plan.

With consideration to all of the project components, staff concludes that the proposed project would fulfill the General Plan's vision for Banning Ranch.

Land Use Compatibility

The EIR identifies vehicular noise impacts from Bluff Road and the 15th Street Extension and night illumination from the proposed Community Park as "significant and unavoidable" impacts. The EIR further concluded that these impacts result in land use incompatibility with those Newport Crest residences immediately contiguous to the project site.

In determining consistency with the General Plan, all aspects of a proposed project need to be considered. A project can be found to be consistent if, in its entirety, furthers the goals and policies of the General Plan. Furthermore, a deviation from a particular General Plan policy may be acceptable if it allows the project to better fulfill the General Plan's goals.

Bluff Road and the extension of 15th Street are required by the Circulation Element of the General Plan. EIR analyzed an alternative alignment of Bluff Road that would have reduced noise levels to Newport Crest to less than significant. However, this alignment would result in greater impacts to open space and biological resources, and would result in additional grading and alteration of natural landforms; specifically, those resources located on the Southern Bluffs and in the Southern Arroyo. This alignment would also bisect the North Community Park and effectively constrain its use as an active park. As a result, this alignment of the roadway was deemed as not feasible.

A community park with night lighting at Banning Ranch is provided for in both the Land Use Element and Recreation Element of the General Plan. The EIR analyzed an alternative location for the Community Park. Alternative B (Open Space Option) envisioned the majority of the project site preserved as open space. In addition, a 31.3-

acre community park with both active and passive park uses and nighttime lighting would be located in the center of the site and away from residential areas. The EIR concluded that under Alternative B, the night lighting impact would remain significant and unavoidable. The EIR also concluded that Alternative B would also result in increased light effects on upland open space areas.

It should also be noted that the introduction of new sources of lighting associated with development of Banning Ranch was recognized as a significant and unavoidable impact at the time the 2006 General Plan Update was under consideration. In adopting the General Plan and developing a park plan that anticipated night lighting for the athletic fields, the City made a policy determination that the provision of a community park was necessary, even if it results in impacts from night lighting.

In the case of the proposed project, staff concludes that the land use incompatibility associated with vehicular noise from Bluff Road/15th Street can be found acceptable because it would allow for the construction of Bluff Road pursuant to the Circulation Element while furthering the landform and biological resource protection policies of the General Plan. Similarly, the land use incompatibility associated with night lighting from the North Community Park can be found acceptable because it would allow the development of active community park pursuant to the Land Use Element and Recreation Element while furthering biological resource protection policies of the General Plan.

General Plan Amendment

An amendment to the Circulation Element of the General Plan is proposed as a part of the proposed project to delete the segment of 15th Street west of Bluff Road, which would provide a second arterial through the project site connecting to West Coast Highway. This amendment would involve revising Figure CE1 (The Master Plan of Streets and Highways) and Figure CE3 (Recommended Intersection Improvements) to remove depictions of this roadway segment.

The EIR traffic analysis indicates that a second roadway connection through the project site, as shown on the City's Circulation Element, is not needed to accommodate the projected traffic demand accessing West Coast Highway.

Circulation Element CE Policy 3.1.3 requires that the City's Master Plan of Streets and Highways to be consistent with the Orange County Master Plan of Arterial Highways (MPAH). An amendment to the Orange County MPAH is proposed to ensure consistency between the two plans.

Development of the second roadway connection to West Coast Highway would likely result in significant impacts to the landform and biological resources, located on the Southern Bluffs. Elimination of this roadway segment would be consistent with the landform and biological resource protection policies of the General Plan.

In conclusion, the proposed amendment to the Circulation Element does not present any internal consistency issues with the other elements of the General Plan.

Local Coastal Program

The certified Coastal Land Use Plan (CLUP) designates the Banning Ranch as a Deferred Certification Area due to unresolved issues relating to land use, public access, and the protection of coastal resources. Because the Banning Ranch property is a Deferred Certification Area, the policies in the CLUP are not applicable to the Banning Ranch property.

Zoning (Planned Community Development Plan PC-57)

The proposed code amendment would rezone the portion of the project site currently within the incorporated boundary of the City from Planned Community (PC-25) to Planned Community (PC-57) and prezone those portions of the project site located within the City's Sphere of Influence from County zoning to PC-57. PC-25 is the Banning Newport Ranch Planned Community. This 75.5-acre planned community development plan was adopted in 1995 and provided for the development of 406 dwelling units and 400,000 square feet of office/industrial uses. The land uses and development policies of PC-25 were made inconsistent with the adoption of the General Plan in 2006. As part of the comprehensive Zoning Code Update approved by the City in 2010, approximately 13.06 acres of PC-25 were rezoned to Public Facilities (PF) leaving approximately 62.44 acres zoned PC-25.

The proposed Newport Banning Ranch Planned Development Plan (NBR-PC) will serve as the zoning for PC-57. The NBR-PC (Exhibit G of Attachment PC 1) would establish the allowable land uses, general development regulations, and implementation and administrative procedures.

Staff has worked with the applicant to incorporate a number of revisions to NBR-PC that are intended to address issues and concerns raised by the Commission during the study sessions and at the previous public hearing. The revisions are provided in the Exhibit G of Attachment PC 1 and the more substantive revisions summarized below:

- Bars. The land use regulations have been revised to prohibit free-standing bars, nightclubs, and micro-breweries in the Visitor-Serving Resort/Residential (VSR/R) District and the Mixed-Use/Residential (MU/R) District.

- Resort Ancillary Uses. The narrative for the resort inn has been revised to clarify that ancillary uses have to customary and proportional to the resort.

- Oil Operations. Language has been added to clarity that all existing oil operations must be consolidated into the Oil Facilities (OF) District within 10 years of annexation.

- Community Parks. The community park will not be subject to site development review; instead, the Recreation and Senior Services Director will have the authority under new Section 4.6 to approve a community park improvement plan in accordance with the park amenities and layout presented in the Master Development Plan.

- Minor Modifications. The Minor Modifications (Section 4.17) has been deleted. This section allowed for staff-level approval of land use district acreage refinements, transfer of dwelling units between land use districts, and the transfer of commercial floor area from the MU/R District to the VSR/R District. The Commission indicated that, as written, this section allowed potentially significant changes to the project to be approved by staff.

- Substantial Conformance. A new section (Section 4.17) has been added that will allow limited changes in the land use district boundaries in conjunction with a site development review permit or a subdivision map.

- Transfer of Residential Dwelling Units. A new section (Section 4.18) has been added that will allow limited transfers of dwelling units between land use districts in conjunction with a site development review permit or a subdivision map.

- Commercial Transfers from MU/R to VSR/R. A new section (Section 4.19) has been added to provide establish a procedure to allow commercial floor area to be transferred from the MU/R District to the VSR/R District.

- Commercial Transfers from MU/R to RL/M or RM. A new section (Section 4.20) has been added to provide establish a procedure to allow commercial floor area to be transferred from the MU/R District to RL/M or RM Districts in conjunction with a site development review permit or a subdivision map.

- Retaining Walls. Language has been added that requires retaining walls with a visible portion over eight (8) feet in height to be designed using methods to soften their appearance.

The Commission also suggested that deliveries should be prohibited earlier than 10:00 p.m. The NBR-PC has the same restrictions as the Zoning Code, which prohibits deliveries, loading, unloading, and similar activities between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays. Staff recommends that the delivery hours remain consistent with the City-wide standard. If further restrictions are warranted, they may be addressed on a case-by-case basis through site development review and/or through conditional use permits.

The 5-acre South Community Park is proposed to be a public park and part of the Community Park (CP) District. This park would consist of native habitat and interpretative areas and would have no improved play fields or courts. Due to its location, sensitive habitat, topography, and lot configuration, it would be difficult to include in the City's parks and recreation program. Therefore, staff is recommending that the NBR-PC be revised to Upland Open Space/Public Trails and Facilities (UOS/PTF) District. Corresponding revisions are also recommended to the Master Development Plan and Tentative Tract Map.

Master Development Plan

The proposed Master Development Plan (NBR-MDP) provides plans and preliminary layouts for streets and lots, pedestrian and vehicular access ways, open space, parks, and other site features proposed for the project site. The NBR-MDP (Exhibit H of Attachment PC 1) includes detailed design criteria for each land use component to guide the review of subsequent development approvals, such as architectural guidelines and plans for landscaping, landform alteration, trails, roadways and infrastructure, and water management.

Staff has worked with the applicant to incorporate a number of revisions to the NBR-MDP that are intended to address issues and concerns raised by the Commission during the study sessions and at the previous public hearing. These revisions correspond to those recommended for the NBR-PC and are provided in Exhibit H of Attachment PC 1.

Tentative Tract Map

The proposed Tentative Tract Map TTM No. 17308 (Exhibit I of Attachment PC 1) is the implementing subdivision map for the project. The Tentative Tract Map describes the subdivision of the project site into lots for public dedication or conveyance, fee and condominium lots for residential development and conveyance to home-buyers, and/or for financing and conveyance to builders which may also be further subdivided for the development of conventional fee lots, planned developments, and/or condominiums. The Tentative Tract Map also describes the plan for grading and bluff restoration, roadways, infrastructure, and other public improvements to serve the subdivision.

Approval of the proposed Tentative Tract Map in conjunction with the NBR-MDP would permit rough and precise grading, oilfield facilities consolidation, site remediation, habitat restoration, construction of public roadways, drainage and water quality improvements, backbone infrastructure, and dry utilities, including domestic water and sewer facilities throughout the project site. Development of all other proposed facilities and land uses would require recordation of a final tract map.

Staff has prepared an extensive list of recommended conditions of approval (Exhibit B of Attachment PC 1) intended to ensure consistency with other components of the proposed project and compliance with City policies and regulations. These include

conditions corresponding to the standard conditions and mitigation measures identified in the EIR and conditions concerning the timing of improvements.

Section 19.12.070 of the Municipal Code establishes required findings that must be made in order to approve a tentative map. These findings and facts in support of findings are provided in Exhibit C of Attachment PC 1.

The Commission also requested information on the project's phasing and timing of improvements. The timing of roadway improvements would be tied to the issuance of certificates of occupancy for residential units in each village or colony. The timing of these improvements is summarized in Table 1 below.

Table 1 - Roadway Improvements
To be completed Prior to 1st Certificate of Occupancy for South Family Village or Resort Colony (See Condition # 88) 1. West Coast Highway 2. Bluff Road and North Bluff Road from West Coast Highway to 16th Street 3. 15th Street from Bluff Road to project boundary, partial improvements to Monrovia 4. 16th Street from North Bluff Road to project boundaries (partial) 5. Signal at 15th Street and Bluff Road 6. Restripe intersection of Coast Highway and Newport Boulevard
Prior to 1st Certificate of Occupancy for North Family Village and/or Urban Colony (See Condition # 89) 1. North Bluff Road to northern property line of Lot 1 2. 16th Street between North Bluff Road and project boundary (full) 3. 17th Street from North Bluff Road to project boundary 4. Signal at North Bluff Road and 17th Street
Prior to 209th certificate of Occupancy for the North Family Village and/or Colony, whichever is first (See Condition #90) 1. North Bluff Road from Lot 1 to 19th Street 2. 19th Street from North Bluff Road to project boundary

The timing of park and trail improvements would also be tied to the issuance of certificates of occupancies for residential uses. The timing of these improvements is summarized in Table 2 below.

Table 2 - Parks & Trails		
Improvement	***Completion Timeframe***	***Condition #***
South Bluff Park	Prior to 101st Certificate of Occupancy for South Family Village and Resort Colony combined, or prior to 1st Certificate of Occupancy for Resort Inn	92
North Bluff Park, Lot 189	Prior to 1st Certificate of Occupancy for Lot 1, Urban Colony	82
North Bluff Park, adjacent to North Family Village	Prior to 209th Certificate of Occupancy for North Family Village	93
Nature Center Interpretative Park	Prior to Last Certificate of Occupancy for North Family Village	80
Vernal Pool Interpretative Park		
Talbert Trailhead Staging Area Interpretative Park	Prior to 1st Certificate of Occupancy for an dwelling within North Village or Urban Colony	81
Lowland, Upland and Bluff Toe Interpretive Trails	Prior to Last Certificate of Occupancy for North Family Village	83
Pedestrian Bridge	None defined.	--
North Community Park	Determined by Development Agreement	17
Central Community Park		
South Community Park	No completion date defined.	--

Traffic Phasing Ordinance

Chapter 15.40 (Traffic Phasing Ordinance, or TPO) of the Municipal Code requires that a traffic study be prepared and findings be made prior to issuance of building permits if a proposed project will generate in excess of 300 average daily trips (ADT). The TPO traffic study differs from other traffic analyses in the EIR in that, typically, the TPO's focus is on conditions one year after project occupancy, or five years after project approval for larger projects that are not expected to be completed within five years. Because the proposed project is a large project, the TPO requirements direct the TPO traffic analysis to account for full project completion in five years, which in this case is 2016, as a "worst-case" scenario. The TPO traffic study also includes an analysis for the Project phasing of construction.

The traffic study found that one intersection in the City and eight intersections in the City of Costa Mesa would exceed the Level of Service (LOS) "D" standard. The traffic study also identified improvements that would mitigate the impacts to these intersections.

The TPO requires findings that that, based on the weight of the evidence in the administrative record, including the traffic study, that the proposed project complies with the Traffic Phasing Ordinance. These findings and facts in support of findings are provided in Exhibit D of Attachment PC 1.

Affordable Housing Implementation Plan

Chapter 19.54 (Inclusionary Housing) of the Municipal Code requires residential subdivision projects with 51 or more units to prepare an Affordable Housing Implementation Plan (AHIP) that specifies how the development would meet the City's affordable housing goal. As a part of the City's Inclusionary Housing Program, it is the City's goal that an average of 15 percent of all new housing units developed over the five-year Housing Element planning period be affordable to very low, low, or moderate income households.

The Newport Banning Ranch AHIP (Exhibit J of Attachment PC 1) proposes the construction of a minimum of 50 percent of the required affordable housing on the project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

Should the proposed project be approved with 1,375 units, the maximum number of affordable units for each of the following income categories is identified below. The proposed project can satisfy its unit requirements through one income category exclusively or through a combination of the income categories subject to the provisions of the approved AHIP.

- Very Low Income: 5 percent of the total units (69 units); or
- Low Income: 10 percent of the total units (138 units); or
- Moderate Income: 15 percent of the total units (206 units); or
- Some combination of the three income categories.

Very Low Income is defined as households with income from 31 to 50 percent of the County median income adjusted for family size. Low Income is defined as households with income from 51 to 80 percent and Moderate Income is defined as households within incomes equal to or less than 120 percent.

Since the proposed AHIP includes alternatives to on-site construction, Section 19.54.070.D of the Municipal Code establishes required findings that must be made in order to approve the AHIP. These findings and the facts in support of findings are provided in Exhibit E of Attachment PC 1.

Development Agreement

A Development Agreement is proposed between the applicant and the City in order to describe the development rights of and public benefits to be provided by the applicant and to outline the terms for annexation of the property to the City.

As of this writing, the terms of the agreement are still being negotiated by the applicant and the Office of the City Attorney. Therefore, staff is recommending that the public hearing on the Agreement be continued to May 3, 2012.

Fiscal Impact Analysis

Pursuant to City Council Policy D-2, a fiscal impact analysis (Attachment PC 2) of the proposed annexation on City finances and related City services and facilities. The fiscal analysis uses the Newport Beach Fiscal Impact Model to help calculate revenue and cost impacts of the proposed project. The fiscal impact model calculates public service impacts for specific land uses that support the residential population, the employment base and the visitor population in the City. It also calculates the public revenues that each type of land use typically generates for the City, including property taxes, sales taxes and other taxes as well as a variety of user charges and fees.

The fiscal impact analysis concludes that based on the revenue and cost projections, the proposed project would have a net fiscal benefit of nearly $2.0 million per year at full build-out. Although, the City would have a somewhat lower benefit overall due to increased maintenance costs for the community park and for Bluff Road. Thus, the regular tax and fee income generated by the project for the City would be sufficient to cover the operations and maintenance costs associated with providing the full range of City services to the project.

Statement of Overriding Considerations

The EIR identified significant environmental impacts that cannot be mitigated to a less than significant level through the adoption of mitigation measures or project alternatives. Therefore, the City Council will need to decide whether the benefits of the proposed project outweigh any identified significant environmental effects that cannot be mitigated to below a threshold of significance. If the City decides that the overriding considerations, including project benefits, outweigh the unavoidable impacts, then the City is required to adopt a Statement of Overriding Considerations, which states the reasons that support its actions. The City Council would also consider adoption of a Statement of Overriding Considerations as part of their review of the Final EIR and the proposed project. The Commission may consider the following when making a recommendation to the City Council on whether the benefits of the project outweigh its impacts.

1. *Open Space Preservation*

Land Use Element Goal 6.4 provides that if acquisition for open space is not successful, Banning Ranch should be developed as "a high-quality residential community with supporting uses that provides revenue to restore and protect wetlands and important habitats." State bonds, environmental mitigation fees, or other financing mechanisms for the acquisition of Banning Ranch as open space have not been identified to date.

The General Plan recognizes that a residential community may be necessary in order to provide sufficient revenue to preserve the majority of the property as open space.

The proposed project would preserve over 50 percent of the site as open space. The proposed project's Habitat Restoration encompasses approximately 235 gross acres of the project site and will provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. *New public and coastal access*

The project site is privately-owned oil field and inaccessible to the public. The proposed project will provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, access to open space and trails, and a pedestrian bridge to the beach. The proposed project will also provide approximately 475 new public parking spaces in the coastal zone.

3. *Excess parkland dedication and improvement.*

In addition to the restoration and long-term preservation of natural open space and habitat areas, the General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's primary use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The proposed project provides approximately 51 gross acres of public parkland and improvements. As described below, the proposed project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the "Quimby Act") allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. The proposed project would be required to dedicate approximately 15 acres of parkland only. The proposed project will both dedicate land and provide improvements to the following parks and recreational trails. The land that will be dedicated exceeds the amount of land that the City could legally require be dedicated, and the funding of the improvements provides a public benefit that could not be required under the law.

The public parks, recreational and open space provided by the project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 20.8 gross acres (16.9 acres net), up to a maximum of $8,000,000;

- The improvement of the South Community Park in accordance with the Newport Banning Ranch Master Development Plan, totaling 5.0 gross acres;

- The improvement of the Bluff Park and Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres;

- The improvement of a trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately 7 miles of trails throughout the project site; and

- The improvement of coastal public access via a Pedestrian and Bicycle Bridge from the project site across West Coast Highway to the beach.

4. *Comprehensive Oil Field Abandonment*

The project site is an active, operating oil field. In addition, as an active, operating oil field, and as detailed under the General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oil field to implement the habitat and parkland goals of the City's General Plan. The proposed project provides for the consolidation of the existing oil operations into two areas thereby permitting oil field abandonment and clean up to commence on the remainder of the project site in advance of when they would have occurred. The costs of the comprehensive oil field abandonment and remediation is estimated at approximately $30 million – none of which will now have to be funded by the City or the public. In addition, the oil operation consolidation will allow for habitat restoration activities to occur in advance of when it would have absent the proposed project's ability to require consolidation.

5. *Area-wide Water Quality Benefits.*

The proposed project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses, that currently drains through the project site and flows untreated into the project lowland areas and to the Semeniuk Slough, in addition to capturing and treating on-site urban runoff from within the project. The 103-acre Semeniuk Slough is identified in the Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Slough include water quality degradation and sediment build-up. By capturing and treating this urban runoff, the Project will provide significant water quality benefits to the Semeniuk Slough.

6. Circulation Improvements.

The proposed project, through an agreement with the City of Costa Mesa, will fund intersection improvements for intersections in that city. Although not in the City, these traffic improvements will provide benefits to City of Newport Beach residents who use these streets. At build out, the proposed project will provide approximately $4.3 million in contributions to intersection improvements which is more than double the project's fair share requirements based upon the traffic analysis in the DEIR.

7. Public Benefit Fee.

In addition to standard fees and charges the applicant would be required to pay, a public benefit fee for each residential unit constructed on the property will be paid to the City.

8. Net Fiscal Benefits to the City.

The fiscal impact report prepared for the City concluded that, "Based on the revenue and cost projections ... the proposed project would have a net fiscal benefit of nearly $2 million per year at full build out." (Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach, prepared by Applied Development Economics, dated December 29, 2011 at page 16.)\

9. Housing Opportunities.

The Housing Element establishes as a goal: A balanced residential community, comprised of a variety of housing types, designs, and opportunities for all social and economic segments. (Housing Element Goal H2.) The proposed project will provide a wide range of housing types from single family detached to higher density attached and multi-family units that will provide a variety of housing opportunities within a single project site – a feature not available in many other areas of the City or new developments elsewhere in the City due to the limited number of sites and the sizes of parcels available for new residential development. In addition, the proposed project will provide at least 50 percent of its affordable housing requirements on site which could provide greater opportunities for all segments of the City's population to enjoy living on the project site.

10. Fire Station Improvements.

The proposed project will contribute up to $700,000 towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of the station is not completed prior to development of certain areas of the project site. The proposed project will also make available an onsite location for a temporary fire station.

11. Sustainable Design.

In addition to its emphasis on a mix of uses and housing opportunities, the proposed project is designed as a sustainable and green community that provides the benefits of promoting energy efficiency and resource conservation that will combine to reduce the project's greenhouse gas emissions consistent with the State's goals set forth under AB 32. The following project components implement sustainability:

- The proposed project will provide a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the project site and to off-site recreational amenities, such as the beach and regional parks and trails, and will coordinate with the Orange County Transportation Authority to allow for a transit routing through the project site.

- The proposed project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.

- The proposed project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.

- The proposed project will implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.

- The proposed project will exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5 percent.

- The proposed project will require that all residential development incorporate: low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multi-metering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.

- The proposed project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.

- The proposed project will implement remediation and cleanup of the oil field, which includes the ability to recycle and properly dispose on-site oil field materials. Additionally, the treatment and cleaning of impacted soils will be done on-site which significantly reduces the potential export of oil field materials and impacted soils.

- The proposed project will also increase construction waste diversion by 50 percent from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

Environmental Review

An Environmental Impact Report (EIR) SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The EIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation of CEQA (California Code of Regulations, Title 14, Section 15000 et seq.).

Public Notice

Notice of the March 22, 2012 hearing was published in the Daily Pilot, mailed to approximately 6,500 property owners within 1000 feet of the property (300 feet is required by the Zoning Code) and posted at the site a minimum of 10 days in advance of the hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Patrick J. Alford, Planning Manager

Submitted by:

Brenda Wisneski AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Resolution with Findings
- Exh. A. Legal Description
- Exh. B. TTM No. 17308 Conditions of Approval
- Exh. C. Required Findings for TTM No. 17308
- Exh. D. Required Findings for Traffic Study No. TS2008-002
- Exh. E. Required Findings for AHIP No. AH2008-001
- Exh. F. Recommended Statement of Overriding Considerations
- Exh. G. NBR-PC with Recommended Revisions & Errata (under separate cover)
- Exh. H. NBR-MDP with Recommended Revisions & Errata (under separate cover)
- Exh. I. Tentative Tract Map No. 17308
- Exh. J. NBR Affordable Housing Implementation Plan
- Exh. K. Project Boundary

PC 2 Fiscal Impact Analysis

PC 3 Correspondence

Attachment No. PC 1

Draft Resolution with Findings

RESOLUTION NO. ####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL OF GENERAL PLAN AMENDMENT NO. GP2008-008, CODE AMENDMENT NO. CA2008-004, PLANNED COMMUNITY DEVELOPMENT PLAN NO. PC2008-002, MASTER DEVELOPMENT PLAN NO. MP2008-001, TENTATIVE TRACT MAP NO. NT2008-003, AFFORDABLE HOUSING IMPLEMENTATION PLAN NO. AH2008-001, AND TRAFFIC STUDY NO. TS2008-002 FOR A 401-ACRE PLANNED COMMUNITY LOCATED AT BANNING RANCH (PA2008-114)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River and legally described Exhibit A and depicted in Exhibit K requesting approval of a Development Agreement; General Plan Amendment to the Circulation Element; Code Amendment; a Pre-annexation Zone Change; Planned Community Development Plan; Master Development Plan; Tentative Tract Map; Affordable Housing Implementation plan; and Traffic Phasing Ordinance Traffic Study approval.

2. The applicant proposes a planned community for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and the preservation of approximately 252.3 acres of permanent open space.

3. The subject property is located within the Planned Community (PC-25) Zoning District County Zoning Suburban Multi-family Residential (R-4), Local Business Commercial (C-1), Light Industrial (M-1) with Oil Production (O), Sign Restriction (SR), and Floodplain Zone (FP-2) Overlays and the General Plan Land Use Element category is Open Space/Residential Village (OS (RV).

4. The subject property is located within the coastal zone. The Coastal Land Use Plan (CLUP) designates this property as a Deferred Certification Area.

5. Public hearings were held on March 22, 2012, and April 19, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of these meetings was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. A draft Environmental Impact Report (SCH No. 2009031061) (DEIR) has been prepared in compliance with the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.

2. The DEIR was circulated for a 60-day comment period beginning on September 9, 2011, and ending on November 8, 2011. The DEIR, comments, and responses to the comments were considered by the Planning Commission in its review of the proposed project.

3. On the basis of the entire environmental review record, the proposed project will have a less than significant impact upon the environment with the incorporation of mitigation measures, with the exception of the following significant and unavoidable impacts:

   A. Lan d Use and Related Programs. There would be land use incompatibility with respect to long-term noise and night illumination predominately from the Community Park on those Newport Crest residences immediately contiguous to the project site. Though mitigation is proposed, noise impacts would remain significant if the residents of Newport Crest elect not to implement mitigation measures to reduce the increased interior noise levels.

   B. Aesth etics and Visual Resources. The proposed project would introduce nighttime lighting into a currently unlit area.

   C. Transportation and Traffic. The proposed project would have impacts on intersections in the City of Costa Mesa. Implementation of Mitigation Measure MM 4.9-2 would mitigate the project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that the project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

   D. Air Quality. Without mitigation, regional (mass) emissions of oxides of nitrogen (NOx) are forecasted to exceed applicable thresholds in some construction years. Though Mitigation Measure MM 4.10-1 would reduce the emissions to less than significant levels, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured. Therefore, the impacts are found to be significant and unavoidable.

   Long-term operational emissions of criteria pollutants would not exceed the South Coast Air Quality Management District (SCAQMD) mass emissions thresholds from initial occupancy through 2020. However, as project development continues beyond 2020, emissions of volatile organic compounds (VOC) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Therefore, the impacts remain significant and unavoidable.

The proposed project would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O_3).

E. Greenh ouse Gases. The proposed project would emit quantities of greenhouse gases that would exceed the City's 6,000 metric tons of Carbon Dioxide Equivalent (CO_2e) per year significance threshold. The proposed project would make a cumulatively considerable contribution to the global greenhouse gases inventory affecting global climate change.

F. Noise. The increased traffic volumes on 17th Street west of Monrovia Avenue in Costa Mesa would expose sensitive receptors to noise levels that would exceed City of Costa Mesa significance thresholds. Mitigation Measure MM 4.12-5 requires the applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted impact to the residences on 17th Street west of Monrovia Avenue is considered significant and unavoidable.

For portions of the Newport Crest development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the build-out condition. Mitigation Measure MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications but would remain above the 5 decibels (dBA) significance criterion in the General Plan. Mitigation Measure MM 4.12-7 would provide interior noise attenuation but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the project site, the impact would be significant and unavoidable.

Use of construction equipment would result in a substantial temporary increase in ambient noise levels to nearby noise-sensitive receptors in the vicinity of the proposed project. The temporary noise increases would be significant and unavoidable due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities.

4. The mitigation measures identified are feasible and reduce potential environmental impacts to a less than significant level, with the exception of those impacts identified above. The mitigation measures would be applied to the project through the Mitigation, Monitoring, and Report Program.

5. The record supports a Statement of Overriding Considerations pursuant to the California Environmental Quality Act in that the project includes benefits that outweigh the land use, night lighting, traffic, greenhouse gas emissions, and noise impacts of the proposed project.

6. On March 22, 2012, the Planning Commission adopted Resolution No. 1873 recommending to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Draft Environmental Impact Report (SCH No. 2009031061).

7. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. The proposed project is consistent with the goals and policies of the General Plan. The Planning Commission concurs with the conclusions of the consistency analysis of the proposed project with these goals and policies provided in the environmental impact report.

2. The land use incompatibility identified in the DEIR associated with the impacts of vehicular noise from Bluff Road on those Newport Crest residences immediately contiguous to the project site is acceptable because the proposed alignment is consistent with the Circulation Element and the landform and biological resource protection policies of the General Plan.

3. The land use incompatibility identified in the DEIR associated with the impacts on night lighting from the North Community Park on those Newport Crest residences immediately contiguous to the project site is acceptable because it would allow the development of active community park pursuant to the Land Use Element and Recreation Element while furthering biological resource protection policies of the General Plan.

4. Extension of 15th Street west of Bluff Road to West Coast Highway is not needed to accommodate the projected traffic accessing West Coast Highway. Deleting this roadway segment from the Master Plan of Streets and Highways would not result in any inconsistencies between the Circulation Element and other elements of General Plan and would avoid alteration of bluffs and disturbance of Southern Coastal Bluff Scrub vegetation adjacent to West Coast Highway.

5. The certified CLUP designates the Banning Ranch as a Deferred Certification Area due to unresolved issues relating to land use, public access, and the protection of coastal resources. Therefore, no other CLUP policies are directly applicable to the Banning Ranch property.

6. Pursuant to City Council Policy D-2, a fiscal impact analysis of the proposed annexation on City finances and related City services and facilities was prepared. The fiscal impact analysis concludes that based on the revenue and cost projections, the

proposed project would have a net fiscal benefit of nearly $2.0 million per year at full build-out.

7. Findings and facts in support of such findings for the approval of Tentative Tract Map No. NT2008-003 in accordance with Section 19.12.070 of the Newport Beach Municipal Code are provided in Exhibit C.

8. Findings and facts in support of such findings for the approval of Traffic Study No. TS2008-002 in accordance with Section 15.40.030 of the Newport Beach Municipal Code are provided in Exhibit D.

9. Findings and facts in support of such findings for the approval of Affordable Housing Implementation Plan No. AH2008-001 in accordance with Section 19.54.070.D of the Newport Beach Municipal Code are provided in Exhibit E.

10. A recommended Statement of Public Benefits is provided in Exhibit F.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Planning Commission hereby recommends to the City Council approval of:

1. General Plan Amendment No. GP2008-008;

2. Code Amendment No. CA2008-004;

3. Planned Community Development Plan No. PC2008-002, attached hereto as Exhibit G and incorporated herein by reference;

4. Master Development Plan No. MP2008-001, attached hereto as Exhibit H and incorporated herein by reference;

5. Tentative Tract Map No. NT2008-003, attached hereto as Exhibit I and incorporated herein by reference, and subject to the conditions set forth in Exhibit B, which is attached hereto and incorporated by reference;

6. Affordable Housing Implementation Plan No. AH2008-001, attached hereto as Exhibit J and incorporated herein by reference; and

7. Traffic Study No. TS2008-002.

Section 2. The Planning Commission hereby recommends that the City Council adopt a Statement of Overriding Considerations specifically identifying the project benefits identified in Exhibit F that outweigh the land use, night lighting, traffic, greenhouse gas emissions, and noise impacts of the proposed project.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF APRIL, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

Exhibit A

Legal Description

EXHIBIT A
Legal Description

Real property in the unincorporated area of the County of Orange, State of California, described as follows:

PARCEL 1:

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN LOTS "A" AND "B" OF SAID BANNING TRACT, WHICH POINT IS THE POINT OF INTERSECTION OF THE CENTER LINE OF NINETEENTH STREET AND THE NORTHWESTERLY LINE OF THE FIRST ADDmON TO THE NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 26' 55" WEST ALONG THE NORTHERLY LINE OF SAID LOT "B", 3315.29 FEET TO THE NORTHWESTERLY CORNER OF LOT "B" OF SAID BANNING TRACT; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF LOT "B" OF SAID BANNING TRACT, THE FOLLOWING COURSES AND DISTANCES: SOUTH 1 DEGREE 45' WEST 462.00 FEET; THENCE SOUTH 34 DEGREES IS' WEST 462.95 FEET; THENCE SOUTH 6 DEGREES IS' EAST 1058.48 FEET; THENCE SOUTH 19 DEGREES 45' WEST 529.21 FEET; THENCE SOUTH 34 DEGREES 30' WEST 463.08 FEET; THENCE SOUTH 42 DEGREES 45' WEST 397.00 FEET; THENCE SOUTH 4 DEGREES 45' WEST 462.00 FEET; THENCE SOUTH 21 DEGREES IS' WEST 198.50 FEET TO THE SOUTHWEST CORNER OF LOT "B", AS SHOWN ON SAID MAP OF THE BANNING TRACT, WHICH CORNER IS ALSO STATION NO. 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE SOUTH 72 DEGREES 51' 36" EAST 807,47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; THENCE SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; THENCE NORTH 20 DEGREES 06' IS" EAST 539.49 FEET; THENCE NORTH 51 DEGREES 48' EAST 405.76 FEET; THENCE NORTH 74 DEGREES 07' EAST 722.86 FEET; THENCE SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; THENCE SOUTH 27 DEGREES 46' EAST 498.37 FEET; THENCE SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; THENCE SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHInIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST; THENCE NORTH 0 DEGREES 36' 01" WEST ALONG THE SAID PROLONGATION OF WHInIER AVENUE, 3061.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION

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TO NEWPORT MESA TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT, 2706.70 FEET TO THE MOST WESTERLY CORNER OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT; THENCE NORTH 19 DEGREES 01' 55" EAST ALONG THE NORTHWESTERLY LINE OF THE LAST MENTIONED TRACT, 1065.62 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF LOT "B" OF SAID BANNING TRACT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EASTERLY LINE OF THE 300-FOOT STRIP OF LAND FOR SANTA ANA RIVER CHANNEL, AS DESCRIBED IN THE DEED TO THE NEWBERT PROTECTION DISTRICT, RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, WHICH POINT IS NORTH 71 DEGREES 20' EAST 510.47 FEET FROM THE SOUTHWEST CORNER OF SAID LOT "B", WHICH LAST MENTIONED CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE EASTERLY LINE OF SAID 300-FOOT STRIP OF LAND, 660 FEET; THENCE SOUTH 76 DEGREES 35' EAST 660 FEET; THENCE SOUTH 13 DEGREES 25' WEST 660 FEET; THENCE NORTH 76 DEGREES 35' WEST 660 FEET TO THE POINT OF BEGINNING, AS CONDEMNED BY THE CITY OF NEWPORT BEACH IN THE ACTION ENTITLED "CITY OF NEWPORT BEACH, A MUNICIPAL CORPORATION, PLAINTIFF VS. TOWNSEND LAND COMPANY AND OTHERS, DEFENDANTS", BEING CASE NO. 34747 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A CERTIFIED COpy OF THE FINAL JUDGMENT HAVING BEEN RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS OF ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LOT "B" IN SAID BANNING TRACT CONVEYED BY THE TOWNSEND LAND COMPANY TO THE NEWBERT PROTECTION DISTRICT FOR A RIVER CHANNEL, 300 FEET WIDE, BY DEED RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT "B" OF THE BANNING TRACT, SOUTH 84 DEGREES 45' EAST 135.84 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT "B", WHICH CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY SIDE OF SAID 300-FOOT RIGHT OF WAY, 946.75 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 42 DEGREES 45' EAST 38.70 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 34 DEGREES 30' EAST 462.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 19 DEGREES 45' EAST 528.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE STILL ALONG SAID WESTERLY LINE, NORTH 6 DEGREES 15' WEST 723.17 FEET TO A POINT IN THE WESTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY LINE OF SAID RIGHT OF WAY, 607.27 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B";
THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 34 DEGREES 15' EAST 148.48 FEET TO AN ANGLE IN SAID LINE; THENCE NORTH 1 DEGREE 45' EAST 436.44 FEET TO THE NORTHWEST CORNER OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE SOUTH 13 DEGREES 25' WEST 3831.55 FEET TO THE SOUTHERLY LINE OF SAID LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 45' WEST 303.08 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM, THE PORTIONS THEREOF INCLUDED WITHIN A STRIP OF LAND 30 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT WHERE THE EASTERLY BOUNDARY LINE OF THE RANCHO LAS BOLSAS BETWEEN STATIONS 78 AND 79 OF THE SAID BOUNDARY LINE IS INTERSECTED BY THE LINE WHICH BEARS NORTH 13 DEGREES 26' 3D" EAST FROM THE POINT ON THE SOUTH LINE OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER SECTION CORNER OF SAID SECTION, SAID BEGINNING POINT BEING ON THE SURVEYED CENTER LINE OF THE SANTA ANA-ANAHEIM JOINT OUTFALL SEWER; THENCE FROM SAID POINT OF BEGINNING, SOUTH 13 DEGREES 26' 3D" WEST ALONG SAID CENTER LINE TO STATION 187+74.49, BEING THE POINT ON THE SOUTH LINE OF SAID SECTION 18, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 13 DEGREES 26' 3D" WEST ALONG SAID SURVEYED CENTER LINE, 2795.66 FEET TO STATION 215+70.15; THENCE SOUTH 16 DEGREES 27' 3D" WEST ALONG SAID CENTER LINE, 1050.35 FEET TO A

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POINT 15.30 FEET SOUTH 84 DEGREES 45' EAST FROM STATION 68 OF THE RANCHO LAS BOLSAS, TOGETHER WITH THE STRIP OF LAND OF VARYING WIDTHS LYING BETWEEN THE EASTERLY LINE OF THE ABOVE DESCRIBED 3D-FOOT STRIP AND THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SANTA ANA RIVER THROUGH THE NEWBERT PROTECTION DISTRICT, AS CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCELS D3-121.1 AND D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH, AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE WAS RECORDED JANUARY 3D, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RENDERED AUGUST 4, 1965 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED "COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VS. SECURITY FIRST NATIONAL BANK, ETC., AND OTHERS" (CASE NO. 123141), A CERTIFIED COPY OF WHICH ORDER WAS RECORDED AUGUST 5, 1965 IN BOOK 7620, PAGE 215 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT B OF THE BANNING TRACT, AS SHOWN ON A MAP FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT B; THENCE SOUTHERLY ALONG

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THE WESTERLY BOUNDARY OF SAID LOT B, SOUTH 01 DEGREE 45' 00" WEST 462.00 FEET TO RANCHO LAS BOLSAS, STATION 75, AND SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET TO RANCHO LAS BOLSAS, STATION 74, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, SOUTH 06 DEGREES 15' 00" EAST TO THE WESTERLY LINE OF THE STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SANTA ANA, RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE INTERSECTION WITH THAT CERTAIN COURSE HEREINABOVE CITED AS "SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET"; THENCE ALONG SAID CERTAIN COURSE, SOUTH 34 DEGREES 15' 00" WEST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103,106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.
ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, UPON, OVER AND BENEATH THE SURFACE OF SAID LAND, ATALL TIMES TO EXPLORE FOR, EXTRACT AND REMOVE ANY OF SAID MINERALS LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228, AS AMENDED BY THE DEED AND AGREEMENT EXECUTED BY HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665, ALL IN OFFICIAL RECORDS, ORANGE COUNTY.

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN LAND AS DESCRIBED IN PARCEL 1 IN DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, ALSO BEING THE SOUTHWEST CORNER OF LOT "B" OF THE BANNING TRACT, AS SHOWN ON THE MAP ATIACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA, WHICH CORNER IS ALSO STATION 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; NORTH 51 DEGREES 48' EAST 405.76 FEET; NORTH 74 DEGREES 07' EAST 722.86 FEET; SOUTH 45 DEGREES 20 28" EAST 740.97 FEET; SOUTH 27 DEGREES 46' EAST 498.37 FEET; SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE IOO-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF

SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITIIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE FIRST ADDITION TO NEWPORT MESA TRACT RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST, WHICH POINT IS THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 404.46 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THAT CERTAIN STRIP OF LAND 250 FEET IN WIDTH, AS DESCRIBED IN PARCEL 1, ARTICLE II OF SAID DEED RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE ALONG THE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND NORTHERLY LINE OF SAID PARCEL 1, ARTICLE II, THROUGH THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1300.00 FEET, THROUGH AN ANGLE OF 9 DEGREES 36' 54", A DISTANCE OF 218.16 FEET TO A LINE TANGENT THERETO; THENCE NORTH 65 DEGREES 56' WEST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT EAST THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250 FEET DISTANT WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH THE NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT WESTERLY AND NORTHWESTERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET; NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND

300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19,1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY, SAID POINT BEING THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE NORTH 64 DEGREES 06' 50" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK C OF EL MORO TRACT, 16.02 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF CALIFORNIA STATE HIGHWAY; THENCE NORTH 54 DEGREES 02' WEST ALONG SAID HIGHWAY RIGHT OF WAY LINE, 145.48 FEET TO THE CENTER LINE OF SAID 300-FOOT RIVER CHANNEL EASEMENT; THENCE NORTH 13 DEGREES 25' EAST ALONG SAID CENTER LINE, 390.57 FEET TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED DATED DECEMBER 30, 1929 FROM JOSEPH BANNING JR. AND OTHERS, TO JAMES H. MACKLIN, RECORDED JANUARY 29, 1930 IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 74 DEGREES 17' WEST 289.47 FEET TO A POINT IN THE SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF SAID RANCHO SANTIAGO DE SANTA ANA, WHICH POINT IS ALSO THE NORTHWEST CORNER OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 15 DEGREES 43' EAST ALONG THE SAID SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, 119.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION OR PORTIONS OF SAID ABOVE DESCRIBED LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, OR WITHIN THE EXTERIOR BOUNDARY LINES OF GOVERNMENT LOT 1, SECTION 19; GOVERNMENT LOT 1, SECTION 20; AND GOVERNMENT LOT 1, SECTION 29, ALL IN TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE RECORDED JANUARY 20, 1962, BOOK 5993, PAGE 441, OFFICIAL RECORDS, ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.
ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 3:

A STRIP OF LAND 250 FEET WIDE, DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF BLOCK C OF EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COpy OF WHICH

WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS; THENCE SOUTH 64 DEGREES 06' 50" EAST, ALONG THE NORTHERLY LINE OF SAID EL MORO TRACT, 154.24 FEET; THENCE CONTINUING ALONG THE LAST MENTIONED NORTHERLY LINE, SOUTH 60 DEGREES 52' 34" EAST 151.04 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30.00 FEET IN WIDTH, AS SHOWN ON THE MAP OF SAID EL MORO TRACT, SAID POINT BEING IN THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON A MAP FILED IN AND ANNEXED TO THE COMPLAINT IN CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COpy OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTH 78 DEGREES 02' EAST ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, 517.61 FEET; THENCE CONTINUING ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, SOUTH 66 DEGREES 42' 20" EAST 644.09 FEET TO A POINT IN THE NORTHERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY AND NORTHEASTERLY ALONG THE NORTHERLY AND NORTHWESTERLY LINE OF SAID TRACT NO.772, THE FOLLOWING COURSES AND DISTANCES: SOUTH 88 DEGREES 25' EAST 105.91 FEET; NORTH 72 DEGREES 45' EAST 268.62 FEET; NORTH 42 DEGREES 06' EAST 228.36 FEET; NORTH 29 DEGREES 06' EAST 306.31 FEET TO A POINT IN THE SAID CENTER LINE OF THE SANTA ANA RIVER; THENCE ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, THE FOLLOWING COURSES AND DISTANCES: NORTH 20 DEGREES 06' 15" EAST 267.71 FEET; NORTH 51 DEGREES 48' EAST 117.09 FEET; NORTH 74 DEGREES 07' EAST 254.30 FEET; SOUTH 45 DEGREES 20' 28" EAST 298.02 FEET; SOUTH 27 DEGREES 46' EAST 331.04 FEET; SOUTH 13 DEGREES 35' 40" EAST 665.36 FEET; SOUTH 1 DEGREE 38' 25" WEST 1205.19 FEET; SOUTH 10 DEGREES 47' 30" EAST 116.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 19 DEGREES 20' 43" EAST; THENCE ALONG THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: EASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 950.00 FEET, A DISTANCE OF 209.67 FEET; SOUTH 83 DEGREES 18' EAST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 318.26 FEET; SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 216.09 FEET; SOUTH 54 DEGREES 08' 30" EAST 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 950.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 264.46 FEET; SOUTH 70 DEGREES OS' 30" EAST, TANGENT TO SAID CURVE, 527.80 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF LOT D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATIACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1980 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID CALIFORNIA STATE HIGHWAY, NORTH 39 DEGREES 43' 45" EAST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT D OF BANNING TRACT, 265.74 FEET TO A POINT, BEING 250.00 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SAID IOO-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 70 DEGREES OS' 3D" WEST, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, 49.03 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A.E.S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 26 DEGREES 10' 42" WEST; THENCE ALONG THE BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 373.48 FEET, A DISTANCE OF 176.40 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND, NORTH 5 DEGREES 44' 28" WEST 104.32 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY, PARALLEL WITH THE

EXHIBIT A
Legal Description

SAID NORTHEASTERLY AND NORTHERLY LINE OF SAID STATE HIGHWAY, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 70 DEGREES OS' 3~" WEST 376.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 194.87 FEET; NORTH 54 DEGREES 08' 3D" WEST, TANGENT TO SAID CURVE, 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 267.55 FEET; NORTH 65 DEGREES 56' WEST, TANGENT TO THE SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHWESTERLY LINE OF TRACT NO. 772, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06 WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORa TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET, AND NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF SAID EASEMENT 300.00 FEET WIDE, FOR PURPOSE OF MAINTAINING THE SANTA ANA RIVER CHANNEL; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING GENERALLY SOUTHERLY OF THE AGREED BOUNDARY LINE DESCRIBED IN EXHIBIT "E" ATTACHED TO THAT CERTAIN SETTLEMENT AND BOUNDARY LINE AGREEMENT, STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE PORTION OR PORTIONS OF SAID LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, THE PATENT FOR WHICH WAS RECORDED JUNE 28, 1884 IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND AS ESTABLISHED BY SAID HEREINABOVE DESCRIBED SETTLEMENT AND BOUNDARY LINE AGREEMENT, OR WITHIN THE EXTERIOR BOUNDARIES OF LOT 1 OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 10 WEST; LOT 1 OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 10 WEST; AND LOT 1 OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, THE PATENT FOR WHICH LOTS WAS RECORDED APRIL 19, 1893 IN BOOK 1, PAGE 66 OF PATENTS,

RECORDS OF ORANGE COUNTY, CALIFORNIA, OR WITHIN ACCRETIONS OF SAID RANCHO OR SAID LOTS.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE PARCEL OF LAND DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH FINAL ORDER WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THE PORTION INCLUDED WITHIN THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS PARCEL 73170-1 IN THAT CERTAIN FINAL DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 667539, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032786 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 30% INTEREST IN AND TO THE IDLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED FROM SAID LAND LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, AS AMENDED BY THE DEED DATED NOVEMBER 29, 1961 FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 70% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 4:

THOSE PORTIONS OF LOTS C AND D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATIACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, BEING ALSO A PORTION OF LOT 1 OF TRACT NO. 463, AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND A PORTION OF TRACT NO. 2250, AS SHOWN ON A MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

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BEGINNING AT THE MOST EASTERLY CORNER OF TRACT NO. is, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WHICH CORNER IS IN THE CENTER LINE OF SUPERIOR AVENUE, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, AND ALSO IN THE SOUTHEASTERLY LINE OF SAID LOT D IN THE BANNING TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. is, AND ALONG THE SOUTHWESTERLY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, 3691.50 FEET TO A POINT IN THE EASTERLY LINE OF WHITTIER AVENUE, 60 FEET IN WIDTH, AS SHOWN ON SAID MAP OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SOUTHERLY PROLONGATION OF THE SAID EASTERLY LINE OF WHITTIER AVENUE, SAID PROLONGATION BEING THE EASTERLY LINE OF PARCEL 1 AS DESCRIBED IN DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 19S8, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, 3465.51 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE ON A CURVE CONCAVE TO THE SOUTHWEST, 250.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT OF INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250,00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1300.00 FEET, 49.39 FEET; THENCE SOUTH 54 DEGREES 08' 30" EAST, TANGENT TO SAID CURVE, 387.05 FEET TO BEGINNING OF CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, 194.87 FEET; THENCE SOUTH 70 DEGREES OS' 30" EAST, TANGENT TO SAID CURVE, 376.41 FEET TO A POINT IN THE WESTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM THE FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A. E. S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE ALONG THE WESTERLY, NORTHERLY AND NORTHEASTERLY BOUNDARY LINE OF SAID 2.7827-ACRE PARCEL, THE FOLLOWING COURSES AND DISTANCES: NORTH 5 DEGREES 44' 28" WEST 160.43 FEET TO THE MOST WESTERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS NORTH 20 DEGREES 20' 15" WEST; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 450.00 FEET, 235.10 FEET; THENCE NORTH 39 DEGREES 43' 45" EAST, TANGENT TO THE LAST MENTIONED CURVE, 75.42 FEET TO THE MOST NORTHERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS SOUTH 29 DEGREES 3D' 33" WEST; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 730.00 FEET, A DISTANCE OF 130.21 FEET; THENCE SOUTH 50 DEGREES 16' 15" EAST, TANGENT TO THE LAST MENTIONED CURVE, 122.00 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SUPERIOR AVENUE, 60 FEET IN WIDTH, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, WHICH POINT BEARS NORTH 39 DEGREES 43' 45" EAST 35.24 FEET FROM THE MOST EASTERLY CORNER OF LOT 1 IN BLOCK 1 OF SAID TRACT NO. 15; THENCE SOUTH 50 DEGREES 16' 15" EAST 30.00 FEET TO THE CENTER LINE OF SAID SUPERIOR AVENUE; THENCE ALONG THE CENTER LINE OF SAID SUPERIOR AVENUE, NORTH 39 DEGREES 43' 45" EAST 705.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND: THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH

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THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING: THAT PORTION OF LOT 1 AND ALL OF LOT 2 OF TRACT NO. 463 AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF FIFTEENTH STREET WITH THE CENTER LINE OF MONROVIA AVENUE, AS SHOWN ON A MAP RECORDED IN BOOK 65, PAGES 31 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 0 DEGREES 37' 24" EAST, ALONG THE CENTER LINE OF SAID MONROVIA AVENUE, 440.93 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT NO. 463; THENCE NORTH 29 DEGREES 26' 43" WEST ALONG SAID NORTHEASTERLY LINE, 272.61 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID NORTHEASTERLY LINE, 1288.43 FEET TO THE CENTER LINE OF SUPERIOR AVENUE; THENCE SOUTH 39 DEGREES 41' 15" WEST, ALONG SAID CENTER LINE OF SUPERIOR AVENUE, 705.55 FEET; THENCE NORTH 50 DEGREES 18' 45" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN A DEED TO A. E. S. CHAFFEY AND OTHERS, RECORDED IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND THE SOUTHEASTERLY PROLONGATION THEREOF, 152.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 730.00 FEET; THENCE NORTHWESTERLY 130.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 13' 12" TO A POINT IN THE NORTHEASTERLY LINE OF PARCEL 1, AS DESCRIBED IN A DEED RECORDED IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 63 DEGREES 11' 16" WEST 1160.70 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 100.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LAND DESCRIBED IN ANNEXATION NO. 54 TO THE CITY OF NEWPORT BEACH, DECEMBER 30, 1963; THENCE ALONG SAID PARALLEL LINE, NORTH 0 DEGREES 38' 10" WEST 734.93 FEET TO A LINE THAT BEARS SOUTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" EAST 1110.58 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, ANY PORTION INCLUDED WITHIN WHITTIER AVENUE AND SIXTEENTH STREET, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.
ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE LAND DESCRIBED IN THE DEED TO THE CITY OF NEWPORT BEACH, RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237652 OF OFFICIAL RECORDS.

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ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND, AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.
ALSO EXCEPTING THEREFROM ALL THE MINERALS, INCLUDING WITHOUT LIMITATION ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER THE HEREINAFTER DESCRIBED LAND LYING 500 VERTICAL FEET BELOW THE SURFACE OF SAID LAND WAS QUITCLAIM TO ARMSTRONG PETROLEUM CORPORATION, A CALIFORNIA CORPORATION BY AN INSTRUMENT RECORDED MAY 5, 1997 AS INSTRUMENT NO. 19970206789 OF OFFICIAL RECORDS.

APN: 114-170-24, 114-170-43, 114-170-49, 114-170-50, 114-170-52, 114-170-56, 114-170-72, 114-170-73, 114-170-75, 114-170-77, 114-170-79, 114-170-83 and 424-041-04

Exhibit B

TTM No. 17308 Conditions of Approval

Exhibit B
Conditions of Approval
Tentative Tract Map No. 17308

General Conditions

1. City Council approval of Tentative Tract Map No. 17308 is in conjunction with its approval of Development Agreement No. DA2008-003 for the same project (the "DA"). Pursuant to Sections 2.2 and 2.4 of the DA and the terms used therein that are defined in Section 1 of the DA, the "Term" of the DA becomes effective on the "Effective Date" of the DA. Tentative Tract Map No. 17308 and the DA comprise parts of a single integrated action and are not severable from one another. Accordingly, notwithstanding any other provision set forth in Tentative Tract Map No. 17308 to the contrary, in no event shall the owner, lessee, or other occupant or any person or entity holding any interest in the subject property acquire any right to develop or use the subject property as authorized or provided herein unless and until the Effective Date in the DA occurs and the Term of the DA commences. In the event the DA is terminated for any reason before the Effective Date of the DA occurs, including without limitation as a result of the mutual termination of the DA by the Parties thereto, the occurrence of an uncured material default under the DA by either Party and a termination of the DA by the non-defaulting Party, or the failure of the Effective Date of the DA to occur prior to the deadline set forth in the DA, as said deadline may be extended by mutual agreement of the Parties to the DA, then in such event Tentative Tract Map No. 17308 automatically shall become null and void and of no further force or effect, without any need or requirement for the City to schedule any public hearings or take any affirmative action or actions to revoke or rescind the same.

2. Notwithstanding any provision expressly or impliedly to the contrary, in the event of any conflict or inconsistency between any of the terms or conditions of Tentative Tract Map No. 17308 and the DA, the terms and conditions of the DA shall control.

3. The applicant shall comply with all applicable provisions of NBMC Chapter 19.40, General Dedication Requirements.

4. The applicant shall comply with all applicable provisions of NBMC Chapter 15.38, Fair Share Traffic Contribution Ordinance, pursuant to the requirements of the Development Agreement.

5. The applicant shall comply with all applicable provisions of NBMC Chapter 15.40, Traffic Phasing Ordinance (TPO), but not limited to the following conditions:

   a. Pursuant to Section 15.40.030(B)(2) of the Newport Beach Municipal Code, construction of the T PO required traffic mitigation improvements shall be completed no more than 60 months from the date of final approval of the Project (as defined in General Condition 8, below). (PDF 4.9-2)

   b. The traffic study as a part of FEIR SCH No. 2009031061 shall be valid for the duration of the term of the Development Agreement. This approval shall be deemed exercised by the issuance of a grading permit to construct the proposed project.

6. The applicant shall comply with all applicable provisions of NBMC Chapter 15.42, Major Thoroughfare and Bridge Fee Program.

7. The applicant shall comply with all applicable provisions of NBMC Chapter 19.44, General Reservation Requirements, but not limited to the following conditions:
   a. Subdividers are required to reserve sites, appropriate in area and location, for open space, parks, recreation facilities, trails, drainage devices for bluff restoration and protection, water quality management facilities, storm drains, water and sewer facilities, roadways, and other public facilities consistent with Newport Banning Ranch Planned Community Development Plan, Newport Banning Ranch Master Development Plan, and the Newport Banning Ranch Mitigation Monitoring and Reporting Program (MMRP). The requirement is based on the adopted policies and standards for the above listed uses and facilities and the required reservations are in accordance with those policies and standards. (PDF 4.1-1, 4.1-2, 4.1-3, 4.1.-4, 4.6-1, 4.8-1)

8. Tentative Tract Map No. 17308 shall expire 24 months from the date of approval pursuant to NBMC Chapter 19.16.010, which date of approval shall be the date of completion and approval of annexation of the project site to the City of Newport Beach by the Orange County Local Agency Formation Commission (OCLAFCO), as set forth in Government Code Section 56658 and summarized in OCLAFCO's Project Processing Policies and Procedures Manual, unless:

   a. A Final Map is recorded; or

   b. An extension is otherwise granted by the City for the period of time provided for in the Development Agreement pursuant to the provisions of California Government Code 66452.6 (a).

9. The development of the project is subject to compliance with all applicable submittals approved by the City and all applicable City ordinances, policies, and standards, subject to modifications by these Conditions of Approval.

10. Development of the project shall comply with the requirements of the NBR Planned Community Development Plan and be in substantial conformance with the approved NBR Master Development Plan and Tentative Tract Map 17308 dated June 30, 2011. (Except as modified by applicable conditions of approval and the DA.) (PDF 4.1-5, 4.7-1, 4.8-1, PDF 4.9-1, PDF 4.9-3)

11. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise

from or in any manner relate (directly or indirectly) to the City's approval of the Newport Banning Ranch project including, but not limited to, the approval of the Tentative Tract Map No.17308, NBR Master Development Plan No.MP 2008-001, NBR Planned Community Development Plan No. PC 2008-002, General Plan Amendment No. GP2008-008, and/or the City's related California Environmental Quality Act determinations, the certification of the Final Environmental Impact Report SCH No.2009031061, the adoption of a Mitigation Monitoring and Reporting Program, and/or statement of overriding considerations adopted for the project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. The provisions herein shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City, or the City's officers, officials, agents, employees, or representatives.

12. The applicant shall comply with all project design features, mitigation measures, and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the Final Environmental Impact Report SCH No. 2009031061 for the project.

13. The applicant shall have the sole obligation to fund or arrange funding for the planning, design, engineering, construction, supervision, inspection and all other costs associated with site remediation, oil field consolidation, open space and habitat restoration, construction of the Community Park, Bluff Park, Interpretive Parks, and Open Space Interpretive Trails and all public infrastructure, including but not limited to roads, water and sewer facilities, storm drain, and water quality management facilities, to serve residential, resort and commercial development as defined within the NBR Master Development Plan.

14. Within 10 years following the completion of annexation of the project site into the City, all continuing surface oil operations shall be consolidated into Lots 190, 6,7, and 226 comprising the OF land use district as designated in the NBR Planned Community Development Plan. (PDF4.5-1)

15. New development within the project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses. (SC 4.14-7)

16. The applicant shall submit a deposit in an amount acceptable to the Community Development Director for the preparation of documentation necessary to reconcile the NBR General Plan Amendment, NBR-Planned Community Development Plan, the NBR Master Development Plan, and Tentative Tract Map No. 17308 with the Newport Banning Ranch Coastal Development Permit. Documentation shall be in a form acceptable to the Community Development Director and City Attorney, and said document shall be approved by the City prior to issuance of the first grading permit for the project.

17. All improvements to Lots 194-196 (North Community Park) and Lots 231 and 232 shall be constructed by the applicant and approved by the City. Completion of these improvements shall be in accordance with the terms and schedule stated in the Development Agreement.

Prior to Final Map

Note: Multiple final Tract maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions18 through 25 apply to the project area included on the applicable map.

18. Prior to Final Map approval the applicant shall obtain written verification of the availability of sufficient water supply from the City Municipal Operations Department consistent with the requirements of Section 66473.7 (b) of the Subdivision Map Act. The applicant shall provide a deposit of funds as identified by the Director of the Municipal Operations Department in an amount sufficient to cover the costs of any studies required by the Municipal Operations Department as part of the preparation of the written verification of water availability.

19. Prior to Final Map approval, the applicant shall submit for review by the Director of Community Development, and shall obtain the approval of the City Attorney for, Covenants, Conditions and Restrictions (CC&Rs) prepared by an authorized professional and which generally provide for the following:

    a. Creation of a Master Association, and/or Sub-associations, and/or a conservancy for the purpose of providing for control over and maintenance of common area improvements not otherwise offered for dedication to the City, which include but are not limited to the following unless otherwise approved by the Director of Public Works: Community walls and fencing, slopes, open space and open space trails, fuel modification zones, bluff parks including all park facilities, maintenance buildings and offices, trails and pedestrian paths within the bluff parks, interpretive parks, median and parkway landscaping and irrigation, pedestrian paseos and greenbelts, bioswales, common area landscaping, irrigation and sidewalks, exterior lighting, walls and fencing within the interior of the tract, off-street parking areas, trash areas and structures, private alleys, slope drains, sewer laterals, water laterals, private residential

park and recreational facilities within the interior of the project, and reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses.

b. A statement that all homeowners and residents will be provided, upon purchase closing or signing of rental agreement, the information and requirements for water conservation pursuant to NBMC Chapter 14.16, Water Conservation and Supply Level Regulations.

c. A statement that the Master Association and/or responsible Sub-Association will be responsible for funding the City's maintenance of the pedestrian bridge spanning West Coast Highway, if constructed.

d. A statement that all homeowners be provided educational information upon purchase closing and annually after the close of escrow on mobile source emission reduction techniques, including but not limited to, alternative modes of transportation and use of zero or low emission vehicles. As part of this statement provisions shall be made that the Association provide to the Director of Community Development an annual report of conservation educational materials distributed to homeowners. (refer to MM 4.10-11)

e. A statement that all homeowners shall be provided educational information upon purchase closing on the positive benefits of using consumer products with low or no-volatile organic compounds (VOCs) such as paint thinners and solvents.

f. A statement that all homeowners be provided educational information upon purchase closing and annually thereafter regarding the energy saving benefits of using of solar heating, automatic pool and spa covers, and efficient pumps and motors for pools and spas.

g. A statement that all common area yards, pedestrian paseos, bluff parks, interpretive parks, median and parkway landscaping, greenbelts, bioswales, walls and fencing within the interior of the tract, off-street parking areas, fuel modification areas, trash areas, maintenance buildings and office structures, exterior lighting, sewer and water laterals, alleys, slopes, slope drains, reciprocal access areas within the cluster courtyard single family detached homes, multifamily attached homes, the resort inn and commercial uses and private residential park and recreation areas within the interior of the tract are private and shall be maintained by the Master Association, or Sub-Association(s) unless otherwise approved by the Director of Public Works.

h. A statement that the Association shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664).

i. Information to be provided to homeowners on the established setback and height requirements for additions and accessory structures conforming to the requirements of the approved NBR Planned Community Development Plan.

j. A statement that all homeowners and residents within 100 feet of open space areas shall be provided written information upon close of purchase or signing of rental agreement, regarding the applicable requirements of Mitigation Measure MM 4.2-1 regarding the "dark sky" lighting program for the project. (PDF 4.6-4)

k. A statement indicating that Lots 8, 189,191-193,199, 203,224,227,229,233 shall be retained by deed restriction as designated public park in perpetuity and maintained by a Master Association, a Sub-Association, conservancy and/or other approved and appropriate agency, and that no structures development or encroachment shall be permitted within the designated park area except as shown on the Final Map, approved Site Development Review, approved landscape and park improvement plans, or as otherwise approved by the City.

l. Provisions that following recordation of each Final Map, each Association formed for the subdivision shall submit to the Director of Community Development a list of all current Officers of the Association.

m. A statement indicating that proposed amendments to the CC&Rs shall be submitted for review to the Director of Community Development or designee, and shall be approved by the City Attorney prior to the amendments being valid.

n. A statement that the City has the right, but not the obligation, to enforce any of the provisions of the CC&Rs.

o. An agreement between the applicant and the Association that on an annual basis by June 1 of each year reports will be furnished to the Director of Public Works in compliance with the reporting requirements of codes and ordinances adopted by the City with respect to the NPDES program.

p. A reference to the plan for maintenance of fuel modification zones in accordance with the approved Fire and Life Safety Program for the project.

20. Prior to Final Map approval the applicant shall reflect on the Final Map or prepare separate instruments to the satisfaction of the Director of Public Works all public access easements, deed restrictions or other instruments including but not limited to those providing for permanent public access to the open space interpretive trails including the Bluff Toe Interpretive Trail, the Southern Arroyo Interpretive Trail, the Upland Interpretive Trail, and the Lowland Interpretive Trail and those providing City access for maintenance of storm drains. (PDF 4.8-2)

21. Prior to Final Map approval, the applicant shall submit an open space management plan for approval by the Director of Community Development, for the long term funding and management of the open space preserve which includes the right-of-way reservation for 19th Street, Lettered lots A through E, Lettered Lots G through R, and all public interpretive trail easements. The open space management plan shall identify all entities responsible for ownership, management and maintenance of the open space preserve and their credentials which qualify the entity as capable of management and maintenance of the open space preserve and able to implement all applicable mitigation measures identified in the MMRP of the FEIR SCH No. 2009031061. The open space management plan shall describe the method of financing and funding the management and maintenance of the open space preserve in perpetuity. Approval by the City of the long term management plan is a condition precedent to recordation of a final map. (PDF4.6-2) The open space management plan shall include but not be limited to identification of funding, management responsibilities, and maintenance activities for but not limited to the following:

a. Maintenance and periodic repair and replacement of park facilities in the Talbert Trailhead Interpretive Park and Vernal Pool Interpretive Park, all open space interpretive trails, and associated appurtenances including but not limited to landscaping, restrooms, trail routes and surfaces, fences, benches and other facilities.
b. Maintenance of all repaired and restored bluff slopes pursuant to the NBR Bluff Restoration Plan. (PDF 4.3-3)
c. On-going habitat protection, restoration, and maintenance, including on-site supervision of trail and habitat areas by qualified personnel, operation of interpretive trails, signs and displays, and funding for any public outreach programs.
d. Maintenance of drainage systems, water quality management systems, and other devices required to protect on-site habitat and water quality. The drainage system maintenance program shall include a statement that prior to conducting any maintenance activities for the water quality treatment basin located in Lot I, the open space preserve management entity shall post a written notification of temporary trail closure dates and times at key points along the Upland Interpretive Trail to accommodate maintenance vehicles using the right of way adjacent to the trail. The written notice shall be posted at least 48 hours prior to the scheduled maintenance and shall state the hours and duration of the trail closure.
e. Maintenance of fuel modification zones within the open space preserve in accordance with the NBR Fire and Life Safety Program approved for the project.
f. The five year Maintenance and Monitoring Program for all restored habitat areas pursuant to the Standard Vegetation Monitoring Procedures outlined in the project FEIR SCH No. 2009031061. (PDF4.6-3)

22. Prior to Final Map approval, the applicant shall pay all applicable development and Final Map fees associated with but not limited to Community Development Department, Public Works Department, and City Attorney review of CC&Rs, map and plan check, hydrology review, geotechnical and soils reports review, parks improvement plan review, grading plan review, traffic and transportation, and construction inspection.

23. Prior to Final Map approval, the applicant shall submit to the Director of Community Development for review and shall obtain the approval of the City Attorney for, a buyer's notification disclosure form, to be given to all buyers, which indicates the location, if applicable, of any abandoned oil production facility within 10 feet of the residential lot and the existence, operations, and characteristics of continuing oil production activities within the boundaries of the project as well as notification of potential exposure to nuisance, noise, risk of upset and hazards, and/or objectionable odors of continued oil production activities.

24. Prior to Final Map approval for residential, resort, and/or commercial development the applicant shall provide separate labor and material improvement bonds or irrevocable

letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for each, but not limited to, the public and private improvements for the each of the following separately:

a. Street improvements, monuments, sidewalks, traffic signal, striping and signage, trail and park improvements, street lights, sewer systems, water systems, storm drain and water quality management systems, erosion control landscaping and irrigation in public rights of way, private slopes and common area recreational areas, and off-site improvements required as part of the project.

25. Prior to Final Map approval, the applicant shall complete geotechnical trenching and field investigations, consistent with all adopted state codes in effect at the time, by a qualified geologist, and shall submit a geotechnical report for review and approval by the Director of Community Development, to confirm the adequacy of any proposed project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. (MM 4.3-2)

Prior to Recordation of Final Map

Note: Multiple Final Maps may be prepared by the applicant and submitted for approval by the City. Unless otherwise noted, conditions 26. through 32 apply to the project area included on the applicable map.

26. Prior to recordation of the Final Map(s), the applicant shall submit for review, and shall obtain the approval of the County Surveyor for a digitized map pursuant to applicable Orange County ordinance. The applicant shall pay for all costs of said digital submittals, including supplying digital copies to the City of the final County Surveyor approved digital map.

27. Prior to recordation of the Final Map, the applicant shall make an irrevocable offer of dedication of all fire protection access easements consistent with Tentative Tract Map 17308, to the City of Newport Beach.

28. Prior to recordation of the Final Map, the applicant shall submit for review and shall obtain approval of the Director of Public Works for all utility maintenance easements and make an irrevocable offer of dedication of the appropriate easements to the City of Newport Beach.

29. Prior to applicable final map recordation the applicant shall provide documentation of acquisition or option to acquire the full right of way width of North Bluff Road between 16th Street and the southerly boundary of Lot 2 and of 16th Street between North Bluff Road and the easterly boundary of the project as identified on Tentative Tract Map No. 17308.

30. Prior to applicable final map recordation, the applicant shall provide documentation of acquisition or option to acquire adequate right of way width of 15th Street from the easterly project boundary to a point east of the project boundary, as determined by the Public Works Director.

31. Prior to final map recordation the applicant shall provide an irrevocable offer of dedication to the City for the following as identified on Tentative Tract Map No. 17308:

    a. Full right of way for Bluff Road and North Bluff Road from West Coast Highway to the northern boundary of Lot 1, right of way adjacent to the project site at West Coast Highway, and the full right of way for 15th Street, 16th Street, and 17th Street within the project boundaries.
    b. Partial right of way as determined by the Director of Public Works for North Bluff Road from the northern boundary of Lot 1 to 19th Street (from North Bluff Road to the eastern terminus of the existing roadway.)
    c. Lots 231 and 232 (Central Community Park), and Lots 194-196 (North Community Park).

32. Prior to applicable final map recordation the applicant shall establish right way reservations as identified on Tentative Tract Map No. 17308 for the southerly half section of 19th Street from the Santa Ana River to the eastern terminus of the existing roadway.

<u>Prior to Issuance of Grading Permits</u>

Note: Grading permits as noted in this section do not apply to grading activities required for oil field remediation.

33. Prior to the issuance of grading permits, the applicant shall pay any unpaid City administrative costs and unpaid costs incurred by City retained consultants associated with the processing of this application to the City.

34. Prior to issuance of grading permits for improvements permitted by the Director of Community Development to commence pursuant to approval of Tentative Tract Map No. 17308, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Community Development for 100% of estimated grading cost, as prepared by a Registered Civil Engineer and approved by the Director of Community Development.

35. Prior to the issuance of grading permits the applicant shall pay all applicable City fees which may include but is not limited to map and plan check, water connection, sewer connection, hydrology review, geotechnical and soils reports review, grading plan review, traffic and transportation, and construction inspection.

36. Prior to the issuance of grading permits, the City of Newport Beach shall be provided the authority by the County of Orange to issue grading permits in the unincorporated

area of the project site. If said authorization is not provided to the City, prior to issuance of grading permits, the annexation of the unincorporated area of the project site to the City of Newport Beach shall be completed and approved by the OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.

37. Prior to the issuance of grading permits the applicant shall obtain all necessary permits required by the California Coastal Commission pursuant to the requirements of the California Coastal Act.

38. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Community Development that consultation with the U.S. Fish and Wildlife Service has been completed.

39. Prior to the issuance of grading permits within areas subject to the jurisdiction of the California Department of Fish and Game, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 1600 Streambed Alteration Agreement has been obtained.

40. Prior to the issuance of grading permits within areas subject to the jurisdiction of the US Army Corps of Engineers, the applicant shall demonstrate to the satisfaction of the Director of Community Development that a Section 404 permit has been obtained.

41. Prior to the issuance of grading permits within areas subject to the jurisdiction of the Santa Ana Regional Water Quality Control Board, the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Santa Ana Regional Water Quality Control Board has issued a Water Quality Certification pursuant to Section 401 of the federal Clean Water Act.

42. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Community Development that the Santa Ana Regional Water Quality Control Board, the Orange County Fire Authority, and/or the California Department of Oil, Gas, and Geothermal Resources have approved a final Remedial Action Plan for the project.

43. Prior to the issuance of grading permits within Caltrans right of way, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all Caltrans encroachment permits have been obtained for the widening and improvement of West Coast Highway as indicated on Tentative Tract Map No. 17308.

44. Prior to the issuance of grading permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all existing survey monuments are located in the field in compliance with AB 1414 for restoration by the Registered Civil Engineer or Land Surveyor in accordance with Section 8771 of the Business and Professions Code.

45. Prior to the issuance of grading permits the limits of grading shown on Tentative Tract Map No. 17308 must be verified by a Geotechnical Engineer. Grading shall not be permitted to extend beyond the limits as indicated on Tentative Tract Map No. 17308 without approval of the Director of Community Development.

46. Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). (SC 4.4-5)

47. Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials. (SC 4.5-2)

48. Prior to the issuance of any grading permits, the Director of Community Development shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted in within and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. Grading plans shall incorporate contour grading techniques to minimize impacts to existing public view points from West Coast Highway. (PDF 4.2-1) If the applicant submits a grading plan that deviates from the grading shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Director of Community Development, the Director of Community Development shall review the plan for a finding of substantial

conformance. If the Director of Community Development finds the plan not to be in substantial conformance, the applicant shall process a revised tentative map or, if a final map has been recorded, the applicant shall process a new tentative map. A determination of CEQA compliance shall also be required. (SC 4.3-1)

49. Prior to issuance of grading permits the applicant shall provide evidence satisfactory to the Director of Community Development, that the applicant shall provide for monitoring of grading activities to comply with Section 7050.5 of the *California Health and Safety Code*, regarding the discovery of human remains. If human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The designated Native American representative shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then make recommendations to the applicant on the disposition of the human remains. (SC4.13-1)

50. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the applicant, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and applicant, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Director of Community Development. Based on their interest and concern about the discovery of cultural resources and human remains during project grading, a qualified Native American Monitor(s) shall be retained to observe the grading activities for which an archaeological monitor is present. Nothing in this condition precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources. (MM4.13-1)

51. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide written evidence to the Director of Community Development that the applicant has retained a qualified Paleontologist to

observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate. Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains. If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays. If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays. All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum. Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes. (MM4.13-3)

52. Prior to the issuance of the first grading permit and/or action that would allow for project site disturbance, the applicant shall provide written evidence that a paleontological survey be conducted pursuant to the requirements of Mitigation Measure 4.13-4 of the Mitigation Monitoring and Reporting Program of FEIR SCH No. 2009031061.

53. Prior to the issuance of the first grading permit and/or action that would permit project site disturbance, the applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the project. (SC4.14-5)

54. Prior to issuance of applicable grading permits the applicant shall submit for review and approval by the Director of the Municipal Operations Department, a 1"=200' Utilities Master Plan prepared by a Registered Civil Engineer consistent with the NBR Master Development Plan showing all existing and proposed public and private sewer pump stations, force mains, laterals, mains and manholes, domestic water service facilities including gate and butterfly valves, pressure reducing stations, pressure zones, fire hydrants, and meters; storm drain facilities to include storm drain mains, laterals, manholes, catch basins, inlets, detention and retention basins, water quality basins and energy dissipaters, outlets, pipe sizes, pipe types and any other related facilities as identified by the Director of the Municipal Operations Department, fiber optics, electricity, gas and telephone/telecommunications. The Master Utilities Plan shall provide for the following:

    a. All public utilities shall be constructed within dedicated public rights of way and/or easements or as approved by the Director of Public Works.
    b. The water quality basin and diffuser basin within the development as described on lots I and L respectively shall be maintained by the entity identified in the open space management plan. The water quality basin within the Community Park as described on lot 194 shall be constructed as part of the Community Park, offered for dedication to the City as part of the Community Park, and upon acceptance by the City shall be publicly maintained.
    c. Domestic water plans shall be designed to take advantage of existing City of Newport Beach water transmission facilities that connect to the project site to minimize off-site impacts. (PDF4.15-3)
    d. Domestic water plans shall provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines. (PDF 4.15-2)

55. Prior to issuance of applicable grading permits the applicant shall submit a Park and Trails Implementation Plan to be reviewed and approved by the Director of Community Development, Director of Public Works, and Recreation and Senior Services Director. The Park and Trails Implementation Plan shall include at a minimum:
    a. Community Park Improvement Plans.
    b. A project schedule describing the sequencing of construction of park and trail improvements and the timing for the design, construction, and dedication or recordation of public easements of all parks and trails within the project.

56. Prior to issuance of applicable grading permits, the applicant shall submit a construction management and delivery plan for each phase of construction to be reviewed and approved by the Director of Public Works. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan. (SC 2.12-1) The construction management plan shall include, at a minimum, the following:

    a. Construction phasing plan
    b. Parking plan for construction vehicles and plan for equipment storage

c. Construction area traffic management plan for the project for the issuance of a haul route permit. The traffic management plan shall be designed by a registered Traffic Engineer. The traffic management plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The traffic management plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions. The applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the Director of Public Works. Haul operations shall be monitored by the Department of Public Works, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. (SC 4.9-3)

d. A construction and equipment staging area plan which shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.

e. A construction fencing plan to include installation of a six-foot-high screen and security fence to be placed around the construction site during construction.

f. A 24 hour hotline number shall be provided at all construction sites for complaints or questions regarding construction activities. (refer to MM 4.10-9)

g. Construction mitigation measures as required by the Mitigation Monitoring and Reporting Program for FEIR SCH No.2009031061.

h. A statement that all grading and construction shall comply with NBMC Section 10.28.040 (Noise Ordinance). (SC 4.12-1)

i. A statement to requiring construction contractors to sweep paved roads within and adjacent to the project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.

j. A statement that all grading plans and specifications include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 consecutive working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to ¾ inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to

maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least effective when it is at the midpoint between noise source and receptor. If preferred by the applicant or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height. A temporary noise barrier shall not be required when it is demonstrated to the Director of Community Development that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier. (MM 4.12-1)

k. A statement that contractors be required to implement the following measures:
    i. Construction waste diversion will be increased by 50 percent from 2010 requirements.
    ii. To the extent practical, during the oilfield clean-up and remediation process, the contractors will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic. (PDF4.11-5)

l. A statement to be provided to all construction contractors that requires all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
    i. *Clearing and grubbing:* Apply water in sufficient quantity to prevent generation of dust plumes.
    ii. *Cut and fill:* Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
    iii. *Earth-moving activities*: Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
    iv. *Importing/exporting of bulk materials:* Stabilize material while loading to reduce fugitive dust emissions; maintain at least six

inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.

v. *Stockpiles/bulk material handling:* Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have a road bladed to the top to the top of the pile to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.

m. *Traffic areas for construction activities:* Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes. Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:

- Be employed by or contracted with the applicant;
- Be on the site or available on site within 30 minutes during working hours;
- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

(SC4.10-1)

n. A statement that all construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA L_{eq}. Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible. (MM 4.12-2)

o. A statement that contractors shall be required to provide a minimum two week notification to affected residents within 300 feet and the Carden Hall school of the start date, duration, and nature, and noise abatement measures of any grading operation or similar noise generating activity. (MM 4.12-3)

p. A notification for contractors that the operation of large bulldozers, vibratory rollers, and similar heavy equipment is prohibited within 25 feet of any existing off-site residence. (MM 4.12-4)

57. Prior to the issuance of a grading permit for Bluff Road, the applicant shall provide written notice to affected residents of an offer of installing dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The offer of retrofit shall only apply to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA) associated with the Project as determined by a licensed Acoustical Engineer. Improvements would be subject to the approval of the Homeowners Association and condominium unit owners. The applicant shall be responsible for the implementation of the noted upgrades pursuant to the following provisions and guidelines: (i) in order to participate in the program and receive new windows/sliders, each condominium owner must provide written notice to the applicant within 45 days following receipt of the proposed program from the applicant, that the owner wants to participate in the program; (ii) failure to respond within such time period shall mean the owner desires not to participate; (iii) the applicant shall provide the Association with written specifications and a Bid Estimate from a licensed window contractor; (iv) the windows/sliders shall be installed by a qualified and licensed third-party contractor as part of one overall program pursuant to a contract between the Newport Crest Homeowners Association (Association) and such third-party; (v) to ensure architectural compatibility and obtain the Association shall provide written approval of such work prior to the execution of a contract with the contractor and Association; (vi) the total cost of the window/slider replacement, to be reimbursed by the Applicant to the Association for all Owners shall not exceed the total cost identified in the Bid Estimate approved by the applicant; and (vii) provided the applicant receives the reimbursement request from the Association within 60 days following completion of the work, the applicant shall reimburse the Association for the cost of the work within 30 days of the applicant's receipt of a final receipt, bill or invoice from the Association evidencing that window/slider replacement work was completed pursuant to the approved estimate. (MM 4.12-7)

58. Prior to issuance of applicable grading permits for roadway improvements, the applicant shall submit a "dark sky" lighting plan consistent with the requirements of the NBR-PC to be reviewed and approved by the Director of Public Works. The "dark sky" lighting plan shall indicate the location of street lights which may only be utilized at key intersection locations as approved by the Public Works Department. (PDF 4.6-4)

59. Prior to issuance of grading permits, if determined necessary by the Community Development Department Building Division Manager, the applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. (SC 4.3.2)

60. Prior to the issuance of grading permits, the applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the Construction General Permit and submit the above to the State Water Quality Control Board for approval and made part of the construction program. The applicant shall provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. The SWPPP shall detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.

61. Prior to issuance of grading permits, the applicant shall prepare and submit a Final Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Director of Community Development and Director of Public Works. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur. The WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

62. Prior to issuance of precise grading permits for any residential, commercial, resort or park development area the applicant shall commence implementation of the NBR Habitat Restoration Plan. (PDF4.6-2)

63. Prior to the issuance of grading permits, the applicant shall submit a planting plan for the arroyos for review and approval by a qualified biologist designated by the Director of Community Development. The arroyos planting plan shall identify the use of native riparian vegetation consistent with the NBR Master Development Plan, Appendix A, Habitat Restoration Plan. (PDF4.4-4)

64. 62. Prior to issuance of applicable grading permits adjacent to bluff slopes the applicant shall submit for review and approval by the Director of Community Development a Bluff/Slope Restoration Plan that identifies eroded portions of bluff slopes to be repaired and stabilized. The Bluff/Slope Restoration Plan shall include a planting plan utilizing native vegetation that does not require permanent irrigation. (PDF-4.3-3)

<u>Prior to Issuance of Demolition and Building Permits</u>

65. Prior to issuance of building permits for applicable portions of the project, subject to grading permits, site remediation activities consistent with the Final RAP shall be completed to the satisfaction of all state and local agencies with oversight responsibility as identified in the Final RAP.

66. Prior to the issuance of a building permit for the construction of residential and commercial uses, the applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire

Department, the City of Newport Beach Public Library, and City of Newport Beach public parks. (SC 4.14-1)

67. Prior to the issuance of building permits the applicant shall obtain approval of a plan stating that water for firefighting purposes and an all weather fire access road shall be in place before any combustible materials are placed on site.

68. Prior to the issuance of any residential building permit, the applicant shall submit for review and shall obtain the approval of the Director of Community Development, plans indicating the location and type of unit address lighting to be installed.

69. Prior to the issuance of building permits, the applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s). (SC 4.14-3)

70. Prior to the issuance of building permits, the applicant shall pay applicable fees to the Newport-Mesa Unified School District Pursuant to Section 65995 of the *California Government Code* Payment of the adopted fees would provide full and complete mitigation of school impacts. (SC 4.14-6)

71. Prior to the issuance of building permits for any residential unit, the applicant shall pay the City of Newport Beach the applicable portion of a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2, as may be further defined in the DA. The fair share fee shall be based on total number of project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. (MM 4.14-2)

72. Prior to issuance of any demolition permit testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos removal procedures outlined in the South Coast Air Quality Management District's (SCAQMD's) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors' specifications and verified by the Director of Community Development. All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community

Development prior to issuance of the first grading permit. (SC 4.5-1)

73. Prior to issuance of applicable building permits, the applicant shall submit to the Director of Community Development for review and approval, architectural plans and an accompanying noise study that demonstrates that interior noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, project plans and specifications shall include ventilation as required by the California Building Code. (SC4.12-3)

74. Prior to issuance of applicable building permits, the applicant shall submit for review and approval by the City of Newport Beach Police Department, development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the project plans. The applicant shall prepare a list of project features and design components that demonstrate responsiveness to defensible space design concepts. (SC 4.14-4)

75. Prior to the issuance of building permits plans shall be submitted to the satisfaction of the Director of Community Development to include requirements that all contractor specifications include a note that architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. (SC 4.10-2)

76. Prior to the issuance of building permits the applicant shall submit for review and approval by the Director of Community Development building plans designed to meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards. (SC 4.15-3)

77. Prior to the issuance of building permits annexation of the unincorporated area of the project site approved for residential, commercial, visitor serving and community park purposes to the City of Newport Beach shall be completed and approved by the OCLAFCO as set forth in Government Code Section 56658 and summarized in OCLAFCO's Processing Policies and Procedures Manual.

<u>Prior to Issuance of Certificates of Use and Occupancy</u>

78. Prior to issuance of certificates of occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire

Station Number 2 shall be complete and operational at the existing City Hall site at 23300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. (MM 4.14-1) In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated Site Planning Areas, then prior to issuance of building permits for any combustible structure in the above Site Planning Areas, the applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the project limits of disturbance approved as a part of the project such that no new environmental effects would occur. (MM 4.14-3)

79. Prior to issuance of use and occupancy certificates for any residential, resort or commercial use construction of all applicable roadways, parkways, median and median landscaping, sidewalks, intersection street lights, streets, alleys, traffic signals and signage and utilities including but not limited to water, water quality management, sewer, storm drain, fiber optics, gas, electricity, telephone and telecommunications necessary to serve the use shall be completed and operational to serve the use, the extent of which shall be determined by the Director of Public Works and the Director of the Municipal Operations Department.

80. Prior to the issuance of a certificate of occupancy permit for the last residential dwelling unit in the North Family Village, the following park improvements shall be constructed: (i) the Vernal Pool Interpretive Park within Lot F; and, (ii) park improvements for the Nature Center Interpretive Park within Lot 233, CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.

81. Prior to the issuance of the first certificate of occupancy for any residential use in the North Family Village or Urban Colony, the construction of improvements to the Talbert Trailhead Staging Area Interpretive Park ("Talbert Trailhead") within Lot Q shall be completed and public access easements, CC&Rs, deed restrictions or other instrument providing for public access and permanent maintenance for the Talbert Trailhead in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Director of Community Development.

82. Prior to the issuance of the first use and occupancy permit for Lot 1, Urban Colony, the applicant shall construct all improvements to North Bluff Park, Lot 189, including all trail and recreational improvements, and deed restrictions, access easements, or other instruments providing for public access and use of this portion of North Bluff

Park in perpetuity, and including the timing for opening of the facility for public use, shall be recorded to the satisfaction of the Community Development Director.

83. Prior to the issuance of the certificate of occupancy permit for the last residential dwelling unit in the North Family Village, the construction of the Lowland, Upland, and Bluff Toe Interpretive Trails shall be complete, and CC&Rs, deed restrictions, access easements, or other instruments providing for public access and use of the facilities in perpetuity, and including the timing for opening of the facilities for public use, shall be recorded to the satisfaction of the Director of Community Development.

84. Prior to the issuance of certificates of use and occupancy, applicable fuel modification shall be installed, completed, and inspected by the Fire Department. This includes physical installation of features identified in the approved NBR Fire and Life Safety Program (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Official shall provide written approval of completion at the time of this final inspection. If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved.

85. The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections to ensure that the landscape palette will be maintained as approved. (SC 4.14-3)

86. Prior to the issuance of use and occupancy permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that applicable street name signs have been installed.

87. Prior to the issuance of use and occupancy permits the applicant shall demonstrate to the satisfaction of the Director of Public Works that all street improvements damaged during construction have been repaired or replaced.

88. Prior to the issuance of the first certificate of use and occupancy for the South Family Village or Resort Colony, whichever is first, the completion of the following roadways, consistent with the roadway sections indicated on Tentative Tract Map No. 17308:

    a. West Coast Highway improvements along the full project frontage to include median reconstruction, design and installation of the traffic signal

at Bluff Road and West Coast Highway, construction of full roadway improvements including sidewalk along the inland half section, and restriping of the intersection of West Coast Highway and Newport Boulevard to provide for one southbound right turn lane, one shared right turn/ left turn lane, and one left turn lane.

b. Full width right of way improvements for Bluff Road and North Bluff Road from West Coast Highway to 16th Street.
c. Full width right of way improvements for 15th Street from Bluff Road to the point approved by the Director of Public Works where 15th Street tapers to meet road improvements existing at the easterly project boundary.
d. Partial improvements for 15th Street from the easterly project boundary to Monrovia Avenue sufficient to provide at a minimum, a functional two lane roadway as determined by the Director of Public Works.
e. Full improvements if feasible, or partial improvements providing at a minimum a functional two lane roadway as determined by the Director of Public Works, for 16th Street between North Bluff Road and the existing terminus at the easterly project boundary.
f. Construction of a traffic signal at the intersection of 15th Street and Bluff Road.

89. Prior to the issuance of the first certificate of use and occupancy for the North Family Village and/or Urban Colony, whichever is first, completion of the following roadway consistent with the sections indicated on Tentative Tract Map No. 17308:

a. Full width improvement of North Bluff Road from 16th Street to 17th Street.
b. Partial improvement to North Bluff Road from 17th Street to the northern boundary of Lot 1, including establishment of the eastern curb line in a location compatible with implementation of a full Primary Arterial with the extent of remaining improvements to be determined by the Director of Public Works.
c. Full width improvement of 16th Street from North Bluff Road to the easterly boundary of the Project.
d. Full width improvement of 17th Street from North Bluff Road to a point at the easterly boundary of the Project where 17th Street tapers to meet existing off-site improvements as determined by the Director of Public Works.
e. Construction of a traffic signal at the intersection of North Bluff Road and 17th Street

90. Prior to the issuance of the 209th certificate of use and occupancy for the North Family Village and/or Urban Colony whichever is first, the functional completion consistent with the roadway sections indicated on Tentative Tract Map No. 17308 of the following roadways shall be complete:

a. Full width improvement of North Bluff Road from the northern boundary of Lot 1 to 19th Street.
b. Improvements to 19th Street from North Bluff Road to the easterly boundary of the project, as determined by the Director of Public Works.

91. Prior to the issuance of the first certificate of use and occupancy for any residential, commercial, or resort use in the project all applicable master infrastructure improvements identified in the Final SWPPP and WQMP including debris basins, bio-swales, energy dissipaters, drainage pipes, water quality basins and other improvements shall be constructed and the applicant shall provide all necessary dedications, deed restrictions, covenants or other instruments for the long maintenance of the facilities in a manner meeting the approval of the Director of Public Works.

92. Prior to the issuance of the certificate of use and occupancy for the 101st residential dwelling unit in the South Family Village and Resort Colony combined, or prior to the issuance of the first certificate of occupancy for the Resort Inn facility, whichever comes first, the applicant shall complete construction of all improvements to South Bluff Park including all trail and recreational improvements, and deed restrictions, access easements, or other instruments providing for public access and use of the South Bluff Park in perpetuity, and including the timing for opening of the South Bluff Park for public use, shall be recorded to the satisfaction of the City.

93. Prior to the issuance of the certificate of use and occupancy for the 209th residential dwelling unit in the North Family Village, the applicant shall complete construction of all improvements to North Bluff Park adjacent to the North Family Village including all trail and recreational improvements, and deed restrictions, access easements, or other instruments providing for public access and use of the North Bluff Park in perpetuity, and including the timing for opening of the North Bluff Park for public use, shall be recorded to the satisfaction of the City.

94. Prior to issuance of certificates of use and occupancy for Lots 1, 10-88, 128-162, 184, 185, and 187 the applicant shall construct the water quality basin located in Lot I and this facility shall be operational to the satisfaction of the Director of Public Works. (PDF 4.4-2)

95. Prior to issuance of certificates of use and occupancy for Lots 89-125, 163-183, 186 and 188 the applicant shall construct the water quality basin and a diffusing basin located in Lot L and these facilities shall be operational to the satisfaction of the Director of Public Works. (PDF4.4-2)

96. Prior to issuance of certificates of use and occupancy for the resort inn, the applicant shall demonstrate to the satisfaction of the Director of Public Works that the applicant has submitted an application to Caltrans for approval of all required Caltrans permits for the construction by the applicant of the pedestrian bridge spanning West Coast

Highway as indicated on Tentative Tract Map No. 17308. If the applicant receives approval from Caltrans for construction of the pedestrian bridge, the applicant shall subsequently submit improvement plans for review and approval by the Director of Public Works, Director of Community Development and Director of Recreation and Senior Services for the construction of the pedestrian bridge. (PDF4.8-3) Nothing in this condition shall prohibit the City from issuing a certificate of use and occupancy for the resort use in the event that CalTrans does not approve the applicant's request for permit approval for construction of the pedestrian bridge.

Subdivision Improvement Plans

97. All subdivision improvement plans shall identify the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. The BMP's identified for implementation shall demonstrate that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan and Storm Water Pollution Prevention Plan. (PDF4.4-6)

98. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.24 (Subdivision Design), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.

99. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.28 (Subdivision Improvement Requirements), with the exception of the deviations from this Chapter as described on TTM No. 17308 and approved by the Director of Public Works.

100. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with Chapter 19.32(Improvement Plans).

101. Approval of improvement plans shall in no way relieve the applicant or the applicant's engineer of responsibility for the design of the improvements or from any deficiencies resulting from the design, nor from compliance with any tentative map condition of approval.

102. The applicant shall design and/or construct all required onsite and offsite improvements to permanent line and grade in accordance with NBMC Chapter 19.36 (Completion of Improvements).

103. All subdivision improvement plans for arterial roadways within the Project and all off-site City of Newport Beach roadways shall include the use of rubberized asphalt, or

pavement offering equivalent or better acoustical properties in accordance with City standards. (SC4.12-4)

104. All new utility lines to serve the project shall be installed in underground trenches.

105. Intersection design shall be approved by the Director of Public Works and comply with City's sight distance standards.

106. All subdivision improvement plans shall include the use of light emitting diode (LED) lights for street lights.

107. Subdivision improvement plans shall provide for the design and construction of Ethernet traffic signal communication network improvements linking the new traffic signal locations to the existing City traffic signal management system.

108. Subdivision improvement plans for roadway systems within the Project shall be coordinated with the Orange County Transit Authority OCTA and the City to identify locations, as applicable, for bus stops within the internal roadway system. If bus turnout locations are identified during consultation with OCTA, the subdivision improvement plans shall be designed to include the bus turnouts. (PDF 4.11-3)

109. Subdivision improvement plans for Streets A, B, C, E, F, G, I and K shall be designed to incorporate "Green Street" and other Low Impact Development features such as bioswales and bio-cells, canopy street trees, traffic calming features and minimal use of street lighting consistent with the requirements of the NBR Master Development Plan, Appendix D, "Green and Sustainable Program." (PDF4.4-3)

110. All subdivision improvement plans shall include a drainage plan approved by the Director of Public Works and Director of Community Development which is designed to ensure that runoff systems from the Project to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system. (PDF 4.4-5)

111. Prior to approval of improvement plans for the pedestrian/bicycle bridge spanning West Coast Highway, the applicant shall provide separate labor and material improvement bonds or irrevocable letters of credit in a form and amount acceptable to the Director of Public Works for 100% of estimated improvement cost, as prepared by a Registered Civil Engineer and approved by the Director of Public Works, for the construction of the pedestrian bridge.

112. All subdivision improvement plans shall conform to the following Fire Department requirements:
    a. Fire hydrants shall be installed and tested prior to placing any combustible materials on the job site.
    b. Detailed plans of underground fire service mains shall be submitted to the Fire Department for approval prior to installation.

c. Blue hydrant identification markers shall be placed with new hydrants.
d. All weather access roads shall be installed and made serviceable prior to and during time of construction for emergency personnel.
e. Fire apparatus access rods shall be designed, maintained, and identified as per Newport Beach Guideline C.01 Emergency Fire Access and C.02 Fire Lane Identification.
f. All security gates shall have knox locks for after hours emergency personnel access to the construction site.

Release of Financial Security

113. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works and the Director of Community Development that the Project CC&Rs have been approved by the City Attorney and the appropriate Association(s) has been formed.

114. Prior to the release of financial security, the applicant shall demonstrate to the satisfaction of the Director of Public Works that all survey monuments damaged or destroyed are restored.

115. Prior to the release of financial security, the applicant shall submit as-built plans prepared by a Registered Civil Engineer depicting all street, traffic signal, sewer, water, and storm drain improvements and street signage and signage placements, traffic markings and painted curbing, and all other required improvements shall be completed to the satisfaction of the Director of Public Works.

116. Prior to the release of financial security, all domestic water and sewer systems shall be fully tested in the presence of a City staff representative, to verify system performance in accordance with design specifications.

117. Prior to the release of financial security the applicant shall execute an agreement to the satisfaction of the Director of Public Works and the Director of Community Development which designates the maintenance responsibilities for all landscaping and irrigation systems in the Project.

118. Prior to the release of financial security the applicant shall submit as built plans at an appropriate scale to the Director of Recreation and Senior Services showing as-built grading, trails, park improvements, and pedestrian bridge landing areas on both sides of West Coast Highway (if the bridge is constructed).

119. Prior to the release of financial security the applicant shall demonstrate to the satisfaction of the Director of the Municipal Operations Department that all underground public utilities necessary for the construction of residential, resort, park or commercial uses to proceed as indicated on Tentative Tract Map No. 17308 have been completed in accordance with the approved Utilities Master Plan and that the as-built plans for said improvements, prepared by a Registered Civic Engineer have

been submitted and approved by the Director of the Municipal Operations Department.

Exhibit C

Required Findings for TTM No. 17308

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

In accordance with Section 19.12.070 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

A-1. The proposed tentative tract map provides lot configurations consistent with the land uses, densities, and intensities of the Open Space/Residential Village land use designation established by the General Plan.

A-2. The proposed tentative tract map allows the development a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, and active community parklands, with a majority of the property preserved as open space.

A-3. The proposed tentative tract map provides for the development of a cohesive planned community with a connective street system, pedestrian walkways and trails.

A-4. The proposed tentative tract map provides bluff top parks, which sets development back from bluff faces and provides public views of the ocean, wetlands, and surrounding open spaces.

A-5. The arterials and streets on the proposed tentative tract map are consistent with the roadway specifications of the Master Plan of Streets and Highways of the Circulation Element of the General Plan.

A-6. The proposed tentative tract map provides for the dedication of 16.9 acres of community parkland, which exceeds the project's obligation under the Park Dedication Fee Ordinance and contributes towards the 20 to 30-acre community park specified by the Land Use Element and Recreation Element of the General Plan.

Finding:

B. *That the site is physically suitable for the type and density of development.*

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Facts in Support of Finding:

B-1. The project site contains topographic and natural habitat constraints. However, the proposed tentative tract map provides for development that is sited away or buffered from the arroyos and bluffs and wetlands and other habitat areas.

B-2. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.

B-3. The project site is a producing oil field. However, the project site would be remediated and all the existing oil operations will be consolidated into two locations.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

C-1. The design of the subdivision locates the majority of the development in the eastern portion of the project site and adjacent to the developed areas, which preserves larger, intact areas of high value habitat.

C-2. The proposed project would have direct and indirect impacts on habitat that supports special status species. However, the environmental impact report prepared for the project concluded that significant impacts to these habitats can be mitigated to a less than significant level through mitigation measures.

Finding:

D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Facts in Support of Finding:

D-1. There are no designated Alquist-Priolo Fault Zones within the project site and the proposed tentative map provides of all habitable structures to be excluded from fault setback zones.

D-2. While the project site is currently impacted primarily by petroleum hydrocarbons, following testing, no contaminant levels were found to exceed the hazardous concentration levels defined by State and federal guidelines.

D-3. The project site will be remediated and all the existing oil operations will be consolidated into two locations.

D-4. The project is conditioned to comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act.

Finding:

E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

Facts in Support of Finding:

E-1. The project site contains existing public utilities easements. However, the design of the subdivision and the type of improvements proposed present no conflict with these easements. Existing easements will remain in their current designated locations or will be modified to be substantially equivalent to ones previously acquired by the public.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a

subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

F-1. The project site does not contain prime farmland, unique farmland, or farmland of statewide importance and no portion of the project site is covered by a Williamson Act contract.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

G-1. The project is not located in a specific plan area.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Facts in Support of Finding:

H-1. The proposed tentative tract map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.

H-2. Single-family detached residential roofs, commercial building roofs, and HOA-owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

EXHIBIT C
Required Findings
Tentative Tract Map No. NT2008-003

Finding:

I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.

Facts in Support of Finding:

J-1. The Affordable Housing Implementation Plan (AHIP) for the proposed project proposes the construction of a minimum of 50 percent of the required affordable housing on the project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

Finding:

J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

Facts in Support of Finding:

J-1. The City has adequate sewer system capacity to serve the requirements of the proposed project. The proposed project would be able to tie into the existing sewer system without adversely affecting the system or causing any water quality affects or violating existing requirements prescribed by the Regional Water Quality Control Board.

Finding:

K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

Facts in Support of Finding:

K-1. The project site is entirely within the Coastal Zone, but is not located within a certified Local Coastal Program. The City has a certified Coastal Land Use Plan (CLUP), but not a certified Implementation Plan. The CLUP designates the

project site as a Deferred Certification Area; therefore, the policies of the CLUP area not applicable to the project site.

K-2. The proposed subdivision design conforms with the public access and recreation policies of the Chapter Three of the Coastal Act.

a. The proposed project would provide several miles of off-street multi-use public trails, on-street public bike trails, and pedestrian paths for pedestrians and bicyclists.

b. The trails would provide connections to on-site land uses and habitat areas and would connect to the existing regional trail system, other parks, and open space areas.

c. The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach.

d. The public parks, trails, and interpretive areas would be available for active and passive recreation uses by residents and visitors.

e. To facilitate public access, public parking areas will be provided at park and recreational areas and along most streets within the project site.

Exhibit D

Required Findings for Traffic Study No. TS2008-002

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

In accordance with Section 15.40.030 (Traffic Phasing Ordinance) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

A. *That a traffic study for the project has been prepared in compliance with this chapter and Appendix A (NBMC Section 15.40).*

Facts in Support of Finding:

A-1. A traffic study, entitled Traffic Impact Analysis for Newport Banning Ranch in the City of Newport Beach, prepared by Kimley-Horn and Associates, Inc., 2011(traffic study), was prepared for the project in compliance with Municipal Code Chapter 15.40 (Traffic Phasing Ordinance and Appendix A).

A-2. The traffic study analyzed the worst-case scenario where the proposed project would be completed within 60 months, considered in the study as being 2016.

A-3. The traffic study found that the following intersection exceeds the Level of Service (LOS) "D" standard in the City of Newport Beach:

- Newport Boulevard at West Coast Highway (AM LOS E: Project Impact 0.024)

and the following intersections exceed the LOS D standard in the City of Costa Mesa:

- Newport Boulevard at Victoria Street/22nd Street (AM: LOS F; no Project impact)
- Monrovia Avenue at 19th Street (AM: LOS E; Project impact to unsignalized intersection)
- Newport Boulevard at 19th Street (AM: LOS E; Project impact: 0.51)
- Newport Boulevard at Harbor Boulevard (PM: LOS F; Project impact: 0.080)
- Newport Boulevard at 18th Street/Rochester Street (PM: LOS F; Project impact: 0.079)
- Pomona Avenue at 17th Street (PM: LOS E; Project impact to unsignalized intersection)

- Superior Avenue at 17th Street (PM: LOS E; Project impact: 0.165)

- Newport Boulevard at 17th Street (PM: LOS E; Project impact: 0.036)

A-4. The traffic study found the following improvements to the intersection of Newport Boulevard at West Coast Highway would result in the project not causing or making worse an unsatisfactory level of service at this intersection:

- Restripe southbound approach to provide one exclusive right-turn lane, shared right/left-turn lane, and one exclusive left-turn lane on Newport Boulevard.

A-5. The traffic study found the following improvements to the intersections in Costa Mesa would result in the project not causing or making worse an unsatisfactory level of service at these intersections:

- Monrovia Avenue/19th Street: Install signal

- Newport Boulevard/19th Street: Add a second southbound left-turn lane on Newport Boulevard.

- Newport Boulevard/Harbor Boulevard: Add fourth southbound through lane on Newport Boulevard.

- Newport Boulevard/18th Street (Rochester St): Convert southbound right-turn lane to a shared through/right lane on Newport Boulevard.

- Pomona Avenue/17th Street: Install signal.

- Superior Avenue/17th Avenue: Convert westbound approach to provide one left, one shared/left, one through, and one dedicated right-turn lane.

- Newport Boulevard/17th Street: Add fourth southbound through lane and one dedicated northbound right-turn lane.

Finding:

B. *That, based on the weight of the evidence in the administrative record, including the traffic study, one of the findings for approval in Subsection 15.40.030.B can be made:*

Findings for Approval. No project shall be approved pursuant to this chapter unless the Planning Commission, or the City Council on review or appeal, finds that:

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

1. *Construction of the project will be completed within sixty (60) months of project approval; and:*

   a. *The project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection, or*

   b. *The project including circulation improvements that the project proponent is required to make and/or fund, pursuant to a reimbursement program or otherwise, will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection, or*

   c. *The project trips will cause or make worse an unsatisfactory level of traffic service at one or more impacted primary intersection(s) but the project proponent is required to construct and/or fund, pursuant to a reimbursement program or otherwise, circulation improvements, or make contributions, such that:*

      (1) *The project trips will not cause or make worse an unsatisfactory level of traffic service at any impacted primary intersection for which there is a feasible improvement, and*

      (2) *The benefits resulting from circulation improvements constructed or funded by, or contributions to the preparation or implementation of a traffic mitigation study made by, the project proponent outweigh the adverse impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that would, if implemented, fully satisfy the provisions of Section 15.40.030 (B)(1)(b). In balancing the adverse impacts and benefits, only the following improvements and/or contributions shall be considered with the greatest weight accorded to the improvements and/or contributions described in subparagraphs (a) and (b) below:*

         (a) *Contributions to the preparation of, and/or implementation of some or all of the recommendations in, a traffic mitigation study related to an impacted primary intersection that is initiated or approved by the City Council,*

         (b) *Improvements, if any, that mitigate the impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that, if implemented, would satisfy the provisions of Section 15.41.030 (B)(1)(b),*

         (c) *Improvements that mitigate the impacts of project trips on any impacted primary intersection in the vicinity of the project,*

(d) *Improvements that mitigate the impacts of project trips on any impacted primary intersection operating, or projected to operate, at or above 0.80 ICU, or*

d. *The project complies with (1)(b) upon the completion of one or more circulation improvements; and:*

(1) *The time and/or funding necessary to complete the improvement(s) is (are) not roughly proportional to the impacts of project-generated trips, and*

(2) *There is a strong likelihood the improvement(s) will be completed within forty-eight (48) months from the date the project and traffic study are considered by the Planning Commission, or City Council on review or appeal. This finding shall not be made unless, on or before the date of approval, a conceptual plan for each improvement has been prepared in sufficient detail to permit estimation of cost and funding sources for the improvement(s); the improvement(s) is (are) consistent with the circulation element or appropriate amendments have been initiated; an account has been established to receive all funds and contributions necessary to construct the improvement(s) and the improvement is identified as one to be constructed pursuant to the five year capital improvement plan and as specified in Appendix A, and*

(3) *The project proponent pays a fee to fund construction of the improvement(s). The fee shall be calculated by multiplying the estimated cost of the improvement(s) by a fraction. The fraction shall be calculated by dividing the "effective capacity decrease" in the impacted primary intersection attributable to project trips by the "effective capacity increase" in the impacted primary intersection that is attributable to the improvement. The terms "effective capacity increase" and "effective capacity decrease" shall be calculated in accordance with the provisions of Appendix A; or:*

2. *The project is a Comprehensive Phased Land Use Development and Circulation System Improvement Plan with construction of all phases not anticipated to be complete within sixty (60) months of project approval; and*

a. *The project is subject to a development agreement which requires the construction of, or contributions to, circulation improvements early in the development phasing program, and*

b. *The traffic study contains sufficient data and analysis to determine if that portion of the project reasonably expected to be constructed and ready for*

occupancy within sixty (60) months of project approval satisfies the provisions of subsections (B)(1)(a) or (B)(1)(b), and

c. *The Land Use and Circulation Elements of the General Plan are not made inconsistent by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Ordinance, and*

d. *The project is required, during the sixty (60) month period immediately after approval, to construct circulation improvement(s) such that:*

   (1) *Project trips will not cause or make worse an unsatisfactory level of traffic service at any impacted primary intersection for which there is a feasible improvement,*

   (2) *The benefits resulting from circulation improvements constructed or funded by, or contributions to the preparation or implementation of a traffic mitigation study made by, the project proponent outweigh the adverse impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that would, if implemented, fully satisfy the provisions of Section 15.40.030 (B)(1)(b). In balancing the adverse impacts and benefits, only the following improvements and/or contributions shall be considered with the greatest weight accorded to the improvements and/or contributions described in subparagraphs (a) or (b):*

      (a) *Contributions to the preparation of, and/or implementation of some or all of the recommendations in, a traffic mitigation study related to an impacted primary intersection that is initiated or approved by the City Council,*

      (b) *Improvements, if any, that mitigate the impact of project trips at any impacted primary intersection for which there is (are) no feasible improvement(s) that, if implemented, would fully satisfy the provisions of Section 15.40.030 (B)(1)(b),*

      (c) *Improvements that mitigate the impacts of project trips on any impacted primary intersection in the vicinity of the project,*

      (d) *Improvements that mitigate the impacts of project trips on any impacted primary intersection operating, or projected to operate, at or above 0.80 ICU; or*

3. *The Planning Commission, or City Council on review or appeal finds, by the affirmative vote of five-sevenths (5/7) of the members eligible to vote, that this*

chapter is inapplicable to the project because the project will result in benefits that outweigh the project's anticipated negative impact on the circulation system;

Facts in Support of Finding:

B-1. The proposed restriping the southbound approach of Newport Boulevard at West Coast Highway to provide a right-turn lane, shared right/left turn lane and left-turn lane is an improvement identified in the Circulation Element of the General Plan, and therefore a feasible improvement under the Traffic Phasing Ordinance. The conditions of approval require the restriping occur in the early phase of development, upon issuance of a certificate of occupancy for the first building constructed in the South Family Village or Resort Colony. The traffic study determined, based on sufficient data and analysis, that the proposed project under a worst-case scenario of full build-out by 2016, when taken together with the circulation improvement, will not cause nor make worse an unsatisfactory level of traffic service at Newport Boulevard and West Coast Highway.

B-2. The proposed project does not result in an inconsistency between the Land Use Element and the Circulation Element of the General Plan by the impact of project trips (including circulation improvements designed to mitigate the impacts of project trips) when added to the trips resulting from development anticipated to occur within the City based on the Land Use Element of the General Plan and Zoning Code. The development included in the proposed project is consistent with the General Plan. Off-site mitigation improvements proposed within the City of Newport Beach, are also included in the Circulation Element.

B-3. The proposed project meets the requirements for a Comprehensive Phased Land Use Development and Circulation System Improvement Plan as the project is subject to conditions of approval and a development agreement which requires the construction of, or contributions to, circulation improvements early in the development phasing program.

B-4. Based on the weight of the evidence in the administrative record, including the traffic study and the conditions of approval, all of the findings for approval in Section 15.40.030.B.2 can be made with respect to the required mitigation measures within Newport Beach.

B-5. Based on the weight of the evidence in the administrative record, including the traffic study, the finding in Section 15.40.030.B.2.b cannot be made with respect to the impacted intersections identified in Costa Mesa because the City cannot enforce mitigation measures outside its jurisdiction.

B-6. Based on the public benefits outlined in the Statement of Overriding Considerations and included in the conditions of approval, the proposed project will result in benefits that outweigh the project's impact on the circulation system

EXHIBIT D
Required Findings
Traffic Study No. TS2008-002

Finding:

C. *That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Facts in Support of Finding:

C-1. The traffic study determined, based on sufficient data and analysis that the proposed project under a worst-case scenario of full build-out by 2016, when taken together with the circulation improvement, will not cause nor make worse an unsatisfactory level of traffic service at Newport Boulevard and West Coast Highway.

C-2. Mitigation measures require that the applicant make best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa.

Exhibit E

Required Findings for AHIP No. AH2008-001

EXHIBIT E
Required Findings
Affordable Housing Implementation Plan No. AH2008-001

In accordance with Newport Beach Municipal Code Section 19.54.070.D (Inclusionary Housing), the following findings and facts in support of such findings are set forth:

Finding:

A. *The purpose of this chapter (Chapter 19.54) would be served by the implementation of the proposed alternative.*

Facts in Support of Finding:

A-1. The applicant has submitted an Affordable Housing Implementation plan (AHIP) that contains alternative methods to on-site construction of affordable units.

A-2. The AHIP proposes the construction of a minimum of 50 percent of the required affordable units on the project site. The remaining affordable housing obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication for affordable housing; or any combination these methods.

A-3. The AHIP serves the purpose of the Inclusionary Housing Ordinance by providing a range of strategies, including on-site new construction, off-site new construction and rehabilitation of existing units, payment of in-lieu fees, and/or land dedication to provide a variety of housing types and opportunities for all social and economic segments, including very low-, low-, and moderate-income households.

Finding:

B. *The units provided are located within the City and are consistent with the requirements of this chapter [Chapter 19.54].*

Facts in Support of Finding:

B-1. The project site is proposed to be annexed to the City and the project cannot be implemented unless the annexation occurs.

B-2. The AHIP requires all affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, to be located within the boundaries of the City of Newport Beach.

B-3. The AHIP complies with the affordability requirement of Section 19.54.040.A of the Newport Beach Municipal Code by providing that 15 percent of all new housing units constructed by the project be affordable to very low, low and

moderate income households. Section 19.54.040.A.1 provides that a lower percent of affordable units may be approved as part of an AHIP, if the project includes units for very low-income households. The AHIP provides that the affordable units be comprised of either 5 percent Very Low Income or 10 percent Low Income or 15 percent Moderate Income or a combination of all of these income levels.

B-4. The AHIP requires all affordable units provided will be restricted, as enforced though a Affordable Housing Implementation Agreement with the City, to ensure that the unit remains affordable to very low-, low-, or moderate-income households.

B-5. Affordable Housing Implementation Agreements will be executed and recorded at each phase of development for affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid.

B-6. The AHIP requires that renovation of existing off-site units to affordable units to comply with the requirements of Section 19.54.070.B of the Newport Beach Municipal Code.

B-7. The AHIP requires that any land dedications for affordable housing to comply with requirements of Section 19.54.070.C of the Newport Beach Municipal Code.

B-8. The AHIP provides that the affordable units provided will be restricted for a period of not less than 30 years.

Finding:

C. It would not be feasible or practical to construct the units on site.

Facts in Support of Finding:

C-1. The AHIP requires that a minimum of 50 percent of the required affordable units be construction on site.

C-2. The project site is constrained by the topography and sensitive habitat areas. Furthermore, policies of the General Plan require that a majority of the project site be preserved as open space. Therefore, the project site has limited area for residential development.

C-3. Implementation of the AHIP will be evaluated at each development phase which will include consideration of off-site affordable units, dedication of land or the payment of in-lieu fees. The conclusion of this evaluation will be subject to an Affordable Housing Implementation Agreement between the applicant and the City of Newport Beach.

Exhibit F

Recommended Statement of Public Benefits

EXHIBIT F

NEWPORT BANNING RANCH PROJECT
STATEMENT OF PUBLIC BENEFITS

The Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch project identified several significant impacts of the project which could not be reduced to less than significant. CEQA requires that where impacts cannot be reduced to less than significant, the lead agency must identify the "specific economic, legal, social, technological, or other considerations," against which the unavoidable adverse environmental impacts are considered in deciding whether to approve the project. (CEQA Section 21081 and CEQA Guideline Section 15093.) Should the City Council determine to approve the Newport Banning Ranch project, it must adopt findings as required by CEQA, including a Statement of Overriding Considerations.

The draft Findings and Statement of Overriding Considerations will be prepared and provided to the City Council for its consideration. However, to understand the project benefits which may considered in weighing the significant effects of the project, a preliminary list of project benefits and considerations is presented for review. This list should be considered a preliminary draft which may be subject to change prior to City Council consideration.

1. Long-term protection of over 50% of the project site as natural open space and habitat consistent with the City's General Plan.

The City's General Plan Policy LU 3.4 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region, to enhance wetlands and other habitats and provide parkland amenities to serve nearby neighborhoods. In order to implement this policy, however, LU 6.3.2 recognizes the need to obtain sufficient funds through private fundraising, State bonds, environmental mitigation fees, or other financing mechanisms, none of which have been identified to date. As the General Plan acknowledges, "due to the significant cost of purchasing the site and habitat restoration, a large amount of revenue would need to be generated to help fund preservation of the majority of the property as open space." (Housing Element at 5-48.)

Consistent with General Plan Policy LU 3.4, the project will implement a comprehensive Habitat Restoration Plan that encompasses approximately 235 gross acres of the project site and will provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. New public and coastal access will be provided.

The project will make available to the public a site that has been privately-owned, and closed to the public since the 1940s, and will provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, access to open space and trails, and a pedestrian bridge to the beach. The

project will also provide approximately 475 new public parking spaces in the coastal zone.

3. **Dedication and improvement of land for public park, recreational, and open space purposes in excess of the requirements of California law and City ordinances.**

In addition to the restoration and long-term preservation of natural open space and habitat areas described above in #1, above, the City's General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's primary use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The project provides approximately 21 gross acres of public parkland and improvements. As described below, the project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the "Quimby Act") allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. Based on the number of dwelling units proposed, the project would be required to dedicate approximately 15 acres of parkland only. The Newport Banning Ranch project will both dedicate land and provide improvements to the following parks and recreational trails.

The public parks, recreational and open space provided by the project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 20.8 gross acres (16.9 acres net);

- The improvement of the Bluff Park and Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres;

- The improvement of a trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately 7 miles of trails throughout the project site; and

- The improvement of coastal public access via a Pedestrian and Bicycle Bridge from the project site across West Coast Highway to the beach.

4. **Comprehensive Oil Field Abandonment Which Expedites Habitat Restoration and Protection.**

The Newport Banning Ranch property is an active, operating oil field. In addition, as an active, operating oil field, and as detailed under the City's General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oil field to implement the habitat and parkland goals of the City's General Plan. The project provides for the consolidation of the existing oil operations into two areas thereby permitting oil field abandonment and clean up to commence on the remainder of the project site in advance of when they would have occurred. The costs of the comprehensive oil field abandonment and remediation is estimated at approximately $30 million – none of which will now have to be funded by the City or the public. In addition, the oil operation consolidation will allow for habitat restoration activities to occur in advance of when it would have absent the project's ability to require consolidation.

5. **Provision of Area-wide Water Quality Benefits.**

The project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses, that currently drains through the project site and flows untreated into the project lowland areas and to the Semeniuk Slough, in addition to capturing and treating on-site urban runoff from within the project. The 103-acre Semeniuk Slough is identified in the City's Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Slough include water quality degradation and sediment build-up. (Coastal Land Use Plan at 4-15 and 4-16.) By capturing and treating this urban runoff, the Project will provide significant water quality benefits to the Semeniuk Slough.

6. **Net Fiscal Benefits to the City.**

The fiscal impact report prepared for the City concluded that, "Based on the revenue and cost projections ... the project would have a net fiscal benefit of nearly $2 million per year at full build out." (Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach, prepared by Applied Development Economics, dated December 29, 2011 at page 16.)

7. **Provide a Variety of Housing Opportunities within the City Consistent with the City's General Plan.**

The City's Housing Element establishes as a goal: A balanced residential community, comprised of a variety of housing types, designs, and opportunities for all

social and economic segments. (Housing Element Goal H2.) The project will provide a wide range of housing types from single family detached to higher density attached and multi-family units that will provide a variety of housing opportunities within a single Project site – a feature not available in many other areas of the City or new developments elsewhere in the City due to the limited number of sites and the sizes of parcels available for new residential development. In addition, the project will provide at least 50% of its affordable housing requirements on site which will provide greater opportunities for all segments of the City's population to enjoy living on the project site.

8. Fire Station Improvements.

The project will contribute up to $700,000 towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of a station is not completed by the City prior to development of certain areas of the project site, the project will also make available an onsite location for a temporary fire station.

9. Sustainable Design.

In addition to its emphasis on a mix of uses and housing opportunities, the Newport Banning Ranch Project is designed as a sustainable and green community that provides the benefits of promoting energy efficiency and resource conservation that will combine to reduce the project's greenhouse gas emissions consistent with the State's goals set forth under AB 32. The following Project components implement sustainability:

- The project will provide a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the project site and to off-site recreational amenities, such as the beach and regional parks and trails, and will coordinate with the Orange County Transportation Authority to allow for a transit routing through the project site.

- The project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.

- The project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.

- The project will implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.

- The project will exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5%.

- The project will require that all residential development incorporate: low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multimetering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.

- The project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.

- The project will implement remediation and cleanup of the oil field, which includes the ability to recycle and properly dispose on-site oil field materials. Additionally, the treatment and cleaning of impacted soils will be done on-site which significantly reduces the potential export of oil field materials and impacted soils.

- The project will also increase construction waste diversion by 50% from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

Exhibit G

NBR-PC with Recommended Revisions &
Errata (under separate cover)

EXHIBIT G
NBR Planned Community Development Plan Revisions and Errata

Page 2-2
Delete the word "bars" from Section 2.2.1.3 as follows:

2.2.1 Planned Community Districts

3. Visitor-Serving Resort/Residential District, to allow for a maximum 75-room resort inn to include ancillary uses such as restaurants ~~and bars~~, spas, fitness centers, meeting and banquet facilities, retail shops, and other similar complementary visitor-serving commercial uses or free standing visitor serving retail uses without a resort inn component. This district also allows for resort-oriented residential units of up to 40.0 dwelling units per gross acre if developed in conjunction with the resort inn. In the event a resort inn is not developed this land use district allows the development of residential land uses of up to 9.0 dwelling units per gross acre within the entire district, with or without visitor-serving commercial uses or visitor serving commercial uses alone.

Page 2-4
Change the acreage assigned to Community Park as follows:

2.4.1 Community Park District (CP)

Approximately ~~26.8~~ 21.8 gross acres designated as CP shall be developed as a public Community Park as part of the Project and offered for dedication to the City to serve the active recreational needs of the Project residents and the community at large.

Page 2-4
Change the acreage assigned to Bluff Park as follows:

2.4.2 Bluff Park District (BP)

Approximately ~~20.9~~ 25.9 gross acres are designated as BP to serve as a passive recreational area and a buffer between the Visitor-Serving Resort/Residential District and Open Space Districts.

Exhibit 2-1 Planned Community Development Plan
Change the land use designation for 5.0 acres of Community Park (southerly CP) to Bluff Park.

Exhibit 2-2 Planned Community Development Table
Change the acreage designated as CP from 26.8 acres to 21.8 acres.
Change the acreage designated as BP from 20.9 acres to 25.9 acres.

Page 2-5
Add the following text to Section 2.5, Visitor Serving Resort/Residential District (VSR/R), first paragraph as follows:

The purpose of the Visitor-Serving Resort/Residential District is to designate approximately 11.3 gross acres to allow for development of a resort inn and resort oriented residential uses within the NBR-PC. In the event a resort inn is not developed in this land use district, the NBR-PC allows for development of residential uses and/or visitor serving commercial uses within the land use district. Uses allowed within the VSR/R District include the following:

EXHIBIT G
NBR Planned Community Development Plan Revisions and Errata

Page 2-5
Delete the words "and bars" and add the following text to the first paragraph of Section 2.5.1 as follows:

1. Resort Inn and Resort Oriented Residential Uses

A resort inn ~~of up to~~ with a maximum of 75 overnight accommodations (guest rooms) with a lobby and related guest areas, along with support commercial uses ancillary to a resort, such as, restaurant(s), ~~and bars~~ gift and sundry shops, business center(s), fitness center(s), spa/salon/treatment rooms, swimming pools and recreation facilities, banquet and meeting rooms, areas for food and beverage preparation, administrative offices, housekeeping areas, maintenance areas, and employee facilities. Ancillary commercial uses are those uses customary and proportional to the resort. ~~Visitor serving~~ Commercial uses ~~included as part of~~ ancillary to resort inn development shall not be counted as part of the maximum 75,000 square feet of commercial area permitted within the NBR-PC.

Page 2-5
Add the following text to Section 2.5.3 referencing the NBR-PC provisions for transfer of residential dwelling units among residential districts as follows:

3. Residential Uses

~~Up to~~ In the event a resort inn is not developed in the VSR/R district, development of a maximum of 100 conventionally-owned residential dwelling units is allowed pursuant to the provisions Section 4.18, "Transfer of Residential Dwelling Units," of the NBR-PC.~~, in the event a resort inn is not developed in the VSR/R district~~. These residential dwelling units shall be counted as part of the maximum 1,375 residential dwelling units permitted within the NBR-PC.

Page 2-5
Add the following text to Section 2.5.4 referencing the NBR-PC provisions allowing for transfer of visitor serving commercial uses to the VSR/R district and delete "bars" as a visitor serving commercial use:
4. Visitor Serving Commercial Uses
In the event a resort inn is not developed in the VSR/R district, development of visitor-serving commercial uses independent of a resort ~~use~~ inn ~~such as~~, to include but not limited to restaurant(s), ~~and bars,~~ gift and sundry shops, business centers, fitness centers, spas and salons, swimming pools and recreation facilities and similar uses are permitted subject to the provisions of Section 4.19, "Transfer of Commercial Area from MU/R District to VSR/R District," of the NBR-PC. ~~This type of~~ All visitor serving commercial use developed independently of a resort inn shall be counted as part of the maximum 75,000 square feet of commercial area permitted within the NBR-PC.

Page 3-1, Add the following text to the last sentence of the second paragraph of Section 3.2.1, "Oil Operations," as follows:

All surface oil production facilities located in areas outside of the OF District in existence after the effective date of the NBR-PC shall be legal non-conforming structures, ~~and~~ subject to NBMC Chapter 20.38, "Nonconforming Uses and Structures," ~~and subject solely to the provisions of NBMC~~ Sections 20.38.010 through 20.38.050 ~~of Chapter 20.38~~ and may continue for a

maximum period of ten years following completion of annexation of the unincorporated County areas of the Project Site to the City .

Page 3-3
Add the following requirement:
Retaining walls over 8 feet in height shall incorporate strategies to visually soften and/or minimize their appearance from public views. Strategies for visual softening may include the use of stepped retaining walls, the use of crib walls, and/or landscape screening.

Page 3-4
Delete the following text from Section 3.3 Landscape Regulations:

~~5. The design and improvement of all developer-installed public parks, including landscape and irrigation plans, within the Project Site shall be subject to approval of a Site Development Review by the City pursuant to Section 4.5 of the NBR-PC, "Site Development Review."~~

Page 3-12
Revise Section 3.9.7, "Legal Non-Conforming Uses, "as follows:

3.9.7 Legal Non-Conforming Uses

Any use within the Project Site lawfully existing at the time of the effective date of the NBR-PC including, without limitation, surface and subsurface oil and natural gas production operations, maintenance and operation of existing easements and pipelines, surface leases for storage yards, and other oil-related buildings, structures, and maintenance areas shall be considered legal non-conforming uses and may be continued subject to NBMC Chapter 20.38.010 through 20.38.050, "Nonconforming Uses and Structures," for up to ten years following the completion of annexation of areas located in the unincorporated County to the City, notwithstanding any omission of a particular such use in Table 3-1, "Allowable Uses." ~~Legal non-conforming uses are not permitted to be expanded.~~

Pages 3-14 and 3-15
Revise Table 3-1, Allowable Uses as follows:

1. Delete Bars and Nightclubs as conditionally permitted uses in the MR/R and VSR/R districts.
2. Delete Breweries, micro as a conditionally permitted use in the VSR/R district.
3. Delete Residential Care Facilities 6 or fewer unlicensed as a conditionally permitted use in the RL, RL/M and RM districts.
4. Delete Nightclubs as a conditionally permitted use in the MU/R and VSR/R districts.

Page 4-5
Revise Section 4.4.6, "Requirement for Site Development Review" as follows:

~~4.4.6 Requirement for Site Development Review~~

4.4.6 Development Activities Pursuant to Approved MDP and Recordation of Final Map

4.4.6.1 Activities Subject to Community Park Improvement Plan Approval

The following development activities are permitted pursuant to approval of the MDP for the Project Site, subject to recordation of a final subdivision map, approval of a Community Park Improvement Plan, and approval of all required permits from local, State (including Coastal Commission), and Federal agencies:

1. Construction of public park and recreational facilities in the CP district.

4.4.6.2 Activities Subject to ~~Requirement for~~ Site Development Review Approval

The following development activities are permitted pursuant to approval of the MDP for the Project Site subject to recordation of a final subdivision map, City approval of Site Development Review, as described in Section 4.5, "Site Development Review," of the NBR-PC, , and approval of all required permits from local, State (including Coastal Commission), and Federal agencies:

1. Development of land uses within the Residential Districts, Visitor Serving Resort and Residential District, Mixed Use and Residential District, and ~~Park and Recreation District~~. BP and IP Districts.

Page 4-7
Add a new Section 4.6, Community Park Improvement Plan, and renumber subsequent sections accordingly.

4.6 Community Park Improvement Plan

4.6.1 Purpose and Intent

The purpose of Community Park Improvement Plan is to provide for the review of specific park design prior to construction of public park and recreational facilities in the CP district.

4.6.2 Applicability

Approval by the City of a Community Park Improvement Plan is required prior to construction activity within the CP District of the NBR-PC as described in Section 4.4.6 "Development Activities pursuant to Approved MDP and Recordation of Final Map."

4.6.3 Review and Approval

A Community Park Improvement Plan shall include, a comprehensive site plan for the community park, floor plans and elevations for any community facility buildings and restrooms, landscape and irrigation plans, lighting plans, plans for play fields and passive recreation areas, parking layout, and other public facilities to be located within the Community Park, grading plans, infrastructure improvement plans, and any other

information deemed necessary for review by the Director of Recreation and Senior Services. The Community Park Improvement Plan shall be reviewed and approved by the Director of Recreation and Senior Services.

Page 4-8
Revise the last paragraph in Section 4.8 "Coastal Development Permit ," as follows:

When any CDP(s) or MCDP is approved by the Coastal Commission that varies from the approval granted by the City for the same application, ~~said CDP(s) or MCDP shall be resubmitted and reviewed by the City as a new application~~. the applicant shall submit a request for determination of substantial conformance to the Director. The Director has the authority to refer any request for substantial conformance to the City Council for consideration and final action on the request.

Page 4-14 through 4-17
Delete Section 4.16," Land Use Acreage Refinement, Transfer of Residential Dwelling Units, and Transfer of Commercial Area," Delete Section 4.17, "Minor Modifications," as follows
:

~~4.16 Land Use Acreage Refinement, Transfer of Residential Dwelling Units, and Transfer of Commercial Area~~

~~Land use acreage refinements, transfer of planned residential dwelling units, and transfer of commercial square footage from that described in Exhibit 2-2, "Planned Community Development Table," may be approved within the NBR-PC in accordance with the provisions of Section 4.17, Minor Modifications."~~

~~4.17 Minor Modifications~~

~~This Section describes activities that constitute minor modifications to the NBR-PC and establishes the procedure for approving minor modifications to the NBR-PC. The following are considered minor modifications to the NBR-PC, including Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table."~~

~~4.17.1 Land Use Acreage Refinements~~

~~A change in the Land Use District boundary lines as illustrated on Exhibit 2-1, "Planned Community Development Plan," and corresponding change in the Gross Acres for the respective Land Use District as described on Exhibit 2-2, "Planned Community Development Table," is permitted as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided the requested change does not result in:~~
~~1. An increase in gross acres or gross density of more than fifteen percent (15%) of the land use district for which the change is requested;~~
~~2. A reduction in the total area allocated to the Lowland Open Space/Public Trails and Facilities District to less than 115 gross acres;~~
~~3. A reduction in the total area allocated to the Upland Open Space /Public Trails and Facilities District to less than 85 gross acres;~~
~~4. A reduction in the total area allocated to the CP District to less than 28 gross acres; and~~
~~5. The total area within the Project Site boundary does not exceed 401.1 gross acres.~~

~~4.17.2 Transfer of Residential Dwelling Units~~

~~A change in the planned number of residential dwelling units for any Land Use District as~~

~~described on Exhibit 2-2, "Planned Community Development Table," resulting from a transfer of residential dwelling units from one Residential Land Use District to another, is permitted as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided:~~

~~1. The transfer does not result in an increase of more than fifteen percent (15%) in the total number of planned dwelling units described on Exhibit 2-2, "Planned Community Development Table," for the Land Use District receiving additional dwelling units;~~
~~2. The total number of dwelling units for the Project Site does not exceed 1,375;~~
~~applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the housing types planned for development;~~
~~4. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer.~~
~~5. The total number of dwelling units within the MU/R Land Use District does not exceed 730; and~~
~~6. A corresponding subdivision map is approved by the City if the transfer results in a change to any previously approved subdivision map.~~

~~4.17.3 Transfer of Commercial Area from MU/R District to VSR/R District~~

~~In the event a resort inn is not developed in the VSR/R District, a portion of the total commercial area described in Exhibit 2-2, "Planned Community Development Table," may be transferred from the MU/R District to the VSR/R District for development of ancillary visitor-serving commercial uses such as restaurants, bars, visitor and tourist oriented retail shops, a fitness facility, a full service health spa, park and recreation facilities, and similar uses provided:~~
~~1. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.~~
~~2. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer. The visitor serving commercial uses can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations commercial development within in the VSR/R land use district.~~

~~4.17.4 Review Authority~~

~~The review authority for a minor modification to the NBR-PC shall be the same review authority as established in this Chapter with authority to approve or conditionally approve the development application being considered in conjunction with a request for a minor modification. A minor modification to the NBR-Planned Community Development Plan and/or Planned Community Development Table shall be processed in accordance with the following procedures:~~
~~1. An application to revise the Planned Community Development Plan and/or Planned Community Development Table shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval~~

~~of a subdivision map or a Site Development Review;~~
~~2. An application for a minor modification to revise the Planned Community Development Plan and/or Planned Community Development Table shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined by the Director; and~~
~~3. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.~~

Page 4-14
Add a new Section 4.17, "Substantial Conformance," as follows:

4.17 Substantial Conformance

Changes in the Land Use District boundary lines as illustrated on Exhibit 2-1, "Planned Community Development Plan," and a corresponding change in the Gross Acres for the respective Land Use District as described on Exhibit 2-2, "Planned Community Development Table," as part of the approval of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, is considered to be in substantial conformance with the NBR-PC provided the change complies with the following:

1. Any resulting increase in gross acres or gross density is no more than fifteen percent (15%) of the land use district for which the change is requested;
2. There is no resulting reduction in the total area designated as Open Space District;
3. There is no resulting reduction in the total area allocated to the CP District; and
4. The total area within the Project Site boundary does not exceed 401.1 gross acres.

Page 4-15
Add a new Section 4.18, "Transfer of Residential Dwelling Units," as follows:

4.18 Transfer of Residential Dwelling Units

A request for a change in the planned number of residential dwelling units for any Land Use District as described on Exhibit 2-2, "Planned Community Development Table," resulting from a transfer of residential dwelling units from one Residential Land Use District to another, may be approved as part of the review of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided the requested change complies with the following:

1. The requested transfer does not result in an increase of more than fifteen percent (15%) in the total number of planned dwelling units described on Exhibit 2-2, "Planned Community Development Table," for the Land Use District receiving additional dwelling units;

2. The total number of dwelling units for the Project Site does not exceed 1,375;

3. All dwelling units planned within the Land Use District can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the residential land use planned for development;

4. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer.

5. The total number of dwelling units within the MU/R Land Use District does not exceed 730; and

6. A corresponding subdivision map is approved by the City if the transfer results in a change to any previously approved subdivision map.

A request for transfer of residential dwelling units shall be subject to the following requirements:

a. The request for a transfer of residential dwelling units from one land use district to another shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval of a subdivision map or a Site Development Review;

b. The request for a transfer of residential dwelling units from one land use district to another shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-16
Add a new Section 4.19, "Transfer of Commercial Area from MU/R to VSR/R," as follows:

4.19 Transfer of Commercial Area from MU/R District to VSR/R District

In the event a resort inn is not developed in the VSR/R District, a request to transfer a portion of the total commercial area as described in Exhibit 2-2, "Planned Community Development Table," from the MU/R District to the VSR/R District for development of ancillary visitor-serving commercial uses such as restaurants visitor and tourist oriented retail shops, a fitness facility, a full service health spa, park and recreation facilities, and similar uses may be approved as part of the review of either a Master Development Plan, Site Development Review, or subdivision map application submitted for the Project Site, provided:

1. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.

2. A traffic analysis performed by the City's Traffic Engineer evaluating the total number of PM peak hour trips that would be generated by development allowed with and without the transfer concludes that there would not be any greater traffic impact generated as a result of the transfer than would be generated without the transfer. Trip generation rates shall be

based on standard trip generation values in the current version of ITE's "Trip Generation," unless the Traffic Engineer determines that other rates are more valid for the uses involved in the transfer. The visitor serving commercial uses can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations." for commercial development within in the VSR/R land use district.

3. All commercial uses planned for development within the VSR/R district can be developed pursuant to the applicable development regulations established in NBR-PC Chapter 3, "Land Use and Development Regulations," for the type of commercial use planned for development.

A request for transfer of commercial square footage from the MU/R District to the VSR/R District shall be subject to the following requirements.

a. The request shall be submitted as part of an application for approval of either a Master Development Plan for the Project Site or as part of an application for approval of a subdivision map or a Site Development Review;

b. The request shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-17
Add a new Section 4.20, "Transfer of Commercial Area from MU/R District to RL/M or RM District," as follows:

4.20 Transfer of Commercial Area from MU/R District to RL/M or RM District

A request to transfer a maximum of 2,500 square feet of commercial square footage to either the RL/M or RM district may be approved as part of the review of a Site Development Review or subdivision map application submitted for the Project Site, in accordance with the following provisions:

1. The requested transfer is for the development of convenience commercial uses to serve the residential community.

2. Approval of the requested transfer of square footage to either the RL/M or RM district is a one-time allowable transfer and no additional transfers may be approved for any other residential district.

3. The total area of commercial uses developed within the Project Site does not exceed 75,000 square feet.

4. The commercial uses planned for development within either the RL/M or RM district can be developed pursuant to the applicable development regulations established in Section 3.14, "Commercial Regulations," of the NBR-PC.

A request for transfer of commercial square footage from the MU/R District to the RL/M or RM District shall be subject to the following requirements.

a. The request shall be submitted as part of an application for approval of either a subdivision map or a Site Development Review.

b. The request shall be accompanied by a revised Planned Community Development Table reflecting the proposed changes and any additional background and/or supporting information as determined necessary by the Director. Unless determined otherwise by the City, the revised NBR-PC document shall serve as the reference document for any future revisions to Exhibit 2-1, "Planned Community Development Plan," and Exhibit 2-2, "Planned Community Development Table," as they may be approved from time to time. Such revisions shall be located in an appendix to the NBR-PC.

Page 4-17, Renumber Section 4-18 to Section 4-20 and revise text as follows:

4.~~18~~ 20 Amendments

All proposed changes to the NBR-PC other than those identified in Section ~~4.17, "Minor Modifications,"~~ 4.18, "Transfer of Residential Dwelling Units, Section 4.19, "Transfer of Commercial Area from MU/R to VSR/R District," and/or Section 4.20 "Transfer of Commercial Area from MU/R to RL/M or R/M District," of the NBR-PC, or as otherwise provided for within the NBR-PC, shall be considered amendments to the NBR-PC and shall be reviewed pursuant to the provisions of NBMC Chapter 20.56.050 "Planned Community District Application Procedures."

Exhibit H

NBR-MDP with Recommended Revisions & Errata (under separate cover)

EXHIBIT H
NBR Master Development Plan Revisions and Errata

Page 3-3
Revise Section 3.2.2 as follows:

3.2.2. Parklands

1. **Public Community Park comprising approximately ~~26.8~~ 21.8 gross/~~21.7~~ 18.0 net acres in SPAs ~~7a,~~ 7b, and 7c,** which shall be developed for public active and passive recreation as part of the Project and offered for dedication to the City;

2. **Public Bluff Park comprising approximately ~~20.9~~ 25.9 gross/~~17.5~~ 21.20 net acres in SPAs 7a, 8a and 8b** which shall be developed for passive park recreation as part of the Project and made permanently available for public use; and…

Exhibit 3-1 Master Development Plan
Change the land use designation for Site Planning Area 7a from Public Community Park to Public Bluff Park.

Exhibit 3-2 Master Development Table
- Change the land use designation for Site Planning Area 7a from South Community Park to South Bluff Park
- Change the subtotal acreage for Public Community Parks from 26.8 gross acres and 21.7 net acres to 21.8 gross acres and 18.0 net acres.
- Change the subtotal acreage for South Bluff Park from 7.3 gross acres and 6.9 net acres to 12.3 gross acres and 10.6 net acres.
- Change the subtotal for Public Bluff Parks from 20.9 gross acres and 17.5 net acres to 25.9 gross and 21.10 net acres.

Page 3-23
Change Section 3.5.1 as follows:
The following parks comprise the Parklands land use component of NBR:

- **~~26.8~~ 21.8 gross/~~21.7~~ 18.0 net acres of Public Community Park** in SPAs ~~7a,~~ 7b and 7c;

- **~~20.9~~ 25.9 gross/~~17.5~~ 21.10 net acres of Public Bluff Park** in SPAs 7a, 8a and 8b; and

- **3.7 gross/2.9 net acres of Public Interpretive Parks** in SPAs 9a, 9b, and 9c.

Page 3-29
Change Section 3.5.2 as follows:

3.5.2 Public Community Park Development Plans

As part of the Project, a ~~26.8~~ 21.8 gross-/~~21.7~~ 18.0 net-acre Community Park will be developed and offered for dedication to the City of Newport Beach. The development plan for the Community Park (SPAs ~~7a,~~ 7b, and 7c) is a Project Development Plan providing a sufficient level of design detail for Coastal Commission approval of a Coastal Permit for this park. The Public Community Park site is comprised of the ~~three~~ two subareas as described below:

EXHIBIT H
NBR Master Development Plan Revisions and Errata

- **The North Community Park Project Development Plan, illustrated in Exhibit 3-6a,** contains 15.9 gross/13.5 net acres and will be improved as an active park to include lighted turf sports fields, lighted hard courts, picnic facilities, age-specific playground, restrooms, off-street public parking, and may include synthetic turf.

- **The Central Community Park Project Development Plan, illustrated in Exhibit 3-6b,** contains 5.9 gross/4.5 net acres and will be improved as a passive recreational area, including picnic areas, informal open play turf areas, and off-street public parking.

- ~~**The South Community Park Project Development Plan, illustrated in Exhibit 3-6c,** contains 5.0 gross/3.7 net acres will be improved as a passive natural recreation area to complement the City's Sunset Ridge Park site to the east and will include park access, native habitat, and interpretive opportunities.~~

Page 3-37
Change Section 3.5.3 as follows:

3.5.3 Public Bluff Park Project Development Plans

The ~~20.9~~ 25.9 gross-/~~17.5~~ 21.10 net-acre Public Bluff Park will be a linear and pocket park system developed as part of the Project and will provide active and passive recreation facilities, including approximately two miles of public pedestrian trails. Pedestrian trails within the Parklands are described in more detail in NBR-MDP Chapter 4, "Master Trails and Coastal Access Plan."

1. **South Bluff Park Project Development Plan**

South Bluff Park (SPAs 7a and 8a) comprises approximately ~~7.3~~ 12.3gross /~~6.9~~ 10.6 net acres, and extends along the perimeter of the Resort Colony, ~~and~~ South Family Village, and east of Bluff Road adjacent to the Open Space Preserve. Exhibit 3-7a, "South Bluff Park Project Development Plan," illustrates the public facilities that will be constructed as part of the Project. As shown, South Bluff Park will be a passive park providing view opportunities from the Resort Colony edge toward the Pacific Ocean and views of open space from the South Family Village edge and from the area east of Bluff Road.

Revise the following Exhibits:

- Exhibit 3-4, Parklands Project Development Plans – Change the designation for the South Community Plan to South Bluff Park
- Exhibit 3-5, Parklands Project Development Table – change the land use designation for Site Planning Area 7a from South Community Park to South Bluff Park and change the subtotal gross and net acreages for Community Park and Public Bluff Park accordingly.
- Revise Exhibit 3-6c, from South Community Park Project Development Plan to South Bluff Park Project Development Plan.
- Exhibit 4-1, Master Trails and Coastal Access Plan – change South Community Park to South Bluff Park.

EXHIBIT H
NBR Master Development Plan Revisions and Errata

- Exhibit 5-19, Key Map for Community Transition/Interface Sections – change the color code for South Community Park to Bluff Park
- Exhibit 5-23, Section DD – Change color code and revise title of Exhibit as follows: South ~~Community~~ Bluff Park Interface with Newport Crest Community.

Section 3.5

Page 10-3
Revise Section 10.6.2 as follows:

10.6.2 Activities Requiring Subsequent Site Development Review Approval

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of Site Development Review pursuant to NBR-PC Section 4.5, "Site Development Review," any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of residential, commercial, and visitor serving resort uses in all Villages and Colonies;

2. Construction of Bluff Parks and Interpretive Parks; and

~~3. Construction of the Community Park.~~

Page 10-3
Add new Section 10.6.3 as follows:

10.6.3 Activities Requiring Community Park Improvement Plan

Following approval by the City of the NBR-MDP the following development activities are permitted within the Project Site subject to recordation of Final Map No. 17308 and any subsequent subdivision map(s), approval by the City of a Community Park Improvement Plan, pursuant to NBR-PC Section 4.4.6.1 " Activities Subject to Community Park Improvement Plan Approval," any additional local required permits, and any permits from State (including Coastal Commission), and Federal agencies with permitting jurisdiction over the activity:

1. Construction of the public Community Park.

Page 10-5
Revise Section 10.7.3 as follows:

10.7.3 Authorization for City to Issue Construction-Level Permits as part of MCDP

The MCDP shall authorize the City to be the final review authority for any subsequent planning development permits and construction level permits, as required by the NBR-PC, for implementation of those activities described in Section 10.6 of the NBR-MDP and within

the areas illustrated on Exhibit 10-1, without additional Coastal Development Permits, provided the subsequent permits are consistent with the NBR-MDP Project Development Plans. Subsequent required planning development permits and construction level permits shall include, but are not limited to, Site Development Review, Community Park Improvement Plan Approval, Use Permits, Final Tract Maps, final grading permits, model home permits, building permits, and other required permits.

Page 10-10
Add new Section 10.12, "Community Park Improvement Plan," as follows:

10.12 Community Park Improvement Plan

Approval by the Director of Recreation and Senior Services of a Community Park Improvement Plan, in accordance with the provisions of NBR-PC Section 4.6, "Community Park Improvement Plan," shall be required prior to construction of the public Community Park.

Page 10-10
Renumber Section 10.12 and revise text as follows:

~~**10.12 Minor Modifications**~~
10.13 Substantial Conformance

The following ~~are considered minor modifications to~~ constitute substantial conformance with the NBR-MDP including Exhibit 1-4, "Site Planning Areas Map," Exhibit 3-1, "Master Development Plan," and Exhibit 3-2, "Master Development Table."

Land Use Acreage Refinements

A change in the Site Planning boundary lines as illustrated on Exhibit 1-4 "Site Planning Areas Map," and corresponding change in the Gross Acres for the respective Site Planning Area as described on Exhibit 1-5, "Site Planning Areas Table," of up to fifteen percent (15%) ~~are~~ as approved ~~permitted~~ as part ~~the approval~~ of either a Site Development Review, or subdivision map application submitted for the Site Planning Area, provided the refinement(s) to Gross Acres does not result in:

~~1. A reduction in the total area allocated to the Lowland Open Space/Public Trails and Facilities District to less than 115 gross acres;~~

~~2. A reduction in the total area allocated to the Upland Open Space/Public Trails and Facilities District to less than 85 gross acres;~~

~~3. A reduction in the total area allocated to the Public Parks/Recreation District to less than 28 gross acres;~~

1. A reduction in the total acreage allocated to Open Space;

2. A reduction in the total area allocated to the Community Park;

3. The total area within the Project Site boundaries exceeding 401.1 gross acres;

4. Less than two roadway access points from North Bluff Road into the North Family Village; and/or

5. Less than two roadway access points into both the South and North Family Village.

Page 10-10
Renumber and Revise Section 10.12.2 as follows:

~~10.12.2~~ 10.14 Transfer of Residential Dwelling Units

A change in the number of residential dwelling units for any Site Planning Area as described on Exhibit 1-5, "Site Planning Areas Table," resulting from a transfer of residential dwelling units from one Site Planning Area to another, and as approved pursuant to the provisions of Section 4.18, " Transfer of Residential Dwelling Units," of the NBR-PC, is permitted as part of the approval of a Site Development Review provided:....

Page 10-11
Renumber and Revise Section 10.12.14 as follows:

~~10.12.14 Additional Minor Modifications~~

10.15 Modifications to Approved Project Development Plans

The following constitute ~~additional~~ ~~allowable minor~~ modifications to the NBR-MDP Project Development Plans which may be approved as part of Site Development Review or subdivision review, and not requiring an amendment to the NBRMDP:

1. Change in utility or public service provider as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans;"

2. Change in roadway alignment of any roadway illustrated on the "Master Roadway Plan" of the NBR-MDP when the change results in a centerline shift of 150 feet or less;

3. Change to roadway sections as described in NBR-MDP Chapter 8, "Master Roadway and Infrastructure Plans as approved by the Director of Public Works;

4. Refinements to the Architectural Design Guidelines pursuant to Section 10.10;

5. Refinements to the mix, distribution, and design of architectural products ~~with as a part of subsequent Site Development Review and construction drawings~~ provided that:

a. The character and style of the architecture remains consistent with the intent of the Project's architectural style;

b. The nominal lot size dimensions and nominal building square footages do not exceed 20% of the original architecture proposed within the Site Planning Area; and

c. All applicable development regulations and standards set forth in the NBR-PC are

complied with.

Page 10-12
Delete the following text:

~~**10.12.4 Applications for Minor Modifications**~~

~~1. Applications for minor modifications to the NBR-MDP shall include the following information:~~

~~a. Text revisions to the NBR-MDP submitted to the City in a "track changes" format to note the insertion(s) and/or deletion(s) of text for each changed page;~~

~~b. Revised applicable NBR-MDP exhibit(s) reflecting the proposed change(s) and in the case of land use acreage refinements or transfer of residential dwelling unit, a revised Site Planning Areas Table;~~

~~c. A summary of: (1) the number of dwelling units, commercial square footage, and overnight accommodations previously approved on all Tentative and all recorded Final Tract Maps; and (2) the number of dwelling units, commercial square footage, and overnight accommodations under construction or completed/occupied at the time of the proposed minor modification;~~

~~d. Identification of the ownership of the Site Planning Area(s) to be affected by the minor modification;~~

~~e. Analysis of consistency with the NBR-PC; and~~

~~f. Any additional background and/or supporting information which the Director deems necessary.~~

~~**10.12.5 Review of Applications for Minor Modifications**~~

~~Applications for minor modifications shall be reviewed in conjunction with a development application for a Site Development Review and/or a subdivision map approval. The review authority for a minor modification to the NBR-MDP shall be the same review authority as established in the NBR-PC with authority to approve or conditionally approve the development application being considered in conjunction with a request for a minor modification.~~

Page 10-13
Renumber and revise Section 10.13 as follows:

~~10.13~~ 10.16 Amendments to the NBR-MDP

All proposed changes to the NBR-MDP other than those identified in Section ~~10.12, "Minor Modifications,"~~ 10.14 Transfer of Residential Dwelling Units and Section 10.15 "Modifications to Approved Project Development Plans," shall be considered amendments to the NBR-MDP and shall be reviewed in accordance with the provisions of NBR-PC

EXHIBIT H
NBR Master Development Plan Revisions and Errata

Section 4.4 "Master Development Plan." When any CDP(s) or MCDP is approved by the Coastal Commission that varies from the approval granted by the City for the NBR-MDP or any approved amendment, the applicant shall submit a request for determination of substantial conformance to the Director or Community Development. The Director of Community Development has the authority to refer any request for substantial conformance to the City Council for consideration and final action on the request.

Page 10-13
Renumber and revise Section 10.14 as follows:

~~10.14~~ 10.17 Amendments to the Master CDP

Amendments to the MCDP are considered to be those changes considered as amendments to the NBR-MDP pursuant to NBR-MDP Section ~~10.13~~ 10.16. Following City approval of any amendment to the NBR-MDP a corresponding application for an amendment to the MCDP shall be submitted for approval to the California Coastal Commission.

Exhibit 10-1, Master Entitlements and Subsequent Approvals Map
Change South Community Park to South Bluff Park

Add the following text to the notations:

Land Use Development per City-approved Master Development Plan and CCC-approved Master Coastal Development Permit. Additional Site Development Review, and/or Community Park Improvement Plan Approval, by City is required, but additional Coastal Development Permit is not required, prior to Land use Development and construction permits.

EXHIBIT K
Project Boundary

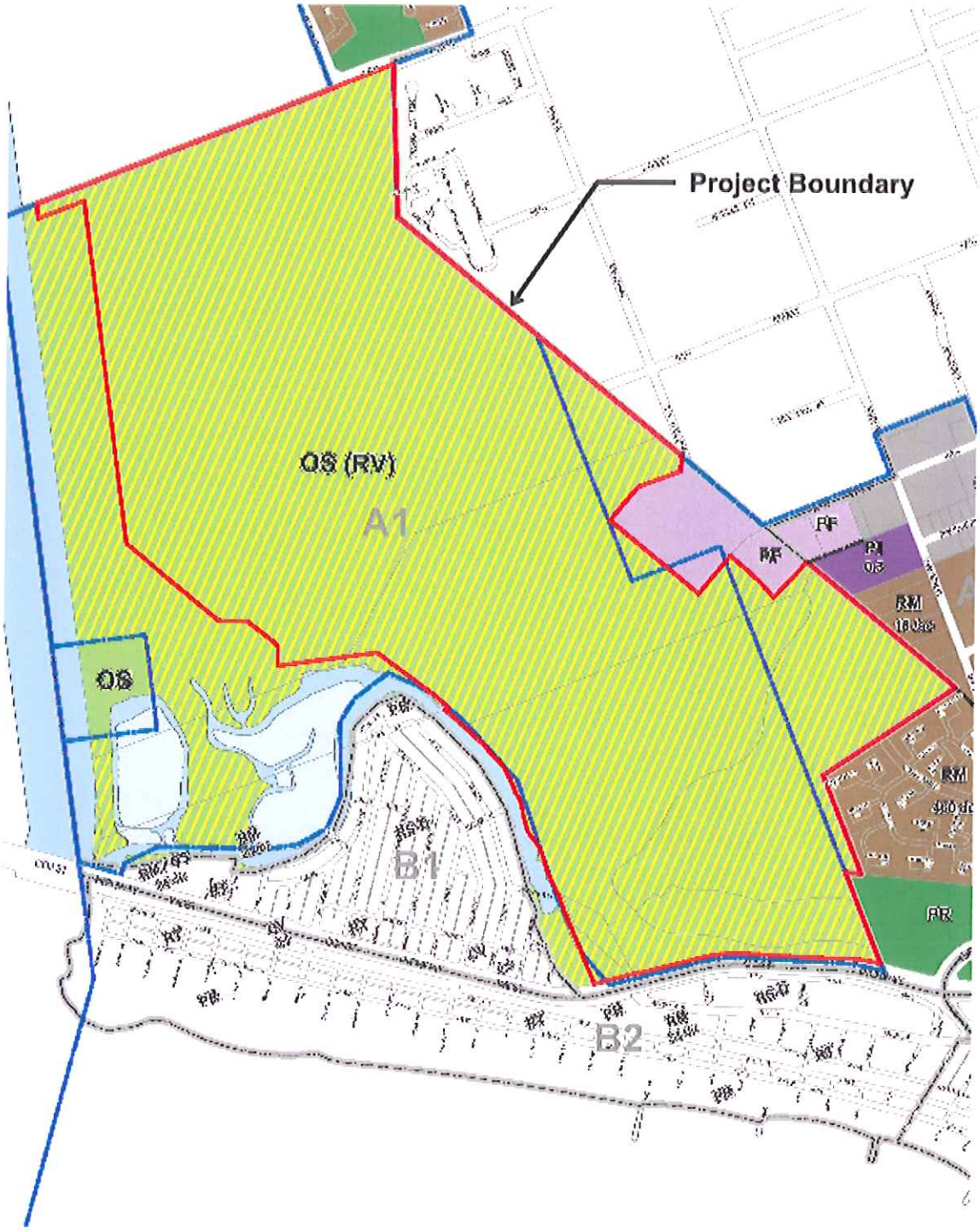


Exhibit I

Tentative Tract Map No. 17308

TENTATIVE TRACT MAP NO. 17308

FOR CONDOMINIUM PURPOSES

LEGAL DESCRIPTION

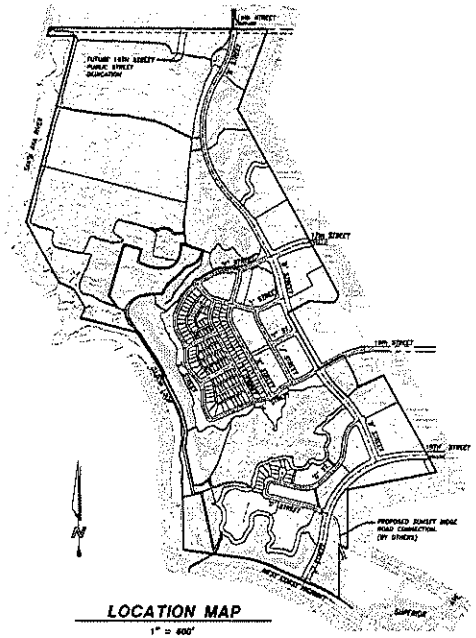
A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION, BEING CASE NO. 8383 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF THE RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

NOTES:

1. EXISTING LAND USE: OIL EXTRACTION
   ADJACENT LAND USE:
   N- RESIDENTIAL/OPEN SPACE
   S- RESIDENTIAL
   E- COMMERCIAL/RESIDENTIAL/INDUSTRIAL
   W- OPEN SPACE/RESIDENTIAL
   PROPOSED LAND USES: RESIDENTIAL, PARK, OIL EXTRACTION/OPEN SPACE, COMMERCIAL, COASTAL INN
2. ZONING: PER THE NEWPORT BANNING RANCH PLANNED COMMUNITY ZONING.
3. DOMESTIC WATER AND SANITARY SEWER SERVICE TO BE PROVIDED BY THE CITY OF NEWPORT BEACH.
4. ALL PROPOSED UTILITIES TO BE UNDERGROUND
   ELECTRICAL: SOUTHERN CALIFORNIA EDISON COMPANY
   GAS: SOUTHERN CALIFORNIA GAS COMPANY
   TELEPHONE: PAC BELL CABLE
   CABLE: TIME WARNER
5. THE DEVELOPER WILL COMPLY WITH ENERGY CONSERVATION MEASURE SET FORTH IN TITLE XXIV OF THE CALIFORNIA ADMINISTRATIVE CODE.
6. DRAINAGE ON THIS SITE WILL BE CONVEYED BY MEANS OF A STORM CONVEYANCE SYSTEM CONSISTING OF VARYING SIZES OF CHANNELS, STORM DRAIN PIPES, CULVERTS, AREA DRAINS AND BROW DITCHES.
7. SIDEWALK RETURN TO BE PER CITY OF NEWPORT BEACH STANDARD PLAN NO. 181 AND TITLE 24 OF AMERICAN WITH DISABILITIES ACT.
8. ALL STREETS ARE PUBLIC UNLESS NOTED OTHERWISE ON MAP.
9. ALL EXISTING EASEMENTS ARE TO REMAIN IN THEIR CURRENT DESIGNATED LOCATIONS UNLESS OTHERWISE NOTED.
10. TOTAL LENGTH OF PROPOSED STREETS IS APPROXIMATELY 23,800 LF.
11. TOTAL PROJECT ACREAGE IS 401.1 GROSS AC.
12. THERE ARE 213 NUMBERED LOTS AND 18 LETTERED LOTS. SEE LOT SUMMARY TABLES FOR PROPOSED LAND USE BY LOT
13. MULTIPLE FINAL TRACT MAPS CAN BE FILED FOR THIS TENTATIVE TRACT MAP.
14. THE ASSESSOR'S PARCEL NUMBERS FOR THE PROJECT AREA ARE: 114-170-24, 43, 49, 50, 52, 72, 75, 77, 79, 83, & 424-041-04.
15. ALL EXISTING WELLS, IRRIGATION LINES, CESSPOOLS, SEWERS, CULVERTS, STORM DRAINS, SOLID OR LIQUID WASTE DISPOSAL SITES, AND UNDERGROUND STRUCTURES WITHIN THE SUBDIVISION WILL BE ABANDONED PER THE GOVERNING AGENCIES SPECIFICATIONS UNLESS OTHERWISE NOTED.
16. ALL LETTERED LOTS SHOWN ON THIS MAP MAY BE DIVIDED ON THE FINAL MAPS INTO MULTIPLE LOTS FOR PHASING, FINANCING, CONSTRUCTION OR DEDICATION PURPOSES.
17. ALL FIRE ACCESS ROADS SHALL COMPLY WITH N.B. FIRE DEPARTMENT STANDARDS.

PROPOSED DEVIATIONS:

1. MODIFIED KNUCKLES ARE ALLOWABLE AS SHOWN AT THE BEND IN "C" STREET AND "E" STREET. SEE MODIFIED KNUCKLE DETAIL ON SHEET 2.
2. 5' WIDE BIKE LANES ARE ALLOWABLE ON "A" STREET, "B" STREET, 15TH STREET AND 17TH STREET.
3. BIOSWALES/BIOCELLS WITH A 5' WALK OR 8' MEANDERING WALK ARE ALLOWABLE ON "A" STREET, "B" STREET, 15TH STREET, 16TH STREET AND 17TH STREET.
4. SIDEWALK IS NOT PROPOSED ON THE WEST SIDE OF "A" STREET (FROM WEST COAST HIGHWAY TO "C" STREET), OR THE WEST SIDE OF "B" STREET (17TH STREET TO 19TH STREET) DUE TO THE ADJACENCY OF OPEN SPACE.
5. BIOSWALES/BIOCELLS ARE ALLOWABLE AS A PARKWAY TREATMENT ON LOCAL STREETS AS SHOWN ON TENTATIVE TRACT MAP.
6. INTERSECTION TAPERS AND MID-BLOCK TAPERS ARE ALLOWABLE ON LOCAL STREETS AND LOCAL TO LOCAL STREET INTERSECTIONS AS SHOWN ON TENTATIVE TRACT MAP. SEE DETAILS ON SHEET 2.
7. AT CITY OF NEWPORT BEACH REQUEST, "A" STREET (FROM WEST COAST HIGHWAY TO "C" STREET) IS AT AN ALLOWABLE MAXIMUM CENTERLINE GRADIENT OF 18%.



LOCATION MAP

1" = 600'

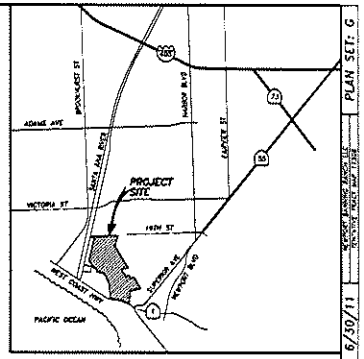
STREET DEDICATIONS

STREET	PROPOSED LAND USE	MAINTENANCE RESPONSIBILITY	LOT AREA ACRES
WEST COAST HIGHWAY	PUBLIC STREET	CALTRANS	0.4
A STREET	PUBLIC STREET	CITY	4.1
B STREET	PUBLIC STREET	CITY	11.2
C STREET	PUBLIC STREET	CITY	1.6
D STREET	PUBLIC STREET	CITY	1.1
E STREET	PUBLIC STREET	CITY	5.4
F STREET	PUBLIC STREET	CITY	0.4
G STREET	PUBLIC STREET	CITY	0.4
H STREET	PUBLIC STREET	CITY	0.4
I STREET	PUBLIC STREET	CITY	1.7
J STREET	PUBLIC STREET	CITY	1.1
K STREET	PUBLIC STREET	CITY	0.1
L STREET	PUBLIC STREET	CITY	1.4
14TH STREET	PUBLIC STREET	CITY	1.1
16TH STREET	PUBLIC STREET	CITY	0.2
17TH STREET	PUBLIC STREET	CITY	1.1
TOTAL			34.9
15TH STREET	PUBLIC STREET DEDICATION	CITY/CONSERVATION	2.1
TOTAL			2.1

NOTE: CITY RESERVES THE RIGHT TO REQUIRE MAINTENANCE OF PARKWAY AND MEDIAN LANDSCAPE TO BE BY MASTER HOA.

LETTERED LOTS

LOT NUMBER	PROPOSED LAND USE	MAINTENANCE RESPONSIBILITY	LOT AREA ACRES
A	OPEN SPACE	CONSERVATION	48.9
B	OPEN SPACE	CONSERVATION	5.2
C	OPEN SPACE	CONSERVATION	6.4
E	OPEN SPACE	CONSERVATION	53.9
I	OPEN SPACE	CONSERVATION	8.4
J	OPEN SPACE/INTERPRETIVE	HOA	0.5
K	OPEN SPACE	CONSERVATION	67.1
M	OPEN SPACE	CONSERVATION	15.5
S	WATER QUALITY BASIN	CONSERVATION	2.7
Z	OPEN SPACE	CONSERVATION	10.0
A	OPEN SPACE	CONSERVATION	10.1
C	WATER DETENTION BASIN	CONSERVATION	0.4
M	OPEN SPACE	CONSERVATION	1.1
N	OPEN SPACE	CONSERVATION	8.5
O	OPEN SPACE	CONSERVATION	9.4
P	OPEN SPACE	CONSERVATION	2.2
Q	OPEN SPACE	CONSERVATION	0.7
R	OPEN SPACE	CONSERVATION	3.7
TOTAL			178.8



VICINITY MAP

NTS

PROJECT NORTH

OWNER/SUBDIVIDER

NEWPORT BANNING RANCH LLC
1300 QUAIL STREET, SUITE 100 NEWPORT BEACH, CA 92660

BY: _____ DATE _____

MICHAEL A. MOHLER

Authorized Signatory

SHEET INDEX

TITLE & LOT SUMMARY	1
STREET SECTIONS & DETAILS	2
CROSS SECTIONS	3
PLAN VIEW	4-7

NUMBERED LOTS

LOT NUMBER	PROPOSED LAND USE	MAINTENANCE RESPONSIBILITY	LOT AREA ACRES
1	MIXED USE/RESIDENTIAL	HOA	4.9
2	MIXED USE/RESIDENTIAL	HOA	5.0
3	MIXED USE/RESIDENTIAL	HOA	4.7
4	MIXED USE/RESIDENTIAL	HOA	5.8
5	LANDSCAPE	CONSERVATION	0.9
6	ACCESS ROAD	PRI. OPERATOR/HOA	0.7
7	ACCESS ROAD	PRI. OPERATOR/HOA	1.5
8	PARK	HOA	0.1
9	ALLEY	HOA	0.4
10	RESIDENTIAL	HOMEOWNER	0.7
11	RESIDENTIAL	HOMEOWNER	0.6
12	RESIDENTIAL	HOMEOWNER	0.7
13	RESIDENTIAL	HOMEOWNER	0.6
14	RESIDENTIAL	HOMEOWNER	0.7
15	RESIDENTIAL	HOMEOWNER	0.7
16	RESIDENTIAL	HOMEOWNER	0.8
17	RESIDENTIAL	HOMEOWNER	0.7
18	RESIDENTIAL	HOMEOWNER	0.6
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26	RESIDENTIAL	HOMEOWNER	0.7
27	RESIDENTIAL	HOMEOWNER	0.7
28	RESIDENTIAL	HOMEOWNER	0.7
29	ALLEY	HOA	0.3
30	RESIDENTIAL	HOMEOWNER	0.7
31	RESIDENTIAL	HOMEOWNER	0.7
32	LANDSCAPE	HOA	0.1
33	RESIDENTIAL	HOMEOWNER	0.7
34	RESIDENTIAL	HOMEOWNER	0.7
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213	RESIDENTIAL	HOMEOWNER	0.1
TOTAL			178.8

PREPARED UNDER THE SUPERVISION OF:

JOHN C. OLIVER PCE 044568 EXP. 03/31/12

NO.	DATE	REVISIONS	APPROVED

DRAWN BY:

DESIGNED BY:

CHECKED BY: JO

FUSCOE ENGINEERING
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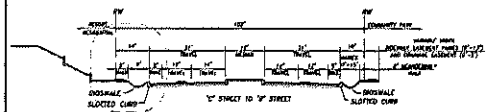
www.fuscoe.com

TENTATIVE TRACT NO. 17308
CITY OF NEWPORT BEACH

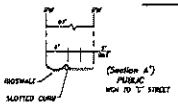
SHEET 1 OF 7

PLAN SET: G

6/30/11

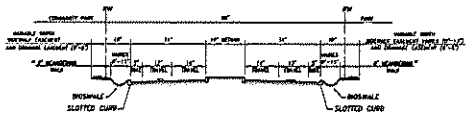


'A' STREET (PUBLIC) N.T.S. A/2

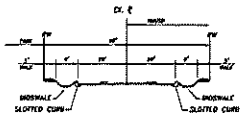


(Section A') PUBLIC WCH TO 'E' STREET

'B' STREET (PUBLIC) N.T.S. B/2

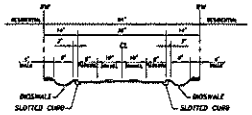


15TH STREET (PUBLIC) N.T.S. C/2

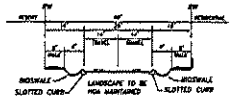


16TH STREET (PUBLIC) N.T.S. D/2

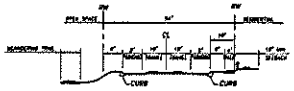
17TH STREET (PUBLIC) N.T.S. E/2



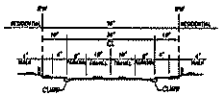
'F', 'G', 'I', 'K' STREET (PUBLIC) N.T.S. F/2



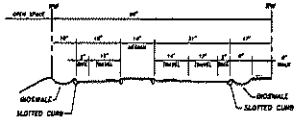
'C' STREET (PUBLIC) N.T.S. G/2



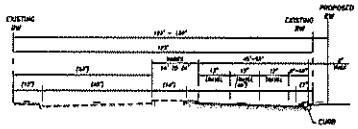
'E' STREET (PUBLIC) N.T.S. H/2



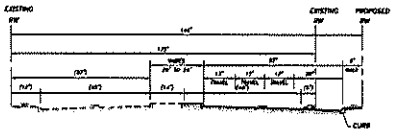
'D', 'H', 'J', 'L' STREET (PUBLIC) N.T.S. I/2



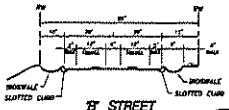
'B' STREET (PUBLIC) N.T.S. J/2



WEST COAST HIGHWAY (PUBLIC) N.T.S. K/2



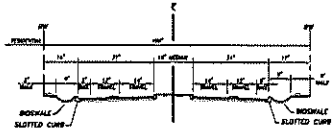
WEST COAST HIGHWAY (PUBLIC) N.T.S. L/2



'B' STREET EXTENSION TO 19TH STREET (PUBLIC) N.T.S. M/2

TYPICAL ALLEY N.T.S. N/2

'B' STREET (PUBLIC) N.T.S. P/2



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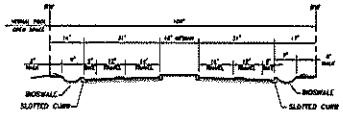
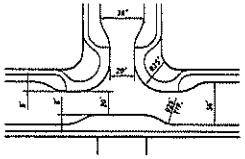


'B' STREET (PUBLIC) N.T.S. R/2



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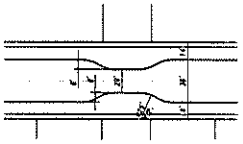

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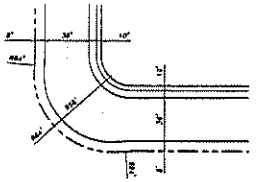

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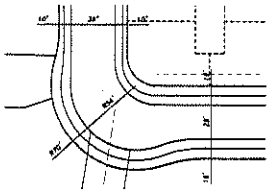

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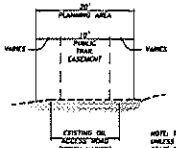

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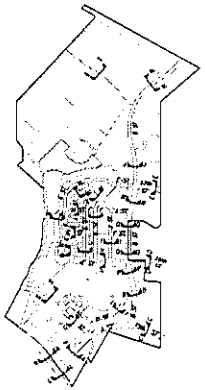
NOTE: THE PUBLIC TRAIL WILL BE UNIMPROVED UNLESS IMPROVEMENTS ARE REQUIRED BY A STATE OR FEDERAL RESOURCE AGENCY OR OTHER PUBLIC AGENCY



* MATERIAL TO BE DETERMINED PRIOR TO FINAL DESIGN. OG TO BE CONSIDERED WHEN WALK IS ADJACENT TO PARKS OR OPEN SPACES

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CHECKED BY: JO

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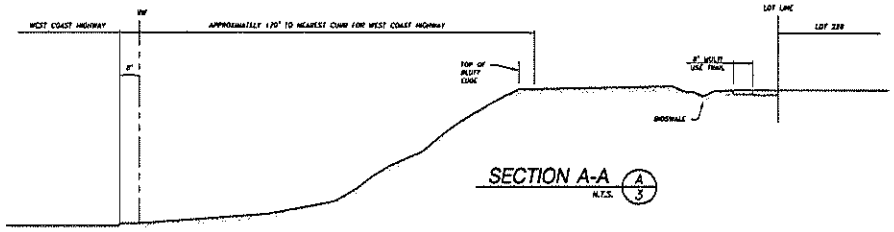
TENTATIVE TRACT NO. 17308
STREET SECTIONS & DETAILS

SHEET 2 OF 7

PLAN SET: G
6/30/11



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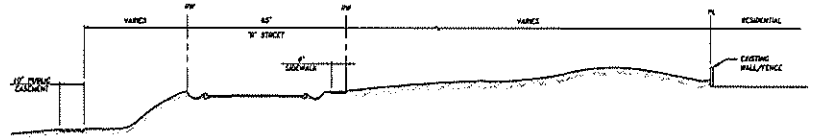
N.T.S.



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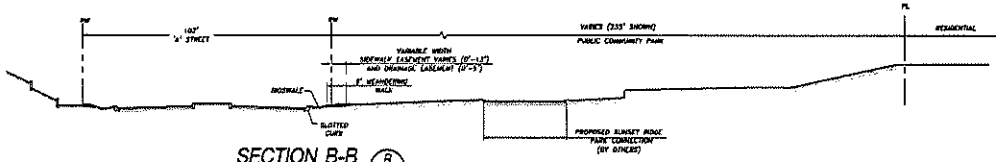

SECTION B-B (B/3)
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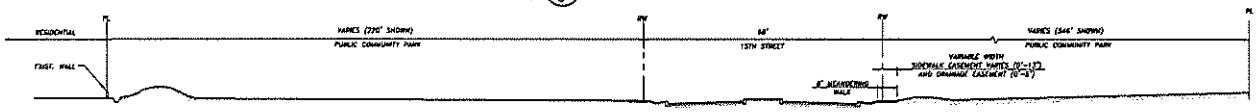
NOTE: REFER TO FIRE AND LIFE SAFETY PROGRAM FOR FUEL MANAGEMENT ZONES AND REQUIREMENTS



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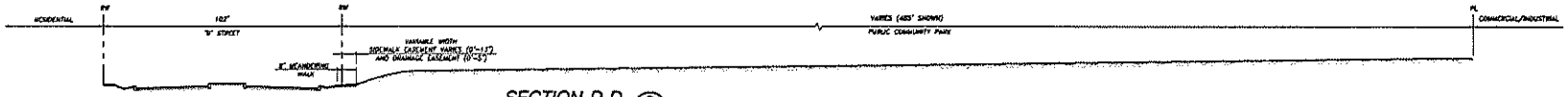

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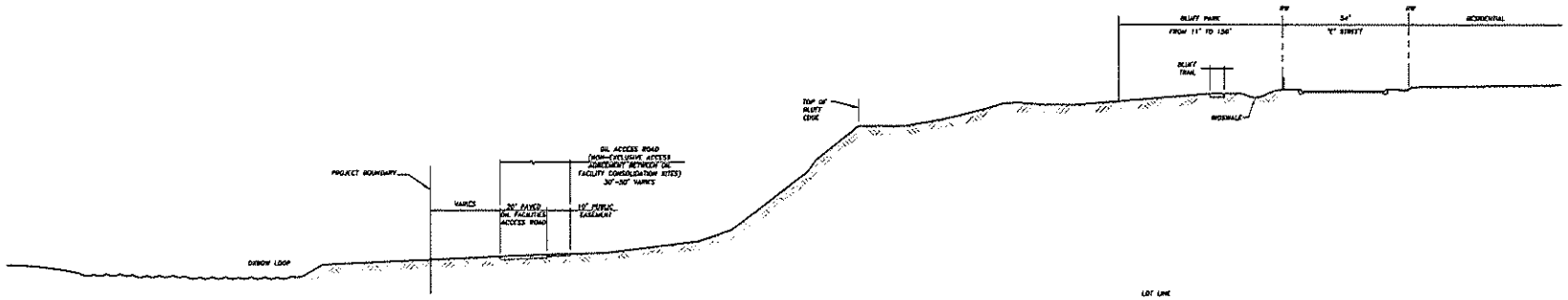

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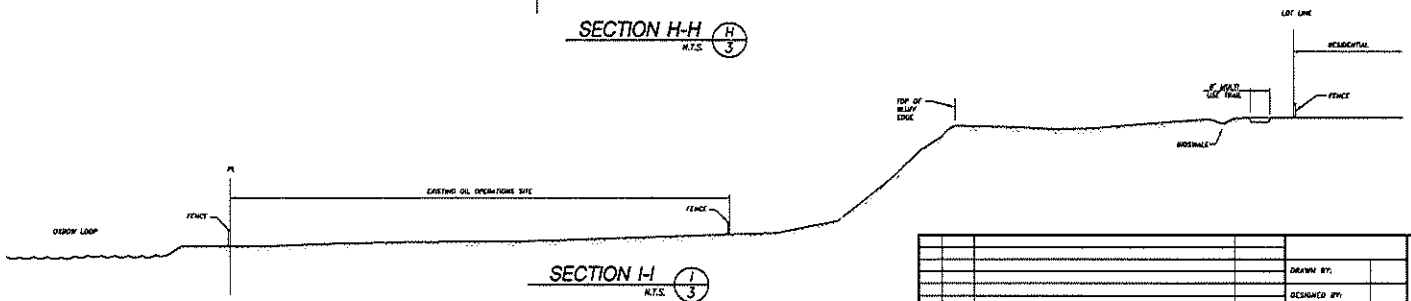

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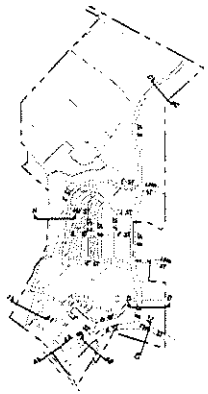

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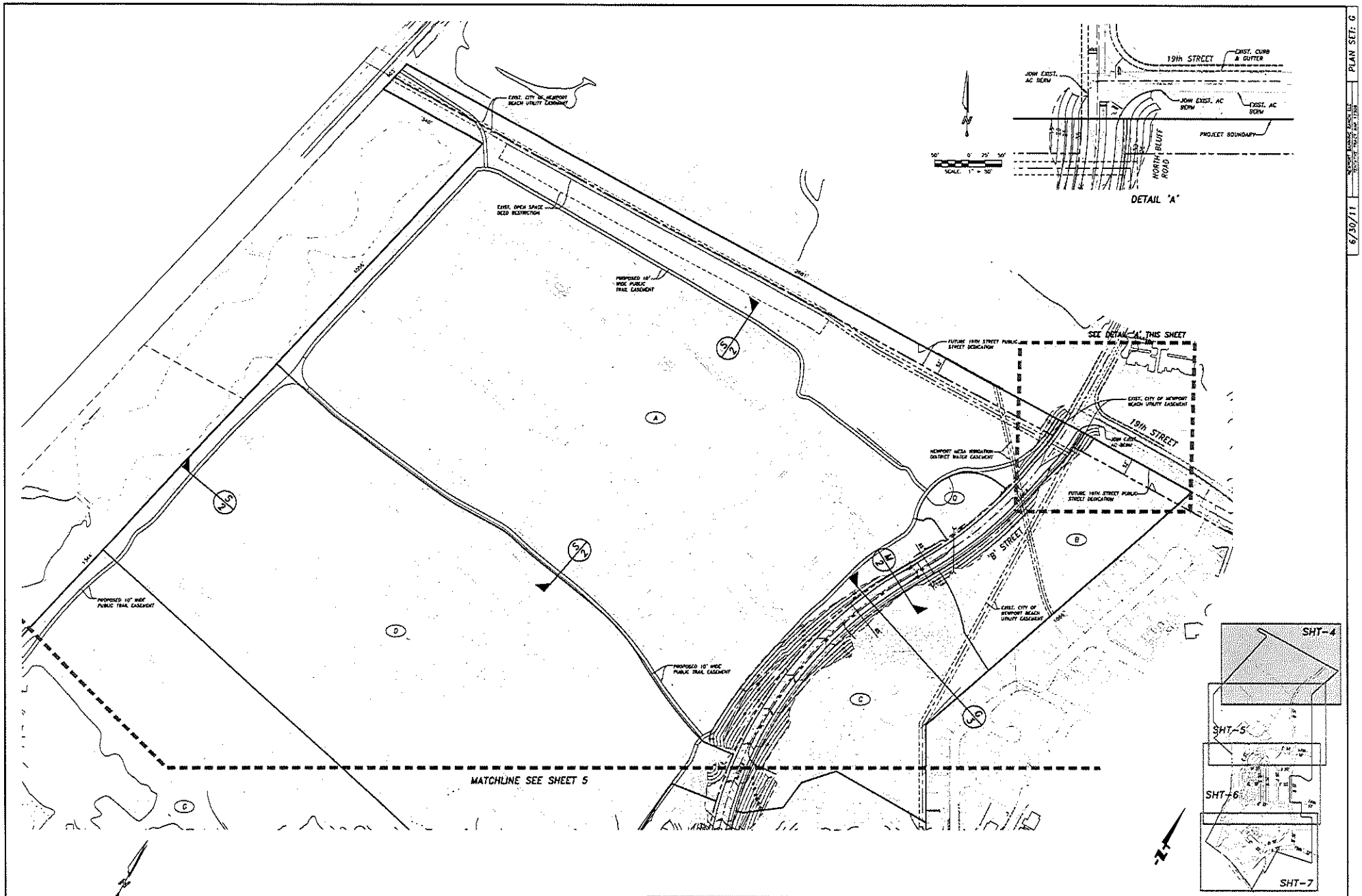
TENTATIVE TRACT NO. 17308
CROSS SECTIONS

SHEET 3 OF 7

PLAN SET: G
6/30/11



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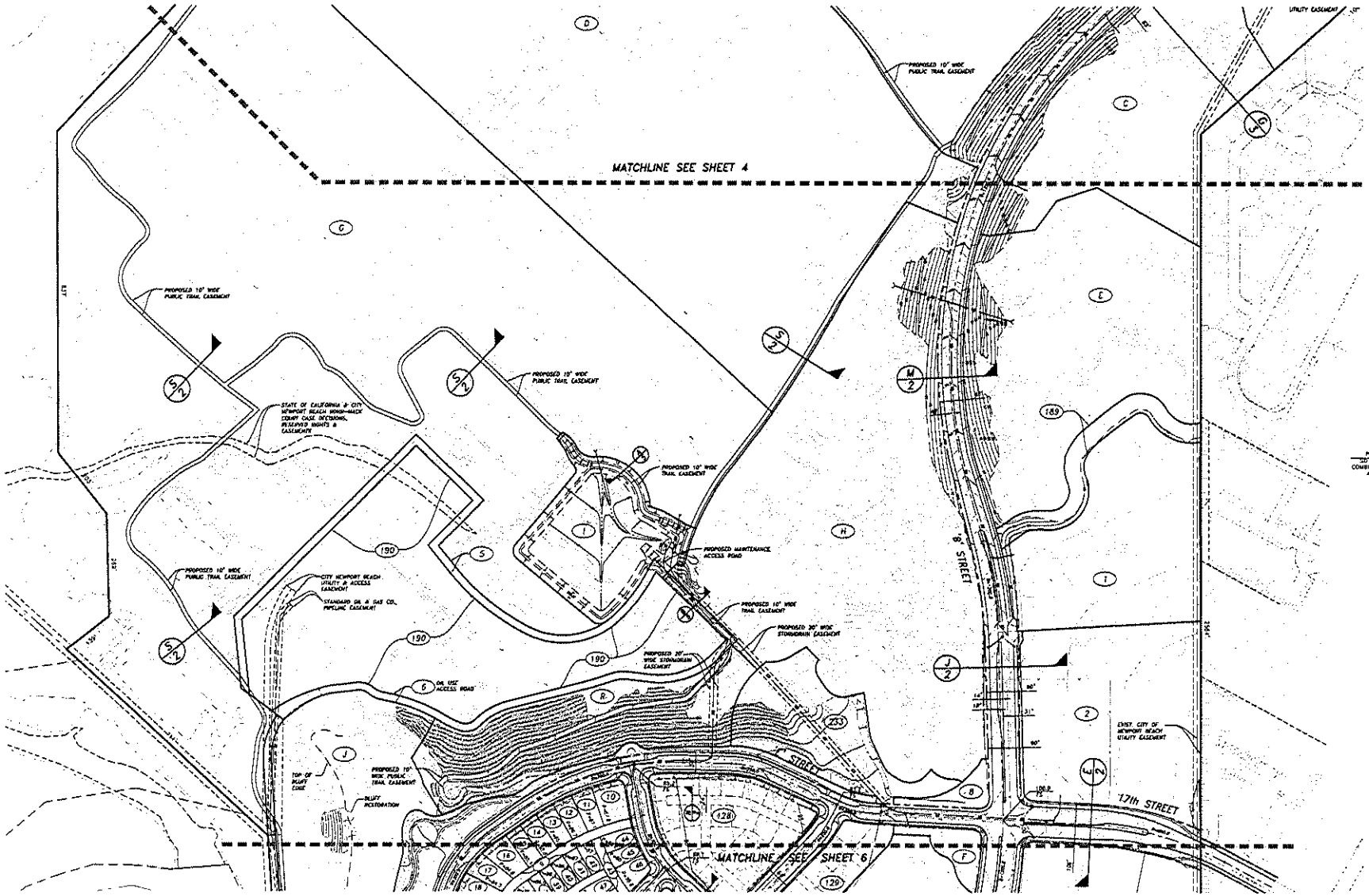
TENTATIVE TRACT NO. 17308

SHEET 4 OF 7

PLAN SET: G

6/30/11



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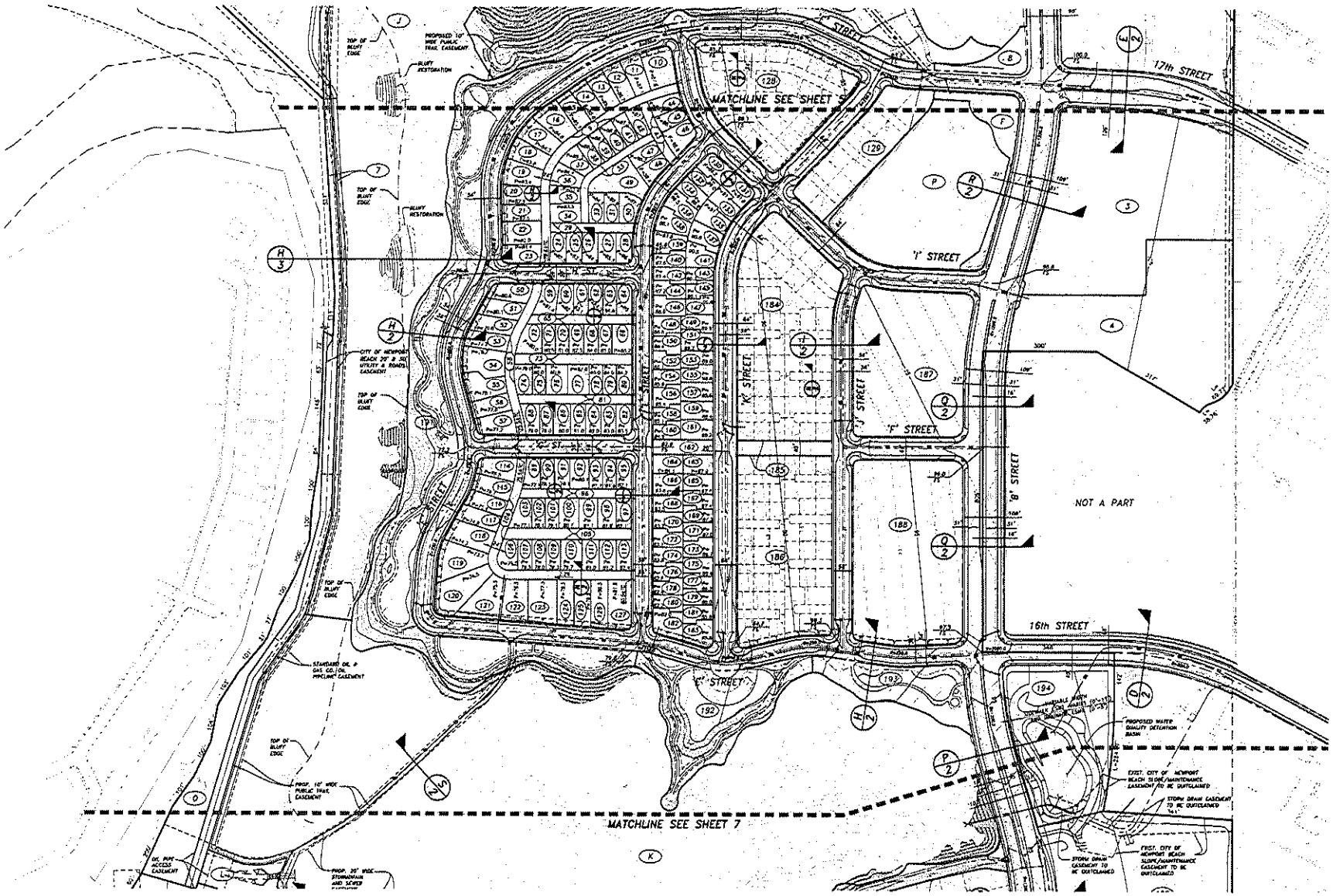
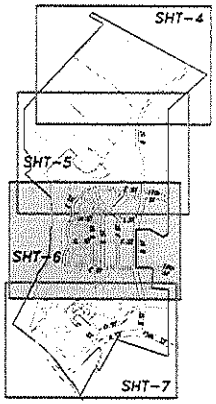
TENTATIVE TRACT NO. 17308

SHEET 5 OF 7

PLAN SET: G

6/30/11





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TENTATIVE TRACT NO. 17308

SHEET 6 OF 7

PLAN SET: G

6/30/11

MATCHLINE SEE SHEET 6

'D' STREET

'C' STREET

'B' STREET

15TH STREET

WEST COAST HIGHWAY

NOTE: A SIDEWALK EASEMENT WILL BE PROVIDED ON PORTIONS OF 15TH STREET, 'A' STREET AND 'B' STREET WHEN THE MEANDERING SIDEWALK IS OUTSIDE THE PUBLIC RIGHT-OF WAY

SEE DETAIL 'B' THIS SHEET

SECTION 'A'

SECTION 'B'

DETAIL 'B'

SCALE: 1" = 50'

SCALE: 1" = 100'

SHT-4

SHT-5

SHT-6

SHT-7

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TENTATIVE TRACT NO. 17308

SHEET 7 OF 7

PLAN SET: C

6/30/11

Exhibit J

NBR Affordable Housing Implementation Plan

Newport Banning Ranch (NBR)
Affordable Housing Implementation Plan (AHIP)
Revised April 2012

1.0 Introduction

1.1 Background

This Affordable Housing Implementation Plan (AHIP) has been prepared in order to comply with the Housing Element of the Newport Beach General Plan as well as Chapter 19.54 of the Newport Beach Municipal Code, Inclusionary Housing, which provides that an AHIP must be prepared by Applicant to set forth a plan for meeting the City's goal of providing a balanced residential community comprised of a variety of housing types and opportunities for all social and economic segments of the community including very low, low and moderate income households. This AHIP is provided in fulfillment of those requirements and details Applicant's approved strategies for meeting City requirements.

Chapter 19.54.060 of the Municipal Code provides that "Residential subdivision projects of 51 dwelling units or more shall be required to submit an AHIP." Tentative Tract Map (TTM) 17308 is an element of Applicant's entitlement package. This map provides for a maximum of 1,375 dwelling units and meets the minimum threshold for submittal of a mandatory AHIP for City review and adoption.

1.2 Project Description

The Newport Banning Ranch (NBR) is a 401-acre master planned community regulated by the City of Newport Beach (City) and other stakeholder governments. The master plan, following extensive community outreach and facilitation, was crafted by a multi-disciplinary team of architects, engineers, planners, and environmental specialists to implement the entitlement standards provided under the Alternative Use option of the Newport Beach General Plan as approved by voters in November, 2006.

The Alternative Use option provides for 1,375 dwelling units, 75,000 square feet of retail and convenience commercial, and a 75-room coastal inn with spa facilities and services. More than half of the property is to be set aside for open space for public parks and playgrounds as

well as protected areas for environmentally sensitive and other habitats. Oil production facilities now on the site will be consolidated into two drilling and production areas.

2.0 Affordable Housing Plan

2.1 Definitions

The Inclusionary Housing Ordinance provides further guidance on the preparation of an AHIP and the City's published housing guidelines and rules including definitions. A number of those definitions, especially definitions about rentals, are relevant to the NBR AHIP including:

A. Affordable Housing Agreement. The Agreement entered into is to be in compliance with Section 19.54.080, which provides legal restrictions by which the affordable units shall be restricted to ensure that the unit remains affordable to very low-, low-, or moderate-income households, as applicable. With respect to rental units, rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property;

B. Affordable Housing Cost. Affordable housing cost for very low income households shall not exceed 30 percent of 50 percent of area median income adjusted for family size. Affordable housing cost for low income households shall not exceed 30 percent of 70 percent of area median income adjusted for family size. Affordable housing cost for moderate income households shall not be less than 28 percent of the gross income of the household, nor exceed 35 percent of 110 percent of area median income adjusted for family size. In determining the maximum household income for a given affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).

C. Affordable Rent. An annual rent that does not exceed 30 percent of maximum income levels for very low-, low-, and moderate-income households, as adjusted for household size. In determining the maximum household income for a given

affordable unit, it shall be assumed that each bedroom is occupied by two persons, except for efficiency units (one person).

D. Affordable Unit. An ownership or rental housing unit, including senior housing, affordable to households with very low-, low-, and moderate income as defined in Section 9.54.020 of the Newport Beach Municipal Code.

E. Applicant. Newport Banning Ranch LLC, including any successor(s)-in-interest.

F. City. The City of Newport Beach.

G. Low-Income. Income between 50% and 80% of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.

H. Moderate Income. Income between 80% and 120% of the Orange County median income, adjusted for actual household size as established annually by the California Department of Housing and Community Development.

I. Very Low Income. Income 50% or less of the Orange County median income, adjusted for actual household size, as established annually by the California Department of Housing and Community Development.

2.1 Affordable Housing Obligation

A. Number of Units/Income Levels. The City's Housing Element includes a goal that 15% of all new housing units in the City be affordable to very low, low and moderate income households. A maximum of 1,375 units are proposed[1]. The Affordable Units shall be comprised of either:

1. Five Percent Very Low Income (69 units); or
2. Ten Percent Low Income (138 units); or

[1] The unit count may vary based on final project approvals. The relative percentage of affordable units shall remain the same.

3. Fifteen Percent Moderate Income (206 units); or

4. A combination of the above.

For the purpose of calculating the number of affordable units in the event a combination of units is to be provided, a Very Low Income Unit shall be deemed to be the equivalent of three Moderate Income Units and two Low Income Units. A Low Income Unit shall be the equivalent of 1.5 Moderate Income Units. For example if 20 Very Low Income Units are provided either 146 Moderate Income Units or 98 Low Income Unit would be required to complete the affordability requirement.

B. If for any reason the number of approved market rate units authorized is not constructed, or cannot be constructed due to the operation of law or economic conditions, then the number of affordable units provided or the fees paid in-lieu of providing rentals shall be reduced proportionally so that Applicant's obligation does not exceed the percentage requirement.

C. Excess Affordable Units. In the event that Applicant constructs affordable units in excess of the maximum required amount, Applicant may be entitled to such additional incentives pursuant to the City's Density Bonus ordinance codified in Newport Beach Municipal Code Chapter 20.32, as the same may be amended from time to time. Such incentives shall be proposed and approved through an Affordable Housing Implementation Agreement (See Section 2.5.A).

2.2 Methodology

A. Options. Applicant shall comply with its affordable housing obligation by any combination of the following:

1. Constructing the new Affordable Units on-site or offsite.

2. The renovation and restriction of existing housing units.

3. The payment of the City's In-lieu Fee.

4. The dedication of land for affordable housing.

B. Minimum Onsite Requirement. A minimum of 50% of Affordable Housing Obligation shall be provided on Site. Applicant and City agree that regardless of the permissible measures employed by Applicant to meet Affordable housing objectives and the mandates of the AHIP, including fee payments and/or land dedications, Applicant will insure that at least 50% of the AHIP affordable housing will be constructed on site as either for sale housing or rentals.

C. Off-site Location. Affordable units provided off-site, either through new construction or through renovation and restriction of existing housing units, shall be located within the boundaries of the City of Newport Beach.

D. Off-Site Renovation. Renovation of existing off-site units to affordable units shall meet the following requirements:

1. The interiors and exteriors of the units shall be substantially renovated to improve the livability and aesthetics of the units for the duration of the affordability period.

2. The units shall be returned to the City's housing supply as decent, safe and sanitary housing and meet all applicable Housing and Building Code requirements.

3. Renovations shall include energy conserving retrofits that will contribute to reduced housing costs for future occupants of the units.

4. The units shall not already be subject to affordability income restrictions unless such restrictions are set to expire in three years or less. In such cases, the affordability covenant shall provide for thirty (30) years in addition to any existing covenant time.

E. In-Lieu Fee. Applicant shall, at Applicant's election, be permitted to pay an in-lieu fee for each unit constructed in order to fulfill up to 50% of the Inclusionary Housing Program requirements.

1. The per dwelling unit in-lieu fee will be paid at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.

2. The per dwelling unit in-lieu fee will be paid in the amount in effect at the time each dwelling unit building permit for market rate housing units is otherwise ready to issue.

3. There shall be no such Inclusionary Housing Program fees required for Commercial, Institutional, or Resort buildings, including lodging buildings.

F. Land Dedication. In addition to the provision of on-site affordable units for eligible households provided by Applicant or Applicant's agents, Applicant may also propose to dedicate land to the City or to a City-designated housing developer for the provision of affordable units in lieu of constructing any or all of the affordable units required by City regulations.

1. The land offered for dedication shall be of sufficient size to construct the number of affordable units that Applicant would otherwise be required to construct.

2. In the event that Applicant cannot dedicate such land in time to fulfill City requirements for a particular sequence of market rate housing, then Applicant shall post improvement security subject to approval by City guaranteeing such dedication by a time certain.

3. Any land offered for dedication shall be assumed to accommodate 40 units per acre.

4. Any land offered for dedication shall have suitable topography and sufficient vehicular access and infrastructure to accommodate 40 units per acre.

5. The location and size of the land to be dedicated shall be subject to the approval of the City Council, which approval shall not be unreasonably withheld.

2.3 Term

City and Applicant understand and acknowledge that any affordable units provided as qualified Inclusionary Housing Program units shall be restricted for a period of not less than thirty (30) years; and, that such the Affordable Housing Cost or Affordable Rent can be adjusted annually to reflect any changes to the Median Family Income for Orange County as determined by California HCD. Such requirements shall be recorded in a rental agreement or affordable housing covenant against the applicable property as provided in the Municipal Code.

2.4 Regional Housing Needs Assessments (RHNA)

A. Requirements. City and Applicant agree that any units constructed and or renovated to meet City Inclusionary Housing Ordinance Requirements shall also meet Southern California Association of Governments (SCAG) Regional Housing Needs Assessments (RHNA) specifications for qualified affordable housing.

B. Income Limits for California. The California Department of Housing and Community Development (HCD) publishes income limits for California counties adjusted for family size. The most recent edition of the Income limits was published June 13, 2011 and established an Orange County Area Median Income of $84, 200 for a family of four (4) persons. HCD further adjusted permissible income limits for the various income categories defined by HCD including:

- Extremely Low $27,700
- Very Low Income $46,150
- Lower Income $73,850
- Median Income $84,200
- Moderate Income $101,050

2.5 Implementation

A. Affordable Housing Implementation Agreement. An Affordable Housing Implementation Agreement (AHIA) will be executed and recorded at each development phase of development for any affordable units to be constructed within that phase, or for land proposed to be dedicated, or for any in-lieu fees to be paid, or for any other permissible measure or measurers for compliance with City's Inclusionary Housing Program.

B. Authority. Each AHIA shall be approved by the Community Development Director in conjunction with the approval of any Tract Map and/or Site Development Review for NBR development phases.

C. Unit Production Security. As security for the provision of the affordable housing provided for in the Affordable Housing Agreement Applicant shall post compliance security bond guaranteeing the subsequent construction of required affordable units for that phase, or an appropriate land dedication or a combination of such measures as permitted by this AHIP. The bond shall be in the amount of in-lieu fee in effect at that time for each dwelling unit to be constructed.

D. Timing. AHIA shall be executed and recorded, and security posted at each appropriate final map. Security will be released when a certificate of use and occupancy is issued for the related affordable rate units.

2.6 Sequencing

A. The affordable units provided or arranged for to be phased as follows:

1. Certificate of use and occupancy for Fifty percent of market rate units: commence construction on, or payment for fees/dedication of lands for one-third of required units.

2. Certificate of use and occupancy for Seventy Five percent of the market rate units commence construction on, or payment of fees/dedication of lands for the next one-third of required units.

3. After issuance of certificate of occupancy for Seventy Five percent of the market rate unit, a reconciliation process will be created to determine the final number of affordable housing units required to be constructed and/or payment of fees/dedication of land

4. At the earlier to occur of certificate of use and occupancy for the last market rate: commence construction on, or payment of fees/dedication of lands for final required units.

3.0 Administration

3.1 Modification of Requirements

If the requirements of Chapter 19.54 of the Newport Beach Municipal Code are modified by the City Council during the term of the AHIP agreement to eliminate the requirement for the payment of in lieu affordable housing fees for the privilege of constructing market rate housing, then Applicant shall be entitled to a waiver of any further fee obligations for the provision of affordable housing units for fees not already paid, or for buildings not already constructed and/or renovated and occupied.

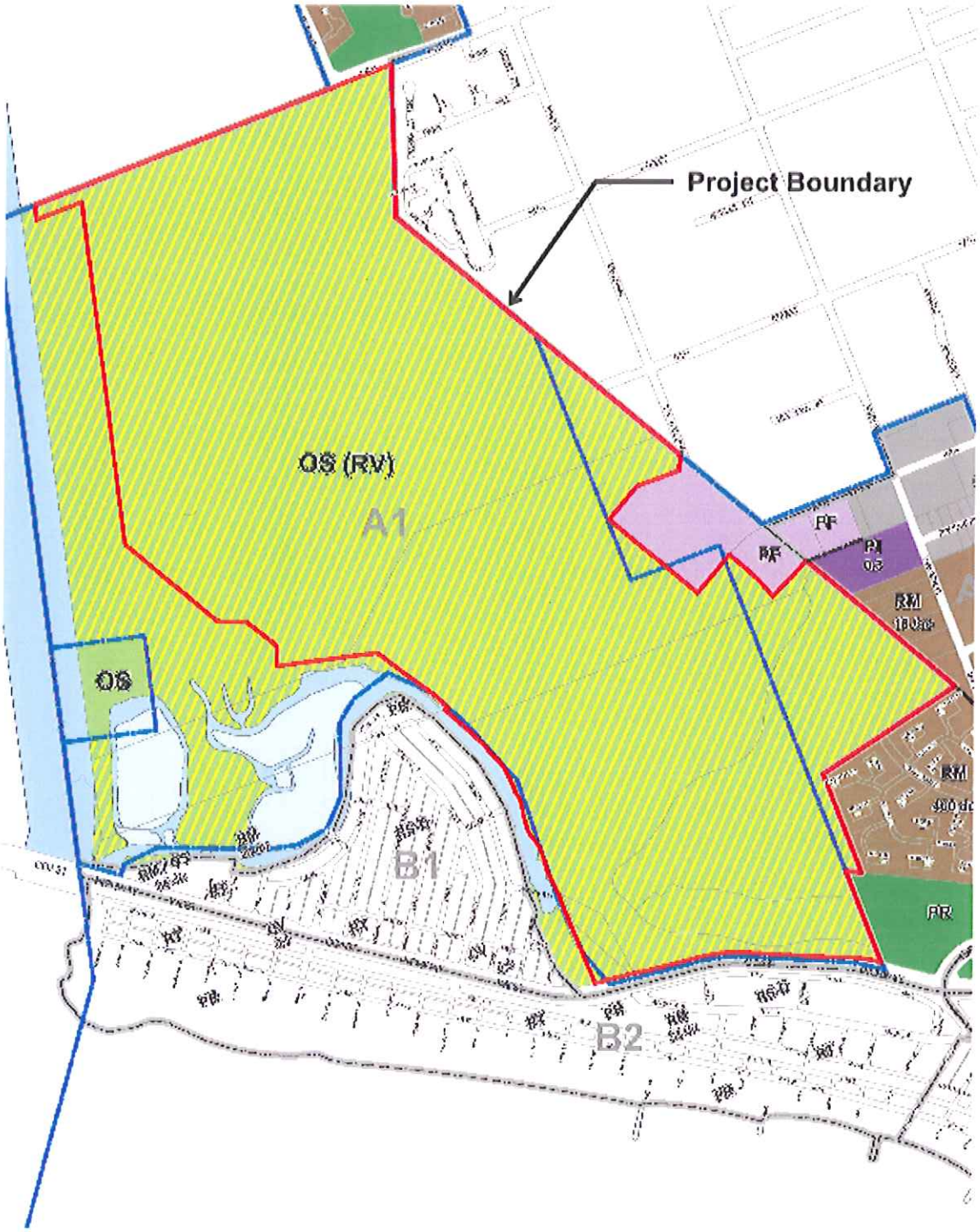
3.2 Amendments

This AHIP may be amended by mutual agreement of the City and Applicant. Such an amendment, so long as it is consistent with the Housing Element of the General Plan and with the Development Agreement, shall not require an amendment to the General Plan itself, the Coastal Development Permit or to the Development Agreement.

Exhibit K

Project Boundary

EXHIBIT K
Project Boundary



Attachment No. PC 2

Fiscal Impact Analysis

FISCAL IMPACT ANALYSIS OF THE PROPOSED NEWPORT BANNING RANCH ANNEXATION TO THE CITY OF NEWPORT BEACH

FINAL DRAFT

DECEMBER 29, 2011

Prepared for

City of Newport Beach

Prepared by

Applied Development Economics
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APPLIED
DEVELOPMENT
ECONOMICS

CITY OF NEWPORT BEACH CALIFORNIA

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1. INTRODUCTION

The proposed Newport Banning Ranch Project would entail annexation of 360 acres from Orange County jurisdiction into the City of Newport Beach. This report is prepared pursuant to City Council Policy D-2, which requires analysis of the fiscal impact of such annexations on City finances and related City services and facilities. The report also provides information for use by the Orange County Local Agency Formation Commission (LAFCo) pursuant to requirements under the Knox-Cortese Act related to the ability of local jurisdictions to provide adequate public services to areas proposed for annexation.

The analysis in the report has been coordinated with the Public Services Analysis in the DEIR for the Newport Banning Ranch Project. However, the standards of significance under CEQA focus on physical impacts to City facilities where expanded capacity may be needed to serve the proposed project. In contrast, the fiscal analysis also addresses impacts to City Departments' operations and maintenance budgets in addition to any new facilities that may be needed.

The fiscal analysis uses the Newport Beach Fiscal Impact Model to help calculate revenue and cost impacts of the proposed project. This model was initially developed in support of the General Plan Update, which was adopted in 2006.[1] The model has been updated to reflect Fiscal Year 2010-2011 costs and revenues from the Newport Beach City Budget. The fiscal impact model calculates public service impacts for specific land uses that support the residential population, the employment base and the visitor population in Newport Beach. It also calculates the public revenues that each type of land use typically generates for the City, including property taxes, sales taxes and other taxes as well as a variety of user charges and fees.

The fiscal impact model is designed to calculate the average cost of public services required by new development, on the assumption that new development affects City services in approximately the same way that existing development does. The model nets out certain costs that are unlikely to change with expansion of City government, such as the number of City Department Directors and Division managers, as well as the City Council and City Clerk expenditures, but otherwise assumes that City administrative support and overhead tends to increase as City government activities grow to provide services to an expanding population and employment base. Over the long term, this is clearly the dynamic that local governments experience. In the short term, development projects may have lower or higher cost impacts depending on the existing capacity of City services to accommodate more development, and the level of expenditure needed to expand services incrementally if existing capacity is not available. The output from the fiscal impact model can be modified to address these circumstances for each individual project. In the case of Newport Banning Ranch, maintenance costs for certain facilities that have community wide benefit, such as the community park and the Bluff Rd. on the periphery of the project site, have been

[1] A technical description of the fiscal impact model may be found in: Applied Development Economics, *Fiscal Impact Analysis and Model, Newport Beach General Plan Update*, January 2004.

prorated to reflect the fact that the proposed project does not by itself require these facilities.

2. PROJECT DESCRIPTION

The proposed Newport Banning Ranch Annexation Area extends in the northwest direction from the City of Newport Beach and is currently located within the Newport Beach Sphere of Influence (SOI). The annexation includes parcels that total approximately 360 acres. An additional 41 acres are part of the proposed project site and currently within Newport Beach City limits.[2] These parcels are along the eastern edge of the site and include portions of the Mixed Use/Residential development, the Community Park and the Medium Density residential. The proposed project could result in the additional development of up to 1,375 dwelling units, 75,000 sq. ft of commercial space, and 75 overnight accommodations in a Resort Inn. The following maps identify the project area and vicinity.

PROJECT ECONOMIC AND DEMOGRAPHIC CHARACTERISTICS

The public services needs for the project, as well as its fiscal impact on the City, are a function of the population, jobs, and visitors it supports and the economic characteristics of the development, including its assessed value and the taxable sales and lodging revenues it generates. The 1,375 dwelling units in the development are projected to house 3,012 residents, based on an average household size of 2.19 persons. It is also estimated that the retail and lodging components of the project will employ 422 workers.[3]

The assessed value of the project at buildout is estimated at $1.52 billion, based on an average price per residential unit of $1.2 million and values of $300 to $350 per sq.ft. for the retail and lodging development. The estimate also accounts for about half of the required 206 inclusionary below market rate units, valued at $309,000 per unit, being provided on-site. The project plan calls for the remainder of the inclusionary units to be provided offsite or through in-lieu fees.

The retail components of the project include both the restaurants and gift shops in the Inn as well as ground floor commercial in the mixed use portion of the project. For this analysis, it is estimated that the retail space overall would generate about $355 per sq.ft in taxable sales. This is slightly below the expected sales performance for retail in Corona del

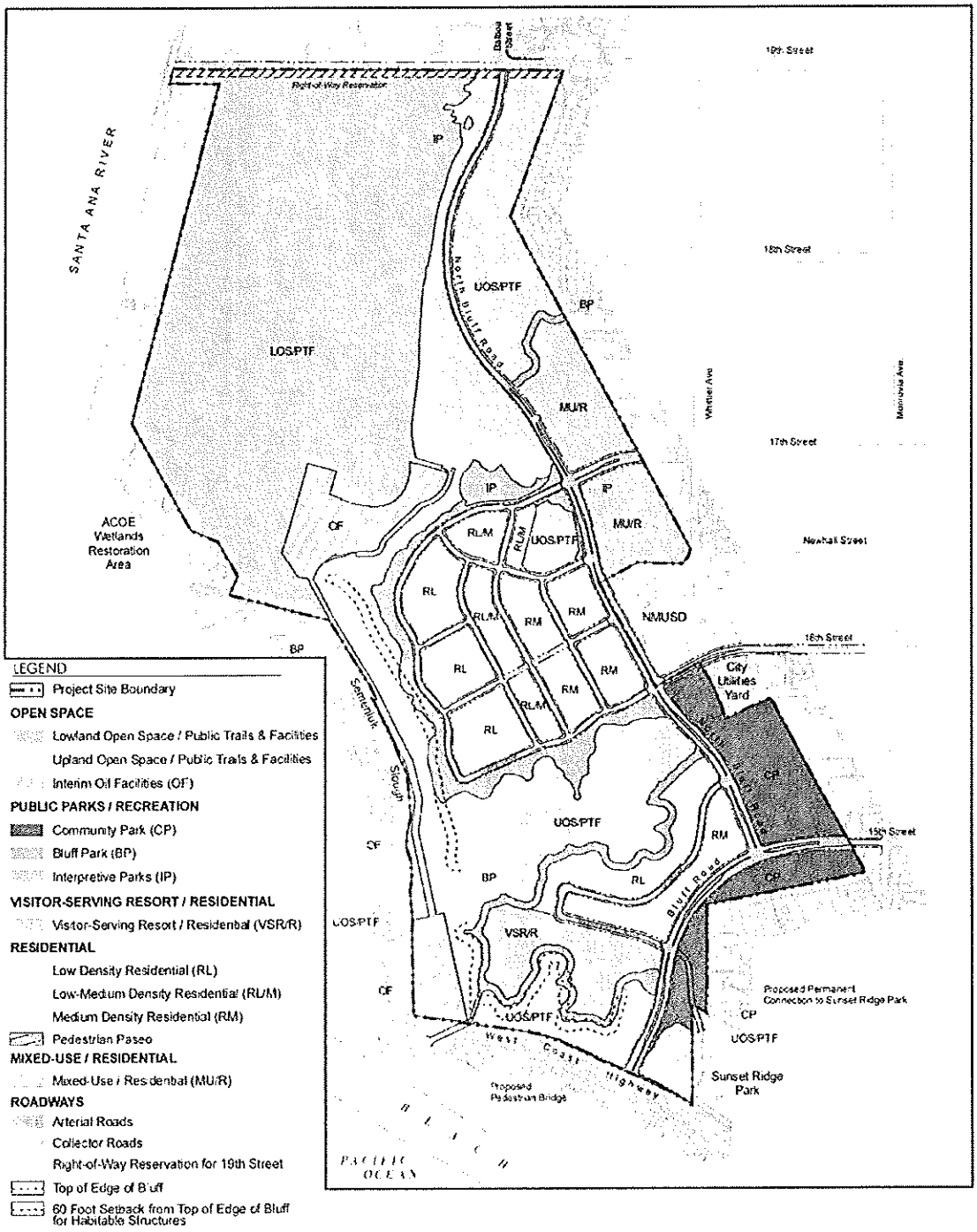
[2] Parcels within the City limits include 114-170-049 (1.424 ac.),114-170-050 (9.823 ac.), 114-170-063 (10.238 ac.), 114-170-083 (28.457 ac.).

[3] The employment estimate is based on employee density factors developed for the 2006 General Plan Update, which range from 303 sq.ft. per retail employee to 707 sq.ft. per employee for the lodging development. The jobs for the 22,000 sq.ft. of restaurants, gift shops and fitness center in the Inn are calculated at the retail rate. Therefore, for purposes of the employment calculations, the analysis assumes a total of 97,000 sq.ft. of retail uses. However, the 15,000 sq.ft. fitness center in the hotel would not generate much sales tax so it is not included in the sales tax calculations.

Mar and the Lido/Cannery area.[4] This estimate assumes a mixture of resort level visitor spending as well as local serving retail in the mixed use development.

[4] Applied Development Economics, *General Plan Update Retail and Commercial Market Analysis*. December 2002. Adjusting the 2002 figures for inflation plus the current retail downturn, comparable current average sales for these two areas would be $363/sq.ft.

FIGURE 1 – NEWPORT BANNING RANCH PROJECT SITE



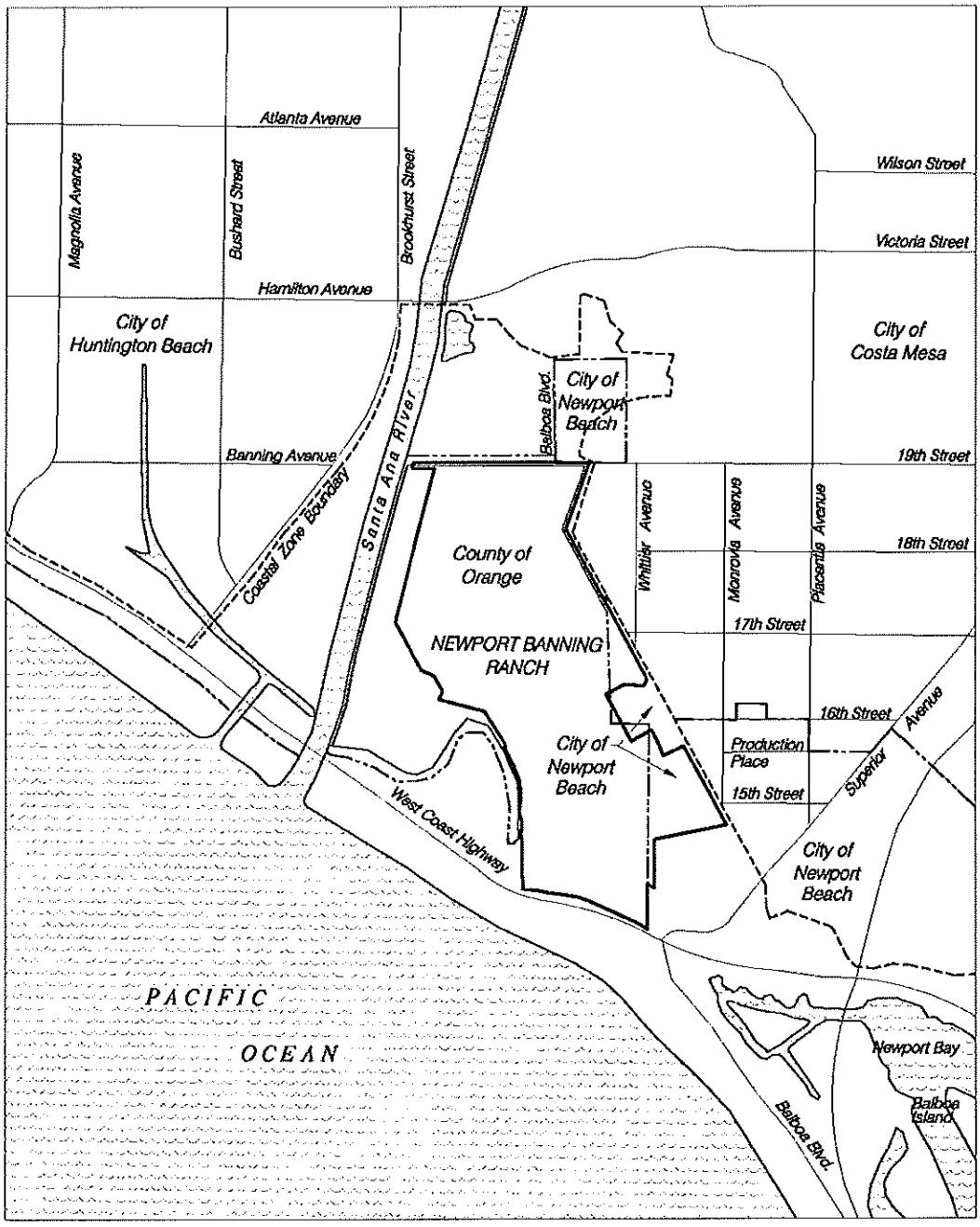
Source: City of Newport Beach Planned Community Development Plan

The 75 overnight lodging units are anticipated to attract nearly 160 visitors per day, at an average group size of 3.0 persons and a 70 percent occupancy rate.[5] The transient occupancy tax calculations in this report assume an average published room rate of $200 per night and 70 percent occupancy of the facility. This rate is about 25 percent above the average level of lodging rooms in the City currently. However, for comparison, the Pelican Hill Resort reports a minimum rate of $495 per night.

Based on the taxable sales calculations discussed above, the restaurants and gift shop would generate about $2.8 million in taxable sales per year. In addition to this amount, the Resort Inn visitors would be expected to spend another $2.7 million per year on taxable items elsewhere in Newport Beach, based on the 2007 visitor surveys conducted by Lauren Schlau Consulting (LSC).

[5] These factors represent City averages as presented in: Lauren Schlau Consulting (LSC), *Economic Impacts and Profile of Newport Beach Visitors*. September 2007. Market conditions have deteriorated since the time of this report, but it is anticipated that by the time the Newport Banning Ranch Inn project is built, market conditions will have rebounded.

FIGURE 2 – NEWPORT BANNING RANCH VICINITY



Source: Newport Banning Ranch Master Site Plan

3. PUBLIC SERVICES PLAN

This section of the report addresses five major service categories that would provide services directly to the project and its residents and businesses: police services, fire protection, libraries, parks and recreation, including cultural and senior citizen programs, and facilities maintenance, including parks and streets maintenance. The analysis below discusses any staffing and facilities expansions needed to serve the proposed project and provides estimates of the annual cost to extend services to the site. The City would also incur additional expenditures for general government services indirectly provided to the project. The costs for these services are provided in the next chapter that discusses the overall fiscal impact of the project. Sources reviewed and utilized in the analysis presented in the Public Services Plan include the Draft Environmental Impact Report commissioned for the proposed Newport Banning Ranch annexation application, and the most recent Municipal Services Review (MSR) for Newport Beach, the *Orange County LAFCO Municipal Services Review/Sphere of Influence Report* dated July 2006.

FIRE DEPARTMENT

EXISTING CONDITIONS

The portion of the project site which is an unincorporated area, is currently served by the Orange County Fire Authority. The City provides protection to the entire City, with some assistance from the Costa Mesa Fire Department through automatic aid agreements. Eight Newport Beach fire stations are strategically located throughout the City, each serving its immediate surroundings with:

- Fire protection
- Fire prevention
- Hazards reduction
- Emergency medical services

Staffing reported in the Newport Banning Ranch Draft EIR ("DEIR) includes 117 full-time fire fighters. Of the eight fire stations, each has one engine company; three have paramedic vans; and two have ladder trucks. A fire engine and paramedic ambulance responds to each emergency call.

Each type of emergency has different total response time objectives which include the time from receipt of the call until the appropriate responding unit is on scene.

The total response time objectives of the Department are broken up into dispatch processing expectations, turnaround time, and travel time objectives (Table 1). The Fire Department expects the MetroNet dispatch center to complete dispatching within 50 seconds for 90 percent of calls and within 90 seconds for the remaining 10 percent. For dispatches requiring the donning of full Personal Protective Equipment (PPE), turn around should be completed within 80 seconds, while the standard for non-PPE calls is 60 seconds. Travel time objectives vary and are presented in Table 2 below.

TABLE 1
TOTAL RESPONSE TIME OBJECTIVES

UNIT	OBJECTIVE**
First Due Response requiring P.P.E.*	Less than 5 Minutes and 20 Seconds
First Due Response without P.P.E.	Less than 5 Minutes
Advanced Life Support Response requiring P.P.E.	Less than 9 Minutes and 20 Seconds
Advanced Life Support Response without P.P.E.	Less than 9 Minutes
Effective Response Force requiring P.P.E.	Less than 9 Minutes and 20 Seconds
Effective Response Force without P.P.E.	Less than 9 Minutes

Source: Newport Banning Ranch DEIR, page 4.14-5.
Notes:
*P.P.E. stands for Personal Protective Equipment
**It is the objective of the Fire Department to achieve these response times 90% of the time

TABLE 2
TRAVEL TIME OBJECTIVES

	OBJECTIVE	
UNIT	90% of Responses	Remaining 10% of Responses
First Due Units	Less than 4 Minutes	Less than 10 Minutes
Advanced Life Support Responses	Less than 8 Minutes	Less than 10 Minutes
Effective Response Force	Less than 8 Minutes	Less than 15 Minutes

Source: Newport Banning Ranch DEIR, page 4.14-5.

PROJECT IMPACT ANALYSIS

A Fire Department study evaluated the City's ability to provide adequate response to the proposed project as well as its existing service area without the provision of an additional fire station. Based on the Fire Department's review of the proposed Master Development Plan and the findings of the study, Station Number 2 could not serve the entirety of the proposed project development within the City's established response time standards. In order to maintain appropriate response times, a temporary fire station would be required on the project site to serve those areas of the site that cannot be served by existing Station Number 2. Site preparation and construction of the temporary fire station, which the Fire Department estimates at about $192,800, would be paid for by the applicant.[6]

The City has sufficient minimum staffing levels currently in place to staff the temporary fire station; however, these temporary positions would have to be hired as overtime positions, the cost of which would be paid for by the applicant. The Fire Department estimates the annual operations cost for the temporary station at about $123,800, including personnel, supplies, utilities and other necessary services. The temporary fire station would be required unless a replacement fire station is operational in a location that provides appropriate response times. The temporary fire station would remain in operation until a replacement fire station is operational that could serve the project in its entirety.

There will be an incremental cost to the Fire Department to respond to fire and medical emergencies generated by the project and its residents and visitors. The City's fiscal impact model estimates that this incremental cost would be approximately $741,000 per year,

[6] Ron Gamble, Newport Beach Acting Assistant Chief/Fire Marshal, personal communication, November 14, 2011.

based on a per capita service impact approach. More than half of this cost would be associated with responses to medical emergencies.

POLICE DEPARTMENT

EXISTING CONDITIONS

Most of the project area is currently in Orange County unincorporated area and is served by the North Operations Division of the Orange County Sheriff's Department. The Newport Beach Police Department provides police protection to the City of Newport Beach, along with mutual aid from the Costa Mesa Police Department. The Newport Beach Police Department provides the following services:

- Emergency police response
- Non-emergency police response
- Routine police patrol
- Traffic violation enforcement
- Traffic accident investigation
- Animal control
- Parking code enforcement

Staffing at the Newport Beach Police Department includes 285 personnel (1 chief, 3 captains, 8 lieutenants, 22 sergeants, 115 sworn officers, 92 civilian personnel, and 44 seasonal and part-time personnel). The Department does not have a staffing standard. Currently, there are 1.3 officers per 1,000 residents.

PROJECT IMPACT ANALYSIS

To maintain the current officer to resident ratio, the Department would need to employ about three additional officers. In addition, the lodging and commercial portions of the project would generate additional police calls for service. The service analysis conducted for the 2006 General Plan Update indicated that retail and lodging uses comprise 20 percent of the demand for police services in Newport Beach. The project would not require expansion of existing facilities, or the construction of new facilities.

The Police Department currently spends $267,400 per sworn officer, including all non-sworn support staff, equipment, data analysis and administrative functions and costs. The City's fiscal impact model calculates an average cost impact for the Newport Banning Ranch project of $1.03 million per year. However, the incremental cost of adding three sworn patrol officers would likely be lower, assuming other department personnel such as community service officers and management staff would not need to be increased. The average cost of a sworn officer is about $125,600, including direct salary and benefits. Departmental support services, including vehicle replacement and fleet maintenance, adds about 37 percent to this cost, bringing the total per officer to $172,100. Three new officers at this cost would total $516,300.

LIBRARY SYSTEM

EXISTING CONDITIONS

The City of Newport Beach Library employs approximately 90 employees and runs four public library branches including the 54,000 square foot Central Library. The Balboa and Mariners branches are four and five miles from the project site, respectively. The Corona Del Mar branch and the Central Library are farther away. The libraries serve "71,784 active borrowers, and the System circulates over 1,701,400 items annually" according to the DEIR.

PROJECT IMPACT ANALYSIS

The DEIR indicates that the City Library System determined that the Project "would not create the need for new or expanded library facilities." However, there would be increased usage of the system and incremental costs associated with the increased service demands of the project. The City fiscal model estimates this incremental cost impact at about $209,200 per year, based on an average current expenditure of $155.53 per capita by the City Library.

PARKS AND RECREATION

EXISTING CONDITIONS

The City currently provides 347.9 acres of parks and also maintains an additional 99.2 acres of Beach Recreation area along the ocean front. On a citywide basis, including the beach areas, the City meets its standard for park acreage but there are areas within the City, including West Newport and Newport Heights that that do not have sufficient park space to meet local needs. The City General Plan identifies the needs for a 20-30 acre community park on the Newport Banning Ranch site.

The City spends $5.1 million per year maintaining its parks and an additional $7.7 million per year providing recreation programs, cultural and arts programs, and senior citizens services. The City has adopted a Quimby Act Ordinance - Dedication and Fees Ordinance (*City of Newport Beach Municipal Code*, §§19.52.010–19.52.090) - requiring new residential subdivisions to provide 5 acres per 1,000 population or contribute to a fund in lieu of actual park dedication or construction or a combination thereof.

PROJECT IMPACTS

The proposed project at Newport Banning Ranch includes approximately 51 gross acres of public parkland in the form of one community park of approximately 27 gross acres, a network of bluff parks totaling approximately 21 gross acres, 3 interpretive parks with approximately 4 gross acres, and a system of bicycle and pedestrian trails. These design elements in the project would meet and exceed the City requirements for approximately 15 acres of parkland under the Quimby Act and the General Plan requirement for a 20-30 acre community park.

The project developer would construct park facilities and offer for dedication the park facilities and the land for the community park and construct the park facilities. The bluff parks and interpretive parks are to be made available for public use. The City General Services Department would assume maintenance responsibilities for the community park areas and the project HOA would assume maintenance of the remaining parks that are accessible to the public. As noted above, the City spends about $5.1 million per year maintaining the 347 acres of non-beach parks. Based on this average cost, the community park would require $352,700 per year to maintain. Since this park is intended to be a citywide asset, this full cost is not counted against the Newport Banning Ranch Project in the fiscal summary below. However, it does represent an increase to City park maintenance costs overall. The average cost impact of project residents' use of all City parks is estimated at about $151,750 per year.

Also, it is estimated that project residents' use of City recreation facilities, arts and cultural programs and possibly senior services would create additional City costs of about $259,000 per year. Overall, the City funds about 40 percent of its recreation programs through fees, which would reduce the net cost impact of the project to $155,400 per year.

STREET/FACILITY MAINTENANCE

EXISTING CONDITIONS

The General Services Department maintains City streets and facilities, including storm drains, street trees and signs, as well as beach cleanup and refuse pickup. The City currently maintains about 83 miles of roads ranging from two lane undivided commuter roads to eight lane divided roads. In addition to General Fund revenues, the City uses State gas tax funds to help maintain streets. The City also receives other regional funds for transportation infrastructure, including Measure M which provides regional sales tax monies to jurisdictions for transportation infrastructure purposes. Including all of these revenue sources, it is estimated the City spends an average of $89,200 per mile annually on street maintenance, including long-term capital replacement expenditures. This is averaged across all types of streets and does not include related expenditures for street landscaping or storm drains.

PROJECT IMPACTS

In addition to internal circulation, which is estimated at about one mile, the proposed project would add two arterial roads to the City inventory, North Bluff Rd. and Bluff Rd., with an approximate combined length of 1.5 miles. Extension of existing City streets into the site would add about 0.3 mile to the total and the project also proposes to construct a pedestrian bridge over Pacific Coast Highway. The HOA would maintain all parkways and bioswales. In addition, the project traffic analysis indicates that less than 50 percent of the traffic on Bluff Rd and North Bluff Rd. would be directly related to the project. Based on these conditions, it is estimated that annual street maintenance costs would be about $142,000.

The actual costs in the early years of the project would likely be less, but then would increase in later years. Additional City costs for maintenance of Bluff Rd., North Bluff Rd. and connecting external streets not attributable to the project would be $71,000.

4. FISCAL IMPACT ON CITY OF NEWPORT BEACH

The public service plan above identifies potential City service expenditures needed to support the proposed development of Newport Banning Ranch. In addition, there would be other costs for general government functions normally provided by the City to residents and businesses in Newport Beach. This section summarizes the projected City costs and discusses the revenue sources anticipated to help defray the expenses. This section addresses operating costs and revenues for the City. The next section addresses capital improvements needed to implement the project and potential funding sources for those costs.

MUNICIPAL SERVICE EXPENDITURES

The services required to support the proposed project are estimated to cost about $2.7 million per year (Table 3). These costs were estimated with the aid of the City's fiscal impact model, which was developed for use in the 2006 General Plan Update process. For this analysis, the model has been updated to reflect the 2010-2011 City budget. In addition, certain cost estimates have been adjusted to reflect the specific design features of the project and the public service impacts identified in the DEIR for the Newport Banning Ranch Project.

Most of the direct services required for the project and their related costs were discussed in the previous chapter. The fiscal model also provides an estimate of General Government costs, which reflect administrative and support services provided by City government to the direct line departments and the residents and businesses of the City. The City departments included in the General Government category are the City Clerk, City Manager, Human Resources, City Attorney, and Administrative Services. (The City Council is not assumed to have increasing annual expenditures due to new development.) The budgets for these departments represent approximately ten percent of the City's General Fund budget. In Table 3, the General Government costs are calculated as a percent of the direct service department costs and are estimated to total $240,000 per year at full build out of the project.

In terms of line department costs, the largest expenditure would be for fire protection and emergency medical response after annexation. The cost estimate for fire protection reflects the increased calls for service, both for medical emergencies and structure related emergencies, at the point when the project is served from a new permanent fire station. As indicated in the earlier discussion of Fire Department impacts, the applicant would be obligated for payment for the construction and operation of a temporary station onsite until a new permanent station can be constructed.

As indicated in the public services plan, the Police Department would need three additional sworn personnel to maintain the current sworn officer to resident ratio and the cost estimate also includes related support functions, staff and operating expenses within the Department.

The Public Works/General Services cost estimate reflects maintenance of the community park onsite and project residents' use of off-site parks, as well as streets, storm drains, signage and lighting. As discussed in the previous chapter, the full maintenance of the community park is not directly attributed to the Newport Banning Ranch project since it would be used by all City residents. Some of the costs for street maintenance are also shown under the category of CIP streets, Gas Tax and Measure M. Taken together, these cost categories reflect not only the direct onsite expenditures to maintain project facilities, but also the average cost related to project traffic wear and tear on other City streets and facilities.

Once the project is developed, it would have minimal impact on the Community Development Department. Typical activities include remodels or other owner-initiated physical changes to the development. The City levies planning, building permit fees and other charges for such services so it is likely that little of the $56,000 per year shown in Table 3 would be a net cost to the City. City charges for service are estimated below in the revenue section and are shown as one of the revenue sources available to defray project related expenses.

The Community Services line item of $468,000 includes both the Library and the City Recreation Department. It also includes City cultural, arts and senior citizens program costs. Again, residents of the project may also pay certain fees for these services, particularly for recreation programs, so the net cost would be less than shown in Table 3.

TABLE 3
EXPENDITURE IMPACTS ON THE CITY OF NEWPORT BEACH

Expenditure Categories	Annual Costs
GENERAL FUND	
General Government	$292,000
Police	$516,000
Fire	$726,000
Public Works/General Services	$604,000
Community Development	$56,000
Community Services	$468,000
CIP Streets	$12,000
Other CIP Projects	$9,000
GENERAL FUND TOTAL	**$2,632,000**
Gas Tax	$34,000
Measure M	$49,000
TOTAL EXPENDITURES	**$2,715,000**

Source: ADE Inc.

REVENUES

The first effect of the proposed annexation would be the transfer of a portion of the property tax currently paid on the property from the County to the City. Orange County and the City of Newport Beach have executed a tax sharing agreement to govern this transfer of revenue for annexations in general, which is discussed in more detail below. Once the annexation is completed and the proposed development of the site begins to occur, then the project would also be subject to other taxes and fees collected by the City

of Newport Beach. These revenues would be available to help pay for the cost of services discussed above.

PROPERTY TAX

Under California law, all private property pays a base property tax equal to one percent of the assessed value of the property. The total tax rate may be higher than one percent if the voters in the jurisdiction approve additional amounts by a two-thirds majority. Typically, additional tax amounts are approved to pay for school bonds or other special purpose financing projects. The base one percent tax is distributed to a number of taxing agencies that provide services, either directly or regionally, to the property. Contiguous parcels with similar taxing agency jurisdictions are grouped together into Tax Rate Areas (TRAs) and the property tax for all the property within the TRA is distributed on a percentage basis to the taxing agencies. In Table 4 below, the middle column shows the distribution of the one percent tax within the unincorporated TRA in which the Newport Banning Ranch property is currently located. The agencies for which the tax distribution will change upon annexation are shaded.

TABLE 4
ALLOCATION OF BASIC 1% PROPERTY TAX

Taxing Agency	Existing (TRA 55-051)	Projected
A58-.01 057A Newport Beach City	-	18.96496%
C66-.01 744A Orange Co Vector Control Dist	0.13268%	0.13268%
C84-.01 706A O C Fire Authority-Gen Fund	13.23621%	-
C87-.01 960A Orange County Water District	1.04153%	1.04153%
C87-.02 961A Orange Co. Water Dist-Water Reserve	0.01270%	0.01270%
C89-.01 708A Orange County Transit Authority	0.33532%	0.33532%
C90-.06 916G OC Sanitation #6 Gen Fund	2.39268%	2.39268%
UGA-.01 320B Newport-Mesa Unif Gen Fund	40.69529%	40.69529%
VAA-.01 300B Coast Comm College Gen Fund	11.35150%	11.35150%
ZAA-.01 600A OC Dept of Education-Gen Fund	1.62527%	1.62527%
100-100.01 001C Orange Co Gen Fund	7.25370%	3.48629%
120-120.01 002A Orange County Public Library	1.96133%	-
400-400.01 710A OC Flood Control District	2.32279%	2.32279%
405-405.01 713A OC Parks CSA 26	1.80188%	1.80188%
664-664.01 001C Educational Revenue Augmentation Fund	12.03246%	12.03246%
664-664.01 002A Educational Revenue Augmentation Fund	2.25561%	2.25561%
664-664.01 706A Educational Revenue Augmentation Fund	-0.75050%	-0.75050%
664-664.01 708A Educational Revenue Augmentation Fund	0.22355%	0.22355%
664-664.01 710A Educational Revenue Augmentation Fund	0.95423%	0.95423%
664-664.01 713A Educational Revenue Augmentation Fund	0.34470%	0.34470%
664-664.01 744A Educational Revenue Augmentation Fund	0.10865%	0.10865%
664-664.01 916G Educational Revenue Augmentation Fund	0.66842%	0.66842%
Total	1.00000%	1.00000%

Source: ADE Inc.

The tax sharing agreement between the City and the County was adopted in 1980. The agreement was amended in 2002 to reflect a slightly different tax distribution for the Newport Coast annexation, contingent upon the City annexing the Bay Knolls area, which occurred in 2003. The amendment also memorialized prior agreements to transfer the tax share from the County Library and the Orange County Fire Authority to the City since the City provides those services directly. This amendment did not specifically reference the future annexation of Newport Banning Ranch. For purposes of this analysis, we have

assumed the transfer of the library and fire authority tax but used the older tax split between the City and the County, which slightly favors the County. This has a very minor effect on the resulting tax share for the City. The City would receive about 52 percent of the County's current share, which is only 7.25 percent, compared to 51 percent under the Newport Coast allocation. Under this scenario, the components of the City's new tax share for Newport Banning Ranch would be as follows:

Taxing Agency	Allocation
C84-.01 706A O C FIRE AUTHORITY-GEN FUND	13.23621%
120-120.01 002A ORANGE COUNTY PUBLIC LIBRARY	1.96133%
100-100.01 001C ORANGE CO GEN. FUND	3.76741%
NEW ALLOCATION FOR CITY OF NEWPORT BEACH	**18.96496%**

The current assessed value for the site is $43.2 million and the base one percent tax paid by the property owners is estimated at $432,326. The County General Fund currently receives about $31,360 of the tax. Upon completion of the annexation, the County General Fund would continue to receive $15,072 (48 percent of its original amount) and the City would begin to receive $81,990 (about 18.96 percent of the total). The County Library and the County Fire Authority would no longer receive property tax from the site.

At full build out of the proposed project, the land and improvements are estimated to have a total assessed value of $1.52 billion as described in the project description above. This valuation includes only the developed portion of the property and does not ascribe assessed value to the parks or open space portions of the site. With this assessed value, the City would receive $2.89 million per year in property tax and the County General Fund would receive about $531,200 per year. (The County would also incur some increased costs for services it provides on a countywide basis).

Other City Revenues

As shown in Table 4 below, the base property tax represents a little over 60 percent of the total revenue the project would likely generate for the City of Newport Beach. A brief description of the major revenue categories is provided below.

Property Tax in lieu of Vehicle License Fees: Several years ago, as part of the Proposition 1A "triple flip" agreements between the State of California and local government jurisdictions, the State lowered vehicle license fees but agreed to make up the difference to local government through additional property tax allocations. These funds are allocated differently than the base property tax discussed above, but the revenues do increase as assessed value increases in the City. In Newport Beach, this revenue represents about 10.8 percent of the base property tax allocation, and is projected in Table 4 on that basis. It should be noted that the City continues to receive a share of the regular motor vehicle license fees, which is estimated at $14,000 in Table 4.

Sales Tax: The project planned for Newport Banning Ranch includes 75,000 sq. ft. of retail, plus an additional 7,000 sq.ft. of sales tax generating space in the resort, including the restaurants and gift shops. This commercial space will directly produce sales tax and, in addition, the inhabitants of new residential development as well as additional visitors

attributed to the development of the resort will patronize local businesses. The sales tax estimates anticipate these effects. The taxable sales potential from the mixed use retail space is approximately equal to the anticipated spending from the 1,375 households in the project, although the project description does not indicate the mix of retail stores planned for this part of the development. Normally, households do not do all of their shopping in one place so it is likely they will patronize other stores in addition to those onsite.

TABLE 4
ESTIMATED PROJECT ANNUAL REVENUES

Revenue Categories	Annual Revenues
GENERAL FUND	
Property Tax	$2,890,000
Property Tax in-lieu of VLF	$292,000
Sales Tax	$333,000
Transient Occupancy Tax	$427,000
Franchise Taxes	$68,000
Business Licenses	$43,000
Motor Vehicle-in-Lieu	$14,000
Other Intergovernmental	$27,000
Charges for Service	$225,000
Fines, Penalties, and Forfeitures	$68,000
Licenses and Permits	$9,000
Use of Property	$135,000
Other Revenue	$13,000
Interest Income	$33,000
SUBTOTAL GENERAL FUND	$4,594,000
Gas Tax	$76,000
Measure M	$19,000
TOTAL REVENUE	$4,688,000

Source: ADE, Inc.

Given the location of the project, it is possible that a significant portion of the residents' offsite spending could occur in Costa Mesa rather than in Newport Beach. In order to avoid double counting sales tax dollars, the analysis is based on typical sales per sq.ft. figures for the retail space rather than on the projected household spending patterns for the resident population. The analysis does include about $5.5 million per year in taxable sales from the resort and offsite spending from resort visitors. The total regular sales tax from the project under these assumptions is projected at about $333,000 per year. Measure M is also a regional sales tax revenue which is allocated to local jurisdictions for transportation purposes. It is estimated in Table 4 as a function of regular sales tax generation.

Transient Occupancy Tax (TOT): As described in the project description, the analysis assumes an average room rate of $200 per room and a 70 percent occupancy rate for the 75 lodging units. The City levies a 10 percent TOT tax on room revenues, which would generate $383,200 per year for the City. Newport Beach also features a large number of vacation rental units and the project includes 87 visitor serving residential units. Based on the average TOT revenues from this source citywide, the residential portion of the project could generate another $43,400 in TOT per year.

Other revenues in Table 4 are projected on a per capita basis with the aid of the City fiscal model.

- Franchise taxes are charged on utility bills for electrical, TV and telephone service provided by private utility companies.
- Business license fees are ascribed mainly to the commercial and lodging portions of the project but also include the potential for home based businesses in the residential component of the project.
- Charges for service, fines, and licenses and permits include a wide range of direct charges by the City, mostly for over-the-counter services provided to residents and businesses. This also includes categories such as library and parking fines. Not included in these categories, however, are the initial fees and permits associated with the annexation process and entitlements for the proposed development. These are assumed to be one-time revenues for the City to defray actual expenditures for City staff and officials to process the development application. The revenues in Table 4 reflect ongoing revenues once the development is completed.
- Use of Money and Property includes parking meter fees among a variety of other revenue sources for the City, including rental or lease of various City facilities. It is assumed that use of City facilities and these related revenues grow generally as more residents and businesses are added to the City.

NET FISCAL IMPACT

Based on the revenue and cost projections shown in Tables 3 and 4, the proposed project would have a net fiscal benefit of nearly $2.0 million per year at full build out (Table 5). The City would have a somewhat lower benefit overall due to increased maintenance costs for the community park and the Bluff Rd., as shown in the right hand column of Table 5. Thus, the regular tax and fee income generated by the project for the City would be sufficient to cover the operations and maintenance costs associated with providing the full range of City services to the project.

TABLE 5
NET FISCAL IMPACT

	Project Share	Total City Costs
Total Revenues	$4,688,000	$4,688,000
Total Expenditures	$2,715,000	$2,986,974
NET (COST)/REVENUE	$1,973,000	$1,701,026

Source: ADE, Inc.

The next section of the report addresses the issue of funding the public facilities and infrastructure needed to implement the project.

5. CAPITAL FACILITIES FUNDING

Currently, City services are not provided to the proposed annexation site. In order to implement the proposed project, the developer would need to install the following improvements:

- Circulation system including North Bluff and Bluff Roads, local roads, and local residential streets. The project plan also includes a pedestrian and bicycle bridge over the Pacific Coast Highway and off-site improvements to 15th, 16th, and 17th Streets in the City.
- Water, sewer, storm drainage, and water quality treatment infrastructure.
- Street landscaping and lighting.
- Approximately 51 gross acres of parks. The project also includes the dedication of approximately 252 gross acres and approximately 240 net acres of open space, with associated public trails and facilities.

The new development would be subject to the City's Excise tax on new construction and traffic impact fees. It is assumed the development would not be subject to Quimby Act fees since it is providing sufficient park acreage onsite. The excise tax is charged at the rate of $.21 per sq.ft of new construction is allocated to capital improvements needs related to City fire services and libraries. Based on the potential new development on the project site, Table 6 estimates the anticipated amount of the excise tax at about $585,000. The City also has a fair share traffic impact fee, which is allocated to citywide traffic improvements. As shown in Table 6, it is estimated that the proposed development would pay nearly $4.7 million in traffic impact fees, based on current fee levels. It is possible the Fair Share Fee will be updated and increased by the time this project is approved. This could also be adjusted based on developer's construction of roads beyond what is needed for the project.

TABLE 6
DEVELOPMENT RELATED REVENUE

			TRAFFIC FEE				EXCISE TAX	
Non-Residential	**Square Feet**	**Rooms**	**Category**	**Unit**	**Fee/Unit**	**Fee Revenue**	**Fee/Square Foot**	**Fee Revenue**
Retail	75,000		General Commercial	TSF	$7,593	569,475	$0.21	15,750
Lodging	94,000	75	Resort Hotel	Room	1,139	85,425	0.21	19,740
Residential	**Square Feet**	**DUs**	**Category**	**Unit**	**Fee/Unit**	**Fee Revenue**	**Fee/Square Foot**	**Fee Revenue**
Low Density	3,230	57	Res-Low (SFD)	TSF	2,088	1,126,288	0.21	113,276
Low/Medium Density	2,240	163	Res-Medium (SFA)	TSF	1,633	310,923	0.21	39,984
Medium Density	2,000	349	Res-Medium (SFA)	TSF	1,633	999,396	0.21	128,520
Mixed Use	1,560	806	Apartment	TSF	$1,234	1,572,758	$0.21	267,649
Total	**9,741,330**					**4,664,265**		**584,919**

Source: ADE Inc., City of Newport Beach.

Attachment No. PC 3

Correspondence

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Monday, March 26, 2012 2:41 PM
To: Alford, Patrick
Subject: NBR EIR comments

Mr Patrick Alford,
Subject: Newport Banning Ranch
Please have these comments added to the official record on the NBR EIR

Views:

The EIR report that was presented provided some simulated views and the impact of views from several locations.
What was painfully obvious, was there were no simulations on view impacts from locations that would have significant impacts on views, primarily, those from the properties of the residents of Newport Crest. Last summer, during a walk around of the property sponsored by NBR, this was a request made by Crest residents to have these view simulations provided that the NBR people said would be provided. They were never provided.

Noise:

The projected closest proximity of Bluff Rd to Newport Crest is 22'. The EIR report provides noise impacts based on an average. This basis for noise impacts taken as an average does not truly consider the noise impact of those residences that are located near the closest point.
The mitigation offered is to provide double paned windows to reduce the noise. Not only is this woefully inadequate and ineffective, as we live in a climate where our windows are seldom closed, but it does not address the impact of the use of our decks, a place we might never be able to enjoy again.

Air Quality:

There is much data that has been accumulated over recent years of the negative health impact of people living in close proximity to major roadways. The proposed Bluff Road would be within the "high risk" proximity for residents of Newport Crest. NOx, CO are among the many harmful toxic gases that would be generated by these vehicles traveling this road and the only mitigation to reduce these unhealthy consequences would be to relocate the road to a distance much farther from Newport Crest than currently planed.
Sincerely,
Dave Sutherland, resident 12 Summerwind Ct Newport Beach.

Alford, Patrick

From: john beth [jabethwdwrk@yahoo.com]
Sent: Saturday, March 31, 2012 5:54 PM
To: Alford, Patrick
Subject: banning ranch

I've lived in west Costa Mesa for over 40 years; (Freedom Homes). I dont know anyone that wants this development. The only people that want it are the rich developers that stand to make millions on the deal along with the city of Newport Beach; and none of them live here. Why doesnt the voice of those that will reap the "dirt" from this count? WE DONT WANT IT!!!!!!!!!!!!!!!!!!!!

Mesa Consolidated Water District

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APR 02 2012
CITY OF NEWPORT BEACH

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April 2, 2012

Mr. Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

Subject: Planning Commission Recommendation to the City Council

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed and provided written comment on the Draft Environmental Impact Report (Draft EIR) for the proposed Newport Banning Ranch project (SCH# 2009031061) on November 7, 2011, and provided public comment at the Public Hearing of the Planning Commission on March 22, 2012. We would like to thank you for the opportunity to provide comment on the proposed project.

As our comments reflect, water service provided to the Banning Ranch site by Mesa Water has the least environmental impact when compared to other water service providers. Providing water service with minimal environmental impact coincides with the intent of CEQA. Mesa Water encourages the City Council of Newport Beach to consider this fact prior to adopting the above mentioned EIR.

Consideration of comments provided by Mesa Water is essential to meeting CEQA requirements mentioned in: CEQA Guidelines Section 15126.6(c):

> ***The range of the potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.***

Water service provided by Mesa Water can be "feasibly accomplished" while maintaining reduced environmental impact. This was stated in our comment letter dated November 7, 2011. Comments made in this letter utilized multiple source references including; The California Department of Water Resources, Metropolitan Water District of Southern California, Orange County Water District, and Pacific Gas and Electric Company. The scientific data provided by these qualified sources were not considered in the response to comments.

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Mesa Water continues its request in considering these facts prior to the EIR being approved by Newport Beach City Council. Attached are the two documents referenced. Please include these attachments with this letter to City Council for review. We thank you for the consideration of our comments and look forward to the City Council addressing these issues.

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Sincerely,

Paul E. Shoenberger, P.E.
General Manager

Attachments: Comment letter dated November, 7, 2012
Energy Intensity Analysis for Mesa Consolidated Water District

AUL E. SHOENBERGER, P.E.
General Manager

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c: Orange County Local Agency Formation Commission

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Mesa Consolidated Water District

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November 7, 2011

Mr. Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

Subject: Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2009031061) for the proposed Newport Banning Ranch Project

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed the Draft Environmental Impact Report (Draft EIR) for the proposed Newport Banning Ranch project (SCH# 2009031061). We thank you for the opportunity to review the Draft EIR and appreciate your consideration of our comments as they relate to the proposed water supply for the project. We offer the following comments at this time and look forward to your response:

Project Description:

We understand that the proposed project site consists of approximately 401 acres of land. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, and approximately 361 acres are in unincorporated Orange County within the City's Sphere of Influence. The entire site is within the Coastal Zone, as established by the California Coastal Act.

As proposed, the project would involve the development of the approximately 401 acre site with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8 gross acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) would be retained in permanent open space. The project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned/re-abandoned, remediated for development, and/or remediated and restored as natural open space.

As stated in the Draft EIR (see page 4.15-9), water service in the City of Newport Beach (City) is provided by three purveyors: the City, the Irvine Ranch Water District, and Mesa Water. The project site historically received water service from Mesa Water. The project site is located adjacent to the water service areas of the City and Mesa Water. Water supply and service for the Newport Banning Ranch project is proposed to be provided by the City (i.e., a LAFCO service reorganization will be required), which relies greatly on imported water.

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General Comments:

The following comments are provided based on our review of the information provided in the Draft EIR regarding the proposed water supply for the project and the associated environmental impacts with the use of imported water as currently proposed. The Draft EIR's analysis is currently inadequate as it does not consider an appropriate range of feasible alternatives or mitigation measure (in fact completely ignores) in the form of the provision of water to the project through Mesa Water, which can provide the water supply to the project through 100% local water sources. The provision of local water to the proposed project via Mesa Water, as opposed to through imported water sources via the City as is proposed under the project, would reduce significant environmental impacts associated with the proposed project. Substantial revisions and recirculation of the Draft EIR is required to correct these deficiencies.

Use of imported water by the proposed project would create an unnecessary consumption of energy (see CEQA Guidelines Appendix F), which exacerbates the state and region's air quality emissions and production of greenhouse gas emissions, which in turn exacerbates global climate change and associated environmental impacts. Additionally, provision of imported water would also continue to contribute to the general degradation of the Bay Delta area, in which southern California relies on imported water through the State Water Project.

Specific Comments:

1. <u>The Draft EIR Fails to Consider a Reasonable Range of Alternatives</u>

CEQA Guidelines Section 15126.6(c) states that:

> ***The range of the potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.***

The EIR identifies significant and unavoidable impacts associated with greenhouse gas emissions and air quality. As the City's water supply is heavily reliant on imported water, the use of the City's water to provide domestic water service to the site would result in an unnecessary consumption of energy, the production of which results in state and regional air quality emissions and greenhouse gas emissions. As Mesa Water relies solely on local groundwater sources (as discussed below), the use of Mesa Water service would result in an incremental reduction in the severity of the significant and unavoidable impacts related to air quality and greenhouse gas emissions. Additionally, an alternative that would include the use of Mesa Water in lieu of the City's water service would not conflict with any of the stated project objectives. Finally, because existing Mesa Water distribution facilities are located adjacent to the project site, the use of Mesa Water service at the project site would be feasible. Therefore, the Draft EIR was deficient as it failed to include an alternative that would have considered the use of Mesa Water, which would have been a feasible alternative that would not have conflicted with the project objectives.

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2. Use of Imported Water versus Local Water is an Inefficient and Unnecessary Consumption of Energy

The Draft EIR identifies significant and unavoidable impacts associated with air quality and greenhouse gas emissions. A comparison of energy demands associated with the provisions of water to the proposed project via the City (imported water) versus Mesa Water (local water) has been conducted and is summarized below. This comparison demonstrates that provision of water to the project through the City would result in an inefficient and unnecessary consumption of energy. This is inconsistent with CEQA Guideline 15126.4(a)(1) which states:

> ***An EIR shall describe feasible measures which would minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.***

The Draft EIR is deficient as it does not identify feasible mitigation measures which would minimize the significant air quality and greenhouse gas emissions impacts that were identified. There is no analysis of alternative water sources for the proposed project, which is one of the most important issues facing Southern California today. As demonstrated in Attachment A, provision of water to the project site by Mesa Water can be accomplished in a more energy efficient manner than is currently proposed, and the Draft EIR does not identify this as a mitigation measure for air quality and greenhouse gas emissions impacts. In fact, calculations of energy consumption at Mesa Water for groundwater extraction with colored water treatment of some of that groundwater show energy consumption values that are significantly lower than using imported water as a portion of the water supply. See Table 1:

Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)

Supply	Percent	Total kWh/af	Notes
Imported State Water Project	62%	3,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
Imported Colorado River Aqueduct	38%	2,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
MWD Treatment Imported Water	100%	490	
Imported Weighted Average		3,105	Includes treatment energy
Groundwater	100%	650	Energy to pump

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Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)

Supply		Percent	Total kWh/af	Notes
Current CWTF Treated Groundwater			1,550	Energy to treat the colored water that is pumped. Not included in clear water.
Future CWTF Treated Groundwater		38%	1,100	Upgraded system to start up in 2012
Groundwater Replenishment Activities by OCWD				
2012-2014	Santa Ana River Diversions	60.7%	50	
	Future imported water purchases	10.1%	3,105	
	Groundwater Replenishment System Operation	29.1%	1,441	
	Total Groundwater Weighted Average		1,542	Pumping + CWTF (38%) + replenishment (62%)
2015-2020	Santa Ana River Diversions	54.5%	50	
	Future imported water purchases	9.1%	3,105	
	Groundwater Replenishment System Operation	36.4%	1,441	
	Total Groundwater Weighted Average		1,585	Pumping + CWTF (38%) + replenishment (62%)
2020-onward	Santa Ana River Diversions	50.8%	50	
	Future imported water purchases	8.5%	3,105	
	Groundwater Replenishment System Operation	40.7%	1,441	
	Total Groundwater Weighted Average		1,610	Pumping + CWTF (38%) + replenishment (62%)

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3. Reduction in Energy Consumption Will Reduce Regional Air Emissions, Including Greenhouse Gas Emissions

The reduction in energy consumption that can be accomplished through the continued provision of water by Mesa Water will result in reduction in energy consumption that will have a corresponding reduction in the generation of air emissions, including greenhouse gas emissions, which are significant when considering the long-term provision of water to the project. When considering the additional 613.5 acre feet per year of water demand projected for the Newport Banning Ranch development and the projected GHG production of approximately 0.24 metric tons CO2 per acre foot of water delivered from Mesa Water using entirely groundwater resources, the total GHG production to service the Newport Banning Ranch from Mesa Water is projected to be approximately 147.7 metric tons CO2 per year. This reduction in greenhouse gas emissions would help meet the State's overall greenhouse gas emission reduction goals mandated by the State and is consistent with the provisions of CEQA Guideline 15126.4(a) which states:

> ***Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:***
>
> ***(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F***

Again, the Draft EIR is deficient with respect to this section of the CEQA Guidelines as it does not analyze the potential greenhouse gas emissions reductions associated with provision of water to the project by Mesa Water. Provision of local water sources to supply the project is feasible and can readily be provided by Mesa Water. Utilizing local water sources would result in an incremental reduction in the significant effects of greenhouse gas emissions by reducing the energy demands as compared to provision of imported water to serve the project. However, there is no analysis of this feasible measure in the Draft EIR, and therefore, the Draft EIR is inadequate with respect to this provision of the CEQA Guidelines.

4. Use of Imported Water Will Continue to Contribute to Impacts to the Bay Delta Ecosystem

The Draft EIR is deficient as it fails to include an alternative or mitigation measure that would utilize Mesa Water service for the project site in order to reduce, indirectly, the impacts to the Bay Delta that occur with imported water supplied through the State Water Project. The impacts on the Bay Delta by using imported water are well known and are identified in the Draft EIR (e.g., see EIR page 4.15-5).

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Impacts on the Bay Delta associated with the use of imported water, which would be completely avoided by the use of local water supplies, are extensive. High profile species impacted by the State Water Project include the delta smelt, anadromous salmonids, and giant garter snake; however, many species are impacted by activities within the Bay Delta associated with the State Water Project.

Large numbers of delta smelt are lost to entrainment in the Central Valley Project (CVP) and State Water Project (SWP) water export facilities. In addition, the CVP and SWP water export facilities and other diversions export phytoplankton, zooplankton, nutrients, and organic material that would otherwise support the base of the food web in the Delta, this reducing food availability for delta smelt. The risk of entrainment to delta smelt varies seasonally and among years. The greatest entrainment risk has been hypothesized to occur during winter when pre-spawning adults migrate into the Delta in preparation for spawning. (Moyle, 2002; USBR, 2004).

Access to most of the historical upstream spawning habitat for Chinook salmon and steelhead trout has been eliminated or degraded by manmade structures (e.g., dams and weirs) associated with water storage, conveyance, flood control, and diversions and exports for municipal, industrial, agricultural, and hydropower purposes. Upstream diversions and dams have decreased downstream flows and altered the seasonal hydrological patterns. Reduced flows from dams and upstream water diversions result in spawning delays, increased straying, and increased mortality of out-migrating juveniles. (Yoshiyama et al., 1998; DWR, 2005).

Provision of local water by Mesa Water should be considered a feasible alternative or mitigation measure to the proposed project. However, the Draft EIR did not consider this measure or alternative, which is inconsistent with the primary purpose of CEQA.

5. The Draft EIR Fails to Identify Conflicts with City of Newport Beach General Plan and California Coastal Commission Policies

Table 4.11-7 of the Draft EIR provides a consistency analysis for the project with certain City and State policies. The Draft EIR fails to identify that the project's use of the City's imported water would conflict with a policy of the California Coastal Commission and the City's General Plan. Page 4.11-33 of the Draft EIR states that a Coastal Act Policy includes that new developments shall "minimize energy consumption..." The corresponding consistency analysis does not consider the unnecessary and inefficient consumption of energy that would occur associated with the use of the City's imported water instead of Mesa Water's locally produced water. Additionally, Page 4.11-28 of the Draft EIR identifies LU Policy 6.4.10 of the City of Newport Beach General Plan Land Use Element that would:

> ***Require that any development of Banning Ranch achieve high levels of environmental sustainability that reduce pollution and consumption of energy, water, and natural resources to be accomplished through . . . infrastructure design and other techniques.***

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Again, the corresponding analysis does not identify the potential use of Mesa Water service in order to reduce the consumption of energy that would occur in association with utilizing imported water from the City's water supply. The failure to identify these potential conflicts with policies analyzed in the Draft EIR resulted in a deficiency in the analysis of greenhouse gas emissions.

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6. The City Cannot Make the Findings Pursuant to CEQA Section 21081(3)(a) that are Necessary in Order to Approve the Project

Pursuant to CEQA 21081(3) (a), the City must be able to make certain findings with respect to the significant impacts, mitigation measures, and alternatives to the proposed project before being able to approve the project. Specifically, the City must be able to make the following finding with respect to the provision of water by the City, as proposed, instead of by Mesa Water:

> ***"Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report." Furthermore, as stated in 21081.5 "In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record."***
>
> ***Section 15021(a) (2) "A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment."***
>
> ***Section 15021(b) "In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors."***

The provision of local water to serve the project is a feasible alternative that would substantially lessen the significant effects of the proposed project on the environment. The City cannot reject this environmentally superior alternative/mitigation measure because it will not be able to find that provision of water to the project site is infeasible for economic, legal, social, or technological considerations. Regarding the required findings that are identified above:

Economic. The economic cost of provision of local water to the project by Mesa Water would be no greater than would be by the City.

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Legal. There are no legal barriers to the provision of water by Mesa Water. Similar to the proposed project, annexation of service would be required through LAFCO.

Social. There are no social effects associated with Mesa Water providing water supply/service to the project.

Technological. Mesa Water has the ability to serve the project site without any additional technological considerations as compared to the City providing such service.

In the Orange County Local Agency Formation Commission (LAFCO) letter dated April 7, 2009, in which LAFCO commented on the Notice of Preparation (NOP), LAFCO stated that:

> *"..."Project Description" should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. These should include, but are not limited to the discussion of the concurrent annexation of the area to the Mesa Water and/or the Costa Mesa Sanitary District."*
>
> *"Water: The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Water. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area."*

Thus LAFCO, the agency with responsibility of identifying utility district and municipal annexations *"create planned, orderly and efficient patterns of development (Govt. Code §56668)"* has identified Mesa Water as one agency that may be in a position to provide orderly and efficient service to the Banning Ranch Development.

Conclusion:

In conclusion, the Draft EIR is deficient in that it does not include an alternative or a mitigation measure that would have evaluated the potential reduction of energy and other corresponding impact reductions associated with annexation into the Mesa Water for water service, which can serve the project with 100% groundwater resources. Use of local water supplies would: 1) reduce energy demand/consumption of the project (reference CEQA Guidelines Appendix F); 2) the reduced energy consumption would reduce state and region-wide air quality and greenhouse gas emissions; 3) reduction in GHG would reduce potential significant impacts associated with global climate change identified in the Draft EIR; and, 4) local water supplies would reduce impacts to the Bay Delta associated with the use of imported water through the State Water Project. Recirculation of the Draft EIR is required in order to provide a thorough analysis of these issues as it relates to the provision of water to the project. This is clearly stated in CEQA Guideline 15088.5(a) which states:

District Mission: 'edicated to Satisfying our Community's Water Needs

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General Manager

:OLEEN L. MONTELEONE
District Secretary

VICTORIA L. BEATLEY
District Treasurer

BOWIE, ARNESON, WILES & GIANNONE
Legal Counsel

> ***"A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification."***

Pursuant to CEQA Guideline 15088.5(a) (3), significant new information includes:

> ***"A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt it.."***

In order to reduce the Project's cumulatively considerable contribution to the global GHG inventory, and its significant and unavoidable GHG emissions impact, the following feasible mitigation should be included in the EIR (Section 4.11.8 Mitigation Program):

MM 4.11.6 **To reduce energy consumption and related greenhouse emissions, the City shall assure that domestic water service to the Project is provided to the greatest extent feasible from locally-produced groundwater sources rather than imported water supplies.**

Mesa Water encourages you to consider inclusion in the EIR analysis Costa Mesa Sanitary District's annexation to the project area. Costa Mesa Sanitary District promotes zero waste strategies to comply with SB 1016 and innovative wastewater technologies and solutions to protect the environment.

We thank you for the consideration of our comments and look forward to review of the re-circulated Draft EIR addressing these issues.

Sincerely,

Paul E. Shoenberger, P.E.
General Manager

Attachment A: Energy Consumption TM1

c: City of Costa Mesa
Costa Mesa Sanitary District
Orange County Local Agency Formation Commission

Attachment A
Technical Memo for Energy Intensity Analysis for Mesa Consolidated Water District

1. Introduction

Due to the geography and scarcity of water, Southern California relies on imported water and local water supplies for both potable and non-potable users. Mesa Consolidated Water District (Mesa Water) provides water service to more than 110,000 customers in an 18 square mile area. The service area includes the City of Costa Mesa, parts of Newport Beach, and some unincorporated sections of Orange County, including the John Wayne Airport. Mesa Water currently uses a mix of local groundwater and imported water from Northern California and the Colorado River. Starting next year, Mesa Water will use no imported water and projects that they will not need to use imported water at any point in the foreseeable future. A map of Mesa Water's service area is shown below in **Figure 1.**

This technical memorandum provides a brief analysis of the energy required to import and treat imported water from the State Water Project (SWP) as well as energy required to extract and treat for color local groundwater. In this memo, the GHG emissions associated with that energy consumption are also estimated.

Energy consumption rates are known as energy intensity, which is the total amount of energy, calculated on a whole-system basis, required for the use of a given amount of water in a specific location. **Table 1** below shows the energy intensities for each water supply used by Mesa Water.

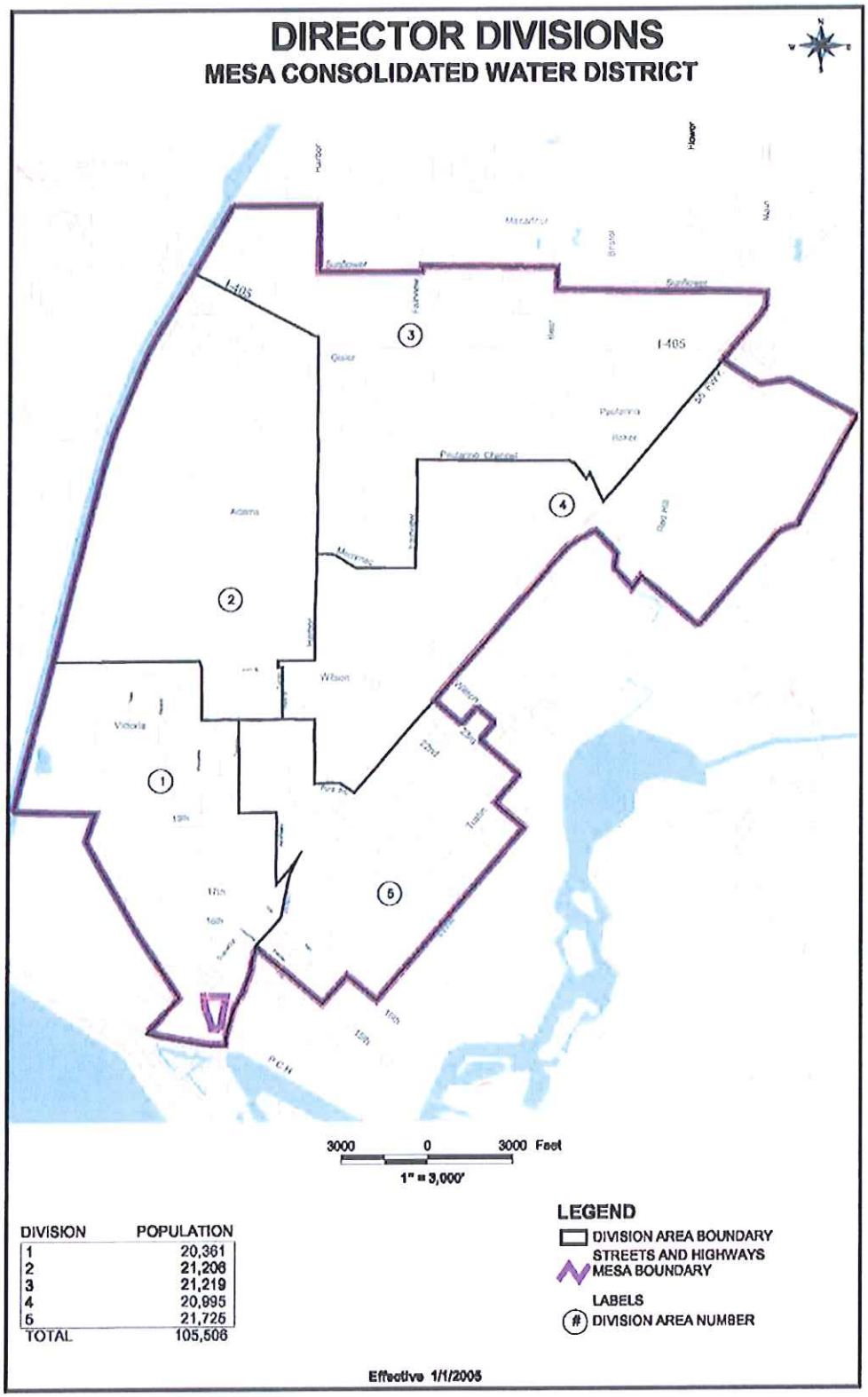
Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)

Supply	Percent	Total kWh/af	Notes
Imported State Water Project	62%	3,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
Imported Colorado River Aqueduct	38%	2,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
MWD Treatment Imported Water	100%	490	
Imported Weighted Average		3,105	Includes treatment energy
Groundwater	100%	650	Energy to pump
Current CWTF Treated Groundwater		1,550	Energy to treat the colored water that is pumped. Not included in clear water.
Future CWTF Treated Groundwater	38%	1,100	Upgraded system to start up in 2012

Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)

	Supply	Percent	Total kWh/af	Notes
Groundwater Replenishment Activities by OCWD				
2012 – 2014	Santa Ana River Diversions	60.7%	50	
	Future imported water purchases	10.1%	3,105	
	Groundwater Replenishment System Operation	29.1%	1,441	
	Total Groundwater Weighted Average		1,542	Pumping + CWTF (38%) + replenishment (62%)
2015 – 2020	Santa Ana River Diversions	54.5%	50	
	Future imported water purchases	9.1%	3,105	
	Groundwater Replenishment System Operation	36.4%	1,441	
	Total Groundwater Weighted Average		1,585	Pumping + CWTF (38%) + replenishment (62%)
2020 – Onward	Santa Ana River Diversions	50.8%	50	
	Future imported water purchases	8.5%	3,105	
	Groundwater Replenishment System Operation	40.7%	1,441	
	Total Groundwater Weighted Average		1,610	Pumping + CWTF (38%) + replenishment (62%)

Figure 1. Mesa Water Service Area (Mesa Water Website, 2011)



DIVISION	POPULATION
1	20,361
2	21,206
3	21,219
4	20,995
5	21,725
TOTAL	105,506

As the population grew within Mesa Water District's service area, Mesa Water has increased supply of water to customers. A significant effort has been increasing the use of groundwater and reducing the dependence on imported water as the supplies for Mesa Water's customers. **Figure 2** below shows the annual water from imported and groundwater sources, over the past 44 years with projections of water supply from these sources over the next 5 years.

Figure 2. Total Distributed Water by Water Source - Mesa Consolidated Water District

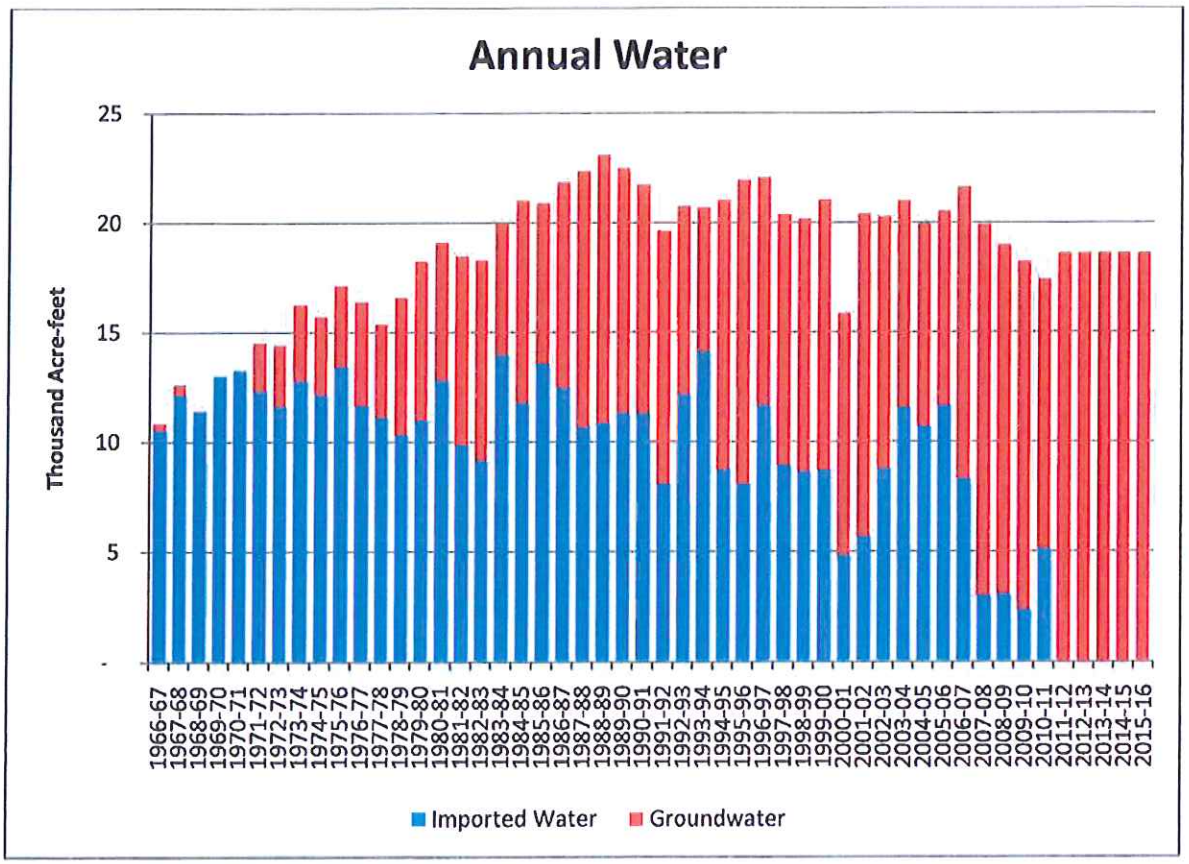
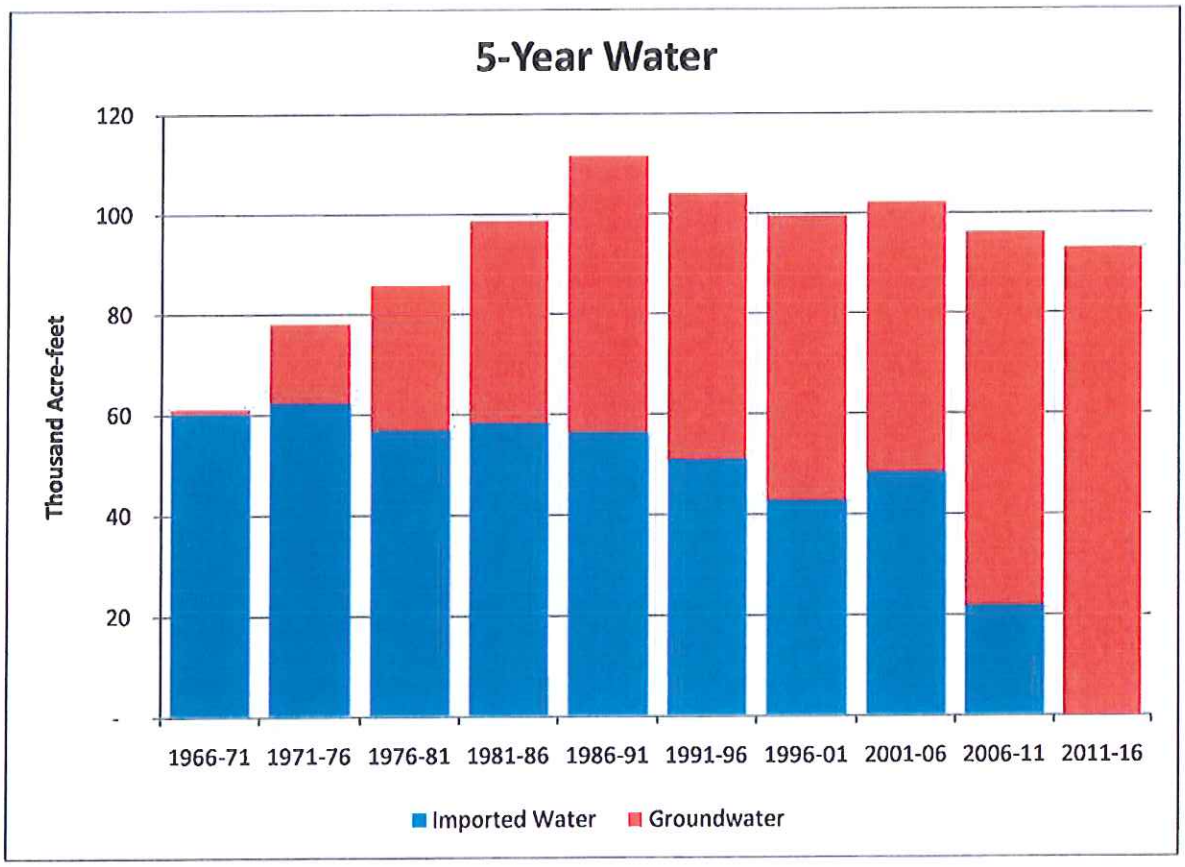


Figure 3 shows the 5-year totals of water from different water sources over the last 44 years with projections for the next 5 years.

Figure 3: Total Distributed Water by Water Source 5-Year Sums - Mesa Consolidated Water District



2. Imported Water

The Metropolitan Water District imports water from the California State Water Project (SWP) and from the Colorado River Aqueduct (CRA) which requires a large amount of pumping energy to overcome the adverse geography. The SWP is a state-owned system, managed by the California Department of Water Resources. The SWP provides supplemental water for agricultural and urban uses. SWP facilities include 1,200-plus reservoirs, which have a total storage capacity of more than 42.7 million acre feet (AF), 22 pumping and generating plants, and nearly 660 miles of aqueducts (CA SWP Website, 2011). SWP facilities are shown below in **Figure 4.**

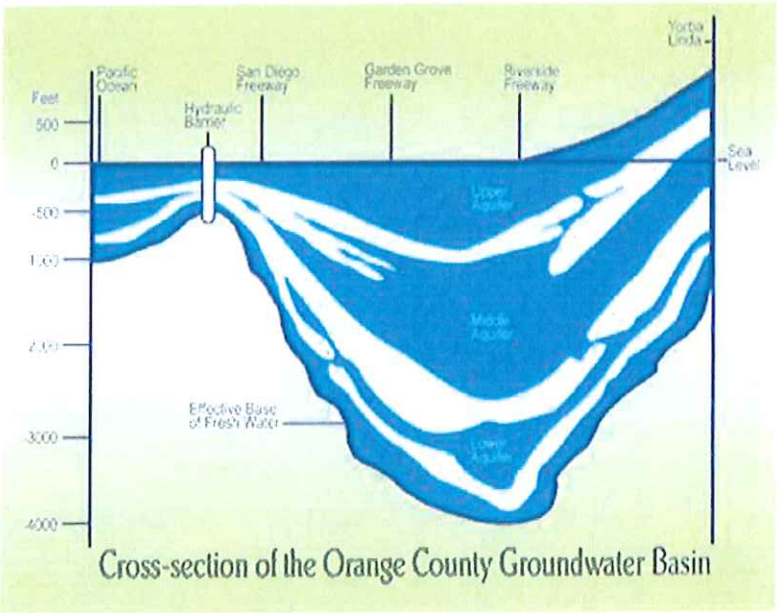
Figure 4. California State Water Project Facilities (CA SWP Website, 2011)

The SWP is the largest consumer of electrical energy in the state of California, requiring an average of 12.2 billion kWh per year to convey water through its aqueducts. On average, approximately 3,000 kWh is necessary to pump one AF of SWP water to southern California, and 2,000 kWh is required to pump one AF of water through the CRA to southern California (Wilkinson, 2007). For the last 5 years and 10 years, the average amount of CRA water brought to southern California has been approximately 38% of the total imported water and the amount of SWP water has been approximately 62% of the total. All water distributed to Mesa Water is treated by MWD, which requires approximately 490 kWh per AF to meet Title 22 requirements. Based on this, the weighted average energy intensity for water imported to Mesa Water is estimated to be approximately 3,105 kWh per AF (MWD, 2011). This energy intensity includes conveyance and treatment factors. Mesa Water's goal is to reduce their use of imported water to zero, solely relying on local groundwater supplies to meet demands. Mesa Water intends to meet this goal in 2012.

3. Groundwater

Mesa Consolidated Water District extracts water from eight groundwater wells, from Orange County's groundwater basin which underlies central Orange County from Irvine to the Los Angeles County border and from Yorba Linda to the Pacific Ocean. A representative section of the Orange County groundwater basin is shown below in **Figure 5.** It is replenished by water from the Santa Ana River, which is the main contributor and imported water purchased from the Metropolitan Water District of Southern California.

Figure 5. Cross-section of the Orange County Groundwater Basin (Mesa Water Website, 2011)



The Orange County Groundwater Basin includes a portion of the aquifer where the water is an amber color resulting from the buried ancient redwood forests that used to grow in the area. In the early 1980's, Mesa Water District became the first water supplier in Orange County to treat and distribute colored water. In 1998, Mesa Water opened its Colored Water Treatment Facility (CWTF) and reduced the district's reliance on costly imported water. The facility produces and treats five million gallons of amber colored water per day via two groundwater wells. The facility also helps to keep the amber tinted water from seeping into our region's clear-water reserves.

As stated above in **Table 1**, the energy intensity to extract and distribute groundwater to consumers is approximately 650 kWh per AF. In addition to the energy intensity required to extract and pump groundwater, the total energy intensity of the groundwater includes replenishment from 3 different sources. Orange County Water District (OCWD) replenishes the groundwater basin by means of diverting Santa Ana River flows, purchasing imported water and recycling water via their Ground Water Replenishment System (GWRS). The energy intensities of these water sources are, respectively 50 kWh per AF, 3105 kWh per AF, and 1441 kWh per AF (OCWD, 2011). Note that the colored groundwater

is not actively replenished by OCWD and, therefore, use of this groundwater does not include the replenishment energy expended by OCWD. However, to use colored groundwater, it is necessary to treat it to remove the color. Currently, the CWTF treatment process adds about 1,550 kWh per AF to the energy intensity of extracted amber-colored groundwater. The efficiency of this treatment process will be improved by mid 2012 to only 1,100 kWh per AF (Mesa Water, 2011). Additionally, in 2012, Mesa Water will have the capability of treating sufficient quantities of colored groundwater to replace imported water in its entirety. Figures 2 and 3 show the groundwater use and imported water use for the last 44 years plus the projected uses for the next 5 years.

4. Energy Intensity

Energy consumption associated with using local groundwater supplies, even with some of those local groundwater supplies being treated to remove color, results in lower energy consumption than when importing water. The energy intensities from Table 1 were used to estimate the energy consumption associated with the different mixes of water supplies Mesa Water has used for the last 44 years. The energy consumption estimates were also applied to the projected water supplies Mesa Water is expecting to use for the next 5 years. **Figure 6** shows the estimated annual energy consumption for imported water and groundwater and the total estimated annual energy consumption. **Figure 7** shows the 5 year estimated energy consumption.

Figure 6. Estimated Annual Energy Consumption for Groundwater and Imported Water used by Mesa Water.

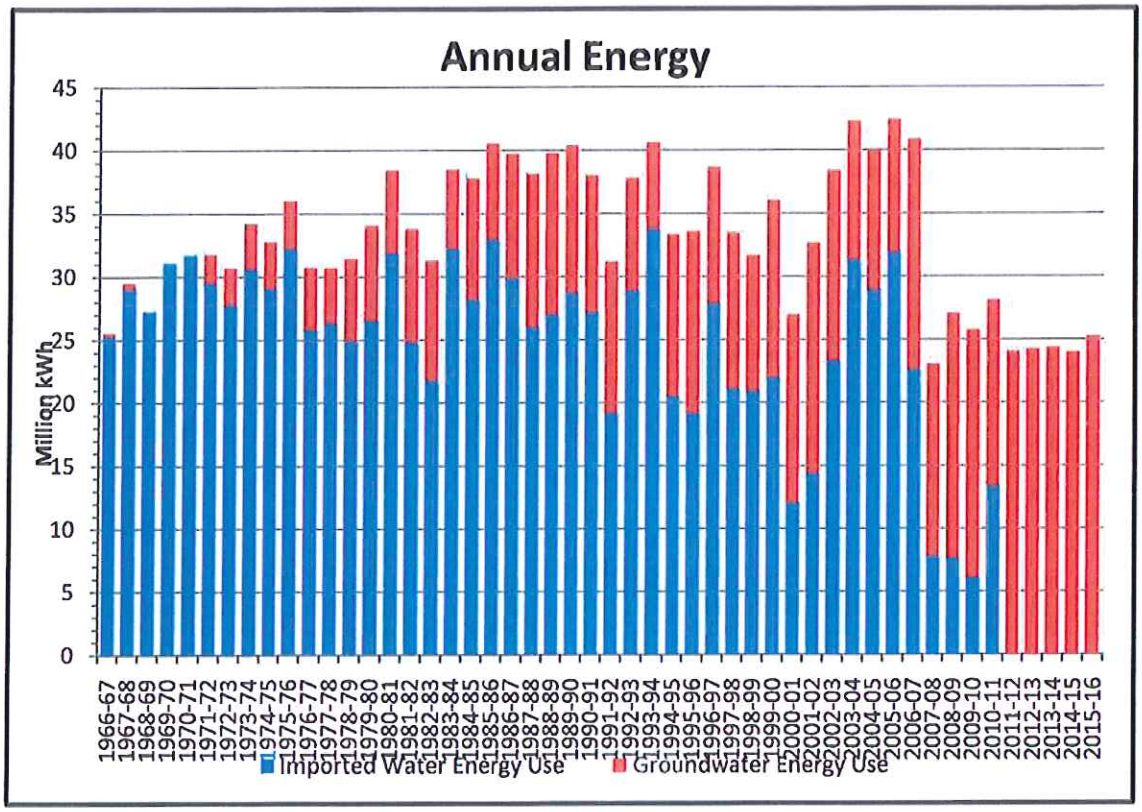
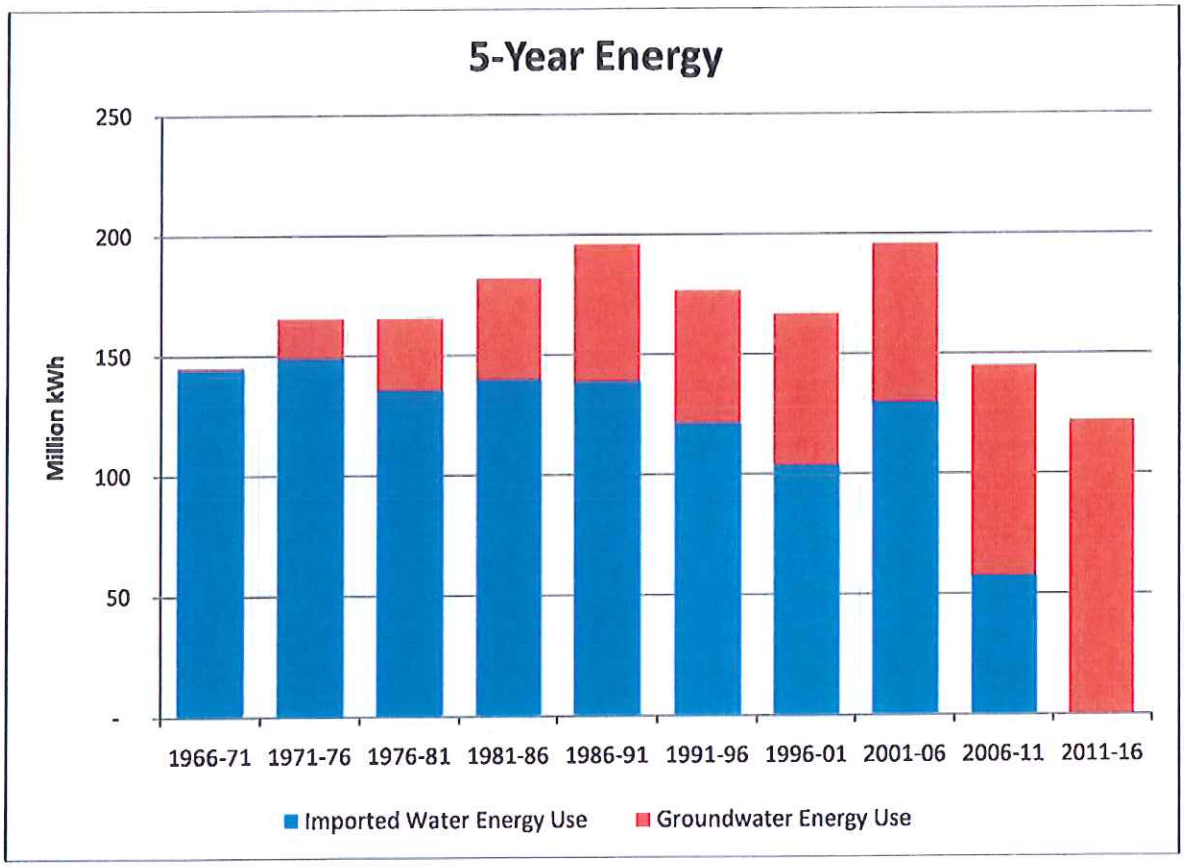


Figure 7. Estimated 5-Year Energy Consumption for Groundwater and Imported Water used by Mesa Water.



5. Greenhouse Gas Emissions

A greenhouse gas (GHG) is a gas in an atmosphere that absorbs and emits radiation within the thermal infrared range. One GHG is carbon dioxide. Carbon dioxide is the primary GHG produced during electricity production. GHG emission factors or rates associated with electricity consumption are an estimate of the amount of carbon dioxide (CO_2) emitted per kilowatt-hour of electricity. The Pacific Gas and Electric Company (PG&E) has the most readily available published estimates of average GHG emission factors since 2003. PG&E estimates average emission factors each year since 2003 based upon all the sources of electricity that PG&E delivered to customers during a specific year. PG&E was among the earliest companies to voluntarily quantify and report its GHG emissions using rigorous, publicly-vetted GHG reporting stands. Prior to 2003, there were no commonly-accepted guidelines to report the GHG emission factors from a utility. Prior to 2003 it is possible to calculate GHG emissions from electricity use by using a factor from a study published in 1990 by Lawrence Berkeley National Laboratory which cites an emission factor of 0.566 lbs CO_2/kWh The average GHG emission factors which PG&E has produced since 2003 have been authorized by the California Public Utilities Commission in Decision 06-12-032. GHG emission factors from electricity use provided by PG&E are shown below in **Table 2.**

Table 2. GHG Emission Factors from Electricity Use Provided by PG&E

Greenhouse Gas Emission Factors		
Emission Type	**Emission Factor**	
	Year	**lbs CO_2/kWh**
Historical Emissions	1990	0.566
	2003	0.620
	2004	0.566
	2005	0.489
	2006	0.456
	2007	0.636
	2008	0.641
	2009	0.575
Current Emissions	2010	0.559
	2011	
Future Emissions (Estimated)	2012	0.453
	2013	0.431
	2014	0.412
	2015	0.391
	2016	0.370
	2017	0.349
	2018	0.328
	2019	0.307
	2020	0.290

Using an emission factor of 0.566 for all years before 1990, linearly interpolating between 1990 and 2003, and using the designated GHG emission factor for each corresponding year above, the GHG emissions from electricity use by Mesa Water District for each water supply over the past 44 years are shown below in **Figures 8 and 9. Figure 8** shows estimated annual emissions. **Figure 9** shows estimated 5-year emissions.

Figure 8. Estimated Annual GHG Emissions from Electricity Use by Mesa Water for Each Water Supply

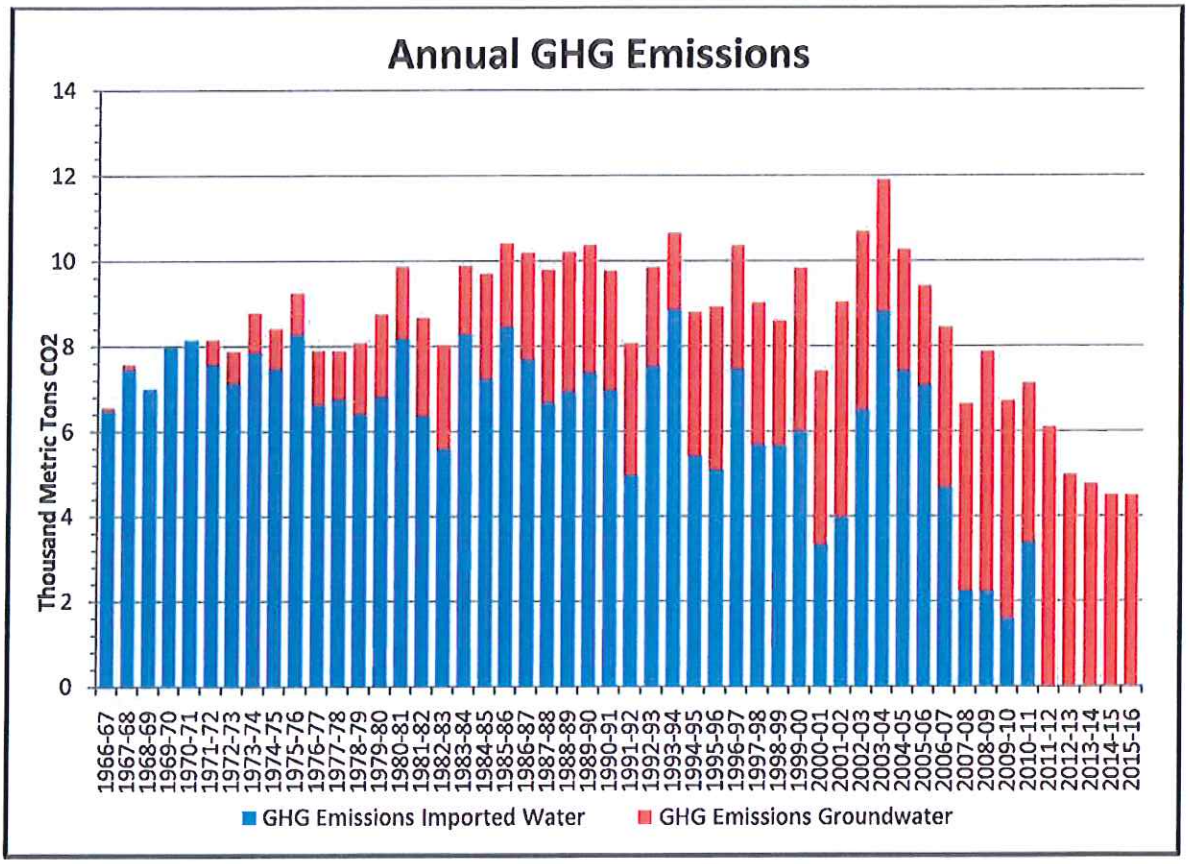
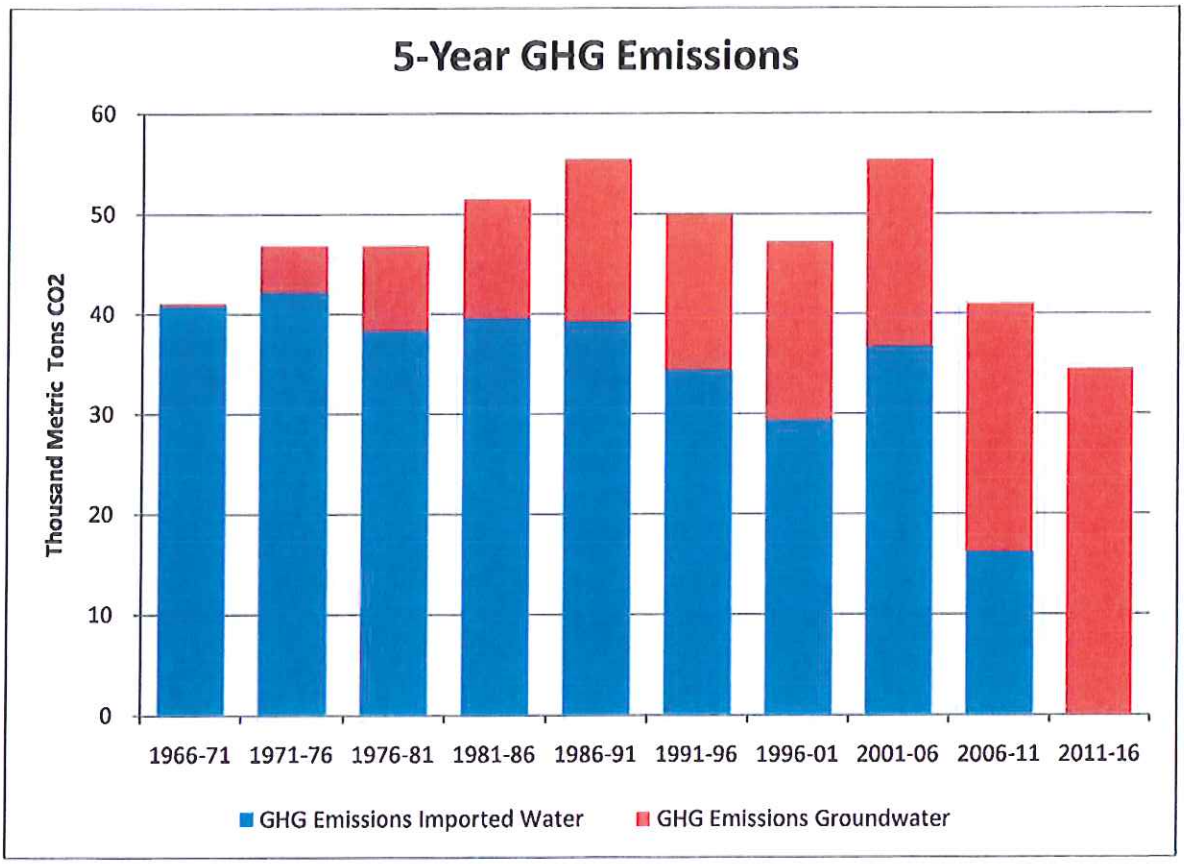


Figure 9. Estimated 5-Year GHG Emissions from Electricity Use by Mesa Water for Each Water Supply



6. Conclusion

The projected estimated energy consumption and GHG emissions for 2011-2016 is approximately 84% of the estimated energy consumption and GHG emissions for 2006-2011 and 62% of the estimated energy consumption and GHG emissions for 2001-2006. Mesa Consolidated Water District will conserve energy and reduce GHG emissions by using local groundwater resources rather than imported water through the California SWP. By developing the local groundwater supplies through investing in the colored water treatment plant, Mesa Water will reduce statewide energy consumption and GHG emissions by more than half from historical energy consumption and GHG emissions.

When considering the additional 613.5 acre feet per year of water demand projected for the Newport Banning Ranch development and the projected GHG production of approximately 0.24 metric tons CO2 per acre foot of water delivered from Mesa Water using entirely groundwater resources, the total GHG production to service the Newport Banning Ranch from Mesa Water is projected to be approximately 147.7 metric tons CO2 per year.

Note that all values presented in this document are based on operational analyses conducted by agencies referenced. All values are subject to change based on re-evaluation of current or future operations.

7. References

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Pacific Gas and Electric Company (PG&E); (2010); GHG Emission Factor Info Sheet; www.pge.com/includes/.../pge_ghg_emission_factor_info_sheet.pdf; April 8, 2010.

Wikipedia Website; *Greenhouse Gas*; http://en.wikipedia.org/wiki/Greenhouse_gas; (Accessed October 2011).

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April 5, 2012

Newport Beach Planning Commission
3300 Newport Boulevard
Newport Beach, CA 92663
(via e-mail)

Re: March 22, 2012 Hearing Item 4 - Newport Banning Ranch - (PA2008-114)

Honorable Commissioners,

I would like to add my voice to that of Suzanne Forster in her April 4, 2012 letter to the editor of the *Daily Pilot* requesting the Planning Commission rescind its two late night decisions of March 22, 2012 regarding the Newport Banning Ranch (NBR) application (recommendations to Council regarding re-circulation and certification of the Environmental Impact Report (EIR)) and reschedule a properly noticed and conducted hearing on the NBR EIR. This seems particularly important to me for a project of wide public interest in multiple communities and I request that this letter be made part of the administrative record for EIR SCH No. 2009031061.

I agree with Ms. Forster that the Chair's instructions to the public, however well intentioned, were extremely intimidating, both in substance and tone, and at least in my view improperly discouraged from speaking those members of the public who did not feel they were qualified environmental experts with significant new factual information to add to the record. I also agree with Ms. Forster that the traffic section of the EIR most likely requires significant revision in view of the Orange County Transit Authority (OCTA)'s recent decision to permanently remove the 19th Street bridge from the County's Master Plan of Arterial Highways without providing any agreed to mitigation measures – a fact which staff declined to acknowledge even though the City of Newport Beach (CNB) is either initiating or in the process of considering litigation to modify the OCTA action.

In addition I feel compelled to raise the following procedural and substantive issues which in my view improperly limited public participation and which I feel will permanently cloud the Commission's recommendations:

1. Inadequate hearing notice
2. Inadequate time to evaluate Response to Comments
3. Inadequate/misleading agenda listing
4. Improper handling of overflow crowd
5. Misleading and incomplete staff report
6. Failure to provide context for hearing
7. Lack of credible basis for actions
8. Adoption of defective resolution

1. Inadequate hearing notice

Please see Attachments 1 and 2 to this letter for a transcription of the notice of the March 22, 2012 CNB Planning Commission hearing published in the *Daily Pilot* on March 10, 2012. The NBR portion of the notice (Attachment 1) describes the project, identifies the components of the project application and informs the public than environmental concerns have been dealt with by means of an EIR prepared in compliance with California Environmental Quality Act (CEQA)

guidelines. The notice gives no hint regarding the purpose of the March 22 hearing, and could be read to imply the EIR has been completed and certified.

Compare this to the notice of the subsequent item (Attachment 2) which clearly notifies the public of the purpose of the hearing and the contemplated actions.

The similar but somewhat more extensive notice mailed to neighboring property owners (not attached) *does* include a line before the CEQA notice saying "*The Planning Commission will provide recommendations to the City Council for final decisions on these applications. Additional public notice will be provided as to the date, time, and place of City Council hearings.*"

But again, no hint is given that the NBR DEIR will be the subject of the March 22 hearing, or that recommendations regarding it would be made at that time.

2. Inadequate time to evaluate Response to Comments

On March 16, 2012 just six days before the hearing scheduled for an unstated purpose, CNB released 1030 pages of *Responses to Comments*, 1200 pages of appendices related to those comments, and a 96 page *Mitigation, Monitoring and Reporting Program* related to the NBR DEIR. Even for those who knew the March 22 meeting would focus on the DEIR this was a very large volume of closely worded material to digest in a very short time, especially for those, including the Commission, who are not environmental professionals with 40 hours a week (or more) to devote to the matter.

Several members of the public testifying on March 22 said they found the responses to their own comments non-responsive. Aside from a few perfunctory questions from Commission to staff at the March 22 hearing it is unclear if anyone, including staff or consultants, made any effort to determine if the public agencies submitting comments found the responses adequate or if they continued to have reservations about the NBR DEIR.

3. Inadequate/misleading agenda listing

The agenda listing for the NBR portion of the Planning Commission's March 22, 2012, on the basis of which the public is supposed to be able to determine if they want or need to attend, is transcribed in Attachment 3 to this letter.

The agenda listing for the previous item (the Ocean Boulevard lot merger) clearly states in the *Summary* the purpose of the hearing and under *Action* mentions not only that the Commission will be conducting a hearing, but that it will be recommending approval or denial by means of adopting one of two alternative resolutions referenced in the associated staff report.

By contrast, the NBR agenda listing gives no hint under *Summary* of what the purpose of the hearing, and there is nothing under *CEQA Compliance* suggesting the EIR is tentative or has not already been approved. Under *Action* the public is told the Commission will "*Receive staff report focused in Environmental Impact Report*," conduct a hearing and continue the hearing to April 5, 2012.

This is defective in two ways. First, based only on this agenda the public might reasonably assume the EIR had already been certified and a staff report on the EIR was to be presented simply as a way to set the context for opening a hearing on the development application, which was be continued to a future date. Second, for those more familiar with the culture of CNB Planning Commission agendas, the absence of any mention that a resolution was going to be considered for adoption definitely means that no action would be taken until a subsequent meeting.

I have personally examined all the Planning Commission agendas back through 2009, and a number from prior years, and although the Commission may suggested modifications to the actions recommended by staff, prior to the March 22 NBR matter I have been unable to find any prior instance in which the Commission took an action when no action was noticed in the agenda. In a number of instances the agenda announced under *Action*, as for the NBR listing, that the Commission would "(1) Conduct public hearing; (2) Continue public hearing to ..." On rare occasions the Commission modified the recommended date for the continuation of the hearing, but in every case the Commission continued the hearing as promised without taking any action beyond ones clearly noticed in the agenda.

Although the Assistant City Attorney assured the Commission that the March 22 votes were properly agendized in compliance with the Brown Act, the California Attorney General in their handbook on the very similarly worded Bagley-Keene Act (governing state, as opposed to county and local, agencies) notes that if a body voluntarily chooses to distinguish action from discussion items in their agendas, they should feel compelled to fit their actions to their notices.

In summary, no one seeing the March 22, 2012 agenda would have expected the Planning Commission to do anything other than open a hearing on the NBR and continue it to April 5th. While the Chair, in his opening remarks to the NBR matter, may have implied actions on the EIR might be taken that night, that is insufficient. A reasonable person relying on the agenda would have assumed that before any such actions were taken they would have an additional opportunity to provide input on April 5, and perhaps beyond.

4. Improper handling of overflow crowd

As the Commission may be only dimly aware, a very large crowd assembled at the CNB Council Chambers at 6:30 pm on March 22, the noticed time of the hearing. The crowd filled the lobby and overflowed into the courtyard, a problem compounded by staff having scheduled the contentious Ocean Boulevard item (which itself may have filled the Chamber) on the same night. Staff did not have an adequate supply of agendas or staff reports, nor did they provide any means for the overflow crowd to hear or participate in the proceedings. For example, at the beginning of the meeting the Chair offered to allow some of the overflow public to sit at the staff conference table at the front of the hall, but even inadequate as that was, those being invited could not hear the invitation.

Since no indication was given as to when the NBR matter would be heard, or if the entire overflow audience would have a chance to be seated for it, many left in frustration, and assuming they had seen a copy of the agenda would have done so assuming they would have an opportunity to speak and participate on April 5, before any action was taken. No announcement, audible or otherwise, was made to the contrary prior to the commencement of the NBR hearing at 9:00 pm. At a minimum, it would seem to me the overflow crowd should have been given a reasonable time to express their views through written comments before the

Commission considered any action, or have been clearly notified as to whether the hearing was going to be continued (as promised) or not.

5. Misleading and incomplete staff report

The staff report compounds the confusion regarding whether any action was contemplated on Agenda Item 4 (the NBR application) at the March 22, 2012 meeting by copying on handwritten page 1 the inadequate language from the agenda as "Project Summary" and "Recommendation." Again there is no hint the EIR has not been already approved and that a vote or votes or a resolution or resolutions is contemplated at the March 22 meeting.

On the contrary, those who leaf through to handwritten page 7 will see that the timeline for the "EIR Review Process" includes not only the March 22 hearing before the Planning Commission, but also a second one on April 5, and possibly more.

Those who notice a draft resolution recommending certification is included in the staff report as *Attachment No. PC 1* will have had this impression reinforced by the "Whereas" on handwritten page 20 which says that "public hearings were held on March 22 and _____, 2012," where it can only be assumed the dates of subsequent hearings on the EIR were intended to be added to the blank space.

The only thing contradicting this interpretation is the statements made under "*Discussion*" on handwritten page 8, suggesting the March 22 meeting will be devoted to the EIR and the April 5 meeting to the development application – but we now know the staff was not in fact prepared to conduct a hearing on the application on April 5 and asked for the NBR matter to be continued to April 19.

The staff report is also inadequate in providing no clear menu of actions required to complete consideration of the EIR by the Planning Commission.

6. Failure to provide context for hearing

As indicated in the draft minutes of the March 22 meeting, Agenda Item 4 began with an explanation by the Chair of the EIR process. For those who had not previously attended a meeting regarding the NBR application, this was woefully inadequate, especially since, as noted above, the vast bulk of the audience were provided with neither agendas or staff reports. To the best of my recollection neither the project nor the contents of the EIR were described, and the Commission launched into a short laundry list of questions, apparently assuming everyone in the audience had attended all the Study Sessions and had time to understand the structure and content of the EIR (described only as "oh the documentation is exhaustive – I think it's three feet tall) on their own.

Considering this was the first public hearing, and especially in view of the absence of agendas and staff reports, I feel the public deserved having the context laid a bit better before being asked to comment on something they may or may not have seen.

7. Lack of credible basis for actions

In moving to reject re-circulation of the NBR DEIR and in adopting the resolution recommending its certification, the Planning Commission is presumably telling the CNB Council that it has thoroughly reviewed the EIR and, in its independent judgment, agrees with all its conclusions.

To put this in context, Attachment No. PC 3 to the March 22, 2012 Staff Report is a table giving a "Summary of Significant Impacts and Mitigation Program." Although it seems to list "insignificant" and "less than significant" impacts as well, the table includes something like 90 numbered questions (an exact total is difficult because, for example, question Threshold 4.6-5 contains three separate questions that are not separately numbered) that have to be answered as to whether they have an environmental impact or not. The consultant appears to have concluded that something like 23 of these will have "no impact," 47 will have (after mitigation) "less than significant impact" and 8 will have a "significant unavoidable impact."

It is absolutely incredible to me that after diligently reviewing the project application, 1432 pages of the DEIR (plus another 5817 pages of appendices), the 1030 pages of comments (plus another 1200 pages of appendices), and the 96 page *Mitigation, Monitoring and Reporting Program*, and listening to the public testimony at its study sessions and public hearing, that the Planning Commission failed, in its independent judgment, to find a single instance in which they might reach a different conclusion from the applicant and consultant as to the significance of a particular impact, or think a different mitigation measure might be more effective.

I am particularly curious if the Planning Commissioners agree with the applicant and consultant that a massive pedestrian bridge over West Pacific Coast Highway has no visual impact, or that an alternative of annexation without development (that is continuing under the current ownership, but with the City Charter forcing consolidation of oil operations) should not have been considered (Alternative A, as I understand it, assumes no annexation, and therefore a continuation of oil operations as they now exist).

8. Adoption of defective resolution

In addition to thinking the NBR DEIR should be re-circulated (due primarily to defective noticing for which the consultant could offer no adequate response), had I known the draft resolution in the March 22, 2012 staff report was going to be considered at that meeting (and not on April 5 or at some subsequent meeting, as the agenda and staff report implied) I would have spoken against it, for it is highly defective, both on its own merits and in comparison to other resolutions adopted by the Planning Commission recommending certification of EIR for other projects.

As a Newport Beach taxpayer I think I am most concerned about the final boilerplate "Whereas" on handwritten page 20 of the staff report (page 2 of 23 of the draft resolution), which seems to state the Planning Commission is recommending certification on the assumption that the costs of any legal challenges will be borne by the project applicant – but offers no suggestion as to how that assumption will be implemented or could be enforced by the City Council. For an EIR that is almost certain to provoke a legal challenge this seems to me to be an extremely serious shortcoming. At the same time, I am also concerned that such a guarantee, if feasible, could lead to a "we can approve anything because we won't have to pay to defend it" attitude, which, at least to me, serves neither the public nor the applicant well.

Beyond that, the 19 page "Exhibit B – Findings of Fact" is, in my opinion, highly defective both in substance and in comparison to the attachments to other resolutions recommending certification of EIRs approved by the Planning Commission in the past, and I am again startled that the Commission voted to adopt this without recommending a single change.

First, I am unable to find any guidance given as to the Council as to the CEQA required definition of what constitutes the Final EIR and the administrative record related to it.

Second, I am able to detect relatively clear findings supporting the conclusions of the EIR only with regard to the 5 to 7 "Effects with No Impact" listed on handwritten page 39 of the staff report (page 21 of the 23 page draft resolution). With respect to the list of the 8 to 13 (it's hard to count precisely) "Significant Unavoidable Impacts" listed on pages 22 and 23 of the draft resolution, the findings supporting the conclusion that these are significant frequently lack clarity and the findings supporting the notion these effects cannot be mitigated are generally non-existent. Moreover, the list of "no impact" effects appears to be an arbitrary subset of the effects concluded to have "no impact" as listed in the following Attachment No. PC 3 to the Staff Report. I am unable to understand why one particular subset of "no impact" effects deserves support by "Findings of Fact" and the others do not.

Third, the Commission appears to be offering the Council no guidance at all as to proposed findings regarding the 47 or so other effects the EIR concludes will have a "less than significant impact" after mitigation – either as to why they are significant to start with or as to why the proposed mitigation measures would be effective.

On that final note, it is unclear if the Commission, after reviewing it, is making a recommendation with regard to the *Mitigation, Monitoring and Reporting Program* since it is unclear from the resolution what the Commission is recommending be regarded as the Final EIR for the NBR project.

Again, attention to proper process, a thorough independent analysis of impacts and mitigation measures and a sincere effort to engage public involvement seem particularly important for a high profile project involving communities outside Newport Beach. For the above reasons and others stated in public comment, I feel the City's handling to date of the NBR environmental review has been inadequate and urge the Commission to reconsider its March 22nd decisions regarding re-circulation and certification of the EIR.

Thank you in advance for your consideration of my comments

Yours sincerely,

James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660
jimmosher@yahoo.com
(949) 548-6229

Attachment 1 : Content of Notice Published in Daily Pilot - March 10, 2012

3300 Newport Boulevard,
Newport Beach
PLANNING COMMISSION AGENDA
Regular Meeting March 22, 2012 at 6:30 p.m.

1. SUBJECT: **Newport Banning Ranch** - PA2008-114
North of West Coast Highway, south of 19th Street, and east of the Santa Ana River. The Project Site is adjacent to the City of Costa Mesa on the east, unincorporated County on the north and west, and the existing developed areas of the City of Newport Beach on the south and southeast. The Santa Ana River and the City of Huntington Beach are located west of the Project Site.
SUMMARY: A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75 room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, and approximately 51.4 acres of parklands. The application consists of the following components: a Pre-annexation and Development Agreement between the applicant and the City of Newport Beach describing development rights and public benefits; General Plan Amendment to the Circulation Element of the General Plan to delete the planned segment of 15th Street west of Bluff Road; Code Amendment to rezone the project site from. Planned Community (PC-25) to Planned .Community (PC-57) and a pre-annexation zone change is proposed for those portions of the project site located within the City's Sphere of Influence from County zoning to PC-57; Planned Community Development Plan would establish the allowable land uses, general development regulations and implementation and administrative procedures; Master Development Plan to establish detailed design criteria for each .land use component to guide the review of subsequent development approvals; Tentative Tract Map to establish lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance; Affordable Housing Implementation Plan specifying how the project would meet the City's affordable housing requirements; and Traffic Study Approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance).
APPLICATION:ER2009-002, DA2008-003, NT2008-003, GP2008-008, PC2008-002, and CA2008-004
CEQA COMPLIANCE: **NOTICE IS HEREBY FURTHER GIVEN** that pursuant to the California Environmental Quality Act (CEQA) the City of Newport Beach has prepared Environmental Impact Report (EIR) -SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The DEIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation" of CEQA, (California Code of Regulations, Title 14, Section 15000 et seq.).

Attachment 2: Remainder of Notice Published in Daily Pilot - March 10, 2012

2. **SUBJECT**: **2808 and 2812 Ocean Boulevard Lot Merger** - PA2011-141
2808 and 2812 Ocean Boulevard

SUMMARY: At the direction of the City Council, the Planning Commission will reconsider Lot Merger Application No. LM2011-002 requesting approval to combine 2808 and 2812 Ocean Boulevard. The Commission will review alternative development standards proposed by the applicant to be applied to the development of the property. The Planning Commission will make a recommendation of approval or denial to the City Council, which will hear the application at a future meeting.

APPLICATION: LM2011-002

CEQA COMPLIANCE: The project is categorically exempt under Section 15305 of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations).

Published Newport Beach/Costa Mesa Daily Pilot March 10, 2012

Attachment 3 : Content of March 22, 2012 Agenda Listing

ITEM NO. 4 Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway

SUMMARY: A proposed planned community on a 401.1 acre project site for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 acres of parklands, and approximately 252.3 acres of permanent open space.

CEQA COMPLIANCE: An Environmental Impact Report (EIR) SCH No. 2009031061 to evaluate the environmental impacts resulting from the proposed project. The EIR has been prepared in accordance with the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code Section 21000 et seq.), and the State CEQA Guidelines for Implementation of CEQA (California Code of Regulations, Title 14, Section 15000 et seq.).

1) **ACTION**:

1) Receive staff report focused in Environmental Impact Report;

2) Conduct a public hearing; and

3) Continue public hearing to April 5, 2012.

Attachment 4: California Attorney General's View of Agenda Requirements

From the AG's Bagely-Keene Open Meeting Handbook:

> "The agenda items should be drafted to provide interested lay persons with enough information to allow them to decide whether to attend the meeting or to participate in that particular agenda item. Bodies should not label topics as "discussion" or "action" items unless they intend to be bound by such descriptions. Bodies should not schedule items for consideration at particular times, unless they assure that the items will not be considered prior to the appointed time. "
>
> Source: http://ag.ca.gov/publications/bagleykeene2004_ada.pdf (under "Notice and Agenda Requirements" on page 8)
>
> *Note: I have not found time to locate a similar statement by the Attorney General with regard to the Brown Act, but the statutory sections being interpreted are essentially identical in the two acts.*

Additional References/ Web Links

Suzanne Forster letter to *Daily Pilot*:

http://www.dailypilot.com/news/opinion/tn-dpt-0403-mailbag-20120403,0,2060329.story

March 22, 2012 Planning Commission agenda and staff report:

http://www.newportbeachca.gov/index.aspx?page=1328

Specifically:

http://www.newportbeachca.gov/PLN/PLANNING_COMMISSION.asp?path=/03-22-2012

Correspondence
Item No. 3a
Newport Banning Ranch
PA2008-114

From: Gerard Proccacino [Gravytrain1@roadrunner.com]
Sent: Tuesday, April 17, 2012 11:34 AM
To: Burns, Marlene
Subject: Newport Beach Planning Commission Meeting, 4/19/2012

Dear Ms Burns,

I am emailing you to ask you please to forward my comments to the Planning Commission for review before their 4/19/12 meeting. I am unable to attend. I thank you in advance.

Dear Planning Commission Members,
I would like it to be on record that I am opposed to the massive development proposed for the Banning Ranch property. I realize that the Commission has approved the dEIR and I was not pleased that there was a sense of rush to evaluate. I was at that meeting but do to work restraints could not stay late enough to voice at the public hearing. I was there when it was said that with the overwhelming public comments that the "insignificant impacts" could not addressed. Well, I want to share some of those "insignificant impacts" that will negatively affect the life of me and my neighbors in the Lido Sands Community. Although the total project, with approx. 4,500 permanent residents and who knows how many more daily residents manning the commercial, retail and lodging venues will be a mind boggling culture change to the total West Newport Community I will only address the proposed Bluff Rd.
I have lived in my home, which is directly in front of where proposed Bluff Rd. is to intersect with PCH, for forty years. This intersection will place, with all turns, eight lanes of traffic with tall, ugly steel gray, traffic and pedestrian signals right outside my bedroom windows. We home owners in West Newport spent thousands of dollars to underground utilities and now there is proposed visual pollution with this intersection. "Insignificant impact?" The homes in Lido Sands bedrooms face PCH. Most of the homes such as mine, are quaint, mid century beach cottages. Many of the windows in these homes, including mine, have 50's cathedral ceilings with windows from floor to roof. The flashing lights will pollute my home with light twenty four hours a day. "Insignificant impact?" The motor vehicles descending down the 8% grade of Bluff Rd. will shine their headlights into my bedrooms twenty four hours a day. "Insignificant impact?" The stopping and starting of motor vehicles and revving engines, especially motor cycles, creating noise pollution. The wall separating Lido Sands from PCH is a mere seven feet high, a residential property line fence is six feet high. Has consideration been taken into account of how noise reverberates and is amplified off the bluffs, towards Lido Sands? "Insignificant impact?"
I think that these and all insignificant impacts must be addressed. Time and deliberate investigation must be taken not to overlook details that can abruptly and negatively effect me and the citizens of Newport Beach.
I remember that the first and best choice for the environment, by Bonterra, was to leave Banning Ranch as natural as possible. Why is there not a priority to support the

City's General Plan priority to preserve this last and only natural property as open space?
Why does the City of Newport Beach need this development? Why do the people of Newport Beach need this development? Please do not approve this development as it is in front of you. Please drill deeper into all the negative impacts and ask the developer to cure them or leave it alone. Please do not Los Angelize Newport Beach. Thank you for your consideration.

Sincerely,
Gerard Proccacino
Lido Sands, Newport Beach, CA

ORANGE COUNTY
BUSINESS COUNCIL

2 Park Plaza, Suite 100 | Irvine, California 92614-5904
phone: 949.794.2242 | fax: 949.476.0443 | www.ocbc.org

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APR 19 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

Correspondence
Item No. 3b
Newport Banning Ranch
PA2008-114

April 19, 2012

Mr. Michael Toerge, Chair
Newport Beach Planning Commission
3300 Newport Blvd.
Newport Beach, CA 92663

RE: Newport Beach Banning Ranch Development (Agenda Item 3) - SUPPORT

Dear Mr. Toerge:

Orange County Business Council represents the largest, most diverse businesses in the region. We advance Orange County's economic prosperity while protecting a high quality of life. We support the Newport Banning Ranch plan as a well thought out proposal that represents both community and city input, and responsibly addresses housing, commercial, and open space needs for Newport Beach.

The business community cites the lack of housing affordable to their workforce and proximate to their jobs as a major impediment to attracting and keeping workers. When it comes to the health and vitality of our communities, an adequate supply of housing is key. Even with a down market, from an economic development perspective, we have a shortage of housing at every job level. OCBC strongly believes that the cities within Orange County must plan to meet our current and future housing needs.

Although there will certainly be more study, the foundational land use designation and density for the property are consistent, if not better than, the surrounding development. In addition, the NBR plan is the only option that ensures public access, habitat creation, oil field cleanup and more than 75% of the site preserved as permanent open space – at no cost to taxpayers.

Additionally, the roadway system follows the voter approved Newport Beach General Plan as well. In fact, the proposed roadways are reduced from what the General Plan calls for, and designed to consider the needs of Newport Beach, Costa Mesa, Huntington Beach and the surrounding region – dispersing both local and regional traffic.

Newport Banning Ranch has the opportunity to become a model for other cities for urban infill and brownfield redevelopment, providing a beneficial mix of residential, commercial, recreation and open space uses that will serve the local community and region in the years to come. The Newport Beach Banning Ranch plan will be part of an overall solution for more compact and smart growth, and an important step in supporting a sustainable future for the City.

The Business Council respectfully urges the Newport Beach Planning Commission to adopt the resolutions before you and support the Newport Beach Banning Ranch plan.

Sincerely,

Kate Klimow
Vice President of Government Relations

cc: Newport Beach Planning Commission
Newport Beach City Council
Mr. David Kiff, City Manager

SHAPING ORANGE COUNTY'S ECONOMIC FUTURE

Planning Commission
Public Hearing
April 19, 2012

Newport Banning Ranch

Surrounding Uses

Project Overview

- 1,375 dwelling units
- 75,000 sq. ft. of commercial uses
- 75-room resort inn
- 51.4 ac of parkland
- 252.3 ac of open space, including:
  - 220.9 acres of habitat
  - 9.5 acres of public interpretive trails
  - 2.6 acres of water quality and detention basins
  - 16.5 acres of oil production
  - 2.8 acres of oil site buffers

Application

- General Plan Amendment
  - Circulation Element
- Code Amendment
  - Prezoning/Rezone
- Planned Community Dev. Plan
- Master Development Plan
- Tentative Tract Map
- AHIP
- Development Agreement

Study Sessions/Hearings

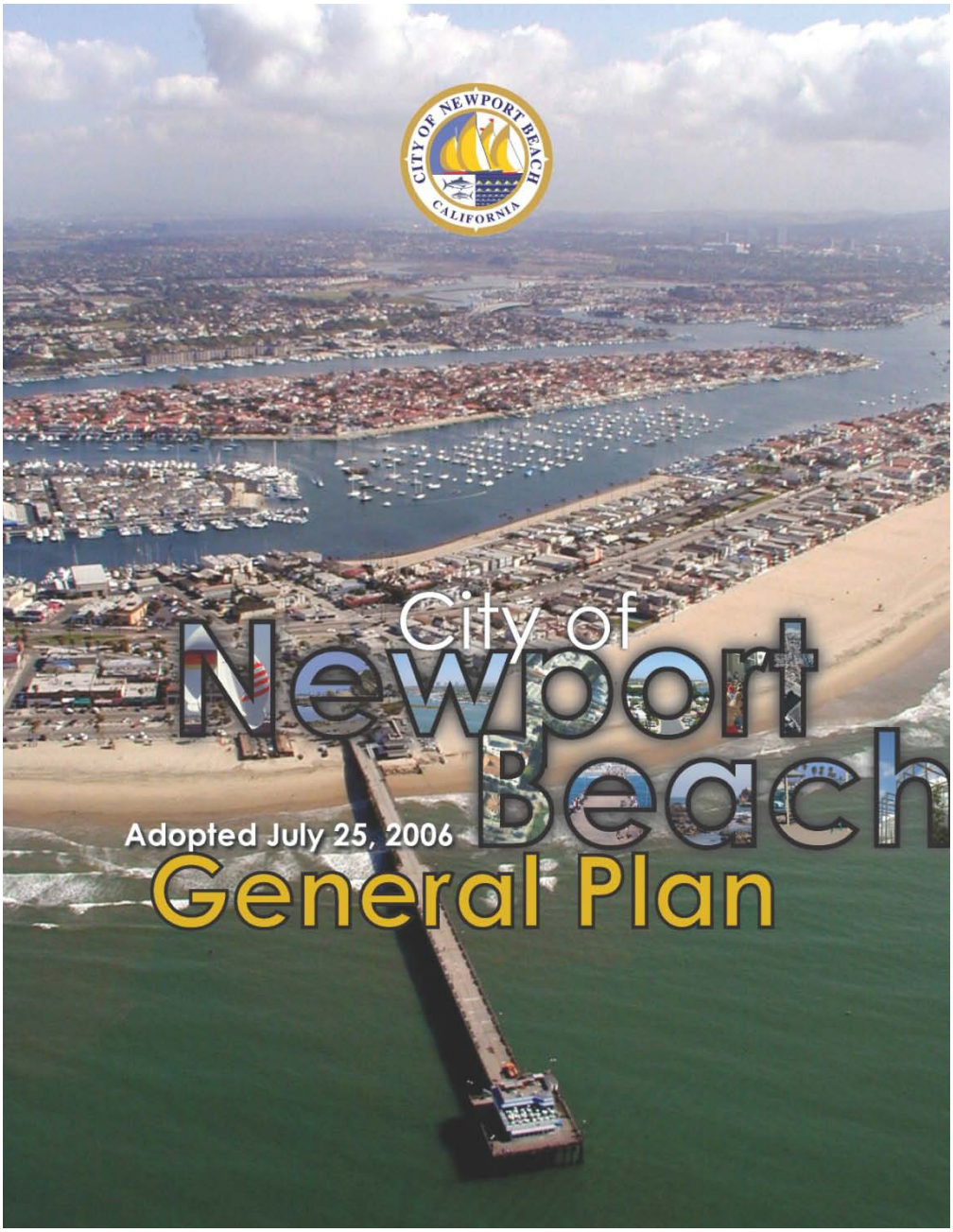
Study Sessions

11/03/11	EIR Process
01/19/12	Subdivision & Circulation
02/09/12	Parks, Open space, & Trails
02/23/12	Land Use & Development
03/08/12	EIR

Public Hearings

03/22/12	EIR
04/19/12	Project
05/17/12	Project
TBD	City Council public hearing(s)

General Plan Consistency



Banning Ranch "Residential Village"

- Mix of housing types
- Consolidated oil operations
- Majority open space
- Street & trail linkages
- Sustainable development
- "Village Center"

Housing Mix

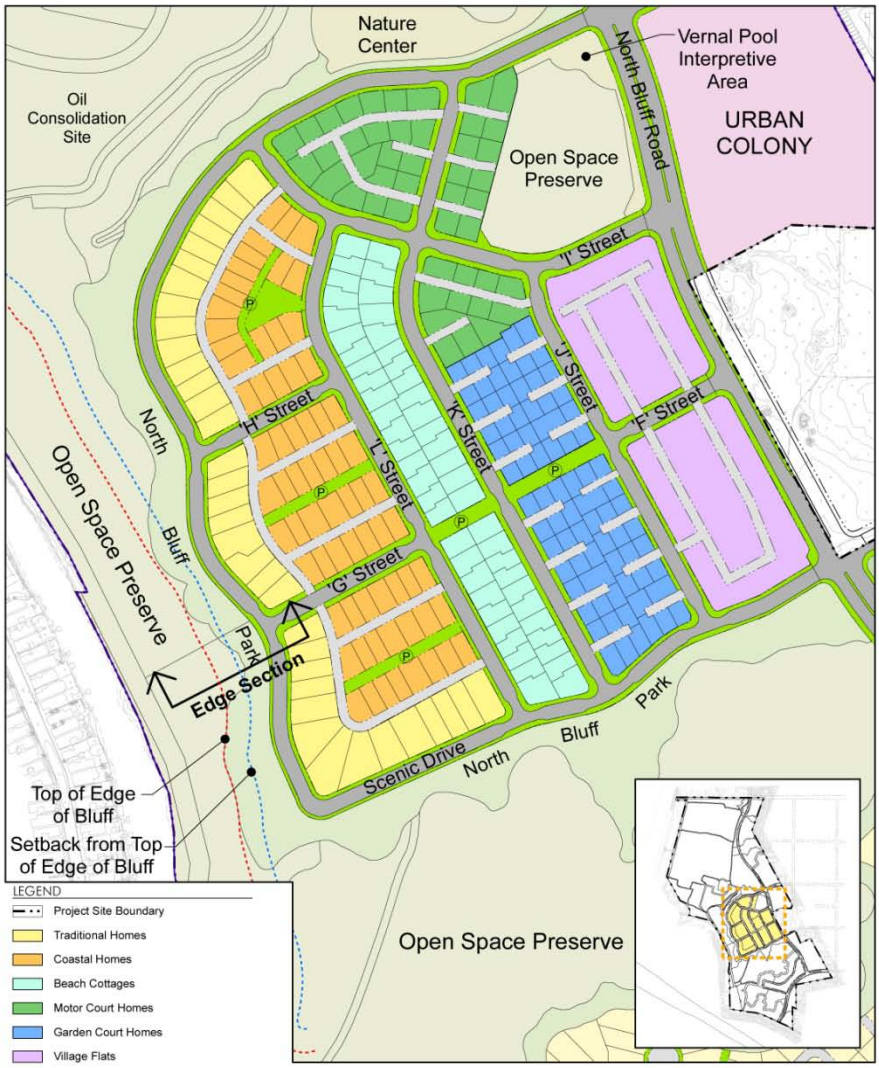


Exhibit 3-12
North Family Village
Project Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

0 300

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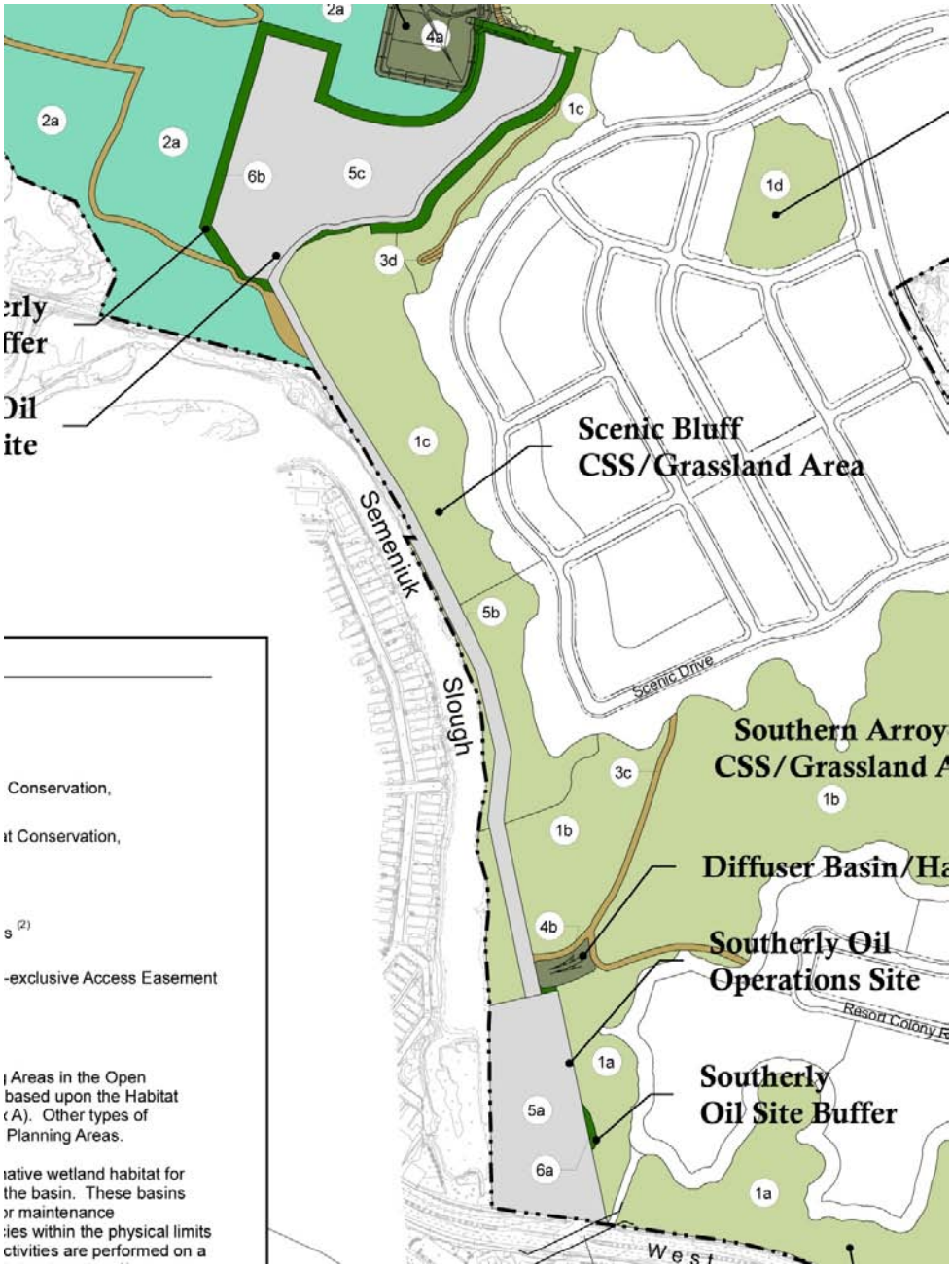
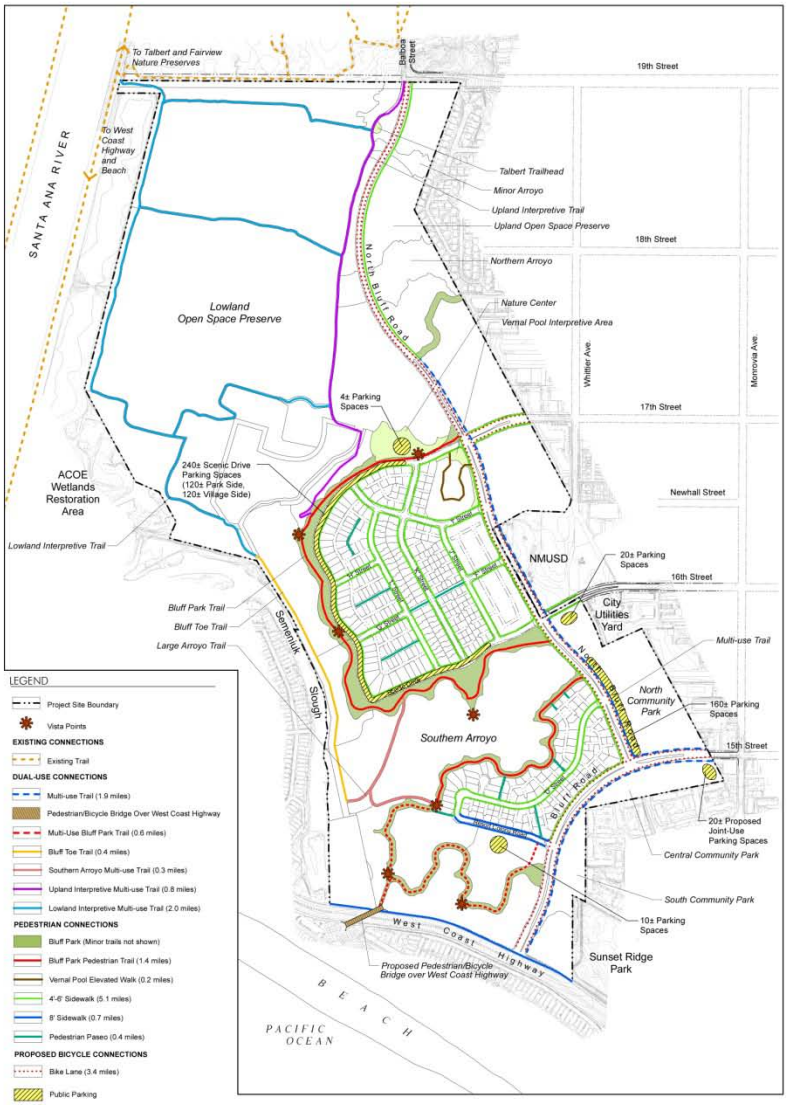
Consolidated Oil Operations



Streets & Trails



NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

Exhibit 4-1
Master Trails and Coastal Access Plan

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Open Space

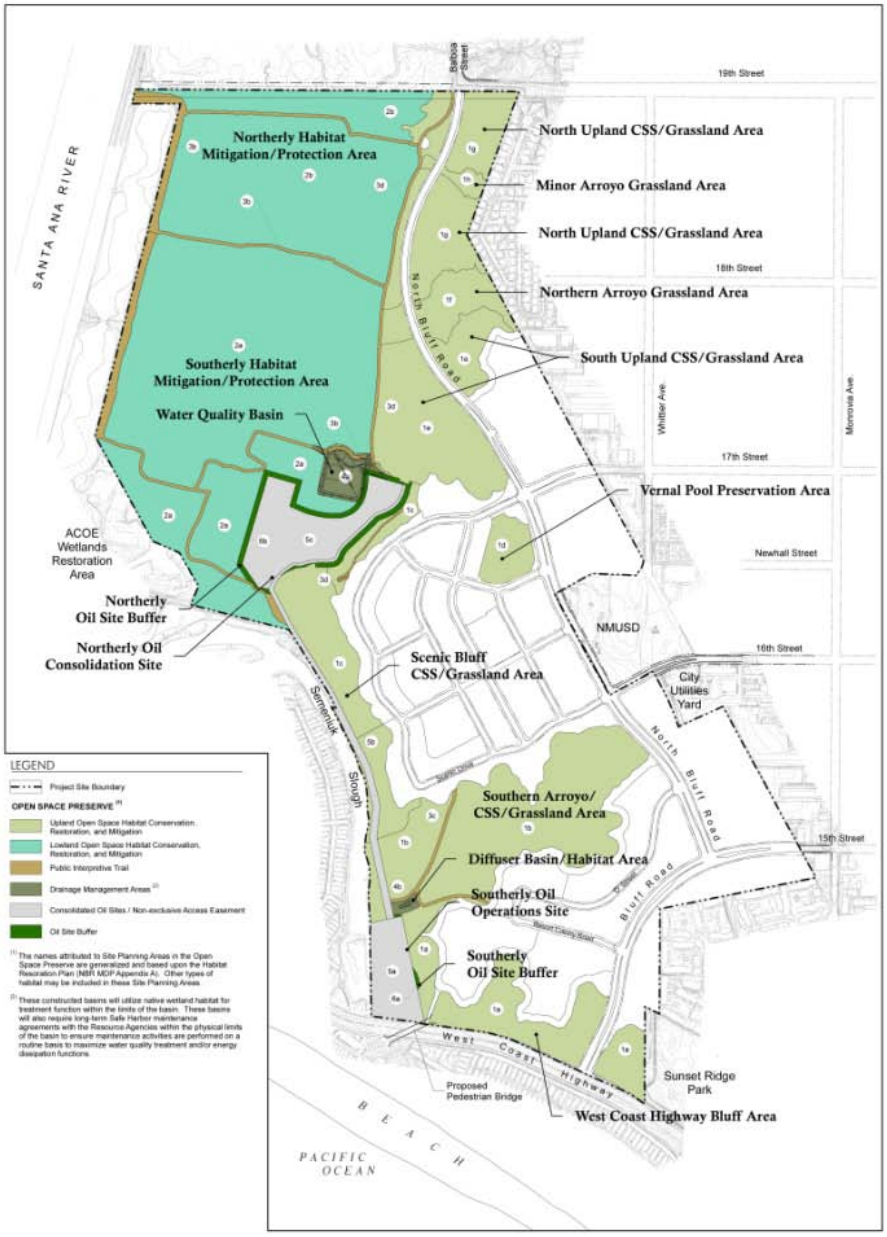

Exhibit 3-3
Open Space Preserve
Project Development Plan

NEWPORT BANNING RANCH
MASTER DEVELOPMENT PLAN
City of Newport Beach - California

Community Park

Village Center

- Local-serving commercial
- Small boutique hotel
- Active park
- Possible school

Urban Colony

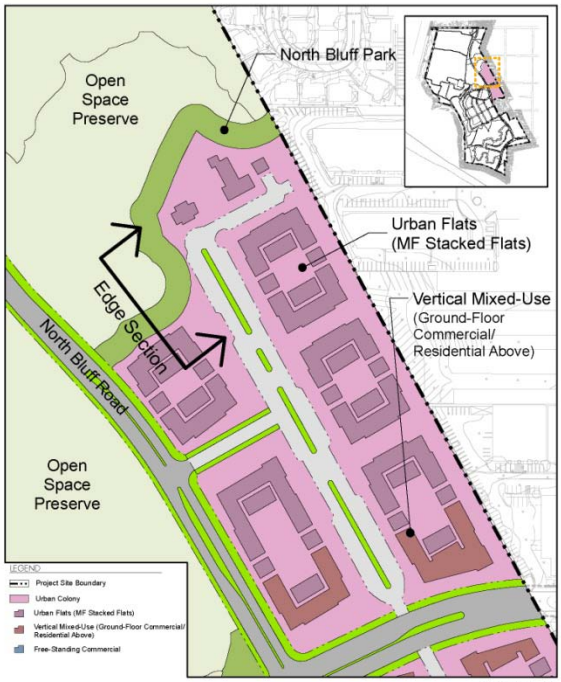

Exhibit 3-17
Urban Colony SPA 12b
Conceptual Development Plan

NEWPORT BANNING RANCH
MASTER DEVELOPMENT PLAN
City of Newport Beach · California

Exhibit 3-16
Urban Colony SPA 12a
Project Development Plan

NEWPORT BANNING RANCH
MASTER DEVELOPMENT PLAN
City of Newport Beach · California

Resort Colony

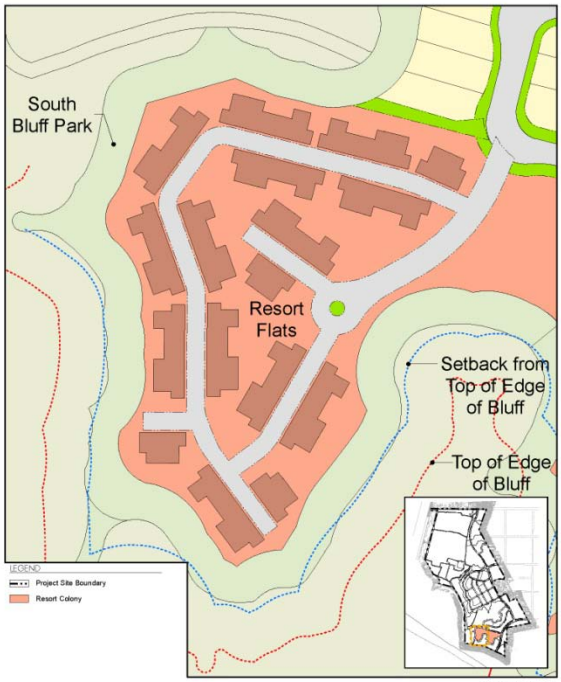

Exhibit 3-20
Resort Colony SPA 13b
Project Development Plan

NEWPORT BANNING RANCH
MASTER DEVELOPMENT PLAN
City of Newport Beach - California

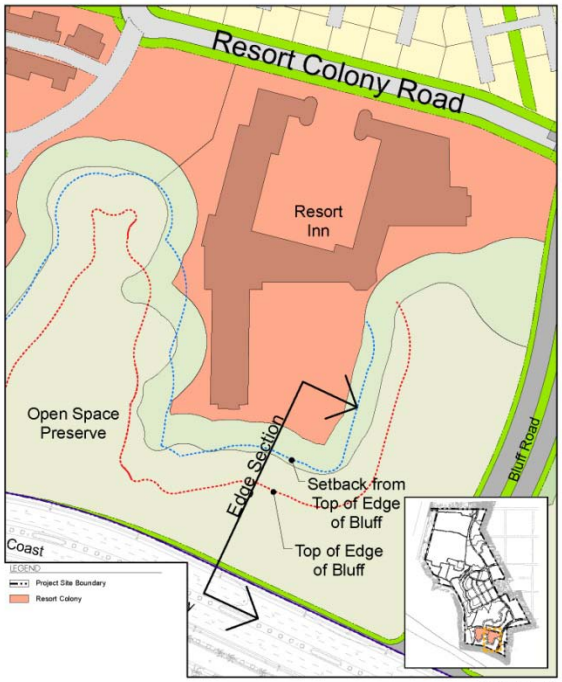

Exhibit 3-19
Resort Colony SPA 13a
Conceptual Development Plan

NEWPORT BANNING RANCH
MASTER DEVELOPMENT PLAN
City of Newport Beach - California

Villages and Colonies

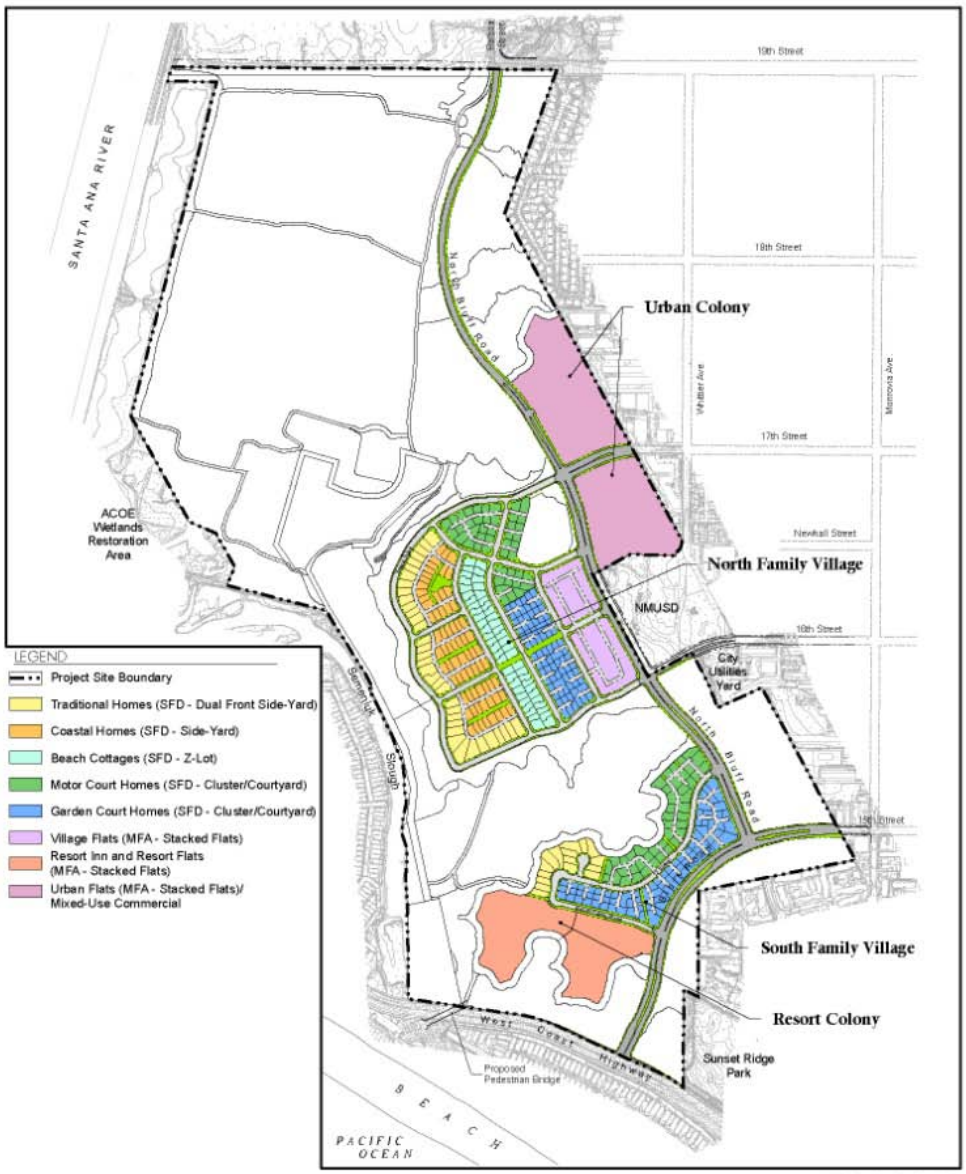

Exhibit 3-10

Villages and Colonies Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

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North Community Park

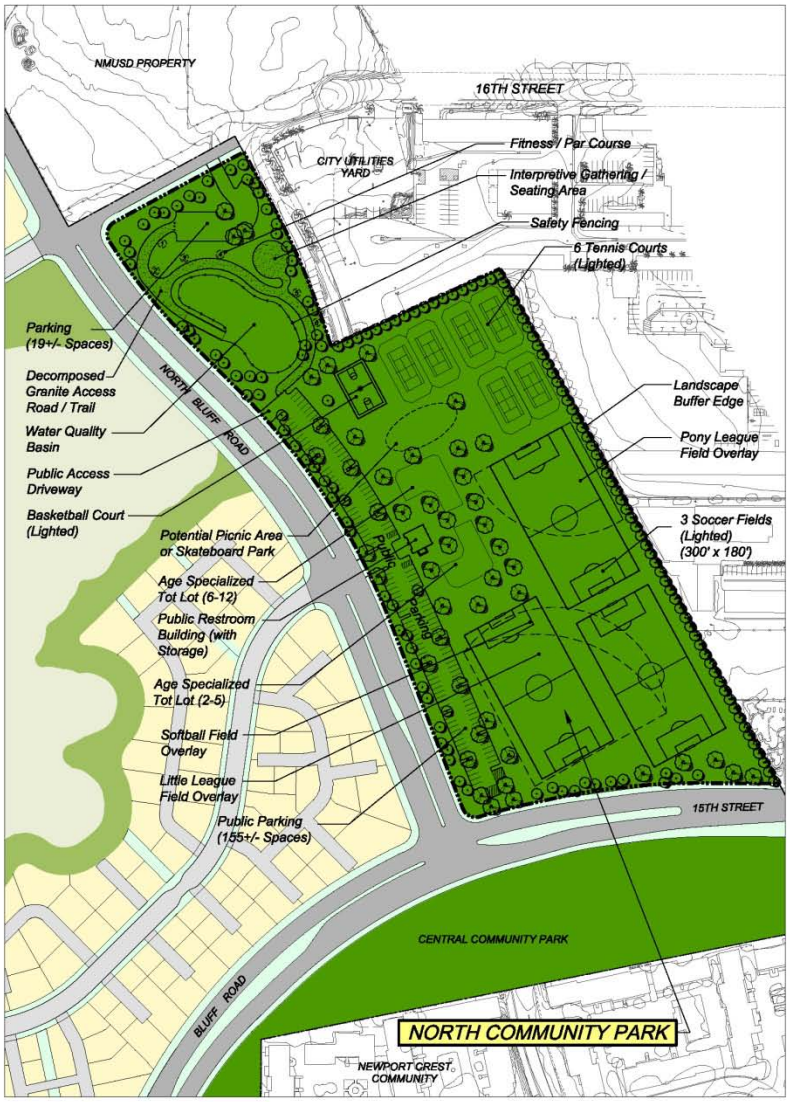

Exhibit 3-6a
North Community Park
Project Development Plan

NEWPORT BANNING RANCH

Central Community Park

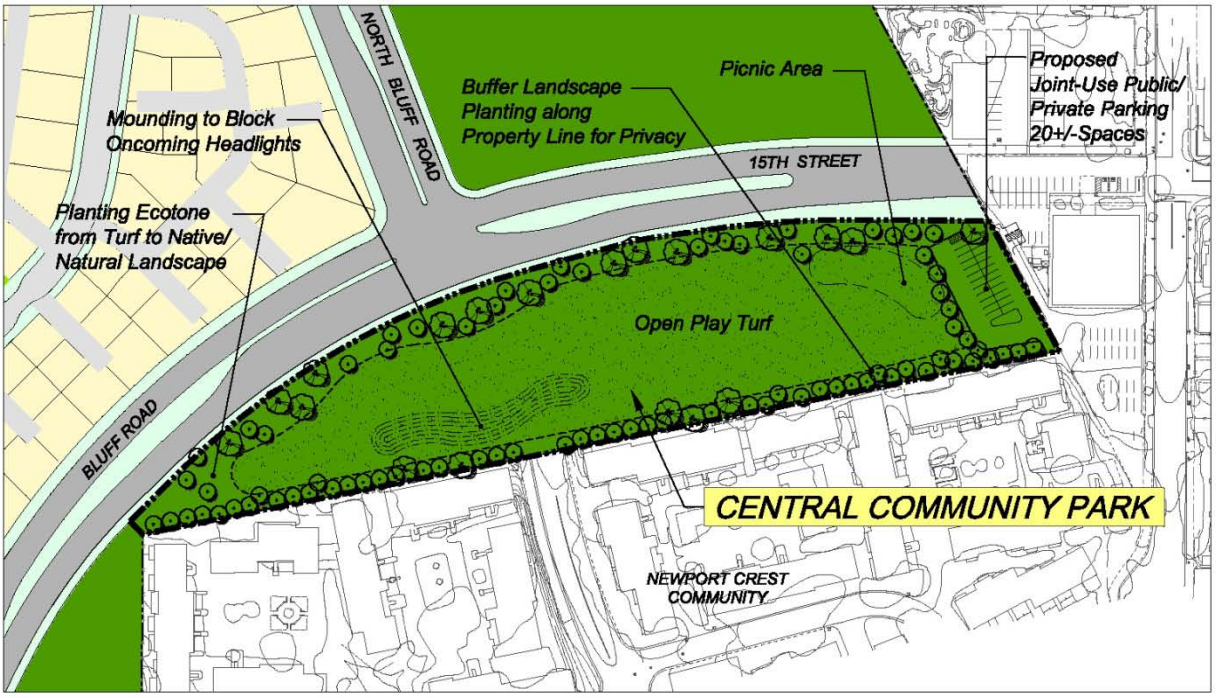

Exhibit 3-6b
Central Community Park
Project Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

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FUSCOE ENGINEERING

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South Community Park

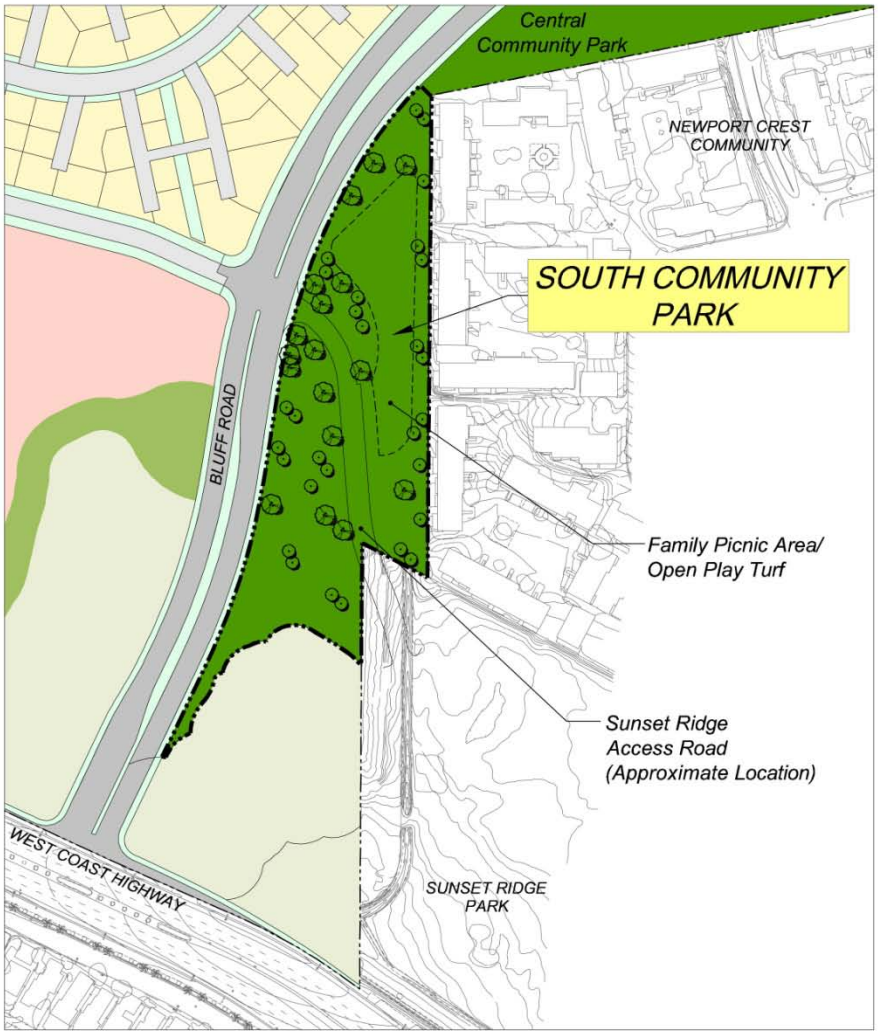

Exhibit 3-6c
South Community Park
Project Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

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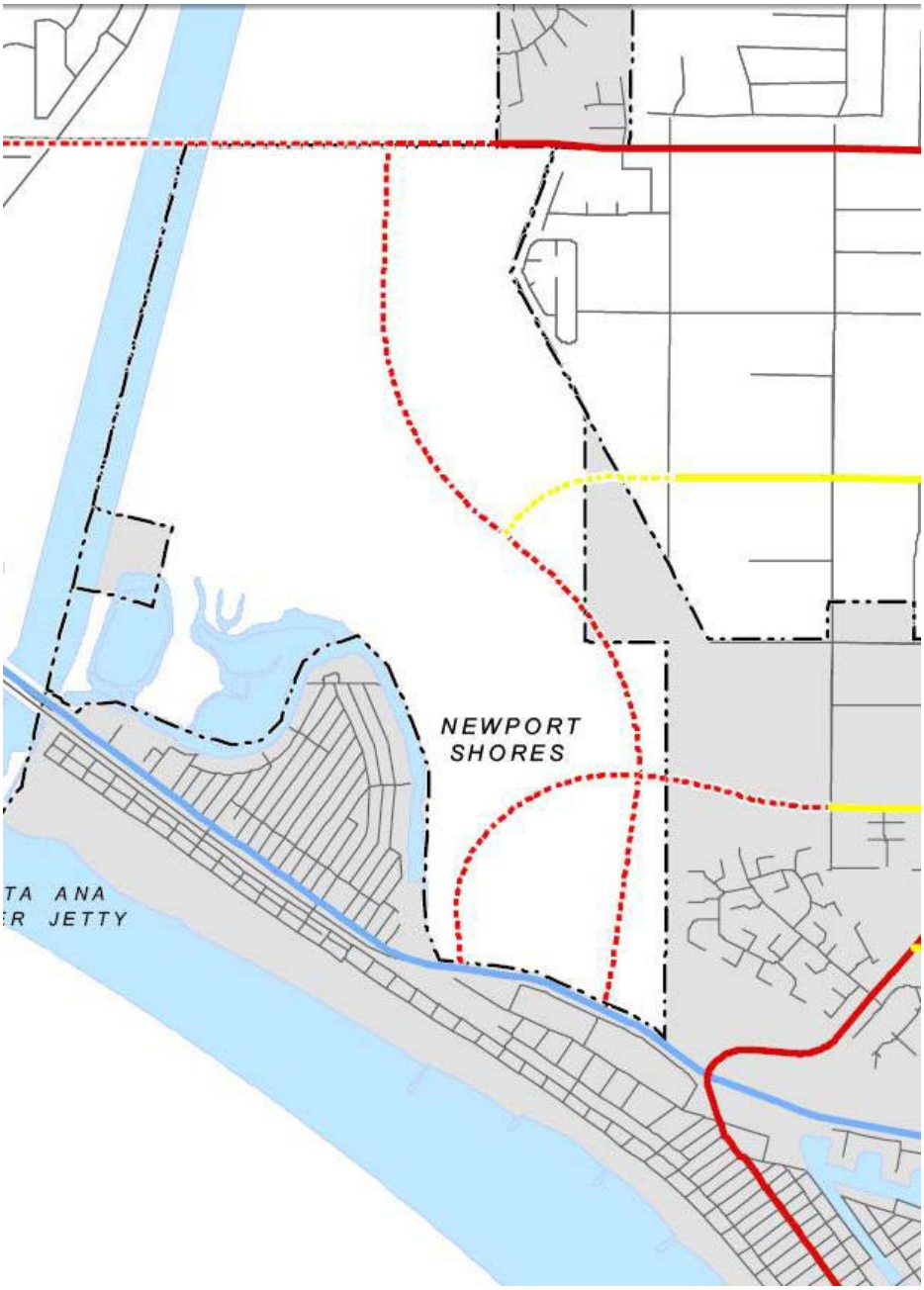
Master Plan of Streets and Highways



PC Development Plan/ Master Development Plan

- Bars
- Resort Ancillary Uses
- Oil Operations
- Community Parks
- Minor Modifications
  - Substantial Conformation
  - Residential Transfers
  - Commercial Transfer
- Retaining Walls

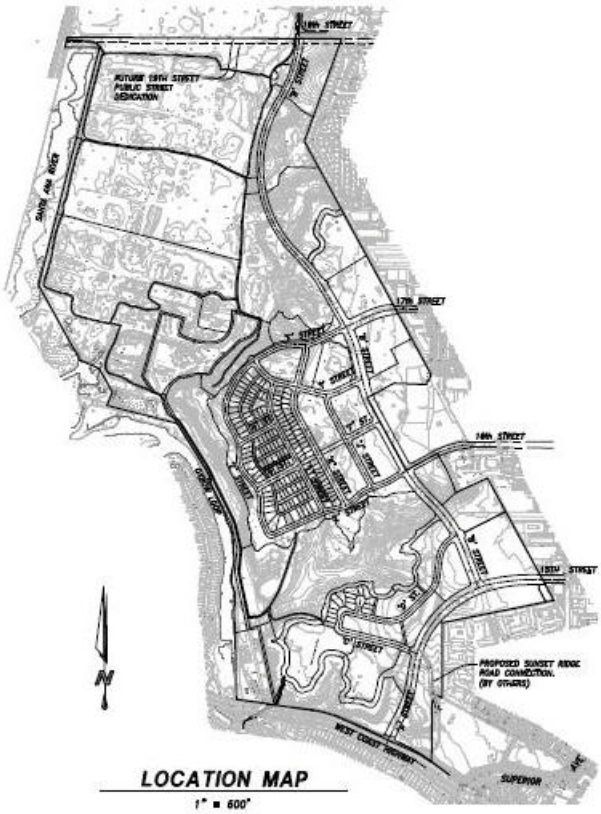
Tentative Tract Map

TENTATIVE TRACT MAP NO. 17308

FOR CONDOMINIUM PURPOSES

LEGAL DESCRIPTION

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF THE RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.



LOCATION MAP

1" = 600'

TPO Traffic Study

- Traffic Phasing Ordinance
- 1 intersection in Newport Beach
- 8 intersection in Costa Mesa

Affordable Housing

- 15 percent of market rate units
  - 5 percent Very Low (69 units); or
  - 10 percent Low (138 units); or
  - 15 percent Moderate (206 units)
- 50 percent onsite
- In-lieu fees
- Off-site
- Land dedication

Fiscal Impact

FISCAL IMPACT ANALYSIS
OF THE PROPOSED
NEWPORT BANNING RANCH ANNEXATION
TO THE CITY OF NEWPORT BEACH

FINAL DRAFT
DECEMBER 29, 2011

Prepared for
City of Newport Beach

Prepared by
Applied Development Economics
100 Pringle Avenue, Suite 560 ◆ Walnut Creek, California 94596 ◆ (925) 934-8712
2150 River Plaza Drive, Suite 168 ◆ Sacramento, CA 95833 ◆ (916) 923-1562
www.adeusa.com

APPLIED
DEVELOPMENT
ECONOMICS

CITY OF NEWPORT BEACH
CALIFORNIA

Public Benefits

- Open space preservation
- Public coastal access
- Excess parkland dedication
- Oil field remediation
- Water quality
- Circulation improvements
- Public benefit fee
- Net fiscal benefits
- Housing opportunities
- Fire station improvements
- Sustainable design

Phasing

Resort Colony
South Family Village

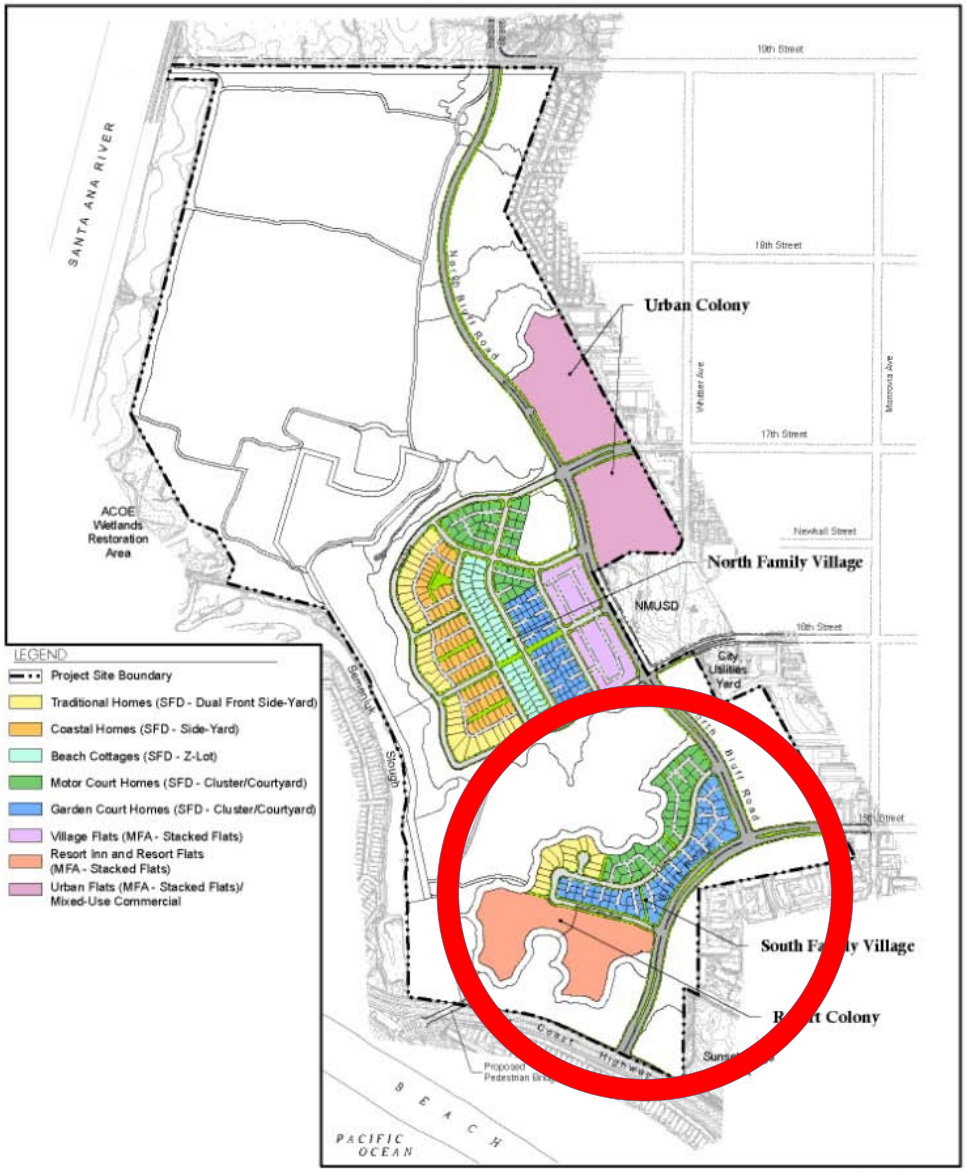


Exhibit 3-10
Villages and Colonies Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

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Phasing

First CofO Resort Colony/South Family Village

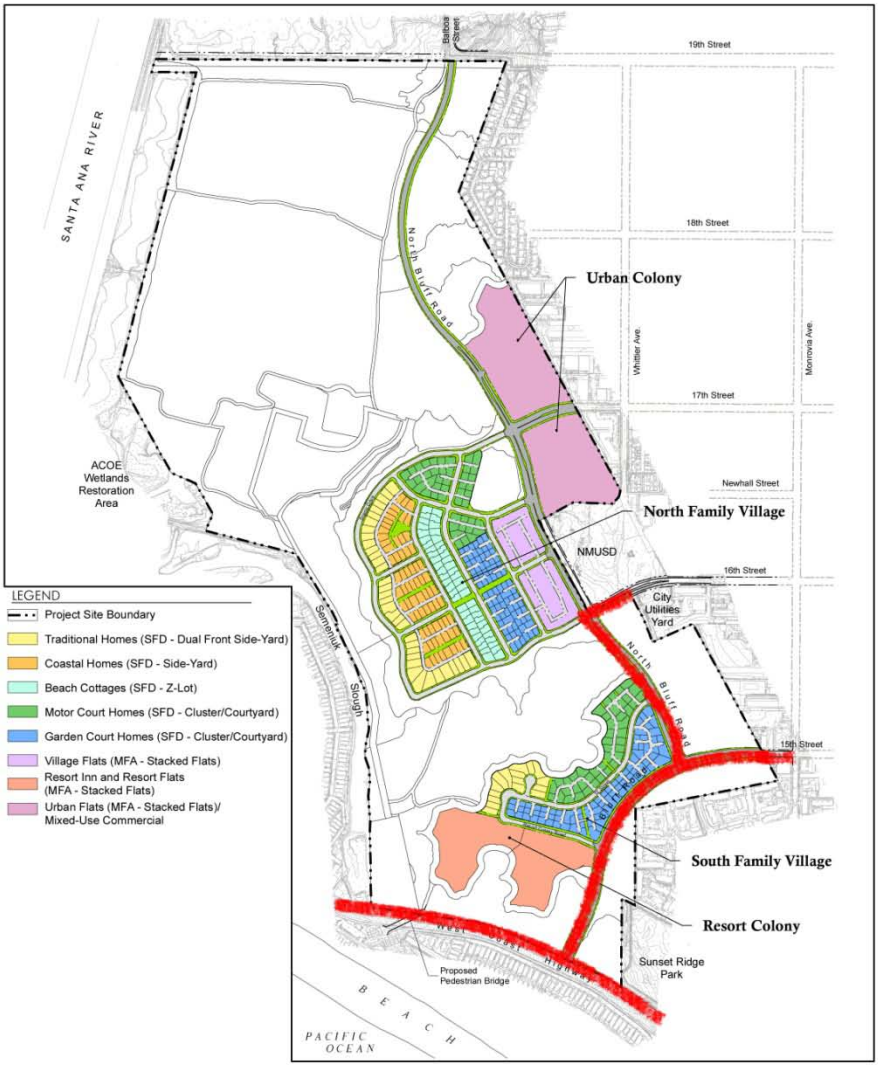

Exhibit 3-10
Villages and Colonies Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

0 900

GLENN LUKOS ASSOCIATES FUSCOE FORMA 06 • 13 • 2011

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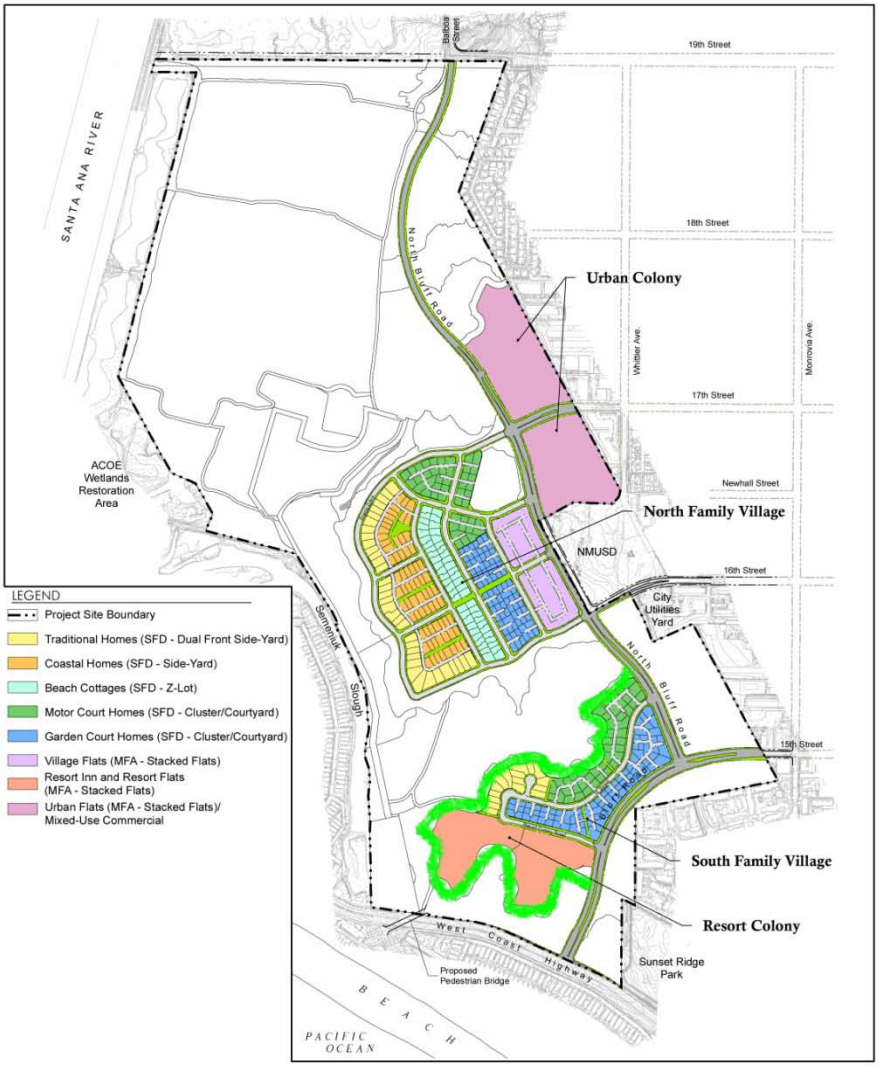
Phasing

101st CofO Resort Colony/South Family Village



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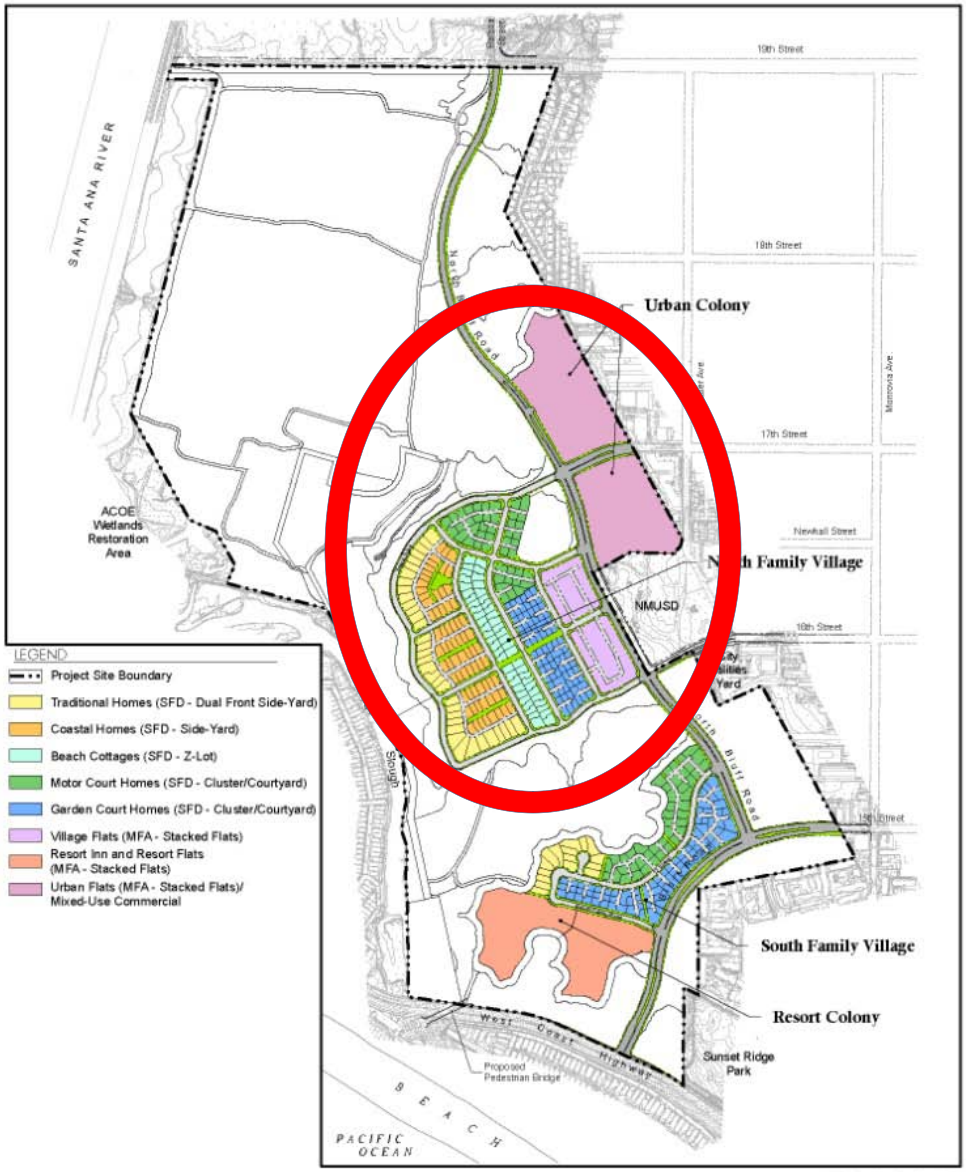
North Family Village
Urban Colony



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NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

GLENN LUKOS ASSOCIATES FUSCOE FORMA 06 • 13 • 2011

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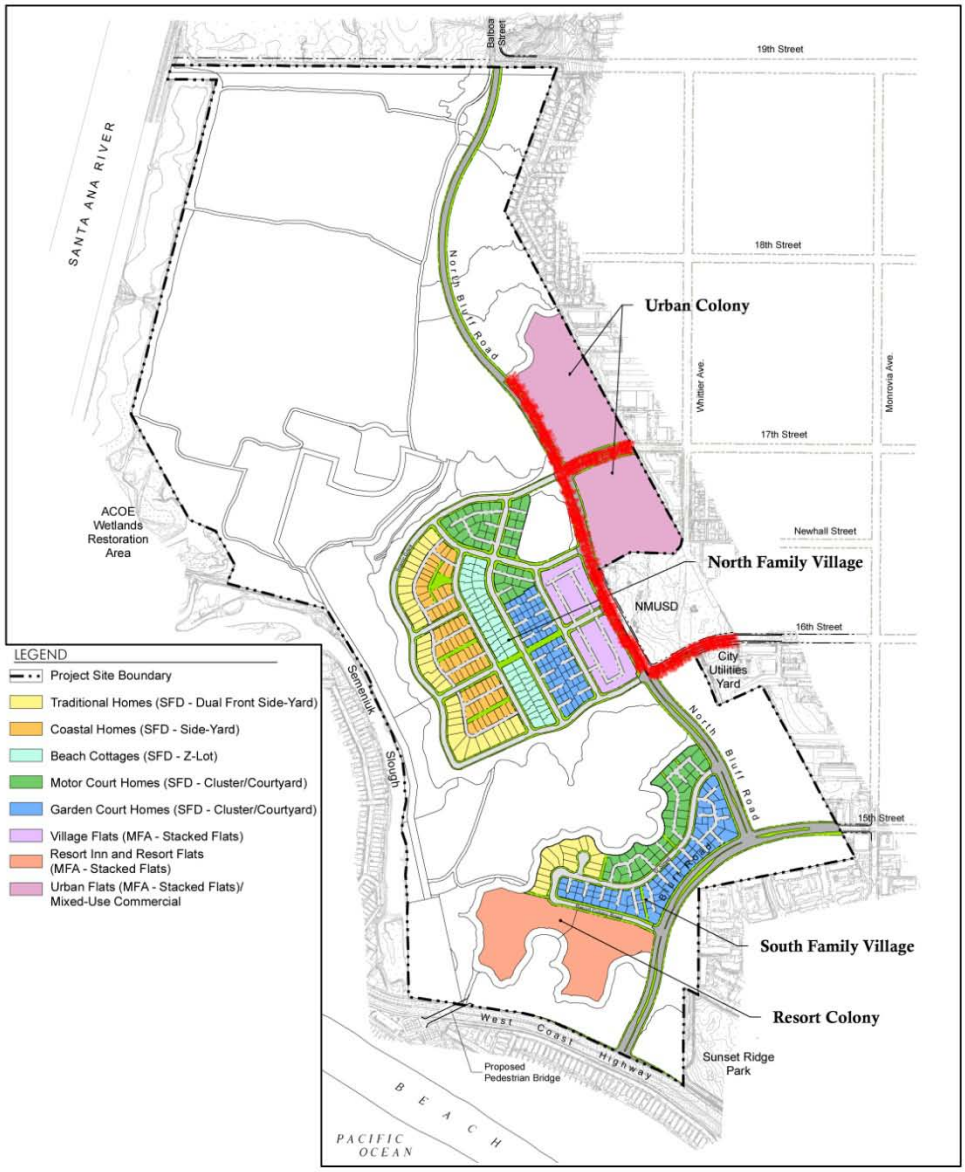
1st CofO North Family Village/Urban Colony



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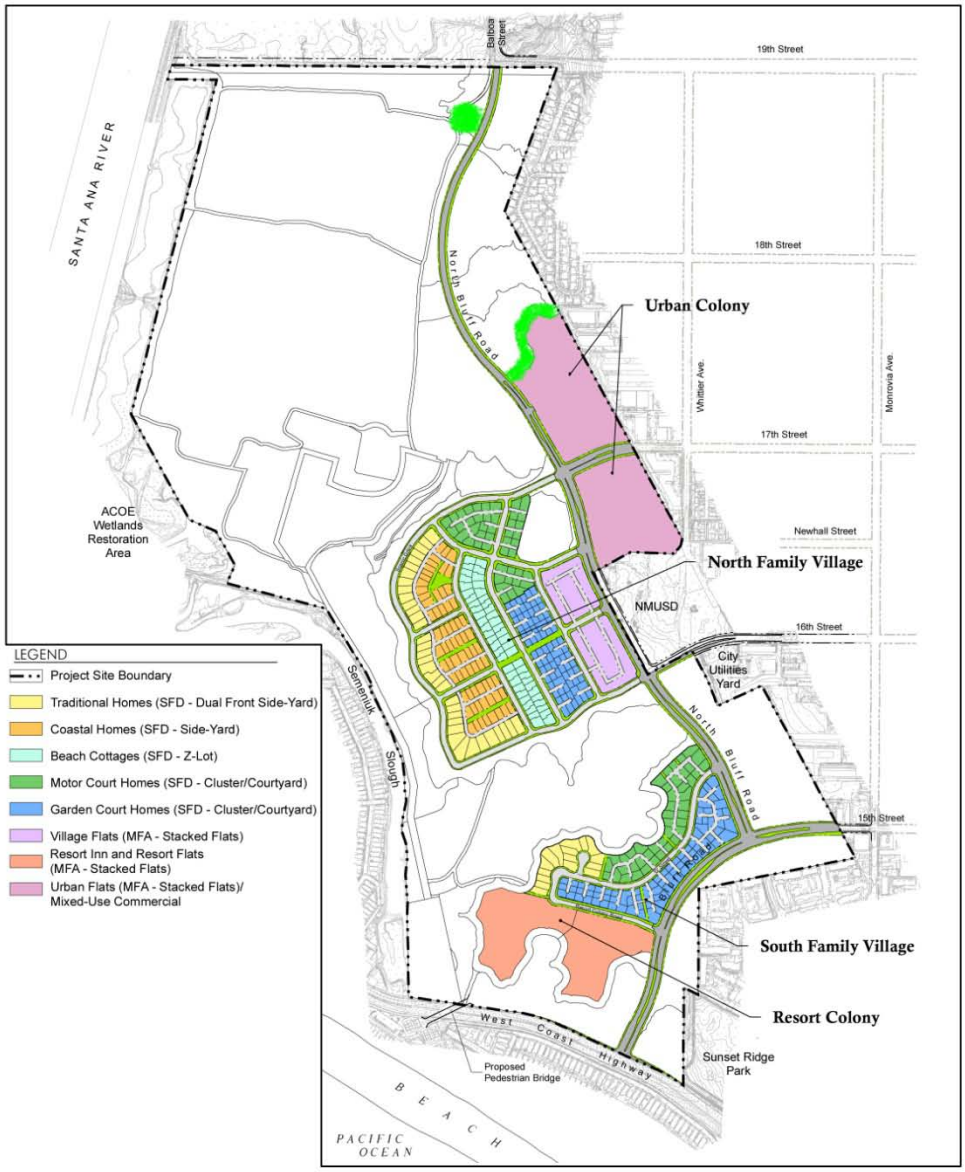

Exhibit 3-10
Villages and Colonies Development Plan

NEWPORT BANNING RANCH

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City of Newport Beach - California

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Phasing

209th CofO North Family Village/Urban Colony

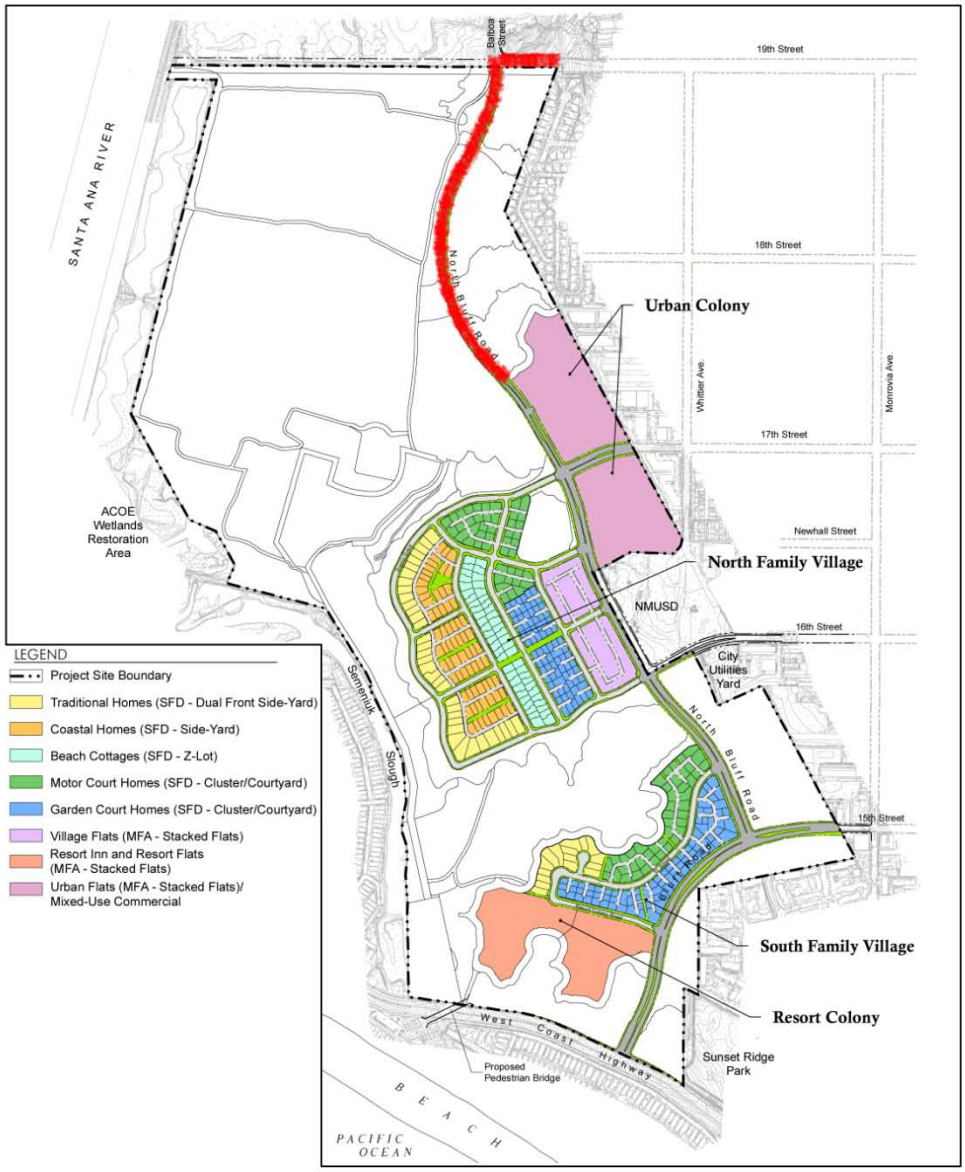

Exhibit 3-10
Villages and Colonies Development Plan

NEWPORT BANNING RANCH

MASTER DEVELOPMENT PLAN
City of Newport Beach - California

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GLENN LUKOS ASSOCIATES FUSCOE FORMA 06 • 13 • 2011

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Phasing

209th CofO North Family Village/Urban Colony

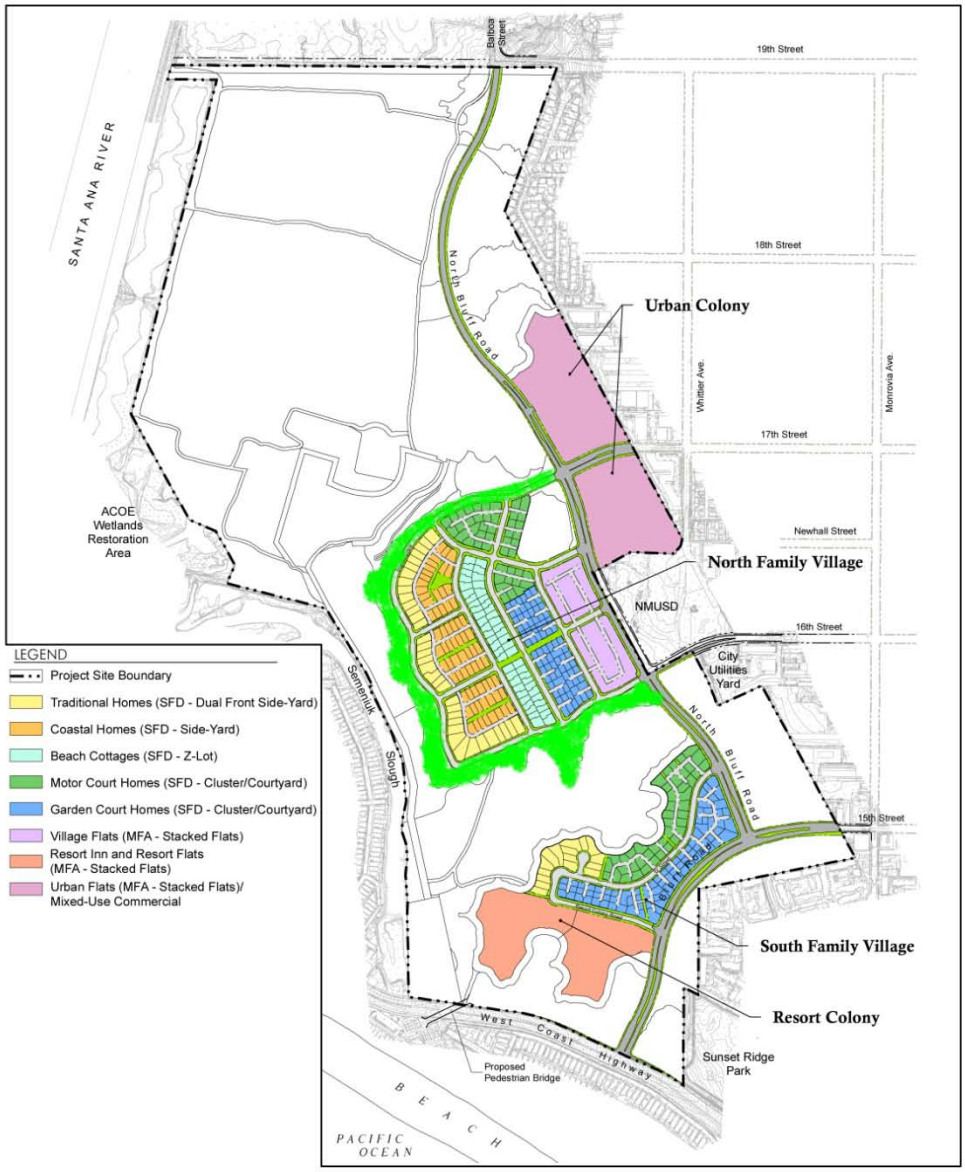

Exhibit 3-10
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City of Newport Beach - California

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GLENN LUKOS ASSOCIATES FUSCOE FORMA 06 • 13 • 2011

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Phasing

Last CofO North Family Village/Urban Colony

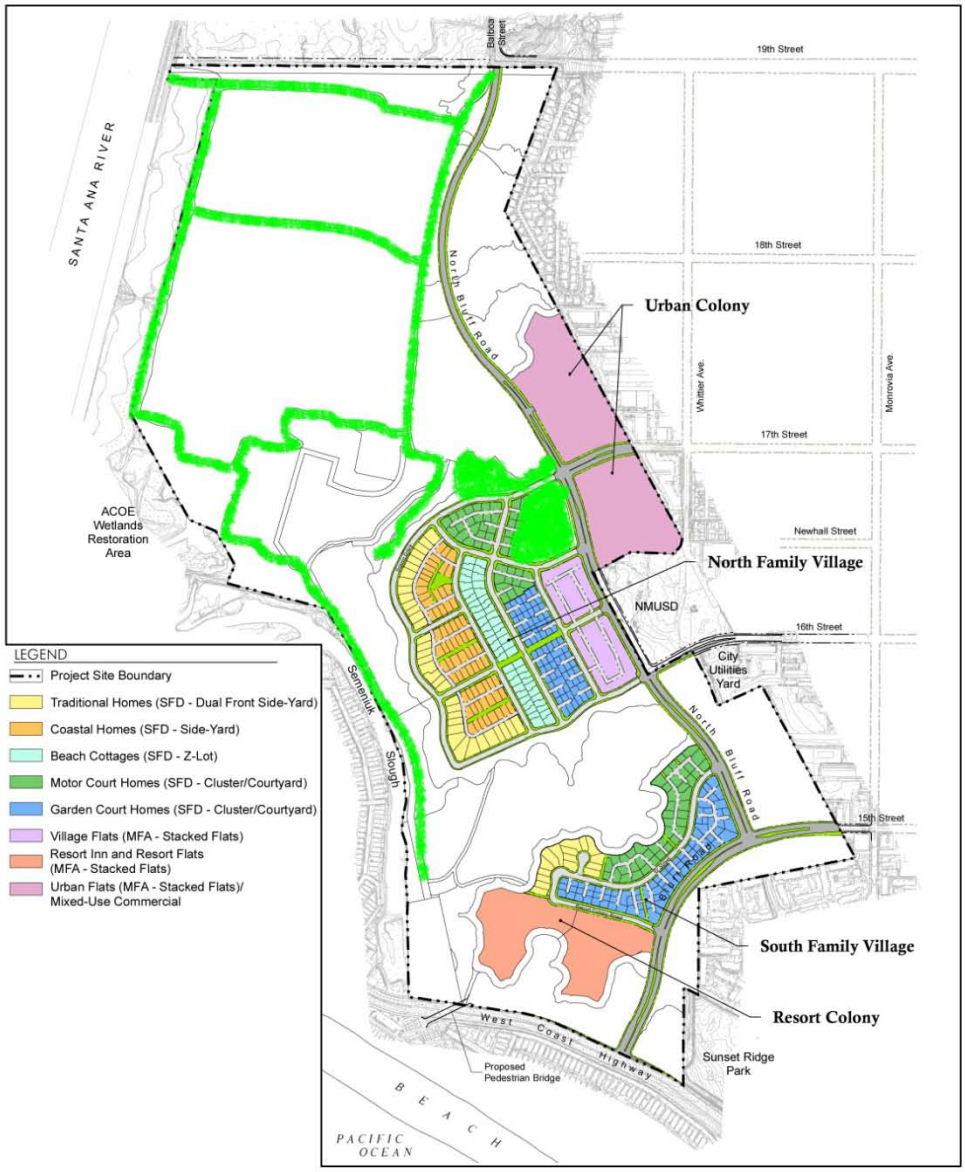

Exhibit 3-10

Villages and Colonies Development Plan

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Review Process Overview

- PC & CC hearings
- Coastal Commission – CDP/MCDP
- City Considers Coastal Modifications (PC & CC hearings)
- Site Development Review (PC hearings)
- Grading & Building Permits

CITY OF NEWPORT BEACH
CALIFORNIA

Newport Banning Ranch EIR Responses to Comments

Page 3-83 The City evaluated whether the elimination of access from West Coast Highway would preclude significant unavoidable noise impacts to certain residences in the Newport Crest condominium development. Noise impacts from future traffic on Bluff Road and 15th Street were evaluated in the Draft EIR...

<u>However, the analysis also confirms that long-term noise increases at some Newport Crest residences would remain above the 5 dBA significance criterion for noise increase. Therefore, the proposed Project's noise impacts as to some of the Newport Crest residences are significant and unavoidable.</u>

Source: FORMA 2011

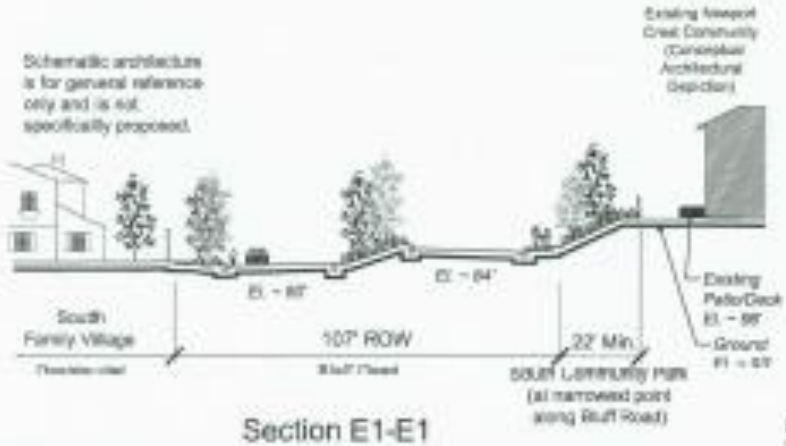
Community Transitions and Interface Key Map — Exhibit 4.1-1

Newport Banning Ranch EIR

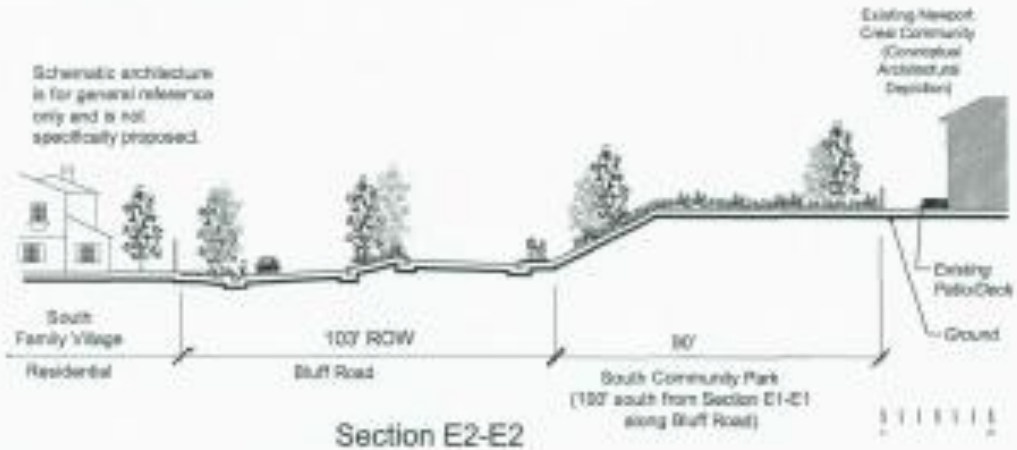
BonTerra CONSULTING

Aerial Photograph of Existing Conditions

Master Development Plan of Proposed Project



Section E1-E1



Section E2-E2

Source: FORMA 2011

Central Community Park Interface with Newport Crest Condominiums

Exhibit 4.1-2g

Newport Banning Ranch EIR

BonTerra CONSULTING

Newport Banning Ranch EIR Responses to Comments

Letter from Cathy Malkemus

Page 3-756:

4.12.8 Environmental Impacts; Impact Analysis - page 4.12-27
The document states that noise barriers could be installed around the second floor balconies of Newport Crest homes and that this measure is feasible. Is the applicant suggesting that we close in our open balconies with walls??

- **Specifically, what "barriers" is the DEIR referring to and who determines if they are feasible??**

Newport Banning Ranch EIR Responses to Comments

Response to Letter from Cathy Malkemus

Page 3-759:

<u>Noise barriers for balconies are generally transparent glass or Lucite-like material, often hinged to allow the occupant to choose an open or closed position.</u>

Development of OC's last large coastal properties

Site	Acres	Residential Units
Marblehead (San Clemente)	248	313
Dana Point Headlands	121	118
Bolsa Chica	2000	379
Crystal Cove (Newport Shores)	980	635
Castaways (Newport Beach)	133	119
Banning Ranch	412	1375

Please enter record

Talking Point #1

- Traffic Impact Study No. TS2008-02 Based on information:
- Traffic was analyzed by Newport Beach during the time the 55 Freeway was under construction from 17th to 19th. Costa Mesa provided peak hour counts conducted BEFORE the construction begun. Costa Mesa based their traffic growth information by an estimated 1%. Prepared in accordance with Newport Beach's Traffic Phasing Ordinance requires analysis be prepared based on traffic counts taken between Feb 2 – May 31. (NOT DURING SUMMER MONTHS
- 65% of the Project traffic can be expected to travel along the street system in southwest Costa Mesa

Talking Point #2

- Volume to Capacity Ratio (comments from CM 11/8/11 re DEIR traffic report) Comment # 10 -- Page 4.9-116: Table 4:9:34 exhibit shows projected increase in traffic due to Project traffic distribution, reflects that approximately 35% of the Project traffic uses 17th Street. Considering the project trip generation of approximately 15,000 vehicles per day, this translates to over 5,200 vehicles per day. However, the Table 4:9-34 shows only an increase of 3,912 vehicles. There should be an exhibit that shows clearly the level of redistribution of background traffic with the construction of Bluff Road. Even with the forecast as provided the volume to capacity ratio is over 0.90 for 17th Street as well as 19th Street, resulting in a need for increased capacity on segments west of Placentia Avenue. The need for this widening and timing should be addressed in the DEIR. Comment: The Volume to Capacity ratio of 0.90 is considered to be less than significant. 17th street DIER does not meet this criteria and mitigation is necessary because it is over 0.90

Talking Point #3_ TRIP GENERATION

Comments: Trip Generation to and from Project is determined by:

- Development nodes
- Coded as separate traffic analysis zones
- In a distribution model
- Following different path assignments
- Best route to each zone
- Final traffic volumes on any particular street represent the sum of the trip assigned to that particular path from each of the traffic analysis zones

- #10 – The trip distribution exhibit (Exhibit 4:907) in the Draft EIR presents a general indication of the distribution of Project traffic to/from the Project site to various off-site destinations. However, because the proposed Project consists of several development nodes throughout the Project site (which are coded as separate traffic analysis zones in the distribution model), traffic follows different paths (assignments) to and from its destinations, depending on the roadways that provide the best route relative to each zone. For example, traffic from the resort inn/residential areas toward the south end of the Project site would be more likely to use 15th or 16th Street to get to the destinations to the east; the residential areas to the north would be more likely to split up between 16th Street and 17th Street to get to the same destinations to the east; and the mixed-use/residential

areas that straddle 17th Street would be most likely to use 17th Street. The final traffic volumes on any particular street represent the sum of the trips assigned to that particular path from each of the traffic analysis zones. (NB response to above letter from Costa Mesa's comments on the DEIR)

INTERNAL CAPTURE OR PASS-BY TRIPS

Comments:

- The Trip Generation Handbook indicates pass-by or internal capture rating to be at 34% in peak pm traffic
- This Traffic Impact Study has adjusted this 34% assumption to a 10% assumption for a "conservative approach"
- FROM 34% to 10%
- This report then estimates the combined trip totals (to and from project for all purposes for the Project) at approximately 15,000 per day across connecting roadway network
- The Project Trip Generation Numbers DO NOT REFLECT trip generation numbers creating impact OUTSIDE the project?

- Internal capture or Pass-by Trips have the same affect...Motorists who are already traveling on the surrounding roadways from one place to another, and who stop at the Project site on their way to another location. ... Project passing the commercial center on their way to/from their homes, as well as other motorists who would use Bluff Road/North Bluff Road and 17th Street to get to/from PCH once the roadway system for the Project is in place. The project assumes a pass-by rate of ten percent (10%). However, The Trip Generation Handbook indicates pass-by trips is 34% in the PM peak hour. Ten percent (10%) is assumed here, for a conservative approach. Bottom line – Trip Generation Handbook indicating 34% for pass-by rate has been adjusted for a "conservation approach" down to 10% so they do not add to project trip generation numbers that create impact outside the project!
- Combined trip totals (to and from project, all purposes) for the residential, resort inn, and commercial components of the Project would be 14,989 trips per day across connecting roadway network. Street parking on the project site would be available to the public for beach access. (Information from Consultant, Kinley-Horn)

Bottom line --- adding 3,000 additional people in project development (household of 2) (then including pass through traffic) --- no matter how you calculate the numbers (through development nodes, separate traffic analysis zones, reducing internal capture and pass-by trips from 35% to 10%) we will experience definite Significant Unavoidable Impacts.

MORE IMPORTANTLY THAN THESE VARIOUS METHODOLOGIES UTILIZED FOR THIS TRAFFIC IMPACT STUDY IS:

- **TRAFFIC – "Additional Consultant Agreements provided in City Council Staff Report Dated 1/12/10 Agenda Item #10**

Traffic Analysis

- Original Traffic Study information appeared on Newport Beach website March 7, 2012) was prepared by Antony Brine, City Traffic Engineer, David Keely, Senior Civil Engineer and Mike Erikson as Contract Traffic Engineer.

Consultant Amendments – RBF Consulting Traffic

- Staff Report - Traffic and engineering services including contract traffic engineering review of initial DIER report, EIR traffic report, review of transportation and circulation issues, work with OCTA on potential MPAH amendments – time and expenses not to exceed $100,000 additional scope $85,000 – Total $185,000. Consultant will provide the following additional contract traffic engineering and development review services to the City of NB in conjunction with processing of the NBRD. Mike Erickson will function on behalf of the City Public Works Department during the review of the development subdivision map application, coordinating the preparation of the traffic report in support of the NBR EIR, reviewing the work product of the project traffic consultant, reviewing transportation and circulation issues associated with the project, reviewing and making recommendations on road alignments, intersection configurations and street sections coordinating with OCTA during the processing of the project by the City and on any required cooperative MPAH study, preparing analysis and reports as required monitoring schedules and taking actions as are necessary and appropriate to ensure that City-required reviews and actions take place in a timely manner. Other comments: Remapping, recalculations and rewriting of reports to reflect revisions and corrections to info on grading and limits of disturbance by the applicant.

(Comment: Due to the fact that the Secretary the Newport Beach Planning Commission, Commissioner Ameri, is Senior Vice President of

RBF Consulting and Mike Erikson has represented RBF Consulting throughout this process, and above Consultant Amendment reflects authorization for $185,000 for services rendered would be considered a conflict of interest.)

Consultant Amendment – Bon Terra - Traffic

- Revise intersection analysis and ADT (average Daily Traffic) forecast to reflect the applicant project revisions submitted to the city in November 2009.
- Incorporate the applicant proposed mix of residential land uses, modifications to roadway (page 12) revised number of dwelling units in specific portions of the project area, and subsequent incorporation of revised traffic analysis project trip rates
- Develop average daily traffic (ADT) forecasts for all study scenarios for roadway segments (adjusted for street usage to and from scenarios not totals)
- Revise intersection analysis and ADT forecasts to reflect the applicant project revisions submitted to City in November 2009
- Forecast traffic volumes (based on applicant's November 2009 revised project land use proposal) with respect to flow conservation to and from adjacent intersections

  Reflects applicant's desire to have report based on 2009 information for a 2012 Traffic Impact Analysis Report

THE Kennedy COMMISSION

www.kennedycommission.org
17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909
fax 949 263 0647

April 19, 2012

Chair Michael Toerge and Planning Commission Members
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658

RE: Newport Place Affordable Housing Amendment and Newport Banning Ranch Affordable Housing Implementation Plan

Dear Chair Toerge and Planning Commission Members:

The Kennedy Commission (the Commission) is a broad based coalition of residents and community organizations that advocates for the production of homes affordable for families earning less than $20,000 annually in Orange County. Formed in 2001, the Commission has been successful in partnering and working with jurisdictions in Orange County to create strategic and effective housing and land-use policies that has led to new construction of homes affordable to lower income working families.

With a significant lack of quality affordable homes, it is evident that Orange County is a very expensive place to live in. While the economic downturn has allowed home prices to be at an all time low, many lower income working families are still not able to purchase a home and remain as renters; however, many of these renting families continually struggle financially to live in the city they work in. Over the past year, Orange County had the biggest rental increase in Southern California (13%) and compared to other cities in Orange County,[1] housing costs are significantly higher in Newport Beach.[2]

As the City moves forward in addressing the housing needs for all income segments of the community, the Commission would like to acknowledge and commend the City's leadership in facilitating and encouraging the development of homes affordable to lower income families in the proposed Newport Place and Newport Banning Ranch developments. The Commission believes the City is moving in the right direction in implementing: 1) the City's 2008-2012 Housing Element Housing Programs 3.2.2. and 3.2.3 in Newport Place and; 2) an Affordable Housing Implementation Plan (AHIP) for Banning Ranch.

For the 2008-2014 Housing Element planning period, the City's total Regional Housing Needs Assessment (RHNA), including the un-accommodated portion of the 2000-2005 RHNA, for lower income households are: 451 homes at very low-income, 319 homes at low-income and; 442 homes at moderate-income.[3] To address the remaining RHNA

[1] Rising Rents May Signal a Housing Market Recovery, Los Angeles Times, March 13, 2012
[2] City of Newport Beach General Plan Housing Element Draft, p. 5-30 and 5-31, August 2011.
[3] City of Newport Beach General Plan Housing Element Draft, p. 5-45, August 2011.

needs, the City identified the John Wayne Airport Area and Banning Ranch as opportunity sites suitable for residential development. In particular, the Airport Area was identified as the "greatest potential" to accommodate the City's lower income RHNA need of 770 homes[4] and between 2010 and 2025, Banning Ranch is projected to represent 48 percent of the City's total new units.[5] More importantly, these identified sites provide a significant opportunity for the City to address its remaining RHNA needs for extremely low-, very low- and low-income households. Providing an amendment to Newport Place would permit residential development that includes a minimum of 30 percent of homes affordable to lower income families.[6] Also, the removal of the 10-acre minimum site requirement and allowing by-right development for multifamily housing affordable to lower-income households is essential in encouraging and facilitating the development of affordable homes in the Airport Area. In addition, Banning Ranch (subject to an AHIP), is expected to provide the following: very low-income homes at 5 percent of total units (69 homes) or; low-income homes at ten percent of total units (138 homes) or; moderate-income homes at 15 percent of total units (206 homes) or; a combination of all three income categories.[7]

In December 2011, the California Department of Housing and Community Development (HCD) found the City's 2008-2014 Housing Element in full compliance that was contingent upon the following:

> Successful implementation of Program 3.2.2, to remove the 10-acre minimum site requirement and Program 3.2.3, to allow by-right development for multifamily housing affordable to lower-income households are critical to facilitate residential development within the John Wayne Airport Area (PC 11 and PC 15).[8]

The Commission supports the City's efforts in planning the development of homes affordable to lower income working families. The proposed zoning amendment in Newport Place and AHIP implementation in Banning Ranch will not only provide quality and affordable homes for the City's work force, but it will also build and contribute to a more economically competitive and opportunity rich community.

---

[4] City of Newport Beach General Plan Housing Element, p. 5-54, November 2011.
[5] Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.
[6] City of Newport Beach Planning Commission Staff Report Agenda Item 2, p. 1, April 19, 2012.
[7] City of Newport Beach Planning Commission Staff Report Agenda Item 3, p. 15, April 19, 2012.
[8] Letter from California Housing and Community Development to City of Newport Beach, p. 1, December 2011.

Please keep us informed of any upcoming meetings and additional information on the proposed Newport Place and Newport Banning Ranch developments. If you have any questions, feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,

Cesar Covarrubias
Executive Director

cc: Melinda Coy, State Department of Housing and Community Development

To: City of Newport Beach Planning Commission

From: Norman J. Suker P.E., T.E

Re: April 19, 2012 Public Hearing for the Newport Beach Banning Ranch Development

Dated: April 19, 2012

I object to the approval of the Newport Banning Ranch (NBR) project as proposed and request that all my comments be included in the records of any and all proceedings relating to the Newport Banning Ranch project or its successors.

I request that no action by the Newport Beach Planning Commission be taken at this time regarding the NBR project for the following reasons;

A) The OCTA Board has removed the 19th Street Bridge across the Santa Ana River. The City of Newport Beach is contesting the Board's action and until this issue is reversed, the commission must accept the fact that the 19th Street Bridge has been removed from the OCMPAH.

B) The City of Newport Beach General Plan Circulation Element Policy CE 3.1.3 **Regional Consistency** states "The City of Newport Beach Master Plan of Streets and Highways shall be consistent with the Orange County Master Plan of Arterial Highways". The City's Master Plan is now inconsistent with the OCMPAH.

C) The NBR DEIR traffic section states that if the 19th Street Bridge is removed from the traffic analysis, that the intersection of the proposed Bluff Rd. and West Coast Highway will have an Level Of Service (LOS) of "F". No mitigation measures were proposed.

D) Caltrans has not approved the construction of the Bluff Rd. and West Coast Highway intersection or a traffic signal at the intersection because the City of Newport Beach has not applied for the necessary encroachment permits. Caltrans has stated in correspondence to the City of Newport Beach dated December 9, 2009 regarding the Sunset Ridge Park that "The proposed signalized intersection (Bluff Rd. and West Coast Highway) is not recommended ...". See attached letter.

E) Failure to remove the bridge from the City's Circulation Element will jeopardize Measure "M" funding.

F) The California Coastal Commission has environmental issues with the proposed Bluff Rd. at West Coast Highway that needs to be resolved.

Norman J. Suker, P.E., T.E
Newport Crest Resident

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

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

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To Janet Brown	From D. Davis	
Co./Dept. PLANNING	Co. CALTRANS	
Phone # 9) 644-3230	Phone # 9) 440-3487	
Fax # 9) 644-3229	Fax # 9) 724-2592	

December 9, 2009

Janet Johnson Brown
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92685-8915

File: IGR/CEQA
SCH#: 2009051036
Log #: 2285A
SR-1

Subject: Sunset Ridge Park

Dear Ms. Brown,

Thank you for the opportunity to review and comment on the **Draft Environmental Impact Report (DEIR) for the Sunset Ridge Park Project.** The project proposes construction of a City park with active and passive recreational uses and an access road to the park through the contiguous private property to the west (Newport Banning Ranch, SCH #2009031061). No nighttime lighting, other than for public safety, is proposed. No nighttime park uses are proposed. The project would include the following uses and facilities: 1 baseball field; 2 soccer fields; playground/picnic area; memorial garden; overlook area with shade structure; pedestrian pathways and bike rack; restroom facilities; up to 119 parking spaces. A signal is proposed on West Coast Highway at the park access road. The City also proposes to widen a portion of the northern side of West Coast Highway from Superior Avenue to a point west of the park access road. The nearest State route to the project site is SR-1.

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

1. Table 1-1, Threshold 4.3-3 in the Level of Significance After Mitigation column should read, "Less than significant impact with mitigation incorporation".

2. The proposed signalized intersection is not recommended based on the MUTCD, chapter 4, which reads, "a traffic control signal should not be installed if it shall seriously disrupt progressive traffic flow".

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,

Maryam Molavi

Maryam Molavi, Acting Branch Chief
Local Development/Intergovernmental Review