

Comment Letter O88a

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 9:44 AM
To: Alford, Patrick
Subject: Banning Ranch dEIR Response

Mr Patrick Alford,
City of Newport Beach
Newport Beach, Ca 92663

Regarding the dEIR on the Banning Ranch Development

Dear Mr. Alford, I have several questions and concerns regarding this proposed development. These questions are as follows and all will be prefixed with a ? mark:

? If there is a way to reduce the harmful emissions and the negative atmospheric effects that are expected during construction and afterwards, would it not be prudent to employ these methods in order to avoid the "significant and unavoidable" consequences? (ref: page 4.10-28 Table 4.10-6, pg 4.10-29 Threshold 4.10-4) 1

? As resident and tax payer in Newport Beach, would it not be prudent and more cost effective to improve construction techniques now, rather than face the impending myriad of health and legal issues that will surely arise in the future from failing to implement such known techniques? I speak of the Tier 3 vs Tier 4 Diesel machinery to be used. It is mentioned on page 4.10-29 that the availability of Tier 4 can not be assured. ? Is it not a reasonable request to ask that these devices be "Assured"? ? Is it not the responsibility of the of the City to protect the people especially when it is within its power to do so? 2

Sincerely,
Dave Sutherland
12 Summerwind Ct Newport Beach, Ca 92663

Letter O88a Dave Sutherland
November 6, 2011

Response 1

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that the Project has been revised to include Tier 4 construction equipment and NOx emissions would be less than significant with the concurrent remediation and grading activities. With respect to Threshold 4.10-4, the potential impacts to sensitive receptors were all found to be less than significant.

Response 2

Please refer to the response to Comment 1.

Alford, Patrick

Comment Letter O88b

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 9:59 AM
To: Alford, Patrick
Subject: Comments on dEIR Banning Ranch

Mr. Patrick Alford
City of Newport Beach
Newport Beach, Ca 92663

Reference: page 4.10-23

If as stated the long term operational emissions "In 2023, calculated regional emissions of VOC, NOx and CO resulting from Project operation would exceed the SCAQMD CEQA significant thresholds." primarily due to vehicles operations, is this not an admission that the Project as currently proposed is too large? The long term effects of this Project are unacceptable for the residents of this area who will have to live with the adverse conditions forever!

Sincerely,
Dave Sutherland
12 Summerwind Ct
Newport Beach, Ca 92663

Letter O88b Dave Sutherland
November 6, 2011

Response 1

While the 2023 operational emissions are forecasted to exceed the SCAQMD CEQA thresholds, this is a regional impact. There would be no significant impact to local residents. The commenter's opinions regarding the size of the Project are noted.

Comment Letter O88c

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 10:11 AM
To: Alford, Patrick
Subject: Comments on dEIR Banning Ranch

Mr. Patrick Alford
City of Newport Beach
Newport Beach, Ca 92663

Reference: Table 4-10-7

In the years 2014-2017 and 2019, emissions of NOx would exceed SCAQMD thresholds. This, as stated is due to concurrent operations of both remediation and grading on separate sites. ? Would these NOx values be under threshold if these operations took place in a sequential effort rather than simultaneous? ? If so, would it not be prudent to maintain the safety and health of surrounding residents by operating under the established thresholds?

?If these operations are to be conducted concurrently because it is more economical to do so, then what price has been put on the health of residents?

Sincerely,
Dave Sutherland
12 Summerwind Ct
Newport Beach, Ca 92663

Letter O88c Dave Sutherland
November 6, 2011

Response 1

Please refer to Topical Response: Air Quality, with respect to nitrogen oxides emissions during construction, which explains that the Project has been revised to include Tier 4 construction equipment and NOx emissions would be less than significant with the concurrent remediation and grading activities.

Comment Letter O88d

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 10:22 AM
To: Alford, Patrick
Subject: Comments on dEIR Banning Ranch

Mr. Patrick Alford
City of Newport Beach
Newport Beach, Ca 92663

Reference: page 4.10-23
The dEIR states that "Operational emissions would continue to increase as the proposed residences are occupied, which is anticipated to start in 2015 and the anticipated completion of the Project in 2023, the occupancy and use of residences, retail uses and other Project components would continue to increase. Over the same period, vehicle emissions factors for most gaseous pollutants are anticipated to diminish because of improved vehicle fleet emissions." ? What empirical evidence is there to support the reduction of fleet emissions as implied in this assertion? Please provide the source of this assumption?

Sincerely,
Dave Sutherland
12 Summerind Ct
Newport Beach, Ca 92663

Letter O88d Dave Sutherland
November 6, 2011

Response 1

Gaseous vehicle emissions are related to fuel economy and vehicle performance. Since the late 1970s, fleet fuel economy has improved, forced by the legislation of Corporate Average Fuel Economy (CAFE) standards. Recent CAFE standards are described in Section 4.10, Air Quality, of the Draft EIR. Because newer cars have improved economy, the replacement of older cars with newer cars each year improves the overall fleet economy. In California, the CARB periodically publishes emission factors through the EMFAC model, which is based on vehicle testing and fleet composition compiled from DMV records, as well as other factors. EMFAC allows the selection of emissions for a given year. Modeling a given number of vehicle trips in different years demonstrates reduced emissions in later years.

Comment Letter O88e

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 10:31 AM
To: Alford, Patrick
Subject: Comments on dEIR Banning Ranch

Mr. Patrick Alford
City of Newport Beach
Newport Beach, CA 92663

Reference: 4.10-25

As stated in this section, VOC and NOx are expected to exceed SCAQMD thresholds in the year 2023. This is the anticipated completion date for the Project.

Reference: 4.10-26 Once completed, the Project leaves the residents with "significant and unavoidable" results of VOC and CO.

? Is this acceptable for the long term ramifications of our community? I find this a complete disregard for the residents and future residents of our beautiful city.

Sincerely,

Dave Sutherland
12 Summerwind Ct
Newport Beach, CA 92663

Letter O88e Dave Sutherland
November 6, 2011

Response 1

While the 2023 operational emissions are forecasted to exceed the SCAQMD CEQA thresholds, this is a regional impact. There would be no significant impact to local residents.

Comment Letter O88f

Alford, Patrick

From: Dave Sutherland [davesutherland4@gmail.com]
Sent: Sunday, November 06, 2011 10:40 AM
To: Alford, Patrick
Subject: Comments on dEIR Banning Ranch

Mr Patrick Alford
City of Newport Beach
Newport Beach, CA 92663

Reference: 4.10-35 MM4.10-9

The Landowner/Developer shall appoint a contact for complaints regarding the Project.
? Is this not liken to the fox looking after the hen house?
? Would it not be prudent to have this post be an official Government Agency, one that
is not directly associated with the Owner/Developer? ? Should not the oversight be an
independent agency that has the power to ensure compliance of operations of the
Project?

Sincerely,
Dave Sutherland
12 Summerwind Ct
Newport Beach, CA 92663

Letter O88f Dave Sutherland
November 6, 2011

Response 1

Providing a means for reporting a complaint to a person directly responsible for on-site activities is the path to obtaining the quickest investigation and response. The existence of a contractor's representative does not preclude contacting the City, as described at <http://www.newportbeachca.gov/index.aspx?page=227>, or, in the case of suspected air pollution violations, the South Coast Air Quality Management District.

Comment Letter O89

October 24, 2011



Patrick J. Alford, Project Manager
City of Newport Beach
Community Development Department
3300 Newport Boulevard
Newport Beach, CA 92658-8915

**RE: Banning Ranch EIR
Comments and Concerns From a Long Time Resident of Newport Shores**

Dear Mr. Alford,

I am a long time resident of the 550 home (not 440 Residences 4.1-3), Newport Shores neighborhood. I have reviewed the EIR for this proposed development and do not believe the environmental mitigation measures, as proposed, are sufficient to meet the impacts this project will impose on our community. Additional measures must be included. I have listed these on the attached "Specific Concerns" document. Also, some documentation in the draft EIR seems to be unclear, specifically, clarification on the following items must be conclusively resolved:

- | | |
|---|---|
| 1. The document states that "The bridge over PCH will be implemented as a part of the development; regulatory approvals must be pursued and received." If this bridge is not implemented many of the transportation and public access mitigation measures that specifically rely on its construction will not be met. How will the project be modified if this bridge is not implemented? The project, as currently configured, requires that the bridge be built. | 1 |
| 2. Connectivity of wildlife corridors and visual considerations within the report somewhat address the removal of existing and construction of new fences. Please confirm that project fencing will be installed only where shown in the exhibits provided. To be clear, if a fence now exists but is not shown in the proposed project exhibits, it will be removed and construction of new fences will only be in places identified on the project exhibits in report section number 4. | 2 |
| 3. Utility lines will all be in-ground installations, including utilities currently running across the bluff and the lowland areas, i.e. the overhead electrical line that currently runs from the toe of the bluff trail to and across the Santa Ana River. | 3 |

4. Clean up and remediation of the lowlands will address: a) ongoing measures to stop sediment from entering the Seminole slue and b) the project will address the sedimentation from the project property that has contributed and will continue through construction and after to the partial filling of the Seminole Slue and the ACOE wetlands.	4
5. Will ongoing open space maintenance and monitoring cost be the responsibility of the project developer?	5

In addition to these clarifications I would like to have the attached specific items addressed.

Thank you.



David Volz
203 Canal Street, Newport Beach, CA 92663

Banning Ranch EIR

Specific Concerns:

A. Access to parks and open spaces and trails, connections to existing trails and parks, public facilities distribution, connection to existing regional trail systems and other parks (4.1-61 section 30212) report sections do not adequately address the public's right to enter and have access to the proposed public spaces, parks and connections through the project. Specifically, the public and residences who would like to access the public project areas as well as move through the project property from the south west boundaries, have not been adequately accommodated.

From the Newport Shores neighborhood to the public interpretive trail the Toe of the Bluff Trail, and South Bluff Park, have not been accommodated. All public facilities should be easily accessible via direct trail connections across and around the Seminole Slue.

Also, a direct connection from the south west for pedestrian and bike riders to access the new nature center, Talbert Trail Head, 19th Street, the community park facilities, and Sunset Ridge Park should be a part of the project's environmental mitigation measures, as should direct access to the CCC Learning Center and public and commercial facilities north and east of the project.

Access points from existing public properties should be included at the small public park next to the Newport Shores Community Center Tennis Courts (bridge across the Seminole Slue). Another access to the toe of the bluff trail at the terminus of Cedar Street, and an access across the end of the Seminole Slue to connect the existing Newport Shores public park (not shown on Exhibit 4.1 -2j) directly to the toe of the bluff trail just north of the oil facilities along PCH. Requiring pedestrians and bikes to travel along PCH to the Banning Ranch Road, then up the road, is not adequate access to these public facilities from the West Newport area. The public benefit of these public facilities cannot be realized if the project does not provide the connections as part of the project.

B. Parkland L.U. Policy 4.1-60, 6.5.2 Active Community Park 20 to 30 acres required, is not adequately met, in the net 21.5 acres identified as north, central, and south community park properties. The community park should be contiguous with no bifurcation by project roads. The portion of the central community park parcel south of North Bluff Road is less than a ball field in width and should not be considered active community park land. The south community park parcel does not meet the community park land description. It is too narrow and is bifurcated by the Sunset Ridge Park Road, therefore, should not be counted as contribution acreage to the community park requirement. Likewise, the parking facilities required to replace lost parking at 15th Street should not be included in the community park acreage count, as this parking is not fully dedicated to the community park. The project must provide the 20 to 30 areas required in one parcel of adequate width to provide active community park amenities.

David Volz
203 Canal Street, Newport Beach, CA92663

October 24, 2011

<p>C. The fence shown on 4.2-2a “Open space fence at top of bluff” is not aesthetically appropriate nor does it meet the environmental consideration for connectivity of wild life corridors. Fences are not included on other sections/exhibits, and none should be included here. If absolutely required at this reach of the bluff top, it should be only a low rail type fence.</p>	8
<p>D. Sports field lighting and after dark lighting of all community park facilities must be included as part of the project according to the report text. Exhibits 4.1-2f and 4.1-2e should be updated to show field and park lighting.</p>	9
<p>E. The oil facilities should all be visually screened from all points of public view. The identified perimeter screening should be much wider and continuous around each oil facility compound and at the entry points. In particular, Exhibit 4.1-6 does not show any screening of the west side of this compound, an existing unsightly mess of machinery that will be made worse by the consolidation of oil facilities proposed to be added to the compound.</p>	10
<p>F. All manmade constructions within the natural areas must be screened or aesthetically treated to match the proposed natural setting. Stand pipes, bollards, signs, markers, roads, fences, etc. must be screened or painted to blend into the setting. Specifically, yellow protective bollards around constructed facilities should not be allowed, or if absolutely needed, must be painted to match the background colors of the natural areas.</p>	11

David Volz
203 Canal Street, Newport Beach, CA92663

October 24, 2011

Letter O89 David Volz
October 24, 2011

Response 1

The proposed pedestrian and bicycle bridge over West Coast Highway would provide access to bike lanes and pedestrian sidewalks on the south side of West Coast Highway and to the beach. The bridge would allow for pedestrians and bicyclists to move between the northern and southern sides of West Coast Highway without having to cross West Coast Highway at street level. However, the bridge is not proposed to mitigate any significant environmental impacts associated with the proposed Project. Therefore, the proposed Project would not have to be changed.

Response 2

Additional fencing would be required in addition to the fencing referenced by the commenter. Please refer to Section 5.6, Walls, Fences, and Monumentation, of Chapter 5, Master Landscape Plan, of the Newport Banning Ranch Master Development Plan, in particular the Exhibit 5-14, Community Walls, Fences, and Monumentation Plan. In addition to the Community Walls and Fences shown on this exhibit, it can be expected that:

1. The eastern edge of the North Community Park adjacent to the Coast Community College District's Newport Beach Learning Center building would be fenced for public safety and security, and that fences may be used to enclose recreational facilities such as tennis courts and play fields.
2. The perimeter of the Consolidated Oil Sites (Site Planning Areas 5a, 5b, and 5c), including the entry to the Oil Access Road from West Coast, would be fenced for security and public safety.
3. The perimeters and/or interior portions of private development areas (e.g., swimming pools, patios, gardens, yards, etc.) within the Villages and Colonies (i.e., Site Planning Areas 10a-10d, 11a-11b, 12a-12b, and 13a-13b) would likely be fenced or walled to some degree for security, privacy, noise attenuation, and/or public safety. Additionally, sound walls or other forms of walls or fences may be required as environmental mitigation pursuant to the EIR or public agency requirements.
4. Fencing may be required anywhere within the Project where a public agency of jurisdiction determines that such fencing is required to protect the public health, safety, and welfare. For example, fencing may be required in association with water management areas (where there is fear of drowning) or the proposed bridge over West Coast Highway (where there is fear of falling).

Although sensitive to connectivity of wildlife corridors, fencing may also be required by State and/or federal resource agencies, and/or the Coastal Commission for the protection of habitat areas or species on either an interim, seasonal, or permanent bases. This is often done, for example, to protect vernal pools and is proposed as a part of the Project.

Construction-level plans for fences and walls would be reviewed and approved by the City as part of Site Development Review.

Response 3

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

Response 4

It is unclear to the City what must be resolved.

Response 5

Open space monitoring and the associated costs would be a Conditions of Approval and would detail the structure and funding of the ownership and maintenance of the open space. It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by a number of sources including endowments, Homeowners Association fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

Response 6

The opinions of the commenter and the requests of the commenter for additional recreational (trail) connections from Newport Shores to the Project site are noted.

Response 7

As a point of clarification, the City's Park Dedication and Fees Ordinance requires 5 acres of parkland for every 1,000 residents; the park requirement for the Project would be 15.06 acres. In addition to compliance with the City's Park Dedication Ordinance, the General Plan specifically addresses the need for a Community Park to be located on the Project site. Land Use Policy 6.5.2 of the City's General Plan states that the Newport Banning Ranch property must:

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

Therefore, 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. However, the General Plan does not obligate the Applicant to develop a park exceeding Park Dedication Ordinance requirements (15.06). However, the General Plan requires that sufficient acreage be available on the property to comply with the General Plan.

The Project proposes to meet its parkland obligations (of 15.06 acres) through the provision of approximately 51.4 gross (42.1 net) acres of public parks, including an approximately 26.8-gross-acre (21.7-net-acre) Community Park; an approximately 20.9-gross-acre (17.5-net-acre) Bluff Park; approximately 3.7 gross (2.9 net) acres of Interpretive Parks; and bicycle, multi-use, and pedestrian trails.

With respect to replacement parking, the park acreage figures do not include the parking area. The opinions of the commenter on the configuration of the Community Park are noted.

Response 8

The fence between the Bluff Park and the Resort Colony depicted on Exhibit 4.1-2a (not Exhibit 4.2.2a as noted in the comment) was not intended indicate that fencing was mandated in this location but rather an illustration of what might be required.

A fence may not be required between the South Bluff Park and the Open Space Preserve in this general area based upon a variety of considerations, ranging from habitat and wildlife protection to public safety. If required, whether by the City, Homeowners Association, a resource agency or the Coastal Commission, the fence would be designed to take into consideration the habitat, wildlife movement and other requirements as detailed by the appropriate approving agency.

Response 9

The referenced land use exhibits show the relationship between on-site and off-site land uses in terms of general uses and distance between uses rather than all potential features on a parcel. Light standards are not depicted on any of the exhibits and are not deemed necessary for the analytical purpose of the exhibits.

Response 10

Exhibit 4.1-6 depicts vegetative buffering on the west side of the oil consolidation site.

As addressed in Section 4.1 and 4.2, the Project proposes to visually screen the consolidated oil facilities sites. The consolidated oil sites would be landscaped with native plant materials, including trees and shrubs in accordance with the Habitat Restoration Plan. The Oil Site Buffers (Site Planning Areas 6a and 6b) do not extend into areas of the Open Space Preserve that were identified as having significant existing habitat value. Exhibit 4.1-6 shows screening (the 2.7-acre Oil Site Buffer Site Planning Area 6b) on the west side of the Northerly Oil Operations Site (SPA 5c), but does not show much screening on a portion of the southern side for the reason (existing habitat) mentioned above.

Response 11

Very little manmade construction is proposed or would be permitted within the Open Space Preserve outside of the two oil consolidation sites. Construction could include, for example, handrails, boardwalks, or interpretive exhibits along the interpretive trails, or functional or safety improvements within the two drainage management areas. Exhibit 5-15 of the Master Development Plan shows that materials for open space fencing may include round or square tubular steel or aluminum posts and stainless or other similar cable; finishes may be galvanized, anodized, or other durable metal finishes. The Talbert Trailhead and public trails in the Open Space Preserve would not be lighted. Subsequent approvals would be required for fencing, signs, etc. in the Open Space areas and the compatibility of these features would be considered by the City as a part of Site Development Review.

Comment Letter O90a

Alford, Patrick

From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Saturday, October 22, 2011 1:58 AM
To: Alford, Patrick
Subject: FW: Banning Ranch vernal pools

Patrick, can you make this email part of the dEIR comments for Banning Ranch?

Thank you.

Terry Welsh

From: terrymwelsh@hotmail.com
To: terrymwelsh@hotmail.com
Subject: FW: Banning Ranch vernal pools
Date: Fri, 21 Oct 2011 06:36:39 -0700

From: terrymwelsh@hotmail.com
To: palford@city.newport-beach.ca.us; tbomkamp@wetlandpermitting.com
CC: christine_medak@fws.gov; jonathan_snapp-cook@fws.gov; erin_mccarthy@fws.gov; jengel@coastal.ca.gov; jdelarroz@coastal.ca.gov; kschwing@coastal.ca.gov; jdixon@coastal.ca.gov; thenry@coastal.ca.gov; ssarb@coastal.ca.gov; awillis@coastal.ca.gov
Subject: Banning Ranch vernal pools
Date: Tue, 30 Aug 2011 21:27:13 -0700

Patrick, can you forward this to the appropriate people working on the Banning Ranch EIR?

To Tony Bomkamp and City of Newport Beach:

On the recommendation of the US Fish and Wildlife Service, I am sending a review of the recent 2010/2011 Banning Ranch wet-season branchiopod study by David Moscovitz. The referenced DVD <u><i>Complete Banning Ranch Mesa Vernal Pools/Wetlands</i></u> has been previously provided to the regulatory agencies as well as the lead agency for the proposed Banning Ranch development project (Newport Beach).	1
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While the recent study by David Moscovitz does provide important data on many of the vernal pools/wetlands of the Banning Ranch mesa, it is clear that a complete study of all of the vernal pools/wetlands has not been completed. In order for the Newport Beach City Council to adequately evaluate the environmental impacts of this proposed development project, a thorough study of ALL vernal pools/wetlands of the Banning Ranch mesa must be part of the anticipated EIR. Lacking such a thorough study, the EIR must be considered incomplete.	2
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To complete an adequate study of all vernal pools/wetlands of the Banning Ranch mesa, and to provide the necessary information to the Newport Beach City Council to evaluate the environmental impacts of the proposed development project, additional dry season and/or wet season studies to evaluate for the listed San Diego fairy shrimp, as required by US Fish and Wildlife Service guidelines, must be performed per protocols.	3
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The following is from a USFWS memo titled:	4
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"Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods"

- c. A complete survey consists of sampling for either:
1. two full wet season surveys done within a 5-year period; or
 2. two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey).

4
cont.

Thank you,
Terry Welsh

Review of 2010/2011 Banning Ranch wet-season branchiopod study by David Moscovitz.

1. It is good to see protocol studies being done on many of the vernal pools/wetlands of the Banning Ranch mesa.	5
2. San Diego fairy shrimp have been identified in vernal pools/wetlands VP1, VP2, AD3, E, G, I and J (VP1, VP2, E, I and J are referred to as 1, 2, 17, 8, and 9 in the DVD <u>Complete Banning Ranch Mesa Vernal Pools/Wetlands</u>). Some of the vernal pools/wetlands in the GLA 2010/2011 wet-season study, such as A, B, D, and V (referred to as 30a, 5, 3, and 28a in the DVD <u>Complete Banning Ranch Mesa Vernal Pools/Wetlands</u>) now have two wet-season protocol studies without detection of the San Diego fairy shrimp.	6
3. Other vernal pools/wetlands in the GLA 2010/2011 wet-season study, such as C, F, H, K, L, M, N, O, P, R, T, W (referred to as 4, 7, 14, 10, 15, 11, 16, 18, 12, 13, 20 and 29 in the DVD <u>Complete Banning Ranch Mesa Vernal Pools/Wetlands</u>) have had only one wet-season study . Furthermore, vernal pools/wetlands described in the GLA 1999/2000 wet-season report, but not mentioned in the current study, such as Depression 1, Depression 2, and Depression 3 (referred to as 27, 24a, and 24b in the DVD <u>Complete Banning Ranch Mesa Vernal Pools/Wetlands</u>) also only have had one wet-season study. By USFWS guidelines, these vernal pools/wetlands will have to have one more wet-season study taken during a year of at least average rain fall, or one dry-season study performed by a qualified biologist, before the presence of the San Diego fairy shrimp can be excluded.	7
4. Other vernal pools/wetlands on the Banning Ranch mesa were not studied, nor even described, in the 2010/2011 wet-season report. It is not clear why vernal pools/wetlands 23, 25, 26, 27, 28b, 30b, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49a, or 49b were not included in this current study. Photo documentation in the DVD <u>Complete Banning Ranch Mesa Vernal Pools/Wetlands</u> shows most, if not all, of these vernal pools/wetlands were present during the 2010/2011 wet-season. Two wet-season studies taken during years of at least average rain fall, or one wet-season study and one dry-season study, will have to be performed on all of these vernal pools/wetlands before the presence of the San Diego fairy shrimp can be excluded.	8
5. In conclusion, of the 54 documented/potential vernal pools/wetlands on the Banning Ranch mesa, seven have evidence of the San Diego fairy shrimp, four have been satisfactorily excluded by protocol studies for the presence of the San Diego fairy shrimp, and 43 require additional wet-season or dry-season studies to exclude the presence of the San Diego fairy shrimp.	9

Letter O90a Terry Welsh
October 21, 2011

Response 1

The comment is noted.

Response 2

Please refer to Topical Response: Vernal Pools.

Response 3

Please refer to Topical Response: Vernal Pools.

Response 4

Please refer to Topical Response: Vernal Pools.

Response 5

The comment is noted.

Response 6

The comment is noted.

Response 7

Please refer to Topical Response: Vernal Pools.

Response 8

Please refer to Topical Response: Vernal Pools.

Response 9

Please refer to Topical Response: Vernal Pools

Comment Letter O90b

Alford, Patrick

From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Sunday, November 06, 2011 9:42 PM
To: Alford, Patrick; steve.banningranch@hotmail.com
Subject: dEIR comments
Attachments: Burrowing Owl information.pdf

Patrick, can you incorporate the attached report into the dEIR comments?

1

Thank you,

Terry Welsh

On 2-16-11, a Burrowing Owl was identified at a site just south of the corner of the City Yard at the end of 16th Street, in an area corresponding to the path of the proposed Bluff Rd. Enclosed is an aerial photo of the approximate location, as well as some photographs. This information needs to be incorporated into the body of data on Burrowing Owls.







The 2008 Planned Community Technical Appendix contained a 2008 Wintering Burrowing Owl map. Again, there was a Burrowing Owl located in the path of the planned Bluff Road (as well as a Burrowing Owl located on the South Mesa, and another located in the Mesa-Unified School District property).



Letter O90b Terry Welsh
November 6, 2011

Response 1

The information regarding the burrowing owl identified on site on February 16, 2011 will be added to the administrative record. However, this observation does not change any findings of the Draft EIR. The Draft EIR identifies the presence of the burrowing owl (*Athene cunicularia*) on site. The Draft EIR documented that suitable foraging and nesting habitat is present on site and this species has been observed wintering on site in 2008, 2009, and 2010. However, this species is absent for breeding based on breeding season surveys conducted in 2008, 2009, and 2010. As addressed on page 4.6-62 of the Draft EIR, impacts on occupied and potential habitat for this species were found to be significant. Implementation of Mitigation Measures (MMs) 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level (see page 4.6-89 of the Draft EIR).

Alford, Patrick

Comment Letter O90c

From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Tuesday, November 08, 2011 6:10 AM
To: Alford, Patrick
Subject: Banning Ranch dEIR comments

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

Patrick, here are three more comments. They are likely going to be submitted by Barry Nerhaus, but I am going to repeat them.

<p>1. Southwestern Pond Turtle - Data exists that shows southwestern pond turtles do not need permanent water nor high quality freshwater marsh to survive. Additionally from personal observation, southwestern pond turtles can utilize tidal marshes, estuaries, and salt marshes for foraging. So my question is what was the methodology for survey for southwestern pond turtles? Visual surveys are inadequate for surveying for this species.</p>	1
<p>2. Light-footed Clapper Rail - Since the freshwater marsh habitat was described to have cattails and rushes, there is a potential to have nesting Clapper Rails. It was stated that a fence was dividing the cordgrass habitat that is known to have at least one nesting pair. Well this bird has wings and can easily fly over a fence. Additionally, I located and documented a clapper rail nest in freshwater marsh this past year with 9 eggs. They hatched and were observed foraging throughout the freshwater marsh. Light-footed clapper rails are known to nest in freshwater marshes.</p>	2
<p>3. Since there are alkali grasslands, there is potential for the rare Wandering Skipper. The dEIR needs to study for the presence of the rare Wandering Skipper.</p>	3
<p>Finally, I had earlier referenced the November 2, 2011 Coastal Commission hearing as an excellent resource on ESHA determination on Banning Ranch and as a specific document describing the likelihood that Bluff Road would not be able to get approval for a connection to Coast Highway. Though no written transcript exists, there is an official State of California video archive containing the hearing. Here is the link:</p> <p>http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2011-11-02</p> <p>16. COASTAL PERMIT APPLICATIONS. See AGENDA CATEGORIES. Attention: Items appearing in this section of the agenda may be moved to the Consent Calendar for this area by the Executive Director when, prior to taking up the Consent Calendar, staff and the applicant are in agreement on the staff recommendation. If an item is moved to the Consent Calendar it will be processed in the same manner as other Consent Calendar items (See AGENDA CATEGORIES) except that if that item is subsequently removed from the Consent Calendar by a vote of three or more commissioners, the item will be acted upon at the meeting in the order in which it originally appears on this Meeting Notice and in the manner Coastal Permit Applications are processed. The purpose of this procedural change is to expedite the Commission's coastal development permit process.</p> <p>a. Application No. 5-10-168 (City of Newport Beach Sunset Ridge) Application of City of Newport Beach to construct, on vacant land, active recreational park (Sunset Ridge Park) of approximately 18 acres at northwest corner of intersection of West Coast Highway and Superior Ave, including access road,</p>	4

parking lot, public restroom, playground, sports fields, paths, viewpoint, retaining wall, landscaping, and coastal sage scrub habitat enhancement. Grading consists of approximately 110,000 cu.yds. of cut, and 102,000 cu.yds. of fill, at 4850 West Coast Highway and on portion of Banning Ranch, Newport Beach, Orange County. (JDA-LB)
Public Comment on Item
Return to Staff
Return to Commission
Motion and Vote
Amending Motion and Vote
Motion and Vote
Withdrawal of Application

4 cont.

Letter O90c Terry Welsh
November 8, 2011

Response 1

As discussed in detail in the Biological Technical report (page 52) of the Draft EIR, the southwestern pond turtle occurs primarily in freshwater rivers, streams, lakes, ponds, vernal pools, and seasonal wetlands and requires basking sites such as logs, banks, or other suitable areas above water level. On behalf of the City, BonTerra Consulting conducted a review of the California Natural Diversity Database (CNDDDB) by California Department of Fish and Game (CDFG) to identify any known occurrences of the southwestern pond turtle within Orange County. The species was reported to have 33 occurrences within Orange County; however, there are no known occurrences for this species within the coastal portion of the Santa Ana River watershed where the Project site is located. The closest occurrence within the watershed is approximately 25 miles upstream in the Silverado Canyon area. No perennial streams or ponds suitable for this subspecies are present on the Project site. Therefore, due to the lack of preferred habitat and absence of the species from the area, the southwestern pond turtle is not expected to occur on the Project site. In addition, the species has not been observed by professional biologists on the Project site over the past 20 or more years.

Response 2

Light-footed clapper rail (*Rallus longirostris levipes*) is discussed in detail on page 60 of the Draft EIR Biological Technical Report. The scientific literature states that this rail is a secretive resident of coastal salt marshes of pickleweed and Pacific cordgrass (*Spartinia foliosa*) (Edelman and Conway 1998). Although this subspecies has occurred at other localities in Orange County, the tidal salt marshes of Upper Newport Bay and the Seal Beach National Wildlife Refuge support the only substantial populations⁵². In addition to these localities, the species has been observed at the Bolsa Chica and San Joaquin Marshes and in the restored cordgrass habitat at the mouth of the Santa Ana River^{53 54}. Clapper rails nested in the relatively extensive lowland freshwater marsh habitats of San Joaquin Marsh in the 1980s (Gallagher 1997). This rail also nests in freshwater marsh habitats on the periphery of its preferred salt marsh habitat at Upper Newport Bay (Gallagher 1997). This species could be heard by BonTerra Consulting ornithologists calling from the U.S. Army Corps of Engineers (USACE) salt marsh restoration site adjacent to the Project site. Tidal marsh areas on the Project site are very limited in extent, with a chain-link fence separating the USACE salt marsh restoration site from the Project site. Freshwater marsh habitats on the Project site are not contiguous with these off-site tidal salt marsh habitats and are considered too small and isolated to be suitable habitat for clapper rails. The Project site provides potentially suitable foraging and high-tide refuge habitat but not suitable nesting habitat for this subspecies. Therefore, the light-footed clapper rail may occur for foraging or temporary refuge during high tides but is not expected to nest on the Project Site.

⁵² Hamilton, R.A. and D.R. Willick. 1996. *The Birds of Orange County, California: Status and Distribution*. Irvine, CA: Sea and Sage Audubon Society.

⁵³ California Department of Fish and Game (CDFG). 2011. California Natural Diversity Database. Records of Occurrence for USGS Seal Beach, Newport Beach, Tustin, and Laguna 7.5-minute quadrangles. Sacramento, CA: CDFG, Natural Heritage Division.

⁵⁴ Glenn Lukos Associates (GLA). 2009 (April 21). *Biological Technical Report for the Newport Banning Ranch Property Newport Beach, California* (prepared for Newport Banning Ranch LLC). Lake Forest, CA: GLA.

Response 3

According to the California Department of Fish and Game (CDFG)⁵⁵, the wandering saltmarsh skipper (*Panoquina errans*) does not have State or federal listing status. It does have a G4G5 S1 designation according to NatureServe, which is a non-profit conservation organization who provides data and information to State and federal resource agencies regarding the listing of species. A G4 status is for species that are “Apparently Secure” and G5 status is for species determined to be “Secure”. It also has a NatureServe Subnational rank of S1, which states that the species is “Critically Imperiled” and a World Conservation Union (IUCN) Near Threatened listing.

As set forth in the State CEQA Guidelines Section 15380(d)

A species not included in any listing identified in subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (b)”. Subdivision (b) includes the following standards:

A species of animal or plant is:

- (1) “Endangered” when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or
- (2) “Rare” when either: (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or
- (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered “threatened” as that term is used in the Federal Endangered Species Act.

Based on a range map for this species, this species is believed to occur in coastal salt marshes from north of Santa Barbara to the southern portion of Baja, Mexico⁵⁶. Existing literature for this species states that “Upper Newport Bay may very well support the largest existing colony of this butterfly. It...may literally swarm during August along the road and the bluffs near Big Canyon on the west side of Upper Newport Bay”⁵⁷. It is also believed that continued preservation of the Upper Newport Bay is desirable for the continued survival of the butterfly at healthy population levels. This species is known to occur within Southern California in coastal and inland salt marsh areas. Given this species distribution and listing status, this species does not meet the criteria of Endangered, Rare, or Threatened as described above; however, it is noted that this species is limited in its distribution and occurrence.

The wandering skipper may occur on site, primarily within the Lowland area supporting higher concentrations of salt grass and pickleweed. Permanent Project impacts on habitat for this species would be limited, and most of the habitat for this species would remain as open space following oilfield remediation activities. However, these activities could temporarily impact marsh habitats used by this species. Much of the marsh habitat on the Project site is currently fragmented by roads and is invaded to varying degrees by non-native species which are known to have significant detrimental impacts on skipper habitat. Revegetation following oilfield

⁵⁵ California Department of Fish and Game (CDFG). 2011 (January). *Special Animals*. Sacramento, CA: CDFG, Natural Heritage Division.

⁵⁶ <http://www.butterfliesandmoths.org/species/Panoquina-errans>

⁵⁷ <http://mamba.bio.uci.edu/~pjbryant/biodiv/lepidopt/hesper/wanderin.htm>

remediation activities has the potential to result in a higher long-term habitat quality due to invasive species removal, removal of human activity and disturbance related to oilfield operations, and availability of larger blocks of contiguous native habitat for this species in the open space area. Project impacts on this species would be considered less than significant in consideration of other habitat available for these species in the region; no mitigation would be required.

Response 4

The comment is noted. The November 2, 2011 Coastal Commission hearing was a hearing on a separate project, the Sunset Ridge Park. Written comments on the Newport Banning Ranch Draft EIR were provided to the City by the California Coastal Commission and are addressed in this Responses to Comments document.

Comment Letter O90d

Comments on dEIR for Banning Ranch.

Attachments:

1. Planned Community Development Plan for Banning Ranch and Technical Appendices (August 2008)
2. Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 and attachments
3. Orange County Transportation Authority (OCTA) Measure M Environmental Oversight Committee (EOC) reports including map and acquisition properties evaluation
4. Letter, dated 4/15/09, from NB City Council in support of application for Measure M funds to be used towards the purchase of the entire Banning Ranch.
5. Coastal Commission staff reports, and attachments, for Coastal Development Permit for Sunset Ridge Park project (application number 5-10-168) from both 9-23-11 and 10-20-11
6. The "Vandersloot File"
7. Final Sunset Ridge Park EIR approved by NB council April 23, 2010

Note: Per City Planner Patrick Alford, the attachments are being uploaded to a designated "Dropbox" file upload site, as well as being provided in the form of DVDs to City Hall.

BIOLOGICAL RESOURCES

1. ESHA

The single most important factor affecting this development in the area of Biological Resources is the presence of Environmentally Sensitive Habitat Areas (ESHAs). The general concept of ESHAs and their relationship to the Coastal Act are briefly discussed, but there is no attempt to delineate ESHAs on the Banning Ranch property. ESHAs undoubtedly exist on Banning Ranch and it is likely that their presence will drastically limit the size of the development, if not outright prevent the development from being built. The dEIR says ESHA determinations will be made by the Coastal Commission, but this will happen months after the dEIR might be voted on by the City Council. Before this City Council vote, an honest attempt should be made to delineate ESHAs as best as possible, using the Coastal Act as the standard of review, but also using the Newport Beach CLUP as guidance. It is not in the public's interest to have the City Council vote on this project without a reasonable expectation of where the ESHAs exist on Banning Ranch, and how they might be affected. To be a responsible lead agency, the City of Newport Beach must understand the extent of the ESHAs before voting on this project. The results of the NB

council approving a project that impacts ESHA can mean much money and time spent on a project that violates the Coastal Act and has no chance of being approved. Such is the case at Sunset Ridge Park, where the City of NB approved a park design that was not consistent with the Coastal Act. Had the NB council known from the beginning where the ESHA is located, a different park design would have been considered earlier.

In or around early 2009, a Newport Banning Ranch Planned Community Development Plan, with extensive appendices (dated 8/08), was posted on the City of Newport Beach's website. It was removed a few months later. This entire plan, with appendices, is being submitted for the record as it included extensive invaluable material that is not present in the current dEIR.

For one thing, a map of probable ESHA was included in the 2008 appendices (this map is not present in the dEIR). While this map will undoubtedly be expanded as the knowledge of the biological resources on Banning Ranch increases, this 2008 map is significant for the extensive ESHA in the northeast corner of Banning Ranch where the extension of Bluff Road to 19th St. is proposed (see page 351 or 540 on the Technical Appendices, vol. II dated 8/08). The dEIR does not explain why a road is planned for this area despite this area being previously mapped as ESHA by the applicant.

Additional ESHA on Banning Ranch is described in the NW and SE polygons in the Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 (described on page 9 of 22 as well as on other pages). Maps of these areas can be seen in the attachments for the same documents (page 8 of 100 as well as on other pages).

Additional ESHA is described in the Sunset Ridge Park Coastal Development Permit (application number 5-10-168) staff report dated 10/20/11. This document describes two areas of ESHA known as "ESHA East" and "ESHA West" (described on pages 17-19 of 46, as well as described elsewhere). Maps of "ESHA East" and "ESHA West" can also be seen in the attachments for the same document (page 177 of 204 as well as on other pages).

In 2009, the Banning Ranch Conservancy applied to the Measure M Environmental Oversight Committee (EOC), which is part of the Orange County Transportation Authority (OCTA) for funds to be used for the purchase of the entire Banning Ranch. This request was supported by a unanimous vote by the NB City Council resulting in a letter of support. Following this application, the EOC evaluated the many open space project applicants, ranking them all. The EOC placed Banning Ranch in the highest category (Group 1) based on "high quality habitat, heterogeneous habitat, larger sized properties, aligns with impacted habitats, and contains covered species." Furthermore, the EOC identified four "priority conservation areas" on the Banning Ranch mesa. Please review the Final Conservation Biology Report as well as the Acquisition Properties Evaluation List and Map.

1 cont.

2

2. Vernal Pool/wetland data is incomplete. There is no mention of the roughly 15 acres of USFWS-declared critical habitat for the San Diego Fairy Shrimp in the middle mesa. The dEIR does mention seven vernal pools/wetlands that have been demonstrated to contain San Diego Fairy Shrimp, but it does not show the locations of the other vernal pools/wetlands detected during surveys conducted by the owner's consultants, many of which contain Versatile Fairy Shrimp. Additionally, there is no mention of the roughly 24 other documented or potential vernal pools/wetlands described in the document [Complete Banning Ranch Mesa Vernal Pools/Wetlands](#).

Under US Fish and Wildlife Service guidelines, a vernal pool has to be subjected to two separate studies before the vernal pool can be determined to be free of listed branchiopods (in this case, the San Diego Fairy Shrimp).

"Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods"

c. A complete survey consists of sampling for either:

- 1. two full wet season surveys done within a 5-year period; or***
- 2. two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey).***

It is important to note that the City of Newport Beach has acknowledged the necessity of conducting two rounds of vernal pool/wetland surveys and has offered to conduct a second round of surveys on four of the potential vernal pools/wetlands on Banning Ranch that lie in a proposed dump site for the Sunset Ridge Park project (VP34, VP35, VP 36, and VP39) in a letter to Coastal Commission staff dated 10-19-11 (Exhibit 13 for the attachments of the Coastal Commission Staff report for the Sunset Ridge Park staff report dated 10-20-11).

In this letter the City says, "Coastal staff in a recent follow-up meeting now further requested that a wet season study be undertaken to further check and confirm that vernal pools or wetlands conditions do not exist in this area The City will agree to undertake this study, and work with Coastal Staff to modify our proposed grading disposal area accordingly if BRC's allegation can be substantiated, and if the subject park project application is approved." (page 10 of 74) Here is a list of potential/documented vernal pools/wetlands on the Banning Ranch mesa:

3

Vernal pool/wetland presence on aerial flyovers (Note: Significant winter rainstorms started 1/19/10 and 12/18/10)

n/a = not applicable. This means the flyover did not adequately evaluate the vernal pool/wetland.

Unk = unknown (has not been excluded by protocol studies)

Vernal Pool/ Wetland	Latitude All are 33° North	Longitude All are 117° West	1/28/10 9 days after rain started	12/24/10 6 days after rain started	1/11/11 1 25 days after rain started	2/7/11 52 days after rain started	Documented ponding water for ≥17 days	Two wet season surveys or one wet season and one dry season survey by certified biologist	Versatile Fairy Shrimp	San Diego Fairy Shrimp (exclusion based on Two wet season surveys or one wet season and one dry season survey by certified biologist)
1 (VP1)	38°04.16"	56°37.23"	Yes	Yes	Yes	Likely	Yes	Yes	Yes	Yes
2 (VP2)	38°02.38"	56°38.31"	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
3 (D)	38°00.10"	56°37.56"	Yes	Yes	Yes	No	Yes	Yes	Yes	No
4 (C)	37°57.70"	56°39.50"	Yes	Yes	n/a	n/a	Yes	No	Yes	Unk
5 (B)	37°55.45"	56°36.21"	Yes	Yes	Yes	No	Yes	Yes	Yes	No
6	37°59.67"	56°33.97"	Yes	Yes	Yes	n/a	Yes	Yes	Unk	No
7 (F)	37°58.35"	56°32.70"	Yes	Yes	Yes	n/a	Yes	No	Unk	Unk
8 (I)	38°02.06"	56°32.30"	Yes	Yes	Yes	n/a	Yes	No	Unk	Yes
9 (J)	38°03.04"	56°31.88"	Yes	Yes	Yes	No	Yes	No	Unk	Yes
10 (K)	38°03.14"	56°30.31"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
11 (M)	38°04.82"	56°29.27"	Yes	Yes	Yes	No	Yes	No	Yes	Unk
12 (P)	38°06.78"	56°32.10"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
13 (R)	38°06.26"	56°33.92"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
14 (H)	38°02.19"	56°33.72"	No	Yes	No	n/a	Unk	No	Unk	Unk
15 (L)	38°02.93"	56°30.16"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
16 (N)	38°04.22"	56°30.75"	Yes	Yes	Yes	No	Yes	No	Yes	Unk
17 (E)	37°59.20"	56°35.82"	Likely	Yes	Yes	Likely	Yes	No	Unk	Yes
18 (O)	38°04.94"	56°30.73"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
19 (Q)	38°05.26"	56°30.76"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
20 (T)	38°09.03"	56°32.63"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
21 (S)	38°08.53"	56°33.66"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
22 (U)	38°09.76"	56°33.44"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
23	37°53.56"	56°41.70"	Likely	n/a	n/a	No	Unk	No	Unk	Unk
24a	37°36.86"	56°41.12"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
24b	37°35.09"	56°41.40"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
25	38°11.59"	56°38.45"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
26	37°58.76"	56°52.07"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
27	37°35.37"	37°35.37"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
28a(V)	38°24.29"	56°41.49"	n/a	n/a	n/a	n/a	Unk	Yes	Yes	No
28b			n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
29 (W)	37°41.79"	56°22.33"	No	n/a	n/a	n/a	Yes	No	Unk	Unk
30a(A)	37°47.36"	56°46.77"	n/a	Yes	n/a	n/a	Unk	Yes	Yes	No

3 cont.

30b	37'47.36"	56'46.77"	n/a	Yes	n/a	n/a	Unk	No	Unk	Unk
31			n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
32 (see 30a)										
33	37'50.38"	56'47.20"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
34	37'40.02"	56'27.15"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
35	37'39.51"	56'27.73"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
36	37'41.99"	56'26.12"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
37	37'38.97"	56'40.80"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
38	37'15.87"	56'39.78"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
39	37'43.46"	56'27.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
40	38'05.27"	56'42.29"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
41	38'01.44"	56'39.62"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
42	37'52.96"	56'48.49"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk 3 cont.
43	37'56.45"	56'39.89"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
44	37'35.65"	56'37.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
45	37'37.41"	56'37.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
46 (see 27)	37'35.37"	37'35.37"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
47	37'50.50"	56'39.64"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
48	37'56.99"	56'37.96"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
49a	37'52.57"	56'21.52"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
49b	37'52.57"	56'21.52"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
(AD3)							Unk	No	Unk	Yes
(G)							Unk	No	Unk	Yes

Comments: The vernal pools/wetlands are listed by their number designations from the DVD *The Complete Banning Ranch Mesa Vernal Pools/Wetlands*. The letters in parenthesis refer to the letter designations in the 2010/2011 Glenn Lukos Study. Vernal pools 1 – 22, along with 51, 40, 41, 43, 48, AD3 and G are located in the “middle mesa” area and constitute the largest vernal pool complex on Banning Ranch. Vernal pools 1 and 2 are described as “Vernal Pool and small adjacent depression” respectively, in the 5/19/00 GLA report (which documented San Diego Fairy Shrimp in both). Vernal pools 23, 25, 26 are located in vicinity to the “middle mesa” vernal pool complex, but are not well seen in the aerial photos. Vernal pools 27, 24a, 24b, 3, 2, and 1 are described as “Depressions 1, 2, 3, 4, 5, and Vernal Pool” respectively, in the 10/18/00 GLA report. Vernal pool 30a was described in the 4/21/08 and 5/28/09 GLA reports.

3. The "Vandersloot File"

In 2008, the late Dr. Jan Vandersloot took several walking tours of Banning Ranch, carefully documenting by photo numerous plants and other biological features of Banning Ranch. Dr. Vandersloot carefully noted the type of plant, and its location, by hand-held GPS device. The information collected by Dr. Vandersloot is important because it documents native vegetation where the dEIR describes non-native, ruderal, or ornamental vegetation. The "Vandersloot File" (Dr. Vandersloot's photo collection, Excel File describing what is in the photos, and their GPS locations, hand drawn maps showing where he walked and stopped to take photos, and a link to "GoogleEarth" showing "push-pins" at each location he stopped to take photos) is submitted as part of the record.

Two examples of discrepancies between the "Vandersloot File" and the vegetation map of the dEIR are:

- a. Dr. Vandersloot documented mulefat at "B75", where the dEIR vegetation map says "non-native grassland."
- b. Dr. Vandersloot documented encelia at "B152" where the dEIR vegetation map says "non-native grassland".

Many other discrepancies exist. A thorough comparison between the "Vandersloot File" and the vegetation should be undertaken.

Any discrepancies warrant a review and site visit by a third party biologist.

Instructions on how to use the "Vandersloot File"

Jan Vandersloot collected this data in late 2008. Jan walked portions of Banning Ranch on 10/12/08, 10/19/08, 10/26/08, 11/1/08, 11/8/08, 11/22/08, 11/30/08, and 12/7/08.

10/12/08 was just a "warm up" day where Jan tested his GPS device. Pictures are not currently available for 10/12/08.

Pictures taken on 11/30/08 are currently not available. It is not clear why they are not available. Perhaps they will turn up some day.

4

Hand-drawn maps show where the photos were taken each day.

An Excel file gives coordinates of each photo, an approximate size of the studied area, as well as a description of what is depicted in each photo (doesn't include 12/7/08).

Finally, the location of most of the photos are depicted on Google Earth with "push-pins."

Below is Jan's description of his method:

11-29-08

Notes on the files on this disk:

1. The first folder, dated 10-12-08, was the first visit to get oriented. No GPS readings were taken on this date.

2. The folders dated 10/19/08, 11/01/08, 11/08/08, 11/22/08, were taken with GPS readings by a Garmin GPS II model, with stated accuracy of 5-10 meters (16-33 feet). This was confirmed in my backyard.

3. Since I am new to using the GPS device, the protocol for displaying the waypoint results went through an evolution. The first few waypoints are not numbered on the photos, but were saved on the GPS unit. Finally, the following protocol was followed: First the GPS waypoint was determined based on roughly the center of the vegetation patch. Then a closeup of the GPS reading was photographed to show the reading in degrees, minutes, seconds. Then I zoomed out to show where the GPS unit was located in relationship to the vegetation and photographed that point. Then a further backup photo was taken to show the general area of the vegetative patch. Thus there is usually a sequence of first a closeup of the GPS reading, with receding views after that.

4. Subsequent to trying to display the GPS waypoints on Google Earth with degrees, minutes, seconds, which was way off, I used the NAV function of the GPS unit to convert the waypoints to decimal degrees. This was much more successful in placing the waypoints on Google Earth. You can see these waypoints on the Banning Ranch Decimal GPS Table on the disk. I also included the GPS Table with the original degrees, minutes, seconds recorded on the GPS unit.

4 cont.

5. The work sheets were performed by walking the areas of vegetation to determine the size in yards of each patch. Thus, you can locate the GPS waypoints on the maps.

6. The photographs were taken with a Nikon Coolpix 8800 with dates of the photos imprinted on the photos.

Jan Vandersloot

4 cont.

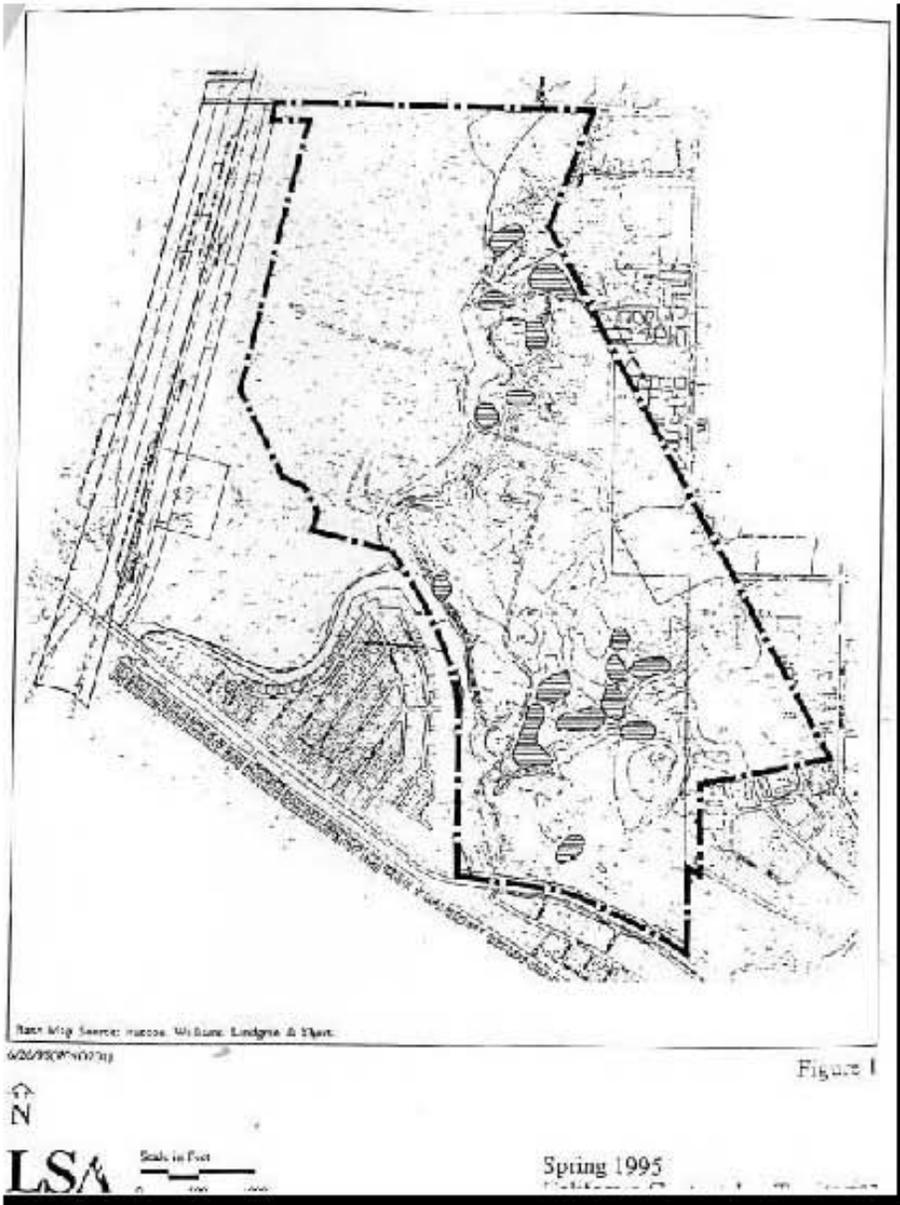
Gnatcatcher data and Cactus Wren data

The dEIR shows one year of Gnatcatcher data (2009), and this uses "condensation points" rather than actual field data. Single "condensation points" are insufficient for establishing ESHA delineations (please review excellent discussion of this topic by biologist Robb Hamilton at the Coastal Commission hearing on Sunset Ridge Park, 11/2/11).

In addition, the dEIR doesn't mention the multiple previous Gnatcatcher and Cactus Wren surveys from 1992-2008, as well as additional documentation of Gnatcatchers that was produced during the effort to build a park at Sunset Ridge. A summary of Gnatcatcher surveys is provided in the attachment for the Coastal Commission staff report for the Coastal Development Permit for Sunset Ridge Park project (application number 5-10-168) from 9-23-11 (see pages 119 – 139). Maps for 1995, 2006 and 2007 (which are not included in the above-mentioned attachment for the staff report) are presenting in the following three pages.

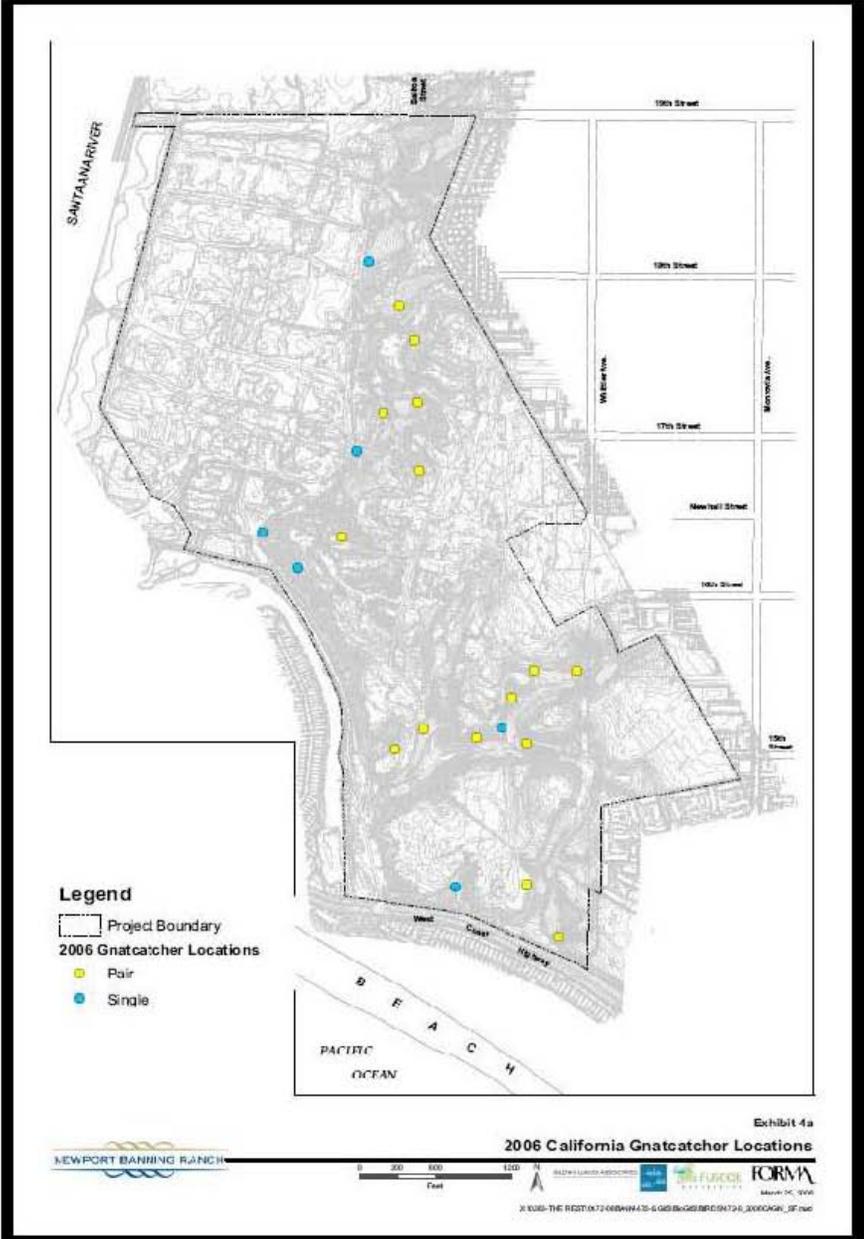
Again, where possible, field data should be produced for Gnatcatcher (and other species) surveys that present data as a single "condensation point"

5



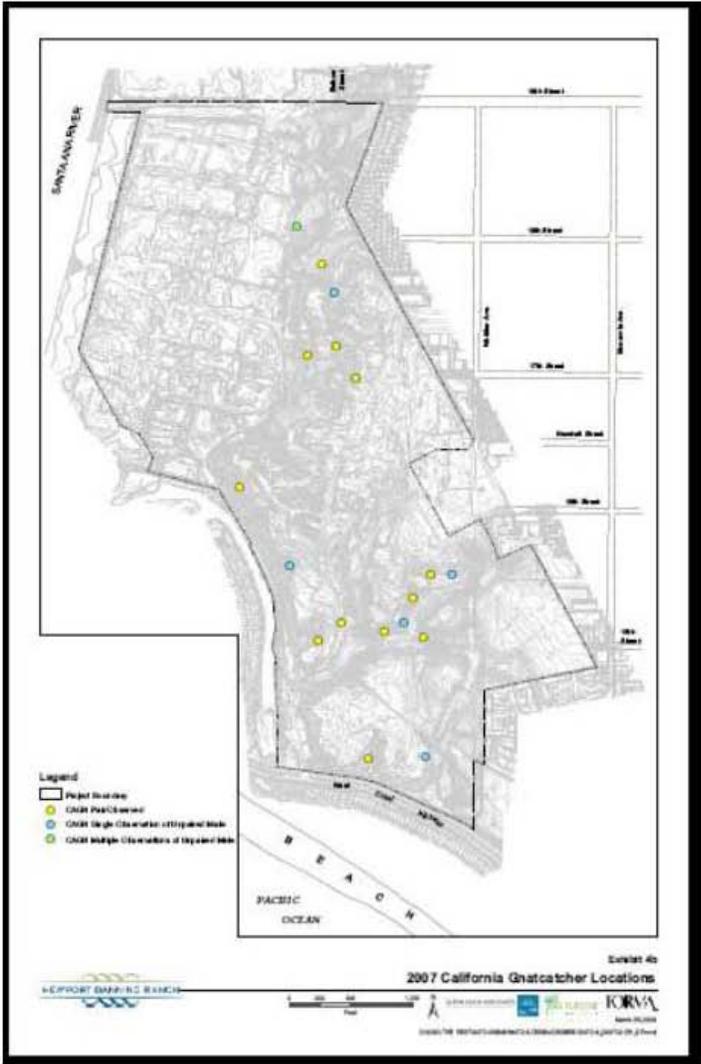
5 cont

Gnatcatcher data from 1995



5 cont.

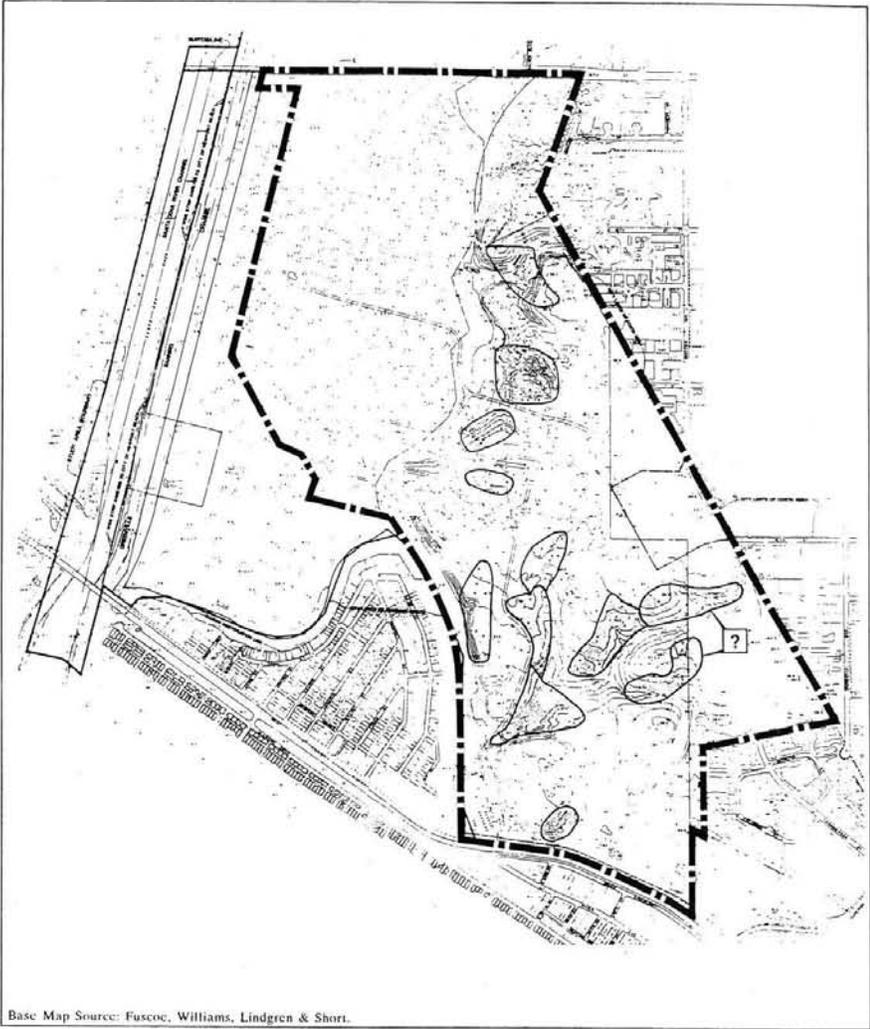
Gnatcatcher data from 2006



5 cont.

Gnatcatcher data from 2007

The dEIR contains Cactus Wren data from 2009, but does not include data beginning in 1992. This is presented as follows



5 cont.



Cactus Wren Territories - Spring 1992



5 cont.

Cactus Wren 1994



5 cont.

Site Map Source: Phase Williams Lindsey & Chen
6/25/95 (WNL/CLB)

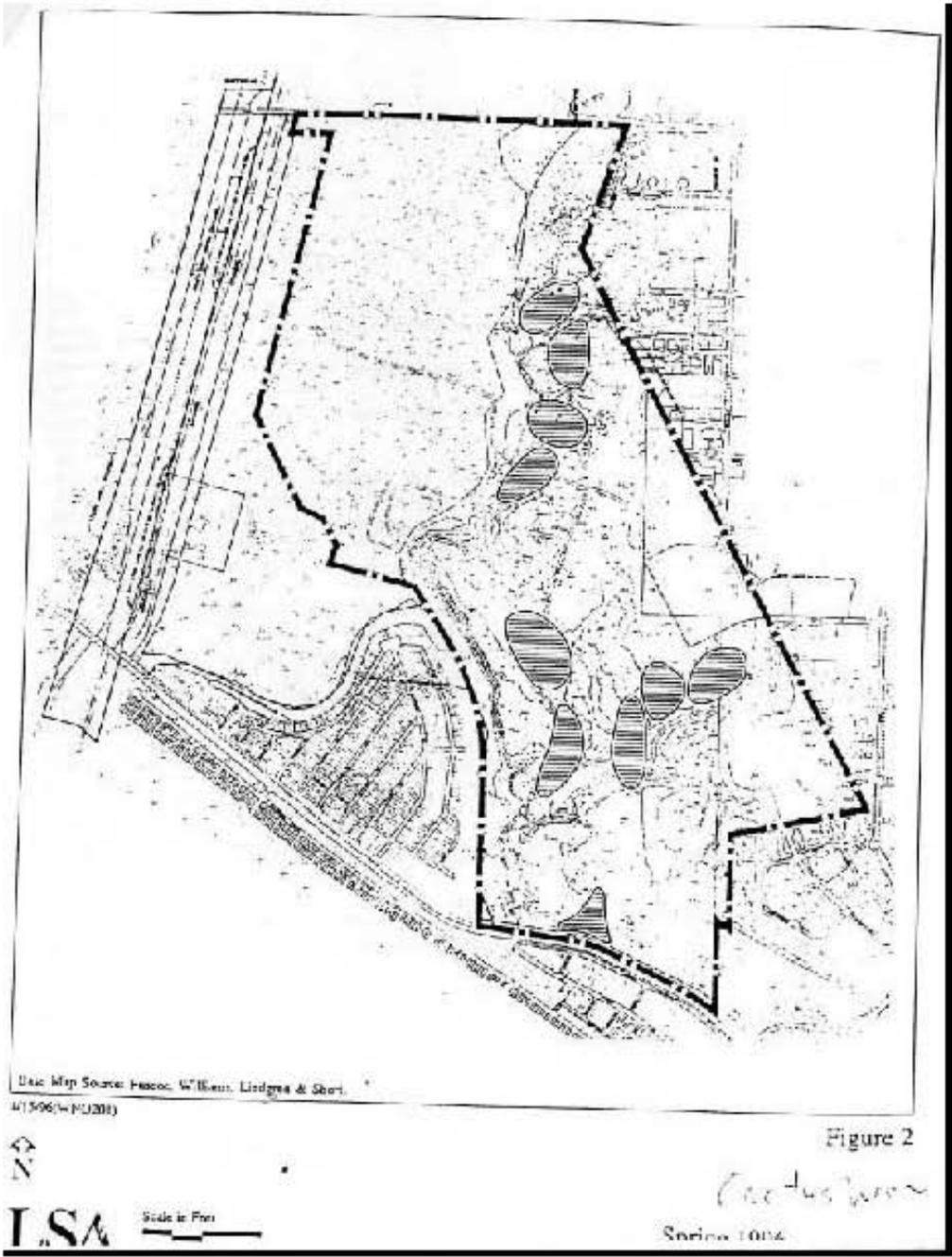
Figure 2

North arrow pointing up with the letter 'N' below it.

LSA

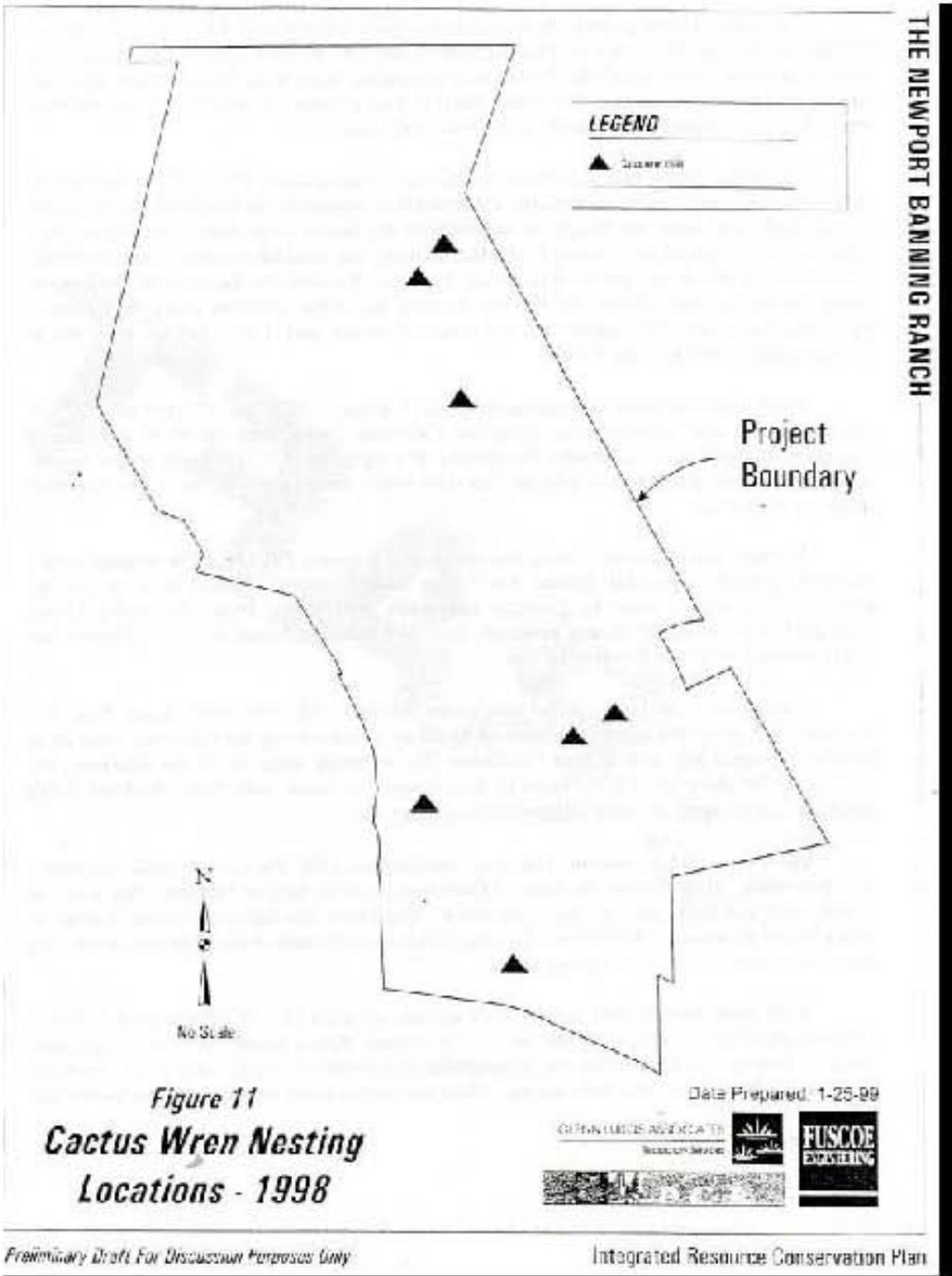
Scale in Feet: 0 500 1000

Spring 1995
Cactus Wren Territories

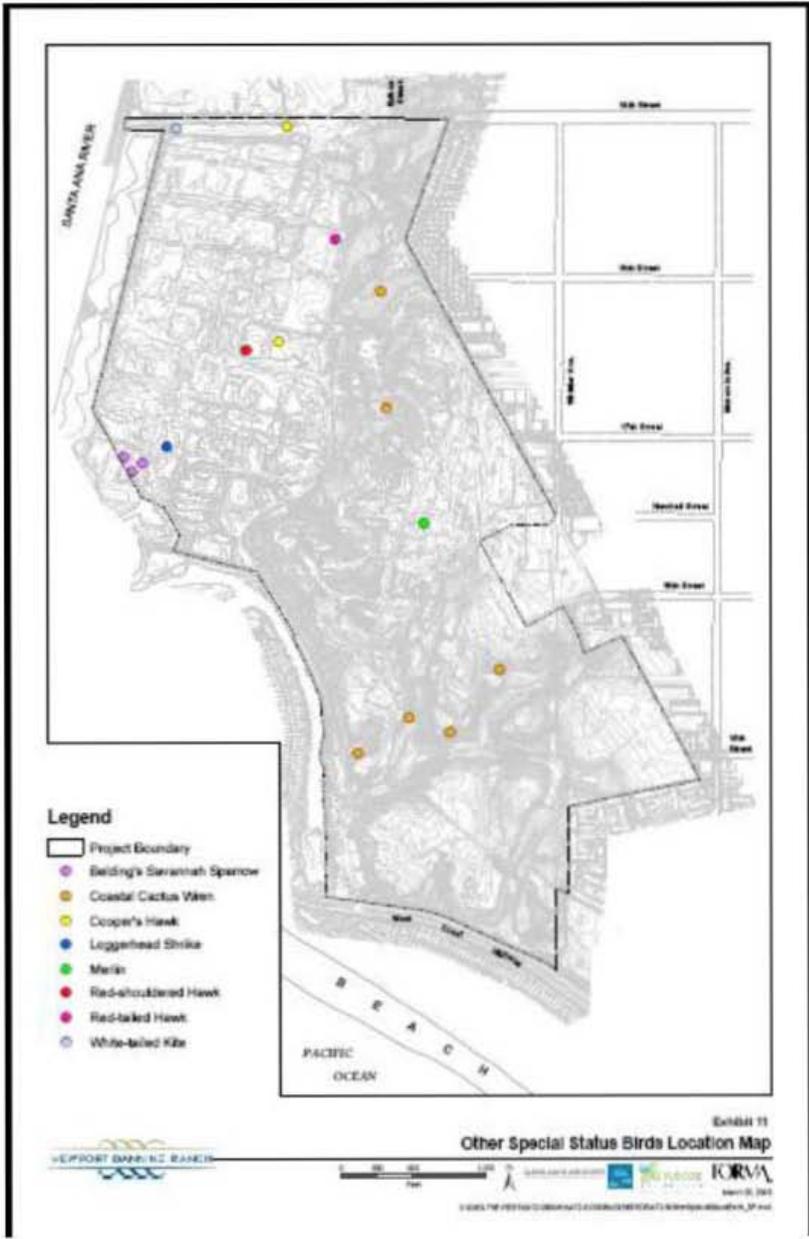


5 cont.

Cactus Wren 1996



5 cont.



5 cont.

<p>Burrowing Owl</p> <p>The dEIR shows data from a 2009 Burrowing Owl survey, but does not include data from a 2008 Burrowing Owl survey that was part of the 2008 Development Plan (see page 343 of 540 in Technical Appendix vol. II of 2008Planned Community)</p>	6
<p>"Orstad File"</p> <p>The late Jim Orstad compiled a lengthy and referenced written argument on why a residential development should not be built at Banning Ranch. The "Orstad File" had been previously submitted as part of the EIR comments for the Sunset Ridge Park project, but is again especially relevant to the proposed Banning Ranch development. The "Orstad File" is being resubmitted to be included in the record for the draft EIR for Banning Ranch (please see attached Sunset Ridge EIR comments, pages 398-414 of 602)</p>	7

Letter O90d Terry Welsh
November 8, 2011

Response 1

Please refer to Topical Response: EHSA, Topical Response: Sunset Ridge Park, Topical Response: Mowing and Fuel Modification, and Topical Response: Coastal Commission Consent Orders.

Response 2

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

Response 3

Please refer to Topical Response: Vernal Pools.

Response 4

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

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

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

Response 5

The Draft EIR summarized the report findings for the surveys conducted for the coastal California gnatcatcher. These surveys are consistent with and follow the survey protocol established by the U.S. Fish and Wildlife Service (USFWS) for this species. The USFWS is the resource agency responsible for this species listing, tracking on population statistics, and ultimate recovery.

Response 6

The information regarding the burrowing owl identified on site on February 16, 2011 will be added to the administrative record. However, this observation does not change any findings of the Draft EIR. The Draft EIR identifies the presence of the burrowing owl (*Athene cunicularia*) on site. The Draft EIR documented that suitable foraging and nesting habitat is present on site and this species has been observed wintering on site in 2008, 2009, and 2010. However, this species is absent for breeding based on breeding season surveys conducted in 2008, 2009, and 2010. As addressed on page 4.6-62 of the Draft EIR, impacts on occupied and potential habitat for this species were found to be significant. Implementation of Mitigation Measures (MMS) 4.6-2 and 4.6-12 would reduce the impact on this species to a less than significant level (see page 4.6-89 of the Draft EIR).

Response 7

The late James Orstad prepared a paper dated June 2, 2004, identifying his concerns regarding development of the Newport Banning Ranch property and noted that he was a proponent of the property becoming “a park and wild game nature preserve”. Issues of concern to Mr. Orstad included oilfield contamination (soil and airborne); unstable bluffs; geotechnical instability; presence of significant historical resources; seismic faulting; and dust pollution. All of the issues identified by Mr. Orstad are addressed in the Draft EIR.

- Oilfield contamination: Section 4.5, Hazards and Hazardous Materials; Section 4.10, Air Quality
- Unstable bluffs, geotechnical instability, faulting: Section 4.3, Geology and Soils
- Historical resources: Section 4.13, Cultural and Paleontological Resources
- Dust pollution: Section 4.10, Air Quality.

Response 8

The State CEQA Guidelines Section 15125(a) states, “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published”. The Notice of Preparation was published on March 18, 2009. The Notice of Preparation was published on March 18, 2009. Using data that is over 20 years old is not relying on the most current and accurate information required by CEQA. The most current information serves as the baseline conditions by which the lead agency determines whether an impact is significant. CEQA also states that the description of the environmental setting shall be no longer than is necessary to form an understanding of the significant effects of the proposed project and its alternatives. If historical data is not substantially different that the recent data available for conditions on site, it is not necessary to reference old data sources whether this older data provides no new/valuable information that would have a effect on the Project findings.

There are reasons where the incorporation of species data from past data would not be needed or appropriate for the proposed Project:

- Environmental site conditions have changed over that past 20 years which could result in a slightly different flora and fauna component of the Project site. This data would therefore not be current.
- Nomenclature has changed for many plant and wildlife species in the area and there would be confusion as to which species previous reports may have been referenced.
- Many of the previous survey reports do not have species compendia. It is unclear whether the survey compendia data is accessible.

Comment Letter O90e

Alford, Patrick

From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Sunday, November 06, 2011 8:19 PM
To: Alford, Patrick
Subject: dEIR comments for Banning Ranch
Attachments: Jim Orstad File.pdf

"Orstad File"

The late Jim Orstad compiled a lengthy and referenced written argument on why a residential development should not be built at Banning Ranch. The "Orstad File" had been previously submitted as part of the EIR comments for the Sunset Ridge Park project, but is again especially relevant to the proposed Banning Ranch development. The "Orstad File" is being resubmitted to be included in the record for the draft EIR for Banning Ranch (please see attached Sunset Ridge EIR comments, pages 398-414 of 602)

Letter O90e Terry Welsh
November 6, 2011

Response 1

The late James Orstad prepared a paper dated June 2, 2004, identifying his concerns regarding development of the Newport Banning Ranch property and noted that he was a proponent of the property becoming “a park and wild game nature preserve”. Issues of concern to Mr. Orstad included oilfield contamination (soil and airborne); unstable bluffs; geotechnical instability; presence of significant historical resources; seismic faulting; and dust pollution. All of the issues identified by Mr. Orstad are addressed in the Draft EIR.

- Oilfield contamination: Section 4.5, Hazards and Hazardous Materials; Section 4.10, Air Quality
- Unstable bluffs, geotechnical instability, faulting: Section 4.3, Geology and Soils
- Historical resources: Section 4.13, Cultural and Paleontological Resources
- Dust pollution: Section 4.10, Air Quality.

PUBLIC MEETINGS

City of Newport Beach Planning Commission Study Session

November 3, 2011

Response 1

The Planning Commission's summary of the purpose of the study session is noted.

Response 2

Patrick Alford of the City of Newport Beach Community Development Department provided an overview of the proposed Project. Please refer to Section 3.0, Project Description, of the Draft EIR.

Response 3

Representatives of the Project provided an overview of the proposed Project.

Response 4

The Project proposes that the Lowland Open Space/Public Trails and Facilities areas include habitat conservation, restoration, and mitigation; public interpretive trails; a water quality basin; and a planting buffer around a portion of the northern oil consolidation site. Approximately 118.4 gross acres of the Project site are proposed for restoration as native habitat either by the Applicant as a part of the Project's biological resources mitigation obligations or as a means of satisfying off-site mitigation requirements. The compensatory mitigation requirements for the Project would be ultimately determined by the regulatory agencies as permit conditions. The exact amount of acreage within the Lowland Open Space area that would be required to be restored as native habitat to satisfy the mitigation requirements of the proposed Project has not been established because it would be subject to the approval of respective regulatory agencies including the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission (Coastal Commission).

If the Project's mitigation requirements do not require the restoration of the approximately 118.4-gross-acre Lowland area, any remaining acreage requiring restoration would be placed in a reserve area (mitigation bank) or similar mechanism and may be made available to third parties seeking off-site areas in which to fulfill their respective mitigation obligations. The area would be remediated in accordance with the Remedial Action Plan discussed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

Response 5

The Applicant provided an overview of the regulatory process associated with oilfield remediation. Please refer to Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

Response 6

The assessment of existing conditions in the Project's Traffic Impact Analysis is based on traffic counts done primarily in 2007 while the General Plan traffic study based its assessment of existing conditions on traffic counts done in 2002. While traffic counts typically would be expected to increase over time, the opposite pattern was evident during the mid-2000s. Traffic volumes have dropped since the early 2000s due to the combined effects of increased gas prices and the economic downturn. Review of the peak hour ICU calculations from these two

traffic studies showed reductions in the peak hour traffic volumes that typically ranged from 10 percent to 20 percent, with several critical movements reflecting reductions up to 25 percent. Such significant reductions in peak hour traffic, therefore, resulted in significant reductions in the ICU calculations.

Table 4.9-4 identifies that the existing level of service (LOS) at the two intersections is LOS B and LOS C, respectively and the General Plan buildout LOS at the two intersections is LOS D and LOS E, respectively. Table 4.9-28 identifies LOS D. The exhibit the commenter is referring to is from Section 4.9, Transportation and Circulation, of the Draft EIR which is only intended to illustrate turning movements. A more detailed representation of the Bluff Road/West Coast Highway intersection is provided on Sheet 7 of the Tentative Tract Map (Exhibit 3-14).

Response 7

The opinions of the commenter are noted.

Response 8

The opinions of the commenter are noted.

Response 9

The commenter inappropriately uses the term “ecological staircase”. The term “ecological staircase” is typically discussed in association with geological formations that have a significant effect on the biological resource present within each terrace, or step. This is most evidently seen in the coastal Pygmy forests of northern California and Oregon. In this typical staircase scenario, the marine terraces are uplifted by changes in ocean level which results in multiple (typically 5) terraces at differing elevations, or “stairs”. Terrace can be over 100,000 years older than the one below it and supporting a distinct association of soils, microbes, plants, and animals. Although marine deposits occur on the Project site, they are not subject to the typical terracing and associated biological differentiation described above for documented “ecological staircase” scenarios.

Response 11

The commenter is incorrect that the Newport Banning Ranch property is the only coastal site with gnatcatchers. Gnatcatchers are known to occur at several locations along the coast in Orange County from Upper Newport Bay, Crystal Cove State Park, Pelican Hill, Laguna Beach, Dana Point, and San Clemente.

As discussed in Section 4.6, Biological Resources, of the Draft EIR, on August 30, 1991, the California Fish and Game Commission considered a petition in support of listing the coastal California gnatcatcher as a State Endangered species. The Commission decided not to list the coastal California gnatcatcher in favor of pursuing preparation of a Natural Communities Conservation Plan (NCCP) program. The purpose of the NCCP program is to provide regional or areawide protection and to promote perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth. On March 25, 1993, the U.S. Department of the Interior listed the coastal California gnatcatcher as a Threatened species and adopted a special rule in accordance with Section 4(d) of the FESA that authorizes landowners and local jurisdictions to voluntarily participate in the State of California NCCP Act of 1992.

Since that time, the County of Orange—in conjunction with State and federal resource agencies, local jurisdictions, utility companies, the Transportation Corridor Agencies, and major private

landowners—prepared the NCCP/HCP for the Central/Coastal Subregion (approved on July 10, 1996). These plans are intended to ensure the long-term survival of the coastal California gnatcatcher and other special status, coastal sage scrub-dependent plant and wildlife species in accordance with State-sanctioned NCCP program guidelines. The Project site occurs within the Central/Coastal Subregion.

Response 12

The Biological Technical Report identifies the presence of Critical Habitat for the San Diego fairy shrimp on the Project site. The following text can be found on page 50 of the Biological Technical Report:

On December 12, 2007, the USFWS published a final rule designating 3,082 acres of land as critical habitat for the San Diego fairy shrimp in San Diego and Orange Counties (USFWS 2007b). The Project site is located in final critical habitat Unit 1, Subunit C for San Diego fairy shrimp.

Response 13

Special status habitats, including, but not limited to coastal sage scrub, is discussed in detail on pages 4.6-42 and -43 of the Draft EIR. For the Draft EIR, the sensitivity level is based on the Nature Conservancy Heritage Program Status Ranks, which ranks vegetation types on a global and statewide basis according to the number and size of remaining occurrences and recognized threats.

The commenter is incorrect in the statement that the coastal sage scrub on the Project site “is one of the few remaining patches we have anywhere along the coast”. Just within the Coastal Subregion of the Natural Communities Conservation Plan, there are approximately 34,500 acres of sage scrub within the 104,000 acres of undeveloped land.

Response 14

As stated on page 4.6-37 of Section 4.6, Biological Resources, two cactus wren territories were observed during focused surveys for the coastal California gnatcatcher in spring 2009 including one breeding pair and one solitary male. However, two territories do not represent “one of the largest populations of cactus wrens in Orange County” as stated by the commenter⁵⁸. The Draft EIR acknowledges that the proposed Project would impact southern cactus scrub, southern cactus scrub/Encelia scrub, disturbed southern cactus scrub, and disturbed southern cactus scrub/Encelia scrub which provides potential habitat for this species. The Draft EIR also states that because of this species declined in Orange County (following the loss of habitat by wildfires), impacts on this species would be considered potentially significant.

Page 4.6-60 summarizes the mitigation for these impacts which includes implementation of MMs 4.6-1 and 4.6-10. These measures 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, which includes approximately 10 acres of coastal sage scrub dominated by cactus, would be preserved on site as part of MM 4.6-1. In addition, 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

⁵⁸ <http://www.naturereserveoc.org/projects.htm>

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

Response 15

As addressed in Section 4.6 of the Draft EIR, the least Bell's vireo has been observed on the Project site during focused surveys. Impacts to this species are considered significant; mitigation is proposed to mitigate impacts to a less than significant level. However, any impact on this species would be considered significant. Implementation of MMs 4.6-5 and 4.6-11 would reduce impacts on this species to less than significant levels. These measures 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. A total of 15.77 acres of riparian habitat would be restored as a part of the proposed Project. 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 includes construction avoidance measures to minimize the impact to the greatest extent practicable to the vireo and the riparian habitat. In addition, 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 riparian habitat and associated wildlife species including, but not limited to, the least Bell's vireo.

The California least tern is not expected to forage on the Project site due to a lack of suitable habitat. However, they may forage in the adjacent USACE salt marsh restoration site and the Santa Ana River. Additionally, they are not expected to occur on the Project site for nesting due to limited suitable nesting habitat and the high levels of disturbance on the Project site.

Response 16

The comments are noted.

Response 17

The comments are noted.

Response 18

The opinions of the commenter are noted. Approximately 252 acres of the 401-acre property would be retained in open space.

Response 19

Please refer to Topical Response: Vernal Pools.

Response 20

Please refer to Topical Response: Vernal Pools and Topical Response: ESHA.

Response 21

The opinions of the commenter are noted.

Response 22

Please refer to the response to Comment 9.

Response 23

All habitat types currently represent on the Project site would remain on the site after Project implementation. There would be no elimination of habitat, only impacts to portions of habitats present as discussed in detail in Section 4.6, Biological Resources, of the Draft EIR.

Response 24

Please refer to Topical Response: Vernal Pools.

Response 25

The Land Use Element of the General Plan does not establish a time period or terms for public acquisition of the site. However, on August 11, 2009, the City Council directed that the exploration of acquisition of open space continue as the review of a development proposal proceeds. There are no terms established for public acquisition except those terms and conditions set forth by Applicant in the January 8, 2010 "Willing Buyer" letter to this specific suitor (see attached). The Applicant is proceeding with entitlement in accordance with the conditions of the Newport Beach General Plan.

Section 7.0, Alternatives to the Proposed Project, of the Draft EIR addresses several alternatives to the Applicant's proposal including Alternative B: General Plan Open Space Designation. The acquisition process for purchase of the property for open space is addressed as a part of the analysis of Alternative B.

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

Response 26

The Newport Banning Ranch EIR has been prepared in compliance with the State CEQA Guidelines Section 15002 which states that the "The basic purposes of CEQA are to: (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities. (2) Identify the ways that environmental damage can be avoided or significantly reduced. (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved".

The State CEQA Guidelines sections referenced by the commenter identify suggested page limits and clearly note that they are not mandates. The length of the Draft EIR reflects the outcome of legislation and court decisions that have required CEQA documents to examine more issues at greater levels of detail. For example, Assembly Bill 32 (the California Global Warming Solutions Act of 2006) resulted in EIRs evaluating greenhouse gas emissions which previously was not typically done. As such, arbitrarily limiting the length of a Draft EIR to less than 150 pages (or 300 pages) would be at odds with the CEQA objectives of disclosure. As such, the Newport Banning Ranch Draft EIR's length would not violate CEQA or render it inaccessible to decision-makers or the public.

Response 27

The Draft EIR addresses the potential impacts of the proposed Project referenced by the commenter as well as Mitigation Programs for these environmental effects. The Traffic Mitigation Program in Section 4.9 of the Draft EIR includes the provision of a second southbound left-turn on Newport Boulevard at 19th Street and notes that the proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape. With respect to 17th Street, the Mitigation Program proposes improvements to the intersection of Newport Boulevard at 17th Street. The Draft EIR proposes a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway 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.

Response 28

The site cleanup would be funded by the property owners.

Response 29

The potential threat from a tsunami is addressed in Section 4.4, Hydrology and Water Quality, of the Draft EIR. The Draft EIR states

.... 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. West Coast Highway and existing development lie between the Project site and the Pacific Ocean and. The proposed Project was also evaluated against a tsunami inundation map used for emergency preparedness (Newport Beach Quadrangle, CA Department of Conservation; March 15, 2009). The proposed 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. It is also noted that the City has an Emergency Management Plan, which includes procedures and evacuation plans in the event of tsunamis. Therefore, risks to development areas on the Project site are considered less than significant.

Response 30

The Applicant's comments are noted.

Response 31

The Applicant's comments are noted.

Response 32

Please refer to the response to Comment 25. The opinions of Commissioner Hillgren are noted.

Response 33

The opinions of the Applicant are noted.

Response 34

With respect to habitat restoration, please refer to the response to Comment 4. The proposed Project includes approximately 118.4 acres of proposed restoration area as native habitat either by the Applicant as a part of the Project's biological resources mitigation obligations. The exact amount of acreage within the Lowland Open Space area that would be required to be restored as native habitat to satisfy the mitigation requirements of the proposed Project has not been established because it would be subject to the approval of regulatory agencies including the USACE, CDFG, USFWS, RWQCB, and the Coastal Commission. If the Project's mitigation requirements do not require 118.4 acres, any remaining acreage requiring restoration would be placed in a reserve area (mitigation bank) or similar mechanism and may be made available to third parties seeking off-site areas to fulfill their respective mitigation obligations. The area would be restored in accordance with the Project's Habitat Restoration Plan.

Response 35

The exhibit the commenter is referring to is from Section 4.9, Transportation and Circulation, of the Draft EIR and is only intended to illustrate turning movements. A more detailed representation of the Bluff Road/West Coast Highway intersection is provided on Sheet 7 of the Tentative Tract Map provided as Exhibit 3-14 in Section 3.0, Project Description, of the Draft EIR).



January 6, 2011

Steve Ray
Banning Ranch Conservancy
P.O. Box 16071
Newport Beach, CA 92659-6071

Re: Newport Banning Ranch “Willing Buyer” Letter

Dear Mr. Ray:

The purpose of this letter is to respond to your request for a “willing seller” letter from the owners of the Newport Banning Ranch property (“NBR”) to assist you in your efforts to locate and secure funding for acquisition of NBR as open space. You will recall, before your request for such a letter can be presented to the owners for their consideration, we have asked you to produce a “willing buyer” letter that would outline the various terms that would be pre-requisites to any discussion regarding an acquisition of the property. Although you previously committed to do so in September 2010, we have not received anything from you. You have instead amended your commitment to ask us for an outline of terms that would need to be addressed in any “willing buyer” letter. This letter responds to that request. Once we receive your “willing buyer” letter, we will present that to the owners for their consideration.

As you know, NBR site is a very complex piece of property. The land is heavily impacted by more than 60 years of intensive oil production activity encumbering most of the surface. These operations are governed by an entity separate and apart from the NBR surface ownership group. Any re-use or acquisition discussion will need to deal with the issues related to this diverse reality of surface and mineral ownership and rights thereto.

Nevertheless we understand that, despite the passage of nearly five years since City Council and voter approval of the General Plan Update without any apparent progress thus far in securing public or private funds, you desire to continue to pursue the “open space” alternative. On the other hand, we continue to believe that the second option in the General Plan, a limited, mixed-use residential village to be developed pursuant to a comprehensive development plan, is the only achievable alternative – and one that will clean, restore, and protect more than 60% of the property as permanent open space at no cost to the public.

In order to respond to your request, the following is intended to outline a number of important areas of concern and terms that would have to be definitively addressed in any

Newport Banning Ranch LLC
1300 Quail Street, Suite 100 | Newport Beach, CA 92660 | T 949.833.0222 | F 949.833.1960
3030 Saturn Street, Suite 101 | Brea, CA 92821 | T 714.577.9154 | F 714.577.9149
newportbanningranch.com

Banning Ranch Conservancy
“Willing Buyer” Letter
January 6, 2011

potential “willing buyer” letter to acquire the property pursuant to the open space alternative:

Nothing herein implies the NBR owners are willing sellers and that decision can only be made by the owners and their respective boards who retain the sole and unfettered discretion to accept or reject such a notion.

Identification and Qualification of Proposed Buyer (“Buyer”)

- Evidence that Buyer is a non-profit corporation or similar entity formed for the primary or exclusive purpose of acquiring, preserving and maintaining open space and that has the ability to pay the Purchase Price (see definition below).
- Description of Buyer’s management team and related experience documenting Buyer’s strategy and providing evidence as to Buyer’s capabilities related to oil field clean-up, habitat restoration, and long-term management of the property.

Oil Remediation and Clean-up

- Under the General Plan open space alternative there would be no regulatory requirement or financial incentive for the mineral rights owner to consolidate surface operations. How does the Buyer propose to handle this matter?
- How do you propose to handle the fundamental issue of seller indemnification and release of liability?

Restoration

- Without the economic incentive for consolidation of oil operations or funding necessary for remediation that is directly associated with the limited development alternative in the General Plan (being pursued by the owners of NBR), public access and habitat restoration is likely to be delayed significantly, or could only occur in small areas around and intermixed with the complex network of existing oil roads, un-remediated areas, wells, and other facilities. How does the Buyer propose to handle this matter?

Valuation Issues

- Commitment to methodology for valuation. The Purchase Price shall mean the fair market value of Newport Banning Ranch as determined by an appraisal prepared by an MAI appraiser selected by NBR from a list of MAI appraisers mutually agreed to by the City of Newport Beach and NBR, and shall assume that all costs have been expended by NBR to fully remediate the Newport Banning Ranch for the development alternative purposes. Costs and fees to acquire entitlements shall not be included in the Purchase Price. The appraisal would use the General Plan’s Development Alternative (including 1,375 market rate residential units) as the highest and best use, and shall assume (i) receipt of all requisite governmental entitlements, subdivision maps, approval of engineering plans and other permits (other than building permits) for development on not less than 40% of the NBR, and (ii) that the Development Agreement is in effect.

Banning Ranch Conservancy
“Willing Buyer” Letter
January 6, 2011

- While not endorsing City efforts, it should be noted that a Consultative Pricing Study independently performed by the City in 2009 derived a value for the property in excess of \$200,000,000.

No Partial Acquisitions

- Acknowledgement that Buyer intends to purchase entire property at close of escrow and that there are no proposed partial acquisitions.

Funding Issues

- Detailed identification of Buyer’s non-contingent funding sources and evidence of commitments.

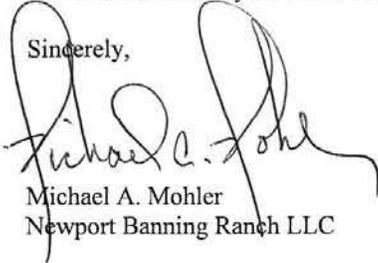
Other

- Acknowledgement that NBR will continue to process the applications necessary to develop the limited, mixed-use residential village, as authorized by the General Plan.
- Acknowledgement that Buyer would work with the City of Newport to resolve public roadway and parks needs.
- Acknowledgement that NBR, if acquired, be deed restricted in perpetuity for open space

In closing, we would like to reiterate our many prior solicitations to you and the Banning Ranch Conservancy, that you consider working with us to create a consensus plan for Newport Banning Ranch – a plan that:

- Includes an appropriate development component that can help accomplish all of the challenges outlined in this letter – at no cost to the public;
- Includes a major natural open space element that can serve as a centerpiece for the future Orange Coast River Park;
- Includes a role for Banning Ranch Conservancy in planning, restoring and managing the natural open space element.

We look forward to your written response to the issues raised in this letter. Thank you.

Sincerely,

Michael A. Mohler
Newport Banning Ranch LLC

SECTION 4.0 CLARIFICATIONS AND REVISIONS

This section includes recommended clarifications and revisions to the EIR. This section is organized by respective sections of the EIR. Deleted text is shown as ~~strikeout~~ and new text is underlined.

TABLE OF CONTENTS

The Table of Contents has been revised and is incorporated into the Final EIR as follows:

4.14-~~23~~ NMUSD School Capacity and Enrollment for 2010–2011..... 4.14-20

SECTION 1.0: EXECUTIVE SUMMARY

Project Objective 14 on page 1-7 has been corrected and is incorporated into the Final EIR as follows:

Implement a Water Quality Management Program within the Project site that will utilize ~~existing~~ proposed 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.

To further articulate, the following Project Objective is provided and is incorporated into the Final EIR as follows:

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).

SECTION 3.0: PROJECT DESCRIPTION

Project Objective 14 on page 3-9 has been corrected and is incorporated into the Final EIR as follows:

Implement a Water Quality Management Program within the Project site that will utilize ~~existing~~ proposed 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.

To further articulate, the following Project Objective is provided and is incorporated into the Final EIR as follows:

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).

Page 3-19 has been revised and incorporated into the Final EIR as follows:

Resort Colony Road and Local Road Adjacent to the South Family Village

Resort Colony Road is proposed as a public Local Road that would be accessed from Bluff Road and North Bluff Road. The loop road would provide access to the proposed Resort and Residential land use areas in the southern portion of the Project site. This roadway adjacent to the ~~VSR/R land use area~~ Resort Colony is proposed with one travel lane in each direction, ~~a pedestrian walkway on the inland side (adjacent to development) of the road, and a meandering trail adjacent to the Bluff Park~~ and eight-foot-wide walkways on each side of the street (Exhibit 3-10e; Cross-Section G-G). Resort Colony Road joins the Local Road adjacent to the ~~Residential (RL and RM) land use areas~~ South Family Village located north of the ~~VSR/R land use area~~ Resort Colony. This roadway would be constructed as a public Local Street with one travel lane and one parking lane in each direction and four-foot-wide walkways on each side of the street (Exhibit 3-10f; Cross-Section I-I).

Page 3-22 has been revised and incorporated into the Final EIR as follows:

The Project proposes a Master Plan for Trails and Coastal Access comprised of public pedestrian paths, on-street bicycle trails, and off-street multi-use trails to provide coastal access and public mobility within the Project site. The proposed pedestrian and bicycle trails would provide connectivity among open space, parks, residential, resort, commercial, and mixed-use on-site land uses as well as public access and connections to existing off-site public trails, including the Santa Ana River and trails located in the Talbert Nature Preserve, Fairview Regional Park located further to the north, and existing walks and trails extending along West Coast Highway and the beach located to the south. A Multi-use Trail, Open Space Interpretive Trails, the Bluff Park Trail, the Pedestrian and Bicycle Bridge, On-Street Bicycle Trails, and Pedestrian Walkways are proposed as a part of the Project.

Section 3.7 of the Project Description has been revised and is incorporated into the Final EIR as follows:

Development implementation is designed to ensure efficient use of soil movement to balance landform grading and bluff/slope restoration and to make efficient use of existing infrastructure locations and connection points within and adjacent to the Project site. Development would be tied to corresponding requirements for public parks and Upland and Lowland habitat dedication and restoration, and would have functioning infrastructure.

Following the final approval of the Project by the City and the Coastal Commission, and following consolidation of oil production wells into the OF land use district as describe in the Newport Banning Ranch Planned Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO requesting approval of the annexation of the 361 acre portion of the Project site located in the City's Sphere of Influence to the City of Newport Beach. The annexation pre-application would be consistent with the terms of the Pre-Annexation and Development Agreement between the City and the Applicant approved by the City, with the approved pre-zoning approved by the City for the Project site and with the City's General Plan. Following approval or conditional approval of the annexation application, the entire 361 acres within

the Newport Beach Sphere of Influence would be annexed to the City in one phase. Following completion of annexation proceedings, Project implementation may commence according to the following plan (Table 3-3).

The following narrative is incorporated into the Final EIR, Section 3.0, Project Description, as Section 3.14, Annexation, to provide additional explanation regarding the annexation process.

Following the final approval of the Project by the City and the Coastal Commission, and following the consolidation of oil production wells into the OF land use district as described in the Newport Banning Ranch Planned Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO pursuant to Government Code Section 56000 et seq. (Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000) for annexation of approximately 361 acres of the Project site to the City. The pre-application would be submitted pursuant to the terms of the Pre-Annexation and Development Agreement agreed to by the City and the Applicant and as approved by the City and would be consistent with the approved pre-zoning approved by the City for the Project site and the City's General Plan. As part of the annexation pre-application, the City would submit a plan for providing public services to include the type, level, range, timing, and financing of services to be extended to the Project site including requirements for infrastructure or other public facilities.

All public services and facilities would be provided to the Project by the City. The majority of the Project site is not currently within the City of Newport Beach service area. As part of the annexation process a change to the organization of the City of Newport Beach retail water agency boundary will be proposed to expand this boundary to incorporate the Project site to provide water service to the Project. The Project site is not within the Costa Mesa Sanitary District boundaries or the boundaries of the City's sewer service. As part of the annexation process, a change to the organization of the City of Newport Beach sewer service boundaries would be proposed to expand this boundary to incorporate the Project site to provide sewer service for the proposed Project. No other changes of organization affecting any public agencies in the Project area would result from the development of the proposed Project or annexation of the 361 acres of the Project site within the Newport Beach Sphere of Influence to the City of Newport Beach.

Table 3-2 on page 3-35 has been revised to incorporate footnote f and is incorporated into the Final EIR as follows (see following page):

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

Land Use Designation	Site Planning Area		Gross Acres ^a	Net Acres ^a	Density (du/gross ac)	Units	Retail (sf) ^d	Resort Inn
	No.	Description						
OPEN SPACE PRESERVE								
1. Upland Habitat Conservation, Restoration, and Mitigation Areas								
UOS/PTF	1a	West Coast Highway Bluff Area	15.3	14.3	–	0	0	0
UOS/PTF	1b	Southern Arroyo CSS/Grassland Area	28.3	28.0	–	0	0	0
UOS/PTF	1c	Scenic Bluff CSS/Grassland Area	13.0	13.0	–	0	0	0
UOS/PTF	1d	Vernal Pool Preservation Area	3.2 ^f	3.2 ^f	–	0	0	0
UOS/PTF	1e	South Upland CSS/Grassland Area	19.4	18.1	–	0	0	0
UOS/PTF	1f	Northern Arroyo Grassland Area	5.8	5.5	–	0	0	0
UOS/PTF	1g	North Upland CSS/Grassland Area ^b	16.3	13.5	–	0	0	0
UOS/PTF	1h	Minor Arroyo Grassland Area	1.2	1.1	–	0	0	0
<i>Subtotal</i>			<i>102.5</i>	<i>96.7</i>	<i>–</i>	<i>0</i>	<i>–</i>	<i>0</i>
<p>^{a.} Gross acres of site planning areas are measured to the centerline of all public roads where such roads are shown on the Master Development Plan. Net acres of site planning areas are measured to the edge of the rights-of-way for all public roads where such roads are shown on the Master Development Plan (i.e., net acres exclude public road rights-of-way).</p> <p>^{b.} The Right-of-Way Reservation for the 19th Street extension, from the Project site's easterly boundary to the Santa Ana River, encompasses approximately 3.1 acres, including approximately 0.6 acre of SPA 1g, 2.3 acres of SPA 2a, and 0.2 acre of SPA 3b.</p> <p>^{c.} The Bluff Toe Trail is located within the non-exclusive access easement identified as Site Plan Area (SPA) 5b, Oil Access Road.</p> <p>^{d.} Up to 2,500 sf of commercial may be transferred to a Residential Land Use District in accordance with the provisions of the NBR-PC provided the total area of commercial uses for the Master Development Plan does not exceed 75,000 sf.</p> <p>^{e.} Includes a water quality basin.</p> <p>^{f.} <u>The drainage area tributary to the vernal pool contains approximately 3.6 acres, and is composed not only of the 3.2 net acres in SPA 1d, Vernal Pool Preservation Area, but 0.4 net acre of the 0.6 net acre in SPA 9b, Vernal Pool Interpretive Area. Any and all interpretive planning within SPA 9b shall respect the 3.6-acre Vernal Pool tributary drainage area, and meet with the approval of the State and federal resource agencies and the California Coastal Commission.</u></p>								
Source: FORMA 2011.								

SECTION 4.2: AESTHETICS AND VISUAL RESOURCES

Page 4.2-11 has been corrected and incorporated into the Final EIR as follows:

BP District and IP District Regulations

- Maximum IP District Building Height – 36 feet⁵⁹
- Maximum BP District Building Height – 18 feet
- Maximum Building Coverage – 40 5 percent of total gross site area

Page 4.2-17 of Section 4.2 has been modified and incorporated into the Final EIR as follows:

⁵⁹ Elevators, mechanical space, chimneys, towers and architectural treatments, intended to add interest and variation to roof design, and that do not exceed 10 percent of the roof area, or exceed the height restriction by more than 12 feet, are permitted.

Grading and Construction

- The Project is proposed to be implemented over a period of approximately ~~43~~nine years.

SECTION 4.3: GEOLOGY AND SOILS

Paragraph 2 of page 4.3-6 has been revised and incorporated into the Final EIR as follows:

The Lowland area encompasses approximately 147 acres in the northwest portion of the Project site at an average elevation of 1 to 10 feet ~~above msf~~. This area consists of remnants of the Santa Ana River floodplain and contains channels conveying drainage from surrounding areas at higher elevations to the Santa Ana River through the Semeniuk Slough (also known as Oxbow Loop) (see Exhibit 3-3, Existing Topographic Site Conditions, Section 3.0, Project Description).

SECTION 4.4: HYDROLOGY AND WATER QUALITY

Page 4.4-6 has been updated and is incorporated into the Final EIR as follows:

Municipal Storm Water Permitting (MS4 Permit)

The State's Municipal Storm Water Permitting Program regulates storm water discharges from MS4s. MS4 Permits were issued in two phases. Phase I was initiated in 1990, under which the RWQCBs adopted NPDES storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving more than 250,000 people) municipalities. As part of Phase II, the SWRCB adopted a General Permit for small MS4s (serving less than 100,000 people) and non-traditional small MS4s including governmental facilities such as military bases, public campuses, and prison and hospital complexes (WQ Order No. 2003-0005-DWQ).

On May 22, 2009 the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order No. R8-2009-0030, Amended by Order No. R8-2010-0062). Re-issuance of this permit would result in future changes to the OC DAMP and City of Newport Beach LIP and storm water program. This updated fourth-term MS4 Permit includes new requirements pertaining to hydromodification⁶⁰ and low impact development (LID) features associated with new developments and redevelopment projects. As part of the Permit requirements, the County of Orange as the Principal Permittee and the co-permittees including the City were required to develop a new Model Water Quality Management Plan (Countywide Model WQMP) which incorporates feasibility criteria for LID and hydromodification requirements. The 2011 Model WQMP and accompanying Technical Guidance Document was approved by the Santa Ana RWQCB on May 19, 2011 with an effective implementation date of 90 days following the approval (August 17, 2011).

⁶⁰ Hydromodification is generally defined as the alteration of natural flow characteristics.

Page 4.4-7

Orange County Storm Water Program 2003–Drainage Area Management Plan (DAMP)

Section 402(p) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires that municipal NPDES Permits include requirements (1) to essentially prohibit non-storm water discharges into municipal storm sewers and (2) to control the discharge of pollutants from municipal storm drains to the maximum extent practicable. In response to this requirement, the Orange County Drainage Area Management Plan (DAMP) was developed in 1993, which has been updated several times in response to requirements associated with NPDES permit renewals (County of Orange et al. 2003). The City is a permittee covered by the requirements of this permit. The next major update of the OC DAMP is expected in 2012 and would include the incorporation of the 2011 Model WQMP and accompanying Technical Guidance Document.

Pages 4.4-9 and 4.4-10:

City of Newport Beach Local Implementation Plan (LIP) and Water Quality Management Plan (WQMP)

The City's Local Implementation Plan (LIP) was prepared as part of a compliance program pursuant to the Third Term NPDES Permit. The LIP presents the actions, activities and programs undertaken by the City, as well as current activities and programs, to meet the requirements of the NPDES Permit and to improve urban water quality. The City updates its LIP annually and the last updated included the Fourth Term NPDES Permit, New Model WQMP and Technical Guidance Document. Although the LIP is intended to serve as the basis for City compliance during the five-year period of the LIP is subject to modifications and updates as the City determines necessary, or as directed by the Santa Ana RWQCB.

~~The LIP, in conjunction with the County DAMP, is the principal policy and guidance document for the City's NPDES Storm Water Program. Sections A.7.0 and A.8.0 of the LIP address new development and significant redevelopment controls for incorporating BMPs into environmental compliance requirements. The LIP also addresses construction requirements for sedimentation and erosion control, as well as on-site hazardous materials and waste management.~~

~~On May 22, 2009, the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order R8-2009-0030). Re-issuance of the fourth term of this permit resulted in changes to the 2003 DAMP and City of Newport Beach LIP and storm water program. This updated Fourth Term permit includes new requirements pertaining to hydromodification and low impact development (LID) features associated with new developments and redevelopment projects. Within 12 months after the permit adoption, the County of Orange, as the Principal Permittee, must finalize a new Model WQMP that incorporates feasibility criteria for LID and hydromodification requirements. Following the Santa Ana RWQCB's approval of the Model WQMP, the City will be required to update their LIP and storm water programs and incorporate the new Model WQMP into their discretionary approval processes for new development and redevelopment projects.~~

The updated Fourth Term MS4 Permit, adopted by the Santa Ana RWQCB on May 22, 2009, includes new requirements pertaining to hydromodification⁶¹ and LID features associated with new developments and redevelopment projects. The 2011 Model WQMP and accompanying Technical Guidance Document was developed to incorporate the LID hierarchy criteria and hydromodification requirements. The prescribed hierarchy of treatment for site design and LID features in ranking order includes infiltration, evapotranspiration, harvest/use, biotreatment, and treatment control BMPs. In addition to the LID hierarchy, hydromodification controls for the 2-year storm event have been added for all priority projects....

As required by the City's municipal ordinances on storm water quality management, a project's WQMP must be submitted to the City for approval prior to the City issuing any building or grading permits. Since the proposed Project includes the development in multiple categories listed above (e.g., residential and commercial uses, parking), the Project is subject to the requirements of the City's WQMP. This includes meeting any all of the new requirements of the updated Fourth Term MS4 Permit and associated revised LIP. These updated requirements ~~may~~ will include LID features, hydromodification controls, and erosion/sediment controls.

SECTION 4.5: HAZARDS AND HAZARDOUS MATERIALS

Section 4.5, Hazards and Hazardous Materials has been revised and is incorporated into the Final EIR as follows:

There are two existing schools and one Community College campus (under construction) located within approximately ¼ mile of the Project site:

- Whittier Elementary School, 1800 Whittier Avenue, Costa Mesa; located approximately ¼ mile to the east.
- Carden Hall, 1541 Monrovia Avenue, Newport Beach; located approximately ⁴/₁₀ mile adjacent to the Project site's eastern boundary.
- Coast Community College District's Newport Beach Learning Center, an educational facility for college students, adult education, and high school-aged students, located adjacent to the Project site's eastern boundary. The Learning Center is under construction on the northwest corner of Monrovia Avenue at 15th Street.

....On-site oilfield and other remedial activities would result in potentially greater release of contaminants, predominantly hydrocarbons, into the air during soil disturbance due to aeration during handling (i.e., earth moving) of the contaminated soils than occurs in the existing condition. Section 4.10, Air Quality, of this EIR addresses the construction and operational air quality emissions anticipated from the proposed Project. The air quality analysis determines that there would be less than significant impacts related to emissions during remedial activities on the Project site. Also, the majority of the Project site is located further than ¼ mile from existing kindergarten through 12th grade schools and the under-construction Coast Community College District's Learning Center. Based

⁶¹ Hydromodification is generally defined as the alteration of natural flow characteristics.

on these factors, there would be a less than significant impact to existing and proposed schools from temporary handling of contaminated soils on the Project site during oilfield consolidation and remediation.

Off-site transport of impacted materials is planned to be minimized as part of the overall remedial approach.... Therefore, with implementation of SC 4.5-1, there would be a less than significant impact related to transport of soils within ¼ mile of existing and under-construction schools.

With proposed Project implementation, the extent of oilfield operations would be consolidated onto 2 areas totaling 16.5 acres, which would be located along the southwestern margin of the Project site and more than ¼ mile from existing schools and the under-construction Learning Center, and the proposed residential, commercial, recreational, visitor-serving, and open space land uses would not emit or otherwise handle hazardous materials, substances, or wastes (see PDF 4.5-1). The nature of anticipated future oilfield operations in the consolidated area would not be different than the existing operations. Therefore, operation of the proposed Project would result in a less than significant impact to schools in the Project vicinity.

Impact Summary: Less than Significant. There would be a less than significant impact to the existing schools and the under-construction Learning Center within ¼ mile of the Project site and/or from off-site haul routes during on-site remedial activities and proposed Project construction with implementation of SC 4.5-2. There would be no impact to existing and under-construction schools within ¼ mile of the Project site from proposed Project operations as continued oil operations are proposed pursuant to PDF 4.5-1 to be limited to two consolidated oil facilities located along the southwestern portion of the Project site.

SECTION 4.6: BIOLOGICAL RESOURCES

MM 4.6-6 has been revised to address potential bird strike issues as follows:

MM 4.6-6 *Migratory Bird Treaty Act...*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.

SECTION 4.8: RECREATION AND TRAILS

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

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

SECTION 4.9: TRANSPORTATION AND CIRCULATION

Page 4.9-27 has been revised and incorporated into the Final EIR as follows:

~~Minor~~ Improvements on 19th Street would be required to connect...

Table 4.9-38 has been changed and incorporated into the Final EIR to reflect the following corrections:

**TABLE 4.9-38
GENERAL PLAN BUILDOUT WITH PROJECT AND 19TH STREET BRIDGE:
MPAH NETWORK ALTERNATIVE**

Intersection		Control	AM Peak Hour		PM Peak Hour		
			ICU/ Delay	LOS	ICU/ Delay	LOS	
Newport Beach	1	Monrovia Ave/16th St	S	0.31	A	.35	A
	2	Placentia Ave/15th St	S	0.50	A	0.56	A
	3	Superior Ave/15th St	S	0.51	A	0.51	A
	4	Superior Ave/Placentia Ave	S	0.63	B	0.50	A
	5	Newport Blvd/Hospital Rd	S	0.63	B	0.75	C
	6	Orange St/W. Coast Hwy	S	0.74	C	0.77	C
	7	Prospect St/W. Coast Hwy	S	0.88	D	0.81	D
	8	Superior Ave/W. Coast Hwy	S	0.90	D	0.85	D
	9	Newport Blvd/W. Coast Hwy ^a	S	0.89	D	0.69	C B
	10	Riverside Ave/W. Coast Hwy	S	0.74	C	0.90	D
	11	Tustin Ave/W. Coast Hwy	S	0.61	B	0.84	D
	12	Dover Dr/W. Coast Hwy	S	0.79	C	0.90	D
Huntington Beach	13	Magnolia St/Hamilton Ave	S	0.73	C	0.74	C
	14	Bushard St/Hamilton Ave	S	0.51	A	0.63	B
	15	Brookhurst St/Hamilton Ave (Victoria St)	S	0.77	C	1.00	E
	16	Magnolia St/Banning Ave	S	0.61	B	0.51	A
	17	Bushard St/Banning Ave	S	0.69	B	0.76	C
	18	Brookhurst St/Banning Ave	S	0.45	A	0.51	A
	19	Magnolia St/Pacific Coast Hwy	S	0.82	D	1.18	F
	20	Brookhurst St/Bushard St	S	0.30	A	0.32	A
	21	Brookhurst St/Pacific Coast Hwy	S	0.73	C	0.91	D E

Intersection			Control	AM Peak Hour		PM Peak Hour	
				ICU/ Delay	LOS	ICU/ Delay	LOS
Costa Mesa	22	Placentia Ave/Victoria St	S	0.71	C	0.81	D
	23	Pomona Ave/Victoria St	S	0.70	B	0.82	D
	24	Harbor Blvd/Victoria St	S	0.66	B	0.77	C
	25	Newport Blvd/Victoria St	S	0.48	A	0.44	A
	26	Newport Blvd /Victoria St (22nd St)	S	0.86	D	0.53	A
	27	Whittier Ave/19th St	S	0.84	D	0.78	C
	28	Monrovia Ave/19th St	S	0.79	C	0.75	C
	29	Placentia Ave/19th St	S	0.54	A	0.57	A
	30	Pomona Ave/19th St	S	0.57	A	0.73	C
	31	Anaheim Ave/19th St	S	0.57	A	0.68	B
	32	Park Ave/19th St	S	0.53	A	0.60	A
	33	Harbor Blvd/19th St	S	0.49	A	0.63	B
	34	Newport Blvd/19th St	S	1.08	F	1.03	F
	35	Newport Blvd/Broadway	S	0.69	B	0.87	D
	36	Newport Blvd/Harbor Blvd	S	0.78	C	1.12	F
	37	Newport Blvd/18th St (Rochester St)	S	0.82	D	1.09	F
	38	Placentia Ave/18th St	S	0.46	A	0.48	A
	39	Whittier Ave/17th St	S	0.41	A	0.52	A
	40	Monrovia Ave/17th St	S	0.34	A	0.44	A
	41	Placentia Ave/17th St	S	0.39	A	0.49	A
	Costa Mesa	42	Pomona Ave/17th St	S	0.51	A	0.54
43		Superior Ave/17th St	S	0.80	C	0.80	C
44		Newport Blvd/17th St	S	0.83	D	0.93	E
45		Orange Ave/17th St	S	0.42	A	0.61	B
46		Santa Ana Ave/17th St	S	0.43	A	0.51	A
47		Tustin Ave/17th St	S	0.44	A	0.57	A
48		Irvine Ave/17th St	S	0.64	B	0.91	E
49		Placentia Ave/16th St	S	0.25	A	0.30	A
50		Superior Ave/16th St	S	0.57	A	0.50	A
51		Newport Blvd/16th St	S	0.68	B	0.75	C
52		N. Bluff Rd/Victoria St	S	0.93	E	0.87	D
On-Site	53	N. Bluff Rd/19th St	S	0.64	B	0.72	C
	54	N. Bluff Rd/17th St	S	0.58	A	0.59	A
	55	Bluff Rd/16th St	U	0.25	A	0.33	A
	56	Bluff Rd/15th St	S	0.29	A	0.35	A
	57	Bluff Rd/West Coast Hwy	S	0.79	C	0.82NA	D
	57a	17 th St/West Coast Hwy	S	0.71	C	0.80 <u>0.82</u>	C
	57b	17 th St/15 th St	S	0.31	A	0.43	A

Notes: S = Signalized, U=Unsignalized
Bold and shaded values indicate intersections operating at LOS E or F.
Intersection operation is expressed in volume-to-capacity (v/c) for signalized intersections using the ICU Methodology.
^b CMP intersection
Source: Kimley-Horn 2011.

The names of two of the SR-55 alternatives have been changed on pages 4.9-133 and -134 and are incorporated into the Final EIR as follows.

Vertical Terminal Enhancement Elevated Turn Lanes Alternative

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative proposes improvements in increments, by first addressing 17th and 19th Streets and Superior Avenue to improve congestion within the corridor. This alternative would study whether improvements at the two ends of the corridor are adequate to address congestion along the entire corridor, and determine the effects of such a strategy.

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative represents a constrained network with improved mobility to 19th Street on the west side of Newport Boulevard by adding:

- A ramp braid at the southbound Newport Boulevard tie-in at the SR-55;
- A free-right turn lane from Newport Boulevard to 19th Street (existing bus turn-out to the west would be relocated); and,
- An eastbound 19th Street to northbound SR-55 flyover structure.

Cut/Cover Freeway Along Newport Boulevard Cut and Cover Alternative

The ~~Cut/Cover Freeway Along Newport Boulevard~~ Cut and Cover Alternative would involve the construction of an entirely new structure below Newport Boulevard. The alternative would provide a four-lane controlled access freeway under Newport Boulevard from 19th Street to Industrial Way and an interchange at 19th Street. Newport Boulevard would be maintained as an eight-lane arterial with side street access.

SECTION 4.10: AIR QUALITY

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

Page 4.10-7

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

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

Page 4.10-20

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

Revised Tables 4.10-7 and 4.10-8 have been revised and are incorporated into the Final EIR as follows:

**TABLE 4.10-7 (REVISED MARCH 2012)
ESTIMATED MAXIMUM DAILY
CONSTRUCTION EMISSIONS: UNMITIGATED^a**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>20</u> <u>13</u>	<u>457</u> <u>107</u>	<u>93</u> <u>64</u>	<0.5	44	<u>41</u> <u>9</u>
2015	<u>29</u> <u>22</u>	<u>478</u> <u>127</u>	<u>423</u> <u>130</u>	<0.5	<u>48</u> <u>57</u>	<u>43</u> <u>11</u>
2016	<u>25</u> <u>19</u>	<u>445</u> <u>104</u>	<u>408</u> <u>116</u>	<0.5	<u>29</u> <u>39</u>	<u>40</u> <u>8</u>
2017	<u>31</u> <u>26</u>	<u>465</u> <u>125</u>	<u>454</u> <u>175</u>	<0.5	<u>37</u> <u>55</u>	<u>41</u> <u>10</u>
2018	<u>27</u> <u>12</u>	<u>82</u> <u>61</u>	87	<0.5	<u>45</u> <u>20</u>	5
2019	<u>32</u> <u>19</u>	<u>403</u> <u>82</u>	<u>428</u> <u>142</u>	<0.5	<u>22</u> <u>36</u>	6
2020	<u>47</u> <u>14</u>	<u>53</u> <u>48</u>	<u>87</u> <u>111</u>	<0.5	<u>47</u> <u>32</u>	3
2021	<u>42</u> <u>6</u>	<u>25</u> <u>22</u>	<u>45</u> <u>53</u>	<0.5	<u>9</u> <u>16</u>	1
2022	<u>44</u> <u>6</u>	<u>23</u> <u>20</u>	<u>44</u> <u>51</u>	<0.5	<u>9</u> <u>16</u>	1
2023	<u>44</u> <u>6</u>	<u>22</u> <u>19</u>	<u>42</u> <u>49</u>	<0.5	<u>9</u> <u>16</u>	1
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	Yes	No	No	No	No
VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter. Notes: Detailed data in Appendix G.						
^c In pounds per day						

**TABLE 4.10-8 (REVISED MARCH 2012)
ESTIMATED MAXIMUM DAILY
CONSTRUCTION EMISSIONS: MITIGATED – TIER 3 CONSTRUCTION
EQUIPMENT^a**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>8</u> <u>9</u>	<u>42</u> <u>59</u>	<u>93</u> <u>67</u>	<0.5	<u>40</u> <u>41</u>	<u>7</u> <u>8</u>
2015	17	<u>60</u> <u>82</u>	<u>428</u> <u>136</u>	<0.5	<u>43</u> <u>57</u>	<u>8</u> <u>10</u>
2016	16	<u>57</u> <u>73</u>	<u>448</u> <u>124</u>	<0.5	<u>26</u> <u>39</u>	<u>7</u> <u>9</u>
2017	<u>24</u> <u>24</u>	<u>83</u> <u>100</u>	<u>465</u> <u>186</u>	<0.5	<u>34</u> <u>49</u>	<u>8</u> <u>11</u>
2018	<u>23</u> <u>12</u>	<u>44</u> <u>53</u>	<u>95</u> <u>93</u>	<0.5	<u>43</u> <u>21</u>	<u>4</u> <u>5</u>
2019	<u>28</u> <u>20</u>	<u>68</u> <u>79</u>	<u>439</u> <u>150</u>	<0.5	<u>22</u> <u>38</u>	<u>6</u> <u>8</u>
2020	<u>47</u> <u>15</u>	<u>48</u> <u>51</u>	<u>92</u> <u>114</u>	<0.5	<u>48</u> <u>33</u>	<u>3</u> <u>4</u>
2021	<u>44</u> <u>7</u>	<u>24</u> <u>25</u>	<u>47</u> <u>55</u>	<0.5	<u>40</u> <u>17</u>	2
2022	<u>44</u> <u>7</u>	<u>24</u> <u>25</u>	<u>46</u> <u>53</u>	<0.5	<u>40</u> <u>17</u>	2
2023	<u>44</u> <u>7</u>	<u>23</u> <u>24</u>	<u>45</u> <u>51</u>	<0.5	<u>40</u> <u>17</u>	2
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	No	No	No	No	No
VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter. Notes: Detailed data in Appendix G.						
^d In pounds per day						

The following mitigation measure is proposed and incorporated into the Final EIR as follows:

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.

The impact summary is revised and incorporated into the Final EIR as follows:

Without mitigation, regional (mass) emissions of NO_x are forecasted to exceed applicable thresholds in some construction years. MM 4.10-1 would reduce the emissions to less than significant. ~~However, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured; thus the impact is potentially significant and unavoidable.~~

SECTION 4.11: GREENHOUSE GAS EMISSIONS

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

MM 4.11-5 Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

SECTION 4.12: NOISE

Page 4.12-10 has been revised and is incorporated of the Final EIR. Mitigation Measure 4.12-1, which is included in the Project to reduce construction noise to sensitive noise receptors, would also be applicable to the Learning Center. Exhibit 4.12-3 has also been updated.

Activities usually associated with sensitive receptors include, but are not limited to, talking, reading, and sleeping. Land uses often associated with sensitive receptors include residential dwellings, hotels, hospitals, day care centers, and educational facilities. The surrounding noise-sensitive receptors adjacent to the Project site are described below and shown in Exhibit 4.12-3.

...East: Residential developments, including single-family residences on the southwestern corner of 17th Street and Monrovia Avenue; multi-family

residences and mobile homes on 15th Street west of Placentia; the California Seabreeze and Parkview Circle communities, located generally between 19th Street and 18th Street in the City of Costa Mesa contiguous to the Project site; and several mobile home parks, including a development at 17th and Whittier....

Coast Community College Newport Beach Learning Center, under construction, on the northwest corner of 15th Street at Monrovia Avenue (an educational facility for high school-aged students, college students, and adult education)....

MM 4.12-10 has been revised and is incorporated into the Final EIR as follows:

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.

SECTION 4.14: PUBLIC SERVICES AND FACILITIES

On pages 4.14-2 to 4.14-12 of Section 4.14, the term "mutual aid" has been changed and is incorporated into the Final EIR with the term "automatic aid".

Page 4.14-3, the second sentence under *Methodology* been changed and is incorporated into the Final EIR as follows:

To assist the Fire Department, the City retained the firm, Fire Force One, to evaluate the City's ability to provide adequate response to the Project site as part of the evaluation of existing fire station sites and three potential locations for future fire station sites ~~as well as to the West Newport area and the City as a whole.~~

Page 4.14-3, under *Existing Conditions* has been changed and is incorporated into the Final EIR as follows:

The Costa Mesa Fire Department provides fire protection services through an ~~automatic aid~~ a cooperative agreement to the Newport Terrace residential community located north of 19th Street in the City of Newport Beach.

Page 4.14-4, the first paragraph under *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department's Policy Manual, ~~approved~~ updated by the Fire Department in January 2010, identifies policies of the Fire Department related to operating procedures including but not limited to response time objectives. Policy 3.A.100, Department Goals, of the Fire Department's Policy Manual identifies the standard operating procedures for the Fire Department and states "Provide a safe, effective and expeditious response to requests for assistance" (NBFD 2010).

Page 4.14-6, the first paragraph under to *Fire Department Response Times and Number of Calls for Service* has been changed and is incorporated into the Final EIR as follows:

The City’s “turnout time” and “travel time” values are based upon national standards published by the National Fire Protection Association (NFPA) in its Standard 1710, “Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments”, 2010 edition. The City has adopted the response time goals identified in NFPA Standard 1710 which states “the fire department’s fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4” (Fire Force One 2010). The maximum response times are intended to be met 90 percent of the time. Acceptable delays that can be attributed to the remaining 10 percent include units out of service for training and maintenance, the closest unit is already assigned to another call, fire inspections in which the crew is a distance away from their apparatus and similar instances.

Table 4.14-3 has been revised and is incorporated into the Final EIR as follows:

**TABLE 4.14-3
NEWPORT-MESA UNIFIED SCHOOL DISTRICT
SCHOOL CAPACITY AND ENROLLMENT FOR 2010–2011**

School (Grade Level)	Net School Capacity ^a	Enrollment ^b	Available Capacity
Elementary (K–6)	12,112 <u>12,478</u>	11,528	584 <u>950</u>
Secondary (7–12)	11,361	10,275	1,086
District Total	23,473 <u>23,839</u>	21,803	1,670 <u>2,036</u>
^a Zareczny 2010 <u>2011</u> . ^b Zareczny 2010 <u>2011</u> . Note: Ungraded elementary and secondary students are included into calculations.			

Table 4.14-4 has been revised and is incorporated into the Final EIR as follows:

**TABLE 4.14-4
AVAILABLE CAPACITY AT EXISTING NEWPORT-MESA UNIFIED SCHOOL
DISTRICT SCHOOLS NEAREST TO THE PROJECT SITE**

School Name	Net School Capacity ^a	Enrollment ^b	Available Capacity	Distance to the Project Site (mi)
Elementary Schools				
Newport Elementary	437 <u>445</u>	429	8 <u>16</u>	2.2
Newport Heights Elementary	553 <u>584</u>	637	(84) <u>(50)</u>	2.8
Pomona Elementary	483 <u>485</u>	518	(35) <u>(33)</u>	2.6
Rea Elementary	530 <u>577</u>	445	(85) <u>(132)</u>	2.8
Victoria Elementary	345 <u>365</u>	384	(39) <u>(19)</u>	3.2

School Name	Net School Capacity ^a	Enrollment ^b	Available Capacity	Distance to the Project Site (mi)
Whittier Elementary	806 <u>804</u>	799	7 <u>5</u>	2.4
Middle Schools				
Ensign Middle	1,228	1,079	149	2.0
High School				
Newport Harbor High	2,844	2,511	333	2.3
<i>Subtotal Elementary Schools</i>	3,154 <u>3,260</u>	3,212	(58) <u>48</u>	N/A
<i>Subtotal Middle Schools</i>	1,228	1,079	149	N/A
<i>Subtotal High School</i>	2,844	2,511	333	N/A
Total Capacity	7,226 <u>7,332</u>	6,802	424 <u>434</u>	N/A
Note: The distances were taken from the crossing of West Coast Highway at Industrial Park Way in Newport Beach.				
c. Zareczny 2010 2011.				
d. Zareczny 2010 2011 (Ungraded elementary and secondary students are included into calculations).				

Page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In accordance with SB 50, the construction of new schools requires a school district to match State funds. The local match is typically provided by such funds as developer fees, local General Obligation bonds, and/or Mello-Roos CFD (“Special Taxes” that can be levied on property owners of newly constructed homes within a CFD). ~~The NMUSD participates in the State funding program and obtained funding for expansion of Sonora Elementary in Costa Mesa in 2008.⁶² The NMUSD pursues the opportunity for facilities funding whenever it is eligible in the State funding program. In June 2010, the District was awarded \$1,431,274 for modernization and new construction at Costa Mesa High School.~~

The second paragraph under the heading “Local Funding” on page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In November 2005, residents within the boundaries of the NMUSD passed a local Measure F authorizing the sale of \$282 million in General Obligation bonds. In a resolution adopted by the School Board on June 13, 2006, the School District approved the tax rate of \$18.87 for every \$100,000 of assessed values for the repayment of the bonds. Measure F is the second successful General Obligation bond in the School District. Measure A was passed by the NMUSD voters in June 2000 and authorized the sale of \$110 million in General Obligation bonds. ~~Measure A funds are used by the School District to modernize every school campus throughout the district and to expand school capacity district-wide were used by the School District to modernize every K-12 school campus throughout the District for ADA compliance, Fire Life Safety, Utility, Technology Upgrades and Interior/Exterior improvements. Measure A projects were completed in 2007.~~

⁶² ~~Although the application for funding of the Sonora Elementary School expansion was approved, funding has not been released due to the State budget crisis. However, due to the current state budget crisis, funding for the Costa Mesa High School Projects has not been released. The total cost of the projects is \$7,456,294.64.~~

Page 4.14-12 has been revised and is incorporated into the Final EIR as follows:

Therefore, following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City, the entire Project can be adequately served through the use of existing City of Newport Beach fire and emergency medical services as well use of fire and emergency medical services provided through the City's mutual aid agreement with adjacent jurisdictions, the latter as needed. The plan for provision of fire protection and emergency medical services to the Project site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable fire protection and emergency medical services to the Project. No significant impacts are anticipated.

Page 4.14-16 has been revised and is incorporated into the Final EIR as follows:

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. Implementation of 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 following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable police protection services to the Project. Therefore, the Project's impact on police protection services would be less than significant.

Page 4.14-19 has been revised and is incorporated into the Final EIR as follows:

The State is also involved in deciding the structure of local schools. For example, in August 1996, the State Senate passed SB 1777 (1996–1997 Class Size Reduction Program) and SB 1789 (Class Size Reduction Facilities Funding Program). These programs together (1) provide incentive monies to local school districts to lower class sizes for kindergarten through the third grades (K–3) to a ratio of 20 students to 1 teacher and (2) provide funds for additional teaching stations. However, the loading factor that the State uses to calculate school building capacity is 25 students per elementary classroom (K–6) and 27 students per middle and high school classroom (grades 7–12) (OPSC 2008). The NMUSD implements Class Size Reduction policies in grades K–3. For the purposes of analyzing school impacts herein, NMUSD's Net Capacity is used. It is defined as the total number of classrooms with 25 students in each classroom; these classrooms do not include protected program classrooms (Zareczny 2009).⁶³ 20 students in classrooms grade Kindergarten through 3rd grade and 33 students in classrooms grades 4th through 12th.

⁶³ Protected program classroom uses include special education, science labs, resource support programs, music, libraries, and computer labs.

Page 4.14-26 has been revised and is incorporated into the Final EIR as follows:

The Library has also indicated that the Project would not create a need for new or expanded library facilities. As a result, there would be no significant physical impacts to library facilities resulting from the proposed Project following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. As identified in SC 4.14-1, the Applicant shall pay the required Property Excise Tax to the City for public improvements and facilities associated with the City of Newport Beach Public Library. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code Section 56668 as the City of Newport Beach can provide continuous and reliable library services to the Project.

SECTION 4.15: UTILITIES

The first sentence in the second paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

As part of the regulation management of groundwater supplies, the OCWD is responsible for ~~recharging local groundwater basins (including the La Habra Basin, the San Juan Basin, the Laguna Canyon Basin, and the Lower Santa Ana River Basin),~~ recharges the Orange County Groundwater Basin which generally involves recharge with Santa Ana River flows, recycled water, and imported water to maintain groundwater levels.

The last sentence in the first full paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

The OCWD ~~regulates~~ manages the use of groundwater supplies through a Groundwater Basin Management Plan. A Groundwater Management Plan 2009 Update was considered and adopted by the OCWD Board of Directors on July 15, 2009 (~~Miller~~ OCWD 2009).

The third sentence in the third paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

OCWD's 2009 ~~Draft~~ Groundwater Management Plan Update estimates groundwater replenishment supplies of 61,000 afy (OCWD 2009).

Page 4.15-26 has been revised and incorporated into the Final EIR as follows:

Capacity Assurance, Management, Operation, and Maintenance Program

In January 2001, the USEPA published a proposed rule intended to clarify and expand permit requirements under the Clean Water Act to further protect public health and the environment from impacts associated with sanitary sewer overflows. The proposed rule is generally referred to as the "Capacity Assurance, Management, Operation, and Maintenance Program Regulation". The proposed Program's regulation requires development and implementation of programs intended to meet the performance standard of eliminating sanitary sewer overflows; to provide overflow emergency response plans, system evaluations, and capacity assurance plans; to conduct program audits; and to implement public communication efforts. The proposed rule was not adopted. In 2002, the

Regional Water Quality Control Board, Santa Ana Region, adopted Waste Discharge Requirements for sewer system owners followed by the State of California's adoption of statewide Waste Discharge Requirements.

Page 4.15-27 has been updated and is incorporated into the Final EIR as follows:

In the vicinity of the Project site, the OCSD operates facilities in West Coast Highway as well as the Bitter Point Pump Station and three force mains located within the Project site, all of which flow to Wastewater Treatment Plant 2.... The OCSD also provides up to ~~10-4G~~ 104 mgd of treated wastewater to the OCWD for further processing for landscape irrigation and injection into the groundwater seawater intrusion barrier.

Page 4.15-27 has been revised and incorporated into the Final EIR as follows:

In addition to these on-site facilities, sanitary sewer facilities exist in the Project vicinity... The City of Newport Beach operates wastewater facilities adjacent to the Project site on West Coast Highway, along 19th Street, and on Ticonderoga Street.... ~~The City of Costa Mesa~~ Costa Mesa Sanitary District also has facilities near the Project site.

Page 4.15-29 has been revised and is incorporated into the Final EIR as follows:

Effluent from the development areas would be collected and directed to the OCSD trunk sewer upstream of the Bitter Point Pump Station via 8-, 10- and 12-inch pipes. The majority of the proposed wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint evaluated throughout this EIR. ~~An off-site connection would be required on sewer stub is proposed near 16th Street to provide future service to the adjacent to the Newport-Mesa Unified School District property. However, the connection proposed sewer stub would occur within the proposed off-site road and grading footprint evaluated throughout this EIR. an existing oil access road and would not result in significant environmental effects beyond those addressed as part of this EIR.~~ Therefore, no additional direct impacts related to construction and operation of the on-site wastewater system would occur.

SECTION 5.0: CUMULATIVE IMPACTS

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

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

Exhibit 5-4 has been updated and incorporated into the Final EIR to reflect changes to the location of several City of Huntington Beach cumulative projects.



TABLE 5-2

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

TABLE 5-3

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

Page 5-74, the first paragraph under *Cumulative Impact Analysis Fire Protection* has been changed and incorporated into the Final EIR as follows:

The City of Newport Beach Fire Department serves existing development (inclusive of past and present projects) through the facilities and staff identified in Section 4.14. The proposed Project assumes the provision of fire protection services is based on a combination of existing and planned City of Newport Beach fire services and the use of ~~mutual~~ automatic aid. The City participates in Central Net, an automatic ~~mutual~~ aid system with the Cities of Costa Mesa, Santa Ana, and Huntington Beach, and the Orange County Fire Authority (OCFA). Together, these cities and the County provide personnel to any emergency. As part of this ~~mutual~~ automatic aid agreement, ~~the closest~~ an emergency response unit is dispatched to the emergency, regardless of jurisdictional boundary. As such, all projects in the Cities of Newport Beach, Costa Mesa, and Huntington Beach would be assumed in the cumulative analysis for fire protection services.

SECTION 9.0: REFERENCES

Newport Banning Ranch LLC. 2011a (August). *Newport Banning Ranch Master Development Plan*. Newport Beach, CA.

_____. 2011b (August). *Newport Banning Ranch Planned Community Development Plan*. Newport Beach, CA.

Orange County Water District (OCWD). 2009 Miller, C. 2009 (October 29). Personal communication. Telephone conversation between CG. Miller (OCWD) and J. Marks (BonTerra Consulting) regarding the Groundwater Management Plan 2009 Update.

