

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



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original staff report

Th5d

ADDENDUM

DATE: August 8, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th5d, APPLICATION NO. 5-16-0649 (Newport Banning Ranch, LLC) FOR THE COMMISSION MEETING OF THURSDAY, August 11, 2016.**

A. CHANGES TO THE STAFF REPORT

Revisions are required to clarify the depth of the soil test pits from 50 centimeters in depth to 90 centimeters in depth, to correct typographical errors, and to address concerns with the Special Conditions.

Commission staff recommends modification the FINDINGS and SPECIAL CONDITIONS of the staff report. Language to be deleted from the staff report is identified by ~~strike-out~~ and where language is to be added the font is **bold and underlined**.

1. On page 1 correct the page numbers to reflect: **Page 1 of 7 9.**
2. On page 1 in the project description, and on page 5 correct ~~50~~ **90** centimeters in depth.
3. On page 8, correct the special condition language to reflect:
2. Archeological Work and Monitoring.

d. During all digging, ground disturbance, and subsurface activity on the site, Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards and a minimum of one Native American monitor from each tribal group, one representing the Gabrieleño-Tongva and one representing the Juaneño-Acjachemen, as identified on the Native American Heritage Commission's most current California Tribal Consultation List and/or SB 18 list, are to be present at the same time and monitoring the same locations. Monitors from the above tribal groups shall be rotated daily, such that every tribal group has an equal opportunity to monitor. Because there are distinct tribal groups among the Gabrieleño-Tongva and Juaneño-Acjachemen, all tribal groups not

monitoring for the day shall be invited to be present every day that monitoring is to occur as volunteer observers and shall have equal input if any deposits are found.

~~the Juaneño and the Gabrielino, and~~†The Native American most likely descendants (MLDs) from each tribal **group shall also be present** when State Law mandates identification of MLDs.; ~~shall be present at the same time on the site and monitor during all digging, ground disturbance, and subsurface activity.~~ The monitors shall have documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission.

4. On page 9, strike Special Condition 3:

~~3. Use of Heavy Machinery.~~

~~PRIOR TO AUTHORIZATION TO PROCEED with heavy machinery, the applicant shall submit to the Executive Director for review and written approval, a written request to carry out mechanical shallow grading (specifically with a small backhoe with a 24 inch bucket) with detailed information, including but not limited to:~~

- ~~a. the rationale and methodology for use of the machinery, as guided by the results of the ground penetrating radar and/or shovel test pits approved by this permit, and/or upon recommendations of Native Americans with ties to the land;~~
- ~~b. the specific location and dimensions of each proposed unit with associated exhibits;~~
- ~~c. the amount of soil proposed to be removed by each pass with the machinery;~~
- ~~d. protective measures to avoid disturbing deposits while using the machinery.~~

~~The mechanical shallow grading is permitted only to aid in the testing that would otherwise be conducted by hand. **This permit does not authorize data recovery or excavation of any deposits or archeological sites.**~~

~~By acceptance of this permit, the permittee agrees that the use of heavy machinery shall not occur prior to receiving written authorization from the Executive Director.~~

5. On page 9, renumber Special Condition 4 to **Special Condition 3**.

B. CORRESPONDENCE RECEIVED

Commission staff received letters that pertain to the permit for archeological testing before the Commission today, but also highlight concerns regarding the project proposed under CDP 5-15-2097, that will be addressed in the staff report for the September 2016 hearing.

Commission staff received one letter of concern dated August 4, 2016 from a professional archeologist asking the applicant to increase the depth of the test pits (attachment 3). Attached is an email from the applicant agreeing to change the project description to increase the depth of test pits (attachment 1).

Commission staff received 1 letter of support dated August 4, 2016 for the project that had 6 attachments that are on file in both CDP files 5-16-0649 and 5-15-2097, but not included here (attachment 2).

Commission staff received 1 letter of concern (email) noting that tribal representative was not contacted by the applicant about the proposed project and asked to see all results of testing (attachment 4).

Commission staff received 1 letter of objection dated August 5, 2016 requesting denial of the project and also noting that the tribal nation was not contacted by the applicant about the proposed project (attachment 6). The letter also notes that the Newport Banning Ranch site in its entirety is an archeological resource, a traditional cultural property, and sacred land. The letter asserts that Banning Ranch contains several archeological sites that are connected and represent a large cultural site, and therefore attempting to find the boundaries of individual sites is not possible, will not be accurate due to past development on the site, and is not necessary. The letter asserts that Ground Penetrating Radar will not effectively detect soil anomalies caused by artifacts in the soil, and cannot detect human ancestral burials they believe are present on the site. The letter contends that the use of heavy machinery will be destructive to the sacred lands and recommends against it. Because of the multiple tribal groups with ties to this property, according to the Native American Heritage Commission, the letter notes that the wording of Special Condition 2 is not inclusive of all groups within the tribes of the Juaneño and the Gabrieliño and that the applicant could choose to work with one group from each tribe, excluding all others.

The status of the land as a sacred land and traditional cultural property will be discussed in more detail in the staff report of CDP 5-15-2097, although at this time there is evidence that the archeological resources represent a larger village site. It is correct that Ground Penetrating Radar is not able to detect human remains, although it can be a useful tool in detecting locations that may contain cultural deposits, in a non-invasive way. The use of heavy machinery could result in damage to cultural deposits and should not be driven off the existing roadways, in case cultural deposits under the soil are compacted by the weight of the machinery driven over them.

Therefore, **Special Condition 3** has been removed from the staff report. Lastly, the changes to **Special Condition 2** require that all tribal groups that have been recognized by the Native American Heritage Commission are included in a fair and equal rotation of monitoring and that, on any day with ground disturbance, a minimum of 1 group from each tribe, Juaneño and the Gabrielino, are monitoring at the same time in the same location.

Commission staff received a final letter (attachment 5) also requesting that the depth of test pits be a minimum of 90 cm. The letter also suggests that all Juaneño and the Gabrieliño groups should be consulted prior to plans/actions on the site, and should be included in the monitoring of the site. Lastly, the letter recommends that all tribal governments meet onsite to discuss the long term management of the open space areas (proposed under CDP 5-15-2097) and that comprehensive ethnographic interviews be conducted as part of the proposed project.

From: Michael Mohler
To: Henry, Teresa@Coastal; George Basye (glbasye@aeraenergy.com); Patrick Maxon (patrick.maxon@psomas.com); Chris Yelich
Cc: Dobson, Amber@Coastal; Schwing, Karl@Coastal; Sarb, Sherilyn@Coastal
Subject: RE: Admin Permit for STPs at NBR
Date: Friday, August 05, 2016 9:03:41 AM

Thank you Teresa. NBR agrees that the STPS should be excavated to a depth of 90 cm. or until bedrock is reached. We herein agree to revised our application accordingly.

Respectfully,

Mike Mohler
Newport Banning Ranch



TATTN



TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A CALIFORNIA NATIVE AMERICAN TRIBE -
VERIFIED BY NAHC - SB18-AB 52-AJR 42 RECOGNIZED BY THE STATE OF CALIFORNIA AS THE
ABORIGINAL TRIBE OF THE LOS ANGELES BASIN AND ISLANDS

California Coastal Commission

Attn: John Ainsworth, Teresa Henry, Sherilyn Sarb

200 Ocean Gate, 10th Floor

Long Beach, CA 90802

Re: Application No. 5-16-0649

Applicant: Newport Banning Ranch, LLC

Agent: Mike Mohler, Brooks Street (Primary Agent)

Project Location: 5100 Block of Pacific Coast Highway, Newport
Beach, Orange County

Dear Mr. John Ainsworth, Acting Executive Director,

Ms. Teresa Henry, District Manager, Ms. Sherilyn Sarb, Deputy Director
and California Coastal Commission Members-

The Tongva Ancestral Territorial Tribal Nation [TATTN] urgently requests
your approval of Item TH5d ADMINISTRATIVE PERMIT [AP] pursuant to
PRC Section 30624, which qualifies for approval by the Executive
Director at your hearing in Santa Cruz next week. TATTN has read the
CCC TH5d AP and supports and approves of it, completely.

NBR -The land owners/Applicants, in my opinion have completed all
feasible ground penetrating radar (GPR) survey testing /studies - and
these proposed shovel test pits (STPs) are required to rule out any
anomalies. The land owners have utilized Native American monitors,
including TATTN/myself, for GPR work and intend to do so again for the
STPs. The STP'S also allow us to check other areas where the GPR
couldn't access or were located on grade angles.

The land there which I personally walked and inspected recently was
historically documented to be heavily plowed by farmers and various
areas had been excavated removing artifacts in the 1920/30's by
amateur artifact hunters. I can now verify that fact and its well
documented in local historical records and TATTN has various reports

JOHN TOMMY ROSAS

TRIBAL ADMINISTRATOR/ TRIBAL LITIGATOR

578 WASHINGTON BLVD #384 MARINA DEL REY, CA 90292

310-570-6567

TATTNLAW@GMAIL.COM



TATTN



TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A CALIFORNIA NATIVE AMERICAN TRIBE -
VERIFIED BY NAHC - SB 18-AB 52-AJR 42 RECOGNIZED BY THE STATE OF CALIFORNIA AS THE
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and maps confirming it has most if not all been cleared out of any tribal artifacts.

TATTN also believes this CCC administrative permit fulfills the legally required compliance to complete the required tribal cultural resources assessment /survey/report as required under CEQA/ NEPA and other state and federal laws.

TATTN very much appreciates Commission Staff on their tribal consultation with TATTN/JTR, especially Teresa Henry, for her expertise and consistent respect to our Tribal Rights and Tribal Cultural Resources.

NBR, the land owners have done exceptional work to include us in an extraordinary manner, we really appreciate, Mike Mohler, George Basye and Chris Yelich for their professional and respectful attitudes' and working with us in confirming the accuracy of our tribal cultural resources survey investigation on the Newport Banning Ranch.

TATTN understands there will be adequate Tribal Ceremonial Areas either planned or as agreed to by NBR, to be compliant under State and Federal laws. Hopefully, the Commission and more Applicants in the future will conduct themselves in this positive proactive way with us tribes culturally affiliated as verified by the NAHC and Federal agencies.

TATTN also supports the letter from Andy Salas Of The Kizh-Gabrieleño and all his comments, as we also have witnessed directly the illegal actions by those various fraudulent individuals portraying to be in our tribe he describes in his letter, I call them MONEYTOR\$ not monitors.

Andy Salas Of The Kizh-Gabrieleño & John Tommy Rosas of the TATTN are the only Tribal entities who are verified culturally affiliated and are lineal descendants' by the NAHC. We have provided ample support in

JOHN TOMMY ROSAS
TRIBAL ADMINISTRATOR/ TRIBAL LITIGATOR
578 WASHINGTON BLVD #384 MARINA DEL REY, CA 90292
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TATTN



TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A CALIFORNIA NATIVE AMERICAN TRIBE -
VERIFIED BY NAHC - SB 18-AB 52-AJR 42 RECOGNIZED BY THE STATE OF CALIFORNIA AS THE
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documentation and verbal history of our claims to the significance of the project area.

We are the only two TONGVA/GABRIELEÑO/KIZH Tribal Entities who have respectfully made efforts to work alongside the true Juaneño tribe as well as the project developer in order to help identify and preserve the last remaining sacred sites of our ancestors in that area .

I beg of you sir to please approve this AP so we can continue our proactive tribal cultural resources work.

I state for the record I approve of the new NBR proposed project as it is a well-planned and a respectful project which has been minimized on the development portion but has strongly increased in open space and preserves our registered scared site areas including generous public benefits unheard of in these times. TATTN has believes this is the best project plan to have all the remediation done so environmentally the land can be shared by all and for future generations of all the people.

Please feel free to contact me if you have any questions, also please see all attached documents in support of this letter.

Thank you on behalf of our 2000 + Tribal Members and our Ancestors- Tai Ye Hun Nuka for your attention to this important matter.


JOHN TOMMY ROSAS
TRIBAL ADMINISTRATOR
TRIBAL LITIGATOR
TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

JOHN TOMMY ROSAS
TRIBAL ADMINISTRATOR/ TRIBAL LITIGATOR
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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.

August 4, 2016

Honorable Commissioners
California Coastal Commission

Item No. Th5d
Application No.: 5-16-0649
Denial of Application

Ms. Teresa Henry, District Manager
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4416

Dear Honorable Commissioners:

While we support the requirement for archaeological investigations to verify the boundaries of the five existing known archaeological sites (CA-ORA-148, CA-ORA-843, CA-ORA-844, CA-ORA-1599 and CA-ORA-1600, we are concerned that the proposed shovel test pits (STPs) are not deep enough. In accordance with 1936 WPA archaeological field notes, "Daily Notes on Banning Excavation and Osteological Report August 17, 1936 – December 17, 1937 Archaeological Project #4465", pg. 3, a burial was found within the Newport Banning Ranch property at a depth of 3 feet (90 cm). In addition, during the tour of the sites on June 10, 2016, I personally observed cultural deposits at CA-ORA-906 with a depth exceeding 50 cm. Therefore, the STPS should be excavated to a depth of 90 cm. or until bedrock is reached, not 50 cm.

Please require the applicant to revise their Archaeological Research Plan to excavate STPs to a depth of at least 90 cm to ensure that the boundaries are accurately verified.

Sincerely,

Patricia Martz, Ph.D.
President

From: sam dunlap samdunlap@earthlink.net
To: Dobson, Amber@Coastal Amber.Dobson@coastal.ca.gov

RE: Banning Ranch consultation meeting

Amber,

Thank you for following up with me. I have read the Administrative Permit dated July 28, 2016 for the Banning Ranch project (Application No. 5-16-0649). My questions at this time are: (1) Which CRM firm was contracted to perform the additional archaeological testing. (2) Since I was not contacted to provide a Native American monitor from our tribal group (Gabrielino Tongva Nation), how am I to know what new discoveries, if any, were found during this testing period.

I hope to receive a copy of the testing report.

Thank you,

Sam Dunlap

Cultural Resource Director

Gabrielino Tongva Nation

(909) 262-9351 cell

Alfred G. Cruz, Jr.
United Coalition to Protect Panhe (UCPP)
2428 E. Altura Ave
Orange, CA 92867

August 5, 2016

Honorable Commissioners
California Coastal Commission

Item No. Th5d
Application No.: 5-16-0649

Denial of Application

Ms. Teresa Henry, District Manager
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4416

Dear Honorable Commissioners:

United Coalition to Protect Panhe (UCPP), people of Acjachemen/Juaneno ancestry, primary goal is the protection of this Sacred Site.

Genga, also known as Newport Banning Ranch Project. is a part of our customs/traditions and is a Traditional Cultural Property/Landscape as a whole.

At this point of the project, UCPP advises/recommends applicant to revise their Archaeological Research Plan (ARP) to excavate STPs to a depth of at least 90 cm to ensure that the boundaries are accurately verified/defined.

In order to clearly verify/define site boundaries and help to avoid tragedies like Bolsa Chica, UCPP is concerned that the proposed shovel test pits (STPs) are not deep enough. In accordance with 1936 WPA archaeological field notes, "Daily Notes on Banning Excavation and Osteological Report August 17, 1936 – December 17, 1937 Archaeological Project #4465", pg. 3, a burial was found within the Newport Banning Ranch property at a depth of 3 feet (90 cm).

UCPP advises/recommends that due to the significance of Genga, a monitor from all tribal consulted Juaneno/Gabrieleno tribal governments be notified in advance and permitted on site when any type of test or ground disturbing activity is done in any of the proposed project area. A special condition for this instance should be required.

This would help to minimize monitor shortage by ensuring that a Juaneno/Gabrieleno monitor is on site at all times and ensure a collective comprehensive monitoring record/report which then can be distributed on a timely basis to the different tribal governments.

Additional Recommendations

UCPP advises/recommends that a meeting and site visit with tribal governments, tribal organizations, Native American Land Conservancy, Dr. Middleton, California Coastal Commission Staff, and the property owners be set by applicant and facilitated by Sacred Places Institute.

This initial meeting would allow Native American participation in further protection of our Traditional Cultural Landscape/Property of Genga.

"UN Declaration on the Rights of Indigenous Peoples supported by US government

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources."


This meeting should have an advance notice of a minimal of 2 weeks in order for those who want to attend will be given the opportunity to do so. The establishment of tribal management/co management with a guaranteed endowment would be required.

UCPP is also concerned with Sacred Places Institute attempts at setting up this meeting/site visit and time limits due to upcoming applicant deadline. This is why UCPP advises/recommends that the responsibility be given to the applicant coordinating the set up of said meeting/site visit.

UCPP advises/recommends a comprehensive ethnographic study of all Juaneno/Gabrieleno groups concerning their relation to the village/region of Genga as a Traditional Cultural Property/Landscape to be completed.

Genga has been divided into many archaeological sites, yet its integrity as a whole/complete, Traditional Cultural Property/Landscape cannot be denied.

Respectfully,



Alfred G. Cruz, Jr.



GABRIELENO TONGVA
SAN GABRIEL BAND OF MISSION INDIANS

August 05, 2016

Teresa Henry
District Manager
South Coast District Office
California Coastal Commission
200 OceanGate, 105th floor
Long Beach, CA 90802

Greetings Ms. Henry,

This letter is in response to the California Coastal Commission's Administrative Permit, Application No. 5-16-0649, Applicant - Newport Banning Ranch, LLC. The Gabrieleno Tongva San Gabriel Band of Mission Indians would like to address concerns regarding the proposed archeological investigations (STP's & Mechanical Test Trenches), including the Ground Penetrating Radar (GPR) occurrence, and the future development of the 401 acre Banning Ranch parcel, considered to be a Traditional Cultural Property listed on the Sacred Lands File.

The proposed STP's would be unnecessary to determine the so called site boundaries, when in fact the site boundaries are already determined. It would be evident that based on each recorded cultural resources and their site location already comprises to establish the site boundaries within the Banning Ranch property. Our Tribal Council, along with prior State Historical Preservation Officer (SHPO) have defined that although various sites have been given discrete identifiers, it's important to remember that they are all part of a larger property. Site numbers are merely recording conveniences and each represents a part of a whole.

Besides, STP's could be inappropriate means to evaluate significant Traditional Cultural Properties, and would be the most minimal method of evaluation lacking accurate results due to the consideration of the parity percentage of impacted cultural land by development vs. the volume of soils being excavated from a STP. Because of existing waterways within the property, I believe this development is compliant to section 106 which addresses adequate levels of testing (36 CFR Part 800.4(b)(1)Level of effort, & (c) Evaluate historic significance). Also guidance from the CA NAHC regarding appropriate dignified and respectful methods of avoidance to evaluate such properties listed on the Sacred Lands File will be useful.

To address Ground Penetrating Radar, our concerns are that GPR would not be considered an appropriate method to rely on to determine the presence or absence of human remains, or for any cultural resources, in my opinion. As you may be aware, GPR analysis detects sub surface anomalies (voids), that I believe can only be detected in larger magnitudes. To be precise, prior

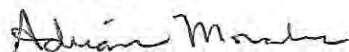
projects that our tribe has been directly involved under MLD status, GPR testing was initiated and failed to identify several intact ancestral remains at both the Hellman Ranch, Landing Hill Project in Seal Beach, and the Bolsa Chica Mesa, Huntington Beach, in which Dr. Wiley / Desetaul, described recently as extensive GPR testing was performed that failed to identify human remains but good enough to detect on a larger scale old World War II bunkers that existed. Therefore Mechanical Test Trenches would not be necessary on the Banning Ranch property. Mechanical Test Trenches will only create irreparable damage to any cultural resources within a Traditional Cultural Property, and would not be considered a dignified & respectful method pursuant to California AB 52 PRC, Section 106, CA NAHC, and most definitely to our Tribal Council.

To date, as a consulting party, our Tribal Council has not engaged in proper consultation with the landowner - Newport Banning Ranch LLC, nor it's representatives. To go on record, our Tribe had no recollection of any planning to initiate GPR on the property recently until after the fact. Also for the record our Tribal Council is self-reliant regarding cultural resource management, and for federal recognition purposes, does not acknowledge any other so called Gabrieleno Tribe or entity. We identify the others as monitoring enterprises just as they verified on July 05, 2016 at the CCC tribal consultation meeting (Rosas & Salas). Therefore please clarify the terminology regarding CCC Special condition 2(d) Archeological Work and Monitoring. The way I interpret, the landowner acknowledges that there is more than one Gabrieleno entity and Juaneno entity that are consulting parties to their project, and each one with their own recommendations and opinions. Our Tribal Council is recommending that our representative be on site during all monitoring conditions and cannot rely on any other group's representation due to lack of expertise.

Because of the Site Evaluation uncertainties, and the lack of proper tribal consultation in part is the landowner's obligation, we ask that the CCC deny any further sub surface evaluations regarding this Administrative Permit, until applicable guidance is provided by all agencies. Our tribal recommendations also include:

- * EIR to address the landowner's revised project design.
- * Landowner to initiate AB 52 CEQA PRC
- * Verification of Section 106 36 CFR Part 800. 4(b)(1) Level of effort, & (c) Evaluate historic significance. To my recollection, this may initiate part 800.8 Coordination with the National Environmental Policy Act (federal agencies early participation and guidance).
- * Guidance from CA NAHC in regards on how to evaluate Traditional Cultural Properties listed on the Sacred Lands File.

Thank you for your immediate resolution to this matter.
Sincerely,



Adrian Morales
Director of Cultural Resource Management Consultation
Gabrieleno Tongva San Gabriel Band of Mission Indians

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Th5d

Staff: A. Dobson – LB
Date: July 28, 2016

ADMINISTRATIVE PERMIT

Application No. 5-16-0649

Applicant: Newport Banning Ranch, LLC

Agent: Mike Mohler, Brook Street Consulting (Primary Agent)

Project

Location: 5100 Block of Pacific Coast Highway, Newport Beach, Orange County

Project

Description: Conduct archeological investigations on the 401 acre Banning Ranch site. Shovel test pits (STP) would be dug by hand by a professional archeologist at the following locations: 1) the approximate borders of five existing known archeological sites (CA-ORA-148, CA-ORA-843, CA-ORA-844, CA-ORA-1599, and CA-ORA-1600) within close proximity of the proposed development footprint (proposed under CDP application 5-15-2097 as of 7/11/2016) in order to verify the boundaries of the sites; 2) across the proposed development footprint in random fashion to test for potential additional archeological sites that are yet to be found; 3) and within areas that need further investigation according to the results of the Ground Penetrating Radar where anomalies are detected. There would be approximately 30-50 total STPs. Native American monitors are proposed to be onsite. STPs would be dug at the approximate or estimated boundary of the edge of the sites. If a cultural deposit is detected, excavation within the test pit would halt, and a sufficient number of additional STPs would be excavated further (approximately 1-3 meters) from the center of the site until sterile soil conditions are found. STPs would be at least 40 centimeters in diameter and 50 centimeters in depth unless bedrock is encountered. All excavated soils would be screened through 1/8th inch mesh shaker screens and any artifacts would be removed. All remaining soils would be returned to the hole and backfilled. After a first round of STP excavations, it may be determined that for various reasons (e.g., depth of anomalies, time limitations) that mechanical soil removal via a small backhoe with a 24 inch bucket are necessary resulting in less than 10 cubic yards of soil disturbance. The testing work would be completed in approximately one week.

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

August 11, 2016, 9:00 a.m.
Hilton Santa Cruz/Scotts Valley
6001 La Madrona Drive
Santa Cruz, CA 95060

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

John Ainsworth
Acting Executive Director

by: Amber Dobson
Coastal Program Analyst

STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent,

acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: See pages five through seven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

A. PROJECT DESCRIPTION AND LOCATION

Banning Ranch (BR) is a four-lot, 401.1 acre site in Orange County at the borders of Newport Beach, Huntington Beach and Costa Mesa (**Exhibit 1**). The site is bounded on the west by the Santa Ana River and the Semeniuk Slough, a remnant channel of the Santa Ana River that adjoins 92 acres of restored salt marsh basin owned and managed by the US Army Corps of Engineers; on the south by Pacific Coast Highway; on the east by a residential area and Sunset Ridge Park in the City of Newport Beach, and parcels partially occupied by storage that are owned by the Newport Mesa Unified School District; and to the north by the City of Costa Mesa Talbert Nature Preserve, an approximate 180-acre nature preserve and wilderness park owned and operated by Orange County Parks. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, while the remainder of the project site is located within unincorporated Orange County. The site is

5-16-0649 (Newport Banning Ranch, LLC)
Administrative Permit

listed as “deferred certification” in the City of Newport Beach’s Coastal Land Use Plan (LUP). All 401 acres of the site are in the Coastal Zone.

The applicant for the proposal is Newport Banning Ranch LLC (NBR), a partnership that includes Aera Energy, Cherokee Investment Partners, and the real estate company Brooks Street, which own the surface rights to the site. The underlying mineral rights are held by Horizontal Drilling, LLC, and oilfield operations are carried out by its operating affiliate the West Newport Oil Company. The applicant proposes to conduct archeological investigations as a follow up to Ground Penetrating Radar (GPR) studies done on the site.

Shovel test pits (STP) would be dug by hand at the following locations:

1. the approximate borders of five existing known archeological sites (CA-ORA-148, CA-ORA-843, CA-ORA-844, CA-ORA-1599, and CA-ORA-1600) within close proximity of the proposed development footprint (proposed under CDP application 5-15-2097 as of 7/11/2016) in order to verify the boundaries of the sites;
2. across the proposed development footprint (under CDP application 5-15-2097 as of 7/11/2016) in random fashion, to be more clearly described in the plan submitted according to the Special Conditions of this permit, to test for potential additional archeological sites that are yet to be found;
3. and within areas that need further investigation according to the results of the GPR where anomalies are detected.

The site supports an array of sensitive coastal species and habitats, including nesting and foraging habitat for the threatened California Gnatcatcher, a very rare vernal pool system that supports the Endangered San Diego fairy shrimp, coastal wetlands, habitat for burrowing owls, and rare purple needlegass grassland, as well as riparian habitat and coastal marsh lands. Banning Ranch contains brackish and fresh water marsh habitat and scrub habitats, grasslands, and vernal pools, as well as several riparian canyons and arroyos. Ground Penetrating Radar was conducted without the removal of sensitive vegetation and habitat, however some STPs may need to occur in areas very close to documented Environmentally Sensitive Habitat Areas (ESHA), as recorded in the staff report CDP 5-15-2097 (published May 2016) (**Exhibit 2**); however, as proposed and authorized, the STPs will not have any negative impacts to sensitive habitat and will not remove any vegetation.

Because one of the objectives of the proposed investigation is to determine if deposits are present within or immediately adjacent to the proposed development footprint (of CDP application 5-15-2097) and the proposed STPs will be largely confined to areas within or adjacent to the proposed development footprint. Under no circumstances are STPs allowed in Wetlands or Vernal Pools, including the documented vernal pool watershed.

To determine the boundaries of the known archaeological sites (CA-ORA-148, CA-ORA-843, CA-ORA-844, CA-ORA-1599, and CA-ORA-1600) on the Banning Ranch property, and whether they will be impacted by the proposed development plan, a professional archeologist would excavate a sufficient number of STPs at the approximate or estimated boundary of the edge of the sites. If a cultural deposit is detected, excavation within the test pit will halt, and a sufficient number of additional STPs will be excavated further (approximately 1-3 meters) from the center of the site until sterile soil conditions are found.

A similar method would be used if a cultural deposit is detected in an STP excavated randomly in the proposed development area. Additional STPs will be excavated at the four cardinal directions (North, South, East, West) from the discovery, at increasing distances (1-3 meters) until sterile conditions are found. If such a detection occurs, the area will then be treated as a new site and further consultation will be required to determine how it will be managed.

There would be approximately 30-50 total STPs. Native American monitors are proposed to be onsite. STPs would be dug to sterile conditions, but at least 40 centimeters in diameter and 50 centimeters in depth unless bedrock is encountered. Since the presence of bedrock precludes the presence of cultural material below it, excavations would halt if bedrock is encountered. All excavated soils would be screened through 1/8th inch mesh shaker screens and any artifacts will be removed. All remaining soils will be returned to the hole and backfilled. Any artifacts recovered are proposed to be added to the existing collection from the 2009 testing for eventual curation at a reputable repository. All efforts will be made to leave artifacts in situ and not collect them. The testing work would be completed in approximately one week and a short letter report of findings will be completed within two weeks.

After a first round of STP excavations, it may be determined that for various reasons (e.g., depth of anomalies, time limitations) that it would be prudent, as a second phase, to introduce mechanical excavations via a small backhoe. The machine will be a small, rubber tired Caterpillar 447 backhoe with a small (24 inch) bucket. The backhoe work would be done by an experienced operator adept at removing sediments in shallow increments to ensure no cultural resources are damaged and work will cease if a deposit is discovered. As with STPs, all work would be monitored by an archaeologist and Native Americans and all soils would be passed through 1/8th inch mesh screen.

B. ARCHAEOLOGICAL AND CULTURAL RESOURCES

Section 30244 of the Coastal Act protects cultural resources in the coastal zone and states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact archaeological resources. These resources may include sacred lands, traditional cultural places and resources, and archaeological sites.

Eight prehistoric and three historic resources are recorded on the site, and five cultural resources studies have been conducted on the site. There have been 17 cultural resources investigations within a 1-mile radius of the site. The EIR process confirmed the existence of 8 known cultural sites that had been previously recorded in the 1980s-90s and earlier and 3 historic sites on the property.

Archeological conditions of the site were explained in CDP applications 5-13-032 and 5-15-2097. Findings from the staff report 5-15-2097 (published May 2016) explain that the site has been recorded

with the Native American Heritage Commission as sacred land and as of February 2016, and the site has been added to the Sacred Lands Inventory with the Native American Heritage Commission. The State Native American Heritage Commission added the “Banning Ranch Cultural Properties and Landscape” located on the site to the NAHC Sacred Lands Inventory because of its cultural significance.

Ordinarily, archaeological testing on sites where there are known archaeological resources should be carried out through a coastal development permit for an Archaeological Research Plan (ARP). The goal of the ARP is to determine where development can be allowed that will avoid impacts to archaeological resources and that those resources can be preserved in place. The ARP must be peer reviewed and be subject to review and comment by the State Historic Preservation Officer, Native American Heritage Commission and affected tribal groups. Native American monitor(s) must also be present during implementation of the ARP. The ARP must also include the preparation and submittal of a final report. The final report would also be subject to the same review and comment of the ARP.

The applicant submitted an ARP (CDP application 5-13-032) dated July 2014 for the archaeological testing/salvage that was previously carried out during investigations for the EIR in 2009. The ARP that was submitted only revisited already known sites, and focused on the archeological sites’ conditions and whether or not the sites were eligible for listing on the California Register of Historic Resources or the National Register of Historic Places. The ARP did not demonstrate that the archaeological testing already performed was adequate to determine that the proposed development (5-15-2097) would not impact known or unknown archaeological resources. Since the ARP was drafted, Native American groups with ties to the land have stated collectively that adequate testing has not been done and that additional testing should precede any approved development plan.

As such, additional testing is needed to determine if all sites (sites currently known and any others that are yet-to-be discovered) are avoided by the proposed development plan subject to CDP application 5-15-2097. **Special Condition 1** requires the applicant to submit a plan specifying the details of the proposed testing prior to proceeding with the work, and only with written authorization from the Executive Director after reviewing and approving the plan.

As proposed, any artifacts recovered are would be added to the existing collection from the 2009 testing (EIR) for eventual curation at a reputable repository. However, conversely the proposal states that all efforts will be made to leave artifacts in situ and not collect them. For the maximum protection of the archeological resources, **Special Condition 2** requires that all intact midden or significant archaeological features encountered are treated such that exposure of the resources is minimized and resources shall be left in place, documented and reburied. If any archaeological or paleontological, i.e. cultural deposits, are discovered, this permit does not authorize any excavation or data recovery of said deposits, nor existing known deposits, or archeological sites.

Native American monitors are proposed to be onsite during the investigation. Because the property was a shared land between two Native American tribes, the Juaneño and the Gabrielino tribes, **Special Condition 2** requires that a minimum of one Native American monitor(s) from each tribe, Juaneño and the Gabrielino, and the Native American most likely descendants (MLDs) from each tribe when State Law mandates identification of MLDs, shall be present at the same time on the site and monitor during all digging, ground disturbance, and subsurface activity. The monitors shall have documented ancestral

ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC).

The applicants propose to use heavy machinery to excavate shallow layers of soil in areas where the GPR has identified a location for additional investigation, if the depth of the anomalies are deep or if there are time limitations where hand digging may not be practical, but it would not be used for the excavation of cultural deposits. As conditioned by **Special Condition 3**, the results of the GPR and the results of STPs are required to be submitted prior to the use of heavy machinery on the site, and only then with written approval of the Executive Director so as to avoid destruction of any unknown deposits.

Additionally, **Special Condition 4** requires the results of the investigation and a final report shall be shared with all Native American interested parties of the Juaneño and the Gabrielino tribes.

As conditioned to minimize impacts to cultural deposits and archeological resources, the project can be found consistent with Section 30244 of the Coastal Act.

B. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Coastal Land Use Plan (CLUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified CLUP was updated on October 2005 and in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified CLUP for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Investigation Plan.

PRIOR TO AUTHORIZATION TO PROCEED with the investigation and STPs, the applicant shall submit a plan to the Executive Director for review and written approval that includes the following:

- a. A map of all known archeological sites (marked “Confidential”), consistent with the map provided in the Archeological Research Plan on file in CDP application 5-13-032, revised to show the locations of CAL ORA 148 and 844 Locus A.
- b. An exhibit (marked “Confidential”) identifying the locations where the Ground Penetrating Radar was conducted and where anomalies were recorded.
- c. An exhibit (marked “Confidential”) that shows the exact locations of where STPs are proposed, at the point of the estimated borders of known sites, and the random points within the proposed development footprint of CDP application 5-15-2097.
- d. A narrative describing how the random STP locations within the proposed development footprint of CDP application 5-15-2097 are selected and the rationale behind the number of random points.
- e. A description of the methods that will be used to determine STP locations adjacent to ESHA that would avoid damaging vegetation and individual plants and avoid disturbing sensitive species.

By acceptance of this permit, the permittee agrees that the proposed investigation and STPs shall not occur prior to the submittal of the above plan, nor prior to receiving written authorization from the Executive Director.

2. Archeological Work and Monitoring.

By acceptance of this permit, the permittee agrees that:

- a. If any intact midden or significant archaeological features are encountered, exposure of the resources shall be minimized to the maximum extent feasible and they shall be left in place, documented and reburied. If any archaeological or paleontological, i.e. cultural deposits, are discovered, **this permit does not authorize any excavation of said deposits, nor existing known deposits, or archeological sites.**
- b. Upon completion of the investigation, all soils shall be backfilled and the project site shall be restored to the existing conditions.
- c. No STPs are permitted that would result in damage or degradation of ESHA. Under no circumstances are STPs or other ground disturbance permitted within Wetlands and Vernal Pools.
- d. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards and a minimum of one Native American monitor(s) from each tribe, Juaneño and the Gabrielino, and the Native American most likely descendants (MLDs) from each tribe when State Law mandates identification of MLDs, shall be present at the same time on the site and monitor during all digging, ground disturbance, and subsurface activity. The monitors shall have documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC).
- e. The permittee shall provide sufficient archeological and Native American monitors to assure that all ground disturbance that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.

3. Use of Heavy Machinery.

PRIOR TO AUTHORIZATION TO PROCEED with heavy machinery, the applicant shall submit to the Executive Director for review and written approval, a written request to carry out mechanical shallow grading (specifically with a small backhoe with a 24 inch bucket) with detailed information, including but not limited to:

- a. the rationale and methodology for use of the machinery, as guided by the results of the ground penetrating radar and/or shovel test pits approved by this permit, and/or upon recommendations of Native Americans with ties to the land;
- b. the specific location and dimensions of each proposed unit with associated exhibits;
- c. the amount of soil proposed to be removed by each pass with the machinery;
- d. protective measures to avoid disturbing deposits while using the machinery.

The mechanical shallow grading is permitted only to aid in the testing that would otherwise be conducted by hand. **This permit does not authorize data recovery or excavation of any deposits or archeological sites.**

By acceptance of this permit, the permittee agrees that the use of heavy machinery shall not occur prior to receiving written authorization from the Executive Director.

4. Testing Results.

By acceptance of this permit, the permittee agrees that:

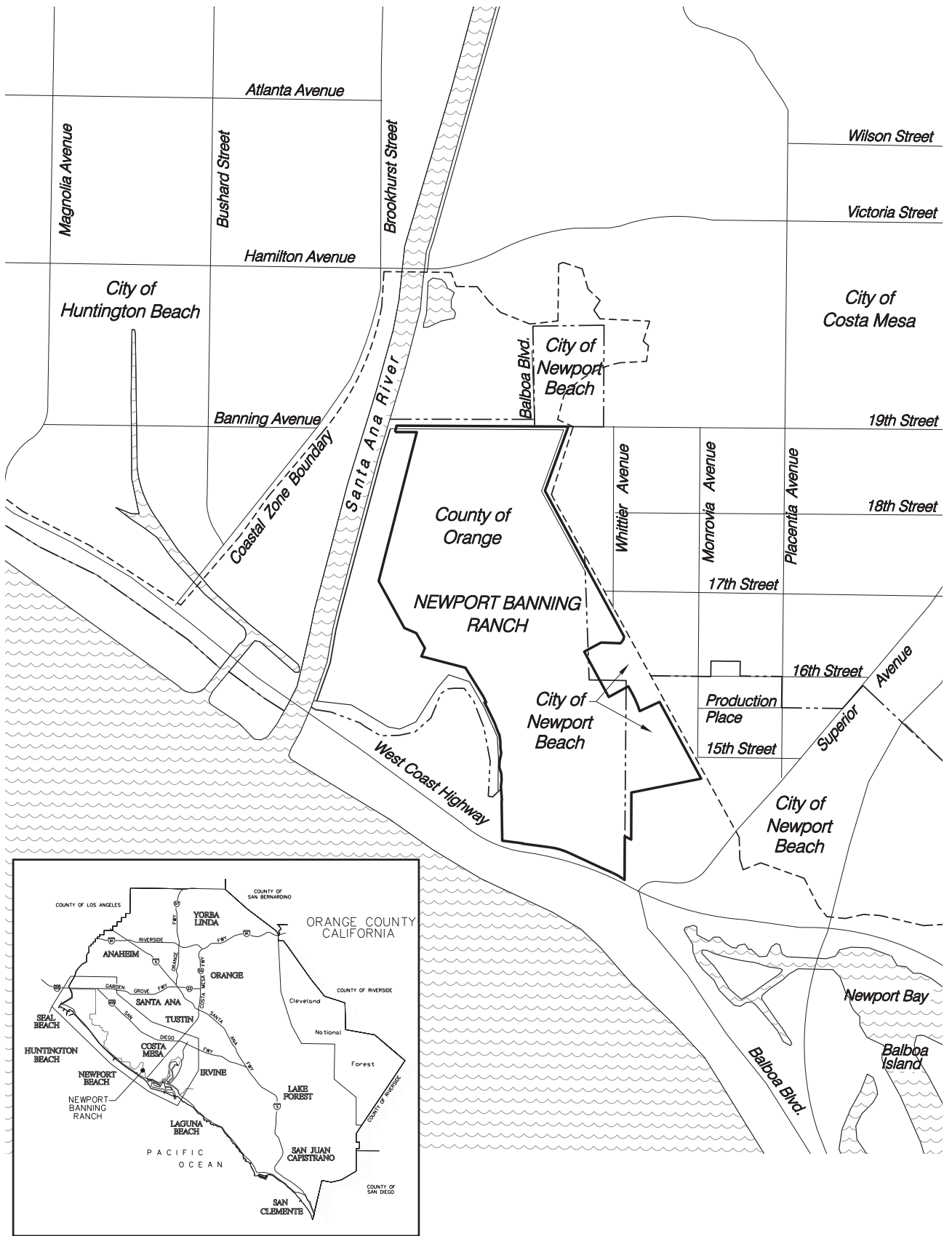
The permittee shall report all testing results and analysis in written form to the Executive Director within 10 business days of the conclusion of the investigation. The report shall also be concurrently provided to the all groups of the Juaneño and the Gabrielino Native American tribes.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

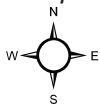
Date of Signing



Source: FORMA 2009

Regional Location and Local Vicinity

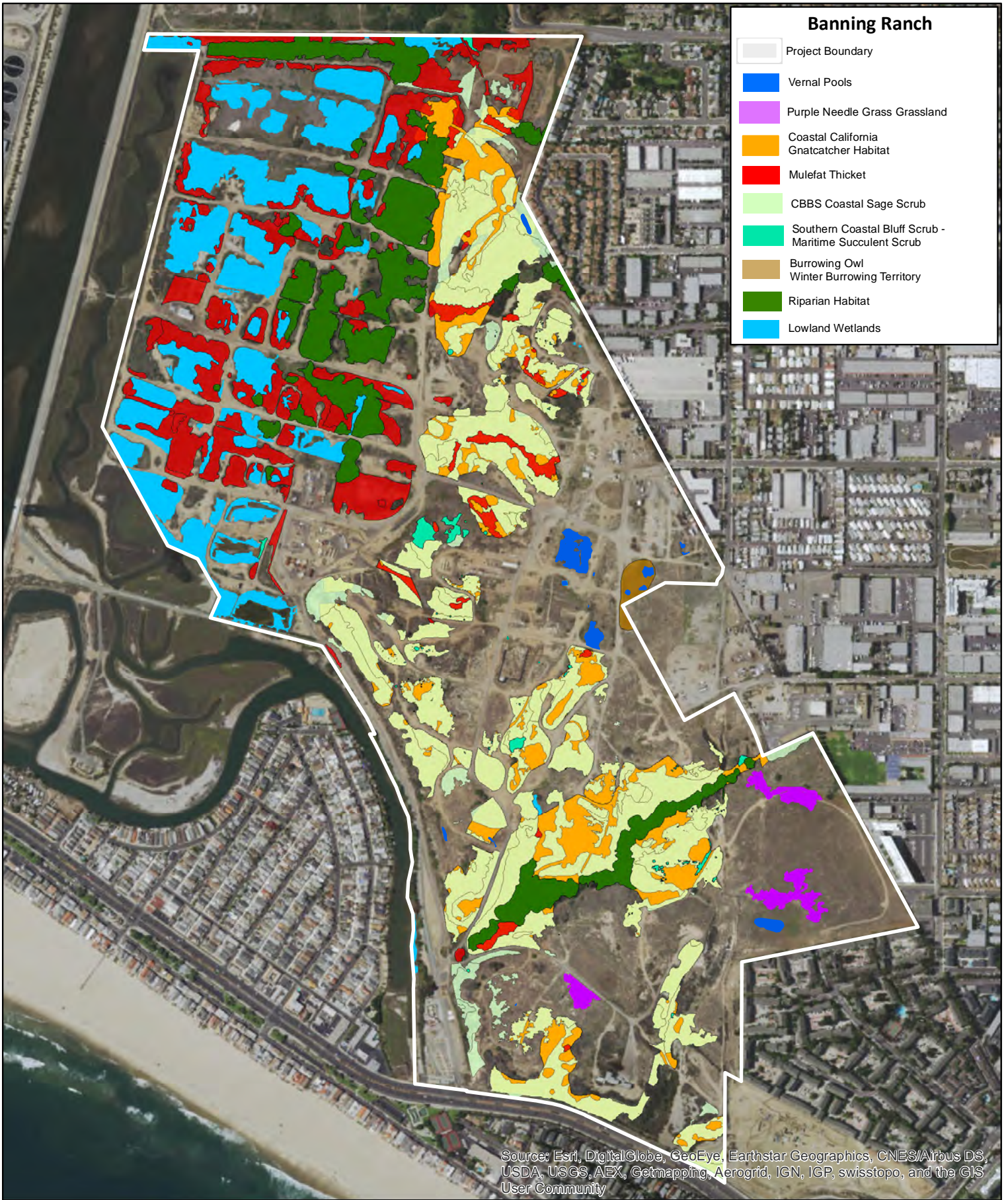
Newport Banning Ranch



Bonterra
CONSULTING

5-16-0649

EXHIBIT 1



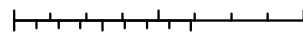
**Copy of ESHA and Wetlands Exhibit 20
of CDP application 5-15-2097
published May 2016**

**5-16-0649
Exhibit 2**



Technical Services Division - GIS Unit

For Illustrative Purposes Only.



0 55 110 220 Meters 1,180 Feet



DSM 4/29/16