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

A. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Vice Chair Hillgren

C. ROLL CALL

PRESENT:	Brown, Hillgren, Kramer, Myers, Toerge and Tucker
ABSENT (EXCUSED):	Ameri (arrived at 7:37 p.m.)
Staff Present:	Brenda Wisneski, Deputy Community Development Director; Patrick Alford, Planning Manager; Leonie Mulvihill, Assistant City Attorney; and Tony Brine, City Traffic Engineer,

D. PUBLIC COMMENTS

Chair Toerge invited comments from those in the audience who wished to address the Commission on other than Agenda items.

Dan Purcell expressed concerns with Commissioner Ameri's absence noting he has been absent for a substantial amount of time, is an excellent contributor when he attends, but stating the citizens of Newport Beach deserve better than an empty seat.

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

E. REQUEST FOR CONTINUANCES

Deputy Community Development Director Wisneski requested continuance of Item No. 2 noting staff released a memo to the Commission requesting the item be continued to the May 17th meeting but stated it is staff's recommendation to continue the item to the meeting of May 3, 2012. She added the Commission received a correspondence related to the potential Koll project noting that item is outside the study area of the subject amendment. She stated the individual has been contacted and clarification has been provided.

Motion made by Commissioner Tucker and seconded by Vice Chair Hillgren, and carried (6-1) with Commissioner Ameri absent, to continue Item No. 2 to the Planning Commission meeting of May 3, 2012.

Chair Toerge invited public comments on this item. There was no response and Chair Toerge closed public comments on this item.

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

F. CONSENT ITEMS

ITEM NO. 1 Minutes of April 5, 2012

ACTION: Approve and file.

Chair Toerge stated a clarification to the minutes relative to the substitute motion regarding the seven (7) foot rear yard setback noting it was not for the entire rear yard, but there were smaller setbacks to the garage area. He noted the resolution passed is accurate, however he wanted the record to be clear.

Motion made by Commissioner Brown and seconded by Commissioner Tucker, and carried (6-1) with Commissioner Ameri absent, to continue approve the Planning Commission meeting minutes of April 5, 2012, as corrected.

Chair Toerge invited public comments on this item. There was no response and Chair Toerge closed public comments on this item.

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

G. PUBLIC HEARING ITEMS

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

Continued to Planning Commission meeting of May 3, 2012.

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

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

Deputy Community Development Director Wisneski stated that the staff report includes a recommendation to conduct a public hearing and to consider adoption of a resolution approving the Tract Map and other related items and continuing the item to consider the Development Agreement at the May 3, 2012 meeting. However, upon review of the staff report and the state of the Development Agreement, she reported that staff would like to modify the recommendation to continue the item to May 17, 2012. She added that staff feels the Development Agreement is an integral part of the project so that it is very important for the Planning Commission to consider it as part of the consideration. She added that staff is not in a position to discuss the Development Agreement this evening and recommended proceeding with the staff presentation, providing questions to staff, conducting the public hearing, and discussing the project to provide direction to staff to return with appropriate changes. She added that the Commission may choose to take straw votes on certain items for clear direction and the item will be presented to the Commission for action at its meeting of May 17, 2012. Ms. Wisneski noted staff is seeking input at this time, including phasing of the project.

Planning Manager Patrick Alford presented a brief introduction of the project that addressed the project site, surrounding properties, project overview, and details of the application, Planned Community Development Plan, Master Community Development Plan, Tentative Tract Map, Affordable Housing Implementation Plan and Development Agreement. He reported on considerations to date by the Planning Commission after noting that the project is in the project-hearing stage. Mr. Alford added that once the Commission has completed the public hearings, the item will go before City Council. He presented details of the project in its entirety and addressed consistency with the City's General Plan. He stated that should the City or other agencies fail to obtain the area as Open Space, the General Plan provides for the development of Banning Ranch as a residential village, noting that it calls for a mix of housing types, to consolidate the majority of oil operations, to preserve the majority of the site as Open Space, to have a system of streets and trails that would link land uses and residential areas, and contains sustainable development provisions. Mr. Alford stated that the General Plan envisions development of the residential village around a village center, adding that the village center calls for local commercial uses, a small boutique hotel, an active park and possibly a school.

Planning Manager Alford addressed the Master Development Plan and Planned Community Text and noted that they allow for a mix of housing types ranging from single-family houses to cluster development to multi-family and mixed-use residential units. He addressed consolidation of the oil operations connected by a service road and the system of streets and trails. He reported that the streets and trails provide linkages between the residential areas and all of the proposed various land uses. Mr. Alford addressed the Open Space areas and presented details of the village center. He added that most of the density has been concentrated in the proposed urban colony and resort colony. He noted that there are land use considerations that need to be looked at and stated that staff believes it is appropriate that the more intense uses be concentrated on the edge of the project. He added that the proposed park provides a buffer to the existing Newport Crest Condominiums.

Mr. Alford presented details of the proposed community park noting it is divided into three areas and identifying their location. Regarding the south community park, Mr. Alford reported the area is somewhat difficult to plan due to the topography, existing habitat, and physical separation from the other two park areas. Staff is therefore, recommending the area remain as Open Space but not be dedicated to the City. Mr. Alford addressed a General Plan amendment to the Circulation Element which would delete an extension to 15th Street and provide an access point to West Coast Highway. He noted that the project does not need that segment in order to function and if that segment were to be developed, it would impact land forms and existing habitat located on the coastal bluff. Mr. Alford reported the project meets with the basic components of the General Plan and the residential village envisioned. He stated that the proposed design can meet the overall intent of the related policies while protecting resources and minimizing land use impacts.

Regarding the Planned Community Development Plan and Master Development Plan, Mr. Alford reported receiving feedback from the Commission on a number of issues. He addressed proposed revisions to those documents including disallowing free-standing bars, ancillary uses needing to be customary with a resort inn and proportional in terms of size, consolidating existing oil operations, and allowing minor modifications at staff level, depending on their sensitivity in terms of acreages and percentages. Regarding the latter, Mr. Alford reported that staff proposes eliminating those sections and replacing them with new sections relative to substantial conformance issues, transfer of residential units and commercial square footages and retaining walls.

Mr. Alford addressed the Tentative Tract Map noting the inclusion of a set of conditions for the map and required findings. He reported the Traffic Phasing Oriented (TPO) Traffic Study is also under consideration which identified one intersection in Newport Beach that went below the level of service D threshold and eight (8) intersections in the City of Costa Mesa. He stated that staff believes the Traffic Study is in compliance with the TPO and referenced the required findings.

Mr. Alford reported the project includes an Affordable Housing Implementation Plan (AHIP) noting that 15% of the market-rate units be affordable which will be based on a sliding scale. He added that it provides for 50% of the housing be created on site and the balance could be handled through in-lieu fees, new construction off-site, the rehabilitation of existing units, or land education. Mr. Alford addressed the fiscal impact analysis which resulted in net fiscal impact to the City, if the project were approved.

Relative to the Environmental Impact Report (EIR), Mr. Alford stated that it indicates there are certain impacts that are significant and unavoidable. Therefore, if the City Council approves the project, it has to approve a Statement of Overriding Considerations. Staff is asking the Commission to consider public benefits within the project and pass those on as recommendations to City Council. He addressed the public benefits including the Open Space preservation, improved public coastal access, allow for oil field remediation resulting in the preservation and restoration of habitat and other land uses, water-quality benefits, circulation improvements, public benefit fee provided for the market-rate units, net fiscal benefits to the City, the provision of affordable housing units, fire station improvements, and sustainable design.

Mr. Alford provided a summary on phasing of the project calling for street improvements, park improvements and construction of trail systems under the various Certificates of Occupancy (CFO). He presented next steps including City Council review, Coastal Commission review and returning to Planning Commission and City Council if any modifications are made to the project and subsequent public hearing reviews through the various phases of the project.

In response to Vice Chair Hillgren's question regarding the process, Chair Toerge indicated the Commission is not in a position to take final action at this time adding that the public hearing can be conducted as well as allowing the Commission to provide input and ask questions. A more formal process can be conducted at the next meeting in anticipation of making formal findings and resolutions.

Vice Chair Hillgren inquired regarding the transfer of units from planning area to planning area, general density and height of the potential development in the mixed-use area, terms of conversion of the hotel to potentially become residential, timing of the completion of the Open Space and parks including the 19th Street Bridge.

Chair Toerge reported that he asked staff to prepare a timeline matrix that would identify the anticipated phasing to get an idea of when the public benefits will manifest during the project.

Commissioner Tucker reported that he is prepared to review the various documents in order to give staff specific direction. He stated that his comments were mostly on the Conditions of Approval since he thought they would be adopted tonight. He noted that staff has them and felt it would be more time-efficient if staff would return with a "tracked

changes" version of the Conditions in time for the next meeting. He suggested that documents be reviewed as they were presented. He noted that the Resolution's Statement of Facts speak in terms of what the applicant proposes and with respect to the 75-room resort inn and 75,000 square feet of commercial space; the applicant is not required to have those uses. The applicant is asking for permission to build the residential, resort inn and commercial square footage, but also will be required to make the park lands and open space available. He felt that language should be added to make it clear what is permissive and what is mandatory. He referred to the Conditions of Approval and invited other Members to comment as desired.

Vice Chair Hillgren noted that he will save his comments until public comments are received.

Regarding the Statement of Public Benefit within the required findings on the AHIP, Commissioner Tucker stated he also asked staff for a timeline matrix for the delivery of public benefits. Regarding provision of water-quality benefits, Commissioner Tucker noted that if the project is not approved, in addition to other monies that an open-space project would have to have, there would not be water-quality benefits or there would have to be money for water-quality improvement similar to what the project would provide. Commissioner Tucker stated there is no requirement that the inn or the commercial area be built. That would have the effect of reducing the fiscal benefits of the project. He felt the potential reduced fiscal benefit of not building the inn or commercial area needs to be stated.

Commissioner Tucker commented on the Planned Community Text noting that it is unclear where "bars" are stricken and that there should be clear distinctions regarding "free-standing" bars and those associated with restaurant use. He pointed out the need for consistency in the format of the document regarding captions. He suggested a timeline for the development of the resort inn and noted that although there is no requirement, he felt that a timeline would be helpful indicating that the area cannot be developed for other purposes for a limited amount of time. Commissioner Tucker addressed the moving of boundaries relative to no loss of Open Space and commented on the statement regarding resulting reduction in the total area allocated to the CP District and asked regarding including the BP and the IP Districts. He pointed out a redundancy in the document.

Commissioner Tucker inquired regarding the availability of access for the adjoining projects (Newport Crest) onto the park areas within the Master Development Plan.

Mr. Alford stated he did not believe that any direct connection is proposed with the project and that Newport Crest and adjoining project residents would have to make use of the street/trail system.

Commissioner Tucker indicated there are flat areas where access may be provided.

Mr. Alford stated he will look into that in more detail and report back to the Commission.

Deputy Community Development Director Wisneski noted that the applicant may have information on grade differentials in specific locations.

Commissioner Tucker felt that it would be convenient to provide as much access as possible depending on the ease of doing so.

Regarding the AHIP, Commissioner Tucker commented on the provision of the applicant supplying a security bond as security for the provision of affordable housing and the sequencing and asked what would happen if the developer defaults in building the affordable housing. He felt the related section is not clearly defined. He addressed the provision regarding the elimination of in-lieu fees and the waiver of further fee obligations for the affordable units. He questioned what would happen with the elimination of in-lieu fees.

Deputy Community Development Director Wisneski reported that the document should be reworded to address the potential scenario if the in-lieu fee is no longer available through the City to the developers and it is no longer an option for the developer to pursue. Regarding the housing obligation is considered as part of the review throughout each phase of the project, staff would ensure that the on-site fifty (50%) percent is met and stated that the other comments he made would be integrated.

Commissioner Tucker inquired regarding the window and sliding-door mitigation program through Newport Crest indicating that the Newport Crest Homeowners' Association would be involved. He stated that it is a "lead-time" item and suggested that staff will need to figure out if they are interested in performing a role and commenting on the condition.

Deputy Community Development Director Wisneski stated the condition related to the windows is a specific mitigation measure related to the EIR.

In terms of the role of the HOA, Mr. Alford reported the intent was merely their standard rule of improving exterior features. He stated that the original mitigation measure in the EIR required the overall approval of the HOA but staff wanted to keep that to the level of the actual residence and the HOA will just have their customary role of reviewing exterior changes.

Commissioner Tucker noted that it looks like there would be more involvement and suggested an alternative to that mitigation measure that would achieve the same goal.

Mr. Alford reported that staff will review and clarify the language.

Chair Toerge stated that it was unclear when the improvements are scheduled to occur. He stated that the window treatments would shield from general noise as well as from grading noise and related activities, but yet some requirements occur prior to the issuance of grading permits. Chair Toerge felt that some of the grading would start before improvements could be made. He expressed interest in seeing how that is integrated in a timeline. He stated he too, questioned the involvement of the HOA and it was unclear regarding the timing of manifestation of the benefits compared to the impact.

Regarding the sustainable development practices in the General Plan, Chair Toerge asked regarding the use of reclaimed water, noting the City does not have a reclaimed water program but that there is one in the City of Costa Mesa. He asked for a way for the project to gain the benefit of reclaimed water for use in Open Space areas, landscaped and park areas.

Mr. Alford reported staff looked into the issue and stated the EIR did not study the scope of extending water lines for reclaimed water into the project site, so that may be outside the limits studied by the EIR. He added that ultimately, it would be a decision determined by LAFCO as to who can best provide services for the area. Mr. Alford stated that the project was studied in terms of the most logical extension of services for the City of Newport Beach and commented it would be nice of those services would become available in the future, but there is no clear provision at this time.

Chair Toerge indicated that there is another district serving reclaimed water in the City and noted the applicant stated the source for reclaimed water was further away compared to the water service representative indicating it was much closer. Chair Toerge stated he would like to understand the limitations and feasibilities.

Deputy Community Development Director Wisneski stated that she had a conversation with Deputy Public Works Director Dave Webb who indicated there was extensive research done when the project first came forward to see if reclaimed water was feasible, adding that the reclaimed water source is three (3) miles away to the north and that at this point, the source is too far away. She added that the City of Newport Beach has no future plans to offer reclaimed water. Deputy Community Development Director Wisneski stated that staff will confirm the distance to a reclaimed water source and return to the Commission with the information.

Commissioner Kramer expressed concerns regarding the resort colony relative to the transient occupancy tax (TOT) projected amount being ten (10%) percent of total revenues from the project. He acknowledged that it is an option, but felt the monies should be deducted out, should the resort inn not be built. He stated he would be in favor of providing a time allotment to allow the developer adequate time to develop such an inn. Commissioner Kramer indicated that he was confused regarding the residential housing within the resort colony and referenced the economic report relative to the amount of TOT produced. He felt that the issue needs to be clarified.

Deputy Community Development Director Wisneski stated that the residential units would continue to be considered residential dwellings even though they are used as vacation rentals.

Interested parties were invited to address the Commission on this item.

Mike Mohler, Newport Banning Ranch, reported the potential exists to connect to Newport Crest and felt the most logical place would be the Ticonderoga area. He stated that he made presentations to them in the past that if the residents wanted the connection and the project were approved, they would work together to erect a gate to allow Newport Crest to

access the property without people from the property accessing Newport Crest. He referenced the possibility of Ticonderoga going through a 1982-3 agreement but indicated he would be willing to work with them regarding the access issue. He stated that he will work with staff to respond to the concerns presented by the Commission regarding the AHIP. He stated the General Plan allows for a resort use which would be a very attractive use for the project if it is financially feasible. Mr. Mohler felt the TOT numbers are not correct adding that the concept is not to associate the resort housing in a financial way with the resort. He added that there may be an ability to associate resort services, but felt the number may be overstated in the fiscal analysis.

He provided a brief PowerPoint presentation in response to comments made throughout the hearings had so far. Mr. Mohler noted it is a Ranch Re-use Plan and addressed the process noting various reviews of the project throughout the years. He stated that he has been reaching out to every known stakeholder and stressed that the plan has been in front of people and there has been no rush to judgment.

Commissioner Ameri arrived at this juncture (7:37 p.m.).

Evelyn Hart spoke of behalf of seniors in Newport Beach, Seaview Affordable Housing and Oasis, Friends of Oasis and their representatives. She expressed concerns regarding affordable housing and felt this would be the time to start setting policies for the City to start taking affordable housing seriously. She referenced the recent adoption of the Housing Element and hoped the Commission will make recommendations to provide affordable housing in a significant way. She added the fastest growing percentage of the community are seniors and felt it would be appropriate for the Commission to make that same percentage of affordable housing designated for seniors.

Reed Royalty, President of the Orange County Taxpayers Association, felt the project is a tremendous opportunity for the environment, taxpayers, and the City. He stated that taxpayers cannot afford to fix up the Banning Ranch property, but listed the amounts to be expended by the developer to do so. He felt that it is a bargain for taxpayers and advised the City to "take the money and run". He referenced those opposed to the project but questioned how much they have raised to buy the property, clean it up and prepare it for public use. Mr. Royalty felt that this is a once-in-a-decade opportunity to do something that benefits everybody including provide much-needed jobs.

Taryn Taddeu, on behalf of the Orange County Business Council, expressed support for the Banning Ranch plan as a well-thought out proposal that represents the community and City input and responsibly addresses housing, commercial and open-space needs. She stated that it is the only option that addresses public access, habitat creation, oil field cleanup and preservation of permanent open space at no cost to the taxpayers. She referenced a letter submitted in support of the project and felt the project could be a model for other cities.

Terrell Koken, Costa Mesa resident, requested that the Commission consider the long-term implications of their decision and expressed his opposition to the project.

Kim Farthing, Costa Mesa resident, commented on affordable housing and the traffic impacts to the City of Costa Mesa. She questioned why traffic counts were not conducted during the summer months and stated that there were several parts of the traffic analysis that she did not understand. Ms. Farthing referenced an agreement referring to the Traffic and Engineering Services contract awarded to RBF Consulting, of which Commissioner Ameri is Vice President and felt that is a conflict of interest. She presented written comments labeled as Exhibit 1.

Terry Welsh, President of the Banning Ranch Conservancy, stated the proposed project is over twice as big as what has ever been built on the Orange County coast in recent memory and four times as dense. He felt it is appropriate for the Commission to recommend against the project and ask the applicant to come back with a project more in keeping with previous Coastal development projects. Regarding the Open Space preservation option, he felt the developer's proposal relies on possible money in the future depending in part on selling possible homes in the future whereas the Open Space preservation option depends on real money. He reported that the Orange County Transportation Authority will spend $190 million in the next several years acquiring and restoring properties exactly like Banning Ranch. He noted that money will not require the levying of additional taxes or selling bonds. He addressed the cost of restoration and noted the greatest thing the Commission could do to restore the Banning Ranch mesa would not cost money and would save money. He addressed the quality of habitat as well as timeliness, noting nature would do 90% of the restoration of Banning Ranch if it is left to. He urged the Commission to recommend against the project.

Shyang Ray stated an objection to the participation of Commissioner Ameri on this hearing and project. She reported that he has been and is still employed by the consultant that has performed services for the City of Newport Beach on the

Banning Ranch EIR and/or project. She felt he has had and may continue to have a direct or indirect financial interest in the proceedings. She stated he has continued to deny recusing himself from the proceedings and his participation constitutes an improper violation of the law and demanded that Commissioner Ameri recuse himself from this hearing and any future proceeding relative to the Newport Banning Ranch EIR and/or project. She opined that failure to do so may subject Commissioner Ameri to civil and/or criminal complaint, will taint the proceedings, and may serve as a causative action to void any actions taken by the Planning Commission in the proceedings.

In addition, Ms. Ray objected to the participation of Commissioner Brown. She stated that at the March 22, 2012, Planning Commission hearing on the Newport Banning Ranch EIR, documentation was entered into administrative record that showed that Commissioner Brown has a predisposed and publicly stated bias in favor of the Newport Banning Ranch project. She reported that he opposes efforts by the Banning Ranch Conservancy and other opponents of the project. Based upon the publicly published statement and upon his actions and vote at the hearing, she continued to maintain that Commissioner Brown showed a bias and is therefore, unable to vote in a fair and impartial manner on the issue at hand. The motion for continuation by Commissioner Brown on the Banning Ranch hearing also serves to taint the proceedings.

Steve Ray noted that there are other speakers in attendance who are willing to yield their time to him as he has around eleven (11) minutes of material to present. He requested that allowance.

Chair Toerge refused noting the issue has been previously considered and that the item will be continued. He stated that is not a policy under which the Commission operates and asked Mr. Ray to use his appropriated time accordingly.

Mr. Ray registered his disappointment at the decision of the Chair and the Commission's failure to seek to overturn that decision. As Executive Director of the Banning Ranch Conservancy, Mr. Ray indicated that his team will present their comments until they are done. Mr. Ray stated an objection to the hearing on the Newport Banning Ranch application. He felt the hearing will be illegitimate, improper and unlawful and presented comments in support of such. Mr. Ray addressed previous action by the Commission certifying the EIR and felt that due to multiple errors that action must be considered null and void therefore, making any subsequent actions and hearings null and void as well. He listed the perceived errors including a letter submitted by Dr. James Mosher which is included as an attachment to tonight's agenda. Mr. Ray took note that the notice for the meeting of March 22, 2012, did not indicate that the purpose for the meeting was to take action to certify the EIR to the City Council. Therefore, he opined that the Planning Commission violated the law by taking action on an improper notice. In addition, he stated the agenda for that meeting simply stated the Commission would receive a report on the Banning Ranch EIR from staff, conduct a public hearing, and continue it to April 5, 2012. He stated that nowhere in the agenda did it state the Commission would take any action relative to the EIR. He stressed that a public body is not permitted to take any action that is not properly agenized. Mr. Ray asserted that because many thought the item would be continued, members of the public who were denied entrance to the hearing left thinking they could return on April 5, 2012 to make comments at that time. He felt the Planning Commission violated the law by taking action on the EIR.

Gary Itano continued with the previous comment noting the Commission failed to provide contacts for the hearing he stated that having discussed items in a study session does not suffice for official public hearing. At the March 22, 2012 public hearing, neither the Commission nor staff nor City consultants presented nor discussed neither the Newport Banning Ranch Project application nor the draft EIR for the project. Therefore, there was no information provided for the Commission or any member of the public whether they had or had not attended the study sessions and the Planning Commission violated its responsibilities under the law. Mr. Itano stated there was a lack of public information available at the hearing noting several items relative to the proceedings were not attached to the staff report, but listed as separate submittals and were not readily available to the public when they sought to review the agenda and staff report. He noted there were insufficient supplies of the documents available at the hearing. He stated a public agency is obligated to provide documentation and make them sufficiently available to the public without requiring extraordinary measures by the public to obtain and review the documents. He asserted that the City and Commission failed in this responsibility and therefore, violated the law. Additionally, the City and Commission failed to provide public access for an overflow crowd and failed to accommodate the right of all member of the public who wished to return to the hearing, to do so. He felt the Commission was warned to anticipate a large crowd and did not plan for such. He noted that the Commission was obligated to postpone the hearing if it was unable to provide for full public access and accommodation. Mr. Itano asserted that at the beginning of the meeting, the Chair ordered those who did not have a seat out of the meeting and out of the Chamber. Many who spent the entire time standing outside the building were denied the right to speak. He added this constitutes a violation of the law and requires actions taken at the March 22, 2012 meeting, to be voided.

Debby Koken resumed with reading the comments stating that during the study session meetings the public was consistently denied participation during the public comments. She stated the Chair consistently stated that it would be given full opportunity to participate and everyone acknowledged the Banning Ranch Conservancy is the organized public opposition to the Banning Ranch project. The Conservancy requested sufficient time to make a coordinated comprehensive presentation on behalf of its membership and affiliates. The request was denied by the Chair on the basis that other such groups had made a request and there was not enough time to hear everybody. She noted the Chair declined to identify any other such requests by any other group, singling out the Banning Ranch Conservancy for denial. She felt that this constitutes "purposeful, disparate treatment" and to imply there was not enough time, directly contravenes the right of the public to be heard with total time for the public hearing, not being a consideration. She state the "use of time" as an excuse, also contravenes the law. Additionally, because the EIR is a City-prepared document, the applicant has no role greater than any single member of the public in its presentation. The fact that the applicant and their consultants were given unlimited time to speak in the public hearing, whereas any other member of the public was only allowed three (3) minutes, is another example of disparate treatment of the public. Ms. Koken reported that false, incorrect or misleading information is a basis for decision-making and stated the Conservancy finds it incredible that the Commission who voted in the affirmative to recommend certification of the EIR did so in spite of the amount of information that should have let it to the opposite conclusion. She commended Commissioner Myers for voting to deny certification of the EIR. Ms. Koken addressed the traffic study especially that the Commission denied that any other traffic studies would be necessary due to the elimination of the 19th Street Bridge given that the studies were based on the assumption that the 19th Street Bridge was to be built. She acknowledged the Commission was given false information by the City Attorney's office about the vote taken by the Orange County Transportation Authority (OCTA) to remove the bridge from the Master Plan of Arterial Highways, especially since Counsel had attended and witnessed the vote at the OCTA meeting. Ms. Koken noted that while the Planning Commission should be able to rely on Counsel, it is incumbent upon them to make reasoned and independent judgments based on information available to them.

Suzanne Forster stated the elimination of the 19th Street Bridge by OCTA was common knowledge, yet the Commission seemed uninformed and should have known better. The denial of reality does not excuse the Commission's responsibility for independence. Ms. Forster stated that the Banning Ranch Conservancy charges the continuation of this hearing would be a further and continuing violation of the law for all of the reasons listed above. They recommend suspension of the hearing immediately, that the Commission seek reasoned counsel and that the action taken at the March 22, 2012 hearing be considered null and void, and that the Newport Banning Ranch draft EIR be rescheduled for consideration at a public hearing in order to cure the violations charged. She asserted that failure to cure and correct the violations may be cause for civil complaint with the District Attorney's office, the office of the State Attorney and litigation.

Keith Banning reported that he spent a number of years on the Little League Board in charge of the fields. He stated the biggest problem was getting enough field time and time for the venue to practice. Mr. Banning found there were not enough fields for children to practice and compete. He spoke in support of allocating fields and reported living near the old Ford Aerospace development and the developer that worked on that project is the same as in the Banning Ranch project. He stated they did a first-class product and stood behind their product. He noted that he is advocating for the fields and the character of the developer.

Alexander Yelich spoke in support of the project, especially the provision of extra fields for sports. He addressed the remediation of the oil fields and felt the project will help the economy.

Allyson Brahs reported that she grew up in Newport Beach and agreed that there are not enough local fields for sports. She indicated that she knows the builder and felt that he would build nice homes. She spoke in support of the project noting that it would be very beneficial to the community.

Bruce Bartram expressed concerns with the effects that the project would have on surrounding neighbors. He referenced the EIR relative to project noise, increased traffic and mitigation measures. He felt that noise mitigation measures would not work from balconies and referenced a letter from a neighbor regarding the issue.

Dianne Russell urged the Commission to consider the impact to the residents of West Costa Mesa relative to increased traffic due to the proposed development.

Bill Bennett addressed the General Plan and took issue with comments from the developer in terms of the development presenting a unique opportunity to implement voter approved 2006 General Plan. He felt it is the "second choice" with the "first choice" being the preservation of Banning Ranch as Open Space. In addition, Mr. Bennett addressed the Orange Coast River Park and felt the preservation of Banning Ranch would be the keystone to a river park within the

Newport Beach City limits. He stated that the developer asserts the benefits listed are not possible with any other option, that no funds have been identified to go forth with the Open Space plan. Mr. Bennett reported that there are funds available and the OCTA would be willing to work with the developer as well as other avenues of funding available. He felt that there is a problem with the City Council and the fact they are "sitting on the sidelines". He stressed the number one priority of the General Plan is working for Open Space and felt that Council is not performing its duties.

Linda Tang, Kennedy Commission, housing development advocates, submitted written comments (Exhibit 2) and commended the City's leadership in encouraging and facilitating the development of housing for low income families within the City's Housing Element. She indicated support for the City's efforts in implementing the AHIP for Banning Ranch. She indicated support the City's efforts to amend the housing program in the Newport Place Plan.

Chip Stassel reported that he has seen many developments in Newport Beach and noted that they have provided growth in the City and are thriving, but also addressed the related challenges. He spoke in support of the project.

Olwen Hageman referenced a recent article in the Orange County Register regarding the 19th Street Bridge. She wondered why the City would want to add residences and commercial space to an already congested area. She addressed the City's mission to have a conservative growth strategy that emphasizes quality of life. Mr. Hageman felt the proposed development is not conservative and does not emphasize the quality of life noting inconveniences over ten (10) years. She felt that the City has not made any efforts to maintain Banning Ranch as Open Space. Ms. Hageman stated that the land belongs to all of Newport Beach and addressed pollution and air quality issues and felt serious consideration must be given prior to development of the project.

Robert Tafoya stated that as a parent and former coach, he welcomes additional sports fields for the City's children. He stated spending time in Banning Ranch and thinks of it as a blighted oil field so the concept of consolidating the area and remediating it for public use is very appealing. Lastly, Mr. Tafoya stated that he is confident that a qualified contractor will be identified to safely remediate the site without danger or concern of the immediate communities.

Norman Suker stated an objection to the project and requested that all of his comments be included in the records of any and all proceedings relating to the project. He requested that no action be taken by the Planning Commission at this time regarding the program and listed his reasons including elimination of the 19th Street Bridge, the City's circulation element requirement for consistency with the OCTA Master Plan of Arterial Highways, decreased level of service due to the elimination of the bridge, jeopardizing Measure M funding and environmental issues by the Coastal Commission needing resolution. He presented his comments in writing as Exhibit 3.

Rob Boyer spoke in favor of the project and felt it would be an asset to the City.

George Schroeder stated that it is nice to have the Open Space but felt that it is a blighted area with a lot of environmental waste and agreed that it is an area in need of clean up. He expressed support for the proposed project and felt whatever is done there will have a lot of public oversight and input. Mr. Schroeder noted that the City of Laguna Beach chose to tax themselves and buy the land at Laguna Canyon. If the residents of Newport Beach who are against this project feel so strongly against it, he encouraged them to get the residents of Newport Beach and Costa Mesa to get an initiative out there to tax themselves to in order to buy the land. He noted that the proposed project will take several years to complete.

Richard Hamm felt the best thing about the project is the tradeoff of Open Space and cleaning up the site. He spoke in favor of the project.

Andrew Hernandez stated that he loves the community and enjoys the Banning Ranch area just as it exists. He spoke in opposition of the plan.

Allan Beek addressed the General Plan noting the first choice of the people is for Open Space and stated he has been here long enough to know the Commission appreciates speakers who are brief.

There was no further response from the public and Chair Toerge closed public comments on this item.

Chair Toerge, stated that while there may be attorneys on the Commission, none are acting as such and rely on the City to provide legal advice as to the conduct and appropriateness of meetings and addressing the required laws to be

followed. He stated that he is not in a position to address the legal comments made and asked the City Attorney to comment.

Assistant City Attorney Leonie Mulvihill reported the City Attorney's office reviewed comments presented by Mr. Mosher, noting the comments presented today are somewhat consistent with those comments but to the extent to suggest that the Agenda did not comply with the Brown Act, that it was misleading, persons were denied entry, or there was some sort of purposeful disparate treatment, she reported attending the meetings and stated that the Agenda fully advised people of the items being considered at the meeting of March 22, 2012 and that it is their opinion that the Agenda complied with the Brown Act and the Commission's actions did so as well.

Chair Toerge officially closed the public hearing.

Commissioner Ameri stated that he does not work for RBF or with them in any form or shape.

Chair Toerge reported that he will submit written comments regarding Conditions of Approval in time for staff to review them and address them at the next meeting.

Commissioner Tucker addressed the issue of the Statement of Overriding Considerations but reminded the audience that in 2006, the public voted for the City's General Plan and that it designated property for residential homes, commercial property and the resort inn. In addition, he stated that the ballot proposition declared that if the land is not acquired for Open Space, it could be developed for approved uses. Regarding Council not doing what some believe they ought to be doing, he noted that land use policy supports, not lead, but support the active pursuit of the acquisition of Banning Ranch. Commissioner Tucker stressed that the Commission can only evaluate plans that are before it and not plans that may or may not occur.

Regarding the EIR, Commissioner Tucker acknowledged there are significant impacts that are not capable of being mitigated to a level of insignificance. Therefore, the City will be in a position to decide whether the impact as compared to the benefits of the project are such that the project should still be allowed to proceed or not. He felt that the Statement of Overriding Considerations is something that he will end up favoring. He believes that the seventy-five (75%) percent of land that will be Open Space or parks and water-quality features provide a tremendous benefit as well as the trails and consolidation and clean up of the oil operation. Commissioner Tucker noted that public agencies are not quick to sign up for transactions if they are not comfortable signing up with environmental remediation projects that they are unsure what will end up being. He reiterated that he will support the Statement of Overriding Consideration. He addressed the impact and felt they would not be terribly over the threshold to lead him to believe the project should not be approved.

Commissioner Brown inquired regarding including a possible provision for senior housing, he felt a timeline matrix is important and stated that he wants to make sure public benefits come first. He stated that he would like clarification on what public benefits are dependent on a specific number of houses being sold. Commissioner Brown inquired regarding possible mitigation measures for those living in Lido Sands.

Mr. Alford reported that no noise impact has been identified for Lido Sands.

Dana Privitt, Bon Terra Consulting, reported that the noise analysis looked at potential noise impact to Lido Sands and found that there would be no significant impact. She clarified that the analysis considered the relationship of the overall project to Lido Sands with other surrounding land uses and addressed compatibility of the project to that area and physical land impact but noted that no new significant impact was identified.

Commissioner Kramer requested guidance from staff at the next meeting regarding the resort inn issue and if there has been any further hotel or resort colony feasibility study performed by the developer. He wondered about imposing a window period for the developer to find a developer for the resort colony.

Commissioner Myers noted that he is in favor of conditions or measures of due diligence or definition of the level of effort required as well as a time frame to develop the resort inn.

Chair Toerge stated that one alternative would be to disallow the alternative of changing them to residential units.

Vice Chair Hillgren agreed that the issue needs to be considered at the next meeting of the Commission.

Commissioner Tucker stated that the developers could work with staff and return to the Commission.

Motion made by Vice Chair Hillgren and seconded by Commissioner Kramer, and carried (7-0) to continue the topic and the public hearing to May 17, 2012.

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

H. NEW BUSINESS

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 Community Development Director's report.

None.

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

None.

ITEM NO. 6 Request for excused absences.

None.

ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Toerge adjourned the meeting at 9:06 p.m.

The agenda for the Regular Meeting was posted on April 14, 2012, at 1:30 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

_____
Michael Toerge, Chairman

_____
Fred Ameri, Secretary

DRAFT