

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-15-2097

Applicant: Newport Banning Ranch, LLC

Agent: Mike Mohler, Brook Street Consulting, etc.

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

Project Description: Abandon oil operations; clean and remediate soil; and construct a housing and mixed-use development including: Subdivision of the 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 2.77 million cu.yds.; Residential and Commercial development including approximately 13.4 acres of roads, 43.4 acres of residential with 895 residential units; 45,100 sq.ft. of commercial use, 3.9 acres of resort with a 75 room hotel and 20 bed hostel; 10.7 acres of parks, and 310 acres of Natural Open Space Preserve with public trails; Oil operations will remain on 15 acres.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

A previous version of the current proposal for development of this site (CDP application 5-13-032) was heard by the Commission in October 2015. No action was taken at that hearing and the item was continued, tentatively planned to be scheduled for the January 2016 hearing. Because of the time constraints and the need for on-going site visits, corrections to mapping and data, and ongoing working meetings, the applicant withdrew the application 5-13-032 and resubmitted the application (as 5-15-2097). Staff and the applicant ultimately agreed on a goal of having the item heard at the May 2016 hearing. At the October 2015 hearing, the Commission made several

comments and suggestions for a revised project and for staff and the applicant to work together to develop a revised plan. In an effort to address changes needed to meet the requirements of the Coastal Act, there have been additional working meetings with the applicant and three comprehensive site visits since the October hearing.

Given the sensitive habitat and numerous site constraints as well as the large scale of the proposed development, it has been a significant challenge to develop an alternative development plan to be implemented through conditions of approval necessary to bring the proposed project into conformance with the Coastal Act. The recommended conditions are attached to the staff report as a separate Appendix A due to the number and size to help with navigation through the report in digital format.

Staff is recommending an alternative development plan that is substantially different than the applicants' proposal in order to avoid ESHA, Wetlands and other identified site constraints shown in [Exhibit 22](#) attached to the staff report. The conditions of approval will require the applicant to redesign the proposed components of the residential and commercial development in a manner that fits into "potential development areas" identified by Commission staff taking into consideration the existing habitat that persists and functions at the site even with the past and ongoing disturbances associated with the oil field operations. The revised project developed in conformance with the recommended conditions of approval will preserve a significant open space habitat corridor within the central upland portion of the property and in the lowlands as an open space system to be restored and enhanced pursuant to a comprehensive Habitat Management Plan (HMP) for the property.

Banning Ranch is comprised of four parcels on 401 acres, located partly in the City of Newport Beach and partly within unincorporated Orange County, adjacent to the mouth of the Santa Ana River where it meets the Pacific Ocean. Despite its history of oil development, the site continues to support an incredibly unique 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 needlegrass grassland, as well as riparian habitat and coastal marsh lands. Banning Ranch contains a lowlands area consisting of approximately 130 acres of brackish and fresh water marsh habitat and an upper mesa (coastal terrace) that covers approximately 262 acres consisting of scrub habitats, grasslands, and vernal pools. The upper mesa is a generally flat plateau with steep slopes along the edge that are cut in several places by small canyons and arroyos. The arroyos and marsh lands support rare and sensitive vegetation that provides habitat for many native animals including several rare species. The coastal bluffs and the bluff along the arroyos support rare and sensitive scrub communities like coastal bluff scrub and California brittle bush scrub, and both provide habitat for federally threatened birds living on the site.

Numerous Native American cultural sites are present on Banning Ranch, which attest to the historic and widespread habitation of the site by the Gabrieleno and Juaneno tribes, and in turn, the site's current significance culturally. At the request of the Tribal Chairman of the Gabrieleno Tongva San Gabriel Band of Mission Indians, the state Native American Heritage Commission added the "Banning Ranch Cultural Properties and Landscape" located on the site to the NAHC Sacred Lands File because of its cultural significance, as described in more detail in Section H, below.

The subject site is presently used for oil extraction and includes a network of roughly 40 miles of pipelines and nine miles of paved and unpaved roads that wind to various well heads, storage facilities, and other oil processing equipment areas spread across the site. Of the more than 400 wells that have been drilled on the property, the great majority have already been abandoned and, as described in the report, a consent order issued by the Commission in March 2015 to address alleged unpermitted development on the site requires NBR to, in addition to restoring 18.45 acres of the project area with native habitat, remove or seek after-the-fact authorization for the majority of the wells remaining in the area of the proposed project. The obligations of the consent order are independent of the Commission's action on this application; NBR is bound to perform the restoration and mitigation activities required by the Consent Orders regardless of the Commission's action. Also, in accordance with a stipulated agreement that arose from a dispute over the legality of certain wells on the property, described in more detail in Appendix B, the oilfield operator and mineral rights owner have applied to the Commission for a coastal development permit to contract the oil operations into the two heavily developed areas on the property known as the Oil Remainder Areas.

The applicant, Newport Banning Ranch LLC (NBR), proposes removal of most of the oil facilities and remediation of oil contaminated soils, grading 2.77 million cubic yards of soil on the site, providing for the continuation of oil and gas production operations on 15 acres, and construction of 895 residential units, a 75-room resort hotel and a 20-bed hostel, 45,100 sq.ft. of commercial/retail space, several parks, a public trail network, and establishment of a 310-acre nature preserve on the property. Revisions to the plan since October 2015 include partial avoidance of the North-South Arroyo and avoidance of some Gnatcatcher use areas in the region of the proposed Northern Urban Colony, reduced grading and fewer residential units. However, the revised project still does not address many of the identified site constraints, would still have 15 acres of impacts to the ESHA and Wetlands on the site, and remains inconsistent with the resource protection policies of the Coastal Act. The proposal before the Commission today was formally submitted 4/12/2016.

Following the October hearing, staff worked diligently to verify the sensitive resources on-the-ground, identify and map the site constraints, and provide them to the applicant in an effort to create a revised proposal that avoids wetlands, ESHA, fault-zones, bluff top encroachments, and other site constraints. As a result of this work, staff made significant modifications to its previous assessment of site constraints and was able to identify for the applicant approximately 55 acres of semi-contiguous developable area and an additional 11 acres for the proposed oil remainder areas, and an alternative development footprint with zero impacts to ESHA and Wetlands for the residential/commercial development. This is significantly more developable area than the roughly 18 acres identified by staff in October of 2015. However, although the applicant has revised its proposal, the current proposal still extends well beyond the boundaries of the developable area identified by staff. The current proposal would still extend far into, and thereby destroy large swaths of, ESHA and wetlands identified on the site, and it therefore continues to be inconsistent with the resource protection policies of the Coastal Act.

Significant changes to the development plan proposed by the applicant in order to achieve consistency with the Coastal Act include elimination of Bluff Road as a through connector from

17th Street to Pacific Coast Highway and elimination of the North Family Village residential component located on the mesa overlooking the North-Southeast of the arroyo on 5.5 acres connecting to 16th street. A portion of this area is underlain by a fault-zone which requires a 60 foot setback for habitable structures. Within this area of the North Family Village the applicant has proposed to construct 69 units of moderate to high-density housing. Bluff Road in this location would fill a portion of the Main Arroyo and would directly impact the burrowing owl habitat and would separate the North-South Arroyo from the Vernal Pool Complex, as well as impact several areas of sensitive habitat, all of which would significantly degrade the connectivity of the site, result in fragmentation of the habitat and would not be compatible with the continuance of habitat areas inconsistent with Section 30240.

The project, as conditioned, does not allow residential and commercial development and associated infrastructure to occur within areas of ESHA and wetlands and buffers, so the proposed access to this area of the North Family Village cannot be constructed. The only access to this site that can be constructed without impacting ESHA and Wetlands would be from the adjacent 16th street. Because of the significant constraints in this area (at the 5.9 acre “potential development area” along the property border [Exhibit 22](#)), including the fault-zone, limited ingress and egress points, burrowing owl habitat and the adjacent arroyo, the project has been conditioned to limit the development in this area to low-intensity uses only. Examples of low-intensity development that would be appropriate for this area include a passive park, a community garden (re-located outside of the habitat and buffer), nature center, environmental educational center, or similar use.

As conditioned, implementation of the oil field abandonment plan will result in restoration and enhancement of the existing ESHA and wetlands that currently persist within the areas historically and currently used for oil production activities. A final Habitat Management Plan will incorporate the restoration and mitigation requirements of the abandonment plan along with the applicant’s proposed Habitat Conservation and Mitigation Plan and result in preservation of all existing ESHA and Wetlands in an open space system including the arroyos, vernal pools and gnatcatcher habitat within central mesa with improved ecological function and value.

While the applicant may argue that, given the significant costs of developing the site, the amount of development that could occur consistent with staff’s recommended conditions does not provide an economically viable project, neither the Coastal Act nor the state and federal constitutional provisions prohibiting takings require that this Commission guarantee developers a profitable return on their investments. Moreover, as indicated above, the subject site comprises only four legal lots. Nevertheless, Staff’s recommendation would allow for a substantial amount of residential and commercial development on the project site. Consequently, this Commission is under no obligation to authorize additional development in order to avoid a taking. Nor must this Commission authorize additional development in order to provide the developer with sufficient revenue to fund the clean-up operation, as the oil operator is already obligated to complete that clean-up under existing law.

In addition, the Commission must make findings that the approved project would be consistent with CEQA, specifically including a finding that the project approved is the least environmentally damaging alternative. The proposed project is not the least environmentally

damaging alternative. In this case, the recommended development footprint avoids ESHA and wetlands; mitigates any adverse impacts to coastal resources; protects sensitive habitats and resources in perpetuity; and is the least environmentally damaging alternative.

Staff recommends APPROVAL with conditions that will result in a revised plan that avoids sensitive resources and identified site constraints by focusing the development into a smaller footprint and by changing the circulation system. The conditions of approval include: a requirement to revise the development plans to avoid harming the resources that the Coastal Act requires be protected, except for temporary impacts that are necessary as part of a clean-up and restoration effort; restrictions on use of the lands where the protected resources are located; restrictions on future development; habitat protection; a requirement for in-situ restoration and mitigation for impacts to ESHA and wetlands due to oil operation clean-up; protection of cultural resources; requirements for other regulatory agency approvals; a requirement that the landowner offer to dedicate a property interest in the protected lands, trails, and recreational areas for their protection; a provision to ensure that no future bluff or shoreline protective devices will be constructed to protect the authorized development; and requirements for low cost overnight visitor accommodations and submittal of evidence of water supply. Conditions of approval also include the submittal of several final plans for landscaping, lighting, construction staging and phasing, construction BMPs, water quality, and geotechnical review. Only as conditioned to avoid ESHA and Wetland impacts can the project be found consistent with the Coastal Act.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-2097 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.

II. 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 on which 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 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

[See Appendix A1](#)

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND BACKGROUND

Location & Current Ownership

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 City of Newport Beach has indicated an intent to annex the property, demarcating it in the City's "Sphere of Influence." The City of Newport Beach issued local approvals for the development project and was the Lead Agency for the production and certification of the Environmental Impact Report (EIR) required pursuant to the California Environmental Quality Act (CEQA). The site is listed as "deferred certification" in the City of Newport Beach's Coastal Land Use Plan (LUP), and presumably, the City would create a plan for the site after annexation. 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. In addition, the City of Newport Beach operates approximately 16 wells and an oil processing facility at the southwest corner of the site adjacent to Pacific Coast Highway.

Site History

Banning Ranch (BR) has a rich natural history with important ecological and cultural functions. The site was once occupied by Native Americans. Adjacent to the Santa Ana River and the Pacific Ocean, the site likely offered productive habitat, fresh water, and hunting and foraging resources. Cultural recourses have been found on the BR site and many more resources are likely still present, yet to be found. At the time of initial European contact, the Santa Ana plain was occupied by the Gabrielino Native Americans. Central Orange County was shared by both the

Juaneño and the Gabrielino tribes. An area called “Genga” is located in what today is Talbert Regional Park, immediately inland of the Banning Ranch (BR) site.

BR is just one of many sites in Orange County that were occupied by Native Americans. Among the more significant sites known along the northern coast of Orange County is the complex of sites surrounding Bolsa Chica, including the “Cog Stone” site or the “Griset Site”. As with Bolsa Chica, Newport Bay also is surrounded by a number of prehistoric sites. The sites along the southern Orange County coast in the San Joaquin Hills include multi-component complexes at Bonita Mesa, Pelican Hill, and Shady Canyon.

In 1801, all the land that lay east of the Santa Ana River, from the Pacific Ocean and inland for 25 miles to the mountains was used for grazing cattle and eventually became known as the *Rancho Santiago de Santa Ana*, totaling over 62,000 acres, which included the BR site. The land was later sold to Mary Hollister Banning in 1874. Thereafter, the site was referred to as the Banning Ranch. Over the years, portions of the property were leased to local farmers.

It wasn't until 1939 that 1,750 acres of the Banning Ranch, including the subject site, were leased for drilling operations by the Thompson Company, an independent operator. Parts of the Banning Ranch were sold off and/or developed. Today, the subject 401 acre remainder of Banning Ranch still supports an extensive network of ecological habitats, as described by the City of Newport Beach's General Plan Land Use Element:

Although the Banning Ranch site contains an assemblage of diverse habitats that have been historically disturbed, when this area is considered with the contiguous Semeniuk Slough and restored wetlands, it provides wildlife with a significantly large, diverse area for foraging, shelter, and movement. Biological studies performed for Banning Ranch indicate that, while disturbance associated with oil activities diminishes the quality of existing habitat to some extent, overall, the area should be regarded as relatively high-quality wildlife habitat due to its size, habitat diversity, and continuity with the adjacent Semeniuk Slough and federally-restored wetlands.

The Banning Ranch project site has supported ongoing oil and gas production operations since approximately 1944. Over 470 oil and natural gas production and steam and water injection wells have been drilled during 72-years of operations, and access roads, pipelines, power lines, and other associated infrastructure have been installed and used. Over time, as operational practices changed and evolved and oil formations at different depths and locations on the site were targeted, wells and infrastructure were abandoned, removed, relocated, and replaced across the site. Peak annual oil and gas production on the site occurred in the early 1980s from over 300 active wells and has declined steadily until recent years when it appears to have stabilized with less than 60 active production wells.

In 1973, Proposition 20 (the predecessor to the Coastal Act) took effect, and the California Coastal Zone Conservation Commission granted an exemption from Proposition 20's permit requirement (E-7-27-73-144) to the oilfield operator at that time, General Crude Oil and G.E. Kadane & Sons, for continuation of the oil production activities occurring or in development at the time, including the use of the 328 wells that existed onsite and the 28 additional wells that were in development. In addition, the “abandonment of wells in accordance with requirements

and approval of the State Division of Oil and Gas and removal of surface equipment and pipelines per state and local agency requirements” was exempted from coastal development permit requirements.

While certain well abandonment and surface equipment removal activities are exempted from coastal development permit requirements, these activities are limited in type and scope. The exemption states that the abandonment of wells and the removal of surface equipment and pipelines carried out according to the State Division of Oil and Gas (currently known as the California Department of Conservation’s Division of Oil, Gas and Geothermal Resources or DOGGR) authorization is exempt. However, none of the proposed abandonment activities currently contemplated have been required or authorized by DOGGR. In addition, typical well abandonment activities considered by DOGGR are limited to the capping of active wells and the removal of oil infrastructure and clean-up of visible areas of oil. The extensive onsite soil and concrete processing, treatment, and disposal element of NBR’s proposal significantly exceeds the scope of what DOGGR would require under its oilfield restoration regulations and is therefore not exempt. Further, as described in greater detail, the Commission has additional authority to review the proposed project under its federal consistency regulations, and NBR has included the entirety of the proposed project in its CDP application. Finally, any development that results in impacts to ESHA is not exempt and is subject to Coastal Commission review and approval, which is the case here.

Coastal Commission Action

A previous version of the current proposal for development of this site (CDP application 5-13-032) was heard by the Commission in October 2015. No action was taken at that hearing and the item was continued, tentatively planned to be scheduled for the January 2016 hearing. Because of the time constraints and the need for on-going site visits, corrections to mapping and data, and working meetings, the applicant withdrew the application 5-13-032 and resubmitted the application (as 5-15-2097). Staff and the applicant ultimately agreed on a goal of having the item heard at the May 2016 hearing. At the October 2015 hearing, the Commission made several comments and suggestions for a revised project and for staff and the applicant to work together to develop a revised plan. In an effort to address these comments, staff scheduled several working meetings with the applicant and several additional site visits.

B. STANDARD OF REVIEW

Approximately 40 acres of the site are under the general jurisdiction of the City of Newport Beach, and 361 acres are under the jurisdiction of the County of Orange. However, for Coastal Act permitting purposes, the entire site is in the Commission’s permitting jurisdiction. This is true for two reasons. First, although the City of Newport Beach Coastal Land Use Plan (LUP) was certified by the Commission in 1982, and was updated in 2005 and 2009, the current LUP designation for the site remains “deferred certification” ([Exhibit 5](#)). Second, since the City has no Implementation Plan, it does not have a fully certified LCP. The City is currently pursuing the Implementation Plan for its LUP. The LUP states:

1.1 Purpose- The Coastal Land Use Plan sets forth the goals, objectives, and policies that govern the use of land and water in the coastal zone within the City of Newport Beach and its sphere of influence, with the exception of Newport Coast and Banning Ranch... Banning Ranch is a

deferred certification area due to unresolved issues relating to land use, public access and the protection of coastal resources.

2.2.4-1- Designate the Banning Ranch Property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.

The 40 acres of the site within the City of Newport Beach's boundaries are included in the City's General Plan as a "planned community." Despite the fact that the entire site is not formally a part of the City of Newport Beach, the City's general plan (not certified by this commission) includes a designation for the site and prioritizes the site as open space, or alternatively as open space with residential, which was added and voter-approved in 2006. The approximately 361 acres under the jurisdiction of Orange County have a land use designation of Open Space and zoning designations of light industrial, residential, business, and an overlay zone allowing for oil production (not certified by this commission) ([Exhibit 5](#)). The entire Project site has a *County of Orange General Plan Land Use Element* designation of Open Space ([Exhibit 5](#)). Neither the City of Newport Beach nor the County of Orange has a certified Local Coastal Program that includes the Newport Banning Ranch site.

Despite the current land use designations in the County and City General Plans of priority as open-space, the project includes proposed new land-use designations for mixed use development. The policies of the Coastal Act encourage and protect higher priorities uses, which include areas for open space, lower cost recreation, and visitor serving development. Additionally, the site is not formally annexed to the City of Newport Beach, which is in the process of creating an implementation plan and certifying their LCP. Approval of this project under a coastal development permit, because it is inconsistent with the policies of the Coastal Act, would effectively prejudice the ability of the local government to certify their LCP.

The EIR describes a development agreement between the applicant and the City of Newport Beach with contingencies for annexation:

Pursuant to the City Code and Section 65864 et seq. of the California Government Code, a development agreement is proposed between the Project Applicant and the City of Newport Beach in order to describe the development rights of and public benefits to be provided by the Applicant, and outline the terms for annexation of the property to the City.¹¹ Section 65865(b) allows a city to enter into a development agreement for property in unincorporated territory with the city's Sphere of Influence; however, the validity of the agreement is contingent upon completion of annexation proceedings. The Pre-Annexation and Development Agreement (Development Agreement) between the Applicant and the City would vest the Project's development approvals to allow buildout of the Project site under the development standards and requirements in place at the time of Project approval. The Development Agreement includes requirements of the City that would need to be accomplished by the Applicant in return for the vesting of Project approvals. The Development Agreement addresses affordable housing requirements; parkland dedication/in lieu fee requirements; infrastructure phasing including Traffic Phasing Ordinance (TPO); permitting by the City pursuant to the Newport Banning Ranch Master Coastal Development Permit subsequent to approval by the Coastal

Commission; vesting of City entitlements and applicable land use regulations; and other issues relevant to the Project in order to describe the development rights of and public benefits to be provided by the Applicant and to outline the terms for annexation of the property to the City. The Development Agreement would not preclude the need for future site plans, tentative tract maps, or other permit processing prior to development. If the City does not have a certified Local Coastal Program by such date on which the Development Agreement is entered into, the Development Agreement would be submitted to the Coastal Commission for its approval.

The suitability of the site as a mixed use development has not been addressed through any LUP or through a certified Local Coastal Program. For a project of this scale, land uses/designations should be identified through a local coastal program prior to any coastal development permit being processed. The standard of review is Chapter 3 of the Coastal Act. Preceding submittal and again upon submittal of the subject CDP application to the Commission, staff advised the applicant that any development plan for Banning Ranch should be addressed in the context of an LCP. The applicant's original submittal relied heavily on conceptual land uses and draft project plans, including footprints, conceptual plans for each type of structure, and general depictions of the types of uses that are proposed in each area. Staff explained that, in the context of a coastal development permit, the Commission's review of the proposed project has to be of the project which is actually proposed on the site, and not just for the types of land uses or types of structures in each area. The coastal development permit process is not suited to the type of 'conceptual' approval that was being sought in the proposed application. In response, the applicant was asked to pursue a certified land use plan for the site in collaboration with either, or both, the City of Newport Beach and the County of Orange. Letters from both agencies were received that indicated that the local governments were unable or unwilling to seek certification of an LCP for the subject area or, at minimum, seek certification of a coastal LUP. Thus, the applicant decided to proceed with the CDP application and submitted additional details about the project.

C. PROJECT DESCRIPTION

The proposed project includes abandoning oil operations, clean-up and disposal of contaminated soil, oil and gas production infrastructure, and debris material, and constructing a housing and mixed-use development on the 401 acre site. The project also involves mass grading, a habitat impact mitigation and conservation proposal, and a subdivision. The revised development proposal includes 13.4 acres of roads, 43.4 acres of residential with 895 residential units; 45,100 sq.ft. of commercial use, 4.6 acres of retail, 4 acres of resort with a 75 room hotel and 20 bed hostel; 10.7 acres of parks and public trails and 310 acres of Natural Open Space Preserve ([Exhibit 2](#)). Active oil operations would remain on 15 acres of the site. Details of the proposal are described further below.

Grading

Mass grading is proposed to prepare the site for the ultimate project. Over-excavation and cut and fill associated with the development plan includes grading for parks, roads, underground utilities, and development lots. Grading is proposed in the Open Space Preserve to establish trail grades, prepare mitigation areas and provide maintenance access and water quality basin creation areas. Estimated total grading for the Project is approximately 1.4 million cubic yards of cut and fill for mass grading, and 1.36 million cubic yards of grading for the housing development

proposed, which would involve removal and recompaction of 3-5 feet of soil on the mesa. The project requires a total of 2.77 million cubic yards of grading ([Exhibit 8](#)).

Subdivision

The applicant has indicated that the subject property is currently comprised of 4 legal lots. The applicant is proposing Tentative Tract Map No. 17308 to subdivide the 401 acre site into 119 residential lots (some of which will contain multiple units and/or condominiums); 1 commercial lot; 2 mixed use/residential lots; 2 resort lots; 17 open space lots; 8 park lots; and 7 public street lots. ([Exhibit 7](#)).

Residential and Commercial Development

The project was approved by the Newport Beach City Council and an Environmental Impact Report was certified by the City of Newport Beach in August 2012. The project does not have local approval from the County of Orange.

Under the proposal, approximately 90 acres of the site would be developed with roadways, housing, retail/commercial space, and resort development, and oil operation areas, (see [Exhibit 2, site plan](#)) divided into the following:

The Urban Colony, high density multi-family residential with 411 units in 3 different housing product types on 12.4 acres to the north of the site, near 17th street.

The North Family Village: low and moderate density single family residential on either side of the North-South Arroyo in the central area of the site with a total of 196 units. The residential community on the west side of the arroyo is proposed to be 14.8 acres with 127 units of low density and the residential community to the east of the arroyo would contain 69 moderate density units on 5.5 acres and would connect to 16th street.

The South Family Village would contain single family residential, along with the Resort Colony (75 room hotel and a 20 bed hostel and retail space) with access taken from PCH. The South Family village plans includes 3.7 acres of high density residential to contain 224 units on 5.3 acres adjacent to the Resort, and moderate density residential in the location west of the proposed community park with 50 units on 5.4 acres. The Resort colony would be developed on approximately 4 acres and the visitor-serving retail would be developed on 4.6 acres on the southern mesa. The proposed park would connect to 15th street.

The project also includes establishment of 15 acres of oil remainder areas, with existing access off of PCH, adjacent to the Semeniuk Slough, largely developed in 2 areas with a connecting road in-between.

The entire project is proposed to meet the standards of LEED-ND (Leadership in Energy and Environmental Design, Neighborhood Design).

Low-density housing (Traditional Homes and Coastal Homes) range in square footage from 2,550-4,150 sq. ft. and are proposed to be 36 feet high with up to 3 additional feet of architectural features. Moderate density housing (Motor and Garden Court Homes, Town homes 1 and 2) range in square footage from 1,650-3,000 sq. ft. and are proposed to be 45 feet high with up to 3 additional feet of architectural features. High density housing (Urban Lofts, multi-

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family) range in square footage from 1,000-2,000 sq. ft. and are proposed to be 60 feet high with up to 3 additional feet of architectural features. The retail and resort structures are proposed to be up to 50 feet high with up to 15 additional feet of architectural features.

Commercial and retail space totaling 45,100 sq. ft. would include 41,600 sq. ft. of visitor serving uses including the following proposed spaces:

South Village Commercial Use	Visitor Serving	Square footage
Art Gallery	X	3,000
Bicycle Rentals	X	3,000
Commercial/Personal Services		2,000
Health/Fitness	X	3,000
Offices		1,500
Restaurants	X	6,750
Tourist Info Center	X	100
Visitor Serving Retail	X	25,750

The multi-family homes and mixed-use development areas toward the North of the site within the Urban Colony would contain 1 parking structure with 675 spaces for residential uses. A second parking structure would be located in the Southern Colony for residential uses with 450 parking spaces, which is proposed to be partially subterranean with 3 levels at 18 feet high.

A 20-bed hostel is proposed in the resort colony, with rates proposed to be \$79 for a private room and \$59 per bed in a shared room. The hostel would be constructed as a second floor to the visitor serving retail space. The hostel would contain a common entry space shared kitchen and living area, with 4 hostel rooms, each with 2 bunk beds and a sofa, and 1 queen bed (with an optional private divider) and shared bathrooms. In the hostel, there would a total of 16 single beds and 4 queen beds.

Roads and Infrastructure

The 13 acres of proposed roads include 2-lane, 2-way entrances to the site from Pacific Coast Highway, 15th, 16th and 17th Streets. The entrance road off of PCH, called Bluff Road, is proposed to be approximately 75 feet wide with a grading footprint between 150-200 feet wide. Bluff road would include medians, bike lanes, sidewalks and bioswales.

Bluff road continues north through the site connecting the southern resort and housing to the northern housing and urban colony, eventually connecting to 17th St. The entrance roads off of 15th, 16th, and 17th streets are proposed to be 75 feet wide and would connect to Bluff Road.

Interior 2-lane, 2-way roads for access to residential are proposed to be between 54-60 feet wide and would include public street parking on both sides of the street, a 6 foot wide bike lane and 4 foot wide sidewalks.

A bridge is proposed to span the main arroyo toward the south of the site to create a continuous connection for Bluff Road between the North and South colonies. All roads are proposed to be open to the public and interior roads would provide public parking opportunities. Five foot wide minimum on street bicycle lanes are proposed for both sides of arterial roadways and all streets would have sidewalks separated from the street by vegetation and bioswales. Onsite public parking surplus would be available to support access to the proposed parks and trail system and some surplus parking would be available for visitors going to Newport Beach. No hours, maximum parking times, or fees have been identified for the public parking and/or parks and trails.

Utility development on the site would include: new infrastructure and utilities, including water, sewer, and storm drain facilities to serve the proposed development, would be constructed. A sewer main extension and sewer lines would be constructed under the trail proposed to parallel the existing oil remainder area roadway to connect to the Orange County Sanitation District pump near PCH. Stormdrain lines would be constructed under the trails in the west end of the Main Arroyo. Stormdrain lines from the Urban Colony and the North Family Village would be constructed along existing oil operation roads from the mesa to the lowlands. Some utility connections would need to be constructed within the Oil remainder areas. New water, sewer and stormdrain facilities would connect to existing City and County facilities located adjacent to the property.

Water Quality Systems

Approximately 5 acres within the Open Space Preserve would be developed Water Quality basins and diffuser basins to control stormwater into the wetlands and to treat runoff largely from the proposed housing developments on the mesa and the flow of run-on from nearby developed areas. The Project includes the construction of new drainage, flood control, and water quality facilities to control the flow of surface water across the site and direct flows into the existing arroyos and reduce flow rates and volumes of untreated runoff to the Semeniuk Slough and the Santa Ana River.

Water Quality systems designed for the residential villages include perimeter basins located around the perimeter of the housing developments along the mesa bluff tops. These perimeter basins would be lined and constructed with bio-retention soil media mix to remove pollutants associated with residential land uses. The perimeter basins' treated flows would be discharged into the adjacent arroyos.

Rainwater Harvesting and BMPs that capture and store storm water runoff for later use are proposed for the attached residential unit development areas within the North and South Village, the retail/resort area and the community park areas. All areas of residential and commercial development would include Hydrologic Source Control (HSCs) measures, including but not limited to: impervious area dispersion, downspout dispersion, localized on-lot infiltration and rain barrels (for residential units). HSC's capture stormwater for use later, and reduce the amount of run-off. Additional water quality improvements consist of Low Impact Design (LID)

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features such as bioswales, landscaping biocells, and permeable pavement, where feasible, as well as source-control and treatment-control Best Management Practices (BMPs).

The proposed plans would include construction of a dissipator within the Open Space Preserve to control stormwater flows from the Urban colony to the middle arroyo toward the north of the project site.

A water quality/detention basin is proposed near the site entrance off of 16th Street to to treat urban run-on and would direct flows into the Southerly/Main Arroyo. The man-made basin will be approximately 0.75 acre and will be designed to accommodate up to a 4-foot treatment depth. Flows will be treated by native plants on the surface and will also include bioretention soil media mix to promote treatment through the soils and collection into a sub-drain. The basin would be planted with native emergent marsh and riparian species to promote water quality cleaning and natural energy dissipation.

One diffuser basin is proposed within the lowlands, just north of the northern oil remainder site, downstream of the North Village. Flows from the North Village area will be treated prior to reaching the diffuser basin by HSC's and either perimeter basins or the harvest and reuse systems. The diffuser basin would be constructed of rip-rap.

The second diffuser basin is proposed within the Open Space Preserve at the west end of the Southerly/Main Arroyo prior to flows entering Semeniuk Slough. A culvert would be constructed under the existing oil remainder site roadway in order for the flows from the Main Arroyo to exit the site into the Slough. The purpose of this diffuser basin is to control flows into Semeniuk Slough from the Southerly/Main Arroyo and the South Village development areas. Flows from the South Village development areas will be treated prior to reaching the diffuser basin by HSC's and either biotreatment basins or harvest and reuse systems. The diffuser basin would also be constructed of rip-rap. The water quality diffuser basins and dissipator proposed are in and adjacent to wetland and riparian habitat. Construction plans for the water quality detention basin, diffuser basins, and dissipator were not provided in the application materials.

Parking

Public parking would be provided throughout the project site to support access to and use of the proposed park and trail system ([Exhibit 10](#)). More than 200 on-street public parking spaces would be provided, and 209 off-street public parking spaces would be provided within the Community Park area. In addition, public off-street parking would be provided as shared parking within the resort colony, including for use by coastal recreationists and park users as capacity permits. The visitor serving commercial of the south village would have a surface parking lot with 180 spaces.

A shuttle is proposed to provide service from the visitor serving/ resort area to the West Newport Park on the hour from May through October, operated by the visitor serving commercial manager.

Habitat Conservation and Conceptual Mitigation Plan

Most of the impacts to the site would be a result of the implementation of the proposed oilfield clean-up work and the mass grading to prepare the site for the housing development. The applicant is proposing compensatory mitigation onsite for most of these impacts, as opposed to

restoration in-place. The plan for the mitigation is the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). 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.

Open Space

The 310 acre “Natural Open Space Preserve” would remain protected as permanent natural land and managed open space and control over the area to achieve these purposes would be transferred to a third party by an offer to dedicate. The applicant proposes these lands would be managed by the non-profit Newport Banning Land Trust (NBLT), which has negotiated a Memorandum of Understanding (MOU) with the applicant that would allow the NBLT to assume stewardship responsibility for the Natural Open Space Preserve. Funding for preservation of these open space areas would likely be provided by the Homeowners Association established for the proposed housing developments. Approximately 160 acres of the Open Space Preserve would be subject to restoration and enhancement or newly created habitat, as a result of mitigation for the development proposal.

Trails

The proposal includes 9.5 acres of public trails in areas adjacent to wetlands and ESHA. This trail system would provide connections between the lowlands of the site and the mesa, as well as connections to larger regional trails: Santa Ana River Regional Trail System and the Talbert Nature Reserve. The trails around the perimeters of the proposed “villages and colonies” are referred to as ‘Bluff Park’, a linear, landscaped passive park on either side of the trails, containing scrub vegetation and purple needle grass restoration areas and serve as a fuel modification zone. The trails in the lowlands primarily following the pattern of existing oil operation roads. Additionally, trails proposed to cross through the western end of the Southerly/Main Arroyo would follow the pattern of existing roads. A trail would connect from the lowlands to the Main Arroyo trail, parallel to the Orange County Sanitation District easement, and the existing road connecting the two remainder oil operations sites.

The 9.5 acres of public trails would be located within 10-foot-wide public easements or dedications as designated on the project subdivision map. Within the 10-foot-wide trail easements/dedications, generally six feet would be trail surface area and a maximum two-foot transition to native ground would be provided adjacent to each side of the trail surface for a maximum total improved area of 10 feet. The trail surface would consist of native soil or decomposed granite and would meander and/or become narrower or incorporate sections of elevated walkways as necessary to avoid identified special-status habitats.

On-street bicycle paths are proposed throughout the project. Five foot wide on-street bicycle trails are proposed for both sides of arterial roadways including Bluff Road, 17th Street, and 15th Street. Bike racks would be provided as a part of the proposed neighborhood retail center, parks, and the multi-family residential uses. All streets within the project site are proposed to have public sidewalks separated from the street. Sidewalks would vary in width from 4 to 8 feet.

Parks

The project would include development of approximately 10.7 acres of active park. The proposed development includes a parkland dedication to the City of Newport Beach (within the 40 acres currently in the City limits) of approximately 10.7 acres for development of a public

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community park. The preliminary site plans for the public park includes active play areas with 3 sport fields and a public restroom facility. The park would include 209 parking spots. The applicant has indicated that the park plans would utilize “dark-sky” technology in the lighting plan.

The site plan includes a community garden immediately south of Pool E next to the property line. The plans for the community garden have not been provided and it is unclear if the garden space will be available to members of the public or if it is strictly for use by occupants of the proposed residential communities.

Interpretive Parks are proposed to be located on the periphery of the Natural Open Space Preserve and would incorporate a vernal pool interpretive area and trailheads for the Interpretive Trail System in the Natural Open Space Preserve. Construction plans for the Trailhead and interpretive parks/trails have not been provided.

Oilfield Abandonment and Clean-up

Since the site is both an active and historic oilfield, the applicant is proposing to prepare it for the proposed commercial and residential development by shutting down most of the current oil and gas production operation, removing all associated equipment and treating all areas in which hydrocarbons or other contaminants are present in the soil. To guide this proposed work, NBR has developed both an Oil Field Abandonment Plan (Abandonment Plan) and a Remedial Action Plan (RAP).

Generally speaking, the Abandonment Plan describes NBR’s proposed approach for shutting down oilfield operations and collecting and disposing of oilfield infrastructure while the RAP was developed as a formal submittal to the Santa Ana Regional Water Quality Control Board (Water Board). It describes the various clean-up targets (infrastructure and pollutants) and establishes the threshold levels for various types of contaminants. These thresholds are based on the type of contaminant (level of toxicity, potential impact on the environment and public health), as well as the depth and location of the contaminant and the potential future use of the area in which it is located. For example, the most stringent clean-up levels are applied to the top 15 feet of soil within areas of proposed future residential use and the least stringent are applied to soil deeper than 15 feet below the surface in areas of proposed future open space.

In approving the RAP in December of 2015, the Water Board accepted NBR’s proposed clean-up targets and chemical threshold levels. While there are only limited areas of the site that may require clean-up under its present use as an operating oilfield, the proposed closure and abandonment of the majority of the oilfield (an approximately 15 acre area would remain in use for oil and gas production and the operator of this area has submitted a CDP application for the installation of 82 new wells there) and its conversion to new residential, commercial, and open space uses trigger the need for a more extensive and comprehensive removal of oilfield contaminants and infrastructure.

Infrastructure Collection and Removal

The first elements of the proposed partial oilfield closure is the abandonment of approximately 66 active or idle oil wells and the investigation and potential re-abandonment of historically abandoned wells that may not have been plugged using current standards. This would be followed by infrastructure collection and removal that includes the removal of pipelines and oil

infrastructure, power poles, tanks and vessels; the demolition and removal of roads and oil pads; the demolition of office buildings and storage structures; the removal of historic oil sumps and other areas that NBR has designated as having potential environmental concern (PECs) and the processing and disposal of several acres of existing onsite concrete debris piles and existing soil treatment stockpiles. The anticipated maximum disturbance footprint associated with these activities is shown in [Exhibit 3](#). While the removal and collection activities could be carried out in a variety of different manners, there is limited flexibility in their siting as they would need to be located in the areas that currently contain the materials and infrastructure needing to be removed.

As part of the proposed removal activities, approximately 230,000 linear feet of two to four inch diameter pipelines are proposed to be removed after being emptied of usable product and flushed with clean water. Smaller above ground pipes would be removed by hand and pulled out of the vegetation, while larger pipe systems will be cut into 20 foot sections and drained into catch basins and transported to one of the proposed onsite staging areas for salvage, recycling, or transport offsite. The vast majority of pipes are above-ground but in locations where the pipelines cross access roads or work areas, they may be buried up to three feet underground. The lines in these locations would be excavated and removed. Areas surrounding the pipes are proposed to be surveyed for visible surface oil and any visible areas would also be excavated and treated.

In addition to the pipelines, the site also includes approximately 306 wooden power poles with lengths of 35 to 40 feet, as well as several electrical panels and transformers. These poles are proposed to be cut at ground level and transported to an onsite staging area for onsite recycling or offsite disposal. Belowground pole sections would be excavated or abandoned in place, depending on their location. All power lines, transformers, and panels would be removed and taken to onsite staging areas for re-use or transport offsite.

Ten steel tanks and vessels are also proposed to be dismantled and removed. Proposed removal would involve isolation from power and fluid sources, draining, disconnection of all valves and fittings, and dismantling or demolition. Recyclable sections would be stockpiled onsite and the remainder would be transported offsite for disposal.

Thirteen buildings, garages, and structures would also be demolished and cleared from the site. Prior to demolition, inspections would be carried out for lead and asbestos and all salvageable metals, wires, and materials would be collected. Demolition would be accomplished using heavy equipment such as an excavator equipped with hydraulic cutting shears. Demolished building materials would be collected and transported offsite to a disposal facility.

Five existing concrete debris piles – covering an area of 2.35 acres – would also be targeted during removal operations. While these debris piles and other soil stockpiles (as well as additional abandoned structures, vehicles, and equipment) were required to be removed from the site in 2006 by the primary state agency with oversight of oilfield operations, the Department of Conservation Division of Oil, Gas and Geothermal Resources (DOGGR), letters from that time period suggest they were retained onsite at the request of NBR and are now proposed to be processed and prepared for onsite disposal or reuse. The material in these debris piles would be combined with any additional concrete removed from building foundations, well pads, road

beds, or pump supports and brought to one of the two proposed onsite concrete crushing areas. At these sites, concrete is proposed to be crushed into small material. Once crushed, the concrete would be dumped into one of the three proposed onsite excavations for disposal. These excavations, part of the soil treatment operations, are proposed to provide both a source of clean fill material to support the grading and construction preparation of the site and a burial/disposal site for treated soil and other material such as concrete waste.

Other material that may also be collected, treated, and buried similar to the concrete waste, is the asphalt-like material present on some of the existing access roads. As described in NBR's Draft Abandonment Plan:

Many sections of the oil field roads have used traditional asphalt paving materials. Historically some roads may have used crude oil impacted tank sediments (tank bottoms) from when the facility tanks were cleaned out, combined with gravels or aggregate to pave roadways. Over time the tank bottom materials became heavily weathered leaving only the heaviest (or longest chain) hydrocarbons similar to normal asphalts. These materials are referred to as Asphalt Like Materials (ALM) and are shown on Exhibit 13. All the roadways that have these materials will be scraped by tracked bulldozers to accumulate the operations related materials and will be transported to the concrete/road processing areas. Any larger sections will be broken up and crushed to a structurally compactable size. These crushed materials will be placed in the deeper sections of the soil borrow pits and if necessary replaced with clean borrow pit soil. Most road and work areas are not expected to require any clean soil backfill.

The site also contains 48 areas in which historic in-ground oil collection or containment areas (sumps) may have been used. These areas are proposed to be located based on historic photographs and tested to determine if excavation and treatment of hydrocarbon impacted soil may be necessary. If contaminated soil is found, it would be transported to the proposed bioremediation areas for treatment. Upon verification that the sump sites have met the appropriate clean-up levels, the excavations would be backfilled with clean soils from the proposed upland soil borrow pits.

Material Treatment, Processing, Stockpiling, Borrow, and Disposal

NBR's proposed soil treatment plan includes several key elements: bioremediation (spreading the estimated 270,000 cubic yards of hydrocarbon contaminated soil across large areas to facilitate the natural breakdown of hydrocarbons by native soil bacteria); excavating contaminated soil and soil with roadbed materials; excavating soil for use as clean fill; soil and material stockpiling; concrete and asphalt road crushing; and underground disposal/burial of concrete waste, asphalt, and treated soil. NBR is currently developing a revised site plan showing the location and configuration of these elements in the upland portion of the site.

While this revised site plan is not available, a previous version prepared in November of 2015 is provided as [Exhibit 18](#) as an example of the relative sizes and configurations of these use areas. Primary use areas are divided between replicate soil borrow/placement sites, "clean soil flip" sites, concrete processing sites, equipment and material salvage areas, bioremediation areas and staging/stockpiling areas.

NBR's proposal to use these areas to treat and dispose of the contaminated soil, concrete waste, and roadbed material that exists on the site involves several steps: (1) the excavation and removal of roadbed material, concrete, and oil impacted soil from throughout the site; (2) transport of this material to either the concrete processing area (as an interim step) or to one of the two proposed soil bioremediation areas; (3) the excavation of deep borrow/placement pits; (4) the stockpiling of clean soil from the deep borrow/placement pits in the adjacent "clean flip sites"; (5) the dumping of concrete waste and roadbed material into the deep borrow/placement pits; (6) the dumping of the treated soil from the bioremediation areas into the deep borrow/placement pits; and (7) the replacement of the stockpiled clean soil from the "clean flip sites" back into the deep borrow/placement pits on top of the waste materials as a clean cap. NBR proposes this cap to be at least ten feet thick over treated soil and 15 feet thick over concrete. Some of the clean soil excavated from the borrow/placement pits would also be used to backfill areas from which oil impacted soil or roadbeds were removed.

NBR has selected the size of the borrow/placement pits and bioremediation areas based on its estimated need for treatment, clean soil, and disposal capacity. Because field verification work carried out in March of 2016 resulted in a reduction of approximately five acres to the estimated clean-up target areas (with an associated reduction in material processing and treatment), the anticipated material disposal and borrow needs have also been reduced. These reductions were not taken into account in the design of the site plan provided in [Exhibit 18](#), triggering the need for a redesign/reconfiguration. In addition, NBR has been working with Commission staff to consider the site's environmental constraints (such as the location of sensitive habitat areas) in the design and configuration of material treatment, processing, stockpiling, borrow, and disposal sites.

NBR's proposed method of bioremediation simply relies on mixing and watering to stimulate the growth and action of natural soil microbes that break-down hydrocarbons. As described in the Abandonment Plan:

The impacted soil accumulated at the bioremediation logistics areas will be spread out across the bioremediation cells and soil processing equipment will work on the top 12 to 36-inches of soil, referred to as "lifts", to initiate the bioremediation process. The lifts will be disced and sprayed with water as needed to create optimal conditions for the natural and indigenous bacteria to grow and degrade the hydrocarbons within the soil. Disking and watering has proven to accelerate the bacteria to grow and breakdown the hydrocarbon molecule chains. This process could take from 2 to 6 weeks per lift and each lift will be tested in a routine manner until testing indicates that the approved remediation criteria have been achieved. Additionally, watering and moisture control measures will be employed to control dust and potential odors during the process.

Once the appropriate remediation standards have been achieved, the now remediated soil lift will be moved into clean soil stockpiles for further verification testing by third party laboratories before recycle placement.

D. OTHER AGENCY APPROVALS

Several other federal, state, and local agencies also have to review roles that must be completed the project before it may proceed.

U.S. Fish and Wildlife Service (USFWS). Because the proposed project requires federal agency permits, including a Clean Water Act Section 404 permit from the US Army Corps of Engineers, the USFWS must conduct a Section 7 or Section 10 Consultation pursuant to the Federal Endangered Species Act. Section 7 Consultation leads to the issuance of a Biological Opinion (BO) and a Section 10 Consultation leads to the issuance of an Environmental Impact Statement (EIS). Neither a BO nor an EIS has been issued as of the date of this staff report.

California Department of Fish and Wildlife (CDFW). The project would require a Section 1600 Streambed Alteration Agreement from the CDFW pursuant to Section 1602 of the *California Fish and Wildlife Code* or notification from CDFW that an agreement is not required. The applicant applied for a streambed alteration agreement and was informed by CDFW in a letter dated September 30, 2015, that it may complete its project without a streambed alteration agreement. However, this letter also noted that the applicant should notify CDFW if any modifications to the project occur so that it may respond accordingly.

Regional Water Quality Control Board. Before the US Army Corps of Engineers can issue its Section 404 Permit, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) must issue a Water Quality Certification under Section 401 of the federal Clean Water Act (401 Certification). The 401 Certification issued by the Regional Board would be required for the fill or alteration of “Waters of the State” on the Project site located under the Regional Board’s jurisdiction. Additionally, approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation is required from the Regional Board. The Regional Board issued a water quality certification in April of 2016 and approved NBR’s Remedial Action Plan in December of 2015 ([Exhibit 17](#)).

U.S. Army Corps of Engineers (USACE). The project would require a Clean Water Act Section 404 permit from the USACE for impacts to areas determined to be “Waters of the U.S.” While NBR has applied for the project to be considered under a general Nationwide Permit, USACE is still in the process of determining if this approach would be appropriate or if a more extensive review under the Individual Permit process would be required. As a federal agency, the USACE’s actions also require compliance with NEPA. The application did not include sufficient information for the USACE to identify accurately the “Waters of the U.S.” present on the site. The Jurisdictional Delineations (JDs) submitted by the applicant contained conflicting and incomplete information. Additionally, USFWS in consultation with the USACE, cannot issue a biological opinion without accurate JDs. Once it has accepted the JDs for the site, the USACE would proceed with its review along either the Nationwide Permit or Individual Permit process. Final decisions on these matters are anticipated within the next several months.

State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). The Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) also has authority to direct the design, scope, and implementation of oilfield clean-up and abandonment activities. Oil and gas wells to be abandoned or re-abandoned must be abandoned in accordance with the current requirements of DOGGR. This is ensured through DOGGR’s well abandonment permitting process and its review of historic abandonment records for previously abandoned wells. In addition, DOGGR has standards and requirements for comprehensive oilfield abandonment. These include the review and approval of a field restoration plan that indicates the amount and location of

aboveground infrastructure proposed to be removed as well as a construction review process used to provide input on the placement of new development near abandoned well locations. While NBR has been in coordination with DOGGR on these various authorizations and processes, it has not obtained well abandonment permits, submitted a lease restoration plan, or initiated the construction review process. However, these steps would be pursued at a later stage in the implementation of the proposed project.

Orange County Health Care Agency. Approval of the final Remedial Action Plan for the oil well/facility abandonment and site clean-up is required from the RWQCB and Orange County Health Care Agency. However, the Orange County Health Care Agency, due to lack of staffing, has deferred to RWQCB on approving the Remedial Action Plan.

Local Agency Formation Commission. The Local Agency Formation Commission (LAFCO) would review the project when the City of Newport Beach formally requests annexation of the 361 acres in unincorporated Orange County. LAFCO is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include a change in service district boundaries for water service.

Orange County Transportation Authority. Amendment to the Orange County Master Plan of Arterial Highways would be required for the circulation proposed on the site. The applicant would be asking to remove a road segment that appears on the plan along North Bluff Road just north of 17th Street connection to 19th Street and to redesignate the remaining southern section of North Bluff Road from a Major (six-lane divided street) to a minor 2-lane divided street and the deletion of a second road through the project site to West Coast Highway. The amendment would include deleting the connection from 17th Street westerly to West Coast Highway.

Newport-Mesa Unified School District. An encroachment permit would be required for the construction of the extension of 16th Street and North Bluff Road on the School District's property.

California Department of Transportation. Activities located within California Department of Transportation (Caltrans) right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit. Caltrans has not yet issued approval for these elements of the project.

In the preparation of these findings, the Commission staff consulted with the most of the above agencies listed. In particular staff consulted with USFWS, CDFW, RWQCB, USACE, and the OC Health Care Agency regarding the sensitive biological resources and waters onsite. Some of these agencies have yet to issue approvals of the project.

Federal Consistency

As noted above, in order to proceed with the proposed project, NBR needs a permit from the USACE pursuant to Section 404 of the Federal Water Pollution Control Act of 1972, as amended (33 USC § 1344). Because this Section 404 permit is listed in the California Coastal Management Program among those federal agency permit activities that reasonably can be expected to affect any land or water use or natural resource of the coastal zone, Section 307(c)(3)(A) of the Coastal Zone Management Act requires that it be subject to the certification process for consistency with the California Coastal Management Program. As provided in Section 307(c)(3)(A):

Any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all the necessary information and data.

Therefore, before USACE can issue its Section 404 permit for any part of the project, the Commission must concur with a consistency certification for the project, finding that it would be carried out consistent with the California Coastal Management Program. Although NBR initially submitted a CDP application that did not include those aspects of the project for which it was seeking a Section 404 permit from the USACE, Commission staff worked with NBR to revise its application to include the entirety of the proposed project. This was done to consolidate the Commission's CDP review and federal consistency review of the project because the Commission's approval of a CDP that covered the whole project would duly meet the requirements of the Coastal Act and Section 307(c)(3)(A) of the Coastal Zone Management Act.

Special Condition 25 requires the applicants submit evidence of other agency approvals and that the applicant shall inform the Executive Director of any changes to the project required by the above agencies that are inconsistent with the Commission's approval of this coastal development permit. Such changes shall not be incorporated into the project until the applicant obtains an amendment to this coastal development permit.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30240 of the Coastal Act states:

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

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

Coastal Act section 30107.5 defines environmentally sensitive area:

“Environmentally sensitive area” means 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.

Coastal Act section 30250 states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

The Coastal Act establishes a high standard for protection of areas that are identified as environmentally sensitive. Only resource-dependent uses, such as habitat restoration, are allowed within an environmentally sensitive area (ESHA), and all development within or adjacent to an ESHA must be sited and designed to prevent significant disruption or degradation of the ESHA, respectively.

Under the Coastal Act, if an ESHA is identified, it cannot be relocated, and must instead be avoided, unless the proposed development is “a use dependent on the resource.” This fundamental requirement of the Act was confirmed in *Bolsa Chica Land Trust v. Superior Court* (1999), 71 Cal.App.4th, 493, 507, wherein the Court found:

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....

Environmentally Sensitive Habitat Areas (ESHA) are areas 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. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Summary of Habitats

On the Newport Banning Ranch site there are several different habitat types that contribute to the ecosystem on the site and to the surrounding sites. Because the project site is bordered by the Santa Ana River, the site contains a unique watershed in the lowlands and on the mesa. The historic path of the Santa Ana River before being channelized was vast and had a network of ever-changing outlets into the Pacific Ocean. This wide pattern between the fresh water of the

river and salt water of the sea created an estuary of marsh and wetland communities. The Semeniuk slough and the wetlands controlled by USACE adjacent to the site are a few remaining examples of the wetland watershed complex in the area. While the wetlands remaining on the Newport Banning Ranch site have been impacted by heavy use of the site for oil operations since the 1940s, and before that for agriculture, the wetlands persist on the site because of the underlying watershed and the site's proximity to both the river and the ocean. The site also represents just one part of a large wildlife corridor following the Santa Ana River. This corridor is one of the few passageways left for wildlife and migrating birds to travel across southern California from the mountains to the ocean.

The site has been documented to be remarkably self-sufficient. The ecosystem on the site is a vast complex of interrelated habitats and species. The site supports a rich seed bank. Once development ceases on the site, the watershed, animals and plants are often able to rebound without intentional restoration. The City of Newport Beach's Coastal Land Use Plan (CLUP) states that the Banning Ranch site: *contains a number of sensitive habitat types including southern coastal bluff scrub, alkali meadow, southern coastal salt marsh, southern coastal black willow forest, coastal brackish marsh, and vernal pools. The property also contains steep coastal bluffs along the southern and western edges of the mesa. The bluff faces have eroded in some areas to form a number of gullies and ravines.*

The Newport Banning Ranch site is largely divided into 2 areas topographically ([Exhibit 6](#)): the lowlands, which consist of approximately 130 acres of wetlands ranging from 0 -10 feet above mean sea level; and the mesa, which contains 4 "arroyo" streambeds, one drainage area, a vernal pool complex, and multiple seasonal wetlands, all of which together control the flow of water across the site. The mesa ranges in elevation from 10-105 ft above mean sea level and includes coastal bluffs and canyons and riparian areas. The site does receive run-off from areas North and East of the mesa and the arroyos on the mesa direct the water down to the lowlands and into the Slough. The water helps sustain the wetlands in the lowlands. Tidal influence from the ocean entering the Slough can also reach the wetlands in the lowlands. This mix of fresh and salt water contributes to the large areas of salt marsh. All of these elements are extremely rare habitats in Southern California.

The habitat characteristic described in the EIR are summarized here:

The site contains 45 vegetation types, including 20 types of coastal sage scrub; 9 types of pools, marshes and mudflats; 8 riparian types; and 8 grassland areas. In general, coastal sage scrub is located along the eastern and southern portions of the project site on the Mesa. The marshes and mudflats occur within the Lowland and are subject to tidal influence. Seasonal features and vernal pools are located in the Upland adjacent to grasslands. Riparian resources are found in portions of the Lowland and Upland. Grassland and disturbed vegetation are found throughout the project site. The project site also supports several special status plants and wildlife species. The federally listed threatened coastal California gnatcatcher and the coastal cactus wren and the San Diego fairy shrimp are present on the project site.

The Lowland (Wetlands) supports wetland habitats, including areas of salt marsh that support the State-listed Endangered Belding's savannah sparrow; they also support willow scrub and willow riparian forest that support the State and federally listed Endangered least Bell's vireo and a variety of special status nesting raptors including the white-tailed kite. Additionally, the Lowland supports special status plants, including substantial populations of southern tarplant.

Riparian and wetland habitat on the site includes willow riparian forest, willow scrub, alkali meadow, mudflats, freshwater marsh, and salt marsh.

The Mesa of Newport Banning Ranch, therefore must also be viewed in the larger context of its role in the integrated upland and wetland ecosystem. Similar to the Bolsa Chica wetlands and mesa near Huntington Beach, which according to both the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, the Mesa and the lowland wetlands are biologically interdependent. Together, the wetlands in the lowlands and the mesa with the riparian arroyos and vernal pool complexes, combine to make this area an important upland-wetland ecosystem. These biological interdependencies are vital to maintaining biological productivity and diversity. The September 25, 2015 memorandum by Dr. Jonna Engel describes in detail the different habitats present on the site, as summarized below ([Exhibit 12a](#)).

Vernal Pools and Wetlands

A number of plant and animal species are endemic to (found only in) vernal pools. Wetlands that provide habitat for plants and wildlife only found in vernal pools are may rise to the level of ESHA. Vernal pools typically occur on coastal terraces in southern California and historic aerial photographs suggest that they were probably common on Banning Ranch before the site was altered by agriculture and oil field development. There are 10 pools on the site, 8 of which that support the endangered San Diego fairy shrimp, a diagnostic vernal pool species.

Rare Plant Communities

Coastal sage scrub in southern California provides habitat for about 100 rare species, many of which are also endemic to limited geographic regions^[1]. Southern Coastal Bluff Scrub and Maritime Succulent Scrub are coastal scrub communities found on the bluffs and canyons of the site and are considered “very threatened.” Patches of Purple Needle Grass Grassland were present in many areas in 2012, but because of the continuing severe drought these native grasslands have been reduced to three areas on the southern mesa. Native grasslands are one the most endangered habitats in California. Both the native and non-native grasslands on the site provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species of mammals, birds, and reptiles. Burrowing owls, red-tailed hawks, Cooper’s hawks, American kestrels, and peregrine falcons have been observed perching and foraging at various locations within and in the vicinity of the purple needlegrass grassland across the entire site. The Riparian habitat found adjacent to drainage areas and arroyos on the NBR site is greatly reduced in extent from its historical distribution and it supports rare and endangered species such as the least Bell’s vireo, particularly in the lowlands.

Rare Wildlife

The site also supports rare, threatened, and endangered animal species. California Gnatcatchers (CAGN) are obligate, year-round inhabitants of in Coastal Sage Scrub plant communities. In the last 60 years extensive southern California suburban sprawl has reduced and fragmented coastal scrub habitats, resulting in a significant decline in California gnatcatcher populations. CAGN is a federally-listed species. Coastal Cactus Wren are extremely rare. They rely on the prickly pear patches and other cacti found on the NBR site. Historically, Cactus Wren were documented on the NBR site but have not been seen since 2009. Burrowing Owls have been seen on the mesa of the NBR site. They are a Species of Special Concern and they often forage in the open grasslands. Other sensitive species that have been seen on the NBR site include: Loggerhead

shrike, yellow warbler, yellow-breasted chat, least Bell's vireo, Belding's savannah sparrow, white-tailed kite, and northern harrier.

Other Biological Factors

Annual grasslands, although dominated by non-native species, provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species of mammals, birds, and reptiles including burrowing owls and many species of raptors. Burrowing owls as well as several species of raptors including red-tailed hawks, Cooper's hawks, and American kestrels, have been observed perching and foraging at many locations. The animals that forage on the site, including Ospreys and other raptors, as well as large mammals like coyotes, all play an important role in the ecosystem of the site.

Riparian Habitat

One of the connections linking the Newport Banning Ranch upper mesa and lowlands are the riparian areas and drainages. The applicant has documented four main drainages on the site. According to the HCCMP, the "small arroyo" is located near the northeastern corner of the site, originating at the eastern property boundary where a concrete culvert discharges stormwater runoff and flows onto the site. Dominant species include riparian vegetation: arroyo willow, black willow, and southern cattail, and mulefat communities. The small arroyo drains into the northernmost portion of the lowland wetlands and supports minimal riparian vegetation at the toe of slope. The small arroyo supports a denser and healthier riparian black willow and mulefat thicket along the northernmost boundary of the lowlands, which supports sensitive species such as the least bell's vireo. The arroyo may be impacted by abandonment and remediation activities, but is outside of the proposed development footprint.

The Middle Arroyo is located in the upper portion of the site, originating at the eastern property boundary where a concrete culvert discharges stormwater runoff and flows onto the site. Dominant native species include arroyo willow, black willow, and mulefat, as well as some non-natives. The water flows toward the lowland wetlands. The arroyo may be impacted by abandonment and remediation activities. A storm water dissipater is proposed to be constructed in combination with trails in the area of the middle arroyo. The dissipater would control flows from the proposed urban colony into the middle arroyo.

The Southern Arroyo (also called the Main or Large Arroyo), is a high-functioning drainage located near the southern portion of the project site, and includes one tributary swale. This arroyo is the least disturbed drainage on site. Dominant vegetation includes arroyo willow, black willow, mulefat, some non-natives. The Main Arroyo is largely avoided by the development proposal, except for the bridge that spans the arroyo on Bluff Road proposed to connect the South Family Village to the North Family Village. The bridge foundational supports would fill a portion of the arroyo and would result in bluff face and bluff edge impacts to the arroyo's canyon bluffs.

Drainage D is a riparian erosional feature covering about 0.45 acre. The feature is located near the southern boundary of the property in a north-south trending canyon that was created in connection with regional highway improvements during the 1960s. The feature originates approximately 1,000 feet from the property boundary at Pacific Coast Highway (PCH), extending toward PCH for approximately 700 feet. Approximately 200 linear feet of this feature contains riparian vegetation, consisting of arroyo willow and mulefat, however, much of this

feature also supports dense patches of non-natives. Drainage D is proposed to be filled and developed with an access road connecting the site to PCH, Bluff Road.

The “North-South Arroyo” on the mesa is depicted on the National Wetlands Inventory, although it is difficult to recognize on the site today due to heavy disturbances from oil operations. The Arroyo begins just south of the Vernal Pool watershed and runs south toward the Main Arroyo, serving as a tributary to the Main Arroyo. Mapping of the North-South Arroyo was not completed, nor was complete watershed mapping of the site. The head of the North South Arroyo is proposed to be graded and filled for development of Bluff Road, which would divide the arroyo from the Vernal Pool Complex. The grading footprint in this area would also impact pool E, immediately north of this arroyo.

Defining ESHA

ESHA, as defined in Section 30107.5 of the Coastal Act, is “...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.” Thus, Section 30107.5 sets up a two part test for determining what constitutes ESHA. The first part is determining whether an area includes plants, animals or their habitats that are either: (a) rare; or (b) especially valuable because of their special nature or role in an ecosystem. If so, then the second part asks whether such plants, animals, or habitats could be easily disturbed or degraded by human activities. If so, then the area where such plants, animals, or habitats are located is deemed ESHA by Section 30107.5.

Defining “rare”

There are several types of rarity, but each of them is fundamentally related to threats to the continued existence of species that naturally occur in larger or more widespread populations. Increasing numbers of species have become absolutely rare, having been reduced to a few hundreds or thousands of individuals. The prognosis for these species is very poor. Another common pattern is for species to be globally rare but locally abundant. Such species only occur at a few places either as a result of natural processes or human perturbations. The remaining populations of tidewater goby and coastal California gnatcatcher, for example, appear to be constrained in their natural distribution as a result of widespread loss of suitable habitat areas. Some species, such as the Pacific pocket mouse, are characterized as “narrow endemics” because they have evolved adaptations to a very limited range of environmental variables (e.g., soil type, temperature, humidity, availability of shelter and forage species etc.), which restrict their spatial distribution. Many other species, such as the least Bell’s vireo and San Diego fairy shrimp, have restricted distributions as a result of human activities, especially agricultural and urban development that results in habitat loss. Many natural endemics have also suffered such habitat loss – compounding the risk to them. All these species may be abundant in the few areas where they still occur. However, regardless of the cause of their restricted distribution, the survival of these species is at elevated risk because localized impacts may affect a large proportion of the population with devastating effects. At the other end of the spectrum of rarity are species such as steelhead that are geographically widespread, but are everywhere in low abundance. Some species naturally occur in this pattern and have life-history characteristics that enable them to persist. However, naturally abundant species that have been reduced to low density throughout their range are at heightened risk of extinction, although their wide distribution may increase their opportunities for survival.

Defining “especially valuable”

All native plants and animals and their habitats have significant intrinsic value. However, the “especially valuable” language in the Coastal Act definition of ESHA makes clear that the intent is to protect those species and habitats that are out of the ordinary and special, even though they may not necessarily be rare. As in all ESHA determinations, this requires a case-by-case analysis. Common examples of habitats that are especially valuable due to their role in the ecosystem are those that support rare, threatened, or endangered species, and those that provide important breeding, feeding, resting or migrating grounds for some stage in the life cycle of animal species and that are in short supply (e.g., California sage scrub provides forage and nesting habitat for the coastal California gnatcatcher and vernal pools and coastal lagoons and estuaries provide nursery habitat for steelhead and the tidewater goby). Habitats may also be especially valuable because of their special nature. Examples include those rare instances of communities that have remained relatively pristine, areas with an unusual mix of species, and areas with particularly high biological diversity (vernal pools for example).

Site Specific ESHA Analyses

The reason ESHA analyses are all site-specific is that there is no simple rule that is universally applicable. For example, a plot of a rare habitat type that is small, isolated, fragmented and highly degraded by human activities would generally not meet the definition of ESHA because such highly impacted environments are so altered that they no longer fit the definition of their historical habitat type. Larger, less isolated, more intact areas that are close to or contiguous with other large expanses of natural habitat are more likely to have a special nature or role in an ecosystem and hence meet the ESHA definition, but “large,” “isolated,” “intact,” and “close to” are all terms that are relative to the particular species or habitat under consideration. What is spatially large to a Pacific pocket mouse is small to a mountain lion or bald eagle. What is isolated for a dusky footed woodrat may not be for a coastal California gnatcatcher. Similarly, an area supporting one or a few individuals of a rare species might not meet the definition of ESHA because scattered individuals might be common and not significant to the species. However, this is relative to the actual distribution and abundance of the species in question. If a few individuals of a species previously thought to be extinct were found, the area would clearly meet the definition. Whereas, if the same number of individuals of a species with a population of 25,000 were found in an isolated, degraded location, the area would probably not meet the definition. A conclusion of whether an area meets the definition of ESHA is thus based on a site- and species-specific analysis that generally includes a consideration of community role, life-history, dispersal ability, distribution, abundance, population dynamics, and the nature of natural and human-induced impacts. The results of such analysis can be expected to vary for different species.

Case-by-case analysis of ESHA necessarily occurs at discrete moments in time. However, ecological systems and the environment are inherently dynamic. One might expect, therefore, that the rarity or sensitivity of species and their habitats will change over time. For example, as species or habitats become more or less abundant due to changing environmental conditions, they may become more or less vulnerable to extinction. In addition, our scientific knowledge and understanding of ecosystems, specific species, habitat characteristics and so forth is always growing. Large numbers of new species are discovered every year. The California Native Plant Society’s Inventory of Rare and Endangered Vascular Plants of California grew from approximately 1400 listings in 1974 to over 2100 listings in 2001. New legal requirements, such as the numerous environmental laws adopted in the 1970s, may be adopted that reflect changes

in our values concerning the current conditions of natural resources. Consequently, ESHA evaluations may change over time. Areas that were once not considered ESHA may become ESHA. It is also possible that rare species might become less so, and their habitats may no longer be considered ESHA. Because of this inherent dynamism, the Commission must evaluate resource conditions as they exist at the time of the review, based on the best scientific information available.

Federally Designated Critical Habitat as ESHA

The definition of environmentally sensitive area in Section 30107.5 of the Coastal Act shares a common focus with the Endangered Species Act definition of critical habitat for those species listed as threatened or endangered. Specifically, critical habitat for a threatened or endangered species is defined in section 3(5)(A) of the Endangered Species Act (ESA) as:

- i. the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and
- ii. specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Additionally, the term "endangered species" is defined in the ESA as "any species which is in danger of extinction throughout all or a significant portion of its range" and the term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

In other words, critical habitat includes those habitat areas in which species imminently or foreseeably at risk of becoming extinct are located that may require special protection and that are essential to the conservation of those species; or those areas not directly occupied by threatened or endangered species but that otherwise have been determined to be essential for the existence of those species.

This definition of critical habitat is similar to the Coastal Act definition of ESHA because endangered and threatened species can, by definition, also be expected to be rare. This common focus on rare species would ensure that those portions of critical habitat so designated due to the presence of a threatened or endangered species would also qualify as ESHA. Additionally, it is often true that those species listed, protected and designated with critical habitat under the Endangered Species Act are recognized as being under imminent threat of extinction due to human induced habitat loss or degradation, or, as stated in the Coastal Act definition of ESHA, "easily disturbed or degraded by human activities."

Although the Commission is not limited to designated critical habitats when defining ESHA, the Commission can rely on critical habitat designations as one of the components supporting an ESHA determination. As detailed below, the Commission finds that those areas within the coastal zone portion of the proposed project area that are currently or have previously been specifically designated as critical habitat by the U.S. Fish and Wildlife Service (FWS) due to the recognized and established presence of federally listed threatened or endangered species and/or the importance of these areas to the conservation of threatened or endangered species and that contain the Primary Constituent Elements of gnatcatcher habitat in the form of coastal sage scrub and associated non-sage scrub habitats contained within the areas designated as coastal

California gnatcatcher occupied areas by Drs. Dixon and Engel in their April 28, 2016 memorandum qualify as environmentally sensitive habitat areas, ESHAs. The primary constituent elements for coastal California gnatcatchers are coastal sage scrub habitats that provide space for individual and population growth, normal behavior, breeding, reproduction, nesting, dispersal and foraging; and (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. At Banning Ranch

ESHA Determination

Upon Commission direction at the hearing on this item in October 2015 (CDP 5-13-032), Commission staff biologists have more critically reviewed current site conditions, as well as additional ecological studies and corrections in mapping provided by the applicants, in making their current ESHA determination. While the ESHA determination has changed since October 2015 and some sensitive habitat areas have expanded while others contracted, the site still has been found to support a vast amount of rare and valuable habitat types that rise to the level of ESHA. The Memorandum by Dr. Jonna Engel dated 9/25/2015 continues to apply to the site for many habitat areas, except where the ESHA determination has been modified, as described in the Memorandum (ESHA Memo.) by Dr. John Dixon and Dr. Jonna Engel, included as [Exhibit 12b](#). The ESHA Memo. indicates that there continues to be a significant amount of ESHA on the NBR site, including vernal pools and San Diego Fairy Shrimp, coastal sage scrub communities and Gnatcatcher habitat, purple needle grass grasslands and foraging habitat, Burrowing Owl habitat, and wetlands (wetlands are described in Findings F. Marine Resources). The Commission concurs with the analysis and conclusions in the ESHA Memo. and hereby adopts it and incorporates its findings, analysis, and conclusions herein.

Vernal Pools and San Diego Fairy Shrimp

Wetlands that provide habitat to plants and wildlife only found in vernal pools are wetlands that may rise to the level of ESHA. There are 10 vernal pools on the NBR site. Vernal pools differ from most seasonal wetlands in that they have a characteristic suite of plant and animal species, an extremely impermeable soil layer, hydrology based only on rainfall, and generally small watersheds. While some wetlands on the NBR site may have been created by human activities, others may have been created naturally, but have been disturbed. The ESHA Memo. states: “there is no way after-the-fact to distinguish the one type of wetland from the other.” Either way, it is possible for wetlands with anthropogenic origins to provide ecological functions of vernal pools. The vernal pools on the site meet the definition of ESHA because they are rare, because *they are aggregated and form vernal pool complexes which play an especially valuable* ecosystem role, and because they are easily disturbed and degraded by human activities and development.

San Diego Fairy Shrimp is a federally endangered species only found in Vernal Pools in coastal Southern California. San Diego Fairy Shrimp (SDF shrimp) have been found in 8 pools on the NBR site (Vernal pools: 1, 2, 3, E, G, H, I, J). Vernal pools A and M do not contain SDF shrimp. There may be additional pools with SDF shrimp that previously had inconclusive results and may be subject to additional surveys. The HCCMP acknowledges the interconnection between the pools, noting that there is a potential for long-term dispersal of sensitive plants and animals between the vernal pools. Unfortunately, the entire watershed on the site has not been mapped. Particularly the complete vernal pool watershed has not been mapped. Because SDF shrimp are

extremely rare and must be protected under the federal Endangered Species Act, the vernal pools where they reside are determined to be ESHA.

Coastal Bluff Scrub and Maritime Succulent Scrub

Southern Coastal Bluff Scrub and Maritime Succulent Scrub are recognized as rare plant communities^[2]. Both plant communities persist on the NBR site, often found together, mainly along the coastal bluff faces and coastal and canyon bluff tops and they perform important functions by serving as habitat for special status species. These vegetation communities are easily disturbed. Therefore, both Coastal Bluff Scrub and Maritime Succulent Scrub meet the definition of ESHA pursuant to the Coastal Act. While both Coastal Bluff Scrub and Maritime Succulent Scrub (CBMSS) are in the family of Coastal Sage Scrub, they are different communities from each other, and different from the California Brittle Bush Scrub that described below.

California Brittle Bush Scrub and California Gnatcatcher Habitat

California Brittle Bush Scrub (CBBS) on the NBR site is a type of Coastal Sage Scrub (CSS) with a dominance of California Sunflower (*Encelia californica*), also referred to as Encelia Shrubland Alliance. The CBBS is the most common of the CSS communities on the NBR site. The CBBS association is rare in coastal California. This plant community on the NBR site is found to be ESHA because it is rare and because it provides an especially valuable ecosystem function for the federally threatened California Gnatcatcher. Both the CBBS and the Gnatcatcher are easily disturbed and degraded by human activities and both rise to the level of ESHA. Much of the Coastal Sage Scrub (CSS) on the property is still within the area designated as critical habitat for California Gnatcatchers (CAGN) and provides them with valuable foraging area and offers connectivity with the CSS vegetation on the adjacent property. Several biological surveys of the project area have documented CAGN nests and foraging and use areas. The CAGN, a federally listed species which must be protected under the Endangered Species Act, relies on the habitat provided by CBBS in the project site.

Purple Needle grass Grassland

Purple needle grass grasslands (PNGG) have become increasingly rare in California and the Department of Fish and Wildlife finds this vegetation community to be of high conservation value. On Banning Ranch, purple needle grass (*Nassella pulchra*) has occurred in patches of various sizes and with various coverage. Where it occurs with greater than ten percent relative vegetative cover, it is classified as purple needle grass grassland, a rare habitat type that meets the definition of ESHA in the Coastal Act.

In 2012 PNGG was present in many areas. Although small isolated patches of PNGG and patches that were surrounded by industrial development were not identified as ESHA by Drs. Dixon and Engel, they concluded that patches in larger clusters that aggregated to several acres were ESHA due to the rarity of such grassland communities and because PNGG is easily disturbed and degraded by human activities and development. Since 2012 there has been a severe and continuing drought that has resulted in a general reduction in the vegetative cover of purple needle grass due to a lack of growth, increased herbivory, and death of individual plants. Although there was a significant reduction in the extent of PNGG by 2015, this rare vegetation community was still widely present on the southern mesa. However, by March of 2016 only three areas had sufficient cover to be classified as PNGG. Purple needle grass is still present at

low cover and density in many of the areas where it was previously mapped as native grassland. Therefore, PNGG on the project site currently exists in two categories: ESHA purple needle grass grassland and Non-ESHA purple needle grass.

Riparian Habitat

The riparian habitat borders drainage areas and arroyos on the site and is found in areas of the lower mesa and in the arroyos on the upper mesa. Riparian habitat is greatly reduced in extent from its historical distribution in southern California. The riparian habitat on the site rises to the level of ESHA because it is a rare habitat type, it supports rare and endangered species such as the least Bell's vireo, and is easily disturbed and degraded by human activities and development.

Burrowing Owl

Western burrowing owls (*Athene cunicularia*) are a California Species of Special Concern that are rare in Orange County due to loss of suitable grasslands to development, especially near the coast. Western burrowing owls are often found in burrows created by ground squirrels, of which there are countless in the project location. Most Western burrowing owls nesting in California remain at their breeding grounds throughout the winter, sometimes staying in the same burrows and sometimes wandering within the region.^[3] Burrowing owls were thought to have been extirpated in all of Orange County (and most of coastal Southern California), except for a small breeding population in Seal Beach. Two large earthen berms on the project site provide habitat for the burrowing owls near vernal pools H, I, and J. The Commission finds this area to rise to the level of ESHA because the area supports wintering burrowing owls, a rare species, and because the area is easily disturbed and degraded by human activities and development.

The burrowing owl winter survey data for the two southern portions of the property (where the public park is proposed) 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.

Raptor Foraging Habitat

Both native and non-native grasslands provide important foraging opportunities for raptors present on the NBR site. Much of the Mesa of the site is composed of both native and non-native grasses, and while it is used for foraging, delineating a particular, contiguous use area is difficult. In past Commission actions, the Commission has determined that foraging habitat for raptors may not rise to the level of ESHA, but does require mitigation for impacts, consistent with California Department of Fish and Wildlife practices. The non-native grasslands of the NBR site do not rise to the level of ESHA, but do provide a valuable role in the ecosystem and warrant protection or mitigation.

Impacts of Residential and Commercial Development Plan

As proposed, approximately 15 acres of ESHA would be impacted due to the residential and commercial development plan ([Exhibit 13](#)).

Vernal Pools

VP1, VP2, VP3, G, H, I, J, and E are occupied by the federally listed SDF Shrimp. Vernal pools M and A are not occupied by fairy shrimp, but contain vernal pool plants. These features are proposed to be protected within the proposed "vernal pool complex." Vernal pools M and E will be avoided by the revised development plan, but both will be impacted by the clean-up activities. Vernal Pool E is will be immediately adjacent to Bluff Road in the proposed plan, without a sufficient buffer.

Purple Needle grass Grassland

Almost all of the PNGG on the site is within the footprint of the abandonment and remediation activities and development plan. The development plan would impact approximately 6.92 acres. A small patch of PNGG is proposed to be created to mitigate within the HCCMP for the loss of the grasslands within the development footprint. Non-ESHA PNGG and Raptor Foraging area would be permanently impacted by the development of the Bluff Road bridge over the main arroyo due to grading and construction of bridge supports. The staff recommendation alternative, as conditioned, would not support the development of Bluff Road and would not include these impacts.

Riparian

The Small Arroyo, the Middle Arroyo, and the North-South Arroyo contain ESHA riparian habitat that may be impacted by abandonment and remediation activities; however, within these locations, necessary riparian impacts would, only as conditioned, be restored in place. A 3 acre portion of the head of the North-South Arroyo would be graded and filled for the development of Bluff Road as a through road connecting the proposed South Village to the North Village. Additionally, the Bluff Road bridge spanning the Main Arroyo would have bridge supports that would impact the riparian habitat in the arroyo. Approximately 915 sq. ft. of riparian habitat would be permanently impacted by the development of the Bluff Road bridge over the main arroyo due to grading and construction of bridge supports.

CAGN areas and scrub communities

The California gnatcatcher (CAGN) specifically prefers to nest and feed in CSS on the mesa. CBBS and the other scrub communities, including southern coastal bluff scrub and maritime succulent scrub, which comprise gnatcatcher habitat, would be significantly impacted by the development plan, as proposed. Approximately 11,325 sq. ft. of CBBS and CAGN habitat area would be permanently impacted by the development of the Bluff Road bridge over the main arroyo due to grading and construction of bridge supports.

Another area of significant impact to CAGN habitat would occur with development on the mesa of the southwestern portion of the proposed North Village (near the current location of the debris piles). As proposed, the area within the applicant's single family residential footprint which cannot be found consistent with the Coastal Act due to impacts to gnatcatcher habitat includes approximately 30 single family residential lots out of 127 lots proposed within the North Village area. Reconfiguration and reduction of the North Village residential plan to take access off 17th Street through the Urban Colony and avoid impacts to ESHA and wetlands C and CC could be found consistent with the Coastal Act. The number of residential units could be recaptured in a multi-family residential development plan, which is a preferred design when compared to an all single-family residential development pattern when considering concentration of development goals and reducing vehicle miles travelled.

Within the northern portion of the Urban Colony, the applicant's proposed footprint would impact approximately 1.8 acres of designated CBBS and CAGN ESHA. An alternative residential development plan to reduce the footprint to avoid ESHA and reconfigure and recapture the proposed number of multi-family units taking access from 17th Street could be found consistent with the Coastal Act.

Burrowing Owl

The Burrowing Owl habitat on the NBR site is a total of 1.17 acres. The Burrowing Owl habitat may be impacted by clean-up activities and approximately 3,500 sq. ft. would be permanently impacted by the development of the Urban Colony, Bluff Road, and the proposed community garden. The development plan, as proposed, would not provide sufficient buffers to support Burrowing Owl habitat ESHA.

Mitigation Proposal

Most of the impacts to the site would be a result of the proposed clean-up and the mass grading to prepare the site for the housing development. The applicant proposes to offset most of these impacts, as opposed to restoring the resources in place, by creating habitat elsewhere, as a form of mitigation. The applicant's proposal 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 for the mitigation associated with the Newport Banning Ranch Project addresses on-site wetland/riparian establishment mitigation, restoration and enhancement, vernal pool establishment mitigation and enhancement, as well as upland scrub and grassland restoration, for impacts to jurisdictional waters, riparian habitat, vernal pool and seasonal features, and scrub and grassland habitat resulting from proposed oil field clean up and implementation of the development project. As described previously, under previous permits and past Commission actions regarding oil well abandonment and remediation, the Commission has required applicants to restore the habitat impacts in place. In this case, the applicant proposes not to restore, but to mitigate for these impacts in areas of the site that are not suitable for development and in the proposed open space areas.

The HCCMP has not been updated by the applicant since 2013 and is not based on the site constraints, including the ESHA and the wetlands present on the site as identified by the Commission. It has not been made consistent with the recent revised site plan (of April 2016) and the approved RAP or revised clean-up disturbance area estimate developed as a result of the field-verification process carried out in November of 2015 and March of 2016.

Generally the HCCMP proposes mitigation for impacts to wetlands and vernal pools and other ESHA that the Commission finds are avoidable. The plan proposes to mitigate for the destruction of vernal pools by establishing new vernal pool habitat within the vernal pool complex on the mesa that would be surrounded by newly created purple needle grass.

While the HCCMP does detail the impacts to the CAGN territories containing scrub, it does not detail the impacts that would be caused to rare scrub communities on the site, such as coastal bluff scrub, maritime succulent scrub, and California brittle bush scrub. These communities are rare and sensitive and afforded protection under the Coastal Act regardless of whether or not they support listed bird species. See the ESHA Memo ([Exhibit 12b](#)) for more information. The plan, as proposed, includes inadequate mitigation for impacts to both purple needle grass and CAGN habitat and no mitigation for the proposed loss of sensitive scrub communities.

The HCCMP includes a Third Party Mitigation 30-acre "mitigation bank" in the lowlands of the site. The applicant has confirmed in writing that a mitigation bank is no longer proposed.

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. Sections of the Coastal Act that protect ESHA and Wetlands enumerate specific, limited uses (only resource dependent uses) that are allow to cause impacts to these resources, and that may, as a result of the allowed impact, require restoration in place and mitigation for those impacts. While the applicant has proposed mitigation for the impacts of the proposed project, the approved impacts still need to be for an allowable use.. The proposal for clean-up work in ESHA may be found to be an allowable use, and consistent with the resource protection policies of the Coastal Act, for the reasons stated below, provided there is subsequent in-place restoration, so that the impacts are only temporary. On the other hand, the proposed large-scale development plan would result in permanent impacts ESHA for a purpose that is not allowable, and it would do so despite the fact that it could be redesigned to avoid all of that ESHA and still provide substantial development. That portion of the proposal is therefore not consistent with the resource protection policies of the Coastal Act.

Potential Impacts from Development Adjacent to ESHA

Coastal Act Section 30240 requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade ESHA, and shall be compatible with the continuance of ESHA. The proposed project would reduce the ability of the ESHA onsite and in surrounding areas to serve as habitat, through both direct and indirect, as well as temporary and long-term, impacts, as described above.

The project would result in a significant change in the type of use and the level of human activity on the site, which would cause significant impacts to ESHA. Activities on the site that result in additional noise or disturbance impacts would negatively impact the sensitive avian species, habitat areas, the water quality of the wetlands, and the presence of rare native vegetation.

Buffers

To ensure compliance with Section 30240 of the Coastal Act, development (aside from resource dependent uses) must be located outside of all environmentally sensitive habitat areas and must not cause significant disruption of the habitat values within those areas. Further, development adjacent to an ESHA must be sited to prevent impacts to the ESHA that would significantly degrade those areas, in part through the provision of a setback or buffer between the ESHA and the development.

A buffer, in the context of the Coastal Commission, is a barrier, “safe zone”, or bordering strip of natural habitat or land between ESHA and development or human disturbance. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. Buffers may also provide ecological functions essential for species in the ESHA. The required width for buffers varies depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to the particular kind of disturbance.

Buffers are important for preserving the integrity and natural function of individual species and habitats. The purpose of a buffer is to create a zone where there will be little or no human

activity; to “cushion” species and habitats from disturbance and allow native species to go about their “business as usual.” A buffer area is not itself a part of the ESHA or wetland, but a “buffer” or “screen” that protects the habitat area from adverse environmental impacts caused by nearby development and the activities that come with it. Buffer areas are essential open space between development and ESHA. The existence of open space ensures that development will not significantly degrade ESHA. Habitat buffers provide many functions including keeping human disturbances such as noise, artificial lighting and domestic animals at a distance; reducing the hazards of herbicides, pesticides and other pollutants; and preventing or reducing shading and the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development.

The ESHA on the site should be free from non-resource-dependent development and assigned buffers to adequately protect the identified resource. The Commission staff ecologist recommend buffers for all Sensitive Vegetation (all CSS communities, Riparian, and PNGG) to be a minimum of 50 feet, except for roads that incorporate special features to provide additional physical buffering, in limited circumstances, as addressed more specially below.

Recommended buffers for Vernal pools, Wetlands, and CAGN habitat are a minimum of 100 feet, except for roads that incorporate special features to provide additional physical buffering, in limited circumstances, as addressed below.

The recommended buffer for Burrowing Owl habitat is 164 feet or 50 meters. As stated in the ESHA Memo by Dr. Engle dated 9/25/2015:

In order to avoid disturbance to burrowing owls, the California Burrowing Owl Consortium and the California Department of Fish and Wildlife recommend 50-m buffers during the non-breeding season. Given that the existing use at Banning Ranch is by wintering and migrant birds, I recommend that a 50-m (164-ft) buffer be established around the defined burrowing owl habitat, which is in accord with previous Commission action.

The applicant proposes to perform a significant amount of development within ESHA that is not resource dependent. Furthermore, the proposed development in areas outside of ESHA does not provide any buffers for the sensitive resources in adjacent ESHA areas. The current proposal for the development is inconsistent with Coastal Act Section 30240, which requires development adjacent to ESHA to be consistent with the continuance of the habitat areas. A minimum of 50 foot buffers around the designated ESHA on the site is required, depending on habitat type. All ESHA buffers should be planted and maintained with native vegetation consistent with and appropriate for the habitat type it surrounds and the buffer should be of sufficient size to avoid degradation of the resource it is designed to protect. The Commission has typically required buffers to be planted in appropriate native vegetation and protected in perpetuity to prevent future development from impacting the ability of the buffer to protect adjacent ESHA. Such impacts would be inconsistent with Coastal Act Section 30240 regarding protection of environmentally sensitive habitat areas.

In some instances, reduced buffers may be acceptable to accommodate access to potential development areas and still allow adequate protection of the resource. There are some locations on the subject site where the potential buffer is currently a road or disturbed area and development of such areas can include other measures to buffer the impact and allow a reduced buffer. One is at the entrance to the site off of PCH, where a reduced buffer for CAGN habitat

(50 feet instead of 100 feet) is allowed, provided mitigation measures such as continuous sound walls, dense vegetation, and grade separations sufficient to prevent impacts that would significantly degrade the ESHA are incorporated into the design of the entire portion of road that is within the 100-foot setback.

The second point is northwest of Wetland W, where a road could be constructed to connect the proposed Resort Colony area to the proposed park near 15th street. In this location a reduced buffer around PNGG (25 feet instead of 50) and a reduced buffer around CAGN habitat (75 feet instead of 100) could be allowed provided mitigation measures such as continuous sound walls, dense vegetation, and grade separations sufficient to prevent impacts that would significantly degrade the ESHA are incorporated into the design of the entire portion of road that is within those setbacks.

Around wetland C and CC there is a “pinch-point” immediately northwest of pool CC that is currently a dirt road and would require a buffer adjustment to allow a road to access the 2.9 ac. of potential development area within North Village, as described more specifically in the findings below addressing Wetlands and Marine Quality.

All roads within the development, including roads within habitat buffers, are conditioned to be no more than 50 feet wide, one lane of traffic in each direction, with on-street parking lanes on each side of the street. Bikelanes and sidewalks can only be constructed in areas where there is sufficient space in the identified “potential development areas.” Areas of reduced buffers are likely not wide enough to accommodate on-street bike lanes and parallel sidewalks. In these cases trails can be designed to serve as alternatives to sidewalks and bike lanes where none can be provided.

Lastly, trails (both multi-use trails and pedestrian trails) can be located within buffer areas and can be located adjacent to areas of ESHA with conditions to limit the width and total disturbance during construction of the trails. Trails shall serve as options for circulation throughout and around the site to reduce vehicle miles traveled. A trail network is proposed within the lowlands, with connections to the mesa, and across the arroyos. Multi-use trails can also serve as secondary access points for Fire and other Emergency services to access residential and commercial development areas.

Conformity of Proposed Residential and Commercial Development with the Coastal Act’s ESHA Policy

Although much of the applicant’s proposed development would be within the developable areas shown on the constraints map, much of it would also extend beyond those limits into the buffer areas for various sensitive resources, and even have direct impacts on the sensitive resources themselves. Under the proposal, approximately 90 acres of the site would be developed with roadways, housing, retail/commercial space, and resort development, and oil operation areas. The proposal includes direct impacts to 15 acres of ESHA and Wetlands, and additional impacts to buffers. The proposed Urban Colony would permanently impact 1.8 acres of ESHA, the North Village would impact 7.5 acres of ESHA and Wetlands, and the Southern Colony, including the park and resort colony, would impact 5.5 acres of ESHA and Wetlands (See [Exhibits 13 and 24](#)).

Residential and commercial development is not a use dependent upon these resources, and the development would completely eliminate the resources in the location where the development would be located. Thus, such development is inconsistent with section 30240, and the project is being conditioned to limit the scope of this development to the developable areas.

In a natural environment there are often wildlife and habitat corridors. For example, in the region of coastal Orange County, the Santa Ana River and surrounding open spaces provide a wildlife corridor for wildlife, specifically birds, to reach the Pacific Ocean from Inland areas. On the NBR site, there are wildlife corridors that connect the open spaces in the form of the arroyos and vernal pool watersheds, as well as lowlands. Section 30240 states that development in areas adjacent to environmentally sensitive habitat areas (ESHA) shall be sited and designed to prevent impacts that would significantly degrade those areas, and shall be compatible with the continuance of those habitats. There is significant ESHA on the NBR site such that any development would be located within close proximity to some habitat areas, and therefore is required to be sited and designed to prevent impacts to, and be compatible with the continuance of those habitats. In this case, that would include development that preserves the site's natural connectivity.

Occupants of the proposed residential communities are likely to have domestic animals such as dogs and cats. Domestic pets can enter sensitive habitat areas and disturb wildlife, compete with wildlife for resources, or hunt wildlife. In order to prevent these disturbances, the project has been conditioned to include perimeter fencing, walls, and gates along the open spaces areas to deter domestic pets from entering conservation, open space areas. In order to prevent fragmentation, these boundaries must be designed in order to allow for the movement of wildlife, including coyotes.

Part of the North Family Village near 16th street would occupy space between the North-South Arroyo and the Main Arroyo. The residential community on the east of the arroyo would contain 69 moderate density units on 5.5 acres and would connect to 16th street. A portion of this area is underlain by a fault-zone which requires a 60 foot setback for habitable structures. The remainder of this area overlooks the North-South Arroyo. Within this area of the North Family Village the applicant has proposed to construct 69 units of moderate to high-density housing, a community garden within the Burrowing Owl habitat, and Bluff Road within the fault-zone setback which would fill a portion of the North-South Arroyo; Bluff Road would fill a portion of the Main Arroyo and would directly impact the burrowing owl habitat and would separate the North-South Arroyo from the Vernal Pool Complex, as well as impact several areas of sensitive habitat, all of which would significantly degrade the connectivity of the site and would not be compatible with the continuance of habitat areas. The proposed plan would not be consistent with Section 30240.

In order to preserve site connectivity and prevent impacts to ESHA and Wetlands, [Special Condition 4](#) requires revised plans that eliminate the proposed segments of Bluff Road located outside of the "potential developable areas," including the segment running from the proposed South Colony, across the Main Arroyo to the North Village and Urban Colony. The project, as conditioned, does not allow residential and commercial development and associated infrastructure to occur within areas of ESHA and wetlands and buffers, so the proposed access to this area of the North Family Village, Bluff Road, cannot be constructed. Therefore, the only

access to this site that can be constructed without impacting ESHA and Wetlands would be from the adjacent 16th street.

Because of the significant constraints in this area (at the 5.9 acre “potential development area” along the property border [Exhibit 22](#)), including the fault-zone, limited ingress and egress points, burrowing owl habitat and the adjacent arroyo, the project has been conditioned to limit the development in this area to low-intensity uses only. Examples of low-intensity development that would be appropriate for this area include a passive park, a community garden (re-located outside of the habitat and buffer), nature center, environmental educational center, or similar use.

The elimination of proposed 69 unit North Family Village housing and Bluff Road as a through connection in this area on the mesa situated between the Main Arroyo and the North-South Arroyo and adjacent to the vernal pool complex is critical for the site’s overall habitat connectivity. The development of a low-intensity use in this area situated in-between the Main Arroyo and the North-South Arroyo, and adjacent to the vernal pool complex, would be critical for the site’s overall habitat connectivity.

Further, Section 30250 requires that new residential and commercial development be located within or next to areas of existing developed areas and where it will not have significant adverse effects, individually and cumulatively, upon coastal resources. The proposed Bluff Road developed through the site would impact habitat areas of federally threatened species, would impact areas of ESHA, and would have significant adverse effects. Bluff road as proposed would divide the North-South arroyo from the vernal pool complex and would divide the watershed. The development plan would have impacts on habitat connectivity and would locate high intensity development adjacent to habitat areas, and cumulatively would lead to fragmentation of the wildlife corridors.

Additional impacts from the loss of habitat linkages due to the current proposal’s physical impediments from houses, fences, roads, and disturbances from noise, light, domestic animals, and other human activity would all intensify at the site and would be detrimental to the existing habitat and wildlife. Measures to ensure that the development does not have a significant individual or cumulative adverse impact on coastal resources would include maximizing the amount of open space and providing wildlife overpasses or underpasses for free movement across the site as required in the Final Habitat Management Plan by [Special Condition 16](#), minimizing the amount of site division due to development and reducing the density and intensity of development areas immediately adjacent to natural corridors as required by [Special Condition 1](#). The proposed project does not provide for these measures. In order to prevent the introduction of non-native plants to the habitat areas of the site, [Special Condition 5](#) requires a revised landscaping plan and [Special Condition 6](#) requires submittal of a revised lighting plan that utilize “dark sky” technology and lighting directed away from areas of ESHA and wetlands. Within the residential and commercial developments all structures are required to have bird-safe glass and all open space and conservation areas shall have perimeter fences and barrier that are safe for wildlife movement but prevent domestic animals from entering conservation areas per [Special Condition 2](#). Only as conditioned can the project be found consistent with Section 30250 to ensure that new residential and commercial development on the site will not have cumulative significant adverse effects on the site’s connectivity. During grading, site

preparation, and the construction of the residential and commercial developments, [Special Condition 15](#) requires barriers around sensitive habitat areas. [Special Condition 16](#) requires a Final Habitat Management Plan for construction phase rare plant protection measures are included, dust control plans, and biological monitoring of avian species.

As described above, there are aspects of the proposed plan involving residential and commercial development which are inconsistent with the resource protection policies of the Coastal Act in various ways. In accordance with Section 30240(a) of the Coastal Act, ESHA shall be protected against any significant disruption of habitat values and only resource dependent uses are permitted within ESHA. Resource dependent uses are limited to trails, public accessways, low impact camp grounds, interpretive signage, and habitat restoration. The proposed residential and commercial developments can be located outside of ESHA. [Special condition 1](#) requires revised plans for the entire residential and commercial development of the site and requires development be designed and sited outside of ESHA and wetlands and the necessary buffers. The condition precludes development within the protected resources, requires habitat buffers, sets limits on the intensity of development between the North-South Arroyo and the Main Arroyo, and details the areas of reduced buffers for the construction of roads only. [Special Condition 11](#) also requires dedication of the Open Space Conservation areas to restrict use and create public lands, along with [Special Condition 31](#) for a deed restriction, and [Special Condition 12](#) restricts the use of the trails within the Open Space Conservation areas while [Special Condition 13](#) ensures public access and recreational use of the Open Space areas. [Special Condition 14](#) which requires a Maintenance and Management plan for the open space.

[Special Condition 16](#) requires is a Final Habitat Management Plan which will detail the restoration, mitigation, and enhancement proposed and required for the impacts to the sensitive habitat areas and wetlands and details monitoring of the habitat both during construction and after restoration. The condition requires a plan to enhance the buffers of Wetlands C and CC and the vernal pool complex. Prior to the clean-up activities and soil disturbance, the top 6 inches of wetlands would need to be preserved and stockpiled for later use, according to the plan. A qualified biologist is required to monitor the implementation of the HMP and a long-term monitoring plan is required for a minimum of 5 years after restoration. Only as conditioned to confine residential and commercial development to areas outside of ESHA, buffers, and wetlands can the project be found consistent with section 30240.

Oilfield Abandonment and Remediation Activities

While there are a variety of regulations^[4] mandating that proper oilfield abandonment and infrastructure removal activities be conducted and completed as part of both individual well shutdowns and full oilfield closures, compliance with these requirements is typically the obligation of the oilfield operators on the site. However, in this case, NBR has entered into an agreement with the operator of the Banning Oilfield and assumed responsibility for carrying out the abandonment process in exchange for the operator's cooperation in relocating its operations into the 15 acre area of the site that is proposed to remain in use for oil and gas production. Without NBR's current proposal to carry out commercial and residential development on the site, the oilfield operator would be required to carry out oilfield shut-down, infrastructure removal, and clean-up activities at a future date when it discontinues oil production. This latter approach is the more typical and standard process for oilfield abandonment.

Clean-up of Oilfield Impact Sites

As shown by the total estimated historic oilfield footprint in [Exhibit 21](#) (areas NBR has shown through historic aerial photographs and/or field surveying to have evidence of direct or indirect use for oil production), much of the Banning Ranch Oilfield has been used at some point over the past several decades for oil and gas production or support activities. Within this total historic use footprint is a smaller footprint of areas that have been shown in NBR's analysis - which included field survey work and photo-documentation provided to Commission staff - to contain materials left over from this historic use that would be required to be cleaned-up and removed once oilfield operations cease and the oilfield is properly abandoned. This smaller footprint – the estimated clean-up areas – is shown in [Exhibit 23](#). Compared to the map that was provided as an exhibit to the staff report for the October 2015 hearing, this current map shows an overall reduction in estimated clean-up disturbance area of more than 25 acres. This reduction is a result of the field survey work carried out by NBR consultants in November of 2015 and March of 2016. It is important to note that not all of the areas highlighted in this map would be excavated and/or graded as part of clean-up, and even though it integrates the results of field survey work, the footprint it shows is still intended to depict a “worst case” disturbance area¹. The specific activities that would occur within this area would vary from more intensive clean-up approaches such as grading, excavation, and demolition of structures to less intensive approaches, such as using cranes from existing roads to pick up and remove equipment, surface pipelines, and power poles from within habitat areas. Which clean-up techniques would be used would be based on the clean-up target, the sensitivity of the surrounding habitat, and the applicable clean-up requirements.

These clean-up requirements are the same as those that would be triggered by the closure and abandonment of any oilfield area and are intended to ensure that infrastructure, equipment, wastes, and contaminants resulting from oil and gas production activities are not left behind where they can pose a risk to the environment or public health and safety. Funding for such closure and clean-up activities is a necessary and assumed business cost for oil and gas operations, but as an additional assurance that funding is available, current regulations for oil and gas wells and production facilities allow for surety bonds to be established that are intended to cover the costs of well abandonment and facility clean-up. On the Banning Ranch Oilfield site, 94 wells are covered by such bonds. In coastal Orange County, requirements for an oil operator to engage in the proper and complete end-of-life clean-up of its facility are typically imposed by state and local agencies such as the Santa Ana Regional Water Quality Control Board, California Department of Conservation, the Orange County Health Care Agency, and the Orange County Fire Authority.

At the Banning Ranch Oilfield site, the proposed clean-up of known and suspected areas with infrastructure, equipment, wastes, and oil contamination needing to be removed as part of oilfield closure would include the removal of surface and buried oilfield infrastructure (such as pipelines, wells and utility poles) and the excavation of oil contaminated soils and historic roads that contain dispersed gravels and asphalt-like materials. In some locations, NBR's proposed oilfield clean-up activities would occur in ESHA and result in unavoidable impacts to ESHA. The

¹ This “worst case” representation is intentional and typical of this type of mapping and analysis as it prevents complications that may arise from decisions based on an under-representation of factors such as material volumes, impact levels, and the timing and duration of work.

approximate location and extent of the proposed activities in ESHA are shown graphically in [Exhibit 3](#), and include clean-up of areas within and adjacent to areas historically used for oilfield activities. Although Commission staff has worked closely with NBR to accurately depict on [Exhibit 3](#) the anticipated disturbance footprint of clean-up activities on sensitive habitats, the actual disturbance area is likely to be somewhat different as new targets are discovered during the course of clean-up, or other targets are removed with less than expected disturbance. For this reason, [Exhibit 3](#) is purely an estimate, and the disturbance area calculations it includes are also estimates and subject to revision based on the results of ongoing clean-up activities. The process of revising these estimates to determine the actual impact area is discussed further towards the conclusion of this section.

Historic Oilfield Use Areas and ESHA

As indicated in [Exhibit 3](#) and by comparing [Exhibit 23](#) and [Exhibit 20](#), the Commission finds that some of the proposed clean-up areas currently support ESHA despite their historic use for oil operations. This situation may have arisen because of the biological traits of these areas prior to their oilfield use (for example, surface pipelines may have been placed within sensitive habitats), and/or because the long history and fluctuating use patterns and intensities of operations on the Banning Ranch Oilfield allowed sensitive vegetation communities and habitats to return, recover, or establish in areas of historic oilfield use (such as surrounding oilfield features that have been rarely accessed since initial installation or long ago abandoned). For example, over 400 of the oil wells on the site have been abandoned and are no longer in use, often meaning that the access roads, utilities, and pipelines serving these wells have also not been used or maintained for an extended time period, which has allowed vegetation and wildlife to re-establish.

Additionally, sensitive habitat has also developed around and within areas historically used as roads in which gravel or asphalt-like-material (often “tank bottoms” or other oil production wastes) was long ago dispersed as a roadbed or dust control measure, but which since has become fragmented, buried, and interspersed with intact plant communities. In some locations on the site, sensitive habitat has also developed over the top of areas in which oil contaminated soil is present or oil contaminants have spread belowground into sensitive habitat areas. As native vegetation has recolonized, recovered, or established in areas of historic oilfield operations, associated wildlife activities such as foraging, breeding, and nesting have also returned to those areas. As indicated in [Exhibit 3](#) some of the vegetation communities and habitat uses that have developed in these areas that contain oilfield wastes now support their designation as ESHA.

Further, while in some cases the discrete area supporting particular clean-up targets may not be sensitive habitat, ESHA is present in areas surrounding the proposed clean-up targets such that in order to effectively remove the target, it may be necessary to clear some habitat to facilitate access and excavation of the proposed target or in order to confirm that complete removal of the clean-up target has been achieved. This is reflected in the disturbance footprint of clean-up activities shown in [Exhibit 23](#), most clearly around features such as power poles, abandoned well sites, and surface pipelines that are depicted with buffers of five to twenty-five feet around them, in order to show areas that may be cleared for use as vehicle or pedestrian access.

Oilfield Closure and Clean-up Regulations

Several state and local agencies have regulations that apply to the cessation and closure of oilfield operations and clean-up of wastes and oil contamination within oilfields, and NBR has developed and submitted (or plans to submit) plans to these agencies that detail their proposed activities.

To meet the requirements of the Santa Ana Regional Water Quality Control Board (RWQCB) and the Orange County Health Care Agency (OC Health), NBR developed a Remedial Action Plan (RAP). This plan included proposed clean-up targets, clean-up methods, and clean-up levels. During its consideration of the RAP, OC Health determined that it had insufficient staff resources to complete its review and elected to defer to the RWQCB for approving the proposal. This RAP was revised by NBR on September 16, 2015, and amended on November 5, 2015 with a variety of changes related to clean-up levels and soil sampling and testing. On December 15, 2015, the RWQCB issued a letter to NBR that concurred with the amended revised RAP and imposed eight conditions. This letter is provided in [Exhibit 17](#).

The RAP essentially establishes a roadmap for how the required oilfield closure and clean-up will be achieved. It describes the various clean-up targets (infrastructure and pollutants) and establishes the threshold levels for various types of contaminants. These thresholds are based on the type of contaminant (level of toxicity, potential impact on the environment and public health), as well as the depth and location of the contaminant and the potential future use of the area in which it is located. For example, the most stringent clean-up levels are applied to the top 15 feet of soil within areas of proposed future residential use and the least stringent are applied to soil deeper than 15 feet below the surface in areas of proposed future open space.

Implementation of the RWQCB approved RAP would include extensive activities throughout the Banning Ranch Oilfield site, including areas either within or adjacent to designated ESHA. Such activities would include the excavation of oil contaminated soils, abandonment or re-abandonment of wells, excavation of roadbed materials, and removal of pipelines, power poles, metal tanks, vessels, structures, pumps, and equipment. In addition, NBR would also excavate and remove soil from all areas known or anticipated to contain contaminated materials. These areas are referred to as areas with Recognized Environmental Concerns or Potential Environmental Concerns (RECs/PECs). As discussed below, some of these activities would occur within and result in adverse impacts to ESHA.

Oil-treated Roads

NBR's Abandonment Plan includes the removal of all existing and historic access roads on the site that have been verified during ground-truthing efforts to contain asphalt-like materials, gravels, or concrete road bed materials. Road areas identified for clean-up include several historic road alignments that now support sensitive vegetation and habitats designated as ESHA, either within the historic alignment or adjacent to it. An example of this type of area is provided in [Exhibit 4](#). NBR proposes to grade to a depth of approximately 12- to 18-inches all of these road alignments in order to collect and extract roadbed materials. In total, NBR's initial estimates were that up to 108,000 cubic yards of roadbed material would be collected during this effort (however, this is expected to be an over-estimate since it pre-dates the reduced clean-up area that was developed through the field survey process). Once collected, this material would be taken to the proposed onsite concrete crushing/processing area, broken down and buried within the proposed onsite disposal pits. Consistent with the RWQCB-approved RAP, all

asphalt-like-material in these pits would be placed no shallower than 15 to 20 feet below final grade elevations.

Areas of Recognized or Potential Environmental Concerns

Based on the historical investigations and soil testing it carried out, NBR initially estimated that 27 areas on the site had recognized or potential environmental concerns (RECs/PECs). Additional investigations indicated that contaminated material was indeed present at 11 of these 27 sites. Seven of these areas showed crude oil contamination at the surface or in shallow soils and one area includes all sites of potential historic oil containment sumps. The other areas were identified because historic activities that occurred may have resulted in the release of oil or other contaminants into the soil. Such activities include the current or historic presence of steam or air injection facilities, stockpile areas, sumps, workshops, storage sheds, electrical transformers, fueling areas, and field offices. An example of this type of area is provided in [Exhibit 4](#). As part of its Abandonment Plan, NBR proposes to carry out additional testing and investigation of these areas and to excavate and remove any contaminated soils found. Based on the level and type of contamination, this removed soil would be taken to the onsite bioremediation areas for treatment and onsite disposal or transported offsite for disposal at a certified receiving facility. NBR's initial estimate is that up to 163,000 cubic yards of contaminated material would be excavated from these sites and other select areas around historic oil sumps and wells (however, as noted above, actual volumes may be lower).

Wells and Infrastructure

In addition to the removal of road bed materials and contaminated soils, NBR also proposes to work with DOGGR to authorize the abandonment of 66 active or idle production or injection wells. These wells include 42 within the mesa portion of the site and 24 within the lowland area. Abandonment and removal of these wells under DOGGR regulations requires that "any auxiliary holes, such as rat holes, shall be filled with earth and compacted properly; all construction materials, cellars, production pads, and piers shall be removed and the resulting excavations filled with earth and compacted properly to prevent settling; well locations shall be graded and cleared of equipment, trash, or other waste materials, and returned to as near a natural state as practicable." In addition, DOGGR also typically requires the removal of all utility poles, transformers, pumps, and pipelines serving the abandoned well. In some locations, the proposed removal of this infrastructure or contaminated soil around the well site would result in the loss of ESHA. In addition, because oilfield operations on the project site would only remain within the approximately 17 acre area in the lowland portion of the site, all pipelines, utility poles, pumping units, storage equipment, supports, and pads throughout the rest of the site would be collected and removed. Because much of this infrastructure was installed many years ago or has been essentially abandoned in place, in many locations it is surrounded by areas of intact habitat areas that have been identified as ESHA. Removal of infrastructure and equipment from such areas would result in adverse impacts to ESHA associated both with direct extraction activities (excavation and disassembly) and activities associated with removal such as the creation and use of access routes and staging areas.

Total Impacts

The Commission's best estimate at this time is that in total, approximately 35 acres of ESHA across the site would be disturbed or removed during the implementation of NBR's proposed oilfield clean-up operations and excavation and removal of the targets described above. This area estimate was developed through a comparison of two maps:

1. [Exhibit 23](#) - The estimated disturbance footprint of clean-up operations developed by NBR partner Aera Energy and its consultants through analysis of historic oilfield use areas and verified through site-wide field surveys carried out in November of 2015 and March of 2016.
2. [Exhibit 20](#) - Vegetation mapping of the site carried out by NBR biological consultants and reviewed and described by Commission staff ecologists in the memorandum provided in [Exhibit 12b](#). As detailed in that memorandum, areas were included on this map as ESHA that support rare and easily disturbed plant communities, wildlife species, and habitat areas.

While this estimate of 35 acres of potential ESHA impacts is based on the most accurate information available on both the type and location of clean-up targets and ESHA, the nature of the clean-up work being proposed and its targets – some of which have little or no surface expression - means that the actual impacts of the clean-up work on ESHA may be less than or greater than 35 acres. The actual affected area would increase if additional clean-up targets, such as oil contaminated soils that extend further than estimated, are discovered once clean-up and excavation work begins and the actual affected area would decrease if some clean-up targets, such as areas of dispersed gravel, are abandoned in place or removed in a way that results in a disturbance footprint that is less than estimated.

During its review of NBR's proposed project, Commission staff worked closely and collaboratively with NBR and the staff of the Santa Ana Regional Water Quality Control Board (RWQCB), as well as the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR), to ensure that the proposed clean-up activities address each agency's regulatory requirements and guidelines while also avoiding if possible, and at least minimizing adverse impacts to any wetlands and environmentally sensitive habitat areas that may be present in or adjacent to potential work areas.

In approving NBR's Remedial Action Plan (RAP), the RWQCB is requiring several conditions that:

- Prohibit implementation of the RAP until RWQCB staff issues a Section 401 Water Quality Standards Certification, the U.S. Army Corps of Engineers issues a Permit under Section 404 of the Clean Water Act, and the Commission issues a CDP for the proposed project;
- Require that NBR consult with RWQCB staff regarding any proposed modifications to the scope and location of activities included in the RAP;
- Confirm that the RAP may be further revised during the Commission's review process - particularly by locating contaminated soil treatment, clean soil excavation, and material and equipment stockpiling activities within the Commission approved development footprint and away from sensitive resource areas;
- Authorize NBR to use clean treated soil as backfill for excavated contaminated soil in the lowland portion of the site;
- Authorize NBR to minimize soil disturbance in areas in which soil testing indicates an absence of contaminated materials; and

- Require that mitigation measures included in a CDP be carried out to address impacts to sensitive resources or wetlands that occur during implementation of the RAP.

Division of Oil, Gas, and Geothermal Resources

The Department of Conservation Division of Oil, Gas, and Geothermal Resources (DOGGR) also has authority to direct the design, scope, and implementation of oilfield clean-up and abandonment activities.

Regardless of the outcome of this coastal development permit application, the existing oilfield operator, Horizontal Drilling LLC, is pursuing a coastal development permit that would allow it to condense the operations that currently occur throughout the site into the 17 acre “Oil Remainder Areas” identified in [Exhibit 20](#). Nevertheless, NBR could still apply to the Commission to continue use of 24 existing wells within the larger site² or apply for permits for an expanded operation. Therefore, NBR has not yet formally initiated the process of seeking permits from DOGGR for abandonment activities. However, NBR has engaged in preliminary discussions with DOGGR regarding review timing and permitting needs. Commission staff have also been in close coordination and consultation with DOGGR staff on the scope and focus of its potential future review. The following provides a description of the three primary elements of that review.

When oilfield operations cease, DOGGR requires that wells be properly abandoned and equipment and materials be removed that pose a potential threat to human health and safety or environmental resources. The primary focus of DOGGR’s review is to ensure that oil and gas production wells are closed and capped in such a way as to minimize the potential for future leaks. The primary way this is achieved is through its well abandonment permit process. Prior to closing and capping the 66 active or idle wells NBR has proposed to abandon, NBR would be required to obtain from DOGGR a well abandonment permit for each well. Through these permits, DOGGR would ensure that NBR complies with a standardized closure, capping, testing, and oversight process established under its regulations. Because well abandonment permits are only valid for a limited period of time, NBR has not yet initiated the process of applying for or obtaining these permits.

In addition to well abandonment, DOGGR also has a role in reviewing and regulating the closure and abandonment of oilfield operations through its requirements on lease restoration. These requirements are triggered by the plugging and abandonment of the last wells on an oil or gas lease and call for submittal of a plan for the removal of aboveground equipment, infrastructure, and hazardous materials from within the lease area within one year of the plugging and abandonment of the last well on a lease. If the 66 wells proposed to be abandoned as part of the project include the last well or group of wells on an oil or gas lease, NBR would be required to submit a lease abandonment plan to DOGGR for review.

Finally, DOGGR staff would also review and provide input on the proposed project through its construction review process. This is a process designed as a way for DOGGR technical staff to provide input and suggestions on the design and configuration of construction activities within close proximity to abandoned oil and gas production wells, with the goal of retaining access to the well heads without the need to remove development. Once NBR has a more refined

² As established in Settlement Order

development configuration that includes details on the specific location of roads and structures, DOGGR staff would be available to assist with construction review.

Conformity of Proposed Oilfield Clean-up Activities with the Coastal Act's ESHA Policy

As described above, the Commission has determined that NBR's oilfield clean-up operations will result in unavoidable ESHA impacts, cumulatively affecting an estimated 35 acres of ESHA, as shown in [Exhibit 3](#). In order for such impacts to be found consistent with the Coastal Act's ESHA protection policy, Section 30240(a), these clean-up operations must be "uses dependent on those [ESHA] resources" and cannot result in "any significant disruption of habitat values."

Resource-Dependent Use

Clean up activities, per se, are clearly not a use that is dependent upon the ESHA resource. Such activities are focused on the removal of contamination in response to pollution that is related to historic oil field operations that only incidentally were located in sensitive habitat. However, habitat restoration is obviously dependent on the resource being restored, as one needs to work within a sensitive resource in order to restore it, and the clean-up of pollutants could be an important part of such restoration, as discussed in more detail below.

Significant Disruption of Habitat Values

The ongoing presence of oil contaminated materials in ESHA is currently resulting in significant disruption of habitat values. As noted in Romero-Zerón (2012), environmental pollution caused by petroleum is of great concern because petroleum hydrocarbons are toxic to all forms of life. Oil contaminated materials and soils disrupt habitat values by placing both plants and animals within that habitat at risk of poisoning and physical injury due to ingesting or interacting with those contaminants, and can restrict the abundance and diversity of wildlife and vegetation communities, limit their growth rates, reproductive potential and survivorship. Non-volatile heavy fractions of crude oil such as those frequently found in high concentrations in soil testing from proposed clean-up sites on the Banning Ranch Oilfield tend to be absorbed by the soil and persist at the site of release, serving as a long-term source of harm for wildlife through skin contact or through intake of contaminated water or food. These heavy fractions of crude oil consist mainly of naphthene-aromatics and poly-aromatic compounds that are carcinogenic, and long exposure to these compounds has been shown to lead to tumors, cancer, and failure of the nervous system in mammals (Abha and Singh 2012). Petroleum is toxic and can be lethal depending upon the nature of the petroleum fraction, the way of exposure to it, and the time of exposure. Chemicals in crude oil can cause a wide range of health effects in people and wildlife, depending on the level of exposure and susceptibility. The highly toxic chemicals contained in crude oil can damage any organ system within an animal's body, including the nervous system, respiratory system, circulatory system, immune system, reproductive system, sensory system, endocrine system, liver, kidney, etc. and consequently can cause a wide range of diseases and disorders (Costello 1979). Oil contaminated soil may also restrict water movement, limit invertebrate abundance and diversity, and may serve as a physical and chemical impediment to the growth and spread of many native plant species.

In addition to the detrimental effects of oil contamination, oilfield equipment, infrastructure, and other materials may also present other sources of disruption for sensitive habitat areas. Asphalt-like roadbed materials and oilfield infrastructure such as aboveground pipelines, well pads, pumps, and utility poles in ESHA physically limits and displaces habitat, restricting the growth,

connectivity, and expansion of vegetation, impeding wildlife movement, and potentially serving as a source of wildlife entrapment, injury, and mortality. Old pipelines and other oil field infrastructure over time will degrade, corrode, and break, likely leading to spillage of any remaining oil and other hazardous substances used during oil field operations. In addition to being a chronic source of degradation, oil contamination and deteriorating oilfield infrastructure may also limit wildlife and plant populations in the surrounding areas by causing the injury and mortality of some individuals, thus restricting reproductive and dispersal capacities. Cumulatively, all of these physical and chemical factors associated with oil contamination and oil production infrastructure within ESHA combine to significantly disrupt a variety of the key habitat values of that ESHA, including its ability to support the plant and animal species that depend on it, provide forage and refuge opportunities for wildlife species, and promote species diversity, abundance, and resiliency.

While the proposed clean-up and removal of the sources of disruption of habitat values from ESHA certainly has the potential to enhance these habitat areas and protect them against future disruption from these sources, in order to ensure that the ESHA is protected against “any significant disruption,” it is also necessary to consider if the removal activities themselves could also be a source of further disruption.

Some of the less intensive clean-up activities proposed in ESHA - such as using hand tools, foot traffic, and locating support equipment in existing oilfield use areas to dismantle, collect, and withdraw infrastructure like surface pipelines – would only result in very limited and short term impacts (slight crushing of vegetation along footpaths, wildlife disturbance for the minutes or hours needed to complete the work) that would not rise to the level of significant disruption. However, other proposed clean-up activities – primarily grading and excavation within habitat areas - could result in more extensive, potentially permanent impacts to ESHA that would more clearly reach the level of significant disruption.

When evaluating this type of activity, it then becomes necessary to consider the measures proposed to minimize that disruption and whether the activity, when combined with a suite of additional activities aimed expressly at the restoration, enhancement, and protection of the affected habitat, would ensure the long-term health and persistence of the ESHA (i.e., whether the activity that would affect the ESHA is an integral component of a comprehensive restoration effort). It is also relevant to consider the purpose of the proposal. As currently proposed, NBR’s oilfield clean-up activities within sensitive habitat areas are not clearly part of such a project or effort. Although NBR has developed and submitted a Habitat Conservation and Conceptual Mitigation Plan as part of its application, in its current form, this Plan lacks the detail, specificity, comprehensiveness, and clear linkage between impacts to sensitive habitats and their in-place, in-kind, restoration needed to assure that its implementation would be capable of reducing disruptions of habitat values to below the level of significance. The Plan lacks a clear accounting mechanism to ensure that total, post-clean-up impact areas are quantified and the appropriate mitigation ratios needed to address the temporal loss and uncertain replication of habitat are applied. The Plan also lacks a comprehensive suite of impact avoidance and minimization measures to ensure that the extent, magnitude, and duration of impacts are limited as much as possible. Finally, far from ensuring that the sensitive resources are restored, the proposal actually involves placing permanent residential and commercial development in the location where sensitive resources currently exist, after clean-up efforts are complete. Thus,

much of NBR's proposed activities are not consistent with the Coastal Act's ESHA protection policies because they cause a significant disruption of ESHA.

However, with additions and revisions to address the shortcomings in its proposal, NBR's Habitat Conservation and Conceptual Mitigation Plan (HCCM Plan) can be modified to integrate more fully with the proposed oilfield clean-up activities into a robust site-wide restoration program, ensuring that any temporary disturbance of ESHA is the minimum necessary to fully restore the ESHA in place. The Commission finds this can be achieved if the proposed clean-up activities are carried out in such a way as to (1) effectively and completely remove the chronic, ongoing, sources of significant disruption to that and adjacent habitat discussed above; and (2) integrate the revised HCCM Plan into a comprehensive and carefully implemented restoration program. With such modifications the Commission could find the proposed oilfield clean-up operations would serve to protect against significant disruption of habitat values.

Key to the success of this approach, however, is the implementation of measures to (1) limit the scope, duration, extent and severity of clean-up impacts within the target and surrounding areas; (2) thoroughly survey and document existing physical and biological conditions within those sensitive habitat sites in which clean-up would occur; (3) design and carry out a site-specific revegetation and restoration plan for each area of impact that includes clear habitat restoration and revegetation goals for that site based on quantifiable metrics and the results of the pre-impact physical and biological survey of that site; (4) design and carry out the appropriate level of supplemental habitat creation to address the temporal loss of habitat function between when it is affected and restored and to make up for limitations in the ability of restoration to fully replicate habitat; (5) carry out adequate ongoing monitoring of performance criteria, supplemental restoration, and maintenance activities until site-specific restoration goals have been met; and (6) provide for the long-term protection and preservation of restored areas and adjacent intact habitat areas.

These six key elements are essential to the successful development and conduct of the restoration component of the oilfield clean-up activities. When combined with the complete removal of the clean-up targets that act as chronic and ongoing disruptions to habitat values, this restoration component would ensure that the project would enhance the biological productivity and functional capacity of the portions of the site from which oil contamination and oil and gas production infrastructure would be removed, and would lead to a significant improvement to habitats and wildlife resources within those areas. Implementation of this type of combined clean-up and restoration plan would improve the quality and quantity of ESHA both within the clean-up areas and throughout the oilfield site.

In order to implement this approach, [Special Conditions 8 and 9](#) would provide for the first key element described above to be met by: (1) requiring site-specific surveys to be carried out at each clean-up area in and immediately around areas of ESHA and wetlands identified on [Exhibit 3](#) in order to confirm the presence of valid a clean-up target, delineate its extent, and aid in the development of a site-specific clean-up plan for that site that would limit the scope, duration, extent and severity of clean-up impacts on habitat; (2) requiring that NBR's Oilfield Abandonment Plan be revised to include a Remediation Action Areas Site Plan that would ensure that the stockpiling, treatment, processing, borrow, and disposal of oilfield wastes does not adversely affect ESHA or wetlands; and (3) requiring that NBR's Oilfield Abandonment

Plan be revised to include a variety of impact avoidance and minimization measures to additionally limit the adverse effects of clean-up activities on sensitive habitats.

Special Condition 16 (specifically, subpart 22) would provide for the second key element described above to be met by requiring that a pre-disturbance physical and biological survey be carried out at each ESHA or wetland site that would be adversely affected by clean-up activities in order to fully document the existing biotic and abiotic characteristics of those areas.

Special Condition 16 would provide for the third key element described above to be met by requiring that NBR to submit a Final Habitat Management Plan that includes a site-specific restoration and post-construction monitoring program that includes site-specific restoration plans for each of the ESHA or wetland sites that would be adversely affected by clean-up activities. As described in that special condition, these plans would be based on the pre-disturbance condition of each site and would be designed to restore the disturbed or damaged habitat to those conditions documented by the pre-disturbance survey results.

The site-specific restoration plans and restoration of impacted or disturbed sensitive habitats in-place is critical because ecosystems are defined by complex and often less-than-fully understood arrays of factors that include continua of physical parameters, species assemblages, and complex interactions between each of these. Due to such intricacies, particularly when extensive biophysical gradients and ecotones (or transitional areas between discrete habitat types) are involved, restoration of ecosystems within the sites they occupy to a well-functioning state tends to be more successful than attempts at de novo habitat creation at entirely new sites (Suding 2011). This can be attributed to any multitude of physical factors including geologic and soil composition, topography and slope face orientations, hydrology, wind exposure, sun exposure, precipitation and temperature regimes, and disturbance regimes (e.g., fire frequency) (Riordan & Rundel 2009). Interactions among species can be even more subtle and difficult to recreate in de novo situations (Longcore 2003; Moreno-Mateos et al 2013). The exchange of certain losses for uncertain gains associated with de novo mitigation (even if a site is degraded) also contributes to the widely-accepted preference for on-site restoration measures (Maron et al 2012; USACE & EPA 2008).

Special Conditions 10 and 16 would provide for the fourth key element described above to be met by (1) requiring clean-up impacts assessment and quantification surveys to be carried out at the completion of clean-up activities at each site in and immediately around ESHA or wetlands in order to document the type and amount of habitat impacts that occurred; and (2) requiring NBR to submit a Final Habitat Management Plan that includes a general restoration and post-construction monitoring program that would be designed to carry out the appropriate level of supplemental habitat creation to address the temporal loss of habitat function between when it is adversely affected by clean-up activities and when it is restored in-kind and in-place and to make up for limitations in the ability of restoration to fully replicate habitat. To accomplish this, **Special Condition 16** also identifies the appropriate ratios to be used to fully mitigate for impacts to the various types of habitats present within the estimated clean-up areas. These ratios would be applied based on the type and amount of habitat removal and disturbance documented in the clean-up impacts assessment and quantification surveys carried out at the conclusion of clean-up activities in each area.

Mitigation ratios identified in [Special Condition 16](#) were selected based on a combination of factors including: (1) past Commission decisions on similar types of habitats and temporary impacts that have frequently found a 4:1 (restoration:impact) ratio to be appropriate for wetlands (including vernal pools without state or federally listed fairy shrimp species) and a 3:1 ratio to be appropriate for ESHA vegetation (including purple needlegrass); (2) guidance from the Newport Beach Coastal Land Use Plan that requires 4:1 mitigation for vernal pools and saltmarsh and 3:1 mitigation for coastal sage scrub occupied by California gnatcatchers and rare vegetation communities including native grasslands and southern maritime chaparral; (3) the analysis and recommendations of Commission staff ecologists provided in [Exhibit 12b](#) that include a recommendation of 10:1 mitigation for disturbance of vernal pool habitat with federally endangered San Diego Fairy Shrimp; (4) the documented success of past habitat creation and restoration efforts carried out onsite by NBR; and (5) the observed recovery and re-vegetation of areas onsite in which mowing operations were discontinued as part of the settlement agreement between NBR and the Commission (CCC-15-CD-01 & CCC-15-RO-01, dated May 12, 2015).

[Special Condition 16](#) would also provide for the fifth key element described above to be met by requiring NBR to develop and submit a Final Habitat Management Plan that establishes quantitative performance criteria for habitat restoration and mitigation areas and includes provisions for monitoring and maintenance of the restoration sites until restoration goals have been achieved.

Finally, [Special Condition 1 and 11](#) would provide for the critical sixth key element described above to be met by providing for the long-term protection and preservation of restored areas and adjacent intact habitat areas by (1) requiring the proposed residential and commercial development to be sited outside of them; and (2) through the recording of a conservation easement that would restrict the use of such areas of land for habitat conservation and public passive recreation.

As described above and with implementation of the specific measures established in [Special Conditions 8, 9, 10, 11 and 16](#), the Commission finds that oilfield clean-up component of the proposed project would be for the express purpose of removing surface and subsurface petroleum-hydrocarbon contamination and infrastructure to restore the former oilfield site to its pre-oilfield natural state, and, more importantly, would restore ESHA. As such, this component of the project would be a "restoration" project and would therefore be a use dependent on ESHA resources.

Conclusion

The proposed project would have significant impacts on ESHA for the abandonment and remediation activities and a proposed housing and commercial development, non-resource dependent uses, with impacts to the ESHA identified on the site. The project, as proposed, is inconsistent with section 30240. With implementation of [Special Conditions 8, 9, 10, 11 and 16](#), the Commission finds that the project will protect ESHA against any significant disruption of habitat values, and that the oilfield clean-up and restoration program outlined above would constitute a use dependent on ESHA resources. The Commission therefore finds the project, as conditioned, consistent with Coastal Act Section 30240(a).

F. MARINE RESOURCES AND WETLANDS

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act states, in relevant part:

(a) The diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.

Wetlands

Seasonal Wetlands often occur under Mediterranean climate conditions of the West coast. Seasonal wetlands have a natural lining of bedrock or a lining of hard clay that prevents water from infiltrating into the soil. During rain events, a shallow layer of water covers the depression in the soil and “awakens” the seeds, eggs, and/or cysts present. During a wet season, a seasonal pool may fill and dry out several times and in years of drought, it may not fill at all. The seeds, eggs, and cysts can survive the drought conditions until the pool fills again.

Title 14 California Code of Regulations (“CCR”) section 13577(b) defines “wetlands”:

Wetlands shall be defined as land where the water table is at, near or above the land surface long enough to promote the formation for hydric soils or to support the growth of hydrophytes.

The Banning Ranch site includes roughly 130 acres of wetland and riparian habitats in the lowlands portion of the site and 12 additional wetlands on the mesa (identified as wetland features VP1, VP2, A, C, E, M, V, W, CC, KK, MM, and OO). Nine periodically ponded area on the mesa are also classified as vernal pools. These types of seasonal wetlands often occur under the Mediterranean climate conditions of the West coast and typically have a natural lining of bedrock or another impervious surface such as a lining of hard clay that prevents water from infiltrating into the soil. During rain events, a shallow layer of water can cover depressed areas in the soil and can trigger the emergence of wetland vegetation and invertebrates by “awakening” the seeds, eggs, and/or cysts that these plants and animals may have left behind during growth cycles that occurred during previous periods of inundation. During a single wet season, a seasonal pool may fill and dry out several times and in years of drought, it may not fill at all. Typically, the seeds, eggs, and cysts that may be present in the soils of seasonal wetlands are adapted to these conditions and can survive both inter-seasonal and intra-seasonal drought conditions until the pool fills again.

If seasonal wetlands contain plant and/or animal species that are characteristic of that habitat and seldom found elsewhere, they are called ‘vernal pools’ and may rise to the level of ESHA. Research suggests that approximately 90% of California’s historic vernal pool habitats have been lost. Due to their extreme rarity and sensitivity to disturbance, these vernal pools are subject to protection under both Section 30240 of the Coastal Act *and* under Section 30233.

The wetland areas in the lowlands portion of the site would only be affected by the proposed oilfield clean-up activities while the wetland areas on the mesa would be affected by both proposed clean-up activities and the proposed residential and commercial development plan. As discussed in the preceding section of this report, with the imposition of the recommended special conditions, all impacts of the clean-up activities to both wetlands and ESHA would be addressed through in-place, in-kind restoration and mitigation consistent with past Commission action and local policy guidance. Also consistent with past Commission action on similar types of clean-up operations in wetland habitats, these special conditions – in particular [Special Conditions 1, 8, 9, 10, 11, and 16](#) – would help ensure that the project disturbance footprint near sensitive areas is minimized to the maximum extent feasible and that a restoration plan is developed and implemented to mitigate for unavoidable impacts to wetlands and other habitats and to provide for their lasting protection and preservation.

In those cases where it is clearly designed and implemented to expand, enhance, or promote wetlands or address a threat or source of degradation to their habitats and resources, restoration

of wetlands has been an allowed type of development in wetlands and considered by the Commission to be an allowable use consistent with Section 30233(a)(6), quoted above. In a variety of permit actions, the removal of oil and gas production infrastructure or contamination from wetland habitats and the subsequent restoration of those habitats has been found to be for restoration purposes. Housing and commercial development, however, is not an allowed use under Section 30233(a), and therefore the proposed fill of wetlands for the construction of residential and commercial development, roads, utilities and other elements of the proposed plan is not consistent with this policy. In particular, the proposed filling of the wetland features referred to as “C” and “CC” for the installation of residential development is not consistent with the wetland policies of the Coastal Act. Although, as discussed in the memorandum provided in [Exhibit 12b](#), these features are small in size and may have been created or augmented through human activity, they have been shown in repeated formal wetland surveys and delineations to meet the definition of a “wetland,” as explained in the ESHA Memo.

In order to be consistent with Section 30233(a), a project that involves filling or dredging in a wetland must meet all three “tests” of that section: the use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts created by that fill or dredging. As discussed further below, as proposed, the aspect of the project involving the placement of residential or other permanent development where wetlands currently exist does not meet the list of limited approvable projects for fill of wetlands under section 30233, nor is it the least environmentally damaging alternative. Lastly, the mitigation proposed for the fill of the wetlands is inappropriate because the project does not meet the limited uses.

Proposed Fill/Dredging

The development plan would impact 2 of the 17 wetlands on the mesa (C and CC) for single family homes in the North Family Village and site grading. The development plan proposes to fill a portion of the head of the North- South Arroyo for the development Bluff Road and grading within Vernal Pool E, which contains endangered San Diego Fairy Shrimp.

The vernal pool complex and wetlands and arroyos are connected throughout the site. A complete mapped watershed encompassing drainage courses over the entire site was not provided and staff is unable to identify impacts of the watershed of the site, as a whole. However, the development footprint as proposed with Bluff Road dividing the vernal pool complex from the North-South Arroyo would completely surround the vernal pool complex with development and would isolate and adversely affect the vernal pool and wetland watershed connections.

In addition, the proposed oilfield clean-up activities include approximately 7 acres of wetland habitat areas within their estimated disturbance footprint. While the majority of these areas would be located on the lowland portion of the site, significant portions of several vernal pools in the upland mesa would also be included – as shown in [Exhibit 3](#). Oilfield clean-up activities within wetland habitats would involve both fill and dredging of wetlands and would involve both low-intensity work such as the removal of surface pipelines and power poles using hand labor and cranes and equipment staged on existing oilfield access roads, as well as high-intensity work such as the excavation of historic roadbeds, re-abandonment of wells, and excavation of oil contaminated soils.

1) Allowable Use

Residential development is not included in the uses listed above, No. 1-7 of Section 30233. Thus, the proposed fill of wetlands “C” and “CC” through grading and development of residential units is not an allowable use. Therefore, the proposed development is inconsistent with the first “test” of Section 30233 of the Coastal Act with regard to uses allowed within wetlands.

The dredging and fill of wetlands associated with oilfield clean-up activities is an allowable use when combined with in-place and in-kind restoration efforts directed at addressing the effects of those clean-up activities on the same affected wetlands. As modified through the implementation of [Special Conditions 1, 8, 9, 10, 11, and 16](#) - as discussed more fully in the previous section of this report - the proposed oilfield clean-up activities would be implemented as part of an integrated plan for the restoration and protection of the wetlands and other sensitive habitats throughout the Banning Ranch site and would qualify under the “restoration purposes” category included in the uses listed above, No. 1-7 of Section 30233. Therefore, as modified through the measures required through these conditions, the proposed oilfield clean-up activities are consistent with the first “test” of Section 30233 of the Coastal Act.

2) Alternatives

No less environmentally damaging alternatives to the proposed fill of wetlands for the residential development have been given substantial consideration with the current development plan proposal. However, an obvious less environmentally damaging alternative to the proposed fill of wetlands would be a reduced or modified development footprint that avoids the wetlands and seasonal features on the mesa portion of the site and/or a designation of these sites as open space and wetland restoration. These alternatives are presented in the “potential development areas” identified in the constraints map provided as [Exhibit 22](#). Given the available acreage outside of wetland areas shown on the constraints map, this avoidance alternative would be a feasible way to implement the project in a less environmentally damaging manner. As such, [Special Conditions 1 and 11](#) were developed to facilitate the implementation of this alternative by identifying a residential development plan area that would avoid the dredging or fill of wetlands on the mesa and the wetland/vernal pool watershed. As conditioned in this way, the project could be found to be consistent with the second “test” of Section 30233.

Alternatives to the proposed oilfield clean-up plan were also considered. Such alternatives included alternative removal methods, in-situ treatments such as phytoremediation and heat treatment, and abandonment in place of contaminated materials and oilfield infrastructure in wetland areas. However, each of these alternatives was rejected either because they were infeasible or would not be less environmentally damaging. Alternative removal methods such as selective removal of only visible surface materials were rejected due to concerns about their inability to completely and effectively remove the clean-up targets. In-situ treatments were rejected because they would either result in more extensive impacts or because they would not be an appropriate and effective way to remove the target materials. These techniques are most often used for more volatile, less persistent chemical contaminants that are less weathered and tightly bound to soils than many of the target materials on the Banning Ranch site. As such, the application of these techniques could result in environmental impacts without effectively removing the target materials. Abandonment of contaminants and/or materials in place – in addition to being at odds with DOGGR and Water Board requirements for removal of these

targets – was rejected because it would not address the ongoing degradation and damage to wetland habitats and resources that is being caused by the presence of these materials. As such, the proposed physical removal of the clean-up targets was determined to be the least damaging alternative – as long as that removal was carried out only in those locations where it was found to be necessary; included all feasible impact avoidance and minimization measures; and was followed with site-specific restoration activities oriented around the in-kind, and in-place restoration of the affected habitat areas. With modification to include these additional elements, the proposed clean-up activities would be the least environmentally damaging feasible alternative and would therefore be consistent with the second test of Section 30233.

3) Mitigation

Section 30233 of the Coastal Act requires that wetland projects include feasible mitigation measures to minimize adverse environmental effects.

Clean Up Activities

The proposed clean-up activities were carefully considered in order to develop a comprehensive list of feasible mitigation measures that would minimize adverse environmental effects. These measures include: (1) ensuring that clean-up activities are only carried out in wetland areas once a valid clean-up target has been confirmed and, if possible, delineated so that the scope, type, and duration of habitat disturbing activities can be limited (provided through [Special Condition 9](#)); (2) avoidance and minimization measures to limit the scope, extent, and severity of clean-up and associated activities in wetlands (provided through [Special Condition 8](#)); (3) the implementation of site-specific restoration activities oriented around the in-kind, and in-place restoration of the affected wetland areas (provided through [Special Condition 16](#)); (4) implementation of supplemental restoration activities using the appropriate mitigation ratio to address the temporal lag between when impacts occur and when successful restoration is accomplished (provided through [Special Condition 16](#)); and (5) the long-term protection and preservation of restored impact sites and mitigation areas through the exclusion of such areas from the residential and commercial development plan and their coverage under a conservation easement (provided through [Special Conditions 1 and 11](#)).

With the inclusion of the Special Conditions described above, the proposed oilfield clean-up component of the project would include feasible mitigation measures to minimize adverse environmental effects and would therefore be consistent with the third and final test of Section 30233.

Residential and Commercial Development Plan

Wetlands C and CC are in the center of the proposed North Family Village where “potential development areas” existing on either side of the wetlands. The location of the wetlands limits access between the development areas. Section 30233 requires feasible mitigation measures to minimize adverse environmental effects to wetlands. In this case, the recommended 100 foot buffer around wetland would minimize adverse environmental effects.

There is “potential development area” between the two pools, although ecologically it is best for these two pools to have one combined buffer and not to allow development to occur between the pools. Were the wetlands entirely surrounded by development, pools C and CC would have reduced functionality and less potential for significant restoration, even with 100-ft buffers. In

addition, as islands of habitat in an urban sea, they would provide fewer benefits to wildlife, be subject to urban run-off and over time, would be degraded. Preserving the connection between these two pools, and the connection to the North-South Arroyo is critical for the pools' long term functionality as wetlands.

The development of a road in the vicinity of C and CC is necessary to access the "potential development area" of approximately 3 acres southwest of the pools. As conditioned, a road may be developed within the outer 50 feet of the buffer of wetland CC, on the side away from wetland C; however, this is only allowable with mitigation measures that (1) prevent water quality or other impacts to the marine resources, and (2) add to the remaining merged buffer an area equivalent to the area lost to development.

Consistency with Section 30233

Although not all wetlands are within the project footprint, all wetlands, including those in the lowlands, need to be protected under the Coastal Act section 30233. The development plan does not meet the list of limited approvable projects for fill of wetlands, nor is it the least environmentally damaging alternative, nor does the project include adequate mitigation for the impacts. The development plan, as proposed, is inconsistent with Coastal Act section 30233.

Only as conditioned to avoid fill of wetlands and vernal pools can the development plan be found consistent with Section 30233. The footprint identified in the "potential development areas" on [Exhibit 22](#) would completely avoid wetlands, vernal pools, and arroyos and is, therefore consistent with Section 30233. [Special condition 1](#) requires revised plans for the development plan to conform to this alternative and also requires complete avoidance of wetlands and vernal pools. [Special Condition 16](#) requires site-specific and general restoration and mitigation plans for temporary impacts to wetlands as a result of clean-up work and [Special Conditions 8 and 9](#) ensure project impacts to wetlands are avoided and minimized. Only with the inclusion of these conditions can the project be found consistent with Section 30233.

Marine Resources

Section 30230 states that marine resources shall be maintained, enhanced, and restored. The wetlands, vernal pools and arroyos of the site are all marine resources. The watershed of the site connected directly to the Semeniuk slough, and from there to the Santa Ana River and Pacific Ocean. The clean-up activities proposed are an attempt to restore and enhance the marine resources of the wetlands and vernal pools and arroyos and, as conditioned for restoration and mitigation plans, are consistent with Section 30230.

The development plan for residential and commercial, as proposed, is not consistent with the provisions for maintenance, enhancement, and restoration of the marine resources on the site. Partial fill of the North-South arroyo is proposed for the development of Bluff Road and partial fill of the Main Arroyo is proposed for the bridge abutments to support the span across the arroyo and allow Bluff Road to connect the South and North of the site. The proposed fill of wetlands C and CC and fill of the arroyos is inconsistent with the section above.

Section 30231 states that the biological productivity and the quality of wetlands shall be maintained without *interference with surface water flow*. The proposal to fill the wetlands would

permanently impact all aquatic organisms in the pools and would be inconsistent with section 30231 that requires the maintenance of biological productivity in wetlands. In addition, the development footprint as proposed will divide the vernal pools from the North South Arroyo and would likely interfere with surface flow of the watershed. The project, as conditioned to allow for the natural hydrological connectivity of the site by avoiding filling the head of the North South Arroyo and maintains the productivity of wetlands by avoiding their fill. Preserving the complete arroyo and the natural connection to the vernal pool complex would protect the surface flow and ensure the long term productivity of the site's natural watershed. Additionally, as conditioned, the project would avoid other sensitive resources in this area, such as Gnatcatcher habitat by preserving the head of the arroyo and providing alternative circulation elements to the proposed Bluff Road. The preservation of this central area is critical for the site's watershed and for the site's overall habitat connectivity for wildlife.

Buffers

The Commission has typically required buffers of at least 100 feet for development adjacent to wetlands. The project did not provide appropriate buffers around the wetlands onsite, specifically around pools E, C and CC. It is for these reasons that a minimum 100-foot buffer is strongly recommended with development occurring around wetlands. Only as conditioned for 100-foot buffers around all wetlands and vernal pools, and as recommended in the ESHA Memo, 10 foot buffers around mapped watersheds, and the combined buffers of wetland C and CC, and for the preservation of the head of the North-South Arroyo and connecting vernal pool complex, and for the avoidance of impacts to the natural watershed of the site can the project be found consistent with Section 30233 to minimize adverse environmental effects to wetlands.

Water Quality of Marine Resources

The proposed development plan could have an impact on the marine resources, including the tidal slough, riparian features, and wetlands, on and off the site. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface areas associated with additional development. Reductions in the amount of pollutants in the existing runoff would be one step to begin to reduce cumulative adverse impacts to coastal water quality. As such, appropriate measures must be taken to assure that adverse effects on water quality are minimized. The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters, both during Construction and Post-Construction.

Pre-Construction

The applicant has provided a Storm Water Pollution Prevention Plan (SWPPP) that describes the pre-construction and during construction management of site water and protection of the marine and sensitive water resources on and off site. Potential sources of pollution during construction include abandonment and remediation, oil clean-up activities, storage and handling of construction materials, clearing and construction related activities that have the potential to discharge, improper dumping, spills, or leakage.

The SWPPP provides specifications and guidelines for reducing the sediment loading into receiving water bodies that could occur during the construction and post-construction of site development. Although some erosion and soil loss is unavoidable during land-disturbance activities, the proper siting and design of erosion and sediment controls will reduce the amount

of sediment transported off-site. Effective site management minimizes excessive soil erosion by keeping the soil stabilized and by directing runoff from disturbed areas to locations where sediments are removed prior to discharge to water bodies.

Specific Construction BMPs proposed include erosion control measures to prevent soil particles from being transported into the storm water runoff by covering and/or binding the soil particles prior to the onset of rain. Methods of erosion control proposed include: scheduling grading for dry months, preservation of existing vegetation, using mulch, and placing rolled erosion control products on the site. Earth dikes and drainage swales will be used to intercept and divert runoff to avoid sheet flow over sloped surfaces, direct runoff towards a stabilized watercourse, and intercept runoff from paved surfaces. Velocity dissipation devices, shall be used at new outlets of pipes, drains, culverts, slope drains, diversion ditches, swales, conduits, or channels. Slope drains shall be used where concentrated flow of surface runoff must be conveyed down a slope. This includes, drainage for top of slope diversion dikes and swales, drainage for top of cut and fill slopes where water can accumulate, and emergency spillway for a sediment basin. Disturbed stream channels, streambanks, and associated riparian areas shall be stabilized with vegetation, hydroseeding, hydraulic mulch, geotextiles & mats, and/or other erosion control measures. Non-vegetative stabilization include use of decomposed granite (DG), degradable mulches, gravel mulch and geotextiles and mats for temporary erosion control on areas prone to erosion where vegetation is not feasible, such as vehicular or pedestrian traffic areas, arid environments, rocky substrates, or where vegetation will not grow adequately within the construction time frame.

Sediment Control is a specific Construction BMPs proposed. Temporary sediment control materials would be maintained on-site throughout the duration of the project to allow implementation of temporary sediment controls in the event of rain and for rapid response to failures or emergencies, which includes silt fences, sediment basins, sediment traps, check dams, fiber rolls, gravel bag berms, street sweeping & vacuuming, sandbag barriers, and storm drain inlet protection.

Tracking controls and wind erosion controls are specific Construction BMPs proposed, which would be considered and implemented year round and throughout the duration of the project. Tracking controls would be located at all access (ingress/egress) points to the project site where vehicles and/or equipment may track sediment from the construction site onto public or private roadways and would include rumble racks (i.e. shaker plates) to provide additional sediment removal. Areas that are graded for construction vehicle transport and parking shall be stabilized. Roadways can be stabilized using aggregate, asphalt or concrete. Wind erosion control BMPs would be on all disturbed soils that are subject to wind erosion, and when significant wind and dry conditions are anticipated during project construction. The objective of wind controls would be to prevent the transport of soil from disturbed areas to off-site locations by wind. Dust control measures are proposed to stabilize soil from wind erosion, primarily in the form of construction watering (i.e. wet suppression), mainly on unpaved roads, drilling and blasting locations, soil and debris storage piles, batch drop from front-end loaders, unstabilized soil, and final grading. In addition, wind screen fencing would be implemented along the perimeter of the project site.

Non-Storm Water Management

Non-storm water management BMPs proposed include: water conservation practices, proper set up of Temporary Arroyo crossings, clear water diversion, potable water/irrigation, vehicle and

equipment cleaning and maintenance. Additionally, the proposal includes avoidance of overspraying curing compounds. Should run-off be generated, cure water shall be directed away from inlets to areas for infiltration or collection and disposal and drain inlets would be protected prior to the application of curing compounds. Use of covers, equipment attachments or platforms to collect debris is proposed. Debris and waste generated during demolition would be stored away from watercourses.

Material and waste management would consist of implementing procedural and structural BMPs for collecting, handling, storing and disposing of wastes generated by a construction project to prevent the release of waste materials into storm water discharges. The proposal includes: proper management of material delivery and storage, material use, stockpile management, spill prevention and management of hazardous waste, contaminated soil, concrete waste, and liquid waste.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes Interim Erosion Control Plan and Construction Responsibilities [Special Condition 26](#), which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible. Only as conditioned does the Commission find the proposed development to be consistent with Sections 30230 and 30231 of the Coastal Act.

Post-Construction

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts.

Single-family residences and commercial structures have the potential to increase local runoff due to the creation of impervious areas. This runoff could carry with it pollutants such as suspended solids, oil and grease, nutrients, and synthetic organic chemicals. This is especially of a concern in locations that are adjacent to wetlands and arroyos, and the Santa Ana River, such as the proposed project.

Hardscape features and other site appurtenances (i.e. area drains and drain lines) should be setback at least 60 feet from the bluff edge to minimize the potential that the development will be affected by erosion and landslide hazards. Thus, the Commission is imposing [Special Condition 27](#), which requires the applicant to submit a revised drainage and run-off control plan.

The proposed water quality management design would include a variety of water quality features. Low Impact Development (LID) Best Management Practices (BMPs) are proposed to ensure that water quality within the surrounding region is protected. Throughout the 12 Drainage Management Areas (DMAs) proposed within the development footprint, multiple BMPs including hydrologic source controls (HSCs), harvest and reuse systems and various bio-treatment mechanisms will be utilized.

HSCs - hydrologic source controls

Water quality control will start with the individual residential and commercial lots. For each residential product type, the HSCs proposed include: two rain barrels for each single family home strategically located near roof downspouts and backyard landscaping to capture runoff from roof downspouts during rain events and detain that runoff for later reuse for irrigating landscaped areas.

The proposed home lots would include impervious areas dispersion, directing runoff from impervious areas onto the surface of adjacent pervious areas. The combination of the rain barrels and impervious area dispersion techniques will result in an average 42% runoff reduction of the annual runoff volume of water for each product type. HSC's will also be implemented for all areas of development including higher density residential (multi-family attached) and retail/resort areas.

Harvest and Reuse Area BMPs

Harvest and reuse BMPs would capture and store storm water runoff for later use. These BMPs would create stored water to be used for water demands, such as landscape irrigation, after a rain event has occurred. Harvest and reuse BMPs include both above-ground and below-ground cisterns, with a storage volumes that achieve 40% capture or higher. Harvest and reuse cisterns may be designed to overflow to biotreatment BMPs.

Six (6) DMAs would implement harvest and reuse systems: the Urban Colony, Park, and portions of the Resort Colony and North Village would implement harvest and reuse cisterns. The cisterns would be designed to hold the full capacity of the design capture volume. Overflow would flow into a connected biotreatment system (modular wetland system – MWS) to maintain water quality.

The MWS units would be connected to the harvest and reuse systems to treat the overflow runoff once the cistern capacity is reached. The combination of harvest and reuse cisterns and MWS units are preliminarily proposed throughout each DMA based on the proposed grading plan and identified low points. Storm drain flows would flow into localized catch basins and into the proposed storm drain lines. The storm drain lines would include low-flow diversion structures which will direct water quality flows to the harvest and reuse cisterns. The cisterns would include a pre-treatment device that can remove particulates sufficient for pre-treating Total Suspended Solids and associated heavy metals attached to sediment.

In addition, all internal roads within Harvest and Reuse areas would include bi-weekly street sweeping to prevent build-up of sediments and associated pollutants on streets and parking areas. The water stored in the cisterns would be connected to a pump system and irrigation line to allow

for landscape irrigation. Any additional treatment needed during frequent storm events would be provided by the MWS units connected to the harvest and reuse cisterns.

Biotreatment Area BMPs

Biotreatment BMPs would reduce storm water volume and treat storm water using various treatment mechanisms characteristic of biologically active systems, and discharge water to the downstream storm drain system or directly to receiving waters. Treatment mechanisms include media filtration, vegetative filtration, general absorption processes, biologically-mediated transformations, and other processes to address both suspended and dissolved constituents.

Examples of biotreatment BMPs for the site include bioretention with underdrains, vegetated swales, constructed wetlands, and biotreatment systems. Stand-alone biotreatment BMPs would be implemented in the regions where harvest and reuse is not feasible. The biotreatment areas include 11 DMAs throughout the majority of the North Village and a portion of the South Village and BMPs implemented on the streets and parkways throughout the entire site.

The community water quality basins would be located along the perimeter of the North Family Village and a portion of the South Family Village. These basins would be landscaped shallow depressions that capture and filter stormwater runoff. These facilities would act as a plant-based filtration device that removes pollutants through physical, biological, and chemical treatment processes. As stormwater passes down through the planting soil, pollutants are filtered, adsorbed, biodegraded, and sequestered by the soil and plants. After treatment, flows would be collected back into the main line for conveyance to the Lowlands for additional treatment including infiltration and evapotranspiration. Flow-through planters and MWS units would be incorporated into the streets and parkways BMP design. Flow-through planters act similarly to the biotreatment basins.

Off-site Runoff Treatment

Implementation of the plan would include an on-site water quality treatment basin for the sole purpose of treating off-site runoff (water that runs on to the site from adjacent areas, or run-on) in a lined basin approximately 0.75 acres. Approximately 46 acres of off-site runoff from the City of Costa Mesa and Newport Beach including commercial, light industrial and residential would be treated by the proposed water quality basin near 16th Street.

The system would provide an expected reduction in annual pollutant loads and annual pollutant concentrations. In addition the treatment of flows, the basin will also serve as a dissipation feature to control flows into the Southern Arroyo. Controlling flows into the Arroyo will serve to reduce erosion of the Arroyo, reduce sediment transport to the Seminiuk Slough and improve habitat establishment along the bank.

Conveyance

The proposed plans would include construction of a dissipator within the Open Space Preserve to control stormwater flows from the Urban colony to the middle arroyo toward the north of the project site. One diffuser basin is proposed within the lowlands, just north of the northern oil remainder site, downstream of the North Village. Flows from the North Village area will be treated prior to reaching the diffuser basin by HSC's and either perimeter basins or the harvest and reuse systems. The diffuser basin would be constructed of rip-rap. The second diffuser basin is proposed within the Open Space Preserve at the west end of the Main Arroyo prior to flows

entering Semeniuk Slough. A culvert would be constructed under the existing oil remainder site roadway in order for the flows from the Main Arroyo to exit the site into the Slough. The purpose of this diffuser basin is to control flows into Semeniuk Slough from the Main Arroyo and the South Village development areas. Flows from the South Village development areas will be treated prior to reaching the diffuser basin by HSC's and either biotreatment basins or harvest and reuse systems. The diffuser basin would also be constructed of rip-rap.

The water quality diffuser basins and dissipator proposed are in and adjacent to wetland and riparian habitat. Construction plans for the water quality detention basin, diffuser basins, and dissipator were not provided in the application materials. Construction specifications are needed to evaluate the basins' effectiveness for the proposed development and for the impacts the construction of these basins would have on ESHA and wetland habitat. Treated fresh water discharges into the lowlands may reduce the salinity of the existing salt marsh in that location. Studies regarding the amount of freshwater introduction and the effects of reduced salinity levels on the habitat have not been provided.

Residential Development Water Quality

Typically, adverse water quality impacts to coastal waters can be avoided or minimized by directing storm water discharges from roof areas and other impervious surfaces to landscaped areas where pollutants may settle out of the storm water. In addition, reducing the quantity of impervious surfaces and increasing pervious water infiltration areas can improve water quality. However, these common techniques of addressing water quality problems, by design, result in increased infiltration of water into the ground. As noted in the hazard section of these findings, the infiltration of water into the bluff is a primary potential source of bluff instability at the project site. Therefore, increasing the quantity of pervious areas, directing runoff to those pervious areas, and encouraging water infiltration for water quality purposes could have adverse impacts upon bluff stability. There are measures, however, that would contribute to increased water quality that could feasibly be applied even to bluff top lots (on the mesa) such as the subject site without increasing instability.

The primary contributors to storm drain pollution stemming from single family residential development are irrigation, fertilizers, swimming pool discharges, and pet waste. These can be eliminated or significantly reduced. For example, permanent, in-ground irrigation tends to result in over-watering, causing drainage to run off site. Irrigation runoff carries with it particulates such as soil, debris, and fertilizers. Limiting irrigation to that necessary to establish and maintain plantings reduces the chance of excess runoff due to over-irrigation. Permanent, in-ground irrigation, in general, is set by timer and not by soil moisture condition. Thus, the site is irrigated on a regular basis regardless of the need, resulting in oversaturation and run off. The run-off, carrying soil, fertilizer, etc, is then directed either to the storm drain system. This can be avoided by limiting irrigation on the mesas.

Another way to improve water quality on bluff top lots without jeopardizing stability is the use of native/drought tolerant plantings. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. As these plantings use less water than ornamental plants, incidents of over-watering, causing saturation and excess runoff, is substantially reduced. As previously stated, reducing site runoff reduces the extent of pollutants carried into the storm drain system and into the ocean.

[Special Condition 5](#) requires native and drought tolerant vegetation on individual residential lots and within the maintained commercial landscaped areas and prohibits permanent irrigation that does not include water-use efficiencies. [Special Condition 5](#) also mandates that individual residential lots not be developed with swimming pools, in order to avoid improper discharges into the dedicated conservation areas for the protection of the water quality of the arroyos and wetlands.

Conclusion

While the proposed water quality features are sufficient for the site development proposed, the overall residential and commercial development plan would have permanent impacts to approximately 3 acres of arroyos and would impact riparian habitat and the watershed, and would impact 2 wetlands, and is inconsistent with the marine protection policies and wetlands protection policies of Ch. 3 of the Coastal Act. The alternative “proposed development areas” allows for the natural connectivity of the site by avoiding filling the head of the North-South Arroyo and avoiding fill of all wetlands, as required by [Special Condition 1](#). Preserving the complete arroyo and the natural connection to the vernal pool complex would protect the surface flow and ensure the long term productivity of the site’s natural watershed. The preservation of this central area is critical for the site’s watershed and for the site’s overall habitat connectivity.

The proposed water quality plans for Pre-construction and Post-construction protection of marine resources would largely be consistent with Coastal Act Sections 30230 and 30231, with the exception of water quality structures located in the lowlands and within areas of ESHA and ESHA buffers, as conditioned by [Special Condition 1](#). However, the development plan as a whole, for which the above described water quality systems are designed, is not consistent with the protection of vernal pools and wetlands, is inconsistent with Sections 30230, 30231, and 30233 of the Coastal Act. Only as conditioned to avoid fill of wetlands, avoid impacts to the watershed, and preserve the site connectivity, provide 100 foot wetlands and vernal pool buffers and watershed buffers as required by [Special Condition 1](#) and to submit final plans for the pre and post construction water quality measures and drainage plans and final plans for commercial space water quality BMPs, as well as a final water quality monitoring plan required by [Special Condition 27](#), and construction plans for water quality systems outside of the lowlands and ESHA as required by [Special Condition 1](#), can the project be found consistent with Sections 30230, 30231 and 30233 of the Coastal Act.

G. HAZARDS

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

Geologic Hazards

The NBR site is located on the Orange County Coastal Plain and adjacent Newport Mesa. Part of the Newport Mesa forms the eastern, upland portion of the NBR site. The Orange County Coastal Plain is one of the coastal alluvial basins of the Los Angeles Sedimentary Basin. The Orange County Coastal Plain is bounded to the north by the Puente Hills, to the east by the Santa Ana Mountains, to the west by the San Gabriel River, and to the southwest by the San Joaquin Hills and the Pacific Ocean.

The central portion of the coastal plain forms the broad alluvial floodplain of the Santa Ana River. The Santa Ana River originates in the San Bernardino Mountains. The river flows approximately 100 miles from the San Bernardino Mountains to the NBR site where it discharges into the Pacific Ocean.

The mesa consists of consolidated alluvial sediments which have been uplifted along a fault zone. The lowland portion of the NBR consists of recent alluvial sediments. The active Newport-Inglewood fault zone, locus of the 1933 M_w 6.4 Long Beach Earthquake, is located along the southern boundary of the NBR, and is a principal hydrogeologic feature in the area, acting as a barrier to ground-water flow in the aquifers below the uppermost water-bearing units. The water-bearing formations in the Orange County water basin are composed of three intra-connected confined aquifer systems: the Lower, Middle, and Upper aquifer systems.

The NBR site is hydraulically bounded to the west by the mouth of the Santa Ana River and to the south by marsh channels, the former course of the Santa Ana River where it once flowed into Newport Bay. The marsh channels are connected by a culvert to the mouth of the Santa Ana River. As water in the Santa Ana River mouth and marsh channel is directly connected to the Pacific Ocean, the aquifer located below the site is in direct connection with sea water. Depth to ground water at the NBR is approximately equal to mean sea level and is influenced by tidal fluctuations. The ground-water flow at the site is from the uplands zone toward the Santa Ana River in the northern portion of the site and from the mesa toward the Pacific Ocean in the southern portion of the site.

Geotechnical investigations were performed for the site by Guptill and Heath(1981), Woodward-Clyde Consultants (1985), the Earth Technology Corporation (1986), Pacific Soils Engineering, Inc. (1993), Leighton (1997), and Earth Consultants (1997). The studies conducted by Guptill and Heath and the Earth Technology were mainly related to the geological evaluation of splays of the Newport-Inglewood fault. Two distinct zones of faulting were identified within the site. The main active trace of the Newport-Inglewood fault is less than 1 mile from the site and the Palos Verdes fault is within 11 miles from the site. The above-mentioned faults are capable of generating significant ground shaking at the site. Converse Consultants (1994) discovered a second active fault on the site called the "West Mesa Fault." This fault traverses the NBR site. It has been encountered in trenches in two distinct areas, and building setbacks have been established so that habitable structures are not built across this fault. Conservatively, these two areas are assumed to be connects, and building setbacks have been established between these areas as well.

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The West Mesa Fault and the Newport-Inglewood fault system should be considered likely sources for future earthquakes that would generate strong ground motions at the site. In addition, surface rupture at the site is possible along the West Mesa Fault.

Several splays of the active Newport-Inglewood fault zone have been mapped across the site and in the site vicinity. Faults that break the ground surface during an earthquake can do considerable damage to structures built across them. Therefore, fault studies are typically designed to evaluate whether a fault is active. If a fault is deemed active, structures cannot be placed across the trace of the fault (Alquist-Priolo Earthquake Fault Zoning Act).

The studies by Woodward-Clyde Consultants and Pacific Soils Engineering, Inc., covered other geotechnical aspects including liquefaction and settlement. Both studies concluded that the upper 10 to 12 feet of the subsurface soils in the lowland areas were highly susceptible to liquefaction. Below 10 to 12 feet, localized zones of liquefiable soils were encountered. In addition, the study by Woodward-Clyde found that the upper 4 to 10 feet of the subsurface materials contained soft, highly plastic clay that might not be suitable for use as structural fill.

The proposed development is located on a coastal bluff, despite the fact that it is inland of PCH. Coastal Bluff edges are also located along the Mesa facing the Seminouk Slough. Coastal bluff erosion is caused by a combination of inherent environmental factors and the anthropogenic factors. Environmental factors include gravity, seismicity, wetting and drying of bluff face soils, wind erosion, rodent burrowing and piping, percolation of rain water, poorly structured bedding, surface water runoff and poorly consolidated soils. Factors attributed to anthropogenic causes include: improper irrigation practices; building too close to the bluff edge; improper site drainage; use of impermeable surfaces which concentrate runoff; use of water-dependent vegetation; pedestrian or vehicular movement across the bluff top, face and toe, and breaks in irrigation lines, water or sewer lines.

In addition to irrigation water or runoff at the bluff top, increased residential development inland leads to increased water percolating beneath the surface soils and potentially outletting on the bluff face along fracture lines in the bluff or points of contact of different geologic formations, forming a potential slide plane. The Commission's staff Geologist has reviewed all geotechnical investigations submitted by the applicant and has concurred that these investigations have adequately addressed concerns regarding bluff erosion and slope stability of the project site.

Commission staff geologist, Dr. Mark Johnsson, concluded that the bluff edge is in the location depicted on [Exhibit 22](#), and with the proposed 60 foot bluff edge setback for all structures, the development would be safe from slope instability and bluff erosion for the economic life of the project. In addition, coastal canyon edges along the arroyos were evaluated and the staff geologist determined that 15 foot canyon edge setbacks would be sufficient. The proposal includes residential development outside of the 60 foot setback from the fault zones and outside of the 60 foot setback from the coastal bluffs. [Special Condition 1](#) ensures adequate setbacks from coastal canyons edges as well.

The grading plans include corrective grading for development proposed in the upland area, which would involve 1,416,000 cubic yards of cut, and 1,356,000 cubic yards fill, for a total of 2,772,000 cubic yards of grading. This represents one of the largest grading projects in the Coastal Zone of California in recent years.

The development, as proposed, would likely be safe from geologic hazard, however conditions described below are applied to insure that the development: *assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site.*

Conformance with Geotechnical Recommendations

The geotechnical consultants have found that the proposed development is feasible provided the recommendations contained in the geotechnical report prepared by the consultant are implemented as regards the design and construction of the project. In order to insure that risks of development are minimized, as per Section 30253, the Commission imposes [Special Condition 24](#), which states that the geotechnical consultant's recommendations should be incorporated into the design of the project. As a condition of approval the applicant shall submit for the review and approval of the Executive Director foundation plans reviewed and signed by a consulting geologist.

Bluff Top Setback

Development on coastal bluffs is inherently risky due to the potential for slope failure. Bluff top development poses potential adverse impacts to the geologic stability of bluffs and the stability of structures. To meet the requirements of the Coastal Act, bluff top developments must be sited and designed to assure geologic stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms. In order to assure that this is the case, a development setback line must be established that places the proposed structures a sufficient distance from unstable or marginally stable bluffs to assure their safety, and that takes into account bluff retreat over the life of the structures, thus assuring the stability of the structures over their design life. The goal is to assure that by the time the bluff retreats sufficiently to threaten the development, the structures themselves are obsolete.

Assumption of Risk

Coastal bluffs in southern California are recently emergent landforms in a tectonically active environment. Any development on an eroding coastal bluff involves some risk to development. Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. Development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, the standard waiver of liability condition has been attached via [Special Condition 22](#).

Bluff Protective Devices

Coastal bluff lots are inherently hazardous, especially those located adjacent to the ocean. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may become endangered.

Section 30253 of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device. [Special Condition 23](#) prevents the construction of bluff protective devices in the future.

Future Development

To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes [Special Condition 28](#), a future improvements special condition. As conditioned, the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

Deed Restriction

[Special Condition 31](#) requires that the property owner records a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Although conditioned for structural stability, the current development proposal includes elements that render the project inconsistent policies for the minimization of natural landforms, specifically the proposed project would fill approximately 3 acres of a portion of the North-South Arroyo and would fill a portion of the Main Arroyo for the development of Bluff Road. The grading required for the alternative "potential development area" would be significantly less (although unknown at this time) because of the reduced footprint and would avoid the impacts noted above. Limiting development to areas outside of ESHA, and requiring development be setback from the canyon bluff/arroyo edges a minimum of 15 feet, as required by [Special Condition 1](#), would minimize landform alteration and would not impact the ability of the project to assure structural stability and would not contribute to overall destruction of the site. Therefore, only as conditioned can the project be found consistent with Section 30253 of the Coastal Act.

H. 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. There was one burial found on the site previously and significant grading of the mesa as well as clean-

up activities could encounter additional burials. Native American tribes note that ancestors were often buried in coastal locations and much evidence exists to support this supposition and, in part, because of the potential for the existence of additional burials on Banning Ranch, the site has been recorded with the Native American Heritage Commission as sacred land; as of 2/25/2016, the site has been added to the Sacred Lands Inventory with the Native American Heritage Commission. At the request of the Tribal Chairman of the Gabrieleno Tongva San Gabriel Band of Mission Indians, 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, which this quote describes:

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. [February 24th letter from Anthony Morales, Tribal Chairman, to NAHC in support of nomination.]

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.

As a part of the EIR, a Prehistoric and Historical Archaeological Resources Assessment and a Paleontological Resources Assessment were prepared. Evaluation of the known archaeological sites on the NBR property during the EIR process resulted in confirmation of the existence of 8 known cultural sites and 3 historic sites on Banning Ranch.

To recap the findings of the EIR, in the opinion of the archaeological consultant that prepared this portion of the EIR, three of the sites, CA-ORA-839, CA-ORA-844B, and CA-ORA-906, that, with other sites on Banning Ranch, make up the Native American cultural landscape of Banning Ranch, are eligible for listing in the California Register of Historic Resources (CRHR) and the National Register of Historic Places (NRHP). A resource is eligible for listing if it meets the following criteria found in Public Resources Code Section 5024.1 and 14 California Code of Regulations Section 4852):

- A. Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- B. Is associated with lives of persons important in our past;
- C. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- D. Has yielded, or may be likely to yield, information important in prehistory or history.

The EIR archaeological consultant further opined that one of the cultural landscape's archaeological sites (CA-ORA-839) rises to the level of a unique archaeological resource. Public Resources Code Section 21083.2(g) defines a unique archaeological resource as follows:

[an] archaeological artifact, object, or site about which it can be demonstrated that, without merely adding to the existing body of archaeological knowledge, there is a high probability that it meets any of the following criteria:

1. Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
2. Has a special and particular quality such as being the oldest of its type or the best available example of its type.
3. Is directly associated with a scientifically recognized important prehistoric or historic event or person.

All known archaeological sites would be avoided by concentrating development in the potential development areas shown on [Exhibit 22](#). In contrast, per the applicant's proposal, a known archaeological site (ORA 1599) would be impacted, if not entirely eliminated, by the Multi-Family development in the South Village and the Resort development in the Resort Colony. Complete avoidance of resources during the clean-up activities is possible and could be achieved by capping or avoidance of known cultural resource locations. The applicant proposes to mitigate for any impacts caused to any additional unknown archeological resources by excavating (data recovery or salvage) the resources and donating them to the Cooper Center in Santa Ana, CA. However, this mitigation option is not most protective of the cultural resource and it is not an appropriate response for this site's history.

Instead of the most protective mitigation measure, i.e. capping or avoidance, the applicant proposes to remove any yet-to-be found resources if impacted by oil clean-up. Capping of the resource site is only proposed as a secondary measure, to prevent further impacts to the site from foot traffic, erosion, etc. Data recovery excavation, again, is proposed for unknown resources as opposed to capping or redesign of the project to avoid the impacts. The applicant's plans do not include capping these resources, including any human burials found during grading.

The applicant's proposal includes mitigation measures which require that a qualified archaeologist monitor the grading and excavation activities and conduct salvage excavation as necessary. Additionally, a Native American representative is proposed to be present onsite during all grading and excavation activities. Native American groups may have knowledge about cultural resources in the area and may have concerns about adverse effects on cultural resources caused by the proposed development. Because 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 of the proposed development footprint. The application did not include an assessment of the potential locations of unknown cultural resources.

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 dated July 2014 for the archaeological testing/salvage that was previously carried out during investigations for the EIR. The required coastal development permit for the development activities associated with the resources assessment, including excavation through shovel test pits and hand units, was not secured, and thus, this archaeological testing was not subject to Commission review prior to its occurrence. In addition, there is no indication that the ARP was subject to peer review nor submitted to State Office of Historic Preservation, Native American Heritage Commission, or affected Native American groups for review and comment on the adequacy of the Plan. The ARP submitted did not demonstrate that the archaeological testing already performed was adequate to determine that the proposed development (including remediation) will not impact known or unknown archaeological resources. Some Native American individuals believe that there are burials on the project site, however no burials were found during this investigation. There is no discussion in the ARP as to why no burials were found. Also, the ARP focused on determining whether any sites on Banning Ranch are eligible for listing on the California Register of Historic Resources or the National Register of Historic Places. However, the focus should be to determine whether there are cultural resources, including Native American burials, which are afforded protection under the Coastal Act, present on site, and if they are present, what measures need to be taken to best protect those resources in place.

In contrast to the applicant's proposal, the alternative development plan of the "proposed development areas" as conditioned, would lessen or avoid significant adverse impacts to all known archeological sites on Newport Banning Ranch. [Special Condition 20](#) requires capping of the known sites and monitoring of grading and construction activities that have the potential of adversely impacting additional unknown sites and cultural resources that may be found during site grading and construction. The Special Condition outlines the procedures that must occur prior to development and if cultural deposits are encountered during the proposed development. The measures that are most protective of both known and unknown resources (capping and avoidance), which would lessen or avoid additional adverse impacts to cultural sites, would be consistent with previous Commission action (CDP 5-97-367, Hellman and HNB-MAJ-1-12, Ridge). The proposed project, which results in avoidable impacts to cultural resources, is not consistent with the Coastal Act. Only as conditioned, can the project be found consistent with Section 30244 of the Coastal Act.

I. PUBLIC ACCESS AND RECREATION

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of public coastal recreational. The following policies which encourage public access and recreational use of coastal areas are applicable to the proposal:

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided

for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreation facilities design to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation....(6) assuring that the recreational needs to new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253(d) of the Coastal Act states, in relevant part:

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled.

Visitor Serving Uses and Recreation and Public Access

Section 30222 of the Coastal Act requires that private lands suitable for visitor serving uses have priority over private residential or commercial. Section 30222 of the Coastal Act requires that adequate park facilities are constructed in conjunction with new residential development to not overload nearby coastal areas. In this case, the southern mesa of the site is ideally located for visitor serving facilities. It provides coastal views, close pedestrian access to Newport Beach, and opportunities for coastal recreation. The proposal includes a resort complex on the southern mesa, a low-cost hostel, visitor serving commercial, bluff trails, a park, and public parking. The Resort Inn is proposed to be a 75 room high-cost resort located on the southern mesa of a coastal bluff overlooking PCH. The Resort would be developed in conjunction with visitor serving commercial and retail space, and a parking garage. The resort would include a lobby, a spa, a kitchen, a restaurant, and a pool. The approximate square footage per guest room would be 900 sq. ft. and there would be some number of suites. The Resort Colony would also include a 20-bed low-cost hostel. Bluff Park, a linear park on the perimeter of the housing colonies, would include approximately two miles of public pedestrian trails. The project includes development of approximately 10.7 acres of active public park. The proposed development includes parklands dedication to the City of Newport Beach. Preliminary plans for the active park include 3 ballfields with maintained landscaping and perimeter surface parking lots. The Community park would impact 1 of 2 areas on the site that supports foraging Burrowing owls and it also impact large semi-contiguous patches of purple needle grass.

These elements of the proposal are consistent with Section 30222 and 30252 above, however the resort colony and park would permeant impact purple needle grass, gnatcatcher habitat, and

ESHA scrub communities. As discussed in Finding for ESHA, these impacts cannot be found consistent with Section 30240 of the Coastal Act. As proposed, the project is inconsistent with Section 30210 which requires that the development of public recreational opportunities shall not be at the expense of the overuse of natural resources.

There is significant area on the southern mesa where construction of the proposed visitor serving amenities could be developed under the “potential development area” without impacts to ESHA. Staff has identified a total of 21 acres for the resort colony and parkland on the southern mesa that would not impact ESHA and therefore, the project would be consistent with the Coastal Act. Only as conditioned by [Special Condition 1](#) for a revised site plan that conforms to the alternative “potential development areas” can the project be found to be consistent with Section 30222, 30210 and 30252.

Section 30210 requires maximum access, which shall be conspicuously posted. The applicant has proposed many public facilities. [Special Condition 19](#) requires a signage plan to direct the public to the public access and recreation easement areas on the project site and adjacent public access and recreation areas accessible from the site, as well as direct the public to refrain from entering and disturbing conservation areas on the project site and educates the public about the habitat value and lists common disturbances to wildlife which are to be avoided, including domestic pets, littering, loud noises, lights, etc. Directional signage on the trails is required and interpretative signage for to environmental and cultural education. The condition limits the use of Community monuments and entry-signs into the development so as not create the appearance that the community is private. Only as conditioned, is the project consistent with Section 30210.

Parking

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by facilitating the provision of transit service and providing adequate parking facilities. Section 30253(d) of the Coastal Act requires that new development minimize energy consumption and vehicle miles traveled. Therefore, in order to conform to the requirements of the Coastal Act, the proposed project must provide adequate parking in order not to negatively impact parking and coastal access.

Public parking would be provided throughout the site to support access to and use of the proposed park and trail system. Approximately 200 on-street public parking spaces would be provided throughout the development, and 209 off-street public parking spaces would be provided within the Community Park area. In addition, public off-street parking would be provided as shared parking within the Resort Inn and the Urban Colony mixed-use commercial/residential development within the site, including for use by coastal recreationists and park users as capacity permits. The applicant proposes all on site parking to be free and open to the general public. The Conditional Use Permit for the resort issued by the City of Newport Beach indicates that 63 parking spaces are required for the resort and hostel. All public streets are proposed to have public parking. All single family homes would have 2-car garages to provide sufficient parking. The residential structures are all proposed to be self-parked and meet the parking standards of the City of Newport Beach zoning code. Additionally, the applicant proposes public parking opportunities for coastal visitors.

The site plan indicates there would be 1 parking structure proposed in the mixed-use Urban Colony and 1 in the Southern Colony, however complete architectural and construction plans were not submitted. If these parking elements are to remain in the final plans based on the site constraints, final construction plans are required by [Special Condition 1](#). The conditions imposed by the Commission in [Special Condition 18](#) include a parking plan and [Special Condition 4](#) provides for alternative transportation provisions for visitors to the retail space, as well as employees of both the retail spaces and the hotel in an attempt to reduce total vehicle miles traveled associated with the development, as consistent with Section 30253(d) of the Coastal Act. As conditioned, the proposed project provides adequate parking for the visitor-serving uses, will enhance parking in the area by providing additional parking for the public, and will minimize energy consumption and vehicle miles traveled.

Transportation

Section 30253(d) of the Coastal Act requires that new development minimize energy consumption and vehicle miles traveled. Therefore, in order to conform to the requirements of the Coastal Act, the proposed project must provide measures to minimize energy consumption and vehicle miles traveled and facilitate the provision of transit service. Section 30252 of the Coastal Act states that new development should include provisions for non-automobile circulation and provide adequate parking or provide alternative transportation. The proposed trail networks would provide for circulation across the site, as well as access to regional trails and the nearby coast.

The trail network can contain different types of trails Pedestrian trails for pedestrian use and wheelchair use, constructed with native soils, or decomposed granite or similar material and Multi-use trails to allow for alternative transportation through the site and around the site. Non-automobile vehicles such as golf carts, bicycles, and automatic wheelchairs, and similar transportation methods could be allowed on multi-use trails, which shall also support pedestrians. Multi-use trails can be constructed with permeable paving, such as interlocking pavers, bricks, decomposed granite, permeable asphalt, or a similar material. These elements of the proposal, as conditioned by [Special Condition 4](#), are consistent with Section 30252.

Additionally, the applicant proposes a shuttle between the resort area and the nearby beach to be operated by the retail manager. These elements of the proposal, as conditioned in [Special Condition 18](#), are consistent with Section 30252.

Further, to minimize energy consumption and vehicle miles traveled and to facilitate the provision of transit service, [Special Condition 3](#) also requires the applicant adhere to the Transportation Demand Management (TDM) program. The applicant must include non-vehicular, carpooling and public transit incentives for the public, guests, and employees, who visit, use and work at the hotel and commercial space to minimize energy consumption and vehicle miles traveled. The conditions imposed by the Commission in [Special Condition 18](#) include a parking plan and requires permanent public access to parking, public streets, and recreation areas and [Special Condition 4](#) provides for alternative transportation provisions for visitors to the retail space, as well as employees of both the retail spaces and the hotel in an attempt to reduce total vehicle miles traveled associated with the development, as consistent with Section 30253(d) of the Coastal Act. As conditioned, the proposed project provides adequate parking for the visitor-serving uses, will enhance parking in the area by

providing additional parking for the public, and will minimize energy consumption and vehicle miles traveled.

Conclusion

While the project may provide public recreational opportunities in the form of trails, public open space, parking, visitor serving retail, and a resort colony, the project does not do so consistent with the protection of the natural resources on the site. Several elements of the project proposed for public access and recreation would have direct impacts to ESHA. The project is largely consistent with section 30222 and 30252, but is inconsistent with Section 30210 which requires that the development of public recreational opportunities shall not be at the expense of the overuse of natural resources. Only as conditioned for revised plans to avoid all impacts to ESHA and wetlands can found consistent will the sections 30222, 30252, 30253(d) and 30210 above, only as conditioned.

J. LOWER COST VISITOR SERVING FACILITIES

The Coastal Act provides that development should maintain and enhance public access to the coast and encourages the provision of lower cost visitor and recreational facilities.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low to moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Coastal Act Section 30213, which protects lower cost visitor-serving recreational land uses and facilities, has its genesis in the 1975 California Coastal Plan. Based on extensive public input in the early 1970s, the Coastal Plan found that few tourist facilities for persons of low and moderate income were being built in many parts of the coastal zone, and that many such low and moderate cost facilities were being replaced by facilities that had higher costs, including particularly in terms of overnight accommodations (i.e., by higher-cost apartments, condominiums, and hotels). The Coastal Act addressed these findings in part by including the specific Section 30213 mandate to protect, encourage, and where feasible provide lower cost visitor and recreational facilities.

Since passage of the Coastal Act, permit applicants have typically requested that the Coastal Commission and LCP-certified local governments approve higher-end overnight facilities on land zoned for visitor-serving uses, and in some cases on land already containing lower cost accommodations, rather than pursuing lower cost accommodations. Other applicants have proposed non-visitor-serving accommodation uses on sites of existing lower cost accommodations. Additionally, applications for the conversion of hotels and motels to, or the construction of hotels and motels as time shares, condominium ownership, and similar ownership frameworks and combinations have generally increased. Often such facilities are more akin to

residential uses, and thus these types of developments can reduce opportunities for publicly available overnight accommodations, especially lower cost facilities. Overall, the Commission's permit experience confirms the need to guard against the loss or preclusion of lower cost overnight accommodations along the coast.

The remaining low to moderately priced hotel and motel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. As more redevelopment occurs, the stock of low-cost overnight accommodations tends to be reduced, since it is generally not economically feasible to replace these structures with accommodations that will maintain the same lower rates. As a result, the Commission sees more proposals for higher-cost accommodations, including limited-use overnight accommodations. If this development trend continues, the stock of affordable overnight accommodations will eventually be depleted.

As the trend to demolish or convert low-cost hotels/motels continues, and only new higher cost hotels are being built, persons of low and moderate incomes will make up fewer of the guests staying overnight in the coastal zone. Without low-cost lodging facilities, a large segment of the population will be excluded from overnight stays at the coast. By forcing this economic group to lodge elsewhere (or to stay at home), there will be an adverse impact on the public's ability to access the beach and coastal recreational areas. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a larger segment of the population will have the opportunity to visit the coast. Access to coastal recreational facilities, such as the beaches, harbor, piers, and other coastal points of interest, is maximized when lower cost overnight lodging facilities exist to serve a broad segment of the population. In light of the above-described trends in the marketplace and along the coast, the Commission is faced with increasing responsibility to protect and to provide lower cost overnight accommodations as required by Section 30213 of the Coastal Act. Although statewide demand for lower cost accommodations in the coastal zone is difficult to quantify, there is no question that camping and hostel opportunities are in high demand in coastal areas, and that there is an ongoing need to provide more lower cost opportunities along California's coast. For example, the Santa Monica hostel occupancy rate was 96% in 2005, with the hostel being full more than half of the year, and the California Department of Parks and Recreation estimates that demand for camping increased 13% between 2000 and 2005 with nine of the ten most popular State Park campgrounds being on the coast.

Hostels have been an integral part of providing lower cost accommodations along California's coast for many decades. In 1978, California State Parks prepared a plan for California's hostels, calling for a series of hostels to be located every 30 to 40 miles along the entire length of the coast. Although the entire plan did not come to fruition, many hostels have operated along the coast over the last four decades, providing significant overnight resources to many visitors of the coast.

Hostelling International USA (HI) is a non-profit organization that oversees development and operation of numerous hostels in the United States. HI currently operates 11 hostels on the California coast, serving over 250,000 guests per year, including individuals, school groups and families. Occupancy rates at HI's coastal hostels are very high, with average occupancy rates of

75% to 95% during the high season and 65% to 85% throughout the entire year, with average daily rates (per bed) ranging from approximately \$20 to \$30 dollars³.

In August 2006 the Commission held a workshop on condo-hotel construction and conversion that encompassed the topic of overnight visitor affordability. Then, in December 2014 and March 2015, the Commission held workshops on lower cost visitor serving accommodations. Background research for these workshops showed that only 7.9% of the overnight accommodations in nine popular coastal counties were considered lower cost, affirming the ongoing need for more effective implementation of Coastal Act Section 30213. The increased attention on this issue has also generated a more detailed examination of the methods for determining when and to what degree the protection or provision of lower cost overnight accommodations was necessary in any specific case.

Historically, the Commission has approved new hotel developments, including higher cost hotels, along the coastline because they are visitor-serving facilities. Often, the Commission has secured public amenities when approving these hotels to address the Coastal Act priorities for public access and visitor support facilities. The Commission has also required mitigation for the use of land that would have been available for lower cost and visitor serving facilities (e.g. NPB-MAJ-1-06A). Mitigation requirements have been to construct on- or off-site lower cost overnight accommodations, or to pay in-lieu fees for construction of new lower cost overnight accommodations off-site in the future. The expectation of the Commission, based upon several recent decisions, is that developers of sites suitable for overnight accommodations will provide facilities which serve the public with a range of incomes [HNB-MAJ-2-06-(Huntington Beach-Timeshares); A-6-PSD-8-04/101 (San Diego-Lane Field); A-5-RPV-2-324 (Rancho Palos Verdes-Long Point); RDB-MAJ-2-08 (Redondo Beach); SBV-MAJ-2-08 (Ventura); 5-98-156-A17 (Long Beach-Pike Hotel); LOB-MAJ-1-10 (Long Beach-Golden Shore)]. There are several examples of actions in which the Commission found that developing new hostel facilities would qualify as lower cost accommodations that would mitigate for impacts caused by proposed higher cost facilities. Some examples include the approval for the San Clemente Inn (A-92-81), Maguire Thomas Partners (5-89-941) and Highlands Inn (A-3-MCO-98-083).

Proposed Project

The applicant has proposed development of a 75 room resort and a 20 bed hostel on the project site. The resort would include a lobby, a spa, a kitchen, a restaurant, and a pool. The approximate square footage per guest room would be 900 sq. ft. and there would be some number of suites. The Applicant anticipates that the room rates at the resort will be high-cost.

The hostel would occupy the second floor of a visitor serving commercial space, with 5 beds in each of the 4 rooms with a bathroom for each room. There would be a shared common area and kitchen. Each room would have two bunk beds and a sofa, as well as a separate lockable space with a queen bed that could be rented as a private hostel room. The rates proposed are \$79 per night for a private room and \$59 per night for a bed in a shared room.

³ See: <http://documents.coastal.ca.gov/reports/2014/12/W3-12-2014.pdf>

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The Applicant is also proposing to make the hostel available to programs for disadvantaged youth groups from LA and Orange Counties. The program would be affiliated with the Ocean and Open Space Experience, and Newport Banning Land Trust. The hostel would be available for the program for 3 days/2 nights each month, from May through October.

Defining Lower Cost

In a constantly changing market, it sometimes can be difficult to define what price point constitutes low cost and high cost accommodations for a given area. In its previous actions, the Commission has addressed what are appropriate terms for defining low cost and high cost hotels (Coastal Development Permit Nos. 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, 5 A-253-80, and A-69-76, A-6-IMB-07-131, 3-07-002, 3-07-003). More recent Commission actions have utilized a formula that can be used to determine low and high cost overnight accommodations for a specific part of the coast (SBV-MAJ-2-08).

The formula is based on California hotel and motel accommodations (single room, up to double occupancy), and does not incorporate hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not provide a very different experience than a stay in a hotel or motel. Hostels, RV parks and campgrounds are typically lower cost by nature, and are the type of facilities that a mitigation fee for the loss of existing lower cost overnight accommodations or the failure to provide new lower cost facilities would support.⁴

The formula compares the average daily rate of lower cost hotels in a specific coastal zone area (e.g., city or bay) with the average daily rates of hotels and motels across the entire State of California. Under this formula, low-cost is defined as the average room rate for all hotels within a specific area that have a room rate less than the statewide average room rate.

To determine the statewide average daily room rate, the statewide average daily room rates collected monthly by Smith Travel Research were used, and are available on the California Travel and Tourism Commission's website: <http://www.industry.visitcalifornia.com>, under the heading "California Lodging Reports." Smith Travel Research data is widely used by public and private organizations. To be most meaningful, peak season (summer) rates were utilized for the formula. To ensure that the lower cost hotels and motels surveyed meet an acceptable level of quality, including safety and cleanliness, only AAA rated properties were included in the survey. According to the AAA website, "to apply for (AAA) evaluation, properties must first meet 27 essential requirements based on member expectations – cleanliness, comfort, security and safety." AAA assigns hotels ratings of one through five diamonds.

The statewide average daily room rate in California in 2008 for the months of July and August was \$133.00. The most recent data available (March 2015) for the statewide average daily room rate reported was \$145.01. The data shows that the *annual* average room rate in California reflected market and economic changes, where rates peaked in 2008 and again in 2012, and increased even higher in 2013 and 2014. In 2014, the *annual* average daily room rate in California was higher than ever at \$140.16.⁵

⁴ There are examples of privately-run higher cost campgrounds and hostels (e.g. Treebones Resort and Ventana Campground in Big Sur campsites are \$80/\$95, and Wayfarer Hostel in Santa Barbara, beds are \$69).

⁵ Source: 2014-15 Smith Travel Research, Inc.

Using the formula, a study for the City of Ventura defined lower cost accommodations as those charging approximately 25% less than the statewide average daily room rate, in this case \$105 and less (\$140 – 25%), and higher cost accommodations are defined as those hotels with daily room rates 25% higher than the statewide average, in this case \$175 and up per night (\$140 +25%) (SBV-MAJ-2-08). Values in-between are considered moderate cost.

Consistency Determination

The proposed 75-room resort hotel is proposed as a high-cost hotel and would have rates above \$175, with no low-cost rooms in the hotel. In order for the resort development to be found consistent with Coastal Act requirements for low-cost accommodations near the coast, the applicant also proposed to construct a low-cost hostel within the resort complex.

The Commission has typically required that lower cost overnight accommodations amount to 25% of the number of hotel rooms proposed. 25% of a 75 unit resort would amount to 18 or 19 accommodations. The applicant has proposed development of a hostel with 16 dorm beds and 4, private, queen size beds. The rates proposed are \$79 per night for a private queen room and \$59 per night for a dorm bed. The hostel is proposed in conjunction with a low-cost overnight program for school children for overnight stays May through October.

In order for the hostel to act as an onsite mitigation for the construction of the high cost resort, the hostel rates should be consistent with the defining rates of low-cost facilities outlined above, which is less than \$105 per night for a traditional hotel room, with a private bathroom. Because the proposal is for a hostel, not a traditional hotel, the per bed rentals should be consistent with similar lower cost overnight visitor serving facilities in the coastal zone that rent on a per-bed basis. Recent survey information from the Newport Beach area indicates that the average rate per bed in a hostel is between \$20-55 a night⁶. The Hostelling International facility in Santa Monica has an average daily bed rate of \$43 a night. Crystal Cove Historic District offers dorm room accommodations with rates of \$34 per bed. The proposed rate of \$59 per dorm bed and \$79 per private queen bed at this hostel would not be considered low-cost.

In order for the proposed resort to be consistent with Section 30213 of the Coastal Act by providing a low cost hostel onsite, the project has been conditioned to require a final rate structure for the hostel consistent with other lower cost overnight facilities in the coastal zone and to provide a method for periodic increase of the overnight rates in the future, either consistent with CPI increases or with an industry index.

Further, to be consistent with Section 30213, the hostel must remain open, in good repair, and must be utilized by the public. Lower cost accommodations facilities are often owned and managed by a public agency, such as California State Parks, or a nonprofit entity, such as Hostelling International. These entities are familiar with lower cost accommodations operations and management, and their missions are to provide public benefits in terms of lower cost accommodations, thereby ensuring that such units remain viable and occupied over time. In this case, the hostel would be owned and operated by a private, for-profit entity. It is unclear how the hostel would remain viable over time, including if the property is sold to another operator, or if

⁶ Analysis of coastal zone hostels, 2014 CDP 5-13-1200

the revenues are insufficient to cover necessary maintenance and upkeep to keep the units in an operable state.

To address this uncertainty, and to ensure the hostel fulfills the requirements of Section 30213, [Special Condition 17](#) requires the hostel to remain open and available to the general public; limits the duration of each stay to 7 days; requires the hostel to open prior to occupancy of the resort hotel; requires the hostel to be maintained in good repair; requires hostel bed occupancy to be maintained at an annual average of no less than 50%; and requires the Permittee to apply for a CDP amendment to replace the hostel with a comparable facility, should the hostel close for any reason.

Additionally, [Special Condition 31](#) requires a deed restriction on the use of the hostel as a lower cost overnight visitor serving facility in perpetuity, and [Special Condition 17](#) requires the applicant to provide information on the operator of the hostel and requires the hostel operator to provide a Hostel Operations Plan.

Finally, the Applicant is proposing to reserve the hostel facilities for a youth outreach program for disadvantaged youth from LA and Orange Counties for 3 days/2 nights per month, from May to October. Such an outreach program could help to maximize public access by providing overnight accommodations for a segment of the population that is often prohibited from staying overnight at the coast due to high costs. However, in order to maximize access for all, the program should be available for all disadvantaged youth, not just those located in LA and Orange Counties. Further, many programs for disadvantaged youth are affiliated with year-round school programs. Therefore, to maximize access, the hostel should be made available throughout the entire year, not just from May through October. Thus, [Special Condition 17](#) calls for a plan to implement this program, requires the program to be made available at least 3 days/2 nights per month throughout the year, and does not limit the program to youth from LA and Orange Counties. Only as conditioned can the proposed resort and hostel be found consistent with Section 30213 of the Coastal Act.

K. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states [emphasis added]:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Landform Alteration

Based on the applicant's 30% grading plans prepared by Fusco Engineering the proposed project would involve 1.4 million cubic yards of cut, and 1.36 million cubic yards fill, for a total of 2.77 million cubic yards of grading ([Exhibit 8](#)). This would constitute one of the largest grading projects to be undertaken in the Coastal Zone of California in recent years. Large areas of cut and

fill are proposed to create level areas for the construction of homes, commercial development, and the park. There would also be areas filled for the construction of Bluff Road in Arroyos.

In addition to visual impacts, the landform alterations would require grading that has impacts upon biological resources within the arroyos and upon the mesa, including wetlands, impacts upon habitat buffer areas, and adverse changes to wetland hydrology. These impacts resulting from the proposed landform alteration are discussed more fully elsewhere in these findings in the “ESHA” and “Wetlands” sections.

The proposed project calls for the construction of three large areas for development designed to accommodate hundreds of housing units, the commercial retail and resort components. The area proposed for the Urban Colony is relatively flat as existing. For the development of Bluff Road, approximately 3 acres of the head of the North-South Arroyo would be filled. Significant grading is required for the development of housing within the North Village, including an areas of fill at the northern edge of the residential community for the connection to Bluff Road and at the western edge for the development of housing which are both within areas of existing CBBS and CAGN habitat. A housing community to the southeast of the North-South Arroyo would result in fill of a portion of the North-South Arroyo.

Significant grading is proposed for the south village residential area, park, and resort colony. Heavy grading is proposed along the edges of the Main Arroyo at the location proposed for the water quality basin (near 16th Street) and the bridge abutments to support the Bluff Road bridge. The bridge would be 120 feet long with 40-50 foot long supports on either side and retaining walls would be constructed on the canyon edges. Fill is proposed on both sides of the Main Arroyo for the development of the bridge, which is also in the location of existing CBBS and CAGN habitat.

The proposed grading for the north village would change the landform from gently to steeply sloping natural grades to a relatively flat manufactured mesa. This proposed development would degrade the natural landform appearance of the site and does not minimize the alteration of natural landforms as required under Section 30251 of the Coastal Act.

There are alternatives to the grading and filling of landscape features on the project site. As conditioned for revise plans with the development footprint limited to “potential development areas,” grading would be confined to more level areas that do not require as much land movement. Alternatively, building pads could be fashioned to accommodate individual building footprints (such as on the Sea Ranch property) such that mass grading could be minimized or avoided. As conditioned, the character of the existing arroyo and other landscape features would be maintained.

In the alternative “potential development areas,” large quantities of grading may be required for the construction of the road off of PCH, bordering the property line to the east, but minimal grading would be required for the other development areas in the urban colony and north family village due to the smaller footprint outside of the identified site constraints. Some additional grading may be required on the eastern edge of the property near the access to 15th street if the applicant should develop high density housing in that location, outside of the fault zone setbacks, where the park is currently proposed.

The Commission finds that the proposed project does not minimize landform alteration. There is ample space on the project site where development could be accommodated without the substantial alteration of existing landscape. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act. Only as conditioned for revised grading plans based on the alternative “potential development areas” and that minimizes grading wherever possible can the project be found consistent with Section 30251.

Visual Resources

The coastal bluffs of the site contain natural bluff formations as well as rare coastal bluff scrub vegetation. The natural resources are visible from Coast Highway and comprise a visual resource. Coast Highway is known as a highly scenic area. The proposed development would include a 50 foot high resort (with architectural elements for a structure up to 75 feet high) atop of the coastal bluffs facing PCH.

The visual analysis of the proposed resort shows that the resort would be visible from PCH. The height of the proposed resort is not consistent with the character of the area. The surrounding developments are limited to 35 feet in height. The structures immediately seaward of the resort and bridge are within the City of Newport Beach’s Shoreline Height Limitation Zone, which limits the height of all structures to 35 feet high. Development is required to be visually compatible with the character of the surrounding areas. Because of the significant height differences, the proposed developments would not be consistent with the character of the areas, and therefore is inconsistent with section 30251 of the Coastal Act.

Only as conditioned can the project be found consistent with Section 30251. Therefore, [Special Condition 2](#) requires revised plans for the resort colony structures and residential structures wherein the height is consistent with the character and heights of the surrounding coastal area through articulation and height setbacks, in order for the project to be found consistent with Section 30251 of the Coastal Act.

The lower Santa Ana River Trail near the Pacific Ocean runs parallel to the site. A visual analysis of views from the Santa Ana River Trail has not been provided. The Coastal Act protects public views in scenic coastal areas. The development plan may have significant view impacts from the trail. [Special Condition 1](#) requires that that the project be designed in such a way as to avoid impacts to public coastal and scenic views in order to be found with section 30251 of the Coastal Act.

L. WATER SUPPLY

Section 30250 of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, it other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels

in the area have been developed and the created parcels would be smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30250 of the Coastal Act requires that new development be supported by adequate services, including water supply, waste water capacity, and adequate road circulation.

Urban Water

The Urban Water Management Plan (UWMP), the guiding document for local and regional water planning, is required to be updated every five years. Water suppliers to the City of Newport Beach include Municipal Water District of Orange County (MWDOC) which receives its water supplies from Metropolitan Water District (Metropolitan). Local urban water providers, including the City of Newport Beach, are also required to prepare an UWMP to be updated every five years. Each UWMP is required to analyze the reliability of water sources available to the water provider over a 20-year planning horizon considering normal, dry, and multiple dry years and to identify any new specific water supply projects it expects to rely on to meet its projected water needs. For the local region (Newport Beach and MWDOC), one of the most critical aspects of the regional Metropolitan UWMP is the determination of Metropolitan's ability to meet current and projected local water demands.

In 2005, Metropolitan adopted a 2005 Regional Urban Water Management Plan (Regional UWMP), and MWDOC adopted a 2005 UWMP. The City subsequently adopted its 2005 UWMP which was prepared through coordination and planning with MWDOC and Metropolitan to maintain consistent assumptions in projecting supply and demand.

The 2010 Water Supply Assessment (WSA) for the proposed development identifies the sources of the City's water supply and provides information relevant to the supply of water received by the City to be used by the project based on information provided in the City's 2005 UWMP. As the 2010 UWMP was not yet available (published in May 2011), the WSA utilized the most up-to-date water supply information at the time which was contained in the 2005 Metropolitan Regional UWMP and the 2005 MWDOC UWMP relevant to the City's water supply. A combination of water sources were explored for the project.

Imported Water

The City receives imported water from MWDOC, of which the City is a member agency. In turn, MWDOC receives much of its supply from Metropolitan, of which MWDOC is a member agency. Metropolitan's 2005 Regional UWMP contains a water supply reliability assessment with a detailed evaluation of the supplies necessary to meet demands of its member agencies, including MWDOC, over a 25-year period in average, single dry-year and multiple-dry year periods. Metropolitan uses the Southern California Association of Governments

(SCAG) regional growth forecast and direct input from its member agencies in calculating regional water demand projections for southern California.

Groundwater

The City obtains groundwater pumped from four wells owned and operated by the City and managed by Orange County Water District (OCWD.) The City's wells are located in the City of Fountain Valley, approximately five miles north of Newport Beach. OCWD regulates the supply of groundwater to the City through a Groundwater Basin Management Plan that is updated every five years with the most current plan adopted in June 2015. The only constraints affecting groundwater supply to the City are the pumping capacity of the wells and pumping limitations established by OCWD to maintain the groundwater basins.

Recycled Water

The City purchases some recycled water from OCWD. The City has programs and policies in place to promote increased recycled water use in future years including financial incentives as identified in the City's 2005 UWMP. Since the NBR-WSA was published, the OCWD Groundwater Replenishment System (GRS) went through an expansion which increased its water productivity from approximately 72,000 AF/year to 100,000 AF/year in 2015. The final expansion (currently being implemented) will increase productivity to 130,000 AF/year which will further increase local water reliability throughout Orange County and make the GRS the largest water recycling plant in the world. The NBR-WSA includes a summary of the historical and projected water supply for the City provided from all three of the above sources through the year 2030 based on information contained in the City's 2005 UWMP. As described in the WSA, the City's water supply from all three sources has steadily increased annually beginning with 17,820 acre feet per year in 2005 and is projected to continue to increase annually up to 21,716 acre feet per year until the year 2030 with the greatest percentage increase in supply occurring from groundwater sources.

Since the October 2015 Newport Banning Ranch Coastal Commission hearing, there have been several noteworthy updates in terms of local and regional water supply planning. As aforementioned, Metropolitan provides water to MWDOC and 25 other member agencies throughout southern California and serves as the primary distributor of imported water supplies for the region. Metropolitan's most recent Regional UWMP (2015) was released for public comment in February 2016. The Metropolitan 2015 UWMP represents the most current and available planning projections of supply capability and demand through 2040 developed across a collaborative process with the member agencies.

The analysis that goes into creating the Metropolitan Regional UWMP is extensive and includes utilizing computer models that run hundreds of model simulations to determine water supply availability scenarios with current and growing demands and variable levels of conservation. Direct communication with Metropolitan's member agencies occurs on an on-going and frequent basis regarding water supplies and demand to ensure that the member agencies are providing their most current long term demand projections and the most accurate data is being utilized for analysis. The 2015 UWMP highlights whether or not Metropolitan will be able to provide water supply to current and projected water demands throughout southern California. The Regional Metropolitan UWMP serves as the guiding document for all other member agencies to prepare their own UWMPs which are due within six months following the release of MWD's Regional UWMP.

In addition to Metropolitan regional water planning documentation, MWDOC has also been independently conducting extensive water modeling studies to determine water supply reliability specific to Orange County. The studies show an overall reduction (~17%) of future water demand in Orange County which has surprised local water managers (OC Register, February 5, 2016) due to slower growth projections, increased water efficiency and water conservation.

MWDOC's March 2016 Draft UWMP anticipates just a 3.27% increase in water supply demand during the next 25 years and expects to meet that demand using its existing and already planned water supply programs. Analysis from model simulations of water supply and demand include multiple climate scenarios and assume no additional conservation or water infrastructure projects (i.e. desalination, increasing stormwater capture, regional water transfer agreements) for purposes of testing the impact of potential future supply investments by Metropolitan, the Metropolitan member agencies outside of Orange County and also for projects within Orange County. Preliminary findings suggest a number of water supply options to reduce or eliminate potential shortages in the future. Their study will not be completed for several more months.

The total average annual water demand for the revised proposed project (895 residential units) is estimated to be 400 acre feet per year, or 0.36 million gallons per day (mgd), substantially less than the average 1,005 acre feet per year demand planned for in the City's 2005 UWMP and the 613.5 ac-ft evaluated in the 2011 EIR (1,375 Units).. The WSA includes an evaluation of estimated future normal year, single dry-year, and multiple dry-year conditions. The evaluation demonstrated that City water supplies will be sufficient to meet future demands during single and multiple dry-year period conditions through the year 2030.

Since the October 2015 hearing, MWD's 2015 UWMP has been released with updated demand and supply projections. The report states that there is enough water supply capabilities to meet current and projected demands throughout southern California and the analyses show potential surpluses in various scenarios (see Table 2-5 below from the 2015 Metropolitan UWMP). Specifically it states:

Metropolitan has supply capabilities that would be sufficient to meet expected demands from 2020 through 2040 under the single dry-year and multiple dry-year conditions [Regional UWMP, 2016, pg. ES-5].

The member agencies, including MWDOC and Newport Beach, can now finalize their own projections of Metropolitan and local water supply and demand projections knowing that MWD supplies can meet the forecasted demands through 2040.

Approval of the WSA does not entitle the Newport Banning Ranch project any water rights, priority or allocation to any supply, capacity or facility, or affect the City's obligation to provide service to its existing customers or any potential future customers. The City Council's approval of the WSA does not constitute an entitlement to water rights or service for the project or a will serve commitment for water to the proposed project. The WSA is not the final water supply analysis that will be required for this project, from the City's perspective, and

subsequent water supply evaluations are required for implementation of the project. [Special Condition 29](#) requires the applicant to submit evidence that the City of Newport Beach has committed to supply water to the development. Only as conditioned can the project be found consistent with Section 30250 of the Coastal Act.

M. INDEMNIFICATION

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes [Special Condition 21](#), requiring reimbursement of any costs and attorney fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit.”

N. UNPERMITTED DEVELOPMENT

Unpermitted development, as described in Appendix A, occurred on the site prior to submission of this permit application, and the Commission has taken action to address the applicant’s liability for all unpermitted development subject to the 2015 Consent Orders, through its issuance of said orders.

The Commission issued the 2015 Consent Orders to address 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.

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, 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 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 alleged unpermitted development. The Commission concurred with Dr. Engel’s general conclusion.

By entering into the 2015 Consent Orders, NBR, although not admitting to any wrongdoing or liability under the Coastal Act, agreed 1) to remove certain allegedly unpermitted wells and either apply for after-the-fact authorization or remove other allegedly unpermitted wells, such that all allegedly unpermitted wells located outside of two areas of the site under West Newport Oil Company’s (WNOC) control, i.e. the “Oil Remainder Areas”, will be removed or addressed in an after-the- fact CDP application(s); 2) restore many acres affected by the disputed activities

and restore additional acres as mitigation, with the combined restoration totaling 18.45 acres; 3) deed restrict 24.6-acres of the site for open space and restoration; and 4) not to engage in the large-scale mowing activities previously undertaken by the oilfield operator that spanned much of the upland areas of the Properties that have resulted in impacts to native habitats. The cessation of mowing activities has allowed for many more acres of the site to begin to recover from this activity. In many previously mowed areas, natural habitat, such as coastal sage scrub, is beginning to flourish after the cessation of mowing.

The 2015 Consent Orders were issued, in part, for the purpose of resolving NBR's liability for alleged unpermitted development on the site to provide clarity for permitting actions, such as the present application, in part by providing for active restoration of certain impacted areas and passive restoration of the remainder of the impacted areas through the cessation of activities that disturbed these areas, thus allowing for an accurate analysis of the resources on site. Although the Consent Orders do help to lay the groundwork for review of this application, the obligations of the Consent Orders are independent of the Commission's action on the application; NBR is bound to perform the restoration and mitigation activities required by the Consent Orders regardless of the Commission's action.

Staff is currently reviewing the restoration plan, which proposes planting of native plant species in disturbed areas across the site, that NBR has prepared pursuant to the Consent Orders. Although these areas have not yet been restored, through the Consent Orders, NBR and the Commission have agreed to immediately treat the restoration areas as if the areas are restored with native habitat. In addition, NBR agreed, by signing the Consent Orders, that it shall not use the restoration or mitigation projects described in the Consent Orders for the purpose of generating mitigation or restoration credits to satisfy any State or Coastal Commission requirement for restoration or mitigation.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the unpermitted development that has occurred on the site, although, as noted above, the Commission has already taken action to address the applicant's liability for the unpermitted development that was the subject of the 2015 Consent Orders, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

O. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

(a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

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. The project site is listed as “deferred certification” in the LUP.

The majority of the site is under the jurisdiction of the County of Orange. Neither the County of Orange nor the City of Newport Beach has a certified Local Coastal Program that includes the project site. The City is in the process of creating an implementation plan for the Coastal Land Use Plan and certifying their LCP. Pursuant to Section 30604(a) of the Coastal Act, only as conditioned to be the least environmentally damaging alternative can the project be found consistent with Ch. 3 policies of the Coastal Act and therefore, will not prejudice the ability of the City of Newport Beach to certify the pending LCP.

P. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved under the Commission’s CEQA-certified regulatory program if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The proposed project is not the least environmentally damaging feasible alternative. Through the CEQA process, the Lead Agency issued a ‘statement of overriding consideration’ to enable the project to be approved consistent with CEQA. The EIR describes several alternatives for the project, including Alternative B, Open Space and Park: *Alternative B would have fewer impacts than the proposed Project because it would involve less grading and site disturbance. This Alternative would have less demand on public services and utilities. However, this Alternative would not assist the City in meeting its RHNA housing requirements or implementing the General Plan Housing Element. Alternative B would be able to avoid the significant and unavoidable impacts associated with traffic, air quality, greenhouse gases, and certain noise impacts, when compared to the proposed Project.* Ultimately Alternative B was not proposed

due to assumed economic restrictions, however under CEQA it is a less environmentally damaging alternative.

Commission staff has identified an alternative project footprint, based on site constraints. There are countless projects that could be designed within that footprint, so Commission staff did not attempt to redesign the applicant's project. However, any project that adheres to those constraints, as the proposed conditions would require, and that abides by the other conditions, would qualify as the least environmentally damaging alternative because the project would respect the ESHA, wetlands, and other on-site resource constraints and conform to all other resource-protection conditions, so that it could be found consistent with Ch. 3 of the Coastal Act. 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 Commission finds that 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.

APPENDIX A1

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Submittal of Revised and Final Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and only upon satisfaction of the requirements of Special Condition 25 (Other Resources Agencies Approvals), the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final plans of each type listed below, with drawings to be supplied in size 11" x 17" or larger. The revised final plans shall conform to the preliminary plans listed in Appendix A2 to the staff report except as indicated in this condition, and they shall be reviewed and approved by the City of Newport Beach prior to submittal to the Executive Director:

General Project Design Parameters - The purpose of the revisions to all plans for the project is to assure, with certain limited exceptions identified below, avoidance of prohibited uses of, or significant adverse impacts to, wetlands and environmentally sensitive habitat areas (ESHA), archeological resources, and bluff and canyon edges. In general, all plans shall be revised to reflect the following (see also general exceptions below) (all setbacks to be measured horizontally and from the boundary of the target resource unless otherwise specified):

- No development as defined in Section 30106 of the Coastal Act shall occur within:
 - the land identified as the "Site Constraints" in [Exhibit 25](#)
 - a minimum 100 foot setback from California gnatcatcher habitat ESHA
 - a minimum 50 foot setback from sensitive vegetation ESHA
 - a minimum 100 foot setback from wetlands
 - a minimum 50 foot setback from archeological resources
- Avoid impacts to bluffs and establish a 60 foot setback for structures from coastal bluff edges
- Avoid impacts to canyons/arroyos and establish a 15 foot setback for structures from the edges
- Habitable structures shall have a minimum 50 foot setback from the earthquake fault zone
- Establish only low intensity uses (e.g. passive park, public trails, environmental education) within the 'potential developable areas' located generally between the boundary of the Southern/Main Arroyo and the North-South Arroyo as depicted as 5.9 acres on [Exhibit 22](#)
- Where impacts to ESHA and Wetlands are authorized under the "General Exceptions" below, said resources shall be recreated and/or restored in their original location.

General Exceptions to Project Design Parameters – Certain limited exceptions to the above identified General Project Design Parameters are as follows:

- Impacts to wetlands, ESHA, archeological resources, and bluff and canyon edges are authorized for all development necessary to remove verified clean-up targets included in the Final Remedial Action Plan, pursuant to Special Condition 8.
- The entry road from Pacific Coast Highway (a.k.a. ‘bluff road’) may be located within the 100-foot setback established above from the Gnatcatcher habitat ESHA to the west, as identified as a Site Constraint in [Exhibit 22](#), for an approximate length of 350 feet where there is no space on site for it to observe the full 100-foot setback, in order to provide access to the “Resort Colony” area, provided that that portion of the road remains at least 50 feet from that Coastal California Gnatcatcher habitat ESHA and mitigation measures such as continuous sound walls, dense vegetation, and grade separations sufficient to prevent impacts that would significantly degrade the ESHA are incorporated into the design of the entire portion of road that is within the 100-foot setback. The applicant shall provide a buffer plan as part of the final Habitat Management Plan for the review and approval of the Executive Director as required by Special Condition 16.
- In the vicinity of Wetland W, just northwest thereof, a road may be located within the 50-foot setback from sensitive vegetation ESHA and the 100-foot setback from the Gnatcatcher habitat ESHA established above for an approximate length of 225 feet where there is no space on the site for it to observe the full setbacks, in order to create a road linkage between the “Resort Colony” area and 15th Street, provided that that portion of the road remains 25 feet from the Purple needlegrass grassland ESHA and 75 feet from the Coastal California Gnatcatcher habitat ESHA and mitigation measures such as continuous sound walls, dense vegetation, and grade separations sufficient to prevent impacts that would significantly degrade the ESHA are incorporated into the design of the entire portion of road that is within those setbacks. The applicant shall provide a buffer plan as part of the final Habitat Management Plan for the review and approval of the Executive Director as required by Special Condition 16.
- Trails for public access and recreation may be located within buffers identified on [Exhibit 22](#) provided they are located in a fashion that minimizes impacts to the resources being buffered.
- If necessary to provide access to the approximately 3 acre developable area southwest of wetland CC a road may be located in the outer 50 feet of the northwestern portion of the 100-foot setback established around wetland CC and shown as a site constraint in [Exhibit 22](#), provided that mitigation measures to prevent water-quality or other impacts that would significantly degrade the wetland are incorporated into the design of the entire portion of the road that is within the 100-foot setback, and provided that the remaining portion of the setback/buffer area around wetland CC and the setback/buffer area around wetland C are, at a minimum, increased in area equivalent to the reduced buffer to allow the road, and made larger as necessary to merge the buffers for C and CC together to form a cohesive wetland complex.

In addition to conforming to the above-identified General Project Design Parameters and the General Exceptions to the Project Design Parameters, each of the plans identified below shall conform to the following, except in the isolated instances where the following would preclude implementation of the exceptions listed above:

A. GRADING PLANS

1. The 30% grading plans submitted on December 2, 2015, shall be revised to eliminate grading outside of the “potential development areas” identified in [Exhibit 25](#) attached to the staff report, and the “limits of disturbance” shall not encroach within the borders of the “potential development areas”.
2. The plans shall indicate that no grading shall take place within areas of identified site constraints, including buffer zones, as depicted on [Exhibit 25](#) attached to the staff report. The amount of grading, including cut, which shall not exceed 1,416,000 cubic yards, and fill, which shall not exceed 1,356,000 cubic yards, as indicated on the Earthwork Quantities submitted 4/11/2016 shall be identified on the final plans.
3. Final plans shall identify the CCC coastal bluff edges as indicated on [Exhibit 22](#) attached to the staff report and the CCC canyon bluff edges.

B. SUBDIVISION/TRACT MAPS

1. A revised subdivision/tract map shall be submitted that identifies all areas mapped as the “Site Constraints” on [Exhibit 25](#) as “open space lots” that shall be subject to the restrictions on uses identified in Special Condition 11 .
2. The revised subdivision/tract map may allow subdivision of the “potential development areas” into smaller lots than currently proposed, if desired for creation of additional single-family, multi-family and commercial developments, as approved by the City of Newport Beach.
3. The revised final subdivision/tract map shall be submitted for review and approval by the Executive Director to ensure conformity with the conditions of this permit prior to construction of any structures, but before recordation of the final subdivision/tract map.

C. SITE PLAN

1. A revised final site plan shall be provided that limits the residential, commercial and active park development footprint, including all supporting infrastructure such as roads, utilities, drainage facilities and fuel modification zones to the “potential development areas” as identified in [Exhibit 25](#);
2. The site plan shall delineate as “open space” the areas that are mapped as the “Site Constraints” in [Exhibit 25](#);
3. The revised site plan may include road, trails, and access elements that result in reduced buffer widths only as specified in “General Exceptions to Project Design Parameters”.

D. PHASING PLAN

A revised final phasing plan shall conform to the following and be phased in the order below:

1. Undertake the pre-cleanup sampling in sensitive resource areas required in the Clean-Up Target Confirmation Sampling in Sensitive Resource Areas and prepare the SITE-SPECIFIC RESTORATION AND MONITORING PROGRAM as described in Special Conditions 9 and 16
2. Clean-up and material treatment, processing, stockpiling, borrow, and disposal activities described in Revised Final Remedial Action Plan
3. Accounting and verification of all impacts of oilfield clean-up activities to all ESHA and Wetlands and required in-place restoration and mitigation
4. Grading, staging, and site preparation for commercial and residential development

5. Construction of public facilities, public access improvements and trails, utilities and infrastructure
 6. Completion of the initial habitat restoration
 7. Construction of commercial and residential
 8. All parks, trails and the hostel must be operating and available to the public prior to the occupation of the first residential unit
- E. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Architectural Plans

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final architectural plans, with drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1, except in the isolated instances where the following would preclude implementation of the exceptions listed:
1. Complete architectural plans including elevations and floor plans shall be provided for all structures in substantial conformance with the plans submitted for CDP application 5-13-032 in the master development plans.
 2. Final plans shall be submitted for the following, including but not limited to: each residential product type, parking garages, hotel and resort structures, swimming pools and accessory structures, hostel, commercial and retail space.
 3. Foundation plans shall be submitted for each structure type limited to standard foundation systems. Caisson foundations that would enable placement of structures closer than 60 feet to a bluff edge are not approved by this permit.
 4. All plans and elevations shall include heights of structures, in conformance with the following (heights measured from finished grade): single family residential structures shall not exceed 45 feet high with architectural features and multi-family residential and commercial structures shall not exceed 65 feet high including architectural features, with the exception of the resort structures. The resort structures, including the hostel, shall not exceed 35 feet including architectural features within 200 feet of the CCC coastal bluff edge. Greater than 200 feet from the coastal bluff edge, the height of the resort structures shall not exceed 65 feet including architectural features. Articulation is required between the height differences.
 5. Final revised plans shall depict the location, design, height and materials of all walls, fences, gates, and safety devices and boundaries. Walls, fences, gates, safety devices and boundary treatments controlling direct access into wetland and ESHA areas and their buffers are required unless that access or entry is upon a public trail. Where the backyards of residences or residential community spaces abut Wetland and ESHA buffers, there shall be walls, fences, gates, and safety devices and boundary treatments, as necessary, to minimize disturbance from development and contain domestic animals within the residential and commercial areas and exclude such

- animals from sensitive habitat. The above-required plans shall be accompanied by an analysis of the wall, fence, gate and boundary treatment plan prepared by a qualified biologist which documents that the proposed walls, fences, gates and safety barriers and boundary treatments will minimize development disturbance and the uncontrolled entry of domesticated animals into wetlands, ESHA, and their buffers.
6. All doors, windows, patio and balcony railings shall be designed to minimize bird-strikes with the structure. Materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass, Plexiglas or other clear material shall not be installed unless embedded with materials or affixed with appliqué (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any embedded materials or appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas with embedded materials or appliqué. All materials and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Transportation Demand Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final Transportation Demand Management Plan, with drawings to be supplied in size 11” x 17” or larger. The Transportation and Demand Management Plan dated September 2014 shall be revised in the following ways:
 1. The TDM plan for the Resort area shall include a minimum of 50 bicycle racks evenly distributed around the southern mesa available to resort guests, resort and retail employees and to members of the public.
 2. A shuttle to and from John Wayne Airport for hostel and hotel guests will be free of charge. The operating hours of the shuttle and reservation process shall be clarified but at a minimum must offer round trip service at least 3 times daily or round trip service at least once per day as well as on-demand service.
 3. Valet service shall not occupy on-street public parking spaces and shall not occupy public parking spaces located at the public lots.
 4. The proposed bicycle rentals in the resort area shall be offered to both hotel guests and hostel guests at a cost not to exceed \$10 per day (may be adjusted annually in accordance with the consumer price index (CPI)), available on an hourly, half day, and daily rate (\$10/daily pro-rated accordingly) and available on a first-come first serve basis.

5. The proposed free daily shuttle service for the general public from the resort area to nearby beaches and other coastal access areas shall include periodic routes (at least twice per day on operating days) to the nearest transportation center or bus hub (currently the Newport Transportation Center at Fashion Island in Newport Beach).
 6. Parking spaces throughout the development shall be developed consistent with the following: a minimum of 2 garage spaces for each single family dwelling; a minimum of 2 covered spaces for each multi-family dwelling and 1 guest space for every two multi-family dwellings; a minimum of 1 space for every 200 square feet of retail center and resort structures; a minimum of 5 spaces for every 1 acre of public park. Parking spaces shall be calculated and the location shall be called out on the revised plans required in Special Conditions 1, 4, and 18.
 7. All roads shall provide public parking spaces and a minimum of 200 public parking spaces along the roads throughout the development shall be provided.
 8. All facilities providing overnight accommodations shall distribute information regarding transit, shared rides and shuttles, bike routes, bike rental and bike parking in all hotel guest rooms, upon guest reservation confirmation and at the reception desk is required. The resort must also provide walking maps and bike routes to guests.
 9. Assistance to guests for booking shuttle services, bike rentals, Uber rides or similar service, "flex cars" and similar alternatives.
 10. The applicant and its successors and assigns shall actively encourage employee participation in a Transportation Ride-Sharing program and shall offer free-of-charge coordination services.
 11. Every on-site employer shall provide, either individually or within an employer-shared facility, on-site employee showers and lockers in an employee lounge for employees who walk or bike to work.
 12. All commercial operations, including retail and restaurant tenants, shall offer a minimum of 50% reimbursement to 100% of their employees for public transit fare to and from work.
 13. The applicant and its successors and assigns shall implement a publicity program, the contents of which is subject to the review and approval of the Executive Director, that indicates how the future hotel employees and tenant employees of the development will be made aware of the provisions of this special condition (during employee orientation, and at least once annually thereafter through meetings, trainings, pamphlets and posters at a minimum). The publicity program shall be implemented within 90 days of the completion of construction.
 14. The applicant and its successors and assigns will maintain a Transportation Information Area, which will provide information to employees, visitors and hotel guests about local public transit services and bicycle facilities.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Circulation System Plans

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final plans for the roadways, trails, and site circulation system, with drawings to be supplied in size 11” x 17” or larger. The final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1 except in the isolated instances where the following would preclude implementation of the exceptions listed. Plans for the roadways, trails, and site circulation system shall be revised in the following ways:
1. Eliminate from the plans the proposed segment(s) of “Bluff Road” located outside of the “potential developable area” identified on [Exhibit 25](#) including the segment running from the proposed South Colony, across the Southerly/Main Arroyo to the North Village and Urban Colony.
 2. Access to the site shall be provided from Pacific Coast Highway, 15th street, 16th street, and 17th street with no internal connections between these existing streets through the site that would result in construction outside of the “potential developable area” identified on [Exhibit 25](#).
 3. Emergency vehicle access to and from the Residential and Commercial development using existing roads or paths may be provided in the Oil Remainder Areas with access off of PCH
 4. The Right-of-way for all roads is limited to maximum 50 feet wide, one maximum 18 foot wide travel lane in each direction, with maximum 8 foot wide on-street parking lanes on each side of the street, with bike lanes in areas only where there is sufficient space in the identified “potential development areas” shown in [Exhibit 25](#).
 5. Bike lanes and sidewalks shall be limited to the minimum width necessary, 5 feet for bike lanes and 4 feet for sidewalks, and shall only be included along road right-of-ways in the revised plans where sufficient area exists in the “potential development areas” without encroaching into buffers shown in [Exhibit 22](#).
 6. Trails shall be designed to serve as alternatives to sidewalks and bike lanes where the latter cannot be provided on-street due to site constraints. Trails shall also serve as options for circulation throughout and around the site to reduce vehicle miles traveled. All trails shall incorporate way-finding, directional signage, as well as permitted use signage, more specifically described in Special Condition 19. Trails shall be reflected on the plans as one of the two types of trails described below:
 - a. Pedestrian trails, limited to maximum 10 feet wide, may cross through areas of ESHA buffers. Pedestrian trails are for pedestrian use and wheelchair use only and shall be constructed with native soils, or decomposed granite or similar material using existing roads or paths where feasible.
 - b. Multi-use trails, limited to maximum 20 feet wide, and may cross through areas of ESHA buffers only as shown on [Exhibit 22](#) attached to the staff report. The purpose of the multi-use trails is to allow for alternative transportation through the site and around the site. Non-automobile vehicles such as golf carts, bicycles, and automatic wheelchairs, and similar transportation methods shall be allowed on multi-use trails only, which shall also support pedestrians. Multi-use trails shall be constructed with permeable paving, such as interlocking pavers, bricks, decomposed granite, permeable asphalt, or a similar material. Multi-use trails shall also be designed to serve as secondary access points for Fire and other Emergency services to access residential and commercial development areas.

Final plans for the multi-use trails shall call out the use of these trails as Fire Access Roads.

- c. A final trail system plan shall be submitted showing all access points and connections to regional trails designed in the least environmentally damaging alignments, but with maximized interconnectedness and circulation across the site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Landscape Plans for Lands Not Included in the Final Habitat Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final landscaping plans, with drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1 except in the isolated instances where the following would preclude implementation of the exceptions listed. Revised final landscaping plans prepared by an appropriately licensed professional, for areas not included in the Final Habitat Management Plan, shall be submitted, revised in the following ways and to include the following requirements:
1. The plans shall demonstrate that all planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 2. All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plans;
 3. All landscaping shall be drought tolerant. No lawns except for approved turf areas within parks. No swimming pools on individual residential lots.
 4. No permanent irrigation system shall be allowed within 25 feet of coastal bluffs or canyon bluffs/slopes. Temporary above ground irrigation to allow the establishment of the plantings is allowed. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers for irrigation is required. Use of reclaimed water for irrigation is required when available. The landscaping plan shall show all the existing vegetation and any existing irrigation system along with notations regarding all changes necessary thereto to comply with the requirements of this special condition.
 5. The plan shall include a map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants.
 6. All areas disturbed by the development and all areas in existing disturbed conditions shall be re-vegetated and maintained. All lands within the dedicated open space and conservation areas shall be vegetated in accordance with the final Habitat

- Management Plan approved by the Executive Director pursuant to Special Condition 16.
7. Except for approved landscaping on the private residential and commercial lots and for approved turf species within the park areas, all landscaping (including temporary erosion control and final landscaping) for the entire development covered by this permit shall be of plants native to coastal Orange County and appropriate to the natural habitat type.
 8. Native plants used for landscaping shall be obtained, to the maximum extent practicable, from seed and vegetative sources on the project site or other local sources.
 9. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots and the park areas. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the private residential lots and the park areas.
 10. Use of native plant species appropriate to coastal Orange County is encouraged within the private residential lots and within approved turf areas in parks.
 11. Landscape treatment for visual purposes shall include adequate plantings to break up large expanses of wall or roof of all residentially and commercially developed portions of the site that would be visible from or face upon proposed parks, open spaces and trails. Landscaping for these visual treatment purposes shall be installed following completion of grading for the development and prior to or concurrent with commencement of construction of the residential and commercial structures authorized under this permit.
 12. Final landscaping for all areas outside the habitat management plan area shall be completed prior to the occupation of the adjoining residential or commercial structures approved by this permit. The timing of re-vegetation efforts within the habitat restoration areas identified in the revised final Habitat Management Plan shall be as indicated in the revised final Habitat Management Plan approved by the Executive Director.
 13. In addition to the Final Landscaping Plans, the permittee shall submit landscape palette lists subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the residential and commercial development areas; 2) a representative list of the non-native, non-invasive common garden plant species that may be planted in the residential lots; and 3) the non-native, non-invasive turf that may be planted within approved turf areas in parks. The landscape palette for the development shall be consistent with the lists of approved plants as reviewed and approved by the Executive Director.
 14. The palette lists shall remain available for public consultation at the City of Newport Beach, any owners association(s) established for the development, and from the management organization for the conservation easement areas. Additions to or deletions from these lists may be made by the Executive Director of the California Coastal Commission, in consultation with the project's restoration ecologist or biologist and the resource agencies. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal

- development permit unless the Executive Director determines that no amendment or new permit is legally required.
15. Concurrent with the submittal of all Landscaping plans and palettes, the permittee shall provide an analysis of each plan submitted, prepared by a qualified biologist, which documents that the landscaping complies with all of the landscaping and habitat management requirements of this permit.
 16. The Final Landscaping Plans shall include Monitoring plans. Five years from the date of the completion of the installation of landscaping as required in these special conditions, the permittee shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the requirements of the special conditions of this permit and the landscape plans approved pursuant to the special conditions of this permit. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the permittee, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Lighting Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of a lighting plan, with drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1 except in the isolated instances where the following would preclude implementation of the exceptions listed. The final plan shall conform to the following:
1. A final lighting plan shall be prepared and shall be designed to protect the wetlands and ESHA from light generated by the project as described in part 2 below. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified environmental lighting design expert, which documents that the lighting plan is effective at preventing lighting impacts upon adjacent wetlands and ESHA.

2. All lighting within the proposed development shall be directed and shielded so that light is directed downward and away from wetlands and ESHA identified in [Exhibit 20](#) and [Exhibit 22](#). All lighting shall utilize the best available “dark sky” technologies including lights with the lowest intensity possible and that utilize wavelengths that are the most environmentally protective of organisms active at night and dawn and dusk. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate for safety purposes.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Fire Hazard Mitigation and Fuel Management Requirements

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final Fire Hazard Mitigation and Fuel Management Requirements Plan, with drawings to be supplied in size 11" x 17" or larger. The revised final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1 except in the isolated instances where the following would preclude implementation of the exceptions listed. The final fire hazard mitigation and fuel management plan for the residential and commercial development shall be consistent with the requirements outlined below:
1. All fuel management shall be consistent with the final habitat management plan approved by the Executive Director pursuant to Special Condition 16. The final fire hazard mitigation and fuel management plan shall provide fuel management zones within the "potential development areas" identified in [Exhibit 22](#). No fuel management zones shall take place within areas identified as ESHA, Wetlands, or buffers.
 2. Proposed and future residential and commercial structures shall be set back a sufficient distance from proposed habitat preservation and restoration areas such that there is no vegetation thinning or clearance required by the relevant fire authority (e.g. City of Newport Beach Fire Department or Orange County Fire Authority) within ESHA and ESHA buffers and sensitive habitat areas and wetlands as identified in [Exhibit 20](#) and [Exhibit 22](#) and such that there is no prohibition by the fire authority on the types of native plant species that may be planted or allowed to grow within the habitat preservation and restoration areas.
 3. The final fire hazard mitigation and fuel management plan shall have received final approval from the relevant fire authority and the submittal shall include written evidence of said approval. The fire hazard mitigation and fuel management plan shall include a statement which states that any changes to the plan, including any changes required by the relevant fire authority or other resource agencies, shall be reported to the Executive Director of the Coastal Commission, and shall require an amendment to this permit or a new coastal development permit prior to implementation of changes unless the Executive Director of the Coastal Commission determines that no amendment or new permit is legally required.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved revised final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Revised Oilfield Abandonment Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide for Executive Director review and approval, a Revised Oilfield Abandonment Plan (Abandonment Plan) that is consistent with the Remedial Action Plan approved by the Santa Ana Regional Water Quality Control Board ("RAP") and designed around the results of the comprehensive ground-truthing and refinement "field verification process" described

in NBR's October 27, 2014 *Newport Banning Ranch Oil Field Abandonment Plan* and carried out in November of 2015 and March of 2016. The Abandonment Plan shall include:

A. REMEDIATION ACTION AREAS SITE PLAN.

A revised remediation action areas site plan shall be provided that confines all materials treatment (bioremediation, concrete crushing, etc.), processing, stockpiling, borrow, and disposal sites described in the RAP to:

1. the "potential development areas" as identified in [Exhibit 22](#);
2. existing cleared and unvegetated areas not identified as ESHA or wetlands in [Exhibit 3](#); and
2. those areas where soil and any existing vegetation would be fully and unavoidably removed due to the extraction of hydrocarbon contaminated soil or oil and gas infrastructure identified in the RAP.
3. For the purposes of this special condition, the combination of these three types of areas shall be referred to as the "available area." The applicant shall limit onsite materials treatment, processing, borrow, stockpiling, and disposal activities to those locations shown in this revised remediation action areas site plan.
4. If the "available area" does not provide sufficient land area for the currently proposed material stockpile, treatment, processing, borrow, and disposal activities, alternative material treatment and disposal options shall be implemented to fit as much of these activities as possible onsite. Such alternative treatments would include the following:
 - a. Placement of clean, treated material within clean-up excavations in the lowland portion of the site rather than disposal pits in the upland area;
 - b. Phasing clean-up and material treatment activities to reduce treatment volumes and areas needing to be processed at one time;
 - c. Offsite rather than onsite disposal of concrete waste that cannot be recycled and reused onsite;
 - d. Use of more selective extraction and removal techniques for inert waste materials such as dispersed gravel and concrete (such as targeted removal rather than grading) that reduces the volume of non-target material collected;
 - e. Use of direct loading of excavated materials onto trucks in place of stockpiling wherever feasible.
 - f. Reuse of removed asphalt, asphalt-like material, gravel, and concrete as roadbed, foundation, and construction materials whenever possible.
 - g. Off site disposal of soil and material volumes unable to be reused onsite or treated and disposed within the "available area" and lowland clean-up excavations.

B. ADVERSE IMPACT AVOIDANCE/MINIMIZATION MEASURES

The Abandonment Plan shall include measures to avoid or minimize environmental impacts during oilfield clean-up, material treatment, processing, stockpiling, borrow, and disposal. Such measures shall include but not be limited to the following:

1. Measures shall be implemented limiting access to and from the clean-up sites and the soil borrow, material stockpiling, processing, treatment and disposal operations areas

- to existing oilfield access roads without removal of vegetation or grading to expand these roads or develop additional access roads;
2. To the maximum extent feasible, project activities related to oilfield clean-up or soil borrow, material stockpiling, processing, treatment and disposal operations that are outside of the “potential development areas” indicated in [Exhibit 22](#), including infrastructure removal, temporary soil and material storage, equipment staging, site access, and the placement and operation of machinery and equipment, shall occur on existing roads and oilfield operations areas and outside of areas of existing native vegetation.
 3. The duration of time each site is disturbed and the total area of disturbance shall be minimized to the extent feasible.
 4. The applicant shall maintain a current database of state or federally listed rare, threatened or endangered species and other sensitive species present in the oil field and seasonal or year round access restrictions or closures required for sensitive species protection. The applicant shall keep closure information posted in the field office and contractor trailers and notify all personnel of closed areas and penalties that NBR will exact from its contractors and employees for non-compliance.
 5. The applicant shall clearly mark any potentially impacted locations of sensitive species in the oil field to exclude vehicles or pedestrians (e.g., with traffic cones, caution/DO NOT ENTER tape, and orange construction fencing) unless vehicle or pedestrian access is necessary to carry out oilfield clean-up activities.
 6. To the extent feasible, the applicant shall confine all vehicular use to designated construction areas and existing access corridors. Proposed new access corridors and routes shall be surveyed by qualified biologists and routed to avoid impacts to sensitive plant and wildlife species and minimize impacts on native vegetation and soils. The corridors shall be clearly designated in the field using durable and conspicuous markers that can be removed before they degrade or that will degrade completely into environmentally harmless materials. Locations shall also be marked on maps. The applicant and its contractors shall not commence any off-road vehicular travel at any project site until receiving written sign-off on said designations for that site from the Executive Director. All personnel operating vehicles capable of off-pavement travel shall be informed of the restrictions on off-pavement travel and made responsible for adhering to them.
 7. Prior to ground disturbance at each excavation site, an exclusion plan shall be prepared by the applicant and approved by the Executive Director. The plan shall identify and map all exclusion zones that shall not be disturbed or disrupted by any element of the proposed projects. Exclusion zones shall include sensitive habitats such as wetlands, riparian vegetation, important terrestrial habitat and other biological resources. The applicant shall not commence any ground-disturbing activity at any site until receiving written sign-off on said plan for that site from the Executive Director.
 8. The applicant shall restrict construction activities and equipment to existing roads, pads or otherwise disturbed areas as much as possible.
 9. Where access to sites, pipeline, well, or infrastructure removal locations must be through native habitats, a qualified biologist shall determine the most suitable and least environmentally damaging access route to the site. This access route shall be clearly marked and will be considered part of the construction zone. The applicant

- shall not enter any native habitats until receiving written sign-off on said access route for that habitat from the Executive Director.
10. Limits of the construction zone shall be clearly marked and delineated by the applicant in the field prior to initiation of each excavation project. No unauthorized personnel or equipment shall be allowed in native habitats outside the construction limits.
 11. The applicant shall clearly mark biologically sensitive areas on grading plans and on site (prior to commencement of activity), and ensure that they are avoided by personnel and equipment.
 12. At oil contaminated soil clean-up sites, any necessary infrastructure removal activities in the same location shall be completed prior to or concurrent with soil clean-up, avoiding any re-disturbance following the completion of s contaminated soil removal. Following contaminated soil and infrastructure removal activities, original topography shall be restored to the extent possible, and stabilized if necessary by physical means such as jute netting.
 13. For sites where ongoing access is required (such as for monitoring or maintenance), a qualified biologist shall determine the most suitable access route. Access routes shall be clearly marked and off-road travel shall be confined to designated routes. Periodic surveys of the access routes, at a frequency determined by the applicant in consultation with the appropriate resource agencies, shall be conducted by a qualified biologist to determine the presence of sensitive species and need for remedial action for environmental impacts, including weed establishment on the disturbed corridor. If the qualified biologist determines that a more suitable route is present, then the new route shall be clearly marked and the old route shall be restored to preexisting conditions and clearly marked to preclude entry. Once the access routes are no longer required, they shall be included in a site specific Habitat Restoration, Revegetation and Monitoring Plan described in Special Condition 16.
 14. Oilfield clean-up activities in and immediately around ESHA and wetland areas shall be limited to daylight hours and night lighting shall not be used. Lighting used in other areas for clean-up or material treatment, processing, borrow, and disposal activities shall be shielded and directed away from the nearest ESHA and wetland areas shown in [Exhibit 3](#), to the extent feasible.
 15. Traffic shall be confined to existing roads and defined work areas. No equipment, vehicles, or personnel shall enter any designated exclusion area or area designated as sensitive species habitat except as part of approved clean-up activities.

9. Clean-Up Target Confirmation Sampling in Sensitive Resource Areas

PRIOR TO IMPLEMENTATION OF RAP APPROVED OILFIELD CLEAN-UP ACTIVITIES in and immediately around areas designated as ESHA or wetlands on [Exhibit 3](#) or within 200 feet of mapped areas of prehistoric cultural deposit sites ORA-839 or ORA-906, minimally invasive confirmation sampling (for example, visual surveys, hand augured or dug sample pits) shall be carried out by an independent third party to verify the presence of and delineate the location and extent of removal targets described in the RAP (such as oil contaminated material or oilfield infrastructure). The results of the clean-up target confirmation sampling shall be used to develop a refined site-specific plan for clean-up at and immediately around each sampling site, including the need for clean-up activities and their extent and scope. The clean-up target confirmation sampling results and the resulting

site-specific clean-up plan shall be submitted to the Santa Ana Regional Water Quality Control Board and Executive Director for review and approval. Relevant results from the field verification process carried out in November of 2015 and March of 2016 may be used as clean-up target confirmation sampling results or to supplement additional sampling and may also be used for the development of site-specific clean-up plans. Consolidated plans may be submitted for approval that include multiple sites. Initiation of RAP approved oilfield clean-up activities in and immediately around areas designated as ESHA or wetlands on [Exhibit 3](#) or within 200 feet of mapped areas of prehistoric cultural deposit sites ORA-839 or ORA-906 shall not occur until written approval of the relevant site-specific clean-up plans for such areas are granted by the Executive Director.

10. Quantification of Oilfield Clean-Up Impacts

- A. WITHIN 30 DAYS FOLLOWING completion of oilfield clean-up activities in and immediately around each area designated as ESHA or wetlands shown on [Exhibit 3](#), a clean-up impacts assessment and quantification survey shall be carried out by a qualified third-party approved by the Executive Director. Each specific area shall be surveyed and the results of the survey shall be submitted for Executive Director review and written approval. The survey shall be designed to document and quantify all impacts to wetlands and ESHA habitats from clean-up activities, including by:
1. Documenting the existing condition (after completion of oilfield clean-up activities) of the wetlands, vegetation and substrate at the clean-up site and surrounding affected areas.
 2. Quantifying and including in the survey results the the severity, scope, and extent of impacts to the vegetation and substrate in these areas.
 3. Recording the type and quantity of clean-up targets removed and the methods used during their removal.
- B. As more specifically described in Special Conditions 1 and 16, all impacts to environmentally sensitive habitat and wetlands shall be restored in place at a 1:1 ratio and mitigation for those impacts shall be provided at the appropriate ratio. Native plants, similar to those impacted, shall be used to re-establish the area consistent with current conditions.
- C. The Habitat Management Plan (“HMP”) discussed in Special Condition 16 shall be revised and mitigation areas shall be calculated based on the final impact areas documented by the clean-up impacts assessment and quantification surveys. If the impacts of the clean-up impacts assessment and quantification surveys are documented to be greater than anticipated in the proposed HMP, the HMP will be revised and additional mitigation will be required for the greater impacts.
- D. If necessary, a revised HMP must be submitted within 90 days following the completion of final oil infrastructure removal, abandonment and remediation and clean-up activities, for Executive Director review and written approval.

11. Open Space/Conservation Area

- A. The phrase “Open Space/Conservation Area” (or “OSCA”) shall refer to the area generally depicted on [Exhibit 25](#), excluding the trails described in Special Condition 12, which area will be more precisely identified in formal legal descriptions and graphic depictions prepared by the applicant and submitted for the Executive Director’s review

and approval prior to issuance of this permit.

- B. Use of the Open Space/Conservation Area shall be restricted to open space and habitat conservation purposes as more specifically described in the subsections of this Section B, below. The lands shall be managed as described in those subsections, and no development inconsistent with the purposes of this restriction shall be allowed.
1. The area shall be used for habitat conservation and restoration purposes.
 2. The landowner(s) shall, or, at the election of the party accepting the offer required by subdivision C.2, that party shall: (a) restore the OSCA in accordance with the final Habitat Management Plan approved by the Executive Director in accordance with Special Condition 16 and maintain the OSCA in accordance with the Management and Maintenance Program for the open space areas approved by the Executive Director in accordance with Special Condition 14 and (b) accept responsibility for maintenance of and liability associated with the OSCA.
 3. No development, as defined in Section 30106 of the Coastal Act, that the Executive Director determines diminishes the habitat value of the area shall occur within the OSCA. All such development is prohibited.
 4. No development, as defined in Section 30106 of the Coastal Act, shall occur within the OSCA except for the following:
 - a. minimal construction necessary to construct habitat fencing, temporary restoration projects, and signage in accordance with the final plans approved by the Executive Director pursuant to Special Conditions 4, 18 and 19;
 - b. invasive vegetation removal and restoration planting in accordance with the final habitat management plan approved by the Executive Director pursuant to Special Condition 16;
 - c. construction of drainage and water quality management devices in accordance with the final plans approved by the Executive Director pursuant to Special Condition 27;
 - d. removal of oil and gas infrastructure and verified clean-up targets and materials treatment (bioremediation, concrete crushing, etc.), stockpiling, borrow, and replacement of excavated areas with clean soil as identified in the approved final Abandonment Plan and the revised Final Remedial Action Plan approved pursuant to Special Condition 8;
 - e. archeological testing and burial or reburial of cultural deposits as identified in any Significance Testing Plan or Archeological Research Plan approved by the Executive Director pursuant to Special Condition 20, though if the process outlined therein requires a coastal development permit for the work, then only once that permit has been secured;
 - f. if approved by the Coastal Commission as an amendment to this coastal development permit or as a new coastal development permit, habitat restoration, public trails and associated appurtenances such as interpretive signs, benches, and trash cans, and erosion control and repair that were not authorized by this coastal development permit.
- C. Prior to Issuance of this Permit, the landowners shall execute and record a document, in a form and content acceptable to the Executive Director, that will:
1. restate/re-impose the aforementioned restrictions on the use of the OSCA;

2. create an irrevocable offer to dedicate to a public agency or non-profit entity approved by the Executive Director, and shown to have no conflict-of-interest with the preservation of open space, either: (a) fee title to, or (b) an open space and conservation easement over, the OSCA, to further ensure compliance with the restrictions listed in section B and more generally protect and promote habitat and open space in the OSCA;
3. include a legal description(s) and corresponding graphic depiction(s) of the legal parcels subject to this permit and a metes and bounds legal description and graphic depiction of the OSCA prepared by a licensed surveyor based on an on-site inspection;
4. reflect that development in the OSCA is restricted as set forth in this permit condition;
5. be recorded free of all prior liens other than tax liens and also free of encumbrances that the Executive Director determines may affect the interest being conveyed. Subject to the review and approval of the Executive Director, existing easements for subsurface drainage devices and subsurface or overhead utilities within the OSCA may remain recorded against the property in higher priority position than the offer provided that such utility/drainage easements and associated facilities are not having an ongoing existing adverse impact on the habitat value of the OSCA and will not have a future adverse impact on the habitat value of the OSCA. Any existing encumbrances allowing activities that the Executive Director determines may be having an existing adverse impact, or may have a future adverse impact, on the habitat value of the OSCA shall be extinguished or subordinated and the associated facilities removed by the applicant;
6. run with the land in favor of the People of the State of California, binding all successors and assignees, with the offer portion of the document, described in subdivision C.2, being irrevocable for a period of 21 years, such period running from the date of recording;
7. indicate that the restrictions on the use of the land shall remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

12. Trails Within the Open Space/Conservation Area

- A. The phrase "OSCA Trails" shall refer to the areas where trails are to be installed within what would otherwise be part of the Open Space/Conservation Area, generally surrounded by the OSCA. The OSCA Trails are generally depicted on [Exhibit 26](#) and will be more precisely identified in formal legal descriptions and graphic depictions prepared by the applicant and submitted for the Executive Director's review and approval prior to issuance of this permit.
- B. Use of the OSCA Trails shall be restricted to public pedestrian and bicycle access, low speed electric vehicle access, intermittent and temporary emergency vehicle use, passive recreational use, and physical development in support of the creation and maintenance of opportunities for such use, as more specifically described in the subsections of this Section B, below. The lands shall be improved and managed as described in those subsections, and no development inconsistent with the purposes of this restriction shall be allowed.

1. The area shall be used for the installation of public access-related amenities and the provision of public access consistent with the final circulation system plan and final signage plan approved pursuant to Special Conditions 4, 18 and 19.
2. The landowner(s) shall (a) construct and maintain the public access-related amenities described in final circulation system plans and final signage plan approved pursuant to Special Conditions 4, 18 and 19 within the OSCA Trails, in accordance with that plan; and (b) accept responsibility for maintenance of, and liability associated with, those amenities, until the offer required by subdivision C.2 of this condition is accepted, at which point any continuing obligations pursuant to this subsection B.2. shall transfer to that party.
3. No development, as defined in Section 30106 of the Coastal Act, that the Executive Director determines would diminish the habitat value of the surrounding OSCA or diminish the public access and recreational value of the OSCA Trails shall occur within the OSCA Trails. All such development is prohibited.
4. No development, as defined in Section 30106 of the Coastal Act, shall occur within the OSCA Trails except for the following:
 - a. grading and construction of public trails and associated appurtenances such as interpretive signs, benches, and trash cans consistent with the final circulation plan and signage plan approved by the Executive Director pursuant to Special Conditions 4, 18 and 19;
 - b. maintenance and management of the trails and appurtenances consistent with the final Management and Maintenance Programs for Public Access, Recreational Use, and Open Space Areas approved by the Executive Director pursuant to Special Condition 14;
 - c. construction of drainage and water quality management devices in accordance with the final plans approved by the Executive Director pursuant to Special Condition 27;
 - d. removal of oil and gas infrastructure and verified clean-up targets and materials treatment (bioremediation, concrete crushing, etc.), stockpiling, borrow, and replacement of excavated areas with clean soil as identified in the approved final Abandonment Plan and the revised Final Remedial Action Plan approved pursuant to Special Condition 8;
 - e. archeological testing and burial or reburial of cultural deposits as identified in any Significance Testing Plan or Archeological Research Plan approved by the Executive Director pursuant to Special Condition 20, though if the process outlined therein requires a coastal development permit for the work, then only once that permit has been secured;
 - f. if approved by the Coastal Commission as an amendment to this coastal development permit or as a new coastal development permit, landscaping, habitat restoration, public trails and associated appurtenances such as interpretive signs, benches, and trash cans, and erosion control and repair that were not authorized by this coastal development permit.
5. Public access shall be made available along the OSCA Trails as soon as oilfield clean-up located within the OSCA is completed, the initial phase of habitat restoration is completed, and the trails are created, but shall be limited to that which is consistent with the final Habitat Management Plan approved by the Executive Director pursuant to Special Condition 16.

- C. Prior to Issuance of this Permit, the landowners shall execute and record a document, in a form and content acceptable to the Executive Director, that will:
1. restate/re-impose the aforementioned restrictions on the use of the OSCA Trails;
 2. create an irrevocable offer to dedicate to a public agency or non-profit entity approved by the Executive Director and shown to have no conflict-of-interest with the provision of public access and passive recreation either (a) fee title to, or (b) an open space and conservation easement over, the OSCA Trails, to further ensure the management of the area consistent with section B and more generally protect and promote public access and passive recreation along the OSCA Trails;
 3. include a legal description(s) and corresponding graphic depiction(s) of the legal parcels subject to this permit and a metes and bounds legal description and graphic depiction of the OSCA Trails, prepared by a licensed surveyor based on an on-site inspection;
 4. reflect that development in the OSCA Trails is restricted as set forth in this permit condition;
 5. be recorded free of all prior liens other than tax liens and also free of encumbrances that the Executive Director determines may affect the interest being conveyed. Subject to the review and approval of the Executive Director, existing easements for subsurface drainage devices and subsurface or overhead utilities within the OSCA Trails may remain recorded against the property in higher priority position than the offer provided that such utility/drainage easements and associated facilities are not having an ongoing existing adverse impact on the habitat value of the OSCA or the public access and passive recreational use of the OSCA Trails and will not have a future adverse impact on the same. Any existing encumbrances allowing activities that the Executive Director determines may be having or may have such adverse impacts shall be extinguished or subordinated and the associated facilities removed by the applicant;
 6. run with the land in favor of the People of the State of California, binding all successors and assignees, with the offer portion of the document, described in subdivision C.2, being irrevocable for a period of 21 years, such period running from the date of recording;
 7. indicate that the restrictions on the use of the land shall remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

13. Public Access Throughout, and Recreational Use of, the Portions of the Site Outside the Open Space/Conservation Area

A. Definitions:

1. The phrase "Perimeter Trails" (in the staff report referred to as the trails within the proposed Bluff Park along the perimeter of the residential and commercial developments) shall refer to all trails built pursuant to the process outlined in Special Conditions 4, 18 and 19 that are not within the Open Space/Conservation Area, which trails will be more precisely identified in formal legal descriptions and graphic depictions prepared by the applicant and submitted for the Executive Director's review and approval prior to issuance of this permit.

2. The phrase “Active Park” refers to the park to be constructed to the east of the South Village and west of the existing terminus of 15th Street.
- B. Use of the Perimeter Trails shall be restricted to public pedestrian and bicycle access low speed electric vehicle access, intermittent and temporary emergency vehicle use and passive recreational use, and physical development in support of the creation and maintenance of opportunities for such use, as more specifically described in the subsections of this section B, below. The Perimeter Trails shall be improved and managed as described in those subsections, and no development inconsistent with the purposes of this restriction shall be allowed.
1. The area shall be used for the installation of public access-related amenities and the provision of public access consistent with the final circulation system plan and final signage plan approved pursuant to Special Conditions 4, 18 and 19.
 2. The landowner(s) shall (a) construct and maintain the public access-related amenities described in the final circulation system plans and final signage plan approved pursuant to Special Conditions 4, 18 and 19 within the Perimeter Trails, in accordance with that plan; and (b) accept responsibility for maintenance of, and liability associated with, those amenities, until the offer required by subdivision D.3 is accepted for all or some portion of the Perimeter Trails, at which point any continuing obligations pursuant to this subsection B.2. for those portions of the Perimeter Trails shall transfer to that party.
 3. No development, as defined in Section 30106 of the Coastal Act, that the Executive Director determines diminishes the public access and recreation values of the Perimeter Trails shall occur within the Perimeter Trails. All such development is prohibited.
 4. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Perimeter Trails except for the following:
 - a. grading and construction of public trails and associated appurtenances such as interpretive signs, benches, and trash cans consistent with the final circulation plans and signage plan approved by the Executive Director pursuant to Special Conditions 4, 18 and 19;
 - b. maintenance and management of the trails and appurtenances consistent with the final Management and Maintenance Programs for Public Access, Recreational Use, and Open Space Areas approved by the Executive Director pursuant to Special Condition 14;
 - c. construction of drainage and water quality management devices in accordance with the final plans approved by the Executive Director pursuant to Special Condition 27;
 - d. removal of oil and gas infrastructure and verified clean-up targets and materials treatment (bioremediation, concrete crushing, etc.), stockpiling, borrow, and replacement of excavated areas with clean soil as identified in the approved final Abandonment Plan and the revised Final Remedial Action Plan approved pursuant to Special Condition 8;
 - e. archeological testing and burial or reburial of cultural deposits as identified in any Significance Testing Plan or Archeological Research Plan approved by the Executive Director pursuant to Special Condition 20, though if the process outlined therein requires a coastal development permit for the work, then only once that permit has been secured;

- f. if approved by the Coastal Commission as an amendment to this coastal development permit or as a new coastal development permit, landscaping, habitat restoration, public trails and associated appurtenances such as interpretive signs, benches, and trash cans, and erosion control and repair that were not authorized by this coastal development permit.
 5. Public access shall be made available along the Perimeter Trails as soon as the grading and construction of the trails is completed pursuant to the final circulation plans and signage plan approved by the Executive Director pursuant to Special Conditions 4, 18 and 19.
- C. Use of the Active Park shall be restricted to public access and passive and active recreational use, as more specifically described in the subsections below. The Active Park shall be improved and managed as described in those subsections, and no development inconsistent with the purposes of this restriction shall be allowed.
 1. The area shall be used for the installation of public access and recreational amenities and the provision of public access and recreation consistent with the site plan, architectural plans, circulation system plan, landscape plan and final signage plan approved pursuant to Special Conditions 1, 2, 5, 4, 18 and 19.
 2. The landowner(s) shall (a) construct and maintain the public access and recreational amenities described in the site plan, architectural plans, circulation system plan, landscape plan and final signage plan approved pursuant to Special Conditions 1, 2, 5, 4, 18 and 19 within the Active Park, in accordance with that plan; and (b) accept responsibility for maintenance of, and liability associated with, those amenities, until the offer required by subdivision D.3 is accepted for the Active Park, at which point any continuing obligations pursuant to this subsection C.2. shall transfer to that party.
 3. No development, as defined in Section 30106 of the Coastal Act, that the Executive Director determines diminishes the public access and recreation values of the Active Park shall occur within the Active Park. All such development is prohibited.
 4. No development, as defined in Section 30106 of the Coastal Act, shall occur within the Active Park except for the following:
 - a. grading and construction of public trails, public park facilities (e.g. public parking, ball fields, restrooms, play structures), landscaping, and associated appurtenances such as interpretive signs, benches, and trash cans consistent with the final site plan, architectural plans, circulation system plan, landscape plan and final signage plan approved pursuant to Special Conditions 1, 2, 5, 4, 18 and 19;
 - b. maintenance and management of the public park facilities, trails and appurtenances consistent with the final Management and Maintenance Programs for Public Access, Recreational Use, and Open Space Areas approved by the Executive Director pursuant to Special Condition 14;
 - c. if approved by the Coastal Commission as an amendment to this coastal development permit or as a new coastal development permit, public recreational building(s), public aquatic center, landscaping, habitat restoration, public trails and associated appurtenances such as interpretive signs, benches, and trash cans, and erosion control and repair that were not authorized by this coastal development permit.
 5. Public access shall be made available to the Active Park as soon as the grading and construction of the public park facilities and trails are completed

- D. Prior to Issuance of this Permit, the landowners shall execute and record a separate document for every portion of one of the areas referenced in subsection A of this condition over which the landowner wishes to be able to dedicate a separate easement or fee title, in a form and content acceptable to the Executive Director, that will:
1. restate/re-impose the aforementioned restrictions on the use of the area,
 2. preclude interference with public use of the area that is consistent with the above purposes, and
 3. create an irrevocable offer to dedicate to a public agency or non-profit entity approved by the Executive Director and shown to have no conflict-of-interest with the preservation of the above-stated uses either fee title to, or an easement over, the area, to further ensure compliance with the uses and restrictions listed in this condition.
 4. include a legal description(s) and corresponding graphic depiction(s) of the legal parcels subject to this permit and a metes and bounds legal description and graphic depiction of the area to which the offer applies, prepared by a licensed surveyor based on an on-site inspection.
 5. reflect that development in the area to which the offer applies is restricted as set forth in this permit condition.
 6. be recorded free of all prior liens other than tax liens and also free of encumbrances that the Executive Director determines may affect the interest being conveyed. Subject to the review and approval of the Executive Director, existing easements for subsurface drainage devices and subsurface or overhead utilities within the area to which the offer applies may remain recorded against the property in higher priority position than the offer, provided that such utility/drainage easements and associated facilities are not having an ongoing existing adverse impact on the habitat value of the uses for which the area is being protected, and will not have a future adverse impact on those uses. Any existing encumbrances allowing activities that the Executive Director determines may be having an existing impact or may have a future impact that is adverse to the designated uses shall be extinguished or subordinated and the associated facilities removed by the applicant.
 7. run with the land in favor of the People of the State of California, binding all successors and assignees, with the offer portion of the document, described in subdivision D.3, being irrevocable for a period of 21 years, such period running from the date of recording.
 8. The recorded document shall indicate that the restrictions on the use of the land shall remain as covenants, conditions and restrictions running with the land in perpetuity, notwithstanding any revocation of the offer.

14. Management and Maintenance Programs for Public Access, Recreational Use, and Open Space Areas

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide for the review and approval of the Executive Director, a Management and Maintenance Program for (a) the public access and recreational use areas described in Special Condition 13, and referred to therein as the Perimeter Trails and the Active Park; (b) the Open Space/Conservation Area (“OSCA”) described in Special Condition 11; and (c) the trails within the OSCA described in Special Condition 12 and referred to therein as the OSCA Trails.

- B. The final management and maintenance program(s) shall include the following:
1. IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE OF THE PUBLIC ACCESS, RECREATIONAL USE, AND OPEN SPACE AREAS. The current owner(s) of each of the areas referenced in the introductory paragraph of this Special Condition (hereinafter, the “Public Benefit Areas”) shall maintain those areas consistent with the final management and maintenance program until such time as any offer of an easement or fee title over one of those areas, required to be made pursuant to this permit, is accepted. Where such an offer is accepted by an entity in accordance with the terms and conditions of the offer(s) to dedicate required by this permit, the party accepting the offer, or its successor in interest as holder of that property interest, shall become responsible for management and maintenance of facilities within the easement area in perpetuity, unless the arrangements between the landowner(s) and the easement holder dictate that the landowner(s) shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved Management and Maintenance Program.
 2. IDENTIFY THE FUNDING AND MAINTENANCE PROGRAM. The Management and Maintenance Program shall include:
 - a. A funding program sufficient to fund the actual cost of maintenance and periodic repair and replacement of the facilities within the Public Benefit Areas, such as public access walkways and associated appurtenances including, but not limited to, surfaces, landscaping (if any), and signage; and
 - b. A list of maintenance activities including but are not limited to: trash collection, repairs or replacement of surfaces due to cracks, spalling, broken concrete, etc., maintenance of gutters, curbs and sidewalks (keep free of debris, wax, gum buildup, etc.), removal and/or trimming of vegetation that is interfering with public use of the OSCA, Perimeter Trails, OSCA Trails, or Active Park, repair/replacement of public access signs, trash receptacles, benches, handrails, stairs, and lighting for the OSCA, OSCA Trails, Perimeter Trails and Active Park areas.
 - c. A funding program sufficient to fund the actual cost of maintenance and periodic vegetation enhancements including on-going restoration, habitat enhancements for identified sensitive species, and repair and replacement of associated appurtenances including, but not limited to, fencing and signage for the OSCA, OSCA Trails, Perimeter Trails and Active Park areas; and
 - d. A list of maintenance activities related to the on-going restoration and habitat enhancement for the OSCA, OSCA Trails, Perimeter Trails and Active Park areas.

15. Construction Staging and Corridors Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final Construction Staging and Corridors Plan, with drawings to be supplied in size 11” x 17” or larger. The revised final plans shall conform to the General Design Parameters

and General Exceptions to the Design Parameters as identified in Special Condition 1.

The revised final construction staging and corridors plan shall demonstrate that:

1. No construction activity, construction staging, materials, debris, waste or equipment storage shall occur outside the “potential development areas” as identified in [Exhibit 22](#);
2. Prior to commencement of grading and construction of the parks, roads, residential and commercial development, temporary barriers shall be placed at the limits of grading for these portions of the development that are adjacent to ESHA or wetlands. The barriers shall be a minimum 8 feet tall and one-inch thick in those areas adjacent to occupied gnatcatcher habitat. Solid physical barriers shall be used at the limits of grading adjacent to all other ESHA and wetlands. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking, fencing shall be removed upon completion of construction of the parks, roads, residential and commercial development.
3. No construction materials, debris, or waste shall be placed or stored where it may enter sensitive upland habitat or wetlands, storm drain, receiving waters, or be subject to wind erosion and dispersion.
4. Any inadvertent impacts to ESHA or wetlands by the proposed development shall be reported to the Executive Director within 24 hours of occurrence and shall be mitigated. Such mitigation shall require an amendment to this permit or a new permit unless the Executive Director determines that no amendment or new permit is legally required.
5. The plan shall include, at a minimum, a site plan that depicts:
 - a. limits of the staging area(s)
 - b. construction corridor(s)
 - c. construction site
 - d. appropriate habitat buffers as identified in [Exhibit 22](#)
 - e. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat
 - f. compliance with ‘Interim Erosion Control and Construction Responsibilities’ Special Condition 26 of this coastal development permit.’
- B. The final plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

16. Final Habitat Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised, final habitat preservation and mitigation plan (i.e., habitat management plan) for review and approval by the Executive Director in consultation with the USFWS and the CDFW. The permittee shall implement and comply with the habitat protection, enhancement, restoration and mitigation measures in the final habitat management plan approved by the Executive Director; the primary elements of which are described within the document titled Habitat Conservation and Conceptual Mitigation

Plan for the Newport Banning Ranch Property dated October 2013, which shall be revised in the following ways:

1. The Final Habitat Management Plan (HMP) shall apply to the Open Space Conservation Area (OSCA) and not the development areas supporting the parks, residential and commercial space, generally depicted as all areas of the 401 acre site not included in the “potential development areas” footprint as shown in [Exhibit 22](#) of the staff report.
2. Identification of location and total acreage of the open space on the site to which the HMP applies.
3. Identification of all areas and locations and acreage determined to be ESHA and Wetlands, per the site constraints map attached as [Exhibit 22](#) to the staff report.
4. Identification of location and acreage, in sum, where the HMP requires conservation of intact habitat.
5. Identification of the approximately 27.93 acres of restoration, mitigation, and enhancement required by settlement agreements between the applicant and the Commission (CCC-11-CD-03 & CCC-11-RO-02 dated April 14, 2011 and CCC-15-CD-01 & CCC-15-RO-01, dated May 12, 2015) and identification of acreage and location of all existing on-site restoration and past mitigation areas as required by CCC and all other regulatory agencies so as to avoid overlap of the mitigation acreage. Pursuant to Consent Orders Nos. CCC-11-CD-03 & CCC-11-RO-02 and Nos. CCC-15-CD-01 & Nos. CCC-15-RO-01, the applicant has agreed not to use the restoration or mitigation projects described in the consent orders for the purpose of generating mitigation or restoration credits to satisfy any State or Coastal Commission requirement for restoration or mitigation, which includes all restoration and mitigation requirements described herein.
6. To provide for in-place and in-kind restoration of all identified ESHA and wetland habitats disturbed or removed during implementation of the oilfield clean-up activities described in the Santa Ana Regional Water Quality Control Board approved Remedial Action Plan (“RAP”).
7. To provide for the identification of the location, type, and acreage of impacts to ESHA and Wetlands as a result of the oil contaminated soil and oil and gas infrastructure clean-up and removal work consistent with the requirements of Special Condition 10 (Quantification of Oilfield Impacts). This mapping and quantification of impacts shall specify the amounts of ESHA and wetland vegetation and habitat within the categories listed in the table of mitigation ratios provided as a part of this condition below that are disturbed or removed during clean-up activities. As shown on [Exhibit 3](#), the estimated total area of wetland and ESHA impacts from oilfield clean-up activities is 42 acres.
8. Identification of the onsite location, habitat type, and acreage required for mitigation, at the appropriate ratio, provided in the mitigation ratio table below, for the impacts to ESHA and wetlands from the oil contaminated soil and oil and gas infrastructure clean-up and removal work. As an initial planning step, the estimated type and acreage of impacts shown in [Exhibit 3](#) shall be used to identify, delineate, and prioritize potential restoration areas onsite.
9. Prior to the start-up of project activities, and as needed for new personnel, a qualified biologist approved by the Executive Director in consultation with other appropriate resource agencies shall conduct a brief training session for all personnel working on

- the oil field. Training shall include a description of all sensitive species potentially occurring on or near sites, details on each species habitat, the protective measures to be implemented for each species, a description of the role of biological monitors, what to do if a sensitive species is observed on site including the contact list for immediate notification, and the responsibilities of those on site to protect resources. A video may be produced to satisfy this requirement.
10. Addition of a plan to create two high-functioning vernal pool complexes. One in the area containing wetlands C and CC, and one in the area containing the following wetlands, vernal pools and periodically ponded areas: VP1, VP2, VP3, E, G, H, I, J and M, each with the following elements:
 - a. The plan shall be created in consultation with the USFWS and approved by the Executive Director.
 - b. The plan shall be created and implemented by a qualified biologist with demonstrated experience in vernal pool creation and restoration who must be approved by the Executive Director.
 - c. The plan shall be implemented in a phased manner over several years such that some undisturbed ponds containing a viable San Diego fairy shrimp population are always present. New vernal pools shall be created and success criteria met before existing San Diego fairy shrimp vernal pools are disturbed.
 - d. A hydrological analysis demonstrating that the area containing the vernal pool complex is sufficiently large to include an adequate watershed.
 - e. The vernal pool complex that includes vernal pool VP1 shall have unimpeded contiguous connectivity to the undeveloped open space and wildlife corridor in the adjacent north-south arroyo and contiguous connectivity to the undeveloped open space and wildlife corridor to the north in the form of a wildlife movement road overpass or underpass that is designed by a qualified biologist and an engineer.
 - f. Wildlife and habitat connectivity shall be provided to the east and the west of the access road from PCH in the south of the site for wildlife movement in the form (e.g. overpass, underpass, culvert) that is designed by a qualified biologist and an engineer.
 - g. Several features named above may be significantly disturbed by oilfield clean-up activities. Shallow soil (upper 6 to 12 inches) containing the propagules of vernal pool plants and animals must be carefully removed and appropriately stockpiled for use in later restoration (excepting therefrom soils too contaminated to successfully use in the restoration).
 - h. Mitigation for the fill of wetlands and vernal pools as a result of oil field remediation activities shall take the form of vernal pool creation. Such mitigation shall occur near the remediated wetland. The mitigation ratio shall be at least 4:1 (area created:area filled). Mitigation requirements for remediation activities in the lowlands may be partially discharged by the creation of vernal pools within the two vernal pool complexes described above. The final locations of created vernal pools shall be approved by the Executive Director in consultation the USFWS and where appropriate the CDFW.

11. Remove all references to the “mitigation bank.” A mitigation bank is not approved as part of this coastal development permit.
12. Identification of the location and acreage of preserved and developed grassland foraging habitat for birds of prey on the upper mesa demonstrating that for each acre developed, 0.5 acre is preserved or created.
13. Identification of location and acreage of all permanent and temporary impacts associated with implementation of the RAP and the residential and commercial development plan on “non-ESHA purple needlegrass” habitat and identify the required mitigation location and acreage to address the impact.
14. The HMP shall include mitigation measures for impacts that are accidental or unanticipated throughout the development phases and across the entire site. Accidental impacts shall be reported to the Executive Director in post-construction monitoring reports.
15. The HMP shall identify high functioning reference sites appropriate for each vegetation community to be created, restored, or enhanced. The reference sites shall be quantitatively sampled and the results included in the HMP. The reference sites shall be the basis for the goals and success criteria of the various restoration efforts. Reference sites should be on or as near as feasible to Banning Ranch.
16. Only plant communities that are currently present or are demonstrated to have been previously present on Banning Ranch shall be restored or created.
17. All existing utilities shall be removed/relocated outside the constraints areas and all related easements shall be extinguished prior to commencement of construction of any residential development.
18. Onsite mitigation shall be provided for all temporary and permanent adverse impacts to ESHA and wetlands. This mitigation shall be calculated based on the mitigation ratios provided below and shall be applied based on the results of the clean-up impacts assessment and quantification surveys required in Special Condition 10 and part 7 of this condition.
19. The plan shall calculate the acreage of mitigation based on the ratios below:

Mitigation Ratios for Creation or Substantial Restoration of Habitat-

Habitat	Mitigation ratio (restored area: impacted area)
ESHA Purple Needlegrass	3:1
Non-ESHA Purple Needlegrass	2:1
Wetlands	4:1
Vernal Pool Wetlands with San Diego Fairy Shrimp	10:1
Coastal Sage Scrub Vegetation	3:1
Riparian Vegetation	3:1

Mitigation Ratios for Enhancement of Existing Habitat-

Habitat	Mitigation ratio (restored area: impacted area)
Wetlands	8:1
Vernal Pool Wetlands with San Diego Fairy Shrimp	20:1
Coastal Sage Scrub Vegetation	6:1
Riparian Vegetation	6:1

20. For the purposes of the HMP- the following definitions shall apply:

Creation of New Habitat shall refer to the conversion of one habitat type to another, for example conversion of upland to wetland or conversion of predominantly exotic vegetation to native vegetation. Creation often entails activities such as remedial grading, or grading to create depressions to support wetlands, alterations to the soil, and an extensive planting program.

Substantial Restoration shall refer to restoration that entails significant changes to the existing habitat or reestablishment of historical habitat and often entails activities such as altering topography or hydrology, extensive removal of invasive and other non-native species, and planting of native species using both seeds and container plants.

Enhancement of Existing Habitat shall refer to relatively minor alterations, such as hand- weeding or other removal of non-native species, planting of a few trees or other major structure-producing species, seeding to increase plant diversity, or adding habitat features such as large woody debris.

21. If the permittee cannot identify sufficient area and acreage on the 401 acre site to locate all required mitigation at the ratios above, the applicant must apply for a permit amendment to reduce the acreage of the proposed residential and commercial and park space and increase the acreage of the open space in order to allow for additional acreage to accept the restoration and mitigation.

22. Additional Components of the HMP shall include two types of restoration programs, (1) a site-specific program that would apply only to the specific areas of ESHA or wetland in which oilfield clean-up activities occur and would be designed to address, in-place, and in-kind, the adverse impacts documented in the clean-up impacts assessment and quantification survey described in Special Condition 10; and (2) a general restoration and monitoring program that would be implemented to meet the additional habitat creation or enhancement requirements that would result from application of the mitigation ratios outlined in the table included above:

a. **SITE-SPECIFIC RESTORATION AND MONITORING PROGRAM**

For each clean-up site in and immediately around an area of ESHA or wetland, as shown in [Exhibit 3](#) and [Exhibit 20](#), the applicant shall submit and have approved by the Executive Director a site specific Habitat Restoration, Revegetation, and

Monitoring Plan for that site. Consolidated plans may also be submitted for approval that include multiple sites with the same or similar habitats and clean-up targets (for example pipelines or power poles). The applicant shall not commence any ground-disturbing activity at any site until receiving written sign-off on said plan for that site or group of sites from the Executive Director. Each site-specific or consolidated Habitat Restoration, Revegetation, and Monitoring Plan shall include, but not necessarily be limited to, the following elements:

1. A detailed in-situ restoration plan indicating the type, size, and extent of all plant materials, any irrigation system and other landscape features to be used to revegetate ESHA and wetland impacts. Implementation of the approved restoration plan shall occur within 60 days of approval by the Executive Director or within such additional time as the Executive Director may grant for good cause. The restoration plan shall be developed in consultation with the USFWS and the CDFW and at a minimum shall include:
 - A pre-disturbance biological survey carried out subsequent to the Executive Director's approval of a site-specific clean-up plan required in Special Condition 9 and prior to the site clean-up, remediation, well abandonment, or infrastructure removal activities described in that approved plan. The survey shall identify all species occupying or using the site and estimate the abundance (density or percentage ground cover), size or age structure, and condition of resident species, and the intensity of use (e.g., time spent foraging or loafing) of non-resident species. Wildlife surveys must be conducted within 24 months prior to the disturbance and must include surveys conducted during the seasons during which disturbances will occur. Vegetative surveys must be conducted within 6 months prior to the disturbance. Surveys of sensitive species must be conducted within 90 days prior to the disturbance. Sensitive species are defined as: (a) species that are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) species listed as G1-G3 and/or S1-S3 by the California Natural Diversity Database; (c) CDFW species of special concern; (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society. Individuals and colonies shall be mapped and clearly marked, their condition shall be determined, and numbers of individuals or percentage of ground coverage or other appropriate measure of abundance shall be determined and recorded. Ground level photographs shall be taken within 30 days of the disturbance.
2. Where delineated wetlands are present, prior to any project activities, the local hydrology and the soil profile to the depth of the expected excavation will be analyzed and described by appropriate specialists approved by the Executive Director in consultation with other relevant permitting agencies. The parameters to be assessed shall include depth, composition, and texture of wetland soils, and a description of any relatively impervious confining layers. Representative soil borings will be preserved and retained by the applicant until habitat restoration and revegetation has been successfully completed,

unless otherwise approved by the Executive Director. The purpose of this condition is to provide the information necessary for physical restoration appropriate to the re-creation of self-sustaining wetland habitat similar to that which existed prior to excavation.

3. A map shall be prepared with a polygon representing the geographic limits of estimated disturbance and the geographic boundary of restoration and revegetation activities. The disturbance boundary will be physically delineated in the field. The boundary of restoration activities may be larger.
4. Each site-specific plan shall incorporate construction monitoring measures that include, but are not necessarily be limited to, the following elements:
 - i. Pre-construction topographic survey information.
 - ii. Specifications for soil compaction, for grading and contouring, for quantity and physical/chemical characteristics of replacement soils and fill, for topsoil maintenance or replacement, for erosion control procedures, and other development activities. Upon completion of an excavation, the ground surface shall be restored to approximate its pre-construction topographic profile. The area surveyed must include the entire limits of work including access corridors, staging areas, overburden storage areas and topsoil storage areas.
 - iii. Protocols to determine quantitatively, following physical restoration and grading, whether the physical habitat has been built-to-plan. The post-construction monitoring report must be approved by the Executive Director prior to revegetation efforts within the area physically restored. This does not preclude early restoration and revegetation activities in portions of the site not subject to construction activities.
5. Each site-specific plan shall incorporate erosion control and stabilization measures that must include, but not necessarily be limited to: (a) monthly monitoring for erosion during the annual rainy season (including the period November through March), until biological performance criteria have been met; (b) remedial measures in the event of erosion; and (c) ongoing erosion control and stabilization measures, which may include appropriate physical measures (e.g., installation of jute netting) and revegetation activities.
6. Each site-specific plan shall include a description of the habitat and revegetation goals in terms of abundance (e.g., density or percentage ground cover), height or other growth characteristics, recruitment and survival, and general dispersion of particular plant species, and the population characteristics (e.g., density, age or size structure) and habitat use by wildlife species. Site-specific plans shall include technical details of collecting seeds and other propagules, propagation, planting, routine monitoring and maintenance (including irrigation), wildlife introductions, and a time schedule. Specific facilities and staff will be identified.
7. Each site-specific plan shall include specific erosion control and ecological performance criteria that relate logically to the local restoration and

revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance criteria shall be absolute (e.g., a specified percentage ground cover or a specified average height within a specified time for a species). Where absolute performance criteria cannot reasonably be formulated, clear relative performance criteria will be specified. Relative criteria are those that require a comparison of the restoration site with reference sites. Reference sites should be located on Banning Ranch in the most proximal area with similar biological conditions. In the case of relative performance criteria, the rationale for the selection of reference sites, the qualitative or quantitative comparison procedure, and the basis for judging differences to be significant will be specified. If the comparison requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance criteria and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

8. The applicant shall fund an independent biological performance monitor to be approved by the Executive Director in consultation with other relevant permitting agencies to conduct performance monitoring. The performance monitors will coordinate their activities with the applicant and with its revegetation contractors. The performance monitors and revegetation contractors are encouraged to cooperate in field sampling, but the performance monitors shall direct the performance monitoring activities. Performance monitoring shall commence one year following the completion of habitat restoration and revegetation and continue until performance standards have been met for two consecutive years after the end of maintenance activities (e.g., watering, replanting etc.) or for five years, whichever is shorter. If performance standards are not met in five years, or if prior to that time NBR concludes that restoration and revegetation will not meet performance standards, within 180 days the applicant shall apply to the Coastal Commission for an amendment to this coastal development permit which will include alternative mitigation.

b. GENERAL RESTORATION AND POST-CONSTRUCTION MONITORING PROGRAM

A qualified biologist approved by the Executive Director in consultation with other appropriate resource agencies with demonstrated success restoring and monitoring native southern California coastal habitats shall design the restoration

and monitoring program as a component of the HMP. The general restoration and monitoring program shall be developed to ensure that the mitigation area requirements established above are met and shall at a minimum include the following:

1. Plans for site preparation and preservation of native seed bank;
2. Restoration plan for the respective native habitats based on reference site survey data (species composition, dominant species relative cover, total percent cover, etc.) including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
3. Final Success Criteria. The restoration will be considered successful if the overall species composition and the vegetative cover of appropriate native species within each of the vegetative layers (e.g., herbs or shrubs) are similar to those metrics in relatively undisturbed vegetation of the same type in nearby reference areas. Random sampling of the restoration and reference sites will be done with sufficient replication to detect a 10% absolute difference in cover with 90% power with $\alpha=0.10$.
4. The sampling design to be employed, an estimate of the sample variance, and a statistical power analysis to estimate the necessary number of samples to meet the requirements specified above.
5. Provisions for assessing the initial biological and ecological status of the “as built” restoration site within 30 days of establishment of the restoration site in accordance with the approved restoration program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
6. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration plan for a period of at least five (5) years.
7. Provisions for documenting nesting and foraging activity by birds on Banning Ranch, including focused nesting season and winter season surveys for birds of prey, including burrowing owls, and rare species. During the nesting season, intensive surveys of coastal California gnatcatchers shall take place to estimate breeding territories, nests, incubation, and fledging success. The survey methods shall be detailed in the HMP. Protocol level surveys of gnatcatchers, cactus wren, beldings savannah sparrow, least bells vireo and any other rare bird species and of birds of prey shall be initiated during the year the HMP is approved and continue during construction and for 5 years after construction has ceased.
8. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall be a cumulative report that summarizes all previous reports. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards.

9. Provisions for submission of a final monitoring report to the Executive Director at the end of the monitoring period. Final performance monitoring shall take place after at least three (3) years without remediation or maintenance other than weeding. The performance monitoring period shall either be five (5) years or three (3) years without maintenance or remediation, whichever is longer. The final report must be prepared by a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five-year period.
 10. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program that were necessary to offset project impacts which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.
- c. RARE PLANT PROTECTION MEASURES DURING CONSTRUCTION
- The HMP shall include a rare plant protection plan that demonstrates that potential impacts to rare plant species within the project area will be minimized to the extent feasible throughout the course of the clean-up and removal of oil contaminated soil and oil and gas infrastructure, material treatment, processing, stockpiling, borrow, and disposal, construction, and restoration activities. The rare plant protection plan shall include all of the following:
1. Seasonally appropriate sensitive plant surveys, conducted by a qualified botanist in conformance with applicable CNPS or CDFW guidelines, shall be completed as close as possible to the initiation of ground disturbing activities, but in no case more than 12 months prior to such activities. The results of the sensitive plant survey shall be reported with a map(s) depicting the locations of rare plants in relation to proposed removal of oil contaminated soil and oil and gas infrastructure; material treatment, processing, stockpiling, borrow, and disposal; restoration; and construction activities at least 30 days prior to the initiation of such activities;
 2. Sensitive plants will be flagged for avoidance using temporary flagging, which will be removed upon completion of work in an area;
 3. During habitat restoration or enhancement, only manual methods (e.g., hand-pulling, shovels, and other hand tools) will be used to remove target invasive plants within sensitive plant protection areas, and sensitive plants will be avoided to the maximum extent feasible during the course of manual removal activities;
 4. Where impacts to sensitive plants cannot be avoided, either project activities will be delayed until rare annual plants have set and released seed or rare perennial plants are salvaged and transplanted to nearby suitable habitat that will be protected from project impacts. Before ground disturbance, topsoil containing the seed bank shall be removed and stockpiled where feasible. The

plan shall include a description of proposed transplant areas for rare plants that cannot feasibly be avoided by project activities and the approximate number of plants to be transplanted; and

5. A schedule for the implementation of rare plant protection measures and authorized restoration activities.

d. DUST CONTROL PLAN

The HMP shall include a Dust Control Plan that shall include measures to control fugitive dust emissions during project construction, including:

1. Coastal Sage Scrub and Bluff Scrub habitat within the likely dust radius resulting from earth moving activities shall be sprayed periodically with clean water to reduce accumulated dust on the leaves, as recommended by the monitoring biologist.
2. Apply water three times daily, to control fugitive dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and any disturbed lands that are unused for 14 consecutive days within the staging areas of the final approved Staging Plan if construction activity causes persistent visible emissions of fugitive dust beyond the work area;
3. Pre-water sites as appropriate up to 48 hours in advance of clearing;
4. Spray all dirt stock-pile areas daily as needed;
5. Cover loads in haul trucks or maintain at least 6 inches of free-board when traveling on public roads; Pre-moisten prior to transport and import and export of dirt, sand, or loose materials;
6. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets or wash trucks and equipment before entering public streets; and
7. Plant vegetation (in accordance with the final approved landscaping plan and restoration plan) in disturbed areas as soon as possible following construction, taking into account the appropriate planting season.
8. The Plan shall describe how these measures will be implemented and monitored throughout construction.

e. BIOLOGICAL MONITORING DURING CONSTRUCTION

The HMP shall include provisions to have a qualified third-party monitoring biologist on-site during all vegetation clearing and any other project-related work with the potential to impact sensitive wildlife species. The biologist must be knowledgeable of the biology and ecology of sensitive wildlife species with the potential to occur on the project site and wetland ecology. The following measures shall be taken prior to and during construction:

1. PRIOR TO CONSTRUCTION, OIL WELL ABANDONMENT, OR SOIL AND INFRASTRUCTURE CLEAN-UP AND REMOVAL ACTIVITIES, pre-construction surveys shall be conducted within seven (7) days of the start of construction by a qualified biologist to determine the presence of any sensitive wildlife species with the potential to occur on the project site. All pre-construction surveys shall be submitted to the Executive Director within 30 days of occurrence.

2. At minimum, monitoring shall occur once a week during any week in which construction occurs. Daily monitoring shall occur during development which could significantly impact biological resources such as excavation, grading, or construction that could result in disturbances to any sensitive species identified in biological monitoring reports. Based on field observations, the biologist shall advise the applicant regarding methods to minimize or avoid significant impacts that could occur upon sensitive species or habitat areas. The applicant shall not undertake any activity that would disturb sensitive species or habitat area unless specifically authorized under this coastal development permit or unless an amendment to this coastal development permit for such disturbance has been obtained from the Coastal Commission.
3. The limits of vegetation removal will be delineated in all areas adjacent to wetlands and ESHA and wetland and ESHA buffers as identified in [Exhibit 20](#) of the staff report, by bright orange plastic fencing, or by stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.
4. Removal of oil contaminated soil and oil and gas infrastructure; material treatment, processing, stockpiling, borrow, and disposal; Grading, Construction, restoration and other site disturbances shall be phased and scheduled to avoid the breeding seasons of special status species that are found to be present in the construction area to the maximum extent feasible.

f. PROTECTION OF BIRD NESTS AND FORAGING AREAS

The HMP shall include the following provisions for the protection of nests and foraging areas during construction:

Nesting Birds-Development During Breeding Season

1. If construction activities, including but not limited to grading, oilfield clean-up; removal of oil contaminated soil and oil and gas infrastructure; material treatment, processing, stockpiling, borrow, and disposal; construction; and restoration activities, or other disturbance are to occur between February 1 and September 15, a pre-construction nesting bird survey shall be conducted to determine the presence of active nests within 500 feet of the construction activities. The nesting bird surveys shall be completed no more than 72 hours prior to any construction activities. All ground-disturbance activities within 500 feet of raptor nests or 300 feet of other active nests or as specified below shall be halted until that nesting effort is finished.
2. The monitor shall review and verify compliance with these nesting boundaries and shall verify when the nests have been naturally vacated for the season, with no human interference. Work may resume when no other active nests are found. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to the Executive Director.
3. Appropriate noise-abatement measures (e.g., sound walls) shall be implemented to ensure that noise levels are less than 60 A-weighted decibels (dBA) at the active nest of a listed species, as determined by the biological monitor. This shall be verified by weekly noise monitoring at an equivalent location conducted by a qualified Acoustical Engineer during the breeding

season (February 1 to September 15) or as otherwise determined by a qualified biological monitor based on nesting activity.

California Gnatcatcher-Development Outside Breeding Season

4. Prior to and during the disturbance of any suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area a minimum of 300 feet away from the birds. No site disturbance shall occur until the individual birds have naturally vacated the area without human interference. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by impacts to Coastal Sage Scrub or Coastal Bluff Scrub.
5. Prior to initiating vegetation impacts or project construction, the biological monitor shall meet on-site with the construction manager or other individual(s) with oversight and management responsibility for the day-to-day activities on the construction site to discuss implementation of the relevant avoidance and minimization mitigation measures for gnatcatchers. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.

Burrowing Owl-Construction During Breeding and Non-Breeding Seasons

6. Pre-construction burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) to determine the presence or absence of the burrowing owl within the project site limits, plus 500 feet beyond. In addition, the burrowing owl shall be documented as part of other surveys and the monitoring required during project construction.
7. If the burrowing owl is present on site during the nesting season (February 1 – August 31), CDFW buffer recommendations shall be followed (CDFW 2012), which require buffers of 164 feet to 1640 feet, depending on the level of disturbance and portion of the nesting season. If wintering burrowing owls are present (September 1 – January 31), which is more likely, no disturbance shall occur within 160 feet of occupied burrows.
8. During construction, any pipe or similar construction material that is stored on site for one or more nights shall be inspected for burrowing owls by the biological monitor(s) before the material is moved, buried, or capped. The owls shall not be disturbed from the pipes during breeding season.

Light-footed Clapper Rail and Belding's Savannah Sparrow-Development During Breeding and Non-Breeding Seasons

9. Prior to temporary impacts to marsh habitat in the lowlands as depicted in the [Exhibit 3](#), a focused survey shall be conducted for light-footed clapper rails and Belding's savannah sparrows in the spring prior to the proposed impact.
10. If either species is present, clean-up and removal of oil contaminated soil and oil and gas infrastructure; material treatment, processing, stockpiling, borrow, and disposal; construction; and restoration activities in the lowlands and all other activities, including restoration, involving the impacts to marsh or other

wetland vegetation shall not occur within 500 feet of appropriate habitat during the nesting season (March 1 through September 15).

11. Restoration may occur during the non-nesting season if a pre-construction survey conducted within 30 days of construction demonstrates that no light-footed clapper rail or Belding's savannah sparrows are in the area of impact. If any of these species are observed within 100 feet of the impact areas, the restoration shall halt until such a time as the birds have naturally vacated the area with no human interference.
12. A Biological Monitor with experience in monitoring light-footed clapper rail and Belding's savannah sparrow shall be present during all development activities involving marsh or other wetland vegetation in the lowlands to minimize the likelihood of impacts to these sensitive bird species. The Biological Monitor shall stop construction if necessary to prevent such impacts.

Least Bell's Vireo-Development During Breeding and Non-Breeding Seasons

13. Activities involving disturbance or removal of riparian vegetation shall be prohibited during the least Bell's vireo breeding season (March 15 to September 15).
14. Vegetation impacts shall be monitored by a qualified Biologist. The Biological Monitor shall delineate (by the use of orange snow fencing or lath and ropes/flagging) all areas adjacent to the impact area that contain habitat suitable for least Bell's vireo occupation.
15. Construction shall be prohibited within 500 feet of an active least Bell's vireo nest during the breeding season of this species (March 15 to September 15), unless otherwise directed by the USFWS and the CDFW.
16. If construction occurs during the breeding season, a summary of construction monitoring activities and noise monitoring results shall be provided to the USFWS and the CDFW following completion of construction.

17. Visitor Serving Overnight Accommodations

A. Hotel Component

BY ACCEPTANCE OF THIS PERMIT, the applicant agrees to comply with the following regarding operation of the 75-room hotel:

1. All hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days;
2. The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited.

B. Lower Cost/Hostel Component

BY ACCEPTANCE OF THIS PERMIT, the applicant agrees to comply with the following regarding operation of the minimum 20-bed hostel:

1. A lower-cost hostel shall be constructed onsite to serve as the component of the proposed hotel and hostel complex that provides lower-cost overnight accommodations.

2. The hostel shall be offered to the general public, to be booked online or by phone or in-person on a per bed basis.
3. All lower-cost overnight facilities shall be open, available and advertised to the general public.
4. Rooms shall not be rented to any individual, family, or group for more than 10 consecutive days.
5. The lower-cost hostel shall be open for general public visitor use prior to or concurrent with occupancy of the 75-room resort hotel.
6. If the hostel is closed, the Permittee shall submit a coastal development permit amendment application to replace the facility with a comparable facility on or offsite.
7. The hostel shall be maintained in a state of good repair, including, at a minimum, in a physical condition comparable to an American Automobile Association (AAA)-rated 1 or 2 diamond rating.
8. Hostel bed occupancy shall be maintained at an annual average of no less than 50%.

C. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a program for operation of the hostel that includes, at a minimum, the following:

1. The overnight rate structure of the proposed lower-cost hostel shall charge rates consistent with similar low-cost visitor serving hostels in the Southern California coastal region. The rates of the low cost accommodations shall be comparable to those offered at Hostelling International in Santa Monica (ADR per bed is \$45) or State Parks Crystal Cove Historic District (ADR per-bed rate is \$34).
2. The rates shall not increase more than the CPI annually. By acceptance of this permit, the applicant agrees that future improvements, including rate adjustments, are subject to review and approval by the Executive Director and may require an amendment to this permit.
3. A minimum of 20 hostel beds shall be available to the public on a per-bed basis at all times. Any private, lock-off room option in the proposed hostel shall be provided in addition to the 20 bed, shared room concept plan.

D. PRIOR TO CONSTRUCTION OF THE RESORT AND HOSTEL, the hostel operator shall be identified and shall provide a Hostel Operations Plan and enter into agreement with the Coastal Commission. The Executive Director shall review and approve, in writing, the Hostel Operations Plan as consistent with the intent and purpose of this condition. In addition, the hostel operator shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to the following: 1) a description of the lower cost accommodations on the site and the reservation system for the general public; 2) the Hostel Operations Plan must preserve these lower cost accommodations in perpetuity; and 3) an agreement that the Hostel Operator and/or Landowner will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for improvements to the lower cost accommodations, including rate adjustments, in the future.

E. Youth Program Providing Lower Cost Overnight Accommodations

PRIOR TO CONSTRUCTION OF THE RESORT AND HOSTEL, the applicant shall submit in a form and content acceptable to the Executive Director, a detailed program to provide lower cost overnight accommodation opportunities in the proposed hostel to

disadvantaged youth. The program shall be offered, at a minimum, year-round on a monthly basis for 3 days/2 nights per month. The program shall be developed in conjunction with an outdoor recreational program such as the Ocean and Open Space Experience or outdoor educational programs affiliated with the Newport Banning Land Trust or the management entity for the on-site open space and conservation system. Any expansion or changes to the approved program shall require Executive Director approval and may require an amendment to this permit.

18. Public Access and Parking Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit for the review and approval of the Executive Director a Public Access and Parking Plan which includes and conforms to the following elements: the applicant agrees on behalf of itself and all successors and assigns that all Streets, Roads, Trails, Parks and Parking within the Newport Banning Ranch development that is the subject of this permit shall be open to the public for use, including, but not limited to, pedestrian, bicycle and vehicular access. All publicly and privately maintained streets, trails, roads, parks and public parking areas shall be open for use by the general public 24 hours per day, 7 days a week, with the exception of standard limited parking restrictions for street sweeping and maintenance purposes. Long term or permanent physical obstruction of streets, roads and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, roaming security personnel acting in a manner that discourages public use, etc.) on any streets, roads, trails, parks or parking areas shall be prohibited. Access control and parking rates of parking structures for commercial, retail, or resort use shall require an amendment to this coastal development permit or a separate coastal development permit from the Coastal Commission.

The extent of public trails and amenities shall not be reduced from that depicted on the approved final plans. The public access trails shall be maintained in a manner that promotes public use of these public trails, as proposed by the permittee and as described in and required by this permit. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

19. Signage Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised final Transportation Demand Management Plan, with drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Design Parameters and General Exceptions to the Design Parameters as identified in Special Condition 1, except in the isolated instances where the following would preclude implementation of the exceptions listed. The permittee shall submit a Signage Plan, in compliance with the following:

1. Public Access Signage that directs the public to the public access and recreation easement areas on the project site and adjacent public access and recreation areas accessible from the site.
 2. Conservation signage that directs the public to refrain from entering and disturbing conservation areas on the project site and educates the public about the habitat value and lists common disturbances to wildlife which are to be avoided, including but not limited to: domestic pets, littering, loud noises, lights, etc.
 3. Signs shall be included that are located and sized such that they are visible from existing publicly accessible areas (e.g. nearby sidewalks, nearby public roads, nearby public parks) adjacent to the site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to those locations.
 4. Directional signage is required including direction to public parking, public parks, directional monuments (e.g. location of public amenities), and public trails. Directional signage to the coast and coastal access points is required.
 5. Trail signage shall include mile markers, circulation, and kiosks with local trail maps, as well as regional trail maps. Signage for Trails shall indicate the types of uses allowed on the trails, consistent with Special Condition 4.
 6. Interpretative signage shall be limited to environmental and cultural educational signage.
 7. Community monuments and entry-signs into the development from PCH and 15th, 16th and 17th streets shall not create the appearance that the community is private and only open to residents and their guests; the public shall be openly welcomed. Such monuments and signs shall not exceed 42 inches in height above finished grade shall be no larger than signs for public parks and trails.
 8. Other signs necessary shall be included in the plan, such as facility identification, informational signage, and roadways signs. Signs shall be multi-lingual wherever appropriate.
 9. All signs shall be installed only within the “potential development areas” identified on [Exhibit 25](#) or within the trail right-of-way, consistent with Special Condition 12 and 13.
- B. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required. Any proposed changes to the approved final sign program shall be reported to the Executive Director. No changes to the approved final sign program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

20. Protection of Cultural Resources

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director a revised archeological research, monitoring and mitigation plan (revised ARP), prepared consistent with subsection D of this condition, which shall incorporate the following measures and procedures:
1. The applicant shall comply with all recommendations and mitigation measures contained in the document titled “Archeological Research Plan, Newport Banning Ranch, Newport Beach, California” by Bonterra-Psomas dated July 2014, except as

- further modified by the conditions below and any other applicable conditions of this permit;
2. If any cultural deposits including but not limited to skeletal remains and grave-related artifacts, traditional cultural, religious or spiritual sites, midden and lithic material or artifacts, are discovered during development, which includes for the purpose of this condition the cultural deposits that were excavated during archaeological testing for the EIR process, the permittee shall carry out significance testing of said deposits pursuant to subsection C below, and, if cultural deposits are found by the Executive Director to be significant, additional investigation and mitigation in accordance with this special condition including all subsections. No significance testing, investigation or mitigation shall commence until the provisions of this special condition are followed, including all relevant subsections;
 3. Based on the results of the significance testing undertaken pursuant to subsection A.2 and C of this condition, the revised ARP shall include mitigation, including appropriate final treatment, for the prehistoric cultural deposits recovered and removed from the site during the EIR process for the project.
 4. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, all development shall cease in accordance with subsection B. of this special condition;
 5. In-situ preservation and avoidance of cultural deposits shall be considered as the preferred mitigation, to be determined by the Executive Director in accordance with the process outlined in this condition, including all subsections;
 6. The revised ARP shall identify proposed mitigation measures for the recovery and/or relocation/reburial of prehistoric cultural deposits that shall be undertaken when the procedures outlined in the Clean-Up Target Confirmation Sampling in Sensitive Resource Areas condition (Special Condition 9) are completed and the Executive Director has determined that impacts to cultural deposits are necessary and unavoidable to conform with State or Federal soil or water clean-up standards;
 7. A setback shall be established between the boundary of cultural deposits preserved in-situ and/or reburied on-site and any proposed structures which shall be no less than 50 feet and may be larger if necessary to protect the cultural deposits;
 8. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading;
 9. The permittee shall provide sufficient archeological and Native American monitors to assure that all development, including but not limited to soil disturbance, clean-up and removal of oil contaminated soil and oil and gas infrastructure; material treatment; processing, stockpiling, borrow, and disposal; construction; restoration activities and project grading, that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
 10. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment

of human remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.

11. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition, including all subsections. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archaeological monitoring plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.

- B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, is discovered during the course of the project, all development in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all development that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection C and D and other subsections of this special condition. In general, the area where development must cease shall be 1) no less than a 200 foot wide buffer around the cultural deposit; and 2) no more than the residential enclave or commercial development area within which the discovery is made.
- C. An applicant seeking to recommence development following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
 3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archaeologist's recommendation as to whether the findings are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD.

- The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection D and subsection A.4 of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may re-commence development in accordance with any measures outlined in the significance testing program.
- D. An applicant seeking to recommence development following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures in compliance with subsection A.4 of this condition. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.
1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, development may recommence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, development may not recommence until after an amendment to this permit is approved by the Commission.
- E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, including the revised ARP but excepting any Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archaeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit

for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

- F. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

21. Indemnification by Permittee

Liability for Costs and Attorney's Fees. By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorney's fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

22. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

23. No Future Protective Device(s)

By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 5-15-2097 including, but not limited to, the residences, commercial or retail development, trails, hardscape, parks, and any other improvements and future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise, or other natural coastal hazards in the future. By acceptance of this Permit, the applicant/landowner hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may now or in the future exist under Public Resources Code Section 30235 or analogous provisions of a Local Coastal Program.

By acceptance of this Permit, the applicant/landowner further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by

this Permit, including, but not limited to, the residences, commercial or retail development, trails, hardscape, parks, and any other improvements and future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the slough or Coast Highway or dedicated open space, before they are removed, the landowner shall remove all recoverable debris associated with the development from the area and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

In the event the edge of the bluffs recedes to within twenty five (25) feet of any structure but no government agency has ordered that the structure is not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the landowner(s), that addresses whether any portions of the residence are threatened by bluff and slope instability, erosion, landslides, sea level rise or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal structure(s) without bluff protection, including but not limited to removal or relocation of portions of the structure(s). The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the structures or any portion of the structures are unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure(s).

24. Geotechnical Recommendations

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final geotechnical report for the project which addresses required foundation design, fault zone setbacks, bluff top and canyon slope/bluff setbacks and etc. for the project authorized by this coastal development permit. The report shall be prepared and certified by an appropriate professional (i.e., civil or other appropriate engineer or architect). If the revised geotechnical report recommends use of any exposed foundation elements or any stabilization, soil recompaction or other grading not included in the current proposal, an amendment to this permit or a new permit shall be required in order to implement such recommendations. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the report approved by the Executive Director.

B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission

amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

25. Other Agency Approvals

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to the submittal of any revised final plans required by this coastal development permit, the applicant shall (1) provide to the Executive Director a copy of all required permits and approvals from the California Department of Fish and Wildlife, Regional Water Quality Control Board, US Army Corps of Engineers, and the US Fish and Wildlife Service (hereinafter “other resource agencies”) and provide them to the Executive Director; and (2) obtain from those other resource agencies a permit, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the above agencies that are inconsistent with the Commission’s approval of this coastal development permit. Such changes shall not be incorporated into the project until the applicant obtains an amendment to this coastal development permit.

26. Interim Erosion Control Plan and Construction Responsibilities

A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices Plan, prepared by a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan are in conformance with the following requirements:

1. Erosion Control Plan

- a. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
- b. Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- c. The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- d. The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
- e. The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an

appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.

- f. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.
 - g. All temporary, construction related erosion control materials shall be comprised of bio- degradable materials (natural fiber, not photo-degradable plastics) and must be removed when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.
2. Construction Best Management Practices
- a. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - b. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
 - c. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - d. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - e. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - f. The applicant shall provide adequate disposal facilities for solid waste including excess concrete produced during demolition or construction.
 - g. Debris shall be disposed of at a permitted disposal site or recycled at a permitted recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - h. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - i. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - j. The discharge of any hazardous materials into any receiving waters shall be prohibited.

- k. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area, with appropriate berms and protection, to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - l. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
 - m. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- B. The final Interim Erosion Control and Construction Best Management Practices Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

27. Water Quality Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, two (2) copies of a final Water Quality Management Plan (WQMP), including Drainage Plans and Runoff Controls, for the post-construction project site. The final plan shall demonstrate substantial conformance with the Preliminary Water Quality Plan prepared by FUSCOE Engineering Inc. last updated 4/22/2016 except it shall be modified as required to conform to this coastal development permit. These plans shall be prepared by a qualified licensed water quality professional. The final WQMP shall include details on all aspects of water quality protection for the post-construction environment of this project, including detailed drainage and runoff control plan sheets, and all supporting BMP sizing calculations.
1. Drainage Plan: As proposed, this project includes the delineation of Drainage Management Areas (DMA), each with specific water quality protection practices, or suites of practices, based on the development type to reduce runoff and pollutants from leaving each unit. A Drainage Plan shall be developed for each DMA which details the movement and discharge of runoff in the delineated DMAs. This plan shall include discharge directional indicators, sizing calculations for all associated BMPs included within the DMA in the final Drainage Plan.
 2. Water Quality Management Plan: A final Water Quality Management Plan shall be developed for this project which incorporates long-term post-construction Best Management Practices (BMPs) that protect water quality and minimize increases in runoff volume and rate in the project design of developments.

Per the "Water Quality Approach Technical Memorandum" (FUSCO, Co., 11/30/2015), and the Addendum to that memo (FUSCO, Co., 4/22/16), there are

specific water quality practices which shall be implemented throughout the developed areas:

- a. On-lot BMPs classified as Hydrologic Source Controls (HSC): including, rain catchment on individual residential units; and dispersion of rain and runoff flows from impervious surfaces to landscaped areas.
 - b. Harvest and Reuse Area BMPs: including both above-ground and below-ground cisterns with a design capture volume (DCV) of at least the 85th percentile storm event for the DMA tributary area, capture 40% or greater of the tributary volume for reuse, and overflow to biofiltration areas prior to discharge into coastal waters.
 - c. Biotreatment Area BMPs including:
 - (3.a) Community Biofiltration Basins, which are designed as flow through filtration systems to filter out sediments and pollutants associated with urban runoff at 1.5 times the DCV for each DMA.
 - (3.b) Street and Parkway Biotreatment BMPs, including modular wetland systems to be employed for filtering and treating roadway runoff, and designed to meet street design Biotreatment BMP specifications.
 - d. Off-site Runoff Treatment Basin: to address run on to the project site from adjacent areas, the project will include an on-site water quality treatment basin designed to treat runoff entering the development from external sources prior to discharge into coastal waters
3. Runoff Controls: Additionally/As well/At a minimum, the project shall include the following water quality protection approaches and runoff controls throughout the development of the site, in the following order of priority:
- a. Site Design BMPs: Project design features that reduce the creation or severity of potential pollutant sources, or reduce the alteration of the project site's natural stormwater flow regime. Examples are minimizing impervious surfaces, preserving native vegetation, and minimizing grading.
 - b. Source Control BMPs: Methods that reduce potential pollutants at their sources and/or avoid entrainment of pollutants in runoff, including schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices. Examples are covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.
 - c. Treatment Control BMPs: Systems designed to remove pollutants from stormwater by gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process. Examples are vegetated swales, detention basins, and storm drain inlet filters. Where post-construction treatment of stormwater runoff is required, treatment control BMPs (or suites of BMPs) shall, at a minimum, be sized and designed to treat, infiltrate, or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.

The qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- i. Projects shall incorporate Low Impact Development (LID) techniques in order to minimize stormwater quality and quantity impacts from development, unless a credible and compelling explanation is provided as to why such features are not feasible and/or appropriate. LID strategies use small-scale integrated and distributed management practices, including minimizing impervious surfaces, infiltrating stormwater close to its source, and preservation of permeable soils and native vegetation.
- ii. Post-development runoff rates from the site shall be maintained at levels similar to pre- development conditions.
- iii. Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious areas and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches and cisterns.
- iv. Landscape plants shall have low water and chemical treatment demands and be consistent with Special Condition 5 and 7, Landscaping and Fuel Modification Plan.
- v. All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit and, if applicable, in accordance with engineered plans prepared by a qualified licensed professional.
- vi. Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed where needed to prevent erosion. Plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system shall be prepared by a qualified licensed professional. The drainage plans shall specify the location, dimensions, cubic yards of rock, etc. for any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The qualified, licensed professional shall ensure that all energy dissipaters use the minimum amount of rock and/or other hardscape necessary to protect the site from erosion.
- vii. All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired, prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- viii. Site drainage and BMP selection shall be developed concurrent with the preliminary development design and grading plan, and final drainage plans shall be approved by a licensed geotechnical engineer or engineering geologist.

- ix. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the affected area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
 - x. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the residential and commercial development. Prior to the occupancy of residential or commercial structures approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final WQMP approved by the Executive Director.
 - xi. Structural BMPs shall incorporate natural treatment components (e.g. soft-bottom vegetated basins/bioswales) to the maximum extent practicable;
4. Other Requirements of the Plan
- a. The use of chemical pesticides, herbicides, rodenticides, shall be prohibited. The use of fertilizers shall be minimized to the maximum extent practicable. An Integrated Pest Management Program (IPM) shall be implemented in all common area landscaping and encouraged in other development areas. The IPM Program shall be designed and implemented for all of the proposed landscaping/planting on the project site and shall include the following IPM features, as appropriate:
 - i. Bacteria, viruses and insect parasites shall be considered and employed as a pest management measure, where feasible.
 - ii. Manual weeding, hoeing and trapping
 - iii. Use of non-toxic, biodegradable, alternative pest control products.
 - iv. The applicant or responsible party shall be responsible for educating all landscapers or gardeners on the project site about the IPM program and other BMPs applicable to water quality management of landscaping and gardens. Education shall include written and verbal materials.
 - b. Restaurants and Cafes:
 - i. Wash down areas for restaurant equipment and accessories and food preparation areas shall be designed to meet the following:
 - The area shall be self-contained, equipped with a grease interceptor, and properly connected to a sanitary sewer. The grease interceptor shall have the capacity to capture grease to the maximum extent practicable.
 - If a wash area is to be located outdoors, it shall be covered, paved, have primary containment, and be connected to the sanitary sewer.
 - The grease interceptor shall be regularly maintained according to manufacturer's specifications to ensure maximum removal efficiencies.

- ii. The applicant shall be responsible for ensuring that restaurant owners, managers, and staff are educated about the use and maintenance of grease interceptors, as well as best management practices designed to limit, to the maximum extent practicable, the contribution of pollutants from restaurants, wash areas, loading areas, trash and recycling storage areas.
 - iii. Informational signs around the establishments for employees and customers about water quality and the BMPs used on-site shall be provided.
- c. Trash and recycling containers and storage areas:
The applicant shall use trash and recycling containers and storage areas that, if they are to be located outside or apart from the principal commercial structures, are fully enclosed and water-tight in order to prevent stormwater contact with waste matter which can be a potential source of bacteria, grease, and particulates and suspended solids in runoff, and in order to prevent dispersal by wind and water. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s), and must be screened or walled to prevent off-site transport of trash.
- d. Structures, hardscape, and Roads:
Runoff from all new and redeveloped surfaces on the site shall be collected and directed through a system of media filter devices and bioswales. The filter elements shall be designed to treat, filter, or infiltrate runoff and a) trap sediment, particulates and other solids and b) remove or mitigate contaminants through filtration and biological uptake. The drainage system shall also be designed to convey and discharge runoff in a non-erosive manner.
- e. Education and Training:
- Annual verbal and written training of employees, tenants, landscapers, and property managers and other parties responsible for proper functioning of BMPs in commercial development shall be required.
 - Outdoor drains in the commercial site shall be labeled/stenciled to indicate whether they flow to an on-site treatment device, a storm drain, or the sanitary sewer as appropriate.
 - Storm drain stenciling (“No Dumping, Drains to Ocean” or equivalent phrase) shall occur at all storm drain inlets in the development.
 - Informational signs around the commercial establishments for customers and employees/tenants about water quality and the BMPs used on-site shall be provided.
 - Informational signs around the residential development for homeowners and the public about urban runoff and the BMPs used on-site shall be provided near the detention ponds, at trail heads, and at centralized locations near storm drain inlets.
- B. A final Water Quality Monitoring Plan shall be submitted designed to characterize and evaluate the potential effects of stormwater and dry weather runoff from the proposed development on receiving waters including the Semeniuk Slough, Santa Ana River, and the Pacific Ocean. The final plan shall be consistent with the requirements of these special conditions:

1. Water quality monitoring for the development shall comply with the following requirements:
 - a. Baseline water quality data of pre-development conditions shall be collected prior to commencement of construction. The baseline water quality studies shall be sufficient to document background (pre-development) levels of the contaminants that will be analyzed in the ongoing water quality monitoring program.
 - b. Dry weather sampling shall be conducted from the commencement of construction through the time in which the water quality management system required by the final Water Quality Management Plan approved by the Executive Director are constructed and fully operational. Dry weather sampling shall occur on a monthly basis.
2. The Water Quality Monitoring Plan shall include a map of the proposed sampling locations.
3. If monitoring results indicate that incidents are occurring in which applicable water quality standards including, but not limited to, any applicable standards in the California Toxics Rule and the California Ocean Plan, are not being met and/or that recurring incidents are threatening to establish a condition in which applicable water quality standards are not being met, the applicant shall investigate the cause or source of the incidents and/or condition and provide information to the Executive Director demonstrating any incidents and/or resulting condition in which applicable water quality standards have not been met is not the result of the applicant's failure to comply with the terms and conditions of this Permit. If the Executive Director determines otherwise, based on the information generated from the applicant's investigation and all other information available to the Executive Director, corrective actions or remedies shall be required. If remedies or corrective actions constitute development under Section 30106 of the Coastal Act, an amendment to this Permit shall be required, unless the Executive Director determines no such amendment is legally required.
4. The applicant shall clarify parameters that will "trigger" a reevaluation of trash and debris BMPs in the Water Quality Monitoring Plan.
5. In addition to construction phase monitoring, post-development monitoring shall be conducted for a minimum period of three (3) years, following completion of development approved by this permit, or beyond three years for as long as necessary to demonstrate to the Executive Director that the water quality management system meets or exceeds the level of treatment required by the water quality management plan. Annual reports and semiannual updates containing data and analytical assessment of data in comparison to any applicable water quality objectives and other criterion specified herein, shall be submitted to the Executive Director of the Commission and to the Regional Water Quality Control Board for the entire monitoring period.

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- C. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

28.Future Development

This permit is only for the development described in Coastal Development Permit No. 5-15-2097. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. 5-15-2097 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

29.Evidence of Water Service

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, permittee shall provide written authorization for the review and approval of the Executive Director that adequate water service is available and will be provided to the project by the applicable Municipal Water District.

30.Development Agreement

BY ACCEPTANCE OF THIS PERMIT, the Permittee acknowledges that a subsequent approval by the Coastal Commission is required for any Development Agreement approved by the City of Newport Beach or any other local government.

31.Generic Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

For purposes of these conditions, the following terms or phrases shall have the meanings listed below.

“Site Constraints” – the areas identified on [Exhibit 25](#) where there is limited or no development potential due to the presence of wetlands, ESHA, buffers, and cultural deposits

“Development” – as defined in Section 30106 of the Coastal Act

“Potential Development Areas” – the areas identified on [Exhibit 25](#) that are located outside of constraints created by the presence of wetlands, ESHA, buffers, and cultural deposits.

“Clean-up” - removal of target materials (which could be concrete, asphalt-like material, oil contaminated soils, or infrastructure such as pipelines, well pads, pumps, and power poles).

“Clean-up target” - materials targeted for clean-up including concrete, asphalt-like material, oil contaminated soils, or infrastructure such as pipelines, well pads, pumps, and power poles

“Materials treatment and processing” - would include bioremediation of oil contaminated soils through their placement, spread, and mixing within delineated cells as well as the crushing and sorting of concrete, asphalt, and asphalt-like materials.

“Stockpiling” is the accumulation and storage of materials.

“Borrow” is the excavation of clean soils for transport and placement as backfill for areas from which oil contaminated soil is removed or use as a clean soil cap layer over disposal pits.

“Disposal” is the placement of treated and tested oil contaminated soil, concrete, asphalt, and asphalt like material in deep excavated pits onsite.

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APPENDIX A2

Substantive Files:

See CDP files 5-13-032 and 5-15-2097

APPENDIX B

Coastal Commission Permits, Enforcement Actions and Related

Coastal Development Permit No. E-85-001

In 1985, WNOC applied for and obtained CDP No. E-85-001 (Exhibit 5) to authorize 3 new exploratory wells on the subject site. Special Condition No. 2 of CDP No. E-85-001 states:

Limitation to Exploratory Drilling. This permit allows the drilling of up to 3 exploratory wells, no other drilling or commercial or oil production activities are authorized by this permit. Upon discovery of oil, the applicant shall submit to the Executive Director the results of testing including drill logs and production estimates within 60 days after removal of the well drilling equipment. A separate coastal development permit from the Coastal Commission shall be required for oil production beyond these three wells.

The body of the staff report further describes the requirement to obtain a CDP for additional wells. The Commission noted that further drilling could have potential subsurface and surface impacts on coastal resources and found in relation to additional drilling that :

The three areas identified for drilling by the applicant are surrounded by existing oil production equipment and minimal grading (max. 1 foot) is proposed. The applicant proposes that up to 10 development wells be approved on each site yielding a total of 30 wells to the deeper horizon. Concerns for subsidence, erosion hazards, and uncertain potential siting of wells on bluffs require that the proposed project be limited to exploration at three well locations. Another coastal permit shall be required for production and the addition of any more wells (beyond the three approved subject to conditions by this permit).

After issuance of CDP No. E-85-001, WNOC wrote to staff to acknowledge and agree to Special Condition No. 2 of the CDP. In its April 4, 1986 letter, WNOC agreed that “The applicants shall, upon discovery of oil, submit to the Executive Director the results of testing including drill logs and production estimates which shall be kept confidential by the Commission, with 60 days after removal of drilling equipment. The applicants recognize that a separate coastal development permit shall be required for oil production beyond these three wells.”

CDP No. 5-86-588

Also in 1986, the Coastal Commission approved CDP No. 5-86-588, which authorized WNOC to remove dredge material that had been placed in a wetland on site by the Orange County Environmental Management Agency pursuant to an agreement with WNOC, but without necessary authorization from the Coastal Commission and, as alleged by the U.S. Environmental Protection Agency, in violation of the federal Clean Water Act. In approving removal of the wetland fill, the Commission found that the site, part of the subject site, “is part of approximately 200 acres of coastal salt marsh wetlands identified on the USFWS National Wetland Inventory Maps.” The Commission cited the provisions included above in finding that fill of wetlands must be limited to the types of development types enumerated in Section 30233. The Commission further noted that “Development in coastal wetlands is subject to special scrutiny under the Coastal Act. Wetlands are highly diverse and biologically productive coastal resources. Their

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variety of vegetation and substrates produce far greater possibilities for marine and terrestrial wildlife feeding, nesting, and spawning than is found in less diverse areas.”

California Regional Water Quality Control Board Cleanup and Abatement Order No. 01-77

In 2001, the California Regional Water Quality Control Board issued an order to require WNO, Aera Energy, and Rancho Santiago to prepare a plan for restoring 2.87 acres of wetlands that had been destroyed by the discharges, that were the subject to the cleanup order, and to mitigate for the temporal loss of the beneficial uses of these wetlands for the time period of the illegal discharges. According to Board communications provided to staff, the parties have fulfilled the obligation to restore 2.87 acres of wetlands. Many of these impacted wetland areas were impacted as a result of the unpermitted development that was the subject of the 2015 Consent Orders, described below, and compensation for habitat lost as a result of the wetland fill noted above was, in large part, incorporated into the requirements of the Consent Orders.

Consent Cease and Desist and Restoration Orders Nos. CCC-11-CD-03 and CCC-11-RO-02

In 2011, the Commission issued Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02, addressing unpermitted removal of major vegetation (including vegetation comprising native plant communities and habitat for the federally threatened coastal California gnatcatcher – a bird species) and the results thereof; the unpermitted placement of solid material, including placement of numerous significant stacks of pipe conduits, vehicles, mechanized equipment, and construction materials; and grading, in violation of the Coastal Act.

The unpermitted development that was the subject of the above-noted consent orders commenced in 2004 and continued regularly into 2006. It was performed by a contractor undertaking a utility undergrounding in nearby locations off the Properties, utilizing and impacting portions of the subject site.

Pursuant to the terms of the Consent Orders, NBR, the contractor, and the utility agreed to, among other things: 1)) restore 1.01 acres of the site impacted by the unpermitted development at issue by planting coastal sage scrub vegetation native to Orange County that provides foraging and breeding habitat for the coastal California gnatcatcher and 2) conduct a mitigation project involving revegetation of no less than 2.5 acres of the site with native coastal sage scrub plant species that provides foraging and breeding habitat for the coastal California gnatcatcher. The restoration described above has commenced and the restoration project is currently within the monitoring and adaptive management phase, as required by the Consent Orders.

Consent Cease and Desist and Restoration Orders Nos. CCC-15-CD-01 and CCC-15-RO-01

See Section N of the Staff Report for a description of the 2015 Consent Orders.

Litigation with WNO

On August 12, 2014, WNO filed suit against the Commission, seeking declaratory relief to affirm its interpretation of the Exemption and confirm that “[a]ll wells and other development within the Oil Field occurring since 1973 for which a [CDP] has not been sought have been developed in a manner consistent with the vested rights . . . and the Resolution.” This litigation is active and pending, however, the parties have stipulated to stay the action until after the Commission’s June 2016 hearing. During that time period, Staff is working with WNO to review permitting options for the consolidation of its operations in the Oil Remainder Areas on

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the site, and WNOG has agreed not to undertake any new oilfield activities or undertake the large scale mowing operations previously conducted on the site.