

LETTERS RECEIVED

2,005 letters of opposition

242 letters of Support

LETTERS IN OPPOSITION

Does not include form letters.

On File: **1,926** additional form letters in opposition



April 28, 2016

Submitted via email 04-28-16

To: California Coastal Commission c/o Amber Dobson

CC: Newport Banning Ranch LLC c/o Michael Mohler

Re: Application No. 5-15-2097 (Newport Banning Ranch)

Alternative Plan

At the California Coastal Commission (CCC) hearing held October 7, 2015, the staff report for the proposed Newport Banning Ranch LLC (NBR) project recommended denial based on significant Coastal Act inconsistencies. Rather than denying the Coastal Development Permit (CDP), Commissioners gave instructions to the CCC staff and NBR to work together to identify a project alternative that the Commissioners could approve. It was also recommended from the dais that the Banning Ranch Conservancy (the Conservancy) have a role in that process.

To date, the Conservancy has not been invited to participate in meetings between NBR and CCC staff. On 1/28/16, the Conservancy contacted NBR to discuss whether a project alternative could be identified that could possibly be supported by the environmental community.

On 2/12/16 and 2/16/16, the Conservancy and NBR held "scoping" meetings to discuss what each party wanted to see in any project alternative. The basic requirements and goals for the development portion of any alternative project included:

Conservancy: Coastal Act consistency, preservation of areas important for function of overall ecosystem, abandonment and reasonable remediation of the oil field, restoration, higher density/smaller footprint, development focused on periphery of site, and public access.

NBR: Coastal Act consistency, abandonment and remediation of the oil field, public access, access to PCH, 15th, 16th, and 17th Streets (willing to give up one access at either 15th, 16th, or 17th), feasible (profitable) project, diversification of product.

In February, the Conservancy engaged Wild Heritage Planners, Carl Welty Architects and Blake Whittington Landscape Planner to develop a project alternative based upon the requirements and goals discussed above and the constraints of the site (ESHA, wetlands/vernal pools, buffering, fuel modification requirements, points of access, etc.). They were also tasked to use environmentally responsible designs and building techniques.

Attached are preliminary drawings displaying recommended footprints and proposed building/housing unit layouts. The plan focuses development in two areas directly off 15th and 17th Streets, previously identified in the CCC staff report as areas void of ESHA and wetlands/vernal pools. It has a development footprint of approximately 7 acres and proposes 108 housing units. An appropriate portion of these units could be offered at affordable, below market rates.

Development Area	Acreage	Density	Unit Square footage	Total Number of Units
A	2	18 DU/AC	2,100	36
B	1.5	16 DU/AC	1,900	24
D	3	16 DU/AC	2,500	48
			TOTAL MEDIUM DENSITY	108

A more detailed description of the project with a discussion of “Regenerative Design” will be forthcoming from Wild Heratige Planners.

While the Conservancy considers the development footprint firm, numbers and mix of units, building layouts and design considerations may be subject to discussion.

Presentation of this Conservancy Alternative represents a shift in the Conservancy’s approach. However, the Conservancy retains all our previously stated positions that ALL wetlands/vernal pools and ESHA be properly identified and preserved, with appropriate buffering, and that ALL Coastal Act (Act) requirements and provisions be upheld by the Commission without re-legislating the Act, revision, re-interpretation, and/or compromising the provisions and/or intent of the Act. Further, the Act (and applicable case law) require that the Act be “liberally construed” to protect all valuable natural resources of the California Coast, which would include Banning Ranch’s inestimable resources.

This Conservancy Alternative is the most protective of coastal resources while offering the owners/proposed developers of Banning Ranch a reasonable economic gain from their property. It also meets all Coastal Act provisions and, in our opinion, should be easily defensible.

If timely, we ask that this submission be attached to the forthcoming staff report on the project for the Commission’s May hearing. Thank you.

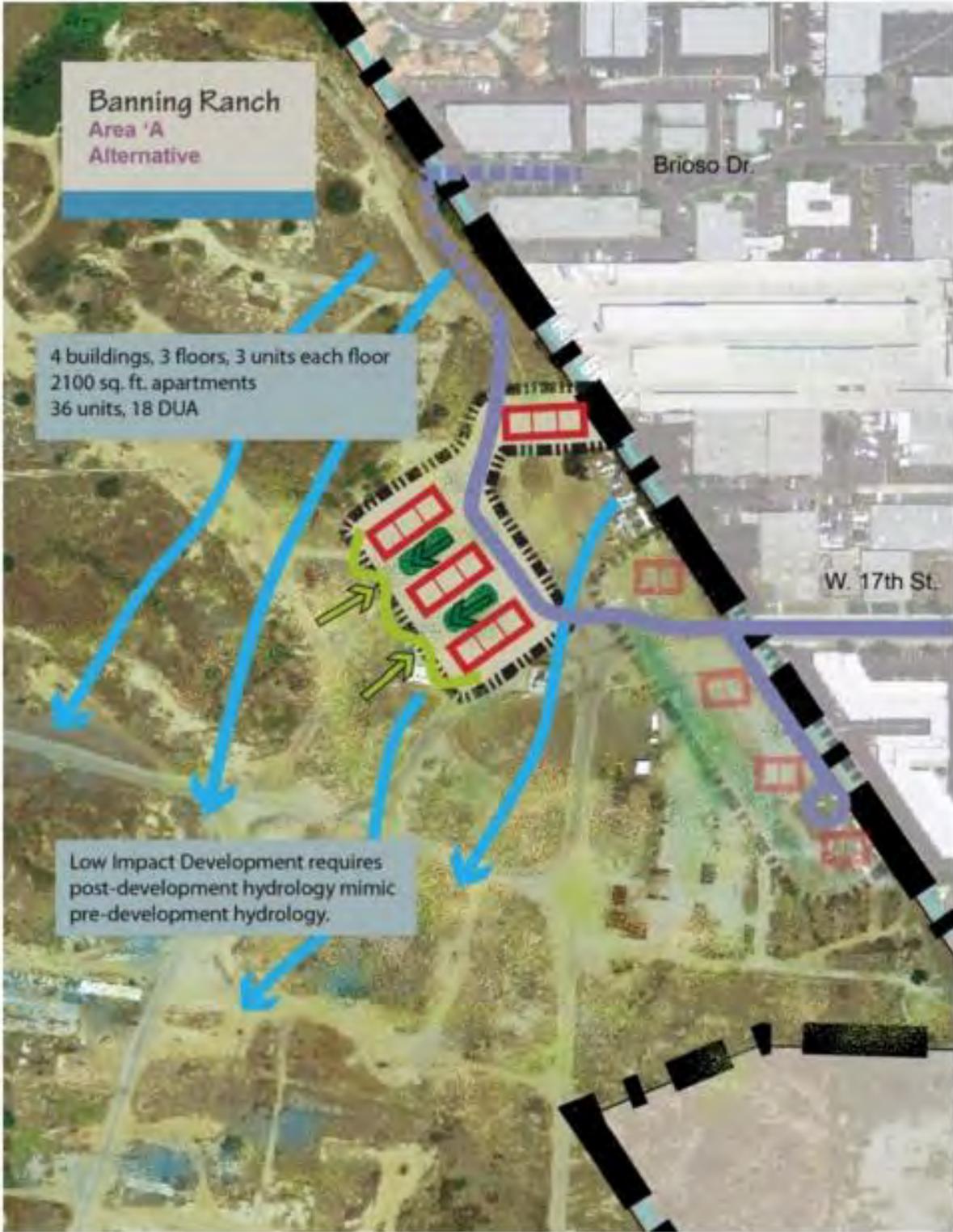
Sincerely,

Terry Welsh, President

Steve Ray, Executive Director

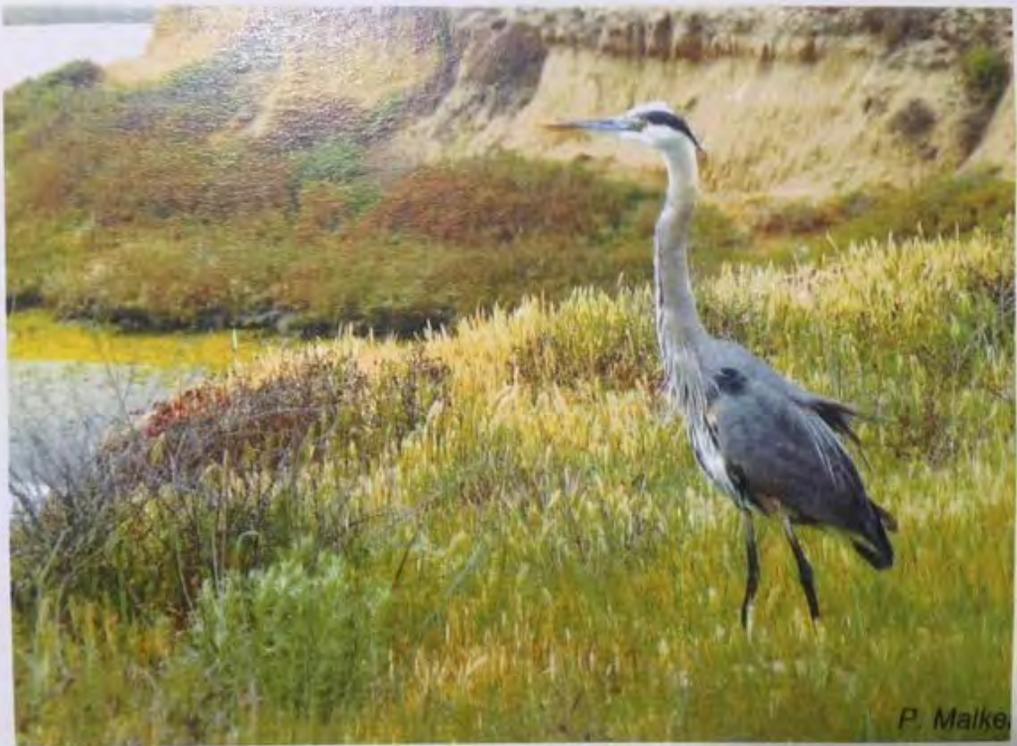
BANNING RANCH CONSERVANCY











Keep the animals
safe. don't
put houses there.
Ariel



Dont tear it up,
let it be how it is
right now

Severin age:9



Dominic

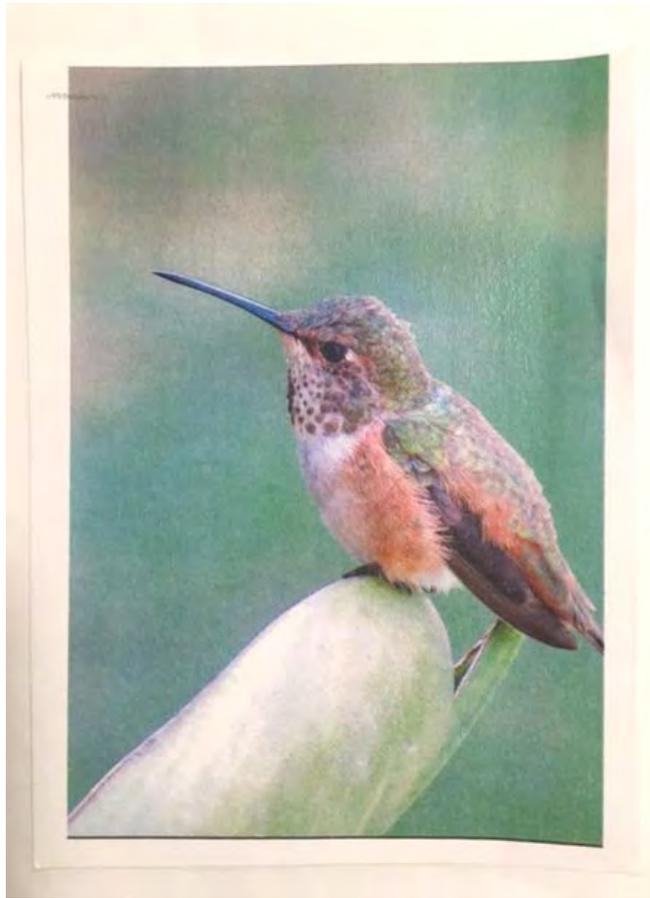
Don't put things on
Banning Ratsch please.



Please Commissioners
don't build on sacred
land we ALL need it
Animals 2
Roger



Saving Banning Ranch Together



Keep the skyline natural, its crowded
enough out here.



Saving Banning Ranch Together



Keep the beach beautiful!
Have a heart to save the
animals that live there!



Hello,
my name is Riley Watson,
I'm a lifelong resident of
Newport $\frac{1}{2}$ Costa Mesa, and
I would love to see 100%
of Banning Ranch restored to
an open nature park. It's
too precious to waste!

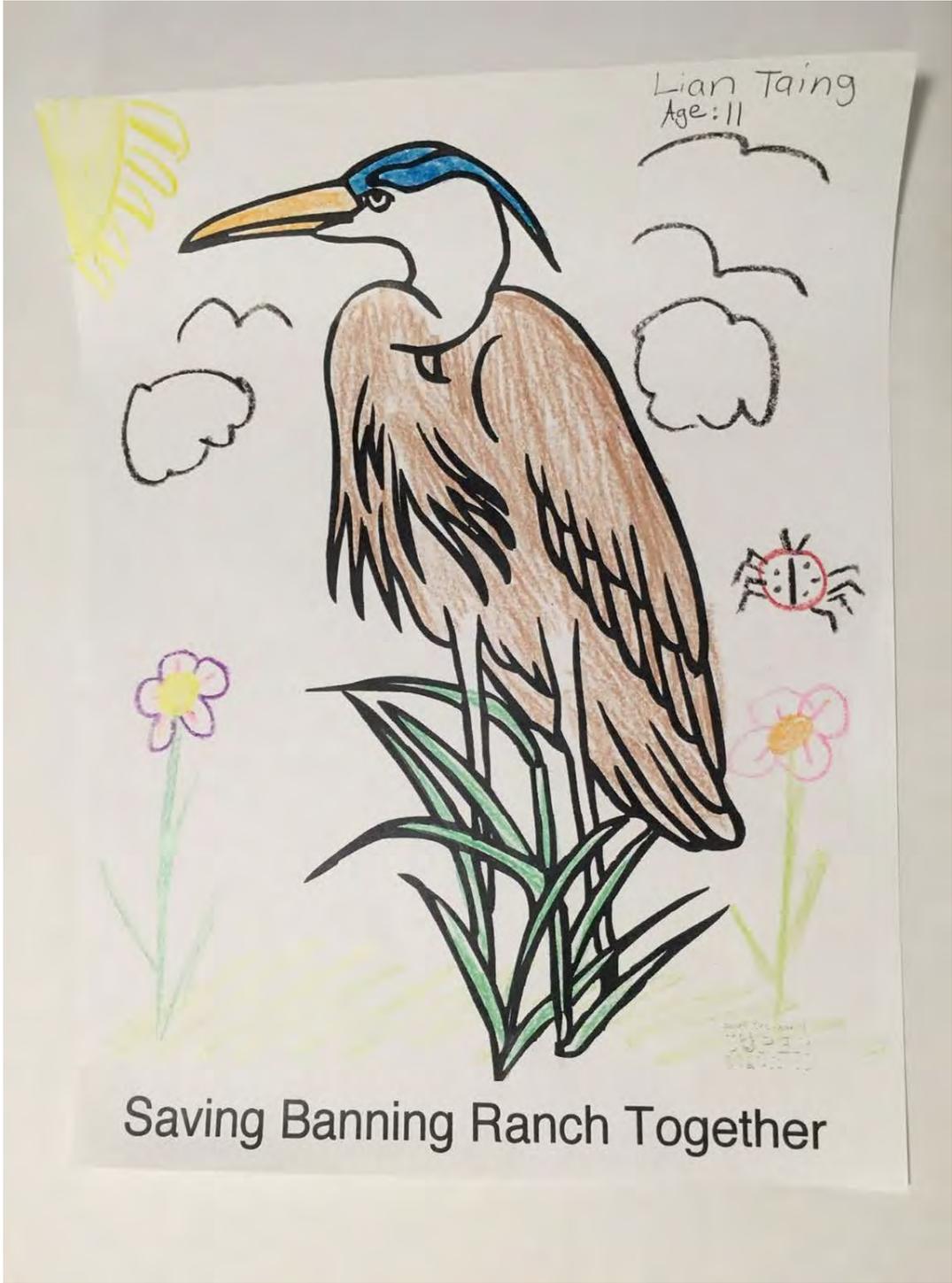
If Banning Ranch is taken away from us, I will be sad because I won't be able to see the nature that lives there, I want to be able to see the burrowing owls and I want the osprey to have somewhere to nest, I have lived here since I was three and it has made Newport Beach a beautiful place. If that no longer exists, nothing will be the same. The animals that live there will be losing ~~our~~ ^{their} homes just to make more homes for other people which is unfair for the animals that have built a house and a family in that area. It is like forcing someone out of their house.

Save Banning Ranch!
-Jessie Phillips



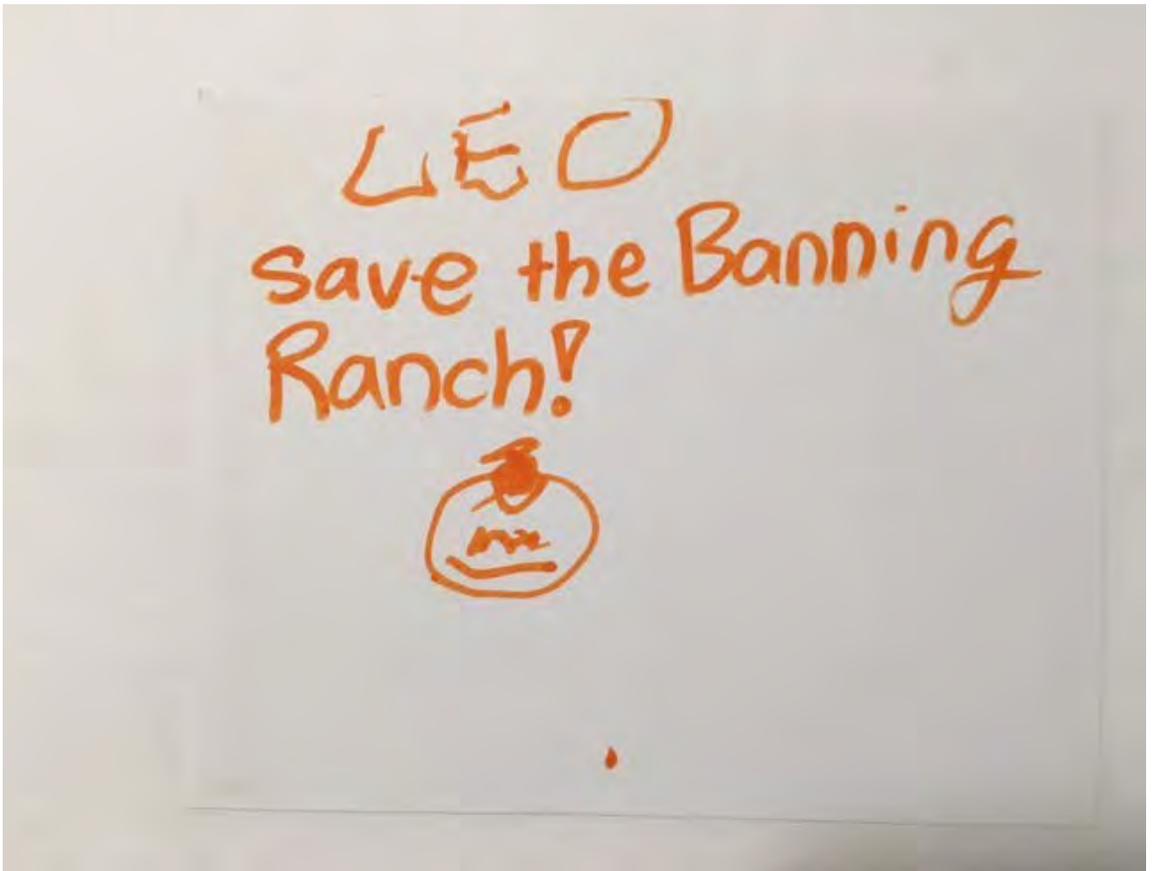
#SaveBanningRanch
#Nature is Beauty
#GoGreen
#WeLoveAnimals

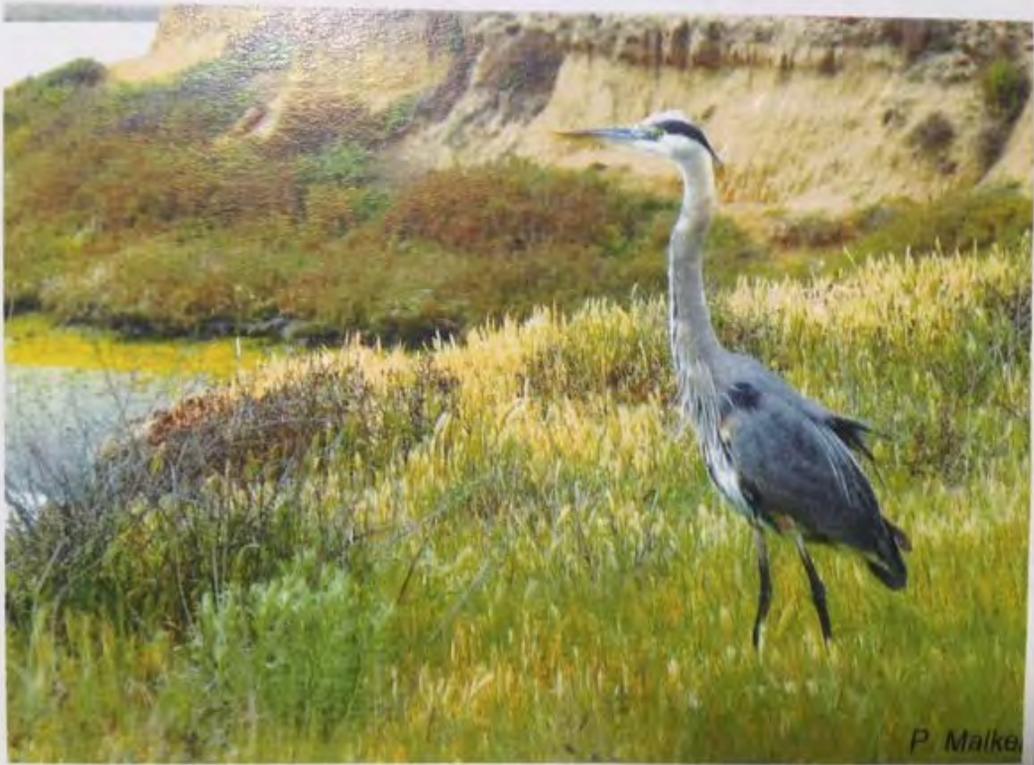






Banning Ranch has to be saved because
as you see on the picture a Great Blue Heron
we will be able to see them again but if
Banning Ranch is not saved we won't be
able to see these wonderful birds. Also I have
lived next to Banning Ranch for 12 years and
everyday I pass by it and I always love seeing
the wilderness of it but if you build what you
want to build I won't be able to see the
beautiful wilderness that I've seen since I was 6
and I'll miss that a lot. So please save Banning Ranch!!
Tom Phillips





PLEASE, don't
destroy our wild
life here!

From,
Ixchel

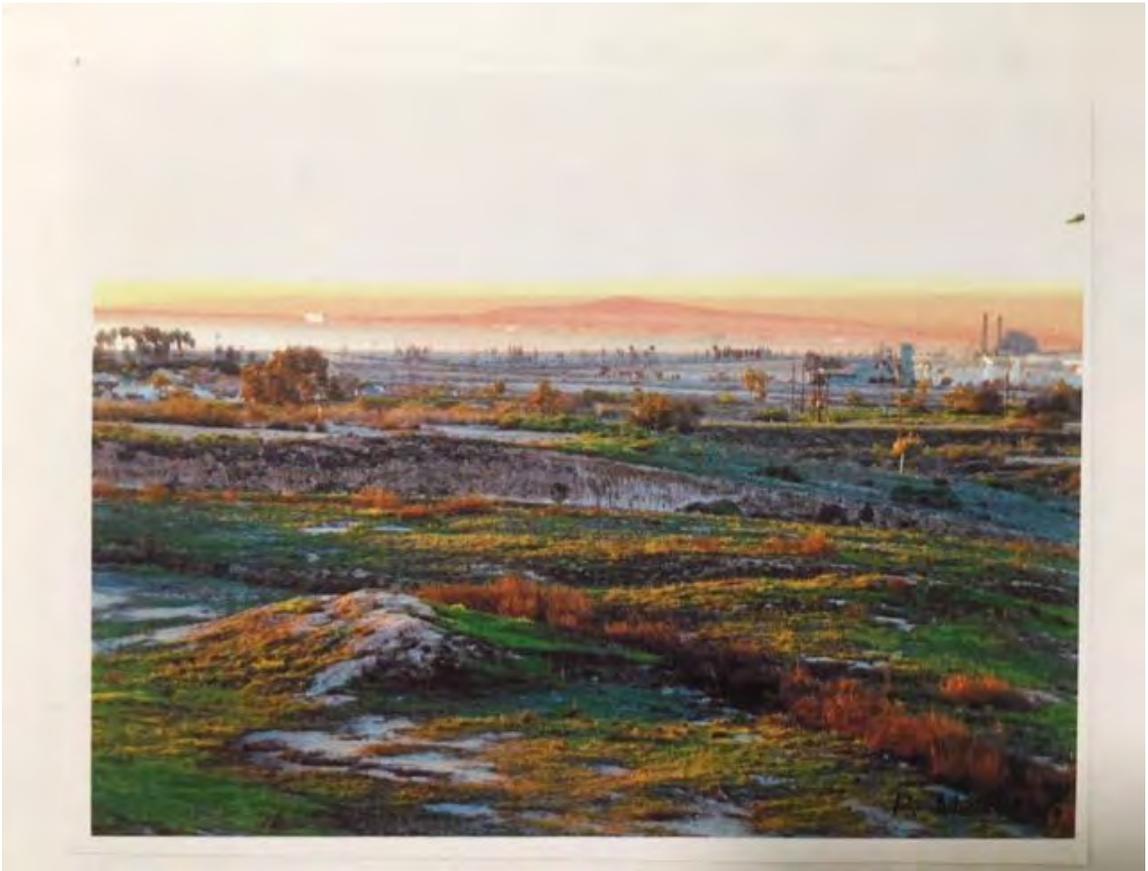


Save are
cost please
Francesca
Cattill



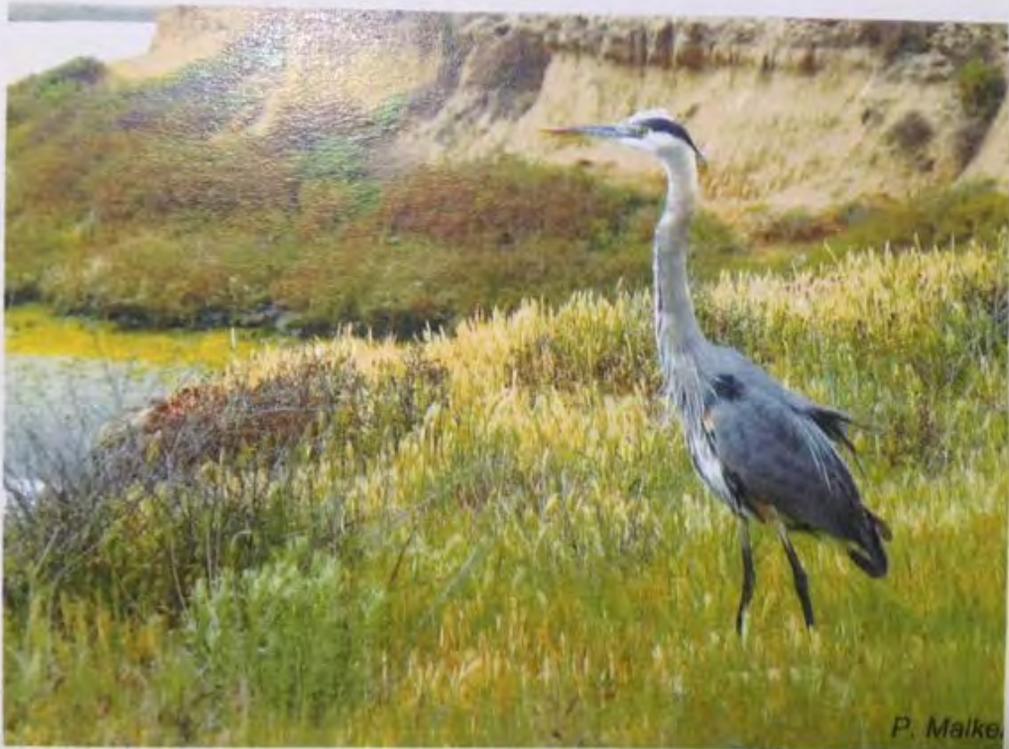


Give our
costs!
Gwen



Please save our
animals & don't
hurt the wildlife!
♥ EIC h 950.819
& Isabella





Rubi
Please save the
Banning Ranch!
Thank You!



Please Save the Wetlands!
Think about the animals

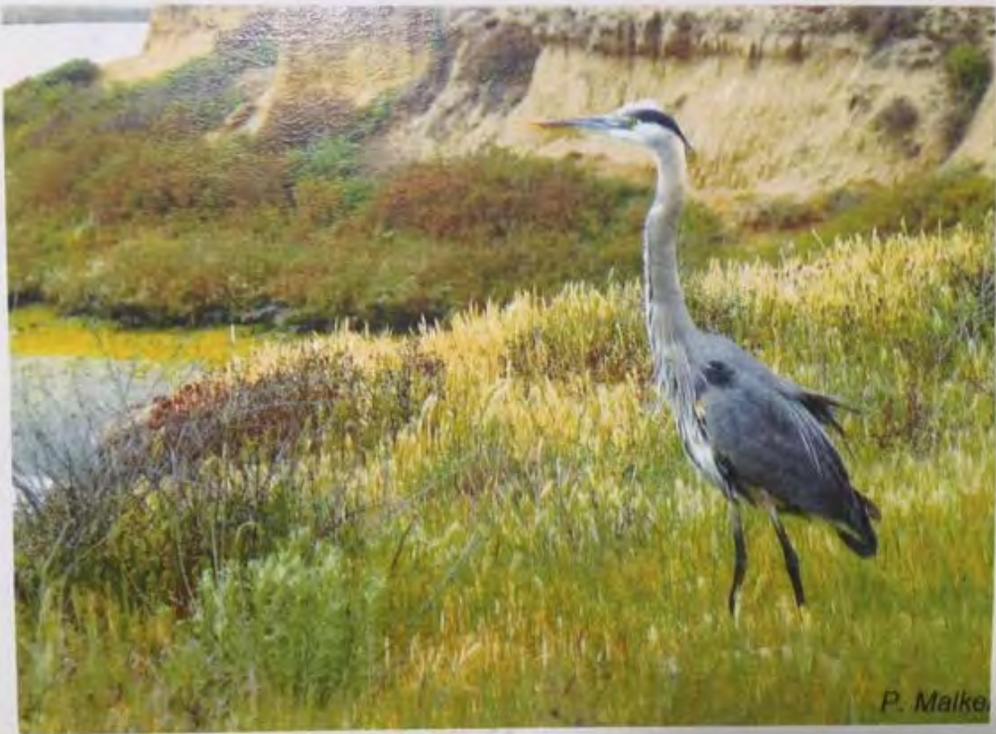
Karolyi
Thorpe
Age: 13





Please Save the Banning Branch.
Stop the destruction of sacred
sites. Please stop being arrogant.
Save the Branch. To much pollution
hurting the environment.

Brandon
Pires



Dear Commissioner,

Newport Beach

My name is Joseph Muller and I'm very concerned and worried about saving the Banning Ranch. Along with hundreds and thousands of other Residents and people. I would greatly appreciate it if you can make it a concern of your own. Take some time and think about this carefully please! "GADBLESS"

New Port Beach City Council
We ask for you to
conserve the Banning
Ranch Conservancy.
Many plants and animals
rely on this land for
shelter and life.





Please save Banning
Ranch!

Liam Thorpe
age: 9





Newport Beach City
Council,
Please conserve this
beautiful place, it is
one of the only wet
lands left in the state
of California.



As citizens and members of the community, we urge you to protect and preserve Banning Ranch. Listen to the will of the people.

- Nick and Rachael O'Neill
Long Beach, CA

Dear Commissioner -

Please reconsider
developing the ranch.

The growth in O.C. is
suffocating. Please
allow future generations
the enjoyment of this
place.

Thank You -
Maureen McCart





Save BANNING
RANCH!



save the
World
Jaydon FISK

From: [Terry Welsh](#)
To: BanningRanchComments@Coastal
Subject: Letters of opposition
Date: Thursday, February 25, 2016 9:15:28 PM
Attachments: [Four letters.pdf](#)

Attached is a scan of letters from four local Costa Mesa residents.

Susan Thomas
Dana Ambrosio
Jo-Ann Holden
Violet Thompson

Thank you,

Terry Welsh

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report.

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

- Banning Ranch is the only remaining large unprotected coastal open space in all of Southern California. When it's gone, it's gone forever.
- 2.8 million cubic yards of soil will be excavated and stockpiled to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.
- ONGOING RECORD DROUGHT: the Project's water demands will place a significant burden on our scarce water supply, increasing water cuts and rate hikes.
- TRAFFIC: 15,000+ more car trips on our roads, daily! Expect double and triple commutes, gridlocked intersections.
- POLLUTION: Air pollution from construction and traffic will exceed state standards.
- POLLUTION: Noise from construction and traffic will double allowable noise thresholds.
- POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Name:

Susan E. Thomas

Email:

omisweetom13@yahoo.com

Street Address:

1750 Whittier Ave, #17 -

City, State:

Costa Mesa, Ca.

Zip/Postal Code:

92627

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Name: Dana Ambrosio

Email: dsat52@gmail.com

Street Address: 1750 Whittier Avenue #29

City, State: COSTA MESA, CA 92627

Zip/Postal Code: 92627

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Name: VIOLET THOMPSON

Email: VIOETHOMPSON@AOL.COM

Street Address: 1750 WHITTIER AVE #17

City, State: COSTA MESA, CALIF, 92627

Zip/Postal Code: 92627

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Name:

Jo-Ann Holden

Email:

— 0 —

Street Address:

1750 Whittier Ave. #21

City, State:

Costa Mesa, Ca.

Zip/Postal Code:

92627

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Name: Starlyn Grover

Email: STARLYN123@Gmail.COM

Street Address: 1750 Whittier Ave. Spc. #64

City, State: Costa Mesa, Calif.

Zip/Postal Code: 92627



GABRIELENO/TONGVA
SAN GABRIEL BAND OF MISSION INDIANS

February 24, 2016

Rob Wood
Native American Heritage Commission

Regarding: Sacred Lands Inventory

Dear Rob,

We believe that sites ORA-845, 846, 839 and 906 represent one large and significant village site. The individual site numbers represent artificial separations due to oil field development and the outdated archaeological method of looking at each site independent of each other. A burial was found at ORA-839 during WPA archaeological excavations in the 1930s. The majority of this large village site has not been excavated. Based on our tribal traditions, we believe that many more burials are present. This belief is also supported by the proximity to and similarity with the Bolsa Chica sites where numerous burials were discovered. In addition, the large habitation site and the associated camp and special collection sites are part of a large complex of villages that stretch from the mouth of the Santa Ana River upstream to the Gabrieleno political center and sacred village of Genga.

The Banning Ranch sites represent the activities that the ancestors carried out centuries ago and are named in our oral traditions and songs, including artifacts, plant gathering areas, and natural features of the landscape that have spiritual meaning. As such they hold great significance for Gabrieleno descendants as a sacred power area, a place where they could gather to honor the ancestors and gain spiritual renewal. The fact that many of the sites have been disturbed does not diminish the area's spiritual significance as the place of our ancestors.

Respectfully yours,

Anthony Morales
Tribal Chairman
Gabrieleno Tongva San Gabriel Band of Mission Indians

From: Rob Wood <rw_nahc@pacbell.net>

To: chiefrbwife <chiefrbwife@aol.com>

Cc: Patricia Martz <p.martz@cox.net>

Subject: Re: Sacred Lands Application

Date: Thu, Feb 25, 2016 10:30 am

Chief Anthony Morales,

I looked at the material you sent in support of the "Banning Ranch Cultural Properties and Landscape" Sacred Lands File nomination, based on that information and the information on the nomination form that was previously sent, I will be adding the site to the Native American Heritage Commission Sacred Lands File.

If you have any questions, please let me know.

Rob Wood
Associate Environmental Planner
Native American Heritage Commission

March 25, 2016

Via email:

John.Ainsworth@coastal.ca.gov

Jack Ainsworth, Acting Executive Director
California Coastal Commission
89 S. California Street, #200
Ventura, CA 93001

Re: Newport Banning Ranch, 5-15-2097

Dear Mr. Ainsworth,

NBR's March 14, 2016 letter from Michael Mohler to Karl Schwing and Amber Dobson states that NBR is on schedule to produce a long list of critical documentation related to site clean-up by March 30 as follows:

NBR is on schedule to produce the following requested information by March 30th:

- *Ground-truthing surveys/results for areas within the proposed NBR development footprint, including confirmation of soil treatment volumes.*
- *Percentage of the site for which ground-truthing efforts have been completed.*
- *Note: Testing results for the oil production sump designated as Feature E have previously been forwarded to Cassidy Teufel in your Energy Group.*
- *Ground-truthing efforts will include the area to the southeast of oil well #164.*
- *Site remediation analysis for the proposed material treatment, soil remediation, borrow and placement locations in a configuration that would avoid Staff's recommended site constraints.*
- *Revised the project description to include all clean-up work proposed to occur within oil remainder areas.*
- *Errata sheet update to HCCMP.*

This leaves only 17 days for staff to analyze and integrate the analysis into the overall staff report assuming that the staff report for the May 11-13 hearing is released on April 22. This seems unfair and extremely unrealistic for staff to accomplish an effective and thorough review. Furthermore, the letter mentions a March 16 on-site visit with you and other staff members. I would venture to guess that additional issues and questions surfaced as part of that visit, which will require NBR to submit more documentation for staff's review and analysis.

Finally, the very last paragraph of NBR's letter states:

Lastly, NBR would like to reiterate our request that Staff schedule dates to meet with NBR to put each of our final pre-hearing thoughts on the table, discuss the issues relating to each, provide NBR with a copy of draft conditions, meet again prior to completion and issuance of the Staff Report to discuss it, and meet further as often as necessary prior to the May hearing in an effort to resolve remaining differences or issues regarding the Project.

From my perspective the applicant is placing unreasonable demands on staff and setting you up for ridicule and possible failure to adequately complete the process and produce a comprehensive staff report by April 22.

At the February 2016 hearing in Morro Bay and published in many media sources, the alleged failing of Dr. Lester's performance which resulted in his termination was blamed on the unsatisfactory pace of approval or disapproval of applications by his staff, and characterized as wholly ineffective. I am gravely concerned that staff is being dumped on with the extraordinary amount and nature of material to be submitted by March 30, leaving very little time to review and synthesize.

I have immense respect for you and your staff and the outstanding work performance despite the huge workload and limited resources. The spirit of this letter is to highlight my personal perspective and concern for further misconceptions of staff's performance given the current and past pattern of the applicant's insistent conduct and practice of dumping on staff at the 11th hour.

Thank you for allowing me to share my concerns.

Sincerely,

Dorothy Kraus
10 Wild Goose Court
Newport Beach, CA 92663

Attachment:

March 14, 2016 letter from NBR to Karl Schwing and Amber Dobson, Re: Newport Banning Ranch Coastal Development Permit Application 5-15-2097

Copies to:

Sherilyn Sarb, Deputy Director, California Coastal Commission
Alison Dettmer, Energy and Ocean Resources, California Coastal Commission
Cassidy Teufel, Energy and Ocean Resources, California Coastal Commission
Karl Schwing, South Coast Office, California Coastal Commission
Amber Dobson, Coastal Program Analyst, California Coastal Commission

From: [Dobson, Amber@Coastal](mailto:Dobson_Amber@Coastal)
To: BanningRanchComments@Coastal
Subject: FW: Against Development of Banning Ranch
Date: Friday, April 29, 2016 8:52:05 AM

Amber Dobson

Coastal Program Analyst II
California Coastal Commission
South Coast Office
Amber.Dobson@coastal.ca.gov

200 Oceangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071



SaveOurWater.com · Drought.CA.gov

From: Ted Mumm [mailto:ted@3mumms.org]
Sent: Tuesday, January 05, 2016 10:37 AM
To: Dobson, Amber@Coastal
Subject: Against Development of Banning Ranch

Ms. Dobson, please be sure the Coastal Commissioners have a chance to read this.

Here's why I'm against the proposed development of Banning Ranch:

I live in the section of Newport Beach called Newport Shores. We are directly adjacent to Banning Ranch.

I've been in the same home for 45 years now, so have had ample opportunity to see Banning Ranch in all its moods and seasons.

Banning Ranch hosts an amazing diversity of animal species. The songs and calls of many of them can be easily heard from my home.

For example, just this morning, as I was getting up to start the day, I heard the cries of the coyote pack that lives on Banning Ranch. They cackled and piped back and forth to each other for several minutes.

It is hard to describe what a privilege it is to be able to hear a sound like that while living in

a densely-populated, grossly over-developed urban area like Newport Beach. Hearing the call of the coyotes sparks my imagination and I think of what our beautiful coast must have been like long ago.

I have heard those coyotes all the years I've lived next to Banning Ranch. But, unlike me, the coyotes aren't relatively recent arrivals. They've been around for much longer. The Native Americans who lived up on the Banning Ranch mesa must have been familiar with those same cries a thousand years ago.

So what happens if Banning Ranch is developed? Well, over the years, I've noticed that those coyote wails always seem to emanate from up on the mesa - *right where the houses will be built*. Building the houses will drive the coyotes out. Problem is, there's nowhere for them to go. Banning Ranch is the last bit of natural habitat in the area. Development of Banning Ranch will silence the coyotes forever.

Additionally, coyotes are essential predators. The most common food item for coyotes is small rodents. Though we may occasionally lose a neighborhood cat, it has been overwhelmingly proven through necropsy, scat investigation, and visual observation that coyotes do NOT, in fact, rely on pets or garbage for their diets. If the coyotes are gone, we'll see an explosion of the rodent population.

For future generations to benefit from the coyotes, Banning Ranch must remain natural habitat. It's that simple. There is no 'compromise' development of Banning Ranch that will allow it to happen.

But this is not just about the coyotes, or even endangered animals like the Cactus Wren, Gnat Catcher and Fairy Shrimp. Preserving critical habitat for plants and animals is important, of course, but to me, it's much more than that. It has to do with what we really need as a society. Do we need more houses with manicured trails and lawns, or do we need something that will be a treasure for future generations?

Banning Ranch is our last little precious bit of natural coastal heritage. It is our final link to what this part of California used to be.

Thus, I plead with you to deny development of Banning Ranch. Our coast needs that beautiful natural habitat. As a nature park, it could become an island of tranquility to refresh our souls. But for me, just insuring that our children can hear the coyotes sing is reason enough.

Sincerely,

Carl W. Mumm
319 Cedar Street
Newport Beach, CA 92663
949-642-0031

From: [KnowWho_Services](#)
To: BanningRanchComments@Coastal
Subject: Reject Application 5-15-2097 to Develop Banning Ranch
Date: Friday, April 29, 2016 9:16:37 AM

Dear CA Coastal Commission,

Dear Commissioners:

I write to urge you to reject Application 5-15-2097 to develop Banning Ranch.

That land currently provides habitat to endangered and threatened animals and plant species, and contains many environmentally sensitive habitat areas (ESHA).

The California Coastal Act rightfully requires that ESHAs be protected.

I urge you to follow the letter and spirit of the California Coastal Act and reject the proposal to develop Banning Ranch.

Sincerely,

Stephanie Weigel
PO Box 1110
Joshua Tree, CA 92252-
catinmoon@yahoo.com
(760) 927-6078

From: [Rebecca Phillips](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch - No Thanks!
Date: Wednesday, April 06, 2016 4:37:42 PM

I urge the CA Coastal Commission to accept the report submitted by your research staff and decline the Brooks Street application for over 800 homes in this open space.

Your job is to protect the environment.

Respectfully,
Rebecca Phillips
Santa Barbara

From: [Jim And Lisa](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch development
Date: Wednesday, April 06, 2016 6:21:07 PM

Please carefully think about the decision regarding the last remaining open and undeveloped land along the Southern California coast. Once this land has been developed there is no going back. Does every foot of open space have to have a development on it? No, shouldn't it be left for wildlife whether human or animal. Even flora and fauna will be damaged. Just because people have money to develop something doesn't mean it should be. Please think long and hard about this and don't let money be the driving force.

Sincerely,
Lisa Morris

From: [Ruth Bieber](#)
To: [BanningRanchComments@Coastal](#)
Subject: Banning ranch development
Date: Wednesday, April 06, 2016 10:15:12 AM

Please reject any and all development on this highly important area. It is far too precious to California. Please stand up and fight these politicians who want to destroy OUR State lands. Who are the entities bribing and trying to control our State of California. Thank you Mrs Ruth Bieber Vacaville CA
Sent from my iPhone

From: [Jon Reisdorf](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch proposal
Date: Wednesday, April 06, 2016 11:49:15 AM

Sirs or Madams,
We live in Arcata and the coastal region is precious to us. We strongly urge you to reject the Banning Ranch proposal. We must conserve what can not be replaced.
Concerned,
Jon and Kathy Reisdorf

From: [Lisa Voss](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch Proposal
Date: Wednesday, April 06, 2016 10:49:11 AM

Dear Commissioners,

It would be really pathetic if California couldn't succeed in saving the last vestiges of unique open space, of which Banning Ranch is a prime example. Southern Ca. has a deplorable reputation for ugly urban sprawl, and this certainly qualifies as that. It's really an embarrassment and disgrace for our state, and it'll start to negatively affect tourism, let alone quality of life for residents. Please do the right thing and preserve this open space buffer for future generations to observe, reject the strip mall and residential development proposal in entirety.

Thank you,

Lisa Voss

From: [Victoria Lynch-Knight](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch Proposal
Date: Wednesday, April 06, 2016 4:38:01 PM

Please do NOT pass the Banning Ranch Proposal. Keep this beautiful area for what it is - pristine land for future generations. It is not yours to sell. Do your job. Turn down the almighty dollar, and think long term.

Victoria Lynch-Knight

From: [Isabel Leonard](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Wednesday, April 06, 2016 2:37:07 PM

Please keep this valuable piece of coast pristine, and ban development permanently.
Thank you.

Isabel Leonard
1301 Skycrest Dr., No. 1
Walnut Creek, CA 94595
USA

T: 1-925-705-7910

From: samjbutler@sbcglobal.net
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Wednesday, April 06, 2016 1:19:06 PM

I urge you to reject the Banning Ranch proposal. Please protect one of the last undeveloped open spaces in Southern California for nature and for us all. The world can survive without another housing development, especially on undeveloped land that supports an array of wildlife.

Thank you.

Sam Butler

From: [Suzanne Saul](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Wednesday, April 06, 2016 11:47:33 AM

Please protect the environment: no development on Banning Ranch. Humans are not the only residents on this planet.

Thank you,
Suzanne Saul

Sent from my iPhone: Suzanne Saul

From: [Bob Faulkner](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Wednesday, April 06, 2016 10:11:08 AM

Hello,

I would like to write in opposition to the Banning Ranch proposal and in support of your Staff recommendation to reject the project.

The Sierra Club is also against this item.

I am greatly concerned about what I have read recently about the Coastal Commission in the Los Angeles Times. I am worried that the Commission is meeting in secret with developers and approving projects which your staff itself have rejected. I am afraid that you are giving too much to builders and not showing enough concern for the environment, which it is your duty to protect.

Thank you,

Bob Faulkner
5096 Rhoads Ave.
Apt. D
Santa Barbara, CA 93111-2653

From: [Moya Mitchell](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Wednesday, April 06, 2016 9:20:48 AM

I oppose the Banning Ranch proposal and support the Coastal Commission staff's earlier recommendation to reject the permit.

There is no reason for a new development anywhere in southern California. It is too heavily impacted.

Thank you!

From: [Mike Starry](#)
To: BanningRanchComments@Coastal
Subject: Members of the Board: I urge you
Date: Wednesday, April 06, 2016 1:01:28 PM

to reject the Banning Ranch proposal. Protect nature. Send developers to Canada.
Thank you for your attention.

Mike Starry
Fresno, CA

From: [Kristin Hansen](#)
To: BanningRanchComments@Coastal
Subject: Oppose Development
Date: Wednesday, April 06, 2016 10:22:06 AM

Hello.

Please oppose this development project. There are so few natural environments along the coast in southern California as it is. Once the land is developed, its natural state is destroyed forever.

Thank you,

Kristin Hansen
Sacramento, CA

From: [Beverly G](#)
To: BanningRanchComments@Coastal
Subject: Please protect Banning Ranch
Date: Wednesday, April 06, 2016 11:07:23 AM

Dear Commission members

I urge you to reject the Banning Ranch proposal. The coast should be open for all, not just those with money.

Beverly Graham

From: [Sharon Reeve](#)
To: BanningRanchComments@Coastal
Cc: savenbr@gmail.com
Subject: Please reject the Banning Ranch Development
Date: Wednesday, April 06, 2016 6:07:28 PM

Commission Members,

Please reject the Banning Ranch Development! It is inconsistent with the California Coastal Act. The land is home to an incredibly unique array of coastal species and habitats. The land has been largely off limits to much human traffic, allowing wildlife to take refuge there mostly undisturbed.

There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site. The development project adverse impacts on Banning Ranch's natural landforms, its biological resources, and visual impacts, make it inconsistent with the California Coastal Act.

Reject the Banning Ranch proposal for development.

Please save this last remaining piece of coastal wild California. Preserving the entire Banning Ranch property as open space as recommended by the City of Newport Beach general plan. Banning Ranch is the largest parcel of unprotected coastal open space and wetland property remaining in Orange County and can provide public access to exceptional views of the ocean and Catalina. Banning Ranch has been designated as a Priority Conservation Area of significant biological importance in various documents including the OCTA.

Best Regards,

Sharon Reeve

4560 Garfield St.

La Mesa, CA 91941

From: [Ange Citoni](#)
To: BanningRanchComments@Coastal
Subject: Please reject the Banning Ranch proposal
Date: Wednesday, April 06, 2016 3:34:44 PM

Respected members of the Coastal Commission,
We urge you to reject the Banning Ranch proposal. The Banning Ranch is home to sensitive habitat and should remain so, for the sake of Californians all together. In these days and age, we know better than destroying coastal wildplaces to build hotels and shopping malls. I hope that you will show Californians that you, as members of the Coastal Commission, are capable of a modern, respectable decision, with the people's best interest in mind.
Best regards,

Hélène Citeau, Ph.D.
Del Mar, CA, 92014

From: [Priscilla Williams](#)
To: BanningRanchComments@Coastal
Subject: Protect Banning Ranch in Orange County
Date: Wednesday, April 06, 2016 4:45:41 PM

Sent from [Mail](#) for Windows 10

The Banning Ranch is a rare example of coastal open space in Southern California.

This land is home to “an incredibly unique array of coastal species and habitats.” Some of the land has been used as oil drilling sites, but has also been largely off limits to much human traffic, allowing wildlife to take refuge there mostly undisturbed.

I oppose the Banning Ranch proposal.

Respectfully submitted,

P.R. Williams
Santa Cruz, CA

From: [Teri Xirakis](#)
To: BanningRanchComments@Coastal
Subject: Reject development of Banning Ranch!
Date: Wednesday, April 06, 2016 9:53:49 AM

Dear commissioners,

I am writing to strongly urge you to reject the latest proposal to develop the land that makes up Banning Ranch. The area — all of southern California, in fact — is already so ruined from over-development, it's time for some people with ethics and wisdom to deny more pocket-lining for a handful of greedy and short-sighted businesspeople at the permanent expense of everyone else — wildlife and flora included.

Please reject this current proposal, and have the wisdom to reject any future "modified" proposals that may come out of the woodwork to ruin this section of undeveloped coastal land.

Thank you,

Teri Yazdi
San Carlos, California

From: [Doug Evans](#)
To: BanningRanchComments@Coastal
Subject: reject development project on Banning Ranch
Date: Wednesday, April 06, 2016 11:01:33 AM

In October, the Coastal Commission staff recommended that the Commission reject a large development project on the 400-acre Banning Ranch in Orange County, the largest privately owned undeveloped open space along the coast in Southern California.

The staff report said, "There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site." It concluded that the project's adverse impacts on Banning Ranch's natural landforms, its biological resources and visual impacts made it inconsistent with the California Coastal Act.

These Calif. coastal zones are more and more limited and must be conserved. I urge you to reject the project.

Douglas Evans
Ojai, Calif.

From: [Carolyn Helper](#)
To: BanningRanchComments@Coastal
Subject: reject
Date: Wednesday, April 06, 2016 12:34:57 PM

I urge you to reject the Banning Ranch proposal and protect this undeveloped coastal area.

C. Helper

From: russdat@gmail.com
To: BanningRanchComments@Coastal
Subject: Save Banning Ranch
Date: Wednesday, April 06, 2016 6:41:35 PM

This note is sent to protest any development in Banning Ranch. We'll soon see if The Costal Commission is in the pockets of developers. The decision to allow another proposal is beyond comprehension and should be voted down.

Sent from my iPhone

From: robustelli@cox.net
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Thursday, April 07, 2016 11:52:00 PM

Dear California Coastal Commission Members,
Pease, please reject the large development project on the 400-acre Banning Ranch in Orange County.
Sincerely,
Lucille Robustelli
Resident of Orange County

From: [Chris Van Hook](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch development comments
Date: Thursday, April 07, 2016 1:13:08 PM

Please do not allow this development to be built. Orange County does not need anymore malls, hotels or houses. It has been totally over-developed. I was born in Los Angeles and spent my childhood at the Orange Co. beaches. It is shocking what has happened to this area. The bluffs from Corona del Mar to Laguna used to be wild and empty. Now it is just one large development or shopping mall after another.

It is your responsibility to the citizens of California to protect our coast for the good of the citizens. Not for the good of developers who will ruin our coast and move on to the next. We who live here are left with the debris of what they have created.

We don't have enough water to keep supporting new developments. People must have nature to go to. They can't be enclosed by concrete with little access. The traffic becomes more and more unbearable. The animals have no where to live and then they get punished when they eat someone's pet. What are they supposed to do?

Please be responsible to the citizens of California, as is your job, and do not allow this development.

Chris Van Hook

From: [Katie](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Thursday, April 07, 2016 8:34:32 PM

Please protect this open space. We are running out of open space for wildlife. We need to protect the remaining open spaces and utilize more efficiently the urban sprawl we already have developed. We can't expand any further!! Please be a part of the solution. The time is now to start putting our foot down about the space we have to protect. Jane Goodall said there is still much to fight for. But it has been a long road down some tragic paths as humanity has destroyed much of our network of life on this earth. Please protect and preserve the remaining spaces for wildlife.

Thanks

Katie Franklin
California

From: [Mitzi Gilmartin](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch proposal
Date: Friday, April 08, 2016 2:07:56 PM

Dear Sirs;
Please reject in May the developer's proposal for the 62 acres development at Banning Ranch in Orange County. Listen to your Coastal Commission staff who recommend a rejection.

Sincerely,
Mary A. Gilmartin
Newport Beach, CA

Sent from my iPad

From: [Gerry Williams](#)
To: [BanningRanchComments@Coastal
Sierra Club](mailto:BanningRanchComments@CoastalSierra.Club)
Subject: Banning Ranch Proposed Development
Date: Friday, April 08, 2016 3:37:10 PM

I write to object to any development of the Banning Ranch property. I don't understand why the recommendations of the Coastal Commission's are being ignored to consider additional development of this area; one of the few remaining "open areas" not overrun by human interests along the coast of Southern California. The wide variety of wildlife that inhabit the area needs to be protected and cherished from human greed and overpopulation! The very idea that a large development is even being considered for this property is very upsetting. Please STOP any further consideration of development for the Banning Ranch property.

Thank you,
Gerry Williams

From: [Susi Raub Vogler](#)
To: BanningRanchComments@Coastal
Subject: No More Development
Date: Friday, April 08, 2016 11:49:10 PM

Why don't we re-develop neglected developed areas instead of paving over another piece of nature. When will we stop being like an unstoppable cancer? Developing the Ranch will only benefit a small percentage of people. We gain more environmentally and mentally by leaving land untouched now. We humans are destroying our own habitat. Aren't we intelligent enough to realize the detrimental effect we've had on this planet already? What is the necessity to develop this space? I fear humans; and fear for humans. I'm deeply saddened for all else that shares this planet with us. We selfishly think we can occupy space anywhere and not regard the rest of life on earth? No more encroachment on nature by humans - we are a pest!

-s

Sent from my iPhone

From: [jack holmgren](#)
To: BanningRanchComments@Coastal
Subject: Reject the Banning Ranch proposal
Date: Friday, April 08, 2016 7:26:37 AM

Dear California Coastal Commission :

Please reject totally the proposal to develop the Banning Ranch!

Sincerely,

John Holmgren
6667 Aitken Drive
Oakland, CA 94611

From: [Pamela Wilkinson](#)
To: BanningRanchComments@Coastal
Subject: Reject Banning Ranch proposal
Date: Saturday, April 09, 2016 4:47:03 PM

At the May Coastal Commission hearing, please vote to support the Coastal Commission staff recommendation that the Commission reject a large development project on the 400-acre Banning Ranch in Orange County, the largest privately owned undeveloped open space along the coast in Southern California.

The staff report finds that the project's adverse impacts on Banning Ranch's natural landforms, its biological resources and visual impacts made it inconsistent with the California Coastal Act. Support your staff findings and reject this proposal.

Pamela Wilkinson

From: [Steve Lustgarden](#)
To: BanningRanchComments@Coastal
Subject: No to Banning Ranch Development
Date: Sunday, April 10, 2016 1:37:28 PM

The Coastal Commission staff have provided you with an unequivocal recommendation: say no to this proposed development.

The project's adverse impacts on Banning Ranch's natural landforms, its biological resources and visual impacts make it inconsistent with the California Coastal Act.

If keeping with the coastal act, you must say no to this proposal.

Thank you,
Steve Lustgarden
Susan Kauffman
Santa Cruz, CA

From: kirbycheeby@yahoo.co.jp on behalf of [Anibamba](#)
Subject: Demande de Partenariat très Sérieuse Svp
Date: Monday, April 11, 2016 4:33:05 AM

Demande de Partenariat très Sérieuse Svp
Nom : MME ANITA BAMBA

Bonjour/Votre Attention:

Mes sincères salutations et mes excuses à votre égard. Je voudrais m'excuser de mon intrusion dans votre vie privée. Je me Nomme MME ANITA BAMBA, Cadre au Département de la Comptabilité d'une banque IBI International Banque D'Investissemnt. Un compte a été ouvert au sein de notre banque en 2005 et depuis 2011, aucune opération ne s'est effectuée. Ce compte présente à ce jour dans nos livres, un compte créditeur de QUATRE MILLIONS CINQ CENT MILLE Euros (4.500.000 €).

Après avoir consulté tous les dossiers relatifs à ce compte, je me suis rendue compte que je pouvais disposer aisément de cet argent si je réussissais à le virer sur un compte à l'extérieur donc je suis à la recherche d'un partenaire honnête. Le possesseur de ce compte feu MR FEDEREZ ANTOINE , un expatrié de Petrol-Technical Support Services Inc, décédé suite à un accident de la circulation et Personne ne sait à ce jour l'existence de ce compte. Ce compte ne possède aucun autre proche ni parent.

J'aimerais que vous m'aidiez à transférer cet argent pour investir dans votre domaine. Après le transfert je vous offrirais 40% pour votre aide. Soyez sûr que c'est une véritable opportunité que je vous offre et soyez rassuré que j'ai les preuves documentaires de mes dire afin de vous rassurer de la crédibilité sans faille de cette transaction et de ma proposition

Dans l'attente de votre réponse rapide que j'espère favorable, je vous souhaite bonne lecture

Fraternellement

MME ANITA BAMBA

From: [Atreyu Archer](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch proposal May 11
Date: Tuesday, April 12, 2016 1:38:50 PM

Please reject all proposals for the development of Banning Ranch, our natural habitats are fleeting! We have more than enough suburbs, shopping centers, and hotels. Our future is in your hands, please save our nature and wildlife!

From: [Holly](#)
To: BanningRanchComments@Coastal
Subject: Protect the coast
Date: Tuesday, April 12, 2016 2:26:01 PM

My name is Holly Wachlin and I am against disrupting the small amount of land remaining on the California coast. Please help preserve the ecosystems that still exist and protect them from irreversible damage. We need as much help as we can to protect our environment as a whole, now more than ever before.

Thank you for your time and consideration,

Holly
Sent from my iPhone

From: [David Aimar](#)
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Sunday, April 24, 2016 7:48:20 PM

Dear Commission members,

I am urging you to reject the updated Banning Ranch Proposal. I am not going to bore you with the reasons I do not feel it is a good idea to develop this land as I am sure you have heard them all. I am one who strongly opposes the Developers plan.

Respectfully,

David F. Aimar, DDS

From: [Arlis Reynolds](#)
To: BanningRanchComments@Coastal
Cc: [Ozreynolds](#); [isabelle.phillips](#); [Nova Wheeler](#); [Bill McCarty](#)
Subject: A letter from the communities around Banning Ranch
Date: Thursday, April 28, 2016 3:56:45 AM
Attachments: [SBRT_Submission_20160428.pdf](#)

To Coastal Commission Staff,
Thank you for your hard work and dedication to protecting our beautiful coastline and upholding coastal laws.
Please see the attached letter from community members regarding the proposed Banning Ranch development project.

Thank you,
Arlis Reynolds

“we don’t inherit the earth from our fathers, we borrow it from our children.”

A decision to build on Banning Ranch, to grade and pave over some of our last natural coastal habitats, is **irreversible**. We will forever lose a natural coastal ecosystem, forever lose native species of plants and animals, and forever lose open space that creates a serene and special environment for communities along the Santa Ana river corridor.

Please protect the rare and sensitive habitats on Banning Ranch, and help us preserve the limited natural open space we have left so future generations can enjoy the coastal wilderness we have been blessed to experience.

Saving Banning Ranch Together

The “Save Banning Ranch Together” movement was created by community members concerned about the impacts of proposed development on Banning Ranch—some of the last coastal wilderness and home to many native and endangered species—on our communities now and in the future.

We are families, neighbors, community members, and citizens of this Earth concerned about the world we are creating (or destroying) for today's and tomorrow's children.

We have spent countless hours of our free time outside of work and other “life” obligations to educate our communities about the proposed development. **Most concerned and upset are the children, who immediately and inherently understand that Banning Ranch is already a home and should be protected as such.**

Please enjoy, appreciate, and seriously consider concerns and desires of our communities to Save Banning Ranch together.

293 identical letters received

From: [Valerie Kessinger](#)
To: BanningRanchComments@Coastal
Subject: New BRC Letter Campaign Submission
Date: Thursday, April 28, 2016 9:05:22 AM

Letter Body

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report. (<http://www.newportbeachca.gov/index.aspx?page=2096>).

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

+ Banning Ranch is the last large unprotected coastal open space in Orange County.

When it's gone, it's gone forever.

+ 2.8 million cubic yards of soil will be moved and much of it stockpiled on site to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.

+ The destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—none of which is allowed by the Coastal Act.

+ The Project's water demands will place a significant burden on our scarce water supply, increasing water shortages.

+ Where's the water coming from? The Project's Water Supply Assessment Report is flawed and outdated by its own admission.

+ TRAFFIC: 15,000 more car trips on our roads, daily! Expect longer commutes, gridlocked intersections.

+ POLLUTION: Air pollution from construction and traffic will exceed state standards.

+ POLLUTION: Noise from traffic and other sources will double allowable noise thresholds.

+ POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely,

Valerie Kessinger

Additional references:

City of Newport Beach EIR, Section 4.6.7, Biological Resources, Environmental Impacts

City of Newport Beach EIR, Section 4.9, Transportation and Circulation

City of Newport Beach EIR, Section 4.10, Air Quality (Table 4.10-7 Estimated Maximum Daily

Construction Emissions: Unmitigated)

City of Newport Beach EIR, Section 6.0, Long Term Implications of the Proposed Project

Name

Valerie Kessinger

Email

vkessinger@schneideroffice.com

Address

19332 Firestone Circle Huntington Beach, CA 92648

United States

[Map It](#)

1,663 identical letters received

From: [KnowWho_Services](#)
To: BanningRanchComments@Coastal
Subject: Reject Application 5-15-2097 to Develop Banning Ranch
Date: Monday, May 02, 2016 9:01:36 AM

Dear CA Coastal Commission,

Dear Commissioners:

I write to urge you to reject Application 5-15-2097 to develop Banning Ranch.

That land currently provides habitat to endangered and threatened animals and plant species, and contains many environmentally sensitive habitat areas (ESHA).

The California Coastal Act rightfully requires that ESHAs be protected.

I urge you to follow the letter and spirit of the California Coastal Act and reject the proposal to develop Banning Ranch.

Sincerely,

Glynn Dodge
PO Box 283
Volcano, CA 95689-
pops@volcano.net
(209) 296-3421



California Cultural Resource Preservation Alliance, Inc.

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

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

February 18, 2016

Amber Dobson
California Coastal Commission

RE: Proposed Banning Ranch Development

Dear Ms.Dobson:

Since 2011, we have written letters to the California Coastal Commission (CCC) regarding the concern that the proposed Banning Ranch development and the proposed removal of oil well structures will result in the destruction of the three remaining archaeological sites within the Banning Ranch property. To date 90 percent of all coastal archaeological sites in Orange County have been destroyed due to development. At one time 11 archaeological sites were recorded within the Banning Ranch project area. Today only three have escaped total destruction due to oil field development, CA-ORA-839, CA-ORA-844B, and CA-ORA-ORA-906. These sites have been determined eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR), and under are considered to be Traditional Cultural Properties related to the ethnographically known village of Genga.

The three remaining archaeological sites are all that is left of an important prehistoric settlement that has cultural and religious values for Native American descendants and can provide important information to be retrieved by archaeologists in the future using non-destructive technology. This makes it all the more important that they be protected and preserved.

In the past it was considered appropriate to “mitigate” significant archaeological sites through archaeological excavations to recover scientific data. As stated in the CCC Staff Report of April 2, 2015 for the Laguna Beach golf and bungalow Village, LLC, “Increasingly, Native Americans, as well as some archaeologists and environmental groups have found these mitigation practices to be objectionable and have petitioned the Commission to require ARDs that avoid impact to archaeological resources by requiring that archaeological resources remain in place, especially Native American human remains.” (Pg. 52).

Please include this language in your staff report for the Banning Ranch Project so that the remaining archaeological sites will be preserved for future generations and further degradation of our national cultural heritage will be averted.

Sincerely,

Patricia Martz, Ph.D.
President



February 12, 2016

Mr. Mike Mohler, Senior Project Manager
Newport Banning Ranch, LLC
1300 Quail Street, Ste. 100
Newport Beach, CA 92660

Dear Mike,

During the last several weeks, we and our residents have visited with or had conference calls with several California Coastal Commissioners and their staff. A constant theme we heard from them is that we should meet with you to discuss, and hopefully resolve our concerns regarding the impacts that Newport Crest will endure during 10 years of oil operation abandonment and soil clean-up, development, and ongoing impacts when the project is completed.

The February 1, 2016 meeting with you, and Newport Crest HOA board members Ginny Lombardi and Sharon Boles was a very good first step. We appreciated receiving an update from you on the current plan. We hope that after listening to our concerns as to how the project will affect our residents' health and safety, and overall quality of life, and our list of mitigations that will at least lessen the impacts of the project, we are on track to meet a common goal prior to the March 9 – 11, 2016 California Coastal Commission hearing.

We thought it was important to put the list of mitigations into a written format. As you can appreciate, it is difficult to anticipate all impacts to Newport Crest, so please understand that this list could expand as we learn more about the final project. For the sake of this letter, our goal is that both you as the developer and we as the impacted community act in good faith toward each other in order to be the best of neighbors in the future.

Our list of mitigations is as follows:

1. Clean Newport Crest on a regular basis. This would include decks, windows, etc., of residents, common areas, along with the pool, tennis courts and vegetation.
2. Install double pane windows and sliders prior to the start of the project.
3. Install air conditioning to combat the noise, dirt, dust, and toxins on Newport Crest.
4. Limit construction to Monday through Friday. Hours of construction should be limited to the City of Newport Beach code.
5. Repair any damage and cracks to Newport Crest units and foundation.
6. Repair any damage and cracks to Newport Crest common areas.
7. Repair any damage to the Newport Crest retaining wall.

H O M E O W N E R S A S S O C I A T I O N

210 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433

www.NewportCrest.org

Public Comments

5-15-2097 EXHIBIT 19



8. Install a "temporary barrier" along the perimeter of Newport Crest and the development to limit the noise, dirt, dust, etc.
9. Provide independent testing by a third party of the soil periodically during construction.
10. Provide independent testing by a third party of dust, noise, and pollutions periodically along the perimeter of Newport Crest.
11. Agree to ongoing discussions and mitigations throughout the entire development process.
12. Install plexiglass-like panels to balconies.
13. Install a secured Newport Crest pedestrian entry gate to Banning Ranch at the end of Ticonderoga.
15. Provide and distribute to onsite residents/offsite homeowners a weekly notice of construction schedule one week ahead of time so that residents/homeowners will be aware of the degrees of noise, dirt, dust and pollution and be able to plan accordingly.
16. Provide and distribute an 8 week construction schedule to onsite residents/offsite homeowners for long term planning.
17. Provide relocation funds for residents that are highly sensitive. Examples would be for residents that have asthma, pregnant, small children, the elderly and those that are ill.

We look forward to finalizing these plans together and would appreciate hearing back from you by February 19, 2016.

Sincerely,

Mark Gonzalez, President, Newport Crest Board of Directors
Ginny Lombardi, VP, Newport Crest Board of Directors
Sharon Boles, Secretary, Newport Crest Board of Directors
Don Bruner, Treasurer
June Palomino, Member at Large

CC: City of Newport Beach Council Member, Tony Petros
Chair Steve Kinsey and California Coastal Commissioners
Deputy Director, Sherilyn Sarb, California Coastal Commission
South Coast District Manager, Karl Schwing, California Coastal Commission
Coastal Program Analyst, Amber Dobson, California Coastal Commission

HOMEOWNERS ASSOCIATION

210 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433

www.NewportCrest.org

Public Comments

5-15-2097 EXHIBIT 19

Feb 17, 2016

Dear Coastal Commission Staff,

In regards to the Newport Banning Ranch application, I would like to make the following points.

With so few places left in Southern California where multiple coastal landforms occur in such a connected fashion as Banning Ranch, the value of this confluence cannot be overestimated.

Under any reasonable accounting of what to conserve vs what to consume in our society, this site stands out as critically endangered.

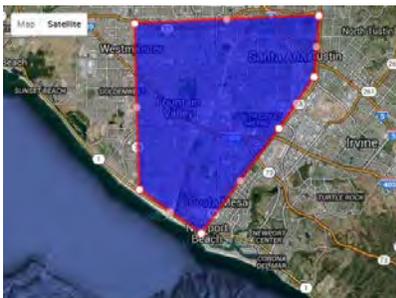
NBR states that it is leaving a large portion of the site as open space/habitat. Left out of this equation is how intensive the land use is all around it, and with development currently accelerating in nearby neighborhoods.

The regional built/unbuilt baseline is a measure the Commission should use in considering this project. Intuitively, we all factor this in, but the principle has not been a strong part of deliberations.

This "island" of habitat has no outlet, no connecting corridors to equivalent habitat so that any impacts to this space carry greater consequence. The grasslands alone, as key elements of raptor and Burrowing Owl foraging, require a highly cautious approach yet multiple building pads and turf areas are planned there.

This objective context, the confluence of relatively high quality habitat near large concentrations of population and intensive land use, should therefore be a primary factor in any presentation on the project.

As an illustration, the area outlined here is a conservative estimate of Banning's local region, at approx. 44,000 acres (55 fwy to 22 fwy and Beach Blvd). Within that area there is less than 700 acres of native-condiland, including Banning and Talbert. On a percentage basis, that is approx. 1.7% of wild land vs development.



In addition, the area has yet to recover from the many alterations intended to impact ESHA. In some areas Encelia has continued to expand density and coverage in recent weeks, demonstrating this point.

Thank you,

Kevin Nelson

Nature Commission
949-939-9372

<http://naturecommission.org> | PO Box 73126, San Clemente, Ca 92673

These two images also illustrate the same massive imbalance.





Dear Commissioners,

This letter is in reference to the CDP 5-15-2097, the Newport Banning Ranch LLC development in Newport Beach. The Board of Directors of Newport Crest Homeowners Association, a 460-unit condominium complex, is very concerned with a possible change to the design of the development.

Newport Crest is adjacent to Newport Banning Ranch LLC, we share a perimeter. For several years, the Board of Directors has been involved in direct conversations with the developers and we have a good working relationship. We have discussed the design, changes in design, and they have responded to some of our concerns by implementing changes we requested. For example, the extension of 15th Street to Bluff Road came within 20' of our property. After meeting and discussing our concern, a subsequent design moved the road about 80' away. Also, the developers have agreed to build a pedestrian gate from our property to Banning Ranch, at the end of our main road.

Over the years, the discussion about the design of the Banning Ranch property has never included building homes directly adjacent to Newport Crest property. Based on comments made at the October 2015 Coastal Commission meeting in Long Beach, it was suggested by a Commissioner to look at building adjacent to Newport Crest. We are very concerned about this suggestion. The homes along this perimeter of Newport Crest have the good fortune of a view of Banning Ranch as well as the ocean.

Many homeowners were involved in the EIR process at the City of Newport Beach, providing input regarding concerns, criticism, and suggestions. If the design of the development had included the construction of homes directly adjacent to our homes, Newport Crest would have provided MUCH more input at the EIR level, as well as the Coastal Commission meeting in October, 2015. The content and scope of the EIR would have been very different than the one that was approved. Not having any opportunity for input on this particular design, the people in our community are at a great disadvantage, a decision could be made by the Coastal Commission without hearing from the people directly affected by this decision.

Prior to making a decision, we request you visit Newport Crest homes to observe firsthand the impact of this decision. At this time, we do not have another venue to express our concerns. We know the Commission does not address effects of land development on people. However, the people of Newport Crest have not been provided ANY opportunity for input on this matter. Prior to the March 2016 Coastal Commission meeting in Santa Monica, we request you examine this proposal carefully.

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Changing the footprint of the Newport Banning Ranch LLC development to make it smaller in one area and moving it to this location is not what the developer or Newport Crest want. We want all development, including homes and parking, to be moved to the other side of the proposed extension of 15th Street, where there is a large area of buildable land where the active park is proposed.

Thank you for considering our request. Please contact us for more information or if you have any questions.

Sincerely,

Mark Gonzalez, President
Ginny Lombardi, Vice President
Sharon Boles, Secretary
Don Bruner, Treasurer
June Palomino, Member at Large
Xochitl Yocham, Community Manager

H O M E O W N E R S A S S O C I A T I O N

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Public Comments

5-15-2097 EXHIBIT 19



January 12, 2016

Dr. Jonna Engel
California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001

Subject: Comments on the “NBR Response to Commission Staff Vernal Pool ESHA Recommendation”

Dear Dr. Engel:

This letter provides comments on the *NBR Response to Commission Staff Vernal Pool ESHA Recommendation* (NBR Response Letter) and provides biological analysis of survey reports and the NBR Response Letter.

I have reviewed the California Coastal Commission staff report (dated September 25, 2015), the Newport-Banning Ranch (NBR) letter response to the CCC staff report letter (*NBR Response to Commission Staff Vernal Pool ESHA Recommendation* (NBR Response Letter), as well as the biological survey reports for NBR including *the Jurisdictional Delineation for the Newport Banning Ranch Property* (Glenn Lukos Associates [GLA] 2008a) *the Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch* (Dudek 2013a), and seven associated fairy shrimp survey reports (GLA 2001, 2008b, 2009, 2010, 2011, 2012, Dudek 2013b).

The Coastal Commission’s staff’s September 25, 2015 memorandum *Regarding ESHA and Wetland Determination for Banning Ranch* (staff memo) identified at least 39 vernal pools on the project site that staff determined to be ESHA. The NBR Response Letter claims that the staff conclusions are not supported by the biological surveys conducted on site. This letter provides commentary on critical inadequacies of the NBR surveys and refutes incorrect assertions made in the NBR Response Letter.

The following pertinent determinations were made and are discussed below:

- 1) Surveys for Federally-listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) are incomplete and San Diego fairy shrimp may be more widespread on NBR than is currently reported. Surveys conducted by biological consultants on behalf of NBR make incorrect assessments that do not follow U.S. Fish and Wildlife Service (USFWS) protocol guidelines, were not comprehensive, and cannot be used to determine absence of this species throughout the Banning Ranch property.
- 2) Surveys for vernal pool indicator plant species conducted by biological consultants on behalf of NBR have under-reported vernal pool plant presence, but the extent to which this has occurred is uncertain. It is impossible to discount basins as being vernal pools without a proper and honest accounting of species composition.
- 3) The vernal pool/grassland complex on Banning Ranch supports a diversity of vernal pool species, functions, and services, including providing habitat for the listed San Diego fairy shrimp. By any objective measure, the vernal pool/grassland complex is an “area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments”, and therefore satisfies the criteria for Environmentally Sensitive Areas (ESHA) identified in Section 30107.5 of the Coastal Act. At this time, incomplete survey information makes it impossible to properly assess the true extent and full sensitivity of the on-site resources.

San Diego Fairy Shrimp Surveys Incomplete

San Diego fairy shrimp are likely to be more widely distributed on NBR than is currently reported, given the presence and distribution of San Diego fairy shrimp within pools on-site, the widespread presence of unidentified *Branchinecta* sp. cysts throughout Banning Ranch property, and the lack of complete surveys for fairy shrimp in all pools. These points are discussed in detail below.

The NBR response letter claims that the fairy shrimp surveys conducted on NBR meet the previous 1996 USFWS guidelines. This is not correct.

A thorough evaluation of potential habitat is necessary to determine the absence of listed species. For many of the identified pools, surveys required to demonstrate absence of listed species have not been conducted to current or past standards.

The U.S. Fish and Wildlife Service (USFWS) established survey protocol guidelines for listed fairy shrimp in 1996 (USFWS 1996). The fairy shrimp survey guidelines were updated in 2015; therefore the surveys conducted on Banning Ranch between 1999 and 2014 were conducted under the guidelines set forth in 1996. Under the 1996 survey protocol guidelines, two routes could be used to determine the presence or absence of the listed species in appropriate habitat and must have occurred within the last five years. The two routes were either 1) two wet (rainy) season surveys, or 2) one wet season survey combined with one dry season survey, for *each basin*. A wet season survey consists of sampling for live animals when the pool contains water; a dry season survey consists of obtaining dry soil samples from each pool, processing the earthen material, and examining the material with a microscope to determine the presence/absence and species composition of encysted resting eggs (cysts). Because of similarities amongst cysts of the *Branchinecta* genera (which includes San Diego fairy shrimp and versatile fairy shrimp [*Branchinecta lindahli*]), those shrimp cysts cannot be identified to the species level, and one subsequent complete wet season survey must be completed to satisfy the survey requirements.

Nine partial surveys conducted between 1999 and 2014 were determined to be incomplete, inconclusive or non-protocol for a variety of reasons. Specifically, in the 1999-2000 wet season, only six pools on the mesa were surveyed; in 2007-2008 only one pool (wet season) was surveyed; in 2008-2009 only one pool (wet season) was surveyed; in 2010 only three pools (wet season) were surveyed and surveys were initiated too late in the season; and in 2011 only one pool was surveyed (dry season). Wet season surveys in 2010-2011 only covered a portion of the extant basins. Wet season surveys in 2011-2012 covered a majority (but not all) of the required basins onsite, but "surveys were inconclusive due to insufficient ponding" (GLA 2013). Therefore, even though seven wet-season surveys were attempted, a combination of lack of survey coverage or lack of rainfall have made it impossible to accurately determine the distribution of diagnostic vernal pool indicator plants and endangered San Diego fairy shrimp within the dozens of seasonal pools on the Banning Ranch property. The rainy seasons of 2009/2010 and 2010/2011 had precipitation near or above average, and would have allowed NBR to conduct the required suite of surveys under adequate environmental conditions. The past four years have seen persistent drought conditions, but 2015/2016 is expected to have at least average precipitation.

Current distribution of San Diego fairy shrimp cannot be known because complete USFWS-compliant surveys for fairy shrimp have yet to be conducted in all pools.

Newport Banning Ranch consultants used results of cyst rearing to conclude that listed fairy shrimp were absent from NBR. This is not an allowable determination.

Dry season fairy shrimp cyst culturing cannot be used to determine absence of San Diego fairy shrimp, and all basins with *Branchinecta* cysts must be considered potentially occupied by San Diego fairy shrimp until proper surveys are conducted. The 1996 USFWS guidelines state that, if *Branchinecta* cysts are observed, “one subsequent complete wet season survey shall be completed to complete survey requirements”; hatching, or culturing, of the cysts in a laboratory setting in artificial basins in order to grow fairy shrimp to identifiable adult phases are not part of, and not addressed in, the 1996 survey guidelines. The 2015 USFWS guidelines directly address hatching and specifically state that DNA analysis of eggs “**is the only method that can be used to differentiate between *Branchinecta* species**”, that dry season fairy shrimp cyst culturing (hydration and incubation) **cannot** be used to determine absence of listed *Branchinecta* species, and **all basins with *Branchinecta* cysts must be considered potentially occupied by listed *Branchinecta* species such as San Diego fairy shrimp until surveys are completed per USFWS guidelines.**

Fairy shrimps persist in their unique environment of alternating periods of desiccation and hydration by finely tuned adaptations to environmental cues. Often only a very small percentage of cysts hatch in any hydration event (Eriksen and Belk 1999), and different species will hatch under different and varied environmental conditions such as temperature, salinity, and total dissolved solids. So, for example, a laboratory hatching study may result in the hatching of only versatile fairy shrimp when other species are present as unhatched cysts.

A hatching event took place which resulted in the identification of versatile fairy shrimp from the dry season samples and resulted in few observations of San Diego fairy shrimp (Dudek 2013b). This hatching study was used to conclude that San Diego fairy shrimp were absent from many pools and that surveys were complete per the USFWS guidelines. As stated above, the 2012 dry season hatching study provides information on which *Branchinecta* species are present, but **cannot be used to determine absence of other species** due to the facts of the life cycle histories of these species and per USFWS protocol guidelines. Furthermore, per USFWS 1996 guidelines, in order for surveys to be considered complete, a subsequent wet season survey needed to be conducted.

In conclusion, NBR maintains that the federally endangered San Diego fairy shrimp is present within eight of the forty vernal pools identified by the CCC, and further maintains that appropriate surveys were conducted to completion per the 1996 USFWS survey guidelines. The survey reports produced on behalf of NBR detailing fairy shrimp surveys conducted between 2001 and 2014 by biological consulting firms indicate that the surveys were either incomplete or inconclusive surveys for fairy shrimp on portions of the NBR mesa. To date, many basins lack the appropriate data to exclude the presence of listed species, under both the 1996 and 2015 USFWS survey guidelines.

Fairy Shrimp Surveys Conducted on NBR are Unallowably Old

The NBR response does acknowledge the presence of the 2015 USFWS guidelines which state that survey results are only valid for 3 years (1996 guidelines allowed for 5 years). Under both the current and previous USFWS guidelines, the data from the fairy shrimp surveys is no longer valid. It is entirely possible that populations of shrimp have been redistributed by natural means or by accidental vectoring through anthropogenic disturbance, and updated surveys are required by the USFWS to assess present conditions.

All pools not already known to be occupied by San Diego fairy shrimp, and that lie within the proposed NBR development plan grading limits/fuel modification boundary, should be resurveyed per the 2015 USFWS guidelines to determine presence/absence of San Diego fairy shrimp. Any pools with *Branchinecta* cysts that

have not been subject to current protocol surveys must be considered potentially occupied by listed species per the 2015 USFWS guidelines.

Pools Supporting San Diego Fairy Shrimp are ESHA

San Diego fairy shrimp are listed as endangered under the federal endangered species act. The definition of “endangered” within the Endangered Species Act is “being endangered with extinction throughout all or a significant portion of its range”. Thus, this listing status distinctly qualifies San Diego fairy shrimp as satisfying the ESHA criteria specified in Section 30107.5 of the Coastal Act, as the species is “rare” and its habitat “could be easily disturbed or degraded by human activities and development”.

The limited, incomplete, and/or inconclusive surveys for San Diego fairy shrimp give an incomplete assessment of the distribution of listed species within the NBR property. Until the required protocol surveys are completed, the Coastal Commission cannot cite a reliable, factual basis upon which to delineate the extent of ESHA occupied by San Diego fairy shrimp on the Banning Ranch property.

Vernal Pool Distribution on Banning Ranch

The mesas on the Banning Ranch property have been disturbed, and continue to experience disturbance, yet the site’s vernal pool/grassland complex nevertheless fulfills important vernal pool functions and services. These include pool hydrology, endemic vernal pool plants and other wetland plants associated with vernal pools, freshwater crustaceans, amphibian larvae, and wildlife use. Furthermore, this vernal pool/grassland complex supports populations of the federally-endangered San Diego fairy shrimp, with known populations within the proposed development area and potential for more unrecorded populations. The following paragraphs discuss relevant information that must be credibly investigated in order to determine the actual distribution of vernal pools on Banning Ranch.

Vernal Pool Plants

NBR response claims that dwarf woolly-heads and hyssop loosestrife are not largely restricted to vernal pools. *This is false.*

The arguments put forth by NBR’s consultants conflict with the standard references for determining which plant species are indicative of vernal pools, and do so in an inconsistent manner.

The NBR response letter first argues, on Page 9, that dwarf woolly-heads (*Psilocarphus brevissimus*; also known as woolly-marbles) are not vernal pool plants, but later, on Page 10, states in the discussion of Fairview Park pools that dwarf woolly-heads are a “vernal pool endemic or near-endemic plant”. Dwarf woolly-heads and hyssop loosestrife are described as “primarily restricted to vernal pools” in Table 6A of Dr. Paul Zedler’s USFWS report on *The Ecology of Vernal Pools of Southern California: A Community Profile* (1987). Hyssop loosestrife is a more widespread species, which may be a weed in rice crops in northern California, but is largely restricted to vernal pools in southern California. Hyssop loosestrife was documented as being a dominant species in pools within the impact area (Dudek 2013a).

Dwarf woolly-heads and water clover (*Marselia vestita*) are listed by both USFWS (Zedler 1987) and U.S. Army Corps of Engineers (USACE) (1997) as being largely restricted to vernal pools. Sections of the NBR response erroneously discount the high level of affinity of dwarf woolly-heads and water clover to vernal pools, but these species were the same species that previously were used by NBR consultants to determine the “vernal pool” status of pool 1. It is uncertain as to why the consultants choose to follow the standard references at certain times and discount them at other times.

Vernal pool indicator plants have been underreported at NBR.

While it is difficult to document lack-of-reporting of key plant species, several notable examples are known. Dwarf woolly-heads is one of the more persistent of the vernal pool plants, and in a pool with limited disturbance, may be still be marginally observable later into summer/fall. Seasonal basin “delineations” conducted by GLA on June 9, 2012 and documented by Dudek (2013a) failed to report the presence of woolly marbles from pool K, yet botanist David Bramlet later observed dwarf woolly-heads in pool K on July 7, 2014, during surveys of the abutting property (Bramlet 2014). Vernal pool plant species may be difficult or impossible to detect during the summer months, especially after several years of drought, but dwarf woolly-heads should have been readily apparent during what the NBR response claims was “the appropriate time of year” in 2012. Delineations of vernal pools should record the presence of **any and all** vernal pool indicator plant species (USACE 1997) and not only the most prevalent plant species, as is customary for regular wetland delineations under USACE guidance. Given that Mr. Bramlet found dwarf woolly-heads in pool K during his July 2014 survey, this plant species absolutely should have been reported in this same pool by GLA/Dudek (2013a).

California alkali plantain (*Plantago elongata*), a vernal pool indicator species (USACE 1997) reported as a *dominant* species in pool LL 2012 during seasonal basin delineation (Dudek 2013a), was **not** called out as a vernal pool endemic in that report and was **not** reported in earlier wet season surveys (GLA 2011). Vernal pool species need not be dominant for vernal pool determination; mere presence of a species such as this in a disturbed basin delineates it as a vernal pool.

NBR Response claims that plant surveys were conducted at the appropriate time of year. This is false.

Vernal pool delineations reported by Dudek (2013) were supposedly conducted during “the optimal time for surveys for vernal pool plants which do not emerge and flower until pools dry down” (NBR response, Page 9). Those surveys were conducted solely in May and June. To adequately inventory a basin, vernal pool plant surveys need to be conducted **throughout the rainy season**. As discussed previously in this letter, dwarf woolly-heads is one of the more persistent vernal pool plants and should have been readily apparent and reported in June 2012, yet this plant was not recorded by GLA (Dudek 2013b) in areas later shown to have presence. **Many of the vernal pool indicator species are small plants that desiccate soon after pools dry out and are not visible in late spring.** The NBR response notes that vernal pools in nearby Fairview Park support water-wort (*Elatine brachysperma*), water-starwort (*Callitriche marginata*), and water clover, all fragile vernal pool indicator species (USACE 1997) that typically cannot be observed as late as May/June. Water-starwort and water clover are both floating plants that become undetectable soon after pools dry out. **The lack of reported observations of these species does not equal the lack of these species**, considering (a) that “delineation” surveys (Dudek 2013a) were done at the wrong time of year to detect frail vernal pool species, and (b) that wet-season fairy shrimp surveys failed to report such vernal pool indicators as California alkali plantain (as discussed in the previous paragraph).

Vernal pool plant diversity at NBR

The staff report specifically details three vernal pool endemic plants present on the Banning Ranch property, but the NBR response does nothing to elucidate the fact that other vernal pool endemic plants have been observed on-site. GLA observed vernal pool indicator plant species (USACE 1997) water pygmyweed (*Crassula aquatica*) and alkali heath (*Malvella leprosa*) in Vernal Pool 1 in 2001 (GLA 2001) and reported California alkali plantain (*Plantago elongata*) as a *dominant* species in Pool LL (Dudek 2013a). Other native plants known from

the proposed development area, and which are commonly associated with vernal pools (Zedler 1987), include Salt marsh sand spurry (*Spergularia marina*), toad rush (*Juncus bufonius*), and spikerush (*Eleocharis macrostachya*).

The Banning Ranch property is home to a diverse assemblage of endemic to near-endemic vernal pool plants including dwarf woolly-heads, water clover, pygmy stonecrop, California alkali plantain, hyssop loosestrife, toad rush, and spikerush. Dwarf woolly-heads have been reported within pools in the center of the site, have been reported as a *dominant* species in pool A further to the southwest, and California alkali plantain was a *dominant* species on in Pool LL in the southern mesa (Dudek 2013a). It is difficult to imagine that these vernal pool plants are dominant species in the center and the edges of the site and are not at least present in the intervening pools. Mere presence of these species in a pool in a vernal pool soil would delineate a basin as a vernal pool.

Vernal Pool Soils

Vernal pool topography and vernal pool features can be seen on historic aerials and Banning Ranch mesas are mapped as Myford sandy loams. Presence of Myford sandy loam soils on these mesas is significant because this soil type is typical of vernal pool soils: flat, low-permeability, with a restrictive subsoil layer. This is a strong line of evidence suggesting that depressions on the site are not human-created but rather features of a historical vernal pool landscape. Bauder and McMillin (1996)'s *Current Distribution and Historical of Vernal Pools in Southern California and Northern Baja* details that five of the six primary vernal pool soil series in San Diego County "have phases which can be thought of as expressions or subtypes that share similar properties: slopes of 9% or less; a thick clay layer in the B horizon- beginning approximately 1-2 feet below the soil surface-that retards drainage; and permeability less than 0.06 inches per hour". Myford sandy loam is equivalent to these San Diego vernal pool soil series, being comprised of flat soils derived from marine influence, with a clay restrictive layer in the subsoil, and slow permeability. Myford sandy loam consists of "soils on marine terraces" with "very slow permeable [sic]" with a "sandy clay layer in the subsoil" (USDA 1978).

The CCC staff report states that both Fairview Park and NBR pools share Myford sandy loam soils, but the NBR response points out that within Fairview Park, only feature 1 is on Myford sandy loam. While not all vernal pools occur on Myford soils, Myford soils are a mima-mound vernal pool soil and the staff report is correct in the comparison; the largest pool at Fairview Park is on the same soil series as the pools on NBR.

Vernal Pool/Grassland Complex

The NBR response claims that the pools and interstitial grasslands within the development footprint are not rare and do not have a valuable ecosystem role. This is false

It is not hyperbole to state that *all* vernal pools in southern California have experienced some level of impact, and that any remaining pools represent the rare last remnants of this habitat type. Disturbances to vernal pool/grassland complexes may result in the re-distribution of associated resources. While portions of the Banning Ranch property are disturbed and degraded to varying degrees, and for a variety of reasons (including decades of unpermitted and illegal mowing of the mesas), the site's vernal pool/grassland complex nevertheless remains important habitat because it is one of the remaining vestiges of a natural community that has nearly been eliminated from southern California. Once widespread along the Pacific coast and within the Central Valley of California, agricultural development followed by widespread urbanization destroyed most of the state's vernal pools (Barbour et al. 1993, USFWS). Bauder (1986) estimated that 97 percent of historic habitat for San Diego fairy shrimp has been lost in San Diego County, and the USFWS (2007) details that the

“majority of vernal pool habitat in coastal Orange County has also been lost”. Holland (1998) estimated that almost three-quarters of vernal pool habitats in the Central Valley of California had been lost by 1997. Ferren and Pritchett (1998) estimated that at least 90 percent of historic vernal pools had been destroyed along the central California coast, and observed that most remaining vernal pools had been degraded. Leidy and White (1998) estimated that, overall, a mere 3-10 percent of the State’s pools remained extant. Accompanying the loss of this habitat has been the loss of its dependent plants and animals; consequently many species characteristic of vernal pools now receive legal/regulatory protections.

The NBR response states that the pools on Banning Ranch do not constitute a vernal pool/grassland complex, but USFWS determinations contradict this assessment. In 2007, the USFWS designated Critical Habitat for the San Diego fairy shrimp on the 15 acres of Banning Ranch known at that time to support the species (USFWS 2007). Critical Habitat comprises a specific geographic area that contains features essential for the conservation of a threatened or endangered species and that may require special management and protection, and is designated through procedures within the Federal Endangered Species Act. In designating Critical Habitat for the San Diego fairy shrimp at Banning Ranch, the USFWS stated, “the vernal pool complex at Newport-Banning Ranch is one of only five known vernal pool complexes containing the San Diego fairy shrimp in Orange County. This vernal pool complex and the vernal pool complex at Fairview Park (subunit 1B) represent the only remaining examples of coastal vernal pools in Orange County.”

The proposed development plan avoids most, but not all, of the pools demonstrated to support San Diego fairy shrimp populations. Additional pools within the proposed impact area that NBR claims to not support San Diego fairy shrimp are not functionally different from the pools within the avoidance areas and support many of the same plants and animals. Taken together, the vernal pool/grassland complex forms a functional ecosystem that satisfies the ESHA criteria in Section 30107.5 of the Coastal Act. Vernal pool endemic plants, and wetland plants often associated with vernal pools (Zedler 1987, USACE 1997), occur within the proposed impact area (Dudek 2013a), and other vernal pool plants as well as animals have reasonable potential to occur in the other pools. While it is important to preserve populations of endangered species such as the San Diego fairy shrimp, it is equally important to preserve sensitive and declining habitats such as vernal pool ecosystems, rather than reducing and fragmenting them, which would leave the preserved areas vulnerable to decline from edge effects associated with adjacent intensive development. The Coastal Act requires that ESHA be preserved in large enough tracts, and with adequate buffers, to sustain overall ecosystem functions and values. On a local scale, vernal pools are part of a matrix of habitats where a diversity of animals and birds use various resources, and on regional and continental scales, vernal pool/grassland ecosystems form integral components of the larger undeveloped landscape that provides stopover and overwintering locations for migratory birds, such as the burrowing owl (Witham et al. 1998).

The NBR response letter incorrectly states that the suite of ecological functions that occur in vernal pools described by the CCC letter are not occurring because these features do not support toads, frogs, or salamanders. – *Frogs are present onsite*

The CCC staff report details the suite of ecological functions that occur in vernal pools, but does not detail which basins supported reptiles or amphibians. The NBR response incorrectly states that frogs are not present on the property. However, wet season surveys conducted on behalf of NBR (GLA 2012) reported the presence of frogs in on-site pools, including pool CC (within the currently proposed development footprint). Furthermore, tadpoles were observed in numerous pools and documented in a series of photographs provided by the Banning Ranch Conservancy (BRC 2011).

Pools within NBR in general, and within the current development footprint specifically, have been shown to be habitat for listed fairy shrimp, versatile fairy shrimp, other ephemeral-aquatic invertebrates, tadpoles, and wildlife including waterfowl.

Summary and Conclusion

The mesas of Banning Ranch support a unique remnant vernal pool/grassland complex that supports large areas of listed San Diego fairy shrimp and of versatile fairy shrimp, and even more expansive pool areas with *Branchinecta* cysts that have yet to be adequately identified. The pools on Banning Ranch also support a variety of wetland plants largely or completely restricted to vernal pools. Although this area has been modified by human activities during the last 100 years, the site has vernal pool soils and historical photographic evidence shows vernal pool topography. It is remarkable that this site has weathered several decades of oil operations and associated land alterations, yet continues to support a widespread and varied assemblage of vernal pool flora and fauna. The mesas of Banning Ranch support one of the last remaining vernal pool/grassland complexes in Orange County, and support one of the northernmost populations of the federally endangered San Diego fairy shrimp. Contrary to several incorrect assertions made in the NBR response to the CCC staff report, the vernal pool/grassland complex on Banning Ranch represents a fully-functioning, rare ecosystem that has high potential to be further disturbed, degraded, and fragmented by implementation of NBR's proposed project.

As detailed in this letter, the surveys conducted by the applicant's consultants have not been adequate either to (a) properly delineate and adequately document the plant and amphibian species present in each of the site's seasonal pools, or (b) determine the presence or absence of San Diego fairy shrimp in each pool according to the applicable USFWS protocol. Until NBR conducts the full suite of required surveys, according to widely accepted methods and protocols, the true extent and full sensitivity of the on-site resources will remain unknown. In my opinion, the available data indicate that the entire vernal pool/grassland complex satisfies the criteria for ESHA specified in Section 30107.5 of the Coastal Act. If, however, the Commission concludes that only a subset of the vernal pool/grassland ecosystem at Banning Ranch may warrant designation as ESHA – for example, limiting ESHA to pools that support definitive vernal pool indicator plant species, or that support San Diego fairy shrimp – the Commission will have an inadequate factual basis upon which to make such a determination. A confident determination cannot be made until the necessary biological surveys are conducted in accordance with standard protocols and practices.

Sincerely,



Dale Ritenour
Vernal Pool Biologist, ICF International

cc: John Dixon, Charles Lester, Amber Dobson, Karl Schwing, Lisa Haage, Alex Helperin, Chuck Posner, Liliana Roman, Sherilyn Sarb, California Coastal Commission
Terry Welsh, Banning Ranch Conservancy
Stephen M. Estes, U.S. Army Corps of Engineers
Kevin Hupf, California Department of Fish and Wildlife
Marc Brown and Kamron Saremi, California Regional Water Quality Control Board
Christine Medak and Jonathan Snyder, U.S. Fish and Wildlife Service

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HAMILTON BIOLOGICAL

April 6, 2016

Jonathan Snyder, Division Chief
U.S. Fish & Wildlife Service
45 Fremont Street, Suite 1900
San Francisco, CA 94105

**SUBJECT: REQUEST FOR USFWS TO CONSULT WITH CCC STAFF
BANNING RANCH, NEWPORT BEACH, CALIFORNIA**

Dear Jonathan,

Since 2008, on behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. has been reviewing biological resource issues pertinent to a proposed development project at Banning Ranch in Newport Beach. The project went before the California Coastal Commission (Commission) for a Coastal Development Permit (CDP) on October 7, 2015, but the Commission directed the applicant, Newport Banning Ranch (NBR), to work with staff on a scaled-back project. A revised project is now scheduled to be heard in early May 2016. I have evaluated reports and mapping provided by NBR's consultant, Dudek, as well as CCC staff's draft mapping of potential Environmentally Sensitive Habitat Areas (ESHA) and associated buffers. We request your agency confer with the CCC regarding the following basic issue-areas:

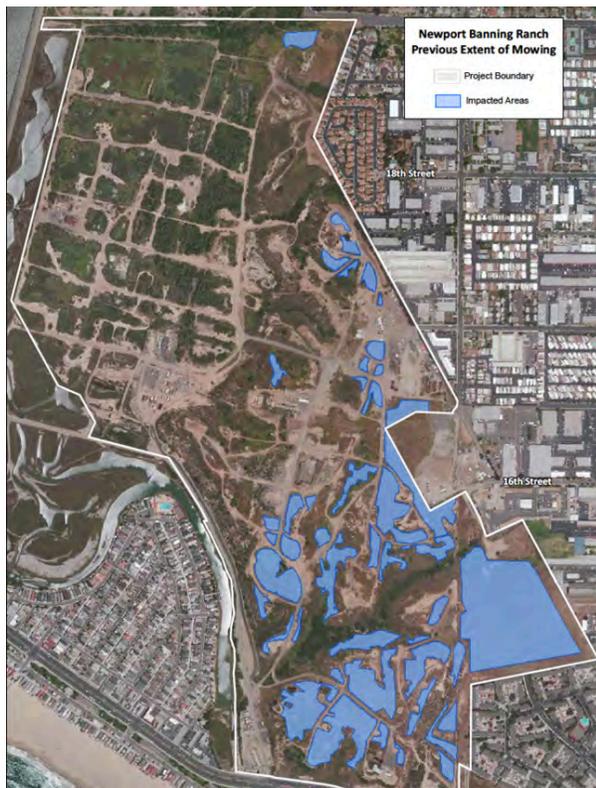
1. Southern coastal bluff scrub dominated by California Encelia (*Encelia californica*), growing in areas illegally mowed by NBR until 2012, is being falsely characterized by Dudek as "low value scrub" that may require "control" in areas they are planting with other scrub species not actually native to Banning Ranch.
2. Dudek continues to portray the 12 gnatcatcher surveys conducted prior to theirs as unreliable, because surveys conducted between 1992 and 2009 recorded more California Gnatcatchers than Dudek has recorded during their surveys (which were conducted from 2013 to 2015, during extreme drought conditions).
3. Dudek and/or CCC biologists may be misusing presence/absence survey data to reach unsupported conclusions that certain areas of suitable native scrub, located in the vicinity of California Gnatcatcher observations, can be regarded as being unoccupied by gnatcatchers (hence warranting a lower level of protection versus comparable scrub that CCC staff does regard as being occupied by gnatcatchers).
4. Dudek continues to map a patch of native scrub as "Myoporum Grove" and "Pampas Grass Patches" and refuses to correct these errors, which occur in an area where their client desires a road.

Given that (a) the California Gnatcatcher is a federally listed species, (b) all of Banning Ranch is designated as critical habitat for the gnatcatcher, (c) Banning Ranch is identified as an Existing Use Area under the Natural Communities Conservation Plan (NCCP) for Central/Coastal Orange County, and (d) surveys for this species have been conducted by federally permitted personnel employing variations on protocols developed by the USFWS, the Banning Ranch Conservancy formally requests that your agency confer with the CCC staff biologists – John Dixon and Jonna Engel – and advise them regarding the four issues identified above and discussed in this letter.

In the case that the USFWS decides not to consult on these issues, this letter is being provided to the CCC staff directly. Parts of this letter cover topics raised previously with CCC staff, but the analyses have been updated to address our concern that the applicant is pursuing a strategy of creating false controversies rather than presenting more standard arguments in favor of their proposed project.

BRIEF REVIEW OF ILLEGAL HABITAT DESTRUCTION & RECOVERY

Between 1992 and 2012, the USFWS documented the unpermitted loss of 7.31 acres of native coastal bluff scrub from Banning Ranch, from 59.41 to 52.10 acres.¹ The figure below shows the extent of unpermitted habitat clearance and mowing:



The areas subjected to unpermitted mowing and clearing of native vegetation largely coincide with the areas now proposed for residential/commercial development. Source: Coastal Commission Cease & Desist Order CCC-15-CD-01.

¹ U.S. Fish & Wildlife Service. 2014. Letter from G. Mendel Stewart, Field Supervisor, to Michael Mohler, Newport Banning Ranch, LLC, and Tom McClosky, West Newport Oil Company. Subject: Oil Field Operations and Maintenance, Newport Banning Ranch, City of Newport Beach, California.

In 2015, the CCC issued Consent Cease and Desist Order CCC-15-CD-01 and Consent Restoration Order CCC-15-RO-01, which covered drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land. Clearly, these extensive violations have had widespread adverse effects upon the biological resources now present on the property. For example:



The photos above show the same patch of Coastal Prickly-Pear before and after unpermitted clearing. Note that only the native cactus was removed, leaving the exotic *Myoporum*, even though the cactus appeared to be healthy whereas the background *Myoporum* appeared to have been in poor condition. This indicates intent to remove ecologically sensitive habitat versus random removal of unhealthy vegetation. Source: Banning Ranch Conservancy.



The photos above show the same patch of California Encelia scrub before and after unpermitted clearing. Source: Banning Ranch Conservancy.

Recovery of Natural Communities Following Illegal Clearing

The following photos were included as Figures 9B and 9C of Dr. Engel's memorandum dated September 25, 2015 ("ESHA and Wetland Determination for Banning Ranch, Orange County, California").



The photos above show an area of Banning Ranch subjected to unpermitted mowing on September 19, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.



The photos above show an area of Banning Ranch subjected to unpermitted mowing on May 30, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.

These photos show that, despite a record four-year drought that has not yet broken, substantial areas of southern coastal bluff scrub dominated by California Encelia (*Encelia californica*) have begun to vigorously recolonize areas that were cleared. The applicant and their consultants continually reinforce the demonstrably false assertion that only their restoration plans, which they would carry out in concert with their massive development, would be able to halt the slide of Banning Ranch toward becoming one giant patch of exotic weeds. In accordance with Coastal Act requirements, the encelia-dominated coastal bluff scrub that existed prior to unpermitted clearing represents the baseline conditions for the project site.

ISSUE #1: VALUE OF CALIFORNIA ENCELIA FOR GNATCATCHERS

The high value of coastal bluff scrub on Banning Ranch for California Gnatcatchers has been well known and thoroughly documented through numerous focused survey efforts dating back to 1992. Please refer also to the attached letter, dated October 5, 2015, from Jonathan Atwood to Jack Ainsworth of the CCC, emphasizing the high value of encelia-dominated scrub on Banning Ranch. Yet Dudek biologists repeatedly characterize this scrub as being of “poor quality.” Typical is the following quote from Page 1 of the attached, unsigned submission to the Coastal Commission from NBR/Dudek dated December 1, 2015:

NBR believes that Staff is not considering the evolving use patterns in California gnatcatcher (CAGN), which suggest a high degree of scientific doubt that the site could currently support 19 pairs or that the reduction of 7 acres of areas of scrub has led to a decrease of 10 pairs of CAGN.

Also on Page 1:

We also request that Staff consider the fact that the low-growing monocultural encelia that has colonized some disturbed areas has not contributed to increases of CAGN - suggesting that such areas have little benefit for the CAGN and do not meet the minimum threshold for ESHA.

Also on Page 1:

On the site, it functions as a weed and will require some level of control when habitat restoration begins and existing patches are incorporated into those efforts.

Page 10:

The NBR habitat is of general poor quality for CAGN based on monotypic, Encelia dominated, California sagebrush lacking, patchy and weedy habitat. Much has been discussed in the Memo of the regeneration of high quality Encelia in areas that had formerly been mowed, or the value of grasslands. These areas do not support valuable foraging habitat – in fact it is highly likely that CAGN will not forage in these areas until larger shrubs are present which would provide some cover and stable perch.

In my opinion, based on 26 years of field experience, including multiple years of focused surveys of Banning Ranch during the early 1990s, each of these claims by Dudek are erroneous to the point of malpractice. On December 13, 2015, I prepared a 19-page, point-by-point rebuttal for CCC staff, which I copied to you and other agency personnel. The bottom line is that, from 1992 to 2009, **twelve focused, multiple-visit survey efforts of Banning Ranch, conducted by four consulting companies, documented 15-29 gnatcatcher territories on the site, in scrub dominated by California Encelia** (and which completely lacks any natural stands of California Sagebrush *Artemisia californica*).

In 1994, when Richard Erickson and I recorded **29 territories** on the site, State biologist Karen Miner also documented a single-year doubling of the gnatcatcher population on

the coastal bluff at Crystal Cove State Park (**43 territories** in 1994 compared with 20 in 1993 and 22 in 1995)¹. These observations, and other unpublished observations of large, short-term population fluctuations of CAGN populations, were summarized in the California Gnatcatcher species account in *Birds of North America*²:

Survivorship may vary substantially among years, usually at regional scale suggestive of widespread causes, such as weather effects (Atwood et al. 1998, Erickson and Miner 1998, Mock 1998). Single-year population decline of 54% noted on Palos Verdes Peninsula, Los Angeles Co., with no change in available habitat (Atwood et al. 1998); comparable observations from Orange Co. and San Diego Co. (Erickson and Miner 1998, R. A. Hamilton and P. J. Mock unpubl.). Palos Verdes Peninsula population showed 50% increase in total number of pairs the following year (Atwood et al. 1998).

Viewed in this wider context, *a single-year spike of the population at Banning Ranch in 1994 was to be expected*; yet Dudek dismisses this phenomenon out of hand, without any discussion at all. Are they unaware of the relevant literature, or do they simply ignore evidence that contradicts their claims?

Page 6 of their submission asserts:

By all accounts, territory sizes in the coastal region range from between 2.5 and 6.04 acres per pair (excluding the recent 2013 to 2015 NBR results).

This is not true. At Bonita Canyon, also in Newport Beach, a five-year study by LSA Associates (1996-2000) documented California Gnatcatchers occupying territories with an average size of 1.89 ± 1.28 acres.³ Table K from their report, reproduced on the following page, shows that the average territory size shrunk to 1.79 ± 0.78 acres in 1999, when 21 pairs were present in habitat judged adequate for 20 pairs (1.05% occupancy rate) and expanded to 2.4 ± 1.00 acres during 2000, when 18 gnatcatcher pairs were present in habitat judged adequate for 22 pairs (82% occupancy rate). The smallest average territory size (1.36 ± 0.70 acres), recorded in 1997, was anomalous, since "extensive clearing forced nine pairs to cling to portions of their previous territories, thus driving down the average territory size." Again, Dudek demonstrates a selective lack of familiarity with those parts of the literature that do not support their position.

¹ Erickson, R. A. and K. L. Miner. 1998. Six years of synchronous California Gnatcatcher population fluctuations at two locations in Coastal Orange County. *Western Birds* 29:333-339.

² Atwood, J. L. and D. R. Bontrager. 2001. California Gnatcatcher (*Polioptila californica*) species account in A. Poole (editor) *The Birds of North America Online*. Cornell Lab of Ornithology, Ithaca, NY.

³ LSA Associates, Inc. 2001. Final report on Bonita Canyon Road Wildlife Studies, 1996-2000. Report dated November 26, 2001, prepared for the San Joaquin Hills Transportation Corridor Agency, Irvine, CA.

Table K: California Gnatcatcher Territory Sizes in Acres, 1996-2000

Territory	1996	1997	1998	1999	2000	Mean±SD
BNCY1	1.73	1.42	1.78	3.11	3.04	2.22±0.80
BNCY2	1.86	2.15	3.98	2.00	2.65	2.53±0.86
BNCY3	1.39	0.78				1.09±0.43
BNCY4			1.66	1.19	2.30	1.72±0.56
BNCY5	1.88	1.84	0.81	1.92		1.61±0.54
BNCY6	0.89	0.95	0.94	1.59	1.93	1.26±0.47
BNCY7	1.20	0.85	1.44	0.61	4.38	1.70±1.53
BNCY8	1.75					1.75
BNCY9	1.59	1.10				1.35±0.35
BNCY10	1.42					1.42
BNCY11	2.24	1.08		1.23	2.01	1.64±0.57
BNCY12	11.05	0.95				6.00±7.14
BNCY13		1.36	1.36	1.62	2.08	1.61±0.34
BNCY14	1.40	1.36		1.20		1.32±0.11
BNCY15	2.04	1.91	2.47	2.18	3.83	2.49±0.78
BNCY16	2.21	2.25	2.01	2.23		2.18±0.11
BNCY17	1.49	0.37	0.79	2.52		1.29±0.94
BNCY18	1.86	1.79	2.73		1.61	2.00±0.50
BNCY18N				1.80		1.80
BNCY18S				0.72		0.72
BNCY19		0.79	0.79	1.21	1.12	0.98±0.22
BNCY23	0.92	0.64	1.01	2.67	2.71	1.59±1.01
BNCY24	2.19					2.19
BNCY25	3.37	3.37	4.34	3.71	3.84	3.73±0.40
BNCY26	1.02	1.47	1.32	1.59	1.02	1.28±0.26
BNCY27	1.18	0.31				0.75±0.62
BNCY28	3.02					3.02
BNCY29	2.99					2.99
BNCY30	1.37	1.68		1.97	3.49	2.13±0.94
BNCY31		1.45	1.18			1.32±0.19
BNCY32				1.65	1.29	1.47±0.25
BNCY34				0.87		0.87
BNCY36					2.75	2.75
BNCY37					1.61	1.61
BNCY38					1.56	1.56
Mean ± SD	2.19±1.99	1.36±0.70	1.80±1.09	1.79±0.78	2.40±1.00	1.89±1.28 0.31-11.05

Table K from the 2001 report by LSA Associates on wildlife studies at Bonita Canyon, Newport Beach, California. As shown,

It has been my own observation that California Gnatcatchers tend to occur regularly in California Encelia only after three or four years of growth, when the branches become woodier and the leaves become sparser and hence easier to move through. This was the pattern of use documented at an encelia-dominated restoration site in the City of Irvine that was planted in April 1991 and first used by nesting gnatcatchers in April 1995¹. Since we are only now entering the period when gnatcatchers at Banning Ranch can start to make use of California Encelia that has been re-growing since illegal mowing stopped in 2012, what factual basis can Dudek cite to substantiate their claims that patches of encelia “do not support valuable foraging habitat”?

Remarkably, pages 10-11 of Dudek’s submission to the CCC attempts to make the case that the USFWS itself supports their interpretation of what constitutes high-value habitat for the California Gnatcatcher:

When modeling Critical Habitat for CAGN, the USFWS used the following methods “To help predict the presence of coastal California gnatcatcher occurrences throughout the range of the species, especially in areas with limited survey information, we commissioned a spatial habitat evaluation model incorporating habitat parameters used by the coastal California gnatcatcher during the breeding season. We began with a GIS layer identifying California sagebrush habitats (e.g., Venturan, Diegan, and Riversidean sage scrub). We recognize that other habitats are used by coastal California gnatcatchers at various points in their life history, such as chaparral, grassland, and riparian habitats during foraging or dispersal. However, few breeding territories have been documented in habitats devoid of California sagebrush.” This indicates that they understood that sage scrub was the important vegetation community.

The USFWS, having continued their analysis past the initial step, recognized that Critical Habitat for the gnatcatcher is not limited to sagebrush-dominated scrub, but also includes other forms of native scrub that provide important habitat for gnatcatchers. Having been aware of the substantial Banning Ranch population of gnatcatchers since at least the early 1990s, the USFWS designated Critical Habitat across the entire property in spite of the lack of California Sagebrush on the site. It is frankly bizarre that Dudek’s interpretation is that the USFWS “understood that sage scrub was the important vegetation community” especially in the context of Banning Ranch, which the Service has long known to be devoid of California Sagebrush.

The Banning Ranch Conservancy requests that the USFWS confer with CCC staff biologists to provide your agency’s informed opinion regarding whether the best scientific evidence supports Dudek’s opinion that native scrub habitat on Banning Ranch, which is dominated by *Encelia californica* and lacking in *Artemisia californica*, “is of general poor quality for CAGN.”

¹ O’Connell, M. W., and R. A. Erickson. 1998. An example of the California Gnatcatcher nesting in restored coastal sage scrub. *Western Birds* 29:434-438.

ISSUE #2: ADEQUACY AND RELIABILITY OF PREVIOUS SURVEY EFFORTS

Dudek conducted their first survey in 2013, reporting ten gnatcatcher territories, followed by eight in 2014 and nine in 2015. In reports to the USFWS and CCC, Dudek has characterized the 12 survey efforts conducted between 1992 and 2009 as unreliable, because (a) the earlier surveys recorded 15–29 gnatcatcher territories on the site, which is more than Dudek recorded, and (b) Dudek suggests that the movement of gnatcatchers probably confused other federally permitted surveyors. Typical of Dudek’s reasoning is the following excerpt which is from an extended discussion of previous survey efforts on Pages 7-8 of their December 1, 2015, submission to the Coastal Commission:

On sites where there is a nice network of paths, trails, or roads like Newport Banning Ranch, it is likely that the surveying biologists utilized them as an easy and acceptable route to conduct surveys without destroying habitat. However, where topography is varied, or when CAGN follow or secretively pop up, it is highly possible that the same individual could be double counted. With more visits, it is more likely that the biologist would be able to figure out the activity patterns and tease out where double counting might be occurring. With 2 or 3 visits, this is very difficult without staging a biologist on individual pairs until the neighbor is located.

Based upon 20+ years of experience as a federally permitted gnatcatcher surveyor, including three years of surveys at Banning Ranch, I can identify no unique aspect to finding and counting California Gnatcatchers at Banning Ranch that makes the standard USFWS survey protocol less effective or reliable there than at other locations in the region. The standard USFWS presence/absence survey methodology does not involve “staging a biologist on individual pairs until the neighbor is located,” but rather requires that the surveys be conducted by federally permitted biologists trained in accepted methods of distinguishing between one wide-ranging pair and two pairs with smaller territories. Since numerous qualified observers consistently recorded counts of 15 to 21 gnatcatcher territories on Banning Ranch over a period of decades, plus the one outlying count of 29 territories that was made during a year when single-year spikes were recorded elsewhere in the region, Dudek’s radical alternative hypothesis (i.e., that everyone else was mistaken) requires a much more coherent and rigorous explanation than they have provided.

Relationship Between Annual Rainfall and Avian Population Levels

The following rainfall totals for Newport Beach¹ are relevant to the years that Dudek surveyed for CAGN (10.94 inches is average):

- 2011/2012: 6.18 inches (56% of normal)
- 2012/2013: 5.61 inches (51% of normal)
- 2013/2014: 4.14 inches (38% of normal)
- 2014/2015: 5.55 inches (51% of normal)

¹ http://ocwatersheds.com/rainrecords/rainfalldata/historic_data

It is appropriate to consider data back to 2011/2012 because that was the year the ongoing five-year drought began. The exceptionally dry conditions reflected in the rainfall numbers reported above have undoubtedly placed unusual levels of stress on native plant and wildlife populations at Banning Ranch.

The link between drought and short-term declines in bird populations resident in coastal sage scrub is well established. Perhaps the most thorough and illustrative study was conducted by Douglas Bolger and colleagues¹, when the record-dry year of 2001/2002 occurred during their three-year study of four resident species of coastal sage scrub in San Diego County (Wrentit, Spotted Towhee, California Towhee, and Rufous-crowned Sparrow). The ecological response was near-total failure of these bird species to reproduce.

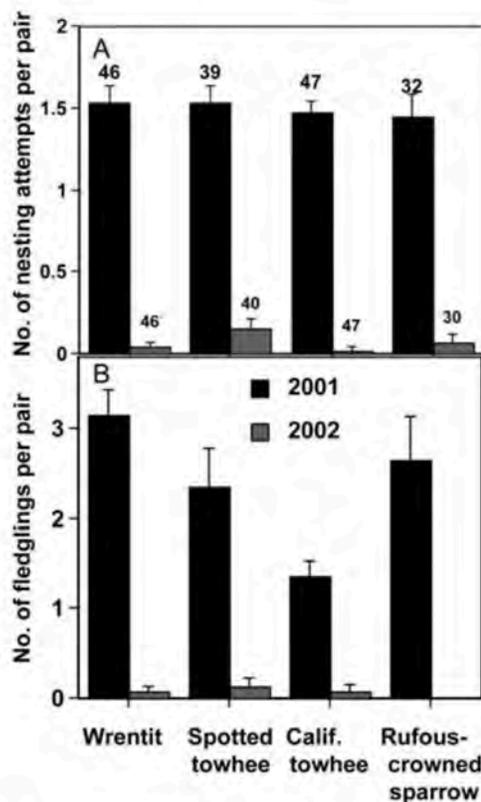


Figure 1 from Bolger et al. (2004) showing near-total reproductive failure of four scrub-dependent bird species in response to severe drought conditions in 2001/2002.

Fig. 1 Reproductive output and effort for four bird species, wrentit (*Chamaea fasciata*), spotted towhee (*Pipilo maculatus*), California towhee (*P. crissalis*), and rufous-crowned sparrow (*Aimophila ruficeps*), in 2001 and 2002: **a** the number of nests attempted per pair and **b** the number of offspring successfully fledged. Bars are standard errors, and numbers over the bars are the sample sizes for focal pairs. Sample sizes are the same in the lower panel

¹ Bolger, D. T., M. A. Patten, and D. C. Bostock. 2004. Avian reproductive failure in response to an extreme climatic event. *Oecologia* 142:398-406

Page 402 of Bolger et al. (2004) states:

The exceptional dry year in 2002 was associated with a near reproductive failure in all four of our focal bird species. The relationship between rainfall and avian reproduction appears to be mediated by arthropod abundance.

Erickson and Miner (1998), Atwood et al. (1998)¹, and Hamilton (2004)² provided evidence that California Gnatcatcher populations also fluctuate in apparent response to variable arthropod abundance. Given that the current drought was already in its second year when Dudek conducted their first survey in 2013, and has only become more severe in subsequent years, I believe that the decrease that Dudek has documented in the gnatcatcher population at Banning Ranch is consistent with expectations if we consider only annual precipitation totals.

Relationship Between Feb-April Rainfall and Gnatcatcher Clutch Size

In addition to considering the overall precipitation totals, it is relevant to consider cumulative rainfall during the “egg-formation period” 30 to 90 days before the normal clutch completion date, because a strong positive correlation has been shown between the rainfall total during this period and California Gnatcatcher clutch size³:

Using isotonic regression, we detected a strong positive trend in the association between clutch size and cumulative rainfall, with cumulative rainfall across 1 month prior to the estimated month of clutch completion having the strongest positive association. These data support the hypothesis that smaller clutches result from more immediate conditions, not from the wet-year/dry-year dichotomy.

Using egg-collection records, researchers calculated 6 May (± 22 days) as the mean estimated clutch completion date for the gnatcatcher and identified the period of February to April as the species’ egg-formation period. In Newport Beach, average precipitation during the egg-formation period is 4.95 inches. The following rainfall totals for February-to-April are relevant to the years that Dudek has surveyed for CAGN:

- 2012: 2.71 inches (55% of normal)
- 2013: 1.16 inches (23% of normal)
- 2014: 1.42 inches (29% of normal)
- 2015: 1.77 inches (36% of normal)

¹ Atwood, J. L., S. H. Tsai, C. A. Reynolds, and M. R. Fugagli. 1998. Distribution and population size of California Gnatcatchers on the Palos Verdes Peninsula, 1993-1997. *Western Birds* 29:340-350.

² Hamilton, R. A. 2004. Target bird monitoring study, Nature Reserve of Orange County, 2004. Report dated November 3, 2004, prepared for the Nature Reserve of Orange County, Irvine, CA.

³ Patten, M. A., and J. T. Rotenberry. 1999. The proximate effects of rainfall on clutch size of the California Gnatcatcher. *Condor* 101:876-880.

Thus California Gnatcatcher clutch sizes are likely to have been below average in 2012, 2013, 2014, and 2015, and provisions for nestlings were probably scarce during each of those years. These important factors almost certainly contributed to the reduced gnatcatcher population sizes recorded by Dudek in 2013, 2014, and 2015.

Effects of Drought on Local Gnatcatcher Movements

During periods of severe drought, gnatcatchers are present at reduced density and resource scarcity can be expected to force the birds to forage across much larger areas to meet their energetic needs compared with periods of near-normal or above-average precipitation. At Banning Ranch, where gnatcatchers may be tightly packed when conditions are favorable, surveyors using playback are more likely to elicit simultaneous responses from males occupying adjacent territories (because the birds are more tightly packed). Thus, even if Dudek surveyors encountered especially confusing situations in 2013, 2014, and 2015 (due to birds wandering more widely than normal) they should appreciate the contributing roles of multi-year drought and a depressed gnatcatcher population, and acknowledge that those factors may not have affected previous surveyors.

False Controversy Over Differences in Survey Efforts

As one of the federally permitted biologists who completed focused investigations of Banning Ranch over multiple years, I consider it deplorable that Dudek biologists are willing to state that my surveys, and those of many other federally permitted surveyors, cannot be relied upon to provide a baseline against which their own surveys can be evaluated. For the record, my approach to counting territories is, and always has been, to take the most conservative approach. That is, if any question exists in my mind as to whether a sighting represents a new territory or simply a previously-counted bird that moved, I always err on the side of *undercounting* unless I am able to track down the original bird and confirm that it is different. This is the standard, accepted methodology of determining the number of territories in a given area, whether the survey effort involves one, two, or more visits.

On Page 7 of their December 1, 2015, submission to the CCC, Dudek attempts to argue that survey efforts involving *fewer* passes could result in *overcounting* of gnatcatchers:

The Draft 1994 protocol suggested 8 surveys while the revised 1997 protocol required 6 (breeding season) or 9 (non-breeding season) surveys to be conducted in this area. However, surveys that adhered to these recommendations did not occur until 2000. Between 1992 and 1998 (7 years), only between 2 and 3 surveys were conducted. Further, the level of effort applied was mostly not discernable. Only the 1997 effort included a level of effort that was somewhat commensurate with subsequent surveys. This is important because the protocol is intended to determine presence or absence and distribution of CAGN – not identify the number of individuals or pairs present. Without repeat visits or continual direct observation by biologists, even highly qualified observers can over-estimate the number of animals present. They are small, typically secretive, usually quite similar in appearance, are known to follow biologists through habitat as they play taped vocalizations, and occur in sometimes varied topography.

If anything, a survey effort involving two visits is likely to *modestly underestimate* the gnatcatcher population, because (a) fewer visits means fewer opportunities to find any birds that may be skulking, and (b) as described previously, the accepted methodology of determining the number of territories is to err on the side of undercounting, not overcounting. Furthermore, as the number of visits increases, *so does the potential for overcounting* territories, because (a) each additional visit increases the potential to double-count a pair that starts in one patch of habitat early in the season but later shifts to another (e.g., after failure of a nest), and (b) later in the season, the family groups start to wander widely, providing additional opportunities to double-count birds.

Dudek's vague, unsupported rebuttal to these observations consists of one line, from Page 7 of their CCC submission: "With more visits, it is more likely that the biologist would be able to figure out the activity patterns and tease out where double counting might be occurring." Without uniquely marked birds there would be no possible way for a surveyor to sort out "activity patterns." The only way to distinguish between one large territory and two small ones is to simultaneously locate adjacent males/pairs, on every survey visit. "More visits" does not prevent overcounting; for reasons explained previously, the opposite is true.

Gnatcatchers tend to be very responsive to playback during the nesting season, so it is unusual for even a two-visit survey effort to miss a territorial bird that is present. For these reasons, survey efforts by qualified personnel can be expected to yield similar overall counts of territories, regardless of whether two, three, six, or nine passes are involved. Surveys involving greater numbers of visits tend to yield higher counts of territories, and have greater potential to result in overcounting of territories.

For the reasons detailed above, Dudek has offered no coherent rationale for questioning the validity or usefulness of the twelve survey efforts conducted between 1992 and 2009. Given that all three of Dudek's surveys have taken place in the context of a severe, multi-year drought, the best available scientific evidence indicates that the gnatcatcher population almost certainly must have been higher during the more favorable years leading up to the current drought, when other qualified observers conducted their surveys.

The Banning Ranch Conservancy requests that the USFWS provide your informed opinion to the CCC regarding the adequacy and usefulness of the baseline data collected on the California Gnatcatcher at Banning Ranch over the course of the past 25 years. Has Dudek provided credible, substantiated arguments that lead the USFWS to share their conclusion that the twelve survey efforts between 1992 and 2009 are likely to have overestimated the gnatcatcher population?

ISSUE #3: POTENTIAL MISUSE OF PRESENCE/ABSENCE DATA

As you know, all native scrub on the site is considered by the USFWS to provide the primary constituent elements of this species' breeding habitat, and all of Banning Ranch is designated as critical habitat for the gnatcatcher. The Banning Ranch Conservancy is concerned that CCC staff biologists are currently attempting to differentiate between native scrub communities that have been documented as being used by California Gnatcatchers (for which they recommend 100-foot buffers to achieve Coastal Act compliance) and native scrub communities that have *not* been documented as being used by California Gnatcatchers (for which they recommend only 50-foot buffers). The implication – that sufficient data exists upon which to distinguish between “occupied” and “unoccupied” coastal scrub habitat in areas where gnatcatchers have been recorded during the nesting season – is troubling, because no survey efforts have attempted to map the extent of gnatcatcher territories using accepted territory-mapping methods.

The generally accepted standard methodology for accurately mapping passerine bird territories during a given season calls for *ten visits* conducted roughly one week apart from the start of breeding through fledging of young¹. The standard territory mapping method will, inevitably, yield larger and more accurate territory boundaries compared with the limited, non-standard methods employed during some of the presence/absence surveys at Banning Ranch. For example, during the surveys I participated in during the 1990s, when I worked for LSA Associates, we mapped use areas by following birds for a maximum of approximately 15 minutes during 1-3 survey passes. Other surveyors used a single “dot” on a map to represent a territory recorded during a given season.

To give a sense of the shenanigans surrounding this issue, let us revisit the letter that Tony Bomkamp of Glenn Lukos Associates sent Christine Medak of your office, dated June 14, 2011, entitled “Clarification Regarding CAGN Mapping from 2002 Protocol Surveys Conducted by Glenn Lukos Associates (GLA) for West Newport Oil.” In this letter, Mr. Bomkamp admitted the following:

- In GLA’s “Newport Banning Ranch Biological Assessment,” submitted to the USFWS on February 10, 2010, Mr. Bomkamp changed the point-location of a pair of California Gnatcatchers recorded in the southeastern part of the site in 2002.
- Mr. Bomkamp “corrected the error” such that the map submitted to the USFWS in 2010 showed a revised gnatcatcher location 100-200 feet southwest of its original location.
- Then, on June 14, 2011, Mr. Bomkamp submitted the letter to your office advising you that he had quietly rewritten the record, **15 months earlier**, without notifying you or anyone else that he had made such a change.

¹ International Bird Census Committee. 1969. Recommendations for an international standard for mapping method in bird census work. *Bird Study* 16, 248–255

Below is a scan from GLA's 2002 report showing two "dots" in the small side-canyon where "Pair 1" was originally mapped. The dots are within a large polygon that appears to depict that pair's use area for the 2002 nesting season. It is unclear how moving the two dots from one part of the polygon to another was intended by Mr. Bomkamp to represent correction of an error:



Figure 5. Scan of GLA's original 2002 mapping of California Gnatcatcher locations. The mapping of Pair 1 shows two dots, representing a gnatcatcher pair, in a small side-canyon within a larger polygon that extends to the north, south, and west. The location of the side-canyon is aligned properly with the map's base topography, and its patch of native scrub is correctly mapped.

The map below shows part of GLA's composite map of gnatcatcher locations from 1992 to 2009, with the 2002 dot in its original and "corrected" locations:



The left-hand yellow dot represents GLA's "corrected" location for a gnatcatcher pair in 2002, and the right-hand dot shows where GLA originally placed the dot. Both yellow dots are in suitable scrub habitat, and we must assume that gnatcatchers visited both patches of scrub regularly during the 2002 nesting season.

Mr. Bomkamp offered the following explanation for changing his map:

I would note that GLA did not have GIS Technology in 2002 and the map was prepared by attaching “sticky dots” to the base map, a process that was not as accurate as using sub-meter GPS combined with highly accurate GIS technology.

This explanation makes no sense, given that the dots were moved from one part of a gnatcatcher territory polygon to another part of the same territory polygon. Apart from ethical and credibility problems attendant to Mr. Bomkamp’s actions, we have to question why GLA considers it appropriate to map the location of a pair of gnatcatchers for an entire nesting season using a dot, or pair of dots. Mr. Bomkamp had wide latitude in choosing where to place the dots within the birds’ mapped habitat-use areas, and his chosen locations greatly affect readers’ perception of the locations occupied, and not occupied, by gnatcatchers.

The bottom line is that the precise location of the dots is completely irrelevant because, in the absence of a valid study of habitat usage showing otherwise, California Gnatcatchers must be assumed to make use of all suitable habitat available within their normal territory size.

Since nobody has employed standard presence-absence techniques to map the full extent of gnatcatcher use areas at Banning Ranch during any nesting season, let alone during multiple nesting seasons (or during fall and winter, when territories expand greatly to include various non-scrub habitats^{1,2}), there can be no legitimate way to use the existing maps of gnatcatcher presence/absence survey results to identify “unoccupied” native scrub in any of the general areas of Banning Ranch where California Gnatcatchers have been repeatedly observed over a period of decades. The regulatory assumption must be that gnatcatchers utilize all suitable native scrub habitat in the vicinity of areas where gnatcatchers have been recorded.

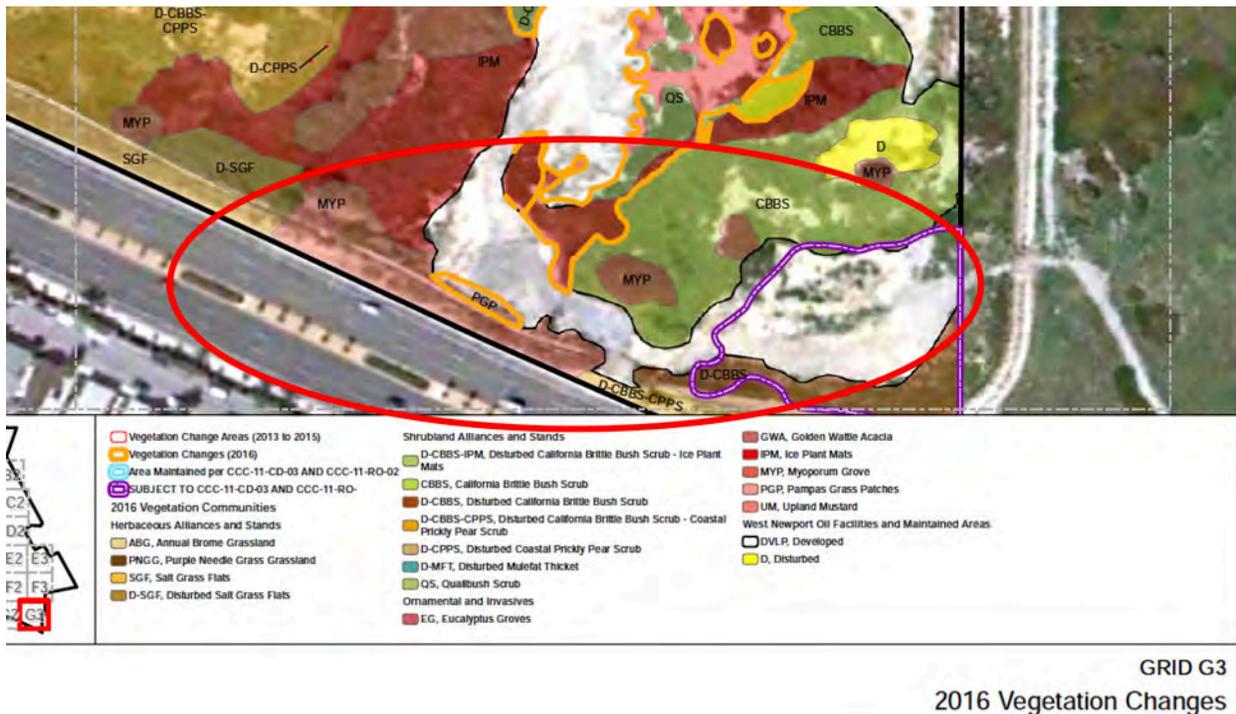
The Banning Ranch Conservancy requests that the USFWS provide your informed opinion to the CCC regarding any potential claims that certain patches of suitable native scrub habitat on Banning Ranch, that are located near documented California Gnatcatcher territories, can be legitimately considered “unoccupied” by the gnatcatcher.

¹ Campbell, K. F., R. A. Erickson, W. E. Haas, and M. A. Patten. 1998. California Gnatcatcher use of habitats other than coastal sage scrub: Conservation and management implications. *Western Birds* 29:421-433.

² Preston K. L., P. J. Mock, M. A. Grishaver, E. A. Bailey, and D. F. King. 1998. California territorial behavior. *Western Birds* 29:242-257.

ISSUE #4: ERRONEOUS MAPPING OF “MYOPORUM GROVE”

The plant communities present in the southeastern corner of Banning Ranch, in the general area where Bluff Road is being proposed, have been repeatedly mis-mapped for several years now, as I have demonstrated to CCC staff and the applicant on numerous occasions. Nevertheless, Dudek’s updated mapping (January 2016) contains the same errors. Dudek refuses to correct these errors, which occur in an area where their client seeks to establish a proposed intersection of Pacific Coast Highway and what is referred to as “Bluff Road.” Since the CCC staff has not yet required Dudek and NBR to correct this error, the Banning Ranch Conservancy asks that the USFWS consider the issue and confer with CCC staff to ensure that biological resources are correctly identified.



The pink polygon along Pacific Coast Highway, which Dudek classifies as Myoporum Grove (“MYP”), is composed of quailbush-dominated coastal bluff scrub in the southeastern part, and a mix of coastal bluff scrub, salt grass flat, Myoporum, and mixed communities that show some level of disturbance in the northwestern part. In 2016, Dudek added the narrow band labeled “PGP” for “Pampas Grass Patches.” As shown in the following site photos, Pampas Grass is present in this general area, but it is mixed in with much larger amounts of native scrub, and does not form a distinct community.

The following four photos show areas in the vicinity of the southern terminus of proposed Bluff Road that are not vegetated with the Myoporum Grove and Pampas Grass Patches communities mapped there by Dudek.



I took the photos above on February 9, 2016, showing a complete lack of *Myoporum* in the southeastern part of the polygon where Dudek has been mapping *Myoporum* Grove for a number of years, most recently in January 2016. The scrub in this area is quailbush scrub, which is a form of southern coastal bluff scrub. Small amounts of Pampas Grass are visible in the right-hand photo, but the scattered plants do not form a separate community.



I took the photos above on February 10, 2016, in the northwestern part of the polygon that Dudek errantly maps as *Myoporum* Grove. This area does actually have a small amount of *Myoporum*, shown in the background of the photo on the right, but it also has salt grass flat, coastal scrub, and what appears to be dead Mulefat, all of which show some signs of disturbance/invasion by exotic plants such as iceplant.

Photos on the next page show a male California Gnatcatcher (or possibly two different birds) that I photographed foraging in quailbush along the shoulder of PCH, adjacent to Banning Ranch (on the Sunset Ridge Park site), on November 6, 2009, and June 3, 2010. The subsequent map, which I prepared in 2010 during consideration of the Sunset Ridge Park project, shows the locations where I documented California Gnatcatchers adjacent to Banning Ranch during my evaluation of the Sunset Ridge Park site. These sightings are as close as 140 feet from the areas of quailbush-dominated scrub that Dudek maps as *Myoporum* Grove. It would not be credible to argue that, although gnatcatchers have been shown to use quailbush scrub in these mapped areas, they do not use the same habitat 140 feet to the northwest.



The photo above shows a male California Gnatcatcher, in winter plumage, that I photographed in quailbush near the corner of Superior Avenue and Pacific Coast Highway on November 6, 2009; the photo at left shows a male California Gnatcatcher, in breeding plumage (either the same bird or a different one), that I photographed seven months later in quailbush on the slope above Pacific Coast Highway near the southeastern corner of the Banning Ranch property on June 3, 2010.



Map showing the locations where I documented California Gnatcatchers using quailbush scrub on the Sunset Ridge Park site, adjacent to the southeastern corner of Banning Ranch, during 2009-2010.

With gnatcatchers having been documented using quailbush-dominated scrub adjacent to the disputed area that Dudek erroneously calls “Myoporum Grove,” on what basis can anybody claim that gnatcatchers do not also use the quailbush-dominated scrub in the southeastern part of Banning Ranch?

The Banning Ranch Conservancy requests that the USFWS confirm (a) that Dudek has incorrectly mapped the predominantly native plant communities present in the southeastern part of Banning Ranch, and (b) that the native scrub present in that area is critical habitat for the California Gnatcatcher that the USFWS considers to be occupied by the gnatcatcher based on the best available scientific evidence.

SUMMARY AND CONCLUSION

The Banning Ranch Conservancy believes that, in at least the four areas detailed in this letter, Dudek's overall strategy is to cast doubt where none exists. As evidence, we cite Page 1 of the unsigned submission to the Coastal Commission from NBR/Dudek dated December 1, 2015:

NBR believes that Staff is not considering the evolving use patterns in California gnatcatcher (CAGN), which suggest a high degree of scientific doubt that the site could currently support 19 pairs or that the reduction of 7 acres of areas of scrub has led to a decrease of 10 pairs of CAGN.

Leaving aside that nobody ever claimed that "reduction of 7 acres of scrub has led to a decrease of 10 pairs of CAGN" (the decrease in pairs presumably came about through habitat destruction combined with multi-year drought effects), we focus on the phrase "a high degree of scientific doubt that the site could currently support 19 pairs." Between 1992 and 2009 federally permitted biologists repeatedly documented 15-29 pairs in the encelia-dominated coastal bluff scrub habitat on Banning Ranch — **among the highest densities of California Gnatcatchers ever documented anywhere**. There is no "high degree of scientific doubt" about this, or about these other items:

- Southern coastal bluff scrub on Banning Ranch has been demonstrated, repeatedly, to be of high value to California Gnatcatchers.
- The twelve gnatcatcher surveys conducted between 1992 and 2009 provide a useful and reliable baseline against which Dudek's more recent, drought-affected surveys may be compared.
- Limited data on gnatcatcher use areas, gathered during relatively brief observation periods during presence/absence surveys, cannot be used to show that a given patch of suitable native scrub habitat, located near documented gnatcatcher use areas, is "unoccupied" by the gnatcatcher.
- Erroneously mapping native scrub as Myoporum Grove and Pampas Grass Patches does not make the constraint go away, unless the regulatory agencies fail to insist on accurate mapping.

"Manufacturing controversy" is a tried-and-true strategy that the tobacco industry successfully employed for many decades, and that the fossil fuel industry is exploiting to great effect today. In the context of Banning Ranch, claiming that "a high degree of scientific doubt" exists regarding issues that are not actually controversial could enable a decision-maker to claim that "experts disagree" about the value of existing resources and of proposed mitigation. At that point, the decision-maker may choose whichever expert they prefer to believe, rather than the one whose claims are supported by the best scientific information. **For these important reasons, the Banning Ranch Conservancy respectfully requests that the USFWS clarify for the CCC that no legitimate controversy exists with regard to the four issue-areas discussed in this letter.**

The CCC staff report for the May hearing is likely to be issued as early as April 22, so we request that your agency consult with the CCC as soon as possible, hopefully no later than April 15. If possible, the Banning Ranch Conservancy would prefer that the USFWS provide your opinions in writing, with a copy to the Conservancy.

Thank you for your time and consideration. If you have questions, please send e-mail to robb@hamiltonbiological.com or call me at (562) 477-2181.

Sincerely,



Robert A. Hamilton
President, Hamilton Biological, Inc.
<http://hamiltonbiological.com>

attachments : Unsigned submission to CCC from NBR/Dudek dated December 1, 2015
Letter from Dr. Jonathan Atwood to Jack Ainsworth re: value of scrub on Banning Ranch

cc : Mendel Stewart, USFWS
Karen Goebel, USFWS
Mary Beth Woulfe, USFWS
Christine Medak, USFWS
Jack Ainsworth, CCC
Dr. John Dixon, CCC
Dr. Jonna Engel, CCC
Dr. Laurie Koteen, CCC
Amber Dobson, CCC
Karl Schwing, CCC
Lisa Haage, CCC
Alex Helperin, CCC
Chuck Posner, CCC
Liliana Roman, CCC
Sherilyn Sarb, CCC
Andrew Willis, CCC
Kevin Hupf, CDFW
Marilyn Fluharty, CDFW
Erinn Wilson, CDFW
Damon Nagami, Natural Resources Defense Counsel
Dan Silver, Endangered Habitats League
Steve Ray, Banning Ranch Conservancy
Dr. Terry Welsh, Banning Ranch Conservancy

October 5, 2015

Mr. Jack Ainsworth, Senior Deputy Director
California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001

Dear Mr. Ainsworth:

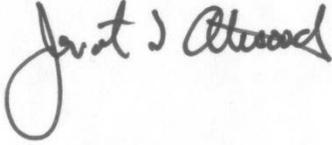
I wish to submit this letter in support of the Coastal Commission's Staff Recommendation to deny the development of Newport Banning Ranch, LLC (5-13-032), located at the 5100 Block of Pacific Coast Highway, Newport Beach, Orange County. The majority of this site has been correctly identified as an Environmentally Sensitive Habitat Area (ESHA), and should be preserved in place rather than impacted and mitigated for elsewhere.

I have been involved in studies of California Gnatcatcher ecology since the late 1980's, and, in fact, was the primary biologist responsible for the species being given protection in 1993 under the U.S. Endangered Species Act. I am very familiar with the species' habitat requirements and population dynamics, especially in coastal areas of Orange, San Diego, and Los Angeles counties (Akçakaya and Atwood 1997, Atwood 1993, Atwood and Bontrager 2001). It has been obvious to me for years that the Banning Ranch property is one of the major elements of any conservation efforts directed toward preserving the species in coastal Orange County.

Even though some areas of this site may support coastal sage scrub vegetation that is not pristine *Artemisia*-dominated scrub, the gnatcatchers themselves – through their dense occupancy of the area – have indicated that the habitat on Newport Banning Ranch is very suitable. Work conducted prior to 2013 found an average of 19 gnatcatcher territories per year (range 15–21, with a maximum count of 29 in 1994). These consistently high population estimates from 1992 through 2009 reflects the important value of this area; I completely reject Dudek's (2013) claim that prior survey efforts overestimated the number of pairs present, and that gnatcatcher habitat at Newport Banning Ranch is inferior. Even if we assume that Dudek's current survey data are correct, and that present population levels are, in fact, lower than the numbers present during the 1990s and 2000s, we must remember that current levels have undoubtedly been impacted by recent severe drought conditions. This apparent reduction in population size has also probably been exacerbated by incremental losses of habitat, and does not reflect the potential that Newport Banning Ranch has to support a strong and robust population of this threatened species, especially now that unpermitted mowing of scrub habitat has ceased and additional habitat is being restored as mitigation for earlier illegal clearing.

I strongly urge you to support the Coastal Commission's Staff Recommendation to deny the development of Newport Banning Ranch, LLC (5-13-032).

Sincerely,

A handwritten signature in black ink that reads "Jonathan L. Atwood". The signature is written in a cursive style with a large, looping initial "J".

Jonathan L. Atwood, Ph.D.

93 Clapp Pond Road
Marlborough, NH 03455

References

Akçakaya, H. R., and J. L. Atwood. 1997. A habitat-based metapopulation model of the California Gnatcatcher. *Conservation Biology* 11:422-434.

Atwood, J.L. 1993. California Gnatcatchers and coastal sage scrub: the biological basis for endangered species listing. Pp. 149-169, *in* J. E. Keeley [ed.], *Interface Between Ecology and Land Development in California*. S. Calif. Acad. Sci.; Los Angeles, California.

Atwood, J.L., and D.R. Bontrager. 2001. California Gnatcatcher (*Polioptila californica*). *In* *The Birds of North America*, No. 574 (A. Poole and F. Gill, eds.). The Birds of North America, Inc., Philadelphia, PA.

Letter report from Dudek to the U.S. Fish & Wildlife Service dated 31 May 2013 (12 pages plus attachments) entitled "Focused California Gnatcatcher Survey, Newport Banning Ranch Project, Orange County, California".

12-page memorandum from Dudek dated 24 October 2013 prepared for Newport Banning Ranch, LLC, entitled "Review and Comparison of California Gnatcatcher Surveys Results for the Newport Banning Ranch Property, Orange County, California".

NBR Response to Commission Staff Gnatcatcher/Scrub Pool ESHA Recommendation

EXECUTIVE SUMMARY OF MAJOR STAFF COMMENTS AND NBR RESPONSES:

Staff Position: *“Over the span of nearly 25 years during which coastal California gnatcatchers have been studied on the project site, their numbers were relatively steady with an average of 19 territories between 1992 and 2009. In 2013 and 2015 the territory numbers dropped to 10 and 9, respectively. The recent decrease is likely a result of the extreme drought (2011-present) as well as adverse impacts and direct loss of scrub habitat due to mowing (USFWS has estimated that a total of 7+ acres of coastal scrub habitat has been lost on Banning Ranch between 1979 and 2012).”*

NBR Response: NBR believes that Staff is not considering the evolving use patterns in California gnatcatcher (CAGN), which suggest a high degree of scientific doubt that the site could currently support 19 pairs or that the reduction of 7 acres of areas of scrub has led to a decrease of 10 pairs of CAGN. In our effort to narrow differences, NBR requests that Staff accept the premise that CAGN pair territories range from between 2.5 to 6.04 acres on the coast¹², so at most, the purported reduction of 7 acres of scrub vegetation could have led to a loss of between 1 to 3 pairs. The additional 9 to 7 pair reductions were either the result of inaccurate censuses in the past or some other factor like drought – or both. We also request that Staff consider the fact that the low-growing monocultural encelia that has colonized some disturbed areas has not contributed to increases of CAGN - suggesting that such areas have little benefit for the CAGN and do not meet the minimum threshold for ESHA.

Observed use areas have changed over time. This may have been a by-product of evolving site conditions such as habitat quality, noise, maintenance, increase in weed growth, prey availability, drought, habitat restoration, observer bias, and many other factors. It is not appropriate to blame shift due to site activities or to consider the cumulative observed use areas over the last 23 years when the facts show that period included a number of generations and available habitat and habitat quality evolved for the better and worse during that period.

Staff Position: *“Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California sunflower and California buckwheat were co-dominant with sagebrush.”*

NBR Response: NBR requests that Staff recognize that on the site, California sagebrush and California buckwheat is nearly non-existent. Staff correctly states that Encelia Scrub is the only noted type of sage scrub on site. It is important to note that Encelia is considered to be a monoculture and that California sagebrush and California buckwheat are not even discussed as other “lower density” species within the community. Encelia is a species that is able to germinate and grow on poor soils, has high seed production numbers, and is highly opportunistic, rapidly colonizing disturbed areas. On the site, it functions as a weed and will require some level of control when habitat restoration begins and existing patches are incorporated into those efforts.

¹ Unitt, P. 2004. San Diego County Bird Atlas. Ibis Publ., Vista, CA.

² Preston, K., P.J. Mock, M. Grishaver, E. Bailey, and D. King. 1998. California gnatcatcher territorial behavior. Western Birds 29:242-257.

Staff Position: *“Where these species are in low abundance, California gnatcatchers will forage on other species, including some non-natives such as black mustard. They also use grassland, chaparral, and riparian habitats in proximity to sage scrub for dispersal and foraging.”*

NBR Response: NBR believes that Staff should recognize that CAGN use of non-native plant species (including mustard) or non-mature vegetation as a foraging substrate is anecdotal and very much exception to the norm. CAGN spend nearly all of their foraging energy in habitat that is likely to provide the arthropods of choice. They may occasionally move, or fly, through non-standard (i.e., coastal sage scrub) habitat or land cover types to reach patches of suitable scrub areas, but those areas should not be considered to be required or necessary habitat. An evaluation of ESHA should not be based on occasional and accidental uses³, or include disturbed or impacted habitat.

CONCLUSION:

While the current NBR site supports primarily poor, yet occupied CAGN habitat, the recently revised and reduced project will restore or enhance all of the sage scrub open space areas to high-quality scrub which will return California sagebrush, California buckwheat, and other appropriate shrubs to the property. This will provide for a more suitable base for arthropod prey species to thrive in, and thus will provide better overall habitat and nesting opportunities for CAGN.

The proposed existence of larger combined and connected blocks of high quality habitat will provide for more opportunities for CAGN to expand their pair numbers. The diversity of plant species will support a wider diversity of invertebrate species, which will provide more prey species for CAGN. The diversity of plant species will also help protect against the effects of drought and disease within the community. Further, the habitat restoration efforts on the project site will help bolster connectivity between other adjacent off-site patches of sage scrub, thereby allowing for more genetic connectivity between on and off-site CAGN pairs.

At the conclusion of the habitat restoration and creation efforts, it can be confidently expected that the increased and better habitat will result in higher CAGN pair productivity, smaller territories, high CAGN pair numbers and densities, and long-term sustainability of CAGNs on the NBR site.

³ Pers. Com. Brock Ortega – Mr. Ortega has over 24 years of extensive field experience with the species, beginning with a 1992 study of 27 pairs of CAGN (minimum 30-hours of observations per pair). Additionally, he obtained his federal 10(a)(1A) permit in the first group of biologists to do so in 1993.

ATTACHMENT 1

CURRENT CONDITIONS

NBR requests that in evaluating which areas meet the threshold for ESHA, Staff should consider that currently, native scrub on the mesa is either largely disturbed or fragmented by developed areas and ongoing oil extraction activities and related oil field maintenance practices. Staff's September 25, 2015 memorandum identifies a total of 99 acres on the project site that qualify as CAGN ESHA based on observed use areas and/or the occurrence of scrub vegetation including small patches of scrub within extensive concrete stockpiles. Staff determined that the CAGN ESHA area "defined by the boundary of the compiled coastal California gnatcatcher breeding territories spanning 1992 to 2014 rises to the level of ESHA because it supports the rare coastal California gnatcatcher, and is easily disturbed and degraded by human activities and development (Figure 33)."

The developed areas and vegetation communities that occur within Staff's recommended 99 acre CAGN ESHA area are illustrated on (Exhibit 1) and listed in Table 1:

Table 1
Developed Areas and Vegetation Communities
within Staff Recommended CAGN ESHA Area

CCC Recommended CAGN ESHA Area	Acres
Vegetation	Acres
Developed	12.56
Disturbed	11.25
Non-native/Invasive	14.25
Disturbed Native	28.31
Native	32.65
Total	99.02

As discussed further herein, NBR believes that Staff's conclusion regarding the extent and quality of their recommended CAGN ESHA is not supported by the detailed, site-specific biological surveys conducted to identify potentially rare and sensitive flora and fauna on the project site, in large part due to the level and extent of disturbed and degraded conditions that have adversely affect the function and values of onsite vegetation. We are providing information which we believe further informs the conditions on the site and associated thresholds for determining ESHA on this highly disturbed site.

As discussed at various points below, NBR believes that the approach used by USFWS for determining the extent of "Critical Habitat" for the CAGN would greatly inform which areas should be considered ESHA as they are based in sound science. For example, the USFWS notes that the mapping of Critical Habitat sometimes includes areas such as developed or disturbed areas that provide no support for the CAGN and such areas are specifically excluded. NBR believes that it would be most reasonable (and scientifically sound) for Commission staff to do the same when defining ESHA.

Rarity/Especially Valuable Ecosystem Role

Staff's identification of CAGN ESHA relies heavily on a compilation of several years of CAGN use area data, irrespective of the severely degraded site conditions throughout much of the delineated ESHA area. In making the ESHA determination, NBR requests staff consider some factors that may not have entered into the initial determination. Specifically, NBR is not sure if Staff considered that the varying years of CAGN observations conducted under evolving site conditions, using in many cases non-protocol surveys, resulted in disparate levels of effort - makes it very difficult to accurately identify areas of the site that are rare and critical for ensuring long-term viability of the onsite CAGN population.

The proposed development plan provides for protecting and restoring, in-place, 74 acres of Staff's recommended CAGN ESHA area, including all bluff and arroyo habitats that do play a critical role for supporting CAGN onsite. However, of the 25 acres of Staff's recommended CAGN ESHA areas that are within the proposed development plan footprint, 13.4 acres consist of developed, disturbed and non-native invasive plant species that have little to no habitat function or value for CAGN. Therefore impacts to native vegetation within the recommended CAGN ESHA areas would be limited to 11.55 acres of highly disturbed and fragmented native vegetation (only 9.3 acres of which is scrub vegetation), which have only marginal function and value for CAGN. Staff's recommended CAGN ESHA areas that fall within the development plan footprint would not meet the threshold for "rare". In fact, the conditions in these areas are extremely common, and where native plants do occur, the conditions are substantially degraded as reflected in the monoculture make-up of the vegetation and fragmented/isolated occurrences.

In summary, the proposed development plan would impact only 11.55 acres of Staff's recommended CAGN ESHA – areas that consist of disturbed and fragmented native vegetation which, given its degraded condition and limited habitat value for CAGN, is not rare and does not rise to the level of ESHA.

Existing Disturbance/Degradation

Staff contends that 99 acres of the site constitutes CAGN ESHA because it supports CAGN and is easily disturbed and degraded by human activities and development. However, as noted above, the 25 acres of Staff's recommended ESHA area within the development plan consist of developed and disturbed areas, non-native/invasive plant species, and highly disturbed native vegetation. Therefore, these areas are already developed and disturbed to an extent that human activities and development have little bearing on their habitat value, which is marginal at best. In addition, the majority of the 25 acres contains non-native invasive plant species, which pose a threat to native flora and fauna, and active oil facilities interspersed throughout the area. As such, the current extent of disturbance and degradation of the area is expected to persist w absent the project.

Proposed NBR Project

As noted above, the proposed the proposed development plan provides for protecting and restoring, in-place, 74 acres of Staff's recommended CAGN ESHA area, including all bluff and arroyo habitats that do, in fact, play a critical role for supporting gnatcatcher onsite (Exhibit 1). Accordingly, the proposed development plan would impact only 25 acres of Staff's recommended 99 acre CAGN ESHA, only 9.3 acres of which is disturbed native scrub, which, given its fragmented occurrence, level of disturbance, and low diversity, does not rise to the level of ESHA.

Restoration

In total, the proposed development plan will protect 74 acres on the site that Staff suggests qualify as CAGN ESHA, which will be restored and expanded throughout the site as described in the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). While the current NBR site supports poor, yet occupied CAGN habitat, the ultimate project will restore or enhance all of the sage scrub open space areas to high-quality scrub which will return California sagebrush, California buckwheat, and other appropriate shrubs to the landscape. The HCCMP provides for scrub establishment, enhancement and revegetation in areas that are currently highly disturbed with limited functions and services to wildlife. Therefore the installation of native scrub species in these areas will provide supplementary habitat for wildlife foraging and nesting and will serve to connect currently disjointed native landscapes that will be preserved in place, increasing the overall value of the existing native communities on site, particularly for CAGN.

Most habitat restoration efforts regarding CAGN (e.g., Montebello Hills, Ocean Trails, El Sobrante Landfill, Coyote Hills East (UnoCal), and many more), require California sagebrush as a dominant component. The attached photo sheet provides a couple of coastal zone examples of created habitat that is currently occupied by CAGN (Exhibit2). Both sites were occupied well prior to the 5-year monitoring period ended. There are numerous similar examples of created or restored habitat in southern California that support good and persistent CAGN populations.

The restoration plan will create high quality and diverse sage scrub habitat where none exists currently, will enhance existing disturbed sage scrub habitat by seeding and planting with a more diverse and appropriate mix of species (primarily the inclusion of California sagebrush and California buckwheat) and by thinning the expanse of Encelia where appropriate, and by generally weeding and enhancing existing more mature sage scrub habitat. This will provide for a much more suitable habitat matrix to support CAGN. The mix of species will closely mirror preferred suitable habitat as outlined by the USFWS, as observed by expert CAGN biologists, and as shown to support thriving CAGN populations on other habitat restoration sites. The larger combined and connected habitat blocks of good habitat will provide for more opportunities for CAGN to expand their pair numbers. The diversity of plant species will support a wider diversity of invertebrate species, which will provide more prey species for CAGN and should result in higher fecundity. The diversity of plant species will also help protect against the effects of drought and disease within the community. Further, the habitat restoration efforts on the project site will help bolster connectivity between other adjacent off-site patches of sage scrub, thereby allowing for more genetic connectivity between on and off-site CAGN pairs. At the conclusion of the habitat restoration and creation efforts, it is expected that the increased and better habitat will result in higher CAGN pair productivity, smaller territories, and high CAGN pair numbers and densities.

DETAILED RESPONSES

A. Vegetation Site Maintenance has Adversely Effected NBR's Gnatcatcher Population

Page 25 of the Staff Memo states:

Over the span of nearly 25 years during which coastal California gnatcatchers have been studied on the project site, their numbers were relatively steady with an average of 19 territories between 1992 and 2009. In 2013 and 2015 the territory numbers dropped to 10 and 9, respectively. The recent decrease is likely a result of the extreme drought (2011-present) as well as adverse impacts and direct loss of scrub habitat due to mowing (USFWS

has estimated that a total of 7+ acres of coastal scrub habitat has been lost on Banning Ranch between 1979 and 2012).

Response: As discussed in more detail below, the site has supported evolving use patterns in CAGN and there is doubt that the site should support 19 pairs currently and that the reduction of 7 acres of habitat has led to a decrease of 10 pairs of CAGN. Summarily, CAGN pair territories range from between 2.5 to 6.04 acres on the coast⁴⁵, so at most, assuming historic site maintenance effected the CAGN populations, the mowing of 7 acres of habitat would have led to a loss of between 1 to 3 pairs. As such, the additional 9 to 7 pair reductions were either the result of inaccurate censuses in the past, as documented in more detail below, or some other factor such as drought.

B. Gnatcatcher ESHA is Easily Delineated at NBR by Compiling Mapped Use Areas because they Clearly Reflect Habitat that is Favorable to Gnatcatchers

Page 25 of the Staff Memo states:

Having nearly 25 years of gnatcatcher survey data makes identifying the boundary of gnatcatcher ESHA straightforward because the overlapping use areas clearly elucidate the habitat that is favorable to gnatcatchers on the project site.

Response: Survey methods and results varied across the years, and it is likely that a few factors contributed to the recent decline but the main factors are likely varied survey methods and interpretation and drought. By all accounts, territory sizes in the coastal region range from between 2.5 and 6.04 acres per pair (excluding the recent 2013 to 2015 NBR results). Both the number of territories and the estimated acreage of suitable habitat in the upland portion of the site have varied over years. The average number of estimated territories during surveys from 1992 to 2009 was 19 (range of 15–29). For years when documented acreages for suitable scrub habitat were available (1992, 1997, 1998, 2000, 2007, 2009), the average was 18.3 (range of 17–19), for an average territory size of 2.96 acres, assuming all suitable habitat was occupied. Between 2013 and 2015, the average territory sizes increased as a function of fewer pairs. The available habitat was estimated at 56.36 acres on site and resulting territory sizes ranged from between 5.64 acres to 7.05 acres. The ranges found onsite coincide with other sites in the western part of their range. For example: Palos Verde Peninsula in Los Angeles County found a mean territory size of 5.7 (n=16); Montebello Hills at 3.48 acres per pair (2005; n=58) and 3.01 acres per pair (2007; n=67 pairs); West Coyote Hills in Fullerton, Orange County, 5.53 acres per pair (2005; n=60) and 6.04 acres per pair (2009; n=55 pairs). The purported direct loss of 7 acres of sage scrub vegetation by the USFWS could only account for a reduction of 1 to 3 pairs of CAGN. This leaves a reduction difference of 9 to 7 pairs (on average) which then could only be accountable by (a) misinterpretation of previous population numbers, or (b) natural factors such as drought or loss of prey availability. There has been much variance in the level of survey effort applied on NBR as shown in Table 2.

**Table 2
Newport Banning Ranch CAGN Survey Efforts and Results by Year 1992-2015**

Year	Survey Team	Survey Type	No. Passes	Survey Hours	Use Areas
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⁴ Unitt, P. 2004. San Diego County Bird Atlas. Ibis Publ., Vista, CA.

⁵ Preston, K., P.J. Mock, M. Grishaver, E. Bailey, and D. King. 1998. California gnatcatcher territorial behavior. Western Birds 29:242-257.

**Table 2
Newport Banning Ranch CAGN Survey Efforts and Results by Year 1992-2015**

Year	Survey Team	Survey Type	No. Passes	Survey Hours	Use Areas
1992	LSA	presence/absence	3	not available	20
1993	LSA	presence/absence	2	not available	19
1994	LSA	presence/absence	2	26	29
1995	LSA	presence/absence	2	not available	16
1996	LSA	presence/ absence	2	not available	17
1997	PCR	presence/absence; USFWS (1997) NCCP guidelines	3	54	18
1998	PCR	presence/absence; USFWS (1997) NCCP guidelines	3	not available	19
2000	PCR	presence/absence; USFWS (1997) guidelines	6	108	19
2002	GLA	presence/absence; USFWS (1997) guidelines	6	53	15
2006	GLA	presence/absence; USFWS (1997) guidelines	6	53	21
2007	GLA	presence/ absence; USFWS (1997) guidelines	6	55	18
2009	BonTerra	presence/ absence; USFWS (1997) guidelines	6	36	17
2013	Dudek	population estimate	2	81	10
2014	Dudek	Presence/absence; USFWS (1997) guidelines	6	73	8
2015	Dudek	Presence/absence; USFWS (1997) guidelines	6	63	9

The first protocol developed for the CAGN was in 1994 and modified in 1997. The Draft 1994⁶ protocol suggested 8 surveys while the revised 1997⁷ protocol required 6 (breeding season) or 9 (non-breeding season) surveys to be conducted in this area. However, surveys that adhered to these recommendations did not occur until 2000. Between 1992 and 1998 (7 years), only between 2 and 3 surveys were conducted. Further, the level of effort applied was mostly not discernable. Only the 1997 effort included a level of effort that was somewhat commensurate with subsequent surveys. This is important because the protocol is intended to determine presence or absence and distribution of CAGN – not identify the number of individuals or pairs present. Without repeat visits or continual direct observation by biologists, even highly qualified observers can over-estimate the number of animals present. They are small, typically secretive, usually quite similar in appearance, are known to follow biologists through habitat as they play taped vocalizations, and occur in sometimes varied topography. On sites where there is a nice

⁶ USFWS. 1994. Draft Survey Guidelines for Assessing Potential Take of the Coastal California Gnatcatcher. January 19, 1994.

⁷ USFWS. 1997. Coastal California Gnatcatcher (*Polioptila californica californica*) Presence/Absence Survey Guidelines. February 28, 1997

network of paths, trails, or roads like Newport Banning Ranch, it is likely that the surveying biologists utilized them as an easy and acceptable route to conduct surveys without destroying habitat. However, where topography is varied, or when CAGN follow or secretively pop up, it is highly possible that the same individual could be double counted. With more visits, it is more likely that the biologist would be able to figure out the activity patterns and tease out where double counting might be occurring. With 2 or 3 visits, this is very difficult without staging a biologist on individual pairs until the neighbor is located.

In 2013, Dudek used a USFWS-requested modified protocol to follow individual birds while surveying for their closest neighbors, unlike previous efforts. For example, biologists followed (tracked) a single male CAGN moving approximately 300 meters (990 feet), across 3 historic use areas. Simultaneously a single male was detected moving through 2 nearby use areas. Neither paired male experienced territorial disputes. Therefore, 2 males were confirmed as behaving territorially over an area encompassing 5 use areas as identified in 2009. These males were simultaneously watched and followed by at least 6 biologists. Using real-time mapping software (i.e., all biologist were able to “watch” the mapped CAGN in real-time as other biologists mapped its progress), the first male was observed by multiple biologists to move up, over, and around an intervening hill and up and through dense riparian bands to access sage scrub patches. A single expert observer would have easily missed these movements. The frequency of the movements, combined with the apparent barriers, would have led the observer to map the single individual as multiple individuals.

Further complicating an apples to apples evaluation of survey efforts, specific information was lacking in reports for surveys conducted between 1992 and 2009. This makes a comparison between those data sets and the 2013 through 2015 data:

- In most pre-2009 reports (except for GLA 2002), is it not clear how often or during which passes specific birds were observed. So it is not clear whether a pair associated with a specific territory was observed during each survey or only once. This would not eliminate the possibility that an individual or pair was detected in different areas on different dates, thus potentially inflating the population size.
- It is not clear from any of the reports how many birds or pairs were detected during each survey. So it is unclear whether birds in adjacent territories were observed simultaneously (thus confirming multiples pairs or territorial males were involved) or even during the same survey. Were this information available, it would help determine whether population estimates were potentially inflated.
- Several reports note that nests were located, but none of the reports include exhibits showing the locations of the nests, the dates nests were observed, the stage of the nests (incubation, nestling period), or whether the nests were active. While information about nests is potentially useful in confirming population size, more specific information than provided in the reports is necessary for several reasons:
- Multiple nests in an area may be from different pairs (if all active), or may be nests from the same pair, if one is active and the others are not. Also, active nests located in several adjacent territories could indicate that territory size estimates are accurate.
- Nests widely distributed across the site leaves open the possibility that the nests were associated with pairs using larger areas than supposed, and that several “pairs” in an area where only one active nest was located may have represented only one pair.
- As the dates and locations for nests are not noted, it is unclear whether multiple nests of the same pair, from different nesting attempts at different times in the season, might have been involved in some cases.

- Nest location information would provide some insight regarding the most important habitat areas on site, since it is reasonable to assume that the CAGN would choose the better areas to nest in.

Finally, as demonstrated by the map (data), observed use areas have changed somewhat over time. This may have been a by-product of evolving site conditions such as habitat quality, noise, maintenance, increase in weed growth, prey availability, drought, habitat restoration, observer bias, and many other factors. It is not appropriate to blame shift due to illegal site activities or to consider the cumulative observed use areas over the last 23 years when that period included a number of generations and available habitat and habitat quality evolved for the better and worse during that period.

C. California Brittle Bush Constitutes ESHA because it is a Rare Habitat and Provides an Especially Valuable Ecosystem Service to CAGN

Page 15 of the Staff Memo states:

California Brittle Bush dominated Coastal Sage Scrub is a rare habitat, provides an especially valuable ecosystem service when occupied by the coastal California gnatcatcher or other rare species, and is easily disturbed and degraded by human activities and development. Therefore the CBBS Coastal Sage Scrub on the project site meets the definition of ESHA (Figure 11).

Page 21 of the Staff Memo further states:

Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California sunflower and California buckwheat were co-dominant with sagebrush.

Response: While Staff accurately states CAGN habitat preferences on page 21 of the memo, it needs to be noted that on the NBR site, California sagebrush and California buckwheat is nearly non-existent. On page 14 of the Memo⁸, Staff specifically cites the project EIR’s description of Encelia Scrub (the only noted type of sage scrub on site according to the author, “The coastal sage scrub on Banning Ranch is best characterized as California Brittle Bush Scrub (CBBS)), which says, “*This vegetation type is dominated by bush sunflower, and it occurs as a monoculture in many of the northern patches. Other species present in lower densities include bladderpod, wreath plant (Stephanomeria virgata), goldenbush (Isocoma menziesii), California buckwheat, coastal prickly pear, and coastal cholla.*” It is important to note that Encelia is considered to be a monoculture and that California sagebrush and California buckwheat are not even discussed as other “lower density” species within the community. Encelia is a species that is extremely easy to germinate, has high seed production numbers, and easily exploits disturbed areas. On NBR, it acts as a weed and will have to be controlled when habitat restoration occurs and existing patches are incorporated into those efforts.

While the CAGN can exist within habitat that is a monoculture, the best habitat types for them include a variety of shrub species and in the coastal part of its range, occupied habitat is

⁸ California Coastal Commission. 2015. ESHA and Wetland Determination for Banning Ranch, Orange County, California (CDP 5-13-032). September 25, 2015

dominated by open California sagebrush⁹. Winchell and Doherty (2008, p. 1325¹⁰) found the density of gnatcatchers was highest in high-quality habitat and decreased as habitat quality decreased. Further, they prefer nesting habitat to be dominated by California sagebrush, including between 20 and 60 percent cover and an inter-shrub gap of 5 to 6 feet. In these situations, nests are often located in California sagebrush plants about 1 meter (3 feet) above the ground¹¹. This description shows that they prefer to occur in more mature and open sage scrub communities that are dominated by California sagebrush. The NBR habitat is of general poor quality for CAGN based on monotypic, Encelia dominated, California sagebrush lacking, patchy and weedy habitat. Much has been discussed in the Memo of the regeneration of high quality Encelia in areas that had formerly been mowed, or the value of grasslands. These areas do not support valuable foraging habitat – in fact it is highly likely that CAGN will not forage in these areas until larger shrubs are present which would provide some cover and stable perch.

D. Grasslands, Bare Areas and Non-Native Vegetation Also Constitute CAGN ESHA

Page 21-22 of the Staff Memo states:

Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat⁶⁰. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California sunflower and California buckwheat were co-dominant with sagebrush⁶¹. Where these species are in low abundance, California gnatcatchers will forage on other species, including some non-natives such as black mustard. They also use grassland, chaparral, and riparian habitats in proximity to sage scrub for dispersal and foraging.

Page 25 of the Staff Memo further states:

Factors that would be used in situations where only one or two years of survey data are available include the gnatcatcher nesting territories, as well as contiguity of coastal scrub habitat, and presence of corridors. These might consist of bare areas, such as roads and oil field development (as is the case on Banning Ranch), or areas vegetated with non-native or non-coastal scrub habitat that provide habitat connectivity and foraging areas. Such areas adjacent to gnatcatcher nesting territory provide connectivity to core coastal scrub habitat and are critical to minimize edge effects.

Response: CAGN forage for invertebrates by perching and gleaning (picking off) them from shrubs, having been described as "near-surface searchers" that glean arthropods off foliage while moving quickly through the substrate¹². Since they do not forage while flying, they must perch and hunt for their prey. To do so, the vegetation must be stout enough to support them. Further, CAGN do not like to be exposed to predators, so are very secretive when hunting. They prefer to glean invertebrates from within the shrub canopy. Their use of non-native plant

⁹ Mock, P. 2004. California Gnatcatcher (*Poliioptila californica*). In The Coastal Scrub and Chaparral Bird Conservation Plan: a strategy for protecting and managing coastal scrub and chaparral habitats and associated birds in California. California Partners in Flight. <http://www.prbo.org/calpif/html/docs/scrub.html>

¹⁰ Winchell, C.S., and P.F. Doherty. 2008. Using California gnatcatcher to test underlying models of habitat conservation plans. *Journal of Wildlife Management* 72: 1322–1327.

¹¹ USFWS. 2010. Coastal California Gnatcatcher 5-Year Review. 51 pg.

¹² Burger, J.C., M.A. Patten, J.T. Rotenberry, and R. A. Redak. 1999. Foraging ecology of the California gnatcatcher deduced from fecal samples. *Oecologia* 120:304-310.

species (including mustard) or non-mature vegetation as a foraging substrate is anecdotal and very much exception to the norm. They spend nearly all of their foraging energy investment in habitat that is likely to provide the arthropods of choice. As noted, they prefer to glean sedentary arthropods off of plants and will exploit invertebrates where they occur – for example, a break-out of butterfly caterpillars. Most typically this occurs within their standard habitat, but of course may sometimes happen in adjacent novel habitat types. Similarly, they may occasionally move, or fly through non-standard habitat or land cover types to reach patches of suitable scrub areas, but those areas should not be considered to be required or necessary habitat. They typically only land in those areas when isolated scrub shrubs are present. As discussed above, they do not like to be exposed to predators and like to have cover when foraging or moving. The exceptions are when they are flying rapidly through an inhospitable area (e.g., open landscape), flying to respond to a territorial dispute, when perched at the top of a small tree to observe their territory (cover always is nearby), and sometimes when nest building. It is inappropriate to base an ESHA determination on occasional and accidental uses¹³ within areas that have little to no habitat function and value for CAGN. In fact, a conservation strategy focused on protecting such areas in lieu of restoring and expanding high quality habitat on a site like NBR is likely detrimental to the long-term viability of the species.

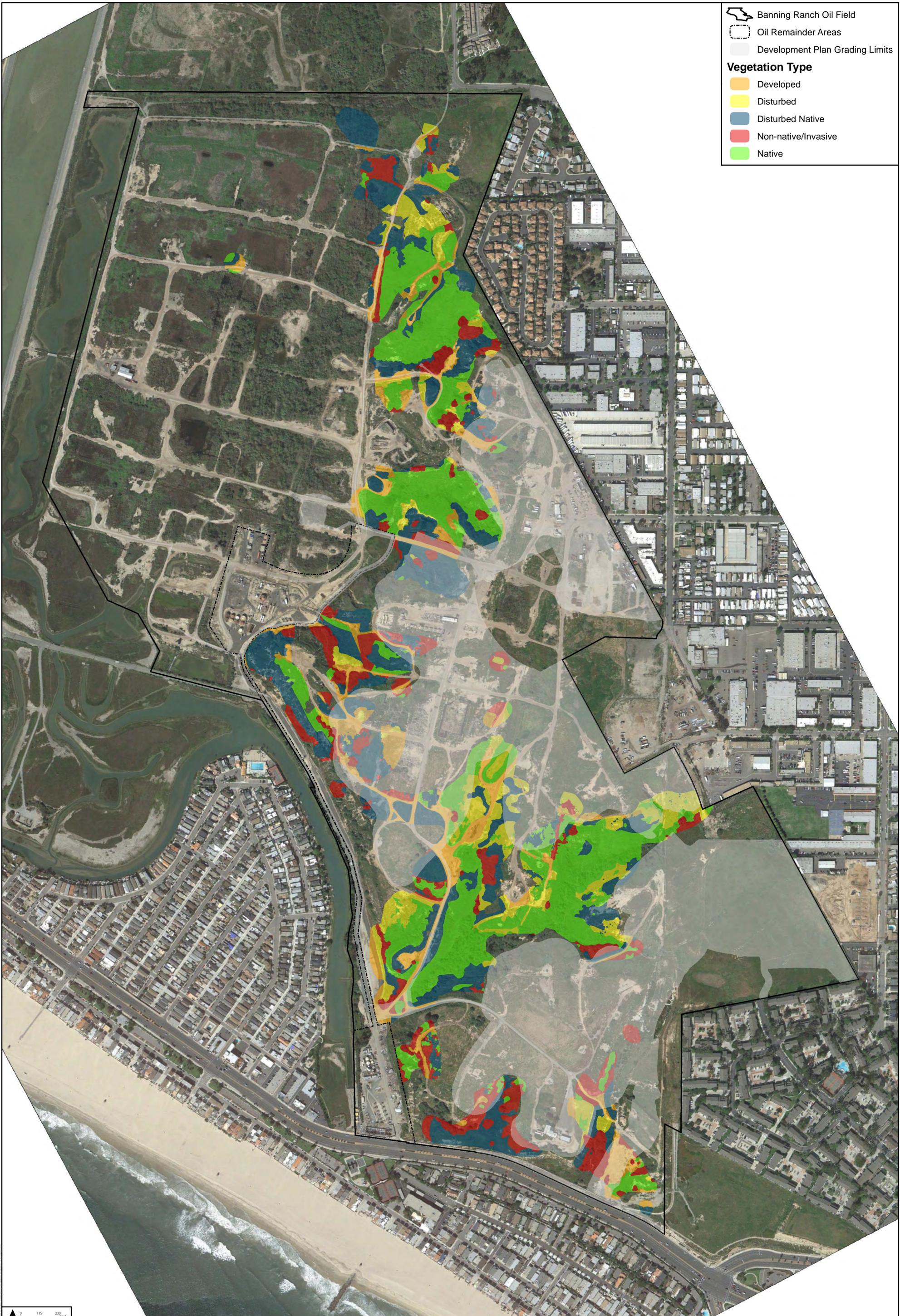
With regard to the federal Primary Constituent Elements (PCE's) associated with CAGN, the USFWS (2007¹⁴) describes the first category as “(1) Dynamic and successional sage scrub habitats: Venturan coastal sage scrub, Diegan coastal sage scrub, Riversidean sage scrub, maritime succulent scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging.” This only relates to sage scrub habitat types and is the main factor. It goes on to describe the secondary type of PCE as “(2) Non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats as described for PCE 1 above that provide space for dispersal, foraging, and nesting.” It is interesting to note that the term, “proximity” is not defined and thus unfortunately can be subjectively interpreted differently. This should be interpreted to mean areas that are directly adjacent to scrub habitats as opposed to widespread inclusion. As discussed, grasslands onsite would not support CAGN breeding or foraging as they are too open and generally do not include shrub cover. One good test is whether the USFWS would allow the vegetation community or land cover to be included as restoration or mitigation for the species. The USFWS has historically not allowed mitigation conservation or habitat restoration credit for CAGN impacts over chaparral, riparian, grassland, or ruderal lands. They have only accepted mitigation in the form of quality sage scrub – either through preservation or through restoration/enhancement. Therefore, they do not believe that these habitat are capable of supporting CAGN on their own and are of limited conservation value.

When modeling Critical Habitat for CAGN, the USFWS used the following methods “To help predict the presence of coastal California gnatcatcher occurrences throughout the range of the species, especially in areas with limited survey information, we commissioned a spatial habitat evaluation model incorporating habitat parameters used by the coastal California gnatcatcher during the breeding season. We began with a GIS layer identifying California sagebrush

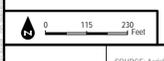
¹³ Pers. Com. Brock Ortega – Mr. Ortega has over 24 years of extensive field experience with the species, beginning with a 1992 study of 27 pairs of CAGN (minimum 30-hours of observations per pair). Additionally, he obtained his federal 10(a)(1A) permit in the first group of biologists to do so in 1993.

¹⁴ <https://www.federalregister.gov/articles/2007/12/19/07-6003/angered-and-threatened-wildlife-and-plants-revised-designation-of-critical-habitat-for-the#h-23>

habitats (e.g., Venturan, Diegan, and Riversidean sage scrub). We recognize that other habitats are used by coastal California gnatcatchers at various points in their life history, such as chaparral, grassland, and riparian habitats during foraging or dispersal. However, few breeding territories have been documented in habitats devoid of California sagebrush." This indicates that they understood that sage scrub was the important vegetation community. Further, "When determining the revised final critical habitat boundaries, we made every effort to avoid lands occupied by development such as buildings, paved areas, and other structures that lack PCEs for the coastal California gnatcatcher. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in this rule and are not designated as critical habitat." Therefore, portions of the site that include previous oil developments (e.g., well pads, roads, maintenance areas) should be excluded from the ESHA designation as well as non-PCE areas such as weedy or disturbed areas.



 Banning Ranch Oil Field
 Oil Remainder Areas
 Development Plan Grading Limits
Vegetation Type
 Developed
 Disturbed
 Disturbed Native
 Non-native/Invasive
 Native



CAGN-occupied Sage Scrub Creation Project Photos

	
<p style="text-align: center;">Carlsbad Crossings; sage scrub habitat creation – CAGN occupied</p>	<p style="text-align: center;">Carlsbad Crossings; sage scrub habitat creation – CAGN occupied</p>
	
<p style="text-align: center;">Carlsbad Crossings; sage scrub habitat creation – CAGN occupied</p>	<p style="text-align: center;">Trump National Golf Course, Rancho Palos Verdes; sage scrub habitat creation – CAGN occupied</p>

CAGN-occupied Sage Scrub Creation Project Photos



Trump National Golf Course, Rancho Palos Verdes; sage scrub habitat creation – Before



Trump National Golf Course, Rancho Palos Verdes; sage scrub habitat creation – After; CAGN occupied



HAMILTON BIOLOGICAL

February 13, 2016

Dr. John Dixon
California Coastal Commission
45 Fremont Street, Suite 1900
San Francisco, CA 94105

**SUBJECT: BIOLOGICAL ISSUES, BANNING RANCH
NEWPORT BEACH, CALIFORNIA**

Dear John,

Since 2008, on behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. has been reviewing biological resource issues pertinent to a proposed development project at Banning Ranch in Newport Beach. The project went before the California Coastal Commission (Commission) for a Coastal Development Permit (CDP) on October 7, 2015, but the Commission directed the applicant to work with staff on a smaller project. The applicant and staff were given 90 days to work out a solution, a period subsequently extended to March. In early November, the applicant presented a revised project proposal that reduced the development footprint from 124 acres to 103 acres (excluding the proposed "oil consolidation areas"), which is significantly larger than the 11.5 acres identified by Commission staff in its October staff report. This letter evaluates staff's draft mapping dated February 9 that shows potential Environmentally Sensitive Habitat Areas (ESHA) and potential development bubbles. It is understood that this is not final mapping, and that changes may be made based upon additional considerations.

ECOLOGICAL SENSITIVITY & IMPORTANCE OF THE SITE

Jonna Engel prepared a memorandum dated September 25, 2015, which described the biological resources of the Banning Ranch property and evaluated whether the applicant's original proposed project complied with the Coastal Act. Page 3 stated:

There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site. The coincidence of upland mesa incised by arroyos and lowland wetlands creates an area abundant in wildlife that is not unlike the well-known Bolsa Chica wetlands complex located about 6 miles north. The presence of vernal pools at Banning Ranch adds a layer of diversity not even present at Bolsa Chica. In fact, it appears the subject site is the only area like it anywhere within the Santa Ana River watershed between the sea and the Santa Ana Mountains located 20 miles inland. The remainder has been heavily urbanized.

The limited area of potential development identified by staff (11.5 acres) in October 2015 reflected the ecological importance and sensitivity of Banning Ranch, including extensive areas of ESHA and coastal wetlands across the property.

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HISTORY OF COASTAL ACT VIOLATIONS

Over a period of decades, the owners of Banning Ranch undertook various forms of development and removal of major vegetation, actions not authorized under the Coastal Act or any valid form of exemption. Between 1992 and 2012, the U.S. Fish & Wildlife Service (USFWS) documented loss of 7.31 acres of native coastal bluff scrub from Banning Ranch, from 59.41 to 52.10 acres.¹

In a letter dated May 18, 2012, enforcement officer Andrew Willis notified the West Newport Oil Company that vegetation removal had been occurring at Banning Ranch in apparent violation of the Coastal Act. The impacts were not addressed under either a valid coastal development permit or the explicitly limited Resolution of Exemption (No. E-7-27-73-144) from 1973. Mr. Willis further observed:

1. No application for vested rights to expand oil operations or to mow extensive areas of vegetation on the property, as required in Section 30608 of the Coastal Act, had ever been applied for by the land owner or the oil operator.
2. Mowing of the property included various areas outside of the mapped area of oil operations contained in the 2011 DEIR for the proposed Newport Banning Ranch project.
3. The DEIR mapped oil operations as occurring in areas that the Commission determined to be ESHA.

On August 19, 2014, former Executive Director Charles Lester issued to West Newport Oil Company and Newport Banning Ranch LLC an 11-page Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and Notification of Intent to Record a Notice of Violation. Page 2 of this document stated:

Based upon the information that staff has reviewed to date, it has become abundantly clear to staff that a number of sensitive and native plant communities and wildlife species thrive on the properties. Accordingly, the potential that development activities on the site, particularly unpermitted development activities, could have impacted and could be continuing to impact sensitive habitats and species, including ecologically significant vegetation, became more salient.

In 2015, the Commission issued Consent Cease and Desist No. CCC-15-CD-01 and Consent Restoration Order No. CCC-15-RO-01, which covered drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land that had occurred on the site. Clearly, these extensive violations have had widespread adverse effects upon the biological resources now present on the property.

¹ U.S. Fish & Wildlife Service. 2014. Letter from G. Mendel Stewart, Field Supervisor, to Michael Mohler, Newport Banning Ranch, LLC, and Tom McClosky, West Newport Oil Company. Subject: Oil Field Operations and Maintenance, Newport Banning Ranch, City of Newport Beach, California.

As summarized on Pages 83–84 of the Banning Ranch staff report dated September 25, 2015:

Commission Ecologist Dr. Jonna Engel conducted a site-specific analysis to assess the likely status, prior to the unpermitted development that was the subject of the 2015 Consent Orders, of the biological resources in areas impacted by the unpermitted development that remain disturbed as a result of those activities. According to the Dr. Engel's analysis, some of the vegetative communities immediately adjacent to areas on the site impacted by the unpermitted development consist of various native plant communities and wildlife habitats that the Commission has consistently treated as ESHA. Dr. Engel determined that several of the areas impacted by the unpermitted development contained or were immediately adjacent to coastal scrub and/or grassland habitat prior to the development at issue, and those areas therefore met the definition of ESHA under the Coastal Act or were adjacent to areas that met that definition at the time they were affected by the Subject Activities. The Commission concurred with Dr. Engel's general conclusion that at least some of the areas that were affected by unpermitted development constituted ESHA.

Figure 1, below, shows the extent of unpermitted habitat clearance and mowing:

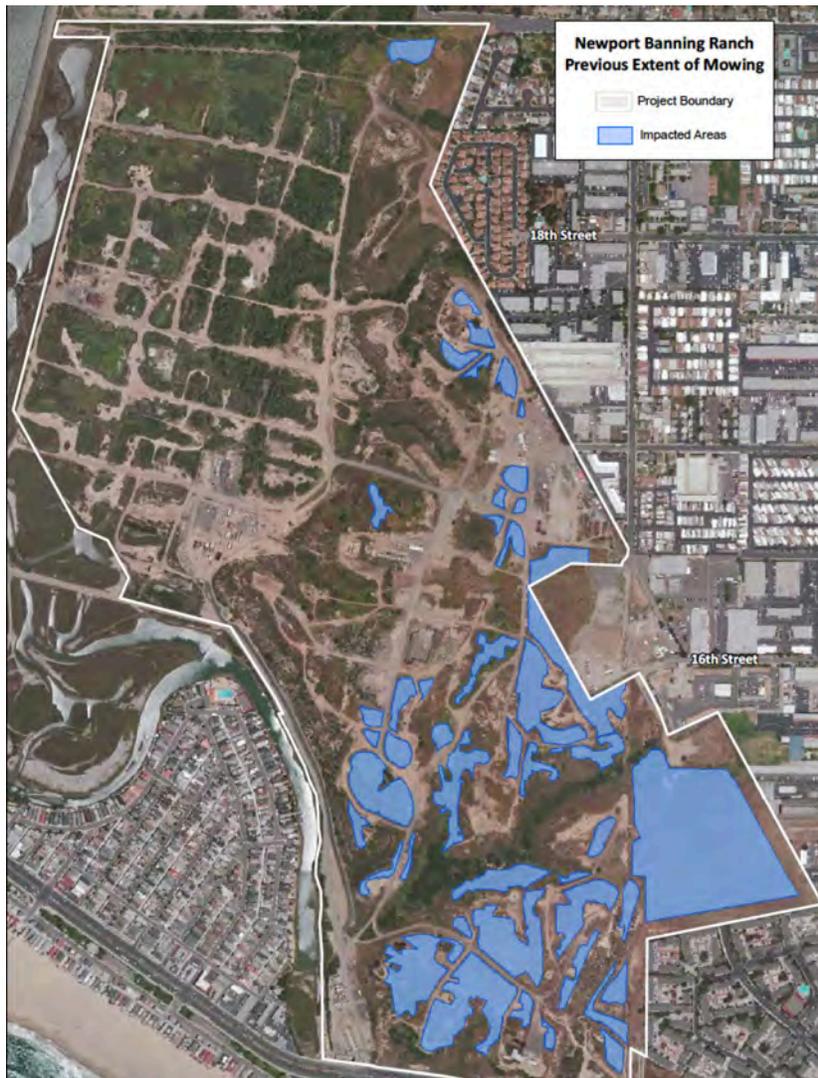


Figure 1. The areas subjected to unpermitted mowing and clearing of native vegetation largely coincide with the areas now proposed for residential/commercial development. Source: Coastal Commission Cease & Desist Order CCC-15-CD-01.

As you know, repeated unpermitted illegal mowing of most of the site's uplands over a period of decades undoubtedly resulted in widespread degradation of natural resources. For example:



The photos above show the same patch of Coastal Prickly-Pear before and after unpermitted clearing. Note that only the native cactus was removed, leaving the exotic *Myoporum*, even though the cactus appeared to be healthy whereas the background *Myoporum* appeared to have been in poor condition. This indicates intent to remove potential ESHA versus random removal of unhealthy vegetation. Source: Banning Ranch Conservancy.



The photos above show the same patch of California Encelia scrub before and after unpermitted clearing. Source: Banning Ranch Conservancy.

These photos are included to demonstrate the extensive and purposeful nature of the Coastal Act violations undertaken by the applicant ahead of their plans to convert Banning Ranch into a massive residential/commercial development. I will return to the issue of habitat disturbance and recovery, and its implications for project planning, later in this letter.

RESPONSES TO COMMISSIONERS' ESHA COMMENTS

During the hearing on October 7, 2015, commissioners expressed their thoughts about ESHA and how it should be dealt with on Banning Ranch, with comparisons to other parts of California. Quotes are provided below, with time stamps from the official video archive.

Mitigation for ESHA

Commissioners Wendy Mitchell and Martha McClure discussed whether it might be possible to deal with ESHA issues through some form of restoration.

Commissioner Mitchell at 9:33:00:

I think this is a question for Dr. Engel: So, can the vernal pools and the wetlands and all the ESHA, can that be restored, rehabilitated, created, etc., through a plan? Or when it's gone it's gone and that's why we're told you can never develop in ESHA?" Follow up after Dr. Engel's answer to the effect that you can improve pools but moving them is not an option: "You couldn't create a vernal pool somewhere... You couldn't take the vernal pool and move it to another location..."

Commissioner McClure at 9:51:56:

Testified that the Commission, a month earlier, when considering an unspecified trail, had identified "trees or brush that was ESHA, but it was in such isolated pockets, and it was all so struggling... I'm wondering why we wouldn't want to create a better environment for ESHA on a piece of property that has been bulldozed and treated with oil."

Commissioner McClure at 9:57:57:

And so I waffle on the ESHA discussion, because I don't know when we want to move into remediation. Because, literally, if this piece of property burned tomorrow, five years from now that brush that's there is going to be back. And it would be a horrific thing to happen, I don't want that to happen by any means. But I know that, because I live where there's a lot of fires, that fire sometimes will sometimes enhance something. But I'm just thinking, why are we not moving to clean the property? And I think that this was an opportunity.

These comments get at the notion that some sensitive resources on Banning Ranch may have been "true" ESHA at some point, but that those areas are now disturbed or degraded, or struggling due to drought or some other cause. The general implication is that such resources do not warrant full protection under the Coastal Act. The attitude clearly expressed is, "Let's clean up the mess and create some nice pools and scrub (in places that aren't right in the middle of where the applicant wants to build)."

What is most striking to me is that the commissioners treat "disturbance" as if it is something that simply *happened* across large parts of Banning Ranch, without any human thought or intent, or any legal requirements to avoid it under the Coastal Act. To state the obvious: **It was the applicant, and other operators at Banning Ranch, who purposefully and illegally disturbed and degraded large swaths of the site, in direct violation of the Coastal Act, and with indications that potential ESHA was specifical-**

ly targeted, as recently as 2012. Why have so many commissioners chosen to completely ignore this recent history of extensive Coastal Act violations? Why are commissioners citing the areas illegally mowed by the land owner as a reason why the Coastal Commission should now approve some form of massive residential and commercial development (so long as it contains a restoration component)?

Whatever the answers are to those questions, this entire line of thinking was addressed in *Bolsa Chica Land Trust v. Superior Court*, 83 Cal. Rptr. 2d 850 (Cal. Ct. App. 1999):

. . . section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA. We do not doubt that in deciding whether a particular area is an ESHA within the meaning of section 30107.5, Commission may consider, among other matters, its viability. (See *Pygmy Forest*, supra, 12 Cal.App.4th at pp. 614-615, 15 Cal.Rptr.2d 779.) However, where, as is the case here, Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. (Id. at p. 617, 15 Cal.Rptr.2d 779.) There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, **ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection.** (See *Pygmy Forest*, supra, 12 Cal.App.4th at p. 617, 15 Cal.Rptr.2d 779.) [emphasis added]

In this regard we agree with the trust that Commission's interpretation of section 30240 would pose a threat to ESHA's. As the trust points out, if, even though an ESHA meets the requirements of section 30107.5, application of section 30240's otherwise strict limitations also depends on the relative viability of an ESHA, **developers will be encouraged to find threats and hazards to all ESHAs located in economically inconvenient locations. The pursuit of such hazards would in turn only promote the isolation and transfer of ESHA habitat values to more economically convenient locations. Such a system of isolation and transfer based on economic convenience would of course be completely contrary to the goal of the Coastal Act, which is to protect all coastal zone resources and provide heightened protection to ESHA's.** (§§ 30001, subds. (a)-(c), 30001.5, subd. (a); *Pygmy Forest*, supra, 12 Cal.App.4th at p. 613, 15 Cal.Rptr.2d 779.) [emphasis added]

Fragmentation of ESHA

Steve Kinsey, the current Chair of the Commission, put forth a related argument, concerning whether it is appropriate to preserve "fragmented" ESHA.

Commissioner Kinsey at 10:09:40:

What I also want to say is that, you know, we talk about ESHA like it's a black and white issue. And perhaps for our biologist it could be. For a commission, for the general public, I think that when species are fragmented, when sites are heavily disturbed, that becomes a factor for me in whether something is ESHA.

Banning Ranch is a large, 401-acre property that is part of the much larger lower Santa Ana River ecosystem. Banning Ranch supports a reasonably intact ecosystem consisting of coastal marsh, riparian, bluff scrub, grassland, and vernal pool communities. The "fragmentation" that people perceive when they focus on areas disturbed by the land

owners and oil operators, legally or illegally, generally represents a temporary condition that can heal either (a) through the passage of time, or (b) through targeted restoration efforts. What is important, ecologically, is that Banning Ranch represents a microcosm of the type of integrated, multifaceted wetland/upland ecosystem that characterized this part of the coastal zone until the very recent past. The reason that Banning Ranch supports so many rare, threatened, and endangered wildlife species (on par with Bolsa Chica or Upper Newport Bay) is that reasonably intact upland/wetland ecosystems areas are now virtually nonexistent anywhere in the Los Angeles/Orange County area. Banning Ranch is, therefore, *precisely* the type of area that led to enactment of the Coastal Act during the 1970s.

The reason ESHA is required to be preserved without compromise is that, on the coast of California, those limited and unique areas that support rare, threatened, and endangered species are under constant pressure to nibble away at their edges, and to increase their level of degradation and fragmentation through siting of roads, trails, and other human amenities within the natural setting. At some point, ESHA can become degraded to the point where it no longer supports rare, threatened, and endangered species. For example, Banning Ranch supported as many as **14 pairs of Cactus Wrens** during the 1990s, but this species appears to have been extirpated from the site within just the past six years. Many other sensitive wildlife populations do persist, but they can only do so with proper planning of development.

At Banning Ranch, planning to maintain the functions and values of the existing natural landscape *must* involve clustering the development around the edges of the site and preserving an intact, unfragmented area in the southern, central, and western parts of the property. Instead, all planning to date has sought either to (a) remove virtually the entire grassland/vernal pool ecosystem – leaving only a small grouping of pools surrounded by development in the northern part of the site – or (b) preserve some larger areas in exactly the type of fragmented, low-functioning condition that Commissioner Kinsey lamented in his comments. In this respect, the Coastal Commission's current approach appears to be leading toward a self-fulfilling prophecy of continued fragmentation and degradation rather than a plan based on ecological principles, which would provide for some level of coastal development and coastal access without sacrificing long-term protection of a reasonably complete, minimally fragmented, viable coastal ecosystem, in compliance with the Coastal Act.

Comparing Banning Ranch with Other Areas

Some commissioners balked at the notion of that the Coastal Act protects the natural resources present within an oilfield in Orange County to the same extent that it protects sensitive resources found in more classically scenic parts of California.

Commissioner McClure at 9:56:40:

I want to make one comment about Pebble Beach, and the oilfield. And I think Commissioner Mitchell nailed it. That here you were looking at an old growth forest, as

opposed to an oilfield. You know, and I'm not sure you can... In fact, I don't want us to put those two together, and when we line it up. And so, for me, I would like to see us find a solution to this. Granted, it may not be this project, but I'm really concerned that we're taking a piece of degraded property. [Then tells an anecdote about another project in northern California.]

Commissioner Kinsey at 10:10:00:

And I think when I listen to my colleague say, 'How can you take an old growth forest and compare it to a significantly disturbed oil field and say they're both ESHA?' We do have the ability to make those determinations and the findings associated with them, and I do believe that in this instance some of this highly disturbed area wouldn't be my definition of ESHA. We have to figure that out as a commission. But as far as I'm concerned, just because it said so on the staff report, or a map, that doesn't in and of itself make it ESHA. I go back to Sunset Ridge Park, which I was very pleased that the Newport community could get, there were arguments that the entire site was ESHA because Encelia was on that site. That site was taken down 40 feet by Caltrans when it wanted to make an interchange.

Given that nearly all land on the California coast shows signs of previous human disturbance, legal or otherwise, any "purity test" will inevitably lead to exclusion of many areas that retain important ecological values. The test of whether an area satisfies ESHA criteria must be whether that area provides ecological values that objectively satisfy the criteria identified in section 30107.5 of the Coastal Act — **or whether it would be expected to satisfy those criteria in the absence of Coastal Act violations** — not whether that area may have looked better or functioned better in its pristine, pre-contact condition.

The test of whether an area satisfies ESHA criteria does not include any reference to its scenic beauty, or to whether a non-biologist would "know it when he or she sees it." My review of two biological reports that Zander Associates prepared for The Pebble Beach Company regarding the Del Monte Forest (2001 and 2010) indicates that the Pebble Beach area, with its unusual soils, supports 19 rare, threatened, or endangered plant species, but only eight special-status wildlife species, one of which is federally listed (the Red-legged Frog). In comparison, the Draft EIR for Banning Ranch confirmed the presence of four special-status plants and 16 special-status wildlife species, including four species listed as threatened or endangered by state and/or federal governments (San Diego Fairy Shrimp, Least Bell's Vireo, California Gnatcatcher, and Belding's Savannah Sparrow). Many other special-status species were identified as having potential to occur, and do occur in the adjacent lower Santa Ana River area. So, by this measure, Banning Ranch supports roughly twice as many special-status wildlife species as the Del Monte Forest does, and four times as many listed wildlife species. Furthermore, Banning Ranch supports the following plant communities that are including the following that are called out by the State of California's Natural Diversity Data Base (CNDDDB) "special communities known or believed to be of high priority for inventory":

- California Encelia Scrub (CNDDDB element 32.050.00)
- *Opuntia littoralis* – Mixed Coastal Sage Scrub (CNDDDB element 32.150.02)
- Purple Needlegrass Grassland (CNDDDB element 41.150.00)

- Pickleweed Mats (CNDDDB element 52.215.00)
- *Salix lasiolepis* Riparian Woodland (CNDDDB element 61.201.01)
- Black Willow Thickets (CNDDDB element 61.211.00).

Southern Vernal Pool is not regarded as a special community by the CNDDDB, but this community is extremely rare in Orange County (Banning Ranch and nearby Fairview Park are the only coastal vernal pool complexes in Orange County); provides the required habitat of the federally endangered San Diego Fairy Shrimp; serves as a source of fresh water for a variety of other plant and wildlife species; and occurs within a matrix of grassland that provides habitat for the Burrowing Owl and several other grassland-dependent species that are limited to only a small number of locations in the coastal zone of southern California. For these reasons, the Southern Vernal Pool community is also widely regarded as being especially rare and ecologically valuable.

Given the documented rarity of the natural resources found in virtually every part of Banning Ranch, and given the documented history of extensive Coastal Act violations at this site, it is extremely concerning to have Coastal Commissioners openly proclaiming that these coastal resources warrant **a lower level of Coastal Act protection** than do the more scenic coastal resources found in central or northern California. Although lacking the “old growth forests” that apparently embody ESHA for some commissioners, Banning Ranch is an irreplaceable piece of the ecologically rich natural landscape that once defined the Los Angeles/Orange County area. The Coastal Act was created, in large part, to ensure that such areas remain functional and valuable for rare, threatened, and endangered native plants and wildlife. The current planning that I have seen will not achieve this fundamental goal of the Coastal Act.

Is All ESHA Equal Under the Coastal Act?

Commissioner Kinsey at 10:10:58:

In truth, if we step back, if we all stood down for another hundred years and did nothing, everything would be ESHA. And everything was ESHA, by our definitions, before we got here. So I think that’s something we have to work with as a commission.

Rather than “standing down for another hundred years,” people are doing the opposite, charging ahead with intensive development on every possible square foot of real estate in the coastal zone. This relentless pressure to modify the coastal environment was the impetus for writing and enforcing the Coastal Act in the first place. The people of California were, and are, concerned about aggressive patterns of land use that chew up irreplaceable resources without making a sincere effort to preserve ecologically functional fragments of California’s increasingly developed coastal landscape. Under the Coastal Act, all areas meeting specified ESHA criteria must be preserved in a manner that will preserve their ecological functions and values. The Coastal Commission may decide that it’s time to “work with” the strict protections for ESHA contained in the Coastal Act, but for now those protections are in place and cannot be arbitrarily ignored

by the Commission in those parts of the state where ecologically sensitive resources do not look like an old growth forest.

RECOVERY OF NATURAL COMMUNITIES FOLLOWING ILLEGAL CLEARING

The following photos were included as Figures 9B and 9C of Dr. Engel's memorandum dated September 25, 2015 ("ESHA and Wetland Determination for Banning Ranch, Orange County, California").



The photos above show an area of Banning Ranch subjected to unpermitted mowing on September 19, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.



The photos above show an area of Banning Ranch subjected to unpermitted mowing on May 30, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.

These photos show that, despite a record four-year drought that has not yet broken, substantial areas of Southern Coastal Bluff Scrub dominated by California Encelia (*Encelia californica*) have begun to vigorously recolonize areas that were cleared. This natural recolonization of illegally cleared habitat stands in contrast to comments made by some commissioners at the hearing on October 7, who suggested that disturbed areas would inevitably be overtaken by ice plant and other exotic weeds found in some parts of Banning Ranch. And, of course, the applicant and their consultants continually reinforce the

demonstrably false assertion that only their restoration plans, which they would carry out in concert with their massive development, will be able to halt the slide of Banning Ranch toward becoming one giant patch of exotic weeds.

BIOLOGICAL VALUE OF ENCELIA SCRUB

The applicant, NBR, and their consultant, Dudek, have adopted a strategy of characterizing native scrub dominated by California Encelia (*Encelia californica*) as being of “poor quality.” Dudek repeatedly emphasizes the “disturbed” nature of the areas of recovering scrub, and makes numerous bizarre and unsubstantiated claims about the putatively low biological value of Encelia-dominated scrub. Typical is the following quote from Page 1 of an unsigned submission to the Coastal Commission from NBR/Dudek dated December 1, 2015, responding to Dr. Engel’s September 25, 2015 memorandum:

We also request that Staff consider the fact that the low-growing monocultural encelia that has colonized some disturbed areas has not contributed to increases of CAGN - suggesting that such areas have little benefit for the CAGN and do not meet the minimum threshold for ESHA.

Also on Page 1:

On the site, it functions as a weed and will require some level of control when habitat restoration begins and existing patches are incorporated into those efforts.”

Page 10:

The NBR habitat is of general poor quality for CAGN based on monotypic, Encelia dominated, California sagebrush lacking, patchy and weedy habitat. Much has been discussed in the Memo of the regeneration of high quality Encelia in areas that had formerly been mowed, or the value of grasslands. These areas do not support valuable foraging habitat – in fact it is highly likely that CAGN will not forage in these areas until larger shrubs are present which would provide some cover and stable perch.

These claims by Dudek are erroneous to the point of unethical malpractice. On December 13, 2015, I submitted a 19-page, point-by-point rebuttal to you and Dr. Engel, as well as other Commission staff members and biologists from the USFWS and California Department of Fish and Wildlife. I will provide this rebuttal letter to anyone who requests a copy. To very briefly summarize:

- The State of California recognizes Encelia Scrub, an early seral stage of Southern Coastal Bluff Scrub, as a “special community known or believed to be of high priority for inventory” (CNDDDB 2016).
- From 1992 to 2009, **twelve survey efforts** of Banning Ranch, conducted by four consulting companies, documented **15–29** gnatcatcher territories on the site. The surveys conducted by LSA Associates, most of which I participated in, became part of a published study (Erickson, R. A. and K. L. Miner. 1998. Six years of synchronous California Gnatcatcher population fluctuations at two locations in Coastal Orange County. *Western Birds* 29:333–339).

- All of Dudek's surveys (2013, 2014, 2015) were conducted under severe and ever-worsening drought conditions, which explains why they recorded several fewer territories than did everybody else. Their bizarre alternative hypothesis is that nobody else's previous survey results can be believed!

Dr. Jonathan Atwood also wrote Dr. Engel a letter, dated October 5, 2015, emphasizing the high value of the Encelia-dominated scrub on Banning Ranch.

It has been my own observation that California Gnatcatchers tend to occur regularly in California Encelia only after three or four years of growth, when the branches become woodier and the leaves become sparser and hence easier to move through. We are only now entering the period when the local gnatcatcher population can start to take advantage of California Encelia that is mature enough to provide high-value habitat for this species. With any luck, adequate precipitation will allow the local gnatcatcher population to start expanding again, to levels routinely recorded before the drought.

During review of the adjacent Sunset Ridge Park project, also in the City of Newport Beach, Dr. Engel prepared a memorandum dated September 22, 2011. Pages 7-8 of this memo state:

... in absence of the routine mowing, the areas identified as "Disturbed Encelia Scrub" would become dense stands of robust, nearly pure, California sunflower. California sunflower is a fast growing shrub and if it wasn't mowed it would reach heights of two to three feet over one growing season.

During my site visits I have seen these areas numerous times and have observed how closely spaced the mowed individual California sunflower plants are to each other. I have also reviewed the photographs of fresh growth during the growing season in Robb Hamilton's December 10, 2009 memorandum to Janet Johnson Brown, City of Newport Beach, "Review of Biological Resource Issues, Sunset Ridge Draft EIR" and I have no doubt that these areas would be dominated by California sunflower suitable for gnatcatcher foraging and possibly nesting without continued mowing. If the periodic mowing is legal, this area would not be ESHA, however, if the mowing is not legal, the area would be ESHA.

Thus, at Sunset Ridge Park, mowing that was later judged to be legal under the Coastal Act (due to grandfathering) represented the only factor that kept "Disturbed Encelia Scrub" from being considered California Gnatcatcher ESHA. Page 29 of the staff report for Sunset Ridge stated:

The disturbed encelia scrub would be used as foraging and potentially breeding habitat by the California Gnatcatcher if mowing of the vegetation were not occurring. The area of Disturbed Encelia Scrub would provide important natural resources and provide necessary ecological services for the California gnatcatcher if mowing of vegetation were not to occur. Based on this finding of biological significance, the "Disturbed Encelia Scrub" is major vegetation.

At Banning Ranch, however, mowing of Southern Coastal Bluff Scrub was *not* judged to be legal. Rather, this mowing was determined to violate the Coastal Act, and was therefore subject to Consent Cease and Desist No. CCC-15-CD-01. When major vegetation/ESHA is cleared illegally, the Commission normally treats the recovering habitat

as if it were intact (i.e., as though the violation had not happened). In this case, however, the staff seems intent upon finding reasons to avoid reaching the very conclusion that applied next door at Sunset Ridge — namely, that illegally mowed native scrub habitat should be regarded as being utilized by California Gnatcatchers, consistent with (a) the known habitat requirements of the gnatcatcher, and (b) designation of all of the scrub on Banning Ranch as critical habitat for the California Gnatcatcher.

Put another way, there is no way for California Gnatcatchers to have been recorded using a given patch of native scrub if that scrub did not exist because it was illegally mowed. This is the most important flaw in staff's current approach of distinguishing between coastal scrub where gnatcatchers have definitely been recorded (100-foot ESHA buffer) and coastal scrub where gnatcatchers were never documented (50-foot ESHA buffer). Staff's current approach rewards the applicant for having repeatedly mowed the scrub without a permit before birds could be seen using it.

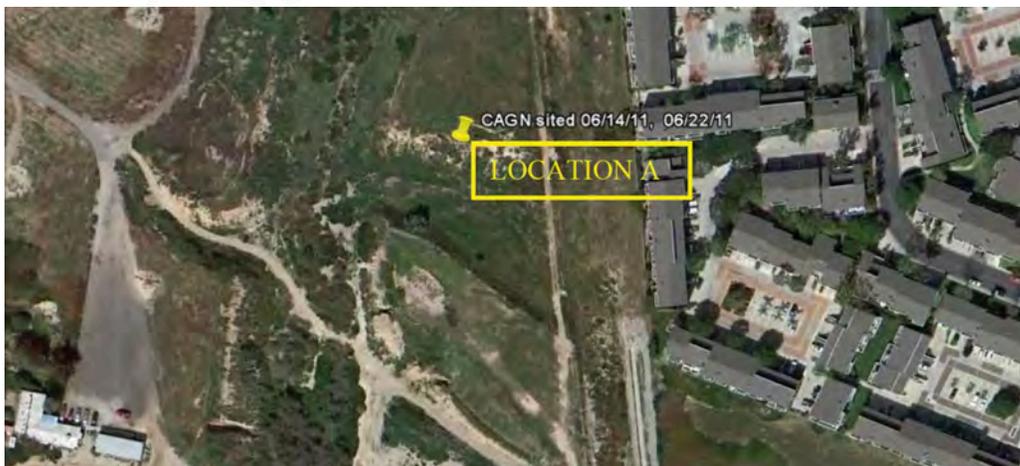
In several cases, staff's latest draft mapping treats areas known to have supported gnatcatchers as if they were not occupied. Appendix 2 to Dr. Engel's September 22, 2011, memorandum, prepared for Sunset Ridge Park, consists of the following email and attached aerial-based map from biologist Christine Medak of the UAFWS:

From: Christine_Medak@fws.gov [mailto:Christine_Medak@fws.gov]
Sent: Monday, July 11, 2011 4:13 PM
To: Jonna Engel
Subject: Fw: Banning Ranch Site Visit

Jonna,

These are the recommendations I provided to Tony following our site Visit on June 14. The following week, I again visited the site with Mike Mohler, George, Mike Sincacore, Ann Johnston and another biologist from BonTerra (don't remember his name). While reviewing the potential revised alignment of the park entryway we again encountered gnatcatchers east of the apartment complex and north of territory 2 in a small patch of CSS and willow scrub vegetation. **[LOCATION A ON EXHIBIT 1]** It appeared that a male was defending a territory in this location and was not just foraging in the vicinity. My understanding was that Mike Mohler was planning to have 2 independent biologists survey the area to determine how it was being used by the gnatcatchers.

Hope this helps.



Part of this patch of occupied scrub was illegally mowed in early 2012, as documented in Figure 9A of Dr. Engel's memorandum dated September 25, 2015:



Gnatcatchers Observed Foraging in this Habitat in June 2011 (Aerial taken March 26, 2012)



Habitat Area Shown Above Mowed in Late Spring 2012.

Figure 24 of Dr. Engel's memorandum dated September 25, 2015, shows another area of scrub where PCR biologists documented California Gnatcatchers in 2000 (shown in red):

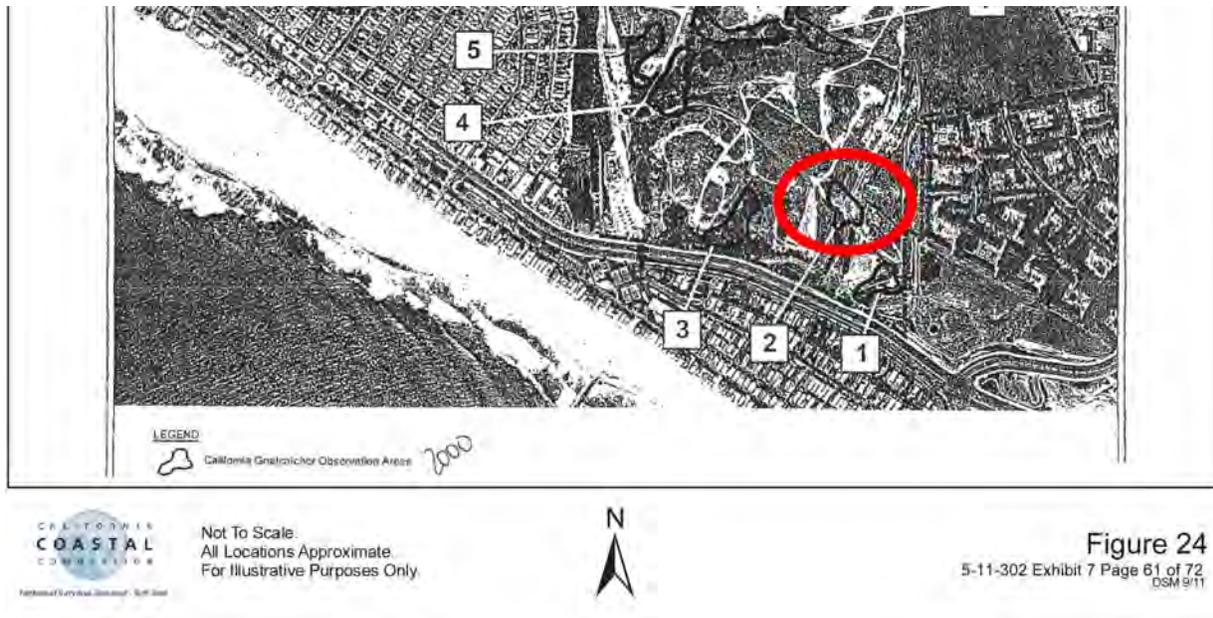


Figure 32 of the same memorandum (September 25, 2015) provides a compilation of the locations where California Gnatcatchers have been mapped between 1992 and 2013:



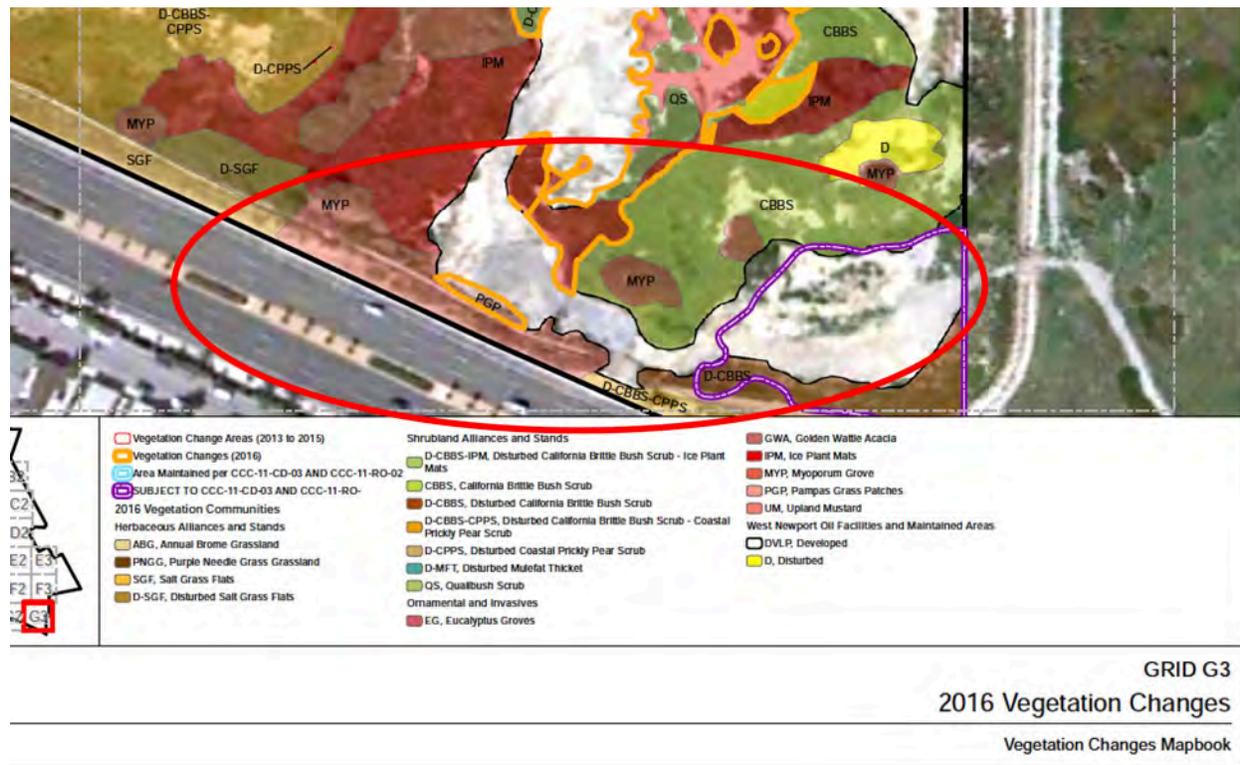
Figure 32. Dudek 1992-2013 Gnatcatcher Compilation Data.
For Illustrative Purposes Only. Source: Dudek. DSM 9/25/15

The only way staff's current draft map is able to allow a version of Bluff Road to be built in the southeastern corner of Banning Ranch is by consciously excluding or reducing the mapped extent of certain inconvenient patches of native scrub habitat that have been documented as supporting gnatcatchers. Providing the requisite 100-foot buffer

for the proven gnatcatcher habitat would not leave adequate room for the road, so the area of gnatcatcher habitat must be arbitrarily and purposefully reduced to a level that will allow for the road. Furthermore, failing to identify all scrub in that area as gnatcatcher habitat will, presumably, make it more palatable to seek a variance to extend another road west from Bluff Road into the 8.2 acres of potential development space that currently exists as a “bubble” unconnected to any other developed area.

ERRONEOUS MAPPING OF THE SOUTHEASTERN CORNER OF SITE

The plant communities present in the southeastern corner of Banning Ranch, in the general area where Bluff Road is planned, have been repeatedly mis-mapped for several years now, as I have demonstrated to staff and the applicant on numerous occasions. Nevertheless, Dudek’s January 2016 update contains the same errors. Dudek refuses to correct these errors, which facilitate the efforts of their client to establish the proposed intersection of Pacific Coast Highway and Bluff Road. I will point them out again, for the record, so that there is no confusion about what is happening.



In this map, the area along Pacific Coast Highway classified as Myoporum Grove (“MYP”) is composed of Quailbush Scrub, in the southeastern part, and a mix of Southern Coastal Bluff Scrub, Salt Grass Flat, Myoporum, and mixed communities that show some level of disturbance in the northwestern part. See the photos on the following page. The new addition in this area is a narrow band labeled “PGP” for Pampas Grass Patches. Limited Pampas Grass is present in the general area shown, but it is mixed in with much larger amounts of native scrub, and does not form its own community.

The following photos show areas in the vicinity of the southern terminus of proposed Bluff Road that are not vegetated with the Myoporum Grove community mapped there by Dudek.



I took the photos above on February 9, 2016, showing a complete lack of Myoporum in the southeastern part of the polygon where Dudek has been mapping Myoporum Grove for a number of years, most recently in January 2016. The scrub in this area is Quailbush Scrub, which is a form of Southern Coastal Bluff Scrub. Small amounts of Pampas Grass are visible in the right-hand photo, but these do not rise to the level of a separately-mapped community, as depicted in Dudek's 2016 map.



I took the photos above on February 10, 2016, in the northwestern part of the polygon that Dudek maps as Myoporum Grove. This area does actually have a small amount of Myoporum, shown in the background of the photo on the right, but it also has Salt Grass Flat, coastal scrub, and what appears to be dead Mulefat, all of which show some signs of disturbance/invasion by exotic plants such as Ice Plant.

It is apparent that Dudek's erroneous mapping facilitates the effort to install a new road through this area. What is not clear is why staff continues to accept this obviously flawed mapping, and uses it as the basis for planning of a road through this part Banning Ranch. The Coastal Act requires that planning be based on the best available science, which Dudek's map plainly is not.

STATUS OF CALIFORNIA GNATCATCHER IN SOUTHEASTERN CORNER

In the absence of detailed territory mapping that would be required to document the habitat areas used by California Gnatcatchers on the project site, the native scrub at the

proposed intersection of Bluff Road and Pacific Coast Highway must be assumed to be used by the California Gnatcatchers that are known to routinely occupy scrub in the southeastern part of Banning Ranch. The map below – which I first provided to the Coastal Commission several years ago during consideration of the Sunset Ridge Park project – shows multiple photo-documented occurrences of California Gnatcatchers foraging in Quailbush-dominated scrub along the edge of Pacific Coast Highway, on the Sunset Ridge Park site, during 2009/2010. These sightings are as close as 140 feet from the proposed intersection of Bluff Road and PCH. Photos on the next page show male California Gnatcatcher(s) that I photographed foraging in Quailbush on the Sunset Ridge site, along the shoulder of PCH, on November 6, 2009, and June 3, 2010. It is not credible to argue that, although gnatcatchers are known to use Quailbush scrub in these mapped areas, they do not use the same habitat 140 feet to the northwest.





The photo above shows a male California Gnatcatcher, in winter plumage, that I photographed in Quailbush near the corner of Superior Avenue and Pacific Coast Highway on November 6, 2009; the photo at left shows a male California Gnatcatcher, in breeding plumage, that I photographed in Quailbush on the slope above Pacific Coast Highway near the southeastern corner of the Banning Ranch property on June 3, 2010.

With gnatcatchers having been documented using the same kind of Atriplex-dominated habitat very close to the area in question, the birds must be assumed to use this same habitat in the disputed area that Dudek erroneously calls "Myoporum Grove." If the applicant desired to prove otherwise, they had more than 20 years to conduct the type of territory mapping that would be needed to make their case.

INADEQUATE TERRITORY MAPPING DATA

Coastal Commission staff is currently taking an approach that would differentiate between native scrub communities that have been documented as being used by California Gnatcatchers (which receive 100-foot buffers) and native scrub communities that have *not* been documented as being used by California Gnatcatchers (which receive 50-foot buffers). This is troubling since most California Gnatcatcher surveys conducted on Banning Ranch over the years have mapped the approximate location of each gnatcatcher pair/individual using a single "dot" or, during some survey efforts (some of which I participated in), personnel followed pairs for limited periods on a limited number of days, mapping only a portion of the actual area used by gnatcatchers during the breeding season. No surveys have employed accepted methodology for determining the extent of a territory defended by a pair of California Gnatcatchers, either during the nesting season or during the non-breeding season (when the birds are known to wander much more widely and use non-scrub habitats).

The generally accepted standard methodology for mapping passerine bird territories calls for **ten visits** conducted roughly one week apart from the start of breeding through fledging of young (International Bird Census Committee. 1969. Recommendations for an international standard for mapping method in bird census work. *Bird Study* 16, 248-255). The standard territory mapping method will, inevitably, yield larger and more accurate territory boundaries compared with the limited, non-standard methods employed during some of the surveys at Banning Ranch. There is no legitimate way to use the existing maps of gnatcatcher survey results to distinguish between "occupied" and "unoccupied" native scrub in any of the general areas of Banning Ranch where California Gnatcatchers have been repeatedly observed over a period of decades. As noted previously, the entire Banning Ranch property is designated as critical habitat for the gnatcatcher, and all patches of native scrub on the site provide the primary constituent elements of this species' breeding habitat.

Since staff cannot cite any adequate, credible evidentiary basis for distinguishing between "occupied" and "unoccupied" native scrub, the default assumption must be that all native scrub located in the general vicinity of gnatcatcher observations is utilized by gnatcatchers. As discussed at length previously, this is especially true for those areas where gnatcatchers have been documented as occupying the scrub during one or more survey efforts, yet staff fails to identify the scrub as California Gnatcatcher ESHA. For these reasons, all native scrub occurring in the vicinity of gnatcatcher sightings should be identified as gnatcatcher ESHA and buffered by 100 feet.

INADEQUATE SPACE FOR CONSTRUCTION WEST OF VERNAL POOL 1

In the mapping I have reviewed, staff proposes to allow road access west of Vernal Pool 1 (“VP1” within the upper red circle) and west of Vernal Pool CC (“CC” within the lower red circle). This is another part of the site where staff is clearly attempting to shoe-horn in development by manipulating the extent of ESHA buffers.

For example, polygons of “CBBS Coastal Sage Scrub” west and north of Vernal Pool 1, and directly east of documented gnatcatcher ESHA, are not considered to be “Coastal California Gnatcatcher Habitat.” As in other parts of the site, it is fallacious to suggest that gnatcatchers go only as far as the extent of staff’s orange screen, but not into the adjacent pale green area of equally suitable habitat.

Second, there is a band of native “Mulefat Thicket” encircling Vernal Pool 1. This native scrub habitat is currently given no buffer at all, despite being a wetland habitat type associated with a vernal pool.

Third, a very narrow area of “potential development” is passes just east of Vernal Pool “CC”. It seems unlikely that development can be accommodated within that narrow band without having to extend grading or fuel modification into ESHA buffer.

APPLICANT INTENDS TO RESTORE GENERIC SCRUB

Southern Coastal Bluff Scrub, and the form of this community that the CNDDDB currently recognizes as the “*Encelia californica* (California brittle bush scrub) Alliance”) are unique and ecologically sensitive plant communities that occur in very limited parts of Orange County and elsewhere in the region – they are not interchangeable with other scrub types. This is important, because the applicant plans to restore scrub at Banning Ranch with generic sagebrush-buckwheat scrub that does not occur there naturally. Page 5 of the applicant’s December 2015 submission to the CCC (regarding California Gnatcatchers) stated:

While the current NBR site supports poor, yet occupied CAGN habitat, the ultimate project will restore or enhance all of the sage scrub open space areas to high-quality scrub which will return California sagebrush, California buckwheat, and other appropriate shrubs to the landscape.

It would be ecologically inappropriate and entirely unnecessary to plant Banning Ranch with generic sagebrush-buckwheat scrub that does not occur there naturally. Please do not let this happen.

INADEQUATE BURROWING OWL ESHA

The aerial-based map on the next page shows areas where Burrowing Owls have been recorded during biological surveys since 2008, as well as the area of Burrowing Owl ESHA identified by Dr. Engel in 2015. Dr. Engel’s analysis of project effects on the Burrowing Owl and its required habitat at Banning Ranch cites two reports:

- California Burrowing Owl Consortium. April 1993. Burrowing Owl survey protocol and mitigation guidelines.
- California Department of Fish and Game. September 25, 1995. Staff Report on Burrowing Owl Mitigation.

The State of California's current policies regarding conservation of the Burrowing Owl are contained in the following reports:

- California Department of Fish and Game. April 14, 2008. *Guidance for Burrowing Owl Conservation*. Habitat Conservation Branch, Wildlife Branch, Bay Delta Region, Sacramento, California.
- State of California, Natural Resources Agency, Department of Fish and Game. March 7, 2012. *Staff Report on Burrowing Owl Mitigation*.

A stated purpose of the State's 2008 *Guidance for Burrowing Owl Conservation*, given on Page 2, is to:

Provide guidance that **supersedes** and augments or clarifies the Department's Staff Report on Burrowing Owl Mitigation (1995; www.dfg.ca.gov/wildlife/species/docs/buowlmit.pdf) and the California Burrowing Owl Consortium's Survey Protocol and Mitigation Guidelines (1993, 1997; www.dfg.ca.gov/wildlife/species/docs/boconsortium.pdf). [Emphasis added]



The aerial photo at left shows locations where Burrowing Owls have been documented wintering on Banning Ranch during certain years between 2008 and 2015. It also shows the 1.1-acre area of Burrowing Owl ESHA identified by Dr. Engel in the September 2015 staff report.

The cover page of the State's 2012 *Staff Report on Burrowing Owl Mitigation* states:

This document **replaces** the Department of Fish and Game 1995 Staff Report On Burrowing Owl Mitigation. [Emphasis added]

Since the 2008 and 2012 reports supersede or replace the 1993, 1995, and 1997 report, it is inappropriate for Coastal Commission staff to cite the outdated reports in their analysis of the Banning Ranch project.

Page 1 of the State's 2008 *Guidance for Burrowing Owl Conservation* provides the following synopsis of the conservation threats facing Burrowing Owls in California [emphasis added]:

Additional immediate protection is needed for the Burrowing Owl (*Athene cunicularia*), a vulnerable California Bird Species of Special Concern (Gervais et al. 2008) and federal Bird of Conservation Concern (U.S. Fish and Wildlife Service 2002), that was the subject of a listing petition to the State of California Fish and Game Commission in 2003. Most Burrowing Owl populations in California still face the same primary threats they did three decades ago (Gervais et al. 2008). Burrowing Owl population declines continue, primarily caused by habitat loss and control of California ground squirrels (*Spermophilus beecheyi*) and other host burrowers.

Concerted conservation actions are needed to maintain viable burrowing owl populations in California and to help prevent the need to list this species under the state or federal endangered species acts.

A comprehensive strategy for its conservation in California is now in progress, which will provide more detailed guidance on measures to protect this species.

Existing legal protection under the California Environmental Quality Act (CEQA), one of the State's principal statutes to address significant environmental impacts, does not substantially contribute to burrowing owl conservation because lead agencies have broad discretion in identifying environmental impacts as significant and, even where they do, significant impacts need only be mitigated to the extent feasible. As a result, lead agencies **do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls**. Current conservation activities, except under a few approved regional conservation plans, are usually implemented piece-meal, typically at the level of the individual owl, to avoid take. In addition, prohibitions on take of burrowing owls are often circumvented, and due to buried or transitory evidence, are not easily enforced.

Suitable conservation areas that could benefit this species through acquisition and management have yet to be identified in most of the State. All these deficiencies remain obstacles to long-term owl conservation, **can lead to local extirpation of resident owl populations, and could cumulatively preclude options for future conservation of this species**.

Page 14 of the State's 2008 *Guidance for Burrowing Owl Conservation* summarizes the Burrowing Owl's ecological requirements as follows [emphasis added]:

Foraging habitat is essential to burrowing owl persistence. Mitigation for impacts to burrowing owl foraging habitat within home ranges should be required based on site-specific evaluation of existing land use patterns, prey availability, and other ecological factors. Use-

ful as a rough guide to evaluating project impacts and appropriate mitigation for burrowing owls, adult male burrowing owl home ranges have been documented (calculated by minimum convex polygon) to comprise anywhere from **280 acres** in intensively irrigated agroecosystems in Imperial Valley (Rosenberg and Haley 2004) **to 450 acres** in mixed agricultural lands at Lemoore Naval Air Station, CA (Gervais et al. 2003), **to 600 acres** in pasture in Saskatchewan, Canada (Haug and Oliphant 1990). **But owl home ranges may be much larger, perhaps by an order of magnitude, in non-irrigated grasslands** such as at Carrizo Plain, California (Rosenberg, pers. comm.), based on telemetry studies and distribution of nests. Because of the larger owl home ranges and more difficult access for telemetry studies in these ecosystems, home range size is not well understood (Rosenberg, pers. comm.) In general, burrowing owls in many study areas have been documented to forage primarily within 600 m of their nests (within approximately **300 acres**, based on a circle with a 600 m radius) during the breeding season (Gervais et al., 2003, Haug and Oliphant 1990, Rosenberg and Haley 2004).

This same information on Burrowing Owl foraging-area requirements was provided on Page 7 of Dr. Engel's memorandum dated February 26, 2015, analyzing the potential effects of an unpermitted fence that the Newport Mesa Unified School District constructed on the northern boundary of the Banning Ranch property (<http://documents.coastal.ca.gov/reports/2015/3/th13a-3-2015.pdf>). In that report, Dr. Engel stated, "Burrowing owls require large expanses of open space for foraging," yet no similar statement is found in the analysis of the much more damaging Banning Ranch project. Why is that?

The staff report dated September 25, 2015 acknowledges that up to three Burrowing Owls have been documented wintering on Banning Ranch during recent years, but fails to consider that these owls "**require large expanses of open space for foraging.**" Rather, the staff report identifies only 1.1 acre of ESHA for the Burrowing Owl, near the northern edge of the mesa, and concludes:

...winter survey data for the two southern portions of the property suggest that these areas are not frequently occupied by over-wintering burrowing owls and while they represent sensitive areas they do not rise to the level of ESHA."

This analysis is inadequate in at least four important respects:

1. Most importantly, **Burrowing Owls are known to require large expanses of grasslands or other suitable open space for foraging**, so even if the site supported only one Burrowing Owl per winter, there is every reason to expect that this owl would forage across all of the ~150 acres of available grassland/vernal pool habitat on the site, including the non-native annual grasslands. Preservation of an acre of Burrowing Owl ESHA around the most-frequently occupied burrow system would do little, if anything, to conserve the wintering owl population at Banning Ranch, so this does not represent a meaningful conservation measure. Although Dr. Engel recognized certain other areas of owl foraging habitat, such as scattered patches of native grassland, as ESHA in their own right, the history of Burrowing Owl decline in Orange County and throughout the coastal zone suggests that preserving only these areas, and their buffers, probably would not

be adequate to ensure continuation of owls wintering in this area. To reiterate information from the 2008 *Guidance for Burrowing Owl Conservation*. "lead agencies do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls."

2. Up to three Burrowing Owls have been documented on Banning Ranch during the winter months, with sightings from all of the upland mesa areas. It is unusual for the Coastal Commission to completely discount the importance of recent, verified sightings of rare species occupying areas of their required habitat. All of these areas should be preserved, not only because they almost certainly provide the foraging habitat required by one wintering Burrowing Owl, but because they have also been shown to be occupied by additional owls, at least during certain winters.
3. The survey data are far from extensive, consisting of a few surveys per year, and only during certain years. Most parts of the project site cannot be effectively surveyed from nearby public lands. Burrowing Owls can be difficult to observe because they occupy burrows, and because they can be missed when they fly from those burrows to forage at night. So there may have been additional owls wintering on the site even during the occasional years when small numbers of owl surveys were conducted. For example, Cindy Black of the Banning Ranch Conservancy (pers. comm.) reports having observed a Burrowing Owl near the northern site boundary eleven times during the month of January 2014. Biologists for Dudek did not report this owl during focused surveys "conducted during the winter season (January 8 - January 30)," although they did report an owl on the southern mesa during that period.
4. The surveys from 2008 to 2014 were conducted by Glenn Lukos Associates, Bon-Terra, and Dudek. These consulting firms have not earned the public's trust in terms of reliably identifying obvious sensitive biological resources on Banning Ranch. Inconspicuous resources, such as Burrowing Owls, could easily be missed (see, for example, the previous paragraph).

The 1996 book that I co-authored with Doug Willick, *Birds of Orange County, California; Status and Distribution* (Sea & Sage Press, Irvine, CA), characterized the status of the Burrowing Owl in Orange County as follows:

Grinnell (1898) considered the "Western" Burrowing Owl (*S. c. hypugaea*) an "**abundant resident** on the lowlands and mesas" of the Los Angeles basin. Sexton and Hunt (1979) called it a "**fairly common resident** . . . throughout coastal plain and foothills," noting an overall decline due to urbanization and ground squirrel control. Continued large-scale destruction and fragmentation of gently sloping grasslands has reduced the known population to a single pair near U.C. Irvine and four or five pairs at the Seal Beach National Wildlife Refuge (SBNWR; Peter H. Bloom pers. comm.). **Fall migrants and wintering birds are rare.** [emphasis added]

Twenty years later, in 2016, Burrowing Owls are no longer known to breed in Orange County; they occur only as rare fall migrants and winter visitors. My review of eBird

data (<http://ebird.org/content/ebird/>) for the past decade indicates that wintering owls are observed most regularly at SBNWR, Upper Newport Bay, and Bolsa Chica, with numbers typically in the range of 1–3 birds per winter at each of these sites. Thus, the 1–3 Burrowing Owls typically found at Banning Ranch represent a substantial proportion of the species' wintering population in Orange County.

The decline from common resident to rare fall/winter visitor is the same pattern seen across virtually the entire coastal zone of California. Thus, an overwhelming body of evidence leads to the conclusion that Burrowing Owls in coastal California are highly sensitive to loss, degradation, and fragmentation of occupied habitat, and cannot persist in small habitat fragments surrounded by development. Areas of open habitat extensive enough to support wintering Burrowing Owls are rare *anywhere* in the coastal zone, at least in southern California. These areas will need to be preserved if this species is to have a legitimate opportunity to persist as a winter resident in the coastal zone of our region. For these reasons, it is my opinion that the entire grassland/vernal pool ecosystem warrants designation as ESHA essential to the Burrowing Owl's persistence on the site. The idea that most of the grassland/pool ecosystem can be built upon, and the rest maintained as fragments amid the existing and planned residential development areas, while maintaining a 1.1 acre "Burrowing Owl ESHA" as shown in staff's current mapping, lacks all credibility.

SIMILARITY OF BANNING RANCH TO MORE MESA

The grasslands of Banning Ranch mesa bear a striking similarity to those found on More Mesa, located on the coast of southern Santa Barbara County:



The grasslands of Banning Ranch are comparable to those at More Mesa, shown here. Most of More Mesa has been designated as an ESHA since 1993, even though the non-native grasslands and associated riparian habitats at More Mesa lack the federally listed species found at Banning Ranch. Source: More Mesa Preservation Coalition.

It is the rarity of shortgrass coastal mesas across southern California, and the importance of these habitats to many declining plant and wildlife species, that make these landscapes biologically valuable. That Banning Ranch includes some large areas of native Purple Needlegrass grassland is a bonus, but for most wildlife species the question of whether grass is native or non-native is, in essence, academic. In addition to providing a functional matrix for dozens of rare, biologically rich vernal pools, the annual grasslands at Banning Ranch support such sensitive birds as White-tailed Kites, Northern Harriers, and Loggerhead Shrikes, in addition to the Burrowing Owls discussed previously. These grasslands also support large flocks of non-sensitive wintering birds, such as Western Meadowlarks and American Pipits, which are increasingly difficult to find in large numbers anywhere along the southern California coast due to widespread development of all types of grassland. For these additional reasons, all of the grassland/vernal pool habitat on Banning Ranch warrants designation as ESHA.

PROPOSED DISPOSITION OF ESHA

Page 22 of the staff report dated September 25, 2015, describes the applicant's proposed Habitat Conservation and Conceptual Mitigation Plan (HCCMP):

Most of the impacts to the site would be a result of the proposed remediation plan (RAP) and the mass grading to prepare the site for the housing development. The applicant is proposing compensatory mitigation in another location for most of these impacts, as opposed to restored in place. The plan for the mitigation is the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). The HCCMP presents a program for the onsite compensatory mitigation that is designed to mitigate the biological impacts caused as a result of the proposed project. The HCCMP was prepared as a mitigation proposal and assumes that the underlying impacts to the sensitive resources would be approvable under the Coastal Act.

The applicant invokes the putative power of the HCCMP to counteract all of the proposed project's adverse effects, but this approach is fundamentally inconsistent with the Coastal Act. Restoration of the habitats remaining around the edges of the new settlements could never fully offset these radical changes to the existing landscape. The natural communities in this area would not be able to continue functioning at the levels they currently do. Fortunately, the Coastal Act does not allow for the destroy-and-mitigate approach to ESHA proposed by the applicant.

"BALANCING"

Impacts to ESHA *may* be authorized under Section 30007.5 of the Coastal Act, known as the "balancing provision." Balancing may be invoked only in specific situations where ESHA policy conflicts with other resource protection policies of the Coastal Act. In such circumstances, the Commission is required to resolve any conflict between different policies of the Coastal Act in a manner which, on balance, is the most protective of significant coastal resources.

In this case, the main purpose of the proposed project is to bring a massive residential, commercial, and resort development to Banning Ranch. Any putative benefits to sensi-

tive coastal resources (e.g., from implementing the HCCMP or from increasing human access to coastal resources) would clearly represent by-products of this primary project objective. No policy of the Coastal Act encourages building this type of oversized, highly destructive project within a largely natural area known to support numerous sensitive coastal resources. Thus no “conflict” among Coastal Act policies exists that would enable the applicant to raise the balancing provision in the first place.

SUMMARY AND CONCLUSION

As detailed in this letter, the Banning Ranch Conservancy is gravely concerned with the direction that the Coastal Commission and staff are taking with the ongoing planning of the proposed residential/commercial project at Banning Ranch.

The Banning Ranch Conservancy does not believe that the Coastal Commission should be rewarding the land owner for unpermitted mowing and clearing of ESHA that has taken place across large swaths of the site over a period of decades. The main forms of “reward” contained in the staff’s current planning are:

- Failure to account for the fact that “disturbed” and “degraded” conditions on Banning Ranch have resulted, in many cases, from the applicant’s widespread and amply documented violations of the Coastal Act.
- Arbitrarily limiting California Gnatcatcher ESHA to only those specific areas where gnatcatchers have been mapped, rather than assuming that gnatcatchers use all potentially suitable habitat present within and around their territory locations (if the habitat existed at all, given that much of the site’s native scrub was illegally mowed once or twice a year for decades).
- Failing to identify as California Gnatcatcher ESHA some areas where gnatcatchers *have* been documented, seemingly in an effort to extend development into parts of the site that would otherwise be preserved.

The Banning Ranch Conservancy is concerned by comments made by Commissioners suggesting an eagerness to “work with” the strict protections for ESHA contained in the Coastal Act, for the purpose of decreasing the level of protection granted to “degraded” ESHA. Until such changes are made to the Coastal Act, we believe that any such arbitrary loosening of ESHA protection will be found to be inconsistent with provisions of the Coastal Act as interpreted through established case law.

The Banning Ranch Conservancy respectfully requests that the Coastal Commission insist upon a development plan that legitimately incorporates basic ecological principles by substantially reducing the loss and fragmentation of large blocks of habitat in the central and southern parts of the site. Such an approach is needed to provide for some level of coastal development and coastal access without sacrificing long-term protection of a reasonably complete, minimally fragmented, viable coastal ecosystem, in compliance with the Coastal Act.

The Banning Ranch Conservancy believes that the Coastal Act requires evaluation of the ecologically sensitive resources of Banning Ranch on their own merits, rather than comparing them with more scenic resources found in locations that some Commissioners regard as supporting “true” ESHA. That being said, any objective evaluation will yield the conclusion that few areas anywhere in California support the number and diversity of rare, threatened, and endangered species documented on Banning Ranch.

In an interview with the San Jose Mercury News published on February 12, 2016, the day after he was dismissed as Executive Director of the Coastal Commission, Dr. Charles Lester stated:

“Some of this might be wanting to finish the transition away to something different from the legacy of Peter Douglas, and hopefully it's not a fundamental undermining of the program,” said Lester, 53. “If this was about a power struggle between the commission and staff -- or me, as the representative of staff -- we still don't know how that power would be used if it shifts in a fundamental way.”

The Banning Ranch Conservancy is concerned that a radical shift in staff’s approach to this project – as reflected in current plans to shoehorn development into many areas identified as ESHA or ESHA buffer when this project was heard by the Commission in October 2015 – appears to reflect fallout from the “power struggle” referenced by Dr. Lester. For the specific reasons outlined in this letter, we are not convinced that staff’s abrupt reappraisal of ESHA on Banning Ranch represents your best scientific opinion, or your decades of experience interpreting the Coastal Act and its myriad precedents and legal interpretations. The Commission’s action against its widely respected Executive Director earlier this week, in conjunction with staff’s about-face on this project, leads us to fear that the era of truly independent, science-based planning of coastal development by the professional staff of the Coastal Commission may have drawn to a close. We sincerely hope that these fears are unfounded, not only for the quality of decision-making at Banning Ranch, but in consideration of all the future coastal development schemes that will be evaluated for Coastal Act consistency in the decades to come.

In closing, let me remind those who do not live in the Los Angeles/Orange County area that Banning Ranch is one of very few places where my children, and many others who live far from Pebble Beach, might one day be able to experience an authentic representation of the subtle and varied natural resources found commonly along the southern California coast through the middle of the 20th Century. The Coastal Act was enacted, in large part, to ensure that California’s preserved coastal landscapes remain functional and valuable for the full range of native plants and wildlife that rely upon them. Unfortunately, my review of staff’s most recent draft plans lead me to conclude that this fundamental objective of the Coastal Act is unlikely to be fulfilled at Banning Ranch under the new approaches to designating ESHA recently adopted by staff. Although I recognize that the dedicated members of the Coastal Commission staff are under pressure to meet questionable expectations from a Commission that has begun to undermine the

basis of its own existence — that is, upholding the Coastal Act in the face of ever-mounting development pressure — I request that you make a stand to uphold the Coastal Act's fundamental tenets, as you have for more than 40 years.

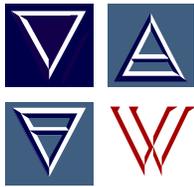
Thank you for your time and consideration. If you have questions, please send e-mail to robb@hamiltonbiological.com or call me at (562) 477-2181.

Sincerely,



Robert A. Hamilton
President, Hamilton Biological, Inc.
<http://hamiltonbiological.com>

cc: Dr. Charles Lester, CCC
Jack Ainsworth, CCC
Dr. Jonna Engel, CCC
Dr. Laurie Koteen, CCC
Amber Dobson, CCC
Karl Schwing, CCC
Lisa Haage, CCC
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Sherilyn Sarb, CCC
Andrew Willis, CCC
Jonathan Snyder, USFWS
Kevin Hupf, CDFW
Steve Ray, Banning Ranch Conservancy
Dr. Terry Welsh, Banning Ranch Conservancy
Tony Barboza, Los Angeles Times
Steve Lopez, Los Angeles Times
Dan Weikel, Los Angeles Times
Scott Martelle, Los Angeles Times
Adam Nagourney, New York Times
Jeremy White, Sacramento Bee
Alex Matthews, Capitol Weekly
John Howard, Capitol Weekly
Matt Coker, OC Weekly
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April 12, 2016

VIA EMAIL

Terry Welsh, Suzanne Forster
Banning Ranch Conservancy Board of Directors
P.O. Box 15333
Newport Beach, CA 92659-5333

RE: REVIEW OF PROPOSED REMEDIAL ACTION PLAN AND ESTIMATED SURFACE USE AREAS TO PERFORM REMEDIATION OF THE NEWPORT BEACH BANNING RANCH PROPERTY, NEWPORT BEACH, CA

Dear Mr. Welsh and Ms. Forster:

I, Nancy Beresky, P.G., Managing Principal Hydrogeologist of Waterstone Environmental, Inc. (Waterstone), have been retained by the Banning Ranch Conservancy (Conservancy) to evaluate the proposed remediation activities for environmental cleanup of the 401-acre Banning Ranch oil field property in Newport Beach, CA (Subject Property, see Figure 1). The remediation activities that are proposed are intended to prepare the Subject Property for residential and commercial redevelopment.

Qualifications

I have performed environmental assessment and cleanup of oil fields and other industrial sites in California for the past 26 years. I have been employed as a hydrogeologist by Waterstone for the past 19 years. I am certified with the State of California as Professional Geologist #7965 and have 38 years of work experience in various geological fields. Further information on my qualifications is included in Attachment A.

I have assessed and remediated numerous oil field properties including a 54-acre property in Santa Fe Springs that had a 100 year history of oil production and contained over approximately 160 abandoned and 25 producing oil wells. I designed the soil assessment of over 150 former sumps, tank farms, and other site uses and prepared the Remedial Action Plan (RAP) for remediation at 39 excavation areas. Excavations were enlarged until confirmation sampling indicated compliance with site cleanup levels based on human health risk. This site is now redeveloped with over 500 residential units named the Villages at Heritage Springs, the largest residential development in Santa Fe Springs since the 1960s. In 2012, Waterstone accompanied the City Manager, Mayor, and planning staff to accept the California Redevelopment Association's 2012 Award of Excellence in the Special Citation category for the successful redevelopment of this brownfield project.



Retention

Waterstone was retained by the Conservancy to evaluate whether the proposed Remedial Action Plan (RAP) for the Subject Property is complete, whether there is inconsistent, incorrect, or missing information, whether remediation volumes are over- or under-estimated and whether the acreage proposed for the Soil Remediation Planning Area (Exhibit 1 included in Attachment B) is an appropriate size for remediation of oil field impacts on the Subject Property. Waterstone understands this document may be used to assist the California Coastal Commission (CCC) in its permit approval process for the development project.

Planned Remediation and Redevelopment

A brief project background description is included in Attachment A. The entity planning to perform redevelopment of the Subject Property, Newport Banning Ranch LLC (Proposed Developer), has retained Geosyntec Consultants (Geosyntec) to perform site assessment and remediation planning. Geosyntec has prepared several Remedial Action Plan (RAP) and other documents (listed in Section 1.0) describing planned remediation activities that Waterstone reviewed for this evaluation.

EXECUTIVE SUMMARY

Based on Waterstone's review of documents listed in Section 1.0, the following summary and recommendation can be made:

- The proposed plan for remediation indicates that over 80 acres of surface will be disturbed for: (i) remedial excavations and (ii) Soil Remediation Planning areas. There are feasible alternatives for reducing this amount of surface disturbance as described in this document that should be considered to lessen the impact of the development on the Subject Property.
- Only 50% of the material that requires removal is oil-containing soil from historical oil field operations. The remainder is for removal and on-site burial of inert materials that do not necessarily require remediation or removal. Removal of inert materials and the plan to bury these materials onsite should be re-evaluated to avoid disturbance of ESHA.
- The Proposed Developer plans to disturb 22 acres of surface so that inert materials such as asphalt, concrete, and debris can be buried between 15 and 20 feet in depth instead of disposed offsite. While this is a great savings to the project, an evaluation must be made whether the cost benefit outweighs the potential destruction of ESHA.
- Important information is missing from the remediation planning documents for the Subject Property.



- The RAP is minimalistic and provides only general statements describing complex procedures such as the onsite treatment and re-use of oil-containing soil, the burial of waste materials, and the protection of Environmentally Sensitive Habitat Area (ESHA).
- No explanation or calculations were provided that can be used to verify the accuracy of the volumes of materials to be treated and buried or confirm the needed acreage for remediation or the Soil Remediation Planning area.
- In spite of the fact that the information is incomplete, it is still apparent from the Revised RAP that the Soil Remediation Planning Area is likely far larger than necessary.
- It is not possible to perform an adequate scientific review of the planned remediation and the Soil Remediation Planning footprint without providing missing information.
- Waterstone recommends that missing information described in this document be provided by the Proposed Developer to allow the CCC to adequately review the proposed development project application.

1.0 Documents Reviewed

I have reviewed the following documents related to Remedial Action Plan (RAP) procedures and actions and the areas of surface use proposed for RAP activities. I have provided an abbreviation for each of these documents in parentheses – these abbreviations will be used throughout my report.

- November, 2001: Environmental Assessment prepared by Geosyntec (2001 EA)
- February 18, 2015: Remedial Action Plan prepared by Geosyntec (Original RAP)
- September 16, 2015: Revised RAP prepared by Geosyntec. (Revised RAP)
- November 5, 2015: Addendum RAP prepared by Geosyntec. (Addendum RAP)
- November 19, 2015: A map entitled “Exhibit 1: Soil Remediation Planning” prepared by the Proposed Developer and included in Attachment B. This map was provided to me by the Conservancy and shows the areas proposed to be used as staging and treatment/equipment areas during the remediation activities described in the Revised RAP. (Exhibit 1 or Soil Remediation Planning footprint)
- December 3, 2015: Ground-Truthing Evaluation, Historic Oil Field Operations Areas prepared by Geosyntec. (GT Evaluation)
- December 15, 2015: Comments on Revised RAP prepared by the Regional Water Quality Control Board (RWQCB Comments).



2.0 Guiding Strategies Used by Geosyntec in Remediation Planning

According to the RWQCB Comments (p. 3), the RAP *“implementation has been designed to be a targeted and efficient plan that seeks to reduce the overall impacts of the work to the surrounding community and the environment.”* However, the RWQCB is not the oversight agency for ESHA protection and the Revised RAP provides no discussion or details regarding special procedures that will be employed for ESHA protection. Section 5.2 (p. 22) of Geosyntec’s original RAP indicates that one of the guiding strategies that Geosyntec followed in RAP planning is to *“...limit disturbance to desirable on-site vegetation and avian species.”*¹

In addition, environmentally sensitive areas are defined by section 30107.5 of the Coastal Act as: *“any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”* Information necessary to evaluate ESHA are further discussed in Section 3.

Another guiding strategy Geosyntec states in the Original RAP is to: *“Reuse remediated soil and recycled materials (e.g., concrete and ALM) in grading area development fills whenever possible.”* Information needed to evaluate “recycling” and “development fills” for the Subject Property is further discussed in Section 5.

3.0 Submitted Remediation Planning Documents are Incomplete and Inadequate to Evaluate ESHA

ESHA is an important resource on the Subject Property and there is a requirement to protect ESHA based on Section 30240 of the California Coastal Act. Therefore, all remediation planning must work around established ESHA. Without a final ESHA map that establishes the areas to be protected by the CCC, it is highly likely that the currently proposed remediation activities and the use of the Soil Remediation Planning Area, as well as areas around necessary excavation areas will destroy, damage or disturb significant ESHA.

Figures 2 and 3 show some examples of surface disturbances that are caused by oil field cleanup that result in much greater areas of excavation than originally anticipated due to “chasing” of well locations, piping, and contaminated soil once remediation field work starts. It is important to note that surface disturbances can be significantly minimized with careful advance planning (further discussed in Sections 3.3, 3.4, and 3.5). Figures 2 and 3 are photographs from Waterstone’s remediation of a 54-acre oil field property in Santa Fe Springs, CA (Villages at Heritage Springs) previously mentioned.

None of the documents prepared by GeoSyntec provide any discussion about the procedures and protocols that will be used to protect ESHA during remediation procedures.¹ (Section 3.3

¹ The Revised RAP states on p. 23: *“Sensitive species impact avoidance and potential mitigation efforts for the development-related project are addressed in the project biological studies.”* Geosyntec should provide a specific list of these documents which the CCC should then review to evaluate whether there are specific procedures for protection/restoration of ESHA such as those outlined in Section 3.3.



provides general procedures that should be used for ESHA protection). Based on the discussion in the subsections below, the RAP document should be newly revised to incorporate several missing items discussed in this section prior to re-submittal for CCC evaluation.

3.1 Needed: Final ESHA Map With an Overlay on a Map of All Areas Disturbed by Remediation Activities

A final ESHA map must be approved for the project site as a critical first step if habitats are to be protected in compliance with the Coastal Act. This is essential for remediation planning, and should be used in all aspects of mapping the Soil Remediation Planning footprint, but Waterstone's understanding is there is no final ESHA map at this point. **Note: I don't think the applicant will ever accept the ESHA map. The applicant will argue till the end of time for less ESHA.** If one of the project goals is truly to "...limit disturbance to desirable on-site vegetation and avian species" (as stated in the RAP), then under no circumstances should the existing RAP be approved by the CCC until a newly-revised RAP is submitted using a final ESHA map to establish remediation areas and procedures that can be evaluated as protective of ESHA.

It is important to understand the total amount of surface acreage that is to be disturbed by all remediation activities, given that protection of ESHA is a goal of the Coastal Act. Although the Revised RAP does not mention the acreage to be disturbed in total for the project, it is possible to calculate the disturbed surface area to be used in the Soil Remediation Planning footprint in the scaled drawing provided in Exhibit 1 (Attachment B). Remediation excavations will cause additional acreage to be disturbed by the excavation areas themselves plus the buffer zone work areas around each excavation that will be necessary for excavators and trucks to perform the excavation, stockpile soil, and load soil. Because the Revised RAP did not provide any direct discussion of the acreage disturbed by remediation areas, Waterstone performed these calculations in Table 2 (further discussed in Section 4.0).

Once the final ESHA map is established, it is critical to overlay this map on (i) the Soil Remediation Planning footprint AND (ii) a map showing the areas where excavation is to occur for removal of oil-containing soil, pipeline removal, well abandonment, concrete removal, etc. Identified excavation areas must include a buffer work zone around each excavation area so that excavators and trucks can maneuver and soil stockpile areas can be identified.

Using the ESHA map, the Soil Remediation Planning footprint should be revised to avoid ESHA. In addition, remediation areas should be re-evaluated to determine whether planned removal of inert materials and pipelines could be left in place in areas where ESHA exists (see Sections 3.4 and 3.5).

3.2 Needed: Usable Revised Exhibit 1

The current version of Exhibit 1 is unusable because there is not enough information to evaluate whether the proposed Soil Remediation Planning footprint will disturb or destroy significant ESHA. An updated Exhibit 1 should clearly illustrate the Soil Remediation Planning Areas to be designed to avoid ESHA estimated boundaries of remediation areas, (including excavation areas, areas of concrete and pipeline removal and oil well abandonment) as well as remediation



area buffer zones (for maneuvering of equipment and soil) , and traffic routes that will be used onsite.

3.3 Needed: Revised RAP with Procedures and Protocols for Protection of ESHA

An appropriately revised map of the entire site as discussed above should be used as the basis for identification of procedures and protocols for definition of ESHA. Even with defined procedures in place and trained remediation contractors, a significant amount of surface area can be disturbed by equipment as shown below in two photographs from Waterstone’s oil field remediation of 54 acres in Santa Fe Springs.

Excavation with Direct Loading to Trucks Requires a Large Enough “Buffer” Zone so Excavators and Trucks can Perform Remediation Activities.

(Note track mounted excavators cause more surface damage than equipment with rubber tires.)



Excavation with Stockpiling Prior to Loading on Trucks Requires a Much Larger “Buffer” Zone for Use as a Work Area



Figures 2 and 3 (attached at the end of this letter) show other areas of disturbance common to oil field abandonment activities.



The newly-revised RAP should include significant and detailed descriptions of exactly where and how ESHA-protective procedures will be carried out during excavation, soil and materials stockpiling, oil well abandonment, concrete and road removal, removed materials loading, removed materials transport, and confirmation sampling. Specifically, an explanation should be provided regarding how ESHA will be protected during the operation of numerous trucks, backhoes, graders, drilling rigs, concrete crushers, concrete breakers, and other vehicles that will be operated during remediation. Following is a list of procedures and protocols that could be used for ESHA protection:

- A final map showing clearly defined ESHA boundaries (See Section 3.1 above).
- A requirement that all equipment entering the site to be used for remediation be wheeled equipment and not track equipment which causes significant surface destruction.
- A requirement that excavated soil be directly loaded on trucks to minimize stockpiling.
- A detailed map identifying road locations and dimensions that will be used by vehicular traffic for ingress and egress to and from the Subject Property and across the Subject Property to remediation areas and the Soil Remediation Planning Area acreage.
- The roads that will be used should be overlain on the final ESHA map demonstrating that traffic routes are protective of ESHA.
- Identification of staking, fencing or other means to identify or delimit roads and discourage off-road entry into ESHA.
- Identification and dimensions of “buffer zones” around remediation excavation areas where equipment will need to work and move around as well as areas where stockpiled soil can be temporarily placed or where trucks can be loaded to move impacted soil to the Soil Remediation Planning Area.
- The buffer zones that will be used around every excavation area should be overlain on the final ESHA map demonstrating that buffer zones are protective of ESHA.
- Identification of staking, fencing or other means to identify or delimit buffer zones and discourage entry into ESHA outside of buffer zones.
- A detailed plan for an assessment of damaged ESHA after completion of cleanup.
- A detailed plan for restoration of ESHA in the event that ESHA is damaged during remediation activities.

3.4 Needed: Alternatives to Protect ESHA by Leaving Pipelines in Place

Given that there is ESHA on the Subject Property, it is unreasonable that the RAP provides no discussion of efforts made to avoid disturbance of ESHA. For example, underground pipeline removal can disturb a very large portion of surface area (see Figure 2) since pipelines are usually “chased” and it is difficult to pre-determine how much surface may be disturbed. While “chasing” pipelines is standard practice, it should not be the norm on the Subject Property because of the significant potential damage to ESHA. An alternative for abandonment of pipelines, which is also a standard practice, is to flush pipes to ensure that the contents are removed and then backfill those pipes with slurry. These alternatives should be considered in areas that will not be developed, as the presence of emptied and slurried pipelines beneath the ground does not pose a threat to human health or the environment.



3.5 Needed: Alternatives to Protect ESHA by Leaving Inert Materials in Place

In the areas of the Subject Property where there is to be no development, the removal of inert materials should be reconsidered because removal of these materials can cause significant surface disturbance (See Figures 2 and 3) and these materials pose no threat to the environment. The removal of asphalt roads, and concrete may destroy habitat that has successfully established itself around these old features, as is common in most oil fields. Concrete and asphalt can be placed in regular landfills and are not subject to environmental regulations, indicating these are inert materials that could easily be left in place without harming the environment or harming ESHA. These are other alternatives that should be considered to avoid impact to ESHA.

3.6 Needed: RAP Analysis of Where Pipelines and Inert Materials Can Be Left in Place

There should be an analysis in the RAP establishing and providing a map of the minimum amount of concrete, asphalt road materials, gravel, and pipelines that require removal and a detailed map should be provided in the RAP indicating the areas where this material and pipelines can remain in place because the benefit of protecting ESHA in certain areas may outweigh the benefit of removing pipelines and inert materials (concrete/asphalt/gravel), the removal of which are not required for site remediation. This would be highly beneficial to the Proposed Developer because it would significantly reduce costs and it will also protect ESHA which is a benefit to the public and compliant with the Coastal Act.

4.0 Submitted Remediation Planning Documents are Incomplete and Inadequate to Evaluate the Volume of Materials to be Remediated and the Acreage to Be Disturbed

To evaluate the size of the Soil Remediation Planning footprint, it is important to verify: (i) the volumes of material that require remediation, (ii) the procedures used to treat or dispose of the material, and (iii) whether the volumes of material match the size of the proposed Soil Remediation Planning footprint. Ultimately, the size required for the Soil Remediation Planning Footprint is controlled by the amount of material to be remediated or recycled and used on the Subject Property.

The volume of material that is required to be managed during remediation is provided by Geosyntec in the Revised RAP (see spreadsheet from Revised RAP in Attachment C) and is also documented by Waterstone in the attached Table 1. Table 1 shows that about 63% of the TPH soil Geosyntec estimates to be managed on the entire Subject Property comes from two PECs:

- 50,000-75,000 cubic yards (cy) TPH soil from **PEC-25**: Oil Well Pads and Linear Features (Pipelines and Roadways)
- 35,000-42,000 cy from **PEC-02**: Tank Farm Drill Site (TFDS)

In addition to TPH soil, PEC-25 also includes the removal of asphalt-like materials used as road paving with the estimated volume of:



- 90,000 -150,000 cy of asphalt/road material from **PEC-25**

Table 1 shows that only 50% of the materials to be managed are soil that is contaminated by crude oil and the remainder is inert material. Given the need to use 22 acres of the Soil Remediation Planning footprint for disposal by burial of inert materials, it should be determined whether the disturbance of 22 acres of surface is warranted for this disposal activity.

Table 2 is Waterstone's evaluation of the acreage that will be disturbed by remedial excavations, which is information not provided in the Geosyntec RAP documents. Although the Revised RAP has no calculation of disturbed acreage required by remedial excavation, each impacted area's thickness and volume was provided in 2001 as Table 4-1 (see Attachment D) in Appendix F of the Revised RAP which is a November 2001 "Environmental Assessment Report." (2001 EA).

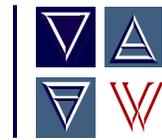
To calculate the acreage to be disturbed by the excavation of impacted soil, Waterstone performed the calculations on the attached Table 2 using information provided in Table 4-1 of the 2001 EA. Waterstone used Geosyntec's estimated volumes reported in 2001 (Table 4-1 "Impacted Soil Types and Gross Volumes") to compare against the total volume for each PEC documented in September 2015 in the Revised RAP. Waterstone also used the impacted volumes and areas to calculate the acreage that will be impacted by remediation of the proposed remediation areas.

The results of the analysis provided on Table 2 (page 3 of 3) indicate that the volume for remediation proposed in 2001 was 78,452 cy which is very comparable to the Revised RAPs high range estimate of 82,100. However, the Revised RAP added PEC-7, -20, -25, -26, and -27 which increases the volume of oil-containing soil by 53%.

Table 3 provides a total calculation of the acreage planned to be disturbed by remediation activities. Besides the 61 acres of the Soil Remediation Planning areas, another potential 20 acres will be disturbed by remediation activities (there is likely some overlap here). In any case, the total planned remediation footprint, at 82 acres, is larger (calculated on Table 3) than just the Soil Remediation Planning area.

While it is possible to calculate the acreage to be disturbed by the information provided in the 2001 document, it is not possible to calculate the disturbed acreage that has been added by the inclusion of PEC-7, -20, -25, -26, and -27 in the 2015 Revised RAP without maps and calculations showing where this acreage is on the Subject Property. The inclusion of the additional PECs increases the oil-containing soil volume by 53%. We know from the 2001 report that the acreage disturbed by the 2001 planned remediation activities is approximately 10 acres which will be significantly increased by the additional PECs identified in the 2015 Revised RAP. This disturbed acreage is for the excavated areas only and IS IN ADDITION TO the 63 acres planned for the Soil Remediation Planning footprint (although there are likely to be some remediation areas inside the Soil Remediation Planning footprint).

To assess whether the Soil Remediation Planning footprint is an appropriate size for the remediation contemplated in the RAP Documents, I have focused my evaluation on PEC-25 and PEC-02 because they comprise the vast majority of the material to be remediated.



4.1 Needed: Calculations to Verify the Estimate of 50,000-75,000 cy at PEC-25

Based on the information in Table 1, PEC-25 contains between 33% and 42% of the total volume of TPH soil to be removed. This is nearly double PEC-02 which has the 2nd largest volume of soil to be managed (23% to 29%). However, there is no way to verify these volumes because Geosyntec does not provide the backup calculations indicating how they arrived at the estimate of 50,000 to 75,000 cy of TPH soil for PEC-25, or 35,000 – 42,000 cy of TPH soil for PEC-2. This information is critical to perform an adequate review of whether the volumes are under or over estimated. Lacking this information, it is not possible to evaluate whether the remediation volumes are accurate and it is also not possible to determine whether the Soil Remediation Planning footprint is appropriately sized.

Although Geosyntec provides no direct discussion of how remediation volumes for PEC-25 were calculated, based on information from the Revised RAP, the estimate of materials may come from Figure 4. The Revised RAP, p. 15, Section 4.2 states: “*The assumption was made that surface areas² (worst case assumption made by aggregating each of the areas used by the oil operations during the 70-year oil field history) were at some time covered with oil sands, asphalt, gravel, or other oil operation materials and that those areas would require remediation in some way in the A&R work.*” This assumption is not scientific or accurate because it exceedingly overestimates remediation volumes for the following reasons:

- Oil field remediation is a common practice in Southern California and it is well established that contamination patterns in the oil field are centered around features used to store/produce oil and contain drilling mud and are not typically ubiquitous or widespread over large areas. Geosyntec acknowledges this in the Revised RAP, p. 17, Section 4.3.1.: “*...hydrocarbon concentrations decrease rapidly [i.e. within a few feet] with depth or distance away from a crude oil impacted area or source.*” Therefore, the assumption that there may be a need for remediation in every cleared area evident from aerial photos over a 70-year timeframe of oil field operations is inaccurate because it ignores important and well known information about oil field impacts.
- There is no environmental reason that gravel and asphalt must be removed. These are inert materials that can go to a regular landfill without environmental restrictions. While the Ground Truthing (GT) Evaluation acknowledges that (p. 1, para. 2) “*gravel-only impacts do not fit the characteristics of petroleum based waste products...they may be considered to be left in place,*” Geosyntec’s GT Evaluation fails to provide a revised estimate of the materials to be handled, leaving the inaccurate volumes of the Revised RAP as the most current remediation volumes for PEC-25. This is an error that prevents a meaningful evaluation of the remedial actions planned and should be corrected in a newly-revised RAP and Exhibit 1 before the CCC reviews the application for the development.

² Which is described in the GT Evaluation (page 1, 2nd para.) “*These historical oil field use areas were originally determined using historical aerial photography showing areas that were cleared at some time in the history of the oil field, though most were now vegetated areas.*”



The GT Evaluation was performed specifically to; “...review areas in and around what was previously classified as historic oil field use areas, particularly roads and work areas that potentially contained materials that would require removal as part of the A&R work.” On the same page, the GT Study states: “The evaluation found both reductions and additions to historic use areas requiring A&R removals.”(GT Evaluation, p. 1, para. 2). Inexplicably, there is no resulting reduction or addition to the volumes originally presented in the Revised RAP Table 1. The GT Evaluation merely provides the reduction and addition in terms of acreage which is information that can't be used to accurately understand how volumes are affected and how the Soil Remediation Planning Area is ultimately affected. Table 2 provides the requisite information that the GT Evaluation should provide (note the blank column for the GT Evaluation).

4.2 Needed: Remove Remediation Volumes inside the TFDS from the Areas Requiring Remediation

According to the Revised RAP, the TFDS remediation includes the removal of 35,000 to 42,000 cubic yards of material. Given that this operation is to remain, it should be determined whether the removal of this material is necessary at this time. Typically, remediation of soil at operational oil field features is not performed until the operations cease. Because soil from this area is the 2nd highest volume on the Subject Property, it should be re-evaluated so that volumes are not unnecessarily inflated.

4.3 Needed: Geotechnical Information to Verify Areas Requiring Overexcavation

Table 1 shows that the two largest areas of the Remediation Planning Areas are the Borrow/Placement Area and the Clean Soil Flip Area. Together, these comprise approximately 36 acres of the approximately 61 acres of the Remediation Planning Areas (60%). The revised RAP, Section 5.2, p. 22 (first bullet) states that Borrow/Placement Areas: “... were chosen from areas of natural fill soils that would require geotechnical over-excavation as part of any development corrective grading.”

Given that ESHA is to be protected, and the disturbance of 36 acres is cited in the Revised RAP for geotechnical reasons, there should be geotechnical work that backs up this statement. However, there is no geotechnical study that Waterstone knows of that supports a geotechnical reason for disturbing the 36 acres. This missing information should be provided.

4.4 Needed: An Alternative Plan to Minimize or Eliminate On-Site Disposal of Asphalt and Concrete

According to the Revised RAP (p. 24), the Proposed Developer plans to:

- (i) dig the 22 acres of the Borrow/Placement Area to a depth of 20 feet,
- (ii) put the excavated clean soil on the 14.5 acres of the Clean Soil Flip Area,
- (iii) bury concrete and asphalt materials from PEC-25 between 15 and 20 feet in depth and
- (iv) fill the 0-15 foot depth with soil from the Clean Soil Flip Area that was originally dug out.



This procedure does not represent “recycling,” this is simply “on-site disposal.” Given the potentially significant destruction of ESHA over 36 acres during this process, it is important for the CCC to evaluate whether this is an acceptable practice for the Subject Property.

On other oil field redevelopment projects, concrete from the oil field is crushed and used to fill remediation excavations and asphalt materials are taken to the dump with other construction debris. In addition, crushed concrete is a sought-after fill material that can be made available at a cost to parties that need fill. While the on-site disposal of concrete and asphalt is attractive to a developer because of much lower costs, it must be determined whether the disturbance of 22 acres to a depth of 20 feet and a staging area of 14.5 acres for dug out soil is an appropriate procedure to conduct on the Subject Property.

4.5 Needed: Map Showing Soil Removal Planned in Sump Areas of PEC-26

The Revised RAP indicates that oil well sumps will be evaluated by:

“Ground-truthing (see RAP Section 4.2) and sampling will further define the boundaries and limits of the required remedial work, including specific evaluations at the potential locations of these 48 sumps.”

“Ground-truthing sampling (minimum number of samples): 1 surface soil sample per potential sump location; additional samples to be collected at locations with visible staining, deleterious material, or showing signs of olfactory (e.g., odors/PID) impacts.”

In Waterstone’s experience evaluating over 120 sumps and cleaning up over 60, there is no way that “ground truthing” or surface samples can be used to evaluate impacts from the prior use of sumps. This can only be achieved by sampling soil to typical sump depths of 8-15 feet. It is uncertain how Geosyntec would use ground truthing to achieve any understanding of subsurface impacts that are typical with sumps.

Attachment D is a map of the sumps with the development area outlined. It is evident that many sumps are not in development areas and as many of these should remain in place as necessary to protect ESHA. It is not clear from the Revised RAP whether all sumps are to be excavated; however, any that are in areas of ESHA should remain in place if soil sampling indicates impacts from historical oil field operations are not present or minimal.

SUMMARY AND RECOMMENDATION

Based on Waterstone’s review of documents listed in Section 1.0, the following summary and recommendation can be made:

- The proposed plan for remediation indicates that over 80 acres of surface will be disturbed for: (i) remedial excavations and (ii) Soil Remediation Planning areas. There are feasible alternatives for reducing this amount of surface disturbance as described in this document that should be considered to lessen the impact of the development on the Subject Property.



- Only 50% of the material that requires removal is oil-containing soil from historical oil field operations. The remainder is for removal of inert materials that do not necessarily require remediation or removal. Removal of inert materials should be re-evaluated to avoid disturbance of ESHA.
- The Proposed Developer plans to disturb 22 acres of surface so that inert materials such as asphalt, concrete, and debris can be buried between 15 and 20 feet in depth instead of disposed offsite. While this is a great savings to the project, an evaluation must be made whether the cost benefit outweighs the potential destruction of ESHA.
- Important information is missing from the remediation planning documents for the Subject Property including:
 - A final ESHA map.
 - A map of remediation areas and Soil Remediation Planning areas that demonstrates protection of ESHA.
 - Detailed procedures for protecting ESHA during remediation activities.
 - Calculations and maps used to verify the cubic yardage of materials to be managed for PEC-25 which comprises approximately 40% of the materials requiring removal on the entire project.
 - Calculations and maps used to verify the acreage disturbed by PEC-7, -20, -25, -26, -27 which adds 53% more oil-containing soil to the 10 acres Waterstone calculated to be disturbed during remediation of other areas (originally quantified in the 2001 Environmental Assessment).
 - Geotechnical information supporting the need to overexcavate 22 acres to be used for Borrow/Placement.
- In spite of the fact that the information is incomplete, it is still apparent from the Revised RAP that the Soil Remediation Planning Area is likely far larger than necessary.
- It is not possible to perform an adequate scientific review of the planned remediation and the Soil Remediation Planning footprint without providing missing information above and other information including:
 - A revised Exhibit 1 showing: (i) ESHA, (ii) remediation areas and areas of removal, and (iii) Soil Remediation Planning areas adjusted based on additional information requested.
 - A revised RAP with alternatives available to leave pipelines, concrete, asphalt-like materials, gravel and other inert materials in place to protect ESHA and maps showing where these can be left in place.
 - A re-evaluation of the TFDS to evaluate the need to perform remediation in this area ahead of cessation of oil operations.
 - An alternate plan to the onsite burial/disposal of debris, concrete, and other inert materials on 22 acres of the Subject Property.



- It is not clear from the Revised RAP whether all sumps are to be excavated in PEC-26, however, any that are in areas of ESHA should remain in place if soil sampling indicates impacts from historical oil field operations are not present or minimal.

Waterstone recommends that missing information described in this document be provided by the Proposed Developer to allow the CCC to adequately review the proposed development project application.

If you have any questions regarding this Report, please contact me at (714) 414-1122.

Sincerely,

Nancy Beresky, P.G. 7965
Managing Principal Hydrogeologist
Waterstone Environmental, Inc.

Attachments:

Figure 1: Site Location Map

Figure 2: One-Day Snapshot of Area Disturbed for Construction Preparation

Figure 3: Surface Disturbance during Site Preparation Activities

Table 1: Estimated Volume of Materials to be Managed (from Revised RAP Table 1)

Table 2: Evaluation of Acreage Requiring Disturbance by Excavation of Impacted Soil

Table 3: Evaluation of Total Disturbed/Covered Acreage and Volume of Material Handled

Attachment A – N. Beresky Qualifications and Subject Property Background

Attachment B – Exhibit 1: Soil Remediation Planning, 11/19/2015

Attachment C – Table 1 of Geosyntec's September 2015 Revised RAP

Attachment D – Table 4-1 of Geosyntec's November 2001 Environmental Assessment

Attachment E – Figure 4 of the Revised RAP: Historical Oil Field Operations Areas
(with sump numbering and development areas added)

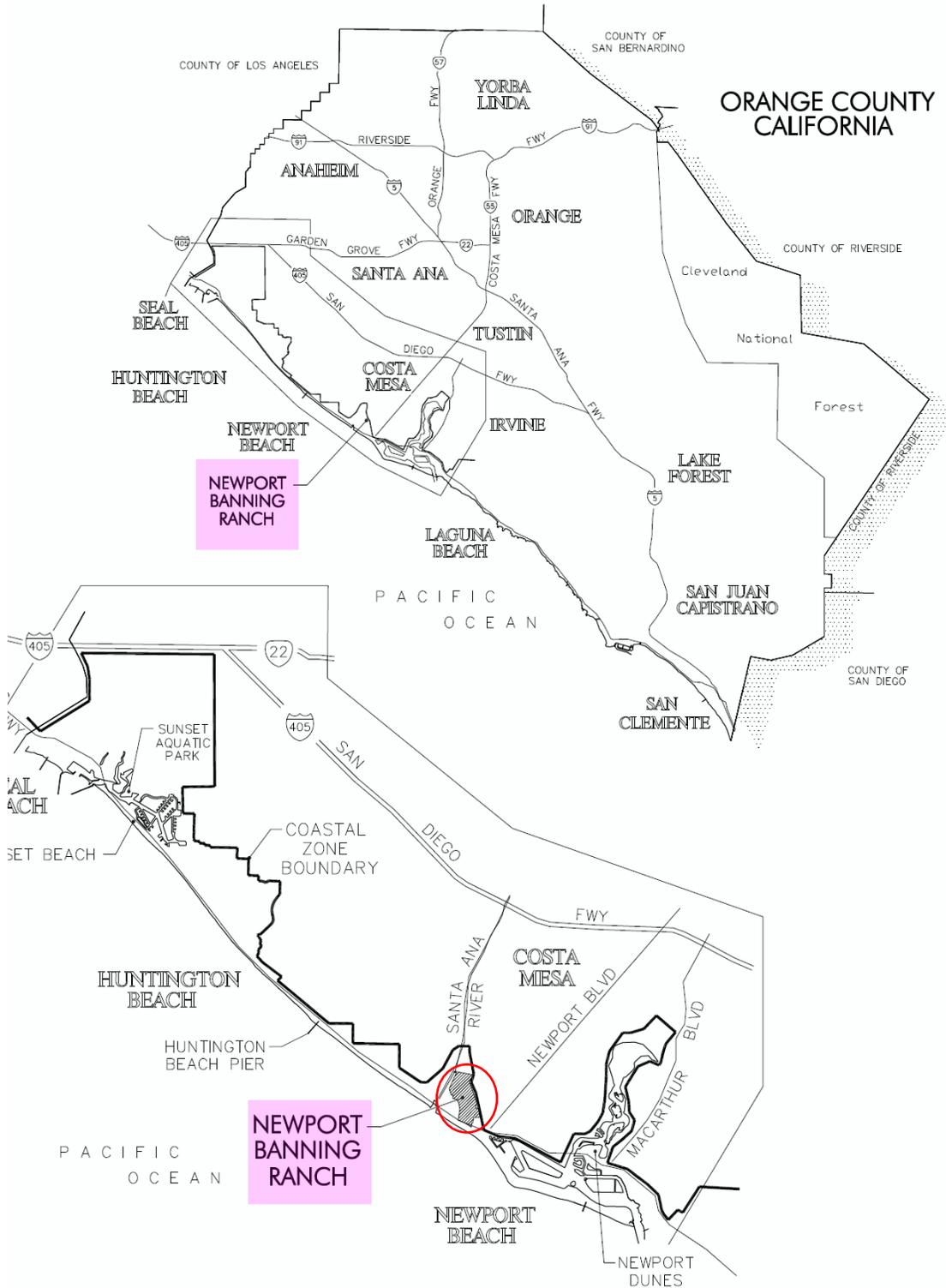


Figure 3
Subject Property
 Newport Banning Ranch
 Newport Beach, CA

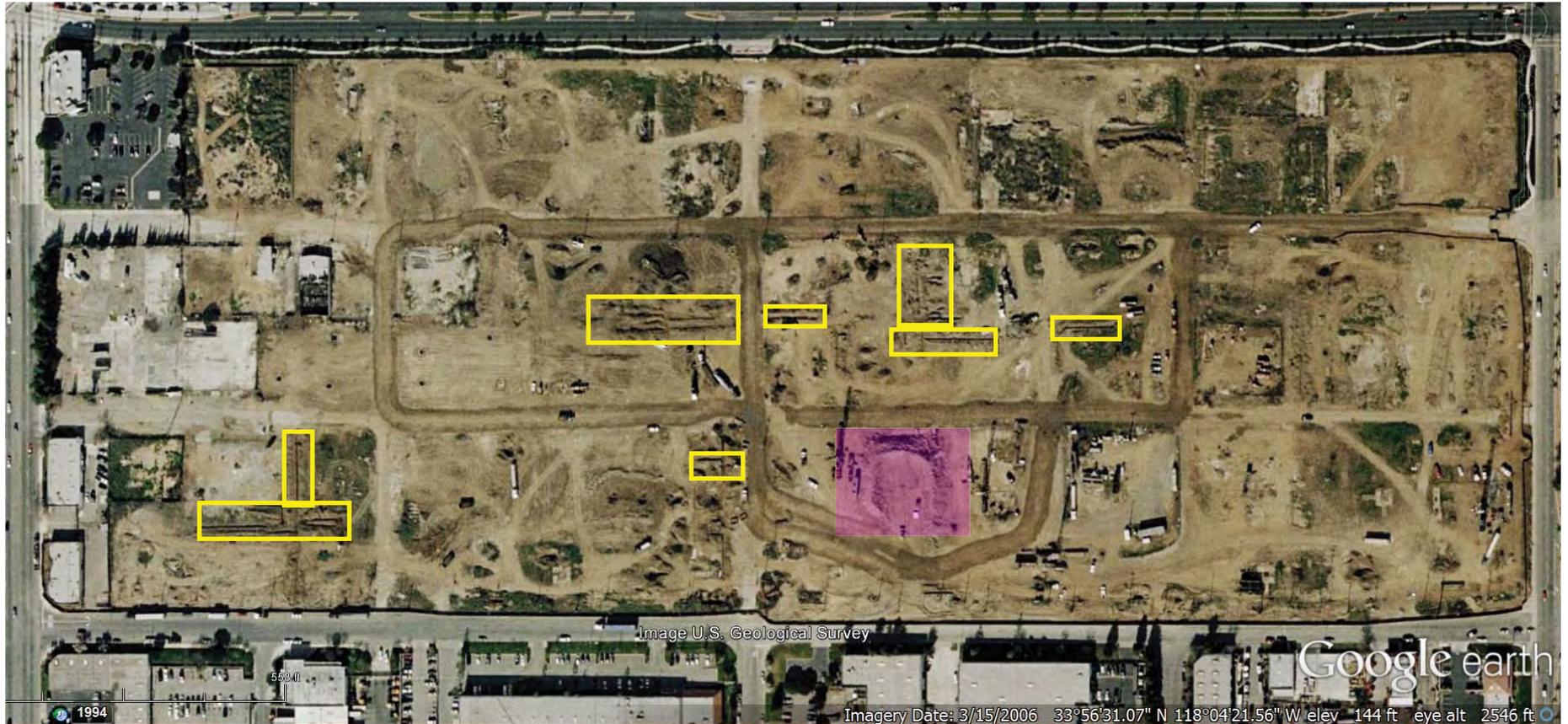
Legend

 Subject Property

Taken from Figure 1: Geosyntec,
 September 16, 2015: Revised RAP

 Waterstone Environmental, Inc.
 2936 East Coronado Street
 Anaheim, California 92806

Drafted By: NB	Project No.: NBR
Approved By: NB	Date: Apr. 16



54-Acre Oil Field Property Prepared for Residential Re-Development on Southeast Corner of Bloomfield and Telegraph, Santa Fe Springs, CA. Each "block" is approximately 5 acres.

FIGURE 2
One-Day Snapshot
of Area Disturbed
for Construction
Preparation

LEGEND

- Area disturbed by pipeline removal activities visible on March 15, 2006
- Area disturbed by concrete crushing activities visible on March 15, 2006



WATERSTONE ENVIRONMENTAL, INC.
 2936 EAST CORONADO STREET
 ANAHEIM, CALIFORNIA 92806



Removal of a Concrete Footer Used for Oil Rig Tie-Down



Large excavation to abandon deeply buried oil well.



Unexpected clarifier and underground storage tank requiring excavation and removal.



FIGURE 3
Surface Disturbance
During Site
Preparation Activities

Pictures from oil field abandonment activities in preparation for residential redevelopment with remediation performed by Waterstone. Southwest corner of Bloomfield and Telegraph in Santa Fe Springs, CA.



WATERSTONE ENVIRONMENTAL, INC.
2936 EAST CORONADO STREET
ANAHEIM, CALIFORNIA 92806

Table 1
Estimated Volume of Materials to be Managed
Banning Ranch - Proposed Oilfield Remediation

NOTE: PECs with managed soil of 10 cy or less are considered minor volumes and are not part of this assessment. See Assumptions.

Reference Line Number	Information from Geosyntec's 9/16/2015 Revised RAP Table 1				
	Area*	Designation	PEC Rationale	Est. Volume of TPH Soil to be Managed (cubic yards)	
				Low	High
1	PEC-25	Oil Well Pads and Linear Features (Roadways/pipelines)	-oil impacted soil -tank bottom materials -concrete cellar -debris -Previous testing: localized impacts	50,000	75,000
2	PEC-02	Tank Farm Drill Site (TFDS)	-ASTs -Oil and gas dewatering -natural gas treatment -sump -2001 testing: deep soil impact to gw and free product on gw	35,000	42,000
3	Approximately 68% of the total TPH-impacted soil volume to be managed is contained within the above 2 PECs:			85,000	117,000
4				71%	65%
5	PEC-08	Former Sump/Clarifier (south and west of PEC-02)	-sump/clarifier -2001 testing: localized impacts	15,000	20,000
6	PEC-01	Maintenance shop/Warehouse	-Waste oil sump, -Stockpiled transformers -Use of haz and petroleum hydrocarbon chemicals -abandoned vehicles -2001 testing: localized soil impact and low concentrations of VOCs in gw	5,000	10,000
7	PEC-07	Pilot-Scale Biotreatment Cell/Stockpiled Soil	-Biotreatment cell -stockpiled, impacted soil -treated soil stockpile canyons -2001 testing: localized impacts	5,000	10,000
8	Approximately 90% of the total TPH-mpacted soil volume to be managed is contained within the above 5 PECs:			110,000	157,000
9				92%	87%

Table 1
Estimated Volume of Materials to be Managed
Banning Ranch - Proposed Oilfield Remediation

NOTE: PECs with managed soil of 10 cy or less are considered minor volumes and are not part of this assessment. See Assumptions.

Reference Line Number	Information from Geosyntec's 9/16/2015 Revised RAP Table 1					
	Area*	Designation	PEC Rationale	Est. Volume of TPH Soil to be Managed (cubic yards)		
				Low	High	
10	PEC-26	Drilling Mud/Oil Well Sumps	-oil impacted soil -drilling mud -debris -Previous testing: localized impacts	4,000	8,000	
11	PEC-03	Air Compressor Plant	-ASTs -vehicle fueling -parts cleaning trough -sump -2001 testing: localized soil impact	2,000	5,000	
12	PEC-20	Soil/Debris Stockpiles	-2001 testing: impacts to soil awaiting treatment	2,000	5,000	
13	PEC-06	City of Newport Beach Tank Farm	-ASTs -Oil and gas dewatering -natural gas treatment -sump -2001 testing: localized impact and no gw impact	1,000	3,000	
14	PEC-04	Steam Generation Plant	-Possible chem spills/leaks -2001 testing: localized areas of impacts	1,000	2,000	
15	PEC-09	Utility Shack Transformer Storage	-leaks from transformers -2001 testing: localized impact and no gw impact	50	100	
16	PEC-27	Sublease Areas	Impacted soil	Unknown	Unknown	
17	Approximately 10% of the total TPH-impacted soil volume to be managed is contained within the remaining (above) 6 PECs:			10,050	23,100	
18				8.4%	12.8%	
19	Totals from adding up cy listed in Geosyntec Table 1- Estimated TPH soil to be managed:			120,050	180,100	
	(Note: The sum of the cy listed in each PEC [above] does not match the totals in the Revised RAP Table 1 [below]).					
20	Totals per Geosyntec Table 1:			Estimated TPH soil to be managed	117,000	182,000
21	PEC-18		Concrete to be managed	15,000	30,000	
22	PEC-25		Asphalt/Road material to be managed	90,000	150,000	
23	Total cy of materials to be managed:			222,000	362,000	
24	Of Total Materials to be Managed, % that is TPH Soil:			52.7%	50.3%	

*Listed in order of highest cy to lowest cy of material to be managed.

Table 1
Estimated Volume of Materials to be Managed
 Banning Ranch - Proposed Oilfield Remediation

NOTE: PECs with managed soil of 10 cy or less are considered minor volumes and are not part of this assessment. See Assumptions.

Reference Line Number	Information from Geosyntec's 9/16/2015 Revised RAP Table 1			
	Area*	Designation	PEC Rationale	Est. Volume of TPH Soil to be Managed (cubic yards)
				Low

Abbreviations:		Assumptions for other PECs not listed above:	
ASTs	Aboveground Storage Tanks	<i>Soil impacted by chemicals other than crude oil will be hauled offsite and not bioremediated onsite:</i>	
chem	Chemicals	PEC-09: 50-100 cy (PCB soil)	Utility Shack Transformer Storage
cy	Cubic Yards	PEC-04: 1,000-2,000 cy (Chemicals other than crude oil)	Steam Generation Plant
gw	Groundwater	<i>PECs with minimal or no impacted soil -not considered in this assessment:</i>	
PCBs	Polychlorinated Biphenyls	PEC-10: Approximate location of Edison transformers PEC-15: Gasoline UST	PECs with less than 2 -10 cy of managed material
PEC	Potential Environmental Concern		
TPH	Total Petroleum Hydrocarbons	PEC-5, -11, 16, 17, 19, 21-24	No impacted soil or other materials to be managed.
UST	Underground Storage Tank		
VOCs	Volatile Organic Compounds	PEC-12, -13, -14	Not listed on Geosyntec Revised RAP Table 1.

Table 2
Evaluation of Acreage Requiring Disturbance by Excavation of Impacted Soil
Newport Banning Ranch, Newport Beach, CA

Geosyntec, Nov. 2001: Table 4-1 Impacted Soil Types and Gross Volumes						Geosyntec, Sept. 2015: Table 1 Revised RAP		Geosyntec, Dec 2015:	Waterstone Calculations <i>Red italic font = differences from Geosyntec, 2001 Table 4-1</i>	
PEC	PRA No.	Impacted Area (sq yd)	Impacted Area (sq ft)	Gross Thickness (ft)	Impacted Volume (cy)	LOW and HIGH Estimated Volume of TPH Soil to be Managed (cy)		Groud Truthing	Calculated Impacted Vol. (cy)	Impacted Area (Acres)
1	1	6,140	55,260	1.5	3,070				3,070	1.27
	2	262	2,358	5	436				<i>437</i>	0.05
	3	1,910	17,190	3	1,910				1,910	0.39
	4	261	2,349	1	87				87	0.05
	5	84	756	1	28				28	0.02
	6	93	837	2	62				62	0.02
SUBTOTAL FOR PEC-01:					5,593	5,000	10,000		<i>5,594</i>	1.81
2	1	78	702	6	156				156	0.02
	2	1,308	11,772	5	2,180				2,180	0.27
	3	624	5,616	5	1,040				1,040	0.13
	4	2,297	20,673	7	5,360				5,360	0.47
	5	254	2,286	13	1,100				<i>1,101</i>	0.05
	6	4,714	42,426	7	11,000				<i>10,999</i>	0.97
	7	441	3,969	20	2,940				2,940	0.09
	8	120	1,080	12	480				480	0.02
	9	350	3,150	12	1,400				1,400	0.07
	10	375	3,375	2	250				250	0.08
	11	1,389	12,501	10	4,630				4,630	0.29
	12	5,280	47,520	8	14,080				14,080	1.09
	13	2,200	19,800	3	2,200				2,200	0.45
	14	62	558	3	62				62	0.01
	15	1,434	12,906	1.5	717				717	0.30
(8'-11')	16	1,980	17,820	1.18	784				<i>779</i>	0.41
SUBTOTAL FOR PEC-02:					48,379	35,000	42,000		<i>48,373</i>	4.73

Table 2
Evaluation of Acreage Requiring Disturbance by Excavation of Impacted Soil
Newport Banning Ranch, Newport Beach, CA

Geosyntec, Nov. 2001: Table 4-1 Impacted Soil Types and Gross Volumes						Geosyntec, Sept. 2015: Table 1 Revised RAP		Geosyntec, Dec 2015:	Waterstone Calculations <i>Red italic font = differences from Geosyntec, 2001 Table 4-1</i>	
PEC	PRA No.	Impacted Area (sq yd)	Impacted Area (sq ft)	Gross Thickness (ft)	Impacted Volume (cy)	LOW and HIGH Estimated Volume of TPH Soil to be Managed (cy)		Groud Truthing	Calculated Impacted Vol. (cy)	Impacted Area (Acres)
3	1	746	6,714	8	1,989				1,989	0.15
	2	24	216	1	8				8	0.00
	3	55	495	4	73				73	0.01
	4	183	1,647	1	61				61	0.04
SUBTOTAL FOR PEC-03:					2,132	2,000	5,000		2,132	0.21
4	1	915	8,235	2	610				610	0.19
	2	132	1,188	1	44				44	0.03
	3	495	4,455	2	330				330	0.10
SUBTOTAL FOR PEC-04:					984	1,000	2,000		984	0.32
6	1	585	5,265	4	780				780	0.12
	2	342	3,078	4	456				456	0.07
	3	195	1,755	1	65				65	0.04
	4	248	2,232	3	248				248	0.05
SUBTOTAL FOR PEC-06:					1,549	1,000	3,000		1,549	0.28
7	BioCell Stockpiled Soil				not included	5,000	10,000			
8	1	1112	10,008	2	741				741	0.23
	2	68	612	5	113				113	0.01
	3	816	7,344	7.5	2,040				2,040	0.17
	4	506	4,554	7	1,181				1,181	0.10
	5	7846	70,614	6	15,692				15,692	1.62
SUBTOTAL FOR PEC-08:					19,767	15,000	20,000		19,767	2.14

Table 2
Evaluation of Acreage Requiring Disturbance by Excavation of Impacted Soil
Newport Banning Ranch, Newport Beach, CA

Geosyntec, Nov. 2001: Table 4-1 Impacted Soil Types and Gross Volumes						Geosyntec, Sept. 2015: Table 1 Revised RAP		Geosyntec, Dec 2015:	Waterstone Calculations <i>Red italic font = differences from Geosyntec, 2001 Table 4-1</i>	
PEC	PRA No.	Impacted Area (sq yd)	Impacted Area (sq ft)	Gross Thickness (ft)	Impacted Volume (cy)	LOW and HIGH Estimated Volume of TPH Soil to be Managed (cy)		Groud Truthing	Calculated Impacted Vol. (cy)	Impacted Area (Acres)
9	1	144	1,296	1	48	50	100		48	0.03
20	Soil Debris Stockpiles			not included		2,000	5,000			
25	TPH Soil from Oil Well Pads/Pipelines			not included		50,000	70,000			
26	Oil Well Sumps			not included		4,000	8,000			
27	Sublease Areas			not included		Unknown				
TPH SOIL TOTALS (not incl. PEC-7, 20, 25-27):					78,452	59,050	82,100		78,447	9.52
TPH SOIL TOTALS (incl. all PECs):						120,050	175,100			
(Geosyntec Rev. RAP Table 1 gives totals of 117,000-182,000)										
PEC-18 CONCRETE TOTALS*:						15,000	30,000			
PEC- 25 ROAD ASPHALT TOTALS*:						90,000	150,000			
2015 Rev. RAP TOTAL HI AND LOW ESTIMATES FOR CY OF REMOVED MATERIALS:						225,050	355,100			
PERCENT OF REMOVED MATERIALS THAT IS TPH:						53%	49%			

*Not included in TPH soil totals.

Acreage for excavations prior to adding PEC-7, 20, 25-27

2001 totals generally agree with the 2015 revised RAP prior to adding cy from PEC-7, 20, and 25-27.
 Adding PEC-7, 20, and 25-27 in the 2015 Rev. RAP increases the TPH volume by 53%

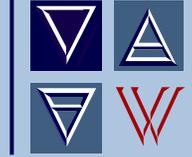
Table 3
Evaluation of Total Disturbed/Covered Acreage and Volume of Material Handled
Newport Beach, Banning Ranch

Remediation Activity	Purpose	Acreage Disturbed	Cubic Yards of Material to be Handled	Depth of Clean Soil Excavation	Cubic Yards of Clean Soil Removed
Borrow/Placement	Burial of waste concrete and asphalt	22	700,000 (clean soil)	20 feet	700,000
Clean Soil Flip	Staging for clean soil from Borrow/Placement	14.5	0	0	0
Soil In/ Bioremediation	Onsite Treatment of Contaminated Soil	10.8	182,000*	0	After all activities in these areas are completed, it is likely some surface scraping will be needed to remove remaining residual contamination or debris.
Concrete Processing	Break/crush concrete/asphalt before burial	2.1	30,000 concrete* 150,000 asphalt*	0	
Equipment Parking and Storage	Logistical support for remediation	2	0	0	
Equipment/ Materials Salvage	Staging of ferrous materials for salvage	3.5	0	0	
Soil Test Staging/Stockpiling	Stockpiling of TPH soil, asphalt, concrete, treated soil, etc.	1.7	0	0	
Lowland Soil Staging	Staging	4.75	0	0	
SUBTOTALS:		61.35**	1,062,000		
Remediation Activity	PECs not included in Exhibit 1	Acreage Disturbed	CY of Materials to be Handled	Description	NOTES
Areas Excavated to Remove TPH Soil OR Areas Currently Covered by Stockpiles	All PECs except PEC-7, 20, 25-27	9.5***	Included in Soil In/ Bioremediation entry.	39 areas are identified for excavation for TPH soil	18 from 1-3' 8 from 4-6' 8 from 7-10' 5 from 10-20'
	PEC-7	1.2	10,000*	Stockpiles	Acreage from cy divided by 5' height
	PEC-20	0.6	5,000*	Stockpiles	
	PEC-25	4 (est.)	Included in Soil In/ Bioremediation entry.	Oil well pads	Assumes each well disturbs 20' by 20' and 100 wells disturbs 1 acre
	PEC-26	2 (est.)		Pipelines	Assumes 25 miles of pipeline and 12' width of surface disturbance
	PEC-27	4 (est.)		Sumps	Est. 37 sumps, est. 1/2 to be excavated at 75' x 75' (weighted average)
	PEC-27	??	??	Sublease Areas	None
GRAND TOTAL:		82.05	1,077,000	Up to 20'deep	700,000

*From Table 1 of Revised RAP, Geosyntec, 2015.

** From Exhibit 1 map. See Section 6.0 and Attachment A.

*** From Table 4-1 of Geosyntec, 2001. Also see Table 2 attached.



ATTACHMENT A

ATTACHMENT A

Qualifications

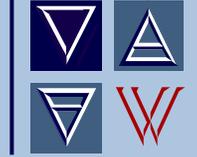
I, Nancy Beresky, Managing Principal Hydrogeologist at Waterstone Environmental, Inc. am a State of California-certified Professional Geologist with 38 years of work experience as a geologist, hydrologist and hydrogeologist. I have worked in California on the environmental assessment and cleanup of real property impacted by chemical compounds for the past 26 years.

The 10 years I worked as a petroleum geologist prior to my work in the environmental field have allowed me to use my knowledge of oil industry practices in the assessment and remediation of oil field properties. For the past 20 years, I have designed and performed the characterization and cleanup of former oil field properties that have been successfully redeveloped for both commercial and residential use. In addition, I have worked on numerous oil field remediation projects and prepared documents assessing and evaluating remediation plans prepared by others. I have been retained as an expert witness several times regarding site assessment and remediation matters and have provided expert testimony in both depositions and jury trials on these topics. My full resume is available at your request.

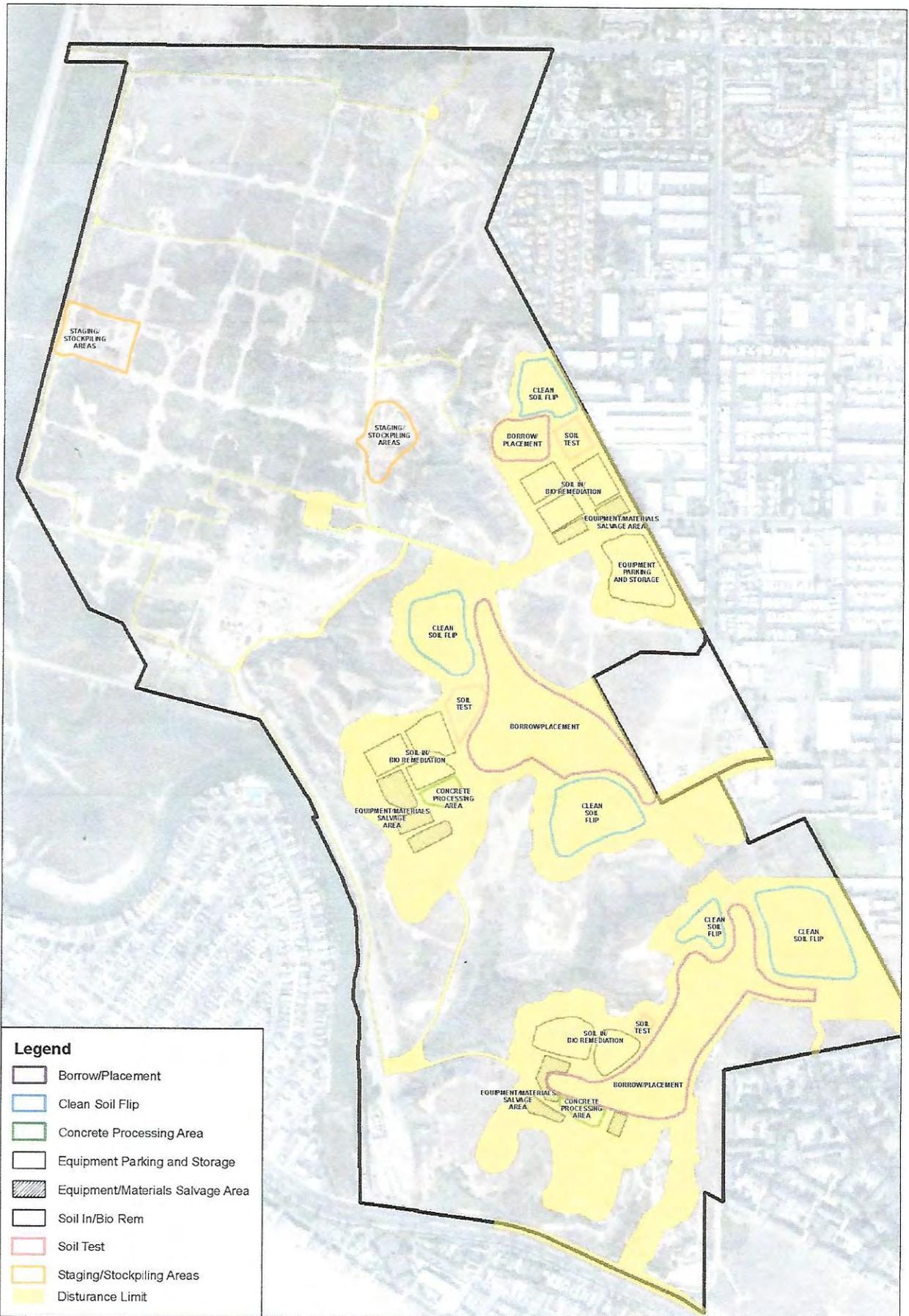
Background

The Subject Property has been used since the 1940s for oil and natural gas production and related operations and includes approximately 475 wells, 85 of which are currently producing oil and operated by West Newport Oil Company (WNOC). Numerous other features that were used to support oil field operations since the 1940s exist or formerly existed on the Subject Property including aboveground storage tanks (ASTs), pipelines, sumps, clarifiers, and other oil field use areas and features.

Based on soil and groundwater sample collection and analysis performed by the oil operator since 1986 and augmented in 2001 with a comprehensive Site Investigation/Environmental Assessment of the Subject Property, Geosyntec has defined 27 Potential Environmental Concern (PEC) areas. Using laboratory analysis results from sampling data, Geosyntec has prepared documents that describe its plans to perform remediation in the 11 PECs where it is considered necessary.



ATTACHMENT B



Soil Remediation Planning

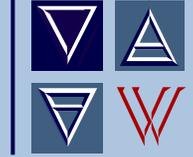
City of Newport Beach

Exhibit 1

11/19/2015



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ATTACHMENT C

TABLE 1
POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT UPDATE
NEWPORT BANNING RANCH

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
01	Maintenance Shop / Warehouse	<ul style="list-style-type: none"> • waste oil sump • stockpiled transformers • hazardous chemicals and petroleum hydrocarbons in use • abandoned vehicles • 2001 testing program results indicated localized areas of soil impacts and the presence of low concentrations of VOCs in groundwater 	<ul style="list-style-type: none"> • 5,000 to 10,000
02	Tank Farm Drill Site	<ul style="list-style-type: none"> • above ground storage tanks • oil and gas dewatering operations • natural gas treatment • underground sump • 2001 testing program results indicated areas of deep soil impacts (to groundwater) and the presence of free product in groundwater 	<ul style="list-style-type: none"> • 35,000 to 42,000 (includes TFDS sump area and excavations to the east and west of the tank farm, outside of the oil consolidation area)

TABLE 1 (continued)

**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
03	Air Compressor Plant (currently inactive)	<ul style="list-style-type: none"> • above ground storage tanks • vehicle fueling area (near) • parts cleaning trough • underground sump • 2001 testing program results indicated localized areas of soil impacts 	<ul style="list-style-type: none"> • 2,000 to 5,000
04	Steam Generation Plant (currently inactive)	<ul style="list-style-type: none"> • possible chemical spills and/or leaks from past operations • 2001 testing program results indicated localized areas of soil impacts 	<ul style="list-style-type: none"> • 1,000 to 2,000
05	Water Softeners (currently inactive)	<ul style="list-style-type: none"> • above ground storage tanks • possible chemical spills and/or leaks from past operations • 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> • 0
06	City of Newport Beach Tank Farm (abandoned)	<ul style="list-style-type: none"> • above ground storage tanks • oil and gas dewatering operations • natural gas treatment • underground sump • 2001 testing program results indicated localized areas of soil impacts and no groundwater impacts 	<ul style="list-style-type: none"> • 1,000 to 3,000

TABLE 1 (continued)

**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
07	Pilot-Scale Biotreatment Cell / Stockpiled Soil	<ul style="list-style-type: none"> • bio-treatment cell area • stockpiled, unlined, impacted soil • treated soil stockpile canyons (near) • 2001 testing program results indicated localized areas of soil impacts 	<ul style="list-style-type: none"> • 5,000 to 10,000
08	Former Sump/Clarifier (south and west of the TFDS)	<ul style="list-style-type: none"> • possible leaching of crude oil from the sumps/clarifiers to the ground • 2001 testing program results indicated areas of soil impacts and no groundwater impacts 	<ul style="list-style-type: none"> • 15,000 to 20,000
09	Utility Shack Transformer Storage	<ul style="list-style-type: none"> • possible PCB leaks from electrical transformers • 2001 testing program results indicated localized areas of hydrocarbon soil impacts - PCBs were not detected 	<ul style="list-style-type: none"> • 50 to 100
10	Approximate Location of Edison Transformers	<ul style="list-style-type: none"> • possible PCB leaks from electrical transformers • 2001 testing program results indicated localized areas of hydrocarbon soil impacts - PCBs were detected at levels exceeding residential preliminary remediation goals (PRGs) at this location 	<ul style="list-style-type: none"> • <2 to 10

TABLE 1 (continued)

**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
11	Personnel Changing Room and Showers	<ul style="list-style-type: none"> • septic wastes • possible solid waste disposal areas (near) • 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> • 0
15	Gasoline Underground Storage Tank	<ul style="list-style-type: none"> • possible gasoline leaks from UST, however UST was closed per regulations • 2001 testing program results indicated a localized area of soil impacts 	<ul style="list-style-type: none"> • <2 to 10
16	Coast Watch Station	<ul style="list-style-type: none"> • miscellaneous debris and municipal solid waste, although no evidence of this material currently exists • 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> • 0
17	Oil/Gas Production Equipment Storage	<ul style="list-style-type: none"> • possible leaching of materials from the equipment to the ground • 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> • 0

TABLE 1 (continued)

**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
18	Soil / Debris Stockpile	<ul style="list-style-type: none"> possible leaching of materials from the debris to the ground 2001 testing program results indicated that additional testing would be needed in this area following concrete debris removal 	<ul style="list-style-type: none"> 0 (petroleum) 15,000 to 30,000 (concrete)
19	Storage Shack	<ul style="list-style-type: none"> possible chemical spills and/or leaks from past operations 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> 0
20	Soil / Debris Stockpiles	<ul style="list-style-type: none"> possible leaching of materials from the equipment and debris to the ground 2001 testing program results indicated impacts to stockpiled soils awaiting treatment 	<ul style="list-style-type: none"> 2,000 to 5,000
21	Soil / Debris Stockpiles	<ul style="list-style-type: none"> possible leaching of materials from the equipment and debris to the ground 2001 testing program results indicated that additional testing would be needed in this area following debris removal 	<ul style="list-style-type: none"> 0

TABLE 1 (continued)

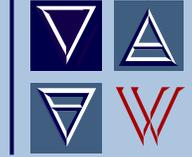
**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
22	Treated Soil Stockpile Area	<ul style="list-style-type: none"> possible leaching of materials from the soil to the ground 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> 0
23	Equipment/Debris Stockpiles	<ul style="list-style-type: none"> possible leaching of materials from the equipment to the ground potential oil leaks 2001 testing program results indicated that additional testing would be needed in this area following equipment removal 	<ul style="list-style-type: none"> 0
24	Field Offices	<ul style="list-style-type: none"> septic wastes possible solid waste disposal areas (near) 2001 testing program results did not indicate impacts at this location 	<ul style="list-style-type: none"> 0
25	Oil Well Pads and Linear Features (roadways/pipelines)	<ul style="list-style-type: none"> tank bottom materials oil-impacted soil concrete cellar debris Previous testing program results indicated localized soil impacts along these features 	<ul style="list-style-type: none"> 50,000 to 75,000 (petroleum soils) 90,000 to 150,000 (asphalt/roads)

TABLE 1 (continued)

**POTENTIAL ENVIRONMENTAL CONDITIONS
IDENTIFIED IN PHASE II EA AND PHASE I ENVIRONMENTAL SITE ASSESSMENT
NEWPORT BANNING RANCH**

PEC	DESIGNATION	ORIGINAL RATIONALE FOR PEC LISTING	ESTIMATED SOIL TO BE MANAGED (cubic yards)
26	Drilling Mud Sumps / Oil Well Sumps	<ul style="list-style-type: none"> • oil-impacted soil • drilling mud • debris • Previous testing program results indicated localized soil impacts 	<ul style="list-style-type: none"> • 4,000 to 8,000
27	Sublease Areas	<ul style="list-style-type: none"> • impacted soil • 2001 testing program results did not focus on sublease areas 	<ul style="list-style-type: none"> • unknown
PRELIMINARY ESTIMATE OF MATERIAL QUANTITIES TO BE REMEDIATED (approximate)			117,000 to 182,000 (petroleum soils)
			15,000 to 30,000 (concrete)
			90,000 to 150,000 (asphalt/road material)
TOTAL			222,000 to 362,000



ATTACHMENT D

ENVIRONMENTAL ASSESSMENT

VOLUME 1 OF 2

NEWPORT BANNING RANCH ORANGE COUNTY, CALIFORNIA

Prepared for:

West Newport Oil Company

1080 West 17th Street
Costa Mesa, California 92627

Prepared by:



GeoSyntec Consultants
2100 Main Street, Suite 150
Huntington Beach, California 92648
(714) 969-0800

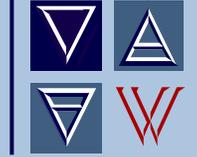
November 2001



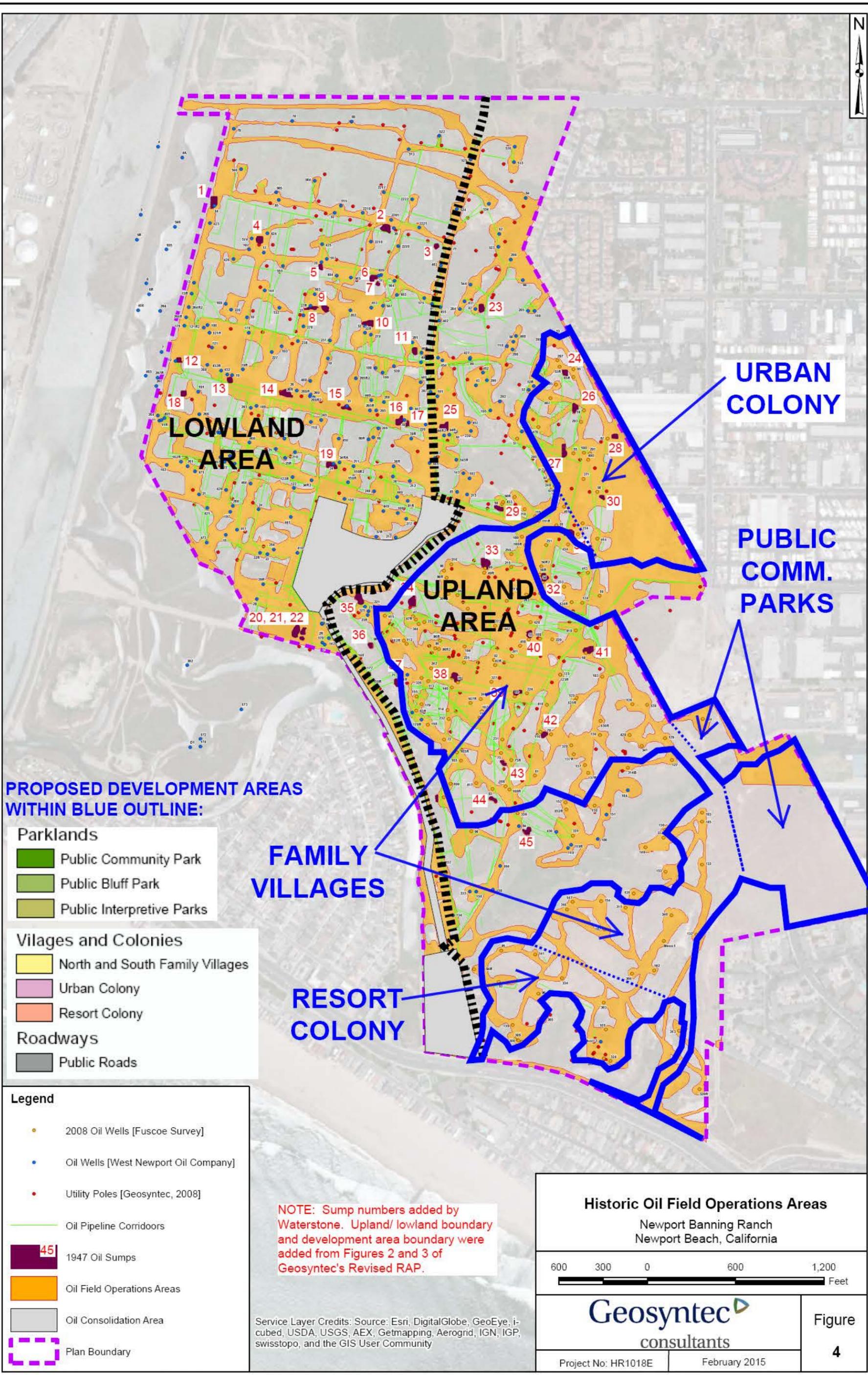
**TABLE 4-1
IMPACTED SOIL TYPES AND GROSS VOLUMES
NEWPORT BANNING RANCH
ORANGE COUNTY, CALIFORNIA
(November 2001)**

PEC	PRA NUMBER	IMPACTED AREA (yd ²)	GROSS THICKNESS (ft)	IMPACTED VOLUME (yd ³)	IMPACT CATEGORY*	DESCRIPTION OF POTENTIAL SOURCE
01	01-PRA-001	6,140	1.5	3,070	Black Staining	Oil Lens - Fluctuating
	01-PRA-002	262	5	436	Black Staining	Oil Lens - Fluctuating
	01-PRA-003	1,910	3	1,910	Oily Staining	Oil Lens - Fluctuating
	01-PRA-004	261	1	87	Oily Staining	Lens - Solvent Storage Area
	01-PRA-005	84	1	28	Diesel/Gas Staining	Truck Leak - Diesel
	01-PRA-006	93	2	62	Brown Staining	Parts Washer
02	02-PRA-001	78	6	156	Oily Staining	Equipment Leak (Pump?)
	02-PRA-002	1,308	5	2,180	Black Staining	Low Lying Area Beside Large Sump
	02-PRA-003	624	5	1,040	Black Staining	Cutting Lab Sump Area
	02-PRA-004	2,297	7	5,360	Black Staining	Cutting Lab Area - Fluctuating
	02-PRA-005	254	13	1,100	Black Staining	Burners / Oil Water Separators
	02-PRA-006	4,714	7	11,000	Black Staining	Large Sump
	02-PRA-007	441	20	2,940	Oily Staining	Corner of Large Sump
	02-PRA-008	120	12	480	Black Staining	Cinder Block Sump - Soil Surrounding Sump
	02-PRA-009	350	12	1,400	Black Staining	Crude Oil Storage Tanks - Fluctuating
	02-PRA-010	375	2	250	Black Staining	Crude Oil Storage Tanks
	02-PRA-011	1,389	10	4,630	Oily Staining	Wide Crude Oil Tank Area - Fluctuating
	02-PRA-012	5,280	8	14,080	Black Staining	Transfer Pump Area - Fluctuating
	02-PRA-013	2,200	3	2,200	Black Staining	Extension of Tank Farm - Fluctuating
	02-PRA-014	62	3	62	Black Staining	Isolated Area with Impacts
	02-PRA-015	1,434	1.5	717	Black Staining	Oil Lens Over Cement Returns - Soil Gas
02-PRA-016	1,980	8-11	784	Black Staining	Cement Returns Area	
03	03-PRA-001	746	8	1,990	Diesel/Gas Staining	Diesel Tank 2° Containment
	03-PRA-002	24	1	8	Diesel/Gas Staining	Diesel Pump & Catch Sump Pipe to Larger Sump
	03-PRA-003	55	4	73	Diesel/Gas Staining	Oily Sump Area
	03-PRA-004	183	1	61	Diesel/Gas Staining	Truck Leak - Spill
04	04-PRA-001	915	2	610	Diesel/Gas Staining	Truck/Equipment Parking & Storage & Diesel Generator
	04-PRA-002	132	1	44	Other (e.g., Iron)	Soda Ash Tanks (Iron)
	04-PRA-003	495	2	330	Other (e.g., Iron)	Low Lying Area (Iron)
06	06-PRA-001	585	4	780	Black Staining	Secondary Tank Farm Area
	06-PRA-002	342	4	456	Black Staining	Secondary Tank Farm Area
	06-PRA-003	195	1	65	Brown Staining	Secondary Tank Farm Area
	06-PRA-004	248	3	248	Brown Staining	Secondary Tank Farm Area
08	08-PRA-001	1,112	2	741	Black Staining	Oil Lens - Fluctuating
	08-PRA-002	68	5	113	Black Staining	Isolated Area with Impacts
	08-PRA-003	816	7.5	2,040	Black Staining	Low Lying Area - Looked like a Former Sump
	08-PRA-004	506	7	1,180	Black Staining	Crude Oil Storage Tanks
	08-PRA-005	7,846	6	15,692	Black Staining	Oil Lens (Sump) - Tidal Area
09	09-PRA-001	144	1	48	Other Low Level (e.g., PCBs)	Surficial PCB Impacts
TOTAL ESTIMATED VOLUME				77,667		

Note: PRA = Preliminary Reduction Area



ATTACHMENT E



PROPOSED DEVELOPMENT AREAS WITHIN BLUE OUTLINE:

- Parklands**
 - Public Community Park
 - Public Bluff Park
 - Public Interpretive Parks
- Vilages and Colonies**
 - North and South Family Villages
 - Urban Colony
 - Resort Colony
- Roadways**
 - Public Roads

- Legend**
- 2008 Oil Wells [Fuscoe Survey]
 - Oil Wells [West Newport Oil Company]
 - Utility Poles [Geosyntec, 2008]
 - Oil Pipeline Corridors
 - 1947 Oil Sumps
 - Oil Field Operations Areas
 - Oil Consolidation Area
 - Plan Boundary

FAMILY VILLAGES

RESORT COLONY

URBAN COLONY

PUBLIC COMM. PARKS

NOTE: Sump numbers added by Waterstone. Upland/ lowland boundary and development area boundary were added from Figures 2 and 3 of Geosyntec's Revised RAP.

Historic Oil Field Operations Areas
Newport Banning Ranch
Newport Beach, California

600 300 0 600 1,200
Feet

Geosyntec
consultants

Project No: HR1018E February 2015

Figure 4

Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

S:\GIS\HR1018E\Project\HistoricalOilFields.mxd.ec.2/11/2015

OCT 19 2015

CALIFORNIA
COASTAL COMMISSION

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report

(<http://www.newportbeachca.gov/index.aspx?page=2096>).

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

- Banning Ranch is the only remaining large unprotected coastal open space in Orange County. When it's gone, it's gone forever.
- 2.5 million cubic yards of soil will be excavated and stockpiled to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.
- The destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—none of which is allowed by the Coastal Act.
- ONGOING RECORD DROUGHT: the Project's water demands will place a significant burden on our scarce water supply, increasing water shortages.
- Where's the water coming from? The Project's Water Supply Assessment Report is flawed and outdated by its own admission.
- TRAFFIC: 15,000+ more car trips on our roads, daily! Expect double and triple commutes, gridlocked intersections.
- POLLUTION: Air pollution from construction and traffic will exceed state standards.
- POLLUTION: Noise from traffic and other sources will double allowable noise thresholds.
- POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely, 

BRUCE G. SEELT
6317 BRIGHT AVE

WHITTIER CAL 90601

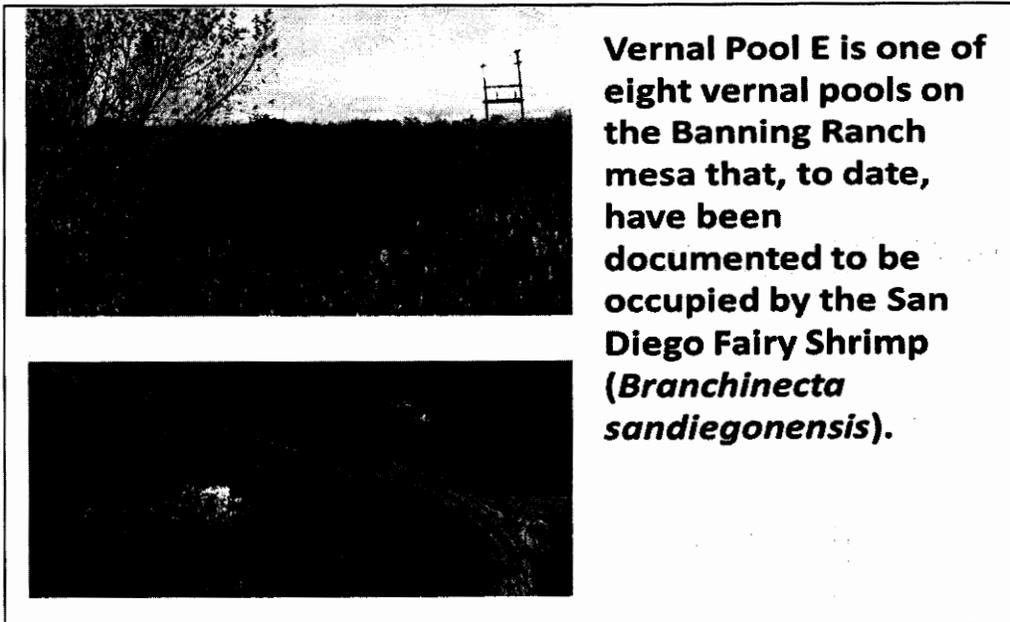
Public Comments

5-15-2097 EXHIBIT 19

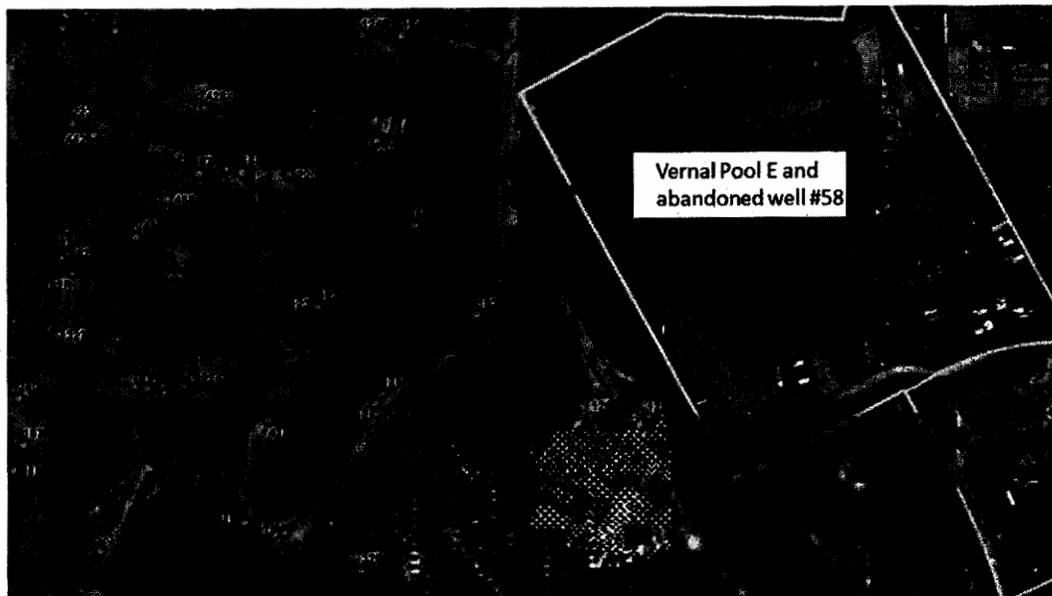
Vernal Pool E is relatively clean



Terry Welsh
Banning Ranch Conservancy
11/17/15



Vernal Pool E is also the site of an abandoned oil well (well #58).



Source: Newport Banning Ranch Oil Field Abandonment Plan, draft 10/22/14 (submitted to the Coastal Commission on 10/30/14)

Yet in their latest alternative development proposal, as in all their previous proposals, NBR plans to pave over vernal pool E by placing Bluff Road and adjacent development directly on top of vernal pool E.



NBR's justification for not preserving vernal pool E is their claim that because vernal pool E is a historic oil sump and the site of an abandoned well, this area can't be considered habitat as it needs to be remediated. From the report entitled *Jurisdictional Determination of Seasonal Features for the NEWPORT BANNING RANCH*, prepared by Dudek and dated May 2013 (and submitted to the Coastal Commission on 5-17-13), the authors state:

Feature E is an excavated oil sump created to capture potential oil spills from existing and historic wells. The feature is directly north of an inactive or abandoned oil well and has been documented to contain areas of contaminated soils that will require future remediation. This feature covers approximately 2,129 square feet (0.049 acres).

NBR also repeats their insistence that Vernal Pool E cannot be preserved due to remediation requirements in their *Habitat Conservation and Conceptual*

Mitigation Plan prepared by Dudek, dated October 2013, and presented to the Coastal Commission on 1/10/14...

*One seasonal feature that will be impacted by the project, Feature E, provides habitat for the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*), but is a documented oil sump requiring remediation.*

However, the large scale oil well abandonment program in the mid-90s (described in the report entitled *Phase 1 description Environmental Restoration Program Newport Banning Ranch West Newport Oil Company, Orange County, Ca Geosyntec Consultants 1/31/96*, submitted to the Coastal Commission on 5/17/13) where 114 wells were abandoned, and the soil around each well tested for Total Recoverable Petroleum Hydrocarbons (TRPH), demonstrated that the soil around well #58 (abandoned on Nov. 22, 1994) was tested and found to contain < 5 ppm TRPH. This is significantly cleaner than not just the open space abandonment requirements, but also *significantly cleaner than residential requirements.*

(January 1995)

WELL NO.	ESTIMATED QUANTITY OF EXCAVATED MATERIAL ⁽²⁾ (yd ³)	DATE OF SOIL SAMPLING	TRPH CONCENTRATION ⁽³⁾ (ppm)
3	30	13 September 1994	24
56	30	03 November 1994	150
56R	30	03 November 1994	550
57A	24	22 November 1994	140
58	24	22 November 1994	< 5
59	43	22 November 1994	< 5
63	53.3	22 November 1994	< 5
63R	30	20 March 1995	16.2

Source: *Phase 1 description Environmental Restoration Program Newport Banning Ranch West Newport Oil Company, Orange County, Ca Geosyntec Consultants 1/31/96*

Conclusion, it is difficult to justify the destruction of Vernal Pool E based on the idea that that Vernal Pool E is so contaminated that it must be eliminated in the name of remediation.



Nov 23, 2015

To: Staff,
California Coastal Commission

From: Kevin Nelson, Nature Commission

Dear Staff,

This report describes a recent surge of non-native plants onto key habitat elements of Banning Ranch. For over twenty years, I and others have observed the grassland areas south of the main arroyo through many seasons and levels of average rainfall.

Beginning in 2014, a dramatic change occurred on the grasslands as they became dominated by Russian Thistle. We have not seen anything like this infestation in the past.

NBR claims that an agency-ordered cessation of mowing is the cause. We disagree, and believe that discing and intensive mowing created these conditions. Considering the many other intentional habitat impacts the development group has initiated, this area should be restored to its past condition which included Purple Needle Grass and Deerweed.

Neighboring resident:

I have lived at the current address for over 28 years. In years past, tall grasses and other plants thrived. When aggressive mowing and scrapping of this land began a few years back, the native plants disappeared and other more invasive species moved in. Over the past two years, the plant mix has changed significantly, grass is no longer the dominant species. This event had never been seen there before. -Dave Sutherland

University of California, Integrated Pest Management Program:

Russian thistle normally will not germinate successfully in firm soil: the soil in the site must be loose. Likely sites for germination include, roadsides, fencelines—any open site with loosened soil.

It can tolerate alkaline soil conditions and it is very competitive when moisture is a limiting factor to the growth of other vegetation, when soils are disturbed, or when competing vegetation is suppressed by overgrazing or poor crop establishment. If moisture is not limiting, Russian thistle is less competitive with other species. Seedlings of Russian thistle are suppressed when other plants become established first and shade out the sunlight.

The attached photos of the current state of these grasslands show the circumstances of this conversion.

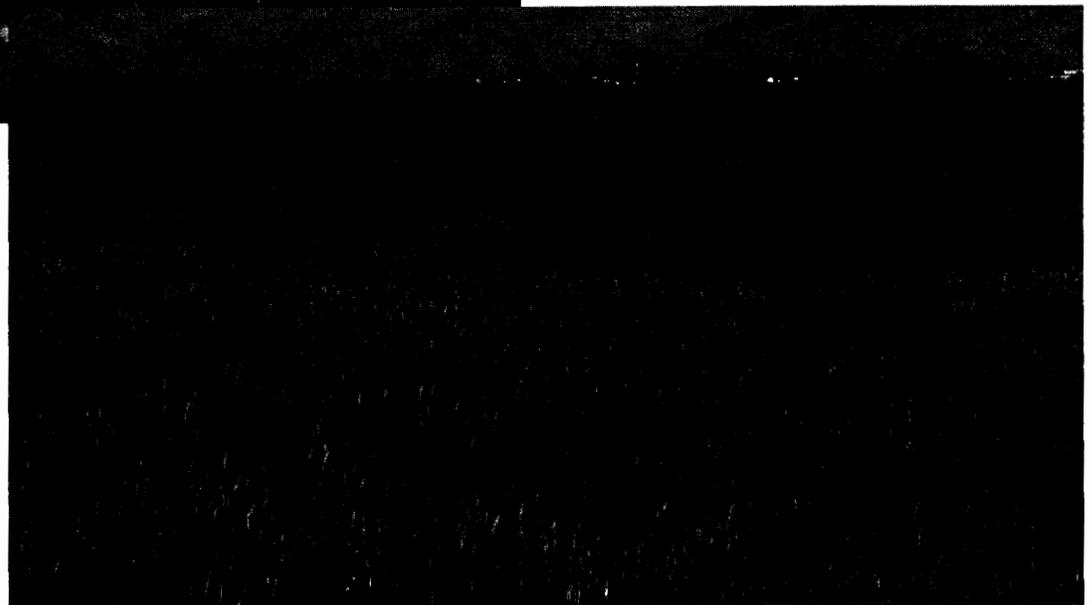
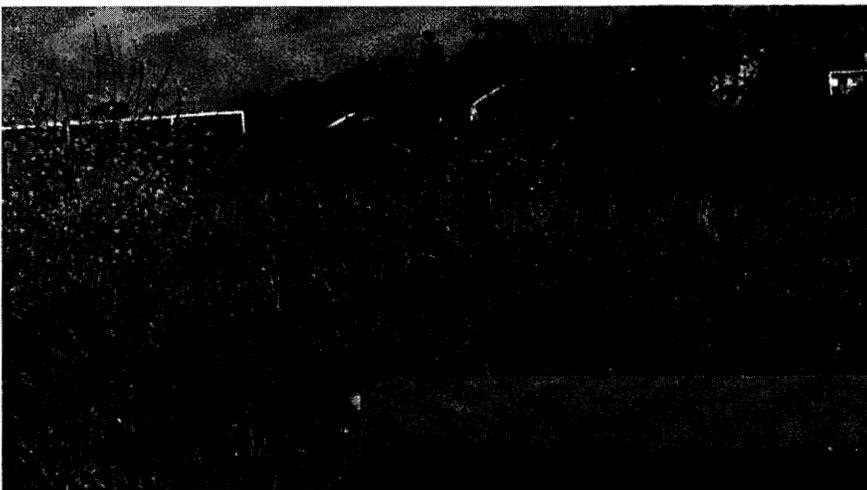
Thank you,

Kevin Nelson,
Nature Commission
949-939-9372 Kevin@NatureCommission.org

Current state of grasslands as of Nov 18, 2015



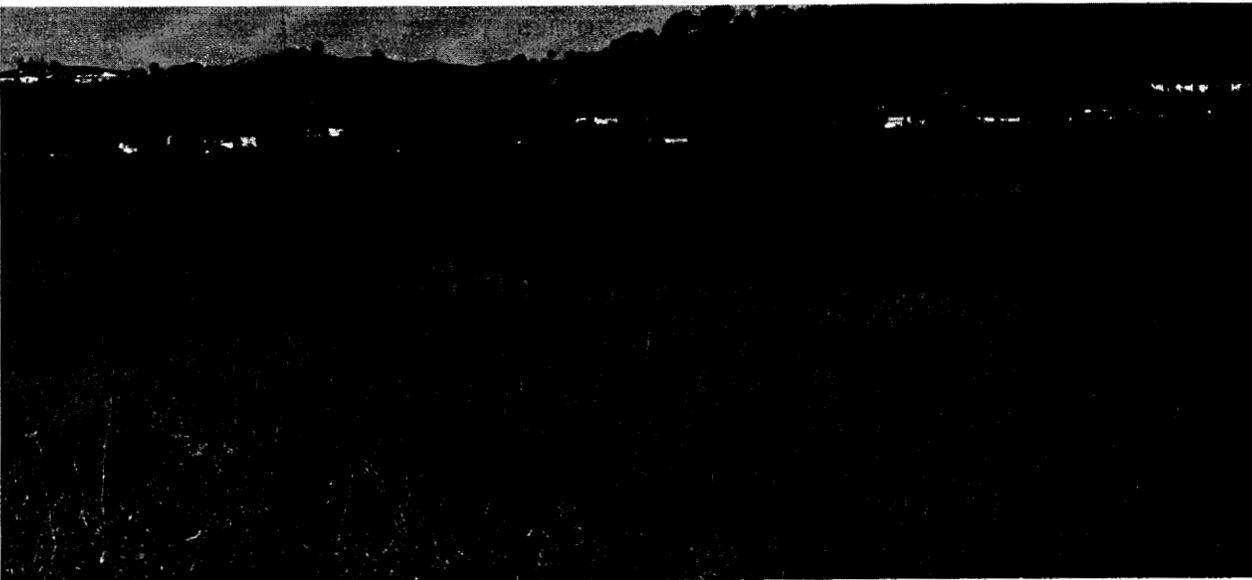
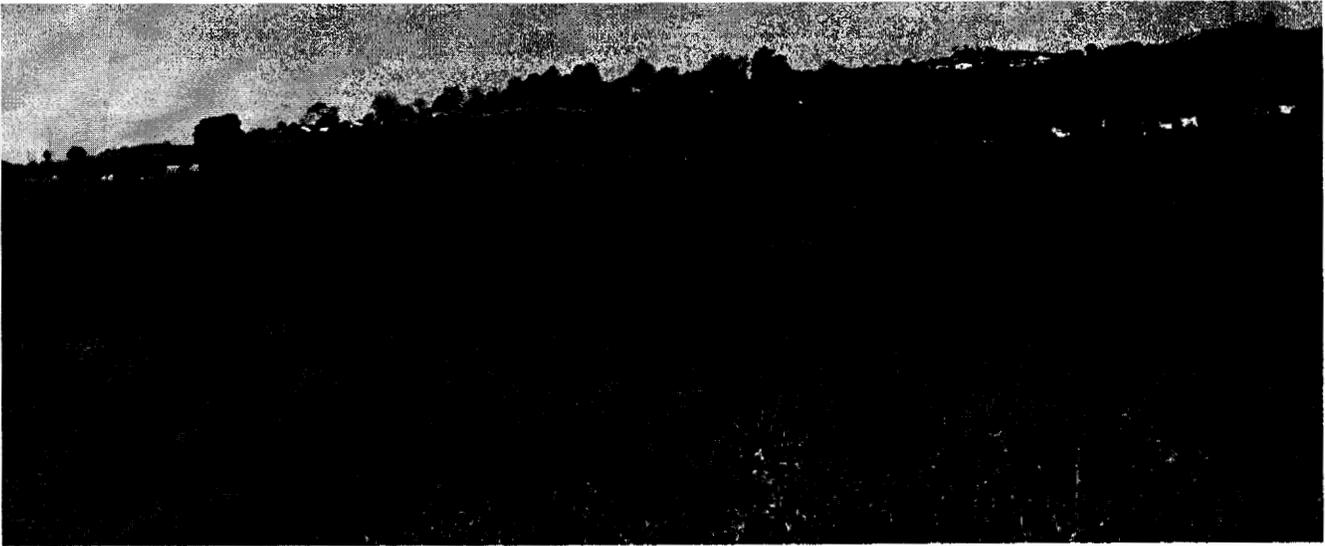
These images show the same area in dry season 2007 and 2008. No Russian Thistle



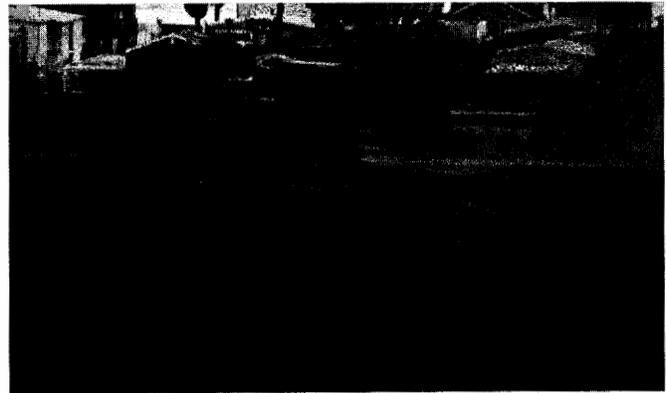
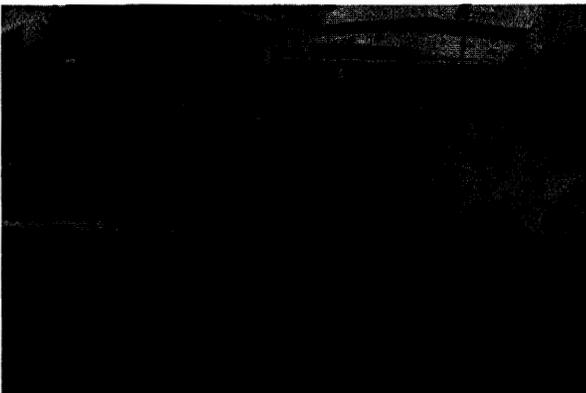
Area of San Clemente: Disturbed soil and Russian Thistle on right.
Undisturbed soil and grasses on left.



Mesa area of San Onofre closely resembles the Banning Ranch grasslands, yet has no Russian Thistle. It is located next to the ocean, contains a vernal pool complex, has been mowed on occasion, but soil has not been deeply disturbed as on Banning Ranch.



As shown here, 2012 Banning mowing was deep, with the driver going over the same areas repeatedly.



Kevin Nelson, Nature Commission
Contact: 949-939-9372 / Kevin@naturecommission.org

Public Comments

5-15-2007 EXHIBIT 19

Dobson, Amber@Coastal

From: Charlotte Masarik <charlottemasarik@cox.net>
Sent: Wednesday, December 02, 2015 6:54 PM
To: Dobson, Amber@Coastal
Subject: RE: CCC Hearing January 13-15 - Banning Ranch

Hello Amber: Please would you see that Chair Kinsey, the Commissioners and Staff get this letter regarding Banning Ranch in their email boxes. Thank you very much and happy holidays, Charlotte Masarik

California Coastal Commission Hearing
January 13 – 15, 2016 in San Diego
Ref: Banning Ranch

Dear Honorable Chair Kinsey, Commissioners and Staff,

We continue to strongly oppose the developer's revised project and urge you to deny the permit at the upcoming January 13-15, 2016 CCC Hearing in San Diego.

Once Again, please protect Banning Ranch, one of the last remaining coastal wildlife areas, home to the threatened California Coastal Gnatcatcher and the Cactus Wren - an Environmentally Sensitive Habitat Area with Native American Remnants still left on Banning Ranch.

We live in Laguna Beach and feel overwhelmed by the impacts of heavy development and tourism in our small town. We believe it has forever down-graded our way of life, the landscape, cultural and community aspects of the town and our open spaces including the ocean bluffs. And for these reasons we believe that Banning Ranch should remain as 100% open space as the Newport Beach General Plan requires. In the CC staff report from the October 7 Hearing, the staff described how, by reducing the development footprint by 93% (from 124 acres to 11.5 acres), the developers could build a project that would avoid EHSA with adequate buffers and be consistent with the Coastal Act. This revised project **has only reduced the development footprint by 18%** (from 124 acres to 102 acres) and still proposes nearly 900 homes. This is unthinkable in our minds and flies in the face of compliance, cooperation and compromise.

We value this last vestige of coastal open space and request that you protect our coast and coastal communities **by once more rejecting this massive, proposed development in Banning Ranch.**

Sincerely,

Charlotte and Alex Masarik
761 Oak Street
Laguna Beach, CA 92651
949-295-8040

DEC 10 2015

CALIFORNIA
COASTAL COMMISSION



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Post Office Box 9256
Newport Beach, CA 92653

www.FHBP.org

December 10, 2015

California Coastal Commission
45 Fremont Street,
Suite 2000
San Francisco, CA 94105

RE: Banning Ranch Proposal, Newport Beach

Honorable Chair Kinsey, Commissioners and Staff:

Friends of Harbors, Beaches, and Parks (FHBP) is a regional non-profit organization that works to protect the natural lands, waterways, and beaches of Orange County. As we noted in our letter to you dated August 26, 2015, regarding the proposed development of the Banning Ranch property in the City of Newport Beach, we have numerous concerns that persist with the most recent submittal from the Newport Banning Ranch LLC dated November 4, 2015. These concerns include:

- Banning Ranch is the only remaining large, unprotected coastal open space in Orange County. If it is developed, it is gone forever.
- The lowland wetland/riparian areas at Banning Ranch present an unprecedented opportunity to revitalize and restore the river delta of the 110-mile Santa Ana River—Southern California's largest watershed. We must not foreclose opportunities to integrate successes from exemplary river and wetland revival projects on the Los Angeles River, the Guadalupe River in San Jose, California, the Sacramento and San Joaquin River Delta, and the San Diego River.
- Restored waterways, where significant hydrologic and habitat restoration are combined with public open space and recreation, yield commercial, social and ecosystem benefits for the region and state.
- Banning Ranch's diverse topography of upland mesas drained by arroyos, numerous vernal pools with rare biotic life, proximity to the sizable lowland wetlands, creates a remarkable abundance of wildlife. These areas are biologically interdependent. The ecologically synergistic effect of topography diversity would be lost forever if the mesas were developed. The most recent plan proposes 2.8 million cubic yards of soil to be excavated and stockpiled to prepare the land for development, destroying a unique coastal environment and exposing the public to unknown levels of oil field contaminants.



California Coastal Commission
Page 2

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- The project proposes destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—that are all considered irreplaceable by the Coastal Act.
- The proposed project's water demands would place a significant burden on scarce water supplies, increasing groundwater withdrawals.
- The Water Supply Assessment Report was flawed and outdated by its own admission. Local traffic and emissions would be significantly increased with 15,000+ additional vehicle daily trips on roads that have not been upgraded for such congestion.
- The air pollution from the project construction and the long-term traffic loading would exceed state standards.
- The noise impacts caused by traffic and other sources from the coastal bluff would be double the allowable noise thresholds and extend beyond the project site.
- The project site is far from any significant existing or proposed transit facilities thus contributing considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.
- Banning Ranch is part of the several thousand-year-old Native American village Genga, an important historic and cultural site for both the local Juaneño (Acjachemen) and the Gabrielino (Tongva) Nations. The area was listed on the state Sacred Lands Inventory maintained by the California Native American Heritage Commission at the request of local tribal leaders many years ago and meets the criteria to be considered a Tribal Cultural Resource under the California Environmental Quality Act as recently amended by AB 52.
- Additionally, eight Native American archeological sites have been documented on the property, with at least three of these eligible for listing on the National Register of Historic Places (NRHP) and the California Register of Historical Resources (CRHR). The entire area is also likely eligible for listing on the National Register as a Traditional Cultural Property.
- Although the cultural resources and archaeological sites on Banning Ranch have been adversely impacted as a result of oil operations on site, previous disturbances do not compare to the damage that could result from the proposed project. The massive grading proposed would most certainly result in the unearthing of Tongva and Acjachemen cultural items of great significance to both tribal communities. Additionally, creating a new housing development the size of the city of Bishop would impact the integrity of the site as a traditional cultural property and would impair the ability of contemporary tribal citizens to utilize the area for traditional cultural practices today.



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California Coastal Commission

Page 3

- Considering that over 90% of known Native American traditional cultural properties and archaeological sites in Orange County have been destroyed from development, the Acjachemen and Tongva evidence on Banning Ranch must be left in place.
- The Coastal Commission must be cognizant of the California Supreme Court's decision on November 30th of the Newhall Ranch development north of Los Angeles. The decision requires public officials to determine whether new development projects will interfere with the state's climate goals stated in AB 32. The decision also protected endangered fish and other wildlife by disallowing capture and relocation as mitigation for impacts to endangered species. The Court further required more consideration to the issues regarding cultural resources and native peoples.
- In a project that creates substantial levels of greenhouse gases, has significant and unavoidable impacts to federally listed threatened and endangered wildlife, and destroys a Native American Traditional Cultural Property, the Newhall Ranch decision carries a salient lesson in pushing forward a project that so burdens our state's resources.

Too many of the above impacts exceed regulatory standards, were designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report (<http://www.newportbeachca.gov/index.aspx?page=2096>), and have not been mitigated with the most recent downsizing of the program and development areas.

Despite the City's own General Plan, approved by the voters in 2006, which states in the Land Use Element "Prioritize the acquisition of Banning Ranch as an open space amenity for the community and region -----", and despite the number and severity of these impacts, the Newport Beach City Council approved the proposed Banning Ranch project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts would put the health, safety and quality of life of the public at risk—and would result in the destruction of the rare and finite natural resources at this unique coastal location.

As a result of the Commission's 90-day deferral in October, the project proponent has been in the process of working with Commission staff on further revisions to the plan approved by the City. FHBP remains concerned about any project from this applicant. We have determined that there is no public benefit from this kind of development at this site, while the value of a preservation-focused use of the property would be extremely beneficial and popular to the surrounding communities and the region.



California Coastal Commission
Page 4

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This land is situated at the Pacific Ocean terminus of the Santa Ana River, which has recently been recognized as a statewide resource through the formation of the Santa Ana River Conservancy. Through concerted action by the State's Coastal Commission and Coastal Conservancy along with all other parties of interest including the 17-agency Southern California Wetlands Recovery Project, the Banning Ranch in its entirety should be valued as the one remaining opportunity for a coastal public resource.

To conclude, FHBP urges the Commission to reject the proposed development at Banning Ranch in its entirety.

Sincerely,

Jean H. Watt
President

Post Office Box 9256
Newport Beach, CA 92653

www.FHBP.org



12-10-15

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In Memoriam

Mailing Address:

P.O. Box 15333
Newport Beach, CA
92659-5333

Phone:

(310) 961-7610

E-Mail Address:

info@BanningRanch
Conservancy.org

SUBJECT: Banning Ranch Consultive Pricing Study is Outdated and Needs a Revision before the Coastal Commission can approve a permit for the development of Banning Ranch

Dear California Coastal Commission and City of Newport Beach,

The attached 2008 Consultive Pricing Study (Study) of Banning Ranch by the City of Newport Beach was severely flawed. It relied on the basic premise that 115 acres of mesa land (Benchland Development) was ESHA free and available for development. The staff of the City of Newport Beach knew the Coastal Act well at the time of the Study, as they had been working with the Coastal Commission staff since before 2005 on a Local Coastal Plan as Newport Beach worked to annex Newport Coast.

There was no excuse for the City of Newport Beach to allow the Study to omit the ESHA requirements of the Coastal Act during the pricing process. In fact it had a fiduciary responsibility to the residents of Newport Beach who voted in the General Plan on November 6, 2006 to have acquisition for public space as the first priority for Banning Ranch. By ignoring the ESHA requirements of the Coastal Act, the City of Newport Beach made the Study biased against the acquisition of Banning Ranch for open space. We request that that General Plan "time period clause" be reset starting at the time of a Study that takes the Coastal Act into consideration to meet the wording of the General Plan that "If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village...."

As you can see in the tables below, by ignoring the Coastal Act, the City of Newport Beach priced the Banning Ranch property for total acquisition at between \$138 million and \$152 million as shown in Table 1 taken from the attached City of Newport Beach document. This pricing that ignored the Coastal Act to claim 115 acres of mesa property was available for development was unreasonable and prevented Banning Ranch Conservancy from raising the funds for acquisition, because no public or private entity would be partners in buying such an overvalued parcel of land. This clearly went against the intentions of the voters on November 6, 2006.

However, as we confirmed during the October 7th Coastal Commission hearing, when one takes into account the Coastal Act when appraising Banning Ranch there are only 11.5 acres that can be developed. The majority of the mesa property (104 acres) that is currently priced as Benchland Development should be priced as Benchland Open Space (94.6 acres) or Hillside Open Space (9 acres). If we apply the same formulas as the City of Newport Beach Study, the price for acquisition changes to somewhere between \$40 million and \$45 million as shown in Table 2. These are numbers that are reasonable enough for the Banning Ranch Conservancy to find private and public funds for acquisition and also to obtain funds for assessment and cleanup related to remaining Brownfield issues. The Banning Ranch Conservancy would work with the EPA, which has remediation funds available for entities like the Banning Ranch Conservancy to apply for after acquisition. The BRC is also interested in investigating cleanup without disturbing existing ESHA using Phytoremediation, a system that will not only benefit Banning Ranch but other coastal Brownfields in need of cleanup without disturbing ESHA

We ask that the Coastal Commission deny the current permit request and ask the developer and the City of Newport Beach to revisit the Study and correct the pricing parameters by including the Coastal Act requirements for ESHA protection. Please ask the City of Newport Beach and the developer to present a true appraisal based on the Coastal Act, since the property was specifically designated as Open Space as a priority and the 2008 Study denied the public of potentially realizing the outcome that they voted for in a fair city-wide election.

We ask the City of Newport Beach to make a new appraisal that takes into account that only 11.5 acres can be developed according to the Coastal Act, and we ask the City of Newport Beach to sit down with the owners and interested non-profits like Banning Ranch Conservancy to facilitate the public's mandate of acquisition for preservation as open space. All we ask is that the City of Newport Beach and the landowners follow the will of the people as represented on November 6, 2006

Thank you



Terry Welsh, M.D.

President, Banning Ranch Conservancy

**CONSULTIVE PRICING STUDY
POTENTIAL ACQUISITION PARCELS
BANNING RANCH - 400± ACRES
NEWPORT BEACH ANNEXATION**

TABEL 1: 2008 APPRIASAL BY CITY OF NEWPORT BEACH (MATH ERRORS IN TOTALS CORRECTED) 115 buildable acres

Parcel Index	Proposed Land Use Designation	No Acres	Price Recommendations			
			Value/acre	Conservative	Value/acre	Optimistic
A	Lowland Open Space	134.1	\$59,657	\$8,000,000	\$64,877	\$8,700,000
B-1	Oil Recovery Site	11.7	\$111,111	\$1,300,000	\$128,205	\$1,500,000
B-2	Oil Recovery Site	4.8	\$187,500	\$900,000	\$208,333	\$1,000,000
B-3	Benchland Open Space	43.5	\$149,425	\$6,500,000	\$174,713	\$7,600,000
C-1	Benchland Development	85.4	\$1,299,766	\$111,000,000	\$1,500,000	\$128,100,000
C-2	Benchland Development	29.7	\$1,750,842	\$52,000,000	\$2,000,000	\$59,400,000
D	Hillside Open Space	93.1	\$45,113	\$4,200,000	\$50,483	\$4,700,000
TOTALS		402.3		\$ 183,900,000		\$ 211,000,000
BULK	25% discount for bulk purchase			\$137,925,000.00		\$ 158,250,000.00

TABLE 2: 2015 ESTIMATED VALUE ADJUSTMENT BASED ON 11.5 ACRES OF BUILDABLE SPACE

Parcel Index	Proposed Land Use Designation	No Acres	Price Recommendations			
			Value/acre	Conservative	Value/acre	Optimistic
A	Lowland Open Space	134.1	\$ 59,657	\$8,000,000	\$64,877	\$8,700,000
B-1	Oil Recovery Site	11.7	\$ 111,111	\$1,300,000	\$128,205	\$1,500,000
B-2	Oil Recovery Site	4.8	\$ 187,500	\$900,000	\$208,333	\$1,000,000
B-3	Benchland Open Space	138.1	\$ 149,425	\$20,635,632	\$174,713	\$24,127,816.09
C-1	Benchland Development	6	\$ 1,299,766	\$7,798,595	\$1,500,000	\$9,000,000
C-2	Benchland Development	5.5	\$ 1,750,842	\$9,629,630	\$2,000,000	\$11,000,000
D	Hillside Open Space	102.1	\$ 45,113	\$4,606,015	\$50,483	\$5,154,350.16
TOTALS		402.3		\$ 52,869,872		\$ 60,482,166
BULK	25% discount for bulk purchase			\$ 39,652,403.77		\$ 45,361,624.69

Hermosa Beach Office
Phone: (310) 798-2400
Fax: (310) 798-2402

San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522


Chatten-Brown & Carstens LLP
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Hermosa Beach, CA 90254
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Michelle Black
Email Address:
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Direct Dial:
310-798-2400 Ext. 5

Requesting Denial

December 17, 2015

Honorable Commissioners
California Coastal Commission
Headquarters Office
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

California Coastal Commission
South Coast District Office
c/o Ms. Amber Dobson
Ms. Teresa Henry
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Via Email Amber.Dobson@coastal.ca.gov
Teresa.Henry@coastal.ca.gov

Re: Application No. 5-13-032
Application of Newport Banning Ranch, LLC

Dear Honorable Commissioners:

We submit these comments on behalf of the Bolsa Chica Land Trust (BCLT) in support of staff's October 2015 recommendation to **deny** Application No. 5-13-032, the Banning Ranch Project. (October Staff Report pp. 1, 5, hereafter "Staff Report".) The mission of BCLT is to acquire, restore and preserve the entire 1,700 acres of the mesa, lowlands and wetlands of the Bolsa Chica ecosystem, and to educate the public about this natural treasure and its unique biological and Native American cultural resources.

We have reviewed NBR's November 4, 2015 submission to the Commission. While now somewhat reduced in size, the revised Banning Ranch Project proposes to construct 895 residences, 445,100 square feet of commercial uses, 4 acres of retail, a 75-room hotel, 8-10 bed hostel, and 6.5 acres of resort uses. Project development has been reduced by approximately 23.5 acres.

The Banning Ranch site “consists of 401 acres and is the largest and last remaining privately owned lands of its size along the coast in Southern California.” (Staff Report p. 1.) As recognized in the staff report, the Banning Ranch Project site shares important similarities with the Bolsa Chica area. Both the property known as Banning Ranch and the Bolsa Chica area contain upland and lowland habitats, coastal wetlands, and Coastal Commission-designated environmentally sensitive habitat areas (ESHA) that host rare, threatened, and endangered species. Both sites have also served as historic centers of Native American activity, resulting in the presence of culturally significant archaeological and paleontological artifacts onsite. Due to urban development pressures, like the Bolsa Chica area, the Banning Ranch property is one of the only remaining areas of open space and habitat remaining on the Orange County coast. Unfortunately, while much of the Bolsa Chica ecosystem has been preserved as the Bolsa Chica Ecological Reserve, no such permanent protections exist for the Banning Ranch ecosystem. This is important, considering that staff found, “[t]he presence of vernal pools at Banning Ranch adds a layer of diversity not even present at Bolsa Chica.” (Staff Report p. 3.)

BCLT supports staff’s October 2015 recommendation to deny NBR’s application due to its inconsistencies with Coastal Act policies concerning biological resources and the protection of ESHA, potential impacts to archaeological and cultural resources, natural landforms, and the preservation of views. (Pub. Resources Code §§ 30240, 30233, 30231, 30253, 30210, 30251.) The November 5, 2015 Project revisions do not remove these inconsistencies.

I. Only Preservation of the Property is Consistent with Coastal Act Requirements for Environmentally Sensitive Habitat Areas (ESHA).

Banning Ranch borders sensitive habitat and ecological reserves on both the north and west, and boasts “an incredibly unique array of sensitive coastal species and habitats, including nesting habitat for the threatened California gnatcatcher, a very rare vernal pool system, and one of the few remaining significant areas of native grassland in the coastal zone.” (Staff Report p. 3.) As part of the historic Santa Ana River wetlands complex, the site also hosts part of one of the few remaining wildlife corridors in Southern California used by terrestrial species and birds to travel between the mountains and ocean. (Staff Report p. 29.) Rare plant communities, and state and federally-listed bird species, including the California gnatcatcher, least Bell’s vireo, and coastal cactus wren are found onsite. (Staff Report pp. 29-31.) The site’s vernal pool complexes house federally-listed San Diego fairy shrimp. (Staff Report p. 44.) Notably, the site supports a rich seed bank. Once development ceases on the site, it is expected that the watershed, animals, and plants native to site will rebound without intervention. (*Ibid.*) The Commission’s

ecologists have identified “a significant portion” of the site as Environmentally Sensitive Habitat Area (ESHA). (Staff Report p. 35.)

Per the Coastal Act, only resource-dependent uses are permitted in ESHAs. (Pub. Resources Code § 30240 (a).) The Coastal Act requires that development adjacent to ESHAs “be sited and designed to prevent impacts which would significantly degrade those areas, and... be compatible with the continuance of those habitat and recreation areas.” (Pub. Resources Code § 30240 (b).) This means that an applicant must avoid developing on an ESHA, as well as siting a project in a manner that indirectly affects ESHA through edge effects, noise, light intrusion, introducing invasive plant or animal species, removing adjacent lands that contribute to the importance of the ESHA (such as raptor foraging grounds), etc.

Although the Project’s footprint has been reduced by approximately 23.5 acres, the Project’s commercial and residential development would develop 62 acres of Banning Ranch, with continuing significant and permanent impacts to ESHA. Additional acreage at Banning Ranch would be affected by the construction of roads and the 2.8 million cubic yards of grading that would occur under the revised Project.

Oilfield abandonment and remediation activities would adversely affect an additional 109 acres of ESHA. Oilfield remediation activities would require extensive grading and excavation to bare earth in areas known to contain sensitive biological resources, including nine acres of sensitive native vegetation. As noted by staff, neither residential, commercial, nor oil remediation activities are considered “resource-dependent” uses of ESHA, and their occurrence within ESHA violates section 30240. Many vernal pools would be impacted by remediation and development. (Staff Report p. 44.) While the revised Project would reduce oil remediation impacts to 12 acres of the lowlands, over 100 acres would still be adversely affected.

Unfortunately, the Applicant proposes to mitigate impacts to ESHA, as opposed to avoiding all ESHA onsite. This proposal violates California law. California courts have upheld the Coastal Act’s protections for ESHAs. For example, ESHA in the way of a proposed development cannot be moved. It must be preserved instead. In *Bolsa Chica Land Trust v. Superior Court*, the justices held:

[T]he language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which

can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA and by carefully controlling the manner uses in the area around the ESHA are developed.

(*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 507, citations omitted.) Moreover, the deteriorating nature of ESHA cannot be considered with regard to Project placement. (*Id.* at 508.) Once ESHA has been determined by the Coastal Commission, it is entitled to the full protections of the Coastal Act. California has lost over 90 percent of its coastal wetlands. Even degraded ESHA must be preserved, especially in locations such as Banning Ranch, where biologists have testified that habitat will recover without intervention. The Project cannot be approved until it has been redesigned to avoid adverse impacts to ESHA.

Moreover, nothing in the revised submittal indicates that the Applicant has provided the Army Corps of Engineers or the Regional Water Quality Control Board with sufficient information to delineate "waters of the U.S." as defined in the Clean Water Act. Thus, the U.S. Fish and Wildlife Service has not yet prepared the biological opinion that will identify critical habitat for the San Diego fairy shrimp, and vernal pools and watersheds present on the Banning Ranch property have not yet been delineated. (Staff Report p. 4.) Accordingly, approval of the Project at this time is premature and may result in violations of the Endangered Species Act and Clean Water Act. Additionally, the Commission's approval of the Project prior to the preparation of this key information would prevent the Commission from exercising its authority to prevent degradation of ESHA that may be determined through these processes, as well as its statutory obligations to protect wetlands and other important habitats.

The Banning Ranch site's environmental importance is even greater than is presented in the staff report. As described further in the comments submitted on October 1, 2015 by Hamilton Biological, the site contains very significant vernal pools and habitat for the rapidly diminishing coastal cactus wren and burrowing owl. More recent reviews by Hamilton Biological indicate that the revised Project will lead to fragmentation of important burrowing owl habitat.

As even the revised Project clearly violates provisions of the Coastal Act designed to protect ESHA, water quality, wetlands, and vernal pools, the Project must be denied.

II. Archaeological and Cultural Resources Are Present Onsite and Require Enforceable Mitigation Conditions.

The Coastal Act provides strong protections for archaeological resources. (Pub. Resources Code § 30244.) Like Bolsa Chica, Banning Ranch “is also known to contain archaeological resources.” (Staff Report p. 4.) Eight prehistoric and three historic resources are recorded on the Project site. Of the 11 archaeological sites evaluated onsite, three, CA-ORA-839, CA-ORA-844B, and CA-ORA-906, were deemed eligible for listing in the California and National Registers of Historic Places as historical resources. (Staff Report p. 60.)

The staff report notes that the Applicant has attempted to plan around the potential for archaeological resources, but acknowledges the importance of multiple local projects (Brightwater at Bolsa Chica and Hellman Ranch in Seal Beach), where “the location of archeological resources was thought known...only to discover during grading just how highly inaccurate those estimates were.” (Staff Report p. 4.) In Bolsa Chica, the applicant and its consultants had determined through extensive preliminary site work that the Project would avoid significant archaeological resources. The subsequent discovery of human remains and other important cultural resources onsite resulted in years of disruption not only to the Project, but to the Native American community while it was determined how to proceed and how to care for the archaeological and paleontological resources unearthed onsite. Similar issues are likely at Banning Ranch, as “the project involves significant grading, there is a high likelihood of discovering additional resources that are currently unknown, especially since the test pits, to date, have been largely outside the proposed development footprint.” (Staff Report p. 60.)

BCLT appreciates the staff report’s emphasis on the preference of in-situ preservation of archaeological resources that may be located during Project grading or construction. BCLT agrees with staff that “Complete avoidance of resources during the abandonment and remediation activities is appropriate for the site and could be achieved through a proposal to cap known resources.” (Staff Report p. 60.) The Applicant’s proposal to excavate resources and donate them to the Cooper Center is “not most protective of the cultural resource and is not an appropriate response.” (*Ibid.*) This is especially true with regard to the Applicant’s failure to provide for capping of human burials found during grading. (Staff Report p. 60.) In order to avoid the controversy and disruption that occurred with the Brightwater project, the Project conditions must require preservation in-situ and the reconfiguration of the Project to avoid adverse impacts to archaeological resources.

The Brightwater controversy highlighted the importance of having Native American monitors present onsite during any Project grading activities or archaeological

investigations. According to the staff report, “Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition.” (Staff Report p. 59.) The Project conditions must require the Applicant to have monitors on site from all relevant Native American communities, as well as the presence of a paleontologist at all times.

BCLT agrees with staff regarding the need to impose strong and enforceable conditions to protect archaeological resources consistent with Coastal Act section 30244. Additionally, given the Applicant’s failure to provide sufficient information in the application materials for staff to adequately assess the Project’s potential archaeological impacts, a deficiency that does not seem to be remedied by the November 5, 2015 submittal, BCLT urges the Commission to deny the Project. (Staff Report p. 61.)

III. Topography and Air Quality Concerns.

The Coastal Act requires that development shall be sited “to minimize the alteration of natural land forms.” (Pub. Resources Code § 30251.) The Banning Ranch site is unique in that it consists of both an upper mesa and lowland fresh water marsh habitat connected by steep slopes and two major arroyos that cut across the property. (Staff Report p. 3.) In order to provide flat building pads for the revised development Project’s 895 residences, commercial, and retail development, the Applicant proposes 2.8 million cubic yards of grading. Even as reduced by the revised Project, the large amount of grading – and the impact of that grading – cannot be understated. For comparison purposes, remediation of the known soil contamination on the site under the Project discussed at the October 2015 meeting would require the movement of only 271,000 cubic yards of soil. (Staff Report p. 2.) While 271,000 cubic yards is itself a large amount of soil movement, it pales in comparison to the 2.8 million cubic yards of grading and soil movement proposed. The resulting Banning Ranch site would have vastly different topography than is present now. Although the November 5, 2015 NBR submittal claims that much of the topography is preserved under the revised plan, this seems impossible if nearly 3 million cubic yards of grading will occur. Clearly, the Project would not “minimize the alteration of natural land forms” as required by the Coastal Act.

The revised Project’s landform alteration through mass grading would also result in adverse visual impacts to and from the site, in violation of provisions in Coastal Act section 30251, pertaining to visual and scenic qualities. The mass grading and fill of natural drainages violates Coastal Act section 30231 providing for the maintenance of riparian habitats, minimization of the alteration of natural streams and watercourses, and the prevention of sedimentation and runoff that adversely impacts water quality.

In addition to the loss of the site's unique topography, the disturbance of millions of cubic yards of contaminated soils presents substantial air quality concerns for wildlife and for downwind residents. The movement of millions of cubic yards of contaminated dirt around the Project site would lead to contaminated fugitive dust. If this dust settles in uncontaminated portions of the property, the known contamination could spread, with greater impacts to ESHA and wildlife than have been disclosed to the Commission and the City thus far. As discussed in the October Staff Report, both the Orange County Health Care Agency and the Regional Water Quality Control Board "continue to have significant questions about the" proposed Remedial Action Plan for the site, despite several years of communication about the plan. (Staff Report p. 2.) Thus, the remediation plan for the site's contamination will likely change significantly before it is approved, which will potentially increase the number of proposed clean-up locations and alter "the excavation depths of these areas, the amount of soil needing treatment or dispersal, and the scale of proposed soil treatment activities." (*Ibid.*) This may have already occurred. In a September 4, 2015 letter to the Applicant, which was also submitted to the Commission, the South Coast Air Quality Management District listed a figure of 362,000 cubic yards of soil remediation. This letter also expressed grave concerns with the potential health impacts of the proposed soil remediation and disturbance. Thus, at this point, the Project may violate Coastal Act section 30253, requiring consistency "with requirements imposed by an air pollution control district" to minimize adverse impacts.

Further air quality degradation would be caused by the thousands of diesel truck trips that would be required to move the soil to, from, and around the development site. Microscopic diesel particulate matter contains a host of toxic chemicals that are able to penetrate beyond human lungs and enter the bloodstream. Diesel particulate matter has been linked to a variety of long term and acute cardiopulmonary ailments, including increased risk of heart attack and death. The State of California considers diesel exhaust a toxic air contaminant and a probable human carcinogen. Children and the elderly are especially susceptible to harm caused by diesel exhaust. The impacts of prolonged exposure to diesel exhaust are likely far greater on smaller species, including threatened and endangered species that inhabit Banning Ranch. Thus, the impacts of diesel exhaust on the site's ESHA and sensitive wildlife presents another way in which the proposed Project violates of the Coastal Act.

Conclusion

Thank you for your consideration of these comments. BCLT continues to support staff's October 2015 recommendation to deny Application 5-13-032, the Banning Ranch Project, for the reasons set forth in the staff report. As proposed, the Project violates sections 30240, 30233, 30231, 30253, 30210, and 30251 of the Coastal Act, due to its

adverse impacts on topography, biological resources including wetlands and vernal pools, and adverse visual impacts through mass grading. Although the November 5, 2015 resubmittal preserves an additional 23.5 acres, it does not remedy these inconsistencies with the Coastal Act. The meager benefits promised by the Project "are entwined with substantial impacts to highly sensitive resources and permanent loss of a very rare and valuable ecosystem that cannot be replicated." (Staff Report p. 4.) BCLT also notes the Applicant's history of Coastal Act violations and unpermitted development at Banning Ranch. Based on the information before the Commission, only total preservation of the Banning Ranch parcel can satisfy both the ESHA/biological resources and cultural resource protections contained in the Coastal Act.

Sincerely,



Michelle N. Black, on behalf of
Bolsa Chica Land Trust

Dobson, Amber@Coastal

From: ryan long <ryanalong@hotmail.com>
Sent: Thursday, December 17, 2015 10:47 AM
To: Dobson, Amber@Coastal
Subject: Newport Beach Concerns

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Honorable Chair Kinsey, Commissioners and Staff,

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report

(<http://www.newportbeachca.gov/index.aspx?page=2096>).

The Conservancy joins the larger community of volunteers, supporters and residents in requesting your attention to the following concerns (partial list):

- Banning Ranch is the only remaining large unprotected coastal open space in Orange County. When it's gone, it's gone forever.
- 2.5 million cubic yards of soil will be excavated and stockpiled to prepare the land for development, destroying the environment and exposing the public to unknown levels of contaminants.
- The destruction of environmentally sensitive habitat areas, threatened wildlife species, coastal wetlands and vernal pools—none of which is allowed by the Coastal Act.
- ONGOING RECORD DROUGHT: the Project's water demands will place a significant burden on our scarce water supply, increasing water shortages.
- Where's the water coming from? The Project's Water Supply Assessment Report is flawed and outdated by its own admission.
- TRAFFIC: 15,000+ more car trips on our roads, daily! Expect double and triple commutes, gridlocked intersections.
- POLLUTION: Air pollution from construction and traffic will exceed state standards.
- POLLUTION: Noise from traffic and other sources will double allowable noise thresholds.
- POLLUTION: Greenhouse gas emissions will contribute considerably to the Greenhouse Gas Inventory, accelerating global climate change and rising sea levels.

Despite the severity of these impacts, the Newport Beach City Council approved the Project in July of 2012, resorting to a "Statement of Overriding Considerations" to rationalize away the "significant and unavoidable" impacts cited throughout the EIR. These impacts will put the health and safety of the public at great risk—and will result in the destruction of the Ranch's rare and finite natural resources.

The public and the environment should not be treated as collateral damage to the proposed development. Please hear our concerns and please preserve our precious California coastline. We're counting on you!

Sincerely,
Ryan

Additional references:

City of Newport Beach EIR, Section 4.6.7, Biological Resources, Environmental Impacts

City of Newport Beach EIR, Section 4.9, Transportation and Circulation

City of Newport Beach EIR, Section 4.10, Air Quality (Table 4.10-7 Estimated Maximum Daily Construction Emissions: Unmitigated)

City of Newport Beach EIR, Section 6.0, Long Term Implications of the Proposed Project

Dobson, Amber@Coastal

From: Bob Paal <bobp@bpaproducts.net>
Sent: Thursday, December 17, 2015 6:02 PM
To: Dobson, Amber@Coastal; Neal Shehab
Cc: Chris Walton; Christa Borggreve; Geni Walton; Karl Post; greg@industrialbrokers.net; bambino369tk@yahoo.com; Sean Pence; robertson.joanna@gmail.com; Rappette; Bill Guidero
Subject: Re: Newport Shores

Follow Up Flag: Follow up
Flag Status: Flagged

Hello Amber,

I have been a member of the Newport Shores community for over 20 years. My children have grown up playing in and around the canal in The Shores.

Please do not approve any new permits for oil drilling. This is a close-knit community that should not have to worry about any type of toxic waste. We simply do not have any reason to believe that this will be dealt with properly.

Thank you for your attention to this issue!

Bob Paal

Sent from my iPhone

> On Dec 17, 2015, at 5:14 PM, Neal Shehab <nealshahab@gmail.com> wrote:

>

> Amber,

>

> I fully support the Oct. 7th Coastal Commission staff report recommending denial of a permit.

>

> PLEASE DO NOT APPROVE NEW OIL WELL DRILLING IN BANNING RANCH

>

> My children swim, fish and kayak in the Silimouk Slough. We can not rely or trust anyone in charge of "clean toxic waste".

>

> Neal Shehab

> (949)244-2736 cell

>

> Sent from my iPhone

Dobson, Amber@Coastal

From: Sean Pence <seanmpence@yahoo.com>
Sent: Thursday, December 17, 2015 5:26 PM
To: Bill Guidero; Neal Shehab; Dobson, Amber@Coastal
Cc: Chris Walton; Christa Borggreve; Geni Walton; Karl Post; greg@industrialbrokers.net; bambino369tk@yahoo.com; robertson.joanna@gmail.com; Rappette; Bob Paal
Subject: Re: Newport Shores

I couldn't agree more.
Sean Pence
3 Canal Circle

From: Bill Guidero <guiderodesign@att.net>
To: Neal Shehab <nealshehab@gmail.com>; "amber.dobson@coastal.ca.gov" <amber.dobson@coastal.ca.gov>
Cc: Chris Walton <chris@pbuilder.com>; Christa Borggreve <331borg@gmail.com>; Geni Walton <waltongeni@mac.com>; Karl Post <karl@karlpost.com>; "greg@industrialbrokers.net" <greg@industrialbrokers.net>; "bambino369tk@yahoo.com" <bambino369tk@yahoo.com>; Sean Pence <seanmpence@yahoo.com>; "robertson.joanna@gmail.com" <robertson.joanna@gmail.com>; Rappette <mishrapp@mac.com>; Bob Paal <bobp@bpaproducts.net>
Sent: Thursday, December 17, 2015 5:20 PM
Subject: Re: Newport Shores

Hi Amber
I also agree with Neil Shehab
Thank you Bill Guidero
342 62nd Street
(949) 675-2626

On Thursday, December 17, 2015 5:14 PM, Neal Shehab <nealshehab@gmail.com> wrote:

Amber,

I fully support the Oct. 7th Coastal Commission staff report recommending denial of a permit.

PLEASE DO NOT APPROVE NEW OIL WELL DRILLING IN BANNING RANCH

My children swim, fish and kayak in the Silimouk Slough. We can not rely or trust anyone in charge of "clean toxic waste".

Neal Shehab
(949)244-2736 cell

Sent from my iPhone

Dobson, Amber@Coastal

From: Michelle Steinhardt <mishrapp@me.com>
Sent: Thursday, December 17, 2015 4:56 PM
To: Dobson, Amber@Coastal
Cc: Rubble SHEHAB
Subject: Newport Shores Resident Concern!

Dear Amber,

I support the October 7th coastal commission staff report recommending denial of a permit.

Please DO NOT approve any new oil well drilling in Banning Ranch.

As a mother, I am very concerned about the claim by the Banning Ranch Developers that they want to "clean toxic wast", I have been made aware that the plan is to disturb the soil and expose Newport Shores to rain runoff which can bring toxic runoff to our canals, where our children swim all the time.

Please do what you can to keep our neighborhood safe. Thanks so much,

Michelle Steinhardt
mishrapp@mac.com

Dobson, Amber@Coastal

From: Ted Mumm <ted@3mumms.org>
Sent: Friday, December 18, 2015 12:03 PM
To: Dobson, Amber@Coastal
Subject: Banning Ranch

Dear Coastal Commissioners and Staff:

RE: Banning Ranch Toxic Waste

I have just learned that the City of Newport Beach may allow the developers, Newport Banning Ranch, LLC, to stockpile the toxic waste instead of removing it.

THIS IS UNACCEPTABLE !!!

I live in the section of Newport Beach called Newport Shores. We are directly adjacent to Banning Ranch.

If the toxic waste is allowed to remain on-site, when it rains it will run into canal and our front yards, and when the wind blows we will be breathing it in the air.

THE TOXIC WASTE MUST BE COMPLETELY REMOVED, NOT JUST COVERED UP !!!

Sincerely,

Carl W. Mumm
319 Cedar Street
Newport Beach, CA 92663

Dobson, Amber@Coastal

From: BRANDON HAUCK <hauck04@hotmail.com>
Sent: Tuesday, December 22, 2015 9:15 AM
To: Dobson, Amber@Coastal
Subject: Banning Ranch

I am writing this letter to voice my strong convictions against the Banning Ranch development.

This development will certainly result in: Increased Traffic, Dirty air, Oil field toxins being released, as well as water shortages. While I completely understand the economic rationale for developing such a property, the cost to our environment, community, and the people there within will be devastating.

Thank you for your time,

Brandon Hauck

Dobson, Amber@Coastal

From: Ted Mumm <ted@3mumms.org>
Sent: Tuesday, January 05, 2016 10:37 AM
To: Dobson, Amber@Coastal
Subject: Against Development of Banning Ranch

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Dobson, please be sure the Coastal Commissioners have a chance to read this.

Here's why I'm against the proposed development of Banning Ranch:

I live in the section of Newport Beach called Newport Shores. We are directly adjacent to Banning Ranch.

I've been in the same home for 45 years now, so have had ample opportunity to see Banning Ranch in all its moods and seasons.

Banning Ranch hosts an amazing diversity of animal species. The songs and calls of many of them can be easily heard from my home.

For example, just this morning, as I was getting up to start the day, I heard the cries of the coyote pack that lives on Banning Ranch. They cackled and piped back and forth to each other for several minutes. It is hard to describe what a privilege it is to be able to hear a sound like that while living in a densely-populated, grossly over-developed urban area like Newport Beach. Hearing the call of the coyotes sparks my imagination and I think of what our beautiful coast must have been like long ago.

I have heard those coyotes all the years I've lived next to Banning Ranch. But, unlike me, the coyotes aren't relatively recent arrivals. They've been around for much longer. The Native Americans who lived up on the Banning Ranch mesa must have been familiar with those same cries a thousand years ago.

So what happens if Banning Ranch is developed? Well, over the years, I've noticed that those coyote wails always seem to emanate from up on the mesa - *right where the houses will be built*. Building the houses will drive the coyotes out. Problem is, there's nowhere for them to go. Banning Ranch is the last bit of natural habitat in the area. Development of Banning Ranch will silence the coyotes forever.

Additionally, coyotes are essential predators. The most common food item for coyotes is small rodents. Though we may occasionally lose a neighborhood cat, it has been overwhelmingly proven through necropsy, scat investigation, and visual observation that coyotes do NOT, in fact, rely on pets or garbage for their diets. If the coyotes are gone, we'll see an explosion of the rodent population.

For future generations to benefit from the coyotes, Banning Ranch must remain natural habitat. It's that simple. There is no 'compromise' development of Banning Ranch that will allow it to happen.

But this is not just about the coyotes, or even endangered animals like the Cactus Wren, Gnat Catcher and Fairy Shrimp. Preserving critical habitat for plants and animals is important, of course, but to me, it's much more than that. It has to do with what we really need as a society. Do we need more houses with manicured trails and lawns, or do we need something that will be a treasure for future generations?

Banning Ranch is our last little precious bit of natural coastal heritage. It is our final link to what this part of California used to be.

Thus, I plead with you to deny development of Banning Ranch. Our coast needs that beautiful natural habitat. As a nature park, it could become an island of tranquility to refresh our souls. But for me, just insuring that our children can hear the coyotes sing is reason enough.

Sincerely,

Carl W. Mumm
319 Cedar Street
Newport Beach, CA 92663
949-642-0031

RECEIVED
South Coast Region

APR 15 2016

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
South Coast District Office
200 Oceangate, Suite 1000
Long Beach, CA 20802-4302

401 E, Micheltorena Street #2
Santa Barbara, CA 93101

Dear Commissioners,

I am writing to you regarding my concern over the proposal to turn Banning Ranch into commercial property. Banning Ranch is the largest parcel of unprotected coastal open space and wetland property remaining in Orange County, offering exceptional views of the ocean and Catalina.

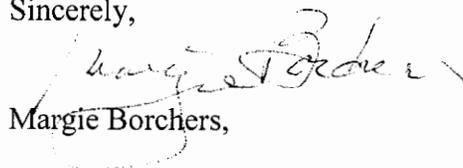
I'm begging you to consider the diversity contained within this area which would be lost forever if you implement this plan. It must be preserved in its entirety as open space as recommended by the City of Newport Beach General Plan. I quote: "There are very few sites along the southern California coastline with the kind of diverse topography and habitat for wildlife found at this site." Staff report by Brook Street Consulting

Here in Santa Barbara, an environmentally diverse area and the prime destination for the migrating Monarchs in Ellwood, was essentially destroyed by people who cared nothing for the butterflies and bees that pollinate our food, so they built the Bacara Resort for the very wealthy and gated it to keep everyone else from the enjoyment of that part of the coast.

Banning Ranch is the largest parcel of unprotected coastal open space and wetland property remaining in Orange County, offering exceptional views of the ocean and Catalina. It belongs to every one of us, not for a select few.

The project's adverse impacts on Banning Ranch's natural landforms, its biological resources and visual impacts, make it a rare and sensitive environment and therefore development would be highly inconsistent with the California Coastal Act. Please do not do this as it would destroy this area forever.

Sincerely,


Margie Borchers,

Dear Honorable Chair Kinsey, Commissioners and Staff,

4-22-16

The Banning Ranch Conservancy, its volunteers and supporters, and thousands of residents of the densely packed communities surrounding Banning Ranch, share grave concerns about the impacts of the proposed development of the Banning Ranch site. Far too many of these impacts exceed regulatory standards and are designated "significant and unavoidable" in the Newport Banning Ranch Environmental Impact Report. (<http://www.newportbeachca.gov/index.aspx?page=2096>).

RECEIVED
South Coast Region

APR 25 2016

CALIFORNIA
COASTAL COMMISSION

Name * *Ms Suneei Meylor*

First *Suneei* Last *Meylor*

Email *

Phone *(562) 594-5519*

Address *13560 Cedar Crest Ln #109L
Seal Beach Ca 90740*

<http://banningpledge.com/brcl>

RECEIVED
South Coast Region

APR 25 2016

CALIFORNIA
COASTAL COMMISSION

April 22, 2016

Coastal Commission, South Coast District
200 Oceangate, 10th floor

Long Beach, CA 90802-4325
Attn: Teresa Henry

Subject: Banning Ranch

Ladies & Gentlemen:

I am in support of the effort to protect Banning Ranch. I agree that its an irreplaceable natural resource that should be preserved. We can look around our communities and see we are running out of natural open space and replacing it with high density development. It's outrageous that we are over building and not protecting the little remaining habitat areas we have left.

Sincerely,



Nance Neilan
Huntington Beach Resident for 40 years

RECEIVED
South Coast Region

APR 25 2016

CALIFORNIA
COASTAL COMMISSION

Lucille and Fred Sharman
495 Poplar St,
Laguna Beach, CA
92651

Amber Dobson
Coastal Commission
200 Oceangate
Suite 1000, 10th floor
Long Beach, CA 90802

Dear Amber,

Please add our 2 votes AGAINST the development of Banning Ranch for housing. We strongly recommend it be turned into a Park Facility for all residents of Orange County to enjoy. Thank you.

L. F. Sharman



H. F. Sharman



RECEIVED
South Coast Region

APR 26 2016

CALIFORNIA
COASTAL COMMISSION

~~**RECEIVED**
South Coast Region~~

~~APR 27 2016~~

~~CALIFORNIA
COASTAL COMMISSION~~

Coastal Commission
South Coast District at Zoo Oceangate
10th floor
Long Beach, CA 90802-4325

Dear Coastal Commission,

We are writing to express opposition to the development of the Banning Ranch. We are residents of Huntington Beach and believe in the preservation of these 400 acres of diverse wild life habitat and Native American Cultural Site. Please keep Banning Ranch protected and vote against development during the May hearing.

 *Michael Campagna*

Michael and Jennifer Campagna
10121 Edye dr.
Huntington Beach, CA 92646
714-925-8742



NEWPORT CREST
NEWPORT BEACH

Dear Commissioners,

This letter is in reference to the CDP 5-15-2097, the Newport Banning Ranch LLC development in Newport Beach. The Board of Directors of Newport Crest Homeowners Association, a 460-unit condominium complex, is very concerned with a possible change to the design of the development.

Newport Crest is adjacent to Newport Banning Ranch LLC, we share a perimeter. For several years, the Board of Directors has been involved in direct conversations with the developers and we have a good working relationship. We have discussed the design, changes in design, and they have responded to some of our concerns by implementing changes we requested. For example, the extension of 15th Street to Bluff Road came within 20' of our property. After meeting and discussing our concern, a subsequent design moved the road about 80' away. Also, the developers have agreed to build a pedestrian gate from our property to Banning Ranch, at the end of our main road.

Over the years, the discussion about the design of the Banning Ranch property has never included building homes directly adjacent to Newport Crest property. Based on comments made at the October 2015 Coastal Commission meeting in Long Beach, it was suggested by a Commissioner to look at building adjacent to Newport Crest. We are very concerned about this suggestion. The homes along this perimeter of Newport Crest have the good fortune of a view of Banning Ranch as well as the ocean.

Many homeowners were involved in the EIR process at the City of Newport Beach, providing input regarding concerns, criticism, and suggestions. If the design of the development had included the construction of homes directly adjacent to our homes, Newport Crest would have provided MUCH more input at the EIR level, as well as the Coastal Commission meeting in October, 2015. The content and scope of the EIR would have been very different than the one that was approved. Not having any opportunity for input on this particular design, the people in our community are at a great disadvantage, a decision could be made by the Coastal Commission without hearing from the people directly affected by this decision.

Prior to making a decision, we request you visit Newport Crest homes to observe firsthand the impact of this decision. At this time, we do not have another venue to express our concerns. We know the Commission does not address effects of land development on people. However, the people of Newport Crest have not been provided ANY opportunity for input on this matter. Prior to the March 2016 Coastal Commission meeting in Santa Monica, we request you examine this proposal carefully.

H O M E O W N E R S A S S O C I A T I O N

210 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433

www.NewportCrest.org



NEWPORT CREST
NEWPORT BEACH

Changing the footprint of the Newport Banning Ranch LLC development to make it smaller in one area and moving it to this location is not what the developer or Newport Crest want. We want all development, including homes and parking, to be moved to the other side of the proposed extension of 15th Street, where there is a large area of buildable land where the active park is proposed.

Thank you for considering our request. Please contact us for more information or if you have any questions.

Sincerely,

Mark Gonzalez, President
Ginny Lombardi, Vice President
Sharon Boles, Secretary
Don Bruner, Treasurer
June Palomino, Member at Large
Xochitl Yocham, Community Manager

H O M E O W N E R S A S S O C I A T I O N

210 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433

www.NewportCrest.org

Dear Coastal commissioners,

I know that you are well versed on the value of the Banning Ranch Ecosystem based on the compelling reports of your staff. Your staff clearly explains the adverse impact this Banning Ranch development will visit on the environment and the residents of its neighboring cities.

I would like to ask you to consider the proposed Banning Ranch development from another point of view.

After reading the Coastal Commission's mission statement while at the Long Beach meeting in October, and after listening to the Coastal Commission's staff reports, the only logical conclusion that can be reached is that the Commission must **deny** the Banning Ranch Company a permit to do **any** building on the Banning Ranch Coastal Property.

Based on the Commission's Mission Statement, **any** disruption of this exquisite, rare, irreplaceable, magnificent geological, culturally historic biosphere would seriously violate the mandate of the Coastal Commission.

Nowhere is there any indication that the Commission is obligated to protect the financial profits of land owners or developers.

Over the decades, it has been a practice of municipalities to protect the common good through use of eminent domain, so, there is a precedent to justify this denial.

There is a potential buyer, whose purpose and mission statement fulfills the Commission's mandate. That is, the Banning Ranch Conservancy.

The Banning Ranch Conservancy Mission Statement:

“To preserve, acquire, conserve and manage the entire Banning Ranch as permanent public open space, park and coastal nature preserve.”

The Coastal Commission Mission Statement:

What We Do

“The mission of the Coastal Commission is to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.”

The Banning Ranch Conservancy’s plan for the Banning Ranch open space not only supports, your mission, it would, also, fulfill your mission for coastal property.

Another point of view I would like to share is that a large expanse of West Costa Mesa shares the coastal bluff with The Banning Ranch. We are geographically and geologically the same bluff as the Banning Ranch, and as such, fall within the sphere of responsibility of the Coastal Commission and its mission to preserve and protect.

Every person in this area would suffer from ten years of breathing toxic air, as well as permanent toxic air from excessive traffic and congestion from Banning Ranch vehicle traffic. The human impact alone should be enough to make development of Banning Ranch unthinkable.

Threats from the proposed Banning Ranch development to the lives and health of tens of thousands of people living nearby have not been publicized nearly as much as the potential destruction of the natural environment and wildlife.

This is no small matter. Within the vicinity of Banning Ranch there are, in Costa Mesa alone, three public elementary schools and several private schools, including Page School in Costa Mesa and Carden Hall and Coastline Community College in Newport Beach; a major acute-care hospital (Hoag), Vivante Assisted Living, and other health facilities; several large housing tracts, the Costa Mesa Senior Center, Bethel Towers--a senior housing development with hundreds of residents--a large retirement community; and several senior citizen mobile home parks.

The schools, numerous health facilities and all the senior facilities, represent the most fragile members of our community who direly need your protection. I say that the "no small matter," is a matter of life and death.

Considering the detrimental impact the proposed development will have on an entire biosphere of the coastal bluff--plant, animal and human--as well as the population of our other surrounding neighborhoods, I again, ask you to deny any development of this irreplaceable property. We all need the Coastal Commission's protection. Please.

Respectfully submitted,

Diane La Duca

Costa Mesa resident

Coastal Commission
South Coast District
200 Oceangate, 10th floor
Long Beach, CA 90802-4325

Dear Ms. Henry:

I found the information below about a coming Coastal Commission meeting:

Newport Beach Civic Center
City Council Chambers
100 Civic Center Drive
Newport Beach, CA 92660

Thursday, May 12, 2016, 9:00 a.m.

Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach)

Application of Newport Banning Ranch, LLC to: (1) abandon oil operations; (2) clean and remediate soil; (3) construct housing and mixed-use development including: subdivision of 401 acre site into 119 residential lots; 1 commercial lot; 2 mixed use/residential lots; 2 resort lots; 17 open space lots; 8 park lots; and 7 public street lots. Grading includes 2.5 million cu.yds.; residential and commercial development, including approx. 13-acres of roads, 43-acres of residential with 895 residential units; 45,100 sq.ft. commercial use, 4-acres of resort with 75 room hotel and 20 bed hostel; 11-acres of parks and 310-acres of Natural Open Space Preserve; oil operations on 15-acres, at 5100 block of West Coast Highway, Newport Beach, Orange County. (AD-LB)

We should work to preserve the Banning Ranch site from development and keep a diverse wildlife habitat from the bulldozers. I understand it is also an American Indian cultural site. We don't need more development there.

Thank you.



Ken Muzzy
19751 Oceanaire Circle
Huntington Beach, CA 92648-3020

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Via Email: amber.dobson@coastal.ca.gov

Honorable Chair Kinsey, Commissioners and Staff:

Subject: Application No.: 5-13-032. 2010 City of Newport Beach Water Supply Assessment and 2005 Urban Water Management Plan for Newport Banning Ranch Project

Summary

The Newport Banning Ranch (NBR) Water Supply Assessment (WSA) is based on the 'paper water' found in the City of Newport Beach's 2005 Urban Water Management Plan (UWMP). The WSA needs to be an evaluation of the city's real water supply and not simply a restatement of a plan that greatly underestimated it. The point of SB 610 and SB 220, also known as the "Show me the Water" laws, is to assure that there is enough surplus water to support large projects that may not be accounted for in the most recent water plan. This WSA does not meet that standard. The WSA did not account for the shortfall of historical water supply, reduced Santa Ana River flows, and the City's ongoing growth that, by 2010, the year the WSA was prepared, had already surpassed growth accounted for in the 2005 UWMP.

Our findings demonstrate that unless a new WSA is performed that identifies new sources of water, there is not enough city water supply to support the project.

The water is not real.

The Conservancy is submitting the attached report for your consideration, which we believe answers the questions of water supply availability for the project. In addition, we would like to speak to some of the legal concerns related to water supply issues.

A water supply assessment cannot rely on "paper water. The report must be based on the actual availability of water. After an in-depth review of the City's UWMP and the WSA for the proposed Newport Banning Ranch Project (project), it is apparent that this project cannot proceed because the WSA is insufficient and fails to demonstrate that water is actually available. The WSA does not comport with Coastal Act Section 30250 or with the California Environmental Quality Act (CEQA).

CEQA requires that "[w]henver a city or county determines that a project, as defined in Section 10912 of the water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code." (Cal. Pub. Resources Code Section 21151.9). Section 10910 of the Water Code contains specific requirements for preparation of a water supply assessment report: "The city or county...shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project." (Cal. Water Code Section 10910(b)).

Importantly, the California Appellate Court has held that a water supply assessment report is insufficient if it relies on the provision of "paper water" and fails to assess the adequacy and availability of actual water. (*Santa Clarita Organization for Planning the Environment ("SCOPE") v. County of Los Angeles* (2007) 157 Cal. App. 4th 149, 159 ("...the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decision making under CEQA. [Citation.]").

The California Coastal Commission must comply with CEQA and all other laws and regulations applicable. Therefore, the WSA's improper reliance on paper water is a violation of CEQA, and the Commission cannot properly approve the development of the Project. The insufficiency of actual water also raises the question of whether the water supply for the Project is consistent with the groundwater protections of Coastal Act Section 30231, which requires preventing the depletion of groundwater.

Because the 2010 Water Supply Assessment is based on 'paper water' it fails to assure that there is enough surplus water to support a project as large as Newport Banning Ranch. As cited earlier, the WSA did not account for the shortfall of historical water supply, reduced Santa Ana River flows, and the City's ongoing growth that in 2010 had already surpassed growth accounted for in the 2005 Urban Water Management Plan.

Conclusion:

Simply stated, unless a new WSA is performed that identifies new sources of water, there is not enough city water supply to support the project.

The Banning Ranch Conservancy urges the Coastal Commission to scrutinize the project and its WSA to ensure compliance with Section 30250 and with CEQA requirements and, if such compliance is lacking, we urge the Commission to uphold the provisions of the Coastal Act by denying the project.

Steve Ray, Executive Director
Banning Ranch Conservancy

Show Me the Water's Failed Promise – The Newport Banning Ranch File

It's bad enough that water utilities project far more supplies than they have access to, which by definition is paper water. It's bad enough that by using this imaginary water they can always come to the conclusion that every project requesting a WSA has sufficient water to proceed. But recently it became clear to me that there are other forms of paper water that come in large amounts as well. Paper water is water the city says it has available to it, but it can never access because it's being used by someone else within the state's water system.

In July I was asked by the Banning Ranch Conservancy to look at the Newport Banning Ranch water supply assessment as they prepared for a California Coastal Commission hearing on the project. Having reviewed quite a number of Los Angeles Department of Water and Power water supply assessments, I knew the first place to look for paper water would be in found in the utilities projections. Over time I've suspected there were other areas where paper water could be found, but L.A.'s sheer size made it difficult for me to validate those.

Reviewing this project's WSA was a good opportunity for me because it is more typical of WSAs that are produced throughout Southern California. The city's relatively small population also made it easier to determine whether housing growth can contribute to paper water 'surpluses' under SB 610.

For a little background, the Newport Banning Ranch (NBR) project is a proposed 1,375 housing unit development in the City of Newport Beach that also includes commercial. The city's water supply is quite different from the City of Los Angeles's water supply in that groundwater clearly is a substantial portion of the city's water supply. Newport Beach does not have its own domestic ground water supply underfoot but instead it has four wells that are located about five miles away in Fountain Valley, which are managed by the Orange County Water District. When ground water is in short supply the city buys imported water from MWDOC.

When I dug into the Newport Banning Ranch WSA I found it was similar to the water supply assessments that are routinely produced by the LADWP. The Newport Beach water supply assessment relies heavily on 'paper water' to create a façade of surplus water just like L.A.'s water supply assessments. <http://droughtmath.com/2015/06/30/the-wsa-bringing-imaginary-water-to-l-a-s-big-projects/>

When reviewing the city's sources of water supply, I found that they never met their respective supply projections and there was no chance that they ever would. 21 percent of the city's projected water supply was water that the city didn't have access to. Hence, it was 'paper water.'

Growth's Contribution to Paper Water

But there was more. What about housing that doesn't trigger SB 610 requirements for a WSA? Failing to report cumulative housing construction would be another form of paper water. If a WSA doesn't acknowledge that new housing has been constructed since the city's Urban Water Management Plan was approved, the water demand from the unrecognized housing would be viewed as a surplus for new projects.

The Newport Banning Ranch water supply assessment was based on an increase of just 1,039 housing units over 20 years. That figure came from the city's Urban Water Management Plan, which in turn comes from the RHNA allocations that are imposed on cities, a subject that I've written about extensively here:

<http://droughtmath.com/2015/06/10/californias-challenge-to-reliable-water-isnt-infrastructure-its-rhna/>

Right off the top, the NBR project's proposed 1,375 units exceeds the city's 20-year water plan by 336 units, meaning that new water supplies should have been identified in the WSA.

But that led me to the next question. Aside from the fact that the project is larger than the city's projected housing growth, how many units were built in the city since 2005 that did not trigger a water supply assessment? The answer was stunning.

In just five years the city's rise in housing exceeded the UWMP's 20-year projected growth by 380% or 5,017 units and there was still fifteen years to go. I didn't expect that growth could be so under-projected in a UWMP that it would decidedly tip the scale towards insufficient supplies in just five years. Shouldn't a water supply assessment capture this demand on water supply? You can't say you're Showing Me the Water if you're not disclosing the demand.

Not surprisingly, the water supply assessment didn't acknowledge this new housing, which meant the water could be viewed as an unused surplus. The project's WSA simply ignored the new housing. An acknowledgment that it was growing would have created pressure on the developer to find new water supplies. The Show Me the Water Law is supposed to link large projects to water supply. It should also assure that large projects are not claiming to have access to water that has already been committed to.

SB 610's silence on projects that are less than 500 units is a weakness in the law. The law only says that a WSA must include a 'discussion' of various elements of the water supply, such as total projected supply during normal and dry years. The law doesn't explicitly point out that the discussion should include housing growth that was not accounted for in the UWMP. Another weakness in the law is that it doesn't have any regulatory oversight. This leaves it up to citizens to challenge water supply as it appears in an EIR.

The law should be expanded to require cities to keep a running total of new demand for recently approved projects that do not trigger a water supply assessment and incorporate that into all EIRs. And while it's keeping a running total of demand, it should also inform citizens on what that will do to their monthly water allocations.

This would give decision makers a little more information that might help eliminate any water shortage surprises should the increase in projected housing exceed the projected increase in the UWMP.

NBR's Other Imaginary Water

Aside from the WSA's failure to mention new water demand from the city's ongoing housing construction, there were the other problems with the Newport Banning Ranch WSA.

The WSA suggested that the city's water supply would increase from 18,648 AF each year to 21,716 AF each year. This suggestion would lead the city's decision makers to incorrectly believe that supplies are increasing and this would be sufficient for the project's new housing. However a review of the city's historical supply tells us there is little chance that the city's future supply will ever exceed 17,200 AF year-after-year or that it will ever see supplies exceed 19,000 AF in any one year.

What I found was that the total well water supply was not enough to meet the UWMP projected supply. Since 1990, OCWD groundwater allocations have been averaging about 72 percent. In the last 10 years that figure has dropped to 62%.

The WSA also suggested that during droughts when wells weren't producing sufficient supplies, the city would be able to make up for those shortages by purchasing imported water from MWDOC. The WSA even goes so far to state that MWDOC "was able to show that it can maintain 100% reliability in meeting direct consumptive demand under conditions that represent normal, single driest, and multi dry years through 2030." However, the fact is that MWDOC doesn't have enough water available for purchase to meet the city's 21 percent shortfall even in wet years, which is shown by the gap in the chart at the right labeled 'paper water'.

<http://droughtmath.com/2015/11/01/show-me-the-waters-failed-promise-the-newport-banning-ranch-file/>

All Claims of Sufficient Water Supply Should be Considered Suspect

The Newport Beach WSA is not unusual. I suspect it is typical of WSAs produced throughout Southern California and maybe even Central California as well. The 'Show Me The Water' law requires that a water supply assessment be attached to the project's EIR when the project is 500 units or larger. Small and medium-size projects will not require a water supply assessment but CEQA still has a requirement for an analysis on water supply in the Utilities section of the EIR. The utilities UWMP serves as an assessment for these projects. Whether the discussion of water supply is found in the

WSA or the UWMP, there is a nearly 100 percent chance that the utilities water supply includes a substantial amount of paper water. All claims of 'sufficient' or 'adequate' water supply should be reviewed closely.

11/01/2015 David Coffin

<http://droughtmath.com/2015/11/01/show-me-the-waters-failed-promise-the-newport-banning-ranch-file/>

Evaluation of the Newport Banning Ranch WSA
& Newport Beach UWMP

David Coffin
www.droughtmath.com
9/27/15

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Executive Summary

The Newport Banning Ranch Water Supply Assessment is based on the 'paper water' found in the City's 2005 Urban Water Management Plan. NBR's WSA needs to be an evaluation of the city's real water supply and not simply restate a plan that greatly underestimated it. The point of SB 610 and SB 220, also known as the "*Show me the Water Laws*," is to assure that there is enough surplus water to support large projects that may not be accounted for in the most recent water plan. This WSA does not meet that standard. The WSA did not account for the shortfall of historical water supply, reduced Santa Ana River flows, and the City's ongoing growth that had already surpassed growth accounted for in the 2005 Urban Water Management Plan in 2010.

We find that unless a new WSA is performed that identifies new sources of water, then there is not enough city water supply to support the project.

- In Section 1
 - We find that the 2005 UWMP had projected growth for only 1,039 additional units between 2005 and 2030 and that the proposed 1,375 units for the Newport Banning Ranch project is well over that 336 units.
 - Compounding the problem, we also found that by 2010, the City of Newport grew by 6,056 units which was 5,017 units over the UWMP projections.
 - If we factor in seasonal and recreational housing, the number grows to 6,993 units.
 - **This unaccounted for increase in housing units reinforces why WSAs should evaluate all of the conditions that impact water supply and not limit it to a simple review of the past UWMP.**
- In Section 2
 - The WSA points to an increase of water supply from 17,820 Af/y to 19,792. The implication is that this surplus (an increase from 200 to 220 gallons per capita daily) is enough to meet the project's demand. However, we find that there is no surplus given the city's inability to access these projected demands. The increase in housing units and inability to meet supply targets has resulted in a decline to 164 gallons per capita daily.
- In Section 3
 - We find that all categories of the city's water supply sources of supply fell short of the UWMP's targets. This includes groundwater and imported water but not recycled water.
 - We also find that the city's UWMP has not been a reliable indicator of future water supply. Both 2000 and 2005 UWMPs stated the city had much more access to water than it really had.
 - We also found that the 2010 UWMP dropped its water supply projections by 21% which is perhaps why NBR choose to use the older 2005 UWMP with the paper water in it.
- In Section 4
 - We find that the WSA has exaggerated how much imported water is available to it during local droughts. We find that MWDOC has never been able to meet drought demands despite the WSA's claim the Metropolitan can meet this demand with 100% reliability.
- In Section 5
 - We confirmed earlier comments that there has been a 50% reduction of the Santa Ana River flows measured in cubic feet per second since 2007 by reviewing the stream data charts.

1. Projected Units

a) The City's UWMP accounts for only 1,039 new units while the proposed project has 1,375 units.

The proposed project's 1,375 units exceeds the 1,039 residential units accounted for in the 2005 UWMP by 337 units (Figure 1).

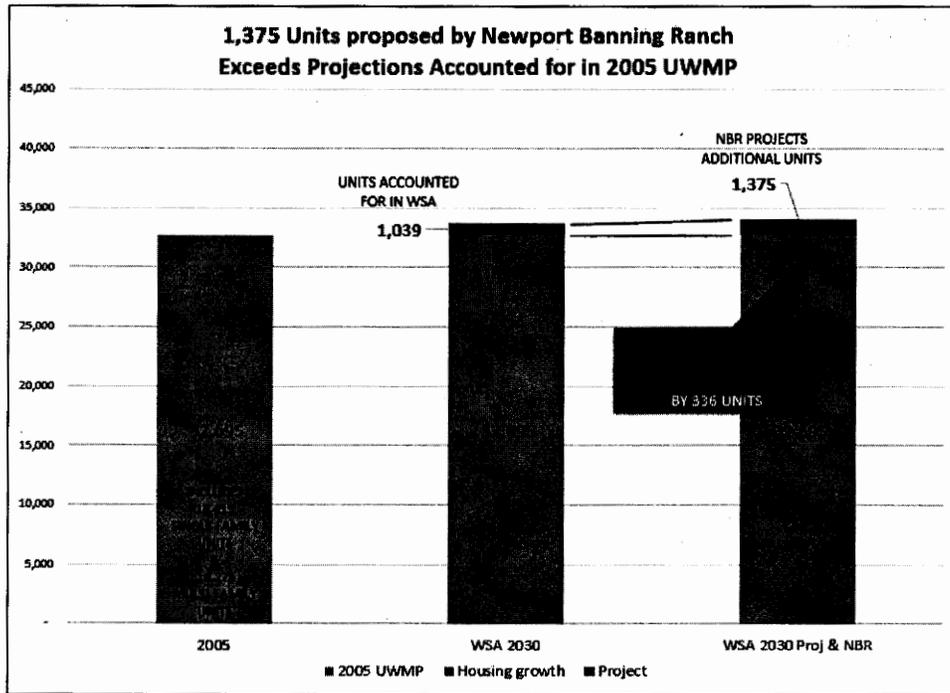


Figure 1 - Project Exceeds UWMP Projection

The City 2005 UWMP shows a net increase of 652 single family accounts, 136 multi-family accounts, and 101 commercial accounts.

To convert residential accounts to units, we need to add a 'density' multiplier of 2.828 to multi-family accounts. The density multiplier is based on the 2000 Census¹ for housing and provides for the average number of units per multi-family account.

Adjusting for density², the 5,048 multi-family accounts in 2005 shown in Figure 2 represents ~14,276 units. An increase of multi-family accounts to 5,184 in 2030 would represent an additional 387 units for a total of 14,663 units citywide. Single family accounts in 2005 represent 18,419 units. An increase in single family units in 2030 is 19,071 units. No density multiplier is needed for single family units and their increase during that period was projected for a total of 652 units.

In total, the UWMP projects an increase of 1,39 single family and multi-family units for a total of 33,734 units. (Figure 2)

The project proposed 1,375 units is 336 more units than is projected in the UWMP and the WSA does not cite where the additional water will come from.

¹ Newport Beach 2000 Census. Housing Tenure. <http://www.newportbeachca.gov/home/showdocument?id=4709>

² 14,663 housing units/5,184 accounts = 2.828 units per acct.

2005 UWMP								Units When Adjusted for Density		
HOUSING (Accounts)	2005	2010	2015	2020	2025	2030	Increase	2005	2030	net resid
single fam	18,419	18,588	18,747	18,909	19,071	19,071	652	18,419	19,071	652
multi-fam	5,048	5,052	5,096	5,140	5,184	5,184	136	14,276	14,663	387
comm	1,863	1,914	1,931	1,948	1,964	1,964	101	-	-	-
Total	25,330	25,554	25,774	25,997	26,219	26,219		32,695	33,734	1,039

Figure 2 – Table showing UWMP Projected Housing Units³

b) The Housing Growth in the City exceeded growth accounted for in the City's UWMP.

Planning departments and water agencies do not track or report the incremental increases in water demand for new housing that falls under the 500 unit CEQA threshold so there is no way to know if the incremental water demand has exceeded the projected growth found in the UWMP. To effectively evaluate the impacts a project will have on the city's water supply, a Water Supply Assessment should include this incremental demand.

As noted in the Section 1A above, the WSA reports that there was 23,467 single-family and multi-family 'accounts'. When density is factored in for multi-family accounts, we find there were 32,695 units in the city in 2005. The 2010⁴ U.S. Census reports that the city's total housing rose 38,751 for a net increase of 5,017 units. This increase of 5,017 units (See Figure 3) is not accounted for in the WSA and far outstrips the 1,039 units that was projected in the 2005 UWMP. Adding the NBR project to the unaccounted for units increases the total to 6,392 units.

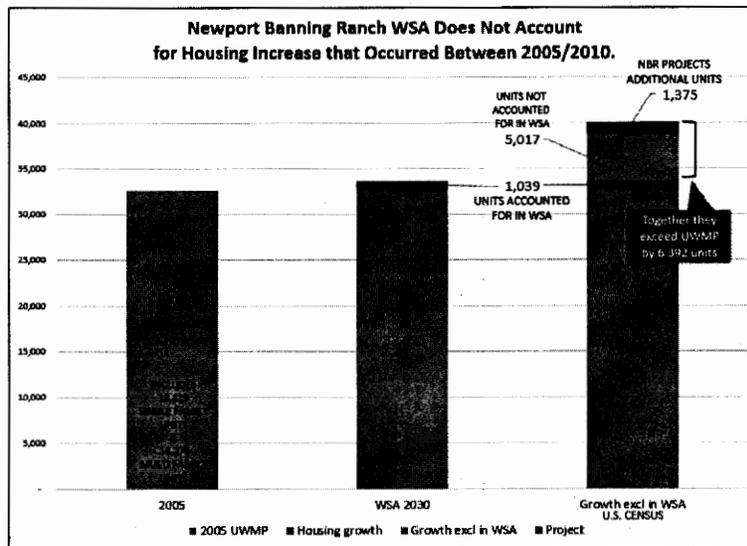


Figure 3 - City Growth Exceeds UWMP Projections

Adding further to the demand, if we include the seasonal and recreational housing of 937 units found in the census, the net increase would be 5,954 units. In a coastal city such as Newport Beach where good weather is year round, water consumption in seasonal and recreational housing may not be significantly different from 'occupied housing'.

³ Not enough information was provided in WSA to include commercial and landscaping so it was purposely omitted to maintain focus on housing element.

⁴ Newport Beach 2010 Census <http://www.newportbeachca.gov/home/showdocument?id=13487>

2. Population and GPCD

Actual available water supply fell dramatically between 2005 and 2010.

The WSA states in Table 7-2 (see *Figure 12*) the city's supply was 17,820 Af/y in 2005. With a population of 79,320⁶ this would suggest an average city supply of 200.6 gallons per capita daily which would also include commercial, government, and landscape.

Generally, we find the supply values reported in UWMP to be quite close to actual supplies delivered in the year that the UWMP was published. However, in future years, water agencies usually *overestimate* supply to bank water⁵ used by somebody else. We verified that this unfortunate tendency to overestimate future water supply also occurred in the 2005 UWMP by comparing projected supply with the historical records supplied by OCWD and MWDOC.

A public records request was made to both the MWDOC and OCWD for historical records of water sales that were made to the Newport Beach utility district. The information received was compiled and compared to the UWMP (*Figure 9*) which is cited in the WSA.

Citing a population of 85,250⁶, the WSA states that the available water supply in 2010 would increase to 19,792 Af/y giving the city 220 GPCD and implying there will be a surplus of water. However, when we look back at the 'actual amount', we find that the City received only 15,688 AF. With less water and a larger than projected population of 85,185⁶, the per capita supply fell 25 percent to just 164.4 GPCD. (*Figure 4*)

In each succeeding year this WSA projected water supplies exceeding 19,000 Af/y (*Figure 12*). Given that actual deliveries fall short of projections by ~21 percent we can only conclude that this is paper water. The long term result is a water supply deficit that hits the community economically and by quality of life.

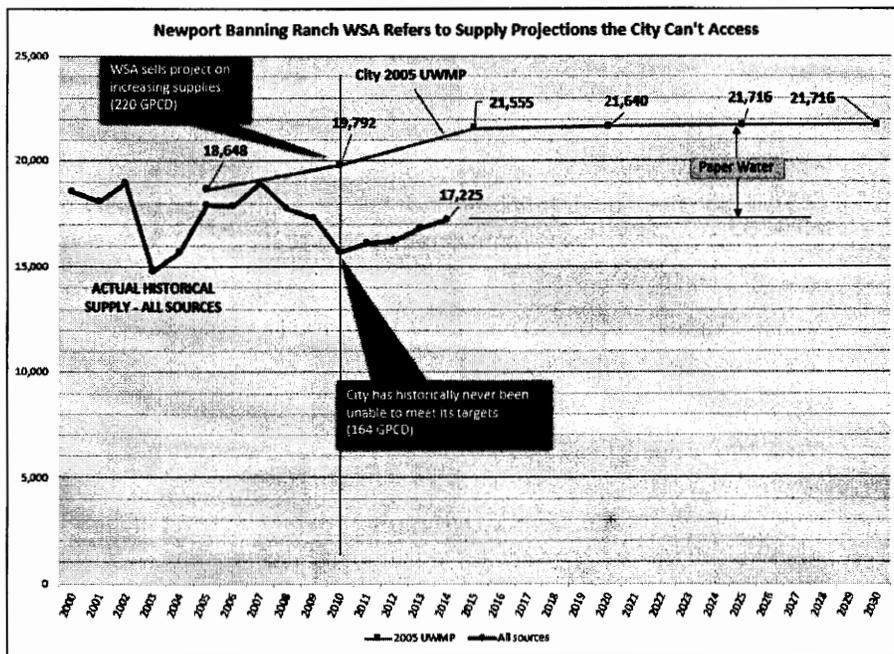


Figure 4 – Gallons per Capita Daily (GPCD)

⁵ Water for Growth - California Water Plan Update 2009. <http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>

⁶ WSA, Table 5-1 on page 11

3. Supply Source Projections v. Actual Delivery

a) Merely citing the UWMP does not provide evidence of available water supply.

A public records request was made to both the MWDOC and OCWD for historical records of water sales that were made to the Newport Beach utility district. The information received was compiled and compared to the UWMP (Figure 9) that the WSA cites as demonstrating sufficient supply for the Newport Banning Ranch project.

The WSA relies on the fact that it can build this project because it states that the City will have and continuously be able to maintain substantial groundwater and imported supplies.

However, we found that the city has not been able to meet the supply projections noted in the WSA and the City's UWMP. Figure 5 shows the combined actual supply from MWDOC (imported water), OCWD wells (groundwater) and recycled water and compares that to the WSA's projections.

Using UWMP data, the proposed project suggests that it has access to substantial surplus water that we find really isn't available, hence paper water.

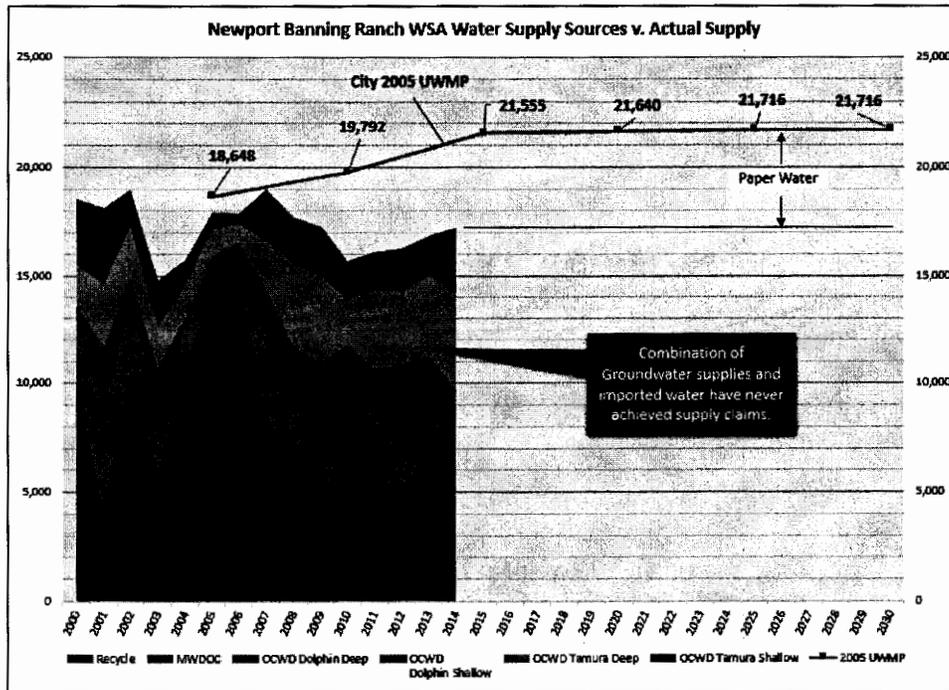


Figure 5 – Comparison of City of Newport Historical Supply to UWMP Projections

- i. **Groundwater** - The WSA suggests that the City would have available to it and would be receiving 11,287 to 14,921 Af/y of groundwater between 2008 and 2015 (Figure 12). However, the average supply from the four wells belonging to the City between 2008 and 2014 has been only 10,883 Af/y.
- ii. **Imported Water** - The WSA suggests the City would have available to it and be receiving 3,743 Af/y of imported water in 2008 and increasing to 6,157 Af/y by 2015. However, the average supply to the City from MWDOC has only been 5,457 Af/y between 2008 and 2014.
- iii. **Recycled Water** – Recycled water is purchased separately from OCWD through the Green Acres Project. Over the last 5 years the City has been purchasing an average of 422 Af/y which suggests that it's met its projections.

b) Past City UWMP's haven't been Reliable Enough to Be Taken at Face Value

In an article that appeared in the 2005 California Water Update called 'Water for Growth'⁷ the author noted that "a majority of utilities are reporting substantial normal-year surpluses. The magnitudes involved—some 2 million acre-feet per year—suggest that many utilities are banking on "paper water" already being used by someone else within the state's water system."

It further cites that "land-use authorities may not be led to adequately considering the water supply consequences of growth. Second, even in jurisdictions with municipal water departments, elected officials may take a shorter-term view of resource adequacy than area residents do. If—as is often asserted—land-use authorities are aligned with pro-development forces, they may be inclined to favor growth..."

We noted in Section 2 that water agencies tend to overestimate future water supplies to 'bank water' already being used by someone else. This leads us to ask how reliable were the City's past UWMPs in forecasting available water supply? Historical evidence shows us they are not reliable at all. WSA's and the UWMP' they rely on all promise lots water for future growth but they misrepresent how much we really have access to. This is called 'Paper Water'.

The following chart shows the water supply projections in the City's 2000, 2005 and 2010 UWMP's. Both the 2000 and 2005 UWMP's cited that the city would have more than 19,700 Af/y within 5 years of their adoption and it didn't happen in either case.

In both plans, city planners and residents were told the city would have sufficient water for growth. However, instead of 20,000 Af/y as promised, what the City had access to was just 17,000 Af/y thus creating a deficit.

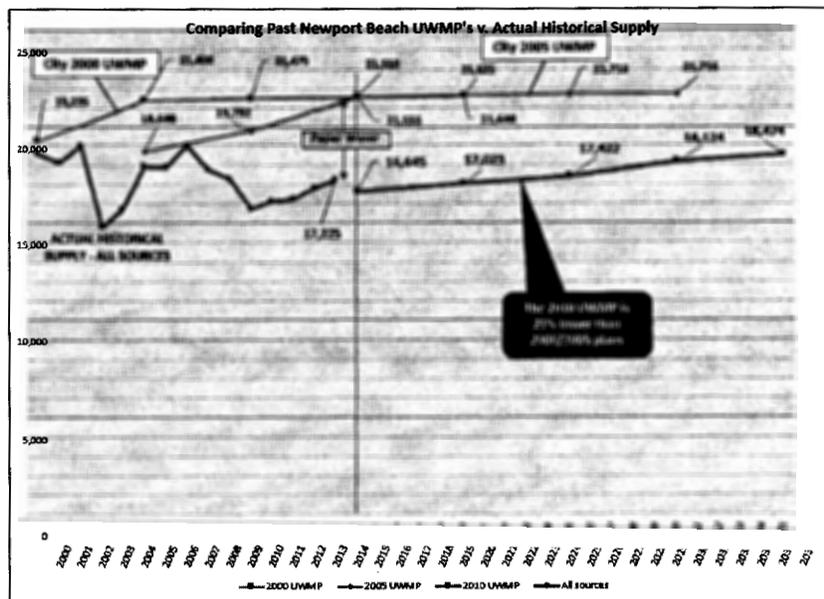


Figure 6 – Comparing the City's Projections v. Actual Supply

This chart also holds some special significance since it may suggest why NBR does not want to revise the WSA using 2010 UWMP.

After years of overly optimistic projections, the City finally acknowledged that this was never going to be met. The 2010 UWMP lowered its projections 21% to an average of 17,761 Af/y. Any surplus that the project sought to have, real or imagined, saw that disappear in the 2010 plan.

⁷ E. Hanak (2005) Water for Growth. California Water Plan Update 2009. <http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>

4. Dry Year Forecasts Point to Drought Recovery Flaw

WSA Exaggerated Dry Year forecasts point to drought recovery flaw

The WSA, using UWMP figures suggests that the City will have substantial surplus water available to it when the City's local ground water supplies fall short.

This is another common reporting phenomena that can be found in most urban UWMP's. In Table 4-9 of the UWMP shown in (Figure 14) and Table 8-2 (Figure 13).

In the WSA we find the claim that the City can increase imported water from 140 to 160% (Figure 14) in single and multi-dry years when local ground water is in short supply. The rationale behind this is that single and multi-dry years are a local groundwater shortage problem that can be resolved by importing water. In fact, the 2005 UWMP and WSA both assure that "Metropolitan Water District indicates it can provide 100% of the supply demanded by its member agencies through 2030"⁸.

However, in 2007 we find that this strategy is no longer viable. In that year, a court found that the huge deliveries of water through the State Water Project had a serious environmental downside and it ordered the DWR⁹ to sharply cut back supplies to Central and Southern California. Multi-dry years weren't just a local problem; they were also a State problem.

A review of the historical supply figures shows that since 2007, the MWDOC supply has not been able to provide the additional water that is cited in the WSA for dry and multi-dry years. From 2000 to 2006 the City's average MWDOC supply was 9,933 Af/y. This dropped to an average of 5,827 Af/y between 2007 and 2014. (See Figure 9)

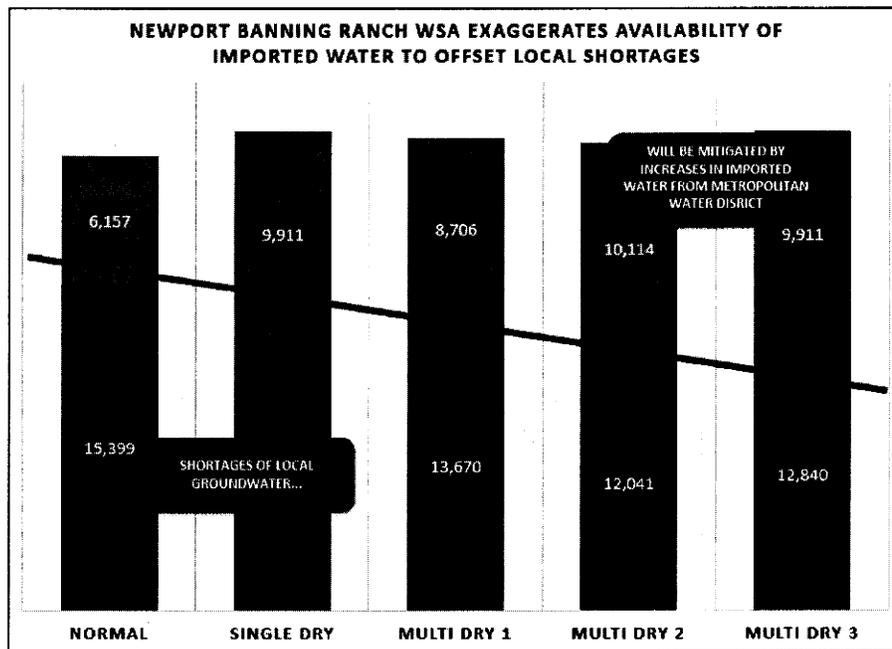


Figure 7 - Dry Year Source Strategy

⁸ NBR Water Supply Assessment. Page 4, Para. 5

⁹ Delta Smelt Decision. Natural Resources Defense Council v. Kempthorne, E.D.Cal., 2007

5. Santa Ana River Supply

Santa Ana River flows are substantially reduced.

A new WSA should be performed because the original WSA was based on a wet period. Since that time there have been significantly reduced flows on the Santa Ana River and subsequent reduced recharge in the basin.

At a recent Westchester/Playa Water forum, Michael R. Markus, General Manager of the Orange County Water District spoke about OCWD recycling program and recycling efforts of other agencies. In his remarks he stated that OCWD has been impacted by reduced Santa Ana River flows and attributed some of it to upstream water agencies that are making a better effort at recycling their sewage instead of just treating it and releasing it into the Santa Ana River. This has resulted in reduced flows and less water for OCWD to treat.

To verify what Mr. Markus intimated, we reviewed gage data located at an entry point into OCWD basin. The chart in Figure 8 shows flows of the Santa Ana River at the gage (11074000¹⁰) below Prado Dam between 2007 and 2015 and confirms both the General Manager's comments and the comments made by Banning Ranch Conservancy of reduced flows.

From Oct 2007 to Jan 2011 flows averaged 297 CFS. From Jan 2011 to Sep 2015 flows averaged just 166 CFS amounting to a 50% drop.

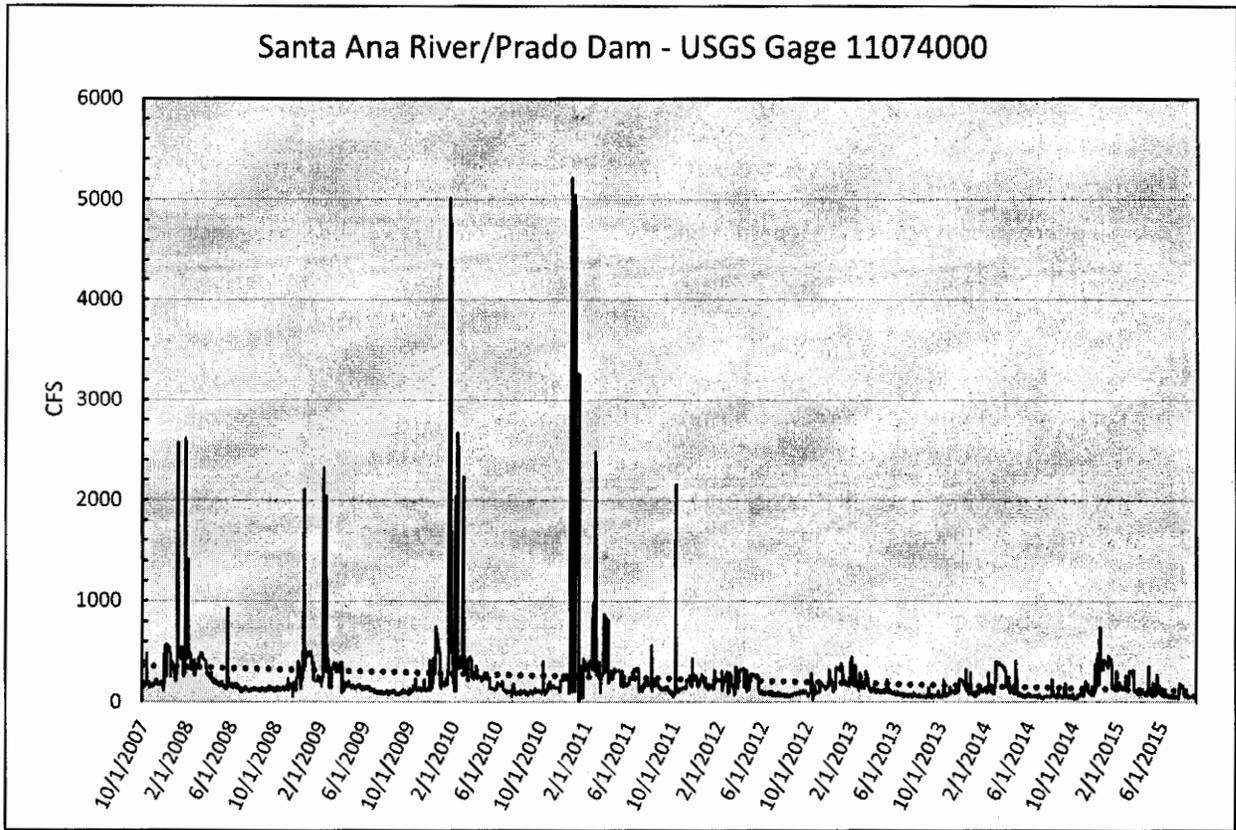


Figure 8 – Santa Ana River flow at OCWD basin

¹⁰ USGS Gage http://waterdata.usgs.gov/usa/nwis/uw?site_no=11074000

Conclusion

The Newport Banning Ranch Water Supply Assessment is based on the 'paper water' found in the City's 2005 Urban Water Management Plan. NBR's WSA needs to be an evaluation of the city's real water supply and not simply restate a plan that greatly underestimated it. The WSA does not assure the residents of the City that there is sufficient water for the project. We find that unless a new WSA is performed that identifies new sources of water, then there is not enough city water supply to support the project.

About

David Coffin is a manufacturing engineer whose interest carries over to California water infrastructure, water history and policy and its relationship to growth. Mr. Coffin's research into urban water supply began in 2000 when he served for two elected terms (eight years) as a board member on the Neighborhood Council of Westchester/Playa in the City of Los Angeles.

Mr. Coffin researches and writes about water supply at www.DroughtMath.com - *A Critical Look at the City of L.A. Water Supply Policy* and his columns are occasionally appear on CityWatchLA.com.

Appendix

NEWPORT BEACH HISTORICAL SUPPLY 2000 – 2015 With 2005 Projected Supply							
Year	MWDOC	OCWD Dolphin Shallow	OCWD Dolphin Deep	OCWD Tamura Deep	OCWD Tamura Shallow	Total	2005 UWMB
2000	10,261.1	1,594.4	1,791.1	1,915.8	2,990.5	18,552.9	
2001	3,829.8	2,907.0	4,489.8	2,925.1	3,487.2	17,638.9	
2002	10,403.9	1,656.7	2,391.0	2,402.1	1,643.2	18,496.9	
2003	5,661.2	1,688.1	3,005.0	1,885.2	2,194.4	14,433.9	
2004	10,722.9	528.5	1,362.0	1,584.2	1,127.5	15,325.1	
2005	13,761.1	452.8	1,507.4	1,241.8	689.1	17,652.2	18,648
2006	14,895.8	568.8	815.9	921.6	406.8	17,608.9	
2007	8,413.9	2,493.2	3,208.5	2,184.1	2,374.1	18,673.8	
2008	5,843.8	2,113.2	3,465.9	3,834.0	2,200.9	17,457.8	
2009	3,996.7	2,520.4	4,143.6	4,030.6	2,294.6	16,985.9	
2010	7,705.2	1,277.1	2,382.1	2,125.9	1,766.2	15,256.5	19,792
2011	4,854.6	2,401.0	3,007.8	3,750.5	1,722.6	15,736.5	
2012	4,732.7	2,475.5	3,266.7	3,397.2	1,962.8	15,834.9	
2013	6,732.2	2,444.7	1,658.2	3,686.1	1,844.2	16,365.4	
2014	4,339.1	3,365.2	1,521.1	4,517.7	3,008.4	16,751.5	
2015	-	885.0	1,515.9	1,707.4	1,087.6	5,195.9	21,556
2016							
2017							
2018							
2019							
2020							21,640
2021							
2022							
2023							
2024							
2025							21,716
2026							
2027							
2028							
2029							
2030							21,716

Figure 9 – Historical Supply to Newport by OCWD and MWDOC.

Historical and Projected Water Use

3-2

Table 3-2. (DWR Table 12) Past, Current, and Projected Water Deliveries (AFY)

Year	Water Use Sector	Single-Family	Multi-Family	Commercial	Industrial	Instit./Gov.	Land-scape	Agricultural	Total
2000	# of accounts	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Metered	deliveries (AFY)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2005	# of accounts	18,419	5,048	1,863	0	397	423	0	26,250
Metered	deliveries (AFY)	7,484	2,727	3,760	0	903	2,842	0	17,723
2010	# of accounts	18,588	5,092	1,914	0	399	438	0	26,591
Metered	deliveries (AFY)	8,085	2,820	3,948	0	940	3,008	0	18,801
2015	# of accounts	18,741	5,096	1,931	0	402	444	0	26,220
Metered	deliveries (AFY)	8,805	3,072	4,300	0	1,024	3,276	0	20,477
2020	# of accounts	18,909	5,140	1,948	0	405	449	0	27,051
Metered	deliveries (AFY)	8,840	3,084	4,317	0	1,028	3,289	0	20,558
2025	# of accounts	19,071	5,184	1,964	0	409	455	0	27,283
Metered	deliveries (AFY)	8,870	3,095	4,333	0	1,032	3,301	0	20,631
2030	# of accounts	19,071	5,184	1,964	0	409	455	0	27,283
Metered	deliveries (AFY)	8,870	3,095	4,333	0	1,032	3,301	0	20,631

Figure 10 – Table from UWMP showing projected accounts and water supply.

Newport Banning Ranch
Water Supply Assessment

Table 5-1 – Existing & Projected Population in Service Area

	2005	2010	2015	2020	2025	2030
Population	79,320	80,250	81,052	81,883	82,681	83,508

SOURCE: City UWMP (December 2005).

Figure 11 – WSA Projected Population Growth

Newport Banning Ranch
Water Supply Assessment

City of Newport Beach

The City's 2005 UWMP contains a comparison of projected water supply and estimated demands through the year 2030. The potable water resources necessary to meet projected demands include imported water (30%) and groundwater (70%). Existing and projected supplies to the City are shown in Table 7-2.

Has Newport Beach been meeting these projections?

Table 7-2 – Existing and Projected Supplies

Supply Source	Annual Amount (af/yr)								
	FY 05-06	FY 06-07	FY 07-08	FY 08-09	2010	2015	2020	2025	2030
MVDOC (Imported)	14,012	15,093	3,743	5,845	5,758	6,157	6,362	6,226	6,256
OCWD (Groundwater)	3,558	3,606	14,338	11,287	13,590	14,921	14,778	14,990	14,960
Recycled Water	250	311	265	299	443	477	500	500	500
Total	17,820	19,009	18,346	17,429	19,791	21,555	21,640	21,716	21,716
% Potable from Groundwater	20%	19%	79%	66%	70%	71%	70%	71%	71%

SOURCE: City UWMP (December 2005), City demand records.

Figure 12 – WSA Showing existing & projected water supply

Newport Banning Ranch
Water Supply Assessment

**Table 8-2 – Projected Water Supply and Demand
(Normal, Single Dry-Year, and Multiple Dry-Years)**

Description	Annual Amount (af/yr)					
	Normal Year	Single Dry-Year	Multiple Dry-Years			
			Year 1	Year 2	Year 3	
2015						
2016						
Total Projected Demand	21,666	22,761	22,376	22,166	22,761	
Available Supply	MWDOC (Imported)	6,167	9,911	8,706	10,114	9,911
	OCWD (Groundwater)	14,921	12,363	13,193	11,564	12,363
	Recycled Water	477	477	477	477	477
Total Available Supply	21,666	22,761	22,376	22,166	22,761	
% Potable Supply from Groundwater	71%	56%	60%	53%	56%	
Difference	0	0	0	0	0	

Figure 13 – Newport Banning Ranch WSA

2015	Normal Water Year (Average)	Single Dry Year (1961)	Multiple Dry Water Years		
			2008 (1959)	2009 (1960)	2010 (1961)
Local Supply	15,399	12,840	13,670	12,041	12,840
	% of Normal	83.4%	88.9%	78.2%	83.4%
Imported Supply	6,157	9,911	8,706	10,114	9,911
	% of Normal	161.0%	141.4%	164.3%	161.0%
		Single Dry Year	Multiple Dry Water Years		
	Normal Water Year		2008	2009	2010

Figure 14 – Table 4-9 of the City of Newport 2005 UWMP

Dobson, Amber@Coastal

From: klschmidt03@gmail.com
Sent: Wednesday, December 16, 2015 7:15 PM
To: Dobson, Amber@Coastal
Subject: Toxic waste Newport Shores

Follow Up Flag: Follow up
Flag Status: Flagged

Amber

Please explain to me what your proposing to do wiith toxic waste in the Newport Shores area? Regardless of how thin the pancake is there is always 2 sides. Please help me understand your side.

Thank you

Kevin Schmidt
Sent from my iPhone

In the application Banning Ranch LLC addresses their communication with Amber Dobson, so she seemed like the correct contact.

For the June 6, 2014 field trip interested parties were instructed to please call or send an email to Amber Dobson at (562) 590- 5071 (voicemail message ok) or Amber.Dobson@coastal.ca.gov, and Amber's contact information listed in the OC Register as the main contact when you Google for Banning Ranch contact information.

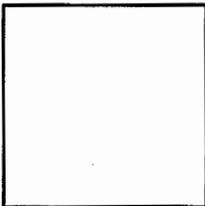
One of my neighbors heard that we should not contact Amber Dobson directly and asked me about it. This lead me to email you. In the application there are other staff members mentioned, maybe we should be in contact with one of those?

Since I have had some contact with the Coastal Commission in the past, my neighbors sometimes ask me for my advice, but I am not an expert and the website is unclear other than saying the public should summarize comments on a topic in three pages or less and attach related documents. I could not find a recommendation for contacts for specific projects, but the CCC websites suggests contacting you for issues in our area.

I am sorry to bother you, but I look forward to your guidance and information. With your permission I would like to share the contact information and guidance with my neighbors. I can appreciate that communications with Coastal Commission staff should be aligned with the Coastal Act, and I am trying to help my neighbors understand how to do this, as I myself learn to do it at the same time.

Kindest regards,

Everette Phillips
206 Walnut St
Newport Beach, CA 92663



This email has been checked for viruses by Avast antivirus software.
www.avast.com

LETTERS IN SUPPORT

242 letters of Support

Does not include form letters.

On File: **208** additional form letters in support



November 30, 2015

Dear Commissioner:

Since our fortunate inception in 2012 through sponsorship from the Newport Banning Ranch LLC (NBR), the Newport Banning Land Trust (NBLT) has touched many sectors in the Orange County community.

As the designated steward of the planned open space at NBR, we have worked to bring the people of our community together to support our effort in creating a native plant nursery, establishing hands-on school programs with two local high schools and collaborations with other 'like-minded' organizations.

You will see from the attached letters the broad-spread support we have received. From our Congressman Dana Rohrbacher to former Coastal Commissioner Mike Reilly. From Newport-Mesa School Board members to a Life Scout working to earn an Eagle Scout award by evaluating seed germination rate of Southern tarplant, our reach has more than exceeded our expectations.

Our collaborative programs have connected NBLT to California State Parks, Crystal Cove Alliance, University California Irvine, Orange County Community Foundation, and other local organizations. Our collaboration with the Institute for Conservation Research and Education (ICRE) has provided a field science curriculum for high school students in Huntington Beach and Costa Mesa.

The native plant nursery was designed to grow local native plant species to ultimately re-plant on Newport Banning Ranch and help restore the land to its natural state. While the plants are growing, we have been able to share them with other organizations in the area. For example, without our presence in the community, Crystal Cove State Park would not have the 300 plants we grew in our native plant nursery from seeds collected on Newport Banning Ranch, all through our community volunteer programs.

Your approval of the Newport Banning Ranch project will enable NBLT to continue our path to be the steward for the open space at Newport Banning Ranch.

Sincerely,

A handwritten signature in cursive script that reads "Robyn Vettraino".

Robyn Vettraino, Executive Director
Newport Banning Land Trust
robyn@newportbanninglandtrust.org

cc: Karl Schwing, Charles Lester, Sherilyn Sarb

February 26, 2016

Chair Kinsey:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Newport Banning Land Trust**

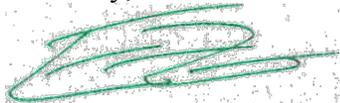
Dear Chair Kinsey & Commissioners:

I am a lifetime Long Beach native and co-founder of Tidal Influence, serving as the Principal Restoration Ecologist since 2009. I also lectured at CSULB from 2006-2014, but am now focusing on mentoring my Tidal Influence team and leading our collaborations with other like-minded organizations like the Newport Banning Land Trust (NBLT). Together, with Institute for Conservation, Research and Education (ICRE), Tidal Influence and NBLT are creating a broad-base approach at working on community-based programs to stimulate momentum within the envisioned regional vision of open space and habitat continuity.

Since July 2014 we have been developing stewardship programs and volunteer training programs to focus on a goal of bringing awareness and public access to Newport Banning Ranch (NBR) and all coastal resources. We have been providing them with wisdom we have garnered through our participation in public engagement, creative partnership building, and diligent ecological investigations over the past 10 years. Our work has taken place in similar setting at Los Cerritos Wetlands and Colorado Lagoon in the Long Beach area. We see tremendous potential to utilize these same approaches in our growing partnership with NBLT on many similar programs at Banning Ranch as they move towards a stewardship role on the proposed open space at NBR.

Under the leadership of Executive Director, Robyn Vettraino, NBLT has worked diligently on partnering with organizations and creating opportunities to host public tours, create a native plant nursery, engage local education and leaders, and host a Field Science program for High School Students. She negotiated a Memorandum of Understanding for NBLT with the property owner which outlines their path for long-term stewardship of at least 280 acres of natural open space. This natural open space will have great value for our coastline, but only if it is properly cared for by a committed organization like the Newport Banning Land Trust.

Sincerely,



Eric Zahn
Tidal Influence, LCC

Cc: Robyn Vettraino, Executive Director



orange county chapter

**USGBC Orange County
Chapter**

360 East First Street, #401
Tustin, CA 92780

P (714) 832-3616
www.usgbc-oc.org

**Market Leadership
Advisory Board**

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verde

February 8, 2016

Chair Kinsey
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Regarding: Newport Banning Ranch

Dear Chair Kinsey:

On behalf of the U.S. Green Building Council Orange County Chapter, we write today to express our organizational support for the Newport Banning Ranch project, which is registered under the LEED for Neighborhood Development program, and has achieved Site Location and Linkage Prerequisite Approval as of December 10, 2014. In addition, we support public access to Banning Ranch, protection of sensitive habitat and maximization of open space.

The Leadership in Energy and Environmental Design (LEED) rating system is a nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED for Neighborhood Development is built off LEED's success and is a consensus based approach to land development of whole neighborhoods that unite the principles of smart growth, new urbanism, and green building to provide a common framework for evaluating and rewarding environmentally-superior neighborhood development practices. It is a partnership between the U.S. Green Building Council, Congress for New Urbanism (CNU), and Natural Resource Defense Council (NRDC).

LEED-ND encourages developers to embrace a comprehensive approach in the design, planning, and building of a neighborhood which promotes using alternative modes of transportation, improved air and water quality, and the construction of more sustainable communities for people of all income levels. Some highlighted features of building and certifying with LEED-ND include:

- Decrease automobile dependence – LEED-ND stresses public and convenient transportation choices such as buses, trains, bicycles, and increased sidewalks for walking. A focus of program certification in “smart location” meaning developing locations which produces shorter automobile trips and reduce traffic congestion. Additionally, a 2009 study found that houses with above average levels of walkability, a core component of LEED-ND, command a premium of \$4,000 to \$34,000 over houses more spread out.
- Protect threatened species - Fragmentation and loss of habitat are major threats to many imperiled species. LEED-ND encourages compact development patterns and the selection of sites that are within or adjacent to existing development to minimize habitat fragmentation and also help preserve areas for recreation.
- Lower Costs - Benefits of LEED-ND neighborhoods include reduced infrastructure and operating costs for municipal governments.

Page Two

The results of building LEED-ND projects are quite clear. Additionally, *the process to register and earn LEED-ND certification* also has a number of benefits including a whole-site approach to project planning and development, consensus and input from all stakeholders, and implementing industry best practices to help achieve maximum results. The Newport Banning Ranch project has already done due diligence in pursuing LEED-ND certification, registering under the program on 5/6/2010 and hosting a number of preliminary meetings with local officials and project stakeholders. However, to ultimately be certified, the plans for the project need to be reviewed by USGBC for pre-certification review prior to the first shovel hitting the ground.

We hope members of this commission work with project developers, residents of California, and all interested parties to advance this LEED-ND project. Please feel free to use USGBC California Orange County, and the whole U.S. Green Building Council network, including over 22,133 LEED certified professionals throughout California as a resource. As an organization, we are more than happy to assist in any form possible.

Sincerely,



Steve Gabbert
Co-Chair, USGBC OC



Fern Nueno
Co-Chair, USGBC-OC



Huntington Beach High School

1905 Main Street, Huntington Beach, CA 92648
(714) 536-2514 FAX (714) 960-7042

February 8, 2016
Chair Kinsey and Commissioners
Via email:
Re: **Newport Banning Ranch**

Dear Chair Kinsey:

I am writing to support approval of the Newport Banning Ranch Project. I am an AP Science teacher at Huntington Beach High School and have taught here for five years. We started a Field Science program nearly ten years ago where students interested in the sciences were able to get field study research outside the classroom and could travel to Yosemite and Catalina Island to teach high school seniors the fundamentals of field biology. This program gives students the unique opportunity to attain field experience pertaining to water quality, mapping and native versus invasive species identification.

The majority of this program was almost cut out of our curriculum last year, but was revived through the team at Newport Banning Land Trust. They stepped in to partner with the Institute for Conservation Research and Education and utilized the restoration area on the Newport Banning Ranch site as well as the Fairview Ponds in Costa Mesa, and through an Advisory Team, taught students how to critically analyze their findings and present before a group of peers, parents and teachers.

Leaders in the science programs are rare and the ability to access sites for analysis and gain field experience is harder and harder to come by. The Newport Banning Land Trust is ready to take the leadership role in advancing those programs locally so that students here in Orange County are provided the opportunity for exposure to these important career paths. Without the thoughtful balance of public access, restoration and housing options that include a funding stream, this opportunity may again be lost. I urge you to approve the Newport Banning Ranch project.

We are ready to participate with the Newport Banning Ranch team in their leadership role on the natural open space portion of the proposed plan and make it a community legacy.

Best regards,

Carissa Rice
AP Science Teacher, Huntington Beach High School.

Cc: Charles Lester, PhD.
Jack Ainsworth
Sherilyn Sarb
Teresa Henry
Karl Schwing



21 April 2016

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105

RE: Newport Banning Ranch Proposed Development

Dear Chairman Kinsey, Vice Chair Bochco and Commissioners:

As a current member and former Chair of the Costa Mesa Parks and Recreation Commission, as well as a member of the Newport Banning Land Trust Advisory Committee, I want to express to you my unconditional support of the proposed modified Newport Banning Ranch development plan that you will be considering at your May 11, 2016 meeting.

To understand the importance of this thoughtful, balanced and collaborative development proposal, I think it is necessary to acknowledge two fundamental truths:

- The Banning Ranch property is a remarkable and environmentally rich coastal landscape home to an extraordinarily complex ecosystem that must be restored, enhanced, maintained and preserved in perpetuity.
- The public must be given access to this exceptional land. Far too many generations haven been denied the opportunity to see, hear, touch and smell the great orchestra that Nature has created on this territory.

But neither of these truths can truly be realized without the Newport Banning Ranch proposal.

I am convinced that in this instance you have an applicant – the landowner – whose commitment to this land is weighted far more to the stewardship of the Banning Ranch environment and the public’s access to it than it is to their fundamental property rights and economic interest in developing a small, degraded, industrialized portion of the site.

This is clearly evidenced not only by the applicant’s original proposal, but even more so in their modified plan born from their willingness to receive and respond to public input and the thoughtful direction provided by the commission and commission staff.

Here's the reality: Realizing the protection of and public access to Banning Ranch is an enormously expensive undertaking that *requires* the implementation of the development proposal if it is to occur.

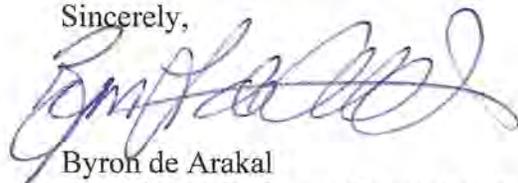
We cannot hope to restore and protect the sensitive environment of the Banning Ranch land and – equally important – establish the public's access to it if we insist on denying the landowner's economic interest to implement its measured, limited, thoughtful development plan.

I'm sure members of the public remind you often (not that you need it) of the commission's charge: To protect and enhance California's coast and ocean for present and future generations. One of the ways you do that is through careful planning and regulation of environmentally sustainable development.

In the case of Banning Ranch, the proposal before you meets both tenets of your mission.

Too many generations have been denied the opportunity to experience this incredible territory. Let's not perpetuate that unfortunate history.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Byron de Arakal', written in a cursive style.

Byron de Arakal
Costa Mesa Parks and Recreation Commissioner
Newport Banning Land Trust Advisory Committee

Chair Kinsey via eMail:

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Dear Chair Kinsey,

We are writing to support the Newport Banning Ranch project.

We are architecture students from Clemson University in South Carolina primarily in California for the Solar Decathlon competition that took place in October of this year in Irvine, California.

We were fortunate enough to share space with the Newport Banning Land Trust and while we were in residence assembling our 'house' for the competition, we learned more about Newport Banning Ranch and the wonderful proposed sustainable community paired with public access through bike and hiking trails planned for the site.

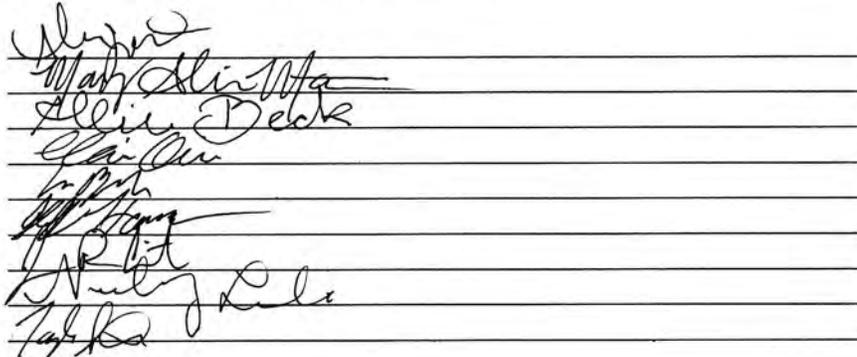
Since we will be here in California through December to continue classes we will also be working on a design proposal for trail signage, public programs and trailhead structures to be integrated into the Newport Banning Ranch and Newport Banning Land Trust partnership.

Overall, we feel connected to the Newport Banning Ranch project and are privileged to be involved in this way. We hope that you will approve the project, which will not only provide leadership for other progressive and sustainable communities in California, but also give this community access to the ecosystem via biking and hiking trails.

Sincerely,

Clemson University Graduate Architecture Students:

Alex Latham
Alison Martin
Allie Beck
Clair Dias
Eric Balogh
Jeff Hammer
Jon Pennington
Neely Leslie
Tyler Silvers



cc: Robyn Vettrano, NBLT Executive Director



**IRVINE RANCH
CONSERVANCY**

March 11, 2016

To Whom It May Concern:

The Newport Banning Land Trust has created a Field Science Program for high school students with modified programs also being introduced to the lower grades. These programs would not otherwise be available to these students.

Students conduct field visits to Banning Ranch one day per month throughout the school year to collect data on a variety of topics. The student-collected data is important for land management, especially related to water quality, topography, and native/non-native species conditions.

The Irvine Ranch Conservancy, a non-profit, non-advocacy land management organization, has collaborated with the Newport Banning Land Trust to provide guidance and advice for volunteer management and expanding their successful community-based programs such as the native plant nursery and education programs.

The Conservancy will continue to collaborate and exchange information with NBLT to promote our shared objectives for community-based habitat restoration and creating a long-term constituency to care for natural open spaces in Orange County.

Sincerely,

Michael O'Connell
Executive Director

Chair Kinsey and Commissioners,

I regret not being able to make the March California Coastal Commission meeting, as I work at the Costa Mesa Library and have a schedule conflict. I hope that this letter finds you all well and in a receptive mood. I am writing to support the proposed Banning Ranch Project.

My name is Jami Russell. I have been a Costa Mesa resident from the day I was born. I have lived in Costa Mesa's Westside for 36 years. I was there before there was a Canyon Park and when Talbert and Banning Ranch did not have a fence between them.

I am writing this letter because Banning Ranch, Talbert, and Canyon Park all share the same problem. A high infestation of invasive plant life strangling off native plants. Most of this has crept in from the long neglected Talbert under the unwatching eye of Orange County. While Costa Mesa Parks & Rec do their best, they can only do so much when there are two other areas with a high infestation of pampas grass, ice plant - Banning Ranch even has poison hemlock. Talbert has become the "home" to many heroine users and other homeless people who constantly cause wildfires there because there is so much severe over growth that it's easy for them to hide. With the approval of Banning Ranch, their plans to restore, we can begin to take a community approach to solving some of these problems. I have a group of over 40 supporters who are neighbors here in Costa Mesa that plan to join the Newport Banning Land Trust in their mission to steward the open space and, once underway, we can expand this active management to Canyon Park and eventually Talbert.

Something needs to be done, period, for all three areas. There's no question about that. This will benefit the wildlife, the environment, and future generations.

The hotel and the fear mongering about the traffic is a non-issue. Traffic will increase with or without the hotel because the human population continues to increase. The real issue is the invasive plant life and the danger posed by drug addicts who use that same invasive plant life to hide in. I urge you to focus on this real issue. I want to see all three parks restored to a vital habitat. I want to see all three areas safe for people to use and enjoy. I want children for years to come to be able to walk down there and see native plants and animals, not ivy and ice plant covering every hill.

If you don't think invasive plant life is a big deal I urge you to check out the children's book "The Story Of Rosy Dock" by Jeannie Baker. It's the true story of how a non-native plant has managed to spread and take

over all of Australia from just one person's garden. While that's another country entirely, that same story is playing out here in California with these three areas. As a nearby resident, the long-term damage frightens me, and the continued risk of fires is always present. Please, please, please, I urge you to make the right choice to see all three areas cleaned up of the invasive plant life and native plant life restored. Approve the proposed Banning Ranch project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jami JoAnne Russell". The signature is fluid and cursive, with the first name "Jami" being particularly prominent.

~Jami JoAnne Russell~
900 Cedar Place
Costa Mesa, CA
92627

February 8, 2016

Chair Kinsey:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Newport Banning Land Trust

Dear Chair Kinsey:

I am writing to support the Newport Banning Ranch project and specifically their collaboration with Newport Banning Land Trust (NBLT). I am a resident of Balboa Island, a collegiate baseball player and a business owner. I have lived in Newport Beach for over 25 years.

This plan, which leaves over 75% as open space, provides public access and allows NBLT to continue to work on community-based programs and educational opportunities for local schools. The NBLT collaborative nature has already generated an informal co-op atmosphere at their office. After only a year there, they have built a native plant nursery completely done by volunteers, hosted community picnics with local musicians, chefs, and breweries, and toured numerous other environmental non-profits who are interested in their programs. It's this kind of team spirit that young community members like myself respect.

Without the kind of proposed remediation and collaboration on the land, implementation of the open space regional vision and habitat in Orange County will remain a dream. Without this area restored and stewarded, the community has lost an opportunity and future generations will scratch their heads at why Commissioners shied from being responsible citizens.

Sincerely,



Marc Motzer
Balboa Island, California

Cc: Robyn Vettrano, Executive Director

February 2, 2016

California Coastal Commission

South Coast Area Office

200 Oceangate, Suite 1000

Long Beach, California 90802-4302

Subject: **Newport Banning Ranch | 5-13-032**

I am respectfully writing to reconfirm my remarks to the Commission in Long Beach on October 09 in support of the rehabilitation master plan for the Newport Banning Ranch.

I have been privileged to address the Commission on several occasions in support of our efforts for the **Newport Banning Land Trust** and to also support the **City of Newport Beach** for their efforts to develop Sunset Ridge Park adjacent to the NBR.

As you know, since the October hearing NBR has made substantial revisions to their original plan even though that plan was part of the City's voter-approved General Plan. That original plan had been documented in a comprehensive FEIR that withstood not just one, but two court challenges.

The revised plans that we have seen include reducing development as follows:

- Provide enhancement to the proposed Vernal Pool complex by reducing approximately .5 acres of development in that area
- Enhance California gnat catcher territories by reducing development on approximately 9 acres
- Expand the natural area on the bluff above West Coast Highway by reducing approximately 5.5 acres of development
- Reduce proposed dwelling units by as much as 35%

In addition to enhanced environmental value these revisions reduce future traffic impacts as well as water demands by as much as 35%.

NBLT Preserve Enhanced. From the point of view of the NBLT our core habitat protection reserve is enhanced, our public trail network is still in place and our long-term funding for maintenance and care is still guaranteed. The NBLT, now in its third year as an established 501c3 non-profit organization, is a member of the

February 2, 2016

California Coastal Commission

Page Two

Land Trust Alliance and follows their guidelines, standards and policies. The NBLT board, of which I am a member, oversees all their activities and over this past year, we have created a native plant nursery and developed programs for several local schools. A core following of volunteers work in the nursery and will ultimately transplant the native species back on to NBR where they originally grew. NBLT will continue their efforts in the community to guarantee access to all.

As we noted in Long Beach, the NBLT is ready, willing and able to take on the challenge of being your approved land steward – when remediation is complete and the fences come down. Until then, we can only provide limited educational programs on the existing 1.66-acre restoration area, which will be ineffective if the land remains an oil field.

We are qualified, motivated, well-advised and credentialed to be care givers for the land. That's what we do. That's why we are here - to be good homemakers for the environment and our California coast.

Very truly yours,



Philip F. Bettencourt, Director & Secretary

Newport Banning Land Trust

ReClaim | ReStore | ReCreate

www.newportbanninglandtrust.org

February 8, 2016

To: California Coastal Commission
Re: Newport Banning Ranch Project

Dear Members of the Coastal Commission,

I cannot attend in person to show my support of the Banning Ranch Project, but would like to add my name to the list of people who support moving ahead with this project.

The fact that the proposed plan designates over 75% of the land for open space will support our local communities tremendously. The Newport Banning Land Trust has plans to involve the community in a restoration process, and importantly, offers an opportunity for partnerships with educational institutions. Serving on the Newport Mesa Unified School District Board of Education, I am aware that our local schools, from elementary to high school, have already been involved in using the area for science programs. Additionally, some of the schools have begun Field Research Programs for the 2015-16 school year with teachers being involved in writing an exciting curriculum.

Please make sure this land remains open and usable for public access and academic use. Support the Newport Banning Ranch!

Sincerely,

Karen Yelsey

Home address:
1907 Bayadere Terrace
Corona del Mar, CA 92625



February 8, 2016

Chair Kinsey via email:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Newport Banning Ranch

Dear Chair Kinsey:

Over the last few years, the Orange County Community Foundation has been working with both the Newport Banning Ranch and Newport Banning Land Trust teams to assist in the development, funding, and stewardship of their endowment.

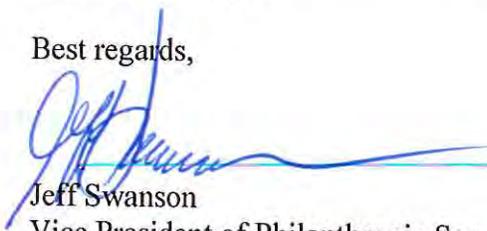
Our goal is to help build a stable source of funding in perpetuity to support the proposed Newport Banning Ranch project.

I am pleased to report that Newport Banning Land Trust is a participant in the Connect OC Nonprofit Central, a database of local organizations (<https://www.ocnonprofitcentral.org/>). In addition, they successfully participated in the County-wide IHeartOC Giving Day (April 21-22, 2015).

At the Orange County Community Foundation, we work closely with local nonprofit organizations and philanthropists to establish and administer funds for the purposes of perpetual community benefit. Building endowments for a sustainable future strengthens local nonprofits and causes alike, marking a larger impact year after year. This partnership, combined with our strong track record of success over the past 25 years, makes the Orange County Community Foundation a natural partner for this significant investment.

We are always ready to assist the Newport Banning Ranch team in their efforts to assure that the natural open space portion of the proposed plan can ultimately fulfill the greatest needs of the local community.

Best regards,



Jeff Swanson
Vice President of Philanthropic Services

Cc: Robyn Vettraino, Executive Director
Michael Mohler, Senior Project Manager

February 4, 2016

Chair Kinsey
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Newport Banning Ranch access

Dear Chair Kinsey:

I write to you personally to request your support in allowing Newport Banning Land Trust (NBLT) access to the Newport Banning Ranch site. One of my roles in my professional educational administration work is to coordinate opportunities for our students to engage in volunteer projects to promote civic and community engagement. One such event was held at the NBLT nursery on Friday, October 2nd, 2015. Our students planted over 100 native plants and seedlings that were later transplanted into the Crystal Cove landscape by another group of students. After this event, I administered a post-event learning outcome survey, and I wanted to share with you a few learning outcomes participants shared with us:

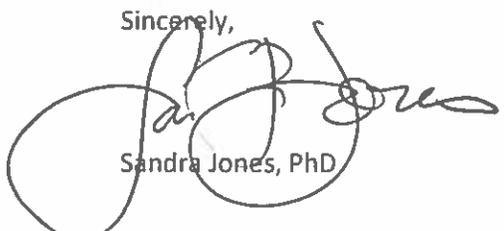
"I like feeling like I am participating in the preservation process of the habitat here in Southern California. Participating in such an important project makes me feel like I am part of this place, rather than just passing through it."

"I learned about plants that are native to this part of California...I also likes[sic] that the plants that are being cultivated are those that are used for nesting by birds. Therefore this project will have a broader impact in the ecosystem present here in Southern California."

Given the significant learning that took place during our last event, I personally would like to see more opportunities for the Orange County community to participate in similar serving learning events. I understand that there is a proposal on the table to grant the NBLT organization access to the Newport Banning Ranch. I personally support this measure as it will allow students to engage in experiential learning, participate in local environmental restoration projects, and in the process, learn about the importance of preserving our native landscape.

Thank you for your time and consideration of this request.

Sincerely,



Sandra Jones, PhD

February 8, 2016

Chair Kinsey:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Newport Banning Land Trust**

Dear Chair Kinsey:

Over the last few years, Orange County Parks has been collaborating with Newport Banning Land Trust. With our properties shared by a fence between the north boundary of Newport Banning Ranch and South Talbert Regional Park on the other, we both recognized that a partnership imminent if we wanted to both be effective land managers.

Orange County Parks has a mission that includes management and operation for enduring value and a system of *regional parks*. With this kind of remediation and restoration proposed as part of the Newport Banning Ranch plan and with stewardship from NBLT, the regional vision for open space in Orange County can gain momentum.

Under the leadership of Executive Director, Robyn Vettraino, NBLT helped lead regional land-owner meetings to work towards consistency among member operations, opportunities for leveraging resources, and to create a forum for operational resource information sharing, among other objectives.

Currently, we are working on a collaborative program with NBLT for community-based restoration and education. Without their leadership, programs like these would likely not be available to the public and Orange County residents.

Sincerely,



William Fegley
Orange County Parks

Cc: Robyn Vettraino, Executive Director

DANA ROHRABACHER
48th District, California

WASHINGTON OFFICE:
2300 Rayburn House Office Building
Washington, DC 20515-0548
(202) 225-2415

DISTRICT OFFICE
101 Main Street, Suite 380
Huntington Beach, CA 92648-8118
(714) 960-6483

<http://rohrabacher.house.gov>



Congress of the United States
House of Representatives

Committees:
FOREIGN AFFAIRS
Chairman, Subcommittee on
Europe, Eurasia, and Emerging Threats
Subcommittee on Asia and the Pacific
SCIENCE, SPACE, AND TECHNOLOGY
(VICE CHAIRMAN)
Subcommittee on Space
Subcommittee on Environment

October 29, 2014

Hon. Steve Kinsey
Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Whale Tail Grant applicant Newport Banning Land Trust

Dear Chairman Kinsey,

I write to support the Newport Banning Land Trust (NBLT) application for a Whale Tail Grant.

Located in my congressional district, the NBLT has an agreement to steward over 230 acres of coastal wetland habitat for the purpose of public access, education, and land stewardship. Underlying the agreement is a unique collaboration between public, private and non-profit organizations that portends the environmental stewardship of a California coastal jewel.

In order to further public engagement in this undertaking, the NBLT launched their ReCreate Collaboration Project on Earth Day 2014. Its purpose is to remedy public disconnect issues pertaining to mitigation through community-based management and to engage volunteer participation in restoration and stewardship activities. Furthermore, it is a splendid opportunity for local schools to involve students with NBLT's on-site educational programs.

I trust that NBLT's Whale Tail grant application documents will yield to you the practical and distinctive community-based eco-system collaborative that it is and so deserving of the Coastal Commission's support.

Yours sincerely,

A handwritten signature in black ink that reads "Dana Rohrabacher".

Dana Rohrabacher
Member of Congress
48th District-CA

Michael W. Reilly

11305 Vellutini Rd., Forestville CA 95436

October 30, 2014

To: Whale Tail Grants Program, California Coastal Commission

Dear Coastal Commission Friends:

As a former Chair and Member of the Coastal Commission for twelve years, I am writing in support of the Whale Tail Grant Application submitted by the Newport Banning Land Trust for the ReCreate Collaborative Project at Newport Banning Ranch.

This innovative collaborative proposal to engage public involvement in the most important coastal remaining resource restoration in Southern California deserves the serious consideration and support of the Commission grant program.

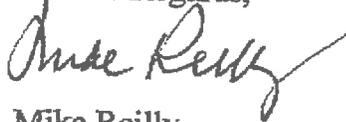
This 400 acre property, bordering Pacific Coast Highway and the Santa Ana River Park, has been operated for the past 70 years as a private oil field. The opportunity to both restore and maintain this sensitive coastal resource and to actively involve the public in education and stewardship programs is very exciting and represents an effort of statewide importance.

While my wife and I pay the little extra each year to display our whale tail licenses on our vehicles, this is exactly the kind of project we would hope to see supported by the program. I am also pleased to see the involvement of the Commissions' Community-Bases Education and Restoration Program.

I have met with Land Trust Executive Robyn Vettrano and have been impressed by both her dedication to resource protection and her out of the box innovative approach to public involvement and collaboration.

I am happy to recommend this project without reservation as an outstanding example of the importance of the Whale Tail Grant program in California.

Sincere Regards,



Mike Reilly

NANCY GARDNER
323 Jasmine
Corona del Mar, CA 92625

October 22, 2014

Members of the Coastal Commission:

I am writing in support of the Newport Banning Land Trust's application for a Whale Tail Grant. Newport Banning Land Trust is working to preserve more than 230 acres of open space at Newport Banning Ranch with programs to provide public access for recreation and education, to nurture natural habitats, and to restore and regenerate the land. The Land Trust's goal is to become a recognized resource for community participation in outdoor activities and native plant restoration programs. While currently limited, the initial programs indicate what a benefit they will be for Orange County, providing a robust public education and access benefits for the community.

As part of its "ReClaim--ReStore--ReCreate process, the Land Trust recently launched the third tier of that plan by formally partnering with a restoration biologist and the leader of the Community-based Restoration Program for California Coastal Commission's program located near it in Newport Beach. Targeting a leadership role in exploring community engagement for restoration projects through simple communication and volunteer community engagement, the Land Trust has quickly gained supporters. The focus is now to expand this program with public land tours, local school programs, public service learning events, an internship program and expanded community outreach program.

As a member of the Newport Beach City Council, I have followed the Land Trust's first steps with great interest. I support the goals of this grant request and urge the Commission to award a Whale Tail Grant to the Newport Banning Land Trust.

Sincerely,

Nancy Gardner



September 30, 2015

Chair Kinsey via email:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Newport Banning Ranch

Dear Chair Kinsey:

Over the last few years, the Orange County Community Foundation has been working with both the Newport Banning Ranch and Newport Banning Land Trust teams to assist in the development, funding, and stewardship of their endowment. Our goal is to help build a stable source of funding in perpetuity to support the proposed Newport Banning Ranch project.

I am pleased to report that Newport Banning Land Trust is a participant in the Connect OC Nonprofit Central, a database of local organizations (<https://www.ocnonprofitcentral.org/>). In addition, they successfully participated in the County wide iheartOC Giving Day (April 21-22, 2015).

At the Orange County Community Foundation, we work closely with local nonprofit organizations and philanthropists to establish and administer funds for the purposes of perpetual community benefit. Building endowments for a sustainable future strengthens local nonprofits and causes alike, marking a larger impact year after year. This partnership, combined with our strong track record of success over the past 25 years, makes the Orange County Community Foundation a natural partner for this significant investment.

We are always ready to assist the Newport Banning Ranch team in their efforts to assure that the natural open space portion of the proposed plan can ultimately fulfill the greatest needs of the local community.

Best regards,

A handwritten signature in blue ink, appearing to read "Jeff Swanson", with a long horizontal flourish extending to the right.

Jeff Swanson
Vice President of Philanthropic Services

Cc: Robyn Vettraino, Executive Director
Michael Mohler, Senior Project Manager

Looking Back ♥ Giving Forward



Huntington Beach High School

1905 Main Street, Huntington Beach, CA 92648
(714) 536-2514 FAX (714) 960-7042

September 30, 2015

Chair Kinsey and Commissioners
Via email:

Re: Newport Banning Ranch

Dear Chair Kinsey:

I am writing to support approval of the Newport Banning Ranch Project. I am an AP Science teacher at Huntington Beach High School and have taught here for 5 years. We started a Field Science program nearly ten years ago where students interested in the sciences were able to get field study research outside the classroom and could travel to Yosemite and Catalina Island to teach high school seniors the fundamentals of field biology. This program gives students the unique opportunity to attain field experience pertaining to water quality, mapping and native versus invasive species identification and the use of statistics to support claims. We at Huntington Beach High School pride ourselves as leaders in this type of curriculum and have been copied by school both inside and outside of our district.

The majority of this program was almost cut out of our curriculum last year, but was revived through the team at Newport Banning Land Trust. They stepped in to partner with the Institute for Conservation Research and Education and utilized the restoration area on the Newport Banning Ranch site as well as the Fairview Ponds in Costa Mesa, and through an Advisory Team, taught students how to critically analyze their findings and present before a group of peers, parents and teachers.

Leaders in the science programs are rare and the ability to access sites for analysis and gain field experience is harder and harder to come by. The Newport Banning Land Trust is ready to take the leadership role in advancing those programs locally so that students here in Orange County are provided the opportunity for exposure to these important career paths. Without the thoughtful balance of public access, restoration and housing options that include a funding stream, this opportunity may again be lost. I urge you to approve the Newport Banning Ranch project.

We are ready to participate with the Newport Banning Ranch team in their leadership role on the the natural open space portion of the proposed plan and make it a community legacy.

Best regards,

Carissa Rice
AP Science Teacher, Huntington Beach High School.

Cc: Steve Danner – AP Science Teacher
Daniel Morris - Principal

Hunter Miles Bernard
3212 Palm Avenue, Manhattan Beach
California 90266-3524
(310.055.8646 mobile)

Tuesday, 06 October 2015

California Coastal Commission (*via e-mail*)

Attention: Chair Steve Kinsey and Commission Members
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

**Subject: Newport Banning Ranch, LLC / Coastal Permit Application No. 5-13-032
(07 October 2015 - Agenda Item W9b)**

Dear Chair Kinsey,

My name is Hunter M. Bernard. I am a Junior at Mira Costa High School in Manhattan Beach, California; and, I am a Life Scout (Eagle Scout candidate) and a member of Boy Scout Troop 849. I stridently support and am writing to ask you to Approve the proposed Newport Banning Ranch project which is scheduled for hearing at your California Coastal Commission meeting tomorrow (07 October 2015).

After considering a number of possible projects, and then a number of possible locations, I decided to work upon my Eagle Scout *and* William T. Hornaday Award Service Project using citizen science and have partnered with the Newport Banning Land Trust (NBLT). Their leadership role in engaging the public on native plant nurseries and creating informal learning opportunities is exactly what a Service Project should entail.

[You may well know that about 2% of all Boy Scouts achieve the rank of Eagle Scout – which requires such a Service Project. However, you may not know what the William T. Hornaday Award is – it has been called the “Olympic Gold Medal” for the environment; and, less that 0.0012% of all the Boy Scouts since the formation of the Boy Scouts of America (BSA) have ever received this very prestigious and rare Award!]

Through a program to provide ecological knowledge and a positive environmental experience for participants, we can initiate a database for evaluation on science and the seed germination rate of Southern Tarplant. Interestingly, the seeds that we will be studying and then (hope) to plant on the planned public open space at Newport Banning Ranch, to be administered by the NBLT, emanate from another land development project in an ecologically sensitive habitat along Santiago Creek in Orange County – these endangered flora species' seeds need a home!

Without the support and leadership of the NBLT, and the overall proposed community engagement and public access as part of the proposed Newport Banning Ranch, implementation of projects like this would not be allowed to happen. The public and private partnerships provide a road path for successful relationships with the community and a means to significantly improve their local environment.

I strongly urge you to support the overall proposed Newport Banning Ranch plan and project which can encourage partnerships like this and can ultimately fulfill the greatest needs of the local community; and, significantly improve our coastal environment and usage!

P.S.: I also speak for my Father -- Bret B. Bernard, AICP; who was a resident of Newport Beach for over 45 years and who still resides on the coast in Orange County. He was for nearly 20 years a public service urban and coastal planner (and Community Development Director) for 3 different coastal communities, including tenure in his hometown of Newport Beach. He shared with me that the proposed Newport Banning Ranch is a perfect realization of a mutually beneficial private development achievement and public opportunities for a property long challenged, stating that "this is the perfect project (there) for everyone, including the coastal environment!"

We both hope that you will not follow the recommendations of your Coastal Commission staff; and, will instead, Approve the proposed beneficial Newport Banning Ranch project.

Thank you in advance for your consideration of my letter of (project) support for the Newport Banning Ranch.

Respectfully submitted and with best regards,

Hunter M. Bernard

Hunter M. Bernard

cc: Robyn Vettraino, NBLT Executive Director
Bret B. Bernard, AICP

From: Aaron Tofani <aarontofani@gmail.com>

Sent: Mon 11/09/15 4:21 PM

To: Info@NewportBanningRanch.com

Priority: Normal

Subject: Letter of Support for the Proposed Banning Ranch Development

Type: Embedded HTML/Text

Dear Chair Kinsey, Please accept this letter of support for the proposed Banning Ranch development adjacent to Newport Beach. On Thursday, November 5th, I attended a presentation by the developers of the proposed project and would like to show my support for the following reasons:

- As someone familiar with oil drilling and well abandonment: My father owns and environmental engineering firm in Irvine and I know first hand how much it costs to clean up properties that have been impacted by oil drilling operations. This project would enable the clean-up and restoration of Banning Ranch to happen now instead of waiting decades longer for public funds or some other financing mechanism.

- As a restaurant owner in Costa Mesa: I am directly affected by this project and believe it will benefit my community overall. While there will be additional restaurants/competition, the excitement and synergy created by the proposed project would be great for my business.

-As a real estate expert: I develop real estate myself and I earned a Master's Degree in Real Estate Development from USC. I feel this project is an excellent use of land by mixing an appropriate density of different residential and commercial uses within a very large open space program that will be open to the public.

I am truly impressed by the proposed project and highly recommend it be approved. Should you have any questions, please feel free to contact me via email or by phone at (949) 412-4137. Thank you for your consideration of my support.

Aaron Tofani

October 6, 2015

To:
California Coastal Commission

From:
Rita Goldberg
City Arts Commissioner
908 Spring Tide Drive
Newport Beach, Ca 92660
(949)375-1404

My name is Rita Goldberg. I have been a resident of Newport Beach for 28 years and am currently in my 8th year as City Arts Commissioner for Newport Beach.

In my appointed role, I am especially concerned with the aesthetics of Newport Beach as a city. Also, as a long time resident of Newport Beach, I am concerned with the aesthetics as well as the safety of Newport Beach.

The Banning Ranch property, in its current state, is an unsightly, unkempt eyesore as well as an environmental hazard to local residents.

I am encouraging the Coastal Commission to approve clean up and development of this area for the benefit of Newport Beach residents.

As of lately, the homeless vagrant population of Newport Beach has escalated. In neighborhoods such as Harbor Cove (Jamboree and Santa Barbara) which are adjacent to large parcels of protected reserves, homeless vagrants have been spotted naked in community jacuzzis and have vandalized nearby homes.

Large undeveloped and unmonitored parcels of land, such as Banning Ranch, are especially at risk of attracting homeless vagrants who, with a flick of a lit match, can cause devastating and deadly outcomes to an area such as Banning Ranch, where oil extraction sources can ignite or cause explosions.

I strongly encourage the members of the Commission to approve clean up and development of Banning Ranch for the benefit of Newport Beach residents.

Thank you for your consideration.

From: "Hendon, Barbie" <BHendon@cltic.com>

Sent: Mon 11/09/15 11:36 AM

To: "Info@NewportBanningRanch.com"
<Info@NewportBanningRanch.com>

Priority: Normal

Subject: Newport Banning Ranch

Type: Attachments

Dear Chair Kinsey,

I am a member of the Urban Land Institute's Orange County Commercial Counsel, and had the pleasure of arranging for Brooks-Street to come to our meeting on the 5th to share the Newport Banning Ranch story. The mission of the Urban Land Institute is to provide leadership in the responsible use of land and in creating and sustaining thriving communities worldwide.

I was very impressed with NBR's attention to Open Space, thoughtful planning and changes to the plan based on the Coastal Commissions input. They answered MANY questions from our group about inclusiveness to the surrounding community, plans for incorporating existing bike paths into the plan, the varied housing alternatives, including the affordable component and the Retail component being a gathering place, not only for the residents, but for the community as well.

I have seen a couple of Brooks-Street's communities. Wilder, in Orinda, California, is set back in a canyon with 90% dedicated to open space. They built the ball fields well in advance of the community and they have been used extensively by the community

I wanted to voice my support for Newport Banning Ranch. I trust the Principals working on the project to create a beautiful, open space with plenty of parks and athletic fields for the community to also enjoy. I urge you to support this great project.

Thank you for your consideration

Barbie

Barbie Hendon

V.P. National Accounts Manager
National Commercial Services

Commonwealth Land Title

4100 Newport Place Drive, Suite 120

Newport Beach, CA 92660

(949) 724-3161 Direct

(949) 230-9647 Cell

bhendon@cltic.com

From: papazisjn@gmail.com

Sent: Mon 12/14/15 12:23 PM

To: info@newportbanningranch.com

Priority: Normal

Subject: Support growth and improvement

Type: Text

As a Costa Mesa resident, with employment local to Newport Beach, please note or support of growth and improvement to our valued land by means of the Banning Ranch proposal. Progress for the sake and benefits to the land and community should be, now and in the future, a priority. Please pass and help improve our community!

Sent from James Papazis's iPhone

From: advocatejc@aol.com

Sent: Mon 12/14/15 6:43 PM

To: info@newportbanningranch.com

Priority: Normal

Subject: Support for the Banning Ranch Development Project

Type: Embedded HTML/Text

Dear Costal Commission,

I have been a resident of Orange County for decades, living in Huntington Beach, Costa Mesa and Santa Ana. The greatest and best use of the Banning Ranch land would be to allow for its clean up and preservation for community use, as well as the residential and hotel development.

At this point in time, no one of the general public even knows Banning ranch exists, let alone makes any use of the land as it sits in its "wasted" current day condition. Decade after decade only a very small "elite group" of people are able to enjoy the Banning Ranch land. Namely, those who live on the bluff who overlook the land.

That elite group generally oppose the project because their "view" would be spoiled. They would rather selfishly keep to their own benefit, the undeveloped land "view", rather than "view" residential roof tops. However, the "view" preferences of a very small elite residential group, is not a good reason to deny this development.

The benefits of development far outweigh the burden of any alleged loss of preserved land and/or the desired "view" for this elite group. Development would mean that scores of other residents of Orange County would be able to enjoy this property, as well as school children on field trips, those coming on vacation, and others coming in for day trips from other parts of California. Not to mention the fact that the businesses in the community would benefit economically from this development as well, creating jobs and revenues for the city and county. To only allow a very small elite group of people to enjoy this land, in the limited manner in which they do, is unfair to the rest of the residents of Orange County.

The Costal Commission's desire for a greater portion of the land to be preserved, presents grave concerns that perhaps have yet to be fully considered. The amount of land already proposed for preservation is a very large portion of land. If the preservation land is increased any further it becomes less "manageable" in the sense of health, welfare, and safety of those in the community that will use and enjoy the land.

The vision of this project is going to benefit everyone in the community and beyond, not just a select few. It would be a derelict of duty to oppose this project and continue to "waste" what many could be enjoying now, and for years and years to come.

Thank you for your careful consideration as you make this decision.

Janet Carter

THE ADVOCATE'S LEGAL CENTER, INC.

2101 Business Center Drive

Suite 100

Irvine, CA 92612

Telephone: 714.444.2984

Email: ADVOCATEJC@aol.com

Website: www.JanetCarter.org

ROBERT M. BROWER

4 Monterey, Irvine, CA 92612-2985 | (949) 854-9784 | RMBROWER@ATT.NET

January 29, 2016

California Coastal Commission
South Coast District Office,
Attn: Ms. Amber Dobson amber.dobson@coastal.ca.gov.
200 Oceangate
Long Beach, California 90802

Subject: NEWPORT BANNING RANCH

Dear Commissioners and Staff:

Position: SUPPORT NEWPORT BANNING RANCH REUSE PLAN

As nearly a three decade resident of California and one who supports the concept of maintaining the beauty of our California coastal areas, I agree with those Coastal Commissioners who understand that having some redevelopment on the Newport Banning Ranch property is the only way to have the otherwise terribly blighted property cleaned up – a goal expressed many times by various Commissioners!

Without some economic engine to generate the financing to clean up the Banning Ranch property, it will remain an ugly scar on our beautiful Orange County coastline in perpetuity.

The new plan for Newport Banning Ranch is a reasonably fair balanced solution for both the developer and the members the environmental community. But most importantly it creates the financial resources to finally cleanup the property. It reduces the number of residential units by 35% and reduces traffic volumes. It also reduces project potable water demands by as much as 30%, while increasing open space.

The consolidated oil operations will at last stop drilling and pumping; and transport of oil from more than 90% of the property will cease. That's good for the total environment! And good for California!

Commissioners, your "YES" vote will clear the way for a creating a more beautiful California coast.

Sincerely,
Robert M. Brower

January 30, 2016

California Coastal Commission
Chair Steve Kinsey & Commissioners
c/o South Coast District Office
Ms. Amber Dobson
amber.dobson@coastal.ca.gov
200 Oceangate
Long Beach, California 90802

Dear Commissioners and Staff:

As a longtime resident and businessman in Newport Beach I support the reduced density reuse plan for the nbr.

The new plan reduces the number of residential units by 35% and reduces traffic volumes and project potable water demands by as much as 30% while increasing open space.

The consolidated oil operations will at last stop drilling and pumping as well as transport of oil from more than 90% of the site. That's good for the environment, good for homeowners and frankly good for property values for all concerned.

I know this field as a former member of the city's Technical Oil Advisory Committee. With perhaps as much as 30 years of production remaining out there this comprehensive plan is the best anyone can expect.

Your "Yes" vote will clear the way for a better future for the coast.

Very truly yours,

Lloyd Sellinger
Newport Beach

February 3, 2016

California Coastal commission
Ms. Amber Dobson and Commissioners
Amber.Dobson@coastal.ca.gov
200 Oceangate, S. 1000
Long Beach, California 90802

Subject Newport Banning Ranch Your 5-13-032

Dear Ms. Dobson and Commissioners:

As a longtime Costa Mesa small business owner I SUPPORT THE REDUCED DENSITY DEVELOPMENT PLAN FOR THE Newport Banning Ranch. It reduces density, lowers traffic impacts, reduces needed grading and even lowers the demand for potable water.

What I also like - and that does not get much mentioned - are the consumer friendly components of affordable housing, affordable lodging opportunities though the planned hostel system, a big network of public trails and generous free parking for beach goers. I hear there is even talk of a free shuttle to the beach. Cool.

It's all good - and it is high time to get it done.

Mark Fitch
Costa Mesa, California

208 identical letters received

Close



From: info@newportbanningranch.com

Sent: Sun 04/10/16 5:12 PM

To: info@newportbanningranch.com

Priority: Normal

Subject: support letter from nbr website

Type: Text

Dear Honorable Chairman Kinsey, Commissioners and Staff,

This letter indicates my support of Newport Banning Ranch, and requests that the Coastal Commission approves the project when it comes before you in May. The plan for Newport Banning Ranch is:

Good for the environmentâwith the cleanup of the oil field, restoration of the land and removal of the fence.

Good for the regionâwith an abundance of open space, parks, trails and connections to recreational areas along the Santa Ana River Corridor.

Good for the coastâby creating access that will otherwise not exist.

Without project approval, the land will remain an unsightly oil field with no public access for many years to come. I believe that we should approve this project but have less residential high density homes and rather put more single family homes so that cars can be part inside and less visible similar to the Brightwater community in Huntington Beach.

Rehabiting this land along with low density residential homes represent the highest and best use for nature, wildlife and local residentsâfor generations to come.

I urge you to support the Newport Banning Ranch plan. The good far outweighs any other option.

Sincerely,

Binh Nguyen
bonbibe@yahoo.com

Close



From: info@newportbanningranch.com

Sent: Tue 02/09/16 6:28 AM

To: info@newportbanningranch.com

Priority: Normal

Subject: support letter from nbr website

Type: Text

Dear Honorable Chairman Kinsey, Commissioners and Staff,

Only in California land politics would a developer give away development rights to 75% of their land and beg that this is enough to get by. This is ridiculous to say the least. A clothing manufacturer is not required to give 75% of their wares to the government. Does GM have to build 3 cars for the public in order to sell one? Does Dell have to supply 75% of their computers free of charge in order to sell the other 25%?

I am a Landscape Architecture graduate. I value the environment and love to get outdoors. That is why I live in Southern California. This project is well planned and will benefit all of us by giving us access to some amazing landscapes forever. We the people of California will be blessed by this generous gift from the developers. Accept it already so we can start enjoying it.

Yes, I am a real estate broker by trade. I do not work in Newport and do not ever intend to do so. I focus on small homes and condos in Ladera Ranch. This project will never benefit me financially, but could be a wonderful place for me to visit with my family.

I'm leaving the prewritten verbiage below because I believe in it. I will add the obvious comment that this project is good for the developer. It should be good for the developer, just as your job is good for you. You obtained your education, leveraged your skills and connections to get where you are today. I praise the developer for putting forth the effort to conceive, plan and implement this project. They should be allowed to realize the benefits of their labors. You can reach me for further comment at (949) 230-3201.

This letter indicates my support of Newport Banning Ranch, and requests that the Coastal Commission approves the project when it comes before you in March. The plan for Newport Banning Ranch is:

Good for the environmentâwith the cleanup of the oil field, restoration of the land and removal of the fence.

Good for the regionâwith an abundance of open space, parks, trails and connections to recreational areas along the Santa Ana River Corridor.

Good for the coastâby creating access that will otherwise not exist.

Without project approval, the land will remain an unsightly oil field with no public access for many years to come. I believe the current plan represents the highest and best use for nature, wildlife and local residentsâfor generations to come.

I urge you to support the Newport Banning Ranch plan. The good far outweighs any other option.

Sincerely,

Daniel Kirkham
Danny@DannyKirkham.com

Close



From: info@newportbanningranch.com

Sent: Fri 03/11/16 11:20 AM

To: info@newportbanningranch.com

Priority: Normal

Subject: support letter from nbr website

Type: Text

Dear Honorable Chairman Kinsey, Commissioners and Staff,

As a Costa Mesa Resident who rents an apartment right across the street from Lions Park, I thoroughly enjoy the nature that the area provides. I get a thrill from walking/running the trails that connect the Canyon Park, Talbert Regional Park, and Fairview park. I would love to see another park in Newport Banning Ranch connected to the network that currently exists. I would feel convinced to buy a home as a first-time buyer within Costa Mesa to live nearby and even volunteer my time & effort in any way I can to support Newport Banning Ranch.

This letter indicates my support of Newport Banning Ranch, and requests that the Coastal Commission approves the project when it comes before you in May. The plan for Newport Banning Ranch is:

Good for the environmentâwith the cleanup of the oil field, restoration of the land and removal of the fence.

Good for the regionâwith an abundance of open space, parks, trails and connections to recreational areas along the Santa Ana River Corridor.

Good for the coastâby creating access that will otherwise not exist.

Without project approval, the land will remain an unsightly oil field with no public access for many years to come. I believe the current plan represents the highest and best use for nature, wildlife and local residentsâfor generations to come.

I urge you to support the Newport Banning Ranch plan. The good far outweighs any other option.

Sincerely,

Juan Carlos Villarreal
johnny.villarreal@gmail.com

Close



From: info@newportbanningranch.com

Sent: Tue 02/16/16 10:06 AM

To: info@newportbanningranch.com

Priority: Normal

Subject: support letter from nbr website

Type: Text

Dear Honorable Chairman Kinsey, Commissioners and Staff,

This letter indicates my support of Newport Banning Ranch, and requests that the Coastal Commission approves the project when it comes before you in March. The plan for Newport Banning Ranch is:

Good for the environmentâwith the cleanup of the oil field, restoration of the land and removal of the fence.

Good for the regionâwith an abundance of open space, parks, trails and connections to recreational areas along the Santa Ana River Corridor. Access to contiguous open space for our community is rare and of critical importance for people and wildlife alike.

Good for the coastâby creating access that will otherwise not exist.

Without project approval, the land will remain an unsightly oil field with no public access for many years to come. I believe the current plan represents the highest and best use for nature, wildlife and local residentsâfor generations to come.

I urge you to support the Newport Banning Ranch plan. The good far outweighs any other option.

Sincerely,

Alene Spindel
alene@tidalinfluence.com



October 2, 2015

Chairman Steve Kinsey and Commissioners
California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105

Re: **SUPPORT OF NEWPORT BANNING RANCH PROPOSAL**

Dear Chairman Kinsey,

On behalf of our membership, **I would like to state our support for the Newport Banning Ranch proposal.**

The Building Industry Association of Southern California, Orange County Chapter (BIA/ OC) is a non-profit trade association of over 1,100 companies employing over 100,000 people affiliated with the home building industry. The Orange County Chapter represents the largest member base within BIA Southern California. Our mission is to champion housing as the foundation of vibrant and sustainable communities.

As a key stakeholder in Orange County, the BIA/ OC has been closely following the Newport Banning Ranch project for many years. For over 7 decades, this land has been fenced off and fully restricted from any public access, and we're looking forward to this much-needed change.

As you are aware, the Newport Banning Ranch site has been an active oil field since the early 1940s. Since then, the site has produced nearly 36 million barrels of oil, exposing the seaside land to the harsh realities of oil drilling. Fortunately, the Newport Banning Ranch proposal will completely clean-up and restore the 400-acre site by creating over 300 acres of usable open space, sports and recreation fields, and connected walkable trails for Newport Beach and surrounding residents to utilize.

The Newport Banning Ranch proposal will also offer the City of Newport Beach millions in economic income. Not only will the developer contribute \$30 million in property clean-up, but City officials estimate a developer paid public benefit fee of \$42 million to go towards road maintenance and emergency services, and estimate property taxes at 2 million annually. Visitors will also benefit from a 75-Room LEED

PRESIDENT
JOAN MARCUS-COLVIN
THE NEW HOME COMPANY

VICE PRESIDENT
JIM YATES
RANCHO MISSION VIEJO

TREASURER
PHIL BODEM
TAYLOR MORRISON

SECRETARY
MIKE GARTLAN
KB HOME

IMMEDIATE PAST PRESIDENT
DONNA KELLY
LENNAR

TRADE CONTRACTOR V.P.
ALAN BOUDREAU
BOUDREAU PIPELINE CORPORATION

ASSOCIATE VICE PRESIDENT
MARK HIMMELSTEIN
NEWMAYER & DILLION, LLP

MEMBER-AT-LARGE
MIKE MCMILLEN
TRI POINTE HOMES

MEMBER-AT-LARGE
SCOTT STARKEY
STARKEY COMMUNICATIONS

CHIEF EXECUTIVE OFFICER
MICHAEL BALSAMO

24 Executive Park, Suite 100
Irvine, California 92614
949.553.9500 | biaoc.com

Certified hotel, offering tourists from the around the globe a chance to see the breathtaking views of the Pacific Ocean.

Perhaps of equal importance, Orange County is facing a housing crisis. According to a recent report by the California Legislative Analyst's Office, Orange County needs an additional 7,000 homes per year to meet demand. State wide, that number increases to a staggering 100,000 homes. Due to the lack of housing, Orange County is ranked 2nd only to the Bay area for highest housing prices, with the average median home price at a record high of \$719,000. Further, the Southern California Association of Governments (SCAG) projects population growth of 430,000 over the next 20 years for Orange County. Simply put, Orange County needs more housing. The Banning Ranch proposal will offer the City of Newport Beach over 1300 new homes. As you are aware, opportunities for new housing in the coastal zone are extremely rare.

The mission of the Coastal Commission is to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. Restoring a 75 year old oil field into hundreds of acres of open space, hundreds of desperately needed homes and a hotel for visitors from around the world to enjoy seems not only logical but a priority for this location, and we encourage your support.

As always, we remain a resource to the Commission on important issues that are related to the well-being of our local communities.

Thank you for your time and thoughtful consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Balsamo", written in a cursive style.

Michael Balsamo
Chief Executive Officer



William Lyon Homes

October 6, 2015

Mr. Steve Kinsey, Chair
California Coastal Commission
200 Oceangate, 10th floor
Long Beach, CA. 90802-4325

SUBJECT: Newport Banning Ranch, LLC, Development Application

Dear Chair Kinsey and Coastal Commissioners:

On October 7, the California Coastal Commission will be considering Application No. 5-13-032 for the development of the property in Newport Beach known as the Banning Ranch. William Lyon Homes strongly recommends and urges the Commission approve this application.

We have been building new houses in California for 60 years. Our corporate headquarters is located in Newport Beach. Therefore, for many years we have observed with interest the many public discussions and meetings that have occurred regarding the development of this property. We have also watched how the plan for this property has evolved into the project before the Commission. Our support for this project is based on a number of factors.

- The property for years has been an oil field surrounded by fencing with no public access. The development of the site will result in the provision of 300 acres of preserved open space, including restored wetlands, new parks and trails available to the public.
- As an infill project with nearby available infrastructure, employment centers, public trails and public services, the development of this property furthers the Sustainable Community goals of the region and the State.
- The City of Newport Beach staff, Planning Commission and City Council thoroughly vetted this plan in numerous public meetings and hearings. The result was that the plan was approved by the City Council.
- The Environmental Impact Report that was certified by the Newport Beach City Council carefully analyzed the impacts and benefits of the project. Mitigation measures were approved to respond to the project impacts identified in the EIR.

- California is not able to supply the housing that is needed for its population. Due to this lack of supply, housing costs continue to increase and overcrowding occurs. California residents and businesses suffer from this lack of available housing. This is an opportunity to provide 1,375 new homes that are energy and water efficient in an area near jobs, transportation and services. California and Orange County need this new housing.

As a corporate citizen of Newport Beach, Orange County and the State of California, we believe that approval of this project is in the best interest of these governmental agencies as well as the residents living in the area. We feel that this project will provide a wonderful community environment for those people who will live here in the future and those people using the public facilities.

We urge your support for the Newport Banning Ranch application. Thank you for considering our comments.

Respectfully,



Jon W. Robertson
Division President – Southern California
William Lyon Homes, Inc.

From: info@newportbanningranch.com **Sent:** Wed 12/09/15 11:14 AM

To: info@newportbanningranch.com **Priority:** Normal

Subject: support letter from nbr website **Type:** Text

Dear Honorable Chairman Kinsey, Commissioners and Staff,

This letter indicates my support of Newport Banning Ranch, and requests that the Coastal Commission approves the project when it comes before you in January. The plan for Newport Banning Ranch is:

Good for the environment: "with the cleanup of the oil field, restoration of the land and removal of the fence.

Good for the region: "with an abundance of open space, parks, trails and connections to recreational areas along the Santa Ana River Corridor.

Good for the coast: "by creating access that will otherwise not exist.

Without project approval, the land will remain an unsightly oil field with no public access for many years to come. I believe the current plan represents the highest and best use for nature, wildlife and local residents for generations to come.

I urge you to support the Newport Banning Ranch plan. The good far outweighs any other option.

Sincerely,
Chris Test

Chris Test
Chris@testing.com

DEC 18 2015

Newport Banning Land Trust CALIFORNIA
COASTAL COMMISSION
Robyn Vettraino, Executive Director
ReClaim | ReStore | Recreate
www.Newportbanninglandtrust.org

December 14, 2015

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302

Subject: **Newport Banning Ranch | 5-13-032**

Dear Chair Kinsey, Commissioners and Staff:

In preparation for your planned January hearing in San Diego, I am respectfully writing to confirm my remarks to the Commission in Long Beach on October 09 in support of the rehabilitation master plan for the **Newport Banning Ranch (nbr)**.

I have been privileged to address the Commission on several occasions in support of the **Newport Banning Land Trust (NBLT)** and to also support the **City of Newport Beach** with their efforts to develop Sunset Ridge Park adjacent to the **nbr**

As you know, since the October hearing **nbr** has made substantial revisions to their original plan even though that plan was part of the City's voter-approved General Plan. That original plan had been documented in a comprehensive FEIR that has withstood not just one, but two court challenges.

The revised plans that we have seen include reducing development impacts by providing enhancement to the proposed Vernal Pool complex; enhancing California gnat catcher territories; expanding

the natural area on the bluff above West Coast Highway; and finally by reducing proposed dwelling units by 35%

In addition to enhanced environmental values these revisions reduce future traffic impacts as well as potable water demands by as much as 35%.

NBLT Preserve Enhanced. From the point of view of the NBLT our core habitat protection reserve is enhanced, our public trail network is still in place and our long-term funding for maintenance and care is still guaranteed. The NBLT, now in its third year as an established 501c3 non-profit organization, is a member of the **Land Trust Alliance** and follows their guidelines, standards and policies. The NBLT board oversees all their activities. Over this past year, we have created a native plant nursery and developed programs for several local schools. A core following of volunteers work in the nursery and will ultimately transplant the native species back on to nbr where they originally grew. NBLT will continue their efforts in the community to guarantee access to all.

Caregivers for the environment. As we noted in Long Beach, we are ready, willing and able to take on the challenge of being your approved land steward – when remediation is complete and the fences come down. Until then, like other stakeholders we are locked out.

We are qualified, motivated, well-advised and credentialed to be caregivers for the land. That's what we do. That's why we are here - to be good homemakers for the environment and our California coast.

Very truly yours,

Philp Bettencourt | Director & Secretary



January 19, 2016

Chairman Steve Kinsey and Commissioners
CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

RECEIVED
South Coast Region

JAN 21 2016

CALIFORNIA
COASTAL COMMISSION

RE: Newport Banning Ranch 5-13-032

Dear Chairman Kinsey and Commissioners:

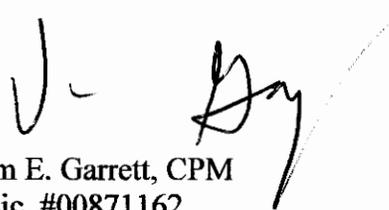
Please be advised that I support the Rehabilitation Master Plan for Newport Banning Ranch.

As a former chair and commissioner for the City of Newport Beach Parks, Beaches and Recreation Commission, I am very aware of the challenges that the development faces.

The Newport Banning Land Trust (NBLT) has done a tremendous job of mitigating concerns of the public to create a viable and responsible development that will work for the greater good of the community.

Thank you for your assistance on this important issue.

Sincerely,
INTERPACIFIC ASSET MANAGEMENT
BRE Lic. #01073855


William E. Garrett, CPM
BRE Lic. #00871162
President

Enc.

Wp51/BG\Kinsey-NewportBanningRanch

**LYONS
COMPANIES**

RECEIVED
South Coast Region

January 27, 2016

JAN 28 2016

Steve Kinsey, Supervisor
Chairman, California Coastal Commission
3501 Civic Center Drive
Suite 329
San Rafael, CA 94903-4193

Sherilyn Sarb
Attn: Amber Dobson
California Coastal Commission
200 Oceangate,
Long Beach, CA 90802

CALIFORNIA
COASTAL COMMISSION

Re: CDP # 5-15-2097 - Newport Banning Ranch

Chair Kinsey & Coastal Commissioners:

I am a lifetime Newport Beach resident and longtime Westside Costa Mesa Business Owner. Over the last several decades I have watched the west sides of Newport Beach and Costa Mesa change and, at times, struggle to thrive. The Newport Banning Ranch proposal, as recently downsized:

1. Plans to open up the site to the public for the first time ever since I've lived here, and a commitment to fully clean up the 400 acres (where hundreds of oil wells have been drilled during the last 75 years) – an opportunity that may not come again in our lifetimes.
2. Can be the catalyst to bring business and residents on the Westside a direct connection to the coast - ending years of isolation out on the mesa.

This is the only feasible option. No one else has a plan that will become a reality in any amount of reasonable time. There is no money to fund other options. This is the plan that gives us restored lands, open space and cleans-up the oil field.

There is a small vocal minority stonewalling the process, attacking the plan – yet there is no other reasonable alternative.

I urge you to consider the facts – before you is a balanced approach to cleaning a 400-acre oil field, dedicate, restore and maintain open space and trails - a plan that knits seamlessly into our existing uses and edges. Let's get this site open to the public.

Sincerely,



Craig N. Lyons

Dobson, Amber@Coastal

From: Lloyd Sellinger <lsellinger@aol.com>
Sent: Saturday, January 30, 2016 1:15 PM
To: Dobson, Amber@Coastal
Subject: NBR

Follow Up Flag: Follow up
Flag Status: Flagged

As a longtime resident and businessman in Newport Beach, I support the reduced density reuse for the NBR.

The new plan reduces the number of residential units by 35% and reduces traffic volumes and project potable demands by as much

as 30% while increasing open space.

The consolidated oil operations will at last stop drilling and pumping as well transport of oil from more than 90% of the site. Thats good

for the environment, good for homeowners and frankly good for property values for all concerned.

I know this field as a former member of the city's Technical Oil Advisory Committee. With as much as 30 years of production remaining out there this comprehensive plan is the best anyone can expect.

Your YES vote will clear the way for a better future for the coast.

Very truly yours

Lloyd Sellinger
Newport Beach

October 3, 2015

Chair Kinsey and Commissioners
Via email:

Re: Newport Banning Ranch

Dear Chair Kinsey:

I am writing to support approval of the Newport Banning Ranch Project. I am studying Environmental Studies in GIS at Cal State Fullerton under a graduate program. My experience in creating a field science program with Newport Banning Land Trust (NBLT) has allowed me to create a connection with the Banning Ranch project and the communities of future scientists who may one day also participate in field ecological studies as I do.

In addition to this my work experience with NBLT has also allowed me to further develop my skills as GIS analyst and create opportunities for several high schools in the area to participate in field science and learn about the ongoing restoration efforts inside the Banning Ranch area.

This opportunity with Newport Banning Land Trust has also allowed me to understand that 75 % of the land is going to be designated as open space. In time remediation of the land will bring back wildlife and natural habitat that has been gone for over 60 years. These are the same plants and wildlife that NBLT has helped students learn and study in the science program. Continued stewardship of this land will allow for properly funded restoration and will allow the public access to a site that has been closed off to them.

The continued existence of the field science program shows the importance of the restoration of the Banning Ranch area and how it can be used to educate future scientists on the importance of restoration ecology. The students that participate in this unique program take away the ability to create a question, solve it scientifically, and present it in a poster presentation format. These skills help carry them through collegiate level studies.

Best regards,

Eric Ostrowski

Cc: Robyn Vettraino

From: Cheri Ketner <cketner@surterreproperties.com>

Sent: Wed 12/09/15 10:51 AM

To: "info@newportbanningranch.com"
<info@newportbanningranch.com>

Priority: Normal

Subject: Newport Banning Ranch - Support

Type: Attachments

Hello,

I am pleased to join the community of supporters for Newport Banning Ranch development. Having lived near the Banning Ranch site since 1988 and raised my children here, I know that the public access to open space is a priority and will greatly benefit future generations.

Regards,
Cheri Ketner