

LOCAL AGENCIES AND COMMITTEES

Comment Letter L1

Memorandum

To: Patrick J. Alford, Planning Manager
From: Debra Stevens, EQAC Chair
Date: October 17, 2011
Re: Comments on the Newport Banning Ranch Draft EIR

The Environmental Quality Citizens Advisory Committee (EQAC) is pleased to have this opportunity to comment on the draft Environmental Impact Report for the proposed Newport Banning Ranch project. It is our hope that these comments will lead to the best possible project for the City of Newport Beach, the neighbors and the applicant. Our comments are summarized below and follow in the order of appearance in the DEIR as far as possible.

SECTION 1.0: EXECUTIVE SUMMARY

The comments provided in the following sections also apply to the Executive Summary and any changes in the document should be reflected in the Executive Summary.

SECTION 3.0: PROJECT DESCRIPTION

1.	Page 3-8, Project Objectives. The project objectives have been narrowly defined. This may make it more difficult to find alternatives that meet the project objectives. For example, Objective 3 suggests that up to 1,375 residential units would be constructed. A specific number is not as appropriate as a range or general acknowledgement of appropriate land uses.	1
2.	Page 3-10, Section 3.6.1 Oilfield Abandonment. There is no good discussion of the baseline activities associated with the oil production facilities on Banning Ranch. Such information should include the existing equipment, amount of oil removed on a daily, monthly or annual basis, how the material is transported, etc.	2
3.	Page 3-11, 1 st full paragraph. The EIR states that third party consultants would monitor the removal of all pipelines, facilities, etc. While a consultant may perform the physical work, a regulatory agency should monitor, oversee and have compliance authority over the remediation	3

<p>activities. Please describe the regulatory oversight and procedures for site remediation.</p>	<p>3 cont.</p>
<p>4. Page 3-11, Section 3.6.2. General comment. The EIR does a poor job at identifying the locations of the types of land uses discussed. Page 3-12, Table 3-1. The table should reference the appropriate Exhibit that shows the different land uses.</p>	<p>4</p>
<p>5. Page 3-42, PDF 4.6-4. A "dark sky" lighting concept will be implemented. The "dark sky" concept must be defined as it is not a common term. What types of lighting design requirements would be included in a "dark sky" concept and how would they reduce light and glare impacts?</p>	<p>5</p>
<p>6. Page 3-43, PDF 4.11-1. This Project Design Feature indicates that the project will be consistent with a green building program that exists at the time, but does not provide any requirement for how energy efficient the building should be constructed. Describe the programs that will be implemented beyond the California Green Building Code. Requirements for some level of energy efficiency should be imposed.</p>	<p>6</p>
<p>7. Exhibit 3-16 depicts a soil disturbance map for the project. What are the estimated hazards produced by excavating existing oil pipeline and other related materials to the local environment both (a) short-term (i.e., through release of airborne contaminants through excavation), and (b) long-term (i.e., through exposure and seepage from topsoil in residential gardening and recreation activities on the excavated ground that long-term residents would have contact with and long-term exposure to)?</p>	<p>7</p>
<p>8. Over 16 pages of the project description is spent on the details of road design, but a disproportionately small portion of Section 3 addresses potential hazards presented by the unearthing of oil field operations materials and building residential/commercial properties on top of the land. Aside from the preliminary documents provided in Appendix D, Section 3 should have given more discussion of the known hazards associated with the decommissioning and building on the oil production facility and while also continuing production for another 30-40 years, to rule out potential risks to public health associated with the large scale excavation and grading planned for the development portions of this project. If this information is located in another portion of the DEIR please provide a reference to the section.</p>	<p>8</p>
<p>9. Page 3-36, Section 3.6 - C. Remediated Soil Disposition. In summarizing the use of excavated hydrocarbon-laden soils the Project Description states: "The primary location for placement of the treated soil would be in the deeper over-excavation portions of the North Family Village." (p. 3-36). More justification is needed in the EIR for using treated soils as the basis</p>	<p>9</p>

for planned residential areas. In particular, additional information is required on the existence of petroleum based contaminants and the potential presence of TENR-contaminated materials in remediated soil.¹ TENR-contamination in varying degrees of severity may exist at every oil and gas production site and pipe handling facility, including those associated at Banning Ranch. Throughout the present EIR document questions and concerns that are typically raised in relation to TENR-contamination in the oil and gas industry should be adequately addressed. This is especially needed since soil in contact with operating oil hardware (i.e., pipes, fittings, etc) that is relocated from elsewhere in the site may contain hazards such as Radium-226, which has a half-life of 1620 years. The contents of these contaminated sites may be of concern for centuries. As is the case in general with all areas where oil drilling activities occur, a radiation area survey should be performed (if not already completed) before any development of the land for residential and commercial use is initiated, and should proceed only when the area can be deemed acceptable for residential land uses in accordance with local and federal guidelines.

9 cont.

Exhibits 3-1 and 3-4 show that residential units are planned where oil extraction activities have occurred. The utmost care must be given to avoid buildings constructed over any radioactive materials or petroleum contaminated soil, since, in the case of radium, contamination the resulting radon concentrations could pose serious a health threat.

The last paragraph of this section estimates that 25,000 cubic yards may prove too contaminated to use and may need to be removed from site. What course of action is planned if all 246,000 cubic yards of remediated material is unusable? By what means will it be relocated and where and when will the replacement fill and grading material be obtained? Discussion of the impacts of this possible scenario is needed in the EIR.

10. Page 3-36, Section 3-6: "D. Open Space Grading." For all small and large scale grading and resurfacing tasks, to maintain habitat and water basin quality it makes sense to avoid use of reclaimed treated contaminated soil in all cases. This is not mentioned here in Section 3-6 D, although it may be described elsewhere in the EIR. Please note where appropriate the rationale for or against such a safe guard.

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11. Page 3-37, Section 3.7 "PROPOSED IMPLEMENTATION PLAN." The proposed timing of the implementation of the project is described as

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¹ TENR (or also TENORM) is Technologically Enhanced Natural Radiation from, e.g., pipe scale and equipment. Because the extraction process concentrates the naturally occurring radionuclides and exposes them to the surface environment and human contact, these wastes are classified as TENORM. Environmental Protection Agency document "Oil and Gas Production Waste." Retrieved 10/10/11 from <http://www.epa.gov/rpdweb00/tenorm/oilandgas.html>.

<p>flexible, taking place over an estimated period of 9 years. One concern that arises from the discussion of Stage 1, also shown on Exhibit 3-18, is that residential occupancy may occur in Stage 1 in the South Family Village before soil remediation and grading are fully complete in the areas depicted as Stage 2 and 3 in Exhibit 3-18.</p> <p>This is cause for concern simply due to the unique precautions that are demanded by the decommissioned oil operations on this site. Utmost care is needed to protect individuals and families that reside or work in the Stage 1 portion of the project from fugitive dust and airborne hazards that may be created by construction activities associated with Stages 2 and 3 of the project. Toxic aspects of decommissioning activities of this sort include toxic air contaminants that when inhaled can produce significant short- and/or long-term health problems. Because this property is a contaminated site, a more comprehensive and conservative justification is needed regarding the timing of project implementation and the safeguards that will be implemented during project implementation to ensure the public health. This is needed for both the local short-term surrounding communities and the longer-term residential occupants for which this development is planned.</p>	<p>11 cont.</p>
<p>12. Page 3-41: Project Design Features (PDFs). Hazards and Hazardous Materials PDF 4.5-1 should additionally include a PDF specifically addressing the hazards unique to the site, how they factor into the project implementation, how they will be mitigated, and what aspects of the site's risks specifically cannot be mitigated.</p>	<p>12</p>
<p>13. Page 3-44-5, Hazards and Hazardous Materials PDF 4.5-1. The following is stated:</p> <p><i>"The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the following measures be implemented during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:</i></p> <ul style="list-style-type: none"> <i>a. Construction waste diversion will be increased by 50 percent from 2010 requirements.</i> <i>b. To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic."</i> <p>Question 1: What oversight will be used to assure that (a) construction waste that needs to be diverted (i.e., contaminated soil at unacceptable</p>	<p>13</p>

<p>levels) is not reintroduced back into the project in an effort to keep waste diversion within the constraint implied by (a.)?</p> <p>Question 2: What oversight will be used to assure the “practicality” mentioned in (b.) in the event that none of the excavated materials can be reused due to their toxicity? Why is the decision to reuse the materials left to the Landowner/Master Developer, which could present a conflict? Please clarify how these issues will be decided and what oversight will be in place to meet the tandem goals of optimizing recycling, while minimizing reuse of contaminated materials.</p>		13 cont.
SECTION 4.1: LAND USE AND RELATED PLANNING PROGRAMS		
<p>1. Impact of light illumination from the Community Park on the Newport Crest neighborhood: Have design alternatives been considered to reduce / mitigate this significant impact? The location of the playing fields and the lights thereon, including the way the lights “face” and the hours which the lights will remain on, should be considered.</p>		14
<p>2. The proposed building heights seem excessive. Doesn't the City have a maximum residential building height of 30 feet? Here, the Family Villages calls for 45 feet height; the Resort Colony calls for 50 feet height; and the Urban Colony calls for 60 feet height. Even the low density, single family housing calls for 36 feet height, while the low-to-medium density single family housing calls for 45 feet height. Why are such tall buildings being considered? Are these heights necessary? Are these proposed heights compliant with City codes / ordinances?</p>		15
<p>3. The scope of the proposed safety lighting in the two Oil Consolidation sites is not addressed. What are the specifics in this regard? Will there be an increase in light over the existing conditions? How many lights? How bright? For what hours will the lights be on?</p>		16
<p>4. The North Family Village Coastal Homes are to be constructed on “zero lot lines.” Why is there no set back requirement? Is this proposed “zero lot line” compliant with City codes / ordinances? Is this compatible with the City's standards?</p>		17
<p>5. More information is needed regarding the specifics of “restoration and remediation” of the 252 acres that are to remain as open space. What needs to be done? What is the plan? Where are the areas on-site for remediation and restoration? If there will be off-site mitigation areas, identify these. What agencies need to be part of this process? What is the current state of the land as far as the degree and scope of</p>		18

<p>contamination? Are there any long-term risks arising from the current state of contamination?</p>		18 cont.
<p>6. The proposed walking bridge over PCH is hardly discussed at all. Why is this bridge needed? How was its proposed size and location determined? Have the bridge's effects on the aesthetics and historical nature and environment of PCH been evaluated? Have the bridge's effects on traffic, businesses and homes been evaluated?</p>	6.	19
<p>SECTION 4.2: AESTHETICS AND VISUAL RESOURCES</p>		
<p>1. Page 4.8-9. Visual Effects -The number of residential dwellings planned for this area, 1375 homes on 149 acres, will create a community of 3,012 (p 4.8-9) people living in a relatively small area. Of the 401 acres encompassing the project, approximately 252 acres do not support building of residences. Some of the planned residences will be 4 to 5 stories or 45 to 60 feet high. Where visible, this concentration of homes will have a negative visual impact on surrounding communities. Will the ocean views from Newport Crest condominiums be obscured by the Resort Colony? The Resort Flats, at 50 feet high, could be obtrusive. The impact of the Resort Colony could negatively alter views from the condominiums. Provide a sight line view exhibit.</p> <p>The Urban City will include 730 units at a height of 60 feet, which is taller than most residential structures in the City of Newport Beach. The EIR justifies this by stating that this section of the project is located in Costa Mesa, which has a higher maximum height level. As it is assumed that the whole development will be incorporated into the City of Newport Beach, this reasoning seems flawed. Visually, the impact of this 60 foot building will be negative. The impacts of this development on the surrounding community must be adequately addressed in the EIR.</p>	1.	20
<p>2. Bluff Road - Why does Bluff Road need to be 4 lanes wide? Traffic on this road will be fast, generate noise impacts, and create visual impacts. Bluff Road will be as wide as Superior Avenue. Bluff Road can be used as a "short cut" by drivers from 15th or 17th Street to PCH. With three other entrances into this project and a planned commercial resort area of only 75 units, this seems like an overly ambitious and unnecessarily wide entrance.</p>	2.	21
<p>3. Excavation on the project site will involve moving 2,600,000 cubic yards of soil. Cuts will be as deep as 25 feet. Canyons and ridges will be either changed or eliminated. Much of the topography in the area of the project will have permanent soil disturbance. The visual character of the</p>	3.	22

<p>topography within the Project site will be changed and the related aesthetic impacts must be addressed in the EIR.</p>		22 cont.
<p>4. Page 4.2-41. Utilities_- Putting utilities underground within the Lowland Open Space seems a hard goal to achieve. Beneath this area is a collection of pipes, drains and other impediments left over from earlier uses of this area. All utilities should be placed underground. Is the undergrounding of utilities in the Lowland Open Space feasible?</p>		23
<p>5. Mentioned are non-habitable structures. What do they look like? Will they be visible from outside the project? What will the accessory structures be used for?</p>		24
<p>6. For both aesthetic and safety reasons, it is recommended that the minimal bluff setback for residences be increased from 60 to 100 feet. Are the proposed bluff setbacks adequate?</p>		25
<p>SECTION 4.3: GEOLOGY AND SOILS</p>		
<p>1. The baseline discussion of geology and soils should contain a description of the known existing soil contamination areas. For areas of suspected contamination, there should be a discussion of the specific steps that will be used to determine the actual presence or absence and the levels of contamination present for specific compounds. Also, a discussion of the specific actions that will be taken to remediate the site should be provided in the EIR.</p>		26
<p>2. Although Appendix B covers many aspects of geology and soil, additional information should be provided regarding the use of reclaimed/treated soil in the project. Please provide in Section 4.3 of the EIR an adequate disclosure of existing soil contamination, and a full description of the risks associated with using the site's treated soil as backfill in the grading and fill operations of the project.</p>		27
<p>SECTION 4.4: HYDROLOGY AND WATER QUALITY (PER CBWQ)</p>		
<p>1. Please consider revising the criteria of the south end retention system to handle a 200-year flood.</p>		28
<p>2. Smart controllers should be mandatory for all irrigation systems, public and private.</p>		29
<p>3. Please explain the retention basin maintenance program and the funding source of that program.</p>		30

4.	Please consider programs that will improve the quality of water discharged into the slough and lowlands.	31
5.	Please ascertain that no untreated runoff from the project reaches the bay.	32
6.	If work is done around the network of pipes at the southwest part of the property, consider improvements to that system.	33
SECTION 4.5: HAZARDS AND HAZARDOUS WASTES		
1.	General Comment. The City of Newport Beach as the lead agency carries primary responsibility for approving a project. Many practical features make this project very appealing to the City (e.g., addition of needed low-income housing for the City, needed increases in the parkland/open space requirements on the City, additional revenue from the Inn planned, and so on.). What is the City's long-term liability if the proposed project does not adequately safeguard against the oilfield related hazards.	34
2.	Exhibit 3-2 and 3-4 suggest that residential units will coincide with oil use and pipe line areas. According to EPA and NRDC documents found online, people who live near oil and gas operations report serious health problems. Such people experience symptoms resembling those that may be caused by the toxic substances found in oil and gas. The negative health effects associated with these substances range from eye and skin irritation to respiratory illness such as emphysema, thyroid disorders, tumors, and birth defects. As described in the cited documents, a recent study reported a higher prevalence of rheumatic diseases, lupus, neurological symptoms, respiratory symptoms and cardiovascular problems in a New Mexico community built on top of a former oilfield with some nearby active wells when compared to a community with no known similar exposures. Other studies have found increased cancer risks associated with living near oil or gas fields. ² The potential health effects of developing residential areas over contaminated soils must be adequately addressed in the EIR. Please clarify if exposure to contaminated soils and the related health impacts have been included in the health risk assessment discussed in Section 4.10 – Air Quality.	35
3.	The Draft EIR proposes to (1) build residences and commercial property	36

² Retrieved: 10/10/11; Environmental Protection Agency: <http://www.epa.gov/rpdweb00/tenorm/oilandgas.html> Natural Resources Defense Council: <http://www.nrdc.org/land/use/download/down.pdf> Occupational Safety and Health Administration: http://www.osha.gov/dts/hib/hib_data/hib19890126.html

<p>on top of a former oilfield, and (2) continue some oilfield operations on the site while residential/commercial properties are occupied. For these reasons, unlike most project EIR documents, this project EIR faces the dual challenges of both making a good faith effort at full disclosure on the clean up portion of the site, as well as providing adequate justification of the development portion of the site. This EIR seems to make a good effort at describing the impacts of the development portion of the project (item 1 above), but needs to provide a more thorough examination of the corollary impacts that are presented for the development by the fact that the site is a former oilfield (item 2 above).</p>		36 cont.
<p>4. Please provide an adequate summary of the procedures and safeguards that will be followed in the closure of the oil fields and reuse of the site as required by the "current requirements of DOGGR (State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources)." Specifically, disclose the criteria that are applied in all aspects of the reuse of the site that justify the property for residential and commercial use. Describe how such criteria minimize the risk of health related hazards to occupants of the property from both a short- and long-term perspective.</p>		37
<p>5. Explain why radiation area surveys are not planned in all areas containing oil pipelines, and operating and formerly operating wells. Alternatively, if such surveys are planned or have been completed, present a discussion of the results, the acceptable thresholds for treated soils, etc. Plans for conducting this survey as well as surveys of soil contamination (from all known contaminants) correlated with oil field operations, treatment and removal should be described in detail, including a review of the science on health risks associated with exposure to contaminants likely to be on site, and an explanation of aspects that are mitigated and unmitigated.</p>		38
<p>6. Exhibit 4.5-1, the Potential Environmental Concern Location Map, does not depict the presumably thousands of feet of contaminated pipeline, wells and oil sumps shown earlier in Exhibit 3-4 Oil Operations. Provide an explanation why the far smaller region depicted on Exhibit 4.5-1 is depicted as the area of concern rather than the larger area shown in Exhibit 3-4.</p>		39
<p>7. Page 4.5-3, General Plan Safety Element. Special attention is needed here since the typically existing exposure hazards detailed in the General Plan Safety Element (which include coastal hazards, geologic hazards, seismic hazards, flood hazards, wild land and urban fire hazards, hazardous materials, aviation hazards, and disaster planning) do not foresee the complications created by the present scenario of building on a former oilfield site, adjacent to continuing oilfield operations.</p>		40

SECTION 4.6: BIOLOGICAL RESOURCES	
1. Page 4.2-22, second paragraph indicates that the eroded bluff would be restored and grading would be required on currently impacted bluffs to restore and re-vegetate the bluff/slope edge. There does not appear to be a complete description of the bluff's current state, i.e. what plant communities are present? What is the extent of the bluff degradation? How did it result? What percent of the bluff would need to be restored? Exhibits 4.2-3b (Resort Colony) and 4.2.5 (Resort Flats) show restored bluff simulation. Exhibit 4.2.-3b includes palm trees which would not be consistent with the use of native plants for restoration. Also, is the extensive use of trees, as shown in Exhibit 4.2-5a (3) consistent with plant species normally found at the bluff's edge?	41
2. Pages 4.4-41 through 4.4-44 (Table 4.4-13), Source Control Non-Structural BMPs. Page 4.4-43, S4: Use Efficient Irrigation and Landscape Design: What BMP is proposed for plant selection in residential landscaping? For residents with landscaping areas, what recommendations and HOA guidelines will be provided for plant selection? Will use of native plants be promoted? The use of efficient irrigation and landscape design is being promoted 'to minimize the runoff of excess irrigation water into the municipal storm drain system'. Why would 'detached residential homes' have a limited exclusion to this BMP?	42
3. Page 4.4-44, S4. 7: In what cases would native species which are drought tolerant not be possible or feasible?	43
4. Page 4.4-44, S5 Protect Slopes and Channels #5: Indicates that the project will "Vegetate slopes with native or drought tolerant vegetation." S5 should require native vegetation consistent with bluff slope habitat.	44
5. Page 4.6-13-14, Non-Native Grassland/ Non-Native Grassland/Ruderal: "Non-Native Grassland occurs throughout the mesa on the Project site. ...Within these Non-Native Grasslands, there are pockets of native species that were not mapped because they were mowed to a height of less than six inches and could not be delineated. What is the area of these unmapped sections? Should these species be resurveyed when they have reached a height of 6 inches? If they are not resurveyed, how will these grasslands be accounted for in the amount of grassland which must be restored or mitigated for, discussed in 4.6-53, in terms of: (a) acreage; and (b) requirements for mitigation as coastal sage scrub (CSS) (3:1 ratio) or disturbed CSS (1:1 ratio) or grasslands (0.5:1 ratio) (see paragraph 2, grassland and ruderal) (4.6-53). Where is the table of required mitigation ratios for plants included?	45

<p>6. Page 4.6-55-56, Wildlife Impacts. How will the restoration and mitigation measures discussed in the section address wildlife corridors? Will corridors/contiguous areas for wildlife movement be improved through the project?</p>	46
<p>7. Page 4.6-69: Vernal Pools. Which Agency/protocol was used to complete the vernal pool survey? What are the requirements for survey time period, length, season, i.e. wet season, dry season surveys? How many surveys were conducted? Were both dry and wet season surveys conducted? Are the survey documents available? Note: The survey protocol located, "Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods," calls for:</p> <ul style="list-style-type: none"> • Two full wet season surveys done within a 5-year period; or • Two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey).³ • Does this standard apply, or was another used? How were the mitigation values for habitat replacement arrived at? How do they compare to those used in similar projects? Do EPA/USFW/other agencies provide a range of guidelines? 	47
<p>8. Please clarify if the developer intends to sell mitigation credits and if so please identify the potential sites for this program.</p>	48
<p>SECTION 4.7: POPULATION, HOUSING AND EMPLOYMENT</p>	
<p>1. How are the following defined?</p> <ul style="list-style-type: none"> • Very low income (69 units, or 5%) • Low income (138 units, or 10%) • Moderate income (206 units, or 15%) 	49
<p>2. What is the basis / formula for the City's projected population being 96,892 by 2030 and 97,776 by 2035?</p>	50
<p>3. Affordable Housing - more specifics need to be provided regarding payment of in-lieu fees and construction of off-site affordable housing.</p> <ul style="list-style-type: none"> • What are the in-lieu fees? How are they calculated? • Where and what off-site affordable housing can be constructed? 	51

³<http://www.slocounty.ca.gov/Assets/PL/environmental/Fairy+Shrimp+Survey+Guidelines.pdf>

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<ul style="list-style-type: none"> • What are the criteria for “affordability” of the units for those employed within the City? • What is the projected sale pricing for the Affordable Housing units? • For the 50% of Affordable Housing that is to be constructed on site, where will these units be located? What is the projected pricing range? 		51 cont.
SECTION 4.8: RECREATION AND TRAILS		
<p>1. The addition of a pedestrian and bicycle bridge crossing Pacific Coast Highway would encourage walking/biking to the beach. This proposal would need to be approved with Cal Trans and the Coastal Commission. The 50 foot landings supporting each end of the bridge could impact the views of residents of Lido Sands. Safety lighting on the bridge would also be visible in Lido Sands. The aesthetics and light and glare impacts on these communities should be evaluated in the EIR.</p>		52
<p>2. Bluff Toe Trail is too close to Newport Shores. Why is it 10 feet wide? Is it necessary?</p>		53
<p>3. The parks proposed for this project are easily accessible and preserve significant views. As Service Area #1 has a 53 acre park deficiency, parks, especially sport parks, are desirable. However, the location of the Community Park so close to Newport Crest, will negatively impact those living in the condominiums. The impacts if these parks on adjacent communities should be evaluated.</p>		54
SECTION 4.9: TRANSPORTATION AND CIRCULATION		
<p>1. Check Exhibit 4.9.2 for accuracy, (16th Street is not a 4 lane undivided roadway).</p>		55
<p>2. SC 4.9-3 indicates that the Haul operation will be monitored by the City of Newport Beach “public works department.” How will be the haul vehicles be identified to the public works department? Do they have special marking so that they can be counted and verified? How will this measure be implemented? The enforcement of this standard condition needs to be addressed in the EIR and included in a Mitigation Monitoring Program.</p>		56
<p>3. Trip Distribution and Assignment - 16th street – what happens if the NMUSD does not give permission and right of way to do improvements? What is the alternate plan for site access?</p>		57

<p>4. The EIR does not discuss the improvements proposed on the north side of West Coast Highway approximate 100 feet of intersection with Superior Ave. to approximately 700 feet of the Centerline of Bluff road. Is this part of the Banning Ranch property?</p>	58
<p>5. The EIR indicates that Resort Colony Road is a single road – Resorts generally have service roads or back of house roads for service that is different than the primary road to the resort. Is this also proposed for the resort?</p>	59
<p>SECTION 4.10: AIR QUALITY</p>	
<p>1. Page 4.10-12, Table 4.10-4. The existing emission sources for criteria pollutants used in the oil field at Banning Ranch should be described in detail. The calculations used to determine the existing oil field emissions in Table 4.10-4 should be provided in the Draft EIR, rather than a reference provided to another document.</p>	60
<p>2. Page 4.10-14, Table 4.10-5. The existing emission sources for toxic air contaminants (TACs) used in the oil field at Banning Ranch should be described in detail. The calculations used to determine the existing oil field TAC emissions in Table 4.10-5 should be provided in the Draft EIR, rather than a reference provided to another document. A baseline health risk assessment should be performed to demonstrate existing health impacts.</p>	61
<p>3. Page 4.10-20, 1st sentence references the use of URBEMIS. The emission calculations were done using CalEEMod and not URBEMIS.</p>	62
<p>4. Page 4.10-20, Table 4.10-7. The construction emission calculations should be provided for peak day emissions. Please clarify what would constitute peak day construction emissions, i.e., what phase of construction, types of equipment, emission factors, etc.</p>	63
<p>5. Page 4.10-23, Operational emissions. The assumptions used in the CalEEMod model should be explained in more detail.</p>	64
<p>6. Page 4.10-25, Table 4.10-13. The emission sources for criteria pollutants used in the oil field at Banning Ranch should be described in detail. The calculations used to determine the existing oil field emissions in Table 4.10-13 should be provided in the Draft EIR, rather than a reference provided to another document.</p>	65
<p>7. Page 4.10-16 and Page 4.10-27, CO Hotspots Analysis. The use of the SMAQMD screening methodology in southern California is questionable.</p>	66

<p>CO modeling at the intersections where LOS E or F are predicted should be modeled and not screened.</p>		66 cont.
<p>8. Page 4.10-27, Ambient Air Quality. An ambient air quality analysis is only provided for CO emissions. An ambient air quality analysis during project operations should be provided for the other criteria air pollutants (e.g., NOx and particulate matter).</p>	8.	67
<p>9. The air quality section does not discuss the health impacts associated with exposure to criteria pollutants. The section concludes that air quality impacts are potentially significant for NOx. Therefore, the health impacts associated with exposure to NOx would also be significant.</p>	9.	68
<p>10. Page 4.10-29, Human Health Risk Assessment. The potential health risks associated with TACs are not described in the Draft EIR. The oilfield sources of TAC emissions and the estimated TAC emissions associated with the operation of the proposed project should be provided in the Draft EIR.</p>	10.	69
<p>SECTION 4.11: GREENHOUSE GASES</p>		
<p>1. Page 4.11-18 states: “...the Project would create a significant cumulative contribution to GHG emissions if it would emit more than 6,000 MTCO₂e/yr of GHGs.”</p> <p>In Table 4.11-3, annual estimated GHG emissions values are presumably based on the estimated 25,000 cubic yards of remediated material that is planned for removal from the site (discussed in Section 4.5). Provide a revised upper-bound estimate that reflects the additional GHG emissions that would be incurred if all 246,000 cubic yards of remediated material (discussed in Section 4.5) is unusable and requires removal from site, and replacement by new fill material from off site.</p>	1.	70
<p>2. Table 4.11-4: Estimated Greenhouse Gas Emissions From Operations:</p> <p>The table's presentation of “mitigated” GHG emissions states that the “mitigated” scenario demonstrates the GHG reductions that occur with Project features that contribute to the reduction of GHG emissions when compared with typical residential and commercial developments.</p> <p>Another useful comparison would be the presentation of mitigated GHG emissions that occur under alternative project features (Alternatives A and B, Section 7) that resemble the current full open space status quo of the 403 acres, since one original vision of the project was to maintain the</p>	2.	71

<p>open space qualities that are present in Banning Ranch's current state. Please provide this alternative comparison to complement the typical residential and commercial development comparison already provided.</p> <p>Furthermore, it seems somewhat misleading to describe the reduction of GHG emissions of the project plan when compared with typical residential and commercial developments, since no such "typical" development plans were included in the envisioned scenarios for use of Banning Ranch.</p>	<p>71 cont.</p>
<p>3. Page 4.11-21: The project would make a cumulatively significant impact on GHG emissions, and exceed the City's threshold. As justification it is stated on Page 4.11-22: "However, as described in the PDFs and demonstrated above, the proposed Project incorporates many characteristics and features that would reduce GHG emissions compared with development of similar land uses in other locations or without commitments to sustainable design." It is unclear if this reference to "similar land uses" here is in reference to the "typical residential and commercial development" mentioned earlier. Please clarify this comparison since comparing the current project plan to a typical residential and commercial development seems inappropriate.</p>	<p>72</p>
<p>4. Page 4.11-25 Level of Significance after Mitigation. It is stated: "Despite application of all feasible mitigation, the Project would make a cumulatively considerable contribution to the global GHG inventory and would have a significant and unavoidable GHG emissions impact." Provide brief explanation why such significant and unavoidable impacts would occur.</p>	<p>73</p>
<p>SECTION 4.12: NOISE</p> <p>1. Page 4.12-14, 1st paragraph. For some very close neighbors of the proposed project (Newport Crest) and a private school (Carden Hall), the noise level will be substantially increased during the construction period and construction noise impacts are considered to be significant and unavoidable and affect a number of the surrounding communities including California Seabreeze, Parkview Circle, Newport Shores, Lido Sands..." as well as several identified mobile home parks in the area. Portions of Newport Crest are as close as 5 feet from the proposed project boundary and Carden Hall is within a few hundred feet.</p> <p>Mitigation Measure (MM)4.12-3 requires that the residents and schools be notified in order for them "to plan their activities to minimize potential disruptive effects of construction noise". This does not reflect a real solution to mitigating "significant short-term noise impacts" on schools. All</p>	

<p>feasible noise mitigation measures must be imposed, which could include doing the construction activities closest to the school during the summer hours or when students would not be present.</p>	74 cont.
<p>2. Page 4.12-22. Longer term, the traffic generated by the proposed project will cause significant traffic noise without mitigation. The use of rubberized asphalt is proposed to mitigate noise impacts. While the mitigating noise on the affected streets with the highest noise impacts (17th St. west of Monrovia & 15th St. west of Placentia), these 2 streets are still within 3 dBA of the 65 dBA threshold. Enforcement of this mitigation measure is not assured as Newport Beach cannot require the mitigation measure on the City of Costa Mesa. Is there any data, references, or evidence regarding the use of rubberized asphalt that shows what the noise reduction would be should it be installed? Has the installation of the rubberized asphalt been included in the construction noise/air quality analyses? Has this mitigation been used elsewhere, and if so, what was the actual noise reduction achieved?</p>	75
<p>3. Page 4.12-40 thru 41. The proposed project will result in significant noise impacts to Newport Crest. MM4.12-7 requires the installation of noise insulation upgrades to reduce second floor balcony and interior noise impacts. There is a list of Construction Activities mitigation measures provided (p. 4.12-40-41) which show concern and consideration for the affected neighbors during the construction years. These must be enforced by the City and the contractors. Additionally, the City should carefully monitor the activities during the construction phases to assure the level of public relations with the neighbors is positive, pro-active and consistent. A detailed mitigation monitoring program needs to be developed and implemented.</p>	76
<p>4. The list of Mitigation Measures (MM) included for the Operational Activities includes details on truck deliveries and loading dock activities (MM 4.12-9, 4.12-43, para # 2). The restriction of such activities should be between the hours of 7:00 AM and 6:00 PM., the same as construction hours. Stipulating that deliveries can happen until 10:00 PM, as stated in this paragraph, will not reduce noise during the evening hours. Truck traffic and loading/unloading activities generate too much noise to be permitted after dark. An additional mitigation measure should require that loading docks be located at least 300 feet away from dwelling units.</p>	77
<p>SECTION 4.13: CULTURAL AND PALEONTOLOGICAL RESOURCES</p>	
<p>1. Page 4.13-24, Threshold 4.13-2, second paragraph, 5th sentence states: <i>"However the planned removal of the oilfield-related infrastructure prior to grading would adversely impact portions of the site. The extent of impacts</i></p>	78

<p><i>is unclear at this time</i>". Could the impact excavations be more clearly defined prior to the issuing of grading permits? If not, when will the impact of these excavations be defined?</p>		78 cont.
<p>SECTION 4.15: UTILITIES</p>		
<p>4.15.1 Water Supply</p>		
<p>1. Of the 3 sections in this category, water supply takes up well over ½ (25+ pages of 45), indicating its potential concern in the public's view as well as the complications of multiple suppliers of water and their future supply predictably. A water supply assessment (WSA) was done, as required by SB 610 for a project of more than 500 dwelling units (du). In addition, there are multiple governmental entities involved in water distribution within southern California (pp.4.15-4 through 4.15-12). Their overall conclusion, including the WSA results above noted is that Newport Beach will be able to meet the water demands for the period 2015-2035 "even under the worst drought conditions" (p. 4.15-12, last para.). Implicit in the projections are past records as well as a future reliance on the entire region to be better stewards and conservationists of water.</p> <p>Recent drought years have caused both the MWD and the City to take actions involving a new water supply plan (eff. 2008). Included is a plan to augment existing groundwater supplies "by producing purified water to recharge the Orange County Groundwater Basin" (p. 4.15-25, last paragraph).</p>		79
<p>4.15.2 Wastewater Facilities</p>		
<p>2. Page 4.15-29, 1st paragraph. While there's capacity to handle the incremental wastewater from this proposed development, there is a concern that there may be a necessity for a wastewater lift station for the Banning Ranch wastewater. This may be required if gravity flows are not great enough to be conveyed to the pump station. This structure would be "between 10,000 and 15,000 square feet and would be enclosed within a structure approximately 2,000 sf feet (sic) in size". (p.4.15-29, paragraph #1). It is not clear from the environmental analyses whether the construction of this structure has been included in the evaluation of noise, grading and construction impacts. The construction impacts related to the pump station must be included in the analysis of project impacts.</p>		80
<p>4.15-3 Energy</p>		
<p>3. The installation of electricity lines (Southern California Edison) and natural gas lines (The Gas Company) can result in significant impacts. The</p>		81

<p>defined Project Design Features and identified mitigation measures must be included in any construction work completed by the applicant or these utility companies. Such measures need to be included in the mitigation monitoring program and enforced to assure they are implemented.</p>		81 cont.
<p>5.0 CUMULATIVE IMPACTS</p> <p>1. MM 4.2-1. The project calls out the use of the Illuminating Engineering Society of North America 'Dark Sky Standards' as the baseline for night lighting. Dark Sky standards need to be defined. How does this standard compare to other standards for night lighting? Does the Dark Sky standard have a reference number? (Could also be an ASHRAE number?) Does 'Dark Sky' include or refer to a specific level of darkness/light, or to an overall standard set? The project calls for 'lighting to be 'directed and shielded from the Open Space Reserve, including habitat areas. What is the benchmark level of darkness to be targeted for the project, particularly in wildlife areas? Is there a minimal level of darkness to be achieved?</p>		82
<p>6.0 LONG-TERM IMPLICATIONS OF THE PROPOSED PROJECT IMPACTS</p> <p>1. The proposed 51.4 acres for active and passive parks, while generous, are insufficient. This amounts to only 12.8% of the entire project. Consideration of an alternative that would require 25 percent or about 100 acres of parks should be made in the EIR. Is the provision of parks and open space consistent with the General Plan and City ordinances?</p>		83
<p>2. The assertion in the DEIR that the project would not induce growth through the provision of infrastructure is not credible. It seems obvious that the establishment of Bluff Road and North Bluff Road will bring more traffic to the surrounding area and more growth in traffic. The installation of an addition 1,325 residential units will also result in an increase in population growth in the area. This section of the EIR should be revised and a better discussion of growth inducing impacts should be provided.</p>		84
<p>7.0 ALTERNATIVES</p> <p>1. Page 7-41, 1st complete paragraph. Why is oil exploration expected to expand under the No Project Alternative? It would seem apparent that with crude oil prices at a relatively high level, oil removal activities are progressing at a relatively rapid rate. How much additional oil exploration would be feasible at the site?</p>		85

<p>2. Page 7-41, Greenhouse Gas Emissions. Calculations should be provided to support the conclusion that the GHG emissions associated with the No Project Alternative would be substantially less than 6,000 metric tons. The previous comment indicates that oil exploration activities would increase under this alternative. Also, please justify the following sentence: "However, it should be noted that the proposed Project would be providing housing in a jobs-rich area, which would help offset an incremental portion of the regional emissions." What defines a "job-rich" area?</p>	86
<p>3. Page 7-49, 3rd paragraph. The EIR indicates: "Under Alternative B, oilfields could be consolidated, potentially resulting in natural vegetation being converted to oil exploration/production." Aren't there current rules and regulations in place that would prevent the existing oil operations from impacting areas with known biological value?</p>	87
<p>4. Page 7-59, last paragraph. The EIR indicates that, under Alternative B, future noise levels at the California Seabreeze and Parkview Circle residences facing the Project site would increase from 0 to 4 dBA CNEL above existing noise levels, which would be a less than significant. CNEL increases of 3 dBA and greater are generally considered "substantial" and, therefore, significant.</p>	88
<p>5. Page 7-136, last paragraph. Alternative D would result in a reduction in allowable dwelling units to a maximum of 1,200, as compared to 1,375 for the proposed Project. The EIR indicates that, under Alternative D, there would be a reduction in average daily trips, but an increase of trips in the AM peak hour and a decrease in trips in the PM peak hour. This seems odd. Why would there be an increase in AM peak hour trips when the number of dwelling units has been reduced?</p>	89
<p>6. Page 7-156, 2nd paragraph. Alternative F does not include the pedestrian and bicycle bridge spanning West Coast Highway. Why is the bridge not included in Alternative F? On page 7-172, it is indicated that Alternative F would not provide enhanced public access through the coastal zone and cites the lack of the bridge as one reason. Yet the bridge could be included in Alternative F so that this alternative would achieve all but one of the project objectives.</p>	90
<p>7. Are there any alternatives either present or additional which can reduce the noise, air emission, and light and glare impacts to Newport Crest from significant and unavoidable to less than significant?</p>	91

APPENDIX D. SITE REMEDIATION AND HAZARDOUS MATERIALS

1. Appendix D presents the Draft Remedial Action Plan for the project prepared by Geosyntec in 2009. Page 2 of Appendix D states:

"A key assumption in all development planning is that any residential construction will be contingent upon the completion of the remediation work and agency closure of each residential planning area."

92

A clarification is needed here: Is this inconsistent with the Implementation Staging 1, 2, & 3 (discussed in Section 3.0 Project Description) which suggests that residential construction will be staggered such that some residential units will be completed and occupied before the completion of remediation work in other stages? Please clarify the wording in Section 3 to address the potentially ambiguous reading of this key assumption.

2. On page 6 it is stated: *"...In the case of the NBR Site where there are no hazardous wastes or levels of contaminants,"*

93

Please provide a summary of the data in support of the above comment. Provide an explanation of why this particular site differs from other former oilfields with respect to the presence of human health hazards.

3. On page 9 it is stated: "The hydrocarbon impacts observed were generally confined to the upper soil layers (i.e., within approximately 6 feet of the surface)."

- Provide details concerning the disposition of the 6 feet of surface soil for the project.
 - Will it be treated and reused?
 - If it is reused what are the criteria that will be applied for acceptable/safe use as fill in residential portions of the project?
 - What portions will be removed from site?
- Provide details on whether the impacts present in the 6 feet of upper soil layers include contaminants from pipeline scale (TENR contaminants).

94

4. On page 16 of the Phase I ESA Update in (Appendix D, page 91) it is stated: "A limited and preliminary pVIC evaluation was performed for the Site, utilizing only the information readily available in the EDR report, review of Site data and documentation, and results of the Site reconnaissance and interviews. This pVIC evaluation is not intended to meet the substantive requirements of the ASTM Standard E 2600 tiered screening, nor is it intended to identify which pVICs are VICs."

95

There was no further elaboration on vapor intrusion assessment in the

<p>main project description. Provide additional/updated information in DEIR Section 4.5 regarding the planned assessment of the existence of vapor intrusion conditions, and the acceptable criterion levels sought for the project.</p>	95 cont.
<p>5. Table 3-3 beginning on page 121 of Appendix D summarizes the Potential Recognized Environmental Conditions of the NBRP. Provide in Section 4.5 of the EIR a list of the items in this table that will be unmitigated, and a justification, during project development.</p>	96

Letter L1 City of Newport Beach Environmental Quality Affairs Committee (EQAC)
October 17, 2011

Response 1

The opinion of the EQAC is noted. The State CEQA Guidelines Section 15124(b) notes that the “statement of objectives” should include the underlying purpose of the project”. The statement of objectives helps the lead agency formulate project alternatives and assists in the preparation of findings or a statement of overriding considerations, as needed. Project Objective 3 reflects the City’s General Plan policy for the Banning Ranch property, including the development of up to 1,375 residential units on the site. Generally a specific number may not be as appropriate as a range or general acknowledgment of appropriate land uses for a project objective. However, the City’s General Plan policy was very specific with respect to the maximum number of units allocated for development on this site. Therefore, the Applicant chose to include a specific objective (Project Objective 3) consistent with the City’s General Plan land use designation of Residential Village for the Project site.

Response 2

The baseline activities associated with the oilfield producing operations are discussed in Section 3.0, Project Description (pages 3-3 and 3-4) and Section 4.5, Hazards and Hazardous Materials (pages 4.5-5 and 4.5-6). The oil operations are an existing use conducted by an independent entity, West Newport Oil Company, which would continue regardless of whether the proposed Project is approved or implemented. Baseline information regarding the oil operations was provided in the Draft EIR in order to evaluate the proposed Project’s impact on the existing physical environment. An exhibit showing the location of existing facilities is included in the Draft EIR as Exhibit 3-4 in Section 3.0. Information regarding the amount of oil removed and how it is transported was not included as this is not a part of the proposed Project. The City does not have the ability to condition or restrict these aspects of the existing operations.

Response 3

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. In addition, please refer to Section 4.5, Hazards and Hazardous Materials, of the Draft EIR (pages 4.5-1 through 4.5-3). Remediation procedures and methodology are described in Section 4.5 as well as anticipated soil remediation volumes (see Table 4.5-3).

Response 4

The opinion of the EQAC is noted. With respect to Table 3-1, please refer to page 3-11 which state “Table 3-1 identifies proposed land uses for the Project (Exhibit 3-2)”.

Response 5

Please refer to Section 4.2, Aesthetics and Visual Resources, of the Draft EIR which describes the dark sky program proposed for the Project as well as evaluates the potential impacts associated with the introduction of night lighting on the property.

Response 6

Project Design Feature 4.11.1 in the Draft EIR requires the proposed Project to be consistent with a recognized Green Building Program that exists at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council’s (USGBC’s) Leadership in

Energy and Environmental Design – Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders’ National Green Building Standard.

The specifics of building energy efficiency may vary depending upon which particular Green Building Program is selected to set the requirements. Each Green Building Program has its own extensive list of potential energy-efficiency components with corresponding points or values of each component. These lists are used as “menus” from which the final program for the Project would ultimately combined so that the final solution (i.e., the constructed Project) can be graded. Additionally, recognized Green Building Programs are each independently being updated and requirements being revised over time. Therefore, although the commitment is specific, to identify today how energy efficiency would ultimately and specifically be attained would not be mandated at this time.

In addition to compliance with the Green Building Code and the third-party Green Building Program, the proposed Project has a Green and Sustainable Program. As addressed in the Newport Banning Ranch Master Development Plan (see Appendix D of the Master Development Plan), the proposed Green and Sustainable Program contains a Resource Management Performance Matrix that identifies commitments and implementing plans/programs for various resources, including energy, air and water resources. For example and as addressed in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR, the proposed Project would be required to have low water use indoor appliances; multimetering energy use “dashboards” in all residences; and all residential buildings must exceed 2008 Title 24 requirements by at least 5 percent.

Response 7

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. All remediation activities, such as excavating pipelines, are required to be conducted pursuant to State and local requirements. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, any contaminated soil in areas proposed for development would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these soils are safe for human exposure in the future. As noted on page 3-24 of the Draft EIR, contaminated material that cannot be effectively remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. Appendix D of the Draft EIR includes the draft Remedial Action Plan that identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by the Regional Water Quality Control Board (RWQCB) and/or the Orange County Health Care Agency (OCHCA).

Response 8

The proposed roadway system is described in detail in the Project Description in order that this component of the Project could be accurately assessed in the overall impact analysis provided in Sections 4.1 through 4.15 of the Draft EIR. With respect to existing oilfield operations and the proposed remediation program, these aspects of the Project are described in Section 3.0, Project Description. However, the analysis of existing conditions related to ongoing and future oil operations and its relationship to proposed development activities is addressed in the 38-page Section 4.5, Hazards and Hazardous Materials. The Project Description identifies that a draft Remedial Action Plan (dRAP) has been prepared for the Project, which specifies that remediation efforts would include oilfield facility and infrastructure removal and oilfield remediation, as well as the consolidation of oilfield activities. The Project Description notes that the dRAP is described in greater detail in Section 4.5.

Response 9

As discussed in Section 4.5.7 Clean-Up Levels and Materials Reuse (see Section 4.5, Hazards and Hazardous Materials, of the Draft EIR), only soils that meet approved clean up levels for residential development areas would be used in deep fills. The California Department of Oil, Gas, and Geothermal Resources (DOGGR) conducted a statewide study in 1996 that included the West Newport Oilfield confirming that NORM (Naturally Occurring Radioactive Material) is not a serious problem in California (which confirmed an earlier 1987 study). As a part of the proposed Project's oilfield abandonment program, comprehensive surveys would be conducted among any salvaged and recycled oilfield equipment and soils to confirm suitability for those purposes. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, should any material be determined unsuitable for recycling, it would be properly disposed of in a licensed State facility.

As to the EQAC's concern regarding whether all of the soils may be too contaminated for use, please refer to page 4.5-8 of the Draft EIR that describes the results of the Phase II Environmental Assessment (EA) soil sampling. According to the Phase II EA, "at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines)". Because the soils do not exceed hazardous waste criteria levels, all of the estimated 246,000 cubic yards of remediated soil can be treated and used on site. Table 4.5-1 provides a summary of the soil sample results from the Phase II EA. This estimate was based on the 2001 Environmental Assessment results of historic sites in Potential Environmental Concern (PECS) #2 and #8, located in the Lowland area where hydrocarbon concentrations were higher than average. The exact volume can only be known when these sites are remediated in the oilfield abandonment, consolidation, and remediation phase and when detailed verification testing determines when the cleanup criteria has been achieved.

Response 10

Remediated soil disposition is addressed on page 3-36 of Section 3.0, Project Description, of the Draft EIR. Remediated soil would be treated and placed in deep fills consistent with the required Final RAP and not be used in conjunction with open space grading.

Response 11

Site remediation would be initiated upon Project approval and would be complete on the Upland area before remediation begins. To ensure efficient use of soil movement to balance landform grading and to efficiently install site infrastructure, the Applicant proposes that major soil movement in connection with site remediation and mass grading would be conducted in a continual program where once remediation is completed, mass grading would commence. Although soil remediation and mass grading may overlap in areas both would be completed before final grading is initiated which precedes construction and occupancy.

Though the remediation may be done in one continuous process, the referenced sentence from the Draft Remedial Action Plan states that any construction within a phase or sequence is contingent upon the completion of the remediation work and agency closure in that phase. No development phase would be occupied until after the remediation in that phase is complete and signed off. With respect to the concern expressed regarding the exposure of future residents that may live on-site in the initial phases of development to toxic air contaminants, the Draft EIR analyzed the impact of soil movement, including potentially contaminated soils, on sensitive receptors which include both existing offsite and future on-site residents and determined that

this impact would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR beginning on page at 4.10-29.

Response 12

The opinion of the EQAC to include an additional Project Design Feature (PDF) to address soil remediation is noted. While the Applicant has not identified such a PDF, the Draft EIR addresses all of the issues of the EQAC with respect to hazardous materials and how the Project site would be remediated. Please refer to Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

Response 13

With respect to Question 1, operational and environmental regulatory oversight is described in Section 4.5, pages 4.5-1 to 4.5-3, of the Draft EIR. Reuse of any materials or soils are monitored by the oversight agencies and must conform to the approved cleanup criteria. All remediation and reuse materials are tested and analyzed by State certified laboratories. Remediation methodology is described in Section 4.5.3, along with anticipated soil remediation volumes in Table 4.5-3 in Section 4.5. Please also refer to Topical Response: Oilfield Regulatory Oversight and Remediation

With respect to Question 2, the reuse of any material or soil is conducted only after the approval of the oversight agencies and confirmation that previously approved cleanup criteria is met.

Response 14

The park plan was developed by the City to best address the community's needs for additional active parkland while taking into account development/environmental constraints found on the Newport Banning Ranch property. Implementation of the Project would create new sources of light and glare that are presently not found on the Project site. Nighttime sources of light would include streetlights, vehicle headlights, and lights used within and around buildings including residences, retail areas, and the resort inn. However, it should be noted that the Project site is located in an urban environment. Existing development is adjacent to the Project site to the north, south, and east with development west of the Santa Ana River.

City parks are open between the hours of 6:00 AM and 11:00 PM. Ball field lights are turned off by 10:00 PM. The location of the sports fields is depicted on Exhibit 4.8-3 in Section 4.8, Recreation and Trails. General Plan Land Use Policy 5.6.3 on ambient lighting requires "that outdoor lighting be located and designed to prevent spillover onto adjoining properties or significantly increase the overall ambient illumination of their location". Lighting for athletic playing fields in the Community Park would be required to have light control visors to control spill and glare and to direct light downward onto the playing field. Light standards used for lighting playing fields shall be either Musco Lighting™, "Light Structure Green" standards, or another comparable light standard of similar design that reduces light spillage.

Because of the new light sources associated with the active sports fields and hard courts associated with the Community Park, the Community Park would result in a significant and unavoidable impact with respect to night lighting. Although the Project proposes to restrict lighting in areas of the site, night lighting associated with the Community Park is proposed to have night lighting, and the Project as a whole would introduce new light sources. The findings of this Draft EIR analysis are consistent with the General Plan EIR's determination that the Project's proposed development would result in significant and unavoidable nighttime lighting impacts. The City of Newport Beach General Plan Final EIR found that the introduction of new

sources of lighting associated with development of the Project site, not just a park, would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which noted that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project, which included this benefit:

The updated General Plan will improve the opportunities for parks and recreation facilities to serve the City's residents and visitors. It provides for the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that will provide playfields and passive recreational opportunities for the underserved western portion of the City. Additionally, the Plan, for the first time in Policy R 1.9, prioritizes park and recreational facility improvements.

Therefore, in adopting the 2006 General Plan Update and developing a park plan that anticipates night lighting for the athletic fields, the City made a policy determination that the impacts of night lighting would be outweighed by the public benefits – all of which were set forth in the Statement of Overriding Considerations adopted by the City in connection with approval of the General Plan. The alternative of eliminating the lights on the ball fields was considered, but rejected as being infeasible because it conflicted with the City's General Plan policies (please refer to Section 7.0, Alternatives to the Proposed Project, page 7-7, of the Draft EIR).

Response 15

The purpose of a PC (Planned Community) Zoning District, as stated in Chapter 20.26.010 of the Newport Beach Municipal Code, is “to provide for areas appropriate for the development of coordinated, comprehensive projects that result in a superior environment; to allow diversification of land uses as they relate to each other in a physical and environmental arrangement while maintaining the spirit and intent of this Zoning Code; and to include a variety of land uses, consistent with the General Plan, through the adoption of a development plan and related text that provides land use relationships and associated development standards”. As such, the PC can establish building heights, setbacks, etc.

Response 16

The operations at the two oil consolidation sites are not a part of the proposed Project and would be under the control of the oil operator. Oilfield lighting is part of the existing baseline as the oilfield currently has safety lighting, including the proposed locations of the oil consolidation sites. The lights would be operated from dusk to dawn.

Response 17

Please refer to the response to Comment 15. By definition, a residence with a “zero lot line” side yard on one side of the lot (one side of residence abuts the property line of the adjacent residence) has no setback at that lot boundary. No single-family residences are proposed without any setbacks. The Coastal Homes would have a minimum ten-foot-wide side yard with a courtyard on the other side of the residence.

Response 18

Section 4.6, Biological Resources, of the Draft EIR includes a Mitigation Program. The proposed Project requires a detailed restoration program for approval by the City of Newport Beach and

the appropriate resource agencies. The Draft EIR states that the program shall include, at a minimum, the following:

1. Responsibilities and qualifications of the personnel to implement and supervise the plan;
2. Site selection;
3. Site preparation and planting implementation;
4. Schedule;
5. Maintenance plan/guidelines;
6. Monitoring plan; and,
7. Long-term preservation.

In terms of current site conditions, please refer to page 4.5-8 of the Draft EIR that describes the results of the Phase II EA soil sampling. According to the Phase II EA, “at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines)”.

Response 19

The Applicant’s Project Design Feature (PDF) 4.8-3 states “If permitted by all applicable agencies, a pedestrian and bicycle bridge over West Coast Highway will be provided, as set forth in the Master Development Plan, from the Project site to a location south of West Coast Highway to encourage walking and bicycling to and from the beach”. As addressed in the Draft EIR, the Project proposes to provide a system of off-street multi-use trails, on-street bike lanes, and pedestrian paths with connections to existing regional trails for use by pedestrians and bicyclists. 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. The bridge would allow for pedestrians and bicyclists to move between the northern and southern sides of West Coast Highway without having to cross West Coast Highway at street level.

The physical impacts of implementing the pedestrian and bicycle bridge (PDF 4.8-3), are evaluated as part of the overall development Project (refer to Sections 4.1 through 4.15 of the Draft EIR). Most specifically, refer to Section 4.2, Aesthetics and Visual Resources, and to Section 4.8, Recreation and Trails. West Coast Highway is not a State- or locally designated scenic highway nor is this segment of West Coast Highway considered historically significant on a local, State, or federal level.

Response 20

The proposed building heights of the various Project land uses are evaluated in Section 4.1, Land Use and Related Planning Programs, and Section 4.2, Aesthetics and Visual Resources, of the Draft EIR. Newport Beach Municipal Code Section 20.30.100:

...provides regulations to preserve significant visual resources (public views) from public view points and corridors. It is not the intent of this Zoning Code to protect views from private property, to deny property owners a substantial property right or to deny the right to develop property in accordance with the other provisions of this Zoning Code....The provisions of this section shall apply only to discretionary applications where a project has the potential to obstruct public views from public view points and corridors, as identified on General Plan

Figure NR 3 (Coastal Views), to the Pacific Ocean, Newport Bay and Harbor, offshore islands, the Old Channel of the Santa River (the Oxbow Loop), Newport Pier, Balboa Pier, designated landmark and historic structures, parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space....Where a proposed development has the potential to obstruct a public view(s) from a identified public view point or corridor, as identified on General Plan Figure NR 3 (Coastal Views), a view impact analysis may be required by the Department. The view impact analysis shall be prepared at the project proponent's expense. The analysis shall include recommendations to minimize impacts to public views from the identified public view points and corridors while allowing the project to proceed while maintaining development rights.

It is not the intent of this Zoning Code to protect views from private property. Further, the City's General Plan goals and policies provide directives in its consideration of aesthetic compatibility.

While Natural Resources Element Goal NR 20 is the "Preservation of significant visual resources", the policies of the Natural Resources Element are applicable to public views and public resources not private views or private resources.

NR Policy 20.1: Enhancement of Significant Resources: Protect and, where feasible, enhance significant scenic and visual resources that include open space, mountains, canyons, ridges, ocean, and harbor from **public vantage points** (emphasis added), as shown in Figure NR3.

With respect to the Urban Colony, the Draft EIR does not indicate that part of the Project site is within the City of Costa Mesa. Rather the Draft EIR states "Building heights would be a maximum of 60 feet, which is consistent with the height restrictions in the City of Costa Mesa's adopted Mesa West Bluffs Urban Plan area which is contiguous to the Urban Colony". The compatibility of the proposed Urban Colony with existing and planned future off-site land uses as well as proposed on-site land uses is addressed in the Draft EIR; please refer to Sections 4.1 and 4.2.

Response 21

Please refer to Topical Response: Bluff Road/North Bluff Road Location and Alignment.

Response 22

Section 4.2, Aesthetics and Visual Resources, of the Draft EIR addresses topographical alternations and finds that the impacts would be less than significant. The majority of the development is proposed for the Upland mesa portion of the Project site. Topographic features of the site are shown on Exhibit 3-3 of the Draft EIR. A comparison of the land use plan with the topographic and geographic features exhibit shows that the significant landforms such as the southerly and northerly arroyo, the bluff edge, and the Lowland area are largely divided.

Response 23

The Draft EIR assumes that all new public utilities would be placed underground within the development area and to the extent economically and environmentally feasible within the Open Space area except for the oil consolidation sites, where utilities may be above ground.

Response 24

Chapter 20.70 of the City's Zoning Code characterizes accessory structures to mean "...an attached or detached structure that is a part of, and clearly incidental and secondary to, a nonresidential structure and that does not change the character of the nonresidential structure". Examples include fences, garages, gazebos, outdoor play equipment, patios and porches, swimming pools, and walls. A "Residential accessory structure" means an attached or detached structure that is a part of, and clearly incidental and secondary to, a residence and that does not change the character of the residential structure. Examples include decks, fences, garages, gazebos, patios, porches, and spas and swimming pools. All of these are non-habitable structures.

Response 25

The recommended bluff setbacks for the project are 50 feet for roads utilities and other non-habitable improvements and 60 feet for habitable structures. These setbacks meet or exceed those contained in the City of Newport Beach's General Plan. The setbacks only apply to bluff areas and are designed to conservatively account for potential slumping and erosion of the bluff face. As discussed in the Draft EIR on page 4.3-11 and in the Project Geotechnical Report on pages 18 and 19, the historic bluff retreat rates are greatly affected by conditions which either are currently not present and or would not be present following development. Consequently, following development, bluff slope retreat would be significantly reduced such that rational and normal development setbacks can be used. In this regard it should be noted that the 60-foot setback exceeds all governing agency requirements and would be more than adequate for the design life of the development. The recommendation of the EQAC to increase the minimum setback for residences to 100 feet is noted.

Response 26

These topics are addressed in Section 4.5 Hazards and Hazardous Materials, of the Draft EIR. The Baseline Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. This report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing. The draft Remedial Action Plan (see Section 4.5 and Appendix D of the Draft EIR) outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria.

Response 27

Please refer the response to Comment 26. As stated on page 4.3-17 of the Draft EIR, "Hydrocarbon-laden soils would be treated, tested, and placed in deep fills or outside the proposed development areas".

Response 28

The proposed Project's storm drain facilities have been analyzed and designed in accordance with Orange County Flood Control standards which require evaluation up to a maximum of a 100-year flood event. Increased flows from the development condition would be mitigated on site to reduce flooding to be less than or the same as the existing conditions for the Semeniuk Slough which is consistent with CEQA requirements.

Response 29

The proposed Project's irrigation systems would be designed to meet City standards for water efficient landscaping, where applicable in accordance with Municipal Code Chapter 14.17. Smart controller irrigation systems will be installed in all public and common area landscaping, and private residential areas as required by Municipal Code 14.17.020A.3.

Response 30

A Homeowners Association (HOA) would be formed prior to occupancy. The HOA would be responsible for inspecting and maintaining all Best Management Practices (BMPs) within the Project's common areas including the proposed water quality basins, in accordance with the BMP Operations and Maintenance Plan that would be prepared as a part of the Final WQMP. The HOA would also ensure that adequate funding is provided (and will be addressed in the WQMP) for long-term BMP maintenance.

The proposed retention basins in the Open Space Reserve would be the responsibility of the Applicant; the responsible party for the proposed basin in the North Community Park will be the City. The Conditions of Approval that the City would place on the Project will detail the structure and funding of the ownership and maintenance of these basins. It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by sources including endowments, HOA fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

Response 31

Based on the proposed LID features and other source control and treatment control BMPs consistent with the requirements of the Fourth Term MS4 Permit (Santa Ana RWQCB Order No. R8-2009-0030), the Coastal Commission and the City of Newport Beach, the proposed Project would be required to treat runoff prior to exiting the Project site. Please also refer to Topical Response: Infiltration Feasibility and Low Impact Development Features.

Response 32

As discussed in Section 4.4-4 of Section 4.4, Hydrology and Water Quality, and as illustrated in Exhibit 4.4-3 of the EIR, the Project site is not tributary to Newport Bay; it is tributary to the Santa Ana River. Consistent with the requirements of the Fourth Term MS4 Permit, the California Coastal Commission and the City of Newport Beach, the Project would provide treatment of runoff up to the 85th percentile level of treatment from a 24-hour storm event from all development areas prior to discharging into the Santa Ana River. In addition, the Project is proposing to implement a water quality basin to provide low flow treatment of runoff from a 48-acre off-site area of Costa Mesa prior to discharging into the Southern Arroyo; see page 4-4.26 of the Draft EIR.

Response 33

No work is proposed around the existing network of pipes located at the southwest part of the property (nor at the corner of Superior at West Coast Highway). Therefore, improvements are not considered.

Response 34

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. The continued operations of existing oilfield facilities are not a part of the proposed Project. These operations are regulated by the State Department of Oil, Gas and Geothermal Resources (DOGGR) and could continue to operate without City approval of the proposed Newport Banning Ranch development project. The proposed Project includes conditions of approval for Tentative Tract Map No. 17308 requiring indemnification of the City by the Applicant/Developer against 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 which may arise from or relate to the City's approval of the Project.

Response 35

With respect to the residential development areas, all oilfield operations would be removed. Impacted soils would be removed from these areas and remediated to agency approved cleanup criteria. Only native clean soils would remain at surface and within 10 feet below planned development areas; only soils that meet the cleanup criteria would be used at depths greater than 10 feet below the surface as compacted structural fill. With respect to health risks, a Human Health Risk Assessment (HHRA) was prepared as a part of the Draft EIR. Based on the significance criteria, no significant impacts are anticipated. Please refer to Section 4.10, Air Quality, of the Draft EIR.

Response 36

With the exception of the two oil consolidation sites, no oilfield operations would remain on the Project site. Please refer to the response to Comment 35.

Response 37

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

Response 38

Please refer to the response to Comment 9.

Response 39

The two referenced exhibits show different but complimentary information. Exhibit 4.5-1 references discrete areas of environmental concern highlighted in previous site investigations. The area shown in Exhibit 3-4 depicts the land area used for oil operations over time. While these areas may have been heavily used as part of the oil production process, there may not be contaminant impacts to all these areas. The Project requires that third-party certified environmental professionals monitor the oilfield abandonment, the remediation, and the full site grading phase to ensure all impacts are addressed to the approved criteria. Please also refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

Response 40

The comment is noted. The procedures described in Section 4.5 of the Draft EIR are intended to address the hazards associated with development on/near an oilfield.

Response 41

The description of plant communities within the bluff areas is provided on page 4.6-10 of the Draft EIR.

Southern coastal bluff scrub occurs along the exposed bluffs and cliffs at the southern edge of the Project site overlooking West Coast Highway. These exposed areas contain low-growing native and non-native species and some elements of maritime succulent scrub, which can also be used to describe components of this vegetation type. Southern coastal bluff scrub is dominated by bush sunflower (*Encelia californica*), bladderpod (*Isomeris arborea*), California buckwheat (*Eriogonum fasciculatum*), coastal cholla (*Cylindropuntia prolifera*), coastal prickly pear (*Opuntia littoralis*), and at some locations, locally dense areas of California box-thorn (*Lycium californicum*). The most common non-native species in this area are hottentot fig (*Carpobrotus edulis*) and Myoporum (*Myoporum laetum*).

Additionally, there are also disturbed areas southern coastal bluff scrub described on Page 4.6-12.

Disturbed southern coastal bluff scrub occurs along the exposed bluffs and cliffs at the southwestern edge of the Project site. These areas have been invaded by non-native species, such as hottentot fig and Myoporum, more heavily than the areas described above. In addition, landslides and invasion by non-native species have caused disturbance. This vegetation type is dominated by bush sunflower, hottentot fig, California buckwheat, bladderpod, coastal cholla, and coastal prickly pear.

Regarding the bluff shown on View 3 (Exhibits 4.2-5a and 4.2-5b of the Draft EIR), approximately 15 percent of the bluff length has experienced erosion due to surface runoff. These erosional areas would be restored as discussed on page 4.3-21 and illustrated in Exhibit 4.3-6 of the Draft EIR.

Exhibits 4.2.-3b and 4.2-5a are visual representations of the project and not reflective of the plant species that will be planted within the landscape areas or the native habitat restoration areas.

Response 42

As part of the Master Development Plan, a Master Plant Palette for the proposed Project based on land use and landscaping zones was prepared for public and private areas. The plant palette promotes native species, drought tolerant species, California friendly species, and bans the use of invasive species. In addition, the Master Development Plan provides specifications for efficient irrigation design that all public and private land uses must comply with. All future homeowners would be required to follow the requirements of the efficient irrigation design and the Master Plant Palette for the selection and implementation of their individual residential landscaping.

Response 43

Native species and drought tolerant species are generally considered feasible within all development areas and are consistent with the proposed Master Landscape Plan (Master Development Plan, Chapter 5) and proposed Plant Palette (Appendix K of the Draft EIR).

Response 44

Native vegetation consistent with bluff slope habitat would be incorporated into the restoration design.

Response 45

As discussed on page 4.6-13 of the Draft EIR, the Project site contains native grasses intermixed with non-native grasses and forbs, with the non-native grasses constituting a larger percentage of vegetation cover than the native grasses. Because the non-native grasses constitute the dominant percentage, the mapping of small pocket of mowed native grasses was not warranted and would not have changed the overall mapping designation of the grasslands communities on site. The mitigation for grasslands areas has taking into consideration the presence of remnant areas of native grasses. Mitigation Measure (MM) 4.6-2 provides for mitigation of both non-native grassland and ruderal vegetation at a 0.7:1 ratio through on-site or off-site restoration and preservation. This level of mitigation is proportional with the impacts.

There is no table regarding mitigation “ratios” for plants. Mitigation for Special Status Plant Species is found in MM 4.6-7. This measure requires the Applicant to:

“...plan, implement, monitor, and maintain a southern tarplant restoration program for the Project consistent with the most current technical standards/knowledge regarding southern tarplant restoration. Prior to the first action and/or permit that would allow for site disturbance (e.g., a grading permit), a qualified Biologist shall prepare a detailed southern tarplant restoration program that would focus on (1) avoiding impacts to the southern tarplant to the extent possible through Project planning; (2) minimizing impacts; (3) rectifying impacts through the repair, rehabilitation, or restoration of the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the Project; and (5) compensating for impacts by replacing or providing substitute resources or environments. The program shall be reviewed and approved by the City of Newport Beach (City) prior to site disturbance.

Impacts on southern tarplant shall be mitigated by seed collection and re-establishment. The seeds shall be collected and then placed into a suitable mitigation area in the undeveloped or restored portion of the Project site or at an approved adjacent off-site location”.

Response 46

As discussed on pages 4.6-21 and 4.6-22 of the Draft EIR, the Project site is located within an area that is largely constrained by urban development. Residential, office, light industrial, institutional, and limited retail development surround the Project site to the northeast, east, and south (separating it from the beach), and also west of the Santa Ana River. The dense urban development (including along the shoreline) separates the Project site from open space areas surrounding the site to all but the area adjacent to the Santa Ana River and Talbert Nature Preserve. The Project site and these open space areas provide a regional resource area for wildlife along the Santa Ana River area. In particular, a variety of birds would use this area to breed while others use it during migration as a stopover site to rest and refuel.

Prior to the consideration of mitigation, the Project would contribute to the historical loss of habitats in the coastal areas that provide habitat for wildlife. However, with implementation of

MM 4.6-1 (Coastal Sage Scrub Habitat Preservation and Restoration), MM 4.6-2 (Grassland Habitat Preservation and Restoration), MM 4.6-3 (Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration), MM 4.6-4 (Marsh Habitat Preservation and Restoration), and MM 4.6-5 (Jurisdictional Resources/Riparian Habitat Preservation and Restoration), this impact would be reduced to a less than significant level.

Revegetation following oilfield remediation activities and Project mitigation have the potential to result in higher long-term habitat quality (i.e., invasive species removed, human activity and disturbance related to oilfield operations removed, and larger blocks of contiguous native habitat) available in the open space areas.

Response 47

Please refer to Topical Response: Vernal Pools. Surveys were conducted on the seasonally ponded areas for two purposes. First, the ponded areas were surveyed to determine the presence/absence of the San Diego fairy shrimp, a federally listed endangered species. These surveys were performed in accordance with U.S. Fish and Wildlife Service (USFWS) protocols which, as the EQAC notes, require surveys during specific seasons and for a specific number of years. In addition, the seasonally ponded areas were evaluated in terms of whether they could be considered either wetlands or other waters subject to jurisdiction under Section 404 of the Clean Water Act and/or the Coastal Act. The wetland delineation requirements for evaluation of these areas using State and federal requirements were complied with as part of the survey work. The mitigation values were based in part upon consultation with the USFWS and in part of criteria used to evaluate functions and values of seasonal pond habitat (e.g., California Rapid Assessment Method [CRAM]: Individual Vernal Pools Field Book Version 6.0, February 29, 2012). Incorporation of this guidance into the final design of the mitigation pools are intended to ensure that the pools exhibit functions for both flora and fauna that are higher than the disturbed artificial pools that would be impacted by the Project, resulting in a net gain in both the extent and functions of the seasonal ponds on the Project site.

Response 48

As described on Page 3-13 of the Draft EIR, approximately 118.4 gross acres of the Project site are proposed for restoration as native habitat either by the Applicant as a part of the Project's biological resources mitigation obligations or as a means of satisfying off-site mitigation requirements. The compensatory mitigation requirements for the Project would be ultimately determined by the regulatory agencies as permit conditions. The exact amount of acreage that would be required to be restored as native habitat to satisfy the mitigation requirements of the proposed Project has not been established because it would be subject to the approval of respective regulatory agencies including the USACE, the CDFG, the USFWS, the Regional Water Quality Control Board (RWQCB) Santa Ana Region, and the Coastal Commission. If the Project's mitigation requirements do not require the restoration of the approximately 118.4-gross-acre area, any remaining acreage requiring restoration would be placed in a reserve area (mitigation bank) or similar mechanism and may be made available to third parties seeking off-site areas in which to fulfill their respective mitigation obligations. The Lowland Open Space area is first depicted in Exhibit 3-2, Newport Banning Ranch Land Use Plan, in Section 3.0, Project Description.

Response 49

The Housing Element identifies "very low," "low," or "moderate" income as annual household incomes not exceeding a percentage of the median family income identified annually by the Department of Housing and Urban Development (HUD) for the Orange County area. As

presented in Section 4.7, Population, Housing, and Employment, the State of California Department of Housing and Community Development (HCD) categorizes households into the following five income groups based on County Area Median Incomes (AMI):

- Extremely Low Income – 0 to 30 percent of the AMI.
- Very Low Income – 31 to 50 percent of the AMI.
- Low Income – 51 to 80 percent of the AMI.
- Moderate Income – 81 to 120 percent of the AMI.
- Above Moderate Income – above 120 percent of the AMI.

Extremely low, very low, and low income groups combined are referred to as “lower income groups”. Household income is adjusted for household size. The City’s 2000 Census income distribution using the above income thresholds was as follows:

- Extremely Low Income – 7 percent.
- Very Low Income – 6 percent.
- Low Income – 9 percent.
- Moderate and Above Moderate Income – 78 percent.

Response 50

Population estimates and projections are prepared by the State of California Department of Finance.

Response 51

The in-lieu fee and affordability criteria are established by the City’s Inclusionary Housing Ordinance (Newport Beach Municipal Code Chapter 19.54). The proposed Project neither specifies nor restricts the location of on-site and off-site affordable housing units. The provision of off-site affordable housing can be accomplished through the construction of new affordable housing units, or ensuring that affordable rental units remain so by providing funding to allow for the imposition of an affordable covenant on existing units to ensure that they remain affordable for a set period of time. The City has the discretion to use the in-lieu fees that are paid to provide affordable housing through the options described above and anywhere throughout the City. The projected sale prices cannot be determined at this time. The affordable units that are to be constructed on site are proposed to be located in the Urban Village. They would be rental units and pricing cannot be determined at this time but would be dictated by market conditions at the time the units are made available.

Response 52

The Draft EIR identifies that the proposed pedestrian and bicycle bridge would require approvals from the California Coastal Commission and Caltrans. Please refer to the response to Comment 19.

Response 53

Bluff Toe Trail would be located in the Lowland Open Space adjacent to the Oil Access Road. It would be improved almost exclusively within the Oil Access Road easement which is the

location of the existing oil access road. The approximate 0.4-mile trail would connect the South Family Village to the Lowland Interpretive Trail. The proposed ten-foot-wide trail would be approximately 150 feet from residences in Newport Shores which is also set back from the Project site by the Semeniuk Slough.

Response 54

The Draft EIR does evaluate the potential environmental effects of the Community Park. Please refer to Sections 4.1 through 4.15 of the Draft EIR.

Response 55

Exhibit 4.9-2 is a copy of the City of Newport Beach Master Plan of Streets and Highways, which shows the future roadway system for the City at buildout. 16th Street is shown as a local roadway within the City of Newport Beach boundaries, not a 4-lane divided roadway.

Response 56

This condition is a standard condition of the City of Newport Beach; the City requires that all hauling operations occur only on arterial highways. Monitoring of construction traffic for the Project to observe construction traffic hours and volumes would be conducted at the appropriate approaches to the construction site and is enforced by City project inspectors.

Response 57

As a part of the proposed Project, access is also proposed from 15th Street, 17th Street, West Coast Highway, and 19th Street. A Memorandum of Understanding (MOU) has been entered into between the School District and the Applicant that would permit these roadways to be constructed as identified in the Draft EIR.

Response 58

Off-site improvements to West Coast Highway are addressed in Section 3.0, Project Description, of the Draft EIR. The widening of Coast Highway along the project frontage has been accounted for in the design of the Bluff Road access to the Newport Banning Ranch property. Page 3-21 of the Project Description describes the proposed improvements which are also shown on Exhibit 3-14, West Coast Highway Off-site Improvements.

Response 59

The description of Resort Colony Road refers to the roadway that would provide for access and general circulation to/from the Resort Colony.. The detailed design of service driveways and visitor and resident circulation driveways within the Resort Colony would be part of the final design of the Resort Colony and reviewed by the City as part of Site Development Review as required by the Newport Banning Ranch Planned Community Development Plan (NBR-PC) prior to issuance of building permits for any portion of the Resort Colony.

Response 60

The opinion of the EQAC is noted. The existing emission source data is provided in Attachment A (starting on page 3 of 30) of the Human Health Risk Assessment (HHRA) which is included in Appendix G of the Draft EIR.

Response 61

The opinion of the EQAC is noted. The HHRA was performed according to the SCAQMD's *Risk Assessment Procedures for Rules 1401 and 1402* following the tiered analysis approach. The methodology is addressed in detail in Section 4.10, Air Quality, of the Draft EIR.

Response 62

The references to URBMEIS has been changed to CalEEMod in the Final EIR as follows:

Page 4.10-7

Fugitive dust emissions (PM10) were calculated using ~~the URBEMIS model~~ CalEEMod, USEPA's AP-42, and SCAQMD's CEQA Air Quality Handbook.

Emissions from operation of the residential, commercial, and other Project development after completion were calculated using ~~URBEMIS~~ CalEEMod. TAC emissions were determined from the generated PM10 and VOC emissions.

Page 4.10-20

The results of the ~~URBEMIS~~ CalEEMod calculations for Project construction are shown in Table 4.10-7, which shows the estimated maximum daily emissions for each construction year. Appendix G of the EIR includes the CalEEMod model output details, including unmitigated and mitigated emissions on site and off site for each construction activity for each year; Table 4.10-7 summarizes the findings. The data are compared with the SCAQMD mass daily thresholds.

Response 63

The elements of the peak day emissions calculations by (1) construction activity (e.g., remediation, grading); (2) by year; (3) whether they are on-site or off-site; and (4) by source (e.g., off-road equipment, worker commute) are included in the CalEEMod data report in Appendix G of the Draft EIR. The data report also includes notes regarding the equipment specified.

Response 64

It is unclear what additional information is requested by the EQAC. Please refer to Section 4.10.3, which provides the methodology used in the preparation of the air quality analysis for the Draft EIR. Please also refer to the CalEEMod data outputs in Appendix G of the Draft EIR that have detail similar to that described for construction in the previous response.

Response 65

The opinion of the EQAC is noted. The future emission source data is provided in Attachment A (starting on page 1 of 10) of the Human Health Risk Assessment (HHRA) which is included in Appendix G of the Draft EIR.

Response 66

The purpose of screening analyses is to provide a simple, conservative test that would provide an answer and thereby avoid an unnecessary detailed analysis. The South Coast Air Quality

Management District (SCAQMD) accepts the Sacramento Metropolitan Air Quality Management District (SMAQMD) methodology for hotspot screening.

Response 67

Ambient air quality analysis for operations is appropriate when there are substantial stationary sources of pollutants such as power plants, mining operations, or industrial facilities, or when there is a massing of mobile sources such as a warehouse/distribution facility, bus station, or a railroad yard. The proposed Project has none of these sources.

Response 68

The potentially significant NO_x impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NO_x or NO₂ would be less than significant because they would be less than the significance thresholds set forth by the SCAQMD. Please also see the general discussion of NO_x emissions during construction. A summary of the health risks of the national criteria pollutants is provided in Topical Response: Air Quality.

Response 69

The State of California Air Resources Board (CARB) has designated almost 200 compounds as TACs. Of the ten tasks posing the greatest health risk in California, most are associated with risk for various forms of cancer. Non-carcinogenic risks include but are not limited to respiratory illness, blood disorders (from chronic benzene exposure), renal toxicity (from hexavalent chromium), and eye, nose, and throat irritation (from formaldehyde). The Human Health Risk Assessment (HHRA) for the proposed Project determined that both carcinogenic and non-carcinogenic health risks associated with the proposed project would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR. Appendix G of the Draft EIR explains in greater detail the potential health risks of TACs.

Response 70

Table 4.11-3, Estimated GHG Emissions from Construction, in Section 4.11, Greenhouse Gas Emissions, of the Draft EIR is based on the assumption of removal of 25,000 cubic yards (cy) of soil. If one postulates the removal and replacement of 250,000 cy of soil, a rough estimate of the increase in GHG emissions would be 3,300 MTCO₂e (metric tons of CO₂ equivalent) over the three-year remediation period. Amortized over a 30-year project lifetime, the increase would be approximately 110 MTCO₂e/year. Please note that the 6,000 MTCO₂e/year significance criteria is applicable to the total GHG emissions estimate (Table 4.11-5) and not to individual years of construction.

Response 71

As stated in Section 7.0, Alternatives to the Proposed Project, of the Draft EIR, for both Alternatives A and B, GHG emissions would be less than the threshold of 6,000 MTCO₂e/yr and substantially less than the forecasted emissions for the proposed Project. A further quantitative analysis is not required of these alternatives to perform meaningful calculations.

The comparison of proposed Project's GHG emissions with typical residential and commercial developments is an extension of the basic philosophy of Assembly Bill 32, the California Global Warming Solutions Act of 2006, which is to reduce GHG emissions as compared with "business as usual". Business as usual assumes development without measures incorporated for the purposes of reducing GHG emissions. This concept is incorporated into the CalEEMod

model and other GHG calculation methods, as the default, and is described in the Draft EIR as typical residential and commercial development. The Project Design Features and mitigation measures are then used to calculate GHG emission reductions.

As noted in the response to the South Coast Air Quality Management District, “a significant amount of VOC, CO, and GHG emissions will be emitted during the project’s operational phase from transportation sources.” The SCAQMD states that, “the lead agency should minimize the project’s significant air quality impacts by incorporating the transportation mitigation measures found in the greenhouse gas quantification report published by the California Air Pollution Control Officer’s Association (CAPCOA).”

The following four transportation measures are included in the Project Description, implied in the Project design, or described in Project Design Features (PDFs) 4.10-1 and 4.10-2. In the Draft EIR, these measures were not specified as being correlated with the CAPCOA document.

Increase density – CAPCOA measure LUT-1

Increase diversity of urban and suburban developments (mixed use) – LUT-3

Integrate affordable and below market rate housing – LUT-6

Provide pedestrian network improvements – SDT-1

The four measures above are “mitigation measures” in the CalEEMod model and were included in the Draft EIR emissions analysis. These measures provide emissions reductions of 29 percent VOC, 22 percent NOx, 23 percent CO, 35 percent PM10, and 32 percent PM2.5.

The Project includes PDF 4.11-3, which requires the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and would provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA. This PDF implements CAPCOA measure LUT-5, Increase Transit Accessibility. The measure was not included in the CalEEMod analysis because the input requires a single distance from the Project to a major transit facility, which is not compatible with the Project design. However, PDF 4.11-3 would reduce VMT and would reduce criteria pollutant and GHG emissions below the rates shown in the Draft EIR.

The Project includes MM 4.10-10, which requires bicycle facilities in multi-family, commercial, and resort buildings, which corresponds to CAPCOA transportation measures SDT-6 and SDT-7. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

The Project includes MM 4.11-5 which requires electric vehicle charging stations at the multi-family buildings and at the resort inn, which corresponds to CAPCOA transportation measures SDT-9, Provide Electric Vehicle Parking. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

To further encourage the use of electric vehicles, MM 4.11-5 has been revised and is incorporated into the Final EIR as follows:

MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the

Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

Response 72

“Similar land uses” is used in the same context as “typical residential and commercial development.” Please also refer to the response to Comment 71.

Response 73

As addressed in Section 5.0, Cumulative Impacts of the Proposed Project, of the Draft EIR, because of the global nature of the climate change problem, most projects will not generate greenhouse gas (GHG) emissions that individually will cause a significant impact on global climate change. Therefore, the analysis of a project’s GHG impacts is typically not considered individually, but is analyzed against the GHG emissions of existing and proposed projects within the region, State, and ultimately against global emissions and how the emissions can cumulatively affect global climate change. This concept is supported in the various Attorney General, State of California Office of Planning and Research, and SCAQMD publications. Therefore, the analysis presented in Section 4.11, Air Quality, almost exclusively addresses cumulative impacts. Under the significance criteria for GHG, potential cumulative impacts could occur if the proposed Project—when combined with other past, present, and reasonably foreseeable future projects—would (1) generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment (emit more than 6,000 metric tons of carbon dioxide equivalent [MTCO₂e] of GHGs) (Threshold 4.11-1) or (2) conflict with any applicable plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect (Threshold 4.11-2). The total annual estimated GHG emissions for the proposed Project are 19,392 MTCO₂e/yr. The Project would emit quantities of GHGs that would exceed the City’s 6,000 MTCO₂e/yr significance threshold. Therefore, the proposed Project—in combination with other past, present, and reasonably foreseeable future projects—would make a cumulatively considerable contribution to the global GHG inventory and would have a cumulatively significant impact on global climate change.

Response 74

The Project would comply with the City’s Noise Ordinance which apply to all projects in the City and which regulate the days and hours during which construction may occur. Mitigation Measure 4.12-3 in the Draft EIR provides that advance notice be provided by contractors to Carden Hall School, the Coast Community College District’s Newport Beach Learning Center (under construction), and residences within 300 feet of noise-generating activities prior to the

start of construction-related noise-generating activities as a means of providing advance time for the schools and residents to plan for the occurrence of these activities. The noise mitigation measures proposed for the Project are considered the appropriate feasible measures to minimize construction noise impacts considering the duration of noisy work near sensitive receptors.

Response 75

Rubberized asphalt pavement has been used for more than 30 years. There have been many studies demonstrating the noise reduction of rubberized asphalt pavement. Most studies have found noise reductions greater than the 4 decibel (dBA) value used in the Draft EIR. This pavement has been used extensively in California, Arizona, and other states. As stated on page 4.12-22 of the Draft EIR, Costa Mesa has used rubberized asphalt since 2004. Of note, CalRecycle has recently given the City of Carlsbad a \$130,000 grant to continue their rubberized asphalt program because the program would divert approximately 17,000 used tires from landfills. Standard Condition 4.12-4 requires the use of rubberized asphalt pavement on Project roadways and a 4 dBA reduction was used in the analysis of traffic noise from Project roads. Rubberized asphalt was not an element of the air quality analysis.

Response 76

The comment is noted. A detailed Mitigation Monitoring and Reporting Program (MMRP) must be adopted by the City if it decides to approve the Project. The MMRP would be available for public review prior to its adoption. Once adopted, the MMRP would be implemented by the City to ensure that all Project Design Features, Standard Conditions, and Mitigation Measures adopted in connection with the Project are satisfied and implemented.

Response 77

Restrictions on the hours of truck deliveries are consistent with the intent of the City's General Plan Noise Element Policy 2.3. A mitigation measure requiring a separation between loading docks and residential units is not feasible in the mixed-use context where residences are located directly above commercial uses.

Response 78

The comment refers to planned removal of oilfield-related infrastructure prior to grading and that extent of impacts to CA-ORA-839 is unclear at this time. The objective is to minimize the disturbance to the archaeological site; however, the extent of disturbance that would result through the removal of the infrastructure cannot be determined with certainty. There is extensive oilfield infrastructure on the Project site as the property has been an active oilfield since the 1940s. All reasonable efforts would be made to ensure minimal impact to the archaeological site during Project grading through the implementation of appropriate mitigation measures.

Response 79

The EQAC is correct in stating that there are multiple entities involved in water distribution within Southern California. However, the EQAC's summary of the last paragraph on page 4.15-12 is incorrect. The information in this paragraph and following paragraphs is a summary of the Metropolitan Water District's 2010 Regional Urban Water Management Plan (2010 RUWMP) and not a summary of the Water Supply Assessment (WSA). The WSA incorporates information from planning documents associated with MWDOC, MWD, OCWD, as well as the City's 2010

Urban Water Management Plan and determined that adequate water supplies are available to meet the needs of the Project along with the demands of future development within the City.

Response 80

Although not preferred, a lift station would be constructed as necessary to provide adequate wastewater service. The lift station is assumed in the Draft EIR analysis and as indicated on page 4.15-29, the lift station could be located within the limits of disturbance assumed in the Draft EIR. The lift station would be located in an enclosed structure and would not create any operational noise impacts. Construction impacts associated with the lift station are assumed in the Draft EIR analysis.

Response 81

As indicated on pages 4.15-37 and 4.15-38, the physical impacts related to installation and/or relocation of electrical and natural gas infrastructure are addressed as part of the proposed Project in the Draft EIR. The primary environmental impacts associated with on-site infrastructure installation would be related to air quality and noise, as this component of construction involves mainly grading, excavation, and movement and placement of the infrastructure materials. Potential impacts would be reduced to a less than significant level with implementation of the Project Design Features, Standard Conditions, and Mitigation Measures identified in the Section 4.15.3, Energy. All Project Design Features, Standard Conditions, and Mitigation Measures including those for electricity and natural gas would be added to the Mitigation Monitoring and Reporting Plan.

Response 82

Mitigation Measure (MM) 4.2-1 in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, requires use of Dark Sky Standards as identified by the Illuminating Engineering Society of North America (IES). The IES has 8,000 members and has existed for over 100 years as the recognized technical authority in illumination in the United States (see www.ies.org). IES and the International Dark Sky Association (IDA, see www.darksky.org) have jointly developed a Model Lighting Ordinance (MLO) intended to, among other things, provide local agencies with outdoor lighting standards for dark sky that reduce glare, light trespass, and sky glow. With respect to ASHREA, as referenced by the EQAC, the sole focus of ASHREA is "heating, ventilating, air conditioning, and refrigeration" (see www.ASHRAE.org); it does not have such standards.

The Model Lighting Ordinance (MLO) was publicly released in July 2011 "to address the need for strong, consistent outdoor lighting regulation" (see www.darksky.org/MLO). The MLO outdoor lighting template offers several innovations to outdoor lighting regulation, including the use of five lighting zones to classify land use with appropriate lighting levels for each. Zones range from LZ0, designed for pristine natural environments and limited outdoor lighting, to LZ4, for limited application in areas of extensive development in the largest cities. The second innovation limits the amount of light used for each property. The third uses the IES's new TM-15-11 "BUG" (Backlight, Uplight and Glare) classification of outdoor lighting fixtures to ensure that only well-shielded fixtures are used. No uplighting for area and street lighting is allowed in any zone.

Regarding targeted darkness levels, specific maximum lighting levels are addressed in Section 4.1, Land Use and Related Planning Programs, Section 4.2, Aesthetics and Visual Resources, and Section 4.6, Biological Resources, of the Draft EIR.

Response 83

As addressed in Section 4.8, Recreation and Trails, the City's Park Dedication and Fees Ordinance (*City of Newport Beach Municipal Code*, §§19.52.010–19.52.090) requires that the project applicant for a residential subdivision “provide for the dedication of land, the payment of fees in lieu thereof, or a combination of both for park or recreational purposes in conjunction with the approval of residential development”. Based on the figures from the 2000 federal census and the City's General Plan Recreation Element identifying the amount of park acreage in the City, the City's park dedication requirement is 5 acres per 1,000 persons (*City of Newport Beach Municipal Code*, Chapter 19.52.040).

In addition to compliance with the City's Park Dedication Ordinance, the General Plan specifically addresses the need for a Community Park to be located on the Project site. Land Use Policy 6.5.2 of the City's General Plan states that the Newport Banning Ranch property must:

Accommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed.

The proposed Project would exceed its Quimby parkland requirement of 15.06 acres with the provision of the 26.8-gross-acre (21.7-net-acre) Community Park. In total, the Project would include approximately 51.4 gross (42.1 net) acres of parkland that would be available for public use.

The EQAC has not identified if the recommendation for a Project alternative with 100 acres of parks would be in addition to the proposed development land uses or would displace some of the proposed land uses. Further the types of parks have not been identified by the EQAC. Should the EQAC's suggested alternative increase the proposed parkland by approximately 50 acres in addition to the proposed land uses, it is anticipated that such an alternative would result in greater environmental impacts than identified for the proposed Project. It is expected that increased density and intensity of development would be required and may also result in greater nighttime lighting impacts. If the EQAC is proposing to reduce proposed land uses in order to allow for more of the site to be used for parks, it is anticipated that there would be a reduction in Project-specific effects such as development-related traffic and noise. Without knowing the EQAC's thoughts with respect to the type of additional parks, it would be speculative to determine the type of potential effects would occur with such an alternative. It should be noted that an increase in parklands beyond that which would be required to meet the City's Park Dedication and Fees Ordinance would not be the obligation of the Applicant.

Response 84

The Draft EIR recognizes that the propose Project would introduce new residents into the City and would provide for additional roadways. This analysis focuses on three primary questions:

- To what extent are there areas where development could occur (planned or unplanned)?
- Would the Project provide new infrastructure that would serve future growth?
- Would the Project be sufficient to influence redevelopment of the surrounding area?

The proposed Project is in an area nearly built out with retail, commercial, and residential uses. Most of the surrounding areas are either already developed or are within public ownership. The only large undeveloped lands near the Project site are recreation or ecological preservation

areas. Further to the north in Huntington Beach, additional development is planned as part of the Brightwater Specific Plan project in Bolsa Chica. However, this development has already been approved and is under construction; it would not be influenced by the proposed Project.

The *City of Newport Beach General Plan* has identified other locations within the City for expanded development and enhancements. None of these locations are immediately adjacent to the Project site, nor do they depend on the Project's implementation to be consistent with the vision in the General Plan. As proposed, the Project would not influence development in other portions of the City. However, should the Project site be developed consistent with the Open Space designation, other areas of the City may need to intensify development to meet the City's projected housing demand. The lack of available undeveloped land limits any growth-inducing effect of the proposed Project.

With the exception of Bluff Road and North Bluff Road, the new infrastructure that would be constructed as part of the proposed Project is intended to only serve the Project. The utility improvements that are being implemented are distribution lines that would serve the land uses on site. The Project does not propose improvements that would extend services to areas that currently are not served or provide additional capacity in these infrastructure improvements, thereby facilitating new off-site development or intensification of land uses.

Bluff Road and North Bluff Road would provide a connection between West Coast Highway on the south and 19th Street on the north that would provide capacity beyond what is needed to serve the Project site. However, this roadway has been on the City's Circulation Element Master Plan of Streets and Highways and the Orange County Transportation Authority's Master Plan of Arterial Highways for a number of years. This roadway is intended to provide an additional north-south roadway to alleviate congestion on parallel roadways. The Project would accommodate planned growth but would not induce growth through the provision of infrastructure.

Response 85

As addressed on page 7-31 of the Draft EIR, the majority of the Project site is within the County of Orange jurisdiction, which does not have any restrictions on expanded oil exploration. Under the No Project/No Development scenario, the property would not be annexed into the City of Newport Beach; therefore, the City's restrictions on new oil exploration would not be applicable. New and replacement wells are drilled, as necessary, as part of ongoing oil operations. Although the precise number and location of new and replacement wells is not known, it is reasonable to assume that continued oil operations including additional drilling would occur as part of this alternative within the parameters of the Coastal Development Permit Exemption. Further, the property owner could seek additional drilling rights. It is unknown how much additional oil exploration would occur over the years. Section 3, Project Description, page 3-2 states "The timing of the abandonment of the oil consolidation sites has not been determined, but it is anticipated that oil production on the Project site would continue for an additional 30 to 40 years from now".

Response 86

As stated on page 7-41 of the Draft EIR, it would be speculative to estimate the magnitude of emissions from increased oilfield activities. However, as shown in Table 4.11-4 of the Draft EIR, existing vehicle GHG emissions associated with oilfield operations are less than 500 metric tons per year. Thus, even a doubling of vehicle use would result in an increase that would be substantially less than 6,000 metric tons per year.

A “jobs-rich” area is defined as an area where the jobs/housing ratio exceeds 1.5. Please refer to Table 4.7-9 of the Draft EIR and the associated text for additional information.

Response 87

Environmental laws currently in effect would be applicable to oil operations. Therefore, compliance with the Endangered Species Act and Coastal Act would be required; however, oil operations are covered by a Coastal Act exemption because they were in operation prior to adoption of the Coastal Act. The removal of natural vegetation may not require agency approvals. Such approval would be required if the vegetation supports endangered species, is considered environmentally sensitive habitat, or is otherwise protected by existing laws and regulations.

Response 88

As stated on page 4.12-27 of the Draft EIR, the threshold of significance (at the California Seabreeze and Parkview Circle residences) is 5 dBA, because the Without Project noise level at all receptors is less than 55 dBA CNEL. The existing noise level in this area, based on measurements at location 5 is 47.3 dBA CNEL.

Response 89

As addressed in Section 7.0, Alternatives to the Proposed Project, Alternative D assumes basically the same arterial roadway network as the proposed Project. Although this Alternative would have fewer residential units and no resort inn, it is projected that there would be an increase in the number of AM peak hour trips.

The number of residences in the Urban Colony would decrease from 730 du to 525 du. The resort inn in the Resort Colony would be eliminated. There would also be a redistribution of the commercial development. The commercial use in the Urban Colony would decrease from 75,000 sf to 60,000 sf and 15,000 sf of commercial use would be allocated to the area designed by the proposed Project as the Resort Colony. This commercial use would be visitor-serving and is anticipated to be a combination of shopping and restaurant uses with an emphasis on restaurants. The increase in the AM peak hour trips is anticipated because the AM trip generation rate for restaurants is greater than for a hotel.

Response 90

The comment is noted. CEQA requires that a reasonable range of alternatives be provided, not that every possible alternative be provided and studied. As such, the bridge is only included in some of the alternatives.

Response 91

The No Project/No Development Alternative would preclude the significant, unavoidable impacts associated with the proposed Project and other Project alternatives. Night lighting impacts could be reduced should the proposed Community Park not include night lit ball fields. As noted in the response to Comment 14, the City of Newport Beach 2006 General Plan Update Final EIR found that the introduction of new sources of lighting associated with development of the Project site, not just a park, would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which noted that there are specific economic, social, and other

public benefits that outweigh the significant unavoidable impacts associated with the General Plan project, which included this benefit:

The updated General Plan will improve the opportunities for parks and recreation facilities to serve the City's residents and visitors. It provides for the development of a new park at Banning Ranch, whether acquired as open space or partially developed, that will provide playfields and passive recreational opportunities for the underserved western portion of the City. Additionally, the Plan, for the first time in Policy R 1.9, prioritizes park and recreational facility improvements.

Therefore, in adopting the 2006 General Plan Update and developing a park plan that anticipates night lighting for the athletic fields, the City made a policy determination that the impacts of night lighting would be outweighed by the public benefits – all of which were set forth in the Statement of Overriding Considerations adopted by the City in connection with approval of the General Plan. The alternative of eliminating the lights on the ball fields was considered, but rejected as being infeasible because it conflicted with the City's General Plan policies (please refer to Section 7.0, Alternatives to the Proposed Project, page 7-7).

Responses 92

Though the remediation may be done in one continuous process, the referenced sentence from the Draft Remedial Action Plan states that any residential construction within a phase or sequence is contingent upon the completion of the remediation work and agency closure in that phase. Please also refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

Response 93

Table 4.5-1 of the Draft EIR provides a listing of the range of soil sample results for assorted contaminants at the Project site. None of the reported maximum concentration values are at levels above the State's hazardous waste levels provided in Title 22 of the California Code of Regulations. The dRAP does not conclude that the Project site is different from other former oilfields with respect to the presence of human health hazards.

Response 94

The methods and criteria to be used during the Project site remediation are included in Section 4.5, Hazards and Hazardous Materials, and Appendix D of the Draft EIR. Only reuse soils that meet the agency approved cleanup criteria would be used in deeper fill areas. Soils would be re-used on site only with the approval and oversight of the designated oversight agencies.

All pipelines and surface oilfield materials would be removed from the Project site except where it is determined that leaving them in place in the Lowland area would be preferred over removal (i.e., removal would be more invasive). It is important to note that in the two oil consolidation sites, oil infrastructure would remain because oil operations would be ongoing. As noted in the response to Comment 9, DOGGR found that NORM (Naturally Occurring Radioactive Material) is not a serious problem in California (confirmed earlier 1987 study).

Response 95

As discussed in Section 4.5 of the Draft EIR, additional vapor assessments and mitigation measures are to be implemented after site remediation and prior to site development. The proposed Project would be required to comply with the Orange County Fire Authority Guideline C-03 Combustible Soil Gas Hazard Mitigation.

Response 96

Table 4.5-3 of the Draft EIR also provides a list of Project Site Recognized Environmental Conditions, similar to that listed in Table 3-3. All of these sites would be addressed in the remediation program to ensure they meet the approved cleanup criteria. The mitigation approach for these areas is described in Section 4.5 of the Draft EIR.



Comment Letter L2

Community Development

www.cityofirvine.org

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

(949) 724-6000

SEP 26 2011

September 21, 2011

Ms. Jennifer Y. Marks
Bonterra Consulting
151 Kalmus Drive, Suite E-200
Costa Mesa, CA 92626

Subject: Review of Newport Banning Ranch Project DEIR

Dear Ms. Marks:

Thank you for the opportunity to review the Draft Environmental Impact Report for the Newport Banning Ranch development project.

The City of Irvine has reviewed the document and related traffic impacts and has no comments at this time.

Sincerely,

BILL JACOBS, AICP
Principal Planner

PRINTED ON RECYCLED PAPER

Letter L2 **City of Irvine**
Bill Jacobs, Principal Planner
September 21, 2011

Response 1

The comment is noted.



CITY OF COSTA MESA

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

DEVELOPMENT SERVICES DEPARTMENT

Comment Letter L3

November 8, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR NEWPORT BANNING RANCH

Dear Mr. Alford:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) prepared for the Newport Banning Ranch Master Plan. Please consider the following comments:

TRANSPORTATION

General comments:

- The report does not have graphics showing traffic volumes at intersections and Average Daily Traffic (ADT) on roadway segments. The City requests that these be provided in order to conduct a complete review of the results of various land use and circulation scenarios.
- At several occasions, the intersections at Newport Boulevard Frontage Road at Victoria and 22nd Street are referred to as State intersections. These intersections are in City of Costa Mesa jurisdiction and control.

1

Page 4.9-3: In the discussion of Master Plan of Arterial Highways (MPAH), the report incorrectly states that the Orange County Transportation Authority's (OCTA) MPAH defines "Orange County freeway, toll road and arterial circulation system." The MPAH map is limited to arterial highways only and the freeways and toll roads are included for information purposes only and reflect existing conditions. This is based on discussions with OCTA staff and also per the OCTA MPAH map itself, which mentions that the information on freeways, toll roads are provided for reference only.

2

Page 4.9-20: Standard condition SC 4.9-3 requires review and approval of the City of Newport Beach Traffic Engineer for issuance of a Haul Route permit. The report should include a condition requiring the approval of City of Costa Mesa Transportation Services Manager for use of any routes within the City of Costa Mesa jurisdiction for construction access.

3

Page 4.9-75: There are several incorrect statements in the discussion of SR-55 Freeway Extension. The report mentions that "The City of Costa Mesa Circulation Element depicts the extension of SR-55 as a freeway between 19th Street and Industrial Way. The Orange County

4

<p>MPAH depicts the freeway portion of SR-55 ending at its current terminus at 19th Street in Costa Mesa.” As mentioned in comment earlier, the OCTA MPAH is limited to arterials only. The SR-55 Freeway is under the jurisdiction of the State of California Department of Transportation (Caltrans). Caltrans has an adopted Route Concept Report (RCR) for SR-55 Freeway that shows the extension of SR-55 Freeway south to Industrial Way. There is no mention of Caltrans RCR in the discussion. As part of the proposed MPAH amendment study for the Banning Ranch project, the City requested that model run and analysis of project with SR-55 Freeway as currently proposed also be included.</p>	<p>4 cont.</p>
<p>Pages 4.9-81 and 4.9-82: The buildout analysis seems to yield significantly lower Intersection Capacity Utilization (ICU) values compared to 2016 conditions. The City requests that the future traffic volume projections at all intersections be provided for review.</p>	<p>5</p>
<p>Page 4.9-93: MM 4.9-2, Costa Mesa Mitigations – The City of Newport Beach should condition that the applicant mitigate the project impacts in Costa Mesa based on terms and conditions as agreed to by the applicant and the City of Costa Mesa.</p>	<p>6</p>
<p>Page 4.9-95: Newport Boulevard – 19th Street Intersection: The recent widening of Newport Boulevard at this location constructed a retaining wall along the west side. The primary access road to parking garage serving the large office building at 1901 Newport Boulevard is located immediately adjacent to this retaining wall. This access roadway will be impacted with any widening.</p>	<p>7</p>
<p>Newport Boulevard – 17th Street Intersection: The proposed mitigation at this location will require undergrounding the existing open channel along southbound Newport Boulevard south of 17th Street to accommodate the fourth through lane. This requires construction of a concrete box structure in the widened area south of 17th Street.</p>	<p>8</p>
<p>Page 4.9-96: Superior Avenue – 17th Street: The note incorrectly states that the improvement is limited to signal operation modifications. The project also includes a westbound right-turn lane, which will require right-of-way from the adjacent parcel. The improvement will also affect drive thru operations of fast food restaurant, which will need to be addressed.</p>	<p>9</p>
<p>Page 4.9-116: Table 4.9-34 shows projected increase in traffic due to project traffic. The project trip distribution exhibit stated that approximately 35% of 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.</p>	<p>10</p>
<p>Page 7-81: The traffic analysis should include graphics showing traffic volumes at intersections for all scenarios. In addition, graphics showing Average Daily Traffic (ADT) volumes for all scenarios should be included.</p>	<p>11</p>
<p>LAND USE</p> <p><i>Section 4.1.7- Environmental Impacts, Page 4.1-31</i></p> <p>The first paragraph refers that no development or grading is proposed for the open space between North Bluff Road and existing California Seabreeze residential community in Costa Mesa.</p>	<p>12</p>

<p>This area is within the project perimeter where abandoned oil wells exist. Given the significance of the Banning Ranch development and proximity of North Bluff Road to these residences, the City recommends that new grading and landscaping is installed in the area where the existing dirt berm is located. It is important that landscape restoration take into consideration any comments from the Seabreeze community and City of Costa Mesa staff. It is also suggested that any improvements be included with the initial phases of the project development so that these Costa Mesa residents could potentially benefit directly from the revitalized open space area to the fullest extent possible</p>	<p>12 cont.</p>
<p>Exhibit 3-9 The street cross section is only depicting the street and not the adjacent slope. It would be helpful to have additional information on the view impacts for the northern segment of Bluff Road adjacent to the Seabreeze community.</p>	<p>13</p>
<p>AESTHETICS</p> <p>The City recommends that this section address interim aesthetic impacts to Costa Mesa communities. To minimize construction impacts to the Seabreeze community, stock piles, construction staging and material storage shall be located away from the residential properties of Seabreeze and Parkview Circle. It would be important to offer a 24-hour hotline for residents to call with any concerns during construction.</p>	<p>14</p>
<p>NOISE</p> <p><i>Section 4.12.1 (Page 4.12-8)</i> The City recommends that the construction hours for the development be consistent with the City's regulations: Permitted Hours of Construction for City of Costa Mesa are from 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday; no construction is permitted on Sunday or federal holidays.</p>	<p>15</p>
<p>RECREATION AND TRAILS</p> <p><i>Section 4.8.5 Community Parks (Page 4.8-10)</i></p> <p>The DEIR refers to North and South Community Parks with various amenities. The California Coastal Act notes that "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." If there are any visitor fees or parking costs associated with proposed public recreational facilities and community parks, the City recommends that Costa Mesa residents be offered a discounted rate.</p>	<p>16</p>

Sincerely,

 KHANH NGUYEN
 Interim Development Services Director

cc: Chief Executive Officer
 Interim Assistant CEO
 City Attorney
 Interim Public Services Director
 Transportation Svs. Manager

Letter L3a City of Costa Mesa
Khanh Nguyen, Interim Development Services Director
November 8, 2011

Response 1

All intersection turning movement volumes are provided in the intersection analysis worksheets for every scenario in the Draft EIR Traffic Impact Analysis; see Appendix F of the Draft EIR (the worksheets are provided in Appendix B to the Traffic Impact Analysis. Average daily traffic (ADT) volumes were not evaluated in the Traffic Impact Analysis for every intersection traffic study area because the impact analysis of all three cities and Caltrans are based on a project's impact on peak hour intersection operation. However, please refer to pages 4.9-114 through 4.9-117 which addresses ADTs for 15th, 16th, 17th, and 19th Streets as well as Exhibits 4.9-24 and 4.9-25. The comment regarding the intersection of Newport Boulevard (frontage road) at Victoria/22nd is acknowledged. This intersection was erroneously included in the list of intersections studied as part of the State Highway analysis.

Response 2

The comment regarding freeways and toll roads on the Orange County Master Plan of Arterial Highways (MPAH) is noted.

Response 3

The standard condition requires the Applicant to obtain a haul route permit from the City of Newport Beach Public Works Department. The commenter's request would require the City to delegate that permit authority to another jurisdiction. This would create unnecessary complications and ambiguities in permit administration and enforcement. The City will make every effort to consult with the City of Costa Mesa in the review of haul routes within the City of Costa Mesa.

Response 4

The comment regarding freeways and toll roads on the Orange County MPAH is noted. The Orange County MPAH classifies Bluff Road/North Bluff Road as a Primary from West Coast Highway to 17th Street and as a Major from 17th Street to 19th Street.

Response 5

All intersection turning movement volumes are provided in the intersection analysis worksheets for every scenario in the technical appendix to the Draft EIR. The future build-out forecasts were developed through the City of Newport Beach citywide traffic model (NBTM), which takes into account local and regional interaction (productions and attractions pairings) between future land uses, and accounts for the effects of internal capture, pass-by, and future network improvements at build-out. The Year 2016 volumes are the result of a straight-line growth increment over existing volumes, plus the addition of project traffic from numerous committed and cumulative projects, and a modest assumption of pass-by for the project. In some cases, this building block approach to developing interim year forecasts results in a higher volume than the gravity model forecasts for build-out.

Response 6

The City of Newport Beach has approval authority over the Project. Should the City take action to approve the proposed Project, the City would need to adopt a Statement of Overriding Considerations to address the significant unavoidable impacts that cannot be mitigated to a level that is considered less than significant including traffic impacts in the City of Costa Mesa. The City of Newport Beach does not have the authority to ensure the City of Costa Mesa implements the mitigation. It should be noted that the Applicant and City of Costa Mesa are working together on a good faith basis to come to an agreement on improvements in Costa Mesa that would meet or exceed the Project's fair share of impacts to Costa Mesa intersections identified in Section 4.9, Transportation and Circulation, of the Draft EIR. The City of Newport Beach understands that discussions between the Applicant and the City of Costa Mesa are ongoing. Please refer to the letter from the City of Costa Mesa to the Applicant which follows these responses.

Response 7

The improvement identified for the intersection of Newport Boulevard at 19th Street is the addition of a second southbound left-turn lane. The Applicant will work with the City of Costa Mesa to adequately mitigate project impacts based on the terms and conditions of their agreement.

Response 8

The improvement identified for the intersection of Newport Boulevard at 17th Street is the addition of a fourth southbound through lane and an exclusive northbound right-turn lane. The Applicant will work with the City of Costa Mesa to adequately mitigate project impacts based on the terms and conditions of their agreement.

Response 9

The commenter is correct; the recommended improvement is not limited to signal modification. As set forth in Mitigation Measure 4.9-2 in the Draft EIR, the improvement identified for the intersection of Superior Avenue at 17th Street is the modification of the westbound approach to provide one left-turn lane, one shared through/left lane, one through lane, and one right-turn lane. This improvement has been identified by and conditioned on the Hoag Health Center project.

Response 10

The trip distribution exhibit (Exhibit 4.9-7) 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 Street 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.

Response 11

Please refer to the response to Comment 1.

Response 12

As shown in Exhibit 4.1-2b in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, proposed Project does not propose any landform grading or development within this area of the Open Space Preserve near the California Seabreeze neighborhood with the exception of grading for North Bluff Road. North Bluff Road would be approximately 355 feet to the west. Landform grading to remove the existing dirt berm would result in additional impacts not assumed in the Draft EIR.

Exhibit 3-16 in Section 3.0, Project Description, of the Draft EIR identifies that there would be limited soil disturbance between North Bluff Road and California Seabreeze to allow for soil remediation. As depicted on Exhibit 4.14-2 in Section 4.14, Public Services and Facilities, a fuel management zone (Zone C) would be located within the 100 feet of the Project site adjacent to California Seabreeze. Zone C is within the proposed habitat restoration area set forth in the Habitat Restoration Plan. As described in Section 4.14, as proposed in the Upland Open Space north of the Urban Colony and west of the City of Costa Mesa, a 100-foot-wide Zone C would be provided adjacent to existing neighborhoods, including California Seabreeze. Grasses, cacti, succulents, and open rock areas are proposed within the first 30 feet adjacent to the existing residences.

Response 13

The information requested is provided in Exhibit 4.1-2b, Interface with California Seabreeze Community, located in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR. This exhibit contains a cross-section that extends east from Bluff Road to the California Seabreeze residential neighborhood. The cross-section is explained on pages 4.1-30 and -31, under "Existing Land Uses to the East." The text notes that North Bluff Road would be at least 300 feet from all the residences and significantly lower in terms of vertical grade. The Draft EIR also notes that impacts are evaluated in Section 4.2, Aesthetics and Visual Resources; Section 4.9, Transportation and Circulation; Section 4.10, Air Quality; and Section 4.12, Noise.

Response 14

Section 4.2, Aesthetics and Visual Resources, pages 4.2-17 and -18 address grading and construction impacts associated with the proposed Project. Although this discussion does not specify the Seabreeze community, the analysis is applicable to this neighborhood as well as other neighborhoods in both Newport Beach and Costa Mesa.

Please also refer to Section 4.10, Air Quality, of the Draft EIR which includes Mitigation Measure (MM) 4.110-9 which addresses the City's request.

MM 4.10-9 **Construction Complaint Resolution.** The Landowner/Master Developer shall appoint a person as a contact for complaints relative to construction impacts to the adjacent neighborhoods. A contact telephone number and email address shall be posted on signs at the construction site and shall be provided by mail to all residents within 500 feet of the Project site. Upon receipt of a complaint, the designated contact person shall investigate the complaint and shall develop corrective action, if needed. The

designated contact person shall respond to the complainant within two working days to describe the results of the investigation, and submit a report of the complaint and action taken to the City of Newport Beach. The designated contact person shall maintain a log of all complaints and resolutions.

Additionally, security fence would be placed around the construction site during construction; construction equipment and materials would be required to be properly stored on the site when not in use; and a 24-hour hot line number would be displayed on the Project site.

Response 15

The City of Costa Mesa's request for more restrictive hours of construction is noted. However, the City of Newport Beach does not alter the permitted hours of construction on a project-by-project basis. The proposed Project would be subject to the same construction noise regulations as all other construction projects in the City. City of Newport Beach Municipal Code Section 10.28.040, "Construction Activity – Noise Regulations", restricts construction activities on any weekday to between the hours of 7:00 AM and 6:30 PM, and on any Saturday to between the hours of 8:00 AM and 6:00 PM, and prohibits construction activities on Sundays and any federal holiday. The City has determined that the construction noise regulations in effect for the City as a whole are adequate and no additional restrictions are proposed. The City of Costa Mesa has not provided reason why the hours should be changed.

Response 16

Access to City parks, recreation facilities, and parking facilities serving City parks are available to the public at no charge. Park facility rental fees are charged for special group events in accordance with the City's "Park and Facility Rental Policy" for the reservation of community centers, park fields, and picnic areas. Fees are also assessed for instructional activities at recreational facilities and repetitive athletic use of sports fields where permits or agreements are required in accordance with Chapter 11.04 of the Newport Beach Municipal Code. The City, County, and private organizations provide several educational and interpretative facilities and programs that are either free or have a nominal charge. These include the Muth Interpretative Center in the Upper Newport Bay Nature Preserve, the Back Bay Science Center on Shellmaker Island, the Newport Aquatic Center at North Star Beach, and the Newport Harbor Nautical Museum. It is expected that the interpretative parks would be operated in a similar manner.



CITY OF COSTA MESA

P.O. BOX 1200, CALIFORNIA 92628-1200

FROM THE OFFICE OF THE CITY MANAGER

November 21, 2011

Mr. Michael Mohler
Newport Banning Ranch
1300 Quail Street, Suite 100
Newport Beach, CA 92660

RECEIVED
Brooks Street
NOV. 28 2011
By: Wendy Zachry

SUBJECT: NEWPORT BANNING RANCH PROJECT

Dear Mr. Mohler:

The City of Costa Mesa appreciates your participation in the many discussions regarding the mitigation for the Newport Banning Ranch project. This letter summarizes the results of our discussions with the understanding that a more formal means of documentation will be received from your office.

The proposed Newport Banning Ranch Project which includes, 1,375 dwelling units, 75,000 square-feet of commercial uses, 75-room resort hotel and other amenities, is projected to have certain traffic impacts to the Costa Mesa circulation system. The projected impacts and required mitigation were identified in the Draft Environmental Impact Report (DEIR) for the project, which was prepared by the City of Newport Beach. The proposed mitigation includes the following:

- Newport Boulevard – 19th Street: Addition of a southbound left-turn lane;
- Newport Boulevard – Harbor Boulevard: Addition of a southbound through lane;
- Newport Boulevard – 18th Street: Additional of a southbound through lane;
- Newport Boulevard – 17th Street: Additional of a southbound through lane;
- Superior Avenue – 17th Street: Addition of a westbound right-turn lane;
- Pomona Avenue – 17th Street: Signalize intersection; and
- Monrovia Avenue – 19th Street: Signalize intersection.

The City of Costa Mesa and Newport Banning Ranch have discussed the Project's potential share of impacts to the above locations and have reviewed several options for mitigation. There was recognition of a need for a phased approach for implementing the mitigations based on the Project development phasing. It is also understood that any substantial changes to the Project development plans, that would result in elimination of need for mitigation identified above, will require a review of Newport Banning Ranch's responsibility.

77 FAIR DRIVE

PHONE: (714) 754-5327 • TDD: (714) 754-5244 • FAX: (714) 754-5330 • www.ci.costa-mesa.ca.us

November 21, 2011
Mr. Mohler
Page 2

In order to address the impacts of the Newport Banning Ranch Project as currently proposed, the Newport Banning Ranch Company and the City of Costa Mesa have agreed to a mitigation plan that requires payment of a total of **\$4,388,483** to the City of Costa Mesa, per the schedule below:

- Prior to Issuance of 301st residential building permit – \$500,000
- Prior to Issuance of 601st residential building permit – \$500,000
- Prior to Issuance of 901st residential building permit – \$750,000
- Prior to Issuance of 1,201st residential building permit – \$875,000
- Traffic impact fees at \$1,283 per residential unit - \$1,763,483

Total Payment to Costa Mesa – \$4,388,483

The above mitigation plan will need to be documented and also be included as part of the Mitigation Monitoring Program in the Final Environmental Impact Report (FEIR).

The City of Costa Mesa appreciates your cooperation and addressing the Banning Ranch traffic impacts and issues.

We look forward to working with you on this project. If you have any questions, please contact me at (714)754-5182.

Sincerely,



PETER NAGHAVI
Interim Assistant Chief Executive Officer

cc: Chief Executive Officer
City Attorney
Interim Public Services Director
Interim Development Services Director
Transportation Services Manager
Senior Planner

Comment Letter L3b

**Special Joint Meeting regarding Banning Ranch
Thursday, October 20, 2011**

Question from the Members of the Public who did not speak:

<p><i>Michelle Simpson, Costa Mesa</i></p>	<p><i>I bought my home less than 3 years ago. Why was I not told of the plan to widen the street and take my home at worst or put a traffic signal on my corner?</i></p> <p><i>When will we know what the verdict will be on the 19th Street/Bluff Road to 19th Street? Will it be decided upon soon?</i></p>	
<p>17th Street and 19th Street have been in the City's General Plan Circulation Element as four-lane arterials. The need for traffic signal was identified in Banning Ranch Draft Environmental Impact Report (DEIR) as a potential mitigation. This document was released in September 2011. Therefore, this information was not available 3 years ago.</p> <p>The City of Newport Beach and other agencies such as California Coastal Commission approve the plans for Bluff Road. The schedule for approval is not known at this time.</p>		1
<p><i>Bonnie Copeland, Costa Mesa</i></p>	<p><i>What is the <u>Final Cost to taxpayers</u> in 2011 \$\$'s of ALL land acquisition, demolishing, road-building, resurfacing that will be the result of the Banning Ranch development AND the subsequent implementation of the O.C. Master Plan including resurfacing with sound-deadening asphalt, 19th Street to PCH, widening of 15th, 16th, 17th, 19th and other streets <u>regardless</u> of whether paid through federal, county, city, state or other funding sources fueled by taxes?</i></p> <p><i>How many of the following: Homes, Businesses, Apartments, will be the <u>FINAL</u> Plan, including implementation of the county master roadway plan, require taking through eminent domain or other means?</i></p> <p><i>Will Costa Mesa make the relocation of <u>ALL</u> displaced Costa Mesa residents into the Banning Ranch Development at Newport Beach's expense a part of the deal?</i></p>	2
<p>The final cost being requested is not known at this time. It is estimated that Costa Mesa mitigations could cost approximately \$8 to \$10 million. This does not include the cost for widening of 17th and 19th Streets per the City's General Plan.</p> <p>The number of properties affected by widening of 17th and 19th Streets is now known at this time as design plans are not developed.</p> <p>The City cannot legally condition relocation of displaced Costa Mesa residents to Banning Ranch.</p>		

<p><i>Sandie Frankiewicz, Costa Mesa</i></p>	<p><i>What will happen to our home and us when we are out of a home, (which) will be demolished in order to widen 19th Street to a four lane raceway?</i></p> <p><i>Have you factored in the road maintenance once all this traffic of thousands of cars gain access to Costa Mesa? Answer: Our broke city will pay! We can't afford not to pay attention, let alone take on the cost of road work/maintenance.</i></p>	3
<p>As design plans for 19th Street have not been developed, it is not known what properties would be affected by the widening.</p> <p>The maintenance and issues with additional traffic will need to addressed during the project design phase.</p>		
<p><i>Gerry Grotenhuis, Costa Mesa</i></p>	<p><i>They speak of oil clean-ups if it is a favor to us. Why can't we require the companies that create the problem to clean it up without trading away our streets?</i></p> <p><i>What is going to be done to handle sewage? Huntington Beach allowed huge developments while their sewage plants were thousands of gallons a day short of capacity (illegible word). I see a lot of toilets planned here.</i></p> <p><i>Comment: Not only does this dump a huge bunch of traffic onto Costa Mesa streets, while giving us nothing, but it coincidently goes through the poorest neighborhood in the city. This raises some clear questions of social equality.</i></p> <p><i>They allude to "Revitalizing" the West-side. I live on the west-side because I like it. We, the residents, are revitalizing the area the way we want to.</i></p> <p><i>There is a small gated community at the end of 18th Street. Go there some morning to get Banning Ranch in microcosm. A stream of BMW's and Mercedes accelerating to the maximum speed (unreadable word) able to still stop at each stop sign. Do it and report back to me.</i></p>	4
<p>Comments noted. These will be forwarded to Newport Beach for their response.</p>		
<p><i>Terry Koken, Costa Mesa</i></p>	<p><i>The 1375 home/condos proposed: How much will they cost the prospective owners to buy?</i></p> <p><i>What is the "green edge" exactly?</i></p>	5
<p>The price information for Banning Ranch homes is not known. Comment will be forwarded to Newport Beach for their response.</p>		

<p>Steve Lang, Costa Mesa</p>	<p>Please address cut through traffic volumes.</p> <p>In regards to the percentage of open land: How much is water? In acres please. If you've been there it is a large amount! I am worried the open land is minimal.</p> <p>We have a great neighborhood coming about in the freedom homes. Many young families and kids. Please help your residents preserve it. We're not all bums and illegals!!</p> <p>P.S. Who cares about soccer fields.</p>	6
<p>Comments noted. These will be forwarded to Newport Beach for their response.</p>		
<p>Casey Evans-Lang, Costa Mesa</p>	<p>How much of Banning Ranch is comprised of water? Would that water stay? Is that water considered as part of the <u>Open Space</u>?</p> <p>Who pays for all the mitigation costs for the traffic, infrastructure, signals, and up keep of?</p> <p>Why are we helping Newport Beach with all their traffic needs to support <u>their</u> development?</p> <p>All those homes (1375) and residents of would be the users of the proposed parks and ball fields – how would Costa Mesa residents be guaranteed use of such fields? Sounds like bait and switch!</p> <p>Only supporters of seem to be business owners? Statistics?</p>	7
<p>Comments noted. These will be forwarded to Newport Beach for their response. Regarding traffic mitigation costs, the developers have indicated that they will accept financial responsibility. However, there is no commitment as to actual funds at this time.</p>		
<p>Sue Chambers, Costa Mesa</p>	<p>What schools would Banning Ranch residents to go in the Newport/Costa Mesa school system? Example – could (illegible word) school improve?</p> <p>I live on the corner of 19th and Parkcrest (house backs onto 19th). How will noise from traffic be controlled?</p> <p>Also will the project and additional traffic affect my property value?</p> <p>What will the New housing project price points be? What's the range?</p> <p>P.S. I think the project sounds great!</p>	8
<p>Comments noted. These will be forwarded to Newport Beach for their response.</p>		

<p><i>Deborah Koken, Costa Mesa</i></p>	<p><i>Is it legitimate for the developer to claim credit for preserving ¾ of Banning Ranch as open space, when in fact most of this is the wetlands and environmentally sensitive habitat areas which they are legally required to maintain as open space?</i></p> <p><i>These areas will remain undeveloped no matter what happens to the rest of the property, so the developer can't claim it as a gift to the public.</i></p>	9
<p>Comments noted. These will be forwarded to Newport Beach for their response.</p>		
<p><i>Richard Robertson, Costa Mesa</i></p>	<p><i>What is the value to Costa Mesa of the Banning Ranch development?</i></p>	10
<p>At this point information is not available to provide a response to this comment.</p>		
<p><i>Terry Powell, Costa Mesa</i></p>	<p><i>I have heard that there are plans for Westside Costa Mesa to "improve," "revitalize the area," "boost the economy." I hear that increased traffic on our roads (19th, 17th, etc) will help achieve this goal.</i></p> <p><i>What exactly is going to happen? What do these terms mean? Building? Bulldozing? Be specific please.</i></p>	11
<p>At this point information is not available to provide a response to this comment.</p>		
<p><i>Michael Grofick, Costa Mesa</i></p>	<p><i>What is Eminent Domain?</i></p> <p><i>Traffic impact to 17th and 19th Street Costa Mesa?</i></p> <p><i>How will Costa Mesa acquire the property on 17th Street and 19th Street to provide roads for Banning Ranch?</i></p>	12
<p>Eminent domain relates to acquisition of private property for public improvements such as streets. It is not proposed as part of Banning Ranch project.</p> <p>Traffic impacts to 17th and 19th Streets are documented in the DEIR. It is likely that Banning Ranch and other projects envisioned for Westside Costa Mesa will require widening of 17th and 19th Streets to their designated General Plan standards. However, the timing of this is unknown.</p> <p>The design of 17th and 19th Streets will provide information on how the widening can be accomplished. At this point, information is not available to provide a response on right-of-way acquisitions.</p>		

Letter L3b City of Costa Mesa

Khanh Nguyen, Interim Development Services Director
November 8, 2011

Response 1

The proposed Project is estimated to generate 14,989 vehicle trips per day. The Draft EIR Traffic Impact Analysis indicates that a composite of approximately 65 percent of the Project traffic can be expected to travel along the street system in southwest Costa Mesa. The resulting traffic volumes do not indicate the need for widening of 15th, 16th, 17th, or 19th Street. The Project's impact on the peak hour operation of intersections along these streets was evaluated, and mitigation measures have been identified for any intersections that would experience a significant Project impact.

The Traffic Mitigation Program in Section 4.9, Transportation and Circulation, of the Draft EIR includes the provision of a second southbound left-turn on Newport Boulevard at 19th Street and notes that the proposed improvement is anticipated to require modifications to the medians and incremental widening of the street at the intersection on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape. With respect to 17th Street, the Mitigation Program proposes improvements to the intersection of Newport Boulevard at 17th Street. The Draft EIR proposes a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway at the intersection depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.

With respect to the action by the City of Newport Beach and subsequent required actions by applicable regulatory agencies regarding 19th Street, the City had not yet scheduled public hearings by the Planning Commission and City Council at the time of this study session.

Response 2

With respect to the cost to taxpayers, the City of Newport Beach concurs with the City of Costa Mesa's staff response that the final cost is not known at this time. As noted in the response to Comment 1, the resulting traffic volumes do not indicate the need for widening of 15th, 16th, 17th, or 19th Street.

Response 3

With respect to road maintenance costs, the City of Newport Beach concurs with the City of Costa Mesa's staff response. As noted in the response to Comment 1, the resulting traffic volumes do not indicate the need for widening of 15th, 16th, 17th, or 19th Street.

Response 4

With respect to remediation, please refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

With respect to wastewater service, please refer to Section 4.15, Utilities, of the Draft EIR. The Draft EIR notes that wastewater originating from the Project site would ultimately be treated by facilities owned and operated by the Orange County Sanitation District (OCSD). Project wastewater flows would be directed to OCSD's Treatment Plant No. 2 in Huntington Beach, which maintains a primary treatment capacity of 168 mgd and currently treats an average influent wastewater flow of approximately 110 mgd. Currently Plant No. 2 is operating at 65 percent of design capacity. The OCSD has indicated that it has existing and future treatment capacity to serve the proposed Project.

With respect to traffic and social equity, Table 1 summarizes census tract, cities of Costa Mesa and Newport Beach, and County of Orange population characteristics. Census Tract 636.01 is bound by Victoria Street to the north, 19th Street to the south, Placentia Avenue to the east and the Santa Ana River to the west. Census Tract 636.03 is bound by 19th Street to the north, West Coast Highway to the south, Newport Boulevard to the east and the Santa Ana River to the west. Census Tract 636.04 is bound by 19th Street to the north, 16th Street to the south, Placentia Avenue to the east and the Santa Ana River to the west. Census Tract 636.05 is generally bound by 19th Street to the north, 16th Street to the south, Anaheim Avenue and Newport Boulevard to the east and Placentia Avenue to the west. Table 2 summarizes the income characteristics for the populations identified in Table 1. Both Tables 1 and 2 represent the area around the Project site inclusive of roadways where Project and cumulative traffic is expected to be distributed. The census tract least affected by traffic would be Census Tract 636.01 which is north of 19th Street.

As shown on Exhibit 4.-7 of the Draft EIR Traffic Impact Analysis distributes traffic as follows:

- 19th Street: 10 percent
- 17th Street: 35 percent
- 16th Street: 10 percent
- 15th Street: 10 percent
- West Coast Highway: 20 percent
- Newport Boulevard: 40 percent

While it is the case that approximately 65 percent of the traffic would join Costa Mesa roadways, the proposed Bluff Road and North Bluff Road from 19th Street to West Coast Highway would be constructed to serve Project and subregional traffic particularly from off-site vehicles in west Costa Mesa. In the case of Bluff Road/North Bluff Road, it is shown on the City of Newport Beach General Plan Master Plan of Streets and Highways and on the County of Orange Master Plan of Arterial Highways.

The County's zoning for the 361 acres of the Project site within County jurisdiction would allow for development of up to 2,510 multi-family dwelling units (du8), 225 single-family du, 50,000 square feet (sf) of general commercial use, 235,600 sf of general office use, and 164,400 sf of industrial uses. Development of property pursuant to the County zoning would generate approximately 22,075 average daily trips on the circulation network; the proposed Project would generate 14,989 average daily trips on the same circulation network.

**TABLE 1
CENSUS TRACT, CITY, AND COUNTY POPULATION CHARACTERISTICS**

Population	Census Tract 636.01		Census Tract 636.03		Census Tract 636.04		Census Tract 636.05		City of Newport Beach		City of Costa Mesa		County of Orange	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Total Population	3,647	100	6,223	100	3,835	100	5,672	100	85,186	100	109,960	100	3,010,232	100
Population 0–19 Years	888	24.4	850	13.7	1,043	27.2	1,945	34.3	16,166	19	26,932	24.4	828,344	27.6
Population 20–64 Years	2,419	66.4	3,935	69.9	2,353	61.5	3,504	61.7	52,838	62.1	72,914	66.4	1,850,211	61
Population 65+ Years	340	9.4	1,030	16.6	439	11.4	221	3.8	16,162	18.9	10,114	9.1	349,677	11.6
Median Age	37.8	N/A	37.7	N/A	33.4	N/A	28.3	N/A	44.0	N/A	33.6	N/A	36.2	N/A
Race: White	2,792	76.6	5,326	85.6	2,406	62.7	2,954	52.1	74,357	87.3	75,335	68.5	1,830,758	60.8
Race: Black or African American	24	0.7	75	1.2	52	1.4	77	1.4	616	0.7	1,640	1.5	50,744	1.7
Race: American Indian and Alaska Native	22	0.6	32	0.5	26	0.7	57	1.0	223	0.3	686	0.6	18,132	0.6
Race: Asian	134	3.7	281	4.5	147	3.8	99	1.7	5,982	7.0	8,654	7.9	537,804	17.9
Race: Native Hawaiian and Other Pacific Islander	12	0.3	11	0.2	10	0.3	20	0.4	114	0.1	527	0.5	9,354	0.3
Race: Some other race	477	13.1	286	4.6	1,057	27.6	2,186	38.5	1,401	1.6	17,992	16.4	435,641	14.5
Race: Two or more races (of total population)	186	5.1	212	3.4	137	3.6	279	4.9	2,493	2.9	5,126	4.7	127,799	4.2
Race: Hispanic or Latino	1,051	28.8	932	15.0	2,214	57.7	4,277	75.4	6,174	7.2	39,403	35.8	1,012,973	33.7
Source: U.S. Census 2010														

**TABLE 2
INCOME CHARACTERISTICS BY CENSUS TRACT ADJACENT TO PROJECT SITE**

	Census Tract 636.01	Census Tract 636.03	Census Tract 636.04	Census Tract 636.05	Total/Average	City of Newport Beach	City of Costa Mesa	County of Orange
Number of Households	1,314	3,056	1,362	1,429	7,161	38,751	39,391	992,781
Median Household Income	84,959	72,884	43,493	37,000	62,349	107,007	64,864	74,344
Households with public assistance	46	34	268	418	766	304	2,155	90,144
Total Population	3,647	6,223	3,835	5,672	19,377	85,186	109,960	3,010,232
Individuals living below poverty status	209	560	625	1,842	3,236	5,246	14,266	296,846
Percentage below poverty status	5.6	10.4	16.3	35.0	16.8	6.3	13.3	10.1
Source: U.S. Census 2010								

The Draft EIR acknowledges that the proposed Project would result in significant impacts including some impacts such as traffic in Costa Mesa and noise in Newport Beach that cannot be mitigated to a less than significant level. While the fact that future development on this property has been forecast in County and city assumptions for traffic and population growth for years is not intended to dismiss the fact that traffic will in part go through some neighborhoods with families in both cities living below the poverty line, these areas were not targeted. The traffic distribution is reflects the physical limitation for access to the Project site rather than social equity.

Response 5

As noted by City of Costa Mesa staff, the price of proposed residences has not been established.

The City of Newport Beach is unsure what the commenter is referring to as the “green edge”. In summary, the 401-acre Project site would include approximately 252.3 gross acres in an Open Space Preserve (including the 16.5-acre consolidated oil facilities sites) and 51.4 gross acres of parks. The majority of the proposed developed uses on the Project site would be bound by the proposed Bluff Top Park, a linear park which would sited between the on-site Open Space Preserve and the on-site residential and resort inn land uses.

Response 6

With respect to traffic, the trip distribution exhibit (Exhibit 4.9-7) 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, 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 Street 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.

The Project is estimated to generate 14,989 vehicle trips per day. The Traffic Impact Analysis indicated that approximately 5 percent of the Project traffic would travel along Placentia north of 17th Street. Project traffic is not shown to travel along Victoria in Costa Mesa since other streets provide a more direct path of travel to off-site destinations. The Traffic Impact Analysis indicates that a composite of approximately 65 percent of the Project traffic can be expected to travel along the street system in southwest Costa Mesa. The impact on the southwest Costa Mesa streets was addressed in the Draft EIR Traffic Impact Analysis.

Tables 4.9-34 and 4.9-35 of the Draft EIR identified the trips on each of the east-west roadways through southwest Costa Mesa that would be attributable to the proposed Project. This traffic consists of the combination of both the traffic that would be generated by the Project as well as existing background trips that could be expected to divert to Bluff Road/North Bluff Road via the east-west connecting streets.

With respect to open space, the 401-acre Project site would include approximately 252.3 gross acres in an Open Space Preserve (including the 16.5-acre consolidated oil facilities sites) and 51.4 gross acres of parks. If the commenter is asking about the amount of the Project site that

contains water-related biological resources, please refer to Table 4.6-1 of the Draft EIR which identifies vegetation types and the existing acreage for each of these vegetation types. For example, the Project site has approximately 31.45 acres of marshes and mudflats.

With respect to preservation of the Project site, please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which evaluates options to the Applicant's development proposal.

The commenter's opinion of soccer fields is noted.

Response 7

With respect to open space and water resources, please refer to the response to Comment 6. Table 4.6-7 identifies the Project's impact on jurisdictional features (Waters of the United States and Waters of the State).

With respect to traffic mitigation costs, please refer to Mitigation Measure 4.9-2 of Section 4.9, Transportation and Circulation, of the Draft EIR which identifies the transportation improvement mitigation program for traffic impacts in the City of Costa Mesa. The Draft EIR identifies that implementation of 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 Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.

With respect to the proposed Project's parks, while the Project site and the associated proposed Parks would be located in the City of Newport Beach (not the City of Costa Mesa), all parks are proposed as public facilities.

Regarding proponents and opponents of the proposed Project, this question does not address an environmental issue. No further response is required.

Response 8

With respect to schools, please refer to Section 4.14, Public Services and Facilities. Please refer to Letter R5 from the Newport-Mesa Unified School District which identifies that the School District forecasts a district-wide capacity surplus.

With respect to noise, please refer to Section 4.12, Noise, of the Draft EIR. No significant noise impacts are anticipated along 19th Street.

With respect to property values, the State CEQA Guidelines Section 15064(e), Determining the Significance of the Environmental Effects Caused by a Project, states:

Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects

on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

This comment does not present or raise an issue regarding the adequacy of analysis of the potential environmental impacts of the Project in the Draft EIR, but states the opinion of the commenter. No documentation has been provided to support the suggestion that vehicular traffic negatively affects property values.

As noted by City of Costa Mesa staff, the price of proposed residences has not been established.

The opinion of the commenter with respect to the Project is noted.

Response 9

With respect to open space, the 401-acre Project site would include approximately 252.3 gross acres in an Open Space Preserve (including the 16.5-acre consolidated oil facilities sites) and 51.4 gross acres of parks. Consistent with the CEQA Statute and applicable regulatory requirements (e.g., U.S. Fish and Wildlife Service, California Department of Fish and Game), a project can have impacts on biological resources; however, if impacts cannot be avoided, they must be mitigated to the greatest degree feasible.

The Project site is currently an active oilfield with no public access. The Draft EIR acknowledges that the proposed Project would result in significant biological impacts (see Section 4.6, Biological Resources). With implementation of the proposed Project, the site would be remediated (see Section 3.0, Project Description and Section 4.5, Hazards and Hazardous Materials); invasive biological resources would be removed to allow for restoration of many of the habitat areas on the property that have been degraded by permitted oil operations and invasive species (see Section 3.0, Section 4.5, and Section 4.6) – biological impacts would be mitigated to a less than significant level; the Open Space Preserve would be publicly accessible (see Section 3.0 and Section 4.8, Recreation and Trails).

Response 10

The City of Newport Beach is unclear as to the commenter's reference to "value". If the commenter could provide additional information to the City, the City will provide an additional response.

Response 11

The City of Newport Beach cannot comment on the City of Costa Mesa's proposed revitalization for westside Costa Mesa. We would suggest that the commenter contact the City of Costa Mesa for additional information.

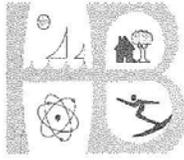
Response 12

With respect to eminent domain, the City of Costa Mesa's definition is accurate. Specifically to the proposed Project and as addressed in Draft EIR (Section 3.0, Project Description and Section 4.1, Land Use and Related Planning Programs), 15th Street currently terminates at Monrovia Avenue located east of the Project site's eastern boundary. There is an existing office building and associated parking lot between the Newport Banning Ranch property line and

Monrovia Avenue. As a part of the Project, the improvements shown on the Master Plan of Streets and Highways from the City of Newport Beach General Plan Circulation Element would be constructed. This would require 15th Street to be extended west through the existing parking area for the office building to provide a connection between the Project site and Monrovia Avenue. The segment of 15th Street between Monrovia Avenue to the boundary of the Project site would be constructed as a two-lane roadway (one lane in each direction). As proposed, displaced parking (approximately 25 parking spaces) associated with the existing office building would be provided for the office building within the proposed Central Community Park area. The right-of-way necessary for the 15th Street off-site improvements would either be acquired by the Applicant or by the City.

With respect to 17th Street and 19th Street, traffic volumes do not indicate the need for widening of 15th, 16th, 17th, or 19th Street.

Comment Letter L4



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING AND BUILDING

www.huntingtonbeachca.gov

Planning Division
714.536.5271

Building Division
714.536.5241

October 31, 2011

Patrick Alford, Planning Manager
City of Newport Beach
Community Development Department
3300 Newport Blvd.
Newport Beach, CA 92658-8915

Subject: Draft EIR – Newport Banning Ranch Project

Dear Mr. Alford:

The City of Huntington Beach has reviewed the Draft Environmental Impact Report (EIR) for the Newport Banning Ranch Project and recommends that the following comments be addressed in the Final EIR/Response to Comments that will be prepared for this project.

<p><u>Recreation</u></p> <ul style="list-style-type: none">Section 4.8 of the Draft EIR lists City of Huntington Beach parks within two miles of the project site. Two City parks, Gisler and Bauer, were left off the list. Please see the enclosed map for locations of the two parks. In addition, it should be noted that Bauer Park is a newly constructed park and is not yet open to the public.	1
<p><u>Traffic and Circulation</u></p> <p>The following comments refer to Section 4.9 of the Draft EIR as well as Appendix F: Traffic Impact Analysis.</p> <ul style="list-style-type: none">The study intersections in the City of Huntington Beach require an assumption of 1,700 vehicles per hour per lane (vphpl) for ICU analysis. Although Section 4.9 of the Draft EIR states that 1,700 vphpl was assumed for the City of Huntington Beach study intersections, it appears that a value of 1,600 vphpl was used for the ICU worksheets in Appendix F. Please clarify and, if necessary, correct this discrepancy.	2
<ul style="list-style-type: none">The draft EIR and Traffic Impact Analysis (TIA) identify three City of Huntington Beach intersections as deficient under various scenarios for the General Plan build-out analysis: Pacific Coast Highway/Magnolia Street, Brookhurst Street/Hamilton Avenue, and Pacific Coast Highway/Brookhurst Street.	3

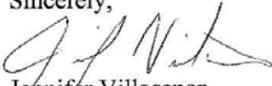
<p>➤ Section 4.9 of the Draft EIR and TIA indicate that the Pacific Coast Highway (PCH)/Magnolia Street intersection would be deficient (LOS F) in the PM peak hour under the General Plan Build-out – Without Project analysis. However, the current Huntington Beach Traffic Model forecasts this intersection to operate at LOS C during the PM peak hour under the General Plan.</p> <p>Therefore, the traffic analysis under the following scenarios would not be expected to deteriorate to LOS F when accounting for project trip generation: General Plan Build-out – with Project; General Plan Build-out – Bluff Road Alternative (Alternative C); General Plan Build-out – Open Space Alternative with Bluff Road (Alternative B); and General Plan Build-out – Open Space Alternative without Bluff Road (Alternative B). Additionally, the analysis forecasts the intersection to operate at LOS F during the PM peak hour under the General Plan Build-out – With Project and Full MPAH Network scenario. However, with implementation of the MPAH, it appears that more project trips are assigned at the critical movements than would be expected considering the alternative routes available. Please clarify these issues in the Final EIR.</p> <p>➤ Under the General Plan Build-out – With Project and 19th Street Bridge and General Plan Build-out – Bluff Road Alternative with 19th Street Bridge (Alternative C) scenarios, a disproportionate number of southbound (PCH) left turns has been assigned at PCH/Magnolia than at PCH/Brookhurst affecting the LOS results. Please address why the assigned trips are not more evenly distributed and/or correct the data and analysis as appropriate. This same issue occurs at the Brookhurst/Hamilton intersection, which was assigned a disproportionate number of left turns compared to the Brookhurst/19th Street intersection during the PM peak hour.</p>	<p>3 cont.</p>
<p><u>Cumulative Impact Analysis</u></p> <ul style="list-style-type: none"> Exhibit 5-4 incorrectly denotes the location of several City of Huntington Beach cumulative projects (see attached mark-up). Please correct in the Final EIR. 	<p>4</p>
<ul style="list-style-type: none"> Table 5-2 should be corrected as follows: <ul style="list-style-type: none"> Huntington Beach Downtown Specific Plan Update: discretionary actions also included Zoning Map and Zoning Text Amendments; Newland Street Residential: The project has been completed is under construction. Please note that this project is now commonly referred to as Pacific Shores. Newland Street Widening: The project is under construction has been completed. 	<p>5</p>
<ul style="list-style-type: none"> Table 5-3 incorrectly denotes the significance of impacts for several City of Huntington Beach Cumulative Projects that are listed. For instance, the Beach and Edinger Corridors Specific Plan Program EIR did not conclude Significant and Unavoidable impacts due to Greenhouse Gases as indicated in the table. However, a Significant and Unavoidable impacts was concluded for cumulative population impacts, which is not specified in the table. Additionally, The Ridge project included biological mitigation measures; however, 	<p>6</p>

the table lists the project as less than significant (assuming no mitigation per the write-up on page 5-23 of the Draft EIR). Please verify each of the Huntington Beach projects in the table with the project's impacts and correct the table as necessary. You may find most of the environmental documents at the following link: <http://www.huntingtonbeachca.gov/government/departments/Planning/>. If you need assistance, please feel free to contact me.

6 cont.

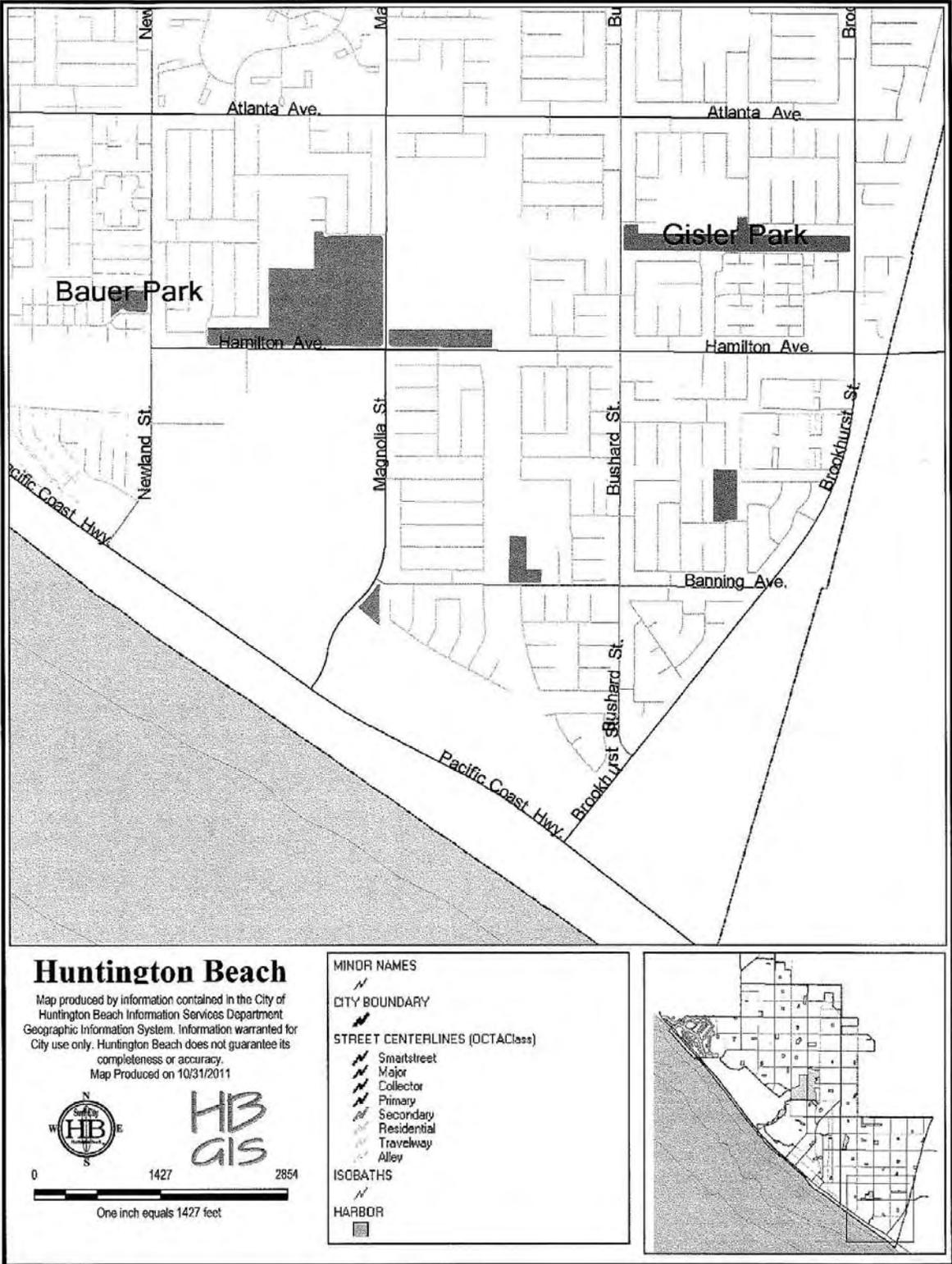
Thank you for the opportunity to comment on the Draft EIR for the proposed project. The City of Huntington Beach looks forward to reviewing the Final EIR when it becomes available.

Sincerely,



Jennifer Villasenor
Senior Planner

Cc: Scott Hess, Planning and Building Director
Mary Beth Broeren, Planning Manager



Letter L4 City of Huntington Beach
Jennifer Villasenor, Senior Planner
October 31, 2011

Response 1

Section 4.8, pages 4.8-4 through 4.8-5 has been revised and is incorporated into the Final EIR as follows:

The City of Huntington Beach is located immediately west of and across the Santa Ana River from the Project site. City recreational facilities within two miles of the Project site include Gisler Park, Bauer Park, Burke Park, Sowers Park, Edison Park, Seeley Park, Eader Park, Le Bard Park, and Hawes Park. These park facilities offer a variety of recreational amenities including picnic areas, athletic fields, and tot lots. While these parks are located near the Project site, their main function is to serve the residents of the City of Huntington Beach, and they are not intended to serve the recreational demand of residents outside of the City.

Response 2

For the Year 2016 analyses, the base saturation flow rate entered into the Traffix software was 1,600, which is the hourly lane capacity parameter used by both the cities of Newport Beach and Costa Mesa. For the City of Huntington Beach intersections, a factor was applied to bring the hourly lane capacity to 1,700 (+6 percent - this is reflected in the line labeled "Final Sat." on the Traffix worksheets), and a 5 percent lost time factor was included, in accordance with the City of Huntington Beach requirements.

Response 3

Both the City of Huntington Beach and the City of Newport Beach traffic models have been approved for area-wide modeling purposes by OCTA. However, differences in modeling parameters and assumptions can still cause different results in forecast volumes.

The only difference between the General Plan Buildout with Project and the General Plan Buildout with Project and Full MPAH Network scenarios is the on-site roadway network. The on-site roadway network proposed by the Project represents changes to the City's Master Plan of Streets and Highways and to the Orange County Master Plan of Arterial Highways (MPAH), which would require an Orange County MPAH amendment. The Full MPAH Network scenario was conducted to satisfy the cooperative study requirements of OCTA. The results of the intersection analysis for the intersection of Magnolia Street at Pacific Coast Highway for these two scenarios are very similar, with a difference of one percentage point in both the morning and evening peak hours.

The peak hour volumes for the General Plan with Project scenarios are forecasted volumes from the NBTM. Review of the ICU worksheets shows that the southbound left-turn volume at Brookhurst Street and Pacific Coast Highway is almost 600 vehicles in the morning peak hour and about 360 vehicles in the evening peak hour, resulting in a v/c ratio of nearly 20 percent in the morning peak hour and 11 percent in the evening peak hour. In contrast, the left-turn volumes at Magnolia and Pacific Coast Highway are forecast to be around 290 in the morning peak hour and 120 in the evening peak hour, with v/c ratios of 10 percent and 5 percent, respectively. The traffic model could be expected to assign some trips to the less congested

movement. The Project's contribution to either of these two left-turn movements is 30 vehicles or less in either peak hour.

Response 4

Exhibit 5-4 has been updated and incorporated into the Final EIR to reflect changes to the location of several City of Huntington Beach cumulative projects. The revised exhibit follows the responses to the City of Huntington Beach's comments.

Response 5

Table 5-2 on page 5-18, the first two rows are modified and incorporated into the Final EIR.

Response 6

Table 5-3 has been revised and incorporated into the Final EIR.



TABLE 5-2

Newland Street Residential	The project would develop and subdivide a former industrial site into a residential development with 204 multi-family residential units and an approximate 2-acre public park.	21471 Newland St; south of Lomond Dr; west of Newland St, north of the terminus of Hamilton Ave; 4 miles to the northwest.	Final EIR was certified in August 2006. The project has been completed <u>is under construction</u> . <u>Please note that this project is now commonly referred to as Pacific Shores.</u>	<ul style="list-style-type: none"> • GP Amendment • Zoning Map Amendment • TTM • CUP • Final Tract Map
Newland Street Widening	The project would widen Newland St from Pacific Coast Hwy to Hamilton Ave, widen the reinforced concrete bridge at Huntington Channel, install storm drain improvements in Newland St, and raise the profile of Newland St to improve traffic visibility. The proposed widening would also address stopping sight distance deficiency by raising the road grade at the Huntington Channel and providing a left-turn lane at the intersection of Newland St and Edison Way.	Newland St from Pacific Coast Hwy to Hamilton Hwy; 2 miles to the west.	IS/MND approved in April 2007. The project is under construction <u>has been completed</u> .	<ul style="list-style-type: none"> • IS/MND approval • No other discretionary actions were identified

TABLE 5-3

CITY OF HUNTINGTON BEACH																
Projects Where Construction Has Been Initiated or Completed																
Brightwater Specific Plan and Annexation	LS	LS	LS	LS	LS	LS	LS	LS	LS	LS	N/A	LS	LS	LS	LS	Yes
Huntington Beach Downtown Specific Plan Update	LS	S	S	S	S	<u>S</u> N/A	LS	LS	<u>U</u> <u>S</u>	U	<u>U</u> N/A	U	U	U	S	Yes
Newland Street Residential	S	U	S	U	LS	S	U	S	<u>SU</u>	U	N/A	S	S	U	S	Yes
Newland Street Widening	LS	LS	LS	LS	LS	S	LS	LS	<u>N/A</u> <u>LS</u>	LS	LS	LS	LS	LS	LS	Yes
Ocean View High School Expansion	LS	<u>N/A</u> <u>LS</u>	LS	LS	LS	LS	LS	<u>N/A</u> <u>LS</u>	<u>N/A</u> <u>LS</u>	LS	N/A	LS	LS	<u>N/A</u> <u>LS</u>	<u>N/A</u> <u>LS</u>	Yes
Pacific City	LS	S	S	S	S	S	<u>LS</u> <u>S</u>	S	S	U	N/A	S	S	S	S	Yes
Projects With Approved CEQA Documentation																
Beach and Edinger Corridors Specific Plan	LS	S	S	S	S	S	<u>LS</u> <u>U</u>	U	U	U	<u>U</u> <u>S</u>	U	U	U	U	Yes
Edison Park Master Plan	LS	S	LS	LS	LS	S	LS	S	<u>N/A</u> <u>LS</u>	LS	N/A	LS	LS	LS	LS	Yes
Goodell Property Pre-Zoning and Annexation	LS	LS	LS	LS	LS	S	LS	LS	LS	LS	LS	LS	S	LS	LS	Yes
Pacific View Mixed-Use	LS	LS	<u>LSS</u>	S	S	LS	LS	LS	LS	LS	N/A	LS	LS	LS	LS	Yes
Parkside Estates	LS	S	S	S	S	S	N/A	N/A	S	S	N/A	S	LS	S	S	Yes
Poseidon Desalination Plant	LS	S	S	S	LS	S	N/A	N/A	S	U	N/A	S	S	S	S	Yes
The Ridge	LS	LS	LS	LS	LS	<u>LS</u> <u>S</u>	LS	LS	LS	LS	N/A	LS	S	LS	LS	Yes
Projects Without Approved CEQA Documentation																
General Plan Circulation Element Update	U	LS	LS	LS	LS	U	U	LS	U	U	U	U	S	U	LS	Yes
Harmony Cove Residential Development	S	LS	S	S	LS	S	LS	LS	LS	LS	LS	S	LS	LS	LS	Yes
Beach and Warner Mixed-Use Project	LS	LS	LS	LS	LS	S	LS	LS	S	U	LS	S	LS	LS	LS	Yes

ORGANIZATIONS, COMPANIES, AND INDIVIDUALS

Comment Letter O1a



Via Email Transmission to palford@newportbeachca.gov

November 8, 2011

Officers:

Terry Welch, M.D.
President
James Mansfield
Vice-President
Deborah Koken
Secretary
Jennifer Frutig, PhD.
Treasurer

Steve Ray
Executive Director

Board Members:

Patricia Barnes
Mark Tabbert

Jan Vandersloot, M.D.
In Memoriam

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Newport Banning Ranch Project
Draft Environmental Impact Report
State Clearinghouse No. 2009031061

Dear Mr. Alford,

"The comments below and all references contained therein are hereby incorporated into the official record of proceedings of this project and its successors."

On behalf of the Banning Ranch Conservancy, thank you for the opportunity to comment on the above referenced Draft Environmental Impact Report (DEIR) for the proposed Newport Banning Ranch development project (NBR) that was prepared and circulated by the City of Newport Beach (City).

Pursuant to Section 15088.5 (a)(4) of the California Environmental Quality Act (CEQA) Guidelines, we herewith strongly request that the DEIR be immediately withdrawn, be revised to comply with CEQA and be recirculated when it is in compliance with CEQA statutes and guidelines and applicable case law. The currently released DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded. (see Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043).

Examples of the inadequate and flawed execution of the DEIR include:

- exclusion of meaningful information from known sources and other public agencies and comments, actions and/or decisions of other public agencies,
- omission of pertinent and available data on known and potential impacts,
- failure to identify significant environmental impacts,
- inadequate analysis of mitigation proposals and impacts,
- failure to perform studies of known and existing conditions and potential impacts,
- a poorly organized document making search and review very difficult,

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- conclusions unsupported by facts in evidence nor reflective of facts omitted or excluded, and
- a public review process that was inadequate, lacked sufficient access to complete DEIR documentation and was contrary to the Notice of Availability and other documents and statements issued by the City regarding the guidelines and timeframes for review of the DEIR.

1 cont.

The flaws of the DEIR are so numerous as to preclude the entirety of them in this letter. However, many of them are addressed in letters/emails submitted by others. By reference, I herewith incorporate the comments of Sandra Genis, Robert Hamilton, Bruce Bartram, Terry Welsh, Jim Mansfield, Jim Mosher, Toni M. Callaway, Matt Hagemann, Penny Elia, Vicki Hernandez, Dennis McHale, Patricia Barnes, Dorothy Kraus, Cindy Black, Scott Thomas, Patricia Martz, Kevin Nelson, Barry Nerhus, Margaret Royall, Suzanne Forster, Jennifer Frutig, Ginny Lombardi, Ed Guilmette, Paul & Cathy Malkemus, City of Costa Mesa, and the Shunda family (Julia, George and Sebastian).

Examples of issues raised by some of the above include, but are certainly not limited to:

- Extensive vernal pool data not included. -- Terry Welsh
- For the record, all mitigation sites identified in the DEIR must be specified. If habitat restoration is undertaken, this will entail changes to the existing environment, impacting some species even if others are possibly benefitted. CEQA requires that the project site be clearly defined, and the DEIR fails to meet this standard.
Authorizing a massive development project on Newport Banning Ranch, on the scale proposed in the DEIR, will have potentially significant cumulative and growth-inducing effects resulting from the likely revival of long-shelved plans for a 19th Street bridge across the Santa Ana River. A bridge at that location would have impacts on numerous biologically sensitive species found in that area, and would represent a major intrusion of noise into the Orange Coast River Park. -- Robert Hamilton
- The DEIR is thus somewhat of a hybrid between a project specific EIR addressing a tract map which includes establishment of individual residential lots in some areas and a Master EIR addressing a general plan or master plan, with additional environmental documents potentially prepared for specific development in the future. -- Sandra Genis
- Notice of Availability of DEIR failed to list significant environmental effects anticipated as a result of the project as required by CEQA Guideline 15087(c)(4).

2

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Documents referenced in DEIR not readily available for public review at the sites listed in the notice. -- Jim Mosher

- The ongoing mowing and likely destruction of ESHA has not been addressed. This is an omission and could possibly end up being another violation/California Coastal Commission enforcement issue. -- Penny Elia
- The Air Quality and Hazards and Hazardous Materials sections of the DEIR do not include the impacts of TACs and criteria pollutants on human health. The Banning Ranch oil field has been in operation nearly seven decades, yet no radiation survey is mentioned in the DEIR. -- Suzanne Forster
- Not included is the foreseeable expansion of Ticonderoga into a commuter roadway. -- Julia Shunda
- No research into H2S gas release based on Cal OSHA reporting and engineered Secondary Oil Recovery operations (H2S gas is by-product). Not included in DSEIR is historic research on wells abandoned, condition of these wells and location on the Banning Lease. -- Dennis McHale
- Significant omission of ESHA and CSS (gnatcatcher and Cactus Wren habitat) data and information, particularly as referred to in the Coastal Commission Consent Cease and Desist Order CCC-11-RO-02 and the Coastal Commission Consent Restoration Order CCC-11-RO-02 and within the City of Newport Beach's CLUP. -- Patricia Barnes
- The DEIR's omission of the under construction Coastline Community College Newport Beach Learning Center on 15th Street and Monrovia. -- Dorothy Kraus
- The dEIR was made available in 3 different formats:
 - Paper copies
 - Multiple CDROM disks
 - Online available via the Internet

2 cont.

Paper

The paper copies were accessible at very limited, primarily City locations. Access was limited to the facility operating hours and times. The document is 7300+ pages making it extremely difficult for a comprehensive review. There is a table of contents, but no index, making very rudimentary searches very difficult.

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CDROM

The files were split into 3 separate disk because the size of the files exceeded the normal CDROM capacity. Disk one contained the main body (Volume 1) of the document, disk 2 the appendixes A-E and disk 3 appendixes F-M. The total of the 3 files sizes is approximately 876 MB. The large file chunks adversely impact computer performance, particular the disk 2 appendix – 660 MB. A high end PC configured with 6MB of RAM and an Intel second generation i7 processor takes approximately 35 seconds to load appendix 2. Less robust computer configurations would take considerable longer to load files this large. The files are in pdf format and have been arranged in Adobe’s portfolio format. Searching portfolios can be extremely time consuming. A more even split in file sizes would have been better. The Adobe Acrobat page number does not match that of the actual document, making browsing the portfolio pages very difficult.

2 cont.

Internet

The entire dEIR document is also available on the City of Newport Beach website. The City has done a relatively nice job a splitting the document into manageable chunks. A fast Internet connection (7-10 mbps) downloaded larger chunks in just over 2 minutes. Slower connections would take much longer. The files are in pdf format and use the more “traditional” Adobe format rather than portfolios making searching much easier. Again, the Acrobat page numbers do not match the actual document page numbers. The files on the City website are also displayed alphabetically rather than the order that they appear the actual document. This may confuse some reviewers.

The real problem with the dEIR is the simple fact that it contains over 7300 pages of material. Trying to review this much material in 60 days is an insurmountable task. While there may be some technical, and accessibility issues, does the document meet CEQA guidelines for length and readability? --
Paul & Cathy Malkemus

In summary, and as demonstrated above and in the many comment letters/emails submitted by the individuals listed above and referenced and included herein, the DEIR is woefully inadequate and not sufficient to serve as a valuable or reliable informational document for the public, the decision makers in the City of Newport Beach, other responsible public agencies or the California Coastal Commission (who retains original jurisdiction over this area of deferred certification that is the proposed project area) and as required under CEQA. **The Banning Ranch Conservancy hereby strongly requests that the aforementioned DEIR be withdrawn, revised in compliance with CEQA requirements and recirculated.**

3

Please contact the undersigned at 310/961-7610 or via email at steve.banningranch@hotmail.com for questions or for further information.

Thank you.

Respectfully submitted,

Steve Ray [s]

Steve Ray
Executive Director
Banning Ranch Conservancy

P. O. Box 16071
Newport Beach,
CA 92659-6071

(310) 961-7610

www.banningranchconservancy.org

Letter O1a Banning Ranch Conservancy
Steve Ray, Executive Director
November 8, 2011

Response 1

The commenter's opinion regarding the adequacy of the EIR is noted. Please refer to the specific responses provided to the commenters referenced in Comment 1 of this letter.

Response 2

Please refer to the response to Comment 1.

Response 3

The commenter's opinion regarding the adequacy of the EIR is noted.

Comment Letter O1b

November 7, 2011

1857 Rhodes Drive
Costa Mesa, CA 92626

RECEIVED BY

COMMUNITY

NOV 07 2011

DEVELOPMENT
CITY OF NEWPORT BEACH

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Recorded media in support of comments from the Banning Ranch Conservancy

Dear Mr. Alford:

Attached are four (4) DVDs containing documents in support of comments being made by members and friends of the Banning Ranch Conservancy.

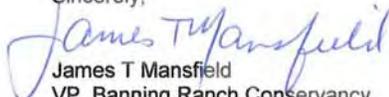
They are labeled:

- Vandersloot File
- 2008 Community Development Plan + Appendices; Consent Order; SRP; Measure M EOC; NB Council letter
- Banning Ranch Vernal pools/wetlands
- Sunset Ridge Park EIR comments

Please ensure that the contents of these DVDs become part of the public record in support of comments to the Newport Banning Ranch DEIR.

Thank you,

Sincerely,


James T Mansfield
VP, Banning Ranch Conservancy
jtmansfield@ca.rr.com

Letter O1b Banning Ranch Conservancy
James T. Mansfield, Vice President
November 7, 2011

Response 1

The commenter submitted four disks to the City. Responses to the materials on each disk are provided below. Most of the contents of the disks are not included in the Final EIR because these documents are publicly available City documents and Staff Reports or superseded materials submitted by the Applicant but they are summarized here in this Response to Comments document and are included in the Administrative Record for this project. Where the documents are not already matters of public record, they are included as Appendix B to this Responses to Comments document.

Disk 1: Vandersloot File

Responses to the late Dr. Vandersloot's examples are provided below. Mr. Vandersloot and the commenter are incorrect in stating that Location B75 was incorrectly mapped as non-native grassland. The location identified by Dr. Vandersloot in 2008 was located at the northern portion of the area mapped as willow riparian forest, which contains mule fat as described on page 4.6-18 of the Draft EIR.

At Vandersloot location B152, this area was mapped accurately as non-native grassland. The presence of small areas of *Encelia* is not uncommon or unexpected in this area. Page 4.6-14 of the Draft EIR states that there are pockets of native species that were not mapped because they were mowed to a height of less than six inches and could not be delineated. They may also have been considered a significantly smaller portion of the larger habitat in the vicinity and therefore, the larger vegetation type would have dominated over a small area of *Encelia*.

Given the lack of evidence presented in these samples, no significant discrepancies are present. Vegetation mapping was conducted on numerous days in 2009 and 2010 by Senior Botanist Sandy Leatherman of BonTerra Consulting who has over 20 years of experience in plant biology and has mapped thousands of acres of habitat throughout Southern California. All biological data in the EIR would be subject to review by applicable regulatory agencies as a part of the permitting process for the proposed Project.

Disk 2: 2008 Community Development Plan and Appendices; Consent Order; Sunset Ridge Park; Measure M EOC; Newport Beach Council Letter

Disk 2 contains the following information:

- Newport Banning Ranch Planned Community Development Plan and technical appendices, dated August 2008
- California Coastal Commission Staff Report and attachments to the Staff Report dated April 1, 2011. Subject: Consent Cease and Desist Order and Consent Restoration Order.
- California Coastal Commission Staff Report and attachments to the Staff Report dated September 23, 2011; Staff Report and attachments to the Staff Report dated October 20, 2011. Subject: Coastal Development Permit for Sunset Ridge Park.
- Orange County Transportation Authority (OCTA) Renewed Measure M Environmental Oversight Committee data: Appendices A through H, dated December 2009; Exhibit

Santa Ana River Mouth Core Habitat Area: Positional Priority Levels with Priority Conservation Areas, no date; Data: *Acquisition Properties Evaluation (PCA and Non-PCA – Biological Criteria)*, no date; City of Newport Beach letter to OCTA, dated April 15, 2009.

With respect to the Newport Banning Ranch Planned Community Development Plan and technical appendices dated August 2008, this information was submitted to the City by the Applicant as a part of the Project Application for the proposed Project. The information on the disk does not reflect the most current Planned Community Development Plan and technical appendices used for the preparation of the Draft EIR. No further response is required.

With respect to the California Coastal Commission Staff Report and attachments to the Staff Report dated April 1, 2011 regarding the Consent Cease and Desist Order and Consent Restoration Order, please refer to Topical Response: Sunset Ridge Park and Topical Response: Coastal Commission Consent Orders.

With respect to the California Coastal Commission Staff Report and attachments to the Staff Report dated September 23, 2011; Staff Report and attachments to the Staff Report dated October 20, 2011 regarding the Coastal Development Permit for Sunset Ridge Park, please refer to Topical Response: Sunset Ridge Park.

With respect to data submitted by the commenter related to the Orange County Transportation Authority (OCTA) Renewed Measure M Environmental Oversight Committee data, the City is familiar with this data. It does not relate directly with the Applicant's proposed Project. Please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which identifies several alternatives to Applicant's proposal including the General Plan Open Space Alternative which would require purchase of the property from the Applicant. This alternative also requires the remediation of the property, the restoration of biological resources, and the construction of a 20- to 30-acre Community Park and a north-south roadway from West Coast Highway to 19th Street. No further response is required.

Disk 3: Banning Ranch Vernal Pools/Wetlands

This disk contains a PowerPoint presentation, *Complete Banning Ranch Mesa Vernal Pools/Wetlands*, dated June 27, 2011. No author or preparer is identified. This information was previously provided to the City. Please refer to Topical Response: Vernal Pools.

Disk 4: Sunset Ridge Park EIR

This disk includes the comments and responses to the comments submitted to the City of Newport Beach on the Sunset Ridge Park Draft EIR. The Final EIR was certified and the park project approved on March 23, 2010. No further response is required.

Comment Letter O2

Banning Ranch Defenders



Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

Dear Mr. Alford:

Thank you for the opportunity to comment on a draft environmental impact report (DEIR) (State Clearinghouse No. 2009031061) for the proposed Newport Banning Project. These comments are submitted on behalf of the Banning Ranch Defenders (BRD) organization.

The Banning Ranch Defenders is an organization that is working to preserve the entire parcel of coastal open space. The BRD has concerns that the proposed development will devastate the rich and abundant biological habitat, increase adverse traffic congestion through the streets of Costa Mesa, and the heights of the higher density portions of the Village Colony building are too high thus restricting and sealing off sights, sounds, smells and breezes of the Pacific Ocean from Westside Costa Mesa residents.

We support the option as identified in the city of Newport Beach's General Plan which is to maintain 100% of Banning Ranch as open space.

Biological

As documented by top biologists Banning Ranch is an area where many species of interests that are protected and Environmentally Sensitive Habitat Areas (ESHA) exist. This species include the California Gnatcatcher, Least Bell's Vireos, Cactus Wren and the Burrowing Owl. It should be noted that the developers, to no surprise, have denied the existence of the Burrowing Owl on the Banning Ranch property, however, evidence overwhelmingly indicates that the Burrowing Owls to thrive on the land.

1

The Banning Ranch property is vital to coastal scrub habitat and encelia scrub. This coastal scrub is essential to the survival of the California Gnatcatcher. Due to the illegal mowing that has been occurring on Banning Ranch, the aforementioned coastal and encelia scrub was disturbed. It is this organization's opinion that the mowing was conducted to eliminate any and all habitat; therefore, the developers could argue the property is a barren wasteland and not the thriving ecosystem that it actually is.

2

<p>The city of Newport Beach and the developers are not in compliance with the California Coastal Act which states all ESHA's must be fully protected. The proposed Bluff Road and other proposed roads will either fragment, or entirely destroy the ESHA's that exist on the property. This devastation is the reason why the California Coastal Commission correctly denied any and all permits for the first section of Bluff Road and Sunset Ridge Park.</p>	3
<p>Traffic</p> <p>Placentia and Victoria Avenues cannot accommodate any increase in vehicular traffic. An estimated 34,000 vehicle trips per day will be added to our streets. An estimated 75% of project trips will be routed through Costa Mesa. The Westside of Costa Mesa is the only area regionally that does not have cut-through traffic. 15th, 16th, and 17th streets may require widening, in order to accommodate the increased traffic flow. 17th and 19th streets, in Costa Mesa, already have low LOS standards. The increase of traffic to these intersections will result in Level-of-Service standard F.</p>	4
<p>While the Newport Banning LLC has downplayed the 19th Street bridge being necessary for project; the bridge is still on the Orange County Master Plan of Arterial Highways.</p>	5
<p>The continuing problems with the SR-55 and Newport Boulevard will not be cured in the near future. Current estimates have any major improvements on the SR-55 not occurring before 10-15 years. Therefore, the SR-55 cannot accommodate satisfactorily any increase in traffic loads.</p>	6
<p>Building Heights</p> <p>The higher density portions of the development are to be abutted next to Costa Mesa. Height requirements are 60' which equates to 4 to 5 story buildings. This higher density phase is being called the "Urban Flats" however there is nothing "flat" about the project as it is a mountain sized building. Due to the height, width, and length of the building it will block the ocean views, smells, sounds and breezes of the Pacific Ocean. Costa Mesa is working to revitalize its Westside and is dependent on the views of the ocean.</p>	7

Truly,

Chris Bunyan
President, Banning Ranch Defenders
P.O. Box 3133
Costa Mesa, CA 92628
714.865.9746

Letter O2 **Banning Ranch Defenders**
Chris Bunyan, President
November 8, 2011

Response 1

The Draft EIR identifies the presence of the burrowing owl (*Athene cunicularia*) on site in several locations throughout the document. The Draft EIR documented that suitable foraging and nesting habitat is present on site and this species has been observed wintering on site in 2008, 2009, and 2010. However this species is absent for breeding based on breeding season surveys conducted in 2008, 2009, and 2010. Impacts on occupied and potential habitat for this species were found to be significant in the Draft EIR (page 4.6-62). Implementation of Mitigation Measures 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level (page 4.6-89).

Response 2

Please refer to Topical Response: Mowing and Fuel Modification. Permitted mowing associated with ongoing oilfield operations has not eliminated all of the on-site habitat. Please refer to Section 4.6, Biological Resources, of the Draft EIR which identifies that the Project site supports native habitat (coastal sage scrub, disturbed coastal sage scrub, grassland depression features, marshes and mudflats, riparian scrub/forest, disturbed riparian scrub/forest, and cliff) that provide valuable habitat for native plant and wildlife resources.

Response 3

Please refer to Topical Response: ESHA. With respect to Sunset Ridge Park, the Coastal Commission has not taken action on the City's public park project; please refer to Topical Response: Sunset Ridge Park.

Response 4

The Project is estimated to generate 14,989 vehicle trips per day. The Traffic Impact Analysis indicated that approximately 5 percent of the Project traffic would travel along Placentia north of 17th Street. Project traffic is not shown to travel along Victoria in Costa Mesa since other streets provide a more direct path of travel to off-site destinations. The Traffic Impact Analysis indicates that a composite of approximately 65 percent of the Project traffic can be expected to travel along the street system in southwest Costa Mesa. The impact on the southwest Costa Mesa streets was addressed in the Draft EIR Traffic Impact Analysis. The resulting traffic volumes do not indicate the need for widening of 15th, 16th, 17th, or 19th Street. The Project's impact on the peak hour operation of intersections along these streets was evaluated, and mitigation measures have been identified for any intersections that would experience a significant Project impact.

Response 5

Because the 19th Street Bridge is shown on the Orange County MPAH, it was assumed to be part of the area roadway network for all of the General Plan Buildout scenarios. In addition, because of the uncertainty of the timing of the bridge, a separate analysis of General Plan Buildout without the bridge was also provided in the Draft EIR Traffic Impact Analysis for informational purposes. It should be noted that the Year 2016 traffic analysis scenarios do not assume the 19th Street Bridge.

Response 6

The traffic forecast and analysis for future General Plan Buildout conditions assume SR-55 and Newport Boulevard improvements to be completed as shown on the Orange County MPAH. The Draft EIR acknowledges that other alternative improvements to Newport Boulevard are currently under study.

Response 7

The proposed 4- to 5-story Urban Colony buildings could be located on both the north and south side of 17th Street. As addressed in Section 4.1, Land Use and Related Planning Programs, and Section 4.2, Aesthetics and Visual Resources, both the City of Costa Mesa's Mesa West Bluffs Urban Plan area and the proposed Project's Urban Colony would have a maximum building height of 60 feet. Potential future residential and live/work land uses within the Mesa West Bluffs Urban Plan area would be similar in use and height as those proposed for the Urban Colony. However, the Urban Colony would permit a much higher residential density (40 du/ac compared to 13 du/ac) and non-residential intensity (2.0 to 2.5 FAR compared to 1.0 FAR) of development when compared to the Mesa West Bluffs Urban Plan area. The maximum lot coverage for the proposed Project is also greater (90 percent compared to 60 percent). The Project's Urban Colony would provide an approximate setback 28 to 40 feet or more from the adjacent off-site industrial uses. Properties located within the boundaries of the Mesa West Bluffs Urban Plan Area are located contiguous to the eastern boundary of the Project site. These properties have a Costa Mesa General Plan land use designation of Light Industrial and a zoning designation of General Industrial. The Costa Mesa City Council identifies the Mesa West Bluffs Urban Plan area as a live/work or residential overlay area. Costa Mesa's Zoning Map was amended to reflect this overlay zone.

It should be noted that the Mesa West Bluffs Urban Plan does not reference views of the Pacific Ocean.

Comment Letter O3



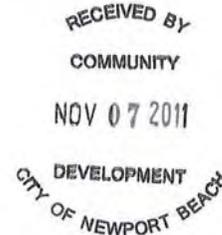
California Cultural Resource Preservation Alliance, Inc.

**P.O. Box 54132
Irvine, CA 92619-4132**

**An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.**

November 3, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915



Dear Mr. Alford:

We are writing to express our opposition to the proposed Newport Banning Ranch Project development not only because it will impact significant archaeological sites, but also because of the impacts to endangered species and habitat. Given the loss of so many significant archaeological sites in Orange County due to development, it is tragic that only three out of 11 archaeological sites in the Newport Banning Ranch Project area have escaped total destruction. All three sites have been determined eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR). This makes it all the more important that the three archaeological sites CA-ORA-839, CA-ORA-844B, and CA-ORA-906 be protected and preserved and not “mitigated”.

1

Having registered our opposition to the proposed project, the remainder of this letter will address the specifics of the proposed mitigation plans. While BonTerra Consulting is to be commended for recommending preservation of portions of two of the sites through site capping and the City is to be commended for incorporating the recommendations into their mitigation plan, we question why all of the remaining portions of the NRHP and CRHR eligible sites cannot be preserved.

According to MM 4.13.2, an unknown portion of CA-ORA-839 will be impacted by planned removal of oilfield-related infrastructure prior to grading. It is not clear why, if the road will not impact the site, “planned removal of oilfield infrastructure that may impact portions of the site.” is necessary. What is the justification for the removal? Leaving it in place is not only cost effective, as removal of the oilfield infrastructure and archaeological data recovery are time consuming and expensive; but given the magnitude of losses to the prehistoric site inventory on the property, the significance of the site, and the inadequacy of data recovery excavations as mitigation for destruction, preservation should be mandatory. It is also troubling that the areal extent of the impacts is not identified and therefore, the portion of the site to be capped could be very minimal.

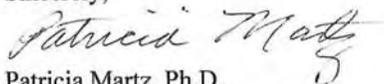
2

The MM 4.13-2 should describe the areal extent of the portion of the site described as “the vast majority of the site” and the areal extent that would be impacted by the planned removal of the oilfield infrastructure. Saying that “It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it .” is not sufficient. The MM 4.12.2 should identify the extent of the area to be preserved and state that the site will be capped following guidance provided by the

3

National Park Service’s brief #5 Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss (NPS 1989, revised 1991).	3 cont.
CA-ORA-844B would not be directly impacted by the proposed development. The proposed road would be 400 feet east of the archaeological site. It will be impacted by oil infrastructure removal activities prior to grading. Again why does the oil infrastructure have to be removed? What is the grading for if the road would be approx 400 ft east of the site? Also indirect impacts from additional erosion of the unstable surface and the increased population on the site as a result of the future development could cause further damage over time. Mitigation of the Project’s adverse effects is required. What mitigation? Data recovery? Why not preservation through site stabilization and capping?	4
CA-ORA-906 will be directly impacted as a result of road construction and oilfield infrastructure removal.	5
Bottom line: Out of 11 archaeological sites, only 3 have not been destroyed to the extent that they retain the potential to provide information important in prehistory and therefore are eligible. But due to the proposed development, all three will be impacted. “The impact would be mitigated to a level considered less than significant with implementation of MMs 4.13-1 and 4.13-2.” This statement reflects the outdated thinking that the only value of an archaeological site is scientific information. If you recover the information through data recovery excavations, you are good to go. This does not take into consideration cultural, heritage, and religious values. It also does not recognize the fact that the time and monetary constraints of archaeological excavation, and the current science of archaeology, are not capable of recovering sufficient information before the site is destroyed.	6
In recognition of this, federal historic preservation laws no longer allow a “no adverse effect determination” or in CEQA parlance “reduction of potential impacts to a level considered less than significant” through data recovery mitigation. Archaeological sites are fragile and non-renewable. Archaeology as it is practiced today is a destructive process. It is essential that the remaining areas of these highly significant archaeological sites be preserved for future generations with advanced archaeological techniques that are non-destructive and that can provide answers to questions that we can’t answer with today’s technology.	7
In summary, the 3 remaining archaeological sites should be avoided, capped, and preserved. If you have any questions, please contact me at (949) 559-6490.	8

Sincerely,



Patricia Martz, Ph.D.
 President

Letter O3 California Cultural Resources Preservation Alliance
Patricia Martz, Ph.D., President
November 3, 2011

Response 1

Three cultural resources, (CA-ORA-839, CA-ORA-844B, and CA-ORA-906), qualify for NRHP and CRHR eligibility. Preservation is, of course, a form of mitigation and has been recommended. The reason for mitigation by data recovery excavation is because the removal of oilfield infrastructure may impact limited areas of a site. While the removal of oilfield infrastructure fulfills other environmental mitigation measures (toxic waste), non-removal of the infrastructure would be agreeable to Cultural Resource management if feasible. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-839 and CA-ORA-844B and they could be entirely preserved in place; however, such a determination cannot be made until remediation activities begin. Grading for road construction would destroy CA-ORA-906, making excavation necessary.

Response 2

The Draft EIR analysis has assumed that removal of oilfield infrastructure was necessary; however, it may indeed be possible to leave some of it in place if its removal would impact sites. While the removal of oilfield infrastructure fulfills other environmental mitigation measures (toxic waste), non-removal of the infrastructure would be agreeable to cultural resource management if feasible. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-839 and CA-ORA-844B and they could be entirely preserved in place; however, grading for road construction would destroy CA-ORA-906, making excavation necessary.

Response 3

The specific dimensions of preservation of the site by capping are dependent on two unknown variables. The exact location and areal extent of the oilfield infrastructure is not definitively known, and the technique of infrastructure removal (e.g., with heavy equipment) is not known and would affect the area of impact. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-839 and it could be entirely preserved in place.

Response 4

The specific dimensions of preservation of the site by capping are dependent on two unknown variables. The exact location and areal extent of the oilfield infrastructure is not definitively known, and the technique of infrastructure removal (e.g., with heavy equipment) is not known and would affect the area of impact. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-844B and it may be able to be preserved in place. The erosion that has already occurred at the site may make capping difficult but not entirely infeasible.

Response 5

The removal of oilfield infrastructure and grading for construction of a road would destroy CA-ORA-906. It would therefore be infeasible to preserve the site. Data recovery is the only feasible option unless the design of the road is changed to avoid the site. Realignment of the road would result in other environmental impacts including those related to sensitive biological resources and topographical issues.

Response 6

Mitigation by data collection is not “outdated,” it is the CEQA/Section 106 preferential means of mitigation if mitigation by preservation is not available. Oilfield infrastructure removal is required, making mitigation of those portions of the sites necessary. If buried oilfield infrastructure could remain in place, there would be no impact to CA-ORA-839 and CA-ORA-844B and they could be entirely preserved in place; however, grading for road construction would destroy CA-ORA-906, making excavation necessary.

Cultural, heritage, and religious values were considered during Native American consultation under SB 18. No concerns regarding these values in relationship to the preservation of the sites were brought up during consultation.

Response 7

If it is not feasible to preserve sites through capping, data recovery excavation is the only means necessary to mitigate the sites or those portions being impacted by development. While the proposed Project would have an adverse impact on the three significant sites, MM 4.13-2 would reduce the adverse effect by accommodating the needs of all concerned, serving the public interest, and promoting the protection and preservation of the majority of the sites.

Response 8

Grading would destroy CA-ORA-906 and the removal of oilfield infrastructure would damage portions of CA-ORA-839, CA-ORA-844B, and CA-ORA-906. If feasible, and if construction plans can be altered, the three sites would be avoided, capped, and preserved.



California Native Plant Society

ORANGE COUNTY CHAPTER

Comment Letter O4

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

November 7, 2011

Patrick Alford
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

RE: Newport Banning Ranch DEIR

Dear Sir:

The Orange County Chapter of the California Native Plant Society has long had an interest in Newport Banning Ranch. Despite its long-degraded condition, it still contains quite a variety of functioning native coastal upland, riparian and wetland habitats, including vernal pools. We are concerned that the pools' restoration and maintenance be done correctly and result in their forming a stable, viable native habitat.

The mission of the California Native Plant Society is to conserve California native plants and their natural habitats, and to increase understanding, appreciation, and horticultural use of native plants.

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

- | | |
|--|---|
| <p>1. The seven vernal pools on site, totaling a half-acre in area, were so designated because they host San Diego fairy shrimp (Table 4.6-5), although most lack any other vernal pool indicators. At the time of the Biological Resources studies, only the largest pool contained any native plant species that characterize vernal pool habitat (p. 4.6-33). MM 4.6-3 calls for restoration by seeding/planting with appropriate vernal pool species, incorporating on-site collected seed if appropriate, but no species list is given. The vernal pool restoration plant palette provided in Appendix K, Attachment 3, lists species that are mostly more characteristic of alkali/subsaline wetlands than of vernal pools. This palette does not appear to be appropriate for the purposes of MM 4.6-3.</p> | 1 |
| <p>2. MM 4.6-3 states that the vernal pool preservation/enhancement areas total 3.58 acres. Table 3.2 lists the Vernal Pool Preservation Area (Site Planning Area 1d) as 3.2 acres. Which is right?</p> | 2 |
| <p>3. The location of the Vernal Pool Preservation Area (Site Planning Area 1d) and Vernal Pool Interpretive Area (Site Planning Area 9b) should be specifically identified on Exhibit 3.2. Their location in relation to the proposed plan is not clear until Exhibit 3-15, despite being discussed in the text that is between the two Exhibits.</p> | 3 |
| <p>4. Exhibit 4.8-8 shows that the Vernal Pool Preservation Area is in a high-visibility site. In that site, especially, the vernal pools are potentially a unique community amenity and a valuable example of the subtle beauty and seasonal changes of authentic Southern California.</p> | 4 |

September 13, 2011

page 2 of 2

<p>5. Appendix K, <i>Fire Protection, Fire and Life Safety Program</i>, p. 5 states: “One edge of the Vernal Pool Watershed Area will be developed with homes. A six-foot-high radiant heat wall [typically a solid masonry wall] shall be constructed along this residential edge [emphasis added]. This wall ... will provide protection for the homes from a fire originating in that area.” Having such a wall along one side of the Area, with rooflines immediately beyond, will destroy the “wide-open field” setting that is an essential part of the vernal pools habitat. OCCNPS requests that those 10 units of Planning Area 10b be removed, thus removing the fire danger and the need for the wall. The vernal pools should be surrounded by as wide an open space as possible.</p>	5
<p>6. The Cut and Fill Map, Exhibit 3-17, indicates that much of the Vernal Pool Preservation Area will be higher than its immediate surroundings. How much higher does not appear to be included in the DEIR documentation. It may be inferred from the Bluff Restoration Plan, Exhibit 4.3-6, that the Area’s northerly corner will be slightly higher than street level and at its southerly corner the street will be some feet lower. This perches the pools on a mesa, and limits their watershed to the 3+ acres of the Area. It’s not clear how much area drains toward the pools at present, but Exhibit 3-17 suggests that it’s somewhat more than 3+ acres. Since a vernal pool is a low spot into which rain water collects, its ability to sustainably support its plants and animals--in this case, especially the endangered San Diego fairy shrimp--depends on having a big enough catchment area. Three-plus acres does not look like enough catchment for these vernal pools.</p>	6
<p>7. MM 4.6-3 calls for the Vernal Pool Preservation Area watershed to be planted with native alkali meadow or native upland grasses favorable for raptor foraging, but no species list is given. The Area watershed would then be “counted” as part of the overall project’s required acreage for grassland mitigation/restoration. Appendix K, Attachment 3, includes a Vernal Pool Watershed Area plant palette that lists three appropriate grasses as well as nine non-grass species. Four of these are more likely to be found in alkali/subsaline wetlands and four are more likely to be found in coastal sage-scrub. If these species are planted in this area instead of mostly grasses, the area will not contribute to the overall acreage of grassland.</p>	7
<p>8. The Vernal Pool Watershed Area plant palette in Appendix K, Attachment 3, includes coastal prickly-pear and coastal cholla. These two species are found in grasslands and could provide raptor perches once grown big enough, as well as habitat for various birds and small animals. And the cacti could form an effective natural barrier to deter visitors from roaming off-path. But there could be liability issues with its presence in a public park in a high-visibility, potentially high-visitation site.</p>	8
<p>9. A great deal of restoration funding and effort will be applied to the Vernal Pool Preservation Area. It would be a waste of that funding and effort if any plants known to be invasive are allowed to be installed as landscaping anywhere within the overall development. It is good that, under MM 4.6-14 and MM 4.6-16, invasive species will be officially contraindicated and residents will be advised of the responsibilities of living in the Wildland-Urban Interface in coastal Orange County.</p>	9

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

Respectfully,

Celia Kutcher
Conservation Chair

Letter O4 California Native Plant Society, Orange County Chapter
Celia Kutcher, Conservation Chair
November 7, 2011

Response 1

As described in Mitigation Measure (MM) 4.6-3 in the Draft EIR, the “Applicant shall be required to plan, implement, monitor, and maintain a vernal pool preservation/restoration program for the Project. A vernal pool program shall be developed by a qualified Biologist and shall be submitted for review and approval to the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission) prior to the first action and/or permit which would allow for site disturbance (e.g., issuance of a grading permit)”. Of particular importance here will be the review and concurrence of the plan by the USFWS who has the regulatory jurisdiction of the areas occupied by the fairy shrimp.

The “vernal pool restoration plant palette” provided in the Fire Protection technical report (Appendix K, Attachment 3 of the Draft EIR), lists species that are compatible with the Fire Protection plan. The comment is noted that several of the plant species listed may not be suitable for the site. The ultimate plant pallet would be part of the Habitat Restoration Plan (HRP) for the Project site that would be required to be developed as part of the Project permitting process with the USFWS. The final plant list would take into consideration soil types present, alkalinity of soils, site hydrology, and compatibility with the goals of long term survival of the fairy shrimp on the site.

Response 2

The correct number is 3.58 acres, as noted in MM 4.6-3 of the Draft EIR, which include the preservation and restoration of these features on site. Table 3-2 on page 3-35 has been revised to incorporate footnote f and is incorporated into the Final EIR as follows (see following page):

Response 3

The location of the Vernal Pool Preservation Area (Site Planning Area 1d) and Vernal Pool Interpretive Area (Site Planning Area 9b) are located on Exhibit 3.2 of the Draft EIR. The call-outs 1d and 9b can be found within the planning areas on the exhibit.

Response 4

The comment is noted.

Response 5

Vernal pools VP-1 (0.30 acre) and VP-2 (0.02 acre) would be surrounded by an additional 3.26 acres of habitat and supporting watershed. This represents an existing habitat to conservation ratio of approximately 10:1. This level of mitigation is adequate to reduce the level of impact to a less than significant level.

**TABLE 3-2
MASTER DEVELOPMENT PLAN STATISTICAL SUMMARY**

Land Use Designation	Site Planning Area		Gross Acres ^a	Net Acres ^a	Density (du/gross ac)	Units	Retail (sf) ^d	Resort Inn
	No.	Description						
OPEN SPACE PRESERVE								
1. Upland Habitat Conservation, Restoration, and Mitigation Areas								
UOS/PTF	1a	West Coast Highway Bluff Area	15.3	14.3	–	0	0	0
UOS/PTF	1b	Southern Arroyo CSS/Grassland Area	28.3	28.0	–	0	0	0
UOS/PTF	1c	Scenic Bluff CSS/Grassland Area	13.0	13.0	–	0	0	0
UOS/PTF	1d	Vernal Pool Preservation Area	3.2 ^e	3.2 ^f	–	0	0	0
UOS/PTF	1e	South Upland CSS/Grassland Area	19.4	18.1	–	0	0	0
UOS/PTF	1f	Northern Arroyo Grassland Area	5.8	5.5	–	0	0	0
UOS/PTF	1g	North Upland CSS/Grassland Area ^b	16.3	13.5	–	0	0	0
UOS/PTF	1h	Minor Arroyo Grassland Area	1.2	1.1	–	0	0	0
<i>Subtotal</i>			<i>102.5</i>	<i>96.7</i>	<i>–</i>	<i>0</i>	<i>–</i>	<i>0</i>
<p>^{a.} Gross acres of site planning areas are measured to the centerline of all public roads where such roads are shown on the Master Development Plan. Net acres of site planning areas are measured to the edge of the rights-of-way for all public roads where such roads are shown on the Master Development Plan (i.e., net acres exclude public road rights-of-way).</p> <p>^{b.} The Right-of-Way Reservation for the 19th Street extension, from the Project site's easterly boundary to the Santa Ana River, encompasses approximately 3.1 acres, including approximately 0.6 acre of SPA 1g, 2.3 acres of SPA 2a, and 0.2 acre of SPA 3b.</p> <p>^{c.} The Bluff Toe Trail is located within the non-exclusive access easement identified as Site Plan Area (SPA) 5b, Oil Access Road.</p> <p>^{d.} Up to 2,500 sf of commercial may be transferred to a Residential Land Use District in accordance with the provisions of the NBR-PC provided the total area of commercial uses for the Master Development Plan does not exceed 75,000 sf.</p> <p>^{e.} Includes a water quality basin.</p> <p>^{f.} <u>The drainage area tributary to the vernal pool contains approximately 3.6 acres, and is composed not only of the 3.2 net acres in SPA 1d, Vernal Pool Preservation Area, but 0.4 net acre of the 0.6 net acre in SPA 9b, Vernal Pool Interpretive Area. Any and all interpretive planning within SPA 9b shall respect the 3.6-acre Vernal Pool tributary drainage area, and meet with the approval of the State and federal resource agencies and the California Coastal Commission.</u></p>								

Source: FORMA 2011.

Response 6

During the rainy season of 2009/2010, the Applicant's consultants Glenn Lukos Associates and Fuscoe Engineering conducted a detailed watershed mapping study for the area of Vernal Pools 1 and 2 based on a topographic survey at an accuracy of 0.1 foot contour and actual observations of water movement in the watershed during significant rainfall events (specifically during the period of January 18 through 21, 2010 which was part of a six-day series of storms that accounted for 6.46 inches of rainfall). Based on the detailed topographic mapping and the direct observation of water movement, it was concluded that the watershed for Vernal Pools 1 and 2 covered 1.85 acres. In the post-Project condition, the watershed would be increased to 3.58 acres and configured to ensure proper drainage to the features while also allowing for restoration and expansion of pools within the 3.58-acre Vernal Pool Preservation and Restoration Area.

Response 7

As discussed in the response to Comment 1, “vernal pool restoration plant palette” provided in the Fire Protection technical report, lists species that are compatible with the Fire Protection plan and are not necessarily the plants that would be used in the final plant pallet for the vernal pool watershed areas. The final plant list would be part of the Habitat Restoration Plan (HRP) for the Project site and would be consistent with the mitigation requirements of Mitigation Measure (MM) 4.6-3. The planting of native alkali meadow species such as saltgrass (*Distichlis spicata*) or native upland grasses such as purple needlegrass (*Nassella pulchra*) would be beneficial to raptor foraging opportunities in the area and would therefore be seasonably be “counted” toward grassland habitat.

Response 8

The Open Space Preserve area of Planning Area 1d would not have public access, except for those areas along the walkway within the interpretive area. Any planting of cacti within this open space area is not expected to be problematic.

Response 9

The comment is noted.



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17701 Cowan Ave., Suite 200
Irvine, CA 92614
949 250 0909
fax 949 263 0647

November 4, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

RE: Newport Banning Ranch Project Draft Environmental Impact Report

Dear Mr. Alford,

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.

The Commission would like to thank the City for providing the community an opportunity to submit comments on the proposed Newport Banning Ranch Project Draft Environmental Impact Report (DEIR). As the City begins to evaluate and address the potential environmental effects of the proposed project, the Commission would like to address a few concerns regarding the proposed project and provide recommendations that should be taken into consideration.

Affordability for Extremely Low, Very Low and Low-Income Households

For the 2006-2014 Housing Element planning period, the City's total Regional Housing Needs Assessment (RHNA), including the unaccommodated 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.¹ To address the remaining RHNA needs, the City identified opportunity sites such as Banning Ranch as land suitable for residential development.²

It is important that every jurisdiction meet the housing needs of all income segments of the community and the Commission commends the City's leadership for proposing the construction of a minimum of 50percent of the required affordable homes in Banning Ranch. The development proposes 1,375 homes and includes the following: 69 homes at very low-income (5 percent of total homes); 138 homes at low-income (10 percent of total homes) or; 206 homes at moderate-income (15 percent of total homes).³

¹ City of Newport Beach General Plan Housing Element Draft, p. 5-45, August 2011.

² City of Newport Beach General Plan Housing Element Draft, p. 5-48, August 2011.

³ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

Working for systemic change resulting in the production of housing for Orange County's extremely low income households.

Mr. Patrick J. Alford
November 4, 2011
Page 2 of 4

While the City requires at least 15 percent of the total homes in Banning Ranch to be affordable to lower income families, the Commission is concerned that the opportunity to meet some of the City's RHNA need for very low- and low-income homes may not be achieved. To meet the City's affordable housing obligation, developers are given the option to provide: 1) 15 percent of total units at very low- and low-income **OR**; 2) 15 percent of total units at moderate income **OR**; 3) 15 percent of total units at a combination of very-low, low- and moderate-income homes.⁴ With these options, developers may opt out of building homes affordable to very low- and low-income working families and instead focus on the option of building homes for moderate-income families.

The 2011 Orange County income limits for a moderate income four person household is \$84,200 and is significantly higher than the incomes of working families earning minimum wages.⁵ Moderate income housing developments are generally affordable to moderate- and above moderate-income wage earners. These housing needs are traditionally met by market rate developments that are not affordable to low-wage earners. In particular, the proposed project anticipates a total development capacity of 75,000 s.f. of commercial uses, a 75-room resort inn and an opportunity for increased economic opportunities.⁶ It is projected that 422 new full-time and part-time employment opportunities (247 retail jobs and 175 resort inn jobs) will be created with "varying salaries including minimum wage positions."⁷ A majority of these jobs will be service sector jobs that have earnings of less than a moderate income household.

Since 2006, the City has built 270 homes and all of these homes were market-rate and above-moderate income homes.⁸ Between 2010 and 2025, Banning Ranch is projected to represent 48 percent of the City's total new units⁹ and provides an opportunity to address the City's remaining RHNA needs for extremely low-, very low- and low-income households. To ensure the proposed project's objective to offer a "variety of housing types in a range of housing prices, including the provision of affordable housing to meet RHNA,"¹⁰ the Commission recommends the City to remove moderate-income homes from its housing requirements in Banning Ranch. The City instead should set the 15 percent affordable home requirements on extremely low-, very low- and low-income homes in Banning Ranch.

⁴ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

⁵ California Department of Housing and Community Development, O.C. Income Limits for 2011, July 2011.

⁶ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 1-3, Sept. 2011.

⁷ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-16, Sept. 2011.

⁸ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

⁹ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 4.7-15, Sept. 2011.

¹⁰ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 1-6, Sept. 2011.

Mr. Patrick J. Alford
November 4, 2011
Page 3 of 4

Addressing and Mitigating Environmental Impacts

With high housing costs and significant lack of affordable homes, many workers and families, especially those who earn lower wages, struggle financially to live in the city they work in. Compared to other cities in Orange County, housing costs are significantly higher in Newport Beach and simply out of reach for extremely low-, very low- and low-income families. In 2007, the median home price in Newport Beach was \$1,485,000¹¹ and rents ranged from \$1,099 for a one-bedroom up to \$3,040 for a three-bedroom apartment.¹² These impacts not only hurt workers and families but may also have negative environmental impacts to the City. In particular, the environmental impacts of a development are especially less drastic when a person can afford to live and spend their money in the same community in which they work in. With low wages and high housing costs, many workers live in other cities and become dependant on their automobile to commute to and from work and other destinations. These trips may increase traffic congestion and air pollutants that not only negatively impact the environment but also the quality of life for the community. Locating homes, specifically affordable homes, near transit, job centers and neighborhood services will decrease the environmental impacts of traffic congestion, vehicle miles travelled (VMT) and greenhouse gas emissions.

In Orange County, many residents are heavily dependent on driving on a daily basis. In 2009, the average commute time to work for Orange County residents was approximately 26 minutes and approximately 78percent of commuters drove alone.¹³ Improving location accessibility and connectivity reduces the dependency for residents, especially for lower income households and workers, to drive their automobiles. This will lead to decreased environmental impacts and will contribute to Banning Ranch's objective to create "cohesive neighborhoods... a system of pedestrian walkways and bikeways that connect residential neighborhoods, commercial uses, parks, open space... and reduces overall vehicle miles travelled."¹⁴ The project will also align with the Sustainable Communities and Climate Protection Act of 2008 (SB 375) and help the City implement and comply with SB 375 goals of reducing VMT and greenhouse gas emissions.

To ensure the impacts are identified and mitigated, the Commission would like the draft EIR to also address the City's jobs-housing "fit." Different from jobs-housing balance, which evaluates the number of jobs to the number of homes in a specific geographic location, the jobs-housing fit provides a more detailed analysis. The jobs-housing fit analyzes the discrepancies between the types of jobs and wages (especially for low-wage jobs) that will be created in a City and the housing costs and opportunities that are available in the City. Simply stated, will an individual working at a new job that has been generated from a development be able to afford to live in the City that he/she is working in?

¹¹ City of Newport Beach General Plan Housing Element Draft, p. 5-30, August 2011.

¹² City of Newport Beach General Plan Housing Element Draft, p. 5-31, August 2011.

¹³ Orange County 2011 Community Indicators, Children & Families Commission of Orange County, p. 25, 2011.

¹⁴ Draft Environmental Impact Report Volume 1, Newport Banning Ranch Project, City of Newport Beach, p. 1-7, Sept. 2011.

Mr. Patrick J. Alford
November 4, 2011
Page 4 of 4

Recommendation

The variety of residential and commercial developments in the proposed Newport Beach Banning Ranch Project should be an environmentally sustainable, economically competitive and opportunity rich development. The effectiveness and success of the proposed project will be dependent on the City's leadership to thoroughly analyze and address the environmental impacts of the proposed project. The Commission recommends the draft EIR analysis to:

1. Remove moderate-income homes from the Banning Ranch Project affordable home requirements.
2. Set the 15 percent affordable home requirements on extremely low-, very low- and low-income homes in the Banning Ranch Project.
3. Provide a detailed jobs-housing "fit" analysis.
4. Continue with meaningful outreach and incorporate public comments in the Banning Ranch Project planning process.

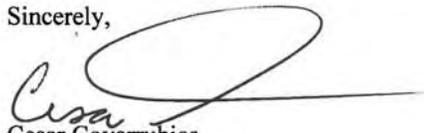
3

The Commission looks forward to hearing the City's response to our concerns and partnering with the City to achieve our mutually beneficially goals in creating more livable and economically competitive communities to all working families in the City. The Commission also welcomes the opportunity to continue our dialogue that will result in the production of new homes affordable to extremely low, very low and low-income working families.

4

Please keep us informed of any upcoming meetings and proposed changes in the Newport Beach Banning Ranch EIR. If you have any questions, feel free to contact me at (949) 250-0909 or cesarc@kennedycommission.org.

Sincerely,



Cesar Covarrubias
Executive Director

cc: Cathy Creswell, State Department of Housing and Community Development
Pauline Chow, Public Law Center

Letter O5 The Kennedy Commission
Cesar Covarrubias, Executive Director
November 4, 2011

Response 1

The recommendation of The Kennedy Commission is noted regarding setting the Project's affordable housing requirement at 15 percent for extremely low-, very low-, and low-income units. The growth data cited is based on Center for Demographic research estimates. Adequate housing opportunity sites that can accommodate all ranges of affordability are indentified in the Housing Element Sites Inventory. Furthermore, HCD has identified a need for 442 moderate units in this planning period, some of which are proposed as part of this Project.

Response 2

The Southern California Association of Governments (SCAG) states that "a balance between jobs and housing in metropolitan region can be defined as a provision of adequate supply of housing to house workers employed in a defined area (i.e., community or sub-region)". Section 4.7, Population, Housing, and Employment, of the Draft EIR does recognize that housing demand created by these jobs would be met by (1) existing units in the City; (2) projected future units in the City; (3) the proposed 1,375 residential units, including affordable housing associated with Project; and (4) dwelling units elsewhere in OC and larger SCAG region.

The proposed Project anticipates the creation of 422 jobs anticipated to be created with between 69 and 206 affordable units proposed on-site and/or off-site within the City (or in-lieu fee for portion). These new units would address a portion of jobs created from Project. Existing rental housing opportunities exist within the City and region to address the remaining need. Current vacancy rates for housing in City (2010 Census) is 12.3 percent meaning there is sufficient housing opportunities in the area. City is collecting in-lieu housing fees on other residential projects that would contribute toward the creation of new affordable housing opportunities in this planning period and future planning periods.

The commenter is incorrect in stating that Section 19.54.080.A of the City's Municipal Code states that an Affordable Housing Implementation Plan (AHIP) must include all the noted items. The contents of an AHIP are identified in Section 20.54.060; the draft AHIP includes these contents. Section 19.54.080.A of the Municipal Code identifies the required contents for the Affordable Housing Agreement, which is the legal document used by the City to implement an approved AHIP and ensure that the approved affordable housing units are rented or sold at an affordable price for the duration and to the income groups approved in the AHIP. The Affordable Housing Agreement would be drafted subsequent to the approval of the AHIP and would be reviewed as to form and content by the City Attorney's Office.

Response 3

The recommendations of The Kennedy Commission are noted. Please also refer to the responses to Comments 1 and 2.

Response 4

The comments are noted. The Kennedy Commission has been added or maintained on the interest list for the proposed Project to receive notices regarding future meetings, hearings, and any Project changes.



Comment Letter O6

Lido Sands Community Association
Post Office Box 1373, Newport Beach, CA 92659

November 8th 2011

Patrick Alford, Planning Manager
City of Newport Beach, Community Development Dept.
3300 Newport Blvd.
P.O Box 1768
Newport Beach, CA 92658-8915

Regarding: Newport Banning Ranch Draft Environmental Impact Report

Dear Mr. Alford,

On behalf of the Lido Sands Community Association ("LSCA") I am writing to share our concerns about the Newport Banning Ranch Draft Environmental Impact Report ("DEIR") and to request clarification about the impacts this project will have to our community. The Lido Sands Community Association is an 82 home "Private Property" single family residence neighborhood paralleling the Banning Ranch property on the other side of PCH from 47th to 56th St.

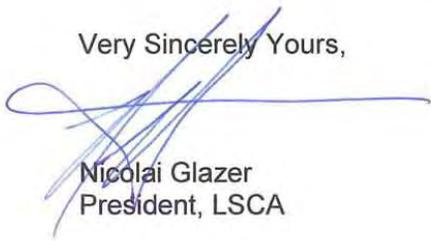
The City has attempted to consider and address the impacts of this project on Newport Shores and Newport Crest Communities in particular, but what about Lido Sands? Lido Sands has been completely overlooked from the perspective of the significant impacts this project will have.

- | | |
|--|---|
| 1) What has the City done to review the impact of pollutants: noise, emissions, light, air, etc. upon the Lido Sands Community not only with the increase traffic flows on PCH in general, but more importantly with a major arterial "Bluff Road" street lights, intersection and traffic signal that is directly in line with the center of our community at Lido Sands Court? | 1 |
| 2) What has the City done to review the impact of the properties proposed to be built along the bluff above PCH looking down into LSCA homes? What are the easements? What are the setbacks? What are the building height restrictions? What is being done to protect the privacy of Lido Sands homes whose privacy will be negatively impacted by development on the bluff? | 2 |

<p>3) What has the City done to mitigate and prepare for the parking and traffic impact issues this will bring to the beach area directly below NBR, i.e. 47th to 56th Streets? Lido Sands has long time been a target of illegal parking issues due to the nature of our private streets in relation to the beach. We already pay for private patrol services to help us monitor our community however the impact of this project will increase costs and other issues to our community. How is the City prepared to support the Lido Sands Community? What has the City done to better understand these issues for West Newport and Lido Sands beach areas?</p>	3
<p>4) There is a planned pedestrian bridge that will cross PCH into West Newport Park at 56th Street. This is directly on the west end of Lido Sands. From recent experience when NBPD redirected pedestrian and bicycle traffic flow to West Newport Park for the 4th of July, LSCA was hit with a significant amount of vandalism and unplanned pedestrian and bicycle traffic through our calm and quiet community. What has the City done to plan and direct pedestrian and bicycle traffic away from and not flowing into LSCA from this bridge?</p>	4
<p>5) What studies have been done to identify any potential issues with sight, noise and light issues into LSCA from this pedestrian bridge?</p>	5
<p>6) What is the actual size, scale and design of this bridge?</p>	6
<p>7) Where in West Newport Park will it exactly land?</p>	7

The Lido Sands Community is rightfully and justifiably concerned that Lido Sands will be a directly impacted neighbor of the project and has clearly and blatantly been overlooked from all aspects. Lido Sands would like the City to address our concerns and protect the interests of our residents. We specifically ask that the DEIR be expanded to include a complete section on the impact to Lido Sand homes.

Very Sincerely Yours,



Nicolai Glazer
 President, LSCA

Letter O6 Lido Sands Community Association
Nicolai Glazer, President
November 8, 2011

Response 1

The relationship of the proposed Project to the Lido Sands community is addressed in several sections of the Draft EIR and included throughout the environmental analysis. This includes but is not limited to land use compatibility (see Section 4.1, Land Use and Related Planning Programs); aesthetics (see Section 4.2, Aesthetics and Visual Resources); traffic (see Section 4.9, Transportation and Circulation); and noise (see Section 4.12, Noise). Impacts were either not specific to Lido Sands or did not exceed CEQA significance thresholds.

Response 2

Please refer to the response to Comment 1. Noise impacts are analyzed in Section 4.12 (Noise); air quality impacts are analyzed in Section 4.10 (Air Quality), and light and glare impacts were analyzed in Section 4.2 (Aesthetics). The Lido Sands Community was referenced in each of these sections and included the environmental analyses.

Response 3

Please refer to Section 4.1, Land Use and Related Planning Programs, which specifically addresses the relationship of the proposed Project's land uses to Lido Sands. In summary, the Project site is adjacent to West Coast Highway, which is a six-lane divided State highway. Residences in the Lido Sands community are located on the south side of West Coast Highway, approximately 180 feet south of the southern Project site boundary. An approximate seven-foot-high noise barrier separates the Lido Sands residences from West Coast Highway providing both noise reduction and visual separation. Proposed development on the Project site would be separated from Lido Sands by approximately 350 feet. This includes the six-lane divided West Coast Highway (off site), and approximate 150 foot-wide area of native habitat (on site), and South Bluff Park (on site). Additionally, there is an approximate vertical grade separation of 50 feet with the Project site at a higher elevation than residences to the south of West Coast Highway. Any on-site development would be set back from the bluff top edge by a minimum of 60 feet. The Resort Colony with a resort inn and residences would be the closest development uses to off-site residences to the south. Buildings within the Resort Colony would not exceed 50 feet in height and would vary in height and massing. Exhibit 4.1-2a depicts the Project interface with the Lido Sands Community. The exhibit depicts the Resort Colony area of the Project separated from the Lido Sands Community by approximately of 400 feet with a vertical separation of approximately 50 feet. This is considered to be sufficient privacy buffer between the Project and the Lido Sands Community. The remaining questions do not raise environmental issues.

Response 4

Section 4.1 states that the Project proposes a new pedestrian and bicycle bridge across West Coast Highway that would link the Project site to the beach to encourage residents to walk to the beach instead of using vehicles. The remaining questions do not raise environmental issues.

Response 5

The pedestrian and bicycle bridge is proposed to encourage walking and bicycling to and from the beach. The proposed 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. The bridge would allow for pedestrians and bicyclists to move between the northern and southern sides of West Coast Highway without having to cross West Coast Highway at street level. The southern landing structure for the bridge would be within a structural pier located within the existing boundaries of the City's 4.6-acre West Newport Park. This landing would have a public elevator; walkways would be constructed to connect the landing to Seashore Drive to the south allowing pedestrians and bicyclists to continue on existing public roadways to access the public beach. Exhibit 4.8-18 depicts the proposed bridge landing in the West Newport Park, which is located west of the Lido Sands Community. Vertical access to the beach is immediately adjacent at 58th Street. Therefore, it is unlikely that pedestrians and bicyclists from the Project would access the beach through the Lido Sands Community.

Response 6

The physical impacts of implementing the pedestrian and bicycle bridge (PDF 4.8-3), are evaluated as part of the overall development Project (refer to Sections 4.1 through 4.15 of the Draft EIR). Most specifically, refer to Section 4.2, Aesthetics and Visual Resources, and to Section 4.8, Recreation and Trails. As addressed in Section 4.2, "Lighting of the bridge would be limited to that required for public safety". With respect to noise, Section 4.12 of the Draft EIR addresses construction-related noise impacts associated with the proposed Project. The bridge would be limited to pedestrians and bicyclists who do not generated significant noise impacts.

Response 7

Please refer to Section 4.2, Aesthetics and Visual Resources, which includes a visual simulation (Exhibit 4.2-4) of the proposed bridge. As described in this Draft EIR section:

As proposed, the bridge would be constructed with a steel truss structure that would clear-span the six travel lanes of West Coast Highway on a diagonal angle. The bridge would not have intermediate supports in the median or piers in the State right-of-way. The landing on the Project side would be in a structural pier located within South Bluff Park; the landing on the south side of West Coast Highway would be a structural pier located in a turf area of West Newport Park, northwest of the existing tennis courts and northeast of the handball/basketball courts. The bridge abutments are proposed to be constructed with a combination of masonry block and concrete with decorative stone accents. The length of this span would be approximately 260 feet, with a minimum vertical clearance from the highway of approximately 20 feet with a maximum vertical height of 50 feet for the landings. Lighting of the bridge would be limited to that required for public safety.

Please also refer to Exhibit 4.8-18 in Section 4.8, Recreation and Trails, which depicts the proposed location of the bridge with respect to West Newport Park.



Comment Letter O7
Susan K. Hori
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-2528
E-mail: shori@manatt.com

November 8, 2011

Client-Matter: 28934-030

BY U.S. MAIL AND E-MAIL: palford@newportbeachca.gov

Mr. Patrick J. Alford
Planning Manager, Community Development Department
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915



**Re: Newport Banning Ranch Draft EIR
(State Clearinghouse No. 2009031061)**

Dear Mr. Alford:

These comments are submitted on behalf of Newport Banning Ranch LLC (NBR), the project proponent of the Newport Banning Ranch Project (Project) that is the subject of the City's Draft Environmental Impact Report (DEIR). Our comments are very limited and specific, and concern those impacts that support the DEIR's conclusion that Land Use Compatibility is a Significant and Unavoidable Impact.

The DEIR's conclusion regarding Land Use Compatibility is set forth as follows:

Land Use and Related Planning Programs (Sect. 4.1, p. 4.1-49): "...the proposed project would result in a land use incompatibility with respect to...long-term noise impacts and night illumination on those Newport Crest residences immediately contiguous to the project site."

As described in the excerpt above, the incompatibility of placing residential uses on Newport Banning Ranch adjacent to existing residential uses in Newport Crest is a direct result of long-term noise and night illumination impacts. The fact that NBR's proposed residential project is considered incompatible with existing residences is of great concern for several reasons.

First, NBR's project is consistent with one of the alternative land uses for the Newport Banning Ranch property. When the City prepared its General Plan and certified the EIR for the General Plan, the City did not conclude that the voter-approved, allowed land uses in the General



Patrick Alford
November 8, 2011
Page 2

Plan (i.e., precisely what is being proposed by the NBR project) would cause a land use compatibility issue. The NBR DEIR supports this conclusion when it states:

Sect. 4.1, p. 4.1-47, Land Use Policy Consistency Analysis

“...the General Plan EIR determines, ‘if development occurs, policies in the proposed General Plan Update would ensure compatibility between proposed uses, on-site open space areas, and the adjacent existing residential uses.’ Given that the General Plan provides for the option of the uses proposed by the Project, the Project implements the policies in the General Plan. Development on the site would reflect a continuation of development similar in nature to the urban development in the communities surrounding the Project site, this change in character of the site would not be considered a significant impact from a land use consistency perspective.”

Given the above statement, the fact that the proposed Project is consistent with the General Plan, the proposed Project provides both open space and residential uses adjacent to existing residential, and the General Plan EIR did not find Land Use Compatibility to be a significant environmental impact, we question the City’s conclusion in the DEIR that the Project will result in a significant and unavoidable land use impact. Given that this Project implements the General Plan, the same findings that are set forth in the City’s certified General Plan EIR should be applied to a project that is consistent with and implements the General Plan.

1 cont.

The conclusion that NBR’s Project results in a significant land use incompatibility impact apparently stems from two other significant impacts resulting from implementation of two other General Plan land use components: an active park in this area of the City, and Bluff Road. Although we understand that the City’s own General Plan EIR found that the impacts from night lighting at the park are significant and unavoidable, it seems that there are two points of analysis that should be applied to the environmental impacts of the NBR Project and potential mitigation.

First, as the General Plan EIR analyzed the impact of night lighting in the park and did not find a significant land use impact, this same conclusion should also be applied to the NBR Project which implements the City’s General Plan, and the same finding regarding land use impacts should be made for the NBR Project – thus eliminating the finding that the Project has a significant and unavoidable land use impact due to night lighting.

Second, it seems that there is a feasible mitigation measure that would eliminate this impact. As CEQA and CEQA Guidelines Section 15126.4 require the City to consider all feasible mitigation measures to reduce or avoid significant impacts, the City should consider the following feasible mitigation measure: restricting the hours the lights are used, or eliminating them entirely. If the City were to adopt this measure, the impact could be reduced to less than



Patrick Alford
November 8, 2011
Page 3

significant. As park lighting is not a component of the NBR Project, NBR as the Project proponent cannot unilaterally choose not to install the lights or turn them off. This, however, is in the power of the City to implement, and we believe, consistent with CEQA's mandate that all feasible mitigation measures be implemented to reduce significant impacts, that a measure requiring either restricting the use of night lighting or not installing night lighting be adopted to reduce this significant impact to less than significant. While we understand that this does not meet the objectives of the General Plan that state as a goal to have a lighted park at Newport Banning Ranch, it would avoid the impact and therefore must be considered as required by CEQA.

1 cont.

With respect to the noise impacts, noise is a significant issue because the NBR Project is required under the City's General Plan to construct Bluff Road. When the City certified the EIR for its General Plan, it was aware of the proximity of Bluff Road to existing and proposed residential uses, but did not make a finding that this was a significant and unavoidable land use compatibility impact. For the same reasons set forth above regarding night lighting, we believe that the conclusions in the City's General Plan EIR must be applied to a project that is consistent with the General Plan and implements the land uses and circulation improvements identified in the General Plan and analyzed in the General Plan EIR.

2

We appreciate your consideration of these comments, and our team are available to provide additional information or answer questions with respect to these comments and our Project.

Very truly yours,

Susan K. Hori
Manatt, Phelps & Phillips, LLP

cc: Michael Mohler, Newport Banning Ranch LLC (via email only)
George Basye, Newport Banning Ranch LLC (via email only)

300998393.1

Letter O7 **Manatt, Phelps & Phillips**
Susan Hori
November 8, 2011

Response 1

The opinions of the Applicant are noted. It is recognized that the City's General Plan did not find that development of the Newport Banning Ranch property under the General Plan Residential Village designation would result in a significant land use impact. However, the General Plan EIR assessed the potential impacts associated with buildout of all General Plan land uses at a programmatic level. The Newport Banning Ranch Draft EIR addresses the potential environmental impacts associated with the Applicant's proposed Project at a greater level of detail. It is also recognized that there can be differences of opinion.

As addressed in the Draft EIR, the City of Newport Beach Zoning Code (October 2010) defines compatibility as "The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. Elements affecting compatibility include: intensity of occupancy, pedestrian or vehicular traffic generated, volume of goods handled, and environmental effects (e.g., local concentrations of air pollution, glare, hazardous materials, noise, vibration, etc.)". The *Newport Beach General Plan* Land Use Element also includes goals and policies directed at land use compatibility. As applicable to the proposed Project, these goals and policies are used in the evaluation of compatibility.

The Draft EIR finds that, overall, the proposed Project is compatible. "When evaluating the 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. There is one legally non-conforming single-family home located on industrially zoned property in the City of Costa Mesa where there may be potential impacts (shade/shadow, night illumination, and noise); however, the required site plan review process (SC 4.1-1) would ensure these impacts would be less than significant".

With respect to the issue of lighting, the Draft EIR evaluates potential nighttime lighting impacts not only associated with the proposed Project's Community Park but also with the other proposed land uses. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site –not just a park– would be considered significant and unavoidable. In certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations, which notes that there are specific economic, social, and other public benefits that outweigh the significant unavoidable impacts associated with the General Plan project.

The Draft EIR's finding is consistent with the City of Newport Beach General Plan EIR. Although the Project proposes to restrict lighting in areas of the site, night lighting associated with the Community Park is proposed to have night lighting, and the Project as a whole would introduce new light sources.

Response 2

The opinions of the Applicant are noted. It is recognized that the City's General Plan did not find that development of the Newport Banning Ranch property under the General Plan Residential Village designation would result in a significant land use impact. However, the General Plan EIR assessed the potential impacts associated with buildout of all General Plan land uses at a programmatic level. The Newport Banning Ranch Draft EIR addresses the potential

environmental impacts associated with the Applicant's proposed Project at a greater level of detail, including the analysis of noise.

November 7, 2011

Patrick Alford - Planning Manager
City of Newport Beach
P.O. Box 1768
Newport Beach, CA 92663

Comment Letter O8

RECEIVED BY

COMMUNITY

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DEVELOPMENT

CITY OF NEWPORT BEACH

Dear Mr. Alford:

The members of the Board of Directors for the Newport Condominium Association (also known as Newport Terrace), wish to go on record as to our collective comments and concerns as representatives of the Newport Terrace residents, in reference to the Draft Environmental Impact Report for the Banning Ranch Project.

After a review of the Draft Environmental Impact Report, discussion amongst ourselves and the homeowners represented at our recent homeowners association meeting, we wish to submit the following comments and/or questions regarding said project.

Our goal at this time is to only bring up our most important concerns regarding this project, and we may at a later time, expand on some of the more important items that will affect our community. However, we did want to get our general consensus in before the November 8, 2011 deadline. In addition and as already pointed out, these are our comments and concerns as they relate to our collective representation of the general community of Newport Terrace, but naturally individual residents are free to submit their own particular concerns.

We hereby reject to the approval of the project in its current form. We respectfully request that a revised Environmental Impact Report be prepared to adequately address the deficiencies and comments discussed below, and to adequately address the deficiencies discussed in the comments raised by others: 1

- We feel the overall project would better serve our community, and surrounding areas far more effectively, if it were downsized in residential density to no more than a total of 1,100 home. In other words, regarding this downsize in overall density, would not this project still serve its purpose just as well with this residential reduction, and as already pointed out as a possible alternative in the Draft Environmental Impact Report? (Section 4.1 / Land Use) 2

- In addition, we feel Bluff Road should completely be eliminated from 17th to 19th Streets, thus terminating at 17th Street. The original plans for Banning Ranch did have the major ingress/egress points for Banning Ranch at 15th, 16th, 17th Streets and Pacific Coast Highway, so why the need for this particular Bluff Road extension to 19th Street now, when many times at related presentations, it is pointed out, that the overall project does not call for it? (Section 4.9 / Transportation and Circulation) 3

- Likewise, and even though not seemingly part of the present Draft Environmental Impact Report, we see no need for the 19th Street Bridge, original slated to connect at Brookhurst at Banning. In fact, if this Bridge is not crucial to the overall project as claimed at all the presentation meetings, why are steps not being taken by the City of Newport Beach to have it removed from the Master Plan of Arterial Highways? (Section 4.9 / Transportation and Circulation) 4

Sincerely,

Newport Terrace Board of Directors
Newport Beach, California 92663

Philip Campa, President
Monica Kerr, Vice President
Ross Minion, Treasurer
Ethan Young, Secretary
Sara Barnett, Member at large

cc:

John Moorlach
Supervisor 2nd District
County of Orange

Mike Henn
Mayor, Newport Beach

Letter O8 **Newport Condominium Association**
Newport Terrace Board of Directors
November 7, 2011

Response 1

The opinions of the commenters are noted.

Response 2

Section 7.0, Alternatives to the proposed Project, of the Draft EIR addresses several Project alternatives. Similar alternatives to the commenter's suggested alternative of 1,100 residential dwelling units (compared to 1,375 units for the proposed Project) area addressed in the Draft EIR. For example, Alternative D would allow for 1,200 units. Alternative E assumes the same number of residential units as the proposed Project but within a reduced development footprint; the development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. Alternative F assumes the same number of residential units as proposed by the Project within a reduced footprint; the development area (residential and commercial) would decrease from 97.4 gross acres to 84.0 gross acres, an approximate 14 percent reduction compared to the proposed Project.

It is important to understand that the significant environmental impacts of the Project are not necessarily related to the number of proposed residential units nor would impacts be substantially lessened or avoided by reducing the number of units to 1,100. A reduction in residential density does not necessarily result in reduced impacts as suggested by the commenter. A reduction in development (whether residential, commercial, or other use) can result in reduction in traffic generation and related air quality emissions and noise depending on the on-site interaction of trips (how much traffic is captured internal to a project site). However, a reduction in density would not mean a reduction in impacts related to topics such as biological resources. It could result in an increase in impacts if a larger area were to be disturbed.

The criteria for selection of alternatives to the proposed Project are discussed in Section 7.3 of the Draft EIR, and reflect the guidance set forth in the State CEQA Guidelines Section 15126.6, including that the range of alternatives selected for consideration are those that would "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project". The alternatives selected for consideration in the Draft EIR, include the mandatory No Project Alternative, as well as alternatives that could meet the criteria set forth in Section 15126.6.

The significant impacts of the Project are identified in Section 7.3.2. The land use and aesthetic impacts are related to night time illumination of the Project site including the proposed Community Park. A reduction in dwelling units would not avoid or substantially lessen this impact. While the noise impacts associated with Bluff Road and North Bluff Road may be incrementally reduced by a reduction in dwelling units, the majority of the traffic on Bluff Road and North Bluff Road is as a result of forecasted local off-site traffic using the road as another option to existing roadways. Traffic impacts in both the cities of Newport Beach and Costa Mesa can be mitigated to a less than significant level. However, because the City of Newport Beach cannot impose or guarantee timely implementation of improvements in an adjacent jurisdiction, traffic impacts were determined to be significant and unavoidable. Reducing the number of units on the Project site would not assure implementation of traffic improvements in another jurisdiction. Finally, while air quality and greenhouse gas emissions are, in part, the result of vehicular emissions and a reduction in the number of units would incrementally reduce these emissions, the impacts are as a result of cumulative impacts and would not be avoided or

substantially lessened. In conclusion, because the significant impacts of the Project are not entirely attributable to the number of dwelling units proposed, and would not be substantially lessened or avoided by reducing units from 1,375 to 1,100, a reduced density alternative would not be required.

Response 3

Please refer to Section 7.0, Alternatives to the Proposed Project, which evaluates several Project alternatives including Alternative C: Proposed Project Without North Bluff Road Extension to 19th Street.

Response 4

The construction of the 19th Street Bridge is not a part of the proposed Project. As addressed in Section 4.9, Transportation and Circulation, both the Orange County MPAH and the City of Newport Beach General Plan Master Plan of Streets and Highways reflect the extension of 19th Street from its current terminus in the City of Costa Mesa, over the Santa Ana River, connecting to Brookhurst Street at Banning Avenue in the City of Huntington Beach. As such, the proposed Project General Plan Buildout scenario assumes the completion of the 19th Street Bridge, consistent with the assumptions of the City's General Plan and the Orange County MPAH. However, because the timing of construction of the bridge is uncertain, an analysis of future General Plan Buildout conditions with the Project but without the 19th Street Bridge is provided in the Draft EIR for informational purposes. It should be noted that the Year 2016 traffic analysis scenarios do not assume the 19th Street Bridge.



Comment Letter O9

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Dept.
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

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DEVELOPMENT
CITY OF NEWPORT BEACH

November 4, 2011

Dear Mr. Alford:

The Newport Crest Homeowners Association's Board of Directors has several concerns regarding the adequacy of the Draft EIR for the Banning Ranch development. Newport Crest is the residential condominium project adjoining the eastern perimeter of the proposed development.

<p>The DEIR Air Quality section (4.10) describes the history of air, soil and water sampling and various clean-up operations of the oil field. It appears that no soil or water sampling has been done since 2001, and in the Hazards and Hazardous Materials section (4.5.) there is no mention of a radiation survey ever having been done. If there was such a survey, please advise as to when it was done, the results of the survey and why wasn't it covered in either the Banning Ranch DEIR or the Banning Ranch Draft Remedial Action Plan (DRAP), prepared by Geosyntec for the Project Applicants in 2009?</p>	<p>1</p>
<p>Do the Project Applicants plan to do a current radiation survey of the oil field operations to determine the level of radioactive wastes? If so, what is the remediation plan to deal with these wastes? Does</p>	<p>2</p>
<p>the Project Applicant plan to test the current disposal areas being used for toxic oil wastes for leaks or fugitive emissions? Do any of the original oil sumps shown on the "Historic Oil Fields Impact Map" (Figure 3, DRAP), still exist and will they be tested?</p>	<p>3</p>
<p>Ambient air analyses have been done for the DEIR criteria pollutants, with the exception of nitrogen oxide (NOx). Also, such an analysis could not be found for benzene, a known carcinogen and highly toxic air contaminant (TAC). Why weren't analyses done for NOx and benzene and why is there no mention in with the Air Quality section or the Hazards and Hazardous Materials section of the known health hazards associated with benzene and the other criteria pollutants? Any environmental impact report should include impacts to human health.</p>	<p>4</p>
<p>Up-to-date and comprehensive testing for TAC pollutants, oil waste toxins and radioactive wastes must be done before any DEIR can be considered complete and certainly before it can be approved. Please advise as to what testing will be done and which independent consultants will be used that have no prior or current contractual relationship with either the Project Applicants or the City, in order to verify the reliability and accuracy of the results. Also, please provide a list of city or country experts who have independently reviewed each section of the Project Applicant's DEIR.</p>	<p>5</p>
<p></p>	<p>6</p>

HOMEOWNERS ASSOCIATION
201 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433
www.NewportCrest.org

Newport Crest Homeowners Association
Draft EIR for the Banning Ranch development
Page 2 of 2.

<p>The document speaks in section (4.10-5) of 'fugitive dust' during grading and of measures to minimize fugitive dust that will include not grading in wind gusts exceeding 15 miles per hour, applying water and/or chemical suppressants to ensure that emissions do not extend to residences. In section (4.10-10) "Sensitive Air Quality Receptors" are identified as structures/residences where people including children, elderly persons, persons with pre-existing repertory or cardiovascular illness, athletes and others who engage in frequent exercise. Further that some members of the general population are especially sensitive to air pollutant emissions and should be given special consideration when evaluating air quality impacts from projects.</p> <p>What effect could these emissions have on pets? What mitigation measures should residents and their pets take to minimize the impact of emissions? Should persons with repertory conditions, cancer, immune deficiencies, etc. consult with their physicians regarding exposure to the emissions? Should these people plan to be out of their homes during this time? Should the various vendors for Newport Crest, including landscapers and construction workers or others take special precautions during this time?</p>	7
<p>The Draft DEIR must be revised to consider the above and to consider alternative mitigations that might include:</p> <ol style="list-style-type: none"> 1. Installing filtering devices in homes to protect residents and pets. 2. Cleaning the homes, decks and common areas of Newport Crest of any contaminated debris. 3. Relocating "Sensitive Air Quality Receptors" during the mass grading phase. 4. Constructing fencing or other structures to help contain and deflect the contaminated air and toxic particles from Newport Crest. 	8
<p>We hereby object to approval of the project in its present form. We respectfully request that a revised Environmental Impact Report be prepared to adequately address the deficiencies and comments discussed above, and to adequately address the deficiencies discussed in the comments raised by others.</p>	9

Thank you.

ON BEHALF OF THE BOARD OF DIRECTORS

NEWPORT CREST HOMEOWNERS ASSOCIATION



Sharon Boles, Member-At-Large

cc: Board of Directors

Letter O9 **Newport Crest Homeowners Association**
Board of Directors
November 4, 2011

Response 1

The Base Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report; see Appendix D of the Draft EIR. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. This report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing. The California Department of Oil, Gas, and Geothermal Resources (DOGGR) conducted a statewide study in 1996 that included the West Newport Oilfield confirming that NORM (Naturally Occurring Radioactive Material) is not a serious problem in California (confirmed earlier 1987 study). As a part of the proposed Project's oilfield abandonment program, comprehensive surveys would be conducted among any salvaged and recycled oilfield equipment and soils to confirm suitability for those purposes. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, should any material be determined unsuitable for recycling, it would be properly disposed of in a licensed State facility.

Response 2

Please refer to the response to Comment 1.

Response 3

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation. All current operations are conducted by the oilfield operator, West Newport Oil Company, pursuant to State and local requirements. As addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, all remediation activities, including disposal areas and historical areas, such as sumps, would be conducted pursuant to State and local requirements. With the exception of the oil consolidation sites, any contamination would be remediated to State and local standards and requirements as well. Remediation to State and local standards would ensure that these areas are safe for human exposure in the future. As noted on page 3-24 of the Draft EIR, contaminated material that cannot be effectively remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. Appendix D of the Draft EIR includes the draft Remedial Action Plan that identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by the Regional Water Quality Control Board (RWQCB) and/or the Orange County Health Care Agency (OCHCA).

Response 4

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that local exposure to NO_x during construction would be less than significant. The potentially significant NO_x impacts described in the Draft EIR are for regional emissions. Exposure of persons to local concentrations of NO_x or NO₂ would be less than significant.

Criteria air pollutants are generally measured in concentrations of parts per million and micrograms per cubic meter whereas toxic air contaminants (TAC) are generally measured in parts per billion and nanograms per cubic meter. Therefore, the common definitions of TACs use the term "extremely low levels". The State of California Air Resources Board (CARB) has

designated almost 200 compounds as TACs. Of the ten tasks posing the greatest health risk in California, most are associated with risk for various forms of cancer. Non-carcinogenic risks include but are not limited to respiratory illness, blood disorders (from chronic benzene exposure), renal toxicity (from hexavalent chromium), and eye, nose, and throat irritation (from formaldehyde). The Human Health Risk Assessment (HHRA) for the proposed Project determined that both carcinogenic and non-carcinogenic health risks associated with the proposed project would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR.

Response 5

Please refer to the response to Comment 4. The 2001 Environmental Assessment involved comprehensive testing of the property including all current and historic oilfield operating areas. A Phase I update in 2005 and 2008 found no significant changes that warranted additional testing. Additional testing and verification sampling will be conducted during the remediation program.

Response 6

Preparers and contributors to the Draft EIR are identified in Section 8.0 of the Draft EIR.

Response 7

Please refer to Topical Response: Air Quality, and Section 4.10 of the Draft EIR, which explain that localized impacts to nearby residents would be less than significant. No measures or precautions are necessary for residents to protect their health or that of visitors or pets. Analysis of air quality impacts to domestic pets is not prescribed by CEQA. However, a brief literature search indicates that most concerns relative to pet health and air pollutants are related to indoor air quality and the effects of chemicals used in the household. An impact to pets from an outdoor pollutant was noted for fluoride compounds occurring in agricultural areas, which is not relevant to the proposed Project.

Response 8

Please refer to the response to Comment 7.

Response 9

The opinion of the commenter is noted.

Comments Pertaining to Draft EIR- Banning Ranch

Comment Letter O10



Newport Heights Improvement Association
and Donald Krotee
Tuesday, November 08, 2011

Page - 1 -

These comments are made on behalf of Newport Heights Improvement Association, a c-3 not for profit California Corporation, and all who join and consult with it. The Corporation is afforded the protections under the laws of the State of California and the corporate protections and strengths offered it by the laws of the United States of America. The comments made herein are offered and sent before the deadline of 5pm, November 8, as indicated in the City of Newport Beach's CEQA notice signed 9-6-11.

The comments ask that the City respond to each inquiry/interrogatory/ comment with a CEQA and or legal response as the implications of each question provide foundation and guidance for the State's CEQA environmental process but, also for the future remedies affecting this Association, and all that join it, in all regard to this development of land and any significant impacts associated with that development. The responses to each comment shall be offered for each alternative. The following are those comments:

1. The traffic from auto travel across the intersections at Newport Boulevard and into Newport Heights will most probably bring school children to Newport Heights Elementary, Ensign Middle School and Newport Harbor High School. Show the impacts to each intersection.	1
2. In regard to the same traffic, provide a statement from the Newport Mesa Unified School District indicating their plans to receive those students and the current student population(s).	2
3. In regard to the same traffic, based on that statement and any other data accumulated or relevant, provide a before and after accounting using the 2003-2005 ADT computed as part of the St. Andrews development, wherein the City provided a public record of the then current ADT across the neighborhood of Newport Heights.	3
4. In regard to the same traffic, compare the cumulative development totals projected under the project and show the actual ADT acquired with all other contemporary public record data gathering that the City may have, in the general project area.	4
5. In regard to density and aesthetics, show clearly the architectural and massing impact to all adjacent development with site cross sectional drawings (or view simulations) showing the typical heights of such densities and the manner in which the projected developments will be	5

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Comments Pertaining to Draft EIR- Banning Ranch



Newport Heights Improvement Association
and Donald Krotee
Tuesday, November 08, 2011

Page - 2 -

<p>constructed. Compare to any and all existing development that borders the development. For example, if larger densities might require 4 or more stories over two levels of sub-terranean parking (to achieve reasonably a stated density), show sample existing developments achieving those densities and show cross sectional drawings next to the proximity of the existing development showing the impact of each density above 20 units per acre for each of the following:</p> <ol style="list-style-type: none"> a. Loss of light b. Comparative height as it impacts aesthetics c. general size difference d. Sound and noise e. The 'onto site views' form Pacific Coast Highway, Hoag Memorial Hospital and all intersections on the development. 	<p>5 cont.</p>
<p>6. In regard to the environmental maintenance and the continuing expense of it's upkeep, for all alternatives, show the amount of resources committed by the developer for the next 10 years, for the reasonable maintenance and stewardship of all items intended to be serviced, the cost of that service, any personnel contemplated in regard to the reasonable maintenance of all remaining open space.</p>	<p>6</p>
<p>7. In regard to natural habitat, please state the distance from which all development must respect or stay from any of the many natural habitats shown in the EIR. Please provide these distances in table form for each species experiencing impact.</p>	<p>7</p>
<p>8. In regard with the CEQA <i>development of alternative</i>, provide an explanation for or the lack of a development alternative of 'no development'. In consideration of present economic circumstances and the real value of the property. The value and expense of acquiring the land shall be provided examination as contributing to the selection of an alternative in CEQA and be examined based on the current real assessment of land value and not aged estimates.</p>	<p>8</p>

Letter O10 Newport Heights Improvement Association
November 8, 2011

Response 1

The Project trip distribution assumptions took into account the component of residential traffic that would travel across Newport Boulevard to and from the schools mentioned. The Project traffic volumes and the analysis include the impacts of this traffic distribution.

Response 2

Please refer to Letter R5 from the Newport-Mesa Unified School District which identifies that the School District forecasts a district-wide capacity surplus.

Response 3

The Traffic Impact Analysis is based on peak hour intersection operations, as required by the City of Newport Beach Traffic Phasing Ordinance, and the traffic study requirements of the City of Newport Beach, and the other jurisdictions who have participated in the scoping for this study. The component of the residential traffic that would be associated with the schools is included in the traffic forecasts, and has been accounted for in the analysis. The Traffic Impact Analysis for this Project would not address 2003-2005 ADT data compiled for another project in Newport Heights.

Response 4

The Year 2016 analysis takes into account the peak hour traffic totals assuming all known Committed and Cumulative projects. The Buildout analysis assumes buildout of all General Plan land uses in the City and the surrounding areas. Project's Traffic Impact Analysis is based on peak hour intersection operations, in accordance with the requirements of the City of Newport Beach, and the other jurisdictions who have participated in the scoping for this study.

Response 5

The Draft EIR addresses the compatibility of the proposed Project with existing and planned off-site land uses as well as internal land use compatibility (within the Project site). Most specifically, please refer to Section 4.1, Land Use and Related Planning Programs, Section 4.2, Aesthetics and Visual Resources, and Section 4.12, Noise. Cross-sections and visual simulations are provided in the Draft EIR.

Response 6

The comment does not address an environmental issue rather the costs to the Applicant for Project maintenance activities.

Response 7

Development setbacks are identified in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR. The Newport Banning Ranch Planned Community Development Plan (NBR-PC) Chapter 3, Land Use and Development Standards, includes tables with all applicable setback requirements. Section 4.6, Biological Resources, of the Draft EIR includes a Mitigation Program to address significant impacts to biological resources associated with the proposed Project. The Mitigation Program would reduce significant impacts to a less than significant level

without the need to establish separate buffer distances for each and every sensitive species found on the Project site.

Response 8

The City is unclear the commenter's question or request. Please refer to Section 7.0, Alternatives to the Proposed Project, which addresses several alternatives to the Applicant's proposed Project. These alternatives include Alternative A: No Project and Alternative B: General Plan Open Space Designation. Alternative A assumes no development of the Project site; it would remain as an active oilfield. Alternative B assumes the site is developed under the City's General Plan Primary Use of open space.

In July 2005, the City of Newport Beach contracted with a consultant to provide services in connection with the potential acquisition of the Project site as permanent open space. The Newport Beach City Council set the following as a priority for 2008 and 2009 "Conduct an appraisal of the Banning Ranch property and assess funding available for the purchase of the property for open space". In February 2008, the City Council appointed the Banning Ranch Appraisal and Acquisition Ad Hoc Committee to oversee the appraisal process for the Project site and the assessment of funding availability for its purchase as open space. In January 2009, the City Council authorized the City to request Measure "M" environmental mitigation funding to acquire the Project site and that request was submitted to Orange County Transportation Authority (OCTA). In August 2009, the City Council received the report on the feasibility of funding acquisition of the Project site for open space, which estimated the cost of property acquisition at \$138,000,000.00 to \$158,000,000.00. The City Council directed staff to continue exploring open space acquisition possibilities as the City moves forward with review of the property owner's development application and to continue to monitor funding opportunities and explore potential new alternatives for open space acquisition.



3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.Coastkeeper.org

November 8, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach Community Development Department
3300 Newport Blvd
Newport Beach Ca. 92658

RE; Comments on the Draft EIR for Banning Ranch

Orange County Coastkeeper ("Coastkeeper") is an environmental organization with the mission to preserve, protect and restore the watersheds and coastal environment of Orange County. After careful review of the Banning Ranch Draft EIR we are submitting the following comments.

The most important concern we have with the EIR is the use of off site property for stormwater storage. The ACOE developed wetlands were specifically developed as wildlife habitat areas and not as flood control facilities. It is our opinion that all pre and post construction stormwater and nuisance flows should be contained and treated onsite with no use of the wetlands as storage/detention basins as currently planned. Keeping and treating all stormwater on site will assure the continued function of the wetlands as designed for wildlife habitat and reduce the chance of water quality degradation from project stormwater and nuisance flows.	1
Another concern is that the use of LID principals in the project is confined to the major streets in the development. Coastkeeper believes that this project, being built very near a sensitive habitat area, should fully implement LID principals throughout the project to reduce or eliminate nuisance and stormwater flows to the maximum extent possible.	2
Water quality is a major concern in the project area. Beach postings related to bacteria concentrations in the Newport Slough have been reduced over the period from 2001 to 2009 from 324 posing days to 6. The construction of a new residential development with its associated impacts from landscaping, pets, and other residential uses has the potential to reverse this progress. Additionally the use of the wetland areas as stormwater storage area is likely to change the salinity in the wetlands and Newport Slough during wet weather, possibly impacting the function and productivity of the wetlands. To address these issues Coastkeeper suggests the implementation of a water monitoring program that will document the baseline conditions for all standard water quality parameters in the before project condition, during construction and for three years following completion to assure that the project does not degrade water quality in the slough and wetlands.	3

Thank You,

A handwritten signature in black ink that reads "Ray Hiemstra".

Ray Hiemstra
Associate Director
Orange County Coastkeeper

Letter O11 Orange County Coastkeeper
Ray Hiemstra, Associate Director
November 8, 2011

Response 1

As shown on the “Existing Condition Hydrology Map” (Volume III, Technical Appendix C, Exhibit 1 of the Draft EIR), storm water runoff and nuisance flows originating in off-site areas (east of the Project site) and in the Project site’s bluff areas (where proposed development would occur) currently drain to the Semeniuk Slough, Salt March Basin, and Lowland areas (SS/SMB/LA) west of Project site where there are wetland areas. When the two tidal gates along the Santa Ana River levee are closed and a storm event occurs runoff is temporarily stored in the SS/SMB/LA areas under the existing condition. This drainage pattern would not be modified in the post-development condition and it is appropriate for post-development condition storm runoff and nuisance flows to continue to drain to the SS/SMB/LA areas. Additionally, water quality treatment of Project site runoff is planned and discussed in Section 4.4 and Technical Appendix C of the Draft EIR.

Response 2

In addition to the landscaped biocells located in the parkways, the Project would also incorporate smaller water quality basins (biotreatment) throughout the property to provide water quality treatment in addition to the green street features. These features are outlined in the Preliminary Water Quality Management Plan (WQMP) prepared for the Project. The Preliminary WQMP is hereby incorporated into the Final EIR and is provided as Appendix A to this Responses to Comments document. Please also refer to Topical Response: Infiltration Feasibility and Low Impact Development Features.

Response 3

The comment is noted. The Applicant accepts the recommendation for a storm water monitoring program that establishes a pre-project baseline condition, monitoring during construction activities consistent with the General Construction Permit, and a post-project condition for three years.

Comment Letter O12

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CITY OF NEWPORT BEACH

Residents of The Costa Mesa Bluff

ResidentsOfTheCostaMesaBluff@gmail.com

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1151 Aviemore Terrace, Costa Mesa, California, 92627

1133 Gleneagles Terrace, Costa Mesa, California, 92627

1085 Sea Bluff Drive, Costa Mesa, California, 92627

Patrick J. Alford, Planning Manager

City of Newport Beach, Community Development Department 3300 Newport Boulevard

P.O. Box 1768

Newport Beach, California 92658-8915

Re: Comments pertaining to the draft environmental impact report (EIR) (State Clearinghouse No. 2009031061) for the Banning Ranch Project

Dear Mr. Patrick J. Alford,

This letter is in reply to your attached "Notice Of Availability" dated September 6, 2011. We are responding with our comments prior to the November 8, 2011, 5:00 PM deadline that you have set.

This letter notices you that the residents of Costa Mesa Bluff are opposed to this project in its present form. The draft environmental impact report does not address several crucial and legal environmental issues.

Some of the issues that have not been adequately addressed are:

- | | |
|--|---|
| 1. Our interests under section 30001 of the California Coastal Act of 1976 have not been addressed and protected. | 1 |
| 2. Visual analysis and aesthetics for the Costa Mesa Bluff residents have not been adequately considered and addressed. | 2 |
| 3. The existing conditions of contamination on the Banning Ranch have not been adequately and scientifically stated. The first step would be to clean the Banning Ranch property of all its environmental hazards, which have been long-standing (since the 1940s). Prior to embarking on any construction and creating complications after the start of construction, it would be prudent to embark and complete the cleaning process prior to submitting any plans for this project to the public especially when it involves 1375 residential units, 75 resort units and 75,000 sq. ft of commercial use. | 3 |

4. This project will have substantial adverse effect on our scenic vistas.	4
5. The project will degrade the visual character and quality of the surrounding site which includes the Costa Mesa Bluff area.	5
6. The project will create a new source of substantial light and/or glare which would adversely affect day and nighttime views in the area. This sky glow will change the quality of life for the Costa Mesa Bluff residents.	6
7. The project would be in conflict with other existing regulations, plans, local coastal programs, ordinances and environmental regulations.	7
8. The noise pollution especially from the proposed 13 years of project implementation would adversely impact the Costa Mesa Bluff residents.	8
9. Assembly Bill 32 and its provisions have not been adequately addressed.	9

We feel that the city of Newport Beach, in its role as lead agency, has come up short in hiring professional consultants to address the serious environmental impacts pursuant to the California Environmental Quality Act (CEQA).

With its 1375 residences, 75 resort units and 75,000 sq. ft. of commercial use, prior to putting forth any plan to the public, it is in the interests of the citizens and the City of Newport Beach to hire a responsible third-party to thoroughly investigate the existing highly contaminated land on which this project is proposed. Once this soil and environmental investigations are complete and a cleanup plan has been approved a method of payment to clean up the site environmentally along with a bond should be obtained from the developer. Then and only then should this project even be considered.

We reserve the right to address these and other related issues regarding the project in the future.

We request you send all your communications to the four addresses listed above and the email address listed above.

Sincerely,

Residents of the Costa Mesa Bluff.

Enclosed: 3 signature pages

Notice of draft EIR requesting comments

NAME	ADDRESS	SIGNATURE	DATE
WANDA COWEN			
Wanda Cowen	2086 Valley Rd. C.M.	Wanda Cowen	11-2-2011
GRANKE KEATING	2082 Valley Rd. C.M.	Edyenne Keating	2 Nov 11
Diana Kretzschmar	1151 Aviemore Terr. Costa Mesa C.M.	Diana Kretzschmar	11-2-11
BERNIE KRETZSCHMAR	1151 AVIEMORE TERR. C.M.	Bernie Kretzschmar	11-2-11
Karl & Michele Kogler	993 Oak St C.M.	Michele Kogler Karl Kogler	11-2-11
Bill Riscosin	1085 SEA BLUFF DR. CM	Bill Riscosin	11-3-11
John Pennino	1179 GLENDALES TER CM	John Pennino	11-3-11
Carl R. Bouk	1185 GLENDALES TER	Carl R. Bouk	11-3-11
Virginia Colwell	1111 Aviemore Terrace Costa Mesa CA 92627	Virginia Colwell	11-3-11
Madge Thomson	1144 Glendale Ter	Madge Thomson	11-3-11
Curtis Cowen	2086 Valley Rd. C.M.	Curtis Cowen	11-2-11
ERMINIE A. ZAPPA			
Ermine A. Zappa	1195 GLENDALES TER	Ermine A. Zappa	11-2-11
BARBARA McCALL			
Barbara McCall	1163 Aviemore Terr, Costa Mesa 92627	Barbara McCall	11-2-11
Dan Hakala	1159 Aviemore Terr. CM 92627	Dan Hakala	11-2-11
Simon Biberau	1167 AVIEMORE TERRACE, CM 92627	Simon Biberau	11-02-11
ALAN HALL			
Alan Hall	1147 GLENDALES TER, COSTA MESA	Alan Hall	11-2-11

NAME ADDRESS SIGNATURE DATE

1132 GLENEAGLES
TRAIL
KINDRE McFadyen COSTA MESA, CA Elinor McFadyen 11/3/11

1133 GLENEAGLE
COSTA MESA, CA
LINDA & JERRY MURPHY Linda Murphy 11/2/11

Denny Goodz 1143 Gleneagles Reserve [Signature] 11/3/11

Ch. Man 1135 AVEMORE TR. [Signature] 11/4/11

John. M. 1135 AVEMORE TR. [Signature] 11/4/11

NAME	ADDRESS	SIGNATURE	DATE
Robert Reeder	1131 Aviemore Ter	ROBERT-REEDER	11-5-2011
ROBERT REEDER	1127 Aviemore Ter	Robert Reeder	11-5-2011
Betty A. Bennett	1123 Aviemore Ter.	Betty A Bennett	11-5-11
Erika Kansriddle	1119 Aviemore Terrace	Erika Kansriddle	11-5-11
Howard R. Woodworth	1111 Aviemore Ter	H.R. Woodworth	11-5-11

**NOTICE OF AVAILABILITY
DRAFT ENVIRONMENTAL IMPACT REPORT
NEWPORT BANNING RANCH PROJECT**

Notice is hereby given that the Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2009031061) for the proposed Newport Banning Ranch Project is available for public review and comment pursuant to the California Environmental Quality Act (CEQA). The Draft EIR addresses the environmental effects associated with implementation of the Newport Banning Ranch Project.

Project Location: The Project site is approximately 401 acres. 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.

Project Description: The Project would allow for the development of the approximately 401.1-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. The proposed Project includes the development of a vehicular and a non-vehicular circulation system for automobiles, bicycles, and pedestrians, including a pedestrian and bicycle bridge from the Project site across West Coast Highway. Project approvals required from the City include a General Plan Circulation Element Amendment, Pre-zoning, Zone Change, Planned Community Development Plan, Master Development Plan, Tentative Tract Map, Development Agreement, and Affordable Housing Implementation Plan. The Project would also require a Coastal Development Permit from the California Coastal Commission.

The Draft EIR examines the potential impacts generated by the proposed Project in relation to the following CEQA Checklist categories: aesthetics and visual resources, land use and planning programs, geology and soils, hydrology and water quality, population, housing, and employment, transportation and circulation, air quality, green house gas emissions, noise, biological resources, cultural and paleontological resources, recreation and trails, hazards and hazardous materials, public services, utilities, and alternatives.

The City of Newport Beach is the Lead Agency for this Draft EIR. Copies of the Draft EIR and technical appendices are available for public review at the following locations:

- City of Newport Beach, Community Development Department, 3300 Newport Boulevard, Newport Beach, California 92658
- City of Newport Beach, Central Branch, 1000 Avocado Avenue, Newport Beach, California 92660
- City of Newport Beach, Balboa Branch, 100 East Balboa Boulevard, Newport Beach, California, 92661
- City of Newport Beach, Mariners Branch, 1300 Irvine Avenue, Newport Beach, California 92660
- City of Newport Beach, Corona del Mar Branch, 420 Marigold Avenue, Corona del Mar, California 92625
- City Website - <http://www.newportbeachca.gov>

All interested parties are invited to submit written comments pertaining to the Draft EIR. The comment period for the Draft EIR will be 60 days beginning September 9, 2011 and ending November 8, 2011. Your comments should be sent at the earliest possible date, but must arrive no later than 5:00 PM on November 8, 2011. Please direct any questions regarding the Draft EIR to Patrick J. Alford at (949) 644-3235 or email at palford@newportbeachca.gov. Written comments should be sent to:

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

If e-mail comments are submitted with attachments, it is recommended that the attachments be delivered in writing to the address specified above. The virus protection measures and variety of formats for attachments can limit the ability for the attachments to be delivered.



Patrick J. Alford, Planning Manager Date



**COMMUNITY DEVELOPMENT
DEPARTMENT
3300 NEWPORT BOULEVARD
P. O. BOX 1768
NEWPORT BEACH, CA
92658-8915**

NOTICE OF AVAILABILITY

Letter O12 Residents of the Costa Mesa Bluff
November 7, 2011

Response 1

Section 30001 of the California Coastal Act states:

- (a) That the California coastal zone is a distinct and valuable resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.
- (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to the present and future residents of the state and the nation.
- (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.
- (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

The Project's consistency with the applicable policies of the Coastal Act is addressed in Sections 4.1 through 4.15 and Section 7.0 of the Draft EIR.

Response 2

The residences noted in the comment letter were not specifically addressed in the Draft EIR because of the distance from the Project site to the residences. The noted residences are approximately 0.4 mile or more north of the Project site. Talbert Nature Preserve is located between the Project site and these residences. There is no existing or planned physical connection between the Project site and this residential community, the latter which is accessed from Victoria Street in the City of Costa Mesa. At its most proximate location to the commenters' residences, the northern portion of the proposed Project site (near 19th Street) would be in open space. The only development improvement in this area would be the proposed extension of North Bluff Road to 19th Street. The only lighting in this portion of the Project site would be at the intersection of 19th Street at North Bluff Road; it should be noted that there is existing street lighting along 19th Street. Because of the distance of the Project site to the commenters' residences and limited development proposed in the northern portion of the property, no significant visual impacts would be anticipated.

Response 3

Please refer to Topical Response: Oilfield Regulatory Oversight and Remediation.

Response 4

The opinion of the commenters is noted. As a point of clarification, the Project site is not contiguous to the residences noted by the addresses attached to the comment letter. Residences at the noted addresses are separated from the Project site by Talbert Nature Preserve. Further, no development land uses are proposed in the northern part of the Project site adjacent to Talbert Nature Preserve; this portion of the site would be in open space.

Response 5

The opinions of the commenters are noted. Please refer to Section 4.1, Land Use and Related Planning Programs, and Section 4.2, Aesthetics and Visual Resources, which address both land use compatibility and visual resources including night lighting effects to surrounding land uses.

Response 6

Please refer to the response to Comment 5.

Response 7

The commenters have not identified what “existing regulations, plans, local coastal programs, ordinances, and environmental regulations” that the Project would be in conflict with. The proposed Project is consistent with the City of Newport Beach General Plan land use designation. The City’s certified Coastal Land Use Plan (CLUP) identifies Banning Ranch, which includes the Newport Banning Ranch site and the Newport-Mesa Unified School District property, as a Deferred Certification Area (DCA) because a project plan is necessary in order to address land use, public access, and the protection of coastal resources. Neither the City of Newport Beach nor the County of Orange has a certified Local Coastal Program that includes the Newport Banning Ranch site.

Response 8

Potential construction-related and long-term noise impacts are assessed in Section 4.12, Noise, of the Draft EIR.

Response 9

The opinion of the commenters is noted. Section 4.11, Greenhouse Gas Emissions, of the Draft EIR (pages 4.11-1 through 4.11-40) specifically addresses the Project and cumulative effects of greenhouse gas.

Comment Letter O13



P.O. BOX 5447, IRVINE, CA 92616-5447

November 7, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, California 92658-8915

RE: DEIR Newport Banning Ranch Project No 2009031061

Mr. Alford:

Please accept these comments on behalf of the Sea and Sage Audubon Society in response to Draft Environmental Impact Report (DEIR), for the Newport Banning Ranch Project No 2009031061. Sea & Sage Audubon Society is an Orange County chapter of National Audubon Society with nearly 3,000 local members dedicated to the protection and appreciation of birds, other wildlife, and their habitats through education, conservation, scientific research, and volunteer opportunities. We appreciate the opportunity to respond to the DEIR.

We found the DEIR to be insufficient and fails to identify all of the impacts related to the proposed project, especially to wildlife. Additionally we find the language used to describe habitats and impacts to habitats, to be unfairly bias towards the project and therefore does not provide the reader with a full understanding of the project and/or its impacts as required by CEQA. The DEIR under rates the value of the property to existing wildlife features, especially birds. 1

We agree with inadequacies pointed out in responses to the DEIR from Robert Hamilton, Barry Nerhus, and Terry Welsh. Examples of our concerns are as follows

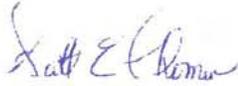
Resident and Wintering Raptors

The bird list in section 4-6-20 fails to recognize raptors as year round residents. This can only be explained by a lack of adequate surveys and investigation during the breeding season. 2

<p>Raptors common to the area as residents that are known to nest regularly in adjacent properties to the Banning Ranch include Red-tailed Hawks, Red-shouldered Hawks, and White-tailed Kites. In fact all three can be observed and heard vocalizing over the Banning Ranch Property during the nesting season in most years. A Red-tailed Hawk nest was visible for several years in the willows, which are observable from the 16th Street terminus area. There is no reason to suspect that these and other raptors are not residents on the property and would be impacted by the proposal.</p> <p>Because of the lack of knowledge about the density and frequency of raptors nesting on the property, some of which may be special status species, but all protected, the DEIR cannot adequately access the impacts.</p>	<p>2 cont.</p>
<p>The DEIR routinely down grades the importance of wintering raptors such as Burrowing Owls. However, the coastal areas of southern California are very important to wintering birds and have become rare and irreplaceable. As a local resource impacts to wintering and rare raptors should be considered significant.</p> <p>The DEIR needs to identify the densities and frequencies of nesting, foraging, and wintering hawks, kites, and owls on the property.</p>	<p>3</p>
<p>Fairy Shrimp</p> <p>In Section 4-6-3 the DEIR states that San Diego fairy Shrimp were discovered, but that the pool was not adequate to support this species. This is contradictory, obviously because the species was detected. There is no explanation given in the DEIR to support any other reason for the shrimp to be in the pool other than it is supported by the habitat.</p> <p>Fairy shrimp populations, of almost any species, are very difficult to access because so many factors, that are often poorly understood, influence which years they will be present as adults in a particular vernal pool. Fairy shrimp cysts can survive for many years, in some cases for decades and longer, and will only hatch under very specific conditions including specific temperature regimes, ph and other pond conditions, as well as rain levels.</p> <p>And, just because the pool was not full for 14 days in relatively wet years, as stated in the DEIR, does not preclude the possibility that it could be full for 14 or more days in years where the rains comes in very short time periods, but very heavily in flood conditions. The pool may only fill properly in very odd years but still support the San Diego Fairy Shrimp, as it must since the species was detected</p> <p>The DEIR should recognize and clearly state that vernal pools found to contain any fairy shrimp species are viable pools, and that it is likely, given the proximity to each other that all viable pools may contain more species than have been identified.</p>	<p>4</p>

<p>CCS Restoration and Birds.</p> <p>The DEIR employs a common strategy of separating each and every parcel of CSS into disparate communities of CSS, such as disturbed Encelia Scrub and Disturbed Mulefat Scrub. And while these are legitimate designations, it is very important to understand the context in which the habitats are described. It would be equally legitimate to describe habitats as mixed, a mosaic, or a diverse CSS mix. The continued and frequent use of the term “disturbed” in the DEIR unnecessarily presents a negative view. This results in a bias towards the need to restore or fix a problem that does not necessarily exist</p> <p>To access the impacts of the project, the DEIR should more adequately recognize that the habitat on the Banning Ranch currently supports a healthy population of CSS obligate species, such as Coastal Cactus Wrens, that often prefer habitats with mosaics or some open areas, and can conversely struggle in very dense CSS.</p>	5
<p>The DEIR does not clearly identify the risks of failure of CSS restoration for CSS obligate birds, especially Coastal Cactus Wrens. And the DEIR should clearly recognize that restoration attempts for one species will likely impact other species.</p> <p>For instance; most raptors, such as red-tailed hawks, red-shouldered hawks, and white-tailed kites, forage well in the “disturbed” habitats that exist currently on the property. Raptors are present in large numbers on the Banning Ranch, and similar nearby coastal habitats, because the mosaic of habitats, including non-native grasses and open areas that provide for the best possible foraging opportunities. “Restoring” these habitats to dense CSS will limit foraging opportunities and impact the local populations.</p> <p>Converting mixed CSS, non-native grasslands, and open areas to dense CSS in an attempt to mitigate for impacts to CSS obligate birds will result in reduced habitats for other species such as raptors, and should be fully indentified in the DEIR.</p>	6
<p>The DEIR must recognize that due to the loss of acreage and the lack of nearby, off-site opportunities, the project cannot simultaneously mitigate for California Gnatcatchers, Cactus Wrens, and raptor species. Given the status of the CSS birds, the DEIR must recognize that it would result in an unavoidable impact to raptors.</p> <p>And, the DEIR must clearly state that the mitigation efforts for California Gnatcatchers and Coastal Cactus Wrens are only projections and may fail to meet expectations</p>	7
<p>Conclusion</p> <p>The DEIR failed to fully investigate all of the biological resources on the Newport Banning Ranch property and fails to identify all of the impacts from the proposal.</p>	8

Thank you for your consideration,

A handwritten signature in blue ink that reads "Scott Thomas". The signature is written in a cursive style with a large initial 'S'.

Scott Thomas
Conservation Chair
Sea and Sage Audubon Society
(949) 261-7964
staudubon@gmail.com

Letter O13 Sea and Sage Audubon Society
Scott Thomas, Conservation Chair
November 7, 2011

Response 1

Please refer to the responses to Comment Letters O50, O73, and O90a through O90d.

Response 2

It is unclear why the commenter indicates that Draft EIR fails to recognize raptors as year round residents. Page 4.6-20 states that “raptors (birds of prey) observed on the Project site include osprey (*Pandion haliaetus*), white-tailed kite (*Elanus leucurus*), northern harrier (*Circus cyaneus*), sharp-shinned hawk (*Accipiter striatus*), Cooper’s hawk (*Accipiter cooperii*), red-shouldered hawk (*Buteo lineatus*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), and great horned owl (*Bubo virginianus*)”. There is no limitation to season in this statement. There is an additional detailed discussion in Section 3.3.4 (Special Status Wildlife) of the Biological Technical Report of 15 various special status raptor species that are known to occur in the region and their potential to occur on the Project site. The wildlife compendia for the proposed Project also identified 11 raptors as occurring on site (see Appendix A to the Biological Technical Report in the Draft EIR).

The evaluation of potential impacts to raptor and other nesting bird species is discussed in several locations of the Draft EIR including page 4.6-56:

Prior to the consideration of mitigation, the Project would contribute to the historical loss of habitats in the coastal areas of the region and may contribute to local extirpation of some wildlife species from the Project site. Unmitigated impacts to habitats in the coastal area would be considered significant. However, with implementation of MM 4.6-1 (Coastal Sage Scrub Habitat Preservation and Restoration), MM 4.6-2 (Grassland Habitat Preservation and Restoration), MM 4.6-3 (Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration), MM 4.6-4 (Marsh Habitat Preservation and Restoration), and MM 4.6-5 (Jurisdictional Resources/Riparian Habitat Preservation and Restoration), this impact would be reduced to a less than significant level.

and

Nesting birds are protected under the provisions of the Migratory Bird Treaty Act (MBTA) and are identified by the List of Migratory Birds (50 CFR 10.13). Suitable habitat for birds protected by the MBTA occurs throughout the Project site. The intentional loss of any active nest through Project implementation would be considered significant. Impact on active nests would be reduced to a less than significant level with the implementation of MM 4.6-6, which establishes protocols for vegetation removal during the migratory bird nesting season.

In addition, impacts to special status raptor species are discussed in detail on pages 4.6-62 and 4.6-62 of the Draft EIR:

Although suitable foraging and nesting habitat is present on the Project site for the burrowing owl, it is only expected to winter on the Project site based on the results of focused surveys conducted in 2008, 2009, and 2010. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and

2010 (GLA 2010a, 2009) (impacts shown on Exhibits 4.6-6a and 4.6-6b). The burrowing owl is a species of local concern because its occurrences are limited in the County. The proposed Project would impact approximately 100.13 acres (97.26 acres permanent, 2.87 acres temporary) of grasslands and ruderal habitat on the Project site. Impacts on occupied and potential habitat for this species would be considered significant. Implementation of MMs 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level. These measures require the restoration of grassland habitat at a ratio of 0.5:1 (totaling approximately 50.07 acres). In addition, the Project would preserve approximately 20.27 acres of grassland areas and include construction avoidance measures to minimize grassland impacts to the greatest extent practicable. Moreover, PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the grassland areas and associated wildlife species including, but not limited to, the burrowing owl.

Although potentially suitable foraging habitat is present on the Project site for golden eagle and Swainson's hawk, these species are not expected to occur on the Project site because (1) the site is outside the currently known range for these species and (2) of the extensive urbanization in the Project region. The bald eagle is not expected to occur on the Project site because of the lack of suitable foraging and breeding habitat. Therefore, there would be no impact on these species, and no mitigation would be required.

Suitable foraging habitat is present for a variety of raptor species including Cooper's hawk, sharp-shinned hawk, ferruginous hawk, northern harrier, white-tailed kite, merlin, prairie falcon, American peregrine falcon, and short-eared owl. While there is no suitable foraging habitat for the osprey on the Project site, there is foraging habitat adjacent to the Project site within the USACE salt marsh restoration site and the Santa Ana River; the osprey was observed perching on the Project site following foraging. The permanent loss of approximately 124.83 acres of foraging habitat for these raptor species would contribute to the ongoing regional and local loss of foraging habitat. This impact would be considered significant. However, revegetation following oilfield remediation activities would result in higher-quality habitat due to invasive species removal; removal of human activity and disturbance related to oilfield operations (oil activities would be consolidated into two on-site locations); and availability of larger blocks of contiguous native habitat for these species in the open space area. Therefore, with implementation of MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5, this impact would be reduced to a less than significant level. These measures require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the Project would preserve approximately 85.97 acres of additional habitat on site. The Project also includes PDFs 4.6-1 through 4.6-4, which require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the raptor foraging areas.

Cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. The loss of an active nest of these species, or any common raptor species, would be considered a violation of Sections 3503, 3503.5, and 3513 of the *California Fish and Game Code*. Therefore, the loss of any active

raptor nest would be considered significant. Impacts on active raptor nests would be reduced to less than significant levels with implementation of MM 4.6-13, which provides for construction avoidance measures to minimize the impact to the greatest extent practicable.

The Draft EIR adequately addresses the potential impact to raptor species as described above.

Response 3

The Draft EIR does not down grade the importance of wintering raptors, especially the burrowing owl. Focused surveys to document the wintering population of this species were specifically conducted on site in 2008, 2009 and 2010. The Draft EIR found that the Project impacts on occupied and potential habitat for this species would be considered significant.

The Draft EIR and Biological Technical report acknowledge the presence of various raptor species on site and their use of onsite resource for foraging and nesting. The request by the commenter for the Draft EIR further identify the densities and frequency of nesting and foraging activities of common raptor species not required to determine potentially significant impacts. Conducting additional surveys and presenting this additional information would not provide results that cannot already be evaluated by the knowledge of expected use patterns and existing literature. The new data/information would not result in any greater finding of significance than that which is already presented in the Draft EIR.

Response 4

In Section 4.6-3, Methodology, of the Draft EIR, does not state that “the pool was not adequate to support this species”, when the species was identified as present within a given pool.

The survey protocol issued by the USFWS to determine the presence/absence of federally listed vernal pool branchiopod species is very specific (*Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods* (USFWS 1996). The protocol states that a wet season survey begin after initial storm events to determine when pools/swales have been sufficiently inundated to begin the surveys (i.e., greater than 3 centimeters of standing water for 24 hours after a rain event). Following rainfall events, the hydrology of the pools are monitored. Once the pools are sufficiently inundated, surveys will begin no later than two weeks following the initial inundation and continue once every two weeks until pools are no longer inundated or until they have experienced 120 days of continuous inundation. The length of time for monitoring is based on the USFWS protocol, and is not arbitrary.

With respect to on-site fairy shrimp, please refer to page 4.6-33 of the Draft EIR:

Suitable ponding habitat for this species is present on the Project site, and this species was observed in two vernal pools (VP1 and VP2) and five temporary pool features (AD3, and pools E, G, I, and J) during focused surveys.

Response 5

Because physical disturbance and/or invasion of an area by non-native species can play an important role in the biological value of an area, it is relevant to describe an area as “disturbed” to accurately describe the resource issue. Areas that were described as “disturbed” included such clarifying statements as (1) “areas have been invaded by non-native species, such as hottentot fig and *Myoporum*”; (2) “heavily disturbed by oilfield activities”; (3) “concrete debris

piles from oilfield activities, and has been subject to maintenance along the edges”; (4) “disturbed by the low-level mowing”; (5) “vegetation type is comprised of goldenbush, pampas grass (*Cortaderia selloana*), and sweet fennel (*Foeniculum vulgare*)”; (6) “contains debris piles from oilfield activities and is surrounded by a dirt road”; (7) “consist of opportunistic native and non-native species that have colonized soil piles and open areas within and along the edges of the debris piles”; and (8) other descriptive terms. Using the terms suggested by the commenter such as “mixed”, “mosaic”, or “diverse” would imply greater biological significance than exists for these areas.

On page 4.6-53 of the Draft EIR, the document acknowledges that fragmentation issue of the coastal sage scrub on site and the biological value as follows:

Much of the scrub habitat on the site occurs in small fragments and in many cases is highly degraded by invasive species. However, impacts on coastal sage scrub (disturbed and undisturbed) vegetation types are considered significant because (1) the loss of these vegetation types in the Project region would be considered a substantial adverse effect on the coastal sage scrub community¹⁵ and (2) impacts to these areas would reduce the habitat for the coastal California gnatcatcher and other wildlife species.

Response 6

The Coastal Sage Scrub Habitat Preservation and Restoration program has safeguards built into it to ensure its success. Specifically, the Applicant is required to plan, implement, monitor, and maintain the program which would be approved by the City of Newport Beach (City) and the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS] and the California Coastal Commission). The program would be maintained and monitored for five years to ensure successful sage scrub habitat establishment within the restored and created areas. The Applicant would be responsible for implementing the coastal sage scrub revegetation program until the restoration areas have met the success criteria outlined in the program and the City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall signed off on the mitigation areas.

The Draft EIR acknowledges the loss of foraging habitat as significant on page 4.6-53:

The proposed Project would impact approximately 100.13 acres (97.26 permanent, 2.87 temporary) of grassland and ruderal vegetation, including areas mapped as non-native grassland, non-native grassland/ruderal, and ruderal. These areas generally have low biological value for most species because they are vegetated with non-native species. However, these areas may provide suitable foraging habitat for a variety of raptor species, including wintering burrowing owls. Additionally, the non-native grassland includes localized areas with low densities of native bunch grasses that could not be delineated separately due to a variety of factors including the scattered distribution, low densities, and mowing operations on the Project site. The loss of grassland function for foraging raptors in the region is considered significant because of its decline in the Project region. Therefore, the proposed Project would have a potentially substantial impact on raptor foraging habitat without mitigation.

¹⁵ Impacts to individual subcommunities may not have been considered significant if evaluated separately; however, all subtypes of coastal sage scrub were considered cumulatively for this analysis.

While the non-native grasslands and ruderal area may be important for the local foraging raptors, it must also be acknowledged that populations of native annual forbs and native grasses are declining because of competitive suppression by non-native grasses¹⁶. The California Native Plant Society states that “aggressive exotic plants are unacceptable in natural areas because they can exclude native plants, degrade, alter or displace natural plant communities, promote faunal change, reduce biological diversity, disrupt ecosystem processes, alter fire frequencies, restrict economic return, reduce recreational values, threaten endangered species and fundamentally alter the unique character and physiognomy of California”.¹⁷

To allow and encourage the existence of invasive, non-native species, is not in the best interest of all plant and wildlife resources on the Project site.

As stated on page 4.6-77 of the Draft EIR, the grassland “mitigation shall occur entirely in one to two locations to provide the maximum habitat value for the raptors, burrowing owls, and other wildlife species that require contiguous blocks of open habitat types. The site(s) shall consist of level or gently sloping terrain, soil types, and microhabitat conditions suitable for occupation by raptors and burrowing owl, as determined by a qualified Biologist”. The goal of the mitigation is to provide 70 acres of higher value habitat, which contain a higher percentage of native plant species and is less fragmented than currently exists by the existing oilfield operations.

Response 7

As discussed on pages 4.6-62 and -63 of the Draft EIR, suitable foraging habitat is present for a variety of raptor species on site. The Draft EIR acknowledges the permanent loss of foraging habitat for these species, and that the impact would be considered significant. However, revegetation following oilfield remediation activities would result in higher-quality habitat due to invasive species removal; removal of human activity and disturbance related to oilfield operations (oil activities would be consolidated into two on-site locations); and availability of larger blocks of contiguous native habitat for these species in the open space area. Therefore, with implementation of MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5, this impact would be reduced to a less than significant level. These measures require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the Project would preserve approximately 85.97 acres of additional habitat on site.

As summarized on Table 4.6-8, the implementation of the Mitigation Program would result in a net increase over existing conditions of approximately 67 acres of those habitat types that warranted mitigation. This is possible because of the high occurrence of disturbed/developed areas (e.g., access roads) that would now be available for restoration. Although there would be a decrease in grasslands areas for foraging raptors by 50 acres, there would be an increase of coastal sage scrub by approximately 25 acres, vernal pool habitat by approximately 3 acres, and approximately 33 acres of marsh and riparian areas. This is a net increase in value of native habitat types that would benefit all onsite plant and wildlife species, not just raptor species.

Response 8

The opinion of the commenter is noted.

¹⁶ Reducing Competitive Suppression of a Rare Annual Forb by Restoring Native California Perennial Grasslands, Tina M. Carlsen, John W. Menke, and Bruce M. Pavlik, Restoration Ecology, Issue 1 Page 18-29.

¹⁷ <http://www.cnps.org/cnps/archive/exotics.php>



Comment Letter O14

1919 S. State College Blvd.
Anaheim, CA 92806-6114

RECEIVED BY

COMMUNITY

SEP 28 2011

DEVELOPMENT
CITY OF NEWPORT BEACH

September 23, 2011

CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT
3300 Newport Blvd
P.O. Box 1768
Newport Beach, CA 92658

Attention: Patrick Alford

Subject: Program Environmental Impact Report For Newport Banning Ranch Project

Thank you for providing the opportunity to respond to this E.I.R. Document. We are pleased to inform you that Southern California Gas Company has facilities in the area where the aforementioned project is proposed. Gas service to the project can be provided from an existing gas main located in various locations. The service will be in accordance with the Company's policies and extension rules on file with the California Public Utilities Commission when the contractual arrangements are made.

This letter is not a contractual commitment to serve the proposed project but is only provided as an informational service. The availability of natural gas service is based upon conditions of gas supply and regulatory agencies. As a public utility, Southern California Gas Company is under the jurisdiction of the California Public Utilities Commission. Our ability to serve can also be affected by actions of federal regulatory agencies. Should these agencies take any action, which affect gas supply or the conditions under which service is available, gas service will be provided in accordance with the revised conditions.

This letter is also provided without considering any conditions or non-utility laws and regulations (such as environmental regulations), which could affect construction of a main and/or service line extension (i.e., if hazardous wastes were encountered in the process of installing the line). The regulations can only be determined around the time contractual arrangements are made and construction has begun.

Estimates of gas usage for residential and non-residential projects are developed on an individual basis and are obtained from the Commercial-Industrial/Residential Market Services Staff by calling (800) 427-2000 (Commercial/Industrial Customers) (800) 427-2200 (Residential Customers). We have developed several programs, which are available upon request to provide assistance in selecting the most energy efficient appliances or systems for a particular project. If you desire further information on any of our energy conservation programs, please contact this office for assistance.

Sincerely,

Mike Harriel
Technical Services Supervisor
Orange Coast Region - Anaheim

MH/ag

Letter O14 Southern California Gas Company
Mike Harriel, Technical Services Supervisor
September 23, 2011

Response 1

This comment letter states that the Southern California Gas Company has facilities in the Project area and that gas service can be provided from an existing gas main located in various locations. In addition, the Southern California Gas Company states that this letter is not a contractual commitment to serve the proposed Project. Laws and regulations affecting the construction of a main and/or service line extension would be determined at the time of actual contractual commitments have begun. The comment is noted.



Comment Letter O15

7 November 2011

To: City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663
Attention: Patrick Alford

Surfrider Foundation Newport Beach Chapter and Huntington/Seal Beach Chapter Position on Newport Banning Ranch Development

The Surfrider Foundation Newport Beach and Huntington/Seal Beach chapters support an environmentally sensitive plan to maximize public space, improve water quality, clean polluted run off and protect natural and sensitive habitat and species. Such a plan must address the existing conditions of concern including: untreated urban runoff to the ocean, destabilized bluffs, existing mineral rights of oil companies and appropriate assessment and cleanup of abandoned oil drilling operations and equipment and site remediation. Our concerns also include the plans for roads on the property, which would carry additional pollutants and untreated urban runoff to the ocean and local beaches.

1

The Draft Environmental Impact Report (DEIR) is required to select an Environmentally Superior Alternative from the several alternative actions that are analyzed within the scope of the Report. The DEIR lists Alternative B – General Plan Open Space Designation as the Environmentally Superior Alternative. This is consistent with the primary use for the property as listed in the City of Newport Beach General Plan approved by the voters on November 6, 2006.

Regarding the project alternatives presented in the DEIR, our chapters see Alternative B – General Plan Open Space Designation as our preferred plan for Banning Ranch, assuming all concerns for water quality, untreated run off and land remediation are addressed in this alternative.

Surfrider Foundation comments on Newport Banning Ranch DEIR

A. Property Acquisition

On pages 1-2 of the Executive Summary and 3-5 of the Project Description, under the City of Newport Beach General Plan, approved by the voters November 6, 2006, the Primary Use of the subject property is Open Space, with an Alternative Use stated as follows:

"If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as 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."

2

1. What steps has the City taken to acquire the property?
2. What is the time period for the City to acquire the property?
3. What terms and conditions has the City considered, negotiated or discussed for the acquisition of the property?

1



<p>4. Please provide any and all information regarding any discussions the City has had with the proposed developer, property owner(s), third parties or any other entities, public or private, regarding acquisition of the property for the primary purpose of maintaining it as Open Space, consistent with the City's General Plan.</p>	2 cont.
<p><u>B. Water Quality Impacts</u></p>	
<p>1. Regarding water quality impacts of the proposed project, Section 4 of the DEIR, we note that very little data are provided to support the general conclusion that the proposed project will have no significant impacts on the water quality of the receiving waters (Semenuik Slough, Santa Ana River and Pacific Ocean). Please provide a quantitative analysis to support the conclusions made in Appendix C regarding pollutant concentrations or the expected removal efficiencies of BMPs.</p>	3
<p>2. With regard to individual classes of pollutants, the paragraph on Bacteria & Pathogens (Appendix C, page 123), unlike the similar paragraphs for other pollutants, does not conclude with a statement such as "As a result, it is anticipated that water quality standards will not be exceeded, and potential impacts from bacteria and pathogens are less than significant." Was this an oversight? What are the possibilities that the water quality standards will be exceeded in regards to bacteria and pathogens?</p>	4
<p><u>C. Residential Landscaping</u></p>	
<p>1. Appendix C, Part 2 of the DEIR, page 867 of 877 has text that reads: <u>"Use Efficient Irrigation Systems and Landscape Design</u> Projects shall design the timing and application methods of irrigation water to minimize the runoff of excess irrigation water into the municipal storm drain system. (Limited exclusion: detached residential homes.) The following methods to reduce excessive irrigation runoff shall be considered, and incorporated on common areas of development and other areas where determined applicable and feasible by the City"</p> <p>This suggests that exclusion exists for detached residential homes concerning the landscaping and garden management programs. Are there any restrictions or incentives for residential property to create sustainable and low water use gardens and landscaping that is consistent with the design concepts and source BMPs?</p>	5
<p><u>D. Comments From Surfrider Foundation's OFG Coordinator, Paul Herzog</u></p>	
<p>Appendix C Part 1 of the DEIR, pp. 117- <u>5.3.3 Interior Water Quality Features</u></p>	
<p>1. Rain barrels, at about 55-70 gallons, are more a tool to slow down the first flush (the first ¾"-1" of rain after a dry period) than a water harvesting vehicle. It is better to create a "sponge" by infiltrating rain water into healthy soil and utilizing native plants than focus on capturing water for irrigating climate inappropriate plants. Note that clay soils can infiltrate water, but just at a slower rate. See Milagro CoHousing Project (28 units) as an example - http://www.milagrococohousing.org/milagro_009.htm</p>	6
<p>2. With regard to Storm Water Planters, is infiltration in vegetated soil and utilizing these planters when that is not possible prioritized?</p>	7



3. Regarding Tree Box Filters, these are typically considered an expensive "tree in a box," primarily used to filter runoff. Is infiltration and above-ground bio-filtration prioritized?	8
4. In regard to Pocket Rain Gardens: When tied into a system of tools, there is not a need for one, large solution, i.e., piece of land (as alluded to on pp.127 "In those instances where the LID features are not sufficient to handle treatment requirements independently, water quality calculations will quantify how much the additional treatment is required by the next downstream LID feature or water quality basin."). There is not a need for an underdrain with healthy soil and an exit to another permeable area. Has this been considered?	9
5. In regard to Appendix C 5.3.4 Transitional Phase Water Quality Features, to build healthy soils, deeper infiltration (than suggested in the drawing on p. 127) is required. What is the basis for the depth of infiltration suggested and where is the data to confirm this?	10
Appendix C Part 2, pp. 859 <u>Site Design and LID BMPs.</u>	
6. Have currently available pervious pavers been considered?	11
7. With regard to POA activity restrictions, has consideration been made to include requirements for POA's to comply with AB 1881, the State or municipality's Water Efficient Landscape Ordinance or the County Water Conservation Resolution?	12
8. Regarding Common Area Landscape Management has consideration been made to encourage the building of healthy soil through organic methods and regular aeration of any turf areas, restricting or preventing the application of fertilizers, pesticides, herbicides or fungicides?	13
9. With regard to Vehicle Wash Areas, have recommendations and requirements been made to restrict the use of saps to those that are bio-compatible (no salts)?	14
10. Regarding LID/Treatment Control BMP Sizing Calculations what is meant by "amended soil layer?"	15
11. With regard to Vegetated BioCell Sizing, What is a Biocell?	16

Dudley Tabakin
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Tony Soriano
Chairperson
Surfrider Foundation
Huntington Beach and Seal Beach Chapter

Letter O15 Surfrider Foundation, Newport Beach Chapter
Dudley Tabakin, Vice Chairperson
Tony Toriano, Chairperson
November 7, 2011

Response 1

The opinion of the Surfrider Foundation is noted.

Response 2

The City of Newport Beach has not expressed interest in purchasing the property. Section 7.0, Alternatives to the Proposed Project, of the Draft EIR addresses several alternatives to the Applicant's proposal including Alternative B: General Plan Open Space Designation. The acquisition process for purchase of the property for open space is addressed as a part of the analysis of Alternative B. In July 2005, the City of Newport Beach contracted with a consultant to provide services in connection with the potential acquisition of the Project site as permanent open space. The Newport Beach City Council set the following as a priority for 2008 and 2009 "Conduct an appraisal of the Banning Ranch property and assess funding available for the purchase of the property for open space". In February 2008, the City Council appointed the Banning Ranch Appraisal and Acquisition Ad Hoc Committee to oversee the appraisal process for the Project site and the assessment of funding availability for its purchase as open space. In January 2009, the City Council authorized the City to request Measure "M" environmental mitigation funding to acquire the Project site and that request was submitted to Orange County Transportation Authority (OCTA). In August 2009, the City Council received the report on the feasibility of funding acquisition of the Project site for open space, which estimated the cost of property acquisition at \$138,000,000.00 to \$158,000,000.00. The City Council directed staff to continue exploring open space acquisition possibilities as the City moves forward with review of the property owner's development application and to continue to monitor funding opportunities and explore potential new alternatives for open space acquisition.

Response 3

As part of this responses to comments document, a Preliminary Water Quality Management Plan (P-WQMP) has been prepared consistent with the stormwater management and water quality BMP features set forth in the Draft EIR (Section 4.4 and Appendix C). In addition, quantitative modeling of the proposed stormwater management and water quality BMP features have been prepared to support the conclusions previously reported in Appendix C and is included as an appendix of the Preliminary WQMP (Appendix G).

To analyze the effectiveness of the proposed bioretention features and the extended detention basin for off-site runoff, water quality modeling was conducted to predict anticipated changes in storm water runoff quality and quantity for proposed versus existing conditions (see Preliminary WQMP, Appendix G). The model does not take into account hydrologic source controls, storm drain routing, Time of Concentration, storm drain pipe storage or other drainage design features that would reduce the predicted storm water volumes.

The results of the planning-level water quality modeling demonstrate improved calculated water quality (i.e., reduced concentrations) in the post-development condition given the change in land uses and implementation and maintenance of Project Design Features (PDF). A summary of the predicted calculated average annual pollutant concentrations are provided below.

**PREDICTED CALCULATED AVERAGE ANNUAL POLLUTANT CONCENTRATIONS:
ON-SITE PLUS OFF-SITE**

Parameter	Units	Existing Conditions	Developed Conditions w/o PDFs	Developed Conditions w/ PDFs	Change
TSS	mg/L	171	117	72	-99
Total Phosphorous	mg/L	0.3	0.3	0.2	-0.1
Dissolved Phosphorus	mg/L	0.18	0.26	0.15	-0.03
Nitrate-N	mg/L	1.0	0.9	0.6	-0.4
Ammonia-N	mg/L	0.5	0.6	0.3	-0.2
Total Kjeldahl Nitrogen	mg/L	2.0	2.3	1.6	-0.4
Dissolved Copper	µg/L	6.1	10.1	5.9	-0.2
Total Copper	µg/L	20	23	12	-8
Total Lead	µg/L	8	8	5	-3
Dissolved Zinc	µg/L	111	100	60	-51
Total Zinc	µg/L	150	149	69	-81

Note: Model results are rounded per the following convention: results are rounded to a uniform level of precision for each parameter such that at least one significant figure is reported for each value, or such that numbers are rounded to the nearest integer, whichever results in greater precision. The number of reported significant figures is intended to prevent introduction of rounding errors; it is not intended to imply model prediction certainty.

The appropriate form of data for use in water quality load modeling are flow composite storm event samples, which are a measure of the average water quality during the event. To obtain such data usually requires automatic samplers that collect data at a frequency that is proportionate to flow rate. Some pollutants of concern, such as pathogens, hydrocarbons, pesticides, and trash and debris, are not amenable to this type of sampling either because of short required holding times (e.g., pathogens), difficulties in obtaining a representative sample (e.g., hydrocarbons, trash and debris), or low detection levels (e.g., pesticides). Therefore, these pollutants were not modeled due to the lack of statistically reliable monitoring data for these pollutants.

Response 4

In accordance with the 2011 Model WQMP, the biotreatment BMPs selected for the Project are able to treat bacteria/pathogens to a medium to high effectiveness level. Source control measures would also be implemented, such as common area litter control, pet waste education for homeowners, and landscape maintenance activities to reduce the potential for pathogen concentrations coming into contact with in storm water runoff. Based on these considerations, the pathogen runoff potential is considered less than significant.

Response 5

Appendix C of the Draft EIR, page 867, summarizes Source Control Best Management Practices from the 2003 DAMP. Please refer to Topical Response: Irrigation, Landscape Design, and Common Area Landscape Management for specific requirements and commitments for public and private landscape areas associated with the proposed Project.

Response 6

Harvest and reuse BMPs, such as cisterns and rain barrels, were discussed in Appendix C of the Draft EIR and are evaluated in more detail in the Preliminary WQMP (Appendix A to this Responses to Comments document). Both the Draft EIR and the Preliminary WQMP reach the

same conclusion. The land uses and associated landscaping irrigation demand were compared with the design capture volume to determine if the irrigation demand can reuse the storm water within a timely manner and meet the minimum annual capture efficiency of 40 percent. With the exception of turf dominated community park areas, the design capture volume significantly exceeds the irrigation demand and cannot be used within the required timeframe. Therefore, harvest and use systems are not considered feasible with the exception of the Community Parks with sufficient turf area based on the criteria in the 2011 Technical Guidance Document. However, the Project recognizes rain barrels can be a useful localized tool to help homeowners conserve water and promote sustainable strategies for water conservation and would be encouraged.

Response 7

Please refer to Topical Response: Infiltration Feasibility and Low Impact Development Features. The overall approach for water quality treatment as outlined in the Preliminary WQMP includes the use of biotreatment LID features that function similar to storm water planters (landscaped biocells and water quality basins) in lieu of infiltration features for the on-site development areas, consistent with the requirements of the MS4 Permit and 2011 Model WQMP.

Response 8

Please refer to the response to Comment 7.

Response 9

Please refer to Topical Response: Infiltration Feasibility and Low Impact Development Features. Due to slope stability concerns and the migration of infiltrated flows along the bedrock and out of the bluff face underdrains would be required for all biotreatment LID features in the Upland area of the Project site. Infiltration in the Lowland area is generally considered more feasible following the proposed biotreatment BMPs within the Upland development area.

Response 10

Please refer to Topical Response: Infiltration Feasibility and Low Impact Development Features.

Response 11

Pervious pavers for the Project site have been considered. However due to the constraints for infiltration on the mesa within the development area, the use of pervious pavers is considered limited and other BMPs have been selected.

Response 12

Irrigation systems would be designed to meet City standards for water efficient landscaping, where applicable in accordance with Municipal Code Chapter 14.17, which was developed in accordance with AB 1881. Please refer to Topical Response: Irrigation, Landscape Design, and Common Area Landscape Management.

Response 13

Please refer to Topical Response: Irrigation, Landscape Design, and Common Area Landscape Management.

Response 14

At this time, no vehicle wash areas are proposed on the Project site. If added in the future, wash areas would be designed to eliminate dry weather runoff in accordance with City and Countywide Model WQMP guidelines, and documented in the Final WQMP (in accordance with the approved Model WQMP) as part of the Coastal Development Permit application package submitted to the California Coastal Commission.

Response 15

The planting and storage media selected for the BMP can be amended (or altered) in composition to allow it to absorb and retain more runoff, filter pollutants, and support vegetation more effectively than soils without amendments. Sand, compost, soil conditioners, and fertilizers are examples of soil amendments. The Countywide Model WQMP provides criteria for amended soils. Use of amended soils in BMP design would be consistent with the requirements outlined in the 2011 Model WQMP, the proposed Project's Preliminary WQMP, and further documented in the Final WQMP (in accordance with the approved Model WQMP) as part of the Coastal Development Permit application package submitted to the Coastal Commission.

Response 16

Biocells are a form of bio-treatment BMPs that function similarly in nature to bioretention cells and rain gardens but tend to have shallower depths based on a higher reliance on sand-based soil amendments. Biocells are small, vegetated depressions to promote infiltration and filtration of storm water runoff. These features function as a soil and plant-based filtration device that removes pollutants through a variety of physical, biological, and chemical treatment processes.

Comment Letter O16



2503 Eastbluff Dr., Suite 206
Newport Beach, California 90405
Fax: (949) 717-0069

Matt Hagemann
Tel: (949) 887-9013
Email: mhagemann@swape.com

November 8, 2011

Patrick J. Alford, Planning Manager
City of Newport Beach,
Community Development Department
3300 Newport Boulevard

Subject: Comments on the Banning Ranch Draft Environmental Impact Report

Dear Mr. Alford:

We have reviewed the September 9, 2011 Draft Environmental Impact Report (DEIR) for the Newport Beach Banning Ranch Project ("Project") on the behalf of the Banning Ranch Conservancy. The Project is to be located on a total of 401 acres in Newport Beach, California and unincorporated Orange County. The Project will construct 1,375 residential units, 75,000 square feet of commercial space, a 75-room resort hotel, a 51-acre park, and provide 252 acres of open space.

Our review focused on Section 4.5, Hazards and Hazardous Materials (Thresholds 4.5-1 and 4.5-2) which were found to have less than significant impact after mitigation. We have concluded that the DEIR has made this finding on the basis of soil, soil vapor and groundwater data that have yet to undergo regulatory agency review. Therefore, in our opinion, the DEIR defers assessment of environmental conditions and fails to disclose baseline conditions which may pose health hazards, unless mitigated, to: (1) workers during construction; (2) adjacent residents during construction; and (3) future residents and the public.

1

The Project site has a long history of use for oil exploration and production, beginning in the early 1940s. Approximately 489 producing and abandoned wells are located at the

2

<p>Project site along with related pipelines, sumps, storage tanks, roads, above-ground crude oil storage tanks, processing equipment, service buildings, and other facilities.</p> <p>A private oilfield operator, West Newport Oil Company, and the City of Newport Beach operate oil wells on the Project site. The City also operates an oil processing facility at the West Coast Highway entrance area to the Project site. Some historical uses of the Site include agriculture, a military coast watch station, equipment storage and maintenance, and areas leased to welders, pipe storage, and equipment operators.</p> <p>The most current assessments of the environmental conditions at the Project site are included in the following documents, prepared by the developer’s consultant, which we reviewed in the preparation of these comments:</p> <ul style="list-style-type: none"> • Phase I Environmental Site Assessment Update (Phase I ESAU), Newport Banning Ranch, Orange County, California prepared by Geosyntec Consultants (April 2008). • Draft Remedial Action Plan (DRAP), Newport Banning Ranch, Orange County, California prepared by Geosyntec Consultants (August 2009). <p>We also reviewed what was identified as a “limited and preliminary” vapor intrusion investigation which was attached to the Phase I ESA Update.</p> <p>After review of these documents, we have concluded that baseline soil, soil vapor and groundwater conditions are uncertain over large areas of the site because of the lack of regulatory agency review of the documents that have been prepared by the developer’s consultants. Because of what we believe to be uncertain baseline soil and soil vapor conditions, construction workers and future residents may face risks without further assessment under agency oversight and implementation of any required mitigation and remediation.</p>	<p>2 cont.</p>
<p>Until additional investigations are conducted under agency oversight, the baseline soil conditions will remain uncertain. It is my professional opinion that a revised DEIR needs to be prepared to include agency-approved soil and soil vapor investigations, and an assessment of human health risks.</p>	<p>3</p>
<p>A map, included as Figure 4.5-1 in the DEIR (Attachment A), shows 27 Potential Environmental Conditions (PECs) that were used for the production of oil, including gasoline storage tanks, and petroleum and diesel tanks and transformers. Below is a summary of all the PECs and the contaminants found in soil and/or groundwater.</p>	<p>4</p>

- PEC 1: Maintenance Shop/Warehouse; polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs);
- PEC 2: Drill Site Tank Farm -- petroleum hydrocarbons, free product;
- PEC 3: Air Compression Plant -- petroleum hydrocarbons;
- PEC 4: Steam Generation Plant -- petroleum hydrocarbons;
- PEC 5: Water Softening Plant -- petroleum hydrocarbons;
- PEC 6: Secondary Tank Farm -- petroleum hydrocarbons;
- PEC 7: Pilot Scale Biotreatment Cell -- petroleum hydrocarbons;
- PEC 8: Former Sumps and Clarifiers -- petroleum hydrocarbons;
- PEC 9: Electrical Transformer Storage Area -- metals (Ba, Be, Cd, Cr, Co, Cu), petroleum hydrocarbons, polychlorinated biphenyls (PCBs);
- PEC 10: Transformer Mounts -- petroleum hydrocarbons, PCBs;
- PEC 11: Offices/Changing Rooms -- septic wastes;
- PEC 12: City of Newport Beach Tank Farm -- petroleum hydrocarbons;
- PEC 13: (consolidated with other PECs)
- PEC 14: (consolidated with other PECs)
- PEC 15: Underground Storage Tank and Fuel Pump -- petroleum hydrocarbons;
- PEC 16: Coast Watch Station -- municipal solid waste;
- PEC 17: Oil and Gas Production Equipment Storage;
- PEC 18: Debris Stockpile;
- PEC 19: Abandoned Shack -- possible chemical spills;
- PEC 20: Debris and Soil Stockpile -- petroleum hydrocarbons;
- PEC 21: Debris Stockpile -- petroleum hydrocarbons;
- PEC 22: Soil Stockpiles;

4 cont.

<ul style="list-style-type: none"> • PEC 23: Equipment Storage -- potential oil leaks; • PEC 24: Main Office -- septic wastes; • PEC 25: Oil Well Pads and Linear Features -- petroleum hydrocarbons; • PEC 26: Drilling Mud Sumps/Oil Well Sumps -- petroleum hydrocarbons; • PEC 27: Sublease areas -- petroleum hydrocarbons; <p>The PECs were identified on the basis of samples collected in 2001 during a Phase II ESA.</p>	4 cont.
<p>Section 4.5 of the DEIR fails to mention that the Project site is under a Regional Water Quality Control Board Cleanup and Abatement Order (No. 01-77, issued to West Newport Oil, Armstrong Petroleum Corporation, Aera Energy LLC, and Rancho Santiago Partnership). To date, under this Order, a Remedial Action Plan (RAP) was approved to govern efforts to recover “an isolated pocket of crude oil located on top of the shallow brackish groundwater in the Main Drill Site Tank Farm” (DEIR, p. 4.5-1). The remainder of the Project site, including the 27 PECs, has apparently not undergone regulatory review and the Phase I ESA and the DRAP have not been reviewed.¹</p>	5
<p>According to the DEIR “prior to the issuance of the first City-issued permit,” the RWQCB will receive a final Remedial Action Plan (final RAP) to “allow for site disturbance unrelated to oil remediation activities” (DEIR, p. 4.5-28). Therefore, under what is outlined in the DEIR, no agency review of the contaminants and plans for cleanup will occur until after EIR certification.</p>	6
<p>In summary, our review shows that except for an area of limited soil excavation, the RWQCB has not reviewed environmental data nor has the RWQCB reviewed and commented on the Phase I Update and the Draft Remedial Action Plan. The conclusions about the extent of contaminants made by the Project developer have not been validated by an objective third party review. Therefore, we have concluded that the DEIR defers assessment of environmental conditions at the site and therefore fails to disclose baseline conditions which may pose health hazards, unless mitigated, to: (1) workers during construction; (2) adjacent residents during construction; and (3) future residents and the public. A revised DEIR needs to be prepared to include agency review of the documents that have been prepared and agency comments on the adequacy of the mitigation that is proposed in the DRAP.</p>	7

¹ Personal communication, Kamron Saremi, Regional Water Quality Control Board, November 2, 2011

Sincerely,

A handwritten signature in blue ink, appearing to read "M Hagemann".

Matt Hagemann, P.G., C.Hg.

Letter O16 SWAPE
Matt Hagemann
November 8, 2011

Response 1

The Baseline Environmental Condition of the Project site is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. This report was submitted to and reviewed by the Regional Water Quality Control Board (RWQCB). A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing. The draft Remedial Action Plan (see Section 4.5 and Appendix D of the Draft EIR) outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria.

Response 2

Please refer to the response to Comment 1. Additionally, Section 4.5, Hazards and Hazardous Waste, of the Draft EIR include Mitigation Measure (MM) 4.5-1 which requires a comprehensive final Remedial Action Plan (final RAP) be submitted to and approved by the Orange County Health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for sit disturbance unrelated to oil remediate activities. Preparation of and compliance with regulatory agency requirements set forth in the final RAP are intended to ensure that baseline soil and soil vapor conditions are fully reviewed and appropriate remediation is conducted.

Response 3

The opinions of the commenter are noted. Please refer to the responses to Comments 1 and 2 as well as the Human Health Risk Assessment in Section 4.10, Air Quality.

Response 4

Please refer to the responses to Comments 1 and 2.

Response 5

The Regional Water Quality Control Board (RWQCB) Cleanup and Abatement Order was rescinded on March 6, 2006. The base condition of the entire Project site, including the 27 Potential Environmental Concerns (PECs), was reviewed by the RWQCB and considered in its evaluation.

Response 6

Please refer to the responses to Comments 1 and 2. Appendix D of the Draft EIR, Draft RAP, details the findings of both a Phase I and Phase II EA, which contain initial findings of contaminants on the Project site. As noted by the commenter, MM 4.5-1 requires "a comprehensive final Remedial Action Plan (final RAP) shall be submitted to and approved by the Orange County health Care Agency (OCHCA) and the Regional Water Quality Control Board (RWQCB) and initiated for the oilfield clean-up and remediation prior to the issuance of the first City-issued permit that would allow for sit disturbance unrelated to oil remediate

activities...” which ensures further agency review of any identified contaminants and plans for clean-up.

Response 7

Please refer to the response to Comments 1, 2, and 6. MM 4.5-1 requires a comprehensive final RAP which would mandates further agency review of any identified contaminants and plans for clean-up. With respect to the concern expressed regarding the exposure of construction workers, adjacent residents and future residents that may be near or on-site in the initial phases of development to toxic air contaminants, the Draft EIR analyzed the impact of soil movement, including potentially contaminated soils, on sensitive receptors which include both existing offsite and future onsite residents and determined that this impact would be less than significant. Please refer to Section 4.10, Air Quality, of the Draft EIR beginning on page 4.10-29.

Comment Letter O17



WEST NEWPORT BEACH ASSOCIATION
P.O. BOX 1471
NEWPORT BEACH, CALIFORNIA 92659
www.westnewport.org

President:
Craig Batley
Absentee Owners Liaison
949/293-4630

Vice President:
Sharon Boles
Superior Ave. Liaison
949/645-4752

Secretary/Membership:
Chris Garber
Villa Balboa
949/466-0605

Treasurer:
Barbara Thibault
Newport Shores
949/642-5843

Historian:
Mike Johnson
West Oceanfront
949/642-3125

Directors:

Mary Bryant
Numbered Streets
949/644-6266

Gary Clark
Newport Shores
949/701-9358

Jerry Cobb
West Oceanfront
949/646-6304

Nicolai Glazer
Lido Sands
949/306-8339

Jim Miller
Newport Island
949/933-9827

Ann O'Flynn
Balboa Coves
949/645-8233

Everette Phillips
Newport Shores
949/650-7528

Robert Rush
River/Neptune
949/645-2977

George Schroeder
Numbered Streets
949/646-2628

Pam Thomas
Numbered Streets
949/673-5332

November 8, 2011

Via Email and Hand Delivery

Patrick Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

Dear Mr. Alford,

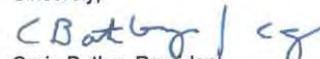
The West Newport Beach Association ("WNBA") representing the interests of "West Newport Beach residents" respectfully requests the City extend the deadline for comments on the Banning Ranch Draft Environmental Impact Report ("NBR DEIR").

The NBR DEIR is over 7,000 pages long, very complicated and difficult to navigate and understand. It has taken years for this document to be compiled and yet we, the public, are expected to read these complicated and confusing documents in sixty days, not to mention understand the document and make our comments and concerns known to the City.

The public comment period is an essential and vital part of the process. It provides information to all parties involved and contributes to mitigating issues. Therefore, it is our opinion that the process should be extended for an additional 60 days. It would also be most helpful if there could be an Executive Summary in 50 pages or less in plain English that can be digested by the general public.

Thank you for considering our request.

Sincerely,


Craig Batley, President
WNBA Board of Directors

cc: WNBA Board of Directors



Letter O17 West Newport Beach Association
Craig Batley, President
November 8, 2011

Response 1

The opinions of the Association are noted. Section 15105 of the State CEQA Guidelines requires that the minimum public review period for a draft EIR shall be 30 days. When a draft EIR is submitted to the State Clearinghouse for review (as was the case for the Newport Banning Ranch Draft EIR), the period is 45 days. Except under unusual circumstances should the review period be longer than 60 days. The City of Newport Beach provided a 60-day public review period.

Comment Letter O18

Alford, Patrick

From: John Allen [jearlingallen@gmail.com]
Sent: Tuesday, November 08, 2011 11:17 AM
To: Alford, Patrick
Cc: Kiff, Dave; Steven Rosansky; michael@jkd4insurance.com; michael.wellborn@rdmd.ocgov.com; jane.dick@ocgov.com; kenniejo@hotmail.com; Sinacori, Mike; district2@ocgov.com
Subject: Noise Regulations for the Banning Ranch Development - Let's Not Repeat the Oil Drilling Noise Problem!!

Pat,

My wife, Leslee Allen, wrote to you last week about some issues with the Banning Ranch Development. I would like to add more information about one of those concerns - the concern about drilling and oil field operation noise.

During a meeting on the Banning Ranch held at Newport Shores last week, we were told that the City of Newport Beach would annex the Banning Ranch property, although it was stated that there was some uncertainty whether the "oil islands" that would remain on the property would also be incorporated. I WOULD STRONGLY RECOMMEND THAT THESE OIL ISLANDS BE INCORPORATED INTO NEWPORT BEACH, AND THAT WE MAKE SURE THAT THE NEWPORT BEACH NOISE REGULATIONS LIMIT DRILLING OPERATIONS TO DAY TIME ONLY. Here are my reasons:

As some of you may remember, from July through September of 2006, a new oil well was drilled in the oil operations just off Pacific Coast Highway, in the oil island just across what we call "Sleepy Lagoon" from our house. This drilling operation of this "new" oil well was a 24/7 operation. It was very different from the drilling operations that we see about every month in which a drill rig operates during the day to clean out existing wells. This 24/7 drilling operation was very disturbing to our Newport Shores neighborhood, to put it mildly. I bought a meter and recorded the sound level from my property and started writing emails. I am very grateful for the attention and efforts of Steve Rosansky, Dave Kiff, and may City Officials. After finding out that the property was not under the jurisdiction of Newport Beach, we enlisted the support of Orange County. Again, we received great support from Jane Dick in Supervisor Silva's office, as well as a lot of help from Mike Wellborn of the Orange County Enforcement Division. We noticed that through every one's collective efforts, a temporary sound wall was erected during the course of time. However, that did not stop the noise. Orange County even hired a professional noise engineering company, which set up its operations in our front yard. But, the bottom line was that the noise continued and no one was able to stop the noise until the oil well was completed and the drill left the area.

The big problem was that the Codified Ordinances of Orange County, specifically Title 7, Division 8 Article 1: "Oil Drilling and Production Regulations" have an area designated as area 'O' which allows 24/7 drilling operations. However, the OC Noise Ordinances (Section 4-6-1) say that drilling operations (or for that matter, any noise source) cannot create sounds louder than 55 dBa for any 30 minutes in an hours period between the hours of 7:00AM to 10:00PM and louder than 50 dBa from 10:00PM to 7:00AM. There are some other provisions that allow higher limits for shorter periods of time. For instance they are allowed to create noise 5dBa louder for under 15 minutes, 10 dBa louder for 5 less than 5 minutes and 15 dBa for less than 1 minute. They cannot create noise for any time period greater than 20 dBa higher than the amount allowed during the day/night time period.

We measured noise in excess of these OC Noise Ordinance limits until the end of the drilling operation.

The noise from the drilling operation modulates. There is an overall lower noise level that is constant, but there are short times of greatly increased noise each time they put in a new section of pipe (about every couple of minutes). These bursts of noises exceeded the OC regulations. However, even bursts of noises that were less than 1 minute, every couple of minutes all night long are very

disturbing (even if they don't exceed 20 dBa louder than allowed during the period). My neighbors will all attest to how disturbing it was.

I believe that, if the Banning Ranch development goes through, the City of Newport Beach should annex all of Banning Ranch, including the 'oil islands'. That Newport Beach ought to set noise regulations that prohibit drilling from 7:00PM to 7:00AM - no exceptions. Taking these actions will protect the current residents of Newport Shores as well as the new residents of the Banning Ranch development. These actions will also be fair to the oil operations, because they will understand the limitations and expectations before any new drilling. It is unfortunate that the oil operator probably over spent his budget trying to quiet his operations. If he had known up front that he could only drill during the day, he would have the opportunity to budget and plan ahead - which is much more economical than trying to change things on the fly. I think that if Newport Beach takes over jurisdiction, we have the opportunity to change the noise regulations, and enforce them in our own city. 1 cont.

I also suggest that the City of Newport Beach work with the County of Orange before the annexation to make sure no OC drilling permits on the Banning Range are issued before annexation. We don't want another three months of disturbed sleep for Newport Shores.

Thank you for your balanced approach and your commitment to publishing all the facts about this project.

John Allen
251 61st Street
Newport Beach, CA 92663
949-671-7670

Letter O18 John Allen
November 8, 2011

Response 1

The opinions of the commenter are noted.

Comment Letter O19a

Alford, Patrick

From: Brandt, Kim
Sent: Sunday, November 06, 2011 10:16 AM
To: Alford, Patrick
Subject: FW: DEIR concerns for Banning development

Kim

From: parahdigm@aol.com [<mailto:parahdigm@aol.com>]
Sent: Saturday, November 05, 2011 5:59 AM
To: lesleeallen2002@yahoo.com
Cc: Brandt, Kim
Subject: Re: DEIR concerns for Banning development

Leslee:

By copy of this e-mail I am forwarding this e-mail to Kim Brandt, our Community Development Director, so that your comments can be included in the DEIR record for Banning Ranch.

Steve

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

From: Leslee Allen <lesleeallen2002@yahoo.com>
To: Steve NS Rosansky <parahdigm@aol.com>
Sent: Tue, Nov 1, 2011 7:37 pm
Subject: DEIR concerns for Banning development

To the Newport Beach City Council

Attn: Steve Rosansky

From : Mrs. Leslee Allen 251 61st St. Newport Beach, CA 92663

After attending the Banning meeting at Newport Shores, I have a few concerns:

1- That the 24 hour drilling that occurred a few years ago be regulated better, so it will not be 24 hrs. with high noise levels for those living on the Newport slough.	1
2- Many of us in NS like the idea of having the oil wells underground, rather than the pumps exposed. If they must be above ground, there must be planting to camouflage it.	2
3- If the Banning development goes in, what will happen to the area on the other side of the Newport slough- will bushes, fence be removed?	3
4- The bridge over PCH connecting the parks and open area in the new development would be a nice access for West Newport. I am in support of it.	4
(Is there someone else I should direct concerns regarding the Nov 8 th DEIR concerns?)	5

Letter O19a Leslee Allen
November 1, 2011

Response 1

Section 4.12, Noise, of the Draft EIR identifies that the drilling of wells requires some periods of 24-hour activity. Drilling noise, consisting principally of diesel engines and tool maneuvering, could occur during the nighttime for periods up to five consecutive days. Without noise reduction, intermittent noise levels at receptors 200 feet away could be 75 dBA, although it is likely that the source to receptor distance would be greater. MM 4.12-11 would be incorporated into the Project to use noise reduction strategies to minimize drilling noise. With the implementation of MM 4.12-11 and the consideration of the limited noise generation time, the impact would be less than significant.

Response 2

As addressed in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, the existing oil facilities in the proposed southern oil consolidation site are visible from and would remain visible from Newport Shores; the Semeniuk Slough is in the foreground. The perimeters of both the southern and northern oil consolidation sites would be planted with native plant materials, including native trees and shrubs. Although Project improvements would not completely screen views of the oil facilities, the native plantings would provide some visual buffering.

Response 3

Section 4.2 provides visual simulations of the Project site from Newport Shores. Please refer to Exhibits 4.2-5a and 4.2-5b and Exhibit 4.2-6.

Response 4

The opinion of the commenter is noted.

Response 5

All environmental comments provided to the City of Newport Beach on the Draft EIR have been compiled and are addressed in this Responses to Comments document. This information will be provided to the City of Newport Beach Planning Commissioners and City Council members.

Alford, Patrick

Comment Letter O19b

From: Leslee Allen [lesleeallen2002@yahoo.com]
Sent: Wednesday, November 02, 2011 10:13 AM
To: Alford, Patrick
Cc: John Allen; 'KennieJo' NS bd 7; Steven Rosansky; 'Michael NS Daily'; 'Mike S NS Sinacorihome'
Subject: DEIR concerns for Banning development

To Patrick Alford

From: Mrs. Leslee Allen 251 61st St. Newport Beach, CA 92663
After attending the Banning meeting last night at Newport Shores, I have some strong concerns:

- | | |
|--|---|
| 1- That the 24 hour drilling that occurred a few years ago be regulated better, so it will not be 24 hrs. with high noise levels for those living on the Newport slough. Will the city of Newport Beach incorporate the area so that they have control over the drilling, rather than the county of Orange? | 1 |
| 2- Having a 50 foot (6 story?) boutique hotel in the location looking down at Newport Shores will be very visible and offensive to the natural view of those who live in Newport Shores and who use the parks at the end of 61st Street. Mike Moyle from Banning development said they favored having the hotel overlook the Newport Pier unless the bridge is built. Why does that make a difference? Those who use the beach / park off of 61st Street would much rather have the 5 or 6 story hotel facing away and landscaped with tall trees. | 2 |
| 3- Having the oil wells underground, rather than the pumps exposed. If they must be above ground, there must be planting to camouflage the oil islands. | 3 |
| 4- If the Banning development goes in, what will happen to the area on the other side of the Newport slough- will bushes, fence be removed? They shelter Newport Shores from the dirt of the oil operations and from seeing the trucks as well. | 4 |

Letter O19b Leslee Allen
November 2, 2011

Response 1

Section 4.12, Noise, of the Draft EIR identifies that the drilling of wells requires some periods of 24-hour activity. Drilling noise, consisting principally of diesel engines and tool maneuvering, could occur during the nighttime for periods up to five consecutive days. Without noise reduction, intermittent noise levels at receptors 200 feet away could be 75 dBA, although it is likely that the source to receptor distance would be greater. MM 4.12-11 would be incorporated into the Project to use noise reduction strategies to minimize drilling noise. With the implementation of MM 4.12-11 and the consideration of the limited noise generation time, the impact would be less than significant.

Response 2

The Draft EIR assesses potential environmental effects associated with the resort inn should it be developed in Site Planning Area 13a or 13b. The opinions of the commenter regarding the location of the resort inn are noted.

Response 3

As addressed in Section 4.2, Aesthetics and Visual Resources, of the Draft EIR, the existing oil facilities in the proposed southern oil consolidation site are visible from and would remain visible from Newport Shores; the Semeniuk Slough is in the foreground. The perimeters of both the southern and northern oil consolidation sites would be planted with native plant materials, including native trees and shrubs. Although Project improvements would not completely screen views of the oil facilities, the native plantings would provide some visual buffering.

Response 4

Section 4.2 provides visual simulations of the Project site from Newport Shores. Please refer to Exhibits 4.2-5a and 4.2-5b and Exhibit 4.2-6.

Comment Letter O20

Alford, Patrick

From: Patricia Barnes [mezzohiker@msn.com]
Sent: Monday, November 07, 2011 10:10 PM
To: Alford, Patrick
Subject: Newport Banning Ranch DEIR Comments to be Included in the Official Record

**City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663
Attention: Patrick Alford**

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments into the official record.

CEQA Guideline Section 15121(a) states that (an) "EIR is an informational document which will inform the public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency." In light of this section of the CEQA guideline, it is readily apparent that the Newport Banning Ranch DEIR has not met the conditions of adequately informing public agency decision-makers and the public of the Coastal Commission's discoveries regarding ESHA as specified in the Coastal Commission Consent Cease and Desist Order CCC-11-RO-02 and the Coastal Commission Consent Restoration Order CCC-11-RO-02. There exists a significant amount of data from these Orders that is not included in the DEIR, including ESHA existing in what is described as the NW and SE polygons. CEQA Guideline 15121(a) also stipulates the inclusion of information and data regarding ESHA contained in the 1) Planned Community Development Plan for Banning Ranch and Technical Appendices; 2) Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 and attachments; 3) Orange County Transportation Authority (OCTA) Measure M Environmental Oversight Committee (EOC) reports; and 4) information contained within the City's own Letter dated 4/15/09, originating from the Newport Beach City Council in support of the application for Measure M funds to be used towards the purchase of the entire Banning Ranch (information that was included in determining Newport Banning Ranch's compliance with CEQA) and 5) information within the City's General Plan.

1

ESHA protection provisions are also contained within the City of Newport Beach's Coastal Land Use Plan. Section 4.1.1. within the Coastal Land Use Plan (CLUP) asserts the following policies regarding Environmentally Sensitive Habitat (ESHA):

Policies 4.1.1-1. Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:

2

A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.

B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society....."

According to the City's CLUP Policies ESHA is entitled to such protections as:

"4.1.1-4. Protect ESHAs against any significant disruption of habitat values.

4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

4.1.1-7. Limit uses within ESHAs to only those uses that are dependent on such resources.

4.1.1-9. Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation."

2
cont.

The City of Newport Beach's CLUP also states:

"Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or edge habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species that is designated threatened under the Federal Endangered Species Act."

3

Another species which depends extensively on CSS is the California Coastal Cactus Wren, a native species that is a California Species of Special Concern. Significant populations of these birds have been found existing on the Banning Ranch project site. The preservation of CSS in coastal salt marsh areas such as that on the Banning Ranch site is especially significant in that large numbers of Cactus Wren were displaced from other areas within Orange County because of the loss of habitat resulting from wildfires that recently occurred in those areas.

4

It is therefore clear that the Newport Banning Ranch DEIR is also in violation of the City of Newport Beach's own Coastal Land Use Plan in it's omission of a significant amount of data pertaining to Environmentally Sensitive Habitat and species such as the California gnatcatcher and the Coastal Cactus Wren, both of which are known to exist within and depend upon habitat found on the Banning Ranch project site.

5

I respectfully request that the Newport Banning Ranch DEIR be extensively revised to conform to the CEQA guidelines cited above as well as to the policies asserted in the City's own Coastal Land Use Plan.

6

Thank you.

**Patricia Barnes
10736 Lynn Circle
Cypress, CA 90630
mezzohiker@msn.com**

Letter O20 Patricia Barnes
November 7, 2011

Response 1

Please refer to Topical Response: Coastal Commission Consent Orders; Topical Response: ESHA; and Topical Response: Sunset Ridge Project. With respect to the Orange County Transportation Authority (OCTA) Renewed Measure M Environmental Oversight Committee data, the City is familiar with this data. It does not relate directly with the Applicant's proposed Project. Please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which identifies several alternatives to Applicant's proposal including the General Plan Open Space Alternative which would require purchase of the property from the Applicant. This alternative also requires the remediation of the property, the restoration of biological resources, and the construction of a 20- to 30-acre Community Park and a north-south roadway from West Coast Highway to 19th Street. The City's General Plan does not make an ESHA determination for the Project site. No further response is required.

Response 2

The comment is noted.

Response 3

The comment is noted.

Response 4

As stated on page 4.6-37 of Section 4.6, Biological Resources, two cactus wren territories were observed during focused surveys for the coastal California gnatcatcher in spring 2009 including one breeding pair and one solitary male. However, two territories do not represent "one of the largest populations of cactus wrens in Orange County" as stated by the commenter¹⁸. The Draft EIR acknowledges that the proposed Project would impact southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub which provides potential habitat for this species. The Draft EIR also states that because of this species declined in Orange County (following the loss of habitat by wildfires), impacts on this species would be considered potentially significant.

Response 5

As addressed in the Draft EIR, Banning Ranch, which includes the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA). A DCA refers to an area where both the land use plan and implementing actions plan have been deferred to some future date in order to avoid delay in certifying the balance of the LCP. The Coastal Commission retains permit jurisdiction in all deferred certification areas. Existing oil and gas operations are conducted throughout the Project site (West Newport Oilfield) pursuant to California Coastal Commission South Coast Regional Coastal Zone Conservation Commission Claim for Exemption No. E-7-27-73-144 (March 24, 1975).

¹⁸ <http://www.naturereserveoc.org/projects.htm>

The City's CLUP sets forth policies with respect to Banning Ranch as a DCA:

Policies:

- 2.2.4-3. Designate the Banning Ranch property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.

- 2.2.4-4. Depict the boundaries of deferred certification areas on the Coastal Land Use Plan Map and other applicable LCP maps.

Response 6

The opinion of the commenter is noted.

Comment Letter O21a

BRUCE E. BARTRAM

Attorney at Law
2 Seaside Circle
Newport Beach, CA 92663
Tel. (949) 650-8682
Fax (949) 515-1589

October 14, 2011

Sent via US Mail and email

Patrick J. Alford, Planning Manager
City of Newport Beach, Community Development Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Newport Banning Ranch DEIR Comment 1

Dear Mr. Alford:

According to the Newport Banning Ranch draft Environmental Impact Report Sections 2.0 Introduction:

"This Environmental Impact Report (EIR) has been prepared to evaluate the potential environmental impacts associated with the construction and implementation of the proposed Newport Banning Ranch Project (Project). The EIR has been prepared in conformance with the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] Sections 21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations (CCR), Chapter 3, Sections 15000 et seq.)...

The City of Newport Beach (City) is the "public agency which has the principal responsibility for carrying out or approving the project" and as such, is the "Lead Agency" for this Project under CEQA (14 CCR 15367). CEQA requires the Lead Agency to consider the information contained in an EIR prior to taking any discretionary action. This EIR is intended to provide information to the Lead Agency and other public agencies, the general public, and decision makers regarding the potential environmental impacts from the construction and operation of the proposed Project.

The City, as the Lead Agency, will review and consider this EIR in its decision to approve, revise, or deny the proposed Project... Pursuant to CEQA, "[t]he purpose of the environmental impact report is to identify the significant effects on the environment of a project,



to identify alternatives to the proposed project, and to indicate the manner in which significant environmental effects can be mitigated or avoided.(PRC 21002.1(a)." (Emphasis added)

PRC 21002.1 contains policies the State Legislature declares "shall apply to the use of environmental impact reports" prepared under CEQA. PRC 21002.1(b) contains another such mandated policy: "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Emphasis added)

In the Newport Banning Ranch (NBR) draft Environmental Impact Report (DEIR) Section 4.1 Land Uses and Related Planning Programs states that CEQA and the State CEQA Guidelines require that land use issues be evaluated as part of the environmental impact analysis process." One such land use issue is the impact the California Coastal Act (PRC 30000 et seq.) will have on the Project. The California Coastal Act provides a comprehensive scheme to govern land use planning for the entire coastal zone of California. One of its goals is to protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone. The Coastal Act creates a shared responsibility between local governments and the California Coastal Commission for the planning of coastal development.

The Coastal Act reflects a strong rule of policy, adopted for the benefit of the public that implicates matters of vital interest. The Act provides heightened protection for areas that are designated environmentally sensitive habitat areas (ESHA) and establishes strict preferences and priorities that guide development in them (PRC 30240). *Hines v. California Coastal Commission* (2010) 186 Cal. App. 4th 830; *McAlister v. California Coastal Commission* (2008) 169 Cal. App. 4th 912.

Public Resources Code Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Given the mandate under the Coastal Act regarding protections to environmentally sensitive habitat areas (ESHA) and the restrictions on development in and adjacent to them described above one should expect a detailed analysis regarding the presence, extent, project impacts on and mitigation measures concerning ESHA in the project site in the NBR DEIR. Instead, on Pg. 4.1-6 of the Land Use and related Planning Programs Section of the DEIR, it states as follows:

"California Coastal Act Environmentally Sensitive Habitat Areas and Guidelines

The California Coastal Act protects important coastal biological resources including wetlands, riparian habitats, and other areas defined as environmentally sensitive habitat areas (ESHAs) by the Coastal Commission. Section 30107.5 of the California Coastal Act defines ESHA as "any

area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Because the Project site is within the boundary of the Coastal Zone, the Coastal Commission would evaluate the proposed Project relative to (1) potential impacts to ESHAs (as defined under Section 30107.5 of the California Coastal Act and (2) guidance from the Newport Beach CLUP. The Coastal Commission determines whether a property contains ESHA." (Emphasis added)

The NBR DEIR, thus "defers" the determination of any ESHA on the Project and of any Project environmental impacts on such ESHA for another public agency -the Coastal Commission- to another environmental review proceeding- the requirement that the NBR Project obtain a coastal development permit (CDP) from the Commission under the Coastal Act. This ESHA avoidance position of the NBR DEIR is further confirmed NBR DEIR Biological Resources Section 4.6. As part of Section 4.6, Table 4.6-10 Summary on Pg. 4.6-102 lists the project's consistency with regarding biological resources with the Coastal Act specifically Section 30240. Once again, Section 30240 protects ESHA and restricts adjacent development. Not surprisingly, it finds the project consistent with the Coastal Act's Section 30240 ESHA protections. However, as you can see the key "qualifier/loophole" is stated at the end. It states:

"The determination of what areas would be regulated as ESHA would be made by the Coastal Commission as part of the CDP process for the Project." (Emphasis added)

The NBR DEIR's ESHA determination delegation to the Coastal Commission flies in the face of that state legislature mandated policy of PRC 21002.1(b) discussed above that "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Emphasis added). Thus, the City of Newport Beach must consider the Project's potential environmental impacts on any ESHA areas in the project site as part of its review process. The NBR DEIR lack of any ESHA analysis violates PRC 21100 (b)(1) which states "[T]he environmental impact report shall include a detailed statement setting forth all of the following: (1) All significant effects on the environment of the proposed project." Additionally, it violates CEQA Guideline 151262(a) which states an "EIR shall identify and focus on the significant environmental effects of the proposed project."

1 cont.

The NBR DEIR's ESHA determination avoidance further violates long standing California court decisions regarding adequacy of EIR contents and the timing of environmental assessment under CEQA. In *Borzung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 282, the Supreme Court approved "the principle that the environmental impact should be assessed as early as possible in government planning." In short, "the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those measures, must occur *before* the project is approved." (Emphasis in the original) *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App 4th 603, 621.

As noted above, the NBR DIER mentions that the City of Newport Beach's Coastal Land Use Plan (CLUP) is to provide "guidance" to the Coastal Commission regarding ESHA determination as part of NBR's CDP process. The weblink to the City's website containing its CLUP is as follows: <http://www.newportbeachca.gov/index.aspx?page=107>.

A review of the CLUP reveals it requires the City to conduct an ESHA determination of the NBR Project in this proceeding as part of its review. In Section 1.3 General Policies it states that "[T]he policies of Chapter 3 of the Coastal Act (PRC Sections 30200 - 30265.5) shall be the guiding policies of the Coastal Land Use Plan." Further, it states "[W]here there are conflicts between the policies set forth in this Coastal Land Use Plan and those set forth in any element of the City's General Plan, zoning, or any ordinance, the policies of the Coastal Land Use Plan shall take precedence."

In the CLUP's Section 4.1.1 states the following policies regarding Environmentally Sensitive Habitat Areas:

"Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or edge habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act.

1 cont.

Policies 4.1.1-1. *Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:*

A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.

B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society....."

Under the City's CLUP Policies ESHA is entitled to such protections as:

"4.1.1-4. *Protect ESHAs against any significant disruption of habitat values.*

4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

4.1.1-7. Limit uses within ESHAs to only those uses that are dependent on such resources.

4.1.1-9. Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation."

1 cont.

In short, the City is required to make a determination of the presence ESHA in the NBR Project site under the City's own CLUP's Policies listed above in addition to such requirements under CEQA.

Lastly, what makes the NBR DEIR ESHA determination avoidance request so egregious is that both the NBR Project applicants Newport Banning Ranch, LLC (NBR) and the City of Newport Beach know that ESHA is present on the NBR Project site. Indeed, both know it is present on the adjoining City-owned property which is the site of the proposed Sunset Ridge Park Project. Both the City and NBR as property owners were the subjects of an enforcement action for violation of the California Coastal Act brought by the Commission. The violation involved the unpermitted removal of major vegetation including vegetation comprising native plant communities and habitat for the federally threatened California gnatcatcher; placement of solid material, including pipes, vehicles and construction equipment; and grading.

The above Coastal Act violation was the subject of a Coastal Commission hearing conducted on April 14, 2011 at the Santa Barbara Board of Supervisors 105 E. Anapamu Street. Santa Barbara, CA 93101. According to the Staff Report prepared for the hearing, the unpermitted development occurred in three areas totaling 1.01 acres (referred to by their relative locations as "Northwest Polygon," "Northeast Polygon," and "Southeast Polygon") (Exhibit #4 of the staff report for the Consent Cease and Desist Order and Consent Restoration Order) of portions of land owned by NBR and the City property (which is continuous to the southeast) (Exhibits #1 and #2 of the staff report for the Consent Cease and Desist Order and Consent Restoration Order), all of which are located immediately inland of the 5000 block of West Coast Highway, Orange County, California. A copy of the April 14, 2011 Staff Report with the aforementioned exhibits is attached.

2

At the April 14, 2011 hearing, the Coastal Commission approved Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02. Under the terms of the Consent Orders the City and NBR are, among other actions, to restore the Northwest and Southeast Polygons on the subject properties by planting coastal sage scrub vegetation native to Orange County that will provide foraging and breeding habitat for the coastal California gnatcatcher. As part of the Consent Orders the City and NBR agreed that for purposes of the enforcement action the Northwest and Southeast Polygons constituted environmentally sensitive habitat areas (ESHA) as defined by the Coastal Act.

As part the CCC Staff Report, attached is the Memorandum prepared for the Coastal Commission by Dr. Jonna Engels dated March 31, 2011. The Memorandum concerns "Newport Banning Ranch NOV (Notice of Violation) Subject Development ESHA Determination. On Pg.

7 of the Memorandum, Dr Engels indicates that the United States Fish and Wildlife Service (USFWS) in 2007 "designated all of Newport Banning Ranch as critical habitat for the California gnatcatcher", a federally protected endangered species under Endangered Species Act.

The Memorandum further states that [I]n designating Newport Banning Ranch as critical habitat, the USFWS noted that the area was occupied by gnatcatchers at the time of the listing and at the time of designation of critical habitat and the area "contains all of the features essential to the conservation of the coastal California gnatcatcher." A copy of the California Gnatcatcher Critical Habitat Map designating both Newport Banning Ranch and the City's Sunset Ridge Park properties is attached for your review.

2 cont.

The USFWS designation of all of Newport Banning Ranch as critical habitat certainly qualifies under the City's CLUP Policy 4.1.1-1(B) as "[T]he recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law." Thus, the City is bound by its own Coastal Land Use Plan and the statutory and case law regarding CEQA cited above to demand the NBR DEIR contain a full determination of ESHA present on the NBR Project site. As noted above, "[t]he purpose of the environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the proposed project, and to indicate the manner in which significant environmental effects can be mitigated or avoided.(PRC 21002.1(a)." (Emphasis added) In its deliberate avoidance in determining the presence of ESHA on the NBR Project site, the NBR DEIR fails in fulfilling the basic purpose of its preparation under CEQA.

3

Very truly yours,



Bruce Bartram

Letter O21a Bruce Bartram
October 14, 2011

Response 1

As addressed in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, the City has received approval for its Coastal Land Use Plan (CLUP) which is one-half of the required components of a Local Coastal Program (LCP), and is currently working on its Implementing Actions Plan. Section 4.1 notes that the CLUP establishes goals, objectives, and policies that govern the use of land and water in the Coastal Zone within the City of Newport Beach and its Sphere of Influence, with the exception of Newport Coast and *Newport Banning Ranch*. Banning Ranch, which includes the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA). The City's CLUP sets forth policies with respect to Banning Ranch site as a DCA:

Policies:

- 2.2.4-5. Designate the Banning Ranch property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.
- 2.2.4-6. Depict the boundaries of deferred certification areas on the Coastal Land Use Plan Map and other applicable LCP maps.

Because Banning Ranch is a DCA in the City's CLUP, the policies in the City's CLUP are not applicable to the Banning Ranch property. Correspondence from the Coastal Commission during its review of the City's CLUP requested that references to the Banning Ranch property be removed. Because the City does not have a certified LCP, and the City's CLUP does not include the Banning Ranch property, the City acknowledges that any consideration of a Coastal Development Permit for the Project site would require a finding of consistency with the Chapter 3 policies of the Coastal Act. The Draft EIR provides an analysis of the proposed Project with the California Coastal Act as required by the State CEQA Guidelines Section 15125. Please refer to Sections 4.1 through 4.15 of the Draft EIR.

The City acknowledges the commenter's reference to Section 30240 of the Coastal Act and the importance of buffers for ESHA as well as the fact that both the Coastal Act and the City's CLUP identify the importance of protecting ESHA and avoidance of impacts to ESHA. Consequently, while the CLUP may provide guidance, it is not binding on the Banning Ranch property.

The purpose of the Draft EIR is to analyze a proposed project's impact on the physical environment. It is not, in and of itself, a policy consistency analysis. Section 4.6, Biological Resources, of the Draft EIR analyzes the proposed Project's impact on biological resources, including federal and State listed endangered and threatened species, sensitive plant and animal species, and specific habitats such as wetlands and vernal pools. Whether any or all of these constitute ESHA under the Coastal Act was not a part of the analysis in the Draft EIR, and application of the policies of the Coastal Act to the existing conditions on the Project site would be undertaken as part of the Coastal Commission's Coastal Development Permit process. Please also refer to Topical Response: ESHA.

Response 2

Please refer to Topical Response: Coastal Commission Consent Orders, Topical Response: Sunset Ridge Park, and Topical Response: ESHA.

Response 3

The purpose of an EIR is to analyze the impacts of a proposed project on the physical environment. The Draft EIR analyzes the proposed Project and its impact on biological resources including coastal sage scrub vegetation and the coastal California gnatcatcher; see Section 4.6, Biological Resources, Section 5.0, Cumulative Impacts, and Section 7.0, Alternatives to the Proposed Project. In so doing, the City has fulfilled its obligation under CEQA to analyze the significant impacts of a project on the physical environment. To what extent these areas constitute ESHA – a concept unique to the Coastal Act – is a finding within the discretion of the Coastal Commission, or a local agency as part of its LCP certification process. While the Draft EIR must identify a project's impact on the environment, including biological resources such as sensitive species and sensitive native vegetation, it is not required to make a finding pursuant to the Coastal Act. That would be within the discretion and authority of the California Coastal Commission when this Project comes before them.