

# **Attachment No. CC 1**

Resolution for certification of the Final EIR



**RESOLUTION NO. 2012-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH CERTIFYING THE FINAL FINAL ENVIRONMENTAL IMPACT REPORT (SCH NO. 2009031061) FOR GENERAL PLAN AMENDMENT NO. GP2008-008, CODE AMENDMENT NO. CA2008-004, PLANNED COMMUNITY DEVELOPMENT PLAN NO. PC2008-002, MASTER DEVELOPMENT PLAN NO. MP2008-001, TENTATIVE TRACT MAP NO. NT2008-003, DEVELOPMENT AGREEMENT NO. DA2008-003, AFFORDABLE HOUSING IMPLEMENTATION PLAN NO. AH2008-001, AND TRAFFIC STUDY NO. TS2008-002 FOR THE NEWPORT BANNING RANCH PROJECT IN ACCORDANCE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND STATE AND LOCAL GUIDLINES AND MAKING CERTAIN FINDINGS AND DETERMINATIONS THERETO**

**THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:**

- 1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401-gross-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River, requesting approval of a planned community for development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, approximately 51.4 gross acres of parklands, and the preservation of approximately gross 252.3 gross acres of permanent open space ("Project"). The application included the following requests:**
  - a. A Development Agreement between the applicant and the City of Newport Beach describing development rights and public benefits;**
  - b. A General Plan Amendment to the Circulation Element of the General Plan to delete the planned segment of 15th Street west of Bluff Road;**
  - c. A Code Amendment to rezone the Project site from Planned Community (PC-25) to Planned Community (PC-57) and a pre-annexation zone change for those portions of the Project site located within the City's Sphere of Influence from County zoning to PC-57;**
  - d. A Planned Community Development Plan to establish the allowable land uses, general development regulations, and implementation and administrative procedures;**
  - e. A Master Development Plan to establish detailed design criteria for each land use component to guide the review of subsequent development approvals;**

- f. A Tentative Tract Map to establish lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance;
  - g. An Affordable Housing Implementation Plan specifying how the Project would meet the City's affordable housing requirements; and
  - h. A Traffic Study Approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance).
2. Staff of the City of Newport Beach determined pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, et seq. ("CEQA"), the CEQA Guidelines (14 Cal. Code of Regulations, Sections 15000 et seq.), and City Council Policy K-3, that the Project could have a significant effect on the environment, and thus warranted the preparation of an Environmental Impact Report ("EIR").
3. On March 16, 2009, the City of Newport Beach, as lead agency under CEQA, prepared a Notice of Preparation ("NOP") of the EIR and mailed that NOP to public agencies, organizations and persons likely to be interested in the potential impacts of the Project.
4. On April 2, 2009, the City held two public scoping meetings, one for government agencies and one for the general public, to present the Project and to solicit input from interested individuals regarding environmental issues that should be addressed in the EIR.
5. The City thereafter caused to be prepared a Draft Environmental Impact Report ("DEIR"), which, taking into account the comments it received on the NOP, described the Project and discussed the environmental impacts resulting there from, and on September 9, 2011, circulated the Draft EIR for public and agency review and comments.
6. On September 19, 2011 and October 17, 2011, the Environmental Quality Affairs Committee of the City of Newport Beach held meetings to review and comment on the Draft EIR.
7. On November 3, 2011, the Planning Commission of the City of Newport Beach held a study session on the Draft EIR process.
8. A 60-day public review and comment period closed on November 8, 2011.
9. On January 19, 2012, February 9, 2012, and February 23, 2012, the Planning Commission held study sessions on the Newport Banning Ranch Project.
10. On March 8, 2012, the Planning Commission held a study session on the Draft EIR.

11. Staff of the City of Newport Beach reviewed the comments received on the Draft EIR during the public comment and review period, and prepared full and complete responses thereto, and on March 16, 2012, distributed the responses in accordance with CEQA.
12. The Planning Commission held public hearings on March 22, 2012, April 19, 2012, and June 21, 2012 in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the aforesaid meeting was provided in accordance with CEQA. The Draft EIR, draft Responses to Comments, draft Mitigation, Monitoring, and Reporting Program, staff report, and evidence, both written and oral, were presented to and considered by the Planning Commission at these hearings.
13. On March 22, 2012, the Planning Commission adopted Resolution No. 1873 recommending to the City Council of the City of Newport Beach certification of the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061).
14. On June 21, 2012, the Planning Commission reaffirmed their March 22, 2012 recommendation to the City Council of the City of Newport Beach for the certification of the Newport Banning Ranch Draft Environmental Impact Report (SCH No. 2009031061).
15. The City Council of the City of Newport Beach held a public hearing on July 23, 2012, in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the aforesaid meeting was provided in accordance with CEQA. The Final EIR, Responses to Comments, Mitigation, Monitoring, and Reporting Program, staff report, and evidence, both written and oral, were presented to and considered by the City Council at this hearing.
16. The environmental documentation comprising the Final EIR for the Project, including the Comments and the Responses to Comments and the Mitigation, Monitoring, and Reporting Program, was presented to the City Council, as the decision-making body of the lead agency, for certification as having been completed in compliance with the provisions of CEQA and State and local guidelines implementing CEQA.
17. The City Council has read and considered the Final EIR and has found that the Final EIR considers all potentially significant environmental effects of the Project and is complete and adequate, and fully complies with all requirements of CEQA and of the State and local CEQA Guidelines.
18. The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY RESOLVE AS FOLLOWS:

**SECTION 1. Certification.** Based on its review and consideration of the Final EIR, Responses to Comments, Mitigation, Monitoring, and Reporting Program, staff report, and evidence, both written and oral, regarding the Project that have been submitted to and received by the City Council, the City Council certifies that the Final EIR, consisting of the Draft EIR (Exhibit A-1), Exhibits (Exhibit A-2), Appendices A Through F (Exhibit A-3), Appendices G Through Z (Exhibit A-4), Responses to Comments and Errata (Exhibit A-5), and Mitigation Monitoring and Reporting Program (Exhibit A-6) for the Project has been completed in compliance with CEQA and the State and local CEQA Guidelines. The City Council, having final approval authority over the Project, adopts and certifies as complete and adequate the Final EIR, which reflects the City Council's independent judgment and analysis. The City Council further certifies that the Final EIR was presented to the City Council and that the City Council reviewed and considered the information contained in it and the full administrative record prior to approving the Project.

**SECTION 2. CEQA Findings of Fact.** Pursuant to CEQA Guidelines Section 15091, the City Council has reviewed and hereby adopts the CEQA Findings and Facts in Support of Findings as shown on the attached Exhibit B entitled "Findings and Facts in Support of Findings for the Newport Banning Ranch Project Final Environmental Impact Report, Newport Beach, California," which exhibit is incorporated herein by reference.

**SECTION 4. Location and Custodian of Record of Proceedings.** The Community Development Department of the City of Newport Beach, located at 3300 Newport Boulevard, Newport Beach, California 92263, is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (California Government Code Section 6250 et seq.).

**SECTION 5. Notice of Determination.** The Community Development Director shall cause the filing of a notice of determination with the County Clerk of the County of Orange and with the State Office of Planning and Research within five working days of this approval.

**SECTION 6. Indemnification.** To the fullest extent permitted by law, applicant and property owner shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Project including, but not limited to, the approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Development Agreement No. DA2008-003, Affordable Housing Implementation Plan No. AH2008-001, Traffic Study No. TS2008-002, and/or the City's related California Environmental Quality Act determinations, the certification of the Environmental Impact Report, the adoption of a Mitigation Program. This

indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by the applicant or property owner, City, and/or the parties initiating or bringing such proceeding. The applicant and property owner shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this finding.

**SECTION 7. Certification, Posting and Filing.** This resolution shall take effect immediately upon its adoption by the City Council of the City of Newport Beach, and the City Clerk shall certify to the vote adopting this resolution and shall cause a certified copy of this resolution to be filed.

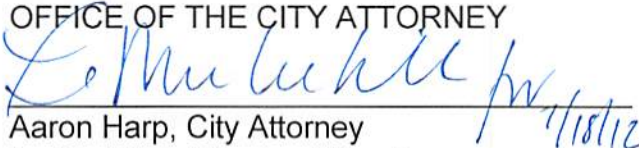
**PASSED, APPROVED, AND ADOPTED this 23rd day of July 2012.**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM,  
OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Aaron Harp, City Attorney  
for the City of Newport Beach

## **CC 1 Exhibits A-1 to A-6**

Final EIR SCH No. 2009031061 (under  
separate cover)



## **Exhibit A**

Newport Banning Ranch  
Final Environmental Impact Report  
(SCH No. 2009031061)

Consists of:

1. Volume I: Draft Environmental Impact Report dated September 9, 2011
2. Volume II: Exhibits dated September 9, 2011
3. Volume III: Appendices A Through E dated September 9, 2011
4. Volume IV: Appendices F Through T dated September 9, 2011
5. Responses to Comments and Errata dated March 2012
6. Mitigation Monitoring and Reporting Program dated July 2012

Exhibit A is available for review at the offices of the Office of the City Clerk or at [www.newportbeachca.gov](http://www.newportbeachca.gov).

## **CC 1 Exhibit B**

Findings and Facts in Support of Findings  
and Statement of Overriding  
considerations

## EXHIBIT B

### FINDINGS AND FACTS IN SUPPORT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE NEWPORT BANNING RANCH PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, NEWPORT BEACH, CALIFORNIA STATE CLEARINGHOUSE NO. 2009031061

#### 1. INTRODUCTION

The California Environmental Quality Act, Public Resources Code Section 21081, and the State CEQA Guidelines, 14 California Code of Regulations, Section 15091 (collectively, CEQA) require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings. The State CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can or should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

State CEQA Guidelines Section 15093 further provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) Where the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement of overriding considerations shall be supported by substantial evidence in the record.
- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed and considered the Draft Environmental Impact Report (Draft EIR) and the Final Environmental Impact Report (Final EIR) for the Newport Banning Ranch Project, SCH No. 2009031061 (collectively, the EIR), as well as all other information in the record of proceedings on this matter, the following Findings and Facts in Support of Findings (Findings) and Statement of Overriding Considerations (SOC) are hereby adopted by the City of Newport Beach (City) in its capacity as the CEQA Lead Agency.

These Findings set forth the environmental basis for the discretionary actions to be undertaken by the City for the development of the Project. These actions include the approval of the following:

- Final Environmental Impact Report No. ER 2009-002
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008
- City of Newport Beach General Plan Figure I2, Sphere of Influence
- City of Newport Beach Zoning Code Amendment No. CA2008-004
- Pre-Annexation Zone Change
- Newport Banning Ranch Planned Community Zoning No. PC2008-002
- Newport Banning Ranch Master Development Plan No. MP2008-001
- Tentative Tract Map No. NT2008-003
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001

- Development Agreement No. DA2008-003
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance

These actions are collectively referred to herein as the Project.

**A. Document Format**

These Findings have been organized into the following sections:

- (1) Section 1 provides an introduction to these Findings.
- (2) Section 2 provides a summary of the Project and overview of the discretionary actions required for approval of the Project, and a statement of the Project's objectives.
- (3) Section 3 provides a summary of previous environmental reviews related to the Project area that took place prior to the environmental review done specifically for the Project, and a summary of public participation in the environmental review for the Project.
- (4) Section 4 sets forth findings regarding those environmental impacts which were determined as a result of the Initial Study, Notice of Preparation (NOP) and consideration of comments received during the NOP comment period either not to be relevant to the Project or which were determined to clearly not manifest at levels which were deemed to be significant for consideration at the Project-specific level.
- (5) Section 5 sets forth findings regarding significant or potentially significant environmental impacts identified in the EIR which the City has determined are either not significant or can feasibly be mitigated to a less than significant level through the imposition of Project Design Features, standard conditions, and/or mitigation measures. In order to ensure compliance and implementation, all of these measures will be included in the Mitigation Monitoring and Reporting Program (MMRP) for the Project and adopted as conditions of the Project by the Lead Agency. Where potentially significant impacts can be reduced to less than significant levels through adherence to Project Design Features and standard conditions, these findings specify how those impacts were reduced to an acceptable level. Section 5 also includes findings regarding those significant or potentially significant environmental impacts identified in the EIR which will or which may result from the Project and which the City has determined cannot feasibly be mitigated to a less than significant level.
- (6) Section 6 sets forth findings regarding alternatives to the proposed Project.
- (7) Section 7 consists of a Statement of Overriding Considerations which sets forth the City's reasons for finding that specific economic, legal, social, technological, and other benefits, including region-wide or statewide environmental benefits, of the Project outweigh the Project's potential unavoidable environmental effects.

**B. Custodian and Location of Records**

The documents and other materials which constitute the administrative record for the City's actions related to the Project are located at the City of Newport Beach Community Development Department, 3300 Newport Boulevard, Newport Beach, California 92658. The City of Newport Beach is the custodian of the Administrative Record for the Project.

**2. PROJECT SUMMARY**

**A. Project Location**

The Project site is approximately 401.1 acres. Of the 401.1 acres, approximately 40 acres of the Project site are located in the incorporated boundary of the City of Newport Beach (City), and approximately 361 acres are in unincorporated Orange County (County) within the City's Sphere of Influence, as determined by the Local Agency Formation Commission (LAFCO) of Orange County. The entire Project site is within the boundary of the Coastal Zone, as established by the California Coastal Act.

The Project site is generally bound on the north by the County of Orange Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development south of the highway in the City of Newport Beach; on the east by residential, light industrial, institutional, and office development in the Cities of Costa Mesa and Newport Beach; and on the west by the U.S. Army Corps of Engineers (USACE) restored 92-acre salt marsh basin and the Santa Ana River. The City of Huntington Beach is west of the Santa Ana River. At its nearest point, the Project site is less than 0.25 mile inland from the Pacific Ocean. Because the property is an active oilfield, there is no public access to the Project site.

**B. Project Description**

The Project would allow for the development of the site with residential, commercial, resort inn, and park and recreational uses, and would provide open space uses that would permit the continuance of oil production and consolidation of the oil operations on a portion of the open space area of the Project site. The Project includes infrastructure to support the proposed land uses, including roads, utilities, and public parks to serve future Project residents and the community at large.

The 401-acre Project site is proposed for development with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, and a 75-room resort inn. Approximately 51.4 gross acres are proposed for active and passive park uses including a 21.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) of the 401-acre site are proposed as permanent open space. Of the 252.3 gross acres, approximately 16.5 gross acres would be used for interim oil operations. Upon the future cessation of oil operations, these oil consolidation sites would be abandoned and remediated, and the consolidation sites would be restored as open space. The 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.

The City of Newport Beach General Plan (General Plan) was adopted by the City Council on July 25, 2006, and approved by the voters on November 6, 2006. The

General Plan (1) establishes criteria and standards for land use development; and (2) provides policy and land use guidance for the City and its Sphere of Influence. A majority of the Project site is located in the unincorporated Orange County area within the City's Sphere of Influence with a County General Plan designation of "Open Space". As a part of the Project, the unincorporated area within the City's Sphere of Influence is proposed to be annexed to the City.

The Project site has a Newport Beach General Plan land use designation of OS(RV), Open Space/Residential Village. The OS(RV) land use designation establishes a Primary Use of Open Space and an Alternative Use of Residential Village for the Project site, as described below:

*Primary Use:* Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

*Alternative Use:* 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, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space.

The City of Newport Beach General Plan's Land Use Element prioritizes the retention of the Project site for open space. As described in the General Plan, the open space acquisition option could include consolidation of oilfield operations; restoration of wetlands; and the provision of nature education and interpretative facilities and an active park containing playfields and other facilities to serve residents of adjoining neighborhoods.

The City of Newport Beach General Plan specifies that, if the Primary Use (Open Space) is not implemented (i.e., the property is not acquired for open space within a time period and pursuant to terms agreed to by both the City and property owner), the Project site could be developed as a Residential Village (RV) containing a mix of housing types, limited supporting retail, visitor accommodations, a school, and active community parklands with a majority of the property preserved as open space. The General Plan identifies the maximum intensity of development allowed on the property to include up to 1,375 du, 75,000 sf of retail commercial uses oriented to serve the needs of local and nearby residents, and 75 hotel rooms in a small boutique hotel or other type of overnight visitor accommodation. The proposed Project implements the General Plan's Alternative Use for the property.

Both the Master Plan of Streets and Highways in the City of Newport Beach General Plan's Circulation Element and the Orange County Master Plan of Arterial Highways (MPAH) depict roadways through the Project site. Roadways to be constructed as part of the proposed Project include: (a) Bluff Road, a north-south, four-lane divided road extending from West Coast Highway to 15<sup>th</sup> Street; (b) North Bluff Road, which would transition from a four-lane divided road to a two-lane undivided road extending between 15<sup>th</sup> Street and 19<sup>th</sup> Street; (c) an extension of 15<sup>th</sup> Street, a four-lane divided road, from its existing western terminus at the boundary of the Project site and connecting with North Bluff Road; (d) the extension of 16<sup>th</sup> Street, a two-lane collector roadway, from its

existing terminus at the Project site's eastern boundary to North Bluff Road; and (e) the extension of 17<sup>th</sup> Street, a four-lane divided primary roadway from its existing terminus at the Project site's eastern boundary and connecting with North Bluff Road.

The Project requires an amendment to the General Plan Circulation Element to delete a second road connection to West Coast Highway through the Project site from 15<sup>th</sup> Street. The traffic analysis done for the Project demonstrates that this roadway is not needed to serve the traffic demand associated with the proposed Project and subregional development. Therefore, construction of this second road to West Coast Highway has not been identified as a component of the Project or assumed for any of the Project Alternatives.

An amendment to the Orange County MPAH is also required to delete a second connection to West Coast Highway and to redesignate North Bluff Road. The Orange County MPAH designates North Bluff Road as a Primary (four-lane divided) to 17<sup>th</sup> Street and a Major (six-lane divided) between 17<sup>th</sup> Street and 19<sup>th</sup> Street. An amendment to the Orange County MPAH is required to change the designation from a Major to a Secondary (four-lane undivided) between 17<sup>th</sup> Street and 19<sup>th</sup> Street.

Half-width roadway improvements on North Bluff Road north of 16<sup>th</sup> Street for approximately 800 feet are proposed on property owned by the Newport-Mesa Unified School District (School District). There is a Memorandum of Understanding (MOU) between Newport Banning Ranch, LLC (Applicant) and the School District that would permit these improvements.

### **C. Discretionary Actions**

Implementation of the portion of the Project within the City of Newport Beach will require several actions by the City, including

- Final Environmental Impact Report No. ER 2009-002. The Project requires the certification of the environmental document as having been prepared in compliance with the CEQA Statutes, the State CEQA Guidelines, and the *City of Newport Beach Implementation Procedures for the California Environmental Quality Act*. By doing this, the City is certifying that the information from the Final EIR was considered in the final decisions on the Project.
- City of Newport Beach General Plan Circulation Element Amendment No. GP2008-008. The General Plan Circulation Element's Master Plan of Streets and Highways Element depicts the westerly extension of 15<sup>th</sup> Street to West Coast Highway through the Project site. An amendment to the Circulation Element of the General Plan would delete the segment of 15<sup>th</sup> Street west of Bluff Road, which would have provided a second arterial through the Project site connecting to West Coast Highway. General Plan Circulation Element Figure CE1, Master Plan of Streets and Highways, depicts two future Primary (four-lane divided) roads through the Newport Banning Ranch site connecting to West Coast Highway.
- City of Newport Beach General Plan Figure I2, Sphere of Influence. The proposed land uses for the Project site are consistent with the allowable land uses and development intensity set forth in the Newport Beach General Plan. The Project would not require an amendment to the General Plan Land Use Element. The General Plan Land Use Element Sphere of Influence map (General Plan Figure I2)



would require an amendment to modify the City boundary to include the entirety of the Newport Banning Ranch site.

- City of Newport Beach Zoning Code Amendment No. CA2008-004. A Zoning Code Amendment would rezone the Project site from Planned Community (PC) 25 to PC-57.
- Pre-Annexation Zone Change. A pre-annexation zone change is proposed for those portions of the Project site located within the City's Sphere of Influence from County zoning to PC-57. The Newport Banning Ranch Planned Community (NBR-PC) would serve as the zoning regulations for PC-57.
- Newport Banning Ranch Planned Community (NBR-PC) Zoning No. PC2008-002. The NBR-PC would serve as the zoning regulations for the Project. The NBR-PC establishes allowable land uses within each land use district; development regulations for each land use district; general development regulations applicable to all development within the Project site; a plan for circulation and infrastructure facilities to serve development; and procedures for implementing and administering the NBR-PC. The NBR-PC would serve as the zoning and development regulations for both the portion of the Project site located within the City and the portion of the Project site located within the County of Orange but within the City's Sphere of Influence. Following annexation of the areas located within the Sphere of Influence, the NBR-PC would become effective.
- Newport Banning Ranch Master Development Plan No. MP2008-001. Approval of the Master Development Plan would implement the NBR-PC requirement for the Project site by establishing design criteria for each land use component proposed for development and by providing a sufficient level of detail, as determined by the City, to guide the review of subsequent development approvals, including construction-level permits, as required by the NBR-PC. The Master Development Plan is also proposed to provide a sufficient level of detail related to Coastal Act policies so that, pursuant to City approval, and to the maximum extent practicable, the Coastal Commission may approve the Master Development Plan as part of a Coastal Development Permit which would include Coastal Commission approval delegating authority to the City to be the final approving body for subsequent discretionary and ministerial approvals.
- Tentative Tract Map No. NT2008-003. The Project includes a request for approval of Tentative Tract Map (TTM) No. 17308 which establishes lots for public dedication or conveyance, lots for residential development and conveyance to homebuyers, and lots for financing and conveyance that may further subdivide (with additional subdivision maps) these lots for the development of conventional fee lots, planned developments, and/or condominiums. Approval of the TTM would permit rough and precise grading, oilfield facilities consolidation, site remediation, habitat restoration, construction of public roadways, drainage and water quality improvements, backbone infrastructure, and dry utilities, including domestic water and sewer facilities throughout the Project site. Development of all other facilities and land uses would require recordation of a final tract map.
- Affordable Housing Implementation Plan (AHIP) No. AH2008-001. The Newport Banning Ranch AHIP proposes the construction of a minimum of 50 percent of the required affordable housing on the Project site. The remaining affordable housing

obligation would be met through the payment of in-lieu fees; the construction of off-site affordable housing including the rehabilitation of existing off-site housing that would contribute to meeting the City's Regional Housing Needs Assessment (RHNA) requirements; land dedication; or a combination thereof.

- Development Agreement No. DA2008-003. The Development Agreement between the Applicant and the City would vest the Project's development approvals to allow buildout of the Project site under the development standards and requirements in place at the time of Project approval. The Development Agreement includes requirements of the City that would need to be accomplished by the Applicant in return for the vesting of Project approvals. The Development Agreement addresses affordable housing requirements; parkland dedication/in-lieu fee requirements; infrastructure phasing including Traffic Phasing Ordinance (TPO) compliance; permitting by the City pursuant to the Newport Banning Ranch Coastal Development Permit subsequent to approval by the Coastal Commission; vesting of City entitlements and applicable land use regulations; and other issues relevant to the Project in order to describe the development rights of and public benefits to be provided by the Applicant and to outline the terms for annexation of the property to the City. The Development Agreement would not preclude the need for future site plans, tentative tract maps, or other permit processing prior to development. If the City does not have a certified Local Coastal Program by such date on which the Development Agreement is entered into, the Development Agreement would be submitted to the Coastal Commission for its approval.
- Traffic Study No. TS20089-002 pursuant to the Traffic Phasing Ordinance. The City of Newport Beach has adopted a Traffic Phasing Ordinance (Municipal Code Title 15, Chapter 15.40, Traffic Phasing Ordinance) (1) to provide a method of analyzing the traffic impacts of projects on "primary intersections" during the morning and evening peak hours; (2) to identify the near-term impacts of a project's traffic and planned improvements to ensure that development is phased with improvements to address impacts; (3) to ensure that project proponents make or fund circulation system improvements that mitigate impacts at or near the time the project is ready for occupancy; and (4) to ensure that a project's cost of mitigating traffic impacts is roughly proportional to project impacts. Because the Newport Banning Ranch Project is a large project, the TPO requirements direct the TPO traffic analysis to account for full Project completion in five years, which in this case is 2016, as a "worst-case" scenario. The TPO Study also includes an analysis for the Project phasing of construction.

The Final EIR would also provide environmental information to responsible agencies, trustee agencies, and other public agencies which may be required to grant approvals and permits or coordinate with the City of Newport Beach as a part of Project implementation. These agencies include, but are not limited to, those listed below.

- ***Orange County Transportation Authority.*** Amendment to the Orange County Master Plan of Arterial Highways. To redesignate the proposed North Bluff Road just north of 17<sup>th</sup> Street to 19<sup>th</sup> Street from a Major (six-lane divided) to a Primary (four-lane divided) and the deletion of a second road through the Project site to West Coast Highway. The amendment would allow for the deletion of the connection from 17<sup>th</sup> Street westerly to West Coast Highway.

- **Orange County Health Care Agency.** Approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation is required from the Regional Water Quality Control Board.
- **Local Agency Formation Commission.** The Local Agency Formation Commission (LAFCO) is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include approximately 361 acres of the 401.1-acre Project site into the City and a change in service district boundaries for water service.
- **Newport-Mesa Unified School District.** An encroachment permit consistent with the MOU for the construction of the extension of 16<sup>th</sup> Street and North Bluff Road on the School District's property.
- **California Department of Transportation.** Activities located within California Department of Transportation (Caltrans) right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit.
- **California Department of Fish and Game.** The Project would require a Section 1600 Streambed Alteration Agreement from the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the *California Fish and Game Code*.
- **Regional Water Quality Control Board.** Issuance of the U.S. Army Corps of Engineers (USACE) Section 404 Permit would require the Santa Ana Regional Water Quality Control Board (RWQCB) to issue a Water Quality Certification under Section 401 of the federal Clean Water Act. Waste Discharge Requirements (WDRs) issued by the Santa Ana RWQCB would be required for the fill or alteration of "Waters of the State" on the Project site located under the RWQCB's jurisdiction. Approval of the final Remedial Action Plan (RAP) for the oil well/facility abandonment and site remediation is required from the Santa Ana RWQCB.
- **California Coastal Commission.** The Project would require a Coastal Development Permit from the Coastal Commission, which would include approval of the Master Development Plan and the Development Agreement.
- **State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR).** Oil and gas wells to be abandoned or re-abandoned shall be done in accordance with the current requirements of the DOGGR. The abandonment requirements will be those applied by DOGGR at the time the Remedial Action Plan, including the Combustible Soil Gas Hazard Mitigation Plan, is submitted for review to the Orange County Fire Authority.
- **U.S. Army Corps of Engineers.** The Project would require a USACE Section 404 permit for impacts to areas determined to be "Waters of the U.S.". As a federal agency, the USACE's actions require compliance with NEPA.

- **U.S. Fish and Wildlife Service (USFWS).** Because the Project would require federal agency permits, the USFWS must conduct a Section 7 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the issuance of a Biological Opinion. As a federal agency, the USFWS' actions require compliance with the National Environmental Policy Act (NEPA).

#### **D. Statement of Project Objectives**

The statement of objectives sought by the Project and set forth in the Final EIR is provided as follows:

1. Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area.
2. Preservation of a minimum of 50 percent of the Project site as open space without the use of public funds to be used for habitat conservation, interpretive trails, and development of public parks to meet the recreational needs of the community.
3. Development of a residential village of up to 1,375 residential units, offering a variety of housing types in a range of housing prices, including the provision of affordable housing to help meet the City's Regional Housing Needs Assessment (RHNA).
4. Development of up to 75 overnight accommodations in a small resort inn including ancillary facilities and services such as a spa, meeting rooms, shops, bars, and restaurants that would be open to the public.
5. Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project.
6. Development of a land use plan that (1) provides a comprehensive design for the community that creates cohesive neighborhoods promoting a sense of identity with a simple and understandable pattern of streets, a system of pedestrian walkways and bikeways that connect residential neighborhoods, commercial uses, parks, open space and resort uses; (2) reduces overall vehicle miles travelled; (3) integrates landscaping that is compatible with the surrounding open space/habitat areas and that enhances the pedestrian experience within residential areas; and (4) applies architectural design criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene.
7. Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access.
8. Provide enhanced public access in the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and

- resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean.
9. Provide for the consolidation of oil resource extraction and related recovery operations in locations that minimize impacts to sensitive habitat areas and promote compatibility with development of the remainder of the property for residential, resort, commercial, park, and open space uses.
  10. Provide for the restoration and permanent preservation of habitat areas through implementation of a Habitat Restoration Plan (HRP) for the habitat conservation, restoration, and mitigation areas (“Habitat Areas”) as depicted on the Master Development Plan.
  11. Provide for long-term preservation and management of the Habitat Areas through the establishment of a conservation easement or deed restriction and the creation of an endowment or other funding program.
  12. Expand public recreational opportunities within the Coastal Zone through development of a public community park and associated parking, and through development of publicly accessible bluff parks, interpretive parks, and trails as part of the Project.
  13. Improve the existing arroyo drainage courses located within the Project site to provide for higher quality habitat conditions than exist prior to the time of Project implementation.
  14. Implement a Water Quality Management Program within the Project site that will utilize existing natural treatment systems and that will improve the quality of urban runoff from off-site and on-site sources prior to discharging into the Santa Ana River and the Semeniuk Slough.
  15. Implement fire protection management solutions designed to protect development areas from fire hazards, to preserve sensitive habitat areas, and to create fire-resistant habitat restoration areas within currently denuded, invasive-species laden, and/or otherwise degraded areas.
  16. Provide compatibility between the Project and existing adjacent land uses.
  17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City’s Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

### **3. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION**

The Final EIR includes the Draft Environmental Impact Report (Draft EIR) dated September 9, 2011, written comments on the Draft EIR that were received during the 60-day public review period, and written responses to those comments and clarifications/changes to the EIR. In conformance with CEQA and the State CEQA Guidelines, the City conducted an extensive environmental review of the Newport Banning Ranch Project:

## A. Environmental Review

- Completion of the Notice of Preparation (NOP), which were released for a 30-day public review period from March 18, 2009, through April 17, 2009. The NOP was sent to all responsible agencies, trustee agencies, and the Office of Planning Research and posted at the Orange County Clerk-Recorder's office and on the City's website on March 16, 2009.
- During the NOP review period, two Scoping Meetings were held to solicit additional suggestions on the content of the Newport Banning Ranch EIR. One scoping meeting was held for agencies and one meeting for the general public. Attendees were provided an opportunity to identify verbally or in writing the issues they felt should be addressed in the EIR. The two scoping meetings for the EIR were held on Tuesday, April 2, 2009 at Newport Beach City Hall at 3300 Newport Boulevard, Newport Beach, CA 92658. The notice of the public scoping meetings was included in the NOP.
- Preparation of a Draft EIR by the City which was made available for a 60-day public review period (September 9, 2011 to November 8, 2011). The Draft EIR consisted of three volumes. Volume I contains the text of the Draft EIR and analysis of the Newport Banning Ranch Project. Volume II contains all Draft EIR graphics. Volume III contains the appendices, including the NOP and comments received in response to the NOP. The Notice of Availability (NOA) for the Draft EIR was published in the September 9, 2011 editions of the Orange County Register and the Daily Pilot, newspapers of general circulation. The NOA was sent to all interested persons, agencies and organizations. The Notice of Completion (NOC) was sent to the State Clearinghouse in Sacramento for distribution to public agencies. The NOA was posted at the Orange County Clerk-Recorder's office on September 9, 2011. Copies of the Draft EIR were made available for public review at the City of Newport Beach Community Development Department, Newport Beach Central Branch Library, Newport Beach Balboa Branch Library, Newport Beach Mariners Branch Library, and Newport Beach Corona del Mar Branch Library. The Draft EIR was available for download via the City's website: <http://www.newportbeachca.gov>.
- Preparation of a Final EIR, including the comments and Responses to Comments on the Draft EIR. The Final EIR/Response to Comments contains: comments on the Draft EIR, responses to those comments, clarifications/revisions to the Draft EIR, and appended documents. The Final EIR Responses to Comments was released on March 16, 2012. In compliance with Section 15088(b) of Title 14 of the California Code of Regulations (State CEQA Guidelines), the City has met its obligation to provide written Responses to Comments to public agencies at least 10 days prior to certifying an EIR.
- The Environmental Quality Affairs Committee (EQAC) held meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR.
- Planning Commission Study Sessions were held for the proposed Project and Draft EIR on November 3, 2011, January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012.
- A notice of the Newport Beach Planning Commission hearing for the Project was published in the Daily Pilot, mailed to all property owners within 1000 feet of the Project Site and to all interested persons, agencies and organizations and posted at the Project Site a minimum of 10 days in advance of this hearing consistent with the

Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

- Planning Commission public hearings were held on March 22, April 19, and June 21, 2012.
- A notice of the Newport Beach City Council hearing of July 23, 2012 for the Project was mailed on July 11, 2012 to all property owners of record within 1000 feet of the subject site and all individuals that requested to be notified. A notice for the City Council hearing was posted at City Hall as required by established public hearing posting procedures. Additionally, notice for the hearing was published in the Daily Pilot on July 13, 2012.

**B. Findings Pursuant to State CEQA Guidelines Section 15088.5 (Recirculation)**

At the Planning Commission hearings of March 22, April 19, and June 21, 2012, the City considered the public testimony and written correspondence received prior to and at those hearings. Although these comments were received subsequent to the close of the 60-day public review period that was provided under CEQA for the Newport Banning Ranch Project Draft EIR, the City prepared responses to those comments. Although CEQA does not require the lead agency to respond to comments received after the end of the public review period (CEQA §21092(c)), the City Council must take into consideration all information that has been presented to it and which is made a part of the record before it. Therefore, responses to the comments which have been presented to the City are provided to demonstrate that substantial evidence supports the City's conclusions that the Final EIR meets CEQA's standards for adequacy and that recirculation of the Draft EIR is not required.

The State CEQA Guidelines Section 15151 defines the standards for adequacy of an EIR:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

The State CEQA Guidelines Section 15088.5 identifies the criteria whereby an EIR is required to be recirculated:

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse

environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
  - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
  - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
  - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR...
- (e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

The City determined that no "significant new information" as defined by Section 15088.5 of the State CEQA Guidelines has been presented to it requiring recirculation of the EIR for the reasons set forth in the responses to the public comments submitted either in writing or orally at the March 22, 2012, April 19, 2012, and June 21, 2012 Planning Commission hearings. These comments were restatements of comments previously made on the Draft EIR for which responses had been prepared and included in the Final EIR, or the information presented and responses thereto did not disclose any new impacts resulting from the Project, or disclose a substantial increase in any previously-identified impacts, or identify new feasible alternatives or new feasible mitigation measures. The responses to the submitted information clarified and provided additional information in support of the analysis previously provided in the Final EIR, and together with the Final EIR provide the substantial evidence relied upon by the City in making this determination. For these reasons, the City concluded that recirculation of the Draft EIR was not required.

### **C. Record of Proceedings**

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed Project consists of the following documents and other evidence, at a minimum:

- The City's General Plan, as amended, and all environmental documents relating thereto;



- All information submitted to the City by the Applicant and its representatives relating to the Project and/or the Final EIR including but not limited to the Newport Banning Ranch Master Development Plan, NBR-PC, Tentative Tract Map, AHIP, Development Agreement, and the Traffic Study pursuant to the Traffic Phasing Ordinance.
- NOP and all other public notices issued by the City in conjunction with the proposed Project;
- The two Scoping Meetings held during the 30-day NOP period;
- The Final EIR including the Draft EIR and all appendices, the Responses to Comments document, and all supporting materials referenced therein. All documents, studies, EIRs, or other materials incorporated by reference in the Draft EIR and Final EIR. The reports and technical memoranda included or referenced in the Response to Comments of the Final EIR;
- All written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR and included in the Final EIR Responses to Comments document;
- All responses to written comments submitted by agencies and members of the public and testimony provided at the November 3, 2011 Planning Commission Study Session during the 60-day public review comment period on the Draft EIR;
- The Environmental Quality Affairs Committee (EQAC) meetings on September 19, 2011 and October 17, 2011 to review and comment on the Draft EIR. The City responded as a part of the Final EIR Responses to Comments document to EQAC's comment letter submitted during the 60-day public review comment period.
- All testimony provided by agencies and members of the public at the January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012 Planning Commission Study Sessions held subsequent to the 60-day public review comment period on the Draft EIR;
- Planning Commission public hearings on March 22, 2012, April 19, 2012, and June 21, 2012.
- Responses to public comments submitted either in writing or orally at the March 22, 2012, April 19, 2012, and June 21, 2012 Planning Commission hearings.
- City Council public hearing on July 23, 2012.
- All final City Staff Reports, and exhibits and attachments thereto and documents referenced therein, relating to the Draft EIR, Final EIR, and the Project;
- All other public reports, documents, studies, memoranda, maps or other planning documents relating to the Project, the Draft EIR, and the Final EIR prepared by the City, consultants to the City, or Responsible or Trustee Agencies.
- The Mitigation Monitoring and Reporting Program (MMRP) adopted by the City for the Project;
- The Ordinances and Resolutions adopted by the City in connection with the proposed Project, and all documents incorporated by reference therein;

- These Findings and Facts in Support of Findings and Statement of Overriding Considerations adopted by the City for the Project, and any documents expressly cited in these Findings of Fact; and
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e).

The documents and other material that constitute the record of proceedings on which these findings are based are located at the City of Newport Beach Community Development Department. The custodian for these documents is the City of Newport Beach. This information is provided in compliance with Public Resources Code Section 21081.6(a)(2) and 14 California Code Regulations Section 15091(e).

#### **4. ENVIRONMENTAL EFFECTS WHICH WERE DETERMINED NOT TO BE POTENTIALLY AFFECTED BY THE PROPOSED PROJECT**

As a result of the Notice of Preparation circulated by the City on March 16, 2009, in connection with preparation of the EIR, the City determined, based upon the threshold criteria for significance, that the Project would have no impact or a less than significant impact on the following potential environmental effects, and therefore, determined that these potential environmental effects would not be addressed in the Draft EIR. Based upon the environmental analysis presented in the EIR, and the comments received by the public on the Draft EIR, no substantial evidence was submitted to or identified by the City which indicated that the Project would have an impact on the following environmental areas:

- Agriculture and Forest Resources:* The Project site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the Project site is covered by a Williamson Act Contract. Additionally, the Project site does not include forest resources, including timberlands, and is not zoned for agriculture.
- Aesthetics and Visual Resources:* The Project area is not adjacent to, nor can it be viewed from a designated State scenic highway.
- Geology and Soils:* The proposed Project would not use septic systems or alternative waste water disposal systems.
- Hazards and Hazardous Materials:* The Newport Banning Ranch Project site is not located within an adopted Airport Land Use Plan. The nearest airport/airstrip is the John Wayne Airport, which is located approximately four miles northeast of the Project site. Furthermore, a discussion of this topic is not necessary because there is no private airstrip in proximity to the Project site.
- Population, Housing, and Employment:* There are no existing residential units on the Project site. The Project proposes the development of up to 1,375 du on the Project site. Therefore, the Project would not displace existing residential units or residents and the Project would not necessitate the need for replacement housing.

#### **5. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS**

The following potentially significant environmental impacts were analyzed in the EIR, and the effects of the Project were considered in the EIR. Where as a result of the environmental analysis of the Project and the identification of Project Design Features, compliance with existing laws, codes and statutes, and the identification of feasible mitigation measures

(together referred herein as the Mitigation Program), the following potentially significant impacts have been determined by the City to be reduced to a level of less than significant, the City has found in accordance with CEQA Section 21081(a)(1) and State CEQA Guidelines Section 15091(a) (1) that “Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment,” which is referred to herein as “Finding 1”. Where the potential impact can be reduced to less than significant solely through adherence to and implementation of Project Design Features or standard conditions, these measures are considered “incorporated into the project” which mitigate or avoid the potentially significant effect, and in these situations, the City also will make “Finding 1” even though no mitigation measures are required.

Where the City has determined pursuant to CEQA Section 21081(a)(2) and State CEQA Guidelines Section 15091(a)(2) that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency,” the City’s findings is referred to herein as “Finding 2”.

Where, as a result of the environmental analysis of the Project, the City has determined that either (1) even with the identification of Project Design Features, compliance with existing laws, codes and statutes, and/or the identification of feasible mitigation measures, potentially significant impacts cannot be reduced to a level of less than significant, or (2) no feasible mitigation measures or alternatives are available to mitigate the potentially significant impact, the City has found in accordance with CEQA Section 21081(a)(3) and State CEQA Guidelines Section 15091(a)(3) that “Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report,” referred to herein as “Finding 3”.

**A. Land Use and Related Planning Programs**

**(1) Potential Impact:** The proposed Project would not physically divide an established community.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no standard conditions of approval or mitigation measures are required or recommended. Project Design Features (PDFs) 4.1-1 through 4.1-5 identify the components of the Project.

**Facts in Support of Finding:** Consistent with the findings of the City of Newport Beach General Plan EIR, the Project would not physically divide an established community. The Project site is an active oilfield without public access. It is contiguous to existing land uses, and roads through the site would provide planned connections to existing land uses in the Project vicinity.

**PDF 4.1-1** Through the implementation of the Master Development Plan, the Project permits a maximum of 1,375 residential dwelling units and a variety of residential housing types to provide opportunities for a range of lifestyles. Housing types include single-family detached, single-family attached, multi-family, and/or residential uses in a mixed-use configuration.

- PDF 4.1-2** The Master Development Plan designates areas for a diverse public park system to include active, passive, and interpretive recreation opportunities.
- PDF 4.1-3** The Master Development Plan designates more than 240 gross acres of the Project site as Open Space, including wetland restoration/water quality areas, interpretive trails, habitat restoration areas, and habitat preservation areas. Open Space areas also include 2 sites and a connecting road comprising approximately 17 acres designated for continuing but interim use as oil and gas production sites. At the end of the oilfield's useful life, this area will revert to Open Space land use.
- PDF 4.1-4** The Master Development Plan provides for a minimum of 20 gross (17 net) acres for a public Bluff Park as a visual and passive recreational amenity, trail corridor, and a transition between open space and development.
- PDF 4.1-5** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan identify proposed uses adjacent to existing Newport Beach and Costa Mesa residential neighborhoods which are limited to either parks or open space. Proposed uses adjacent to existing commercial and light industrial areas within the City of Costa Mesa "Mesa West Bluffs Urban Plan" overlay area will be a higher density residential and/or mixed-use development of similar height and scale to those prescribed in the "Mesa West Bluffs Urban Plan". Open space and/or park uses will be sited adjacent to the Newport Crest community to provide a visual buffer between that community and Project development areas.

**(2) Potential Impact:** There would be land use incompatibility associated with long-term noise sources and night illumination on the Project site including from the Community Park, the latter on those Newport Crest residences immediately contiguous to the Project site. This impact is considered significant and unavoidable.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the incorporation of Standard Condition (SC) 4.1-1 and Noise Mitigation Measures (MMs) 4.12-5 through 4.12-7. However, the City has determined that while the above-described impact can be partially mitigated by the Mitigation Program identified below, this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** 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 set forth in Standard Condition (SC) 4.1-1 would ensure these impacts would be less than significant.

The proposed Project would have significant and unavoidable construction-related air quality and noise impacts. Although construction impacts would occur over several years, they would end with the cessation of these activities. Because these significant unavoidable construction impacts would terminate, they are not considered a determinate factor in the compatibility of land uses. Additionally, there would be significant vehicular noise impacts from Bluff Road to Newport Crest residences immediately adjacent to the Project site and to six single-family residences on 17<sup>th</sup> Street in the City of Costa Mesa. Noise MMs 4.12-5, 4.12-6, and 4.12-7 regarding resurfacing roadways with rubberized asphalt, noise walls/berms, and condominium noise attenuation measures that would mitigate noise impacts to a less than significant level. However, the City cannot require owners of condominium units at Newport Crest to accept and implement improvements on their private property nor can it mandate the implementation of mitigation in another jurisdiction. Therefore, it is speculative to know whether this mitigation, while feasible, is desirable by residents and the Newport Crest Homeowners Association. As such, noise impacts to the identified single-family residences on 17<sup>th</sup> Street and to a portion of the Newport Crest Condominium development are considered significant and unavoidable. Residences near the active areas of the proposed Community Park may also be adversely impacted by night lighting. There are no feasible measures or alternatives to mitigate this impact as the City has made a policy decision (as noted on page 7-7 of the Draft EIR) on the appropriateness of having night lighting at the Community Park. As a result, the proposed Project as a whole would result in a land use incompatibility with respect to long-term noise impacts and night illumination.

**SC 4.1-1** Approval of the Newport Banning Ranch Project would require Project implementation and all future approvals to be subject to all applicable provisions of the *Newport Beach General Plan*; *Newport Banning Ranch Planned Community Development Plan*; all requirements and enactments of federal, State, and local agency authorities; as well as the requirements of any other governmental entities. All such requirements and enactments will, by reference, become conditions of Project approval.

**MM 4.12-5** The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15<sup>th</sup> Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17<sup>th</sup> Street west of Monrovia Avenue with rubberized asphalt.

**MM 4.12-6** Prior to the approval of a grading permit for Bluff Road and 15<sup>th</sup> Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future

traffic noise from the Bluff Road and 15<sup>th</sup> Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.

**MM 4.12-7**

Prior to the issuance of a grading permit for Bluff Road and/or 15th Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading permit for Bluff Road or 15<sup>th</sup> Street in the event any or all Owners decline to participate in the Program.

**B. Aesthetics and Visual Resources**

**(1) Potential Impact:** Development of the proposed Project would alter existing views of the Project site; however, due to extensive site planning, buffers, landscaping and architectural guidelines, the Project would not result in a significant topographical or aesthetic impact. The Project would create public views from the Project site of on-site and off-site scenic resources including the Pacific Ocean that are not currently available because of the property's existing oilfield operations. This is considered a beneficial impact.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Land Use PDF 4.1-4 (set forth above), Aesthetics PDFs 4.2-1 through 4.2-4, and Biological Resources PDF 4.6-4 (set forth below). No mitigation measures were recommended or required.

**Facts in Support of Finding:** The Project is proposed to be implemented over several years. Project implementation would change the overall visual character and use the Project site from an oilfield to a developed urban infill community. The resulting change in topography/landform and land use would be permanent. Consistent with the General Plan, the majority of the property would be retained in open space (General Plan Land Use Element Goal 3.4 and Policy 6.4.1). Site disturbance would first occur associated with required site remediation efforts. Roadways and utilities (such as water, wastewater, gas, electric, and cable) would be constructed prior to the development of the structures. The transition from graded lots to framed structures to finished buildings with landscaping would occur over each area. As the structures are constructed and finished, the scale of the Project and changes to the visual character of the Project site would become more evident.

Total excavation is estimated to be approximately 2,600,000 cubic yards (cy), including approximately 900,000 cy of cut and fill and 1,455,000 cy of cut and fill corrective grading. Cuts are anticipated to vary from 1 foot to 10 feet with localized cuts up to approximately 25 feet. Fills are anticipated to vary between 1 foot and 30 feet, but may be up to 60 feet associated with bluff repairs with gradients between 2:1 and 3:1. The larger fills would be used for bluffs repair and restoration due to erosion damage, but would allow for the retention of the major topographical features of the Project site including the arroyos.

There is no public access to the Project site because it is private property and an active oilfield. Therefore, the Project site cannot be observed by the public from on-site locations nor can off-site views be observed from the property. There is a vertical grade separation of approximately 50 feet from West Coast Highway to the top of the Project bluffs along West Coast Highway and an approximate 50- to 65-foot vertical separation between the Newport Shores residences and the top of the bluff on the western edge of Project site. Because of the difference in elevation, there are uninterrupted views of off-site land uses to the south and west. These views include but are not limited to existing off-site development, the USACE 92-acre wetlands restoration area, the Santa Ana River, and the Pacific Ocean.

The Newport Beach General Plan EIR states:

The Banning Ranch property is currently developed with oil production uses and associated structures, including large storage tanks. However, much of Banning Ranch consists of open space. As such, the existing conditions in Banning Ranch contribute to overall natural aesthetics within the City...If the property cannot be acquired in a timely manner, the development of a compact residential village that preserves the majority of the site as open space and restores critical habitat is allowed in accordance with Policies LU 6.3.1 through 6.5.5. Under both land use options proposed for Banning Ranch, Policies LU 6.5.1 and 6.5.3 would both apply to the area, and would relocate and cluster oil operations, as well as restore and enhance wetlands and wildlife habitats. Both of these policies would improve the overall aesthetic quality of the area. While both options (open space and high quality residential development) would protect visually important open space components of the existing area, the visual impacts of retaining the site as open space would be less than if development were to be allowed in the area...if the site is ultimately developed, new land uses would include residential, limited commercial, overnight accommodations, and community parks designed in such a way as to provide a cohesive urban form that provides the sense of a complete and identifiable neighborhood (Policy LU 6.4.5). Most importantly, Policy LU 6.5.5 requires that development be located and designed to prevent residences on the property from dominating public views of the bluff faces from Coast Highway, the ocean, wetlands, and surrounding open spaces. In addition, as discussed above, the consolidation of oil operations as well as the restoration of wetlands and habitat areas would improve the visual quality of the area. While new development would represent a change from the existing land uses, with implementation of the proposed General Plan Update policies, the potential visual impacts of new development in the Banning Ranch area would be minimized. Consequently, development in Banning Ranch under the proposed General Plan Update would have less-than-significant impacts on the visual quality of the area.

- PDF 4.2-1** As identified in the Master Development Plan, contour grading will be used to minimize impacts to existing public view points from West Coast Highway.
- PDF 4.2-2** Habitable structures will be set back at least 60 feet from the tops of bluff edges, as required in the Newport Banning Ranch Planned Community Development Plan.
- PDF 4.2-3** Implemented through the Master Development Plan, landscaping will be provided around the perimeter of buildings that are proposed adjacent to Open Space Preserve areas to provide a transition.
- PDF 4.2-4** Architectural guidelines included in the Master Development Plan provide for a range of housing types and architectural styles to avoid visual monotony and minimize impacts to existing public views of bluffs. Building architecture will be regulated through



provisions contained in the Master Development Plan to ensure high quality designs that are sensitive to the natural resources and compatible with the character of Newport Beach communities within the Coastal Zone. Architectural guidelines require use of a palette of earth tone colors compatible with the open space setting.

**PDF 4.6-4** The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

**(2) Potential Impact:** The proposed Project would generate new light sources. The Project would include a “dark sky” lighting concept for development areas adjacent to the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. Consistent with the findings of the General Plan EIR, increased lighting on the Project site is considered a significant, unavoidable impact.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated the incorporation of PDF 4.6-4 (set forth above) and MMs 4.2-1 and 4.2-2 (set forth below), this impact cannot be mitigated to a less than significant level. With the exception of the No Development Alternative, there are no other feasible alternatives or mitigation measures that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** 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, lights used within and around buildings including residences, retail areas, and the resort inn, and lights used for the active sports fields in the Community Park.

The Project incorporates “dark sky” lighting standards for HOA land uses and businesses within 100 feet of the Open Space Preserve and Bluff Parks (PDF 4.6.4). Uses within the South and North Bluff Park and Nature Center contiguous to the Open Space Preserve, and non-residential uses in the Villages and Colonies would be required to have: (a) flood lamp shielding and/or City-approved “dark sky” light fixtures/bulbs to reduce the amount of stray lighting into natural resource areas; (b) direct lighting rays confined to the respective residential, resort inn, and commercial lots or park areas upon which the exterior lights are to be installed so that adjacent and nearby areas of the Open Space Preserve are protected from any significant light spillage, intrusion, and glare; and (c) no skyward-casting light fixtures/bulbs. Street lighting would be limited to the lighting of intersections.

However, where not within 100 feet of the Open Space Preserve or the Bluff Parks or for land uses not restricted to dark sky lighting standards within 100 feet of the Open Space Preserve (e.g., private residences), community landscape/common areas, public facilities, streetscapes, parks, and other similar areas may contain accent or other night lighting fixtures. Commercial use lighting would include lighting of parking lots, drive aisles, and building facades subject to the lighting requirements set forth in the NBR-PC.

The North Community Park area is proposed to include lighted tennis courts, lighted soccer fields, a lighted basketball court, youth baseball and softball fields overlaid on the soccer fields, a picnic area or skateboard park, tot lots, fitness/par course, and parking areas. Sports areas would be lit until 10:00 PM. 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. MMs 4.2-1 and 4.2-2 place lighting orientation and design restrictions on the Community Park and other land uses within the Project site.

Although the Project proposes to restrict lighting in areas of the site, the Community Park is proposed to have night lighting, and the Project as a whole would introduce new light sources. The findings of this 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. 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, specifically night lighting on the property, associated with the General Plan project.

- MM 4.2-1** All public roadways and private development within the Village and Colonies, South and North Bluff Park, Interpretive Parks, and Oil Consolidation sites shall have their "dark sky" lighting system and its components incorporated into the Project and approved by the City of Newport Beach Community Development Director or his/her designated representative prior to the issuance of a building permit for the applicable Village, Colony, Bluff Park, and Nature Center on the Project site. Each lighting plan shall incorporate electrical plans and structural plans that detail the provision of lighting systems for exteriors of all buildings, parking lots, loading areas, walkways, public use areas, any public art displays, fountains, or landscape areas. Lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. No skyward-casting lighting shall be used. Final lighting orientation and design shall be in accordance with the "dark sky" lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible as determined by the Community Development Director or his/her designated representative. Prior to final inspection or issuance of a certificate of occupancy, where applicable, the City

shall cause to be performed a photometric field inspection of the approved lighting system for the Project. The inspection shall verify the proper construction and installation of materials within the approved plan; determine the actual light patterns and values through light meter testing and observation; and determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Project.

**MM 4.2-2**

The lighting plan for the Community Park shall incorporate electrical plans and structural plans that detail the provision of lighting systems for sports field and hard courts; exteriors of buildings; parking lots, walkways, and/or landscape areas. All lighting within the development shall be directed and shielded so that light is directed away from the Open Space Preserve, including habitat areas. Floodlamp shielding and/or sodium bulbs shall be used in developed areas to reduce the amount of stray lighting into native restoration and preservation areas. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting. 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. Final lighting orientation and design shall be in accordance with the “dark sky” lighting standards as defined by the Illuminating Engineering Society of North America (IESNA) and shall reduce the impacts of new light sources to the extent feasible, as determined by the Community Development Director. Prior to final inspection, the City shall cause to be performed a photometric field inspection of the approved lighting system for the Community Park. The inspection shall verify the proper construction and installation of materials within the approved plan; shall determine the actual light patterns and values through light meter testing and observation; and shall determine the extent of any errant lighting. Deviations and/or violations shall be corrected prior to the final clearance for the Community Park.

**C. Geology and Soils**

**(1) Potential Impact:** The Project site is in a seismically active area with faults within the development area that could not be proven to be inactive. Habitable structures on the Project site near these faults are subject to fault setback zones and seismic design parameters that would appropriately address seismic building standards.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

**Facts in Support of Finding:** The Project site is not located within an Alquist-Priolo Earthquake Fault Zone. Most of Southern California is subject to ground shaking (ground motion) as a result of movement along active and potentially active fault

zones in the region. Three regional fault systems are within approximately six miles of the Project site: the Compton Thrust Ramp, the Newport-Inglewood Fault Zone, and the San Joaquin Hills Blind Thrust Fault. Seismic design of on-site structures (excluding bridges) would be in accordance with the 2007 California Building Code (CBC) criteria; seismic design of the pedestrian and bicycle bridge would be in accordance with Caltrans standards. To accommodate the effects from seismic shaking, all on-site Project structures would be required to comply with the seismic design standards contained within the California Building Code as adopted by the City.

There are two discrete segments of the Newport-Inglewood Fault Zone North Branch (the Newport Mesa North Segment and the Newport Mesa South Segment) potentially within the Project site. Portions of these fault segments were not conclusively shown to have Holocene surface rupture, and therefore are “faults that could not be proved to be inactive”; therefore, Fault Setback Zones were established. Bluff setbacks are in excess of those required by the California Building Code and would assure no potentially significant impact to Project development from surface fault rupture.

State laws and local ordinances require that, prior to construction, potential seismic hazards are identified and mitigated, as needed, to protect public health and safety from substantial risks through appropriate engineering practices. Compliance with PDF 4.3-1, SCs 4.3-1 and 4.3-2, and MMs 4.3-1 through 4.3-3 (set forth below) would ensure that impacts related to strong seismic ground shaking are less than significant.

**PDF 4.3-1** Habitable structures will be set back a minimum of 60 feet from the tops of bluff edges, as required in the Master Development Plan and the Newport Banning Ranch Planned Community Development Plan, and will not be constructed within identified fault setback zones.

**SC 4.3-1** Prior to the issuance of any grading permits, the City of Newport Beach Community Development Department, Building Division Manager or his/her designee shall review the grading plan for conformance with the grading shown on the approved tentative map. The grading plans shall be accompanied by geological and soils engineering reports and shall incorporate all information as required by the City. Grading plans shall indicate all areas of grading, including remedial grading, and shall extend to the limits outside of the boundaries of an immediate area of development as required by the City. Grading shall be permitted within all Land Use Districts and outside of an area of immediate development, as approved by the City, for the grading of public roads, highways, park facilities, infrastructure, and other development-related improvements. Remedial grading for development shall be permitted in all Land Use Districts and outside of an immediate development area, as approved by the City, to adequately address geotechnical or soils conditions. Grading plans shall provide for temporary erosion control on all graded sites scheduled to remain unimproved for more than 30 days. If the Applicant submits a grading plan that deviates from the grading

shown on the approved tentative map (specifically with regard to slope heights, slope ratios, pad elevations or configurations), as determined by the Building Manager, s/he shall review the plan for a finding of substantial conformance. If the Building Manager finds the plan not to be in substantial conformance, the Applicant shall process a revised tentative map or, if a final map has been recorded, the Applicant shall process a new tentative map. A determination of CEQA compliance shall also be required.

**SC 4.3-2**

Prior to the recordation of a subdivision map or prior to the issuance of any grading permit, whichever comes first, and if determined necessary by the City of Newport Beach Community Development Department, Building Division Manager, the Applicant shall record a Letter of Consent from any affected property owners permitting off-site grading, cross lot drainage, drainage diversions, and/or unnatural concentrations. This process will ensure that construction activities requiring encroachment permits or having temporary effects on adjacent parcels are properly noticed and coordinated.

**MM 4.3-1**

The Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval, a site-specific, design-level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable State and local code requirements and:

- a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies;
- b) Determine structural design requirements as prescribed by the most current version of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults;
- c) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and other surrounding related improvements;

Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site-specific investigations. The structural engineer shall review the site-specific investigations, provide any additional necessary measures to meet Building Code requirements, and incorporate all applicable recommendations from the investigation in the structural design plans and shall ensure that all structural plans for the Project meet current Building Code requirements.

The City's registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical

requirements contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits.

The City shall review all Project plans for grading, foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.

**MM 4.3-2** Prior to the approval of any applicable final tract map, the Applicant shall have completed, by a qualified geologist, additional geotechnical trenching and field investigations and shall provide a supplemental geotechnical report to confirm the adequacy of Project development fault setback limits in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. The trenching and report shall be subject to the review and approval of the City of Newport Beach Public Works Director.

**MM 4.3-3** Prior to the approval of any applicable final tract map, development setbacks from the Upland fault segments, revised as necessary based upon the findings of additional trenching investigations, shall be incorporated into the Project consistent with requirements set forth in the California Building Code and the *City of Newport Beach General Plan*. Bluff setbacks consistent with the regulatory requirements for habitable structures shall be incorporated into the Project consistent with the beach bluff setback standards in the *City of Newport Beach General Plan*. Where applicable, setback distances consistent with recommendations in the Project's Geotechnical Report (GMU 2010) shall be incorporated. Prior to the preparation of final Project plans and specifications, additional trenching shall be conducted within the 1,300-foot gap between the 2 parts of the existing Fault Setback Zone. This additional trenching shall provide more information about the potential for active faulting in this portion of the Project site. If necessary, the development fault setback zones shall be modified after this information is obtained and analyzed in accordance with the mandates of the Alquist-Priolo Earthquake Fault Zoning Act. This information shall be subject to the review and approval of the City of Newport Beach Public Works Director and Community Development Director.

**(2) Potential Impact:** Two fault segments on the Project site have not been confirmed as inactive, and development setbacks have been incorporated into the Project. The fault setback zones would reduce the risk of surface fault rupture. Habitable structures would be restricted to the Upland area, avoiding soils that may liquefy or undergo lateral spreading.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of the Mitigation Program (Project Design Feature, standard conditions of approval, and mitigation measures).

**Facts in Support of Finding:** On-site soils subject to liquefaction and lateral spreading are located in the Lowland; no habitable structures are proposed as a part of the Project in the Lowland; this area is proposed for open space, trails, and oil facilities and their associated infrastructure. Residential, commercial, active recreation, and resort inn uses would only occur in the Upland area.

Soils in the Upland (except for existing colluvial deposits when subjected to saturated conditions) are too dense, cemented, or too far above the water table for liquefaction and lateral spreading to occur. Corrective grading would replace unsuitable materials with suitable engineered fill materials over San Pedro Formation or terrace deposits such that they would not be subject to liquefaction. Therefore, the risk associated with seismic-related ground failure and associated liquefaction, lateral spreading, or subsidence is less than significant.

There is no surficial evidence of subsidence on the Project site, and there have been no reports of subsidence-related impacts on oil production facilities. Accordingly, subsidence is not considered a significant risk to or from Project implementation.

**(3) Potential Impact:** Grading activities would increase the potential for soil erosion and loss of top soil. Best Management Practices (BMPs) would minimize this impact both during construction and long-term use of the Project site.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features. No mitigation measures were required or recommended.

**Facts in Support of Finding:** Grading activities would increase the potential for soil erosion and loss of top soil. There is a risk of shallow slumping on bluff faces associated with surface runoff; however, Project drainage improvements are expected to reduce runoff compared to existing conditions. Upon completion of the Project, soil erosion and the loss of topsoil would be minimized through the use of engineered grading, surface drainage improvements, and landscaping.

Areas within the bluff slope setback zone would contain drainage devices to minimize the surface flow over the bluff slopes. In addition, surface drainage and bluff slope erosion-control plans would be developed in areas where bluff slopes are to remain natural. Construction best management practices (BMPs) would ensure that construction-related impacts on soil erosion would be less than significant, and post-Project operation and occupancy would not generate surface flows that result in loss of topsoil or induce erosion.

Erosion of the bluff face by surface runoff and local drainage has resulted in shallow erosion, slumping, and localized surficial bluff instability. Future bluff retreat rates would be expected to be lower than historic bluff retreat rates since removing oil production activities in the Upland would reduce runoff rates over the bluffs. Project drainage improvements would also reduce surface runoff over the bluffs and resulting bluff face erosion; however, surface runoff from precipitation and nuisance flows would not cease entirely. The Project would also implement subdrain systems to capture infiltrated water and direct it away from the bluff faces on the Project site, thereby reducing the risk of bluff instability related to post-development groundwater.

As sediments within the bluffs possess a fairly high erosion potential, the topographic alteration of the bluffs would take the form of shallow erosion and surficial slumping of bluff faces. The Project includes bluff repair for bluff stability. Areas that have suffered from erosion would require careful grading in order to restore and revegetate the bluff/slope edge and to limit further degradation. The drainage overtopping the bluff/slope edge would be intercepted along the public trail system and redirected into the Project drainage system. Compliance with PDF 4.3-1 (set forth above) and PDFs 4.3-2 and 4.3-3 (set forth below) would significant impacts do not occur.

**PDF 4.3-2** The Master Development Plan identifies drainage devices to be constructed along slopes adjacent to the development edge to eliminate existing surface flow over bluffs to the extent feasible. Landscape and irrigation plans will be designed to minimize irrigation near natural areas/slopes through the use of drought-tolerant vegetation and low-flow irrigation.

**PDF 4.3-3** The Master Development Plan includes a Bluff/Slope Restoration Plan that requires eroded portions of bluff slopes to be repaired and stabilized. In order to stabilize slopes and help avoid erosion, bluff areas devoid of vegetation after repair and stabilization efforts will be planted with native vegetation that does not require permanent irrigation.

**(4) Potential Impact:** On-site soils have a low to medium expansion potential.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.3-1 and 4.3-2 and MMs 4.3-1, 4.3-2, and 4.3-3 (set forth above).

**Facts in Support of Finding:** Expansion tests indicate the presence of expansive soils. Without correction, expansive soils can be unsuitable for building. Expansive soils can be accommodated through strengthened and stiffened building foundation design that is capable of resisting the effects of expansive soils. The final geotechnical report will include an evaluation of expansive soils and include specific construction and design recommendations, based on Building Code requirements to reduce Project impacts associated with expansive soils.

#### **D. Hydrology and Drainage**

**(1) Potential Impact:** Construction and operation of the Project has the potential to adversely impact water quality in downstream receiving waters through discharge of runoff that contains various pollutants of concern. The Project incorporates detailed low impact development (LID) features into internal site design and transitional areas for sediment, source, and treatment control. Additional site-design, structural, source-control, and treatment-control BMPs would be incorporated into the Project to supplement LID features, ensuring compliance with the Project Water Quality Management Plan and National Pollutant Discharge Elimination System (NPDES) permit. The Project has demonstrated on-site ability to treat all runoff treatment volumes that would be generated from the Project site in addition to runoff entering the site from upstream developed areas within Costa Mesa in compliance with regulatory standards.



**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features and standard conditions of approval. No mitigation measures were required or recommended.

**Facts in Support of Finding:** The Project would incorporate a Runoff Management Plan that includes water quality and drainage features designed to treat site runoff for water quality purposes and to reduce runoff volumes or rates where feasible. Water quality features would consist of LID features where feasible (e.g., bioswales, landscaping biocells, permeable pavement, and other improvements designed to promote soil-based infiltration processes) as well as source-control and treatment-control BMPs. One water quality basin and one diffuser basin/habitat area are proposed in the Lowland within the Open Space Preserve to provide treatment of storm water and detention of runoff flowing from on-site areas and off-site urban areas located to the east prior to discharging into the Lowland. The other basin is proposed in the Lowland near the North Family Village to provide energy dissipation of flows prior to entering the Semeniuk Slough. Both of these basins would be planted with native emergent marsh and riparian species to promote water quality cleaning and natural energy dissipation. A second water quality/detention basin is proposed to intercept approximately 48 acres of off-site flows from the 16<sup>th</sup> Street Costa Mesa drainage area. The water quality/detention basin is proposed on the Project site at the southeast corner of 16<sup>th</sup> Street at the Project site boundary.

Drainage improvements would minimize runoff to arroyos, redirect runoff away from bluffs, and reduce flow rates and volumes in the Semeniuk Slough. On-site local drains would be provided to drain each of the on-site subwatersheds under developed conditions. These drainage features would result in an improvement over existing site runoff conditions with respect to water quality, velocities, and volumes.

The Project incorporates Project Design Features (PDFs) to minimize adverse Project effects to water quality, storm water runoff, and groundwater impacts. Site drainage patterns would remain generally consistent with the existing condition, with minor alterations proposed in site subwatershed boundaries in order to manage flows from the Project into Lowland area. The integration of LID features into the Project design would provide sustainable water quality and storm water management capabilities for the site.

**PDF 4.4-1** The Master Development Plan requires that two water quality basins (one in the Community Park and one in the Open Space Preserve) be constructed to treat off-site urban runoff from Costa Mesa and Newport Beach and Project runoff that drains into the Lowland area.

**PDF 4.4-2** The Master Development Plan includes a water quality basin and a diffuser basin located within the Open Space Preserve to provide for storm water control, energy dissipation, and natural water quality treatment.

**PDF 4.4-3** The Master Development Plan requires that public arterials and some selected collector roadways within the Project site be designed with “Green Street” and other Low Impact Development (LID) features, such as bioswales and bio-cells. Green Streets are

designed to incorporate sustainable design elements such as narrower pavement widths, canopy street trees, traffic-calming features, and minimal use of street lighting. Landscaping along the street edges will be selectively used to treat storm water runoff from the streets and adjacent development areas.

- SC 4.4-1** All landscape materials and irrigation systems shall be maintained in accordance with the approved Landscape Plan. All landscaped areas shall be kept in a healthy and growing condition and shall receive regular maintenance. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
  
- SC 4.4-2** The development shall be kept free of litter and graffiti. The owner or operator shall provide for removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks.
  
- SC 4.4-3** Prior to the issuance of grading permits, an SWPPP and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Resources Control Board (SWRCB), and made part of the construction program. This SWPPP shall detail measures and practices that would be in effect during construction to minimize the Project's impact on water quality and storm water runoff volumes.
  
- SC 4.4-4** Prior to issuance of grading permits, the Project Applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the project, subject to the approval of the Community Development Department, Building Division and Code and Water Quality Enforcement Division. The WQMP shall include appropriate BMPs to ensure project runoff is adequately treated.
  
- SC 4.4-5** Prior to issuance of grading permits a list of "good housekeeping" practices, consistent with the approved Water Quality Management Plan, shall be submitted by the contractor for incorporation into the long-term post-construction operation of the site to minimize the likelihood that pollutants would be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The WQMP shall list and describe all structural and non-structural BMPs. In addition the WQMP must also identify the entity responsible for the long term inspection, maintenance, and funding for all structural (and if applicable treatment-control) BMPs.

**(2) Potential Impact:** Local groundwater is not suitable for use as drinking water; therefore, there would be no Project impact to groundwater table due to drawdown.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.4-3 (set forth above) and PDF 4.4-6 (set forth below). No mitigation measures were required or recommended.

**Facts in Support of Finding:** Groundwater recharge does occur at the Project site and would decrease under Project conditions due to a reduction in pervious surface area. Infiltration BMPs would be incorporated into site design to ensure that site runoff continues to infiltrate to the maximum extent practicable. The Project site is not a designated recharge site for the City. Local groundwater is not suitable for use as drinking water because of mixing with tidal waters. Consequently, the Project's potable water needs would not impact local groundwater levels. Proper design of structural BMPs and LID features would ensure separation of the volumes of water to be treated and the underlying groundwater table, which would ensure no adverse impact to groundwater quality from treatment-control BMPs and LID features. Infiltration BMPs would treat most pollutants within the uppermost soil layers of the BMP facility, reducing pollutant transfer to the groundwater table. Temporary construction impacts associated with removal of oil pipelines in the Lowland would be reduced to a less than significant level with the incorporation of BMPs. PDF 4.4-3, the use of LID standards, and PDF 4.4-6, incorporation of BMPs, would ensure that Project impacts would be less than significant.

**PDF 4.4-6** The Master Development Plan requires the use of best management practices (BMPs) for erosion control, sediment control, wind erosion control, storm water and non-storm water management, and waste management/pollution control. These BMPs will be implemented to ensure that potential effects on local site hydrology, runoff, and water quality remain in compliance with all required permits, City policies, and the Project's Water Quality Management Plan (WQMP), and Storm Water Pollution Prevention Plan (SWPPP).

**(3) Potential Impact:** Grading activities would increase the potential for soil erosion and sedimentation to affect water quality. Best Management Practices (BMPs) and Standard Conditions would minimize this impact both during construction and operation.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1 and 4.4-2 (set forth above), PDF 4.4-5 (set forth below) and SCs 4.4-3, 4.4-4, and 4.4-5 (set forth above). No mitigation measures were required or recommended.

**Facts in Support of Finding:** Sediment-control BMPs would be installed to intercept and filter out soil particles that may have been mobilized by flows during construction activities before these flows discharge into receiving waters. These controls may include installing check dams, These measures would also be placed around areas of soil-disturbing activities, such as grading or clearing, to retain sediments on site.

Compliance with the General Construction Permit and the Orange County Dewatering Permit, the latter if required, would minimize construction impacts from grading/excavation; material stockpiling and dewatering; construction and utilization of access and haul roads; and equipment staging, operation, and fueling. The Project would comply with the most current General Construction Permit and associated

local NPDES regulations to ensure that the potential for construction-related erosion and adverse sedimentation effects are minimized through the identification and application of efficient sediment-control BMPs and construction site monitoring. These permits require development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), which would describe construction BMPs that address the measures and controls necessary to ensure that construction site effects on sedimentation and erosion are appropriately minimized and remain less than significant.

Therefore, the Project would not result in adverse erosion or sedimentation impacts on the Project site, in arroyo drainage channels, or to downstream receiving waters. PDFs 4.4-1, 4.4-2, and 4.4-5 and SCs 4.4-3, 4.4-4, and 4.4-5 would ensure that Project construction and operation would maintain flow velocities below erosion thresholds and reduce overall sediment delivery to downstream systems. PDF 4.4-1 requires water quality basins on the Project site to treat urban runoff originating from off-site properties. PDF 4.4-2 identifies that a portion of the Lowland would provide for water quality treatment and storm water detention. PDF 4.4-5 requires the Project's drainage plan to stabilize runoff to West Coast Highway and the Semeniuk Slough. SC 4.4-3 requires a SWPPP in compliance with the General Permit for Construction Activities and SC 4.4-4 requires a WQMP including required BMPs. Post-construction operations must include "good housekeeping" as required in the WQMP (SC 4.4-5).

**PDF 4.4-5** The Master Development Plan requires development of a drainage plan to ensure that runoff systems from the Project site to West Coast Highway and the Semeniuk Slough will be stabilized and maintained through the Project's drainage system.

**(4) Potential Impact:** Project-induced increases in impervious surfaces would result in an increase in peak flow runoff and runoff volumes from the site that could affect on-site or off-site flooding. Project drainage area modifications would be incorporated into a Runoff Management Plan to ensure that peak flow rates and volumes would not result in adverse flooding impacts to downstream systems.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, 4.4-4, 4.4-5, and 4.4-6 as well as SC 4.4-4 (set forth above). No mitigation measures were required or recommended.

**Facts in Support of Finding:** During site remediation, grading, and construction, soil would be exposed to wind and water erosion. The implementation of erosion and sedimentation BMPs would control flows on site and would ensure that impacts associated with construction would be properly managed (PDFs 4.4-1, 4.4-2, 4.4-3 and SCs 4.4-2, 4.4-3, 4.4-4, and 4.4-5) to protect water quality and beneficial uses of receiving waters at the Project site from both construction and operational impacts. LID and BMP features would ensure that runoff from the Project site complies with NPDES site discharge requirements for the protection of receiving water quality and beneficial uses. Water quality entering the Lowland area and Semeniuk Slough would not be adversely impacted once these controls are in place. Construction BMPs also contain measures to be implemented to control construction site runoff and storm water.

Site drainage patterns would largely remain the same upon Project completion; drainage would continue to flow from east to west across the site, through the existing arroyos and into either the Semeniuk Slough or the Lowland area. The Project's drainage area for Subwatershed A (in the Lowland) would be reduced by approximately 27 acres from the existing condition. While the proposed Project runoff potential is anticipated to be slightly higher in the Project watershed, the overall results show that this reduction in drainage area maintains flow volumes similar to the existing condition. This is achieved largely through the preservation of open space on the Project site. Modeling results of existing and proposed runoff volumes into the Lowland and USACE-restored salt marsh basin indicate that the combined basin capacity (Lowland and USACE-restored salt marsh basin) can store existing flood volumes up to the 25-year frequency in its current capacity. The proposed condition 25-year runoff volume would be less than the 345 acre-feet storage capacity of the combined USACE-restored salt marsh basin and Lowland area.

In the Upland, all on-site curbs, gutters, and storm drains would be designed in accordance with City standards, thereby minimizing potential impacts of on-site development area flooding. The Project would slightly alter the existing drainage patterns through minor modification in on-site subwatersheds. These minor alterations are consistent with an overall Project storm water management strategy that directs flows to areas that have additional capacity (the Lowland) and decreases flows to areas with minimal or constrained capacity (Semeniuk Slough). Increase in storm water runoff volume delivered to the Lowland area would be accommodated by the storage capacity of the existing Lowland and USACE-restored salt marsh basin. Sheet flow runoff under the existing condition on the Project site would be replaced with storm drain systems to convey flows to the Lowland area, Semeniuk Slough, and the Caltrans storm drain.

**(5) Potential Impact:** The proposed Project's modifications in Project drainage patterns and Project drainage features would not exceed the capacity of storm water systems. The Project drainage features would reduce flow rates through the middle and lower sections of the Caltrans reinforced concrete box from existing conditions.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.4-1, 4.4-2, and 4.4-3 and SCs 4.4-2 through 4.4-5 (set forth above). No mitigation measures were required or recommended.

**Facts in Support of Finding:** Project site drainage from Subwatershed A would discharge into the existing Caltrans' reinforced concrete box (RCB) storm drain in West Coast Highway. The Project's proposed drainage plan would modify Caltrans' existing storm drain to accommodate a new storm drain system from the Upland. Flow rates were modeled in order to determine the Project's effect on flow rates moving through the storm drain. These modeling results indicate that, overall, the storm drain would experience reduced flood loading compared with the existing condition. Therefore, impacts from the Project on the capacity of the Caltrans' storm drain are less than significant. PDFs 4.4-1 through 4.4-3 and SCs 4.4-2 through 4.4-5 are applicable.

**(6) Potential Impact:** Inundation of or impact to habitable structures on the Project site by flooding, seiche, mudflow, or tsunami is not expected.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant. No project design features, standard conditions, or mitigation measures were required or recommended.

**Facts in Support of Finding:** Improvements to the Santa Ana River implemented over recent years by the USACE in partnership with the Counties of Orange, Riverside, and San Bernardino include levee upgrades, improvements to Prado Dam, and construction of Seven Oaks Dam. These improvements protect surrounding residences and communities from the 100-year flood event. Project development is proposed for the Upland area, which is located above the Santa Ana River's 100-year floodplain. While flooding could affect the Lowland, no habitable structures are proposed in this area. There are no permanent standing water bodies in the Upland area and inundation by seiche or mudflow is not anticipated in the Upland area. Due to the Project's proximity to the coast, inundation by tsunami is possible, and the Lowland is located within the tsunami warning area designated in the City's General Plan. The development footprint remains out of the tsunami inundation area and the impacts from potential tsunami effects under a condition of future sea level rise are considered less than significant.

#### **E. Hazards and Hazardous Materials**

**(1) Potential Impact:** The disturbance of potential hazardous materials associated with past oil extraction activities and from demolition of existing structures located on site is a potential impact.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Hydrology and Water Quality PDF 4.4-6 (set forth above), and Hazards PDF 4.5-1, SC 4.5-1, and MM 4.5-1 (set forth below).

**Facts in Support of Finding:** The Project site is primarily impacted by petroleum hydrocarbons, specifically degraded and weathered crude oil, and that these impacts are generally confined to specific operating areas, including oil well locations, pipelines, tank farms, sumps, and roadways. The Project site also includes road materials made up of varying amounts of gravel, asphalt, crude oil, or crude oil tank sediments, and large amounts of concrete used in oilfield operations and facilities. Some areas of the site contain soils impacted by generally low concentrations of chemicals other than crude oil, such as volatile organic compounds (VOCs) and metals. None of the petroleum hydrocarbons or any other contaminants identified in soil and groundwater were found on the Project site at levels exceeding the hazardous waste criteria, as defined by federal and State regulations. These types of impacts are consistent with oilfields of this age and are similar to other oilfields that have been feasibly and effectively remediated for residential development. That said, the presence of these materials on the Project site has the potential to adversely affect the proposed land uses and persons residing on the Project site and, without appropriate remediation, would be considered a significant impact.

Environmental assessment and cleanup work of the oilfield is conducted under the regulatory oversight of the Regional Water Quality Control Board (RWQCB), Santa Ana Region and/or the Orange County Health Care Agency, Environmental Health Division (OCHCA). This existing oversight is expected to continue through field abandonment and remediation activity because both agencies have the most

experience of any agencies with oilfield-to-development projects. It is expected that the RWQCB would continue to be the lead agency until the site receives closure.

All remediation activities, such as excavating pipelines, soil remediation, oil well abandonment and re-abandonment, would be conducted pursuant to State and local requirements. With the exception of the oil consolidation sites (which would remain), any contaminants would be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these areas are safe for human exposure in the future. Contaminated material that cannot be efficiently remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements.

As a part of the EIR, a draft Remedial Action Plan (dRAP) was prepared and identifies areas of the property proposed for remediation. The dRAP outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria. In addition to targeted remediation, all development areas would be monitored, tested, and remediated by credentialed third-party experts during mass grading to ensure that nothing is overlooked and all soil impacts are mitigated. Remediation work would be completed and approved by the regulatory oversight agencies before any construction work is initiated in those areas.

The dRAP details the findings of both the Phase I and Phase II Environmental Site Assessment (ESA) which contain initial findings of contaminants on the Project site. It should be noted that, 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 cy of remediated soil can be treated and used on site.

Mitigation Measure (MM) 4.5-1 requires the implementation of a comprehensive final Remedial Action Plan (RAP) for oilfield abandonment, clean-up, remediation, and consolidation. The final RAP must be submitted to and approved by RWQCB and/or the OCHCA. With implementation of the requirements of the approved final RAP, there would be less than significant impacts related to historic and ongoing oilfield operations on the Project site.

With respect to the abandonment of oil wells, the oilfield operations on the property are governed by regulations of the California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). The DOGGR has specific guidelines for the abandonment or re-abandonment (the latter as necessary) of oil wells. For oilfields that are abandoned for future development purposes, DOGGR has established a process called “Construction Site Review” that must be followed.

Additional oversight for air and vapor control would be provided by the South Coast Air Quality Management District (SCAQMD) and the Orange County Fire Authority (OCFA). All environmental testing is conducted by third-party consultants and analyzed and validated by State certified laboratories using chain of custody procedures to ensure the integrity of the results.

There is a potential for the presence of lead-based paint (LBP) and asbestos-containing materials (ACMs) in some of the structures and equipment on the Project site. SC 4.5-1 requires the handling and disposal of these substances, if identified, in accordance with applicable State regulations.

**PDF 4.5-1** The Master Development Plan requires existing oil operations to be consolidated into two areas within the Open Space Preserve designated as “Interim Oil Facilities”, in accordance with the land use districts established for the Project site in the Newport Banning Ranch Planned Community Development Plan, totaling approximately 17 acres including the service access road. This use will ultimately revert to an Open Space land use at the end of the oilfield’s useful life.

**SC 4.5-1** Prior to demolition, testing for all structures for presence of lead-based paint (LBP) and/or asbestos-containing materials (ACMs) shall be completed. The Asbestos-Abatement Contractor shall comply with notification and asbestos-removal procedures outlined in the South Coast Air Quality Management District’s (SCAQMD’s) Rule 1403 to reduce asbestos-related air quality health risks. SCAQMD Rule 1403 applies to any demolition or renovation activity and the associated disturbance of ACMs. This requirement shall be included on the contractors’ specifications and verified by the Director of Community Development.

All demolition activities that may expose construction workers and/or the public to ACMs and/or LBP shall be conducted in accordance with applicable regulations, including, but not limited to Title 40 of the *Code of Federal Regulations* (CFR), Subchapter R (Toxic Substances Control Act); CalOSHA regulations (Title 8 of the *California Code of Regulations* §1529 [Asbestos] and §1532.1 [Lead]); and SCAQMD Rule 1403 (Asbestos Emissions from Demolition/Renovation Activities). The requirement to adhere to all applicable regulations shall be included in the contractor specifications, and such inclusion shall be verified by the Director of Community Development prior to issuance of the first grading permit.

**MM 4.5-1** 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 site disturbance unrelated to oil remediation activities. The Applicant shall follow the protocol for the OCHCA Industrial Cleanup Program to develop the site-specific final RAP. The final RAP shall use the draft Remedial Action Plan (dRAP) and the existing clean-up levels that have been in effect since 2001 as the basis of the final RAP consistent with OCHCA requirements. The final RAP shall (1) incorporate the remediation methods to be employed that are described in the dRAP; (2) propose the clean-up criteria for specific areas of the Project site depending upon the land uses for those areas; and (3) provide additional details such



as the location of on-site areas for bioremediation. The final RAP shall also require compliance with Orange County Fire Authority Guideline C-03 Combustible Soil Gas Hazard Mitigation.

The clean up criteria shall be approved by the OCHCA as a part of final RAP subject to the review and approval of the RWQCB. The final RAP shall describe the means by which those clean-up standards shall be met per the remediation methods described in the dRAP. Methods described in the dRAP include the use of natural bio-remediation of soils on site; reuse and recycling of treated soils where and when feasible; and removal and recycling of materials such as concrete, gravel, and asphalt-like road materials.

Oil and gas wells to be abandoned or re-abandoned shall be done so in accordance with the current requirements of the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR). Documentation of final abandonment approval from the DOGGR shall be provided to the Orange County Fire Authority and the City of Newport Beach Community Development Department, Building Division, before issuance of the first certificate of occupancy.

- (2) Potential Impact:** There would be a less than significant impact to the existing schools within ¼-mile of the Project site and/or from off-site haul routes during on-site remedial activities and proposed Project construction. There would be no impact to existing schools within ¼-mile of the Project site from proposed Project operations as continued oil operations are proposed to be limited to two consolidated oil facilities located along the southwestern portion of the Project site.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.5-1 (set forth above) and SC 4.5-2 (set forth below). No mitigation measures were required or recommended.

**Facts in Support of Finding:** Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach. However, when implemented, haul routes may be within ¼ mile of identified schools or other schools between the Project site and the disposal location, an accident or upset condition during handling and transport could result in the release of contaminated soils into the surrounding environment. As described in SC 4.5-2, any contaminated soils or other hazardous materials removed from the Project site shall be transported only by a Licensed Hazardous Waste Hauler in compliance with all applicable State and federal requirements. Hazardous materials are routinely transported through Southern California, in compliance with State and federal requirements, and accidents and/or releases are quite rare. There would be a less than significant impact related to transport of soils within ¼ mile of existing schools.

- SC 4.5-2** Prior to issuance of grading permits, the applicant shall submit documentation in a form and of a content determined by the Director of Community Development that any hazardous

contaminated soils or other hazardous materials removed from the project site shall be transported only by a Licensed Hazardous Waste Hauler to approved hazardous materials disposal site, who shall be in compliance with all applicable State and federal requirements, including the U.S. Department of Transportation regulations under 49 CFR (Hazardous Materials Transportation Act), California Department of Transportation (Caltrans) standards, Occupational Safety and Health Administration (OSHA) standards, and under 40 CFR 263 (Subtitle C of Resource Conservation and Recovery Act). The Director of Community Development shall verify that only Licensed Haulers who are operating in compliance with regulatory requirements are used to haul hazardous materials.

## **F. Biological Resources**

**(1) Potential Impact:** The Project would have direct and indirect impacts on habitat and special status species associated with oilfield remediation, grading, construction, and long-term use of the Project site. Grading activities could impact several sensitive natural communities on the Project site.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-3, and MMs 4.6-1 through 4.6-16 (set forth below).

**Facts in Support of Finding:** Approximately 236.32 acres of native and non-native vegetation types and other areas would be impacted by the proposed Project. Permanent Project impacts (approximately 205.83 acres) would occur in areas of the proposed for parks, recreation, residences, the resort inn, commercial uses, roadways; public trails; and utility infrastructure including the consolidated oil sites, access roads, landscape buffers, fuel modification areas, and water quality basins. Temporary Project impacts (approximately 30.49 acres) would occur in areas that are mapped as Open Space (i.e., existing oil operation roads, bluff repair, oilfield remediation, and the vernal pool interpretative areas). This includes approximately 22.17 acres from non-remediation activities and approximately 8.32 acres from remediation activities. These impacts are considered temporary because the areas would be restored as part of the Project.

Construction activities for oilfield remediation would result in the loss of approximately 38.70 acres of 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 nesting, foraging, roosting, and denning opportunities for a wide variety of wildlife species. In addition, implementation of the proposed Project would result in the loss of approximately 197.62 acres of non-native habitat or non-habitat cover types (non-native grassland, non-native grassland/ruderal, ruderal, giant reed, ornamental, disturbed, and disturbed/developed) that provide lower-quality or no wildlife habitat. The Project would impact substantially more non-native/disturbed or non-habitat types (84 percent) compared to native habitat types (16 percent). However, some of these non-native habitats may provide nesting, foraging, roosting, and denning opportunities for some species.

Removing or altering habitats on the Project site would result in the loss of small mammals, reptiles, amphibians, and other slow-moving animals that live within the Project's direct impact area. More mobile wildlife species that are now using the Project site would be forced to move into the remaining areas of open space, which would consequently increase competition for available resources in those areas. This situation would result in the loss of individuals that cannot successfully compete.

**Habitat.** The Project would result in impacts to approximately 236.32 acres of non-native and native habitats that provide low to high value habitat for a suite of both common and special status species. Of the 236.32 acres impacted, approximately 97.49 acres contain ornamental, disturbed, and disturbed/developed areas that provide low value wildlife habitat. These impacts are considered adverse but not significant in terms of habitat loss for general wildlife species on a regional basis. The loss of wildlife habitat would not be expected to reduce wildlife populations below self-sustaining levels in the region.

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. 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.

**Special Status Plants.** Four special status plant species were observed during the surveys: southern tarplant (CNPS List 1B.1), southwestern spiny rush (CNPS List 4.2), California box-thorn (CNPS List 4.2), and woolly seablite (CNPS List 4.2). Implementation of MM 4.6-7, which requires implementation of a southern tarplant restoration program, would reduce this impact to a less than significant level. The southwestern spiny rush and woolly seablite would be temporarily impacted during oilfield remediation activities and could be impacted. At this time, it is unknown whether all southwestern spiny rush and woolly seablite could be avoided during the remediation activities. All these species are CNPS List 4 species. CNPS List 4 species are "Plants of Limited Distribution – A Watch List", and impacts on these species are not typically considered significant by lead agencies. Project impacts are not expected to have a substantial adverse effect on these species, and no mitigation is required.

**San Diego Fairy Shrimp.** San Diego fairy shrimp was observed on the Project site during surveys. The Project result in permanent impacts to 0.173 acre of habitat occupied by San Diego fairy shrimp and temporarily impact 0.06 acre of vernal pool habitat through pipelines removal activities. Combined permanent and temporary impacts to San Diego fairy shrimp habitat (0.24 acre) is considered significant because the loss of this resource would represent a substantial adverse effect to this species distribution in the region.

These impacts can be mitigated to a less than significant level through the development and implementation of a 3.58-acre vernal pool conservation/restoration area that supports the San Diego fairy shrimp (MM 4.6-3). The Project proposes to

also set aside an additional 1.73-acre upland area north and west of the 1.85-acre vernal pool conservation area which would be used for future enhancement to expand the vernal pool conservation area to total 3.58 acres. Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat.

**Birds.** Potentially suitable foraging and/or nesting habitat for light-footed clapper rail, western snowy plover, Belding's savannah sparrow, and tricolored blackbird is present primarily in the salt and freshwater marsh areas on the Project site, and these species may occur. The Project site provides only potentially suitable foraging habitat for the long-billed curlew and large-billed savannah sparrow. Of these species with potential to occur, only the Belding's savannah sparrow may nest on the Project site. Permanent Project impacts on foraging and/or nesting habitat is expected to be limited, and the habitat for these species, except the tricolored blackbird, would remain as open space following oilfield remediation activities. MMs 4.6-4 and 4.6-8 would reduce the potential impact on these species to a less than significant level. These measures require the restoration and/or preservation of approximately 9.90 acres of marsh habitat either on site or immediately off site and avoidance measures during construction. 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 marsh areas and associated wildlife species.

In total, 17 territories (16 pairs and 1 solitary male) of the federally listed Threatened coastal California gnatcatcher have been observed on the Project site (2009 surveys). Revegetation following oilfield remediation activities has 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 for this species in the open space area. However, Project impacts on this species are significant because of the location and size of the impacted population. MMs 4.6-1 and 4.6-9 require the on-site or off-site restoration of 47.75 acres of coastal sage scrub habitat at a ratio of 3:1 for coastal sage scrub (including disturbed southern coastal bluff scrub) and 1:1 for disturbed coastal sage scrub (excluding disturbed southern coastal bluff scrub). In addition, approximately 35.16 acres of coastal sage scrub or disturbed coastal sage scrub would be preserved on site. Mitigation includes the required approval from the USFWS to impact the species, and construction avoidance measures to minimize the impacts to the greatest extent practicable. 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 coastal sage scrub and associated wildlife species, including, but not limited to the coastal California gnatcatcher.

Two coastal cactus wren territories were observed during 2009 focused surveys for coastal California gnatcatcher. The proposed Project would impact approximately 2.92 acres (2.59 acres permanent, 0.33 acre temporary) of southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub. Impacts on this species would be significant. MMs 4.6-1 and 4.6-10 require the restoration of coastal sage scrub dominated by native cactus species habitat at a ratio of no less than 1:1 and construction avoidance measures to minimize the impacts to the greatest extent practicable. In addition, approximately 35.16 acres of coastal sage scrub would be preserved on site (MM

4.6-1). 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 cacti-dominated coastal sage scrub and associated wildlife species, including, but not limited to the cactus wren.

Two least Bell's vireo territories (both solitary males) were observed during the 2009 focused surveys. The Project would impact approximately 2.74 acres (1.45 acres permanent, 1.29 acres temporary) of undisturbed and disturbed willow riparian scrub and willow riparian forest habitats. The permanent Project impacts on this species' habitat is expected to be limited, and most of the habitat for this species would remain as open space following oilfield remediation activities; these activities could temporarily impact riparian habitats used by this species. Revegetation following oilfield remediation activities would result in a higher long-term habitat quality. MMs 4.6-5 and 4.6-11 require the on-site or off-site restoration of riparian habitat at a ratio from 3:1 to 1:1 depending on the habitat value impacted. The Project also requires approval from the USFWS to impact the species and its habitat. In addition, the Project would preserve approximately 23.03 acres of riparian habitats. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 are applicable.

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. Two owls were observed wintering in 2008, and one owl was observed wintering in 2009 and 2010. The 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. MMs 4.6-2 and 4.6-12 require the restoration of grassland habitat at a ratio of 0.5:1 (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. PDFs 4.6-1 through 4.6-4 are also applicable.

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. There is foraging habitat for the osprey adjacent to the Project site within the USACE salt marsh restoration site and the Santa Ana River. 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 is significant. Revegetation following oilfield remediation activities would result in higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 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. PDFs 4.6-1 through 4.6-4 are also applicable.

Cooper's hawk, northern harrier, and white-tailed kite have the potential to nest on the Project site. 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. 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. Impacts 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.

**Mammals.** Suitable or potentially suitable foraging habitat is present for the pallid bat, hoary bat, western yellow bat, pocketed free-tailed bat, and big free-tailed bat. Hoary bat, pocketed free-tailed bat, and big free-tailed bat also have potential to roost on the Project site. The permanent loss of approximately 124.86 acres of foraging and roosting habitat for these bat species would contribute to the ongoing regional and local loss of foraging and roosting habitat; this impact is significant. Revegetation following oilfield remediation activities would result in a higher-quality habitat. MMs 4.6-1, 4.6-2, 4.6-4, and 4.6-5 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. PDFs 4.6-1 through 4.6-4 are also applicable.

**Indirect Impacts.** Indirect impacts are impacts related to disturbance from construction (such as noise, dust, and urban pollutants), and long-term use of the Project site and its effect on the adjacent habitat areas. Bluff Road traffic noise impacts are considered significant. MMs 4.6-1, 4.6-2, 4.6-4 through 4.6-6, and 4.6-8 through 4.6-13 would reduce this impact to a less than significant level by increasing the biological value of the site for wildlife species. Short-term construction impacts to active least Bell's vireo nests are considered potentially significant. MM 4.6-11 would reduce this impact to a less than significant level.

Seeds from invasive species may escape to natural areas and degrade the native vegetation. Since the Project contains open space that includes high habitat value, this impact is significant. MM 4.6-14 requires monitoring in the oilfield remediation areas and prohibits invasive, exotic plant species to be planted within the areas adjacent to open space to reduce these impacts to less than significant.

Impacts on biological resources in the area could occur as a result of changes in water quality. Adverse water quality effects during construction or operation of the Project could (1) affect populations of insects, tadpoles, and other aquatic prey, which would affect food web interactions related to species that forage in aquatic or riparian areas or (2) cause adverse effects through biomagnification (i.e., the buildup of pesticides to toxic levels in higher trophic levels). The Project Design Features and Standard Conditions identified in Hydrology and Water Quality would preclude significant water quality impacts.

Lighting could inadvertently result in an indirect impact on the behavioral patterns of nocturnal and crepuscular (i.e., active at dawn and dusk) wildlife remaining in the lowland or adjacent areas such as in the USACE salt marsh restoration site or along the Santa Ana River. Wildlife present in these areas may already be somewhat acclimated to current lighting associated with traffic from the adjacent roadways. The Project would introduce new sources of ambient light on the Project site, which could affect small, ground-dwelling animals that use the darkness to hide from predators, owls, and other specialized night foragers and wildlife that primarily move at night. As a part of the Project, no permanent night lighting would be permitted within the Open Space Preserve with the exception of safety lighting in the two Oil Consolidation

sites. A “dark sky” lighting concept will be implemented within most areas that adjoin habitat areas. PDF 4.6-4, the Project would restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

Human activity in the Lowland would be limited to the trails; however, the overall increase in human activity across the entire Project site could be potentially significant. MM 4.6-15 requires a fencing and signage plan. Development and park uses built adjacent to natural open space, particularly near the lowland, may create urban-wildlands interface issues. These urban-wildlands interface impacts are significant. MM 4.6-16 requires development and implementation of an urban-wildlands interface brochure and public education program to reduce this impact to a less than significant level.

During remediation and construction, the dust within the development footprint and adjacent areas is expected to increase. The removal of the roads and vehicular traffic associated with oilfield activities and subsequent revegetation of the Lowland with native habitat may result in an increased habitat value. This would be considered a potentially beneficial operational impact of the proposed Project.

As noted in PDF 4.6-1, the Project would preserve and enhance approximately 220 acres of native habitat. The Project would also provide approximately 51.4 gross (42.1 net) acres for active and passive park uses. Community landscaping improvements for streets, parks, common areas, open space areas, and habitat areas would be enhanced, restored, and improved with major supplemental plantings that would increase the biomass of Newport Banning Ranch, providing for on-site carbon sequestration. This would be a beneficial impact for GHG emissions.

- PDF 4.6-1** The Master Development Plan designates a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas.
- PDF 4.6-2** The Master Development Plan includes a Habitat Restoration Plan (HRP) for the Habitat Areas. The HRP includes provisions for the preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project.
- PDF 4.6-3** As identified in the Master Development Plan, the Habitat Areas to be restored as project design features will be subject to the same five-year Maintenance and Monitoring Program implemented for areas restored as mitigation. Standard Vegetation Monitoring Procedures are outlined in the Biological Technical Report prepared for the EIR and will be implemented consistent with applicable regulatory requirements.
- PDF 4.6-4** The Master Development Plan requires that street lights be utilized only in key intersections and safety areas. The Planned Community Development Plan requires that a “dark sky” lighting concept be implemented within areas of the Project that adjoin habitat areas. Light fixtures within these areas will be designed for “dark sky” applications and adjusted to direct/reflect light downward and away from adjacent habitat areas. The Newport Banning Ranch Planned Community Development Plan will

restrict exterior house lighting to minimize light spillage into adjacent habitat areas.

**MM 4.6-1 Coastal Sage Scrub Habitat Preservation and Restoration.** Permanent impacts on coastal sage scrub vegetation (including disturbed southern coastal bluff scrub) (12.32 acres) shall be mitigated at a 3:1 ratio (36.96 acres) on the Project site or off site (nearby) through the restoration of southern coastal bluff scrub and California sagebrush scrub. Permanent impacts on disturbed coastal sage scrub vegetation (excluding disturbed southern coastal bluff scrub) (8.21 acres) shall be mitigated at a 1:1 ratio (8.21 acres) elsewhere on the Project site or off site. In addition, temporary impacts (2.58 acres) to coastal sage scrub and disturbed coastal sage scrub vegetation types shall be mitigated by revegetation with locally occurring native coastal sage scrub species following remediation at a 1:1 ratio. The required restoration is summarized in Table A. In addition to restoration, the Project shall preserve 35.16 acres of coastal sage scrub on site. Coastal sage scrub restoration and preservation on site would total 82.91 acres.

**TABLE A  
REQUIRED COASTAL SAGE SCRUB RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
<b>Permanent Impact</b>			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	12.32	3:1	<b>36.96</b>
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	8.21	1:1	<b>8.21</b>
<b>Temporary Impact</b>			
Coastal Sage Scrub (including disturbed southern coastal bluff scrub)	1.92	1:1	<b>1.92</b>
Disturbed Coastal Sage Scrub (excluding disturbed southern coastal bluff scrub)	0.66	1:1	<b>0.66</b>
<b>Total</b>	<b>23.11</b>		<b>47.75</b>

The Applicant shall be required to plan, implement, monitor, and maintain a coastal sage scrub revegetation program for the Project consistent with the most current technical standards/knowledge regarding coastal sage scrub restoration. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), a detailed restoration program shall be prepared by a qualified Biologist and 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 shall include, at a minimum, the items listed below.



1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area or land shall be purchased/obtained immediately off site. Selected sites shall not result in the removal of a biologically valuable resource (i.e., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species planting. Locally occurring native plants and seeds shall be used and shall include species present on site, in adjacent areas, and uncommon species known to occur on site such as California box-thorn and woolly seablite.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the gnatcatcher breeding season (February 15 to July 15).
6. **Monitoring plan.** The coastal sage scrub monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects, wildlife monitoring); (c) performance criteria as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies. The site shall be monitored and maintained for five years to ensure successful sage scrub habitat establishment within the restored and created areas.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall begin coastal sage scrub restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit that allows for ground disturbance

(e.g., grading permit). The Applicant shall be fully responsible for implementing the coastal sage scrub revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off).

The Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) program does not authorize Incidental Take resulting from the conversion of habitat occupied by coastal California gnatcatchers in Existing Use Areas. Therefore, the Applicant has elected to seek a Take Authorization through Section 7 of the FESA. Prior to issuance of the first permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide, a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) to the City that authorizes the removal of coastal sage scrub (i.e., coastal California gnatcatcher habitat). It is anticipated that the USFWS Biological Opinion will contain conservation recommendations to avoid or reduce the Project impact. Although any additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below also shall be followed.

1. Prior to the commencement of clearing operations or other activities involving significant soil disturbance, all areas of coastal sage scrub habitat to be avoided shall be identified with temporary fencing or other markers that are clearly visible to construction personnel.
2. A USFWS-approved Biological Monitor shall be on site during any clearing of coastal sage scrub. The Applicant shall advise the USFWS at least 7 calendar days—but preferably 14 calendar days—prior to the clearing of coastal sage scrub. The Biological Monitor shall flush avian or other mobile species from habitat areas immediately prior to brush-clearing and earth-moving activities. It shall be the responsibility of the Monitoring Biologist to ensure that identified bird species are not directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities to continue on a timely basis.
3. Following the completion of initial clearing activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other clearly visible, appropriate markers. No construction access, parking, or equipment storage shall be permitted within such marked areas.

The combined restoration and preservation of 82.91 acres of coastal sage scrub would result in a net increase in habitat by 24.64 acres.

**MM 4.6-2 Grassland Habitat Preservation and Restoration.** Permanent impacts on non-native grassland and ruderal vegetation (100.13 acres) shall be mitigated at a 0.7:1 ratio through on-site or off-site restoration and preservation. These permanent impacts to non-native grassland and ruderal vegetation shall be mitigated by the restoration of 48.63 acres (0.5:1) of grassland and alkali meadow within both the upland and lowland portions of the Project site as summarized in Table B and may include native grassland areas within Fuel Modification Zone C. Temporary impacts (2.87 acres) shall be mitigated by native grassland or alkali meadow revegetation following remediation at a 0.5:1 ratio (1.44 acres). An additional 20.27 acres of grassland habitat shall be preserved on site. The grassland restoration and preservation would total 70.34 acres.

**TABLE B  
REQUIRED GRASSLAND RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
<b>Permanent Impact</b>			
Non-Native Grassland and Ruderal	97.26	0.5:1	<b>48.63</b>
<b>Temporary Impact</b>			
Non-Native Grassland and Ruderal	2.87	0.5:1	<b>1.44</b>
<b>Total</b>	<b>100.13</b>		<b>50.07</b>

The Applicant shall begin grassland restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be required to plan, implement, monitor, and maintain a native grassland preservation/restoration program for the Project. A grassland preservation/ restoration program shall be (1) developed by a qualified Biologist; (2) submitted for review and approval to the City of Newport Beach (City) prior to the first permit that would allow for site disturbance (e.g., grading permit); and (3) shall be implemented by a qualified Biologist. The grassland mitigation plan shall also provide mitigation for the loss of raptor foraging and burrowing owl habitat; therefore, site selection measures shall include considerations that influence the site’s suitability for burrowing owl and other raptor species. Restoration shall consist of seeding with appropriate needlegrass species and, if appropriate, incorporating seeds collected from special status plant species (southern tarplant) that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the Applicant, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and a qualified Biologist knowledgeable about native grassland restoration, raptors, and the burrowing owl. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be purchased/obtained. The 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.
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. If mammal burrows are limited on the mitigation site(s), the qualified Biologist shall recommend creation of artificial burrows suitable for occupation by the burrowing owl. The burrows shall be constructed using standard specifications established for the owl. Depending on the topography of the site(s) and the availability of natural perches, the qualified Biologist shall make recommendations regarding whether additional perching sites (e.g., large rocks) shall be placed on the mitigation site(s).
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the burrowing owl/raptor breeding season (February 1 to August 31).
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports

for five years, which shall be submitted to the resource agencies. The grassland mitigation site shall be monitored and maintained for five years to ensure successful establishment of native grassland habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for burrowing owl, particularly that they occur in grasslands with openings or lower vegetation coverage; thus, the performance criteria shall include a requirement for openings or a lower percent cover for portions of the mitigation site.

7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual grassland mitigation plan to ensure the mitigation site is not impacted by future development.

The Project would result in the restoration of 50.07 acres of native grassland and alkali meadow and preservation of 20.27 acres of non-native grassland areas, for a total of 70.34 acres. Because the value of habitat to be replaced (native grassland and alkali meadow) is higher than those habitat values impacted by the Project, a less than 1:1 mitigation ratio is deemed adequate to compensate for the loss of non-native grassland areas.

**MM 4.6-3**

***Grassland Depression Feature and Fairy Shrimp Habitat Preservation and Restoration. Grassland Depression Feature Habitat Preservation and Restoration.***

The proposed Project is designed to protect the two areas previously described as vernal pools that are occupied by San Diego fairy shrimp. The proposed Project would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Because oilfield pipelines are located on top of the soil surface in the pooled areas, their removal would be conducted with the minimum possible soil disturbance and would occur outside the rainy season to reduce direct impacts to this species. However, pipe removal activities would disrupt the soils within the vernal pools in which the San Diego fairy shrimp has been observed and which potentially contain fairy shrimp cysts. Therefore, these pipe removal activities would be considered a potentially significant temporary impact. This impact would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed.

During Project grading, a small area of the surrounding upland portion of the watershed would be impacted, but the Project proposes to replace this portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area. Remediation, restoration and permanent protection of the two pools and protection of its watershed would ensure that

Project impacts to these two pools are less than significant. In addition, the Project has identified an additional 1.73 acres of upland area, adjacent to the 1.85-acre area, which would be available for future vernal pool creation, restoration, and/or enhancement. If this additional area is restored, a total vernal pool conservation area of 3.58 acres would be provided by the Project (Table C).

**TABLE C  
REQUIRED VERNAL POOL PRESERVATION/RESTORATION**

Feature	Temporary Impact	Permanent Impact	Total Impact	VP1, VP2, and Upland Watershed Preservation	Upland Area Vernal Pool Enhancement Area	Total Preservation/Enhancement Areas
VP1	0.06	0.00	0.06			
VP2	0.00	0.00	0.00			
Feature AD3	0.00	0.007	0.007			
<b>Total for VP1, VP2, and AD3</b>	<b>0.06</b>	<b>0.007</b>	<b>0.067</b>	<b>1.85</b>		
Features E and G (oilfield sumps)	0	0.053	0.053			
Features I and J (grasslands)	0	0.12	0.12			
<b>Total for E, G, I, and J</b>		<b>0.173</b>	<b>0.173</b>		<b>1.73</b>	
<b>Total San Diego Fairy Shrimp Habitat Impacts</b>			<b>0.24</b>			<b>3.58</b>

Expansion of the watershed by 1.73 acres would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat created as mitigation for Features E, G, I, and J, which support the San Diego fairy shrimp.

Restoration of the pool areas, by removing mule fat and non-native species, would restore the pools to characteristic vernal pool habitat, as vernal pools do not typically support woody vegetation such as mule fat. The restoration program would also provide increased wildlife habitat function for migratory birds that use the pools as a migration stopover, and the increased watershed area would be planted with native alkali meadow or native upland grasses favorable for raptor foraging and would be “counted” toward the approximately 50 acres of grassland habitat.

Impacts to San Diego fairy shrimp detected in Features E and G, which are to be remediated as part of the oilfield clean up and remediation, shall be mitigated by testing the soils, and if the soils are not contaminated to the degree requiring environmental remediation, they shall be removed and relocated to the vernal pool conservation area at a ratio of 1:1. Soils shall also be

removed and relocated within features I and J.<sup>1</sup> All mitigation shall occur within the 1.73 acres that have been set aside along with the 1.85-acre conservation area to provide a 3.58-acre vernal pool conservation area.

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). The Applicant shall begin the vernal pool restoration activities (e.g., soil preparation) no later than one year after issuance of the first grading permit. Restoration shall consist of seeding/planting with appropriate vernal pool species and, if appropriate, incorporate seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall be located on the Project site in a dedicated open space area. The mitigation areas shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** Planting shall occur by a qualified Biologist who is monitoring on site rainfall to minimize impacts to existing fairy shrimp.
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting.
6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general

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<sup>1</sup> The final ratio would be determined in consultation with USFWS and would be based on the character of the features known to be occupied. Features such as E and G, which are oilfield sumps would require a lower mitigation ratio than less disturbed pools I and J.

observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.

7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the vernal pool revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off. The site shall be monitored and maintained for five years to ensure successful establishment of vernal pool habitat within the restored and created areas.

The preservation of the vernal pool habitat and the expansion of the watershed habitat will result in a net increase in habitat occupied by the San Diego fairy shrimp on the site that would also exhibit higher levels of function for the fairy shrimp.

**MM 4.6-4** **Marsh Habitat Preservation and Restoration.** The Project would impact 2.45 acres (0.10 permanent/2.35 temporary) of marshes. Permanent impacts to marshes shall be restored at a replacement ratio of 3:1, totaling 0.30 acre (Table D). Temporary impacts associated with oilfield remediation shall be mitigated at a 1:1 ratio<sup>2</sup> (totaling 2.35 acres). In addition, 7.25 acres shall be preserved on site, for a total of 9.90 acres of restoration and preservation.

**TABLE D  
REQUIRED MARSH/MEADOW/OPEN WATER  
HABITAT RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
<b>Permanent Impact</b>			
Marsh/Meadow/Open Water	0.10	3:1	<b>0.30</b>
<b>Temporary Impact</b>			
Marsh/Meadow/Open Water	2.35	1:1	<b>2.35</b>
<b>Total</b>	<b>2.45</b>		<b>2.65</b>

<sup>2</sup> It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.



The Applicant shall be required to plan, implement, monitor, and maintain a marsh/meadow preservation/restoration program for the Project. A marsh/meadow preservation/restoration program shall be developed by a qualified Biologist, and 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], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the first action and/or permit that would allow for site disturbance (e.g., grading permit). The Applicant shall begin marsh habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first permit allowing ground disturbance (e.g., grading permit). The marsh/meadow preservation/restoration program shall also mitigate for the potential loss of light-footed clapper rail, western snowy plover, and Belding's savannah sparrow habitat; therefore, site selection measures shall include considerations that influence the site's suitability for these species. Restoration shall consist of seeding with appropriate marsh/meadow species and, if appropriate, incorporation of seeds collected from special status plant species that may be impacted by the Project. A detailed restoration program shall contain the items listed below.

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies. The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** The site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation. Locally occurring, native plants and seeds shall be used and shall include species present on site and in adjacent areas, and shall also include uncommon species known to occur on site such as southwestern spiny rush.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash

removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).

6. **Monitoring plan.** The monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term site preservation shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The Applicant shall be fully responsible for the implementation of the marsh and mudflat restoration program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful restoration of marsh and mudflat habitat within the restored and created areas. The performance criteria shall take into consideration the habitat requirements for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow. For example, the light-footed clapper rail requires areas with tidal influence and prefers using cordgrass to build their nests; the western snowy plover nests on bare ground in areas of little to no vegetation coverage; and the Belding's savannah sparrow uses the upper portions of the marsh dominated by pickleweed. Thus, performance criteria shall be tailored to fit different portions of the mitigation site intended for each species.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

**MM 4.6-5**

**Jurisdictional Resources/Riparian Habitat Preservation and Restoration.** The Applicant is in the process of obtaining permits/agreements/certifications from the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission that are required for direct or indirect impacts on areas within these agencies' jurisdictions. The

Applicant shall be obligated to implement/comply with the mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. Jurisdictional areas shall be restored on the Project site or immediately off site at a minimum replacement ratio of 3:1 for permanent impacts and 1:1 for temporary impacts to ensure no net loss of habitat.<sup>3</sup> The jurisdictions of the USACE, CDFG, and California Coastal Commission are not additive areas, as many of the riparian areas on the Project site may be within the jurisdiction of several of these agencies. Therefore, the permits and associated jurisdictional replacement requirements would identify which mitigation areas apply to the corresponding jurisdictions.

Permanent impacts on willow scrub and willow riparian forest (1.42 acres) shall be mitigated at a 3:1 ratio (4.26 acres) on the Project site through restoration of willow habitat. Permanent impacts on all other riparian vegetation types and all temporary impacts to riparian vegetation types (11.51 acres) shall be mitigated at a 1:1 ratio (11.51 acres) on the Project site. In total, as compensation for permanent and temporary impacts to 12.93 acres of riparian habitat, the Project would create 15.77 acres of riparian habitat. In addition, the Project shall preserve 23.03 acres of riparian habitats, for a total of 38.80 acres of restoration and preservation. Details of the restoration required are summarized below in Table E.

**TABLE E  
REQUIRED RIPARIAN RESTORATION**

	Impact (Acres)	Ratio Required	Restoration Required (Acres)
<b>Permanent Impact</b>			
Willow Scrub/Willow Riparian Forest	1.42	3:1	<b>4.26</b>
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.03	1:1	<b>0.03</b>
Mule Fat Scrub	0.47	1:1	<b>0.47</b>
Disturbed Mule Fat Scrub <sup>a</sup>	4.95	1:1	<b>4.95</b>
<b>Temporary Impact</b>			
Willow Scrub/Willow Riparian Forest	0.59	1:1	<b>0.59</b>
Disturbed Willow Scrub/Disturbed Willow Riparian Forest	0.70	1:1	<b>0.70</b>
Mule Fat Scrub	0.20	1:1	<b>0.20</b>
Disturbed Mule Fat Scrub <sup>a</sup>	4.57	1:1	<b>4.57</b>
<b>Total</b>	<b>12.93</b>		<b>15.77</b>
<sup>a</sup> Includes disturbed mule fat scrub, disturbed mule fat scrub/ruderal, and disturbed mule fat scrub/goldenbush scrub.			

<sup>3</sup> It is important to note that all temporary impacts are for purposes of oilfield remediation and habitat restoration and, as such, are an allowable use in wetland areas under Section 30233 of the California Coastal Act, which includes habitat restoration as an allowable activity in wetlands.

Prior to the first permit that would allow for site disturbance, a detailed restoration program shall be prepared for approval by the City of Newport Beach (City) and the resource agencies (i.e., the USACE, the CDFG, the RWQCB, and the California Coastal Commission). The program shall include, at a minimum, the following items:

1. **Responsibilities and qualifications of the personnel to implement and supervise the plan.** The responsibilities of the landowner, specialists, and maintenance personnel that would supervise and implement the plan shall be specified.
2. **Site selection.** The mitigation site shall be determined in coordination with the City and the resource agencies (i.e., the USFWS, the CDFG, the RWQCB, and the California Coastal Commission). The site shall either be located on the Project site in a dedicated open space area, or suitable adjacent off-site open space shall be obtained/purchased. Selected sites shall not result in the removal of a biologically valuable resource (e.g., native grassland).
3. **Site preparation and planting implementation.** Site preparation shall include (a) protection of existing native species; (b) trash and weed removal; (c) native species salvage and reuse (i.e., duff); (d) soil treatments (i.e., imprinting, decompacting); (e) temporary irrigation installation; (f) erosion-control measures (i.e., rice or willow wattles); (g) seed mix application; and (h) container species installation.
4. **Schedule.** A schedule shall be developed that includes planting to occur in late fall and early winter (i.e., between October 1 and January 30).
5. **Maintenance plan/guidelines.** The maintenance plan shall include (a) weed control; (b) herbivory control; (c) trash removal; (d) irrigation system maintenance; (e) maintenance training; and (f) replacement planting. The maintenance plan shall also include biological monitoring during maintenance activities if they occur during the least Bell's vireo breeding season (March 15 to September 15).
6. **Monitoring plan.** The riparian vegetation/jurisdictional resources monitoring plan shall include (a) qualitative monitoring (i.e., photographs and general observations); (b) quantitative monitoring (i.e., randomly placed transects); (c) performance criteria, as approved by the resource agencies; (d) monthly reports for the first year and reports every other month thereafter; and (e) annual reports for five years, which shall be submitted to the resource agencies.
7. **Long-term preservation.** Long-term preservation of the site shall also be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development.

The limits of grading shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within marked areas.

The Applicant shall begin riparian habitat restoration activities (e.g., soil prep, seeding) no later than one year after issuance of the first grading permit. The Applicant shall be fully responsible for the implementation of the riparian revegetation program until the restoration areas have met the success criteria outlined in the program. The City and the resource agencies (i.e., the USFWS and the California Coastal Commission) shall have final authority over mitigation area sign-off.

The site shall be monitored and maintained for five years to ensure successful establishment of riparian habitat within the restored and created areas, and the performance criteria shall take least Bell's vireo habitat requirements into consideration. For example, the presence of a shrubby understory is important for this species; thus, performance criteria shall include a requirement for structural complexity.

The Applicant is seeking a Take Authorization through Section 7 of the Federal Endangered Species Act for impacts to habitat for the least Bell's vireo. Prior to issuance of the first action and/or permit that would allow for site disturbance (e.g., grading permit), the Applicant shall provide to the City of Newport Beach a Biological Opinion issued from the U.S. Fish and Wildlife Service (USFWS) authorizing the removal of jurisdictional resources (i.e., potential least Bell's vireo habitat). It is anticipated that the USFWS Biological Opinion would contain conservation recommendations to avoid or reduce the Project's impact. Although additional conservation measures identified by the USFWS shall be enforced, at a minimum, the Construction Minimization Measures listed below shall be followed.

1. Activities involving the removal of riparian habitat shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15) unless otherwise directed by the USFWS and the CDFG.
2. Vegetation-clearing activities shall be monitored by a qualified Biologist. The Biological Monitor shall ensure that only the amount of riparian habitat approved during the consultation process shall be removed. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.
3. The use of any large construction equipment during site grading shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to September 15), unless otherwise directed by the

USFWS and the CDFG. Construction may be allowed within 500 feet of an active nest if appropriate noise measures are implemented, as approved by the resource agencies.

4. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at specified monitoring locations near active nest(s), as determined by the Biological Monitor. This shall be verified by weekly noise monitoring conducted by a qualified Acoustical Engineer during the breeding season (March 15 to September 15) or as otherwise determined by a qualified Biological Monitor based on vireo nesting activity.
5. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFG following completion of construction.

**MM 4.6-6**

***Migratory Bird Treaty Act.*** No vegetation removal shall occur between February 15 and September 15 unless a qualified Biologist, approved by the City of Newport Beach (City), surveys the Project's impact area prior to disturbance to confirm the absence of active nests. If an active nest is discovered, disturbance within a particular buffer shall be prohibited until nesting is complete; the buffer distance shall be determined by the Biologist in consultation with applicable resource agencies and in consideration of species sensitivity and existing nest site conditions. Limits of avoidance shall be demarcated with flagging or fencing. The Biologist shall record the results of the recommended protective measures described above and shall submit a memo summarizing any nest avoidance measures to the City to document compliance with applicable State and federal laws pertaining to the protection of native birds.

To protect bird species on site, any front glass railings, screen walls, fences and gates that occur adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird-strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.

**MM 4.6-7**

**Special Status Plant Species.** The Applicant shall be required 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. The southern tarplant restoration program shall have the requirements listed below.

1. Seed ripeness shall be monitored every two weeks by a qualified Biologist and/or a qualified Seed Collector at the existing southern tarplant locations to determine when the seeds are ready for collection. A qualified Seed Collector shall collect all the seeds from the plants to be impacted when the seeds are ripe. The seeds shall be cleaned and stored by a qualified nursery or institution with appropriate storage facilities.
2. The mitigation site shall be located in dedicated open space on the Project site or at an adjacent off-site mitigation site. The mitigation site shall be prepared for seeding as described in a conceptual restoration plan.
3. The topsoil shall be collected from areas with limited amounts of weeds from the impacted population and re-spread in the selected location, as approved by the qualified Biologist. Approximately 60 to 80 percent of the collected seeds shall be spread in the fall following soil preparation and seed preparation. The remainder of the seeds shall be kept in storage for subsequent seeding, if necessary.
4. The qualified Biologist shall have the full authority to suspend any operation at the site which is, in the qualified Biologist's opinion, not consistent with the restoration program. Any disputes regarding consistency with the restoration program shall be resolved by the Applicant, the qualified Biologist, and the City.

**MM 4.6-8** ***Light-footed Clapper Rail, Western Snowy Plover, Belding's Savannah Sparrow.*** Due to temporary impacts to marsh habitat in the lowland by oilfield remediation activities, a focused survey shall be conducted for light-footed clapper rail, western snowy plover, and Belding's savannah sparrow in the spring prior to the proposed impact to determine if these species nest on or immediately adjacent to the Project site. If any of these species are observed, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission) prior to the initiation of grading or any activity that involves the removal/disturbance of marsh habitat, including clearing, grubbing, mowing, disking, trenching, grading, or any other construction-related activity on the Project site. If any of these species would be impacted, mitigation for impacts on these species shall include replacement of marsh habitat as described in MM 4.6-4. In addition, the measures listed below shall be implemented.

1. Marsh vegetation shall be removed after September 15 and before March 1.
2. If marsh vegetation is proposed for removal prior to September 15, a series of pre-construction surveys shall be conducted to ensure that no light-footed clapper rail, western snowy plover, or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the resource agencies shall be contacted to determine if additional consultation and/or minimization measures are required.
3. A Biological Monitor familiar with light-footed clapper rail, western snowy plover, and Belding's savannah sparrow shall be present during all activities involving marsh vegetation removal to ensure that impacts to marsh habitats do not extend beyond the limits of grading and to minimize the likelihood of inadvertent impacts to marsh habitat. In addition, the Biological Monitor shall monitor construction activities in or adjacent to marsh habitat during the light-footed clapper rail, western snowy plover, and Belding's savannah sparrow breeding season (March 1 to September 15).
4. The limits of disturbance during oilfield cleanup shall be clearly marked, and temporary fencing or other appropriate markers shall be placed around any sensitive habitat adjacent to work areas prior to the commencement of any ground-disturbing activity or native vegetation removal. No construction access, parking, or storage of equipment or materials shall be permitted within the marked areas.

**MM 4.6-9** ***California Gnatcatcher.*** Prior to initiation of grading or any activity that involves the removal/disturbance of coastal sage scrub habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the



Project site, the Applicant shall obtain a Biological Opinion from the U.S. Fish and Wildlife Service to authorize incidental take. Mitigation for impacts on the California gnatcatcher shall include restoration and preservation of 82.91 acres of coastal sage scrub habitat and implementation of the Construction Minimization Measures listed in MM 4.6-1.

**MM 4.6-10** ***Coastal Cactus Wren.*** Impacts on southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub shall be avoided to the maximum extent practicable. If it is determined by the City of Newport Beach (City) during the final grading plan check that impacts on cactus habitat cannot be avoided, the coastal sage scrub mitigation plan shall incorporate cactus into the planting palette at no less than a 1:1 ratio for impacted cactus areas. The Applicant shall submit the coastal sage scrub mitigation plan to the City to verify that an appropriate amount of cactus has been incorporated into the plan. Mitigation for impacts on the coastal cactus wren shall include replacement of coastal sage scrub habitat and implementation of the Construction Minimization Measures described in MM 4.6-1.

**MM 4.6-11** ***Least Bell's Vireo.*** Prior to initiation of grading or any activity that involves the removal/disturbance of riparian habitat, including clearing, grubbing, mowing, disking, trenching, grading or any other construction-related activity on the Project site, the Applicant shall obtain approvals from the resource agencies (i.e., the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [CDFG], and the California Coastal Commission). Mitigation for impacts on the least Bell's vireo shall include (1) replacement of riparian and upland scrub and riparian forest habitat and the Construction Minimization Measures described in MM 4.6-5; (2) protection of nests and nesting birds as described in MM 4.6-6; and (3) any additional provisions imposed by the permitting agencies.

**MM 4.6-12** ***Burrowing Owl.*** Impacts on known burrowing owl burrows and surrounding non-native grasslands shall be avoided to the maximum extent practicable, as determined by a qualified Biologist in coordination with the City of Newport Beach (City). If impacts on grassland habitat occupied by burrowing owl cannot be avoided, mitigation for impacts on the burrowing owl shall include restoration of native grassland habitat, as described in MM 4.6-2.

Within 30 days prior to any ground-disturbing activity to suitable burrowing owl habitat, a focused pre-construction survey shall be conducted to determine the presence or absence of the burrowing owl on the Project site. If the species is not observed, no further mitigation shall be necessary. Results of the survey shall be provided to the California Department of Fish and Game (CDFG).

If an active burrow is observed during the non-nesting season, a qualified Biologist shall monitor the nest site; when the owl is away from the nest, the Biologist shall exclude the owl from the burrow and then remove the burrow so the owl cannot return.

If an active burrowing owl burrow is observed during the nesting season, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. Peak nesting activity for burrowing owl normally occurs from April to July. To protect the active burrow, the following restrictions to construction activities shall be required until the burrow is no longer active (as determined by a qualified Biologist): (1) clearing limits shall be established within a 300-foot buffer around any active burrow, unless otherwise determined by a qualified Biologist and (2) access and surveying shall be prohibited within 200 feet of any active burrow, unless otherwise determined by a qualified Biologist. Any encroachment into the buffer area around the active burrow shall only be allowed if the Biologist determines that the proposed activity shall not disturb the nest occupants. Construction can proceed when the qualified Biologist has determined that fledglings have left the nest burrow.

**MM 4.6-13** **Raptor Nesting.** To the maximum extent practicable, habitats that provide potential nest sites for raptors shall be removed from July 1 through January 31. If Project construction activities are initiated during the raptor nesting season (February 1 to June 30), a qualified Biologist shall conduct a nesting raptor survey. Seven days prior to the onset of construction activities, a qualified Biologist shall survey within the limits of the Project disturbance area for the presence of any active raptor nests (common or special status). Any nest found during survey efforts shall be mapped on the construction plans. If no active nests are found, no further mitigation would be required, and survey results shall be provided to the California Department of Fish and Game (CDFG).

If nesting activity is present, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the *California Fish and Game Code*. To protect any nest site, the following restrictions on construction are required between February 1 and June 30 (or until nests are no longer active, as determined by a qualified Biologist): (1) clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest and (2) access and surveying shall be prohibited within 200 feet of any occupied nest. Any encroachment into the 300- and/or 200-foot buffer area(s) around the known nest shall only be allowed if a qualified Biologist determines that the proposed activity shall not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified Biologist has determined that fledglings have left the nest.

**MM 4.6-14** ***Invasive Exotic Plant Species.*** A qualified Biologist shall monitor any oilfield remediation activities that involve disturbance of native habitat but that would not include removal of the habitat in its entirety. During vegetation removal for remediation activities, the Biological Monitor shall direct the construction crew to remove invasive plant species, including but not limited to pampas grass and giant reed. The Biologist shall also direct the crew on any additional measures that may be needed to eradicate these species, such as removal of roots, painting cut stems with Round-up or other approved herbicide, or follow-up applications of herbicide.

The Applicant shall submit Landscape Plans to the City of Newport Beach (City) for review and approval by a qualified Biologist. The review shall ensure that no invasive, exotic plant species are used in landscaping adjacent to any open space and that suitable substitutes are provided. When the process is complete, the qualified Biologist shall submit a memo approving the Landscape Plans to the City.

**MM 4.6-15** ***Human Activity.*** Prior to issuance of a grading permit, the Applicant shall submit a fencing plan to the City of Newport Beach (City) for review to demonstrate that access to the open space within the lowland shall be limited to designated access points that link to existing trails. To best protect habitat from human activity, fence rails shall be placed along the boardwalk trails. Signs shall be posted along the fence indicating that habitat within the lowland is sensitive because it supports Endangered species. The signage shall also provide information on biological resources within the lowland (e.g., coastal sage scrub, marsh, riparian habitats, and special status species). In addition, signage shall require that dogs be leashed in parks, along trails, and in any areas adjacent to open space.

**MM 4.6-16** ***Urban Wildlands Interface.*** To educate residents of the responsibilities associated with living at the wildland interface, the Applicant shall develop a wildland interface brochure. The brochure shall be included as part of the purchase/rental/lease agreements for the Project residents. The brochure shall address relevant issues, including the role of natural predators in the wildlands (e.g., coyotes' predation of pets) and how to minimize impacts of humans and domestic pets on native communities and their inhabitants (e.g., outdoor cats' predation of native birds, lizards, and small mammals). The brochure shall also address invasive species that shall be avoided in landscaping consistent with MM 4.6-14.

**(2) Potential Impact:** Grading activities could impact several sensitive natural communities on the Project site.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.6-1 through 4.6-4 and MMs 4.6-1, 4.6-3, 4.6-4, and 4.6-5 (set forth above).

**Facts in Support of Finding:** The Project would impact approximately 14.18 acres (12.26 acres permanent, 1.92 acres temporary) of special status coastal sage scrub vegetation. Impacts on these coastal sage scrub 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 community and (2) impacts to these areas would reduce the habitat for the coastal California gnatcatcher and other wildlife species. MM 4.6-1 and PDFs 4.6-1 through 4.6-4 require habitat restoration of permanent impacts to coastal sage scrub (including southern coastal bluff scrub) at a 3:1 ratio and disturbed coastal sage scrub (excluding southern coastal bluff scrub) at a 1:1 ratio either on site or off site. In addition, all temporarily impacted coastal sage scrub would be restored at a 1:1 ratio. In total, 47.75 acres of coastal sage scrub restoration and an additional 35.16 acres of coastal sage scrub would be preserved. MM 4.6-1 also requires the Applicant to follow Construction Minimization Measures TO provide conservation and avoidance actions to reduce the adverse impact to the habitat and associated wildlife species. PDFs 4.6-1 through 4.6-4 require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

The Project would significantly impact approximately 14.44 acres of special status riparian habitats (6.62 acres permanent, 7.82 acres temporary). MMs 4.6-4 and 4.6-5 and PDFs 4.6-1 through 4.6-4 require the restoration and preservation of 48.70 acres of riparian habitat as well as habitat restoration/preservation and indirect effect minimization measures.

The Project is designed to protect the two vernal pool areas that are occupied by San Diego fairy shrimp. The would permanently impact 0.07 acre of ephemeral pool and 0.06 acre of vernal pool habitat in order to remediate the soil and remove the pipelines in these areas. Once the remediation and pipeline removal are completed, the vernal pool areas would be restored and protected. Pipe removal activities would be a significant temporary impact that would be mitigated through preservation and restoration of a 3.58-acre conservation area. This includes enlarging and protecting the pools watershed. The Project would replace a portion of the watershed so that the protected pools and 1.49 acre of contributing watershed would be permanently protected within a 1.85-acre vernal pool conservation area (MM 4.6-3). PDFs 4.6-1 through 4.6-4 are also applicable.

**(3) Potential Impact:** Grading and oil remediation activities could impact jurisdictional areas as follows (some jurisdictional areas overlap): USACE—0.32 acre permanent/3.93 acre temporary; CDFG—1.87 acres permanent/0.05 acre temporary; California Coastal Commission—2.47 acres permanent/6.48 acres temporary.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of Project Design Features (PDFs) 4.6-1 through 4.6-4 and Mitigation Measures (MMs) 4.6-3 through 4.6-5.

**Facts in Support of Finding:** Implementation of MMs 4.6-3, 4.6-4, and 4.6-5, and PDFs 4.6-1 through 4.6-4 would reduce impacts on jurisdictional resources to less than significant levels through habitat restoration and preservation (totaling approximately 52.28 acres). PDFs 4.6-1 through 4.6-4 also require the designation

and methodology of habitat restoration/preservation and indirect effect minimization measures. These features also provide conservation and avoidance value to the habitat and associated wildlife species.

**(4) Potential Impact:** The permanent loss of open space would reduce wildlife movement corridor habitat available for species.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.6-1 through 4.6-5 (set forth above).

**Facts in Support of Finding:** The Project site is adjacent or proximate to the Talbert Marsh, the Santa Ana River, the USACE salt marsh restoration site, and Talbert Park, as well as extensive urbanization in the Project vicinity. Wildlife movement opportunities between the Project site and large areas of open space in the region are already constrained by extensive urbanization in the Project vicinity, security fencing around the Project site, and ongoing use of the Project site as an operating oilfield. The Project would permanently reduce the size of coastal open space (existing operating oilfield) by approximately 205.83 acres. Following oilfield remediation activities within the Upland and Lowland, large contiguous areas would be revegetated and remain contiguous with the USACE salt marsh restoration site, the Santa Ana River, and the Talbert Marsh. The revegetation following oilfield remediation activities would result in a higher-quality habitat resulting from invasive species removal; removal of human activity and disturbance related to oilfield operations; and availability of larger blocks of contiguous native habitat in the open space area. With implementation of MMs 4.6-1 through 4.6-5, this impact would be reduced to a less than significant level.

## **G. Population, Housing, and Employment**

**(1) Potential Impact:** While the Project would result in population growth in the area through the construction of new residences and employment opportunities, the Project would not exceed the growth currently projected for the Project site or exceed regional projections. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 (set forth below) are applicable to the Project.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.7-1 and SC 4.7-2. No mitigation measures were required or recommended.

**Facts in Support of Finding:** The Project's population, housing, and employment growth are within the overall Orange County Projections (OCP-2006) for Orange County and Regional Statistical Area (RSA) F-39. The Project is expected to directly generate 3,012 residents, which would account for approximately 34 percent of the projected growth in the City by 2025 and approximately 27 percent by 2035. The General Plan Housing Element identifies several areas for future housing opportunities including the Project site.

The Project would provide new jobs associated with the neighborhood commercial and resort inn uses. It is assumed that the housing demand generated by these new jobs would be met by (1) existing units in the City; (2) projected future units in the City; (3) proposed on-site units, including affordable housing; and (4) units located

elsewhere in Orange County and the larger SCAG region. Given the mobility of workers within the SCAG region, it is not possible to accurately estimate the housing demand jobs would generate in other parts of the region.

The expected employment generation from the Project would represent approximately 25 percent of the employment generation in the City by 2035; it is expected that the demand for new housing generated from Project employees (422 jobs) could be accommodated by the projected housing growth. Therefore the potential growth associated with Project-generated jobs (construction and operation) would not be significant. While no significant Project impacts have been identified, PDF 4.7-1 and SC 4.7-1 are applicable to the Project.

**PDF 4.7-1** The Master Development Plan includes a range of housing types to meet the housing needs of a variety of economic segments of the community to be designed to appeal to different age groups and lifestyles.

**SC 4.7-1** An Affordable Housing Implementation Plan (AHIP) is required that specifies how the development will meet the City's affordable housing goal.

#### **H. Recreation and Trails**

**(1) Potential Impact:** The Project would increase the demand for park and recreational facilities. The Project includes approximately 51.4 gross acres of parkland, including 21.8 gross acres for a public Community Park, as well as trails through the Project site that connect to the regional trail system. The physical impacts of implementing park and recreational facilities, including the pedestrian and bicycle bridge, are evaluated as part of the overall Project.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth below).

**Facts in Support of Finding:** The City's Park Dedication Ordinance would require 15.06 acres of park or the payment of in-lieu fees; the City's General Plan requires a 20- to 30-acre community park on the Newport Banning Ranch property, although the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements. The General Plan requires that sufficient acreage be available on the Newport Banning Ranch property to comply with the General Plan. The Project would exceed local Quimby Act and General Plan parkland requirements by providing approximately 51 acres of parkland, including a Community Park, consistent with the General Plan. In addition to parkland, the Project includes multi-use trails for pedestrians and bicyclists, on-street bike lanes, and the bridge over West Coast Highway.

**PDF 4.8-1** The Master Development Plan and Tentative Tract Map provide for approximately 51 gross (42 net) acres of public parkland in the form of an approximately 27 gross acre (22 net acre) public Community Park, 2 bluff parks comprising approximately 21 gross (18 net) acres, and 3 interpretive parks containing approximately 4 gross (3 net) acres. Of the approximately 27 gross acres for the

public Community Park, approximately 22 gross (18 net) acres will be offered for dedication to the City which exceeds the City's Municipal Code requirement for park dedication for the 1,375 unit Project, which is approximately 15 acres.

**PDF 4.8-2** The Master Development Plan provides a system of bicycle, pedestrian, and interpretive trails within the developed areas and the Upland and Lowland Open Space areas of the Project.

**PDF 4.8-3** 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.

**SC 4.8-1** The Applicant shall comply with the City of Newport Beach Park Dedication and Fees Ordinance (*City of Newport Beach Municipal Code* Chapter 19.52). The City's tentative map review authority shall determine whether land dedication, an in lieu fee, or a combination of the two shall be required in conjunction with its approval of a tentative map. Land dedications shall be offered at the time of appropriate final map recordation, either on the final map or by separate instrument. The City may further clarify improvement and phasing requirements in a Development Agreement.

**(2) Potential Impact:** The Project would increase the demand for park and recreational facilities; however, since the new recreational facilities provided by the Project exceed City standards, it would prevent the overuse of existing local recreational facilities.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.8-1 through 4.8-3 and SC 4.8-1 (set forth above) and MM 4.10-10.

**Facts in Support of Finding:** The Project would increase the demand for park and recreational facilities; however, the Project includes approximately 51.4 gross (42.1 net) acres of parkland, as well as off-street multi-use trails, on-street bike trails, and a pedestrian and bicycle bridge over West Coast Highway to serve Project residents and the surrounding community (PDFs 4.8-1, 4.8-2, and 4.8-3). Air Quality MM 4.10-10, requires the provision of bicycle spaces as a part of the Project. These recreational facilities provided by the Project would prevent the overuse of existing local recreational facilities. With regard to beaches, trails, and other regional recreational facilities, these facilities are designed to meet the needs associated with countywide projected growth. The Project is consistent with the City's General Plan land use designation for the Project site; therefore, no impact would occur.

**MM 4.10-10 *Bicycle Facilities.*** Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.

- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.
- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

#### **I. Transportation and Circulation**

- (1) **Potential Impact:** The Project would generate traffic that would significantly impact intersections in the cities of Newport Beach and Costa Mesa. The traffic impact analysis identifies significant impacts at one intersection in the City of Newport Beach and up to seven intersections in the City of Costa Mesa.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. PDFs 4.9-1 through 4.9-3, SCs 4.9-2 and 4.9-3, and MM s 4.9-1 and 4.9-2 are applicable. However, Finding 2 identifies that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency”. The City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, traffic improvements that would require the approval of the City of Costa Mesa or Caltrans are considered significant, unavoidable impacts. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** No traffic, other than that associated with limited oilfield operations, is currently generated on or from the Project site. As shown below, multiple traffic scenarios were evaluated. At buildout, the Project is estimated to generate 14,989 trips per day, with 906 trips in the AM peak hour (251 inbound and 655 outbound trips) and 1,430 trips in the PM peak hour (866 inbound and 564 outbound trips). The following summarizes the significant intersection impacts by traffic scenario. Unless mentioned, the Project’s traffic impacts are less than significant and mitigation is not required:

*Existing Plus Project* – The Project is forecasted to significantly impact three intersections in Costa Mesa.



*Year 2016 With Project Traffic Phasing Ordinance (TPO) Analysis* – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa.

*Year 2016 With Phase 1 Project TPO Analysis* – The Project would significantly impact one intersection in Newport Beach and two intersections in Costa Mesa.

*Year 2016 Cumulative With Project* – The Project would significantly impact one intersection in Newport Beach and seven intersections in Costa Mesa. Of the intersections in Costa Mesa, one is a State Highway intersection.

*2016 Cumulative With Phase 1 Project*– The Project would significantly impact to two intersections in Costa Mesa.

*General Plan Buildout* – The Project would significantly impact to two intersections in Costa Mesa.

The Project's Mitigation Program consists of several measures, including road improvements that would be provided by contributions to the applicable jurisdiction's capital improvement program and funded through fees and/or other methods of financing. Where the Project causes a significant traffic-related impact, the Applicant would be responsible for the required mitigation. Where the Project contributes to a significant impact to an intersection, the Applicant would be required to participate in the funding of improvements at the significantly impacted intersection on a fair-share basis. Funds generated by the fair share traffic impact fees are deposited into the City of Newport Beach's Circulation and Transportation Fund account and are used only to construct circulation system improvements identified in the General Plan Circulation Element. It is also important to recognize that the City's Fair Share Fee Ordinance allows for the dedication of right-of-way or the construction of appropriate arterial improvements in lieu of the payment of the fees. Proposed improvements located outside the City of Newport Beach's jurisdiction require agreements with the affected jurisdictions regarding the timing, cost, and fair-share responsibility of the improvements.

The City of Newport Beach cannot impose mitigation on or mandate the implementation of mitigation in another jurisdiction. The Applicant has reached an agreement with the City of Costa Mesa for the payment of fees associated with impacts occurring in Costa Mesa. In correspondence from the City of Costa Mesa to the Applicant dated November 21, 2011, the City of Costa Mesa identifies that both parties have agreed to a mitigation plan that requires the payment of \$4,388,483 to the City of Costa Mesa. Payments would be made by the Applicant to the City of Costa Mesa prior to the issuance of the (1) 301<sup>st</sup> residential building permit; (2) 601<sup>st</sup> residential building permit; (3) 901<sup>st</sup> residential building permit; and (4) 1,201<sup>st</sup> residential building permit. However, the City of Newport Beach cannot ensure that improvements would be made concurrent with or preceding the identified intersection impact in the City of Costa Mesa. Therefore, for purposes of CEQA, the impacts to be mitigated by the improvements would remain significant and unavoidable.

**PDF 4.9-1** In addition to mitigating traffic impacts of the Project, the transportation improvements included in the Master Development Plan provide arterial highway capacity needed to address existing demand as well as for planned growth in the region through

implementing portions of the City's General Plan and the County's Master Plan of Arterial Highways.

**PDF 4.9-2** The Development Agreement requires that arterial roadway improvements and contributions toward off-site improvements be provided earlier in the development phasing program than needed to mitigate Project traffic impacts and requires that contributions toward off-site improvements be provided early relative to the development phasing.

**PDF 4.9-3** The Master Development Plan includes a new arterial connection between West Coast Highway and 19th Street that will provide enhanced access to and from southwest Costa Mesa which will contribute to the mitigation of the impacts of projected regional growth.

**SC 4.9-2** In compliance with Municipal Code Chapter 15.38, Fair Share Traffic Contribution Ordinance, the Applicant shall be responsible for the payment of fair share traffic fees or right-of-way dedication or traffic improvements or a combination thereof.

**SC 4.9-3** ***Traffic Management Plan.*** Prior to issuance of any grading permit, the Applicant shall prepare for City of Newport Beach Traffic Engineer review and approval a Construction Area Traffic Management Plan for the Project for the issuance of a Haul Route Permit. The Plan shall be designed by a registered Traffic Engineer. The Traffic Management Plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The Plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the Project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions.

The Applicant shall ensure that construction activities requiring more than 16 truck (i.e., multiple axle vehicle) trips per hour on West Coast Highway, such as excavation and concrete pours, shall be prohibited between June 1 and September 1 to avoid traffic conflicts with beach and tourist traffic. At all other times, such activities on West Coast Highway shall be limited to 25 truck (i.e., multiple axle vehicle) trips per hour unless otherwise approved by the City of Newport Beach Traffic Engineer. Haul operations shall be monitored by the City of Newport Beach Public Works Department, and additional restrictions may be applied if traffic congestion problems arise. A staging area shall be designated on site for construction equipment and supplies to be stored during construction. No construction vehicles shall be allowed to stage on off-site roads during the grading and construction period.

**MM 4.9-1** Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

**MM 4.9-2** Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

**TABLE A  
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS**

Location		Improvement	Scenario in which Improvements are Needed/Project's Percentage of Fair Share Improvements					
			Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
9	Newport Blvd/West Coast Hwy	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.	n/a	X (45.1%)	X (9.8%)	n/a	n/a	n/a
		Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.						

n/a: Mitigation measure is not required under this traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE B  
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 9: Newport Boulevard/West Coast Highway</b>					
Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.93	E	0.88	D
2016 TPO, Phase 1	AM	0.91	E	0.86	D
2016 Cumulative	AM	0.96	E	0.91	E
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

n/a: not applicable for the traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE C**  
**CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed						
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout	
28	Monrovia Ave/ 19 <sup>th</sup> St	Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required	n/a	X	n/a	X	n/a	n/a
	34	Newport Blvd/ 19th St	Provide a second southbound left-turn on Newport Boulevard. Note: 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 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.	n/a	X	n/a	X	n/a
36		Newport Blvd/ Harbor Blvd	Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.	X	X	X	X	X
	37	Newport Blvd/ 18 <sup>th</sup> St (Rochester St)	Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.	X	X	X	X	X
42		Pomona Ave/ 17 <sup>th</sup> St	Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.	n/a	X	n/a	X	n/a

**TABLE C (Continued)**  
**CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
43 Superior Ave/ 17 <sup>th</sup> St	Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation.	X	X	n/a	X	n/a	n/a
	Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.						
44 Newport Blvd/ 17 <sup>th</sup> St	Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach.	n/a	X	n/a	X	n/a	n/a
	Note: 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 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.						

n/a: Mitigation measure is not required under this traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE D  
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 28: Monrovia Avenue/19<sup>th</sup> Street</b>					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	36.4	E	0.60	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	39.2	E	0.61	B
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 34: Newport Boulevard/19<sup>th</sup> Street</b>					
Assumes the addition of a second southbound left-turn lane on Newport Boulevard.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.91	E	0.85	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	0.91	E	0.85	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	AM	1.01	F	0.99	E
<b>Intersection 36: Newport Boulevard/Harbor Boulevard</b>					
Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.					
Existing + Project	PM	1.05	F	0.87	D
2016 TPO	PM	1.14	F	1.01	F
2016 TPO, Phase 1	PM	1.07	F	0.90	D
2016 Cumulative	PM	1.15	F	0.95	E
2016 Cumulative, Phase 1	PM	1.07	F	0.90	D
General Plan Buildout	PM	1.12	F	0.92	E
<b>Intersection 37: Newport Boulevard/18<sup>th</sup> Street (Rochester Street)</b>					
Assumes the southbound right-turn lane is converted to a southbound shared through/right lane on Newport Blvd.					
Existing + Project	PM	1.05	F	0.88	D
2016 TPO	PM	1.15	F	0.97	E
2016 TPO, Phase 1	PM	1.09	F	0.91	E
2016 Cumulative	PM	1.16	F	0.98	E
2016 Cumulative, Phase 1	PM	1.09	F	0.91	E
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 42: Pomona Avenue/17<sup>th</sup> Street</b>					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	46.3	E	0.54	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	53.3	E	0.56	A
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

**TABLE D  
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 43: Superior Avenue/17<sup>th</sup> Street</b>					
Assumes the westbound approach is converted to provide one left, one shared/left, one through, and one dedicated right-turn lane.					
Existing + Project	PM	0.91	F	0.81	D
2016 TPO	PM	0.98	E	0.87	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.98	E	0.88	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 44: Newport Boulevard/17<sup>th</sup> Street</b>					
Assumes fourth southbound through lane and one dedicated northbound right-turn lane					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	0.91	E	0.88	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.92	E	0.89	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
n/a: not applicable to the traffic scenario Source: Kimley-Horn 2011.					

**(2) Potential Impact:** Implementation of the proposed Project would not increase traffic hazards due to design features or incompatible land uses and would not result in any significant impacts related to circulation or access. The Project would not significantly impact any emergency response evacuation plans.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SC 4.9-1 (set forth below), SC 4.9-3 (set forth above), and MMs 4.9-3 and 4.9-4 (set forth below).

**Facts in Support of Finding:** Because the property is an active oilfield, there are no public roads through the site. The Project would construct Bluff Road and North Bluff Road through the site, connecting West Coast Highway to 19<sup>th</sup> Street, as depicted in the *City of Newport Beach General Plan's* Circulation Element and the Orange County MPAH. Bluff Road would be constructed as a four-lane divided road from West Coast Highway to 15<sup>th</sup> Street. North Bluff Road would be constructed as a four-lane divided road from Bluff Road to the limits of the development area north of 17<sup>th</sup> Street and a two-lane road northward to 19<sup>th</sup> Street. These roadways would intersect with existing local streets to allow for the circulation of Project traffic to/from the Project site and regional traffic through the Project site. Project roads would be designed to be appropriately consistent with the City's Design Criteria, Standard Special Provisions, and Standard Drawings. To facilitate the movement of construction traffic and to minimize potential disruptions, standard conditions and



mitigation, would be applicable to the proposed Project. No significant impacts are anticipated.

**SC 4.9-1** Sight distance at all intersections shall comply with City of Newport Beach standards.

**MM 4.9-3** Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments.

**MM 4.9-4** Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the accessway meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.

**(3) Potential Impact:** The Project includes regulations that require adequate parking for new uses in the Project. The extension of 15<sup>th</sup> Street consistent with the General Plan would displace parking at an existing office building.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.9-5 (set forth below).

**Facts in Support of Finding:** Parking is proposed to meet the City's parking requirements as well as the Coastal Commission's requirement for visitor-serving coastal access parking. All local streets would be public and many would allow for on-street parking; parking would not be permitted on arterials. Any modifications to the off-street parking requirements, including the use of off-site parking facilities, joint-use parking, and/or reductions in the required number of off-street parking spaces for any and all land uses, are permitted pursuant to the provisions of Municipal Code Chapter 20.

The extension of 15<sup>th</sup> Street onto the Project site would displace approximately 25 parking spaces associated with the office building along Monrovia Avenue. MM 4.9-5 requires the Applicant to provide replacement parking for the 25 displaced parking spaces associated with the existing office building in a parking lot in the proposed Community Park site. Replacement spaces would be provided concurrent to or preceding the loss of off-site parking.

**MM 4.9-5** Prior to the displacement of any private parking spaces associated with improvements to 15<sup>th</sup> Street, the Applicant shall be responsible for the construction of replacement parking on the Project site within the Community Park site or in a location immediately proximate to the existing parking lot.

**J. Air Quality**

**(1) Potential Impact:** With respect to potential conflicts with the applicable South Coast Air Quality Management District's (SCAQMD) Air Quality Management Plan (AQMP), the AQMP provides controls sufficient to attain the national and state ozone and particulate standards based on the long-range growth projections for the region. The Project does not exceed the assumptions in the AQMP. Therefore, the Project is in conformance with the AQMP.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no Project Design Features, standard conditions of approval, or mitigation measures were required or recommended.

**Facts in Support of Finding:** The AQMP is based on growth projections agreed to the five affected counties and SCAG. If the total population accommodated by a new project, together with the existing population and the projected population from all other planned projects in the subarea, does not exceed the growth projections for that subarea incorporated in the most recently adopted AQMP, the completed project is consistent with the AQMP. The entire County of Orange is considered to be one subarea. The AQMP is region-wide and accounts for, and offsets, cumulative increases in emissions that are the result of anticipated growth throughout the region. The AQMP assumptions for mobile source emissions are based on assumed trip generation and trip distances, which are, in turn, based upon existing uses and general plans. The assumptions in the AQMP are consistent with the General Plan. The proposed Project does not propose development that exceeds the quantities in the General Plan; therefore, the Project does not exceed the assumptions in the AQMP. Because implementation of the proposed Newport Banning Ranch Project would not exceed growth projections for the subarea, the Project is considered consistent with the AQMP.

**(2) Potential Impact:** Construction emissions would exceed the South Coast Air Quality Management District (SCAQMD) regional threshold for nitrogen oxide (NO<sub>x</sub>) in some of the years of construction. Emissions of all other criteria pollutants and NO<sub>x</sub> emissions in 2018 and 2020 through 2023 would not exceed the SCAQMD CEQA significance thresholds. The exceedance of the NO<sub>x</sub> threshold would occur when remediation in one area of the site would occur concurrently with grading in an area where remediation was completed or not required. Thus, the exceedance would not be continuous for the entire year but limited to periods when the two activities using multiple pieces of heavy equipment would overlap. Localized concentrations of carbon monoxide (CO) concentrations, NO<sub>2</sub>, and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) due to construction activities would not exceed regional thresholds.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of SCs 4.10-1 and 4.10-2, and MMs 4.10-1 through 4.10-9 (set forth below).

**Facts in Support of Finding:** As set forth in the EIR and as clarified and amplified in the responses to comments received by the Planning Commission, construction emissions were calculated using CalEEMod. Compliance with SCAQMD Rules is required; therefore, it is assumed that construction would be performed in

accordance with Rule 403, Fugitive Dust, and Rule 1113, Architectural Coatings (SC 4.10-1 and SC 4.10-2, respectively). To reduce NOx emissions, MMs 4.10-1 through 4.10-4 are incorporated into the Project. MM 4.10-1 requires the use of advanced design diesel-engine driven construction equipment with Tier 3 and Tier 4 certification. MMs 4.10-2 through 4.10-4 are measures commonly recommended by the SCAQMD as good practice on large construction projects for NOx emissions reduction; these measures principally require efficient operations of construction equipment and construction traffic. Emissions reductions with Tier 3 and Tier 4 equipment can be estimated with the CalEEMod model.

Although unmitigated construction emissions would not exceed the CEQA significance thresholds for pollutants other than NOx, MMs 4.10-5 through 4.10-7 provide additional emissions reductions; these measures require dust control, street sweeping, and early road paving to minimize fugitive dust, PM10, and PM2.5 emissions. MMs 4.10-8 and 4.10-9 provide notices to nearby residents of planned grading work and a complaint resolution process.

- SC 4.10-1**     **Dust Control.** During construction of the proposed Project, the Project Developer shall require all construction contractors to comply with South Coast Air Quality Management District's (SCAQMD's) Rules 402 and 403 in order to minimize short-term emissions of dust and particulates. SCAQMD Rule 402 requires that air pollutant emissions not be a nuisance off site. SCAQMD Rule 403 requires that fugitive dust be controlled with Best Available Control Measures so that the presence of such dust does not remain visible in the atmosphere beyond the property line of the emission source. This requirement shall be included as notes on the contractor specifications. Table 1 of Rule 403 lists the Best Available Control Measures that are applicable to all construction projects. The measures include, but are not limited to, the following:
- a. **Clearing and grubbing:** Apply water in sufficient quantity to prevent generation of dust plumes.
  - b. **Cut and fill:** Pre-water soils prior to cut and fill activities and stabilize soil during and after cut and fill activities.
  - c. **Earth-moving activities:** Pre-apply water to depth of proposed cuts; re-apply water as necessary to maintain soils in a damp condition and to ensure that visible emissions do not exceed 100 feet in any direction; and stabilize soils once earth-moving activities are complete.
  - d. **Importing/exporting of bulk materials:** Stabilize material while loading to reduce fugitive dust emissions; maintain at least six inches of freeboard on haul vehicles; and stabilize material while transporting to reduce fugitive dust emissions.
  - e. **Stockpiles/bulk material handling:** Stabilize stockpiled materials; stockpiles within 100 yards of off-site occupied buildings must not be greater than 8 feet in height, must have

a road bladed to the top<sup>4</sup> to allow water truck access, or must have an operational water irrigation system that is capable of complete stockpile coverage.

- f. **Traffic areas for construction activities:** Stabilize all off-road traffic and parking areas; stabilize all haul routes; and direct construction traffic over established haul routes.

Rule 403 defines large operations as projects with 50 or more acres of grading or with a daily earth-moving volume of 5,000 cubic yards at least 3 times in 1 year. The Project is considered a large operation. Large operations are required to implement additional dust-control measures (as specified in Tables 2 and 3 of Rule 403); provide additional notifications, signage, and reporting; and appoint a Dust Control Supervisor. The Dust Control Supervisor is required to:

- Be employed by or contracted with the Property Owner or Developer;
- Be on the site or available on site within 30 minutes during working hours;
- Have the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with all Rule 403 requirements; and
- Have completed the AQMD Fugitive Dust Control Class and have been issued a valid Certificate of Completion for the class.

**SC 4.10-2** **Architectural Coatings.** Architectural coatings shall be selected so that the VOC content of the coatings is compliant with SCAQMD Rule 1113. This requirement shall be included as notes on the contractor specifications.

**MM 4.10-1** **Off-road Construction Equipment Engines.** Prior to issuance of a grading permit, the Applicant/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:

- a. Prior to December 31, 2014: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 3 off-road emissions standards.
- b. After January 1, 2015: All off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 4 off-road emissions standards, where available.
- c. A copy of each unit's certified Tier specification shall be provided at the time of mobilization of each applicable unit of equipment.

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<sup>4</sup> Refers to a road to the top of the pile.

- MM 4.10-2** **Construction Site Design and Operation.** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures or provide information and data that demonstrates that implementation would not be feasible:
- a. Electricity shall come from power poles rather than diesel- or gasoline-fueled generators, compressors, or similar equipment;
  - b. Construction parking shall be configured to minimize traffic interference;
  - c. Construction trucks shall be routed away from congested streets and sensitive receptors;
  - d. Construction activities that affect traffic flow on the arterial system shall be scheduled to off-peak hours to the extent practicable;
  - e. Temporary traffic controls, such as a flag person(s), shall be provided where necessary to maintain smooth traffic flow; and
  - f. Dedicated turn lanes for movement of construction equipment on- and off-site and signal synchronization shall be provided as necessary to maintain smooth traffic flow.
- MM 4.10-3** **Construction Equipment Operation.** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to implement the following measures:
- a. All construction equipment shall be tuned and maintained in accordance with the manufacturer's specifications;
  - b. Diesel truck idling time shall be five minutes or less, both on- and off-site; and
  - c. Work crews shall shut off diesel equipment when not in use.
- MM 4.10-4** **Construction Ridesharing and Transit Incentives.** Prior to issuance of a grading permit, the Landowner/Master Developer shall provide copies of construction documents to the City of Newport Beach showing that these documents include a statement that the construction contractors shall support and encourage ridesharing and transit incentives for the construction crews.
- MM 4.10-5** **Fugitive Dust – Supplementary Measures.** Prior to issuance of each grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents and grading plans include the following:
- a. The contractor shall suspend grading operations when wind gusts exceed 15 miles per hour;

- b. The contractor shall take measures (such as additional watering or the application of chemical suppressants) to stabilize disturbed areas and stockpiles prior to non-work days if windy conditions are forecasted for a weekend, holiday, or other day when site work is not planned.
- c. The contractor shall re-apply water as necessary during grading and earth-moving to ensure that visible emissions do not extend to residences or schools.

**MM 4.10-6** ***Paving of Bluff Road.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction plans and schedule require the construction and paving of Bluff Road between West Coast Highway and 15<sup>th</sup> Street as early as feasible in order to minimize dust generation by vehicles using the roadway.

**MM 4.10-7** ***Fugitive Dust – Street Sweeping.*** Prior to issuance of a grading permit, the Landowner/Master Developer shall demonstrate to the City of Newport Beach that construction documents require the construction contractors to sweep paved roads within and adjacent to the Project site if visible soil materials are carried to the streets. Street sweepers or roadway washing trucks shall comply with SCAQMD Rule 1186 and shall use reclaimed water, if available.

**MM 4.10-8** ***Notification of Receptors.*** The Landowner/Master Developer shall distribute a notice to all residents, schools, and other facilities within 100 feet of the Project site that states the following or similar “the environmental analysis identifies a potential for excess dust pollution for short periods during heavy grading. Extra measures shall be taken to prevent the dust from leaving the Project site, but persons should be aware of the potential for pollution”. This notice may be combined with the notice described in MM 4.10-9.

**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.

**(3) Potential Impact:** Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial Project occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile

organic compounds (VOC) and CO would exceed the significance thresholds, principally due to vehicle operations. The impacts would be significant and unavoidable even with implementation of the PDFs, compliance with Standard Conditions, and implementation of identified mitigation measures.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth below), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5 (set forth below); SC 4.11-1 (set forth below); and MMs 4.10-10 through 4.10-12 (set forth below), this impact cannot be mitigated to a less than significant level. Other than the No Development Alternative, there are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** Operational emissions would begin as residences are occupied (anticipated to commence in 2015). Between 2015 and the anticipated completion (2023), the occupancy and use of residences, retail uses, and other Project components would continue to increase. Over the same period, vehicle emission factors for most gaseous pollutants are anticipated to decline with improved vehicle fleet emissions. Operational emissions of all criteria pollutants in 2017 and 2020 would be less than the SCAQMD CEQA significance thresholds. In 2023, calculated regional emissions of VOC, NO<sub>x</sub>, and CO resulting from Project operation would exceed the SCAQMD CEQA significance thresholds. The emissions of SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> would not exceed the thresholds. Vehicle operations would be the principal source of pollutant emissions, with consumer products as a secondary contributor to the total VOC emissions.

**PDF 4.10-1** The Master Development Plan provides for commercial uses, in the Mixed-Use/Residential and Visitor-Serving Resort/Residential Land Use Districts, within walking distance of the proposed residential neighborhoods and nearby residential areas to reduce vehicle trips and vehicle miles traveled.

**PDF 4.10-2** The Master Development Plan provides a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails.

**PDF 4.11-1** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist 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™.

**PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.

**PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.

**PDF 4.11-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:

- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
- b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
- c. Air conditioning units will be Freon-free.
- d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
- e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
- f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
- g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

**PDF 4.11-5** 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:



- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- 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.

**SC 4.11-1** Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.<sup>5</sup>

**MM 4.10-10** ***Bicycle Facilities.*** Prior to the issuance of building permits for the following specific components of the Project, the Applicant shall demonstrate to the City of Newport Beach that:

- a. The plans for multi-family residences shall identify the provision of a minimum of one on-site bicycle space per ten dwelling units.
- b. The plans for commercial development in the Mixed-use/Residential District shall identify the provision of a minimum of 1 on-site bicycle space per 2,500 gross square feet (gsf) of commercial area.
- c. The plans for resort inn and support commercial areas in the Visitor-Serving Resort District (or visitor-serving commercial if the resort is not built) within the Visitor-Serving Resort/Residential: Provide on-site bicycle rack(s) with a minimum of 1 bicycle space per 2,500 gsf of the resort inn building (or commercial square footage if the resort inn is not built).
- d. Bicycle racks shall support the frame of the bike and not just one wheel; shall allow the locking of the frame and one wheel to the rack; shall be easily usable by both cable and U-locks; and shall be usable by a wide variety of bikes, including those with water bottle cages and with and without kickstands.
- e. There shall be clear access routes from bike lanes to bicycle racks in order to avoid riding through parking lots.

**MM 4.10-11** ***Conservation Education – Mobile Sources.*** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on mobile source emission reduction techniques (such as use of alternative modes of transportation and zero- or low-emission vehicles) to all

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<sup>5</sup> Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow. The homeowners associations shall provide an annual report of conservation educational materials distributed to homeowners to the City of Newport Beach.

**MM 4.10-12 Conservation Education – Consumer Products.** The future homeowners associations for Newport Banning Ranch shall be required to provide educational information on the positive benefits of using consumer products with low or no-volatile organic compounds (VOCs) (such as paint thinners and solvents) to all homeowners as part of purchase closing documents for the purchase of a property and annually after the close of escrow.

**(4) Potential Impact:** Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

**Facts in Support of Finding:** Because the maximum traffic volumes would be substantially less than the 31,600 vehicles per hour screening level, congested intersections are located where mixing of air would not be limited, and because vehicle mix would not be extraordinary, there would be no potential for a CO hotspot or exceedance of State or federal CO ambient air quality standard. The impact would be less than significant and no mitigation measures are required.

**(5) Potential Impact:** The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations of O<sub>3</sub> would be cumulatively considerable.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-2 through 4.11-4 (set forth above); SC 4.11-1 (set forth above); and MMs 4.10-10 through 4.10-12 (set forth above), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** The Project region is in nonattainment for ozone (O<sub>3</sub>), NO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>. After 2020, implementation of the Project could result in long-term emissions of the O<sub>3</sub> precursor VOC and short-term emissions of the O<sub>3</sub> precursor NO<sub>x</sub>, which would exceed the SCAQMD mass emissions thresholds for those pollutants. Long-term NO<sub>x</sub> emissions would not exceed the threshold but are forecasted to be just less than the threshold. Therefore, the Project would cumulatively contribute to a regional concentrations of O<sub>3</sub> which is a significant,

unavoidable impact. PDFs 4.8-3, 4.10-1, 4.10-2, 4.11-2, 4.11-3, and 4.11-4 are applicable. PDF 4.8-3 requires a bridge over West Coast Highway that, if approved, would further reduce VMT. SC 4.11-1 requires construction in accordance with the 2008 Title 24 standards. In order to reduce long-term operational emissions, MM 4.10-10, MM 4.10-11, and MM 4.10-12 would be implemented.

(6) **Potential Impact:** Health risk associated with Toxic Air Contaminants to both off-site and on-site receptors found the cancer risk, the cancer burden, the chronic hazard risk and the acute hazard risk are all below the SCAQMD thresholds

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant and no mitigation measures, project design features, or standard conditions of approval were required or recommended.

**Facts in Support of Finding:** The oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

As a part of the EIR and as clarified and amplified in the responses to comments received by the Planning Commission, a human health risk assessment (HHRA) was conducted to determine potential exposure to Toxic Air Contaminants (TACs) emitted from future oilfield operations and from the combination of emissions from the oilfield and the proposed residential and commercial development. TACs are a diverse group of air pollutants that include both organic and inorganic chemical substances that may be emitted from a variety of sources including industrial operations. TACs are different from the “criteria” pollutants in that ambient air quality standards have not been established for TACs.<sup>6</sup> TACs occurring at extremely low levels may still cause adverse health effects, and it is typically difficult to identify levels of exposure that do not produce adverse health effects. TAC impacts are described by carcinogenic risk, and chronic and acute adverse effects on human health.

The HHRA compared annual TAC emissions to SCAQMD Risk Assessment Procedures Tier 1 thresholds and, where TAC emissions exceed Tier 1 thresholds, a Tier 4 refined air dispersion modeling analysis was conducted to determine TAC exposure concentrations at residential, commercial, and park receptors.<sup>7</sup> An emissions screening level HHRA was performed using the TAC emissions inventories from the consolidation of oil operations and the proposed residential and commercial operations. The Tier 1 HHRA was performed in accordance with SCAQMD air toxics risk assessment procedures for Rules 1401 and 212.

In accordance with the SCAQMD procedures, where the Tier 1 analysis indicated that TAC emissions exceeded the Tier 1 thresholds, then operational risks were

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<sup>6</sup> An exception is that there are ambient standards for lead and vinyl chloride because the CARB classified these pollutants as TACs after they were identified as criteria pollutants.

<sup>7</sup> SCAQMD risk assessment procedures are defined in tiers. The tiers are designed to be used in order of increasing complexity. If compliance cannot be demonstrated using one tier, the analyst may proceed to an appropriate higher tier.

modeled using the USEPA AERMOD dispersion model. Three scenarios were modeled: (1) Baseline Conditions; (2) Proposed Project Conditions (future TAC concentrations at the property's fence line receptors); and (3) Future Oilfield Impact on Development Area (exposure concentration on the Project's residential and commercial areas).

TAC emissions that are anticipated to contribute significantly to cancer/chronic or acute risk are included in the risk assessment calculations using CARB's Hotspots Analysis Reporting Program (HARP). As required by the HARP protocol, the chronic air toxic modeling for fence line, residential, and commercial receptors is conducted for a 70-year period assuming that a person is located at each receptor grid 24 hours per day, 365 days per year for 70 years. The chronic modeling for receptors in recreational areas assumes that the maximum exposure time would be 8 hours per day, 245 days per year. The acute air toxic modeling is conducted for the peak one-hour exposure.

The potential impact to existing off-site receptors was calculated by subtracting the baseline risk from the future risks anticipated to occur after completion of the proposed Project's consolidated oilfield, residential, and commercial areas. Incremental chronic cancer risks and non-cancer hazards reflect the increase or decrease of potential exposures under the future conditions relative to the existing baseline. Because there are no on-site residential, commercial, or recreational uses, the baseline risk is zero, and the total risk from the consolidated oilfield to future on-site represents the incremental risk at these locations.

The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. SCAQMD procedures require that when the maximum individual cancer risk (MICR) is greater than one in one million, the cancer burden is calculated. The USEPA SCREEN3 model was used to determine the area of analysis (the area where the cancer risk would be one in one million or greater). The peak cancer risk for the consolidated oilfield on proposed residential and commercial areas was assumed to apply to the entire population within a radius area defined by the distance at which the cancer risk dropped below one in one million.

The Tier 1 analysis was performed for two cases: (1) Net emissions increase (i.e., future conditions minus the baseline) from the consolidated oilfield and the proposed residential, commercial, and hotel development to off-site receptors 100 meters from the Project fence line and (2) emissions from the future consolidated oilfield to receptors within the Project site (the baseline for this case is zero). Because the Tier 1 analysis indicated that at least one applicable screening index is projected to be greater than 1.0 for each scenario, a Tier 4 analysis was performed.

The HHRA Tier 4 analysis was performed using the AERMOD and HARP models. The scenarios considered were similar to those used for the Tier 1 analysis with the following parameters: (1) for the impact from the Project and oilfield emissions to off-site receptors, the receptors were located at the property boundary (fence line). The exposure time for these receptors (HARP protocol) is assumed to be 24 hours per day, 350 days per year, for 70 years; and (2) for the impact from the oilfield emissions to on-site receptors, separate analyses were made for residential and commercial receptors and for recreational areas. The exposure time for the residential and commercial receptors is assumed to be 24 hours per day, 350 days per year, for 70 years; the exposure time for recreation area receptors is 8 hours per

day, 245 days per year, for 70 years. The Tier 4 analysis indicates that for all scenarios, the Maximum Incremental Cancer Risk (MICR) would be less than 10 in 1 million and the chronic non-cancer and acute hazard indices would be less than 1.0. None of the TAC impact indicators would exceed SCAQMD significance thresholds.

The proposed oilfield consolidation would provide reductions of cancer risk at 40 percent of the fence line receptors, and reduction of the chronic non-cancer health risk at 29 percent of the receptors. The reductions are due to the relocation of oilfield activities away from most of the existing receptors, as well as the decreases in emissions due to the reduction in mobile equipment traveling for the oilfield operations. Decreases in travel time and distance would reduce emissions from diesel engine exhaust and unpaved road dust.

Although all calculated MICR values are less than the 10 in 1 million SCAQMD threshold, SCAQMD procedures require that when the MICR is greater than one in one million, the cancer burden is calculated. The cancer burden is the potential increase in the number of cancer cases for the actual exposed population. The USEPA SCREEN3 model was used to determine the area of analysis, which is the area where the cancer risk would be one in one million or greater. Drawing a rough boundary around the outer edge of the entire Project site (not just the 20-acre consolidated oilfields) captured 19 census tracts in the Cities of Newport Beach, Costa Mesa, and Huntington Beach. These census tracts have a combined population of approximately 86,000. Assuming that everyone in these tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5. The HHRA used very conservative assumptions. Therefore, no significant impacts are anticipated and no mitigation measures were required or recommended.

**(7) Potential Impact:** Odors may be perceived from both construction and long-term operations, but these odors would be typical for the land use and operations. Odors from the oilfields are not anticipated to be perceptible at nearby developed sites.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR through the implementation of MM 4.10-13 (set forth below).

**Facts in Support of Finding:** Field observation at the existing oilfield operations did not detect objectionable odors between 50 and 100 feet from oilfield machinery. Future residences, parks, and other areas where substantial groups of people would gather would be 200 feet or further from the oilfields. Although no odor impacts area anticipated, MM 4.10-13 would provide a mechanism for future homeowners to register odor complaints.

**MM 4.10-13 Odor Complaints.** The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

**K. Greenhouse Gas Emissions**

**(1) Potential Impact:** The Project would make a cumulatively considerable contribution to the global greenhouse gas (GHG) inventory.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by Recreation and Trails PDF 4.8-3 (set forth above), Air Quality PDFs 4.10-1 and 4.10-2 (set forth above), and Greenhouse Gas Emissions PDFs 4.11-1 through 4.11-5; SC 4.11-1; and MMs 4.11-1 through 4.11-6 (set forth below), this impact cannot be mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** The total annual estimated GHG emissions for the proposed Project are 19,392 million metric tons of carbon dioxide equivalent (MMTCO<sub>2</sub>e). The Project would emit quantities of GHGs that would exceed the City's 6,000 MTCO<sub>2</sub>e/yr significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory and would have a cumulatively significant impact on global climate change.

Temporary impacts would result from Project construction activities. GHGs would be emitted by off-road and on-road construction equipment and worker vehicles including remediation, consolidation, and construction activities. The total construction GHG emissions are estimated at 16,851 MTCO<sub>2</sub>e. Operational GHG emissions include mobile sources and operational activities. Reductions would be associated with vehicular reductions that would result from the mixed use, neighborhood walkability, and increased density designs; energy design that would exceed Title 24 requirements; and water conservation design for indoor and outdoor use. These measures would result in an estimated reduction in forecasted buildout annual operational GHG emissions of approximately 25 percent: from 25,359 to 18,949 MTCO<sub>2</sub>e/yr.

The proposed Project is anticipated to include the planting of approximately 9,000 trees inclusive of private residential areas, parks, parkways, and medians. The Project would improve the sequestration capacity of the project site by approximately 3,564 MTCO<sub>2</sub>e. These emissions, similar to construction emissions, are single-event emissions to be amortized over the Project lifetime.

The Project would be consistent with applicable *City of Newport Beach General Plan* policies that would result in minimization of GHG emissions and with measures recommended by the California Attorney General to reduce GHG emissions. Notwithstanding, the Project would emit quantities of GHGs that would substantially exceed the City's 6,000 MTCO<sub>2</sub>e/yr significance threshold. GHG emission reductions resulting from implementation of the SC, PDFs, and the Green and Sustainable Program cannot be reasonably estimated. These reductions would not reduce emissions to less than 6,000 MTCO<sub>2</sub>e/yr. 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.

**PDF 4.11-1** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that the Project be consistent with a recognized green building programs that exist 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™.

**PDF 4.11-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the Project to exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.

**PDF 4.11-3** The Master Development Plan and the Newport Banning Ranch Planned Community Development Plan require the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.

**PDF 4.11-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require that all residential development incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:

- a. Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Homeowners Association (HOA) owned and operated public and/or common area men's restrooms will be required to feature waterless urinals.
- b. Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
- c. Air conditioning units will be Freon-free.
- d. Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.
- e. The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
- f. Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.

- g. Single-family detached residential roofs, commercial building roofs, and HOA owned public building roofs, which have adequate solar orientation shall be designed to be compatible with the installation of photovoltaic panels or other current solar power technology.

**PDF 4.11-5** 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:

- a. Construction waste diversion will be increased by 50 percent from 2010 requirements.
- 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.

**SC 4.11-1** Energy Efficiency Standards. The Project shall be built in accordance with the California 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, commonly identified as the “2008 Title 24 Energy Efficiency Standards” or the version of these standards current at the time of the issuance of each building permit.<sup>8</sup>

**MM 4.11-1** Prior to the issuance of each occupancy permit, the Applicant shall submit for approval to the Community Development Director the plan for the applicable future homeowners association to provide educational information on (1) water conservation; (2) energy conservation, including the use of energy-efficient lighting and the limiting of outdoor lighting; (3) mobile source emission reduction techniques, such as use of alternative modes of transportation and zero- or low-emission vehicles; and (4) the use of solar heating, automatic covers, and efficient pumps and motors for pools and spas to all homeowners prior to individual purchase of property and again annually.<sup>9</sup>

**MM 4.11-2** Prior to the issuance of the building permit for the resort inn and each building permit for a multi-family complex with a swimming pool or spa, the Applicant shall submit for approval to the Community Development Director that the plans incorporate energy efficient heating, pumps and motors.

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<sup>8</sup> Note that PDF 4.11-2 requires the Project to exceed the energy requirements of these standards by at least five percent.

<sup>9</sup> The requirements in this measure are in addition to those of PDF 4.11-4f, but may be distributed and/or grouped together by the homeowners associations. The mobile source emissions component of this measure is the same as MM 4.10-7.



- MM 4.11-3** Prior to the issuance of each building permit, the Applicant shall submit for approval to the Public Works Director that light emitting diode (LED) lights shall be used for traffic lights and LED or similar energy-efficient lighting will be used for street lights and other outdoor lighting.
- MM 4.11-4** Prior to the issuance of each building permit for multi-family buildings, parks, and other public spaces, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of facilities for the collection of recyclable materials consistent with the recycle requirements of the City and the local waste collection contractor.
- 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.
- MM 4.11-6** Prior to the issuance of each building permit for multi-family buildings, commercial building, park, and other public space, the Applicant shall submit for approval to the Community Development Director that the plans include the installation of bicycle parking spaces at each facility. Bicycle spaces for residents and employees shall be easily accessible and secure. Bicycle spaces for visitors and customers, in parks, and in public spaces shall be visible from the primary entrance, illuminated at night, and protected from damage from moving and parked vehicles.

**L. Noise**

**(1) Potential Impact:** Construction activities would result in a substantial temporary increase in ambient noise levels to noise sensitive receptors in the vicinity of the Project. This is a significant, unavoidable impact.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. However, the City has determined that while the above-described impact can be partially mitigated by SC 4.12-1 and MMs 4.12-2 through 4.12-3 (set forth below), this impact cannot be

mitigated to a less than significant level. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant level. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding:** Construction noise would be related primarily to the use of heavy equipment during the grading phase of construction. The Project is anticipated to be implemented over approximately 9 years. MMs 4.12-1 and 4.12-2 would reduce construction noise levels to values consistent with the Federal Transit Administration's construction noise impact guidelines and the construction noise limits established by some jurisdictions. However, even with temporary noise barriers, maximum construction noise events for short periods of time could range up to 40 dBA above the ambient noise levels and average hourly noise levels could be 30 dBA above ambient in areas where the existing ambient noise levels are low (i.e., in the 45 to 50 dBA  $L_{eq}$  range) and construction occurs close to a Project boundary. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receivers, and duration of construction activities, the temporary noise increases would be significant. There would be periodic, temporary, unavoidable significant noise impacts that would cease upon completion of construction activities. MM 4.12-3 would provide notification to residents to allow persons to plan activities to minimize the potential disruption that could be caused by the construction noise.

**SC 4.12-1** To ensure compliance with Newport Beach Municipal Code Section 10.28.040, grading and construction plans shall include a note indicating that loud noise-generating Project construction activities (as defined in Section 10.28.040 of the Newport Beach Noise Ordinance) shall take place between the hours of 7:00 AM and 6:30 PM on weekdays and from 8:00 AM to 6:00 PM on Saturdays. Loud, noise-generating construction activities are prohibited on Sundays and federal holidays.

**MM 4.12-1** Grading plans and specifications shall include temporary noise barriers for all grading, hauling, and other heavy equipment operations that would occur within 300 feet of sensitive off-site receptors and occur for more than 20 working days. The noise barriers shall be 12 feet high, but may be shorter if the top of the barrier is at least one foot above the line of sight between the equipment and the receptors. The barriers shall be solid from the ground to the top of the barrier, and have a weight of at least 2.5 pounds per square foot, which is equivalent to  $\frac{3}{4}$  inch thick plywood. The barrier design shall optimize the following requirements: (1) the barrier shall be located to maximize the interruption of line of sight between the equipment and the receptor, which is normally at the top of slope when the grading area and receptor are at different elevations. However, a top of slope location may not be feasible if the top of slope is not on the Project site; (2) the length and of the barrier shall be selected to block the line of sight between the grading area and the receptors; (3) the barrier shall be located as close as feasible to the receptor or as close as feasible to the grading area; a barrier is least

effective when it is at the midpoint between noise source and receptor.

If preferred by the developer or contractor, the construction of a temporary earth berm may be used as the noise barrier. Earth berms provide greater noise reduction than wood or masonry walls of the same height.

A temporary noise barrier shall not be required when it is demonstrated to the Community Development Department, Building Division Manager or his/her designee that a barrier would not be feasible. Reasons may include, but not be limited to (1) the barrier would cause impacts more severe than the construction noise, (2) the barrier would interfere with the construction work, and (3) a property owner refuses to allow the barrier.

**MM 4.12-2** Prior to the start of grading, the Construction Manager shall provide evidence acceptable to the City of Newport Beach Public Works Director and/or Community Development Director, that:

- a. All construction vehicles or equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers; mufflers shall be equivalent to or of greater noise reducing performance than manufacturer's standard.
- b. Stationary equipment, such as generators, cranes, and air compressors, shall be located as far from local residences and the Carden Hall School as feasible. Where stationary equipment must be located within 250 feet of a sensitive receptor, the equipment shall be equipped with appropriate noise reduction measures (e.g., silencers, shrouds, or other devices) to limit the equipment noise at the nearest sensitive residences to 65 dBA  $L_{eq}$ .
- c. Equipment maintenance, vehicle parking, and material staging areas shall be located as far away from local residences and the Carden Hall School as feasible.

**MM 4.12-3** At least two weeks prior to the start of any grading operation or similar noise generating activities within 300 feet of residences or the Carden Hall school, the contractor shall notify affected residents and the school of the planned start date, duration, nature of the construction activity, and noise abatement measures to be provided. The notification shall include a contact telephone number for questions and the submittal of any complaints of excess, unanticipated noise.

**(2) Potential Impact:** The increased traffic volumes on local roads associated with the Project would expose off-site sensitive receptors to increased noise levels in excess of City of Newport Beach standards for changes to ambient noise levels.

**Finding:** The City hereby makes Finding 1 that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. MM 4.12-5 (set forth

below) is applicable to noise impacts in the City of Costa Mesa. SC 4.12-4 is applicable to public streets in the City of Newport Beach (set forth below). MMs 4.12-6 and 4.12-7 (set forth below) are applicable to noise impacts on private properties in the City of Newport Beach. However, Finding 2 identifies that “Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency”. The City of Newport Beach cannot impose mitigation on another jurisdiction or on private property. Therefore, noise mitigation that would require the approval of the City of Costa Mesa or occur on private property is considered a significant, unavoidable impact. There are no other feasible mitigation measures or alternatives that would reduce this impact to a less than significant. Therefore, the City hereby also makes Finding 3 which would require the adoption of a Statement of Overriding Considerations as a condition of Project approval.

**Facts in Support of Finding – Costa Mesa:** Noise sensitive uses adjacent to the 17<sup>th</sup> Street road segment west of Monrovia Avenue include six single-family residences that have front yards and side yards facing 17<sup>th</sup> Street. Because the single-family residences front onto 17<sup>th</sup> Street and driveway access from the streets to these homes is needed, the construction of sound walls would not be effective because a continuous wall is necessary for noise abatement. MM 4.12-5 provides funds to resurface 17<sup>th</sup> Street west of Monrovia Avenue and 15<sup>th</sup> Street west of Placentia Avenue with rubberized asphalt as required. Noise level increases to sensitive receptors adjacent to off-site roadways would be reduced to a less than significant level. However, because the City of Newport Beach does not have the authority to mandate the implementation of mitigation in the City of Costa Mesa, the impact is considered significant and unavoidable.

**Newport Beach Public Property.** Project traffic noise could significantly impact several residential patios and balconies and apartment units along adjacent to 15<sup>th</sup> Street west of Placentia Avenue. MM 4.12-5 would require the Applicant would provide funds to the City of Newport Beach for the installation of rubberized asphalt pavement. The estimated 4 dBA noise reduction provided by the pavement would reduce the impact to a less than significant level.

**Newport Beach Private Property.** The roadways were assumed to be paved with rubberized asphalt in accordance with SC 4.12-4. At Newport Crest, future noise levels would exceed existing noise levels by 8.6 to 16.1 dBA at Newport Crest receptor locations. Because future cumulative noise levels would be 5 or more dBA greater than the existing noise levels, the cumulative impact would be significant. MM 4.12-6 would reduce noise levels to the “Clearly Compatible” and “Normally Compatible” ranges defined in the City of Newport Beach General Plan although the forecasted exterior noise level increases of 5 dBA or greater are substantial when compared to existing noise levels. Although exterior and interior noise levels would meet State and local compatibility standards with MM 4.12-6, the degree of noise increases require the consideration of further feasible mitigation. MM 4.12-7 requires windows with improved noise reduction capability and second floor balconies noise barriers. The City cannot mandate improvements on private property. Therefore, for purposes of CEQA, the Project would result in a significant unavoidable noise impact because the City cannot be assured that the recommended mitigation can be implemented. Noise levels at other off-site sensitive land uses would be less than significant.

- SC 4.12-4** In accordance with City of Newport Beach standards, rubberized asphalt, or pavements offering equivalent or better acoustical properties shall be used to pave all public arterials on the Project site and all off-site City of Newport Beach roads where improvements would be provided or required as a part of the Project.
- MM 4.12-5** The Applicant shall provide evidence that funds have been deposited with the City of Newport Beach associated with the cost of one-time resurfacing 15<sup>th</sup> Street west of Placentia Avenue with rubberized asphalt. The Applicant shall provide evidence to the City of Newport Beach that funds have been deposited with the City of Costa Mesa associated with the cost of one-time resurfacing 17<sup>th</sup> Street west of Monrovia Avenue with rubberized asphalt.
- MM 4.12-6** Prior to the approval of a grading permit for Bluff Road and 15<sup>th</sup> Street, the Applicant shall demonstrate to the City of Newport Beach that the Project plans and specifications require the construction and installation of a noise barrier to reduce future traffic noise from the Bluff Road and 15<sup>th</sup> Street to the Newport Crest residences. The Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer, of the proposed barrier, which may be a wall, an earth berm, or a berm-wall combination. The noise barrier, at a minimum, shall reduce forecasted future ground floor residential exterior noise levels to 60 dBA CNEL and second floor residential noise levels to 65 dBA CNEL. The barrier shall be solid from the ground to the top with no decorative cutouts and shall weigh at least 3.5 pounds per square foot of face area. The barrier may be constructed using masonry block, ¼ inch thick glass, or other transparent material with sufficient weight per square foot.
- MM 4.12-7** Prior to the issuance of a grading permit for Bluff Road and/or 15<sup>th</sup> Street, the Applicant shall provide written notice to affected residents of an offer of a program (Program) for the retrofit and installation of dual pane windows/sliding doors on the façade facing the Newport Banning Ranch property. The Program offer shall only apply to the owners of the residences (Owners) with rear elevations directly adjacent to the Newport Banning Ranch property in the western and northern boundaries of Newport Crest Condominiums impacted by significant noise levels (significant being a cumulative increase over existing conditions greater than 5 dBA) associated with the Project as determined by a licensed Acoustical Engineer. Improvements shall be subject to the approval of the Newport Crest Homeowners Association (Association) and Owners. The Applicant shall be responsible for the implementation of the Program pursuant to the following provisions and guidelines: (i) in order to participate in the Program and receive new windows/sliders, each participating Owner must provide written notice to the Applicant within 45 days following receipt of the proposed Program from the Applicant, that the

Owner wants to participate in the Program; (ii) failure to respond within such time period shall mean the Owner desires not to participate; (iii) following receipt of written notice from participating Owners, the Applicant shall obtain a cost estimate and submit written specifications from a licensed and bonded window contractor to the Owners and the Association for design/architectural approval; (iv) following receipt of design/architectural approval from the Owners and the Association of written specifications, the Applicant shall enter into a contract with a qualified, licensed and bonded contractor for the installation of windows/sliders to the participating Owners' condominiums as part of one overall Program pursuant to the contract between the Applicant and the contractor; (v) the total cost of the Program shall be paid by the Applicant on behalf of the Owners in an amount not exceed the total cost identified in the cost estimate approved by the Applicant. Nothing in Mitigation Measure 4.12-7 shall prohibit the City from issuing a grading permit for Bluff Road or 15<sup>th</sup> Street in the event any or all Owners decline to participate in the Program.

**(3) Potential Impact:** Traffic noise levels has the potential to impact certain sensitive (i.e., residential and resort inn) land uses within the Project site.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-3 (set forth below) and SC 4.12-4 (set forth above) and MM 4.12-8 (set forth below).

**Facts in Support of Finding:** Project-related traffic noise levels to exceed 65 dBA CNEL at exterior receptors within the (1) South Family Village adjacent to Bluff Road and North Bluff Road; (2) North Family Village west of North Bluff Road between 16<sup>th</sup> Street and 17<sup>th</sup> Street; and (3) Urban Colony east of North Bluff Road. SC 4.12-3 requires that interior noise levels at new residential and hotel uses to meet the applicable interior noise standards. SC 4.12-4 requires the application of rubberized asphalt for pavement of public arterials within the Project site and off-site public roads where improvements are proposed or required, minimizing noise impacts to adjacent existing and future uses. MM 4.12-8 requires the preparation of an acoustical study to demonstrate that the exterior living areas of proposed residential developments would be exposed to noise levels below 65 dBA CNEL prior to tract map approval for residential uses.

**SC 4.12-3** All residential and hotel units shall be designed to ensure that interior noise levels in habitable rooms from exterior transportation sources (including aircraft and vehicles on adjacent roadways) shall not exceed 45 dBA CNEL. This SC complies with the applicable sections of the California Building Code (Title 24 of the *California Code of Regulations*) and, for single-family detached residences, exceeds the requirements of Section 10.26.025 of the Noise Ordinance. Prior to granting of a building permit, the Developer/Applicant shall submit to the City of Newport Beach Community Development Department, Building Division Manager or his/her designee for review and approval architectural plans and an accompanying noise study that demonstrates that interior

noise levels in the habitable rooms of residential units due to exterior transportation noise sources would be 45 dBA CNEL or less. Where closed windows are required to achieve the 45 dBA CNEL limit, Project plans and specifications shall include ventilation as required by the California Building Code.

**MM 4.12-8** Prior to final map recordation for the residential areas adjacent to Bluff Road and North Bluff Road, including the Urban Colony, the Applicant shall provide an acoustical analysis prepared by a qualified Acoustical Engineer to the City of Newport Beach for review and approval. The analysis shall demonstrate that the residential exterior living areas including, but not limited to swimming pools, playgrounds, and patios, would be exposed to noise levels below 65 dBA CNEL. The acoustical analysis shall also demonstrate that the North Community Park has been designed such that permitted park activities would not exceed the City's Noise Ordinance standards at residential exterior living areas. This can be accomplished through site design or the construction of noise barriers. Barriers may be constructed using an earth berm, wall, or berm-wall combination. Walls may be masonry block, 1/4-inch-thick glass, or other transparent material with sufficient weight per square foot.

**(4) Potential Impact:** Potential long-term stationary noise impacts would be associated with residential uses, commercial uses at the mixed-use development, operations at the proposed resort inn, the Community Park, and consolidated oil operations.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of SC 4.12-2 (set forth below) and MMs 4.12-8 (set forth above) through 4.12-11 (set forth below).

**Facts in Support of Finding:** Stationary source noise is regulated through the Cities of Newport Beach and Costa Mesa Noise Ordinances; the standards are the same for both cities. Potential stationary-related noise impacts associated with residential uses include the operation of air conditioning units and outdoor activities. Potential long-term stationary noise impacts with the Project's mixed-use residential area would be occur primarily with loading dock activities, including truck deliveries; operation of mechanical equipment, including exterior ground-mounted and rooftop HVAC units; parking lot activity; and noise from restaurant and entertainment establishments. With respect to the resort inn, the closest residential area nearest would be approximately 100 feet north of the northern boundary of the resort inn section of the Resort Colony area. The location of outdoor activity areas at the resort inn has not been defined but because the inn entrance would be at the north end and the most attractive views would be to the south and west, it is likely that outdoor activities would be on the southern portion of the resort inn and separated from the residential areas by both distance and buildings. No impacts to the residential areas are anticipated. Further, compliance with the Noise Ordinance is required for the resort inn operators. With respect to the North Community Park, all field and court lighting would shut off at 10:00 PM; only passive use such as walking would be anticipated to occur from 10:00 PM until 11:00 PM. Activities at the park would not exceed the City of Newport Beach limits included in the City's Noise Ordinance.

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. 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 requires the use of noise reduction strategies to minimize drilling noise.

**SC 4.12-2** HVAC units shall be designed and installed in accordance with Section 10.26.045 of the Newport Beach Noise Ordinance, which specifies the maximum noise levels for new HVAC installations and associated conditions.

**MM 4.12-9** Truck deliveries and loading dock activities in commercial areas of the Project shall be restricted to between the hours of 7:00 AM and 10:00 PM on weekdays and Saturdays and shall be restricted to between the hours of 9:00 AM and 10:00 PM on Sundays and federal holidays. Moreover, the Project Applicant/Developer or his successors and assignees shall specify in the contract for each operator of a commercial space that truck deliveries and loading dock activities shall be restricted to these specified hours.

**MM 4.12-10** Loading docks shall be sited to minimize noise impacts to adjacent residential areas. If loading docks or truck driveways are proposed as part of the Project's commercial areas within 200 feet of an existing home, an 8-foot-high screening wall shall be constructed to reduce potential noise impacts.

**MM 4.12-11** Prior to the approval of a permit by the California Department of Conservation, Department of Oil, Gas, and Geothermal Resources (DOGGR) for the drilling of replacement oil wells in the Consolidated Oil Facility, the Applicant shall provide to the City of Newport Beach descriptions of the noise reduction methods to be used to minimize drilling activity noise. These methods may include, as feasible, but not be limited to (1) use of electric power in place of internal combustion engines, and (2) acoustical blankets or similar shielding around elevated engines on drill rigs.

**(5) Potential Impact:** Vibration may be noticeable for short periods during construction, but it would be temporary and periodic

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant as a result of implementation of MM 4.12-4 (set forth below).

**Facts in Support of Finding:** Construction activities can generate varying degrees of groundborne vibration depending on the construction procedures and equipment used. Groundborne vibration from construction activities rarely reaches levels that can damage structure. Unless there are extremely large generators of vibration, such as pile drivers, or receptors in close proximity to construction equipment, vibration is generally only perceptible at structures when vibration rattles windows, picture frames, and other projects. The existing Newport Crest condominiums and the California Seabreeze residential community adjacent to the Project site would be considered older residential structures for vibration impact assessment. The



operation of large bulldozers and vibration rollers operating at the property boundary at ten feet from a residential structure has the potential to cause structural damage. MM 4.12-4 prohibits the operation of large bulldozers and vibratory rollers within 25 feet of any existing residence, and would reduce the potential impact to a less than significant level.

**MM 4.12-4** During construction, the operation of large bulldozers, vibratory rollers, and similar heavy equipment shall be prohibited within 25 feet of any existing off-site residence.

## **M. Cultural and Paleontological Resources**

**(1) Potential Impact:** The Project would not impact any known historical resources. Grading and excavation could impact unknown historical resources.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MM 4.13-1 (set forth below).

**Facts in Support of Finding:** The historical resources (eight buildings and their adjacent elements) on the Project site were formally evaluated. None were found to be eligible for listing in the California Register of Historical Resources (CRHR) or the National Register of Historic Places (NRHP). The Project would not impact any known significant historical resources. Although no impacts are anticipated to historical resources, MM 4.13-1 requires that an archaeologist monitor grading and excavation activities in the event that unknown historic resources are uncovered during these activities. The archaeologist would have the ability to temporarily halt or redirect work to permit the sampling, identification, and evaluation of the artifacts and resources.

**MM 4.13-1** Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Archaeologist to observe grading activities and to salvage and catalogue archaeological and historic resources, as necessary. The Archaeologist shall be present at the pre-grade conference; shall establish procedures for archaeological resource surveillance; and shall establish, in cooperation with the Applicant/Contractor, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts, as appropriate. If archaeological and/or historic resources are found to be significant, the Archaeologist shall determine appropriate actions, in cooperation with the City and Applicant/Contractor, for exploration and/or salvage. These actions, as well as final mitigation and disposition of the resources, shall be subject to the approval of the Community Development Director.

Based on their interest and concern about the discovery of cultural resources and human remains during Project grading, a qualified Native American Monitor(s) shall be retained to observe some or all grading activities.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer who is qualified to monitor for both archaeological and paleontological resources.

**(2) Potential Impact:** Grading and oilfield remediation activities would impact three known archeological sites and could impact unknown resources.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SC 4.13-1 (set forth below), MM 4.13-1 (set forth above), and MM 4.13-2 (set forth below).

**Facts in Support of Finding:** The Project site includes 11 archaeological sites including 3 sites that would be impacted by the Project. Archaeological sites (CA-ORA-839, CA-ORA-844B, and CA-ORA-906) are considered eligible for listing on the CRHR and the NRHP. Disturbance activities could also impact unknown resources. The removal of oilfield-related infrastructure would adversely impact portions of CA-ORA-839 and CA-ORA-844B. All reasonable efforts would be made to ensure minimal impact or avoidance as feasible to these archaeological sites. CA-ORA-906 would be directly impacted by development as well as by oilfield infrastructure removal. MM 4.13-1 requires that an archaeologist monitor grading and excavation activities. MM 4.13-2 is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. There is no indication that there are burials present on the Project site. Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition. In the event that human remains are discovered during grading activities, SC 4.13-1, which addresses procedures to follow in the event of a discovery of suspected human remains. All impacts to these resources can be mitigated to a less than significant level.

**SC 4.13-1** In accordance with Section 7050.5 of the *California Health and Safety Code*, if human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or are believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 24 hours. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendents shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner(s), the disposition of the human remains.

**MM 4.13-2** The State CEQA Guidelines (14 CCR §15126.4[b][3]) direct public agencies, wherever feasible, to avoid damaging historical

resources of an archaeological nature, preferably by preserving the resource(s) in place. Several possibilities suggested by the State CEQA Guidelines include (1) planning construction to avoid the site; (2) incorporating the site into open space; (3) capping the site with a chemically stable soil; and/or (4) deeding the site into a permanent conservation easement.

The following is applicable for the three sites deemed eligible for listing on the CRHR or the NRHP as historical resources. Only CA-ORA-839 is also considered a unique archaeological resource. In this instance, mitigation is the same for both types of resources.

#### CA-ORA-839

It should be possible to preserve the vast majority of the site in place in perpetuity to avoid further disturbance to it. However, it appears that the planned removal of oilfield infrastructure may impact portions of the site. In that event, the site shall undergo a data recovery excavation of those areas that would be impacted.

#### *Research Design/Treatment and Mitigation Plan*

A Research Design/Treatment and Mitigation Plan (data recovery plan) shall be prepared by a qualified Archaeologist and approved by the City of Newport Beach Community Development Director prior to any excavation being undertaken. The Plan shall explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer;

#### *Data Recovery*

Data recovery excavation shall be completed prior to Project grading and shall be designed to recover the consequential data present on the site. Data recovery shall be sufficient to collect a representative sample of site constituents, including organic materials, to permit additional absolute dating of the deposit. The study shall include:

- a. Excavation of a sufficient number of Control Units and shovel test pits (STPs) to recover a representative sample of site constituents;
- b. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered;
- c. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study; and
- d. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

#### *Capping*

In addition, secondary impacts (e.g., increased foot traffic, erosion) could occur at the site after the Project has been constructed; therefore, the site shall be capped with chemically

stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;
- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the new land surface and to prevent future erosion at the cap surface;
- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

#### CA-ORA-844 Locus B

CA-ORA-844B is not expected to be directly impacted by development. Oil infrastructure removal activities that would occur prior to grading are expected to adversely impact portions of the site. Indirect impacts from additional erosion of the unstable surface and increased population in the vicinity of the site as a result of the future development could cause further damage over time.

Both capping and data recovery excavation are viable options for treating the site; however, because it has been disturbed by erosion and oil extraction activities, capping the deposit would be

difficult and possibly more expensive and time consuming and may produce less desirable results than data recovery excavation. Considering these circumstances, two options are provided: (1) successful capping of the site, while likely difficult to accomplish, would be designed to protect the site in perpetuity or, preferably, (2) data recovery shall be undertaken prior to grading to collect the scientifically consequential data that is present in the site since it appears that only a small, yet important, portion of the site remains. Because of the limited size of this site, this option would enable the removal and analysis of the site in its entirety.

Capping the deposit or data recovery would result in temporary impacts to approximately 0.92 acre of coastal sage scrub (0.29 acre of encelia scrub and 0.63 acre of cactus scrub). The Mitigation Program set forth in Section 4.6, Biological Resources, addresses this impact.

#### *Capping*

If option 1 is chosen, the site shall be capped with chemically stable soil to preserve it in perpetuity. During grading operations, excess dirt shall be placed on the site to a sufficient depth to protect the deposit, but not cause unintended damage to it. Shallow-rooted vegetation (such as native coastal sage scrub) may be planted on the new surface. To ensure the integrity of the archaeological deposit, the current ground surface shall initially be covered with some form of horizon marker (e.g., by *Mirafi*, a polypropylene geotextile) to prevent the deposit from mixing with the covering material and to serve as a marker of the site if the covering is ever removed. The following relies on guidance provided by the National Park Service's Brief #5 *Intentional Site Burial: A Technique to Protect Against Natural or Mechanical Loss* (NPS 1989, revised 1991).

The capping program must include submittal to the Community Development Department of a Site Capping Plan that includes:

- a. An evaluation by a qualified Archaeologist of the classes of archaeological components to be preserved and their suitability for preservation;
- b. An analysis by a qualified Soils Scientist of the pH levels, compression strength, and permeability of the horizon marker and capping material to be used to ensure they fit the preservation needs of the site's constituents;
- c. Formulation of a plan by a qualified Civil/Structural Engineer that details how the cap would be physically constructed to ensure that (1) hydraulic changes over time, (2) erosion, and (3) the physical placement of the cap itself do not adversely impact the deposit;
- d. Archaeological monitoring during placement of the capping material;
- e. A Revegetation Plan, prepared by a qualified Biologist/Restoration Specialist, that is designed to help stabilize the

new land surface and to prevent future erosion at the cap surface;

- f. A plan of future monitoring of the site to ensure the long-term success of the capping program; and
- g. A report detailing the results of the capping effort.

#### *Data Recovery*

If option 2 is selected, data recovery excavation at CA-ORA-844B shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove site constituents. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.
- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a Data Recovery Excavation/Mitigation Report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

#### CA-ORA-906

CA-ORA-906 would be directly impacted as a result of development as well as oil infrastructure removal. Data recovery excavation at the site shall be completed prior to Project grading and shall be designed to recover the consequential data present in the site and to remove the site constituents. Mitigation shall be in the form of data recovery excavation to collect the scientifically consequential data that the site retains prior to its destruction by Project grading. The study shall include:

- a. Development of a Research Design/Treatment and Mitigation Plan to explicitly lay out the methods to be used in the excavation and the scientifically consequential questions that the study will hope to answer.
- b. Excavation of a sufficient number of Control Units and STPs to recover a representative sample of site constituents.

- c. Controlled demolition/removal of the site by a small scraper under the direction of a qualified Archaeologist to ensure the removal of all midden and other cultural constituents of the site. Controlled demolition permits the discovery and recovery of larger features not typically found during hand excavation and reduces the number of hand-excavated control units necessary.
- d. Laboratory analysis of all recovered materials and creation of a computerized database of artifacts recovered.
- e. Completion of a data recovery excavation/mitigation report detailing the results of the study.
- f. Curation of excavated cultural material in a museum or other scientifically accredited institution that would make the collections available to future researchers.

**(3) Potential Impact:** Grading and oilfield remediation activities would impact significant paleontological resources.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of MMs 4.13-3 and 4.13-4 (set forth below).

**Facts in Support of Finding:** Fossil sites have been recorded in two mapped units that underlie the site. San Pedro Sand and Palos Verdes Sand are considered to have high paleontological sensitivity; the Quaternary younger alluvium is of low paleontological sensitivity. The Project site contains paleontological resources exposed in natural outcrops, borrow areas, and drainages over most of the site. MM 4.13-3 requires that a qualified paleontologist monitor the grading and excavation activities and conduct salvage excavation as necessary. If any scientifically important large fossil remains are uncovered, the paleontologist would have the authority to divert heavy equipment away from the fossil site. MM 4.13-4 requires a paleontological survey be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. Significant impacts can be mitigated to a less than significant level.

**MM 4.13-3** Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant/Contractor shall provide written evidence to the City of Newport Beach Community Development Department that the Applicant/Contractor has retained a qualified Paleontologist to observe grading activities and to conduct salvage excavation of paleontological resources as necessary. The Paleontologist shall be present at the pre-grading conference; shall establish procedures for paleontological resources surveillance; and shall establish, in cooperation with the City, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the fossils as appropriate.

Any earth-moving activity associated with development, slope modification, or slope stabilization that requires moving large

volumes of earth shall be monitored according to the paleontological sensitivity of the rock units that underlie the affected area. All vertebrate fossils and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites that yield vertebrates should be excavated, and approximately 2,000 pounds (lbs) of rock samples should be collected to be processed for microvertebrate fossil remains.

If any scientifically important large fossil remains are uncovered during earth-moving activities, the Paleontologist shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Paleontologist shall be equipped to rapidly remove fossil remains and/or matrix (earth), and thus reduce the potential for any construction delays.

If scientifically important fossil remains are observed and if safety restrictions permit, the Construction Contractor shall allow the Paleontologist to safely salvage the discovery. At the Paleontologist's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any construction delays.

All fossils shall be documented in a detailed Paleontological Resource Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the Natural History Museum of Los Angeles County (LACM) or the San Diego Natural History Museum.

Because of slope modification, fossil-bearing exposures of the Quaternary marine deposits may be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved for educational and scientific purposes.

**MM 4.13-4**

Prior to the issuance of the first grading permit and/or action that would allow for Project site disturbance, a paleontological survey shall be conducted to record all paleontological resources present at the surface for those portions of the Project site where grading would occur that would affect Quaternary San Pedro Sand and Quaternary Palos Verdes Sand. A qualified Paleontologist shall make collections of exposed fossils from lithologic units of high paleontologic significance, especially in areas where access to fossil sites is not permitted because of slope modification. All vertebrate and representative samples of megainvertebrates and plant fossils shall be collected. Productive sites yielding vertebrates should be excavated, and approximately 2,000 lbs of rock samples shall be collected to process for microvertebrate fossil remains. Dry screening of fossil marine shell horizons in the Quaternary terrace deposits and San Pedro Sand with 1/8-inch archaeological field screens shall be conducted to recover rare types of fossil marine mollusks, bony fish, sharks, reptiles, birds, and marine and terrestrial mammals. All fossil sites shall be tied to



detailed measured sections showing sedimentary structures and relationships with over- and underlying rock units.

- a. For San Pedro Sand, prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a qualified Paleontologist shall prepare a detailed mitigation plan to sample the existing paleontological sites that would be affected by slope modification. The plan shall be developed in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) in order to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence must be made. Bulk sampling that is collected from matrix or sediment to recover rare invertebrates, marine vertebrates, and terrestrial vertebrates must also be part of the mitigation plan.
- b. For Quaternary marine terrace deposits (Palos Verdes Sand), prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, a detailed mitigation plan must be developed to sample the existing paleontological sites that would be affected by slope modification. This shall be conducted in consultation with a local museum (e.g., the LACM or the San Diego Natural History Museum) to describe the size of the sample, methods of collection and processing, stratigraphic information, and other pertinent information. A bulk sample of at least 100 lbs per fossil site shall be processed through fine screens, and all identifiable fossils shall be sorted from the concentrate. Detailed measured geologic sections placing the fossil sites in a stratigraphic sequence shall be made. Bulk sampling, collecting, water screening, or dry screening of sediments that contain rare invertebrates, marine vertebrates, and terrestrial vertebrates shall be part of the mitigation plan.
- c. A qualified Paleontologist shall be notified and retained when earth-moving activities are anticipated to impact undisturbed deposits in the San Pedro Sand and Palos Verdes Sand. The designated Paleontologist shall be present during construction activities on a full-time basis to assess whether scientifically important fossils are exposed. Part-time monitoring is recommended in Younger Alluvium. If any scientifically important, large fossil remains are uncovered during earth-moving activities, the Paleontological Monitor shall divert heavy equipment away from the fossil site until s/he has had an opportunity to examine the remains. If warranted, a rock sample shall be collected for processing. The Monitor shall be equipped to allow for the rapid removal of fossil remains and/or matrix (earth), and thus reduce the potential for any

construction delays. At the Monitor's discretion, the Grading Contractor may assist in the removal of the fossil remains and rock sample to reduce any delay in construction.

- d. All fossils shall be documented in a detailed Paleontological Resources Impact Mitigation Report. Fossils recovered from the field or by processing shall be prepared; identified; and, along with accompanying field notes, maps and photographs, accessioned into the collections of a designated, accredited museum such as the LACM or the San Diego Natural History Museum.
- e. Because of slope modification and restoration of the bluff area, most, if not all, the fossil-bearing exposures of the San Pedro Sand and Quaternary marine terrace deposits would be destroyed. If feasible, a few stratigraphic sections with fossil-bearing horizons shall be preserved in perpetuity for educational and scientific purposes.

Nothing in this mitigation measure precludes the retention of a single cross-trained observer qualified to monitor for both archaeological and paleontological resources.

## **N. Public Services and Facilities**

**(1) Potential Impact – Fire Protection:** The majority of the Project site is designated as having a high or moderate fire hazard risk. There is the potential for portions of the Project site to not be served within City's established service response times.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDF 4.14-1, SCs 4.14-1 through 4.14-3, and MMs 4.14-1 through 4.14-3 (set forth below).

**Facts in Support of Finding:** With respect to fuel management, based on the State "Draft Fire Hazard Severity Zones in LRA" Local Responsibility Area (LRA) map for Newport Beach dated July 27, 2010, the majority of the Project site is designated LRA High, and small portions of the site are designated LRA Moderate or are not designated at all. None of the Project site is designated LRA Very High. The Project includes a Fire and Life Safety Program. The Program is intended to meet or exceed the requirements set forth in the City of Newport Beach Fire Code and all its amendments to the 2010 California Building Code; the 2010 California Fire Code; and the International Fire Code, 2009 Edition. The Project includes fuel management zones consistent with the fire safety requirements for the Project. Fire protection in landscaped areas would be achieved by avoiding and reducing the use of highly flammable plant materials adjacent to proposed development. This would be accomplished by revegetating these areas with low fuel volume plantings; removing or pruning and thinning native plants; and/or using selective irrigation.

With respect to service response, Fire Station Number 2 cannot serve the entirety of the proposed Project development within the City's established response time standards. As identified on Table 4.14-2, Site Planning Area 12b, the northerly block of Site Planning Area 10a, and the northerly block of Site Planning Area 10b cannot be served by Station Number 2 within the established response time. In order to maintain appropriate response times, a temporary fire station would be required on

the Project Site to serve those areas that cannot be served by existing Station Number 2; the temporary fire station would be required unless a replacement fire station is operational in a location that provides appropriate response times. The temporary fire station would remain in operation until a replacement fire station is operational that could serve the Project in its entirety. It should be noted that in addition to City fire services, Newport Beach participates in Metro Net, a multi-city dispatch center covering Huntington Beach, Newport Beach, Fountain Valley, and multiple cities in North Orange County and has individual automatic aid agreement with the Cities of Costa Mesa, and Huntington Beach, and the OCFA. Together, all fire agencies provide personnel to any emergency. Therefore, the Project can be adequately served through the use of existing/future City of Newport Beach fire and emergency medical services, a temporary fire station on the Project site, as well use of fire and emergency medical services provided through the City's mutual aid agreement with adjacent jurisdictions.

**PDF 4.14-1** The Master Development Plan requires that the Project be designed to provide fire-resistant construction for all structures adjoining natural open space, including utilizing fire-resistant building materials and sprinklers.

**SC 4.14-1** Prior to the issuance of a building permit for the construction of residential and commercial uses, the Applicant shall pay the required Property Excise Tax to the City of Newport Beach, as set forth in its Municipal Code (§3.12 et seq.) for public improvements and facilities associated with the City of Newport Beach Fire Department, the City of Newport Beach Public Library, and City of Newport Beach public parks.

**SC 4.14-2** Prior to City approval of individual development plans for the Project, the Applicant shall obtain Fire Department review and approval of the site plan in order to ensure adequate access to the Project site.

**SC 4.14-3** Prior to the issuance of a building permit, the Applicant shall complete that portion of the approved fuel modification plan determined to be necessary by the City of Newport Beach Fire Department prior to the introduction of any combustible materials into the area. This generally involves removal and thinning of plant materials indicated on the approved fuel modification plan(s).

Prior to the issuance of a Certificate of Occupancy, fuel modification shall be installed and completed by the Applicant, and inspected by the Fire Department. This includes physical installation of features identified in the approved Precise Fuel Modification Plan (including but not limited to plant establishment, thinning, irrigation, zone markers, and access easements, among others). If satisfactory, a Newport Beach Fire Department Fire Code Official shall provide written approval of completion at the time of this final inspection.

If applicable, a copy of the approved plans shall be provided to the Homeowners Association (HOA). Fuel modification shall be maintained as originally installed and approved.

The applicable Property Owner, HOA, or other party that the City deems acceptable shall be responsible for all fuel modification zone maintenance. All areas shall be maintained in accordance with the approved Fuel Modification Plan(s). This generally includes a minimum of two growth reduction maintenance activities throughout the fuel modification areas each year (spring and fall). Other activities include maintaining irrigation systems, replacing dead or dying vegetation with approved materials, removing dead plant material, and removing undesirable species. The Fire Department shall conduct regular inspections of established fuel modification areas. Ongoing maintenance shall be conducted regardless of the date of these inspections.

**MM 4.14-1** Certificates of occupancy shall not be issued by the City of Newport Beach for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b until Fire Station Number 2 is rebuilt at the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards.

The construction of a replacement Fire Station Number 2 within the boundaries of the existing City Hall site at the northeastern corner of Newport Boulevard at 32<sup>nd</sup> Street or at an alternative location would be the subject of separate, subsequent environmental review. The replacement Fire Station could only be constructed upon the demolition of existing permanent and temporary structures on the City Hall site. Potential environmental impacts associated with the replacement Fire Station Number 2 would be associated with demolition of the existing Fire Station, and the construction and operation of the replacement Fire Station. Potential environmental effects are anticipated to include short-term construction-related traffic, air quality, and noise impacts during demolition and construction. Because of the proximity between the existing and proposed Fire Stations (approximately 500 feet), this relocation is not anticipated to result in new significant operational impacts.

**MM 4.14-2** The Applicant shall pay the City of Newport Beach a fire facilities impact fee equal to its fair share of the need for a relocated Fire Station Number 2. The fair share fee shall be based on total number of Project dwelling units as a ratio of the total number of dwelling units within the service area of relocated Fire Station Number 2. The proportionate fee shall be paid prior to the issuance of a building permit for any residential dwelling unit.

**MM 4.14-3** Prior to issuance of certificates of use and occupancy for any residential dwelling unit, the resort inn, or any commercial structure in Site Planning Area 10a (northerly block only), Site Planning Area 10b (northerly block only), and Site Planning Area 12b, Fire Station Number 2 shall be complete and operational at

the existing City Hall site at 3300 Newport Boulevard or at another location that the Newport Beach Fire Department has determined is sufficient to provide fire response within the Fire Department's established response time standards. In the event the replacement station for Fire Station 2 is not operational in time for issuance of use and occupancy for the above stated site planning areas, then prior to issuance of building permits for any combustible structure in the above site planning areas, the Applicant shall provide and improve a site, as defined by the Development Agreement within the Community Park, areas for a temporary facility of sufficient size to accommodate one engine company and one paramedic ambulance of at least three firefighters on a 7-day/24-hour schedule. The temporary fire station site shall be within the Project limits of disturbance approved as a part of the Project such that no new environmental effects would occur.

**(2) Potential Impact – Police Protection:** The Project would introduce new structures, residents, workers, and visitors into the Police Department's service boundaries, thereby potentially increasing the need for police protection, facilities, and personnel.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-4 and 4.14-5 (set forth below). No mitigation was recommended or required.

**Facts in Support of Finding:** Although the Project would increase demand for the City's police protection services, this demand would not require the construction of new facilities, nor would it require the expansion of existing facilities that would result in physical environmental impacts. The Police Department's operating budget is generated through tax revenues, penalties and service fees, and allowed government assistance. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. Tax-base expansion from development of the proposed Project would generate funding for the police protection services. SCs 4.14-4 and 4.14-5 related to site security and building and site safety design recommendations would ensure adequate police protection services can be provided to the Project site.

**SC 4.14-4** Prior to issuance of building permits, the City of Newport Beach Police Department shall review development plans for the incorporation of defensible space concepts to reduce demands on police services. Public safety planning recommendations shall be incorporated into the Project plans. The Applicant shall prepare a list of Project features and design components that demonstrate responsiveness to defensible space design concepts. The Police Department shall review and approve all defensible space design features incorporated into the Project prior to initiating the building plan check process.

**SC 4.14-5** Prior to the issuance of the first grading permit and/or action that would permit Project site disturbance, the Applicant shall provide evidence to the City of Newport Beach Police Department that a construction security service or equivalent service shall be

established at the construction site along with other measures, as identified by the Police Department and the Public Works Department, to be instituted during the grading and construction phase of the Project.

**(3) Potential Impact – Schools:** The Project would generate new elementary, middle, and high school students into the Newport-Mesa Unified School District (NMUSD).

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of SCs 4.14-6 and 4.14-7 (set forth below). No mitigation was recommended or required.

**Facts in Support of Finding:** Using the NMUSD school generation rates, the proposed Project is anticipated to generate 268 K–12 students including approximately 161 elementary, 42 middle, and 65 high school students. The School District found that based on data about available capacity, the NMUSD would not require funds to construct additional capacity to serve the Project-generated students. A district-wide capacity surplus is forecasted by the School District.

**SC 4.14-6** Pursuant to Section 65995 of the *California Government Code*, the Applicant shall pay developer fees to the Newport-Mesa Unified School District at the time building permits are issued; payment of the adopted fees would provide full and complete mitigation of school impacts.

**SC 4.14-7** New development within the Project site shall be subject to the same General Obligation bond tax rate as already applied to other properties within the Newport-Mesa Unified School District for Measure F (approved in 2005) and Measure A (approved in 2000) based upon assessed value of the residential and commercial uses.

**(4) Potential Impact – Library Services:** The Project would generate new residents thereby increasing the demand on the Newport Beach Public Library system. No new facilities are required.

**Finding:** The City hereby makes Finding 1 and determines that the change is Less Than Significant. SC 4.14-1 (set forth above) applies to the Project.

**Facts in Support of Finding:** Future residents of the Project would be expected to primarily use the Mariners and Balboa Branch Libraries. While expanded library services may be needed to meet this growing demand and the new population expected from the Project, the City has not identified any negative impacts resulting directly from the Project. The Project would not create a need for new or expanded library facilities.

**(5) Potential Impact – Solid Waste:** The Project would generate solid waste associated with oilfield remediation and construction activities as well as long-term use of the Project site.

**Finding:** The City hereby makes Finding 1 and determines that the change is Less Than Significant.

**Facts in Support of Finding:** During the oilfield remediation and oil well closure process, it is estimated that up to approximately 25,000 cubic yards (cy) of material may require disposal at an off-site recycling/treatment facility; such facilities are accessible in Southern and Central California. The Project would generate an estimated 19,456.3 pounds of solid waste per day or approximately 3,540.5 tons of solid waste annually. The development level proposed by the Project is consistent with the growth projections in the Orange County Projections 2006 (OCP-2006), which are used by the County of Orange in their long-term planning for landfill capacity. The County's landfill system has capacity in excess of the required 15-year threshold established by the California Integrated Waste Management Board (CIWMB). There is adequate waste disposal capacity within the permitted County's landfill system to meet the needs of the proposed Project. No significant impacts are anticipated. Greenhouse Gas Emissions PDF 4.11-5 applies to the Project (set forth above). PDF 4.11-5 requires that construction waste diversion be increased by 50 percent from 2010 requirements and that the oilfield clean-up and remediation process recycle and reuse materials on site to minimize off-site hauling and disposal of materials. This PDF would further reduce the amount of solid waste generated by the Project.

**O. Utilities**

**(1) Potential Impact – Water Supply:** The Project would increase demand for water supply but would not require new water treatment facilities. Anticipated water demand would require construction of water distribution facilities, the majority of which would occur within the Project's development footprint.

**Finding:** The City hereby makes Finding 1 and determines that this potentially significant impact is Less Than Significant as a result of the implementation of PDFs 4.11-1 and 4.11-4 (set forth above), PDFs 4.15-1 through 4.15-4, and SCs 4.15-1 and 4.15-2 (set forth below). No mitigation measures were recommended or required.

**Facts in Support of Finding:** The Project's water distribution system would require connections to the City's existing water infrastructure at West Coast Highway, 15<sup>th</sup> Street, 16<sup>th</sup> Street, and Ticonderoga Street. Within the Project site, 8- to 12-inch-diameter water mains would provide potable, irrigation, and fire flow water service to the proposed on-site land uses. In addition, a 12-inch domestic water main would extend east of the Project site into the 15<sup>th</sup> Street right-of-way to the intersection with Monrovia Avenue and connect with an existing 24-inch water line. Another 12-inch water main would extend east of the Project site into 16<sup>th</sup> Street and connect with an existing 14-inch water line. A pressure-reducing station is proposed adjacent to Bluff Road near West Coast Highway. The construction of these water facilities would primarily occur within the Project's development footprint. Potential impacts are addressed as a component of the overall Project. PDFs 4.15-1 through 4.15-4, PDF 4.11-1, and PDF 4.11-4 are designed to reduce water consumption through measures such as the use of drought-tolerant plants, Smart Controller irrigation systems, and the green building program. SC 4.15-1 and SC 4.15-2 incorporate water conservation and drought-response measures. No significant impacts are anticipated associated with water infrastructure.

The Project's water demand is estimated to be 613.5 acre-feet per year (afy). The water demand for the Project site was included in the City's water demand forecasts

(as identified by City staff and the 1999 Water Master Plan) and is reflected in the City's 2005 and 2010 Urban Water Management Plan and in Metropolitan Water District of Orange County (MWDOC), Orange County Water District (OCWD), and Metropolitan Water District (MWD) planning documents. A Water Supply Assessment (WSA) was prepared for the Project and approved by the Newport Beach City Council on October 12, 2010. The City of Newport Beach 2010 Urban Water Management Plan was adopted by the Newport Beach City Council on June 14, 2011. The Project's WSA is consistent with the assumptions of both the City's 2005 and 2010 Urban Water Management Plans. Based on the WSA, the City, as water purveyor, determined that a sufficient supply is available during average, single-dry, and multiple-dry years to meet the anticipated water demand associated with the Project, in addition to the water demands of existing and planned future uses through year 2030. The Project's contribution to the cumulative impact on water supply is considered less than significant.

- PDF 4.15-1** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of native and/or drought-tolerant landscaping in public common areas to reduce water consumption.
- PDF 4.15-2** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan require the use of Smart Controller irrigation systems in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis.
- PDF 4.15-3** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for a domestic water system designed to take advantage of existing water transmission facilities that connect to the Project site to minimize off-site impacts.
- PDF 4.15-4** The Newport Banning Ranch Planned Community Development Plan and the Master Development Plan include a plan for the Project's water system to provide a level of redundancy by making a connection between the City of Newport Beach Zone 1 and Zone 2 water lines.
- SC 4.15-1** Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following mandatory permanent water conservation requirements, as summarized, during non-shortage conditions:
- a. No customer shall use potable water to irrigate landscaping unless such irrigation is limited to no more than ten minutes of watering per day per station.
  - b. No person shall use water to irrigate landscaping that causes or allows excessive flow or runoff.
  - c. No person shall use water to wash down hard or paved surfaces, except when necessary to alleviate safety or sanitary hazards.



- d. No person shall permit excessive use, loss, or escape of water through breaks, leaks, or other malfunctions in the user's plumbing or distribution system.
- e. No customer shall use potable water for irrigation during a rainfall event.
- f. By July 1, 2012, all landscape irrigation systems connected to dedicated landscape meters shall include rain sensors that automatically shut off such systems during periods of rain or include evapotranspiration systems that schedule irrigation based on climatic conditions.
- g. No customer shall operate a water fountain or other decorative water feature that does not use a recirculating water system.
- h. No customer shall use water to clean a vehicle, except by use of a hand-held bucket or hand-held hose equipped with a water shut-off nozzle or device.
- i. Effective January 1, 2010, all new commercial conveyor car wash systems shall have recirculating water systems. By January 1, 2013, all commercial conveyor car wash systems shall have recirculating water systems.
- j. Eating or drinking establishments shall not provide drinking water unless expressly requested by the patron.
- k. Hotel, motel, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily.
- l. No customer shall install a new, single pass cooling system in a building or on premises requesting new water service.
- m. Effective January 1, 2010, all new washing machines installed in commercial and/or coin-operated laundries shall be *EnergyStar<sup>®</sup>* and *CEE Tier III* qualified. By January 1, 2014, all washing machines installed in commercial and/or coin-operated laundries shall be *EnergyStar<sup>®</sup>* and *CEE Tier III* qualified.
- n. No customer shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid.
- o. Commercial kitchens shall employ water-conservation practices and technology.
- p. Construction Site Requirements:
  - No person shall use potable water for soil compaction or dust control on a construction site where there is an available and feasible source of recycled water or non-potable water approved by the Department of Public Health and appropriate for such use.
  - No person shall operate a hose within a construction site that is not equipped with an automatic shut-off nozzle, provided that such devices are available for the size and type of hose in use.

**SC 4.15-2** Chapter 14.16, Water Conservation and Supply Level Regulations, of the *City of Newport Beach Municipal Code* establishes the following four levels of water supply shortage response actions to be implemented during times of declared water shortages.

Water Conservation Level	Requirements
Level One	Limit outdoor watering to scheduled irrigation days
	Cutbacks in water usage (up to 10%)
	Increased response time to fix broken/leaking plumbing (within 72 hours of notification from City)
	Limit filling of ornamental water features/pools (once per week)
Level Two	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (11–25%)
	Increased response time to fix broken/leaking plumbing (within 48 hours of notification from the City)
	Increase limitations for filling of ornamental water features/pools (once every other week)
Level Three	Further reduction in scheduled irrigation days and no watering between 9:00 AM and 5:00 PM on any day
	Increased cutbacks in water usage (26–40%)
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from the City)
	No filling of ornamental water features/pools
Level Four	No outdoor watering
	Increased cutbacks in water usage (more than 40%)
	No new potable water services/meters
	Increased response time to fix broken/leaking plumbing (within 24 hours of notification from City)
	No filling of ornamental water features/pools

**(2) Potential Impact – Wastewater Treatment:** Existing wastewater treatment facilities have sufficient capacity for Project-generated wastewater.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant and that no project design features, standard conditions of approval, or mitigation measures were required or recommended.

**Facts in Support of Finding:** Total sewage generation is expected to be 0.259 million gallons per day (mgd). Effluent from the development areas would be collected and directed to the Orange County Sanitation District (OCSD) trunk sewer upstream of the Bitter Point Pump Station via 10- and 12-inch pipes. The majority of the wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint. An off-site connection would be required on 16<sup>th</sup> Street, adjacent to the NMUSD property. No additional direct impacts related to construction and operation of the on-site wastewater system would occur. The April 2006 OCSD Strategic Plan Update assumed Project development generating a higher effluent rate than would occur with the proposed

Project. 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.

**(3) Potential Impact – Energy:** The proposed Project would increase the demand for electrical and natural gas service in the Project area.

**Finding:** The City hereby makes Finding 1 and determines that this impact is Less Than Significant with the implementation of PDFs 4.6-4, 4.11-1, 4.11-2, and 4.11-4, and SC 4.11-1 (set forth above) and SC 4.15-3 (set forth below). No mitigation measures were required or recommended.

**Facts in Support of Finding:** The Project would generate a demand of approximately 12.2 million kilowatt hours (kWh) of electricity and approximately 66.2 cf of natural gas annually. Southern California Edison (SCE) and The Gas Company have indicated an ability to serve the Project without significantly impacting levels of service. The Project includes design consideration to avoid inefficient, wasteful, and unnecessary energy consumption and reduce energy consumption. PDF 4.6-4 (street lights only in certain areas), PDF 4.11-2 (exceeding adopted 2008 Title 24 requirements by 5 percent), PDF 4.11-4 (subdivision map requirements), and PDF 4.11-5 (efficient grading operations). SCs 4.11-1 and 4.15-3 require that energy conservation efforts are incorporated into the Project. PDF 4.11-1 requires the Project to be consistent with a recognized green building program. There is existing facilities within and adjacent to the site that would serve the Project. SCE facilities that may require relocation include an overhead circuit located along 19<sup>th</sup> Street. Impacts associated with infrastructure installation are a component of the Project.

**SC 4.15-3** The proposed Project shall meet or exceed all State Energy Insulation Standards and City of Newport Beach codes in effect at the time of application for building permits. Commonly referred to as Title 24, these standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Title 24 covers the use of energy-efficient building standards, including ventilation; insulation; construction; and the use of energy-saving appliances, conditioning systems, water heating, and lighting. Plans submitted for building permits shall include written notes or calculations demonstrating compliance with energy standards and shall be reviewed and approved by the City of Newport Beach Community Development Department, Building Manager, prior to issuance of building permits.

## 6. FINDINGS REGARDING ALTERNATIVES

### A. Alternatives Considered and Rejected During the Scoping/Project Planning Process

The following is a discussion of the land use alternatives considered during the scoping and planning process and the reasons why they were not selected for detailed analysis in the Draft EIR. Among the factors that can be used to eliminate alternatives from detailed consideration in an EIR are “failure to meet most of the basic Project objectives, infeasibility, or inability to avoid significant environmental impacts” (CEQA Guidelines §15126.6[c]). Alternatives were eliminated during the scoping/planning process either because they were determined to be infeasible or because it could be determined that they would not avoid or eliminate significant environmental impacts when compared to the proposed Project.

#### 1. **Development of the Project site Consistent with the County of Orange General Plan and Zoning Designations**

The zoning for the 361 acres of the Project site within the County jurisdiction would allow for development of up to 2,510 multi-family dwelling units, 225 single-family dwelling units, 50,000 sf of general commercial use, 235,600 sf of general office use, and 164,400 sf of industrial uses. Overlay zones, including Oil Production, Sign Restriction, and Floodplain Zone 2 apply to portions of the property. Development of property pursuant to the County zoning would generate approximately 22,075 average daily trips on the circulation network (Newport Beach 2006a, 2006b). This Alternative was not retained for detailed evaluation in the EIR because it would not reduce identified impacts of the Project and in many cases would result in greater impacts associated with more intense and increased development that could occur under the County’s land use designations for the property. This Alternative would also not achieve several important Project objectives, specifically Objective 1 which is to provide a Project that implements the goals of the General Plan of the City of Newport Beach, and Objective 16 which is to provide a Project compatible with existing adjacent land uses. Consequently, this Alternative has been considered and rejected from further analysis.

#### 2. **Alternative Site**

Development of the Project on an alternative site has been reviewed and eliminated from detailed consideration due to the lack of available alternate sites meeting the majority of the objectives established for the proposed Project. Newport Beach is almost fully developed with no other unentitled property that is suitable for supporting a mixed-use project such as Newport Banning Ranch. Eight areas within the City were identified and considered but no comparably sized parcels would provide for the same mix and range of uses in the City. Alternative sites outside of the City’s jurisdiction were also considered; however, no comparable site within the County’s coastal zone could be identified. Although there may be properties inland that could provide a similar level of development, inland areas would not meet the objectives regarding enhancing coastal access and protection of coastal resources. For these reasons, consideration of developing the Project on an alternative site was not included in the EIR alternatives analysis.

### **3. Construction of General Plan Roads**

Both the City of Newport Beach General Plan Master Plan of Streets and Highways and the Orange County MPAH depict two connections to West Coast Highway through the Project site. One connection is depicted as extending south from 19th Street to West Coast Highway and the second roadway would extend from 15th Street past Bluff Road and connect with West Coast Highway on the western edge of the Project site. The need for these two primary roads was based on the environmental baseline that the 2006 General Plan Update used, which assumed more intense development on the Project site. Based on the reduced density being proposed, only one roadway is needed to serve the travel demand. This Alternative would have had more impacts due to the need for the construction of an additional roadway. This alternate has been rejected from further consideration.

#### **B. Alternatives Selected for Analysis**

The State CEQA Guidelines require that an EIR "describe a range of reasonable alternatives to the Project, or to the location of the Project, which could feasibly attain most of the basic objectives of the Project but would avoid or substantially lessen any of the significant effects of the Project, and evaluate the comparative merits of the alternatives" (State CEQA Guidelines §15126.6[a]). Six alternatives were evaluated. The alternatives were developed to avoid or minimize impacts associated with implementation of the proposed Project. Given the nature and scale of the Project, complete avoidance of significant impacts was not feasible for any alternative other than the No Project Alternative.

The following alternatives were analyzed:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17<sup>th</sup> Street.
- Alternative D: Reduced Development and Development Area.
- Alternative E: Reduced Development Area.
- Alternative F: Increased Open Space/Reduced Development Area.

The City's findings and facts in support of findings with respect to each of the alternatives considered are provided below. Consistent with the guidance set forth in State CEQA Guidelines Section 15126.6, the Findings address whether the alternative would feasibly attain most of the basic objectives of the Project; whether it would avoid or substantially lessen any of the significant effects of the Project; and whether the alternative is feasible, as defined by the State CEQA Guidelines Section 15364, as being "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors".

**1. Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses)**

**Description:** Alternative A is the “no project” alternative required by the State CEQA Guidelines Section 15126.6(e) which allows the decisionmakers to compare the potential impacts of the proposed Project with the potential impacts of not approving the proposed Project. Alternative A assumes existing conditions on the Project site (oil operations) and the continuation and possible expansion of oil exploration and oil production operations within the constraints of the Project site’s existing California Coastal Act regulatory exemption for petroleum production. No uses other than oil operations would occur on the Project site. Oil consolidation, clean-up, and remediation would not occur for the foreseeable future, and public access would not be provided. At the eventual cessation of oil production operations, well abandonment and removal of certain surface equipment and pipelines would occur in accordance with applicable State and local regulations. This Alternative would not require an amendment to the City of Newport Beach General Plan or Orange County MPAH, a zone change, a Coastal Development Permit, or any of the other actions associated with the Newport Banning Ranch Project. The approximate 361 acres of the 401-acre site within the City’s Sphere of Influence would not be annexed into the City of Newport Beach.

**Environmental Effects:** A full discussion of Alternative A’s environmental impacts as compared to the proposed Project is set forth in Section 7.5.1 of the Final EIR, which is hereby incorporated by reference. The City of Newport Beach has assumed the Project site would ultimately be annexed to the City and has adopted land uses and policies accordingly. Alternative A would have greater impacts than the proposed Project when evaluating consistency with City plans and policies. However, since under this Alternative scenario the site would not be annexed into the City of Newport Beach, the City planning programs would not be applicable to the majority of the property. This Alternative would not have any impacts that are significant and unavoidable when compared to the proposed Project. The proposed Project would have significant and unavoidable impacts associated with land use compatibility (due to noise and lighting impacts), aesthetics, transportation, air quality, cumulative greenhouse gas emissions, and noise. Alternative A would avoid or substantially lessen the significant effects of the proposed Project.

**Ability to Achieve Project Objectives:** When evaluating the desirability and feasibility of an Alternative, it is also important to evaluate the ability of the Alternative to meet the Project objectives. An Alternative does not need to meet all the Project objectives to be considered potentially feasible. However, Alternative A does not meet any of the Project objectives.

**Feasibility:** In the short-term, Alternative A is potentially feasible, at least from a technological and legal perspective, as it contemplates the continuation of the existing oil operations. Because the property is privately owned and the extent of petroleum production activities will eventually cease when resources are depleted or when it becomes uneconomical to continue extraction activities with diminishing returns, some form of reuse of the Project site is expected to ultimately occur. Therefore, long-term economic feasibility of this Alternative is questionable.

**Finding:** While this Alternative would avoid the Project’s significant impacts, it would not achieve any of the objectives established for the Project. From a policy perspective, this Alternative would fail to provide the City with additional housing opportunities, including

affordable housing, the latter which is an identified need in the City's Housing Element, and would not further the implementation of the City's General Plan. This Alternative would also delay the remediation of the oilfield until the property owner chooses to cease operations sometime in the future. This Alternative would also delay the City's ability to provide a north-south road connection through the property as shown on the City's General Plan Circulation Element Master Plan of Streets and Highways and the Orange County Master Plan of Arterial Highways. In light of these considerations, this Alternative has been rejected by the City in favor of the proposed Project.

## **2. Alternative B: Newport Beach General Plan/Open Space Designation**

**Description:** The Project site is designated as OS(RV) in the City of Newport Beach General Plan's Land Use Element. The OS(RV) land use designation allows for both a Primary Use (Open Space) and an Alternative Use (Residential Village) on the Project site. The Land Use Element prioritizes the retention of the Project site for open space. The Project site would have to be acquired through public or private funding by an entity capable of restoring and maintaining the Project site and with the approval of the property owner(s), including the surface rights owners. As described in the General Plan, the open space acquisition option includes consolidation of oil operations; wetlands restoration; construction of roadways; and provision of nature education, interpretative facilities, and an active park that contains lighted playfields and other facilities.

Alternative B would include park and open space uses, including an approximately 31.3-gross acre community park in the central portion of the site. Alternative B also assumes consolidation of the oilfields, remediation of the property, and restoration of habitat including wetlands. Additionally, the following roadways would be constructed consistent with the City of Newport Beach General Plan's Circulation Element: (1) a north-south road with a southern terminus at West Coast Highway and extending to a northern terminus at 19th Street (Bluff Road and North Bluff Road); (2) the extension of 15th Street from its existing terminus to Bluff Road within the Project site; (3) the extension of 16th Street from its existing terminus to Bluff Road within the Project site; and (4) the extension of 17th Street from its existing terminus to Bluff Road within the Project site. As with the proposed Project, Alternative B also assumes the deletion of the future extension of a second road through the Project site and its connection to West Coast Highway; this action would require the approval of a General Plan Amendment to the City's Circulation Element and an amendment to the Orange County MPAH. Consistent with the roadway assumptions for the proposed Project, North Bluff Road (extending from 17th Street to 19th Street) would transition from a four-lane divided to a two-lane undivided road to 19th Street.

With this Alternative, the City would be responsible for implementing the Community Park, including the acquisition of the land designated for this use. However, the acquisition of the remaining portion of the site, as well as funding of all remaining improvements and maintenance, would be the responsibility of a yet unknown third party. In addition to costs associated with site acquisition, funds would also be required to initiate consolidation of oil operations and to address oilfield abandonment and clean-up needs as well as acceptance and mitigation of any long-term liability exposure. Additional funding would be required to implement restoration and long-term management of sensitive habitats and to construct park(s), roadways, and other needed infrastructure (including sewer, water, electrical, gas and storm drain facilities) to support the park(s) and roadways. As with the proposed Project, a Coastal Development Permit

would be required to initiate restoration activities and to allow for the future construction of permitted land uses and roadways through the Project site.

**Environmental Effects:** A full discussion of Alternative B's environmental impacts as compared to the proposed Project is set forth in Section 7.5.2 of the Final EIR, which is hereby incorporated by reference. Alternative B would have fewer impacts than the proposed Project because it would involve less grading and site disturbance. This Alternative would have less demand on public services and utilities. However, this Alternative would not assist the City in meeting its RHNA housing requirements or implementing the General Plan Housing Element. Alternative B would eliminate significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts when compared to the proposed Project; however, there would still be impacts that could not be reduced to a level considered less than significant. The following areas would have significant, unavoidable impacts:

There would be land use incompatibility with respect to night illumination associated with the development of the property including the Community Park as well as long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue because both Alternative B and the proposed Project include the construction of the roadways consistent with the City's General Plan Circulation Element. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Alternative B would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site would be considered significant and unavoidable. However, in certifying the General Plan Final EIR and approving the General Plan project, the City Council approved a Statement of Overriding Considerations and found that there are specific economic, social, and other public benefits that outweigh the significant and unavoidable impacts associated with the General Plan project.

Construction of the roadways and park would cause a substantial temporary increase in noise levels at residences and schools within 500 feet of the roadway and park construction because of existing relatively low ambient noise levels. Due to the low existing ambient noise levels, the proximity of the noise-sensitive receptors, and duration of construction activities, the temporary noise increases would be significant and unavoidable.

**Ability to Achieve Project Objectives:** This Alternative does not meet the Project objectives as effectively as the proposed Project. Specifically, this Alternative would not meet the following Project objectives:

- Development of a residential village of up to 1,375 residential units, offering a variety of housing types in a range of housing prices, including provision of



affordable housing to help meet the City's Regional Housing Needs Assessment (RHNA) (Objective 3).

- Development of up to 75 overnight accommodations in a small resort inn including ancillary facilities and services such as a spa, meeting rooms, shops, bars, and restaurants that would be open to the public (Objective 4).
- Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Development of a land use plan that (1) provides a comprehensive design for the community that creates cohesive neighborhoods promoting a sense of identity with a simple and understandable pattern of streets, a system of pedestrian walkways and bikeways that connect residential neighborhoods, commercial uses, parks, open space and resort uses; (2) reduces overall vehicle miles travelled; (3) integrates landscaping that is compatible with the surrounding open space/habitat areas and that enhances the pedestrian experience within residential areas; and (4) applies architectural design criteria to orient residential buildings to the streets and walkways in a manner that enhances the streetscape scene (Objective 6).
- Implement a Water Quality Management Program within the Project site that will utilize existing natural treatment systems and that will improve the quality of urban runoff from off-site and on-site sources prior to discharging into the Santa Ana River and the Semeniuk Slough (Objective 14).

In addition, the following objectives would only be partially met with Alternative B, assuming that adequate funding is available:

- Provide enhanced public access in the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).
- Provide for the restoration and permanent preservation of habitat areas through implementation of a Habitat Restoration Plan (HRP) for the habitat conservation, restoration, and mitigation areas ("Habitat Areas") as depicted on the Master Development Plan (Objective 10).
- Provide for long-term preservation and management of the Habitat Areas through the establishment of a conservation easement or deed restriction and the creation of an endowment or other funding program (Objective 11).
- Improve the existing arroyo drainage courses located within the Project site to provide for higher quality habitat conditions than exist prior to the time of Project implementation (Objective 13).
- Implement fire protection management solutions designed to protect development areas from fire hazards, to preserve sensitive habitat areas, and to create fire-resistant habitat restoration areas within currently denuded, invasive-species laden, and/or otherwise degraded areas (Objective 15).

**Feasibility:** Although Alternative B appears to be legally, technologically, and socially feasible, its feasibility is dependent upon the ability of a responsible party to obtain sufficient funds to acquire the site and fund clean-up, restoration, and long-term maintenance of the site. Consideration by the City of the proposed Project does not preclude the City or any third party from acquiring the property and initiating site remediation, habitat restoration, park development, and road construction. However, to date, no one or entity has identified sufficient funds to implement the open space acquisition alternative. Therefore, at this time it is difficult for the City to conclude that this Alternative is feasible. Based upon the lack of identified sources of funding and entities to undertake implementation of this Alternative, the City is not assured that property acquisition may be “capable of being accomplished in a successful manner within a reasonable period of time”.

**Finding:** Though this Alternative would not meet or would not effectively meet more than half the Project objectives, the General Plan identifies that the Open Space land use is the primary land use for the site with the Residential Village serving as an alternate, if acquisition for open space is not feasible. While EIRs are to focus on environmental impacts, rather than economic considerations, the financial feasibility of implementing an alternative is a reasonable consideration under CEQA. To date, no individual or entity including the City has identified the resources to implement the open space acquisition option. Therefore, the decision makers may determine that this is not a feasible alternative regardless of the potential environmental or other public benefits. For these reasons, the City finds that the proposed Project is preferred over this Alternative.

### **3. Alternative C: Proposed Project with Bluff Road Extending to 17th Street**

**Description:** Alternative C assumes the same land uses and same development plan as the proposed Newport Banning Ranch Project and would require the same approvals from local, regional, and State agencies. However, that segment of North Bluff Road extending just north of 17<sup>th</sup> Street to 19<sup>th</sup> Street would not be constructed under this Alternative. The City of Newport Beach General Plan’s Circulation Element and the Orange County MPAH depict a north-south roadway connection from West Coast Highway to 19<sup>th</sup> Street through the Project site. Alternative C would provide the development of a north-south connection (North Bluff Road/Bluff Road) from West Coast Highway only to 17<sup>th</sup> Street. By removing the extension of this segment of the roadway, the open space area would not be bisected as a result of this Alternative. Alternative C does not assume the deletion of North Bluff Road between 17<sup>th</sup> Street and 19<sup>th</sup> Street from the City’s General Plan Circulation Element Master Plan of Streets and Highways or the Orange County MPAH. Therefore, although the road would not be constructed as part of this Alternative, it does not preclude the construction of this roadway segment in the future by a party other than the Applicant. Should the road be constructed in the future, the impacts that are avoided at this time would be realized. It should be noted that implementation of the segment of roadway between 17<sup>th</sup> and 19<sup>th</sup> Streets would be a separate project and would require separate approvals.

As with the proposed Project, Alternative C assumes an amendment to the Circulation Element to delete a second road through the Project site and its connection to West Coast Highway. An amendment to the Orange County MPAH is required for this deletion as well as to downgrade North Bluff Road from a Major to a Primary. Alternative C is proposed to minimize significant impacts to sensitive habitat areas and landform alteration associated with the extension of North Bluff Road from just north of 17<sup>th</sup> Street to 19<sup>th</sup> Street.

**Environmental Effects:** A full discussion of Alternative C's environmental impacts as compared to the proposed Project is set forth in Section 7.5.3 of the Final EIR, which is hereby incorporated by reference. Alternative C is the same as the proposed Project, except that the extension of North Bluff Road between 17<sup>th</sup> Street and 19<sup>th</sup> Street would not be constructed. As a result, the nature of the impacts are the same as those identified for the proposed Project, with incremental decreases in impacts associated with the amount of grading and disturbance to native habitat and biological resources, and increased (qualitative and quantitative) opportunities for habitat restoration. There is also a reduction in construction air emissions and impacts to significant archaeological and paleontological resources. This Alternative would also have the benefit of not having the road extension bisecting the open space area. However, Alternative C would result in additional traffic using Bluff Road, which would result in an incremental increase in traffic noise along this segment of roadway. In addition, this Alternative would increase the number of intersections that have Project-related impacts. Should it be determined at some point in the future that the connection of North Bluff Road to 19<sup>th</sup> Street is required, the City or other entity would be responsible for implementing the improvement. This would not be an expense borne by the developer. Subsequent CEQA analysis would likely be required and permitting may be more difficult because the roadway would bisect lands that had been remediated and were functioning as open space.

Alternative C would not eliminate or substantially lessen any of the significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative C:

There would be land use incompatibility with respect to night illumination associated with the development including the Community Park, as well as long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17<sup>th</sup> Street with rubberized asphalt.

Alternative C would include a "dark sky" lighting regulations in the NBR-PC that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative C would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site 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 and unavoidable impacts associated with the General Plan project.

Alternative C would have impacts on intersections in the City of Costa Mesa. Implementation of MM 4.9-2 would mitigate the impacts to a level considered less than significant. However, 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, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Alternative C development continues beyond 2020, emissions of volatile organic compounds (VOC) and carbon monoxide (CO) would exceed the significance thresholds, principally due to vehicle operations. Alternative C would have cumulatively considerable contributions to regional pollutant concentrations of ozone (O<sub>3</sub>).

Alternative C would emit quantities of greenhouse gases (GHGs) that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO<sub>2</sub>e/yr) significance threshold. Development associated with Alternative C would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

For the *Existing Plus Project, 2016 with Project*, and *General Plan Buildout* traffic scenarios, the increased traffic volumes on 17<sup>th</sup> Street west of Monrovia Avenue would expose sensitive receptors to noise level increases in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17<sup>th</sup> Street west of Monrovia is considered significant and unavoidable.

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

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

**Ability to Achieve Project Objectives:** Alternative C is a potentially feasible alternative. It is able to meet the Project objectives as effectively as the proposed Project, with the exception of Objective 7. Objective 7 would only be partially achieved with this Alternative. This objective reads: "Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access." Alternative C does not operate as effectively as the proposed Project in meeting this objective because it results in an additional intersection operating at a deficient level of service. Additionally,

it does not construct a segment of the local and regional transportation network that is identified in the adopted circulation plans.

**Feasibility:** This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors..

**Finding:** Alternative C would incrementally reduce impacts associated with the amount of grading and disturbance to native habitat and biological resources, and would provide increased (qualitative and quantitative) opportunities for habitat restoration. This Alternative would have the same significant unavoidable impacts as the proposed Project. From a policy perspective, this Alternative would not fully implement the City's Master Plan of Streets and Highways or the Orange County Master Plan of Arterial Highways which depict a north-north roadway through the property from West Coast Highway to 19<sup>th</sup> Street. While this Alternative is feasible, because it would not construct a segment of the local and regional transportation network, the City, therefore, finds that the proposed Project is preferred over this Alternative.

#### **4. Alternative D: Reduced Development and Reduced Development Area (No Resort Inn and 1,200 Units)**

**Description:** Alternative D assumes a reduction in the amount of development that would occur on the Project site and a reduction in the acreage associated with that development. The same roadway system is proposed. When compared to the proposed Project, Alternative D would allow for 1,200 du (compared to 1,375 du), including an affordable housing component per the AHIP<sup>10</sup>; 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses (in place of a 75-room resort inn); approximately 39.1 acres of parks including a 24.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands for the proposed Project including a 21.8-gross acre Community Park).<sup>11</sup> The 15,000 sf of visitor-serving commercial use would be predominately restaurant uses. Alternative D does not include a Nature Center, trails, or the pedestrian and bicycle bridge. Open space uses would increase from 252.3 gross acres to 269.1 gross acres. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and, upon acceptance, it would be maintained by the City.

Alternative D would require the same discretionary actions as noted for the proposed Project. Alternative D is proposed to reduce impacts associated with the intensity of development (e.g., vehicle trips, vehicle miles travelled, noise and air quality impacts) and the footprint of development (e.g., biological resources).

**Environmental Effects:** A full discussion of Alternative D's environmental impacts as compared to the proposed Project is set forth in Section 7.5.4 of the Final EIR, which is hereby incorporated by reference. Alternative D would reduce the number of residential units by approximately 13 percent and eliminate the resort inn. The project footprint would be approximately 11 percent smaller. Although the nature of the impacts would be

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<sup>10</sup> The number of required affordable units would be 15 percent of the total number of approved units.

<sup>11</sup> Alternative D assumes compliance with Quimby Act, which would require approximately 15 acres of parkland based on 5 acres of park per 1,000 persons; the City assumes 2.19 persons per dwelling unit.

the same as those discussed for the proposed Project, the overall impacts associated with Alternative D would be less due to the reduced amount and area of development. However, it should be noted that this Alternative offers a reduced level of public amenities (i.e., trails, parks, and pedestrian bridge) compared to the proposed Project, and would not provide as much affordable housing as the proposed Project. Although this Alternative would have fewer units and no resort inn, it is projected that there would be a lower number of average daily trips (ADT), an increase in the number of AM peak hour trips, and a slight decrease in PM peak hour trips. Moving the location of visitor-serving commercial uses to the Resort Colony from the Urban Colony would result in a redistribution of some trips on the circulation network, with more trips expected to be generated in the southerly portion of the Project site, which would be expected to result in a slightly higher volume of traffic on the southern portion of Bluff Road and use of 15<sup>th</sup> Street easterly of the Project site.

This Alternative does not eliminate but would substantially lessen the significant impacts of the proposed Project. Construction air emissions would remain significant and unavoidable, but would be lessened. Although not identified as significant and unavoidable, impacts associated with grading, habitat removal, and creation of impervious surfaces would be reduced compared to the proposed Project due to the reduction in the development footprint. The following significant and unavoidable impacts would occur with Alternative D:

There would be land use incompatibility with respect to night illumination associated with development of the property including the Community Park, as well as long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue. Although mitigation has been identified to reduce impacts from vehicular noise, similar to the finding with respect to the proposed Project, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the affected segment of 17<sup>th</sup> Street with rubberized asphalt.

Alternative D would include a “dark sky” lighting regulations in the NBR-PC that would apply to businesses (e.g., visitor-serving commercial and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative D would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site 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 and unavoidable impacts associated with the General Plan project.

When compared to the proposed Project, Alternative D would have a reduction of average daily trips (ADT), but an increase of trips in the AM peak hour and a decrease trips in the PM peak hour. Based on the lower volume of ADT and PM peak hour volumes, Alternative D would not create additional roadway or intersection deficiencies. Both Alternative D and the proposed Project would be expected to result in a significant

impact at one intersection in the City of Newport Beach and seven intersections in the City of Costa Mesa. Impacts to the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach can be mitigated to a level considered less than significant. Alternative D would impact the following Costa Mesa intersections: Newport Boulevard at 19<sup>th</sup> Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18<sup>th</sup> Street/Rochester, Newport Boulevard at 17<sup>th</sup> Street, Monrovia at 19<sup>th</sup> Street, Pomona Avenue at 17<sup>th</sup> Street, and Superior Avenue at 17<sup>th</sup> Street. Implementation of MM 4.9-2 would mitigate the 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 Alternative D impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be would remain significant and unavoidable.

Alternative D would have construction-related air quality impacts. During grading, large and fine particulate matter (PM10 and PM2.5, respectively) concentrations may exceed the SCAQMD CEQA significance thresholds at the property lines, but would not be likely to exceed ambient air quality standards.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as development continues beyond 2020, emissions of VOCs, CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Alternative D would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

Alternative D would emit quantities of GHGs that would exceed the City's 6,000 MTCO<sub>2</sub>e/yr significance threshold. Similar to the Project, Alternative D would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17<sup>th</sup> Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa.

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

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

**Ability to Achieve Project Objectives:** This Alternative is able to meet most of the project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4), which is an important Coastal Act policy consideration and does not provide as extensive of a public access network (no pedestrian and bicycle bridge over West Coast Highway) as compared to the proposed Project. Further, this Alternative does not include a Nature Center or trails. In addition, it only partially meets the following objectives:

- Development of a residential village of 1,375 residential units, offering a variety of housing types in a range of housing prices for future residents, including provision of affordable residential dwelling units to help meet the City's Regional Housing Needs Assessment (RHNA) (Objective 3).
- Provide enhanced public access through the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).

**Feasibility:** This Alternative is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

**Finding:** While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project and which are important Coastal Act policy considerations. While this Alternative is feasible, because it would not provide as many public benefits and would result in similar significant environmental impacts, the City, therefore, finds that the proposed Project is preferred over this Alternative.

## 5. Alternative E: Reduced Development Area

**Description:** Alternative E assumes the same number of residential units (1,375 du) as proposed by the Project within a reduced footprint. The development area (residential, commercial, and visitor-serving uses) would decrease from 97.4 gross acres to 92.9 gross acres. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); 15,000 sf of visitor-serving commercial uses instead of the resort inn; and approximately 39.1 acres of parks, including a 20.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands with the Project). As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative E would require the same discretionary actions as noted for the proposed Project.



**Environmental Effects:** A full discussion of Alternative E's environmental impacts as compared to the proposed Project is set forth in Section 7.5.5 of the Final EIR, which is hereby incorporated by reference. Alternative E would reduce the development footprint by approximately 11 percent. Although the nature of the impacts would be the same as those discussed for the proposed Project, the impacts associated grading and project footprint would be incrementally smaller due to the reduced amount of disturbed area (i.e., impacts associated with grading, habitat removal, creation of impervious surfaces, construction air emissions). This Alternative would increase the overall vehicle miles travelled (VMT); therefore, there would be slightly greater long-term air emissions, noise, and traffic.

Although with Alternative E there would be incremental reduction in impacts due to the reduction in development and the area being developed, this Alternative would not eliminate any of the unavoidable significant impacts identified with the proposed Project. The following significant unavoidable impacts would occur with Alternative E:

There would be land use incompatibility with respect to long-term noise impacts and night illumination on those Newport Crest residences immediately contiguous to the Project site. Noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels. Land use compatibility issues from night lighting associated with the Community Park would also be considered significant.

Development would introduce new sources of light on the Project site, which would result in a significant visual impact.

Alternative E would result in impacts to the same intersections as outlined for the proposed Project. Implementation of the Mitigation Program would reduce impacts to less than significant levels. However, the City of Newport Beach cannot guarantee implementation of necessary mitigation within another jurisdiction. Therefore, the impacts in the City of Costa Mesa intersections are assumed to remain significant and unavoidable.

Alternative E would have cumulatively considerable contributions to regional pollutant concentrations of O<sub>3</sub>.

Alternative E would emit quantities of GHGs that would exceed the City's 6,000 MTCO<sub>2</sub>e/yr significance threshold. This would make a cumulatively considerable contribution to the global GHG inventory.

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

The increased traffic volumes on 17<sup>th</sup> Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Costa Mesa's standards. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface

the street with rubberized asphalt; however, the City of Newport Beach has no control to assure that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17<sup>th</sup> Street west of Monrovia Avenue is considered significant and unavoidable.

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

**Ability to Achieve Project Objectives:** This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objective:

- Provide enhanced public access through the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).

**Feasibility:** Alternative E is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

**Finding:** While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate these impacts. This Alternative would achieve most of the Project objectives but would not provide visitor-serving overnight accommodations or many of the public benefits (i.e., Nature Center, trails, pedestrian and bicycle bridge) that are associated with the proposed Project. Additionally, it would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. While this Alternative is feasible, because it would not provide as many public benefits, the City, therefore, finds that the proposed Project is preferred over this Alternative.

## 5. Alternative F: Increased Open Space/Reduced Development Area

**Description:** Alternative F assumes the same number of residential units (1,375 du) 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. When parkland is factored in, the development footprint for Alternative F is reduced by 20 percent compared to the proposed Project. This alternative does not include a resort inn or visitor-serving commercial uses. Residential units would be provided at a higher density and on smaller lots than assumed for the proposed Project. The same roadway system is proposed. Open space uses would increase from 252.3 gross acres to 282.4 gross acres. This Alternative does not include a Nature Center, interpretive trails, or a pedestrian and bicycle bridge over West Coast Highway. It provides 60,000 sf of neighborhood commercial uses (compared to 75,000 sf); and includes approximately 34.7 acres of parks, including a 21.8-gross-acre Community Park (compared to approximately 51.4 total acres of parklands). The acreage of the Community Park would

be the same for Alternative F and the proposed Project. As with the proposed Project, the Community Park would be constructed by the Applicant as part of this Alternative; it would be offered for dedication to the City; and upon acceptance, it would be maintained by the City. Alternative F would require the same discretionary actions as noted for the proposed Project.

**Environmental Effects:** A full discussion of Alternative F's environmental impacts as compared to the proposed Project is set forth in Section 7.5.6 of the Final EIR, which is hereby incorporated by reference. Alternative F would reduce the development footprint. Although the nature of the impacts would be the same as those discussed for the proposed Project, the overall impacts associated with Alternative F would be fewer due to the reduced amount of disturbed area. Although not identified as significant and unavoidable impacts, this Alternative would substantially less the impacts associated with grading, habitat removal, and creation of impervious surfaces.

Alternative F would substantially lessen construction air emissions impacts compared to the proposed Project because less development is proposed; the area of disturbance would be smaller; and grading would be reduced by 25 to 35 percent. However, Alternative F would not eliminate any significant and unavoidable impacts identified with the proposed Project. The following significant and unavoidable impacts would occur with Alternative F:

There would be land use incompatibility with respect to night illumination associated with the Community Park and long-term noise impacts on those Newport Crest residences immediately contiguous to the Project site. In addition, there would be a potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue. For noise, though mitigation is proposed, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

Alternative F would include a "dark sky" lighting regulations in the NBR-PC that would apply to businesses (e.g., neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, Alternative F would introduce nighttime lighting into a currently unlit area. The Community Park is anticipated to have night lighting of active sports fields, which could result in light spillover onto adjacent properties. The night lighting impacts are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site 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 and unavoidable impacts associated with the General Plan project.

Alternative F would be projected to result in a decrease in ADT and peak hour traffic volumes when compared to the proposed Project. This decrease in peak hour volumes would not cause any of the intersections operating at an acceptable level of service with the Project to operate at an unacceptable level of service. Both Alternative F and the proposed Project would be expected to result in deficiencies at the intersection of Newport Boulevard at West Coast Highway in the City of Newport Beach which can be mitigated to a level considered less than significant. Alternative F and the proposed

Project would significantly impact seven intersections in Costa Mesa: Newport Boulevard at 19<sup>th</sup> Street, Newport Boulevard at Harbor Boulevard, Newport Boulevard at 18<sup>th</sup> Street/Rochester, Newport Boulevard at 17<sup>th</sup> Street, Monrovia at 19<sup>th</sup> Street, Pomona Avenue at 17<sup>th</sup> Street, and Superior Avenue at 17<sup>th</sup> Street. Implementation of MM 4.9-2 would mitigate the impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. If the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Alternative F impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, the impacts to be mitigated by the improvements would remain significant and unavoidable.

Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as development continues beyond 2020, emissions of VOCs and CO would exceed the significance thresholds, principally due to vehicle operations. Alternative F would have a cumulatively considerable contribution to regional pollutant concentrations of O<sub>3</sub>.

Alternative F would emit quantities of GHGs that would exceed the City's 6,000 MTCO<sub>2</sub>e/yr significance threshold. Similar to the Project, Alternative F would make a cumulatively considerable contribution to the global GHG inventory affecting global climate change.

The increased traffic volumes on 17<sup>th</sup> Street west of Monrovia Avenue would expose sensitive receptors to noise levels in excess of the City of Newport Beach's standards for changes to the ambient noise levels. At buildout, noise levels would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurface the street with rubberized asphalt; however, the City of Newport Beach has no ability to ensuring that the mitigation would be implemented. Therefore, the forecasted impact to residents of 17<sup>th</sup> Street west of Monrovia is considered significant and unavoidable.

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

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

**Ability to Achieve Project Objectives:** This Alternative is able to meet most of the Project objectives. However, it does not meet the objective of providing overnight visitor accommodations (Objective 4). In addition, it only partially meets the following objectives:

- Development of 75,000 square feet of retail commercial uses oriented to serve the needs of local residences and visitors utilizing the resort inn and the coastal recreational opportunities provided as part of the Project (Objective 5).
- Provide enhanced public access through the Coastal Zone through a system of pedestrian walkways, multi-use trails, and on-street bikeways designed to encourage walking and biking as an alternative to the use of automobiles by providing connectivity among residential, commercial, park, open space, and resort uses within the Project site and to existing adjacent open space, hiking and biking trails, the beach, and the Pacific Ocean (Objective 8).

**Feasibility:** Alternative F is considered feasible as it appears to be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.

**Finding:** While this Alternative would lessen some of the environmental effects of the proposed Project, it would not eliminate any significant impacts of the Project. However, it should be noted that this Alternative does not offer the same level of amenities (i.e., trails, parks, and pedestrian bridge) as the proposed Project. While increasing public access opportunities over the existing condition and compared to Alternatives A and B, Alternative F would not provide the same extent of public access amenities (i.e., pedestrian/bike overcrossing) as compared to the proposed Project, and would not provide overnight visitor accommodations, which is an important Coastal Act policy consideration. For these reasons, the City rejects this Alternative in favor of the proposed Project.

## 7. STATEMENT OF OVERRIDING CONSIDERATIONS

### Introduction

The City is the Lead Agency under CEQA for preparation, review, and certification of the Final EIR for the Newport Banning Ranch Project. As the Lead Agency, the City is also responsible for determining the potential environmental impacts of the proposed action and which of those impacts are significant, and which can be mitigated through imposition of mitigation measures to avoid or minimize those impacts to a level of less than significant. CEQA then requires the Lead Agency to balance the benefits of a proposed action against its significant unavoidable adverse environmental impacts in determining whether or not to approve the proposed Project. In making this determination the City is guided by State CEQA Guidelines Section 15093 which provides as follows:

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal (sic) project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

In addition, Public Resources Code Section 21081(b) requires that where a public agency finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in an EIR and thereby leave significant unavoidable effects, the public agency must also find that overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project.

Pursuant to Public Resources Code Section 21081(b) and the State CEQA Guidelines Section 15093, the City has balanced the benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts. The City also has examined alternatives to the proposed Project, none of which both meet the Project objectives, and is environmentally preferable to the proposed Project or feasible for the reasons discussed in the Findings and Facts in Support of Findings.

The Newport City of Beach City Council, the Lead Agency for this Project, and having reviewed the Final EIR for the Newport Banning Ranch Project, and reviewed all written materials within the City's public record and heard all oral testimony presented at public hearings, adopts this Statement of Overriding Considerations, which has balanced the benefits of the Project against its significant unavoidable adverse environmental impacts in reaching its decision to approve the Project.

### **Significant Unavoidable Adverse Environmental Impacts**

Although most potential Project impacts have been substantially avoided or mitigated, as described in the Findings and Facts in Support of Findings, there remain some Project impacts for which complete mitigation is not feasible. For some impacts, mitigation measures were identified and adopted by the Lead Agency, however, even with implementation of the measures, the City finds that the impact cannot be reduced to a level of less than significant. The impacts and alternatives are described below and were also addressed in the Findings.

The EIR identified the following unavoidable adverse impacts of the proposed Project:

**Land Use.** 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., air pollution, glare, hazardous materials, noise, vibration, etc.)". Therefore, land use incompatibility can occur where differences between nearby uses result in significant noise levels and significant traffic levels, among other factors, such that project-related significant unavoidable direct and indirect impacts impede use of the existing land uses as they were intended. The proposed Project would result in a land use incompatibility with respect to long-term noise and night illumination on those Newport Crest residences immediately contiguous to the Project site. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site 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. In addition, there would be a potential long-range noise impacts for residents on 17<sup>th</sup> Street west of Monrovia Avenue. For noise, though mitigation is proposed, noise impacts would remain significant if the residents of Newport Crest elect not to implement the mitigation measures to reduce the increased interior noise levels and if the City of Costa Mesa does not implement the recommended measure of resurfacing the street with rubberized asphalt.

**Aesthetics and Visual Resources.** The proposed Project would include "dark sky" lighting regulations set forth in the Newport Banning Ranch Development Planned Community (NBR-PC) zoning regulations that would apply to businesses (e.g., resort inn and neighborhood commercial uses) and Homeowners Association-owned and operated land uses within 100 feet of the Open Space Preserve. However, the Project would introduce nighttime lighting into a currently unlit area. The Project would result in night lighting impacts that are considered significant and unavoidable. The City of Newport Beach General Plan Final EIR found that the introduction of new sources of lighting associated with development of the site 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 Consideration which noted that there were specific economic, social, and other public benefits which outweighed the significant unavoidable impacts associated with the General Plan project.

**Transportation and Circulation.** The Project would have impacts on select intersections in the City of Costa Mesa. Implementation of Mitigation Measure (MM) 4.9-2 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction or agency. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa and the California Department of Transportation (Caltrans) that would ensure that Project impacts occurring in Costa Mesa and State highways 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. The following impacts were identified with the various traffic scenarios evaluated:

- **Existing Plus Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street; and (3) Superior Ave at 17<sup>th</sup> Street. (This scenario assumes all development occurs at once, which is not an accurate reflection of the timing of development for the proposed Project.)
- **Year 2016 With Project Transportation Phasing Ordinance (TPO)** – Intersections identified as deficient are: (1) Monrovia Avenue at 19<sup>th</sup> Street; (2) Newport Boulevard at 19<sup>th</sup> Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street; (5) Pomona Avenue at 17<sup>th</sup> Street; (6) Newport Boulevard at 17<sup>th</sup> Street; (7) Superior Avenue at 17<sup>th</sup> Street; and (8) Newport Boulevard at West Coast Highway.
- **Year 2016 With Phase 1 Project TPO** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard; (2) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street; and (3) Newport Boulevard at West Coast Highway.
- **Year 2016 Cumulative With Project** – Intersections identified as deficient are: (1) Monrovia Avenue at 19<sup>th</sup> Street; (2) Newport Boulevard at 19<sup>th</sup> Street; (3) Newport Boulevard at Harbor Boulevard; (4) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street; (5) Pomona Avenue at 17<sup>th</sup> Street; (6) Newport Boulevard at 17<sup>th</sup> Street<sup>12</sup>; (7) Superior Avenue at 17<sup>th</sup> Street; and (8) Newport Boulevard and West Coast Highway.
- **Year 2016 Cumulative With Phase 1 Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street.
- **General Plan Buildout with Project** – Intersections identified as deficient are: (1) Newport Boulevard at Harbor Boulevard and (2) Newport Boulevard at 18<sup>th</sup> Street/Rochester Street.

**Air Quality.** During periods of grading, localized large and fine particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) concentrations may exceed the South Coast Management District's (SCAQMD's) CEQA significance thresholds at the property lines but would not likely exceed ambient air quality standards. Localized concentrations of carbon monoxide (CO) and nitrogen dioxide (NO<sub>2</sub>) due to construction activities would not exceed the applicable CEQA thresholds. Regional (mass) emissions of criteria pollutants during construction activities would not exceed the applicable thresholds.

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<sup>12</sup> The Newport Boulevard at 17<sup>th</sup> Street intersection has a Project-related impact using the Highway Capacity Manual (Caltrans methodology), as well as an impact using the Intersection Capacity Utilization methodology.



Long-term operational emissions of criteria pollutants would not exceed the SCAQMD mass emissions thresholds from initial occupancy through 2020. However, as Project development continues beyond 2020, emissions of volatile organic compounds (VOCs), CO, and PM10 would exceed the significance thresholds, principally due to vehicle operations. Feasible mitigation measures would be implemented to reduce operational emissions, although the effects of such mitigation are not quantifiable. Localized concentrations of CO at congested intersections would not exceed ambient air quality standards or CEQA significance thresholds.

The Project would have a significant cumulative air quality impact because its contribution to regional pollutant concentrations would be cumulatively considerable.

**Greenhouse Gas Emissions.** The Project would emit quantities of GHGs that would exceed the City's 6,000 metric tons of carbon dioxide equivalent per year (MTCO<sub>2</sub>e/yr) significance threshold. The Project would make a cumulatively considerable contribution to the global GHG inventory affecting Global Climate Change.

**Noise.** For the *Existing Plus Project, 2016 with Project*, and *General Plan Buildout* scenarios, the increased traffic volumes on 17<sup>th</sup> Street west of Monrovia Avenue in Costa Mesa, would expose sensitive receptors to noise levels that would also exceed significance thresholds in the City of Costa Mesa. MM 4.12-5 requires the Applicant to provide funds to the City of Costa Mesa to resurfacing the street with rubberized asphalt; however, the City of Newport Beach has no ability to assure that the mitigation would be implemented. Therefore, the forecasted noise impact to residents of 17<sup>th</sup> Street west of Monrovia is considered significant and unavoidable.

For portions of the Newport Crest condominium development, there would be a significant increase in the ambient noise level due to the projected traffic volumes in the buildout condition. MM 4.12-6 would reduce impacts to levels within the "Clearly Compatible" or "Normally Compatible" classifications. However, the long-term noise increases at some Newport Crest residences from vehicular traffic noise from Bluff Road due to Project and cumulative traffic levels would remain above the General Plan's 5 A-weighted decibels (dBA) significance criterion. MM 4.12-7 would provide interior noise attenuation, but because the City of Newport Beach does not have the authority to mandate the implementation of mitigation on private property that is not on the Project site, the impact would be significant and unavoidable.

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

In addition, the EIR identified six alternatives to the Project and analyzed whether these alternatives could avoid or substantially lessen the unavoidable environmental impacts of the proposed Project. While some of the alternatives could lessen or avoid some of the unavoidable impacts of the proposed Project, some of the alternatives also resulted in different and in some cases, increased environmental impacts, consequently, for the reasons set forth in Section 6 of these Findings, none of the alternatives were determined to be feasible:

- Alternative A: No Action/No Development Alternative (Continuation of Existing Land Uses).
- Alternative B: Newport Beach General Plan/Open Space Designation.
- Alternative C: Proposed Project with Bluff Road Extending to 17<sup>th</sup> Street.
- Alternative D: Reduced Development and Development Area.

- Alternative E: Reduced Development Area.
- Alternative F: Increased Open Space/Reduced Development Area.

The City, after balancing the specific economic, legal, social, technological, and other benefits including region-wide or statewide environmental benefits, of the proposed Project, has determined that the unavoidable adverse environmental impacts identified above may be considered acceptable due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed Project, each of which standing alone is sufficient to support approval of the Project, in accordance with CEQA Section 21081(b) and State CEQA Guideline Section 15093.

1. **Long-term protection of over 50 percent of the Project site as natural open space and habitat consistent with the City's General Plan**

The City's General Plan Policy LU 3.4 prioritizes the acquisition of Banning Ranch as an open space amenity for the community and region, to enhance wetlands and other habitats and provide parkland amenities to serve nearby neighborhoods. In order to implement this policy, LU 6.3.2 recognizes the need to obtain sufficient funds through private fundraising, State bonds, environmental mitigation fees, or other financing mechanisms, none of which have been identified to date. As the General Plan acknowledges, "due to the significant cost of purchasing the site and habitat restoration, a large amount of revenue would need to be generated to help fund preservation of the majority of the property as open space". (Housing Element on page 5-43)

Consistent with General Plan Policy LU 3.4, the Project will implement a comprehensive Habitat Restoration Plan that encompasses more than 250 acres of the Project site and would provide for the restoration of wetlands and other habitat areas, and the preservation and long-term maintenance of existing open space, sensitive habitats and additional restored and created habitats at no cost to the public.

2. **New public and coastal access will be provided**

The Project would make available to the public a site that has been privately-owned and closed to the public since the 1940s. It would provide new public and coastal access through construction of a road connection to West Coast Highway and the beach, as well as access to open space and trails. The Project would also provide approximately 475 new public parking spaces in the coastal zone.

3. **Dedication and improvement of land for public park, recreational, and open space purposes in excess of the requirements of California law and City ordinances**

In addition to the restoration and long-term preservation of natural open space and habitat areas described above in #1, above, the City's General Plan also contemplates the provision of parkland amenities to serve nearby neighborhoods and City residents in general. Under the General Plan's Primary Use as open space, in addition to the costs of property acquisition, the City and its residents would be responsible for funding the cost of park improvements. The Project provides approximately 26.8 acres of public community parkland and improvements. As described below, the Project's parkland dedication and improvements exceed the parkland dedication requirements under State law and provide significant open space and recreational benefits to the City and its residents.

Government Code Section 66477 (commonly known as the “Quimby Act”) allows a city to require the dedication of land or require the payment of fees for park and recreational purposes as a condition to the approval of a tentative map. The Quimby Act establishes limits on the amount of land that is required to be dedicated. Based on the number of dwelling units proposed, the Project would be required to dedicate approximately 15 acres of parkland only. The Project would both dedicate land and provide improvements to the following parks and recreational trails in excess of its Quimby Act requirements. The public parks, recreational and open space provided by the Project are as follows:

- The improvement of the North Community Park and the Central Community Park, totaling 26.8 gross acres (more than 18 net acres);
- The improvement of Bluff Park and the Interpretive Parks in accordance with the Newport Banning Ranch Master Development Plan, totaling 24.6 gross acres; and
- The improvement of a more than 7 mile trail system through open space areas in accordance with the Newport Banning Ranch Master Development Plan, totaling approximately seven miles of trails throughout the Project site.

**4. Comprehensive oilfield abandonment which expedites habitat restoration and protection**

The Newport Banning Ranch property is an active, operating oilfield. In addition, as an active, operating oilfield, and as detailed in the City’s General Plan, if acquisition of the property were pursued through public funds, additional funds would have to be identified by the City to pay for the costs of habitat restoration and parkland improvements. Further, the City and public would be required to either allow the oil operator to continue its operations until oil operations cease, or pay for the consolidation, clean up and remediation of the oilfield to implement the habitat and parkland goals of the City’s General Plan. The Project provides for the consolidation of the existing oil operations into two areas thereby permitting oilfield abandonment and clean up to commence on the remainder of the Project site (approximately 380 acres) in advance of when they would have occurred, and at no cost to the City or the public. In addition, the oil operation consolidation would allow for habitat restoration activities to occur in advance of when it would have absent the Project’s ability to require consolidation.

**5. Provision of areawide water quality benefits**

The Project is designed to include water quality basins that are proposed to be sized to treat off-site urban run-on from areas of the Cities of Costa Mesa and Newport Beach developed with commercial, industrial and residential uses. These areas currently drain through the Project site and flow untreated into the Project’s lowland areas and to the Semeniuk Slough. The water quality basin would also capture and treat on-site urban runoff from within the Project. The 103-acre Semeniuk Slough is identified in the City’s Coastal Land Use Plan as an Environmental Study Area which is characterized by open estuarine, southern coastal salt marsh, and ornamental plant communities. Potential impacts to the Semeniuk Slough include water quality degradation and sediment build-up. (Coastal Land Use Plan at pages 4-15 and 4-16) By capturing and treating this urban runoff, the Project would provide significant water quality benefits to the Semeniuk Slough.

**6. Payment to City of a public benefit fee**

In addition to any other fee or charge to which the Project would be required to pay, the Project would to the City a public benefit fee of approximately \$30,909 for each market rate residential unit constructed on the property

**7. Net fiscal benefits to the City**

The Fiscal Impact Analysis of the Proposed Newport Banning Ranch Annexation to the City of Newport Beach prepared by Applied Development Economics concluded that the Project would have a net fiscal benefit of nearly \$2 million per year if all of the proposed land uses are fully developed. Furthermore, even if the resort Inn and retail and service commercial uses are not developed, the Project would have a net fiscal benefit of nearly \$1.4 million per year.

**8. Provide a variety of housing opportunities within the City consistent with the City's General Plan**

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

**9. Fire station improvements**

The Project would contribute \$510 per residential unit or up to \$700,000 with full build-out towards the redevelopment of Newport Beach Fire Station No. 2, and in the event the redevelopment of a station is not completed by the City prior to development of certain areas of the Project site, the Project would make available an on-site location for a temporary fire station.

**10. Sustainable design**

In addition to its emphasis on a mix of uses and housing opportunities, the Newport Banning Ranch Project is designed to be a sustainable and green community that provides energy efficiency and resource conservation to reduce the Project's greenhouse gas emissions, consistent with AB 32. The following Project components implement sustainability:

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

- The Project is registered under the Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Program, and will be consistent with the program's green building requirements.
- The Project provides compact development patterns by concentrating development in two main clusters which minimize habitat fragmentation and provides larger, more contiguous areas for open space protection, habitat restoration and parkland.
- The Project would implement a "dark sky" lighting program to minimize light spillage into adjacent native habitat areas.
- The Project would exceed adopted 2008 Title 24 energy conservation requirements by a minimum of 5 percent.
- The Project would require that all residential development incorporate low water use appliances; Smart Controller irrigation systems; Freon-free air conditioning units; multimetering "dashboards" in each dwelling unit to visualize real-time energy use; and solar orientation of structures to promote compatibility with the installation of photovoltaic panels or other current solar power technology.
- The Project has provisions for parking spaces for electric or hybrid vehicles and installation of facilities for Level 2 electric vehicle recharging.
- The Project would implement remediation and cleanup of the oilfield, which includes the ability to recycle and properly dispose on-site oilfield materials. Additionally, the treatment and cleaning of impacted soils would be done on site which significantly reduces the potential export of oil field materials and impacted soils.
- The Project would also increase construction waste diversion by 50 percent from 2010 requirements; and recycle and reuse construction materials onsite to minimize off-site hauling and disposal of materials.

## **11. Circulation Improvements**

The Project, through an agreement with the City of Costa Mesa, will fund intersection improvements for intersections in that City. Although outside of the City of Newport Beach, these traffic improvements will provide benefits to City of Newport Beach residents who use these streets. The Applicant will incrementally fund the City of Costa Mesa for intersections improvements. At Project build out, the Project will have provided approximately \$4.3 million in contributions to intersection improvements which is more than double the Project's fair share requirements based upon the traffic analysis in the Final EIR.

