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

Click here to go to original staff report

W14d

ADDENDUM

DATE: September 6, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **SECOND ADDENDUM TO ITEM W14d, APPLICATION NO. 5-15-2097 (Newport Banning Ranch, LLC) FOR THE COMMISSION MEETING OF WEDNESDAY, September 7, 2016.**

SECOND ADDENDUM

Letters and Ex Partes received as of September 6, 2016 at 3:00 pm

I. Ex Partes
II. Applicant's response to Staff Report
III. Letters of Opposition
IV. Letter of Support
V. Letter from City of Newport Beach Fire Department

THIS 2nd ADDENDUM IS ONLINE ONLY. PRINTED COPIES ARE NOT AVAILABLE FOR THE HEARING.

RECEIVED
SEP 03 2016
CALIFORNIA
COASTAL COMMISSION

Resent-From: <roberto.uranga@coastal.ca.gov>
From: Terry Welsh <terrymwelsh@hotmail.com>
Date: September 3, 2016 at 7:38:43 AM PDT
To: "roberto.uranga@coastal.ca.gov" <roberto.uranga@coastal.ca.gov>
Subject: Thank you

Commissioner Uranga:

Thank you very much for your time this week to discuss the proposed development project at Banning Ranch.

Your availability and interest is much appreciated and I hope that the discussion gave you a better understanding of the issues involved.

Attached is a summary of the points that were discussed. This document has been provided to your staff.

We will see you at the hearing.

Thanks again,

Terry Welsh

TWELVE REASONS FOR THE CALIFORNIA COASTAL COMMISSION (CCC) TO DENY DEVELOPMENT OF NEWPORT BANNING RANCH

1. **The Banning Ranch Conservancy strongly opposes the applicants' proposed development. Approval would require Commissioners to seriously violate the Coastal Act in numerous ways and is, simply, not defensible. While improved from May, 2016, the Banning Ranch Conservancy, due to missing, incomplete or inaccurate information in the application, does not support the Commission staff's recommended project at this time.**

   Approval of the applicant's project would set a bad precedent by allowing extensive development in ESHA. The staff has greatly improved their recommendations for approval, with conditions requiring expanded foraging area for the Burrowing Owl, but issues still exist with incomplete vernal pool fairy shrimp and vegetation studies, vernal pool watershed delineations, ESHA buffers and inaccurate vegetation mapping.

2. **Banning Ranch has extensive ESHA and wetlands. Commissioners must look beyond the visual impression of Banning Ranch and understand the body of scientific wildlife data.**

   It is the history of oil production that has allowed Banning Ranch to become a wildlife refuge as the areas surrounding Banning Ranch have seen intensive residential and commercial development. While not pristine, Banning Ranch has some of the last and rarest wildlife habitat remaining along the southern California coast, and the body of scientific evidence makes this clear. Native plant species may only be dormant (sleeping) due to a record five-year drought – not dead.

3. **There is no urgency for the invasive non-native vegetation on Banning Ranch.**

   Like everywhere else in California, non-native vegetation has been invading Banning Ranch for decades, if not centuries. There is no evidence that non-native vegetation is an urgent threat to the wildlife of Banning Ranch. Rather, it is the unpermitted vegetation clearance that occurred for many years that is the much greater threat to the wildlife. Indeed, the return of native California brittlebush scrub in areas where the mowing has ceased signals that Banning Ranch is "self-restoring." We are concerned that the staff allowed the applicant to re-map the native grasslands, which have contracted under the drought conditions, but did not require the applicant to re-map the areas of brittlebush scrub that are now springing back after cessation of illegal mowing.

4. **The vernal pool complex on Banning Ranch predates the oil operation.**

   The US Fish and Wildlife Service (USFWS) recognizes the vernal pool complex at Banning Ranch as one of only two remaining on the Orange County coast (the other being the complex at near-by Fairview Park) and the only vernal pool complex in Orange County containing critical habitat for the endangered San Diego Fairy Shrimp. Historic aerial photos

show vernal pools and mima mounds that predate the oil operation. Although nearly all the vernal pools on Banning Ranch show varying degrees of disturbance from the oil operation, the vernal pool complex at Banning Ranch, contrary to what the applicant claims, is not the product of the oil operation. The entire vernal pool complex, including pools containing non-listed fairy shrimp species and other life forms, should be preserved with adequate watersheds and buffers. To date, adequate vernal pool fairy shrimp surveys and vegetation surveys haven't been completed, nor have complete watersheds been delineated.

5. **While the expedient abandonment and remediation of the oil field is something desired by all, in no way should the Commission demand anything other than full compliance with the Coastal Act for any proposed development project on Banning Ranch.**

   The owner is legally responsible for the abandonment and remediation of the oil field whether or not there is development. Remediation cannot be viewed as a "benefit" that can be considered to off-set any adverse impacts of the proposed development project. In no way should the abandonment and remediation of the oil field be "held hostage" until the owners obtain their desired development entitlements. In the case of Banning Ranch, agreements for some abandonment and restoration, independent of the proposed development project, are already in place. Eighty percent (80%) of the historic oil wells have already been abandoned. Money has already been set aside for abandonment of remaining wells. Rare wildlife has persisted on Banning Ranch and will continue to persist, should the site remain an oil field. With the cessation of the large-scale mowing, Banning Ranch is already "self-restoring."

6. **The abandonment and remediation of the oil field can occur in an environmentally conscious manner.**

   Gravel roads and abandoned underground pipes can be left in place if their removal would cause unnecessary destruction of natural coastal resources. Transporting concrete and asphalt off site for use in other construction projects would avoid the digging of large destructive onsite disposal areas (not necessary for oil field remediation) known as "Borrow Placement Areas". The Soil Remediation Planning Areas (the areas planned for Bio Remediation, Borrow Placement, Clean Soil Flip, Staging/Stockpiling Area, Concrete Processing, etc.) can be reduced in acreage and located to avoid ESHA and buffers.

7. **It is very important to maintain not only the burrows, but adequate foraging area, for the 1 – 3 Burrowing Owls that winter on Banning Ranch each year.**

   Breeding populations of Burrowing Owls are believed to have been extirpated from the Southern California coast. Maintenance of the habitat for the 1 – 3 Burrowing Owls that winter on Banning Ranch each year is essential if a breeding population is to return to this portion of the Southern California coast. A California Department of Fish and Wildlife report titled *Staff Report on Burrowing Owl Mitigation* (published 3/7/12) recommends from 280 –

600 acres of foraging area per adult male. Clearly, the CCC staff's current recommendation of Burrowing Owl ESHA is a significant improvement over May's recommendation of only 1.17 acres of ESHA. *All native and non-native foraging grasslands* on the Banning Ranch mesa should be preserved as ESHA for the Burrowing Owl.

8. **The historical nesting season use areas of the Coastal Cactus Wren should be considered as ESHA**

   Historically, Banning Ranch has supported up to 14 nesting pairs of Coastal Cactus Wrens. None have been seen in surveys since 2009. Well-documented destruction of Maritime Succulent Scrub by unpermitted vegetation removal for many years may have contributed to the likely extirpation of Coastal Cactus Wrens from Banning Ranch. If the Coastal Cactus Wren is to be successfully re-introduced to Banning Ranch, it is important to preserve their historical nesting season use areas.

9. **There is substantial and undeniable documented evidence that Banning Ranch was a pre-historic Native Nation settlement.**

   Banning Ranch was part of a larger settlement known as Genga. Banning Ranch is contained within the *Native American Heritage Commission* Sacred Lands File. Areas where Native American evidence is located should be left undisturbed.

10. **Fuel modification activities should not be allowed in ESHA buffers.**

    Once an area is designated a fuel modification (fire safety) zone, it falls under the jurisdiction and control of the local fire authority and its primary purpose becomes human safety. This involves regular management and removal of flammable vegetation. For this reason, among others, the CCC has a long history of requiring fuel modification zones to be sited in the development footprint, and not in ESHA buffers. At Banning Ranch, the CCC staff has made it clear from the very beginning (2009), even before the Environmental Impact Report (EIR) was prepared by the City of Newport Beach, that any fuel modification zones should be sited in the development footprint.

11. **Bluff Road is neither: (a) needed, (b) desired, nor (c) consistent with the Coastal Act.**

    Bluff Road is the main roadway planned for the applicant's proposed project, connecting PCH with 15th, 16th and 17th streets. Despite the applicant's claims, adequate coastal access is already in place for residents of west Costa Mesa and west Newport Beach. One never hears a "west-sider" voice a need for another road. On the contrary, there is a strong opposition to building Bluff Road among "west-siders." The proposed Bluff Road would also extensively impact ESHA.

12. **Development of Banning Ranch can occur on a small footprint, consistent with the Coastal Act and is the required choice.**

While the Banning Ranch Conservancy still maintains our position that all of Banning Ranch should be preserved, the Conservancy recognizes there is a potential project that would comport with the Coastal Act. The Conservancy has prepared a preliminary draft of a 108-unit alternative project, environmentally superior to that of the applicant. This draft alternative project was forwarded to both the applicant and CCC in April 2016. It provides a reasonable return for the property owner (in addition to all the oil revenues realized from 70 years of oil production, as well as ongoing revenues from continued drilling at the proposed consolidated site) and is not subject to any claim for "takings." This draft alternative development project has also been presented to the Newport Banning Land Trust (NBLT), the Newport Beach City Council and Planning Commission, the West Newport Beach Association (WNBA), and residents in adjacent communities including the Newport Crest Home Owners Association (HOA). The draft alternative project was also presented on 7/20/16, at a dinner, as part of the California Coastal Resiliency workshop at the University of California, Irvine. On 8/29/16, the Banning Ranch Conservancy met with the applicant to discuss our alternative project and associated issues that will be the subject of future discussions. An offer was made by the Banning Ranch Conservancy to help with restoration efforts should the applicant and the Banning Ranch Conservancy come to an agreement on a project. At this point, the applicant has not responded with a "counter-offer" alternative project plan. The Commission is required under the law to select the project alternative that is "most protective" of coastal resources

Banning Ranch Conservancy
September, 2016

EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED
SEP 04 2016
CALIFORNIA COASTAL COMMISSION

Filed by Commissioner: Erik Howell

1) Name or description of project: Newport Banning Ranch

2) Date and time of receipt of communication: 09/02/16 2:00

3) Location of communication: Pismo Beach, Telephonically

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Terry Welsh

5) Identity of person(s) on whose behalf communication was made: Terry Welsh

6) Identity of persons(s) receiving communication: Erik Howell

7) Identity of all person(s) present during the communication: Erik Howell, Terry Welsh

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Terry Welsh articulated the twelve points in opposition to the staff report. These have been provided to staff. He also stated that he would be disappointed if the property was still not open to the public forty years from now.

09/04/16
Date

Erik Howell
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED
SEP 04 2016
CALIFORNIA COASTAL COMMISSION

Filed by Commissioner: Erik Howell

1) Name or description of project: Newport Banning Ranch

2) Date and time of receipt of communication: 9/3/16 4:30

3) Location of communication: Pismo Beach

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Chris Yelich, Mike Mohler

5) Identity of person(s) on whose behalf communication was made: Chris Yelich, Mike Mohler

6) Identity of persons(s) receiving communication: Erik Howell

7) Identity of all person(s) present during the communication: Erik Howell, Chris Yelich, Mike Mohler

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Chris Yelich and Mike Mohler explained that the current staff recommendation does not provide enough development to pay for the cleanup of the site. They emphasized the public benefit of the road providing access to PCH. They pointed that their proposed project will consolidate oil production further away from current homes. They also went over their response to the staff recommendation.

09/04/16
Date

Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

EX PARTE COMMUNICATION DISCLOSURE FORM	
Filed by Commissioner:	Effie Turnbull Sanders
1) Name or description of project:	
Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach) Agenda Item Sept. 7, 2016, Item 14d	
2) Date and time of receipt of communication:	
8/31/16 at 6pm:	
3) Location of communication: **(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)**	
Numero Uno Pizza at Highland and Wilshire in Los Angeles, CA	
4) Identity of person(s) initiating communication:	
Steve Ray, Executive Director and Terry Welsh, President of Banning Ranch Conservancy	
5) Identity of persons(s) receiving communication:	
Effie Turnbull Sanders	
6) Identity of all person(s) present during the communication:	
Steve Ray, Executive Director and Terry Welsh, President of Banning Ranch Conservancy, Effie Turnbull Sanders	
7) Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):	
Steve Ray stated the following: At the October Hearing staff recommended complete denial and the Commission rejected that and asked the staff to go back to the developers to find a project. There was another staff report for the May hearing that was postponed. At the May hearing staff recommended 55 acres of developable property. I testified that staff changed the way that they defined ESHA. In this staff report the staff is recommending 19.7 acres of development. Our position is that the applicant's project proposal is unacceptable and there are so many problems with it and has no chance of being legally sustained.	

Regarding the staff's recommendation: we applaud the staff for recognizing that there were things that had been overlooked and missed things in the May recommendation including burrowing owls as a species of special concern. Burrowing owl needs both areas for the burrowing and foraging.

Since 2009 instead of having breeding pairs of cactus wren, not one has been spotted. This was the result of violations. There was no fix for recreating habitat for the bird to return.

The current staff report is inconsistent in interpreting ESHA. For example, where Bluff road enters the project, there is a healthy scrub area that has not been identified as ESHA. This qualifies as ESHA, but if it is designated, this eliminated the ability to come into the property from PCH.

We have proposed an alternative. We have presented this proposal to the City of Newport Beach and homeowners associations in the area and the developers.

We had a meeting with the developers on Monday that did not go well. The developer's position is that they are going to get their project or else it is going to remain an oil field for the next 150 years.

Developers are making a major pitch that the property is not going to get cleaned up unless they have a project to pay for it. However, they already have the responsibility to remediate already.

The county has taken a "no position" and the City is in favor of the development because it will be an income stream for them, TOT tax etc. However, in the City's general plan the BR area is supposed to be open space. BRC won at superior court and now it is before the Supreme Court.

Terry Welsh stated the following

Terry Welsh went over a list of reasons for why the project should be denied. These reasons will be provided to staff and included on the record.

We are concerned that the fuel modification zones around the development is being proposed to be in the ESHA buffer.

CCC Staff has always made it clear that fuel modification must be in the development footprint, not in the ESHA buffer. If you look at the May staff report, you see this repeated over and over again.

Putting the fuel modification in the ESHA buffer, defeats the purpose of protecting ESHA.

We don't feel comfortable having the ESHA buffer be under control of the fire department because the priority is for fuel modification (preventing fire) not protection of ESHA.

The applicant's plan is to put fuel modification in the ESHA buffer, which is contrary to historical practice and the staff report.

Bluff Road is a main road that the developers propose to expand. Access from the West Side of Costa Mesa (populated heavily by Latinos) is not a problem and developing Bluff Road will not increase beach access. The City wants to build Bluff road to allow the City to relieve its traffic problem and congestion on PCH by diverting the traffic through Costa Mesa.

Newport Banning Ranch Land Trust is the developer's faux environmental group. Four of the five board members are the developers.

We support most recent staff report but we have other issues that we are going to raise is that vernal pool studies on fairy shrimp and vernal pool vegetation have not been completed.

Invasive vegetation removal is not an emergency.

The vernal pool complex is real, but they are impacted.

We want the development project evaluated in terms of its consistency with the Coastal Act.
Oil abandonment and cleanup can do it in an environmentally conscious way.

We are pleased with staff report protection of foraging area for burrowing owls in addition to their burrows.
Cactus wrens (state species of special concern) and are no longer there.

There was a Native American settlement on Banning Ranch.

The alternative project that is being proposed by BR is: 6.5 acres and 108 units of residential housing.

==========
Both Mr. Ray and Mr. Welsh thanked me for my time and we concluded the meeting.

Date	**Signature**

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

Banning Ranch CONSERVANCY

BRIEFING BOOK

W14d

for

California Coastal Commission

Newport Banning Ranch – Application 5-15-2097

September 7, 2016

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EXECUTIVE SUMMARY

RE: Application 5-13-032 (Newport Banning Ranch)

The Banning Ranch Conservancy objects to the scheduled hearing on the above application on the basis that the application is incomplete and the hearing is unlawful.

1. The project has been segmented by the applicant, with concurrence of the Commission Staff, into two supposedly separate and distinct projects, resulting in "piece-mealing" of the overall project. The project, as documented from the beginnings of the project proposal, includes a development proposal that is based upon, contingent upon and includes consolidation of oil field operations (to include abandonment of wells, well sites, pipelines, structures and equipment; remediation and clean-up of the impacted land, especially the development footprint; and translocation of wells and equipment to the designated "oil consolidation" sites on the same property).
2. The application is also incomplete because of lack of information or inaccurate information from the applicant. Eight Notices of Incomplete Application (on file) from Commission Staff to the applicant detail all of the studies and reports repeatedly requested or required by Staff to process the application that the applicant ignored or simply refused to provide.
3. If the Commissioners give serious consideration to approve the Staff recommended development footprint or a "compromise" footprint between the project as proposed and the Staff recommendation, there would be insufficient information available to the decision makers and/or the public to adequately analyze the project for conformance with Chapter 3 policies of the Coastal Act. Too much information would be lacking regarding the specific layout, design, placement and mix of structures and features to properly analyze any such "project".

The Commission should strongly encourage the applicant to withdraw the application and re-submit when they are willing to provide all requested information. If the applicant is unwilling, and/or in order to eliminate any conflict with the Streamlining Permit Act, the Commission should then deny the project for the reasons stated herein and in the complete record of these proceedings.

The Banning Ranch Conservancy recommends DENIAL of the applicant's proposed project for all the reasons enumerated in this Briefing Book, in the Coastal Commission Staff Report on Application 5-13-032 (Newport Banning Ranch) and in the Administrative Record of this proceeding. The proposed project contains so many issues and violates the Coastal Act in so many ways as to render any consideration of it as an exercise in futility and any approval of it as legally unsustainable.

The Banning Ranch Conservancy recommends DENIAL of the Staff's recommendation of a project of 19.7 acres for all the reasons enumerated in this Briefing Book, in the Coastal Commission Staff Report and in the Administrative Record of this proceeding. There is much to applaud in the Staff Report, such as recognition of much of the ESHA for the Burrowing Owls. However, Staff continues some of the same egregious errors from the May 2016 Staff Report, to wit: changes in the law, science and interpretation of ESHA, wetlands and vernal pools in contravention of the Coastal Act, settled case law and past precedent in prior Coastal Commission decisions. Where there has been unpermitted development on Banning Ranch, Staff is inconsistent in applying the baseline environmental conditions as what was there prior to the unpermitted development (as required by the Coastal Act) versus what the conditions are since that unpermitted development occurred.

The Banning Ranch Conservancy, further, finds additional and substantial reasons that both the applicant's proposed project and the Staff's recommended project should be denied. They are discussed herein and in the Administrative Record of this proceeding.

The Banning Ranch Conservancy has recognized and recommended a potential Alternate Proposal that meets requirements of the Coastal Act and is most protective of coastal resources.

It is the position of the Banning Ranch Conservancy that Section 30007.5 – "Conflict Resolution", also known as the "Balancing Provision" - is inapplicable and must not be relied upon by the Commission to provide support for any discussion or decision to implement it in this proceeding. No provisions of the Coastal Act are in conflict with any other provision of the Act in this application. The inherent purpose of the Banning Ranch project is development of the property for residential and commercial uses for private economic gain. Any "public benefits" are ancillary to that inherent purpose.

Many other problems, issues and areas of concern are illuminated in this Briefing Book and throughout the Administrative Record on file for this application.

SITE DESCRIPTION

- Banning Ranch at 401.1 acres is the last large parcel of unprotected privately owned coastal open space in Southern California, located where the Santa Ana River meets the Pacific Ocean.
- Branches of the active Newport Inglewood Fault, source of the Long Beach 6.3 earthquake of 1933, traverse the property.
- The site was occupied by both the Gabrielino/Tongva and Juaneňo/Acjachemen Native Americans. Cultl resources have been found on the Banning Ranch site and more archeological resources are likely still present, yet to be found.
- Oil drilling operations began in 1943. Peak annual oil production in the early 1980's was roughly 1.2 million barrels of oil with over 300 active wells. Production now averages approximately 90,000 barrels per year with approximately 60 active wells.
- Approximately 72 acres would be developed to include housing, retail commercial space, resort development, parks, roadways and trails, with approximately 15 acres of oil consolidation activity. Additional open space acreage will be seriously disturbed or lost due to oil field remediation and construction grading activity.
- The current property is all that remains of the historic Banning Ranch. Over 90% has been sold and developed. What's left is all that remains of unprotected open space. It is **nature's compromise**. And must be preserved.

OTHER PUBLIC AGENCIES:

CONDITIONAL APPROVALS:

- California Department of Fish and Wildlife (CDFW) – Section 1601 Permit issued September 2015 by default due to Department's failure to timely act on it.
- Regional Water Quality Control Board - Remedial Action Plan (RAP) – Conditionally approved December 2015
- Regional Water Quality Control Board -- Section 401 Permit. Heavily conditioned approval February 2016

APPROVALS STILL REQUIRED:

- U.S. Army Corps of Engineers (USACE) – Jurisdictional Delineation.
- U.S. Army Corps of Engineers (USACE) – Section 404 Permit
- U.S. Fish and Wildlife Service (USFWS) – Section 7 Consultation
- State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR) – oil field abandonment
- Orange County Health Care Agency – Remedial Action Plan for oil field abandonment
- California Department of Transportation – encroachment permit – road expansion, intersections, pedestrian bridge.
- Newport-Mesa Unified School District - encroachment permit
- Orange County Transportation Authority (OCTA) – public transit
- The Local Agency Formation Commission (LAFCO) – annexation

DEVELOPMENT & ESHA

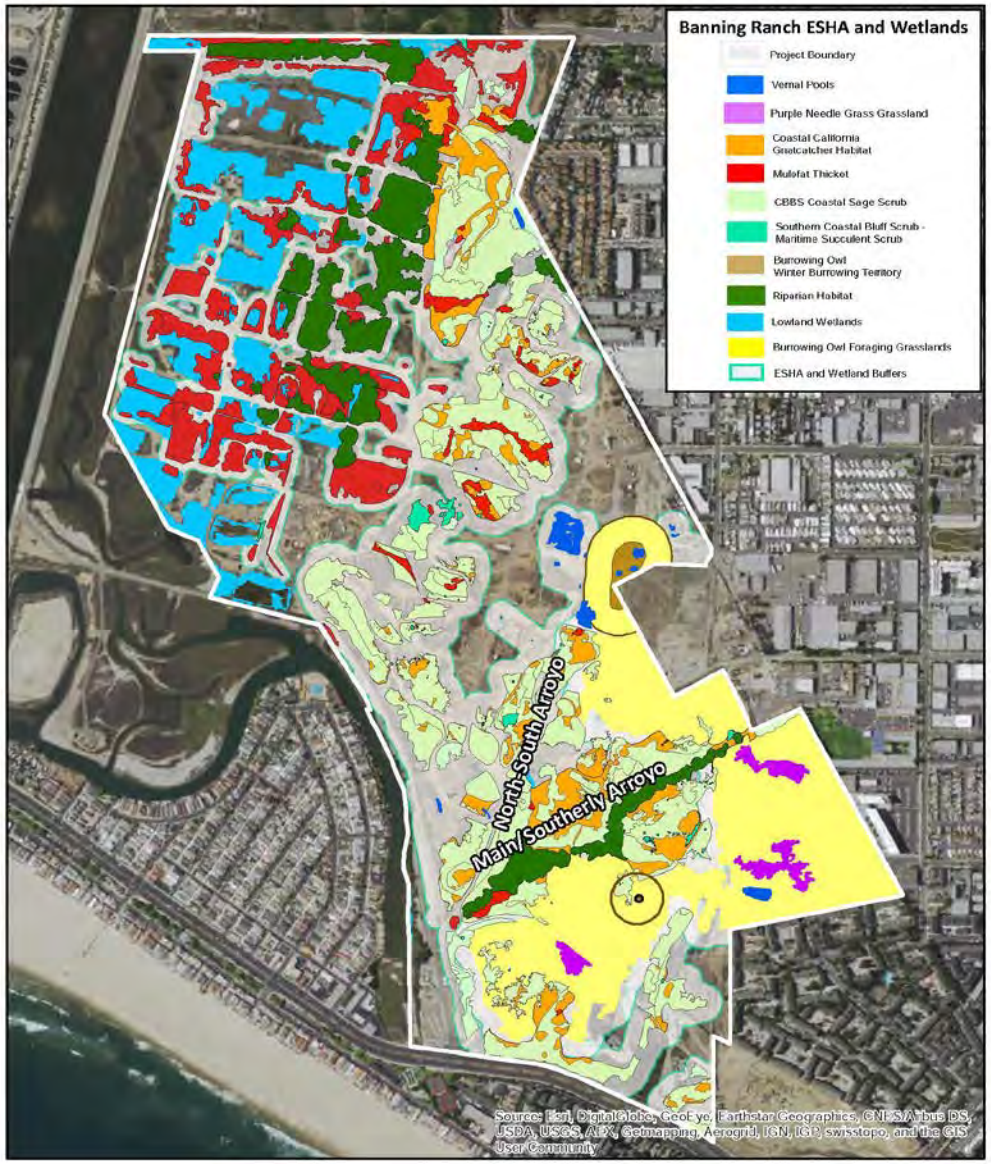
NBR Revised Project Development Proposal

CONCEPTUAL SITE PLAN 07/11/2016
NEWPORT BANNING RANCH
NEWPORT BEACH, CA

5-15-2097, EXHIBIT 2
Page 1 of 12

Banning Ranch CONSERVANCY

CCC Staff Delineated ESHA and Wetlands with Buffers



COASTAL COMMISSION
For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

5-15-2097, EXHIBIT 3b
Page 1 of 1

DSM 8/25/16

NBR's latest proposal before the Coastal Commission is shown in Exhibit 2, Page 1 of 12, on the previous page. It includes an Urban Village by the 17th Street entrance north, a residential development, the North Family Village, on the Central Mesa, and a public park area west of 16th Street and the Newport Mesa Unified School District property. In the southeastern portion of the property is the South Family Village and in the southwest the Resort Colony and retail development. All these development areas are connected by the proposed Bluff Road which begins in the south at the intersection with Pacific Coast Highway and continues north to 17th Street, with connecting roads at 15th and 16th Streets.

Exhibit 3b, Page 1 of 1, on the previous page displays the Coastal Commission Staff's delineations of wetlands, vernal pools, environmentally sensitive habitat areas (ESHA*) and Coastal Act sanctioned buffer areas on the Banning Ranch property. In the side-by-side comparisons of both exhibits on the previous page, note the conflicts between the proposed development footprint and all the areas requiring protection under the Coastal Act.

On Exhibit 6, Page 1, seen at right, the proposed development footprint is overlaid on the protected areas. It is clear that the proposed development areas with gray diagonal lines invade the protected areas and are therefore unsuitable for development. Further, the light turquoise line inside the development footprint of the Urban Village and North Family Village represents the required habitat buffers and further limits any potential development.

*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.

Development Plan Impacts Upon ESHA and Wetlands

Development Plan Impacts Upon ESHA and Wetlands - Site Plan Detail NOT Shown

For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

5-15-2097, EXHIBIT 6
Page 1 of 2

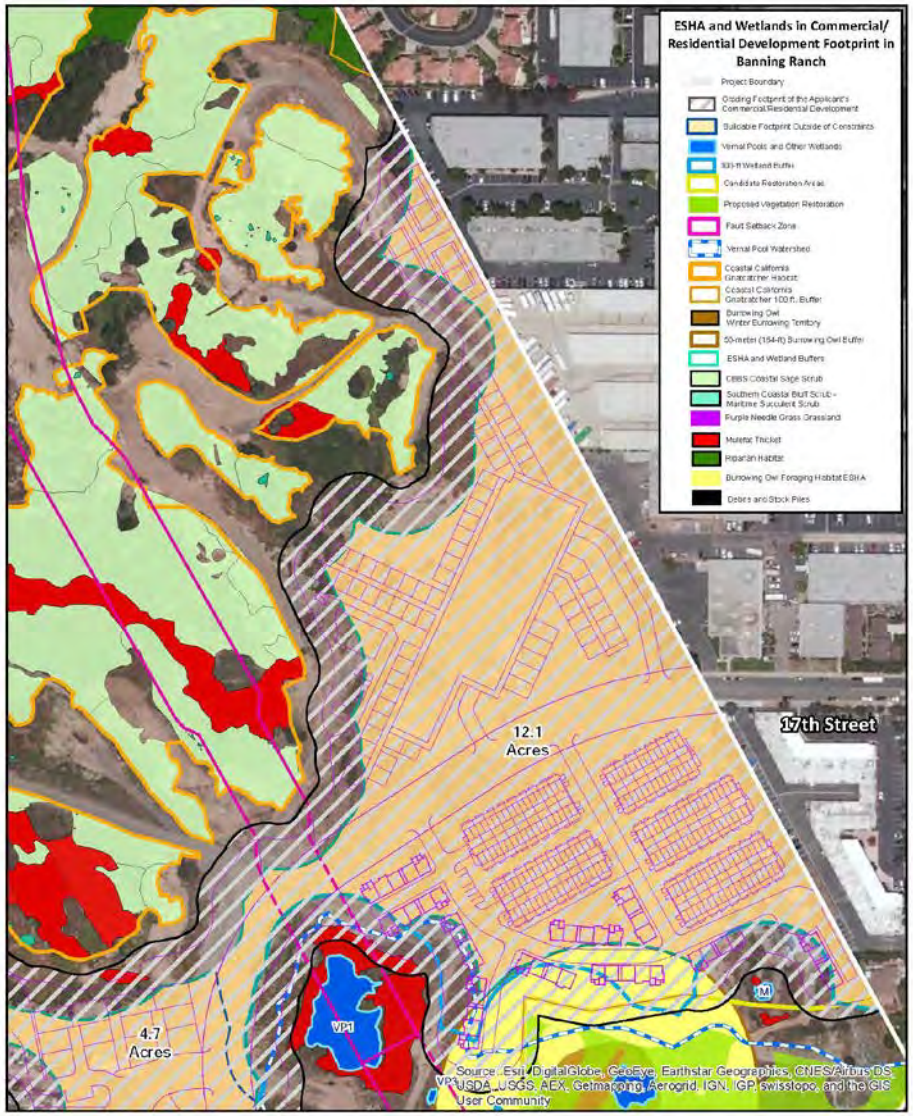
DSM 8/26/16

The Exhibit to the right and the two on the following page (Exhibit 5, Page 1, 2 & 3) provide a closer more detailed view of the conflicts between the proposed development and the wetland, vernal pool, ESHA and buffer delineations by Coastal Commission Staff.

It is the position of the Banning Ranch Conservancy that the delineations of ESHA, wetlands, vernal pools and buffers are incomplete and inadequate, to wit:

A. Watershed delineations have not been performed on all the vernal pools. The watershed is the source of water flow into the vernal pool. Without the watershed ponding, the pools are seriously constrained, thus disrupting the plant and wildlife resources within the pool and those dependent on the pools. Buffer areas should extend 100 feet beyond the watershed, which may service individual or multiple pools, not just a single pool.
B. Habitat for Gnatcatchers in the lower southeastern portion of the property has not been adequately protected. Scrub habitat in close proximity and almost identical to ESHA habitat delineated in that portion of the property and well within the use range of documented Gnatcatcher sightings has not been similarly delineated as ESHA. It is a reasonably scientific assumption that these proximal and similar habitat areas constitute foraging and dispersal habitat for the federally threatened Gnatcatchers and, therefore, merit similar protection. One such site located at the proposed connection of Bluff Road to Pacific Coast Highway has been addressed in a report to the Commission by the respected biologist and Gnatcatcher expert Robert Hamilton of Hamilton Biological Inc.
C. Not all documented Burrowing Owl sightings have been included on the ESHA Delineated Map. Dozens of sightings of multiple Burrowing Owls which have been documented in the record (reports to the Commission by Cindy Black, Shyang Ray, Kevin Nelson and Steve Ray) are not noted on Staff maps. Most of the sightings have been in the grasslands of the southeastern portion of the Central Mesa between 15th and 16th Streets. The burrow areas must be designated as such for protection and not just as foraging areas.

North Development Area Impacts on ESHA and Wetlands

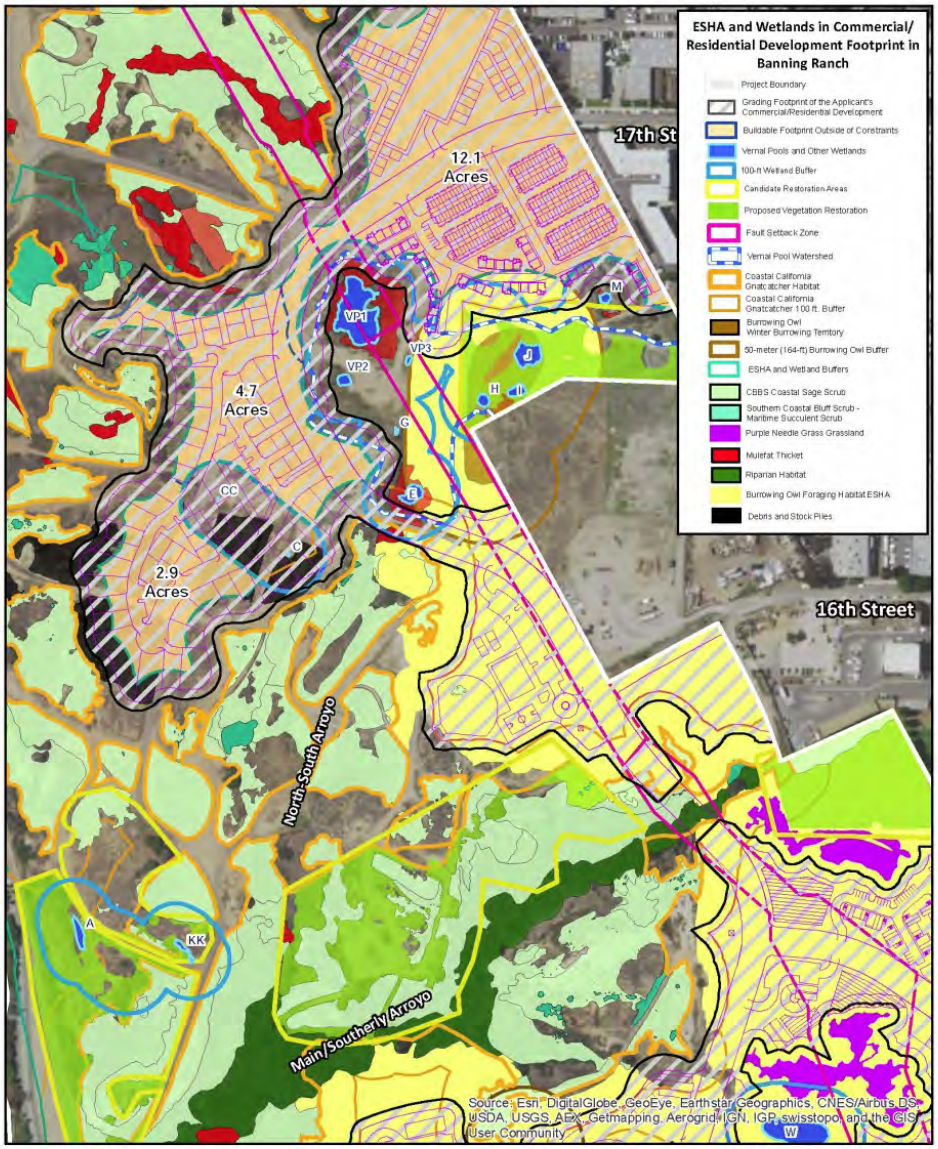


ESHA and Wetlands in Commercial/Residential Development Footprint in the Northern Area of Banning Ranch

For Illustrative Purposes Only.
Source: Fuscoe, Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

5-15-2097, EXHIBIT 5
Page 1 of 3

Central Development Area Impacts on ESHA and Wetlands



ESHA and Wetlands in Commercial/Residential Development Footprint in the Central Area of Banning Ranch

For Illustrative Purposes Only.
Source: Fuscoe, Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 125 250 500 Feet

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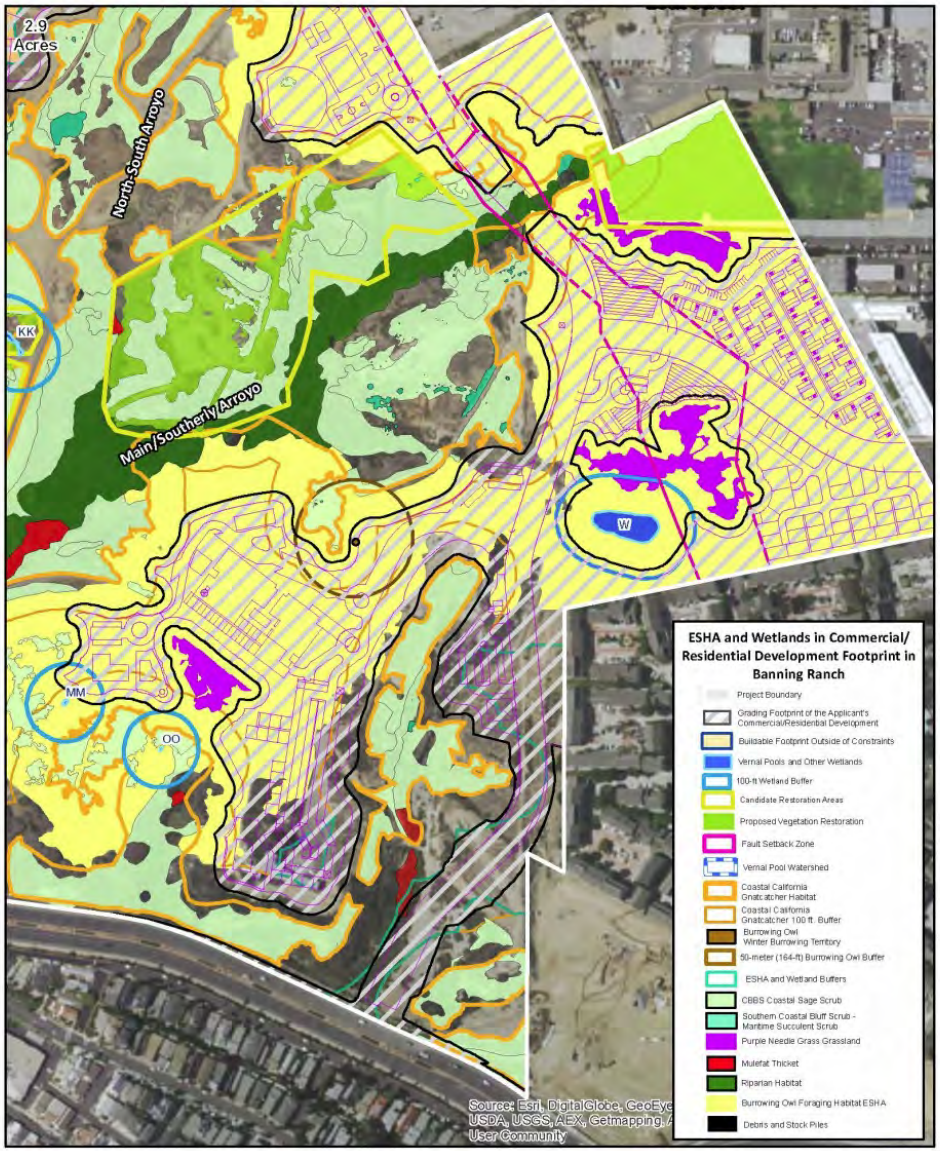
South Development Area Impacts on ESHA and Wetlands



ESHA and Wetlands in Commercial/Residential Development Footprint in the Southern Area of Banning Ranch

For Illustrative Purposes Only.
Source: Fuscoe, Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 125 250 500 Feet

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THE HABITATS

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.

- The Lowland Wetlands
- Vernal Pools
- Rare Plant Communities
- Rare Listed Wildlife
- Riparian Habitat
- Coastal Sage Scrub and California Gnatcatcher Habitat*
- Coastal Bluff Scrub and Maritime Succulent Scrub
- Burrowing Owl
- Purple needlegrass Grassland
- Federally Designated Critical Habitat as ESHA*

Coastal California Gnatcatcher

*Figure 16 to the right identifies that all of Banning Ranch and additional adjacent lands have been declared critical habitat by the US Fish and Wildlife Service.

"The coastal California gnatcatcher is an obligate, year-round resident of coastal sage scrub communities. Gnatcatchers in Southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sunflower, California sagebrush, and California buckwheat."

J.D. Engel memo
ESHA and Wetland Determination for Banning Ranch p. 15
September 25, 2015

USFWS Coastal California Gnatcatcher Critical Habitat

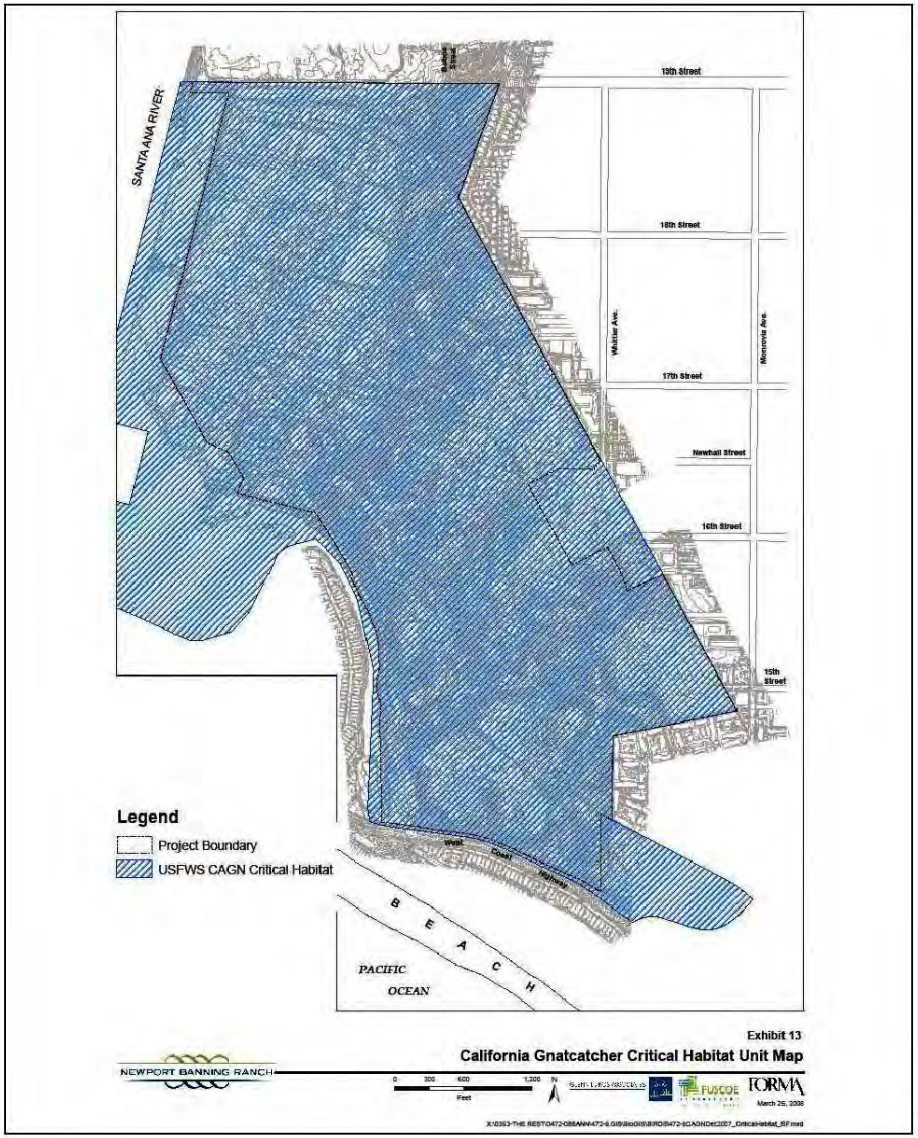


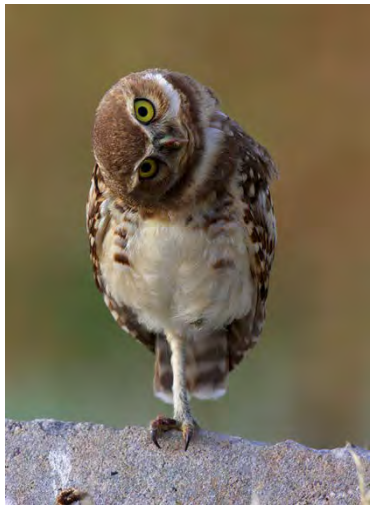
Figure 16. USFWS Coastal California Gnatcatcher Critical Habitat.

For Illustrative Purposes Only. Source: GLA.

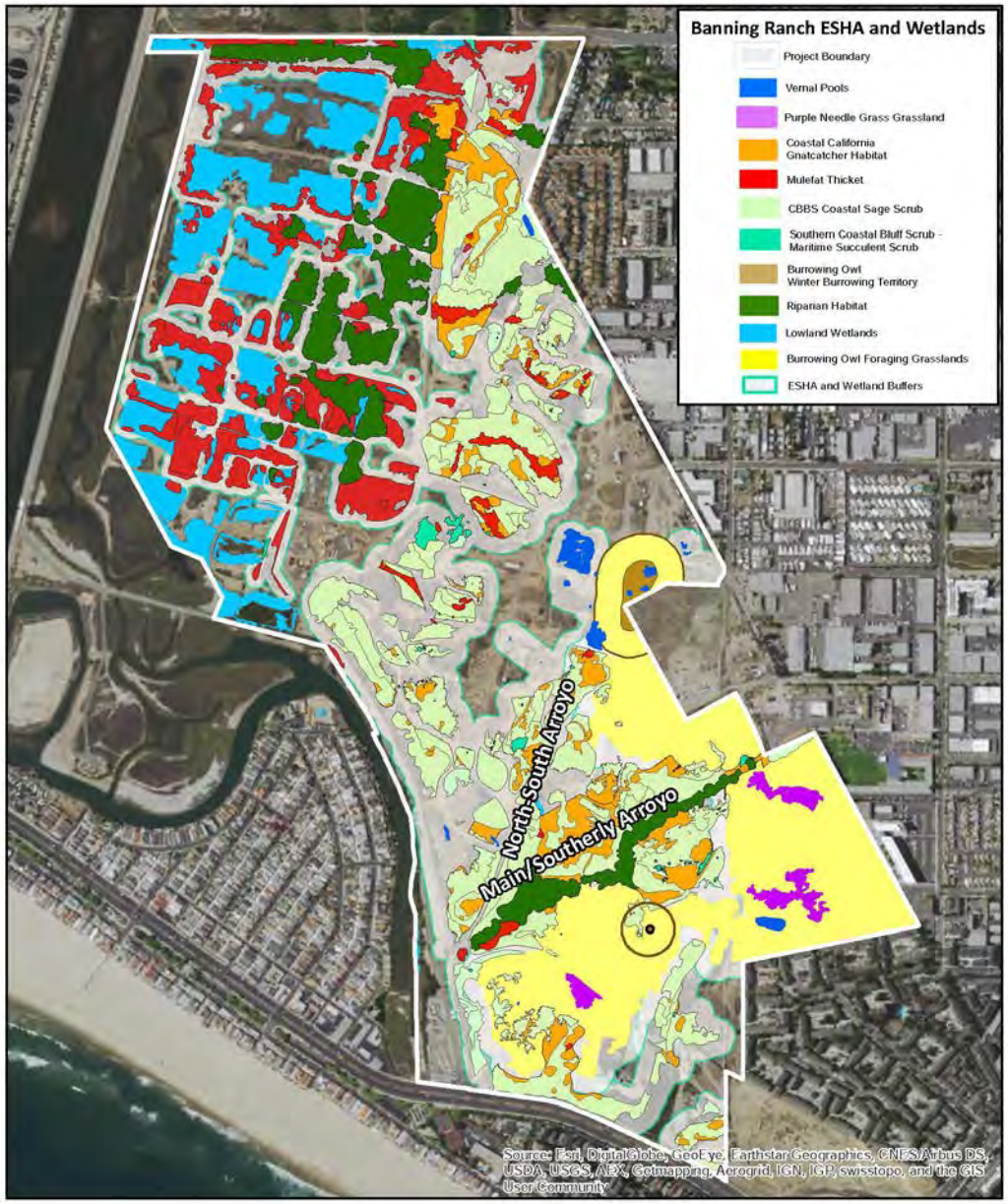
DSM 9/25/15

BURROWING OWLS

Burrowing Owls have almost disappeared from the Southern California coast. The primary cause is loss of habitat due to over-development. Banning Ranch harbors a wintering population of Burrowing Owls and is one of the few sites in Southern California where they are regularly documented. In order to protect Burrowing Owls, it is necessary to safeguard not just their burrows but also their foraging (feeding) areas. Failure to do so will almost certainly extirpate (make extinct) the owls from the site.



Burrowing Owl sighted on 12-28-2012 by Whittier Avenue



CALIFORNIA COASTAL COMMISSION

For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

N

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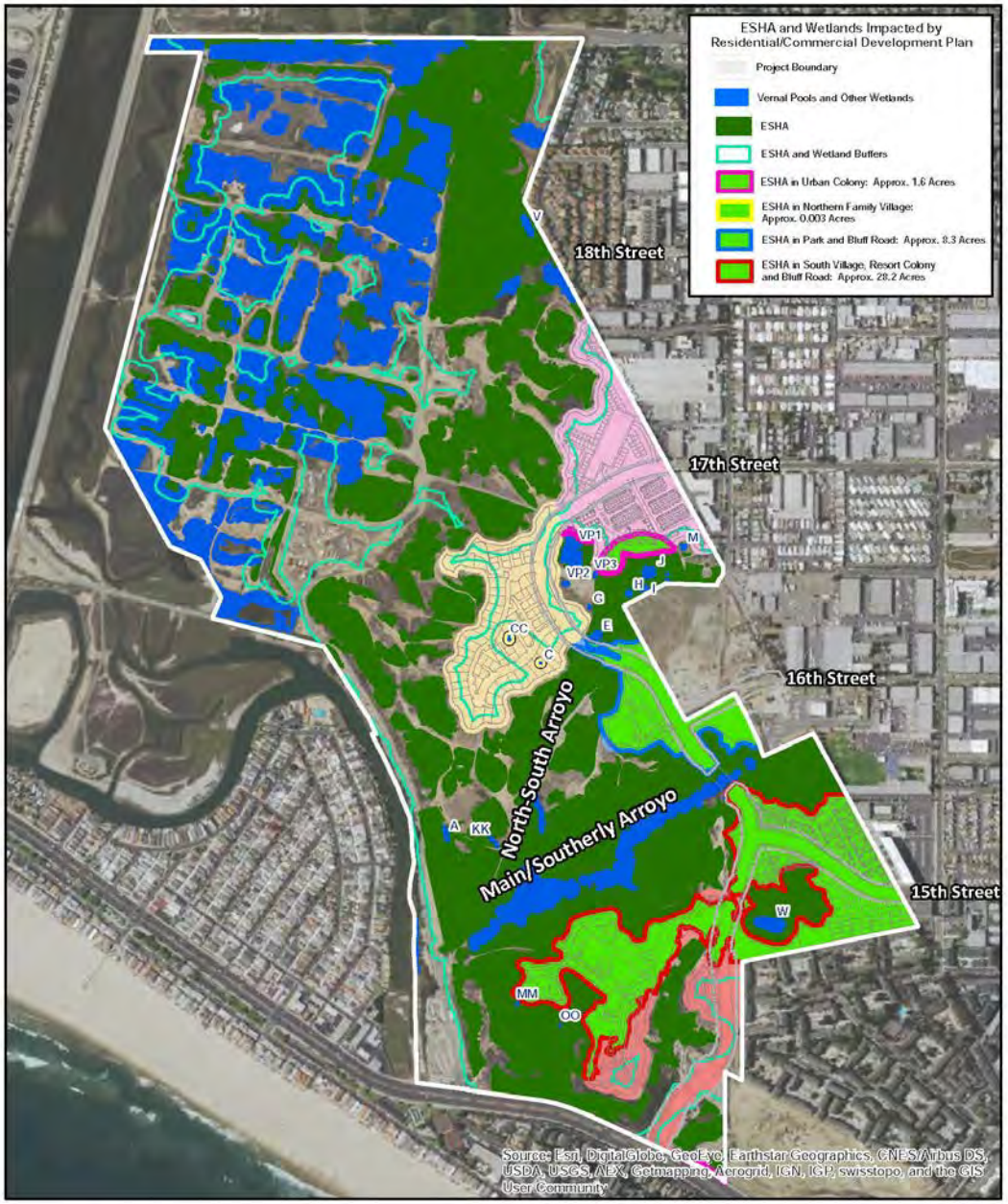
Banning Ranch CONSERVANCY

ORANGE COAST RIVER PARK and THE PACIFIC FLYWAY

Banning Ranch is the central element of the proposed Orange Coast River Park.
Banning Ranch is also an important link in the Pacific Flyway, contributing to the annual migrations of multiple avian species.

DEVELOPMENT IMPACTS ON ESHA

- **The Applicant's proposed development footprint will significantly disrupt, disturb and/or destroy 42 acres of valuable ESHA habitat on Banning Ranch as identified in the Commission Staff Report.**
- **Vernal pools** containing Federally Endangered San Diego Fairy Shrimp, versatile fairy shrimp and other life forms will be impacted by remediation within the development footprint of the North Family Village.
- Remaining **vernal pools** will be impacted by oil field abandonment and remediation activities and are within the proposed development footprint.
- **Purple needlegrass** - Almost all of the PNG on the site is within the footprint of the abandonment and remediation activities and development plan. A small patch of PNG is proposed to be created to mitigate for the complete loss of the grasslands. That's totally unacceptable for mitigation even if you ignore the fact that mitigation is not permitted for loss of ESHA, which must be avoided by any development.
- **Riparian** – Multiple impacts to riparian habitat scattered across the site would result from the abandonment and remediation activities and the development plan.
- The **riparian corridor** in the far southeast of the site contains valuable riparian habitat that would be impacted by the proposed Bluff Road connecting the development site to Pacific Coast Highway.
- **Coastal sage scrub** habitat would also have to be removed to accommodate the Bluff Road connection to Pacific Coast Highway.
- **The proposed Bluff Road and its bridges,** as well as connecting roadways, will negatively impact a variety of ESHA habitats.



Development Plan Impacts Upon ESHA and Wetlands By Plan Area - Site Plan Detail Shown

CALIFORNIA COASTAL COMMISSION

Source: Brooks Street, Dudek, USACE, CDFW, ESRI, CCC.

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0 250 500 1,000 Feet

0 75 150 300 Meters

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WATER QUALITY

The location of the proposed water quality basin in the lowlands is inconsistent with Coastal Act Section 30233, requiring the protection of wetlands. A minimum of 100-foot buffers around the designated wetlands on the site is required.

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 30231, 30233, and 30255 of the Coastal Act. Therefore, the proposed development project must be denied.

Marine Resources are the tidal slough, riparian features and wetlands. The proposed development has an admitted likelihood for a discharge of polluted runoff from the project site into coastal waters during Abandonment and Remediation, Construction and Post-Construction.

WATER SUPPLY

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.

- The City of Newport Beach prepared a Water Supply Assessment (WSA) in 2010 based on data from the City's 2005 Urban Water Management Plan.
- 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.
- Commission Staff requested additional information from the applicant showing that the project could be developed with adequate water supply, given the extreme drought conditions and the time elapsed since the WSA was first drafted. On April 30, 2015, the Banning Ranch Conservancy (on file) submitted a comment letter to the Coastal Commission regarding the inadequacy of the 2010 Newport Banning Ranch WSA. The comment letter focused on two major points: 1) The WSA is outdated and should be invalid and 2) the region's water supply reliability and variability has changed significantly due to the current drought.
- A response letter from the Applicant posits that there is no legal requirement to update the WSA report, which at the time it was prepared, was required by law to utilize the most up-to-date data available. Instead of updating the WSA report, the response letter defends the original report, based on outdated 2005 data, despite the fact that newer, more accurate data is available. As a result, **it is unknown if the development can adequately be supported by the water supply available without more recent information**.
- Ultimately, the response does not address the City's ability to meet the demand, regardless of whether the demand per capita increases or decreases. Based on the information submitted to date, it is unknown if the proposed development can be supported by adequate water supply. As such, the proposed project's consistency with Section 30250 of the Coastal Act cannot be determined and **the project must be denied**.

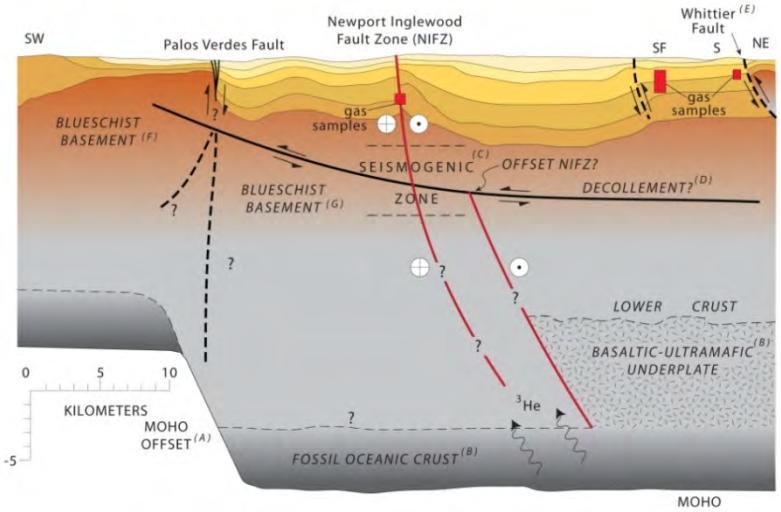
SEISMIC HAZARDS

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.

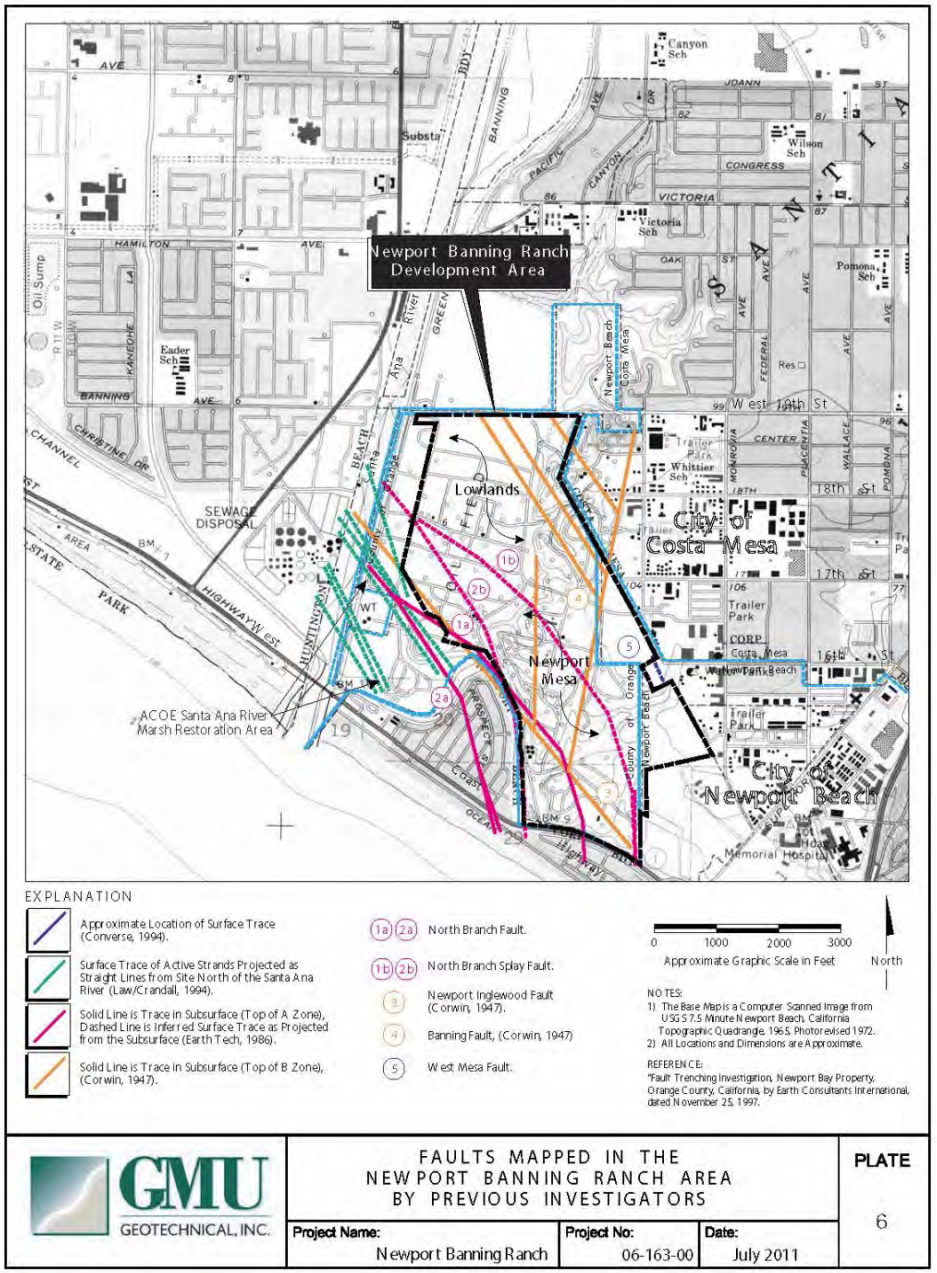
The West Mesa Fault and the Newport-Inglewood fault system should be considered **likely sources for future earthquakes** that would generate strong ground motions at the site. In addition, **surface rupture at the site is possible** along the West Mesa Fault.

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).

Commission Staff's ill-advised concurrence with the action taken by the applicant and the on-site oil operator (WNOC) to illegally segment the project into two separate projects, the development and the oil consolidation, results in no information being available about the oil consolidation plan, its drilling and extraction methodologies, to potentially include well stimulation (hydraulic fracturing) nor its waste disposal plan.



Recent significant research concludes that well-stimulation and deep waste disposal have a direct effect on seismic activity as has happened with increased frequency of earthquakes in the Midwestern parts of the United States.



ARCHAEOLOGICAL RESOURCES

- Sedimentary deposits in coastal Orange County are considered to be some of the most important fossil-producing formations in the world (similar to the sites at Bolsa Chica).
- Eight prehistoric and three historic resources are recorded on the project 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.
- At CA-ORA-844B, the applicant has proposed to remove the archaeological resources instead of capping due to costs.
- CA-ORA-839 could be impacted by soil remediation.
- CA-ORA-906 could be impacted by oil infrastructure removal. The applicant's plans have not included capping resources found during grading, including any human burials.
- The information provided in the application materials and in the rushed recently-conducted Shovel Test Pit study was not sufficient for complete assessment of potential impacts to archaeological resources. The application has not included a request for approval and implementation of an Archaeological Research Plan (ARP), nor did it include an after-the-fact request for approval for the archaeological testing and recovery that was conducted on the site through the EIR process.
- The two proposed mitigation measures (recovery and monitoring) are **not** consistent with the Coastal Act as there are other reasonable mitigation measures that are more protective of the existing resources such as avoidance. **The proposed project results in avoidable impacts to cultural resources and must be denied.**
- Even if the project might be consistent with section 30222, it 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.

LOWER COST VISITOR-SERVING FACILITIES

HOTEL

- An average daily rate of $175 or more is considered high cost.
- The Conservancy is not aware that proposed rates for the resort hotel have been published. Without rates to identify as qualifying for a definition of lower cost, the project's consistency with Section 30213 of the Coastal Act cannot be determined.

HOSTEL

- The proposed hostel would include four rooms with shared bathroom facilities placed above retail space.
- Rates for the hostel have been established at $59 per night per bed, five beds to a room, with an additional $20 for each "privacy" screen (optional).
- The rates may sound lower cost but at a minimum of $295 per night per room, they're not.

AFFORDABLE HOUSING

- The applicant has (laughably) tried to include affordable housing as a "low cost visitor-serving use". The purpose of affordable housing is to provide permanent housing for low income residents of the development and does not qualify as "visitor-serving".

NOTE: Further, because the development of both the resort and the hostel would **permanently impact ESHA**, the proposed project is inconsistent with multiple policies of the Coastal Act and **must be denied**.

GRADING, SOIL DISTURBANCE, LANDFORM ALTERATION AND REMEDIATION

- As of the publication date of this Briefing Book, the Banning Ranch Conservancy has not been informed about any updated grading or remediation plans, nor viewed any maps illustrating such. Therefore any data or analysis is difficult. One document has been received titled "Newport Banning Ranch - Clean-Up, Redevelopment and Public Access Plan - September 7, 2016". There is one reference on page 9 of the document that says "Reduced Grading - 1.4 million cubic yards - (40%)". One would surmise that grading of the Banning Ranch project has been reduced by 40% to 1.4 million cubic yards (may represent cut or fill or both).
- Whatever the amount of cubic yards of grading might be, significant landform alteration and grading will be required for the project. Cuts may vary from one foot to ten feet throughout the project site but may be up to 40 feet in localized areas. Fills may vary from one foot to forty feet.
- There would also be areas excavated for construction of the proposed primary access onto the site from Pacific Coast Highway known as Bluff Road.
- Partial or complete fill of arroyos and/or vernal pools is also a possibility.
- The landform alterations would require grading that has potentially devastating impacts upon valuable biological resources within the arroyos and upon the mesa, impacts upon habitat buffer areas and adverse changes to wetlands hydrology.
- Remediation activities to abandon and/or remove oil field wells and structures have been seriously exaggerated in prior iterations of planning for the proposed project. While remediation requirements for residential and commercial uses are more significant than open space, the developer's Remedial Action Plan (RAP) is more of a "disposal" plan rather a remediation plan consistent with other similar projects, according to oil field remediation expert Nancy Beresky of Waterstone Environmental Inc (report on file).
- The proposed project does not minimize landform alteration. There is potential space on the project site where development might be accommodated without the substantial alteration of the existing landscape features or the destruction of valuable habitat and potential reduction or extirpation of sensitive wildlife species.
- The massive grading and remediation activities will displace significant amounts of soil and potentially release contaminated dust and/or carcinogenic particulates into fugitive dust streams that may cause harmful and/or unhealthful impacts to downwind residents.
- The proposed project is inconsistent with Section 30251 of the Coastal Act and must be denied.

TAKINGS ANALYSIS

- It has come to the attention of the Conservancy that some Commissioners may be concerned about a potential "takings" claim by the applicant if the project is denied. It is the opinion of the Conservancy that there would be no justifiable cause for such a claim, for the following reasons:
- The project proposed by the applicant is inconsistent with the Chapter 3 policies of the Coastal Act and, therefore, must be denied by the Commission.
- For decades, **the applicant has received and will continue to enjoy an economic benefit** from the property in the form of revenues (royalties) resulting from ongoing oil exploitation.
- The applicant/owners of the property **are not entitled to violate the law to achieve any guaranteed or maximum return for any development of the property**.
- An alternative project could be approved on the portions of the site identified in the Alternate Proposal submitted by the Banning Ranch Conservancy. (NOTE: Commission Staff's recommendation would also result in an alternative proposal for development but is not supported by the Conservancy.) Thus, a **denial is not a final adjudication by the Commission** of the potential for development on a portion of the project site, as it does not preclude the applicant from applying for some other development or use of the site, such as a much smaller-scale development project that proposes visitor serving, mixed-use commercial and/or residential uses and more carefully addresses the applicable Coastal Act policies.

ALTERNATIVES

Commission Staff has identified approximately 19.7 acres of land (which does not include the oil consolidation areas of approximately 15 acres) that are potentially not constrained by wetlands, ESHA, their 100 foot buffers, or steep slopes, and that, with careful planning, in Staff's opinion, could possibly be accessible without significant disruption to surrounding habitats.

In conjunction with the proposed consolidation of the oil operation, Staff projects that the NBR property could provide significant protected coastal habitat, open space and passive recreational use, and substantial development. The Commission Staff has also found that there are feasible alternatives (as seen in Exhibit 4 to the right) which could avoid such impacts.

NOTE: The Banning Ranch Conservancy does not endorse any or all of the potential areas for development as identified by the Staff.

The Conservancy submitted an Alternate Proposal in May 2016, that identified potential development footprints on two areas of the site with suggested types of development for those sites. The Conservancy will require adjustment of that proposal to conform to Staff's ESHA delineations. The Conservancy will posit that a development alternative is possible on the site near the 17th Street entrance. However, the Conservancy will require onsite study and delineation to determine the feasibility of that or any other site for potential development.

Since there is at least one feasible alternative that conforms to the Coastal Act and is more protective of Coastal resources, the Commission must deny the applicant's proposed project.

Therefore, the Commission must **deny the project**.

Constraints on Banning Ranch

For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

5-15-2097, EXHIBIT 4
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DSM 8/23/16

UNPERMITTED DEVELOPMENT

Unpermitted development, in violation of the Coastal Act, occurred on Banning Ranch on dates too numerous to mention and for years, even decades, and through many forms and actions, again too numerous to mention.

The Commission has taken action on three occasions to address the liability for the unpermitted development (separate state agencies took action on another occasion, due to egregious dumping of oil waste in the wetlands), which included mowing and clearing of valuable plant habitats significant in their own right and used by protected species. Two actions taken by the Commission were both resolved through Consent Orders with the applicant.

A third Consent Order involving the oil operator (WNOC) is on hold during a stay in litigation brought by WNOC. That unpermitted development consisted of oil drilling without permits, placing structures and oil field appurtenances without permit and removing protected habitat.

The Banning Ranch Conservancy posits that not all violations of the Coastal Act have been adjudicated through the above actions. Additional multiple violations of the Coastal Act have been documented and reported by the Conservancy, and Notices of Violation must be filed, processed and adjudicated before the project can proceed.

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 to Chapter 3 policies of the Coastal Act.

The Banning Ranch property has been placed within the Sphere of Influence of the City of Newport Beach. The City processed the local application for the proposed Banning Ranch project. However, the City has no certified Local Coastal Plan (LCP) for either the City or the Banning Ranch property. Two days after the public hearing on the Banning Ranch project and at the same Coastal Commission hearing, the Commission will consider approval of an Implementation Plan to accompany the City's certified Coastal Land Use Plan, thus certifying their LCP. However this LCP does not cover Banning Ranch, which would remain an Area of Deferred Certification under the Coastal Act.

The City of Newport Beach has announced that, if the Banning Ranch is developed, it intends to annex the property into the City and process an LCP specific to it.

Approval of this project with a coastal development permit that is inconsistent with the policies of the Coastal Act **would effectively prejudice the ability of the City of Newport Beach to certify their Banning Ranch LCP**.

Thus, pursuant to Section 30604(a) of the Coastal Act, the Commission must **deny the project**.

SEGMENTATION OF PROJECT AND OIL FIELD CONSOLIDATION

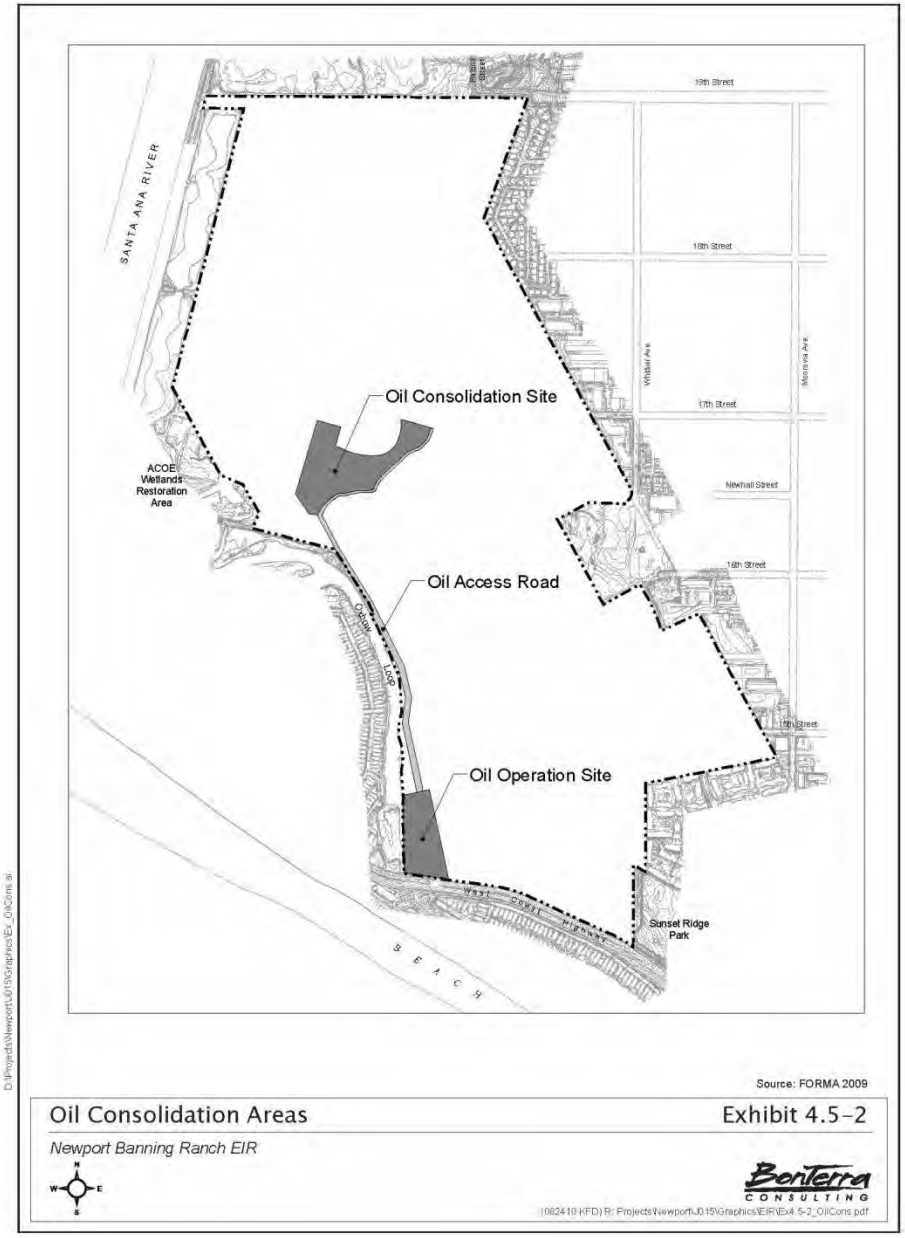
The Conservancy objects to the legality of this hearing on the basis that segmentation or "piece-mealing" of a single project has been accepted by Commission Staff, and is being treated as two separate unrelated projects. In fact, the development of the property and the oil consolidation are co-related and co-dependent on each other. The owners and the oil operators have made clear that there will be no oil consolidation without the development being built and that the development cannot be built without the oil consolidation.

The oil consolidation and development will occur on the same property with the same owner with contractual and financial agreements in place between the developer and oil operators and with full knowledge, one of the other, especially given that the two elements of the project are being processed at the same time but treated as separate by Commission Staff. This prohibits full disclosure and analysis of cumulative impacts on the full project (which includes both the oil consolidation and the development).

Further, the Conservancy has identified a potential project alternative that is the most protective of the environmental and coastal resources. The alternative is discussed elsewhere in this Briefing Book.

The formal application does not include the proposal to consolidate the existing surface oil facilities onto two sites conjoined by an oil access road, all totaling 15 acres. Plans for the Oil Consolidation Zones and Oil Operations were submitted but rejected by Commission Staff as an incomplete application. However, this does not preclude combining the oil consolidation application with the development application and processing them together as one project.

Oil Consolidation Areas



CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) and COASTAL ACT COMPLIANCE

Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is not the least environmentally damaging alternative. The EIR describes several alternatives for the project including Alternative B, Open Space and Park. Ultimately Alternative B was not adopted due to assumed economic restrictions, however under CEQA it is a less environmentally damaging alternative. Under Section 21080.5(d)(2)(A) of CEQA, the proposed project cannot be approved.

While the Coastal Commission has no authority or responsibility to regulate or enforce the CEQA law, the Commission must ensure compliance with other legal and regulatory requirements such as CEQA.

The Commission's primary responsibility, of course, is to ensure compliance with the Coastal Act. As explained throughout this Briefing Book and all the documentation submitted by the Banning Ranch Conservancy, our allied organizations and supporters and as incorporated herein by reference, the proposed project is inconsistent with Sections 30240, 30233, 23231, 32055, 30253, 30210, 30251 of the Coastal Act due to adverse impacts upon natural landforms, adverse impacts upon biological resources including wetlands and vernal pools; adverse visual impacts related to landform alteration and the project's consistency with 30252, 30213 and 30250 cannot be determined based on the lack of required information.

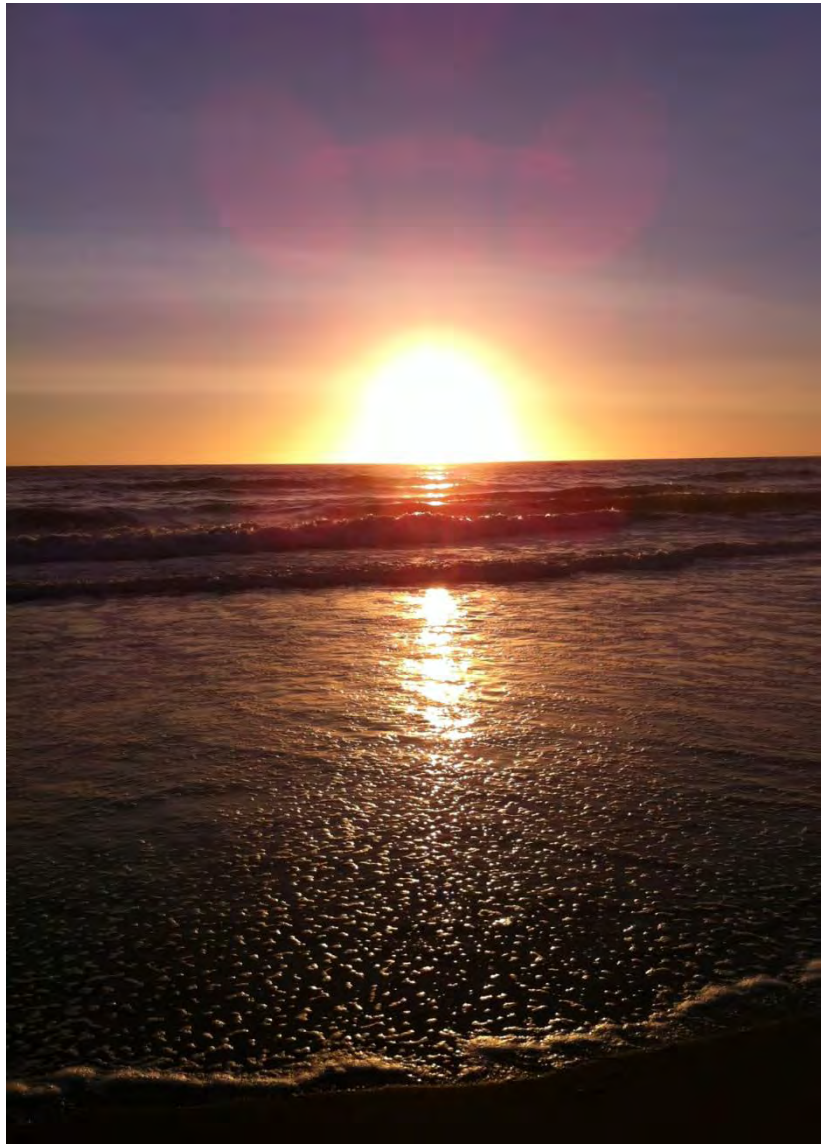
The Commission Staff and the Banning Ranch Conservancy have also found that there are feasible alternatives which would avoid such impacts.

THE APPLICANT'S CONSERVANCY

The applicant, Newport Banning Ranch LLC, founded its own conservancy, the Newport Banning Land Trust (NBLT). It is painfully obvious that NBLT is the applicant's organization and promotes development of Banning Ranch. Most members of the NBLT board are, actually, the applicants.

NBR presented NBLT a Memorandum of Understanding (MOU) that would require NBLT to assume stewardship responsibility for the proposed Natural Open Space Preserve. The burden for funding for preservation of these open space areas would likely be passed to the Homeowners Association established for the proposed housing developments, not the applicant, even though they publicly maintain that they are providing funding.

Funding mechanisms such as high Homeowners Association dues, a legally questionable transfer tax on home sales and creation of a Mitigation Bank in the lowland wetlands that would require outside developers needing to mitigate for their environmental transgressions elsewhere to pay for the need to restore open space, are designed to relieve the applicants and their land trust of the actual responsibility to restore the land.



BANNING RANCH IS NOT A WASTELAND DEVOID OF LIFE

"In spite of the ongoing four [now five] year drought, many of the areas mapped 'disturbed' in 2012, now support a high cover of native shrubs, especially California sunflower (also known as California brittle brush)."

J.D. Engel memo
ESHA and Wetland Determination for Banning Ranch p. 13
September 25, 2015

The California brittle brush, commonly known as Encelia (*encelia californica*), is recognized by its bright yellow "sunflower-like" appearance. A base plant, a progenitor of coastal sage scrub habitat, Encelia is found in profusion throughout the mesas on Banning Ranch and is easily viewed, especially following any rain event. Encelia serves as the basic nesting and foraging species for the threatened coastal California gnatcatcher. The State of California, Natural Diversity Data Base recognizes California Brittlebush Scrub as a high-priority sensitive native plant association (independent of its function as habitat for the gnatcatcher).

MISSING – INFORMATION, STUDIES, CCC STAFF REQUESTED INFO

- Plans for the Oil Consolidation Zones and Oil Operations were submitted but were rejected by Commission Staff as an incomplete application. The consolidation will not occur without the development project and the project cannot be built without the consolidation. They are one and the same project. By law, they cannot be segmented into two supposedly unrelated projects.
- Commission Staff requested additional information from the applicant showing that the project could be developed with adequate water supply, given the extreme drought conditions and the time elapsed since the Water Supply Assessment was first drafted. On April 30, 2015, the Banning Ranch Conservancy (on file) submitted a comment letter to the Coastal Commission regarding the inadequacy of the 2010 Newport Banning Ranch WSA. The comment letter focused on two major points: 1) The WSA is outdated and should be invalid and 2) the region's water supply reliability and variability has changed significantly due to the current drought. More current data is available and the WSA needs to be revised.
- The Vernal Pool Interpretive Area Park would be planted with native grasslands providing a vegetated buffer between the vernal pool restoration complex and adjacent development. It appears on the site plan that the interpretative vernal pool complex may contain a pedestrian footpath around, and in some cases through, the vernal pools. Construction plans for the vernal pool complex have not been provided.
- A protocol Wet Season Survey must be performed on all potential vernal pool features to determine their functioning as a vernal pool or coastal wetland or neither, thereby determining the level of protection required for them.
- And many more …

TWELVE REASONS FOR THE CALIFORNIA COASTAL COMMISSION (CCC) TO DENY DEVELOPMENT OF NEWPORT BANNING RANCH

1. **The Banning Ranch Conservancy strongly opposes the applicants' proposed development. Approval would require Commissioners to seriously violate the Coastal Act in numerous ways and is, simply, not defensible. While improved from May, 2016, the Banning Ranch Conservancy, due to missing, incomplete or inaccurate information in the application, does not support the Commission staff's recommended project at this time.**

   Approval of the applicant's project would set a bad precedent by allowing extensive development in ESHA. The staff has greatly improved their recommendations for approval, with conditions requiring expanded foraging area for the Burrowing Owl, but issues still exist with incomplete vernal pool fairy shrimp and vegetation studies, vernal pool watershed delineations, ESHA buffers and inaccurate vegetation mapping.

2. **Banning Ranch has extensive ESHA and wetlands. Commissioners must look beyond the visual impression of Banning Ranch and understand the body of scientific wildlife data.**

   It is the history of oil production that has allowed Banning Ranch to become a wildlife refuge as the areas surrounding Banning Ranch have seen intensive residential and commercial development. While not pristine, Banning Ranch has some of the last and rarest wildlife habitat remaining along the southern California coast, and the body of scientific evidence makes this clear. Native plant species may only be dormant (sleeping) due to a record five-year drought – not dead.

3. **There is no urgency for the invasive non-native vegetation on Banning Ranch.**

   Like everywhere else in California, non-native vegetation has been invading Banning Ranch for decades, if not centuries. There is no evidence that non-native vegetation is an urgent threat to the wildlife of Banning Ranch. Rather, it is the unpermitted vegetation clearance that occurred for many years that is the much greater threat to the wildlife. Indeed, the return of native California brittlebush scrub in areas where the mowing has ceased signals that Banning Ranch is "self-restoring." We are concerned that the staff allowed the applicant to re-map the native grasslands, which have contracted under the drought conditions, but did not require the applicant to re-map the areas of brittlebush scrub that are now springing back after cessation of illegal mowing.

4. **The vernal pool complex on Banning Ranch predates the oil operation.**

   The US Fish and Wildlife Service (USFWS) recognizes the vernal pool complex at Banning Ranch as one of only two remaining on the Orange County coast (the other being the

complex at near-by Fairview Park) and the only vernal pool complex in Orange County containing critical habitat for the endangered San Diego Fairy Shrimp. Historic aerial photos show vernal pools and mima mounds that predate the oil operation. Although nearly all the vernal pools on Banning Ranch show varying degrees of disturbance from the oil operation, the vernal pool complex at Banning Ranch, contrary to what the applicant claims, is not the product of the oil operation. The entire vernal pool complex, including pools containing non-listed fairy shrimp species and other life forms, should be preserved with adequate watersheds and buffers. To date, adequate vernal pool fairy shrimp surveys and vegetation surveys haven't been completed, nor have complete watersheds been delineated.

5. **While the expedient abandonment and remediation of the oil field is something desired by all, in no way should the Commission demand anything other than <u>full</u> compliance with the Coastal Act for any proposed development project on Banning Ranch.**

   The owner is legally responsible for the abandonment and remediation of the oil field whether or not there is development. Remediation cannot be viewed as a "benefit" that can be considered to off-set any adverse impacts of the proposed development project. In no way should the abandonment and remediation of the oil field be "held hostage" until the owners obtain their desired development entitlements. In the case of Banning Ranch, agreements for some abandonment and restoration, independent of the proposed development project, are already in place. Eighty percent (80%) of the historic oil wells have already been abandoned. Money has already been set aside for abandonment of remaining wells. Rare wildlife has persisted on Banning Ranch and will continue to persist, should the site remain an oil field. With the cessation of the large-scale mowing, Banning Ranch is already "self-restoring."

6. **The abandonment and remediation of the oil field can occur in an environmentally conscious manner.**

   Gravel roads and abandoned underground pipes can be left in place if their removal would cause unnecessary destruction of natural coastal resources. Transporting concrete and asphalt off site for use in other construction projects would avoid the digging of large destructive onsite disposal areas (not necessary for oil field remediation) known as "Borrow Placement Areas". The Soil Remediation Planning Areas (the areas planned for Bio Remediation, Borrow Placement, Clean Soil Flip, Staging/Stockpiling Area, Concrete Processing, etc.) can be reduced in acreage and located to avoid ESHA and buffers.

7. **It is very important to maintain not only the burrows, but adequate foraging area, for the 1 – 3 Burrowing Owls that winter on Banning Ranch each year.**

   Breeding populations of Burrowing Owls are believed to have been extirpated from the Southern California coast. Maintenance of the habitat for the 1 – 3 Burrowing Owls that

winter on Banning Ranch each year is essential if a breeding population is to return to this portion of the Southern California coast. A California Department of Fish and Wildlife report titled *Staff Report on Burrowing Owl Mitigation* (published 3/7/12) recommends from 280 – 600 acres of foraging area per adult male. Clearly, the CCC staff's current recommendation of Burrowing Owl ESHA is a significant improvement over May's recommendation of only 1.17 acres of ESHA. *All native and non-native foraging grasslands* on the Banning Ranch mesa should be preserved as ESHA for the Burrowing Owl.

8. The historical nesting season use areas of the Coastal Cactus Wren should be considered as ESHA

Historically, Banning Ranch has supported up to 14 nesting pairs of Coastal Cactus Wrens. None have been seen in surveys since 2009. Well-documented destruction of Maritime Succulent Scrub by unpermitted vegetation removal for many years may have contributed to the likely extirpation of Coastal Cactus Wrens from Banning Ranch. If the Coastal Cactus Wren is to be successfully re-introduced to Banning Ranch, it is important to preserve their historical nesting season use areas.

9. There is substantial and undeniable documented evidence that Banning Ranch was a pre-historic Native Nation settlement.

Banning Ranch was part of a larger settlement known as Genga. Banning Ranch is contained within the *Native American Heritage Commission* Sacred Lands File. Areas where Native American evidence is located should be left undisturbed.

10. Fuel modification activities should not be allowed in ESHA buffers.

Once an area is designated a fuel modification (fire safety) zone, it falls under the jurisdiction and control of the local fire authority and its primary purpose becomes human safety. This involves regular management and removal of flammable vegetation. For this reason, among others, the CCC has a long history of requiring fuel modification zones to be sited in the development footprint, and not in ESHA buffers. At Banning Ranch, the CCC staff has made it clear from the very beginning (2009), even before the Environmental Impact Report (EIR) was prepared by the City of Newport Beach, that any fuel modification zones should be sited in the development footprint.

11. Bluff Road is neither: (a) needed, (b) desired, nor (c) consistent with the Coastal Act.

Bluff Road is the main roadway planned for the applicant's proposed project, connecting PCH with 15th, 16th and 17th streets. Despite the applicant's claims, adequate coastal access is already in place for residents of west Costa Mesa and west Newport Beach. One never hears

a “west-sider” voice a need for another road. On the contrary, there is a strong opposition to building Bluff Road among “west-siders.” The proposed Bluff Road would also extensively impact ESHA.

12. Development of Banning Ranch can occur on a small footprint, consistent with the Coastal Act and is the required choice.

While the Banning Ranch Conservancy still maintains our position that all of Banning Ranch should be preserved, the Conservancy recognizes there is a potential project that would comport with the Coastal Act. The Conservancy has prepared a preliminary draft of a 108-unit alternative project, environmentally superior to that of the applicant. This draft alternative project was forwarded to both the applicant and CCC in April 2016. It provides a reasonable return for the property owner (in addition to all the oil revenues realized from 70 years of oil production, as well as ongoing revenues from continued drilling at the proposed consolidated site) and is not subject to any claim for “takings.” This draft alternative development project has also been presented to the Newport Banning Land Trust (NBLT), the Newport Beach City Council and Planning Commission, the West Newport Beach Association (WNBA), and residents in adjacent communities including the Newport Crest Home Owners Association (HOA). The draft alternative project was also presented on 7/20/16, at a dinner, as part of the California Coastal Resiliency workshop at the University of California, Irvine. On 8/29/16, the Banning Ranch Conservancy met with the applicant to discuss our alternative project and associated issues that will be the subject of future discussions. An offer was made by the Banning Ranch Conservancy to help with restoration efforts should the applicant and the Banning Ranch Conservancy come to an agreement on a project. At this point, the applicant has not responded with a "counter-offer" alternative project plan. The Commission is required under the law to select the project alternative that is “most protective” of coastal resources

Banning Ranch Conservancy
September, 2016

From:	Michael Mohler
To:	Ainsworth, John@Coastal; Sarb, Sherilyn@Coastal; Schwing, Karl@Coastal; Dobson, Amber@Coastal
Cc:	phillip@bochcomedia.com; Cox, Greg@Coastal Commission; Groom, Carole@Coastal Commission; erik@erikhowell.com; skwestmarin@yahoo.com; mmcclure@co.del-norte.ca.us; wendy@katzmitchell.com; Shallenberger, Mary@Coastal Commission; Effie.turnbull@lausd.net; mark@mark-vargas.com; Kram@contentllc.com; District7@longbeach.gov; Celina.luna@longbeach.gov; mluevanocoastal@gmail.com; April Winecki; Steven H. Kaufmann; George Basye; Chris Yelich; Rewdy Holstein; Johntommy Rosas; Andy Salas
Subject:	RE: NBR Email to Staff and Commissioners
Date:	Friday, September 02, 2016 7:39:05 PM

Dear Staff and Commissioners,

Attached please find a link to Newport Banning Ranch's response to the August 26, 2016 Staff Report for Item W 14d, Application No. 5-15-2097 - with the attachments and exhibits broken out.

https://www.dropbox.com/sh/i6tiqklsgnvfzs0/AAA-T39OoIyFn-j8p3yE9aaha?dl=0

Thank you.

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mohler@brooks-street.com

Item W14d

September 2, 2016 VIA Email and US Mail

Steve Kinsey and Dayna Bochco Chairman and Vice Chair California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105	Coastal Commissioners California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 91405

Mr. Jack Ainsworth Acting Executive Director California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 91405	Ms. Sherilyn Sarb Deputy Director California Coastal Commission 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108

A copy of this letter has been provided to California Coastal Commission Staff in accordance with the requirements of Public Resources Code, Sections 30319-30324

Regarding: Item W14d, CDP Application No. 5-15-2097

Hearing Date: September 7, 2016

Dear Vice Chair Bochco and Members of the California Coastal Commission,

On behalf of Newport Banning Ranch, LLC, I would like to thank you for your time and consideration of the Newport banning Ranch project (Project). Over the last several months we have worked closely with Coastal Commission (Commission) Staff to address the matters raised in the Commission's consideration of the project during the October 2015 hearing, and the Staff direction and various public comments provided during these intervening months. As noted in our September 2, 2016 transmittal to the Commission, NBR has submitted numerous technical analyses which directly address the primary issues raised in the staff report. NBR is disappointed, to say the least, that these technical analyses have been omitted from the current Staff Report, while opinions of other experts opposed to the project have been included.

These technical analyses are an important part of the record; and therefore we provided copies under separate cover to the Commissioners on September 2. These analyses, and supplemental expert analysis we are submitting with this letter as Attachments 1-5, demonstrate that the staff's proposed findings designating an additional 64 acres of potential burrowing owl foraging habitat as ESHA are flawed, in several very important respects. In particular, they demonstrate that the site is not and has not been consistently "occupied' by more than a single wintering burrowing owl, under CDFW definitions (p.25), that there is no evidence of burrowing owl using the site for breeding or nesting, and that the potential foraging area on site, as Dr. Dixon agrees, is already inadequate to serve as foraging area for

the owl. In addition, staff's proposed finding that feature C and CC must be designated wetland should also be rejected by the Commission in its independent discretion. Third, the staff's rigid buffer recommendations are not "compatible with the continuance" of those habitat areas that do qualify as ESHA, and are inconsistent with other recommendations allowing for variable buffers that have a relationship to the protection of the habitat at issue. Staff's recommendations, taken together, reduce the developable area on the 400 acre site to only 10.2 acres, not for the sake of protection of coastal resources, but for the sake of limiting development.

As of two weeks ago, NBR believed that a workable framework had been developed with Staff from which the Commission could consider a revised Project, substantially reduced in scope and scale, but which retained the substantial coastal resource and public benefits embedded in the NBR Project, including the timing and financial catalyst to accelerate abandonment, remediation and preservation/restoration of more than 324 acres of open space, and to open and improve the site for high-priority public access and recreational uses, low-cost visitor-serving accommodations, and substantial water quality improvements. Our optimism was grounded, in part, by our successful efforts to revise the Project to ensure avoidance of all impacts to Staff's recommend ESHA as presented in the May 2016 Staff Report, while retaining all the Coastal Act's high-priority uses originally proposed and leaving what appeared at that time to be only a few primary points of disagreement relating to buffers, allowing a through connection for Bluff Road, and impacts to seasonal features C and CC. We were further encouraged by the additional analyses prepared by our various technical experts and submitted to Staff to further address their concerns related to potential impacts to seasonal features and ESHA buffers.

The Staff Report indicates that 19.7 acres of the property could be developed pursuant to the Staff Recommendation. However, the reality of imposing Staff's recommended ESHA and wetland buffers in conjunction with their 60 ft. defensible space requirements, conditioned to be located entirely within their allowed "buildable area", is that only 10.2 acres of the site could accommodate the proposed development. As shown on Exhibit 1, this staff recommendation essentially eliminates the ability to utilize approximately 1/2 of Staff's "buildable area", leaving only 10.2 acres of disconnect land areas to be used for Staff's proposed development. This is not a viable option for NBR, is completely unwarranted and in no way carries out the requirements of the Coastal Act.

NBR believes we have provided substantial evidence to support the Commission's review and approval of the Project, as proposed, based on the wetland and ESHA delineations presented in the May 2016 Staff Report, and the variable buffers proposed by NBR, described in more detail below.

Primary issues

I. Bluff Road

II. Environmentally Sensitive Habitat and Wetlands

   A. Potential ESHA vs. ESHA

   B. Burrowing Owl Foraging Habitat

   C. Seasonal Features C and CC

   D. Buffers and Fire Safe Habitat Restoration/Fuel Modification

III. Potential Takings

IV. Conditions of Approval

In addition to the primary issues listed above, NBR has provided corrections and clarifications focused on sections of the Staff Report addressing cultural resources, abandonment and remediation, impact avoidance measures and coastal resource benefits for Bluff Road, visual resources and green house gas emissions (Attachment 1). For the reasons outlined above and more fully detailed below and in the Attachments, we respectfully request the Commission's approval of the Project, subject to NBR's proposed revised Conditions of Approval provided in Attachment 2.

I. BLUFF ROAD

The Staff Report states that bluff road will bisect the site's core habitat areas and impact arroyos and wetlands. These statements are not correct. Over the last several months, NBR has considered several design options to address Staff's stated concerns with respect to bluff road and has ultimately proposed a road that avoids ESHA and wetlands, that will span the entirety of the south arroyo, and that will span and restore hydrologic and habitat connectivity between the vernal pool complex and north-south arroyo.

Here again, existing site conditions provide important context for the Commission's consideration of Staff and NBR's opposing positions. As proposed, the bluff road connection would not divide the North-South Arroyo from the vernal pool complex as there is currently no connection between these site areas now. The upper portion of the North South Arroyo was substantially filled in the 1940's as part of the oil field development, eliminating any hydrologic connection with fill that now supports a routinely used oil facility road. The road connection across the North-South Arroyo would, in fact, restore hydrologic connectivity and create a habitat corridor between the North-South Arroyo and vernal pool complex by removing the existing fill and a roadbed previously placed in the drainage thereby allowing for water flow and wildlife movement below the bridge. In addition, bluff road does not bifurcate core habitat areas as it is aligned at the easternmost extent of the NBR property on the mesa, within the most upper reaches of the North- South Arroyo and Southern Arroyo and adjacent to developed areas. Further, the proposed bluff road improvements are minuscule compared to the 9 miles of existing roads spread out across the entire property, which do bifurcate core habitat areas, but which will be removed or converted to public trails with project implementation.

Finally, construction of Bluff Road, as proposed, would facilitate and encourage multi-modal transportation options to the coast and recreation areas via a modest two-lane thoroughfare, with sidewalks and bicycle lanes designed along the entirety of the access corridor. Providing circulation and connectivity via Bluff Road to and from the shoreline through the Project site, its low-cost visitor- serving, recreational and affordable housing elements, and to the Project's underserved neighbors in Costa Mesa, would implement the coastal access and recreation policies of the Coastal Act mandating that maximum public access and recreational opportunities in the Coastal Zone be provided for all people, consistent with the need to protect public safety, private property and natural resources.

These factors, coupled with the substantial coastal resource benefits that are inherent to this critical Project element, demonstrate that maintaining Bluff Road in the development plan is not only consistent with the ESHA and wetland protection policies of the Coastal Act, but it's also necessary to improve and maintain maximum public access to shoreline and upland recreation areas.

II. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA) AND WETLANDS

A. POTENTIAL ESHA VS. ESHA

NBR has continued to express its strong disagreement with the type and extent of Staff's recommended ESHA as identified in the May 2016 Staff Report, but had agreed to revise the proposed Project to avoid all impacts to both the ESHA and wetlands as recommended by staff in the May 2016 Staff Report if the Commission approved the Project, with the exception of impacts that would occur to two (2) marginal seasonal features created by oil spill and pipeline repair activities (Features C and CC, addressed further in Section I.d). The primary genesis of NBR's disagreement with Staff's recommended ESHA is the sweeping inclusion of scrub areas that are highly degraded both in terms of structure and habitat continuity, yet delineated by Staff to be ESHA given their potential to support coastal California gnatcatcher (CAGN). While we understand that the Commission may apply a different standard than the U.S. Fish and Wildlife Service (FWS), FWS, who is the only agency to list the species as threatened, does not consider impacts to "potential" habitat to be considered take – worthy of Section 7, 9 or 10 consultation. Equally important, the Coastal Act does not consider "potential" ESHA to be ESHA. With respect to Staff's newly recommended 64-acre burrowing owl ESHA (addressed further in Section I.b), not only are the subject grassland areas dominated by non-native invasive plant species (35 acres), but much of the area (approximately 19 acres) is also developed or consists of disturbed/ruderal areas that have been so physically disturbed or invaded that they cannot be characterized as any definable vegetation community.

While portions of the project site undeniably provide habitat that supports a variety of special-status plant and animal species, the site also suffers from extensive degradation due to its use as an oil and gas production operation for more than 70 years. Contributing factors to the degraded site conditions include widespread areas of low native plant coverage and diversity (disturbed native vegetation communities make up 96 acres of total site area), 92 acres of non-native invasive plant species, and the obvious disturbance in the form of dispersed oil structures and roads, well pads, staging and debris stockpiling areas, and approximately 158 acres of affected site areas requiring clean-up and remediation.

In its analysis, and support, of the proposed abandonment and remediation elements of the project, Staff acknowledges the threat to ESHA posed by the existing oil facilities and use areas on pages 61-62 of the Staff report:

> *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.*
>
> *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.*

Even with this direct acknowledgement of at least one existing site condition that threatens and degrades the quality of onsite habitats, Staff's ESHA determination and exhibits essentially omit all of these pertinent factors, and

significant portions of their recommended CAGN ESHA determination alternatively relies on the presence of isolated, fragmented, monoculture and highly invaded shrub species that *may* be occupied by gnatcatcher. These vegetation conditions, in this particular setting, do not represent rare, or diverse high quality habitats rising to the level of ESHA not only due to their disturbed and degraded condition, but also because of the level of ongoing disturbance from oil field operations that surround and/or are immediately adjacent to these areas. These particular areas are highly degraded by oil field activities both in terms of their vegetative structure and other less tangible environs, such as the presence of human induced noise, dust, artificial water inputs, etc., and therefore do not meet the definition of ESHA. Staff typically considers the type and extent of existing site disturbance and degradation when analyzing and delineating ESHA, but fails to do so in the case of NBR.

It should be noted that NBR is not dismissing non-ESHA areas as having no potential habitat value, but maintains that the non-ESHA areas on the property have limited habitat value because their modified condition no longer fits the definition of their natural habitat structure or function, and therefore should not be subject to the strict use limitations of Coastal Act Section 30240. The Commission can and should, based on the preponderance of the evidence, exercise its independent authority to determine that these disputed areas do not "rise to the level of ESHA". In addition, the above enumerated site-specific factors are critically important to establishing resource protection buffers that are appropriately established based on the site's conditions, and not an arbitrary 100 ft. buffer standard. To assist the Commission in its review and consideration of appropriate development buffers, NBR has prepared detailed graphics that document existing site conditions, including the various factors enumerated above, adjacent to and within 200 ft. of the proposed development footprint.

B. BURROWING OWL FORAGING HABITAT

Staff has modified its ESHA recommendation from that contained in the October 2015 and May 2016 Staff Reports for the burrowing owl, expanding the ESHA recommendation from 1.5 acres of wintering burrow habitat, to 64 acres to include the large majority of primarily non-native grassland and disturbed oil field roads and well pads/ruderal areas on the upland portion of the site. NBR understands that this expanded ESHA recommendation is not based on any new site-specific evidence, but on a letter received from Dr. Bloom, a consultant hired by the project opposition to provide expert opinion on the matter. While everyone recognizes Dr. Bloom to be an expert on owls and raptors in general, there are several factors included in his analysis that require correcting and clarification. Dr. Bloom's observations are not sufficient, or in some instances even directly relevant to the Commission's ESHA determination.

NBR, in response to a number of Staff comments and requests for information made during the application review process, has provided extensive site-specific and science based information regarding potential impacts to burrowing owl that could result from the Project. The corrections and clarifications to Dr. Bloom's, and therefore Staff's, analysis of the factors relating to burrowing owls are largely documented in environmental information and habitat impact analyses previously submitted to Staff for the Project. However, in response to this new development, NBR's biological consulting team has prepared an additional technical memo to assist the Commission in evaluating all the information available to render a fully informed decision for burrowing owl ESHA on the property (Attachment 3).

First and foremost, it's important to clarify that five (5) protocol surveys have documented only one (1) owl consistently onsite in any given year between 2008 and 2014. As described in the attached technical memo, in a single year (2008) three (3) individuals were observed; however, one of the occurrences was offsite on the School District property and the owl on the Southern Mesa was a transient that was only present for about two weeks and was not detected thereafter. In addition, all observations of owls on the site have been during the wintering season only; there

is no site-specific evidence that demonstrates or even suggests the site provides breeding/nesting habitat for burrowing owl. As such, based on a number of site specific, protocol level surveys, the Project site, in all but one year, provides wintering habitat for a single burrowing owl.

Correctly identifying and describing the well-documented number (1) and type (wintering) of onsite burrowing owl population is an important first step in evaluating potential project impacts to the species and therefore an appropriate ESHA determination. In this regard, its worth noting that much of the information from the CDFW guidelines cited by project opponents as "thresholds" or "standards" for making a foraging habitat determination is applicable to breeding/nesting habitat only, and therefore is not specifically applicable in this instance. Further, the CDFW document represents "recommendations" only and are not legally binding in any way. Recall that this species is not covered by the California Endangered Species Act or Federal Endangered Species Act and has the same status as hundreds of other species as a California Species of Special Concern only. The document itself discusses that it is appropriate to modify any component of the recommendations in coordination with the CDFW or species experts. As in many cases of dealing with substantially degraded site areas that still provide some habitat value for special status species, the Commission must conduct an ESHA analysis and determination absent clear and definitive criteria.

However, what is clear is that Staff's analysis and recommendation regarding burrowing owl ESHA and foraging habitat, in general, in the October 2015 and May 2016, *was not an error or oversight, but* was wholly consistent with how the Commission has treated raptor foraging habitat, including that for non-breeding/nesting burrowing owl, over the last 20 years. Dr. Dixon continues to agree that the area of potential foraging habitat on this site is not sufficient to support even one wintering owl.

The Commission's decisions on Bolsa Chica/Brightwater where occupied burrows were determined to be ESHA, but the areas of potential foraging habitat were not considered ESHA, is a prime example. As recommended by Staff and adopted by the Commission in numerous past permit actions, while non-native grasslands and ruderal areas may provide value as foraging habitat, the Commission has not designated such areas as ESHA given their generally degraded condition and difficulty in determining which section or portion of any particular foraging area may be especially important. This is especially true for wintering habitats, such as that at NBR, when foraging habitat immediately adjacent to an occupied location is not as important as a nest site when individuals are less likely to forage over longer distances.

Staff's analysis of potential ESHA foraging habitat for burrowing owl relies on two primary incorrect assumptions. The first is that foraging habitat "adjacent or close to their burrowing habitat" is necessary to support an individual wintering on the site. As documented in the attached technical memo, burrowing owls may forage over extraordinary distances, and likely forage to some distance from the NBR site currently given that all the experts seem to agree that the site, in and of itself, does not contain an adequately sized foraging area to support a wintering burrowing owl. Which leads to the second incorrect assumption in the Staff analysis, which is that the foraging habitat at NBR is essentially a standalone resource, and therefore the loss of onsite foraging habitat due to the proposed project will result in such a drastic reduction in available forage habitat that an owl will no longer use the site during the winter season. The Staff Memo on page 38 states:

> *Unlike the situation in many coastal areas (e.g. the Gaviota coast), the potential foraging habitat at Banning Ranch and the Newport Beach area in general is not extensive and all the appropriate habitat at Banning Ranch is probably used at one time or another by burrowing owls.*

In fact, the foraging habitat on the site is no doubt supplemented by large open spaces immediately adjacent to site and in the project area. As identified in the technical memo, landscape-level mapping of potential foraging habitat was conducted to identify suitable foraging habitat within observed foraging ranges of burrowing owl and includes approximately 76 acres within 600m, 17 acres between 600m and 1km, 622 acres between 1km and 3km, this includes adjacent and nearby open space such as Talbert Regional Park, Fairview Park, and the Huntington Beach Wetlands and 1,077 acres between 3km and 6km, which includes areas such as upper Newport Bay.

Given the high likelihood that wintering burrow owls on NBR can and do travel to offsite properties to forage, including across urban environments such as those that abut much of the NBR property, there is not sufficient information to conclude that any particular area of onsite foraging habitat is especially important and necessary to ensure wintering burrowing owl will continue to use the site. In addition, the vast majority of the foraging habitat at NBR consists of non-native invasive plant species and disturbed/ruderal areas. These factors, taken together, demonstrate that, while the non-native grassland and disturbed/ruderal areas at NBR do have foraging habitat value, these areas do not rise to the level of ESHA. This conclusion is consistent with how the Commission has treated foraging habitat in past actions across the coastal zone, as opposed to Staff's recent departure in the case of NBR, which would result in large expanses of some of the most disturbed portions of the site being designated as ESHA.

As an additional departure from past Commission actions, Staff has further expanded its burrowing owl ESHA designation to include an additional burrowing owl burrow due to a single documented occurrence in 2014. In past Commission actions, Staff has recommended and the Commission has concurred that only burrows that were repeatedly observed to be used by wintering owls have been designated as ESHA. Staff provides no analysis or justification as to this change.

Though the onsite grassland and disturbed/ruderal areas do not rise to the level of ESHA, the Commission does have the ability to require appropriate mitigation for project impacts. Here, Staff has recommended and NBR agrees that any project impacts to the site's non-native grasslands be mitigated at a ratio of 0.5 acres of preserved or restored foraging habitat for every 1.0 acre of lost foraging habitat. In addition, as described in the attached technical memo, NBR is proposing a robust vernal pool and native grassland restoration plan that provides foraging areas more than 3 times the 2012 CDFW guideline, and that includes specific elements to enhance both burrowing owl burrows and foraging habitat, to maximize the potential for long-term persistence of wintering Burrowing Owl on the site.

Currently, Staff's newly recommended 64-acre burrowing owl ESHA areas dominated by non-native invasive plant species (35 acres), and much of the area (approximately 19 acres) is also developed or consists of disturbed/ruderal areas that have been so physically disturbed or invaded that they cannot be characterized as any definable vegetation community.

Finally, we note that there seems to be a general, misinformed assumption by many commenters that foraging habitat on the site will be unaffected and retain its habitat value for wintering burrowing owl in the event the NBR project does not move forward or is substantially reduced in size to avoid all foraging habitat area. However, site observations since the cessation of mowing of the open oil fields in 2012 for vegetation management purposes suggest otherwise. As a result of that action, vegetation is growing higher in some areas – threatening the foraging areas for the burrowing owl. NBR's biological team has observed a number of site areas starting to transition to invasive Russian thistle and/or mustard. It is expected that without management, the availability of open habitat will continue to decline and the previously suitable areas will support fewer ground squirrels, fewer burrow resources, and much reduced suitable open habitat for wintering burrowing owls to occupy. Absent the proposed project and its extensive habitat restoration

plan there would be no management or maintenance of existing or restored habitat areas. Pursuant to the proposed project, there will be more habitat available, there will be more restoration possible, and management of the open space will occur in perpetuity.

C. BUFFERS AND FIRE-SAFE HABITAT RESTORATION/FUEL MODIFICATION

Staff has recommended uniform buffers from the recommended ESHA and wetlands onsite, 100 ft. from wetlands and upland scrub communities (some not occupied for decades, or ever, and some presumably occupied at some point in the future, by gnatcatcher) and 50 ft. from purple needlegrass, with a few exceptions for select elements of the Project's circulation system. Pursuant to Section 30240(b) of the Coastal Act, there is no rule requiring uniform application of 100 ft. or 50 ft. buffers from any particular resource area and, in numerous past permit actions, the Commission has recognized that there are certain circumstances where smaller buffers or buffers of variable width may be appropriate given site specific conditions. In imposing habitat buffer requirements for new development, the Commission has considered a number of site-specific factors to ensure that such buffers, including buffer size, structure and use, are designed to ensure that new development does not significantly degrade or otherwise compromise continuance of ESHA. Such factors include 1) the level and extent of existing site disturbance, both in terms of existing development and land uses and 2) the extent of habitat enhancement and/or preservation that will occur in the post-project condition.

Staff's analysis acknowledges that at least one of these factors contribute to a determination of appropriate buffers on page 49 of the Staff Report:

> *In some instances, reduced buffers may be acceptable to accommodate access to developable space where they can be designed to provide 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.*

Despite this acknowledgement, the Staff Report contains no information, no graphics, and no analysis of the above factors in relation to the existing conditions of site or the proposed Project.

Existing Site Disturbance

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 sprawled across the site. An estimated total 158 acres of historic and active oil facilities requiring abandonment and remediation also exists throughout the site. These developed facilities and historically impacted areas currently bifurcate ESHA and wetlands and essentially confine the outer boundary of the resource areas, and thereby provide for ZERO BUFFERS between the oil field development and existing habitat areas.

The sprawling pattern of these conditions and lack of buffers have displaced habitat areas through time and now produce edge effects throughout every habitat type in both the lowlands and uplands of the site, likely affecting every sensitive species, to some deree, that occurs at NBR. The proposed Project would remedy these conditions throughout the entire site by removing the existing oil facilities, remediating historically impacted areas, reestablishing habitat areas long ago displaced by the oil operations, thereby eliminating all their associated edged effects, and creating new buffers from the proposed, consolidated development footprint. The site's existing conditions and

proposed project benefits provide critically important context in the determination of appropriate buffers for the proposed project and cannot be ignored. The Staff Report, however, does just that and instead focuses the buffer analysis on only the area surrounding the proposed development footprint.

Even with Staff's buffer analysis narrowly focused on areas solely around the development envelope, the site conditions speak for themselves and seriously challenge the basis for Staff's recommended 100 ft. buffers. NBR has analyzed the 80 acres of land surrounding the proposed development footprint (land contained within a 200 ft. radius around the development edge). Of these 80 acres, only 32.5 acres consist of scattered and fragmented patches of native vegetation (20 acres of which are highly modified, disturbed native vegetation). The balance of the 80 acre area (47.5 acres) includes developed and disturbed (largely bare dirt) areas, oil infrastructure, stockpiled debris, and non-native/invasive vegetation. Without the proposed Project, this is not only an existing condition that compromises the resource values of the site, but it's also the foreseeable condition for many years to come.

Perhaps most importantly, NBR has submitted substantial evidence supporting the conclusion that the proposed variable width buffers will be amply protective of special-status species on the property, specifically CAGN, least Bell's vireo, San Diego Fairy Shrimp and wintering burrowing owl burrow habitat, and when considered with the proposed restoration plan (discussed further below), the Project will actually enhance the site's resources to better support these species into the future. The development plan itself avoids all impacts to ESHA currently inhabited by these species, and the temporary impacts of site clean-up activities will be thoroughly mitigated per the proposed restoration plan.

Irrespective of the well documented, broadly modified site conditions adjacent to the development footprint, and substantial evidence concluding that the site's ESHA and special-status species will benefit from the proposed project, Staff concludes that 100 ft. buffers are necessary to ensure that new development does not significantly degrade or otherwise compromise the continuance of adjacent ESHA that is already impaired, at best. Staff further recommends restrictions on uses and activities in the buffer, such that any new buffers must effectively be treated as ESHA, although they clearly are not, restricting any "use" of the buffers for purposes of even limited fuel modification. Staff's analysis is so narrowly focused that it misses the fact that the vast majority of their recommended ESHA (165 out of 178 acres, 93%) is located well beyond their recommended 100 ft. buffer and will be substantially improved with the Project. In reality, the existing site conditions compromise the value of any habitat that may currently exist in the areas adjacent to the project footprint far more than the Proposed project, which would restore 65 acres of the area immediately adjacent to the project as high quality ESHA, and implement fire safe habitat restoration in the remaining 25 acres. By disregarding the existing site conditions and neglecting to include any analysis of the proposed project's buffers for the entirety of the site and the benefits of the project's restoration elements in the context of site and resource specific buffers, the Staff analysis fails to accurately define the connection between potential development edge impacts to ESHA, thus rendering Staff's recommended arbitrary buffers unwarranted under the Coastal Act. When combined with Staff's recommendation to require an additional 60 ft. defensible space within their allowed "buildable area" in addition to the 100 ft. buffer requirement. Based on site conditions, staff's proposed mandatory 100 foot buffer bears no relation to the purpose of a buffer, to assure that adjacent development is "compatible with the continuance of the habitat area", such as it is. The purpose of a buffer, under Section 30240, is not to restore or improve ESHA, but to maintain avoid degradation of the existing condition.

The arbitrariness of staff's approach to buffers in this case is nowhere better illustrated than in its treatment of seasonal features C and CC. (discussed in detail in Section D, below). The features clearly are not ESHA. However, staff continues to recommend that the features should be defined as wetland, which in turn leads to a recommendation

of mandatory 100 foot buffers around features that are so small as to be barely measurable, which do not support any species of concern, and which will substantially be removed as part of the remediation/ restoration plan. Although staff has emphasized the importance of connectivity and the vernal pool watershed as a whole, and these features are not currently 'connected'. Staff's definitions would force the Commission to (1) define them as wetlands; (2) impose mandatory 100 foot buffers around them; and (3) prohibit their relocation to the vernal pool complex as part of the restoration plan. This will lead to an absurd and counterproductive result ecologically, and in no way serves the purposes of either Section 30240, or 30233 of the Coastal Act.

Proposed Buffers

As opposed to current conditions, the proposed Project would eliminate the sprawling pattern of oil field development, its lack of habitat buffers, and its associated edge effects, and create new and restored buffer areas to separate the 64 acre consolidated development from onsite ESHA.

With respect to seasonal feature and wetland resources, the Proposed project provides for new variable buffers between the development edge and these resources, ranging from 50-670 ft. and 400-1000 ft., respectively (Exhibit 2). This is a significant improvement from existing conditions where several of the of the site's existing seasonal features are currently located in or immediately adjacent to developed oil field facilities, and where many acres of the site's wetland resources have been historically impacted by oil operations. NBR's biological consulting team has study each instance where a seasonal feature would be provided with a minimum 50 ft. buffer and has well-documented the existing conditions of these features and the overwhelming benefits of the proposed project for these resources (Attachment 4).

On the mesa, the Proposed project provides for new variable 50' – 100 ft. + buffers between the development edge and ESHA. This is also a significant improvement from existing conditions where most of the site's existing upland habitat is bifurcated and confined by existing oil field development, resulting in zero buffer conditions and sprawling edge effects across much of the property.

Fire Safe Restoration Buffers

NRB's proposed buffers will be vegetated exclusively with native vegetation to serve as auxiliary habitat for special-status plants and wildlife, and are located and designed to provide ample distance from development to avoid degradation of the resources the buffers are designed to protect. To ensure that the proposed buffers will provide for both habitat creation and fire safety for adjacent development, NBR has coordinated with the City of Newport Beach Fire Department and a team of restoration biologists to prepare a fire-safe habitat restoration plan for proposed upland buffers uniquely suited to the project site. One of the primary goals of the buffer design is to provide suitable habitat for CAGN, possible reintroduction of the coastal cactus wren, and accommodate the three to four week annual visit of the one burrowing owl, while meeting long-term fuel modification requirements without having to consistently maintain the buffer area. The proposed fire-safe habitat restoration consists of the following elements (see Exhibit 3):

- Defensible Space of 30 Feet:
  - A minimum 20 ft. wide defensible space separating all habitable structures from proposed natural open space areas and habitat buffers - to be located entirely within the development plan footprint).
  - A 10 ft. wide non-combustible public access trail – to be located just outside of and along the approved development plan edge.

- ESHA Buffer – A minimum 50 ft. wide zone located between the Defensible Space and ESHA, consisting of habitat restoration area designed and maintained as a mosaic of native grassland, shrub and succulent/cactus habitats, including native plant species such as purple needlegrass, California encelia, Coastal golden bush, Coastal prickly pear, and Coastal cholla. No existing native vegetation will be removed and vegetation maintenance within this zone consists only of maintaining the mosaic of native habitats as described, inclusive of non-combustible/succulent habitats that minimize fire risk, and which also provide nesting and foraging habitat for special-status birds, including California gnatcatcher and coastal cactus wren.

With the NBR proposal, ESHA buffers would be maintained and the whole of the buffer vegetated with native plants. Given the extraordinary degraded condition of the buffer areas and the reality of necessary abandonment and remediation, the proposed NBR project would in fact, create new native habitat and buffers from adjacent habitats where none currently exists, and where only minimal vegetation maintenance would be conducted as described above.

Staff has indicated their concern with the proposed fire-safe habitat restoration plan as approved by the Newport Beach Fire Department, given the *potential* that the Newport Beach Fire Department could require additional measures in the future. This is true of any development approved in the Coastal Zone, and that the Commission's Special Conditions for Landscape and Fuel Modification Plans ensure that any such change in approved fire protection measures would be subject to further Commission review via a permit amendment or new coastal development permit.

Habitat Restoration and Preservation Plan

The proposed Project includes a comprehensive restoration and enhancement plan (HCCMP) to ensure long-term viability of NBR's sensitive habitats and the special status species that rely on them. The NBR HCCMP provides for effectively preserving and restoring ESHAs to address potential impacts of the proposed site clean-up activities, in conjunction with targeted habitat restoration designed to address the unique habitat needs of the special-status species that occur on site. As proposed, the restoration will enhance on-site biological communities in a manner that improves the overall ecological function of the site from its current condition. Specific vegetation communities proposed to be restored include coastal sage scrub, coastal bluff scrub, non-native grasslands, native bunchgrass grasslands, riparian wetlands, tidal marsh, alkali meadow and seasonal features/vernal pools (Exhibit 4). The restoration areas would be embedded within a larger open space conservation area that will be permanently protected and managed as a single preserve, which will improve overall habitat values along the Santa Ana River corridor by expanding riparian and wetland habitat in areas that are currently disturbed and/or developed, and by enhancing areas through the removal of invasive and exotic species. Approximately 324 total acres are expected to be included into the Open Space Conservation Area.

The restoration plan would result in enhanced and expanded habitat for a number of special-status species, including California gnatcatcher, least bell's vireo, Belding's savannah sparrow, Ridgeway's rail, San Diego fairy shrimp, and wintering burrowing owl. In addition, it will provide better and more extensive habitat for a variety of other native resident and migratory species.

California Gnatcatcher. As documented in our July 2016 *Newport Banning Ranch: Evaluation of Buffers or Coastal California Gnatcatcher and Coastal Sage Scrub ESHA,* post-project conditions are expected to see an increase in the carrying capacity California gnatcatcher, with increase that would conservatively account for an additional 10

occurrences. Implementation of the project would result in creation of approximately 30 additional acres of high quality scrub habitat on the site, increasing the quantity of scrub habitat from 68.7 to 98.7 acres. The buffers would also include another 25 acres of habitat, much of which would be suitable for the gnatcatcher. The habitat restoration would include native cactus and would also provide additional habitat for the Cactus Wren and Ashy Rufous Crowned Sparrow.

Least Bell's Vireo. This species has been limited to one or two occurrences per season within the lowland portion of the site, which is highly degraded and includes many acres of non-native invasive plants including (but not limited to) giant reed and Pampas grass. Removal of these non-native species will allow for an increase in riparian habitat and increase the carrying capacity for least Bell's vireo as well as for other riparian birds such as the Yellow Warbler and Yellow-Breasted Chat. This restoration will also increase the potential nesting areas for raptors such as the Cooper's Hawk and the White-tailed Kite, both of which have been documented to nest in the lowland willows.

Belding's Savannah Sparrow. This species is limited to areas of coastal salt marsh at the southwest corner of lowland and is fully avoided by the development with limited temporary impacts to salt marsh. Enhancement within this lowland portion of the site, which is highly degraded will allow for an expansion and enhancement of coastal salt marsh and is likely to result in a modest increase in the carrying capacity for least Bell's vireo.

Ridgeway's Rail. Due to recent taxonomic work, the light-footed clapper rail, which has not been identified on the site but has been observed in the cordgrass marsh on the adjacent Army Corps of Engineers property, has been renamed as Ridgeway's rail. Habitat restoration within the southwest corner of the lowland could provide increase foraging habitat for this species.

San Diego fairy shrimp. All vernal pools and other seasonal features on the site that support this species will be preserved and placed within a Vernal Pool Preserve with the exception of Feature E, an oil sump that does not support vernal pool plants and is dominated by mulefat. This feature will be remediated and will be restored at the same location such that there will be an increase in both the area of occupied habitat and the number of pools occupied by this species, resulting in an overall increase in the amount of habitat and the numbers of this endangered fairy shrimp.

Wintering Burrowing Owl. As already noted above, through grassland restoration and other management actions, suitable habitat for burrowing owl will be maintained on the site and restoration of native grasslands will benefit Raptor Foraging.

NBR recognizes that, in some instances, Staff's recommended uniform 100 ft. buffers for ESHA and wetlands may be appropriate in natural settings where development has the potential to encroach upon existing, functioning habitat buffers. However, this is not case for NBR, where there are few existing ESHA and wetland buffers that exist today, and the introduction of buffers with the proposed Project will be a substantial improvement over existing conditions. The abandonment and remediation of the existing oil field development surrounding these areas, along with extensive habitat restoration, will effectively provide vast amounts of new intact buffers beyond those prescribed to the development itself. The proposed variable width buffers for ESHA and wetlands near the development are designed with appropriate width, structure and use, to ensure that new development does not significantly degrade or otherwise compromise continuance of onsite ESHA as required by Section 30240 of the Coastal Act.

D. SEASONAL FEATURES C AND CC

The proposed project has been revised to preserve all wetlands identified by Staff, with the exception of two minor, highly degraded features identified as C and CC. Based on field studies, NBR maintains that these features do not qualify as wetland for the following reasons:

- The features are the direct result of documented oil operation activities and consist of small excavations for pipeline repairs. Both features consist of oil spill locations and still contain contaminated soils (crude oil) that impact any habitat value and must be remediated.
- Though both features support wetland indicator plants, hyssop loosestrife (*Lythrum hyssopifolia*, OBL) and brass buttons (*Cotula coronipifolia*, OBL), both species are non-native invasive species on the CalIPC list of invasive species.
- The features contain only non-listed versatile fairy shrimp, the presence of which actually poses a threat to the federally listed San Diego fairy shrimp as it has been shown to hybridize with the versatile fairy shrimp.
- Feature C is largely underlain by a 2-inch layer of asphalt (weathered crude oil), which largely negates any habitat value of the feature.
- Feature CC consists of an excavated pit created to repair and remove 3 pipelines, and contains a monoculture of a non-native, invasive plant species.
- Both Feature C and CC contain hydrocarbon contaminated soils that impact any habitat value and that must be remediated
- These features are not connected in any way to other seasonal features on the site. Feature C is located at the base of a large spoil pile, which blocks any connectivity to the watersheds of other seasonal features. Similarly, Feature CC is a deep depression (approximately 2.5 feet deep) that exhibits no potential for overflow as ponding depths generally reach only a few inches.
- Feature C consists of an excavated depression approximately five feet by seven feet and about three to four inches in depth. The depression was created by excavating the oil saturated soil and to expose the broken pipe, which was ultimately abandoned in place and the pipe left within the excavated depression for future remediation. An approximately two-foot by four-foot area in the center of the feature is underlain by a one to two inch thick layer of asphalt-like material (weathered crude oil) which is at a depth of three to four inches. This information along with site photographs were provided to Dr. John Dixon and Dr. Engel dated March 22, 2016 and is cited in Dr. Dixon's Memorandum referenced above.

Staff maintains that the origin, condition of the pool and the fact that all of the plants present are non native invasives is irrelevant to the definition, and the Commission must define these features as wetland in any case. In his recent presentations on ESHA and wetlands in Santa Rosa, Dr. Dixon correctly recognized that there are many marginal cases, and that is why in the end it is up to the Commission to accept or reject the staff recommendation based on all the facts. In this case, these two small features of minimal habitat value should not be defined as wetland as set forth in the Coastal Act and regulations (including the interpretive guidelines of 1981 which specifically exclude "ditches" of less than five feet in width).

Nevertheless, In the event the Commission finds that features C and CC do meet the Coastal Act definition of wetland, NBR further maintains the Commission has the ability to determine a more optimal restoration site within the proposed vernal pool restoration complex to offset impacts to these marginal seasonal features as opposed to requiring in-situ restoration in a location that is isolated from other seasonal features on the property and therefore offers very little or no resource benefit. The features themselves total only 0.003 acre, all of which would necessarily be impacted by

permissible, abandonment and remediation activities. NBR believes that restoring these features in the proposed vernal pool complex is not only justifiable, but is permitted under the Coastal Act for sound biological reasons:

1. Given the continued isolation of these degraded features, even if restored in-situ with other wetlands creation as suggested by Staff, hydraulic and habitat connectivity with similar onsite resources would be wholly absent
2. Restoring the features within the proposed vernal pool complex would result in the elimination of two areas entirely dominated by non-native invasive plant species (as already noted); providing for re-establishment in an area where a high diversity of native seasonal wetland plants could be established
3. Restoring the features within the proposed vernal pool complex would result in the elimination of a source of the versatile fairy shrimp, which poses a hybridization threat to the federally listed San Diego fairy shrimp.

As further detailed in Attachment 5, ecologically, there are no sound reasons to maintain these features within their current isolated locations, supporting non-native invasive species when there is the option to re-establish features that would support native plants and the San Diego fairy shrimp.

In addition, in their current location and given their degraded condition, a 100 ft. habitat buffer is not warranted for these features in the event the Commission concludes they are wetlands as defined by the Coastal Act and there is significant precedent for permitting reduced buffers, where appropriate. The Commission has, in numerous past permit actions, considered the extent of isolation and degradation in determining appropriate buffers for wetlands, as is the case here.

For the reasons above, NBR does not believe these features should be considered coastal wetlands, and given their degraded state and lack of habitat function for rare or native species, they do not meet the definition of ESHA. Accordingly, a 100 ft. habitat buffer is not warranted for these features in the event the Commission concludes they are wetlands as defined by the Coastal Act..

III. UNLESS SIGNIFICANTLY REVISED, THE STAFF RECOMMENDATION WOULD WORK A "TAKING" OF NBR'S PROPERTY.

As discussed above, NBR has revised the Project to address the concerns expressed by Commissioners at the October 15, 2015 hearing, and the Project, as now proposed, is fully consistent with the Chapter 3 policies of the Coastal Act. By contrast, there are serious problems with the Staff Recommendation. A regulation of property that "goes too far" may effect a taking of that property (*Pennsylvania. Coal Co. v. Mahon* (1922) 260 U.S. 393, 415), and that frankly would be the consequence if the Staff Recommendation were adopted here. The Staff Recommendation would impose impermissible, and result in a de facto denial of the application and all reasonable use of NBR's property.

It serves to remind that in *Nollan v. California Coastal Com.* (1987) 483 U.S. 825, 837, the United States Supreme Court held there must be a substantial connection or "nexus" between the public burden created by the development and the necessity for the exaction. *Dolan v. City of Tigard* (1994) 512 U.S. 374, 386, followed, adding that there also must exist "rough proportionality" between the development restriction and the extent of the impact state-imposed condition is supposed to mitigate. The Staff Report includes conditions that would exact a public trails network (Special Conditions 3, 11-12 and 15), abandonment and remediation of the oil operations in the lowlands (Special

Conditions 7-9, 14), and impose an ESHA overlay and major restoration obligation over several hundred acres of habitat in the lowlands (Special Conditions 10, 12, 14). These exactions and requirements would impose an enormous financial obligation on NBR (between $48.5 million and $57.5 million), but, importantly, where there is *no* "nexus," *no* rough proportionality, and *no* reasonable relationship to the Staff's very small, fragmented development footprint at the eastern edge of the Mesa. And, as explained above, we respectfully the treatment of Seasonal Features C and CC as wetlands, the inclusion potential ESHA as ESHA, the rigid buffers recommended (which ignore Commission precedent), the expanded fuel modification zone, the expanded burrowing owl ESHA and buffer and consequent complete elimination of the entire South Family Village and parks, and the elimination of Bluff of Road, all would amount to erroneous and unsupported exactions. Together, these recommendations "go too far" and, if adopted, they would work a taking of the NBR's property. The Project would be unbuildable – and important, from a resource perspective, the property would continue to degrade and the substantial coastal resource and public access benefits NBR initially proposed would be lost.

There is a better way. In response to concerns expressed and the direction of the Commission, NBR has substantially revised the Project, greatly reduced its size, and addressed all coastal issues so that today the Project before you is fully consistent with the Chapter 3 policies of the Coastal Act. That is the Project we respectfully ask you to approve.

IV. CONDITIONS OF APPROVAL

Staff has recommended that the Commission find the project, as proposed, is inconsistent with several Coastal Act policies, including those policies that require protection of wetlands, ESHA, and visual resources, and that only as conditioned pursuant to the staff recommend can the project by found consistent with the Coastal Act.

We disagree with Staff's conclusion for the reasons discussed in this letter, and request that the Commission consider the Applicant's proposed Conditions included in Attachment 2. In preparing these proposed Conditions of Approval, NBR has endeavored to work within the context of Staff's recommended conditions as much as possible.

NBR's proposed additions to the conditions are shown in underline, and NBR's proposed deletions to the conditions are shown in ~~strikethrough~~. The most significant, requested changes to the conditions are necessary to reflect NBR's proposed development footprint, and to re-incorporate conditions previously recommended by Staff in the May 2016 Staff Report to address improvements, uses, etc. associated with the Project's proposed commercial and visitor-serving uses.

V. CLOSING

Thank you for the opportunity to comment.

Respectfully submitted,

Michael A. Mohler
Newport Banning Ranch LLC

Cc: Via Email
Jack Ainsworth, Coastal Commission
Sherilyn Sarb, Coastal Commission
Karl Schwing, Coastal Commission
Theresa Henry, Coastal Commission
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Attachment 1 - Staff Report Corrections and Clarifications
Attachment 2 – Newport Banning Ranch Proposed Conditions of Approval
Attachment 3 – Burrowing Owl Technical Memo
Attachment 4 – Vernal Pool Buffer Analysis
Attachment 5 – Feature C and CC Memo

Exhibit 1 – Staff Recommended Project
Exhibit 2 – Proposed Wetland Buffers
Exhibit 3 – Fire Safe Habitat Restoration Buffers
Exhibit 4 – HCCMP Map

ATTACHMENT 1
STAFF REPORT CORRECTIONS AND CLARIFICATIONS

I. CULTURAL RESOURCES

In response to Staff first raising the issue in May 2016, NBR has conducted substantial outreach to the Native American community to ensure their questions and concerns have been fully vetted and addressed through the Commission's review process. The outcome was successful implementation of the work plan approved by the Commission at the August hearing, and production evidence further substantiating a finding that the proposed development will not result in substantial impacts to cultural resources.

While NBR is pleased with the efforts and results of the Native American consultation process, we offer a number of clarifications and corrections to Section H., Archaeological and Cultural Resources, of the Staff Report.

Site Surveys

The Staff Report indicates that the proposed development footprint has never been surveyed. This is not correct. The site (and portions of it) has been surveyed several times in the past, to varying levels, but including surface surveys of the proposed development footprint. After initial surveys in the 1930s (WPA), it was again surveyed in the 1960s by PCAS and the 1970s by UC Riverside. Van Horn surveyed the site in 1979-1980 before his testing of several of the sites. More recently, the entire site was surveyed by Keith Companies in 1999. It was during this survey that the sites near the bluff road (CA-ORA-1599 and -1600) were recorded. LSA surveyed the entire site once again in 2008 and found no new sites. During these surveys, no potential archaeological sites were observed within the development footprint, which is why no subsurface testing had been conducted within the project footprint until August 2016. The August 2016 subsurface testing involved 122 test pits and confirmed the negative results of prior surface surveys.

SB 18 Consultation (Page 86-87)

The Commission staff report addresses only the City's compliance with SB 18 in connection with the General Plan Update approved in 2006. However, the more relevant SB 18 consultation took place in connection with the City's preparation of an EIR for the Banning Ranch project. The City contacted 15 Native Americans that were listed on the Native American contact form provided to the City by the Native American Heritage Commission. Attached is the letter from the NAHC transmitting the contact list. Also attached is the comment letter received from the NAHC on the Banning Ranch Draft EIR.

The Staff Report states that some tribal groups assert that there has been no meaningful consultation between the tribal governments and the lead agency to resolve tribal concerns. According to the City, only two tribal governments contacted the City and expressed an interest in consulting per SB 18 in connection with the Banning Ranch EIR.

Once the City certified the EIR and approved the project in 2012, it was under no continuing obligation to continue consultation with the Native American tribes. This was not a situation where projects have not evaluated cultural resources late in the environmental decision-making process. Rather, the City initiated and conducted tribal consultation pursuant to the laws and regulations in effect when it prepared the Draft EIR, which was as early in the environmental decision-making process as feasible.

AB 52 Tribal Consultation (Pages 87-89)

The Staff Report indicates the City prepared a mitigated negative declaration; however, the City prepared and certified an Environmental Impact Report (EIR) not a mitigated negative declaration. Although the City did not engage in AB 52 consultation – because it only went into law in 2015 – well over three years since the City approved the Banning Ranch project, it did contact Native American governments and request consultation pursuant to SB 18. The recent field work and protocols outlined in the Special Conditions address any issues.

Finally, it is inappropriate to cite or use Staff's recommended findings for the Ridge project as precedent for the Commission's review of NBR, as the Commission Staff's recommendations were not adopted by the Commission. The application was withdrawn before action was taken by the Commission.

II. ABANDONMENT AND REMEDIATION

The Staff Report confuses several facts related to the abandonment and remediation work and the future of the oil field should no project be approved. To be clear, with no project approval the entire site will remained fenced off with no public access and will continue as an oil field industrial site for the foreseeable future. Importantly, since the October 2015 hearing, the RWQCB has approved the RAP, so any further staff speculation about areas to be remediated is not warranted. NBR must perform remediation to the degree and in the areas dictated by the agency with jurisdiction.

Extensive environmental investigations have shown that the numerous historic industrial impacts on the site do not present a threat to the public health and safety or to the current environment or biological resources, so long as the site remains fenced off as an active industrial site as it is today. With no project, only very limited abandonment work would occur within the fenced site to comply with existing agreements including the 2015 Settlement Agreement with the Commission. The Commissioners may recall that the Cease and Desist and restoration orders, together, require restoration of only 18.45 acres of the 400 acre site.

The Staff Report lists several of the Settlement Agreement conditions yet characterized them ***incorrectly*** as "long overdue – in some cases by well over a decade". In fact, there are no long overdue restoration and cleanup activities on the site. Other examples were resolved years ago or were deferred in anticipation of a project and a full field abandonment and remediation that would allow for more sustainable onsite recycle and reuse of materials.

An accelerated full field abandonment and cleanup would only occur with an approved change in the entire site land use (proposed project approval). A partial, or even a full field abandonment does not include restoration, installation of amenities such as trails, parks or the opening of the property to public access as these would only occur with the approval of a project of sufficient size to fund these additional and optional initiatives. Cessation of the industrial uses of the property alone would also not trigger public access to the private property. Unfortunately, some segment of the public has been led to believe that the public and environmental benefits of the project will occur regardless of whether the housing is approved. That is simply not correct, nor is it a realistic hope.

Staff has reduced the area allowed for the Remediation Action Areas Site Plan (Remediation Logistics Areas) from the previous staff report by eliminating the inclusion of areas already impacted by required remediation

and areas of existing cleared and unvegetated areas (currently used roads, work areas, well pads, etc.). It also does not include the NBR suggested category of Non-Native Invasives (Ornamentals) that must also be removed as part of the restoration work. The reason for this reduction is not clear and it will likely impact the ability to conduct a fully onsite abandonment and remediation resulting in significantly increased offsite truck traffic through adjacent neighborhoods. Staff also indicates that the design of these areas also impact ESHA when in fact they only occupy some small areas where required remediation will already occur, which was specifically allowed in staff's previous report.

Within the Remediation Logistics Areas, Staff implied that the size of the remediation borrow/placement pits were based on NBR's preferred timeline to complete the cleanup activities as opposed to the correct, and communicated reason which was to minimize the use of offsite trucking and the associated traffic and emissions impacts to surrounding neighborhoods and residents by keeping the remediation activities fully onsite.

III. VISUAL RESOURCES

Staff's analysis of potential project impacts to visual resources concludes that the project, as proposed would be inconsistent with the visual resource protection policies of the Coastal Act due to landform alteration. The Staff Report cites outdated grading figures, then makes a number of unfounded statements to support its conclusion. Staff claims that large areas of cut and fill are proposed and that the project degrades 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.

The proposed project would involve 1,062,000 cu. yds. of cut and 1,056,000 cu. yds of fill. While these numbers may seem large, in terms of potentially impacting visual resources, its important to understand how the proposed grading would affect the natural landforms of the property.

The proposed project would result in no grading impacts to the natural landforms of the property. All previously proposed grading, including both remedial grading and project footprint grading, of the site's bluff's and slopes has been eliminated. As described previously, bluff road has been redesigned to avoid all grading impacts to the site's arroyos, and the road has been designed to actually restore the landform between the vernal pool complex and north-south arroyo. Contrary to the Staff Report's conclusion, the project does not require grading that has impacts upon biological resources within the arroyos and upon the mesa.

Of the 2.2 million cu. yds. of grading proposed, 1.7 million cu. yds. is associated with corrective grading and estimated up to 315,00 c.y. of oil remediation efforts and does not impact the exiting landform. Project modification of the existing landform is associated with the remaining 500,000 cu. yds., which results in an average change of grade of 4' across the development area (for comparison purposes, the bluffs range in height from 45'-65' in height). Less than 6% of the proposed development area has proposed landform changes greater than 10 ft. in height. These occur in isolated cases such as where the historical landform has already been impacted by oil use or in the area where earth was removed for Caltrans road construction. It should also be noted that nearly half of the development footprint area has already been impacted by oil field operations and that approximately 120 acres of impacted area outside of the development footprint is proposed to be restored.

Accordingly, the project will not result is signification landform alteration, and in particular will not adversely impact natural landforms of the site. Approximately 12 acres of the site's previously altered landform would

be restored with the propose project, and habitat restoration of the lowlands and uplands will improve the overall aesthetic value of the project site. As such, the project is consistent with Section 30251 of the Coastal Act.

IV. GREEN HOUSE GAS EMISSIONS

The Staff Report suggests that the proposed Project may not be consistent with Coastal Act policies addressing green house gas (GHG) emissions. However, the Staff Analysis omits any discussion of the many project features that will serve to minimize energy consumption and vehicle miles traveled, thereby addressing the myriad of potential impacts caused by GHG emissions. The Staff Analysis further omits pertinent information from the Project's Final EIR concluding that any individual development project within the City would likely not result in GHG emissions of a magnitude to directly impact global climate change. Page 4.11-17 of the Final EIR states:

> *Because of the global nature of the climate change problem, most projects will not result in GHG emissions that are individually significant (CAPCOA 2009). This concept is supported in the various AG, OPR, and SCAQMD publications (as described above) that almost exclusively address cumulative impacts. Therefore, it is accepted as very unlikely that any individual development project or General Plan would have GHG emissions of a magnitude to directly impact global climate change and the impact of the proposed General Plan Update is considered on a cumulative basis.*

In addition, the Project includes several features as articulated in the Final EIR to address GHG:

- Comply with recognized green building programs that exist at the time of final Project approval such as, but not limited to, Build It Green, the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design–Neighborhood Development (LEED-ND™), California Green Builder, or National Association of Home Builders' National Green Building Standard™.
- Exceed adopted 2008 Title 24 energy requirements by a minimum of five percent.
- Coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and will provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA.
- All residential development to incorporate the following measures, which will be reflected on and incorporated into every application for a final subdivision map that creates residential lots:
    - Builder-installed indoor appliances, including dishwashers, showers, and toilets, will be low water-use. Public and/or common area men's restrooms will be required to feature waterless urinals.
    - Smart Controller irrigation systems will be installed in all public and common area landscaping. Community landscape areas will be designed on a "hydrozone" basis to group plants according to their water requirements and sun exposure.
    - Building materials and finishes are required to contain low amounts of volatile organic compounds (VOCs).
    - Air conditioning units will be Freon-free.
    - Concrete for paving in public infrastructure and Project common areas will not be acid-washed unless mandated by agency requirements.

    - The future homeowners association for Newport Banning Ranch will be required to provide educational information on recycling to all homeowners prior to individual purchase of property and again annually.
    - Multimetering "dashboards" will be provided in each dwelling unit to visualize real-time energy use.
    - Single-family detached residential roofs, commercial building roofs, and public building roofs, will be designed with adequate solar orientation (such as being south-facing roofs with sufficient sun exposure) and to be compatible for the installation of photovoltaic panels or other current solar power technology.
- Implemented then following measures during initial project grading activities and will be incorporated into all grading permit applications submitted to the City:
- The Landowner/Master Developer will use clean-burning diesel fuel, bio diesel fuel, and/or other alternative fuels for heavy construction equipment to reduce construction emissions by 25 percent over 2010 "business as usual" construction equipment emissions.
- Construction waste diversion will be increased by 50 percent from 2010 requirements.
- To the extent practical, during the oilfield clean-up and remediation process, the Landowner/Master Developer will be required to recycle and reuse materials on site to minimize off-site hauling and disposal of materials and associated off-site traffic.
- The Project will provide a network of public pedestrian and bicycle trails to reduce auto-dependency by connecting proposed residential neighborhoods to parks and open space within the Project site and to off-site recreational amenities, such as the beach and regional parks and trails.

With respect to the last listed set of project features, the Coastal Act, recognizes the benefits of providing transportation choices for all people, not only to facilitate coastal access and recreation, but also as a means of reducing VMT, energy consumption and GHG emissions, and thus curtailing the effects of global climate change. The proposed Project's coastal access improvements, including its trails, bike paths and Bluff Road, which would provide the primary coastal access transit route through the site, would inherently serve to minimize energy consumption and air emissions, while protecting, promoting and enhancing a variety of public access and recreational resources in the corridor as mandated by the Coastal Act.

STATE OF CALIFORNIA Arnold Schwarzenegger, Governor

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RECEIVED BY
PLANNING DEPARTMENT
APR 24 2009
CITY OF NEWPORT BEACH

April 13, 2009 (Revised 4-20-09)

Ms. Debby Linn, Contract Planner
CITY OF NEWPORT BEACH PLANNING DEPARTMENT
3300 Newport Boulevard
Newport Beach, CA 92658

Re: SCH#2009031061; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR); for the Newport Banning Ranch Project located in the City of Newport Beach; Orange County, California

Dear Ms. Linn:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 designated to protect California's Native American Cultural Resources. The NAHC is also a 'reviewing agency' for both federal and state environmental documents circulated for review under both federal and state statutes and environmental regulations. The California Environmental Quality Act (CEQA) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the 2007 CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE)', and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following action:

√ Contact the appropriate California Historic Resources Information Center (CHRIS) for possible 'recorded sites' in locations where the development will or might occur.. Contact information for the Information Center nearest you, the South Central Coastal Information Center (Contact Ms. Stacy St. James at 714-278-5395). The record search will determine:

- If a part or the entire APE has been previously surveyed for cultural resources.
- If any known cultural resources have already been recorded in or adjacent to the APE; in this case, CA-ORA-64 is near the proposed site; that site in the mid-1990s yielded hundreds of Native American human remains and thousands of artifacts;.
- If the probability is low, moderate, or high that cultural resources are located in the APE.
- If a survey is required to determine whether previously unrecorded cultural resources are present.

√ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for pubic disclosure.
- The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.

√ The Native American Heritage Commission (NAHC) performed:

- A Sacred Lands File (SLF) search of the project 'area of potential effect (APE)'. The results: Known Native American Cultural Resources were identified within one mile of the 'area of potential effect' (APE).; The NAHC SLF is not exhaustive and local tribal contacts should be consulted from the attached list and the there are Native American cultural resources in close proximity..

- The NAHC advises the use of Native American Monitors, also, when professional archaeologists or the equivalent are employed by project proponents, in order to ensure proper identification and care given cultural resources that may be discovered. This is particularly true for this, proposed project, because of the *plethora of Native American human remains and archaeological features discovered during Phase I of the Playa Vista Project*. The NAHC, FURTHER, recommends that contact be made with Native American Contacts on the attached list to get their input on potential IMPACT of the project (APE) on cultural resources.. In some cases, the existence of a Native American cultural resources may be known only to a local tribe(s) or Native American individuals or elders.
- √ Also, lack of surface evidence of archeological resources does not preclude their subsurface existence.

- Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5 (f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
- Again, a culturally-affiliated Native American tribe may be the only source of information about a Sacred Site/Native American cultural resource.
- Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.

√ Lead agencies should include provisions for discovery of Native American human remains or unmarked cemeteries in their mitigation plans.

- CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the Initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Moreover, the project since it requires a change of zone, will require a General Plan Amendment; this will require additional consultation with local tribal governments pursuant to California Government Code §§65352.3, 65352.4 and 65560 (Open Space).

FURTHERMORE, this project falls under the jurisdiction of the U.S. Army Corps of Engineers (ACOE) and may require an ACOE Permit and possibly a Programmatic Agreement of which the City of Newport Beach will be a signatory. The NAHC is also a 'reviewing agency' for environmental documents prepared under the National Environmental Policy Act (NEPA; 42 U.S.C 4321 *et seq*); Parts 1500 to 1508, USACE Regulations for Implementing NEPA, 33 CFR Part 220; and that are subject to the Tribal and interested Native American consultation requirements of the National Historic Preservation Act, as amended (Section 106) (16 U.S.C. 470). The provision of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001-3013) apply to this project if Native American human remains are inadvertently discovered during 'ground-breaking' activity. The NAHC is of the opinion that the federal standards, pursuant to the above-referenced Acts of the U.S. Congress and the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq*) are similar to and in many cases more stringent with regard to the 'significance' of historic, including Native American items, and archaeological features, including those of Native American origin, than are the provisions of the California Environmental Quality Act (CEQA.) of 1970, as amended. Therefore, the NAHC urges the City of Newport Beach to support and coordinate the federal tribal consultation and Native American cultural resource requirements with those provided for in state statutes and regulations also found in a *Programmatic Agreement* or memorandum of understanding (MOU).

√ Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.
√ Finally, Lead Agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,

Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

Native American Contact
Orange County
April 20, 2009

TI'At Society
Cindi Alvitre
6515 E. Seaside Walk, #C
Long Beach , CA 90803
calvitre@yahoo.com
(714) 504-2468 Cell
Gabrielino

Gabrielino Tongva Nation
Sam Dunlap, Tribal Secretary
P.O. Box 86908
Los Angeles , CA 90086
samdunlap@earthlink.net
(909) 262-9351 - cell
Gabrielino Tongva

Juaneno Band of Mission Indians Acjachemen Nation
David Belardes, Chairperson
32161 Avenida Los Amigos
San Juan Capistrano , CA 92675
DavidBelardes@hotmail.com
(949) 493-0959
(949) 493-1601 Fax
Juaneno

Juaneno Band of Mission Indians Acjachemen Nation
Anthony Rivera, Chairman
31411-A La Matanza Street
San Juan Capistrano , CA 92675-2674
arivera@juaneno.com
949-488-3484
949-488-3294 Fax
Juaneno

Tongva Ancestral Territorial Tribal Nation
John Tommy Rosas, Tribal Admin.
tattnlaw@gmail.com
310-570-6567
Gabrielino Tongva

Gabrielino Tongva Indians of California Tribal Council
Robert Dorame, Tribal Chair/Cultural Resources
P.O. Box 490
Bellflower , CA 90707
gtongva@verizon.net
562-761-6417 - voice
562-925-7989 - fax
Gabrielino Tongva

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693
San Gabriel , CA 91778
(828) 286-1262 -FAX
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 Fax
Gabrielino Tongva

Juaneno Band of Mission Indians
Alfred Cruz, Cultural Resources Coordinator
P.O. Box 25628
Santa Ana , CA 92799
alfredgcruz@sbcglobal.net
714-998-0721
alfredgcruz@sbcglobal.net
Juaneno

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project, located in the City of Newport Beach; Orange County, California.

013882

Native American Contact
Orange County
April 20, 2009

Juaneno Band of Mission Indians
Adolph 'Bud' Sepulveda, Vice Chairperson
P.O. Box 25828 Juaneno
Santa Ana , CA 92799
bssepul@yahoo.net
714-838-3270
714-914-1812 - CELL
bsepul@yahoo.net

Juaneño Band of Mission Indians
Sonia Johnston, Tribal Chairperson
P.O. Box 25628 Juaneno
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sonia.johnston@sbcglobal.net
(714) 323-8312

Juaneno Band of Mission Indians
Anita Espinoza
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Anaheim , CA 92807
(714) 779-8832

Juaneno Band of Mission Indians
Joe Ocampo, Chairperson
1108 E. 4th Street Juaneno
Santa Ana , CA 92701
joeaocampo@netzero.com
(714) 547-9676
(714) 623-0709-cell

United Coalition to Protect Panhe (UCPP)
Rebecca Robles
119 Avenida San Fernando Juaneno
San Clemente , CA 92672
(949) 573-3138

Gabrielino-Tongva Tribe
Felicia Sheerman, Chairperson
501 Santa Monica Blvd, # 500 Gabrielino
Santa Monica , CA 90401
(310) 587-2203
(310) 428-7720 - cell
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fsheerman1@GabrielinoTribe.

Gabrielino-Tongva Tribe
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(310) 587-2203
(310) 428-7720 - cell
(310) 587-2281

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This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project, located in the City of Newport Beach; Orange County, California.

STATE OF CALIFORNIA Edmund G. Brown, Jr., Governor

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RECEIVED BY
COMMUNITY
OCT 1 2011
DEVELOPMENT
CITY OF NEWPORT BEACH

October 3, 2011

Mr. Patrick J. Alford
CITY OF NEWPORT BEACH
3300 Newport Boulevard; P.O. Box 1768
Newport Beach, CA 92663

Re: SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the "Newport Banning Ranch Project;" located in the City of Newport Beach Orange County, California

Dear Mr. Alford:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985; 170 Cal App. 3rd 604). The NAHC wishes to comment on the proposed project. In the decision, the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were identified** within one-half mile of the project. This area is known to the NAHC as very culturally sensitive. Also, the absence of archaeological resources does not preclude their existence.

The NAHC "Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing

relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

ATTACHMENT 2
NEWPORT BANNING RANCH PROPOSED SPECIAL CONDITIONS

IV. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Plans** - The only grading, residential construction, roads and other infrastructure approved pursuant to this coastal development permit are those shown on the revised Site Plans, prepared by the Galloway Group, dated July 11, 2016 (**NBR Attachment A**), associated infrastructure ~~associated with development of the proposed Urban Colony and North Family Village~~ and proposed water quality improvements, and the oilfield clean-up and restoration described below. ~~The proposed Bluff Road, Resort Colony, Community Park and South Family Village are not approved herein.~~ Grading, excavation, and other activities associated with oilfield clean-up and restoration operations carried out consistent with the Regional Water Quality Control Board approved Remedial Action Plan and Special Conditions 7 through 14 is permitted.

   PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and only upon satisfaction of the requirements of **Special Condition 22 (Other Agency Approvals)**, the applicant shall submit, for review and approval of the Executive Director, two (2) sets of revised plans of each type listed below, with drawings to be supplied in size 11" x 17" or larger. The revised plans shall substantially conform to the preliminary plans on file in CDP application 5-15-2097 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 (ESHAs), archeological resources, and bluff and canyon edges. In general, all plans shall be revised to reflect the following (see also general exceptions below and individual exceptions listed within the lettered subsections of this condition) (all setbacks to be measured horizontally through the air 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 "Open Space Conservation Area" on **NBR Attachment B**, which includes onsite ESHA and buffers, Vernal Pools and Other Wetlands including ~~100-ft. wetland~~ buffers, the Actual Areas to be Restored Pursuant to Settlement Agreement as depicted on the map titled "Constraints on Banning Ranch" in **NBR Attachment C**~~**Exhibit 4**~~
   - buffers/setbacks from ESHA and wetlands shall be provided as identified in **NBR Attachment D**
   - Minimum buffers/setbacks shall be provided as follows:
     - a minimum 50~~100~~ foot setback from California gnatcatcher habitat ESHA as depicted on the map titled "ESHA, Wetlands and Buffers" in ~~**Exhibit 3b**~~**NBR Attachment D**
     - a minimum 50 foot setback from sensitive vegetation ESHA as depicted on the map titled "ESHA, Wetlands and Buffers" in **NBR Attachment D**~~**Exhibit 3b**~~

- a minimum ~~100~~ 50 foot setback from wetlands, including vernal pools, as depicted on the map titled "ESHA, Wetlands and Buffers" in **NBR Attachment D~~Exhibit 3b~~**, except where the vernal pool watershed exceeds the 100 foot wetland buffers, then the setback is at the boundary of the watershed
- a minimum 50 foot setback from archeological resources which are eligible for listing in the California Register of Historic Resources (CRHR) and the National Register of Historic Places (NRHP), identified as CA-ORA-839, CA-ORA-844B, and CA-ORA-906
- a minimum of 164 foot setback from Burrowing Owl ESHA burrows, as depicted on the map titled "ESHA, Wetlands and Buffers" in **NBR Attachment D~~Exhibit 3b~~**
- ~~a minimum of 100 foot setback from Burrowing Owl foraging habitat ESHA, as depicted on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b**~~

- a minimum 60 foot setback for structures from coastal bluff edges, as illustrated on **NBR Attachment C**
- a minimum 15 foot setback for structures from the edges of canyons/arroyos, as illsrated on **NBR Attachment C**
- Habitable structures shall have a minimum 5~~6~~0 foot setback from the earthquake fault zone as established in the fault study provided by GMU Geotechnical and as generally identified in **NBR Attachment C**
- Where impacts to ESHA ~~and~~ , Wetlands and Buffers within the Open Space Conservation Area are authorized under the "General Exceptions" below, said resources shall be recreated and/or restored in their original location after the authorized development that disturbs those resources is complete, except that abandonment, remediation and project development impacts to Seasonal Features C and CC may be mitigated within the proposed Vernal Pool Restoration Complex adjacent to the Urban Village.

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

- Impacts to wetlands, including vernal pools, the vernal pool watersheds, ESHA, wetland and vernal pool buffers and ESHA buffers within the Open Space Conservation Area identified in Attachment B, archeological resource buffers, and bluff and canyon edges are authorized for all development necessary to remove and remediate verified clean-up targets included in the Santa Ana Regional Water Quality Control Board (RWQCB) approved Remedial Action Plan, pursuant to **Special Condition 7 (Revised Oilfield Abandonment Plan)**.

- Trails for public access and recreation may be located within the Open Space Conservation Area identified in Attachment B ~~buffers identified on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b**~~ provided they are located in a fashion that minimizes impacts to the resources being buffered.
- ~~Water quality control/improvement structures approved pursuant to **Special Condition 23** and **Special Condition 24** can be located within ESHA buffers and wetland buffers as depicted on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b** and outside of the "buildable areas" as identified in **Exhibit 4** (Constraints on Banning Ranch).~~
- Habitat restoration within ~~ESHA, wetlands, buffers, bluffs, canyons/arroyos~~ may occur pursuant to the approved habitat management plan required by **Special Condition 14**

- Limited existing and proposed utility and drainage infrastructure improvements are allowed in substantial conformance with the preliminary plans on file with CDP 5-13-032 and CDP 5-15-2079)
- The energy dissipaters/lowland water quality basins are allowed as generally shown on **NBR Attachment B**
- Grading and Fire Safe Habitat Restoration shall be permitted in ESHA and wetland buffers for the following:
  - Grading of 25 ft. beyond the approved development footprint edge to allow for construction of a 10 ft. wide accessible (no more than 5% grade) public pedestrian trail.
  - Habitat restoration designed and maintained as a mosaic of native grassland, shrub and succulent/cactus habitats to minimize fire risk and provide nesting and foraging habitat for special-status birds, including California gnatcatcher and coastal cactus wren.
- ~~A road that results in reduced buffer widths may be constructed in the vicinity of Wetlands C and CC only as specified in Section A ("Grading Plans") of this condition.~~
- Any development authorized through a separate coastal development permit within the Oil Remainder Areas depicted on **NBR Attachment C** ~~**Exhibit 4**~~ (Constraints on Banning Ranch).

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

- The 30% grading plans submitted on December 2, 2015, shall be revised to ~~allow development of the Urban Colony and North Family Village residential development only~~eliminate grading for development plan improvements outside of the approved development areas identified on Attachment B, except as allowed pursuant to these Special Conditions~~, including grading necessary for building pads, access roads, and water quality improvements, utilities and infrastructure, and erosion control features. The revised grading plans shall eliminate grading outside of the "buildable area" for the Urban Village and the North Family Village identified in **Exhibit 4** (Constraints on Banning Ranch) attached to the staff report~~. Minimal grading shall be allowed for the approved development plan improvements and 10 foot wide trails proposed surrounding the development within the ESHA and wetland buffers, not to exceed a width of ~~10~~ 25 feet of grading within the buffer areas. Grading shall be allowed for the 20 foot wide trails proposed across the site within the ESHA and wetland buffers, not to exceed a width of 25~~0~~ feet of grading within the buffer areas. No grading ~~shall occur within ESHA, Wetlands or buffer zones~~ for residential development and associated infrastructure shall occur within ESHA, Wetlands or buffer zones within the Open Space Conservation Area identified in Attachment B, except as allowed pursuant to these Special Conditions~~, as depicted on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b**, except as follows in the location of wetlands C and CC: 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 4** (Constraints on Banning Ranch), provided that~~

~~mitigation measures to prevent poor water quality or other impacts that would significantly degrade the wetlands 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 wetlands CC and C are, at a minimum, increased in area equivalent to the reduced buffer to allow the road (road width right-of-way not to exceed 50 feet as consistent with **Special Condition 3**) and made larger as necessary to merge the buffers for C and CC together to form a cohesive wetland complex~~.

Final grading plans shall identify the CCC coastal bluff edges and the CCC canyon/arroyo bluff edges as indicated on ~~**Exhibit 4**~~ **NBR Attachment C** (Constraints on Banning Ranch)~~ attached to the staff report~~.

B. SUBDIVISION/TRACT MAPS

1. A revised subdivision/tract map shall be submitted that identifies all areas identified as "Open Space Conservation Area" as identified in Attachment B and described in **Special Condition 10** as "open space lots" that shall be subject to the restrictions on uses identified in **Special Condition 10 (Open Space/Conservation Area)**.
2. The revised subdivision/tract map may allow subdivision of the approved development areas identified on **NBR Attachments A and B** ~~"buildable areas" depicted on **Exhibit 4** (Constraints on Banning Ranch)~~ into smaller or larger 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 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 site plan shall be submitted ~~for the Urban Village/colony and the North Family Village shall be provided~~ that limits the residential, commercial and park development footprint, including all roads serving the proposed uses, to the approved development areas identified on **NBR Attachments A and B** ~~structures and supporting infrastructure such as roads, utilities, drainage facilities and fuel modification zones to the "buildable areas" as identified in **Exhibit 4** (Constraints on Banning Ranch);~~
2. The site plan shall delineate as "open space" the areas that are identified as the "Open Space Conservation Area" as identified in **NBR Attachment B** and described in **Special Condition 10**;

~~3. The revised site plan may include a road that results in reduced buffer widths only as specified in Section A ("Grading Plans") of this condition.~~

~~**4.**~~**3.** The revised site plan may include trails, fuel modification zones/fire safe habitat restoration, utility and drainage infrastructure, and access elements that are located within Open Space Conservation Area" as identified in **NBR Attachment B** ~~areas of ESHA or ESHA buffers~~ only as specified in Section A ("Grading Plans") of this condition and identified on plans approved pursuant to **Special Condition 3 (Circulation System Plans) and Special Condition 16 (Sign Plan).**

D. PHASING PLAN

A revised final phasing plan shall require that the following steps be ~~phased~~ initiated in the order below for each phase of project development:

1. Undertake the Clean-Up Target Confirmation Sampling required pursuant to **Special Condition 8** and prepare the SITE-SPECIFIC RESTORATION AND MONITORING PROGRAM as described in **Special Conditions 14 (Habitat Management Plan)**.
2. Initiate surface removals and abandonment of oil infrastructure and wells where no vegetation or sensitive resources are impacted using only existing roads and access.

~~2.~~3. Clean-up and material treatment, processing, stockpiling, borrow, and disposal activities described in the Santa Ana Regional Water Quality Control Board (RWQCB) approved Remedial Action Plan.

~~3.~~4. Accounting and verification of all impacts of oilfield clean-up activities to all ESHA and Wetlands and required in-place restoration and mitigation.

~~4.~~5. Grading, staging, and site preparation for residential, commercial and park development ~~of the Urban Colony and North Family Village only and associated infrastructure and utilities~~.

6. Construction of public facilities, public access improvements and trails shall occur concurrent with construction of commercial and residential development.

~~5.~~7. Completion of the initial habitat restoration of open space shall occur concurrent with construction of commercial and residential development.

8. The hostel must be operating and available to the public concurrent with the occupation of the hotel
9. All upland parks and trails must be operating and available to the public concurrent with the occupation of the first residential unit within each phase of project development identified in the final phasing plan.
10. All lowland parks and trails must be operating and available to the public upon completion of oil field abandonment and remediation activities.

~~6. Construction of residential units.~~

~~7. All public open space and trails must be operating and available to the public prior to the occupation of the first residential unit.~~

E. The permittee shall undertake development in conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Architectural and Construction 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 scaled architectural and construction plans, with drawings to be supplied in size 11” x 17” or larger. The final plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1 (Revised Plans)**, 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 and revised plans submitted July 2016 on file in CDP application 5-15-2097.

2. Revised 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, and fencing.
3. Foundation plans shall be submitted for each structure type limited to standard ~~slab~~ 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. 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. Articulation is required between the height differences. 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 that 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.
5. All doors, windows, and 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 appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any embedded materials or appliqués 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 appliqués. All materials and appliqués 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.
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 unit within each multi-family dwelling and 1 guest space for every two multi-family dwelling units; Public on-street parking spaces shall be provided throughout the development to support the use of the trail network. Parking spaces shall be calculated and the location shall be called out on the revised plans required in **Special Conditions 1, 3, and 15**.

7. Complete construction plans for water quality control/improvement structures approved pursuant to **Special Condition 23** and **Special Condition 24**

B. The permittee shall undertake development in conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. 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 plans for the roadways, trails, and site circulation system, with scaled drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1 (Revised Plans)** 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 "Bluff Road" network extending from West Coast Highway up to 17th street and across the Southerly/Main Arroyo and the North-South Arroyo head.~~

~~2. Access to the site shall be provided from 17th street only.~~

~~3. Emergency vehicle access may be provided between the Residential development and the Oil Remainder Areas using the existing road and existing access off of PCH and using approved Multi-use trails.~~

~~4.~~1. The curb to curb widths ~~Right-of-way~~ for all roads is limited to 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 as illustrated in **NBR Attachment E**, with bike lanes in areas only where there is sufficient space in the identified approved development areas shown in **NBR Attachment B**. Turn lanes will be allowed within the same maximum

curb to curb width at intersections, and Bluff Road can be widened at the intersection of West Coast Highway as noted in number 5 below. ~~and the identified "buildable area" shown in **Exhibit 4** (Constraints on Banning Ranch)~~.

~~5.~~2. Bike lanes and sidewalks shall be limited to the minimum width necessary, 5 feet for bike lanes and 4 feet for sidewalks.

~~6.~~3. Trails shall be designed to serve as alternatives to sidewalks and bike lanes where they cannot be provided on-street due to site constraints. Trails shall also serve as options for non-automobile 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 16**

(Sign Plan). 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 **NBR** ~~**Exhibit 3b (ESHA, Wetlands and Buffers**~~**Attachment X B**~~) 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.

~~7.~~4. Bluff Road may be widened at the intersection with West Coast Highway as shown in Exhibit 30 to allow for 2 northbound lanes and 3 southbound lanes with adequate pocket lengths and transitions to the standard Bluff Road section.

B. The permittee shall undertake development in conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

4. Landscape Plans for Lands Not Included in the Approved 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 landscaping plans, with scaled drawings to be supplied in size 11” x 17” or larger. The final plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1 (Revised Plans)** except in the isolated instances where the following would preclude implementation of the exceptions listed. Revised landscaping plans required by this condition shall be prepared by an appropriately licensed professional, shall cover all areas not included in the approved Habitat Management Plan, and shall meet 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, including lawn/grass species. No permanent in-ground swimming pools are permitted 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, and the 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 14**.
7. Except for approved landscaping on the private residential <u>and commercial</u> lots <u>and</u> for approved turf species <u>in park areas</u>, 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 <u>and commercially</u> developed portions of the site that would be visible from public <u>parks</u> areas, 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 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 Habitat Management Plan shall be as indicated in the revised 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, drought-tolerant turf species that may be planted in park areas. 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 conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

5. 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 scaled drawings to be supplied in size 11" x 17" or larger. The final plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1** (Revised Plans) 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. The proposed lighting plan shall include, but not be limited to, the following elements:
   - Street lights may only be utilized at key intersection and shall be limited to the use of light emitting diode (LED) lights.
   - All other exterior lighting shall be wildlife-friendly and shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes.

~~1.~~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 on **NBR ~~the map titled "ESHA, Wetlands and Buffers" in Exhibit 3b~~Attachment D.** 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 conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

6. 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 Fire Hazard Mitigation and Fuel Management Requirements Plan, with scaled plans to be supplied in size 11" x 17" or larger. The revised plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1 (Revised Plans)** 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, including fire safe habitat restoration, approved by the Executive Director pursuant to **Special Condition 14**. ~~The final fire hazard mitigation and fuel management plan shall provide fuel management zones within the "buildable areas" identified in **Exhibit 4 (Constraints on Banning Ranch),** which zones shall include a minimum of 60 feet of defensible space with the buildable areas. No fuel management zones shall be within areas identified as ESHA, Wetlands, or Watershed as depicted on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b**.~~
2. ~~Proposed residential structures shall be set back a minimum of 60 feet in horizontal distance through the air from ESHA and Wetlands, including areas serving as buffers pursuant to **Special Condition 1** and as depicted on the map titled "ESHA, Wetlands and Buffers" in **Exhibit 3b**, 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 protected resource areas or their buffers as identified in **Exhibit 3b (ESHA, Wetlands and Buffers).**~~ 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 conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

7. 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*, including that ground-truthing 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 ~~"buildable areas"~~ approved development areas as identified in **NBR** ~~**Exhibit 4**~~

~~**(Constraints on Banning Ranch)**~~**Attachments A and B**;

2. existing cleared, disturbed non-native vegetation (excluding non-native grasslands) and unvegetated areas not identified as ESHA or wetlands in Exhibit 3; and
3. 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.

~~1. areas not identified as ESHA, wetlands, ESHA buffer, or wetlands buffer in **Exhibit 3b**.~~

For the purposes of this special condition, these two types of areas shall be referred to as the "available area." The applicant shall limit the remediation action areas site plan to these "available areas" and shall confine the RAP identified removals and any interim stockpiling to these areas to the extent feasible.~~onsite materials treatment, processing, borrow, stockpiling, and disposal activities to those locations shown in this revised remediation action areas site plan as being part of the "available area."~~

If the "available area" does not provide sufficient land area for the applicant to perform the material stockpiling, treatment, processing, borrow, and disposal activities as it has currently proposed, 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. As provided for the in the Remedial Action Plan approved by the Santa Ana Regional Water Quality Control Board, placement of clean, treated material within clean-up excavations in the lowland portion of the site (including any such excavations in ESHA, wetlands, ESHA buffer, or wetlands buffer 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; however, the duration of time each site is disturbed and overall duration of overall site clean-up shall also be minimized to the extent feasible;
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 waste materials such as dispersed asphalt like material, 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 impacts to sensitive plant and wildlife species ~~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 so that such access only uses existing oilfield access roads and work areas and does so without removal of sensitive 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 ~~"buildable areas"~~approved development areas indicated in ~~**Exhibit 4 (Constraints on Banning Ranch)**~~ **NBR Attachments A and B**, 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 the protection of such sensitive species. 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 locations of sensitive species adjacent to work areas 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 abandonment and remediation (including clean-up sites and the soil borrow, material stockpiling, processing, treatment and disposal operations areas, and pipeline corridors), 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. The Executive Director shall respond in writing to all such submitted vehicular access designations within 10 working days. 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~~and remedial excavations ~~site~~, an exclusion plan shall be prepared by the applicant and approved by the Executive Director. The plan, which shall be included in the Revised Oil Field Abandonment 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, to the extent feasible, 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. The Executive Director shall respond in writing to all submitted revisions to the plan within 10 working days.

8. The applicant shall restrict abandonment and remediation~~construction~~ activities and equipment to existing roads, pads or otherwise disturbed areas as much as possible.
9. Where new vehicle 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. The Executive Director shall respond in writing to all such submitted vehicular access designations within 10 working days.
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 except as allowed to complete abandonment and remediation pursuant to this Special Condition.
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 except as allowed to complete abandonment and remediation pursuant to this Special Condition.
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 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 except where development plan improvements are approved pursuant to this permit.
13. For sites where new and ongoing 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 14 (Habitat Management Plan)** except where development plan improvements are approved pursuant to this permit.
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 3a**, 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.

8. 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 **NBR** ~~**Exhibit 3a**~~ **Attachment D** or within 200 feet of areas of prehistoric cultural importance identified through Native American consultation, 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 an explanation of 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 **NBR Attachment D** ~~**Exhibit 3a**~~ or within 200 feet of areas of prehistoric cultural importance shall not occur until written approval of the relevant site-specific clean-up plans for such areas are granted by the Executive Director.

9. Quantification of Oilfield Clean-Up Impacts

A. WITHIN 9~~3~~0 DAYS FOLLOWING completion of oilfield clean-up activities in and within 50 feet ~~immediately around~~ each area designated as ESHA or wetlands shown on ~~**Exhibit 3a**~~ **NBR Attachment D**, 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 by the biologist and the results of the survey shall be submitted for Executive Director review and written approval. This survey can be combined with the area closure report documentation that is also submitted to the Regional Water Quality Control Board. The Executive Director shall respond in writing to all such submitted clean-up impacts assessment and quantification survey results within 20 calendar days. 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 (Revised Plans)** and **14 (Habitat Management Plan)**, all temporary impacts to environmentally sensitive habitat and wetlands from abandonment and remediation shall be remedied by restoring the resources in place at a 1:1 ratio, except for impacts to wetlands and vernal pools located on the mesa and where development plan improvements are approved pursuant to this permit. Where abandonment and remediation impacts affect wetlands and vernal pools located on the mesa or are coincident with development plan impacts, ~~and mitigation for~~ those impacts shall be ~~provided~~ mitigated at the appropriate ratio for that habitat type established in Special Condition 14. Native plants, similar to those impacted and grown from seed collected onsite or as near to the site as feasible if on-site collection isn't completely feasible, shall be used to re-establish the area consistent with current conditions or enhance it.

C. The Habitat Management Plan ("HMP") discussed in **Special Condition 14** 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.

10. Open Space/Conservation Area

A. The phrase "Open Space/Conservation Area" (or "OSCA") shall refer to the areas generally depicted on **Exhibit 9 (T.T.M. Lots dated August 12, 2016)** as "Lettered Lots" A through E, G through P, and R, excluding the trails described in **Special Condition 11 (Trails Within Open Space/Conservation Area)**, 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. The OSCA granted pursuant to this condition shall not become effective unless and until a coastal development permit is granted and development has commenced pursuant to 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 14** 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 12** 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 3 (Circulations System Plans), 15 (Public Access and Parking) and 16 (Sign Plans)**;
   b. invasive vegetation removal and restoration planting in accordance with the final habitat management plan 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 23 (Interim Erosion Control Plan) and 24 (Water Quality Management Plan)** <u>including the energy dissipaters/lowland basins are allowed in substantial conformance as shown on the 30% Grading Plans submitted on December 2, 2015</u>;
   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 final Abandonment Plan approved pursuant to **Special Condition 7 (Revised Oilfield Abandonment Plan)** and the Remedial Action Plan approved by the Santa Ana Regional Water Quality Control Board (RWQCB) pursuant to **Special Condition 7;**
   e. archeological testing of, and preservation and protection measures taken with respect to, cultural deposits as identified in the Archeological Research Plan approved by the Executive Director, and as required pursuant to **Special Condition 17 (Protection of Cultural Resources)**, though if the process outlined therein requires a subsequent coastal development permit for the work, then only once that permit has been issued;
   <u>f.</u> 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.
   <u>g. existing and proposed utility and drainage infrastructure improvements are allowed in substantial conformance as shown on the preliminary plans on file with CDP 5-13-032 and CDP 5-15-2079).</u>
   <u>h. Fuel Modification Zone/ fire safe habitat restoration, which shall be allowed within ESHA and wetland buffers as described in Special Condition 1.</u>

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 one of the items listed in the next paragraph to a public agency or non-profit entity, or some combination thereof, approved by the Executive Director and shown to have: (a) no conflict-of-interest with the provision of open space conservation, (b) a plan for substantive consultation with Native American tribal governments with ties to the land in developing and implementing plans for habitat restoration and preservation and environmental and cultural education, (c) demonstrated experience in land conservation and habitat restoration, (d) the support of the public, environmental and restoration organizations, and (e) a mission that reflects the maximum public interest;
   3. The irrevocable offer required by the prior paragraph shall be for 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;
   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 OSCA prepared by a licensed surveyor based on an on-site inspection;
   5. reflect that development in the OSCA 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 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 <u>or relocated to an alignment/area that does not impact the habitat value of the OSCA</u>;
   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 C.2, being irrevocable for a period of 21 years, such period running from the date of recording;
   8. 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.

11. Trails Within the Open Space/Conservation Area

The phrase "OSCA Trails" shall refer to the areas where trails are to be constructed within

what would ~~, if not excluded by the definition of OSCA at the beginning of the prior condition,~~ be part of the Open Space/Conservation Areas, generally surrounded by the OSCA. Trails constructed as OSCA Trails shall be consistent with **Special Condition 3 (Circulation System Plans).** The OSCA Trails are generally depicted on **Exhibit 2, page 1 (Site Plan)** but will be revised on plans approved by the Executive Director pursuant to **Special Condition 3** and those 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. The OSCA Trails granted pursuant to this condition shall not become effective unless and until a coastal development permit is granted and development has commenced pursuant to this permit.

A. 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 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 3 (Circulations System Plans), 15 (Public Access and Parking) and 16 (Sign Plans).**
   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 3 (Circulations System Plans), 15 (Public Access and Parking) and 16 (Sign Plans)** 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 3 (Circulations System Plans), 15 (Public Access and Parking) and 16 (Sign Plans);**
      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 12**;
      c. construction of drainage and water quality management devices in accordance with the final plans approved by the Executive Director pursuant to **Special Condition 23 (Interim Erosion Control Plan) and 24 (Water Quality**

Management Plan);

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 approved pursuant to **Special Condition 7 (Revised Oilfield Abandonment Plan)** and the Remedial Action Plan approved by the Santa Ana Regional Water Quality Control Board (RWQCB) pursuant to **Special Condition 7;**

e. installation of native plantings or natural barriers on archeological testing of, and preservation and protection measures taken with respect to, cultural deposits as identified in the Archeological Research Plan approved by the Executive Director, and as required pursuant to **Special Condition 17**, though if the process outlined therein requires a subsequent coastal development permit for the work, then only once that permit has been issued;

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.

g. existing and proposed utility and drainage infrastructure improvements are allowed in substantial conformance as shown on the preliminary plans listed in Appendix A2 to the staff report (on file with CDP 5-13-032 and CDP 5-15-2079).

~~f.~~h. Fuel Modification Zones/ fire safe habitat restoration, which shall be allowed within ESHA and wetland buffers as described in Special Condition 1

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 14.**

B. 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 one of the items listed in the next paragraph to a public agency or non-profit entity, or some combination thereof, approved by the Executive Director and shown to have: (a) no conflict-of-interest with the provision of public access and passive recreation, (b) a plan for substantive consultation with Native American tribal governments with ties to the land in developing and implementing plans for habitat restoration and preservation and environmental and cultural education, (c) demonstrated experience in land conservation and habitat restoration, (d) the support of the public, environmental and restoration organizations, and (e) a mission that reflects the maximum public interest;
3. The irrevocable offer required by the prior paragraph shall be for 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;

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 OSCA Trails, prepared by a licensed surveyor based on an on-site inspection;
5. reflect that development in the OSCA Trails 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 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 or relocated to an alignment/area that does not impact the habitat value of the OSCA;
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 C.2, being irrevocable for a period of 21 years, such period running from the date of recording;
8. 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;
9. 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.
10. The trail, park and recreational facilities granted pursuant to this condition shall not become effective unless and until a coastal development permit is granted and development has commenced pursuant to this permit.

12. 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) ~~any~~ the public access and recreational use areas (b) the Open Space/Conservation Area ("OSCA"); and (c) the trails within the OSCA referred to in the prior condition as the OSCA Trails and the Active Parks.

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, buildup, etc.), removal and/or trimming of vegetation that is interfering with public use of the OSCA, OSCA Trails, ~~any other public access and recreational use areas,~~ repair/replacement of public access signs, trash receptacles, benches, handrails, stairs, and lighting for the OSCA, OSCA Trails, public parks and recreational 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, public parks recreational areas; and
   d. A list of maintenance activities related to the on-going restoration and habitat enhancement for the OSCA, OSCA Trails, and recreational areas.

13. 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 Construction Staging and Corridors Plan, with drawings to be supplied in size 11" x 17" or larger. The revised plans shall conform to the General Project Design Parameters and General Exceptions to Project Design Parameters as identified in **Special Condition 1 (Revised Plans)**. The revised construction staging and corridors plan shall demonstrate that:
   1. No construction activity, construction staging, or materials, debris, waste or equipment storage shall occur outside the "approved development ~~buildable~~ areas" as identified in ~~**Exhibit 4**~~ **NBR Attachment C (Constraints on Banning Ranch),**

except those uses identified as General Exceptions to Project Design Parameters pursuant to Special Condition 1;

2. Prior to commencement of soil clean up, site preparation, 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, wetlands, vernal pool watershed, archeological resources, and their buffers- ~~and all other identified constraints~~. 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 ~~or constraints~~ 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 buffers as identified in ~~**Exhibit 3b**~~**NBR Attachment D (ESHA, Wetlands and Buffers)**
   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.

14. Habitat Management Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a revised 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 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 residential, commercial, visitor-serving or park uses and associated development, generally depicted as all areas of the 401 acre site not included in the "~~buildable~~ approved development areas" or the "Oil Remainder Areas" footprints as shown in ~~**Exhibit 4**~~**NBR Attachment C** **(Constraints on Banning Ranch)**~~ 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 map attached as **NBR Attachment C**~~**Exhibit 3a** 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 located outside the approve development areas and 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 9 (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 18 (Estimated Oil Field Clean-Up Sites in ESHA and Wetlands)**, the estimated total area of wetland and ESHA impacts from oilfield clean-up activities is 59 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 permanent impacts to ESHA and wetlands from the oil contaminated soil and oil and gas infrastructure clean-up and removal work. All temporary impacts to environmentally

sensitive habitat and wetlands from abandonment and remediation shall be restored in place at a 1:1 ratio.Where abandonment and remediation impacts affect wetlands and vernal pools located on the mesa or are coincident with development plan impacts, those impacts shall be mitigated at the appropriate ratio as provided in the table of mitigation ratios required pursuant to this Special Condition. As an initial planning step, the estimated type and acreage of impacts shown in **Exhibit 18 (Estimated Oil Field Clean-Up Sites in ESHA and Wetlands)** 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 wetland~~s C and CC~~W, 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 underpass that is designed by a qualified biologist and an engineer.

    f. 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).

    g. Mitigation for the fill of wetlands and vernal pools located on the mesa 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.

9. Remove all references to the "mitigation bank." A mitigation bank is not approved as part of this coastal development permit.
10. ~~For areas outside of Burrowing Owl foraging ESHA, i~~Identification of the location and acreage of preserved and developed grassland raptor foraging habitat on the upper mesa demonstrating that for each acre developed, 0.5 acre is preserved or created.

~~11. Impacts to Burrowing Owl Foraging Grasslands that include non-native grasses shall be restored with salt-grass and native grasslands.~~

~~12.~~11. 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.

~~13.~~12. 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.

~~14.~~13. 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.

~~15.~~14. Only plant communities that are currently present or are demonstrated to have been previously present on Banning Ranch shall be restored or created.

~~16. 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.~~

~~17.~~15. 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 9 (Quantification of Oilfield Clean-up Impacts)** and part 7 of this condition.

16.The plan shall calculate the acreage of mitigation for all permanent impacts, and temporary impacts to wetlands and vernal pools located on the mesa, based on the ratios below:

Permanent Impact 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	3:1
Vernal Pool Wetlands with San Diego Fairy Shrimp	4:1
Coastal Sage Scrub Vegetation	3:1
Riparian Vegetation	3:1
~~ESHA Burrowing Owl Foraging grasslands - salt grass~~	~~2:1~~
~~ESHA Burrowing Owl~~ Foraging grasslands – native and non-native grasslands~~and ruderal grass~~	0.5:1

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

17. Advance compensatory mitigation may be permitted pursuant to the Final HMP approved by the Executive Director, and implementation of compensatory mitigation as identified in the Final HMP in advance of Project impacts shall serve to reduce the above identified mitigation ratios by reducing temporal loss of habitat acreage, functions, and services from construction-related impacts.

In the event advanced compensatory mitigation plans are implemented and performing at identified performance standards ahead of construction impacts, the above identified mitigation ratios will be reduced according to the progress of the mitigation at the time of project impacts. In the case where mitigation has been installed and meets the five year performance standards, a ratio of 1:1 for habitat creation and substantial restoration (1:1 ratio of habitat replacement to impacts) and 2:1 for habitat enhancement (a 2:1 ratio of habitat enhancement to impacts) would be applied. Where impacts occur after habitat installation but before the five year performance standards are fully achieved, the mitigation ration would be reduced on a pro-rated basis according to the progress of the restored or enhanced habitat. The determination of the mitigation ratio for advance mitigation would be as follows:

- Mitigation Sites achieve five-year performance standard prior to impacts: Mitigation Ratio reduced to 1:1 for creation/substantial restoration and 2:1 for enhancement
- Mitigation Sites achieve four-year performance standards prior to impacts: Mitigation Ratio reduced by 75% for creation/substantial restoration and for enhancement
- Mitigation Sites achieve three-year performance standards prior to impacts: Mitigation Ratio reduced by 50% for creation/substantial restoration and for enhancement
- Mitigation Sites achieve two-year performance standards prior to impacts: Mitigation Ratio reduced by 25% for creation/substantial restoration and for enhancement

Mitigation credits applied to overall Project mitigation ratio obligations will be accounted for with a credit ledger that tracks advanced mitigation implementation timing and performance, with anticipated temporary and permanent Project impacts.

For example, if final project impacts to scrub ESHA are determined to be 10 acres and total mitigation obligations are determined to be 30 acres based on the above identified 3:1 mitigation ratio, the following mitigation ratio credits may be applied based on successful performance of a 10-acre advanced scrub restoration site:

Example - Total Scrub Impact with Advanced Mitigation Ratio Credit Ledger

	Advanced Mitigation Ratio Credit Allowance				
	Year 1	Year 2	Year 3	Year 4	Year 5
Mitigation Credit Upon Achieving Identified Performance Standards prior to Construction Impacts	0% ratio reduction 10 acres @ 3:1	25% ratio reduction 10 acres @ 2.25:1	50% ratio reduction 10 acres @ 1.5:1	75% ratio reduction 10 acres @ 0.75:1	100% ratio reduction 10 acres @ 1:1
Total Mitigation Requirement	30 acres	22.5 acres	15 acres	7.5 acres	10 acres

~~17.~~18. 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.

Temporary Impacts shall mean all project disturbances resulting in impacts to ESHA and/or wetlands lasting no more than 6 months in a specific project area. Project area disturbances lasting longer than 6 months and thus precluding initiation of in-place and in-kind mitigation within 6 months of the initial site disturbance shall be mitigated pursuant to the Mitigation Ratios for Creation or Substantial Restoration of Habitat above.

~~18.~~19. 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, or the applicant must identify and

prepare an offsite HMP for review and approval of the Executive Director.

~~19.~~20. 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 9**; 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 **NBR Attachment D~~Exhibits 3a and 18~~**, 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 Ranchor 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 **NBR Attachment D** ~~**Exhibit 3b**~~ **(ESHA, Wetlands and Buffers)** 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 Wintering 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 1,640 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 or demolition or abandonment, 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 **NBR Attachment D** ~~**Exhibit 3a**~~ **(ESHA and Wetlands)**, 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.

15. 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 public street 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, non-automobile use, and vehicular access consistent with the above special conditions. All publicly and privately maintained streets~~, trails, roads,~~ and street 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. Upland trails will be open for use by the general public 24 hours per day, 7 days a week; Lowland trails will be open 6 a.m. to Sunset. Parks and public parking areas will be open 6 a.m. to 11 p.m. and posted No Overnight Parking. 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, or public parking areas shall be prohibited. Access control and parking rates of parking structure 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.

16. 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 (Revised Plans)**, 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, and OSCA Trails, 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 (OSCA) 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, 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.
6. Interpretative signage shall be limited to environmental and cultural educational signage.
7. Community monuments and entry-signs into the development from PCH, 15th, 16th and 17th street 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 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 possible.
9. All signs shall be installed only within the "~~buildable~~ approved development areas" identified on **~~Exhibit 4~~NBR Attachment C (Constraints on Banning Ranch)** or with the OSCA Trails trail right-of-way, consistent with **Special Condition 11 (Trails Within the Open Space/Conservation Area)**.
10. Signage shall acknowledge the California Coastal Commission's role in providing public access at this location by including the agency name and logo. For any trail that is a component or segment of the California Coastal Trail, trail signage shall identify it as part of the California Coastal Trail and also include the California Coastal Trail logo.

B. Signs and displays not explicitly permitted in this document that are inconsistent with or could undermine the purposes of the signage required pursuant to Section A of this condition 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.

17. 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 plan (ARP), prepared consistent with **Subsections G, H and I** of this condition, which shall incorporate the following measures and procedures:

Additional Tasks Required Prior to Any Ground Disturbance for the Oilfield Abandonment/Remedial Action or for Residential/Commercial Development:

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 final "Newport Banning Ranch Archaeological Testing Plan – August 2016" by Bonterra-Psomas, approved by the Executive Director on August 17, 2016 and by the conditions below and any other applicable conditions of this permit;
2. If recommended by the archaeological peer review committee, Native American groups and agency review process described in Subsection G, the applicant shall undertake additional archeological testing to determine the boundary of known prehistoric archeological sites and, where necessary, testing (including the use of cadaver dogs or other test methods recommended by peer-review) to ensure that all other prehistoric archeological sites that may be present ~~on the site~~within the approved development areas are identified and accurately delineated (to the maximum extent practicable and in accordance with current professional archeological practices). The purpose of any further testing is to locate and delineate the boundaries of all prehistoric cultural deposits present on the site and to avoid disturbance to those deposits by any of the development contemplated by the applicant in its proposal;
3. If any significant cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural, religious or spiritual sites, intact midden soil and lithic material or artifacts, are discovered during the additional archeological testing they shall not be exposed and the testing shall be immediately halted in this location. Additional testing shall be conducted further from the center of the discovery until sterile conditions are encountered. The revised ARP does not authorize the excavation of any cultural deposits nor data recovery. Nothing in this condition shall prejudice the ability to comply with applicable State and Federal laws if human remains are encountered. However, in compliance with applicable State and Federal laws the project archaeologist shall work with the designated Most Likely Descendant(s) ~~County Coroner~~ and appropriate regulatory~~other~~ authorities to allow Native American human remains to be left in situ, to the maximum extent practical.
4. The revised ARP shall identify proposed mitigation measures for the recovery and/or relocation/reburial of prehistoric cultural deposits consistent with Native American Tribal guidance that shall be undertaken when the procedures outlined in the Clean-Up Target Confirmation Sampling in Sensitive Resource Areas condition (**Special Condition 8**) are completed and, only if 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. Further, the revised ARP shall ~~provide~~ advise the method of construction associated with oilfield clean-up, including but not limited to the types and weight of mechanized equipment to be used, and the storage locations of such equipment. The Plan shall require that pipes and other oil infrastructure be removed by hand wherever possible, in order to avoid damage to archaeological resources;
5. Archeological and cultural resource monitoring shall be consistent with section C of this condition;
6. Implementation of the revised ARP shall not occur until the coastal development

permit has been issued.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director an archaeological mitigation plan, prepared by a qualified professional consistent with **Subsections G, H and I** of this condition, which shall incorporate the following measures and procedures:
   1. The permittee shall carry out significance testing of the cultural deposits located within the approved development areas that were excavated during archaeological testing in 2009 for the EIR process pursuant to **Subsection E** below, unless the sites and/or deposits have previously been found to be insignificant, and, if cultural deposits are found by the Executive Director to be significant, additional investigation and mitigation, including but not limited to reburial of the items, in accordance with this special condition including all subsections shall be required. No significance testing, investigation or mitigation shall commence until the provisions of this special condition are followed, including all relevant subsections;

C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director an archaeological monitoring and mitigation plan for the protection of archaeological/cultural resources during project grading and construction activities, prepared by a qualified professional, consistent with **Subsections G, H and I** of this condition, which shall incorporate the following measures and procedures:
   1. During all digging, ground disturbance, and subsurface activity on the site, Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards and the Native American most likely descendants (MLDs) if designated pursuant to Public Resources Code Section 5097.98~~from each tribe when State Law mandates identification of MLDs~~, or their designated representative, shall be present on the site.
   2. Also present during all digging, ground disturbance, and subsurface activity on the site shall be a minimum of 1 set of Native American monitors for every location of ground disturbance; 1 set shall include 2 individual monitors and be defined as one monitor representing the Gabrieleño-Tongva and one monitor representing the Juaneño-Acjachemen, as identified on the Native American Heritage Commission's list (NAHC list)7. Both Native American monitors in the set shall be present at the same time and monitoring the same location.
   3. More than 1 set of monitors on the site may be necessary during times with multiple grading and soil disturbance locations.
   4. Tribal representatives selected for the monitoring set shall be rotated equally and fairly among all tribal groups identified as Gabrieleño-Tongva and Juaneño-Acjachemen on the NAHC list, such that every tribal group has an equal opportunity to monitor on the site.

5. During all digging, ground disturbance, and subsurface activity on the site, any Native American representatives of the Gabrieleño-Tongva and Juaneño-Acjachemen on the NAHC list are welcome to be present on the site and voluntarily monitor, even if they are not the assigned set of monitors within the rotation for that day. All volunteer monitors shall be assigned to a specific monitoring group by the archaeologist in charge.
6. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading or other development that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times. All archaeological monitors, Native American monitors and Native American most likely descendants (MLD) if designated pursuant to Public Resources Code Section 5097.98 shall be provided with a copy of the final revised ARP, approved archaeological monitoring and mitigation plan required by this permit. Prior to commencement of grading, the applicant shall convene an on-site pre-grading meeting with the all archaeological monitors, Native American monitors and Native American most likely descendants (MLD) if designated pursuant to Public Resources Code Section 5097.98 along with the grading contractor, the applicant and the applicant's archaeological consultant in order to ensure that all parties understand the procedures to be followed pursuant to the subject permit condition and the approved archaeological monitoring and mitigation plan, including the procedures for dispute resolution. At the conclusion of the meeting all attendees shall be required to sign a declaration, which has been prepared by the applicant, subject to the review and approval of the Executive Director, stating that they have received, read, discussed and fully understand the procedures and requirements of the approved archaeological monitoring and mitigation plan and agree to abide by the terms thereof. The declaration shall include contact phone numbers for all parties and shall also contain the following procedures to be followed if disputes arise in the field regarding the procedures and/or terms and conditions of the approved archaeological monitoring and mitigation plan, and ARP. Prior to commencement of grading a copy of the signed declaration shall be given to each signatory and to the Executive Director.
   (a) Any disputes in the field arising among the archaeologist, archaeological monitors, Native American monitors, Native American most likely descendants (MLD) if designated pursuant to Public Resources Code Section 5097.98 , the grading and construction contractors or the applicant regarding compliance with the procedures and requirements of the approved archaeological monitoring and mitigation plan or ARP shall be promptly reported to the Executive Director via e-mail and telephone.
   (b) All work shall be halted in the area(s) of dispute. Work may continue in area(s) not subject to dispute, in accordance with all provisions of this special condition.
   (c) Disputes shall be resolved ~~by the Executive Director,~~ in consultation with the archaeological peer reviewers, Native American monitors, Native American MLD, the

[7] Both the Native American Heritage Commission's current California Tribal Consultation list and SB Contact18 list

archaeologist and the applicant. The Executive Director shall use best efforts to resolve all such disputes within 72 hours.

(d) If the dispute cannot be resolved by the Executive Director in a timely fashion, said dispute shall be shall be referred to the archaeological peer review committee ~~reported to the Commission~~ for resolution ~~at the next regularly scheduled Commission meeting~~within 72 hours.

7. If any significant cultural deposits are discovered during project grading or construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other significant artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found by the Executive Director to be significant pursuant to **Subsection E** of this condition and any other relevant provisions, additional investigation and mitigation in accordance with all subsections of this special condition;
8. If any significant cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or other significant artifacts, all development shall cease in accordance with **Subsection D** of this special condition;
9. In-situ preservation and avoidance of cultural deposits shall be considered as the preferred mitigation option to the maximum extent feasible, to be determined in accordance with the process outlined in this condition, including all subsections. A setback shall be established between the boundary of cultural deposits preserved in-situ and/or reburied on-site and any proposed development; the setback shall be ~~no less than~~ 50 feet from the boundary of cultural deposits which are eligible for listing in the California Register of Historic Resources (CRHR) and the National Register of Historic Places (NRHP)~~and may be larger if necessary to protect the cultural deposits~~;
10. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring and mitigation plan shall not prejudice the ability to comply with applicable State and Federal laws. The range of investigation and feasible mitigation measures considered shall not be constrained by the approved development plan. T~~Where appropriate and consistent with State and Federal laws, t~~he treatment of remains shall be governed by State Law ~~decided as a component of the process outlined in the other subsections of this condition~~.

D. **Discovery of Cultural Deposits.** 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 other significant artifacts, is discovered during the course of the project, all grading and construction activities in the area of the discovery that have any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction 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 **Subsections E and F** and other subsections of this special condition. In general, the area where construction activities 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 area within which the discovery is made.

E. **Significance Testing Plan Required Following the Discovery of Cultural Deposits.** An applicant seeking to recommence construction 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) if designated pursuant to Public Resources Code Section 5097.98~~when State Law mandates identification of a MLD~~. ~~Once a plan is deemed adequate, the Executive Director will make a determination regarding the significance of the cultural deposits discovered.~~

(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 (i.e. 2 meters or less pursuant to the Interpretative Guidelines), 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 commence until after the Commission approves an amendment to this permit.

(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 archeologist's recommendation as to whether the findings should be considered significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD if designated pursuant to Public Resources Code Section 5097.98~~when State Law mandates identification of a MLD~~. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the archaeological peer review committee~~Executive Director~~. The archaeological peer review committee ~~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 F** of this condition and all other relevant subsections. If the deposits are found to be not significant by the archaeological peer review committee~~Executive Director~~, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

F. **Supplementary Archaeological Plan Required Following an Executive Director Determination that Cultural Deposits are Significant.** An applicant seeking to recommence construction following a determination by the archaeological peer review committee ~~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) if designated pursuant to Public Resources Code Section 5097.98~~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. If there is disagreement between the project archeologist and the Native American monitors and/or the MLD, both perspectives shall be presented to the archaeological peer review committee~~Executive Director~~. The range of investigation and feasible mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered shall 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 creating an open space area around the cultural resource areas. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the final, approved, 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, construction 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, construction may not recommence until after the Commission approves an amendment to this permit.

G. **Review of Plans Required by Archaeological Peer Review Committee, Native American Groups and Agencies.** Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, including the revised ARP, the mitigation plan for the cultural deposits that were excavated during archaeological testing for the EIR process, unless the sites and/or deposits have previously been found to be insignificant, and the monitoring and mitigation plan during project grading, excepting any Significance Testing Plan, shall have received review and written comment by a three (3) member peer review committee composed of archaeologists convened in accordance with current professional practice. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. Representatives of Native American groups with documented ancestral ties to the area, as determined by the NAHC, shall also be invited to review and comment on the above required plans. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and the Native American groups or an explanation provided as to why the recommendations were rejected. Furthermore, upon completion of the peer review and Native American review process, and prior to submittal to the Executive Director, 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 any of the entities contacted for review and comment do not respond within 30 days of their receipt of the plan, the requirement under this permit for those 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.

H. At the completion of the revised ARP, the mitigation plan for the cultural deposits that were excavated during archaeological testing for the EIR process, unless the sites and/or deposits have previously been found to be insignificant, and the archaeological grading monitoring and mitigation plan, the applicant shall prepare a report, subject to the review and approval of the Executive Director, which shall include but not be limited to, detailed information concerning the quantity, types, location, and detailed description of any cultural resources discovered on the project site, analysis performed and results and the treatment and disposition of any cultural resources that were excavated. The report shall be prepared consistent with the State of California Office of Historic Preservation Planning Bulletin #4, "Archaeological Resource Management Reports (ARMR): Recommended Contents and Format". The final report shall be disseminated to the Executive Director and the South Central Coastal Information Center at California State University at Fullerton.

I. The permittee shall undertake development in conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

18. 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.

19. 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.

20. 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 and visitor-serving 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) or its successors shall remove the development authorized by this Permit, including, but not limited to, the residences, trails, hardscape, 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 , before they are removed, fall to or slough onto Coast Highway, Semeniuk Slough or any dedicated open space 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).

21. 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 conformance with the approved plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

22. Other Agency Approvals

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and prior to the submittal of any revised 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, State Historic Preservation Officer, the City of Newport Beach or the County of Orange (hereinafter "other agencies") and provide them to the Executive Director; and (2) obtain from those other 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.

23. 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.

24. 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 8/11/2016 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. ~~Consistent with **Special Condition 1** for a revised site plan, the DMAs shall be limited to those required for the Urban Colony and the North Family Village (DMAs 1, 2, A, and B).~~ 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 for the July 2016 Site Plan" (FUSCO, Co., ~~08/11/2016~~~~11/30/2015~~), ~~and the Addendum to that memo (FUSCO, Co., 8/11/16),~~ 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 ~~consistent with Buildable Areas of **Special Condition 1**.~~
   d. Off-site Runoff Treatment Basin, in the location as proposed, 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- A final Drainage and Runoff Control Plan shall be developed which, at a minimum 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.

d. 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 4 and 6**, 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 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, and rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone), 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. 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.

c. 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.

d. 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.

<u>e. Restaurants and Cafes:</u>
<u>i. Wash down areas for restaurant equipment and accessories and food preparation areas shall be designed to meet the following:</u>

- 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.

B. A 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.Water quality monitoring for the development shall comply with the following requirements and shall include:
-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.
-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.
-The Water Quality Monitoring Plan shall include a map of the proposed sampling locations.

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.

The applicant shall clarify parameters that will "trigger" a reevaluation of trash and debris BMPs in the Water Quality Monitoring Plan.
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.

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 site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

25. Future Development

A. ~~Future Development Within the "Buildable Footprint" –~~ This permit is only for the development described in Coastal Development Permit No. 5-15-2097~~, which only allows permanent development within the area designated as the "Buildable Footprint" in the "Constraints on Banning Ranch" graphic attached/"Total Constraints Map" (**Exhibit 4**)~~. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development, as defined in PRC section 30106, ~~within that "Buildable Footprint,"~~ 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.

~~B. Future Development Outside the "Buildable Footprint," ORA, and OSCA – For all portions of the site that are outside the areas designated as the "Buildable Footprint" and the "Oil Remainder Areas" in the "Constraints on Banning Ranch" graphic/"Total Constraints Map" (**Exhibit 4**), and that are also outside of the OSCA defined in Special Condition 10 (the "Open Space/Conservation Area" condition), the following restrictions and requirements shall apply:~~

~~1. No development, as defined in Section 30106 of the Coastal Act, including but not limited to, alteration of landforms, removal of native vegetation or the erection of structures of any type, shall occur unless approved by this Commission as an amendment to this permit.~~

~~2. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcels subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the area subject to this Section B of this condition, prepared by a licensed surveyor based on an on-site inspection of the open space area.~~

~~3. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the enforceability of the restriction.~~

~~4. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity. The deed restriction shall not be modified or removed without an amendment to this coastal development permit from the California Coastal Commission.~~

26. 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.

27. 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.

28. 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.

29. Traffic Management

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall prepare for Executive Director review and approval a Construction Area Traffic Management Plan for the project. The Plan shall be designed by a registered Traffic Engineer. The Traffic Management Plan shall identify construction phasing and address traffic control for any temporary street closures, detours, or other disruptions to traffic circulation and public transit routes. The Plan shall identify the routes that construction vehicles shall use to access the site, the hours of construction traffic, traffic controls and detours, vehicle staging areas, and parking areas for the Project. Advanced written notice of temporary traffic disruptions shall be provided to emergency service providers and the affected area's businesses and the general public. This notice shall be provided at least two weeks prior to disruptions.

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

C. The Applicant shall implement the City of Newport Beach and City of Costa Mesa transportation improvement mitigation program elements for the Project identified in Table A of MM 4.9-1 and Table C of MM 4.9-2 of the Newport Banning Ranch EIR in accordance with the Applicant's fair-share responsibility for the improvements as identified by the respective cities. The improvements shall be completed during the 60 months immediately after issuance of the Coastal Development Permit. Concept plans depicting these improvements are provided in Appendix F to the Newport Banning Ranch EIR.

30. 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, unless approved pursuant to a future coastal development permit or permit amendment.

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 potential rate adjustments that exceed the CPI annual adjustment allowed per this permit, 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 potential rate adjustments that exceed the CPI annual adjustment allowed per this permit, 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.

31. Transportation Demand Management Plan

D. 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
3. but at a minimum must offer round trip service at least once per day, as well as on-demand service, Friday through Sunday, Memorial Day through Labor Day.
4. Valet service shall not occupy on-street public parking spaces.
5. 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.
6. The proposed free daily shuttle service for the general public from the resort area to nearby beaches adjacent to West Newport Park shall include periodic routes (at least twice per day on operating days) to public transportation stops adjacent to the project site, Memorial Day through Labor Day.
7. 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.

8. All roads shall provide public parking spaces throughout the development.
9. 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.
10. Assistance to guests for booking shuttle services, bike rentals, Uber rides or similar service, "flex cars" and similar alternatives.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

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.

32. 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" shall refer to all trails 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.
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 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;
   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;
   c. construction of drainage and water quality management devices in accordance with the final plans;
   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;
   e. installation of native plantings or natural barriers on archeological resources, testing and burial or reburial of cultural deposits as identified in any Significance Testing Plan or Archeological Research Plan approved by the Executive Director, 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.

g. existing and proposed utility and drainage infrastructure improvements are allowed in substantial conformance as shown on the preliminary plans listed in Appendix A2 to the staff report (on file with CDP 5-13-032 and CDP 5-15-2079).

h. Fuel Modification Zones/ fire safe habitat restoration C, which shall be allowed within ESHA and wetland buffers as described in Special Condition 1

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.

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

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;

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.

d. existing and proposed utility and drainage infrastructure improvements are allowed in substantial conformance as shown on cite plans.

e. Fuel Modification Zones/ fire safe habitat restoration C, which shall be allowed within ESHA and wetland buffers as described in Condition 1.

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 or relocated to an alignment/area that does not impact the habitat value of the OSCA.

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.
9. The trail, park and recreational facilities granted pursuant to this condition shall not become effective unless and until a coastal development permit is granted and development has commenced pursuant to this permit.

33.Expiration

Notwithstanding Standard Condition 2, above, if development has not commenced, this coastal development permit shall expire five 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. An application for extension of this coastal development permit must be made prior to the expiration date.

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

"Site Constraints" – the areas where there is limited or no development potential due to the presence of wetlands, ESHA, buffers, cultural deposits, and geologic hazards
"Development" – as defined in Section 30106 of the Coastal Act
"~~Buildable~~ Approved Development Areas" – the areas identified on **NBR Attachments A and B** of the Special Conditions ~~labeled as the "Buildable Footprint Outside of Constraints" on **Exhibit 4**~~ 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.
"Significant Cultural Resource" or "Significant Cultural Deposit" is an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of 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. Significant Cultural Resource and Significant Cultural Deposit includes, but is not limited to, skeletal remains and/or grave goods, features, traditional cultural sites and/or artifacts, religious and/or spiritual sites and/or artifacts, and/or intact midden soil that meets the criteria set forth above.

TABULATION

URBAN COLONY

TOWNHOMES 1	3.1 ACRES
TOWNHOMES 2	3.4 ACRES
WRAP CONDOMINIUMS	7.2 ACRES
SUBTOTAL:	13.7 ACRES

NORTH VILLAGE

CLUSTER SFD	6.6 ACRES
TRADITIONAL SFD	5.3 ACRES
SUBTOTAL:	11.9 ACRES

SOUTH VILLAGE

CLUSTER SFD	3.2 ACRES
VILLAGE FLATS	4.0 ACRES
SUBTOTAL:	7.2 ACRES

MIXED-USE RESORT COLONY

HOTEL SITE (INCLUDES COMM.)	7.6 ACRES
RESORT CONDOMINIUMS	4.3 ACRES
SUBTOTAL:	11.9 ACRES
TOTAL:	44.7 ACRES

CONCEPTUAL SITE PLAN 07/11/2016

NEWPORT BANNING RANCH

NEWPORT BEACH, CA

NEWPORT BANNING RANCH

NBR Special Conditions Attachment A
Site Plans

0 50 100 200

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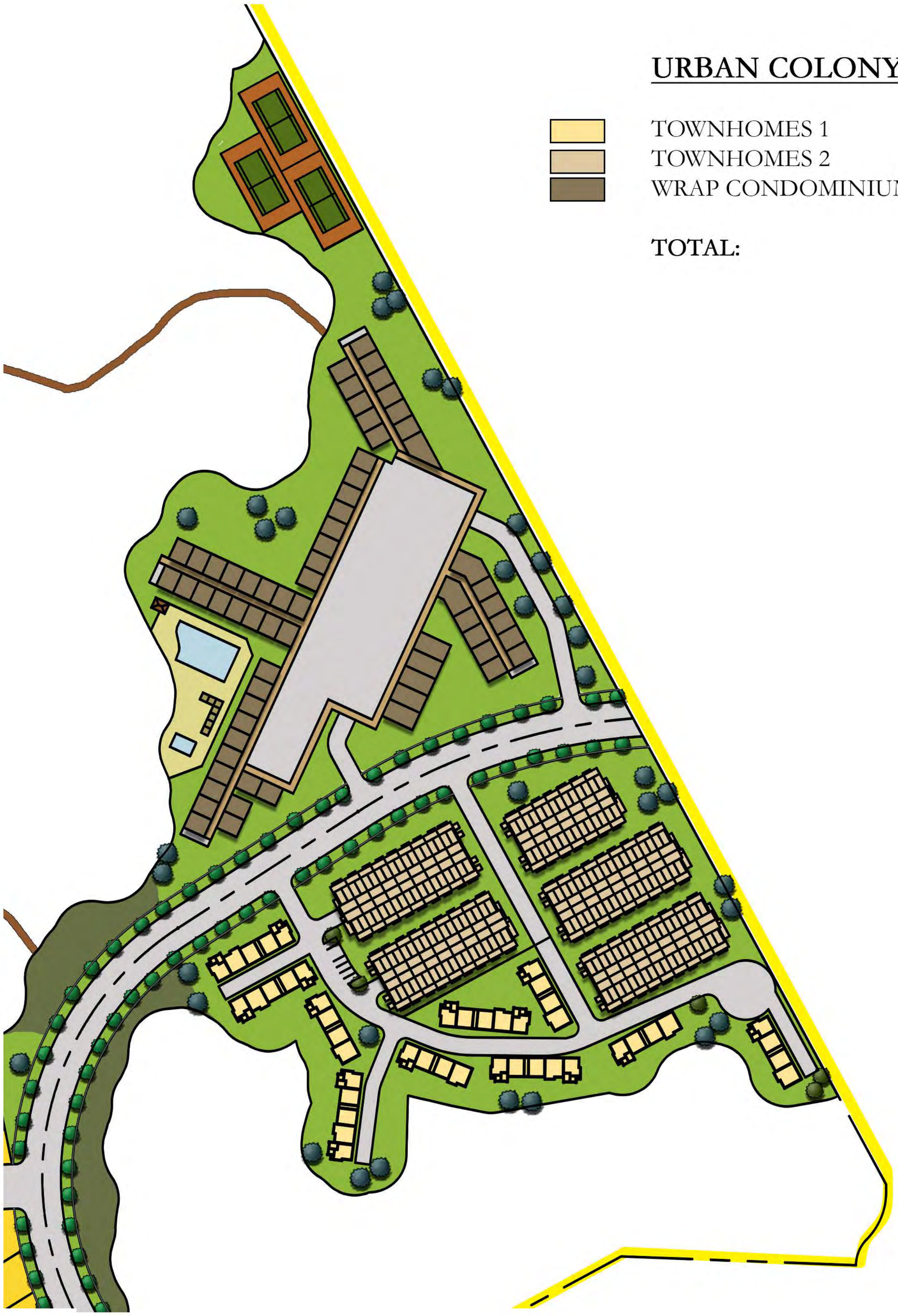
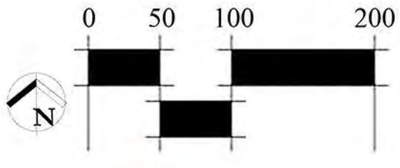


URBAN COLONY

TOWNHOMES 1	3.1 AC
TOWNHOMES 2	3.4 AC
WRAP CONDOMINIUMS	7.2 AC
TOTAL:	**13.7 AC**



URBAN COLONY

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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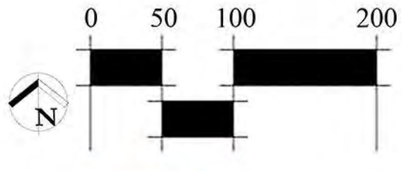

NORTH VILLAGE
NEWPORT BANNING RANCH
NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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0 50 100 200

N

COMMUNITY PARK

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

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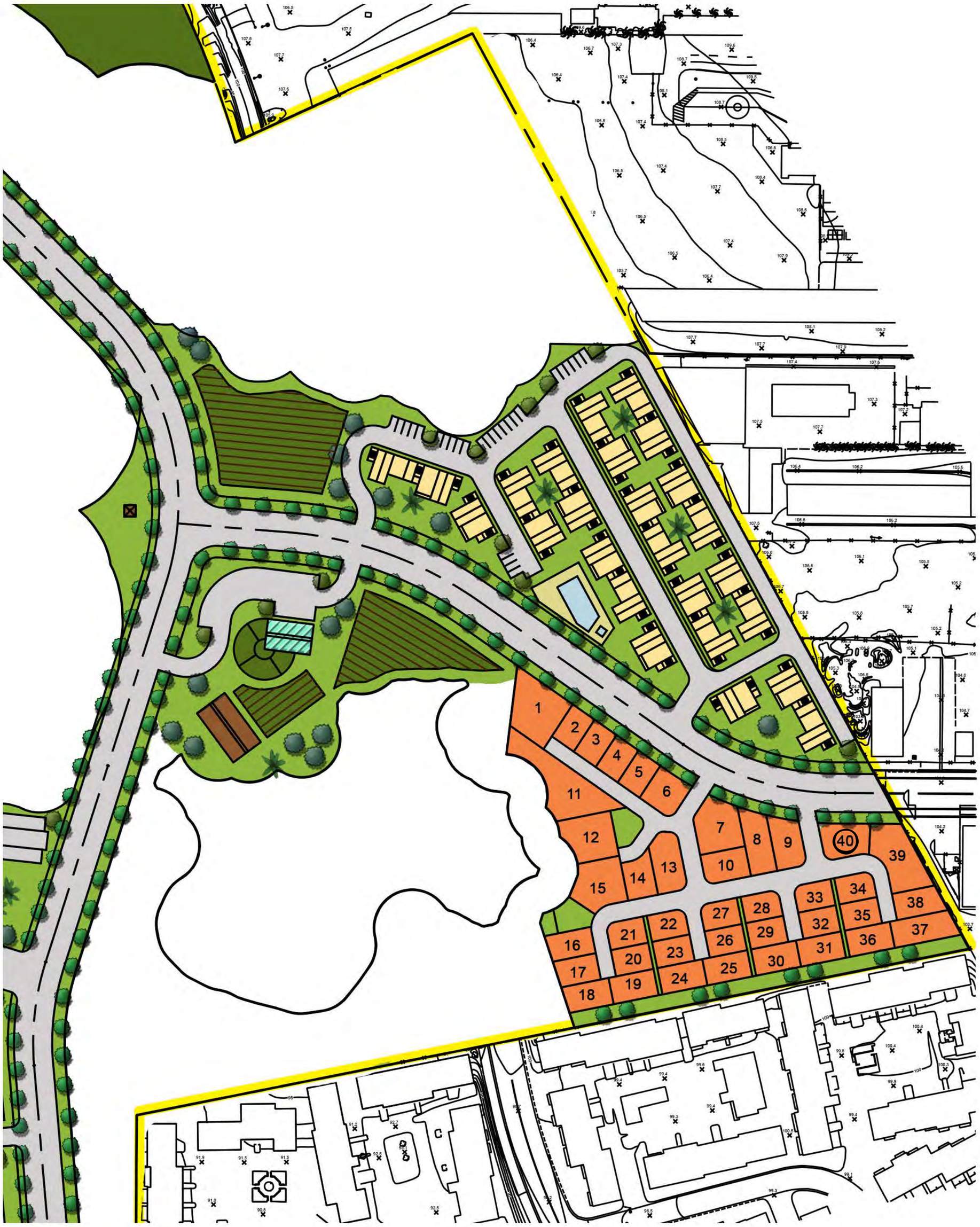

SOUTH VILLAGE

	VILLAGE FLATS	4.0 AC
	CLUSTER SFD	3.2 AC
	TOTAL:	**7.2 AC**

0 50 100 200

N

SOUTH VILLAGE
NEWPORT BANNING RANCH
NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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VISTITOR SERVING COMMERCIAL

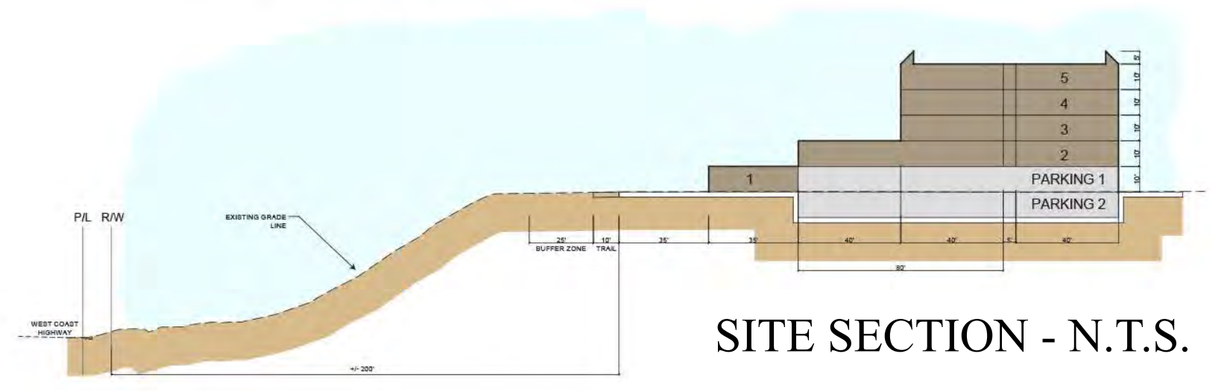
HOTEL (RESIDENTIAL ABOVE)

RESIDENTIAL

SITE SECTION

MIXED USE RESORT COLONY

NORTH TOWER	7.6 AC
SOUTH TOWER	4.3 AC
TOTAL	**11.9 AC**



SITE SECTION - N.T.S.

0 50 100 200

N

MIXED USE RESORT COLONY - GROUND FLOOR

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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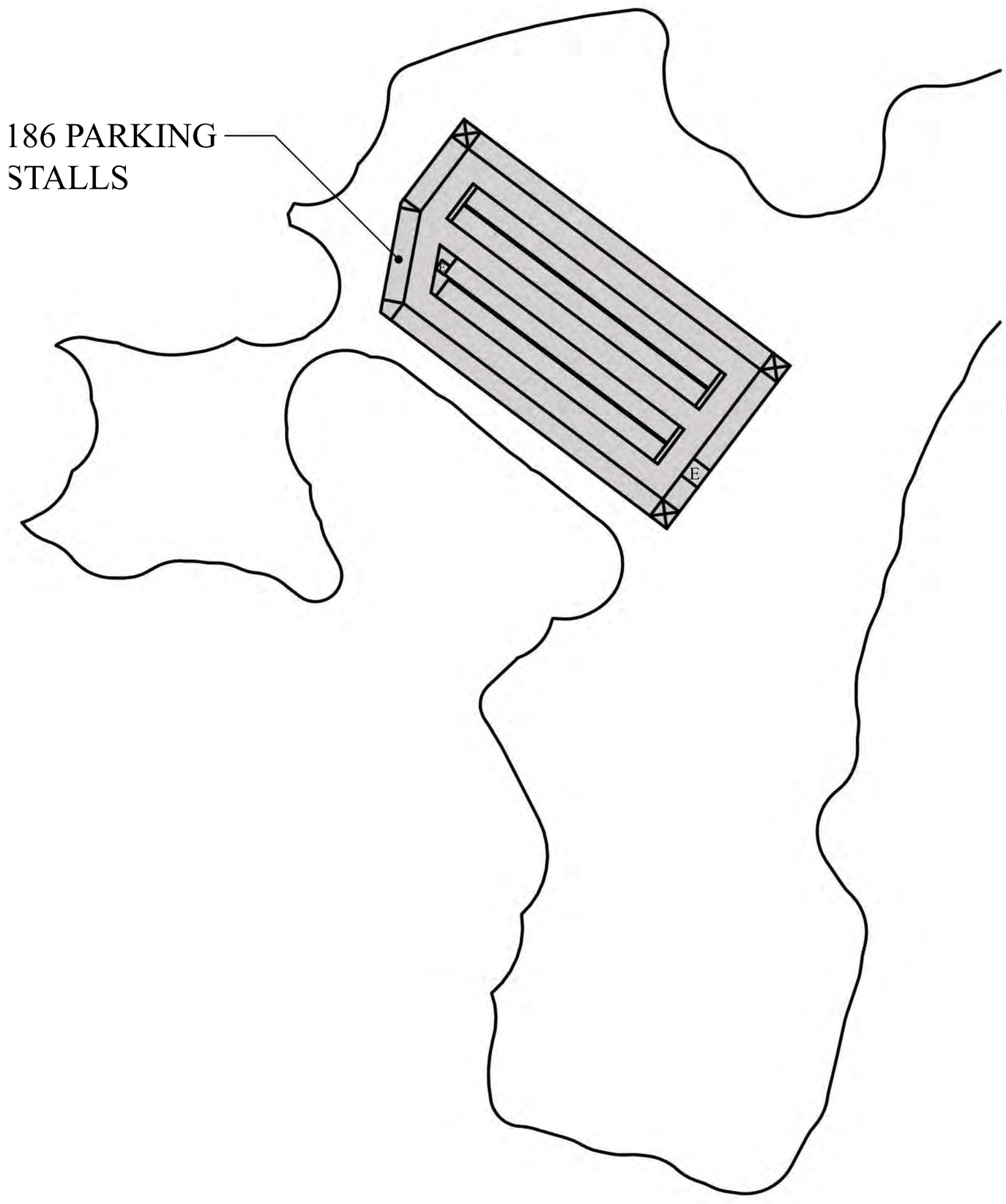
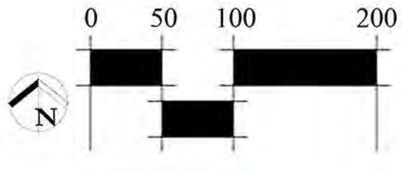


MIXED USE RESORT COLONY - 2ND LOWER LEVEL

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH



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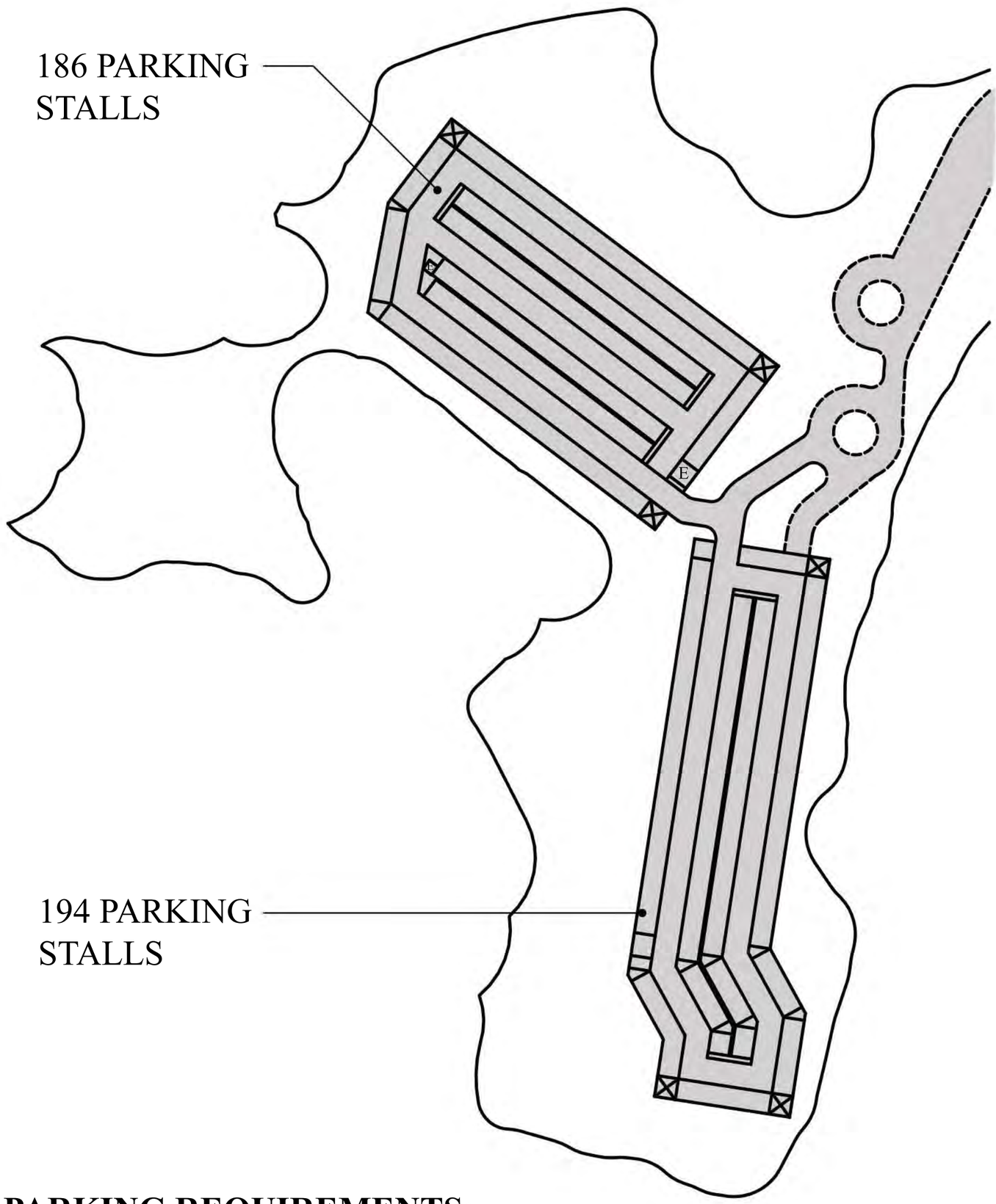
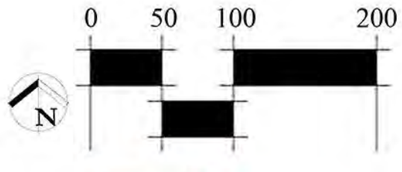


PARKING REQUIREMENTS:
80 STALLS - COASTAL VISITORS
160 STALLS - HOTEL
225 STALLS - RETAIL
284 STALLS - RESIDENTIAL



MIXED USE RESORT COLONY - LOWER LEVEL
NEWPORT BANNING RANCH
NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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VISTITOR SERVING COMMERCIAL

HOTEL (RESIDENTIAL ABOVE)

RESIDENTIAL

SITE SECTION

MIXED USE RESORT COLONY

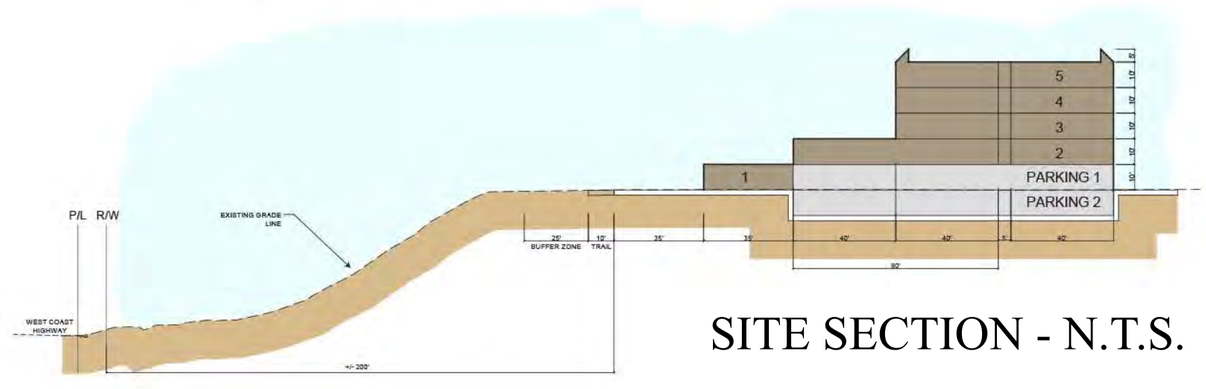
NORTH TOWER

	HOTEL	75 ROOMS
	RETAIL	45,000 SQ.FT.
	RESIDENTIAL	48 DU

SOUTH TOWER

	RESIDENTIAL	196 DU

TOTAL 244 DU



SITE SECTION - N.T.S.

0 50 100 200

N

MIXED USE RESORT COLONY - GROUND FLOOR

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

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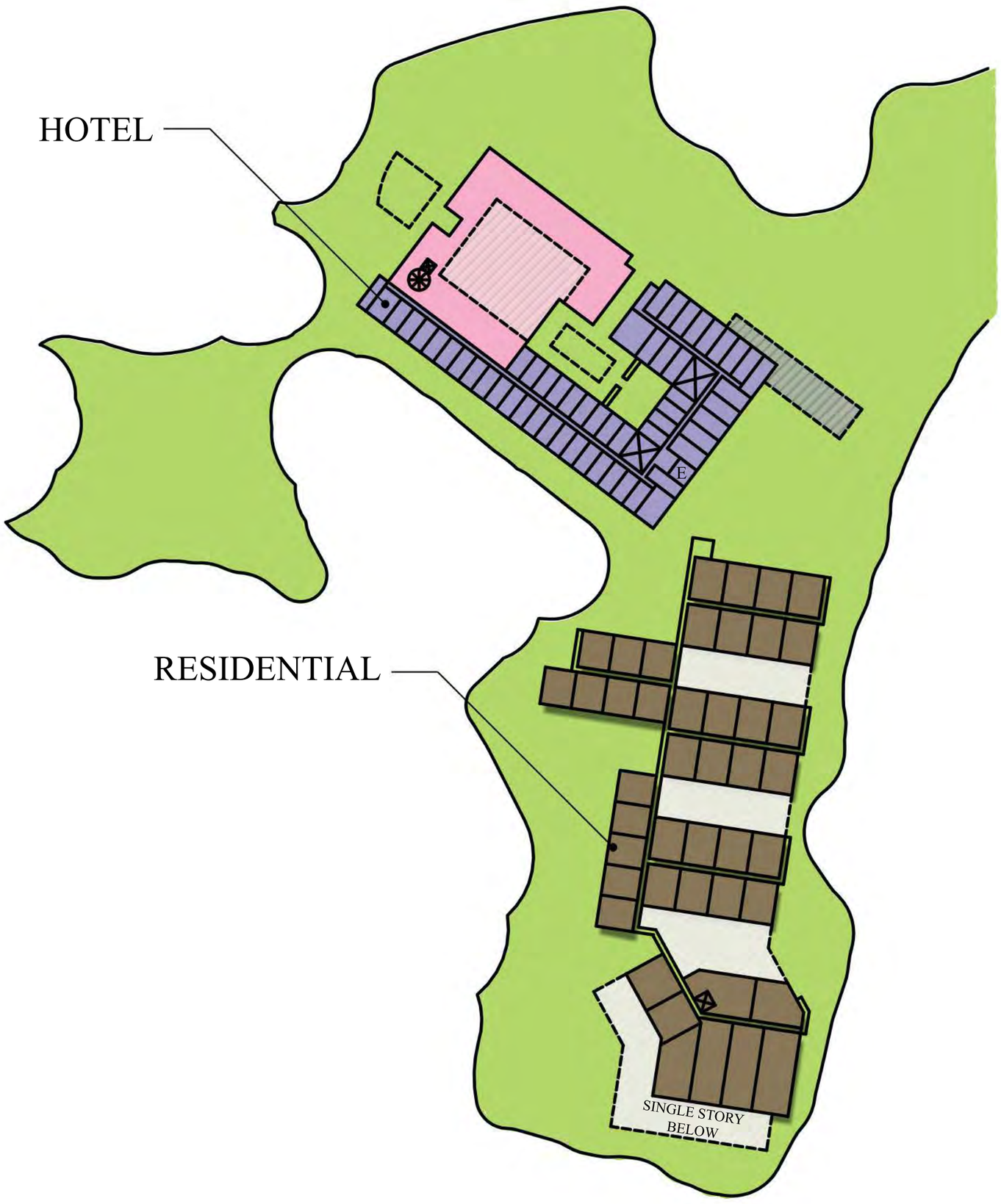
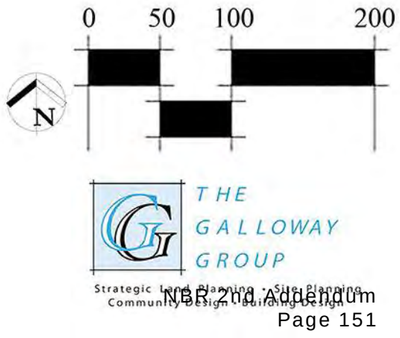


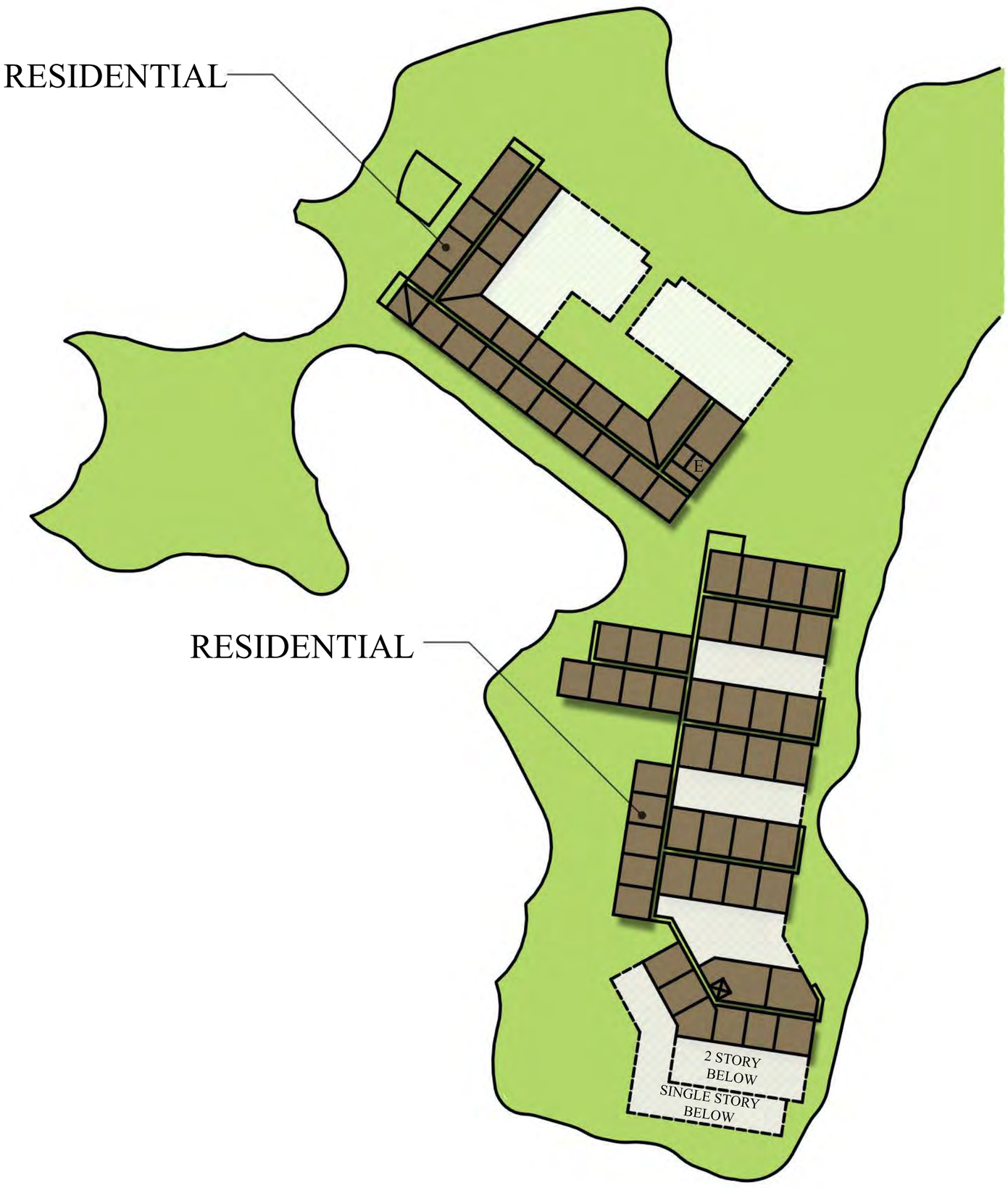
MIXED USE RESORT COLONY - SECOND FLOOR

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH





MIXED USE RESORT COLONY - 3RD - 4TH FLOOR

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH

0 50 100 200

N

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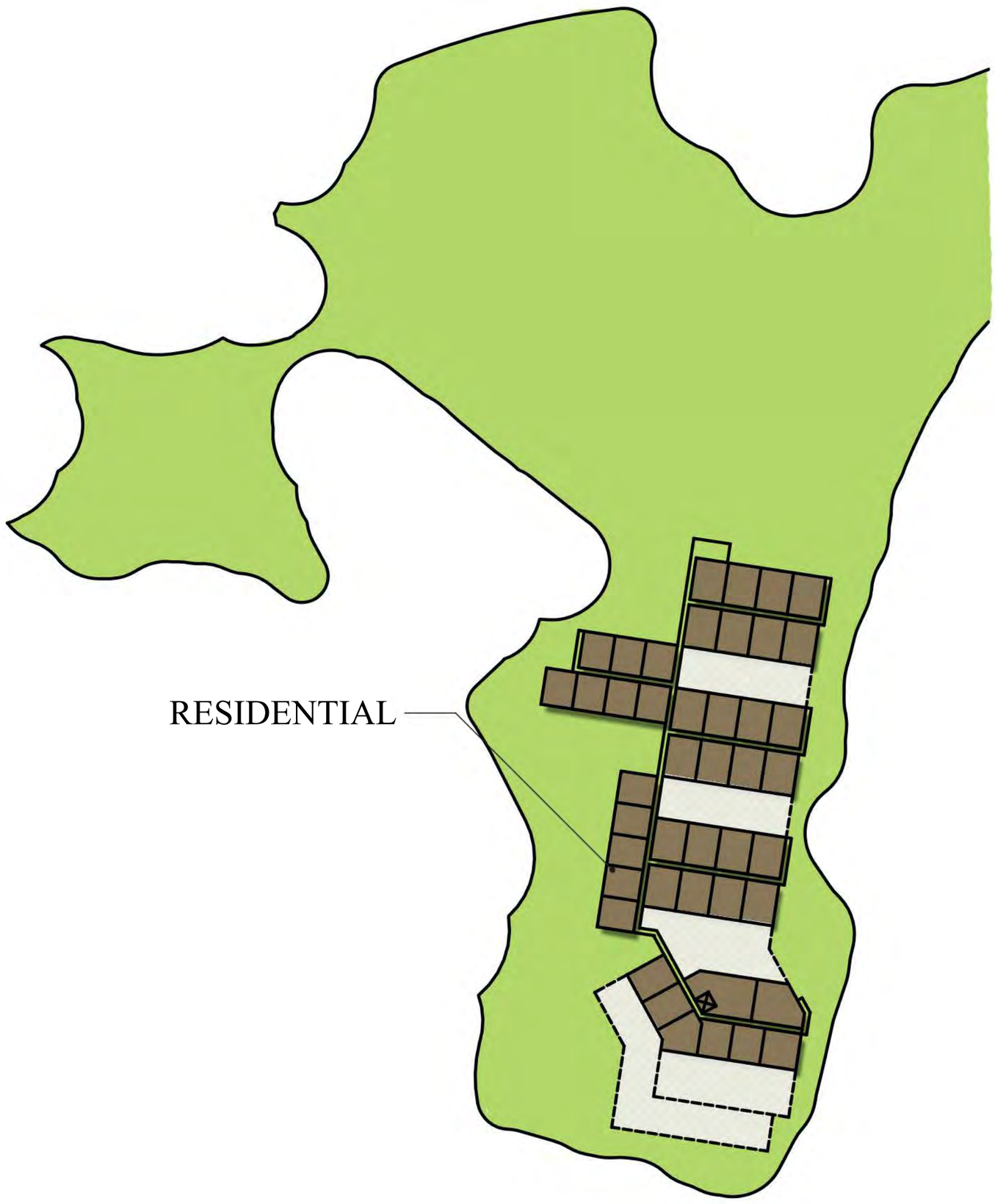
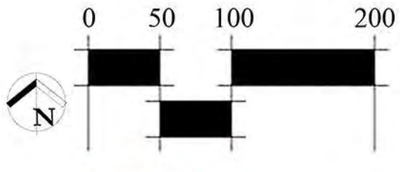


MIXED USE RESORT COLONY - FIFTH FLOOR

NEWPORT BANNING RANCH

NEWPORT BEACH, CA 07/11/2016

NEWPORT BANNING RANCH



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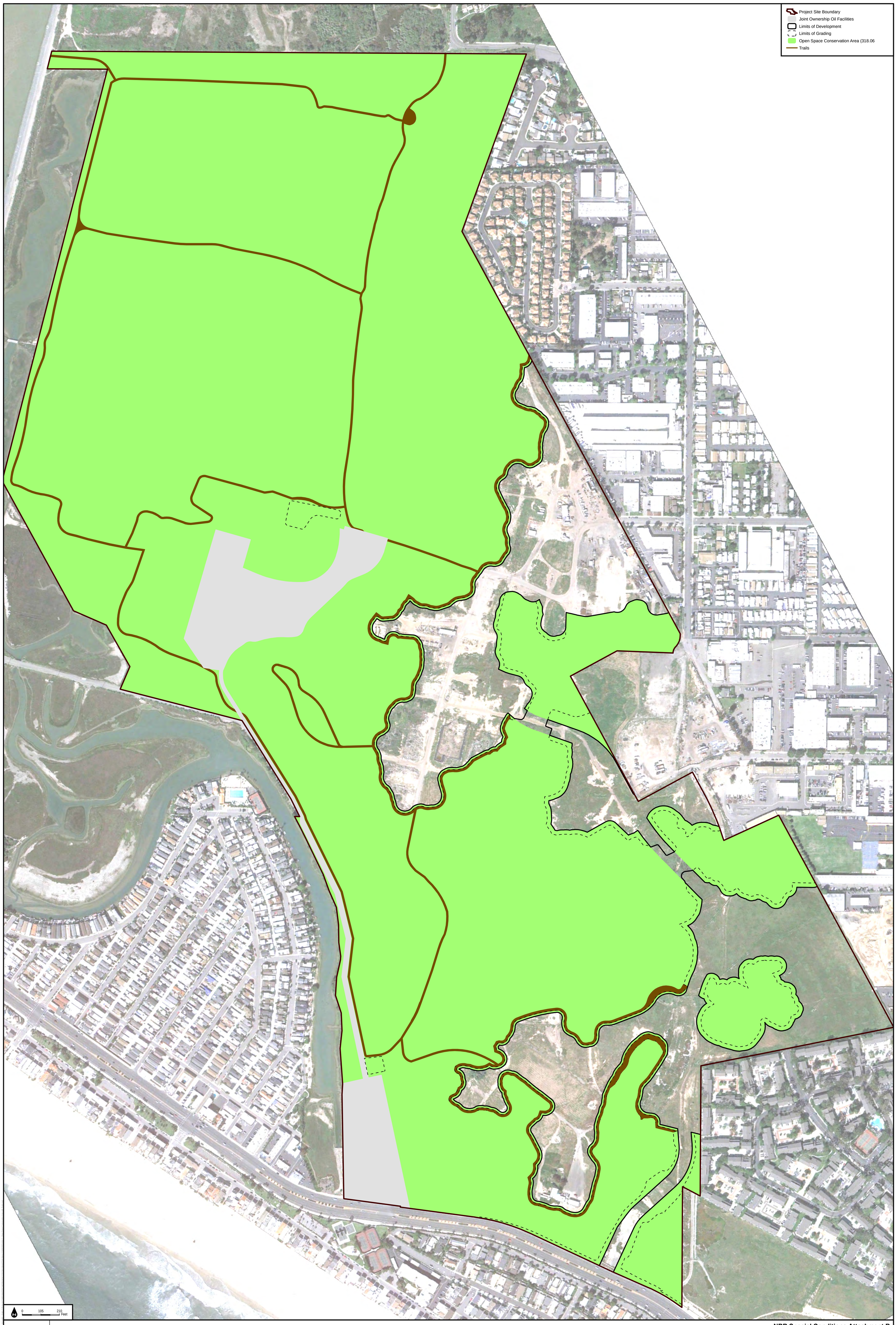
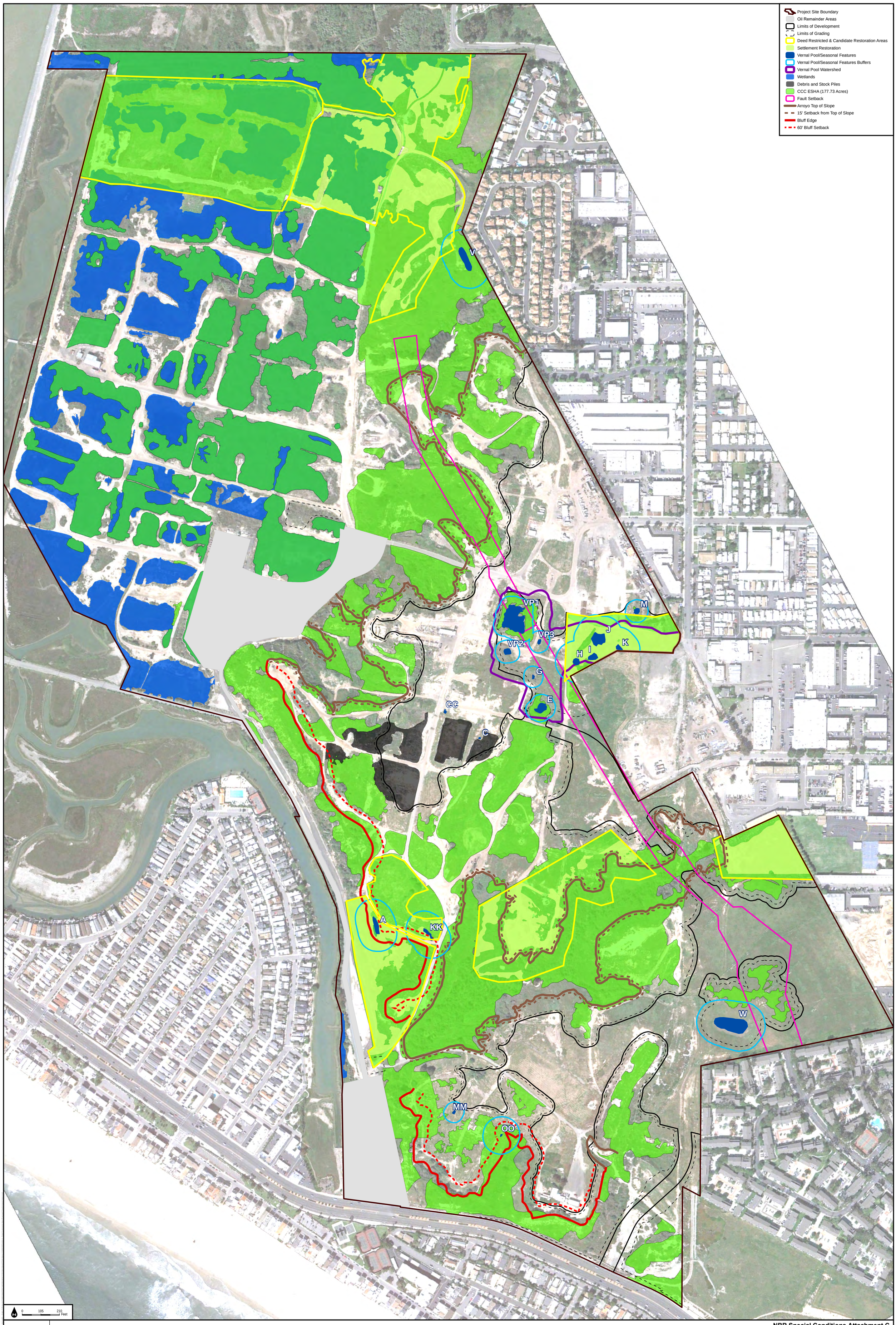


DUDEK

SOURCE: 2011 Aerial and Project Footprintl provided by Fuscoe Engineering, ESHA by CCC

Newport Banning Ranch

NBR Special Conditions Attachment B
Open Space Conservation Area



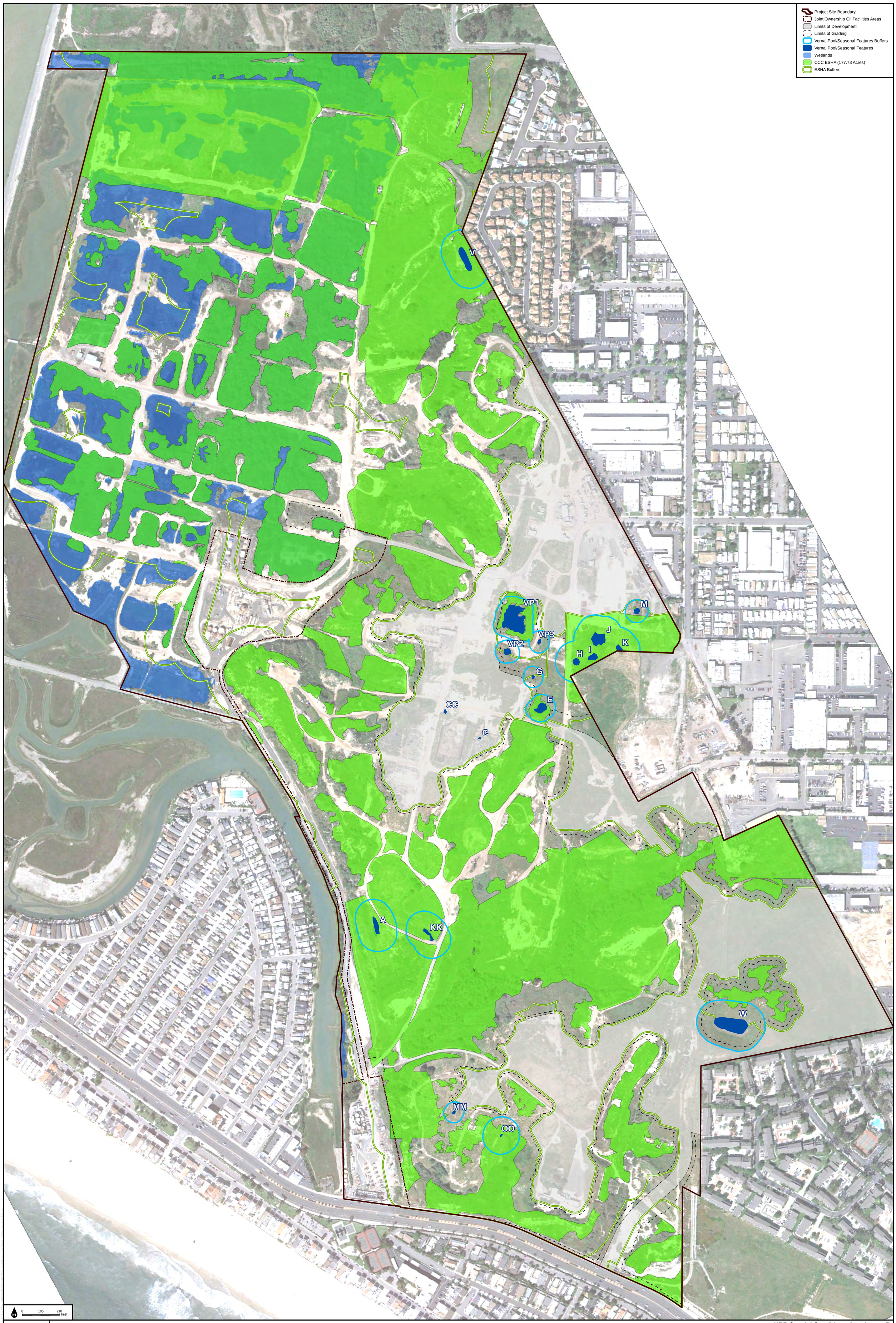
DUDEK

SOURCE: 2011 Aerial and Project Footprintl provided by Fuscoe Engineering, ESHA by CCC

Newport Banning Ranch

NBR Special Conditions Attachment C

Constraints on Banning Ranch

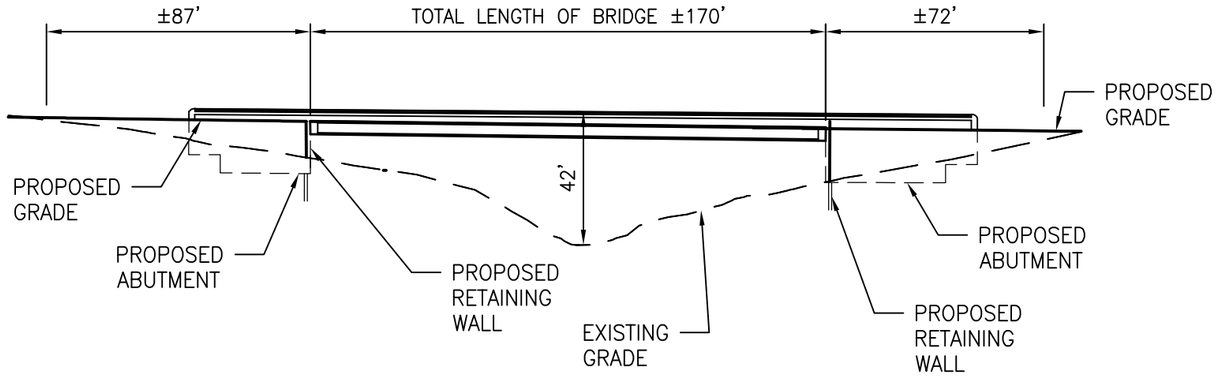


DUDEK

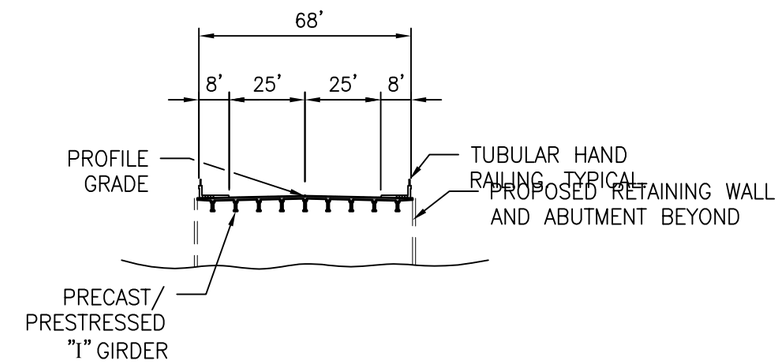
SOURCE: 2011 Aerial and Project Footprintl provided by Fuscoe Engineering, ESHA by CCC

Newport Banning Ranch

NBR Special Conditions Attachment D
ESHA, Wetlands and Buffers



SECTION A
1" = 50'



SECTION B
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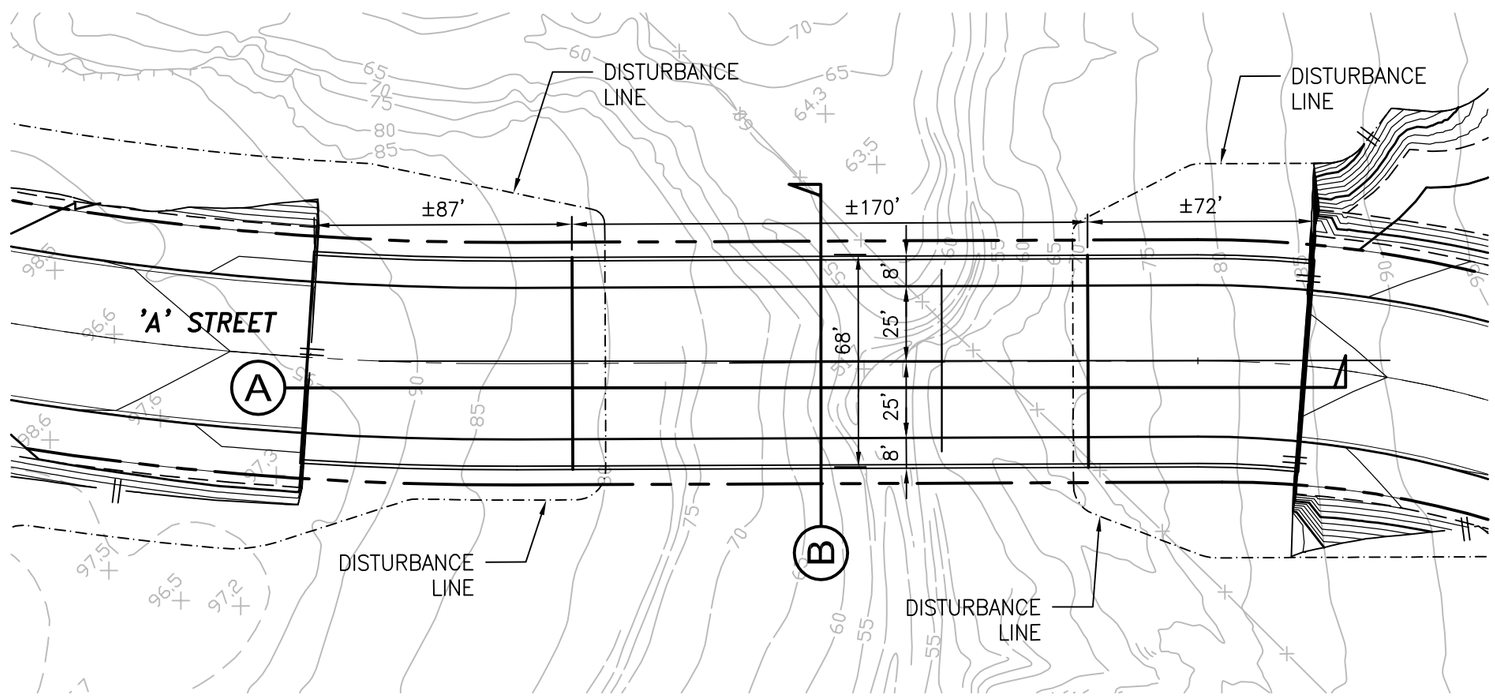
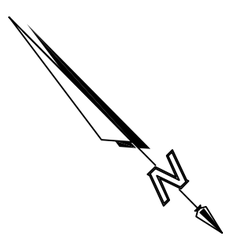
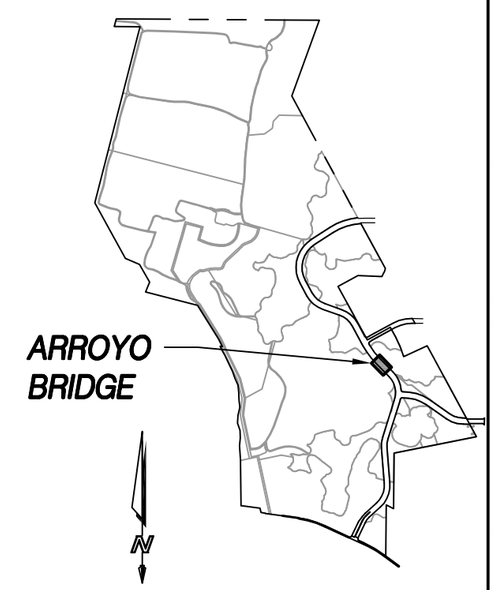




50' 0' 25' 50'
SCALE: 1" = 50'



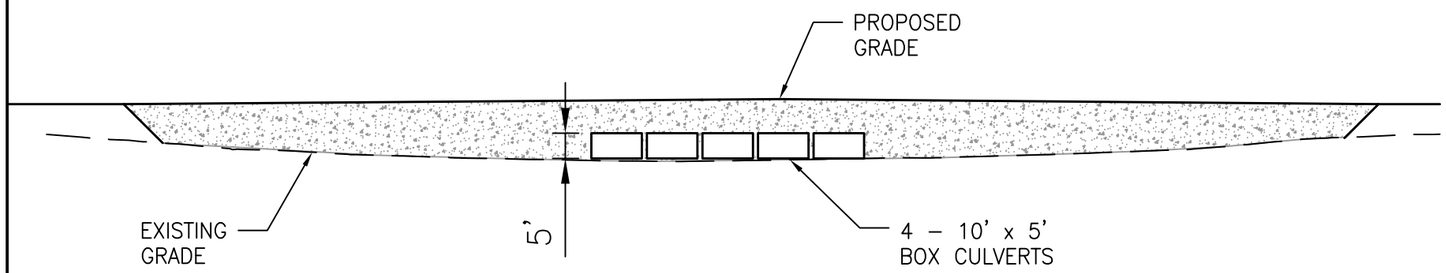
NEWPORT BANNING RANCH

BLUFF ROAD
SOUTHERLY ARROYO BRIDGE
JULY 21, 2016

NBR Special Conditions Attachment E
Bluff Road Design

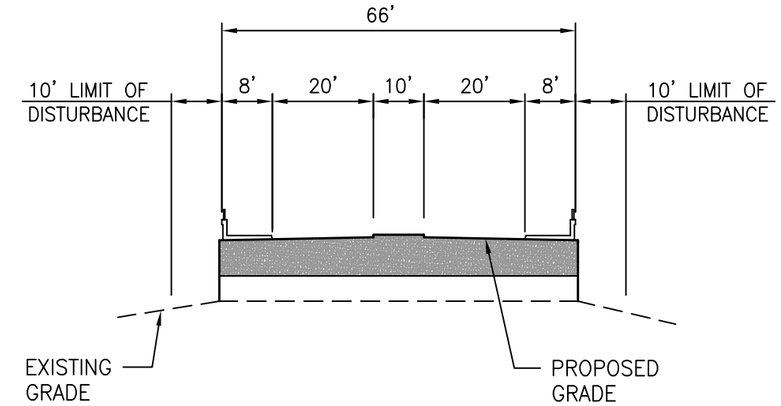
FUSCOE ENGINEERING
16795 Von Karman, Suite 100
Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315
www.fuscoe.com

F:\Projects\821\001\Exhibits\821-001-XH-Bridge.dwg (7/22/2016 7:42 AM) Plotted by: Michelle Penaloza



SECTION A

N.T.S



SECTION B

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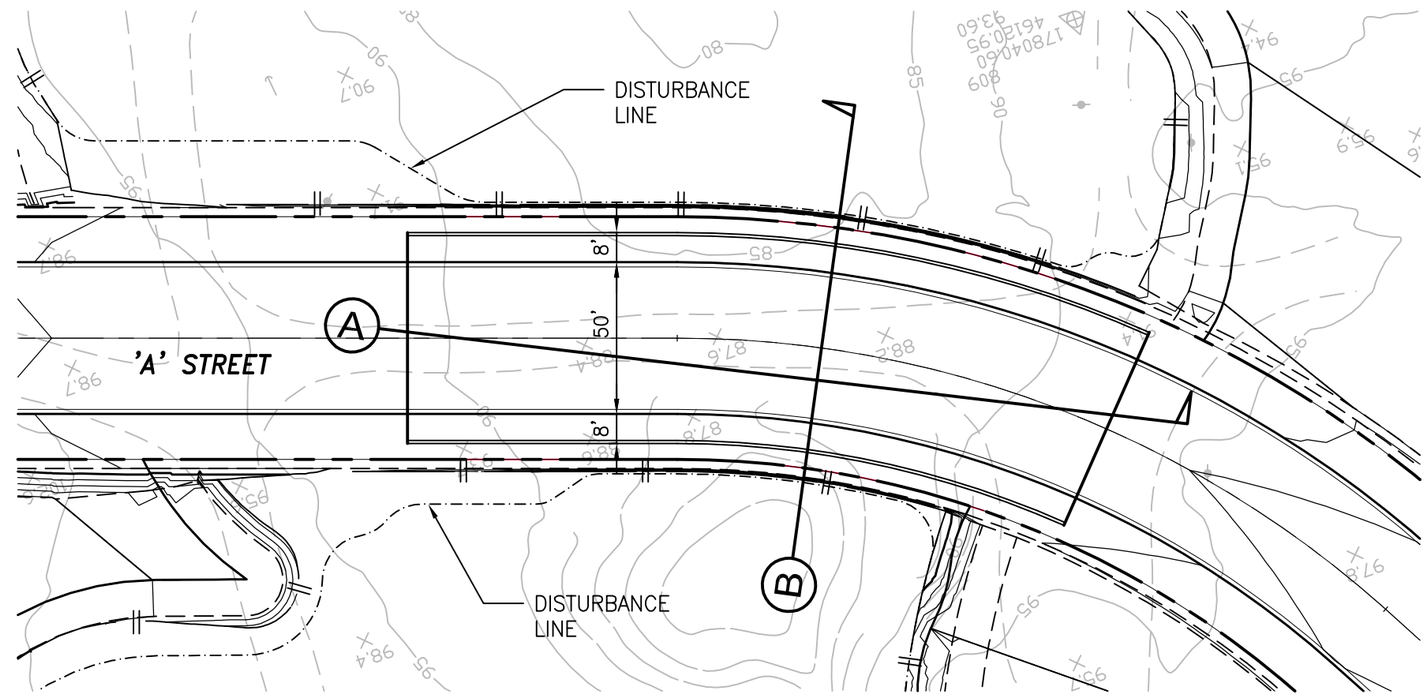

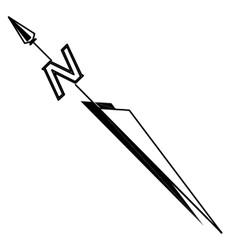

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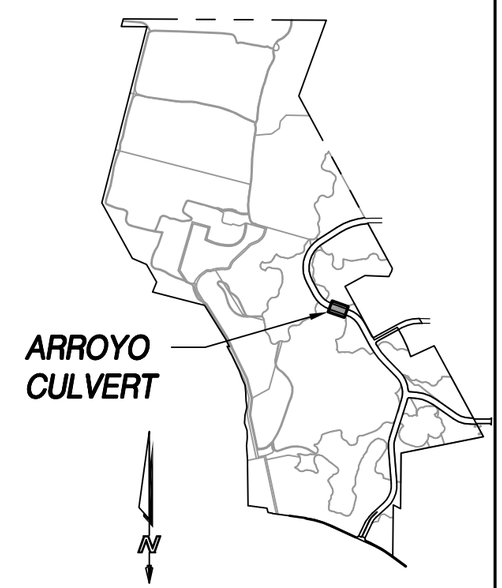

BLUFF ROAD
NORTH/SOUTH ARROYO CULVERT CROSSING

JULY 21, 2016

NEWPORT BANNING RANCH

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16795 Von Karman, Suite 100
Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315
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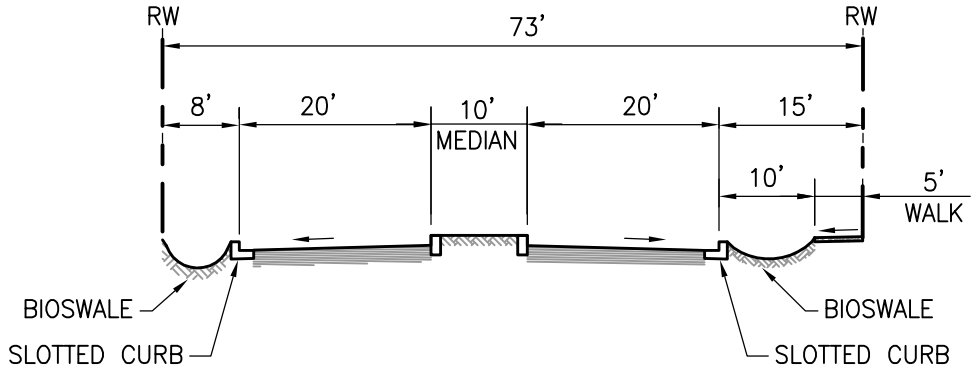

BLUFF ROAD
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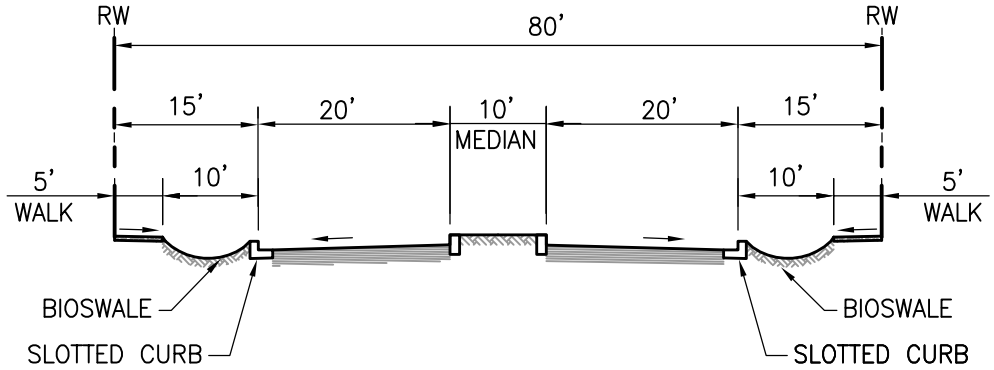

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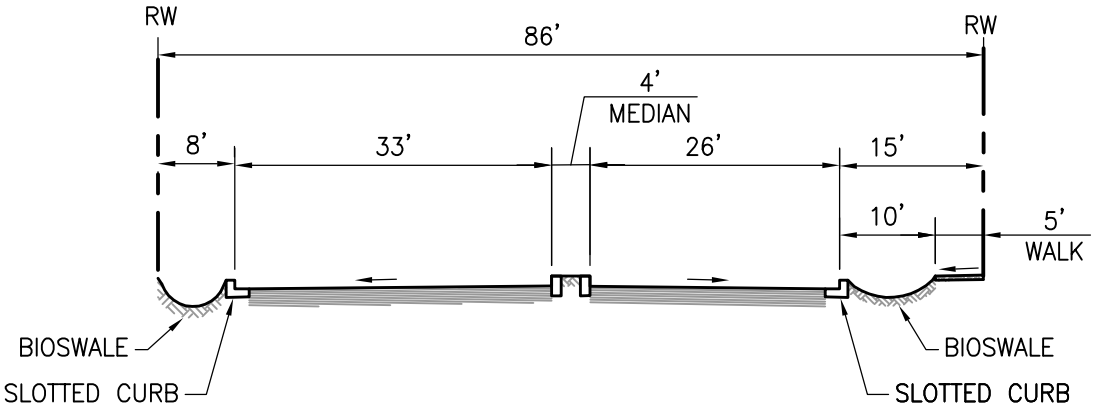
15TH TO 17TH N.T.S. (B)



BLUFF ROAD
AT WHC N.T.S. (C)

BLUFF ROAD
CROSS SECTIONS
JULY 20, 2016

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16795 Von Karman, Suite 100
Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315
www.fuscoe.com

Attachment 3

September 2, 2016 VIA Email and US Mail

Steve Kinsey and Dayna Bochco Chairman and Vice Chair California Coastal Commission 45 Fremont Street #2000 San Francisco, CA 94105	Coastal Commissioners California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 91405

Mr. Jack Ainsworth Acting Executive Director California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 91405	Ms. Sherilyn Sarb Deputy Director California Coastal Commission 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108

Re: Newport Banning Ranch, Coastal Development Permit Application No. 5-15-2097

Dear Chair Kinsey, Vice Chair Bochco, Mr. Ainsworth and Ms. Sarb:

In the Staff Report for the September 7, 2016 Newport Banning Ranch (NBR) Coastal Commission Hearing, staff has modified its previous ESHA determination made in May 2016 for the Burrowing Owl from 1.5 acres to 64 acres. As explained in their Memorandum dated August 25, 2016 ("August Memorandum") Dr. John Dixon and Dr. Jonna Engel explain that the change was made in response primarily to a letter submitted by Dr. Peter Bloom to Dr. Dixon, dated June 24, 2016. The purpose of this letter is to provide additional information that informs this issue as well as to correct the record at certain points regarding Burrowing Owls on the NBR site and most importantly, to propose a way forward, which would not render the project wholly infeasible. The responses below are directed at Dr. Bloom's letter and the August Memorandum which relied heavily on the Dr. Bloom's letter and represent the work and input provided by Tony Bomkamp, at GLA, and Brock Ortega, at Dudek.

First, and foremost, we have great respect for Dr. Bloom and agree that he has excellent credentials related to southern California wildlife including burrowing owls and other raptors and condors. However, we believe that he may not have had all of the information available to him and so we are providing additional information for the Commission's information and providing corrections to the record below.

On-site Wintering Individual(s) – First, there are no breeding owls on the project site, only wintering owls. Dr. Bloom comments that: "Nonetheless, survey data show that this area supports a known minimum wintering owl population of up to several individuals annually." This is picked up by the August Memorandum. This is an inaccurate overstatement as in most years, only a single owl has been observed and in a few years, two owls. Three individuals were observed during the 2008 surveys season; however, one of the occurrences was offsite on the School District property and the owl on the Southern Mesa was a transient that was only present for about two weeks

Newport Banning Ranch LLC
1300 Quail Street, Suite 100 | Newport Beach, CA 92660 | T 949.833.0222 | F 949.833.1960
3030 Saturn Street, Suite 101 | Brea, CA 92821 | T 714.577.9154 | F 714.577.9149
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and was not detected after two weeks throughout the remainder of the wintering season. For the majority of years, only one individual has been detected during protocol surveys by biologists highly experienced in conducting protocol burrowing owl surveys.[1] Other individuals have been identified off site and still others identified within the upper Newport Bay area located about 5km to the east.

Although some burrowing owls are year-round residents in California, others are migratory. In parts of coastal of southern California, such as in coastal Santa Barbara and Los Angeles counties, burrowing owls are known to winter but are no longer known to breed.[2,3] In Orange County, the CNDDB includes recent nesting records for the Seal Beach Naval Air Station and vicinity and the University of California, Irvine, area. Additional records from other locations, such as the El Toro Marine Corps Air Station, [4] Fairview Park in Costa Mesa, The Great Park in Irvine, and Huntington Beach Wetlands[5] have involved only wintering owls. The seasonality of burrowing owl records in such places is a result of the migratory nature of some owls. Burrowing owl populations of lowland areas of the state are likely augmented by migrants from elsewhere during the winter.[6]

The origin of most burrowing owls wintering in California is unknown, western burrowing owls have been documented traveling as far as 2,450 kilometers (more than 1,500 miles) to their wintering grounds.[7] Data on burrowing owls captured and banded by researchers provide some insight on where owls wintering in California may come from. Of 90 banded owls encountered prior to 2001, including those encountered in California and those banded in California and encountered elsewhere, 62% were encountered near where the owls were originally banded. Four owls were banded elsewhere (two in Boise, Idaho, and one each in Washington State and British Columbia), and two owls were banded in California and encountered elsewhere (one banded in Orange County and found dead in Mexico and one banded in the Los Angeles Basin and later encountered in Nevada) (Harman and Barclay 2003 cited in LSA Associates 2009)[8]. The remaining owls were those banded in California and later encountered elsewhere in the state. However, some of these may have been encountered in migration rather than at breeding sites. Therefore, not

[1] The surveys conducted by the "General Public" are impossible to interpret relative to the actual number of owls during any one season as many of the observations may have been of the same owl in different locations.

[2] CDFG (California Department of Fish and Game). 2003. Evaluation of Petition: Request of the Center for Biological Diversity et al. to list the Western Burrowing Owl (*Athene cunicularia hypugaea*) as a Threatened or Endangered Species. October 2003.

[3] Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*). Pp. 218-226 in *California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California*, W. D. Shuford and T. Gardali, eds. Studies in Western Birds, No. 1. Camarillo, Calif.: Western Field Ornithologists; Sacramento: California Department of Fish and Game.

[4] CDFW (California Department of Fish and Wildlife). California Natural Diversity Data Base. 2013. Rarefind Version 43.0.2. On-line database.

[5] Bomkamp, Tony. Personal Observations GLA Biologists of single Burrowing Owls during the wintering season.

[6] Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*).

[7] Haug, E. A., B. A. Millsap, M. S. Martell. 2011. Burrowing Owl (*Athene cunicularia*). In Birds of North America Online, ed. A. E. Poole. Ithaca, N.Y.: Cornell Lab of Ornithology. Access March 2013 at http://bna.birds.cornell.edu.bnaproxy.birds.cornell.edu/bna/species/061.

[8] GLA (Glenn Lukos Associates). 2013. Results of 2012 Focused Breeding Season Burrowing Owl Surveys Conducted for the Newport Banning Ranch Project, Located in Unincorporated Orange County and Newport Beach, Orange County, California. Letter to Newport Banning Ranch, LLC.

only is it not possible to determine based on the available data where owls wintering in coastal Orange County might breed, but it is unclear how likely they are to breed elsewhere in California versus somewhere out of state.

The data on site shows that there is consistently one adult that uses the site, and the period in which it uses the site varies from year to year. As noted, in some years a second owl has been observed. It has been discussed that owls *may* exhibit site fidelity, returning to the same place year after year. This is true, some owls apparently do return to the same area on an annual basis, though this has mostly been shown in migratory birds returning to their breeding areas. However, this occurs sporadically and there has been no scientific study to determine the causal triggers of this. It is very conceivable that when the owls that currently visit the site eventually die, no owls will know about the site or find the site and it will remain unoccupied.

Adequacy of surveys – Dr. Bloom comments: "Importantly, no surveys have attempted to determine specific foraging areas used by wintering owls on Banning Ranch." Also, "Most importantly, no night surveys were conducted at Banning Ranch when burrowing owls and other owl species are most active…" Focused surveys were conducted in accordance with the latest (2012) survey protocols published by the CDFG (now CDFW; Staff Report on Burrowing Owl Mitigation, Appendix D). The 2012 protocols are similar in method and general parameters to those set forth in the 1993 Burrowing Owl Consortium Guidelines[9] and the Western Riverside Multiple Species Habitat Conservation Plan. None of the protocols require or suggest the need for forage use area studies or nocturnal surveys. Further, use area and nocturnal studies are not standard studies requested by wildlife agencies related to burrowing owls or other species. These are not standard surveys that would be expected through CEQA. To the best of our knowledge, CCC Staff have never requested such studies for projects and they never requested such studies for this project. Additionally, the wildlife agencies reviewed the EIR and background information and found no issues with the survey methods or analysis. CDFW received and reviewed the EIR and background information during the Section 1600 review process. In order to address CCC comments and to adhere to their requests, NBR also performed additional breeding and winter surveys for burrowing owl. Those studies also went beyond what is typically required. In addition to the protocol surveys, NCR's biologists, experienced with burrowing owls, conducted numerous other surveys during the wintering season which included further opportunistic observations of wildlife on the site, including the burrowing owl (or in some years owls).

General Foraging Habitat Needs – In general, wintering habitat is necessary for the survival of migratory bird species, however the actual requirements for burrowing owl are not known. Available information regarding foraging distance, acreage, preferred prey species, etc. is not known and has not been studied with any scientific rigor. Their wintering needs may be generally the same as their breeding needs, but it is important to consider that (a) during the winter they are only foraging for themselves and not for young or mates so their needs and hunting area are likely reduced, (b) they are more flexible in the habitats they utilize and their burrow needs (e.g., they may sometimes not even require burrows and in South America they will utilize orchards and vineyards), and (c) their diets are flexible and can change with transitioning species and quantities of prey items so they can adapt as the seasons and abundance of differing available prey species change.

Given the variable migratory behavior of burrowing owls, in which some individuals migrate away from their breeding habitat in winter while others remain in the same area year-round, distinct wintering habitat may be less important for the species than for species that are strictly migratory. In addition, individuals of this species have demonstrated

[9] Burrowing Owl Consortium. 1993. *Burrowing Owl Survey Protocol and Mitigation Guidelines*.

behavioral plasticity in their migratory patterns, in which they choose to migrate some years but not others.[10] Further, they lose most, if not all of their territoriality during the winter and can have overlapping use areas.

Suitable Foraging Habitat – Dr. Bloom discusses the foraging requirements for Burrowing Owl, which is in turn reflected in the August Memorandum on page 37:

> *Determining the minimum size of foraging habitat necessary to support one to several burrowing owls is not a simple exercise. Bloom cites studies that estimate average home ranges from around 300 to over 400 ac for breeding males* ***and suggest that wintering ranges are four times larger****. In the studies he cites, there is tremendous variability among birds, with breeding home ranges from* ***20 to 1,213 acres in one study****. The fact that one to several wintering birds have been present at Banning Ranch with approximately 122 acres of foraging habitat indicates that those large areas are not required in all situations. However, we agree that reducing the area of available foraging habitat in such a way that the remaining habitat is fragmented and subject to increased disturbance will place the burrowing owl at increased risk of abandoning this site.* [Emphasis Added]

We concur with the August Memorandum that the existing site conditions at Newport Banning Ranch do not appear to be sufficient to support a wintering burrowing owl let alone two owls and that the wintering individuals are likely traveling to offsite foraging areas. It is important for the Commission to consider that the project EIR found that burrowing owl foraging habitat was present in non-native grasslands and ruderal areas on the site, noting the project would have permanent impacts to 97.26 acres of foraging habitat and temporary impacts to 2.87 acres.[11] The EIR further noted the project includes approximately 20.27 acres of grassland areas and opportunities for restoration of 50.07 acres of grassland. Due to negotiations with the wildlife agencies and CCC staff, the project has substantially reduced its footprint by 40 percent and now only impacts to 28 acres of foraging habitat. In addition, Figure 1 shows the potential foraging habitat available to wintering burrowing owls around the project site after implementation. Because there is no information available regarding home range needs or foraging distances for wintering burrowing owls, a number of foraging area envelopes (600m; 1km; 3km; 6km) are considered. Landscape-level mapping of potential foraging habitat in areas adjacent to the site was performed and includes approximately 76 acres within 600m, 17 acres between 600m and 1km, 622 acres between 1km and 3km, this includes adjacent and nearby open space such as Talbert Regional Park, Fairview Park, and the Huntington Beach Wetlands and 1,077 acres between 3km and 6km, which includes areas such as upper Newport Bay. This does not include other smaller infill parcels or beach foraging opportunities which represent additional viable areas to forage. For example, Dr. Bloom was interviewed by the L.A. Times in 2013[12], discussing Seal Beach Naval Weapons Station burrowing owls located 0.5 mile (0.8km) away from nesting least terns, stating, "It would be possible for these little guys (burrowing owls) to raid that colony of least terns. If that were to happen, the Navy would have to deal with the problem of a modestly protected species eating a federally endangered species." If these nearby beach areas were included in the

[10] Haug, E. A., B. A. Millsap, M. S. Martell. 2011. Burrowing Owl (*Athene cunicularia*). In Birds of North America Online, ed. A. E. Poole. Ithaca, N.Y.: Cornell Lab of Ornithology. Access August 2016 at http://bna.birds.cornell.edu.bnaproxy.birds.cornell.edu/bna/species/061.

[11] City (City of Newport Beach). 2011. Draft Environmental Impact Report. Newport Banning Ranch Project, City of Newport Beach. State Clearinghouse 2009031061. Prepared for the City of Newport Beach by BonTerra Consulting. September 9, 2011.

[12] 2013. Sahagun, L. Navy steps up efforts to protect burrowing owls at weapons base. Los Angeles Times 10 August 2013

calculations then they would minimally add between 40 and 350 acres of additional foraging habitat within known foraging flight distances.

Habitat Maintenance – It has been suggested that the burrowing owl habitat onsite will remain of high quality if there is no project, or if the project is substantially further reduced in size as that proposed by Staff. That is highly unlikely. Regardless of the view of historic management of the site for oil operation purposes, the site was managed for decades to maintain low ground cover where appropriate, which resulted in higher quality habitat for the owl(s).[13] In 2012, NBR, in coordination with the oil operator, was directed by the CCC and FWS to have the oil field operator cease mowing and management operations over a large portion of the property. Predictably as a result of that action, and as frequently cited by CCC staff, vegetation has started growing. NBR's biological team has observed a number of site areas starting to transition to invasive Russian thistle and/or mustard which has been previously occupied by low-growing grasses and forbs. Similarly, as has been observed on field trips by CCC staff and project biologists, areas that were once suitable grasslands are now overrun by acres of Russian thistle. It is expected that without management, the availability of open habitat will continue to decline and the previously suitable areas will support fewer ground squirrels, fewer burrow resources, and much reduced suitable open habitat for wintering burrowing owls to occupy. A direct goal of eliminating management is to allow vegetation to passively restore. It is succeeding in its goal in some areas, therefore, benefits to one species (California gnatcatcher) will harm another. Without the project there would be no management or maintenance. With implementation of the reduced project, there will be more habitat available, there will be more restoration possible, and management of the open space will occur in perpetuity.

Given this information, particularly, the fact that sufficient foraging area is not available on the site, but as demonstrated, sufficient foraging habitat is available when considering both onsite and offsite resources that will be preserved in perpetuity, the most important factor for persistence of wintering habitat for Burrowing Owl becomes the long-term maintenance of areas with sufficient ground squirrel populations such that adequate numbers of suitable burrows remain on the site. As part of this management, it will also be important to preclude domestic dogs and cats from the areas with burrow complexes, limit potential lighting impacts to these areas, and prevention of human intrusion into burrow complexes during the wintering season. In order to maximize the potential for long-term persistence of wintering Burrowing Owl on the site the concepts set forth below will be incorporated into a Burrowing Owl Long-Term Management Plan for the Site.

- Ground squirrels will be allowed to persist throughout the open space areas on the site to ensure that a robust population of ground squirrels remains on the site as this is critical to maintain suitable conditions for wintering Burrowing Owls.
- Appropriate exclusion fencing (e.g., post and cable) with appropriate signage will be installed at the limits of the buffers that surround all burrow complexes in open habitat (e.g., grasslands) and other habitat areas, to ensure that access is strictly controlled and that the buffers function as intended.
- The project's CC&Rs will include restrictions on outdoor cats, stating that occupants are prohibited from having outdoor cats so as to reduce potential predation on Burrowing Owls and other

[13] On page 33 of the 2012 Burrowing Owl Staff Report the following recommendation regarding vegetation management is provided: Manage vegetation height and density (especially in immediate proximity to burrows). Suitable vegetation structure varies across sites and vegetation types, but should generally be at the average effective vegetation height of 4.7 cm (Green and Anthony 1989) and <13 cm average effective vegetation height (MacCracken et al. 1985*a)*."

avifauna. (It is expected that the onsite coyote population will remain and will provide a source of control of feral cats, which is presumably the existing condition).

- As already covered in the Habitat Restoration Plan prepared for the site, disturbed areas, areas of non-native grassland or ruderal vegetation, and degraded areas of purple needlegrass grassland will be restored with native grassland habitats. Such restoration will increase the biomass over much of the mesa, which would in turn increase the potential prey base, reducing the area over which burrowing owls must range to find prey.
- Develop a lighting plan that ensures potential lighting impacts to Burrowing Owl ESHA is reduced to acceptable levels.
- Develop a signage plan specific to Burrowing Owl ESHA that directs the public to refrain from entering and disturbing conservation areas (OSCA) 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.
- Include artificial burrow structures at three locations within the grassland restoration areas to ensure that burrow complexes are available regardless of ground squirrel population fluctuations.

Finally, we feel it is important to address one other comment letter addressing burrowing, specifically the letter by Elizabeth White Flowers. Regarding the Flowers (2016) document, it is apparent that Ms. Flowers is not conversant with the biology of burrowing owls, their status onsite, or their regulatory status. (1) a central tenet of her discussion and argument revolves around breeding owls on the NBR site. In fact, no owls have been observed on site during the breeding season despite numerous (2008, 2009, 2010, 2012 and 2015) CDFG protocol-level surveys having been conducted. NBR has consistently had only one owl present onsite during the wintering season when detected, 2008 being the exception when three owls were observed onsite but one left after only a couple of weeks. Her discussion of the status of breeding pairs and effects on juveniles is not relevant as they do not breed on site. (2) With regard to burrowing owl biology - they do not "often travel by foot." Instead, they fly long distances to migrate and forage and fly short distances around their burrow areas. They may occasionally pursue prey on foot for short distances, but their primary method of locomotion, escape, and predation is by flight. (3) With regard to status, they are not a state-listed species subject to CESA contrary to how they are described by Ms. Flowers.

Respectfully submitted,

Michael A. Mohler
Newport Banning Ranch LLC

<u>Figures:</u>

Figure 1 – Potential Burrowing Owl Foraging Area

Potential Burrowing Owl Foraging Area
Approximate Acreages

Within Project Site = 199 Acres
Within 1km - 3km Distance Line = 622 Acres
Within 3km - 6km Distance Line = 1077 Acres
Within 600m - 1km Distance Line = 17 Acres
Within 600m Distance Line = 76 Acres

N

Feet
0 3,000 6,000

SOURCE: ArcGIS Online Imagery: Bing Hybrid

DUDEK

NEWPORT BANNING RANCH

FIGURE 1
Potential Burrowing Owl Foraging Area

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Attachment 4

TECHNICAL MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 04720010BANN

TO: Amber Dobson, California Coastal Commission

FROM: Tony Bomkamp

DATE: August 30, 2016

SUBJECT: Justification for Variable Buffers for the Newport Banning Ranch Seasonal Features that Support San Diego Fairy Shrimp Plus Features K and M

Newport Banning Ranch supports a number of artificial features that support the federally listed San Diego fairy shrimp, specifically Features VP1, VP2, VP3, E, G, H, I, and J. Two additional features, Feature K and Feature M, though not supporting the San Diego fairy shrimp, will be included in the Vernal Pool Preserve and are included in this analysis. Features C and CC are addressed in a separate Memo dated August 30, 2016 prepared by Glenn Lukos Associates. The purpose of this Technical Memorandum is to evaluate whether the buffers as proposed by Newport Banning Ranch are sufficient to ensure the long-term persistence of the San Diego fairy shrimp on the project site as well as to protect other biological values associated with the various features. In conducting the evaluation, each feature has been considered separately with additional functions exhibited by each feature, including hydrology and biology considered. It is important to note that the Coastal Commission Staff Report recommends incorporation of a 100-foot buffer for vernal pools on the site or 10 feet from the edge of vernal pool watersheds, whichever is greater.

As addressed below for each of the Features, it is important to consider the specific characteristics of the subject features in the context of natural vernal pools that occur on more-or-less undisturbed sites. Undisturbed vernal pools can include a suite of vernal pool functions that would potentially necessitate larger buffers including such factors as diverse native vernal pool flora, special-status toad and/or salamander populations that breed in the pools and reside in adjacent uplands, and specialized pollinators residing in adjacent uplands, upon which many of the endemic vernal pool plants rely for reproduction.[1] The artificial features at Newport Banning Ranch support none of the characteristics of high quality natural vernal pools other than the ability to pond water (in most cases only during wetter than normal years) and supporting the San Diego fairy shrimp. As discussed in more detail for each feature below, the functions associated with the subject features at Newport Banning Ranch are consistent with artificial

[1] Robbin Thorp and Joan Leong. 1998. Specialist Bee Pollinators of Showy Vernal Pool Flowers, In: C.W Whitam, E.T. Bauder, D. Belk, W.R. Ferren and R. Ornduff (Editors). *Ecology, Conservation, and Management of Vernal Pool Ecosystems* Proceedings from a 1996 Conference, California Native Plant Society, Sacramento, pp. 167 – 179.

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pools that are relics of oil field uses that occur in some of the most disturbed portions of this historic oil field.

VERNAL POOL 1

In the post-development condition, a variable buffer is proposed for Vernal Pool 1, with a 100-foot buffer to the east and south, a 50-foot buffer to the west and a buffer ranging from 50 to nearly 75 feet on the north.[2] Vernal Pool 1 supports the San Diego fairy shrimp; however, this feature does not support a vernal pool flora; rather the feature is dominated by a tall shrub mulefat (*Baccharis salicifolia*) and the dominant understory species consist of non-native rabbitsfoot grass (*Polypogon monspeliensis*), and saltgrass (*Distichlis spicata*), neither of which are considered native vernal pool indicator plants. Hyssop loosestrife (*Lythrum hyssopifolium*), a non-native invasive species listed by the California Invasive Plant Council (CalIPC) also occurs within the pool. Hairy pepperwort (*Marselia vestita*) was observed on one occasion within this pool at a single location consisting of a few plants and has not otherwise been observed within other portions of this pool.[3] Creeping spikerush (*Eleocharis macrostachya*) a plant found in a variety of wetland habitats occurs in low densities throughout much of the pool, typically emerging in significant numbers in only wetter than normal years.

It is important to accurately report the characteristics of the plants observed within Vernal Pool 1 as well as other features discussed below. In the September 15, 2015 Memorandum prepared by Dr. Jonna Engel, it was stated on page 20 that:

> A number of plant and animal species are endemic to (found only in) vernal pools. Plant species indicative of vernal pools, including woolly marbles (*Psilocarphus sp.*), hyssop loosestrife (*Lythrum hyssopifolia),* and water clover (*Marselia vestida*), occur in nine of the vernal pools on the project site.

This statement is not accurate relative to the 12 features addressed in this Technical Memorandum. Woolly marbles occurs within two pools addressed in this memo: Vernal Pool 1 and Feature M. Similarly, water clover occurs only in Vernal Pool 1, which is preserved and is not a vernal pool endemic as shown in Footnote 2. Hyssop loosestrife, which occurs within many of the Features within the Vernal Pool Preserve is a non-native invasive species that occurs in wide range of wetland habitats:

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[2] Note that the requirement for providing an additional 10 feet of buffer from the edge of the watersheds for each feature will be addressed through grading, that will ensure that water from both the development and common areas on the site are not directed into the vernal pool watersheds.

[3] Tony Bomkamp. 2000. Personal observation. Note that the 2012 Jepson Manual describes the habitat for this species as: "Creek beds, flood basins, vernal pools"; thus, while it may occur in vernal pools, it would not be considered a vernal pool endemic species.

> *Hyssop loosestrife is a* ***common weed*** *of seasonal wetlands* ***and agronomic crops, especially rice fields****. Introduced from Europe.*[4] [Emphasis added]
>
> *Lythrum hyssopifolia is listed by CalIPC as an invasive plant (Classified as "Limited").*[5]

The watershed for this Feature was mapped in 2010 by Fuscoe Engineering during intense storms that allowed direct observation of water within the Feature's watershed.

Post-Project Condition

In the post-project condition, the watershed will be preserved and as noted, a variable buffer will be incorporated into the project design. In order to ensure that the San Diego fairy shrimp continues to persist for the long-term, the following measures will be implemented to protect the pool.

Water Quality – Grading will be performed in the adjacent areas to ensure that drainage from adjacent residential or common areas is not discharged to the vernal pool watershed.

Invasive Species – Species that could potentially invade vernal pools will not be allowed in the residential or common area plantings. As noted above, the pool supports hyssop loosestrife, a common invasive species that occurs across a variety of wetland habitats including vernal pools.

Management – Vernal Pool 1 will be located within the projects Vernal Pool Preserve Area and will be a component of the project open space that will be subject to long-term management that will include appropriate exclusion fencing, signage, and public education/awareness to ensure that potential encroachment into the pool does not occur.

Vernal Pool 1 does not support native vernal pool plants that require specialized pollinators that would reside in adjacent uplands. Specifically, none of the three plants noted on page 20 of Dr. Engel's memo ("woolly marbles (*Psilocarphus sp.*), hyssop loosestrife (*Lythrum hyssopifolia),* and water clover (*Marselia vestita*") require pollination. Woolly marbles[6] and the non-native invasive hyssop loosestrife[7] are self-pollinated and water clover is a fern that reproduces by spores.

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[4] https://www.cdfa.ca.gov/phpps/ipc/weedinfo/lythrum.htm
[5] http://www.cal-ipc.org/ip/inventory/index.php#definitions
[6] http://www.env.gov.bc.ca/wld/documents/statusrpts/b109.pdf
[7] Marc T. Johnson and Carl Rothfels. 2001. The establishment and proliferation of the rare exotic plant, *Lythrum hyssopifolia*, Hyssop-leaved Loosestrife, at a pond in Guelph, Ontario, *Canadian Field-Naturalist* 115(2) 229-233.

Finally, this feature does not support special-status toads or salamanders that would over-summer in adjacent uplands. As such, incorporation of a variable buffer for Vernal Pool 1 would allow for the conservation of the existing functions and would ensure that long-term persistence of the San Diego fairy shrimp and would also be sufficient to maintain the other limited biological functions associated with this pool.

VERNAL POOL 2

In the post-development condition, a variable buffer is proposed for Vernal Pool 2, with a 100-foot buffer to the north, east and south, and a 50-foot buffer to the west. Vernal Pool 2 supports the San Diego fairy shrimp; however, this feature does not support a vernal pool flora; rather the feature is dominated non-native invasive wetland species including brass buttons (*Cotula coronipifolia*) (as for hyssop loosestrife, this species is listed by CalIPC as an invasive exotic species) and hyssop loosestrife. A third non-native plant curly dock (*Rumex crispus*) was also identified in this feature. The watershed for this Feature was mapped in 2013 by Fuscoe Engineering.

Post-Project Condition

In the post-project condition, the watershed will be preserved and as noted, a variable buffer will be incorporated into the project design. In order to ensure that the San Diego fairy shrimp continues to persist for the long-term, the following measures will be implemented to protect the pool.

Water Quality – Grading will be performed in the adjacent areas to ensure that drainage from adjacent residential or common areas is not discharged to the vernal pool watershed.

Invasive Species – As noted, this feature is dominated by two non-native invasive species, listed by the California Invasive Plant Council (CalIPC) plus a third non-native species. Nevertheless, species that could potentially invade vernal pools will not be allowed in the residential or common area plantings.

Management – Vernal Pool 2 will be located within the projects Vernal Pool Preserve Area and will be a component of the project open space that will be subject to long-term management that will include appropriate exclusion fencing, signage, and public education/awareness to ensure that potential encroachment into the pool does not occur.

Vernal Pool 2 does not support native vernal pool plants that require specialized pollinators that would reside in adjacent uplands nor does this feature support special-status toads or salamanders that would over-summer in adjacent uplands. As such, incorporation of a variable

buffer for Vernal Pool 2 would allow for the conservation of the existing functions and would ensure that long-term persistence of the San Diego fairy shrimp.

VERNAL POOL 3

In the post-development condition, a variable buffer is proposed for Vernal Pool 3, with a 100-foot buffer to the west, east and south, a 50-foot buffer to the north. Vernal Pool 3 exhibits ponding in only extreme years and ponding does not persist for more than 10 – 12 days. A single San Diego fairy shrimp barely large enough for identification was collected from the pool in 2010; however, this feature is not important habitat for the San Diego fairy shrimp due to the inability to pond even in the wettest of years. Furthermore, this feature does not support a vernal pool flora; rather the feature is dominated by upland species and the only dominant wetland indicator plant detected was salt-marsh sand spurrey (*Spergularia marina*), which occurs in a variety of wetland habitats.[8] Curly dock, a non-native was also identified in this feature in low numbers. The watershed for this Feature was mapped in 2013 by Fuscoe Engineering.

Post-Project Condition

In the post-project condition, the watershed will be preserved and as noted, a variable buffer will be incorporated into the project design.

Water Quality – Grading will be performed in the adjacent areas to ensure that drainage from adjacent residential or common areas is not discharged to the vernal pool watershed.

Invasive Species – As noted, this feature is dominated by upland non-native grasses and wetland plants that occur across a wide range of wetlands. Nevertheless, species that could potentially invade vernal pools will not be allowed in the residential or common area plantings.

Management – Vernal Pool 3 will be located within the projects Vernal Pool Preserve Area and will be a component of the project open space that will be subject to long-term management that will include appropriate exclusion fencing, signage, and public education/awareness to ensure that potential encroachment into the pool does not occur.

Vernal Pool 3 does not support native vernal pool plants that require specialized pollinators that would reside in adjacent uplands nor does this feature support special-status toads or salamanders that would over-summer in adjacent uplands. As such, incorporation of a variable buffer for Vernal Pool 3 would allow for the conservation of the existing functions and would ensure that long-term persistence of the San Diego fairy shrimp.

[8] The 2012 Jepson Manual, page 624, describes the habitat for this species as: Mud flats, alkaline fields, sandy river bottoms, sandy coasts, and salt marshes.

FEATURE G

A variable buffer is proposed for Feature G, with a 100-foot buffer to the northwest, north, and east, a 50-foot buffer to the west and south. Vernal Pool G supports the San Diego fairy shrimp; however, this feature does not support a vernal pool flora; rather the feature is dominated non-native upland species including non-native soft chess (*Bromus hordeaceus*), and non-native summer mustard (*Hirschfeldia incana*) with other upland species also present. The only wetland species was brass buttons (*Cotula coronipifolia*), an invasive exotic as already noted. The watershed for this Feature was mapped in 2013 by Fuscoe Engineering.

Post-Project Condition

In the post-project condition, the watershed will be preserved and as noted, a variable buffer will be incorporated into the project design.

Water Quality – Grading will be performed in the adjacent areas to ensure that drainage from adjacent residential or common areas is not discharged to the vernal pool watershed.

Invasive Species – As noted, this feature is dominated by upland non-native grasses and the only wetland plant is a non-native invasive that occurs across a wide range of wetlands. Nevertheless, species that could potentially invade vernal pools will not be allowed in the residential or common area plantings.

Management – Feature G will be located within the projects Vernal Pool Preserve Area and will be a component of the project open space that will be subject to long-term management that will include appropriate exclusion fencing, signage, and public education/awareness to ensure that potential encroachment into the pool does not occur.

Feature G does not support native vernal pool plants that require specialized pollinators that would reside in adjacent uplands nor does this feature support special-status toads or salamanders that would over-summer in adjacent uplands. As such, incorporation of a variable buffer for Feature G would allow for the conservation of the existing functions and would ensure that long-term persistence of the San Diego fairy shrimp.

FEATURES H, I, J, and K

Features H, I, and J will be located within the eastern portion of the Vernal Pool Preserve and all will have a minimum 100-foot buffer, when the undeveloped property to the south is included. These features support the San Diego fairy shrimp. Feature K is immediately southeast of Feature J and east of Feature I and supports the common versatile fairy shrimp and should be

considered for removal from the Vernal Pool Preserve due to the potential for adverse impacts on San Diego fairy shrimp through hybridization.

FEATURE M

In the post-development condition, a variable buffer is proposed for Feature M, with a 100-foot buffer to the south and a 50-foot buffer the east north and west. Feature M supports the common versatile fairy shrimp. This feature occurs in a flat area that was previously occupied by pipe racks as evidenced by the metal foundations still present. Vegetation is dominated by invasive species including Spanish sunflower (*Pulicaria paludosa*)[9], hyssop loosestrife[10], and upland grasses. A patch of woolly marbles was also observed during spring of 2016, covering approximately 24 square inches. Given the limited amount of woolly marble, this feature does not support a vernal pool flora; rather as already described is dominated by non-native invasive species. The watershed for this Feature was mapped in 2013 by Fuscoe Engineering.

<u>Post-Project Condition</u>

In the post-project condition, the watershed will be preserved and as noted, a variable buffer will be incorporated into the project design.

Water Quality – Grading will be performed in the adjacent areas to ensure that drainage from adjacent residential or common areas is not discharged to the vernal pool watershed.

Invasive Species – As noted, this feature is dominated by two non-native invasive species, including one that is listed by the California Invasive Plant Council (CalIPC). As noted, this feature also supports the versatile fairy shrimp, which in this context should be viewed as an invasive species due to it ability to hybridize with the San Diego fairy shrimp, which would result in adverse impacts on a federally listed species. Removal of the feature is recommended to reduce the potential of hybridization with the San Diego fairy shrimp which occurs in nearby pools.

Management – Feature M will be located within the projects Vernal Pool Preserve Area and will be a component of the project open space that will be subject to long-term management that will include appropriate exclusion fencing, signage, and public education/awareness to ensure

[9] The 2012 Jepson Manual describes this species as follows: "Invasive weed in watercourses, moist soils, disturbed ground…"
[10] While this species is not recorded on the wetland data sheet in the May 2013 Dudek *Jurisdictional Determination of Seasonal Features for the Newport Banning Ranch*, hyssop loosestrife was observed to be dominant during spring and summer of 2016 by T. Bomkamp.

that potential encroachment into the pool does not occur. As noted, removal of the feature is recommended to protect the federally listed San Diego fairy shrimp.

Finally, Feature M does not support native vernal pool plants that require specialized pollinators that would reside in adjacent uplands nor does this feature support special-status toads or salamanders that would over-summer in adjacent uplands. As such, incorporation of a variable buffer for Feature M, should it be retained would allow for the conservation of the existing very limited functions.

FEATURE E

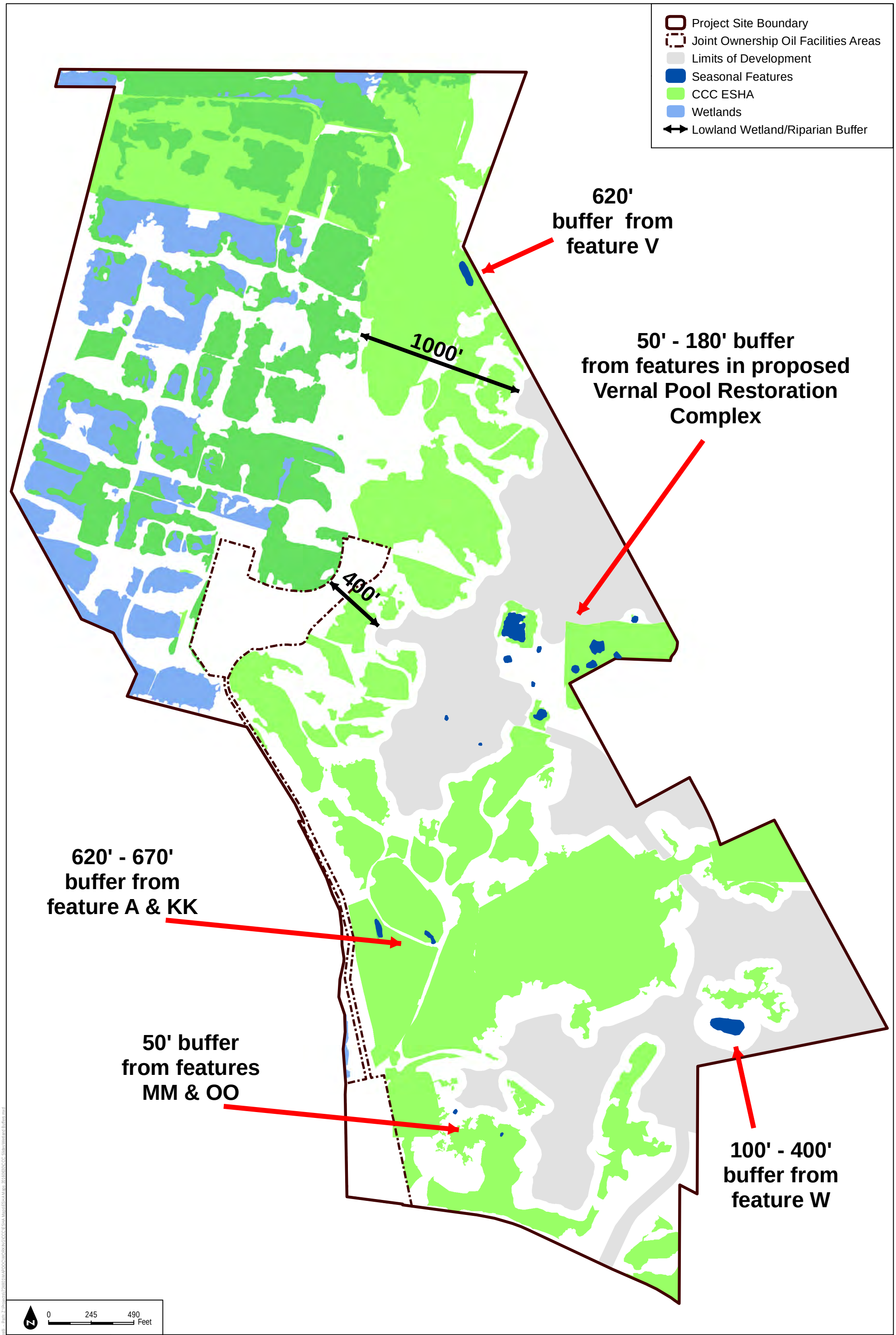
Feature E is an excavated oil sump, which has been documented as containing hydrocarbons that require remediation. This feature is not a vernal pool by any definition, supporting a predominance of mulefat. Surveys conducted in 2016 found that areas subject to previous ponding supported mulefat, black mustard (*Brassica nigra*), and curly dock (*Rumex crispus*).[11]

The the April 29, 2016 Memorandum, Dr. Dixon and Dr. Engel contemplate potential impacts to Feature E as part of the necessary hydrocarbon remediation:

> To maintain the viability of this endangered species, we recommend that vernal pools be created in several areas and be incorporated into the approved HMP to provide habitat for the San Diego fairy shrimp, and that destruction of vernal pools containing San Diego fairy shrimp due to remediation be mitigated at a 10:1 (area created or Restored area:impacted) by restoring the vernal pools in place and creating vernal pools nearby or in other areas approved by the U.S. Fish and Wildlife Service.

The recommendation to create vernal pools for the San Diego fairy shrimp at multiple locations on the site or possibly on nearby sites (as approved by USFWS) is biologically sound and would enhance the long-term survivability of the species within the region. Creation of a new pool immediately to the east of Feature E would be part of the mitigation program with additional pools to be created on other portions of the Newport Banning Ranch mesa within the mosaic of coastal sage scrub and native grasslands. Nevertheless, a 10:1 ratio is not needed to ensure that sufficient replacement habitat is provided. A ratio of 4:1 would be more than sufficient and would exceed the requirements of most USFWS Biological Opinions for replacement of vernal pools occupied by listed fairy shrimp.

[11] Bomkamp, Tony. March 10, 2016. Memorandum to Amber Dobson, Subject: Wetland Status for Mulefat Scrub beyond the Limits of Vernal Pool 1, Feature E and Feature M at Newport Banning Ranch, Orange County, California



SOURCE: 2011 Aerial and Project Footprintl provided by Fuscoe Engineering, ESHA by CCC

DUDEK

Wetland Buffers

Newport Banning Ranch

NBR 2nd Addendum

Attachment 5

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 04720010BANN

TO: Mike Mohler, Newport Banning Ranch, LLC

FROM: Tony Bomkamp

DATE: August 30, 2016

SUBJECT: Features C and CC at Newport Banning Ranch

In the Memorandum dated April 29, 2016 and revised on August 25, 2016, Dr. John Dixon and Dr. Jonna Engel continue to maintain that Features C and CC meet the definition of wetlands under the Coastal Act. In the Revised Memorandum they note that the presence of non-native invasive plants as the only indicators of wetland vegetation does not change the status of these features as wetlands, a point that I have never disputed. I also acknowledge that in some instances, it is appropriate for the Coastal Commission to regulate impacts to anthropogenic wetlands and I also believe that in many other instances, such anthropogenic features should not be regulated as wetlands. Dr. Dixon seems to agree with this as is clearly set forth in his exclusion of Feature P, which as he noted, includes more wetland indicator species, including native species than either Features C or CC. The question seems to be where one draws the line between features which should or should not be regulated as Coastal wetlands.

As an adjunct faculty member at CSU Fullerton, I have been regularly teaching a graduate "Wetland" seminar since 1994 for the Graduate Environmental Studies Program and I have also taught a Graduate Seminar on Vernal Pools for the CSU Biology Department. I believe that identifying Features C and CC as wetlands is not appropriate for a number of reasons, many of which have already been previously stated.

1. The origin of these features as depressions created incidentally to remediate oil spills must be taken into account. It is hard to imagine that the framers of the Coastal Act had such features in mind as the types of features that would be protected under the Coastal Act.
2. The lack of biological value associated with these features. As noted, they contain dense areas of non-native invasive plants and lack native wetland plants. This does affect their functions, which because of the invasive qualities of the plants that occupy them is best described as harmful. If these features were created as "restoration" pools, it would be mandatory to eradicate these plants (difficult but possible) in order to meet success criteria. These pools also contain the common versatile fairy shrimp, which Dr. Dixon determined was not sufficiently important to preserve in a number of other pools.

29 Orchard ▪ Lake Forest ▪ California 92630-8300
Telephone: (949) 837-0404 Facsimile: (949) 837-6834

3. The isolated character of these pools. As shown on Figure 2 of the Revised Memorandum by Dr. Dixon and Dr. Engel, these features will be largely surrounded by development, further negating any possible benefits associated with preserving the features.

Should the Commission find these features to be wetlands, the following factors should be considered: 1) relocation of Features C and CC to more ecologically sound locations such as the vernal pool preserve or other areas on the mesa. If this Commission determines that Features C and CC should be preserved in place, then 2) the size of the buffer should be appropriate to the value of the resource.

Relocation of Features C and CC

There is no question that it would be ecologically superior to relocate these features to the vernal pool preserve or to other areas on the Banning Ranch Mesa rather than leaving two tiny isolated features largely surrounded by development. Relocation would result in the elimination of the invasive species within the features and would also provide for remediation of the contaminants that remain in the features. Relocation would also allow for creation of basins designed for the express purpose of creating vernal pool habitat, which would include introduction of native vernal pool plants as well as the endangered San Diego fairy shrimp. It would also allow for the creation of pools within a larger preserve area that would optimize genetic exchange between the newly created pools. Given their small size and isolation, retaining Feature C and CC in their current location as recommended by Staff would provide no benefit for the long-term preservation of San Diego fairy shrimp on Banning Ranch because these features already support the versatile fairy shrimp, which pose a risk to the San Diego fairy shrimp through hybridization.

Buffers

On page 19 of 69 of the Revised Memorandum it is suggested that a 100-foot buffer is appropriate for wetlands, which presumably includes Features C and CC. In other permit decisions, the Coastal Commission has found that for degraded wetlands, with far more function than Features C and CC, a 25-foot buffer is sufficient to protect the functions and values. For example, at the Boeing Site in Seal Beach, the Commission required preservation of a drainage ditch that contained native wetland vegetation but required only a 25-foot buffer. In a separate and unrelated approval of permit A-NOC-12-005 (appeal of a proposed 33,368 sq. ft. office building and one three-story, 58,970 sq. ft. office building, surface and underground parking, and other improvements) the Commission approved the project with reduced buffers that ranged from 22’ to 100’. In approving the reduced wetland buffer, the Commission found that, though the wetland was at one time part of a natural hydraulic waterway, because the natural connection to the site had been altered through the construction of a drainage pipe, the wetlands were

created through freeway runoff and not considered high quality habitat. In the case of Features C and CC, they are highly degraded (as depicted in the photos on page 16 of the Revised Memorandum). As already noted, the only plant species within these wetland features are listed by CalIPC as non-native invasive plants. Exhibit 1 attached, depicts a 10:1 ratio of watershed to pool with a 10-foot buffer around watershed as noted in Dr. Dixon's memo. This is more than adequate for these highly degraded features.

10ft Buffer
Seasonal Features
Watershed C
Watershed CC

N

0 12.5 25 50
Feet

NEWPORT BANNING RANCH
Feature C & Adjacent Areas

GLENN LUKOS ASSOCIATES

Exhibit 1

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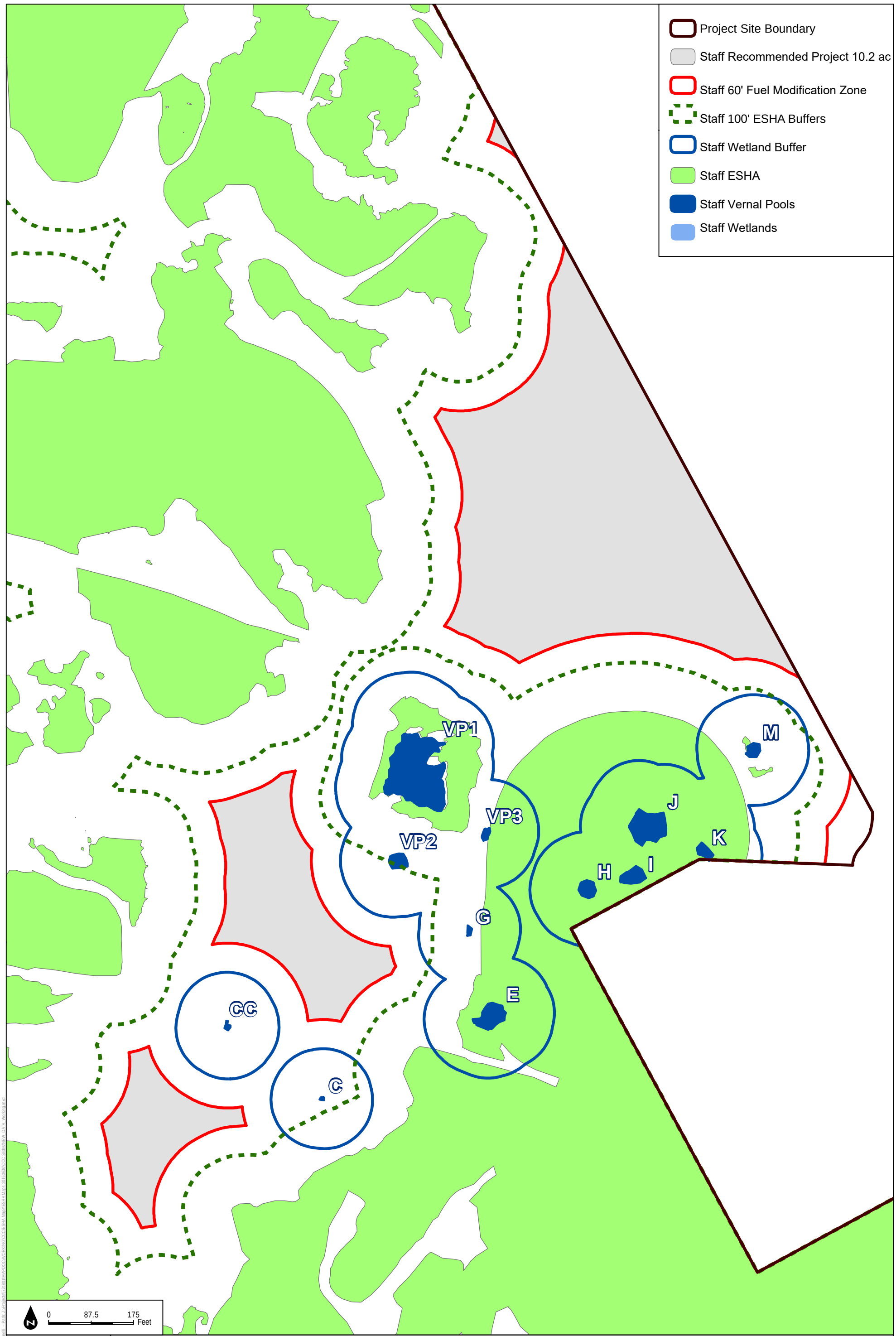

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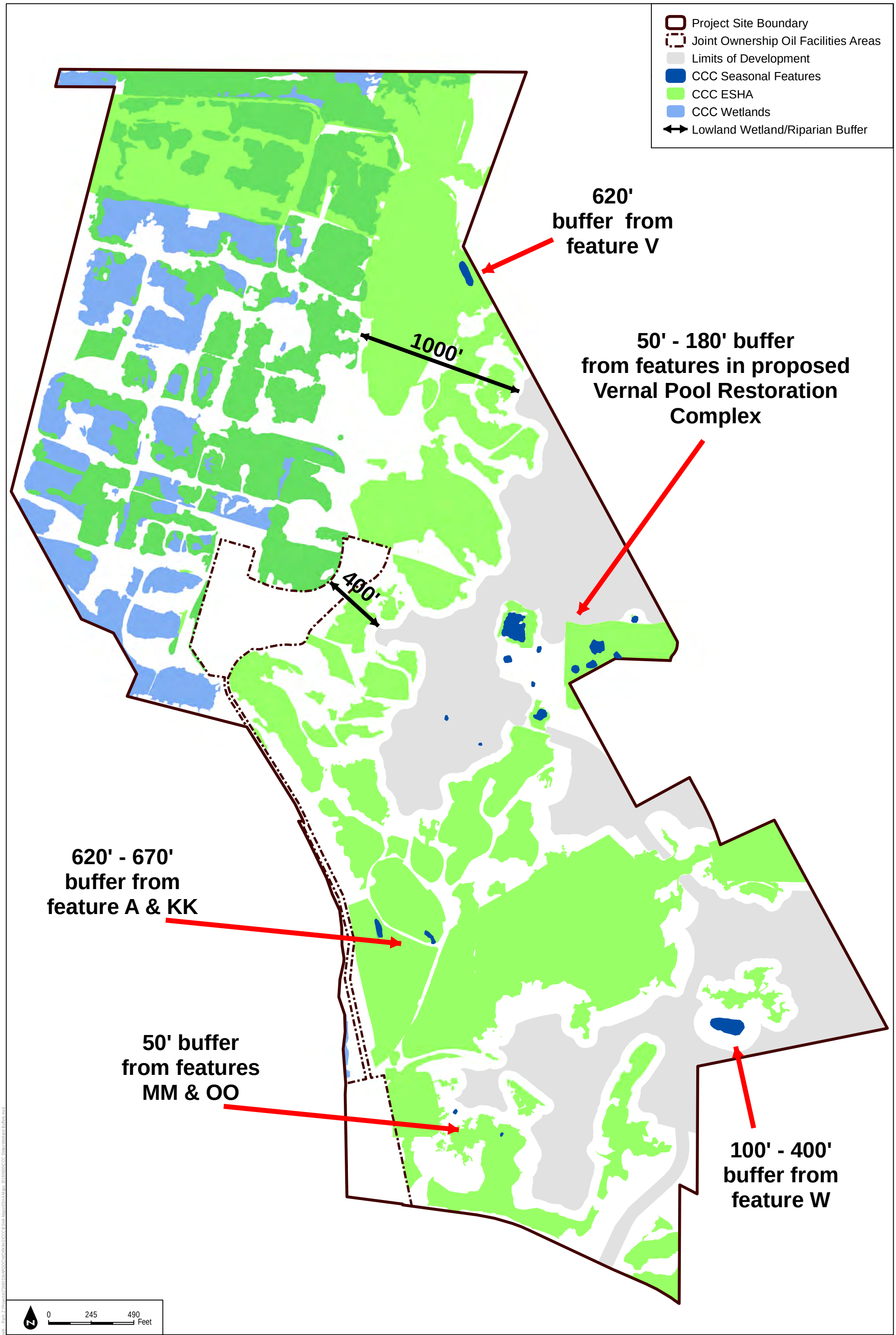
SOURCE: 2011 Aerial and Project Footprint provided by Fuscoe Engineering, ESHA by CCC

EXHIBIT 1

Staff Recommended Project Footprint

Newport Banning Ranch



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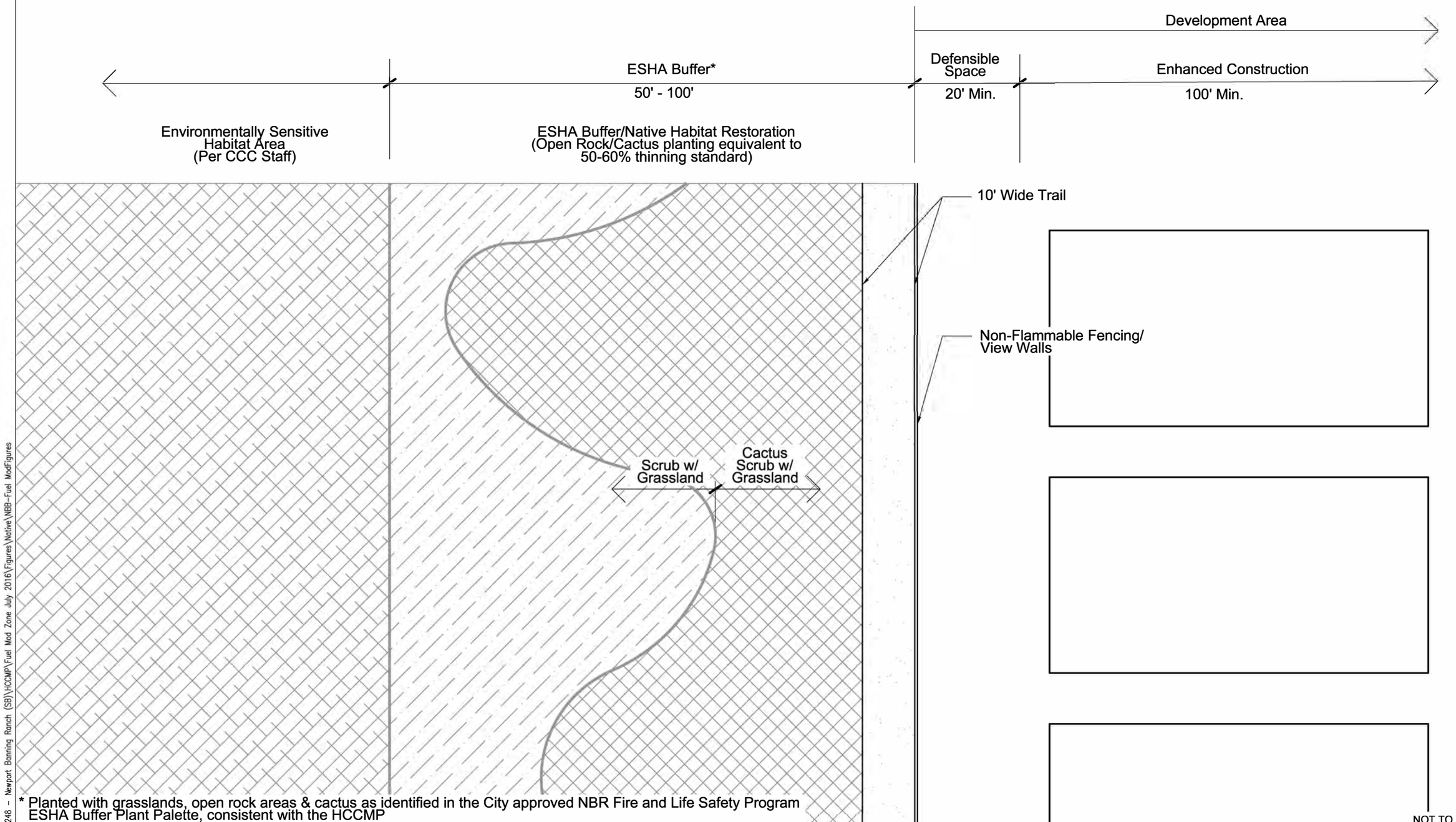
SOURCE: 2011 Aerial and Project Footprint provided by Fuscoe Engineering, ESHA by CCC

Exhibit 2
Proposed Wetland Buffers

Newport Banning Ranch



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Newport Banning Ranch Project

Exhibit 3

Fire Safe Restoration ESHA Buffer/ Plan View

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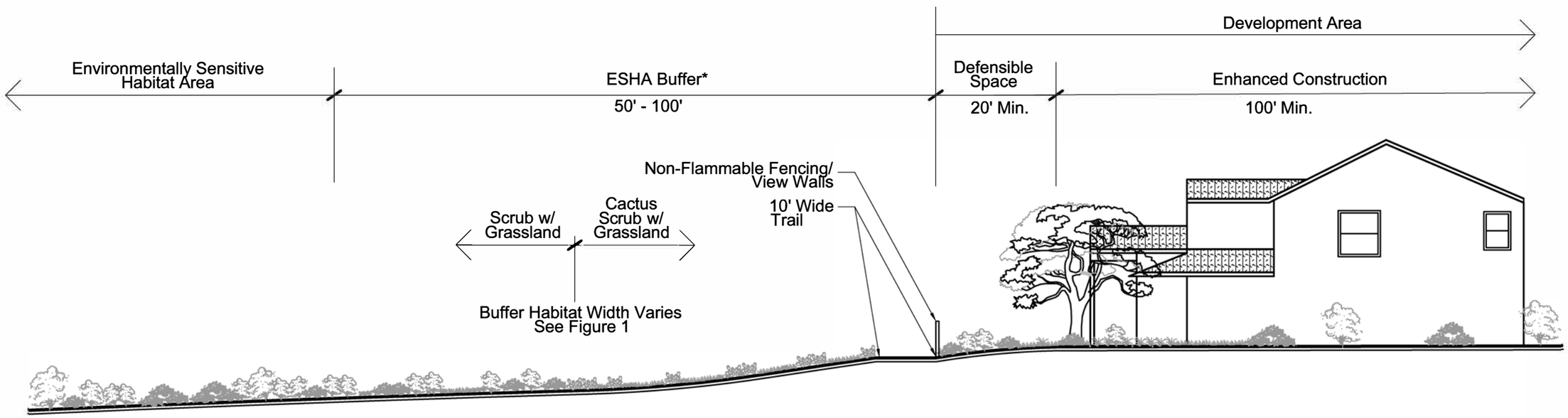

Environmentally Sensitive Habitat Area (Per CCC Staff)

ESHA Buffer/Native Habitat Restoration (Open Rock/Cactus planting equivalent to 50-60% thinning standard)

Plant Palette: ESHA Buffer

Botanical Name	Common Name
Grasslands	
Distichlis spicata	*Saltgrass*
Lupinus bicolor	Arroyo lupine
Lasthenia californica	California goldfields
Melica imperfecta	Coast Range melica
Stipa lepida	Foothill needlegrass
Stipa pulchra	Purple needlegrass
Succulent Scrub Mosaic	
Non-combustable/Succulent Scrub	
Cylindropuntia prolifera	Coastal cholla
Opuntia littoralis	Coast prickly pear
Fire-Resitive Scrub Species	
Encelia californica	California encelia
Isocoma menziesii	Coastal goldenbush
Lycium californicum	California boxthorn
Peritoma arborea	Bladderpod

* Planted with grasslands, open rock areas & cactus as identified in the City approved NBR Fire and Life Safety EHSA Buffer Plant Palette, consistent with the HCCMP

NOT TO SCALE

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Exhibit 3

Fire Safe Restoration Buffer Cross-Section and Planting Palette

Newport Banning Ranch Project

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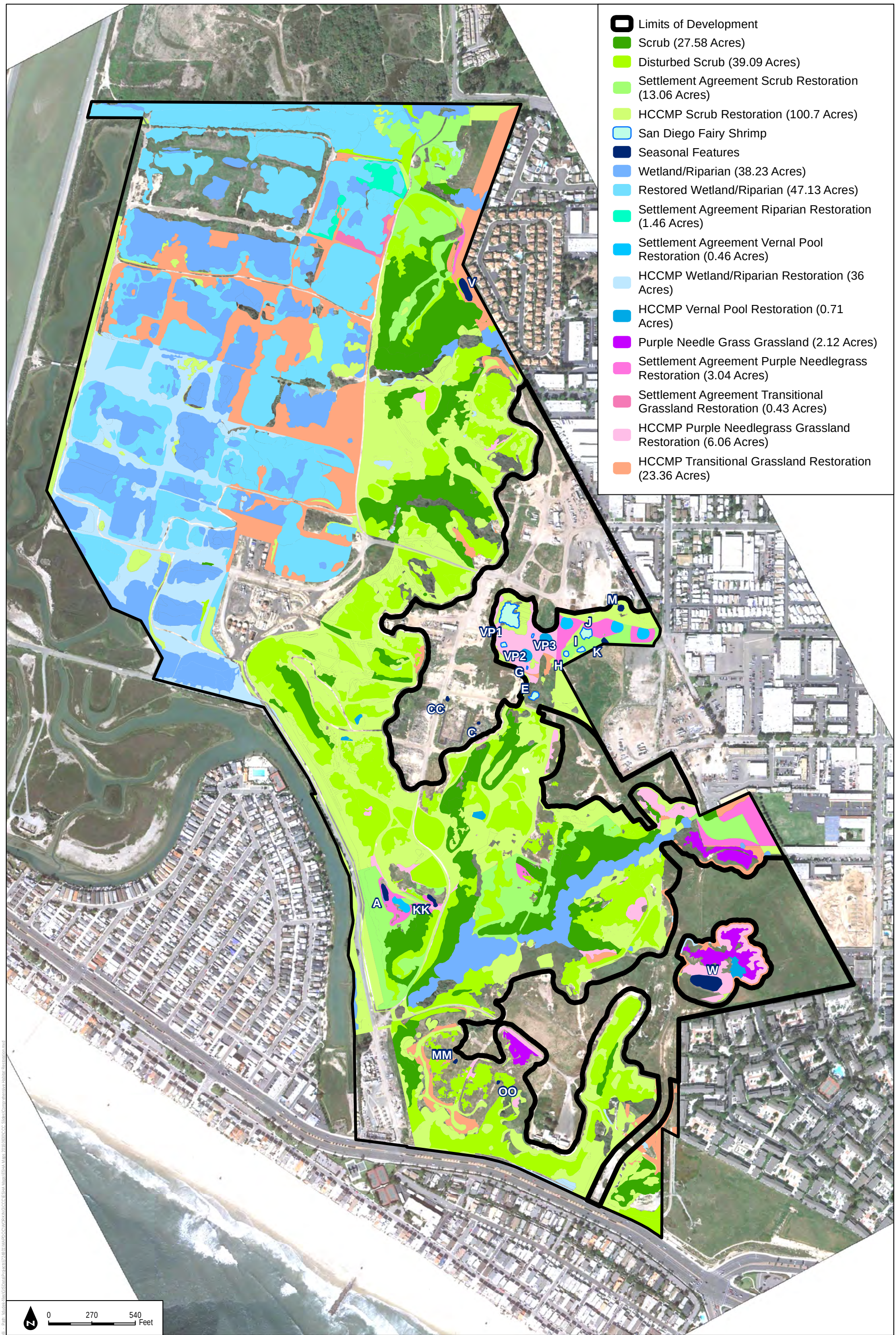

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SOURCE: Dudek

Exhibit 4
Comprehensive Habitat Restoration

Newport Banning Ranch

JUANENO BAND OF MISSION INDIANS, ACJACHEMEN NATION, GABRIELENO/TONGVA SAN GABRIEL BAND OF MISSION INDIANS, SACRED PLACES INSTITUTE FOR INDIGENOUS PEOPLES

September 6, 2016

Mr. John Ainsworth, Acting Executive Director
California Coastal Commission
Via email: BanningRanchComments@coastal.ca.gov

Re: Agenda Item W14d – Newport Banning Ranch, LLC

Dear Mr. Ainsworth and Coastal Commissioners:

Sacred Places Institute for Indigenous Peoples (SPI) is an Indigenous-led, Los Angeles-based organization that works to build the capacity of Native Nations and Indigenous Peoples to protect sacred lands, waters, and cultures throughout California. SPI is joined on this comment letter with the Chairpersons and members of the following California Native American Tribes, Gabrieleño/Tongva San Gabriel Band of Mission Indians and the Juaneno Band of Mission Indians, Acjachemen Nation, (collectively "Native Nations") who are recognized by the California Native American Heritage Commission and who have deep cultural and spiritual ties dating back millennia to the 400-acre site proposed for development by Newport Banning Ranch, LLC (NBR).

SPI and the Native Nations appreciate the Coastal Commission staff's work to address the cultural, archeological and ethnographic resources in the staff report. This area is one of the last remaining coastal open space areas within Acjachemen and Tongva homelands. It is on the Sacred Lands Inventory maintained by the Native American Heritage Commission and is identified as a traditional cultural landscape by Tongva and Acjachemen Nations. Therefore, we agree that this proposed development site is a rare treasure of remaining archeological and cultural resources, including across three temporal horizons and possibly a fourth which is very rare. However, while we agree with many of the staff report's factual details, we have many concerns with its conclusions, which we detail below.

Based on these concerns, we have concluded that the Coastal Commission must deny the project permit in its current form. We conclude this because our Native Nations and our cultural, archeological, and ethnographic resources on the NBR property – the full extent of which are still largely unknown - may be irreversibly impacted by this development and insufficient information presently exists to make a complete determination about the extent of the project's impacts. ***We therefore respectfully***

request that the Coastal Commission deny this coastal development permit application, address our concerns laid out below, and prohibit any site preparation or other grading-like work until such time as adequate cultural, archeological and ethnographic information has been gathered, analyzed and presented to the Native Nations with sufficient time for our review and analysis of that information.

The staff report included an important contextual excerpt from a May 3, 2016 letter to the Commission by the California Cultural Resource Preservation Alliance (Alliance). The staff report noted that, "The reason the property as a whole, all 401 acres, is regarded as a Traditional Cultural Landscape is because of the site's vast array of special vegetation and wildlife and biological resources: It is this ecosystem [of Banning Ranch] that led the Gabrielino and Juaneno-Acjachemen ancestors to settle here, collect the plants and animals, hold ceremonies, and bury their dead. It is this ecosystem that together with the archaeological sites, forms this sacred landscape of the Banning Ranch Cultural Property and Landscape."

While three sacred sites have been documented the past decades, including in roughly eight reports, and even with further archeological resource examination that is called for in Special Condition 17 through an additional Archeological Resource Plan (ARP), this only addresses part of the overall tribal cultural and archeological issues. **We believe that ethnographic interviews and an ethnographic report should be required in addition to a more comprehensive ARP**. This will complete the necessary information gathering of the cultural significance and use of this property.

Once this information has been gathered by a non-biased professional who has no ties to any interested tribal government, we believe it is likely to lead to a determination by the State Historic Preservation Officer that the entire site is a Traditional Cultural Landscape. The staff report acknowledges this likely, stating that, "Because the site is now in the Sacred Lands File, and because this listing includes information about how 4 of the 8 known archeological sites may be connected and are believed to be a village site, SHPO will review that information at the time of the Section 106 consultation. *SHPO could make the determination that the complex of the 4 archeological sites or all known archaeological sites should be treated as 1 large site eligible for listing in the National Register, or could determine that the entire 401 acres of the property are considered sacred lands and a Traditional or Tribal Cultural Landscape that may be eligible for listing in the National Register as a Traditional Cultural Property*."

We believe that once a subsequent ARP is completed as well as sufficient ethnographic interviews are performed and a report is prepared that it will be determined that the entire Banning Ranch site, including the individual archeological sites, is a Traditional Cultural Property due to the historic religious and ceremonial use of the site, and "because of unique landscape features, such as a mountain top or a bluff top, a place with significant natural views, a place with rivers or estuaries, special vegetation or wildlife that may contribute to its significance, a place with evidence of cultural traditions or evidence of burials, or a place with religious artifacts or monuments.

Additionally, because the developer has not engaged in meaningful consultation until the past few months, Native Nations agree with the staff report statement that we have not been afforded sufficient time necessary to review and evaluate the recent studies. The report states that, "Archaeological documents and studies were not shared with the tribal groups

until June 2016 and the tribal groups are concerned with the limited amount of time to review past archeological documents and cultural documents and respond to the project proposal and evaluate the project's impacts on the archeological sites and the cultural significance of the site, while attempting to participate in the monitoring of the site's ongoing investigations with little advanced notice." We have not had sufficient time to analyze and evaluate the information recently presented to us. Seven years ago, in 2009, the developer invited some of the nine (9) Native Nations with direct cultural and archeological ties to this land on a site visit, but then performed no follow-up or engagement in the intervening seven years. **The developer's failure to engage Native Nations as required by law at a much earlier stage of the process should not benefit them and adversely impact our ability and right to advocate for the protection of our sacred resources.**

We also want to register our strong concern about the "Impacts of unpermitted development" on Native Nations' cultural and archeological resources. The staff report notes that, "Earth-moving activities associated with oil lease production have greatly disturbed all of the recorded cultural resources on the Project site. Disturbances that have affected cultural resources include road building, quarrying and preparation, closure, and rehabilitation of drilling pads. Fill, acquired from numerous locations on the property through time, was often utilized to create roads and pad sites in the lower wetlands." We are disturbed by the fact that the Commission has not required mitigation of these impacts and that we have not been consulted about mitigation in this regard.

Even more disturbing was the staff report's inclusion that, "In 1982, 95% of ORA-843 had been destroyed by grading, but the portion that was left in good condition and recorded as very significant. During the 2010 investigation, ORA- 843 was not found significant and was lacking integrity indicating that the site had been subject to damage. This damage is yet to be mitigated." We believe that mitigation of all of these unpermitted development impacts, including penalties and fines payable to our Native Nations for untold damages to these culturally significant resources, must occur <u>prior to</u> consideration of any new permit approval.

Despite the property owner's unpermitted disturbance and damage to our long-known cultural sites archeological resources, we firmly believe that the Banning Ranch site rises to the level of being eligible for listing on the National Register of Historic Places under Public Resources Code Section 5024.1 and 14 California Code of Regulations Section 4852. Further, as noted in the staff report, that "the land is a religious and sacred site and that the significance of the 401 acres is not diminished by the disturbed archaeological deposits found to date and the disturbed areas are not a representation of the archeological and cultural resources and significance that exist on the site."

For these reasons, as well as the specific comments below, we strongly urge the Coastal Commission to deny NBR's proposed coastal development permit in its current form.

Finally, if for some reason the Commission approves the NBR project at some level, we strongly but respectfully request that the open space area, at a minimum, be required to be co-managed with Native Nations such as ourselves that have clear and direct cultural ties to this property. Additionally, Native Nations should be recipients of at least half of the funds proposed to be set aside to manage the open space area. This would ensure the protection for our archeological, cultural, and ethnographic resources in perpetuity. Importantly, the design and content of all signage for the property must be required to

receive review and approval from Native Nations, and funding for our time to consult on this must be compensated. Thank you.

Specific Comments on the NBR, LLC Project

As Native Nations, we offer the following specific comments for your consideration:

Use of Culturally Appropriate Language

1. The use and incorporation of the term “tribal cultural resource” would be beneficial in the document. The staff report struggles with “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,” when they could simply say “tribal cultural resources and traditional cultural landscapes.” PRC 21074 (a)(1)(A)-(B).

Please consider changing all use of term “pre-historic” to “pre-contact” as the former term implies history began at the point of European contact in California.

Change all “Native American groups” to “California Native American Tribes, MLDs, and groups.” The document needs to reflect the fact that sovereign Native Nations are to be consulted on this project and the term used should be consistent with the terms used elsewhere in state land use and planning law. The California Assembly Bill 52 amendment to CEQA adopted the term California Native American Tribe. We strongly recommend that the Commission adopt language consistent with the language used in CEQA and by the Native American Heritage Commission.

2. We have concerns regarding the use of the term “skeletal remains and grave-related artifacts.” The term "human remains" encompasses more than human bones because some tribal traditions may have called for the ceremonial burning of human remains, associated funerary objects, and animals. Ashes and other remnants of these burning ceremonies are treated in the same manner as bones or bone fragments that remain intact. Therefore, many California Native American Tribes might be hesitant to allow the use of the terms “skeletal remains and grave-related artifacts.” It may be more appropriate to use the phrase, “Native American human remains and associated burial goods and/or funerary items.” That phrase should satisfy the California and federal use of the terms.

Concerns Regarding Special Condition 17

1. We have concern regarding the use of “cadaver dogs” in Special Condition 17(A)(2). Cadaver dogs, or “forensic canines” are useful investigative tools for the discovery of in situ burials. However, they are not fool-proof and have a tendency to give false security. They also can only be utilized in very specific conditions.

2. We have concern regarding Special Condition 17(A)(2), “…the applicant shall undertake additional archaeological testing to determine the boundary of known prehistoric archaeological sites and, where necessary, testing (including the use of cadaver dogs or other test methods recommended by peer-review) to ensure that all other

prehistoric archaeological sites that may be present on the site are identified and accurately delineated…" Our concern here is that the "other test methods" being recommended are limited by allowing only the peer review to have input on which methods might be used. Archaeologist have a tendency to want to dig or perform something invasive in order to learn more about an area. Tribal people would prefer not to disturb an area they feel may be significant if they don't have to. The Native American monitors must be seen as contributors to the information being considered by the decision maker. In addition to forensic canines, there are other techniques used in the field, such as Ground Penetrating Radar, survey drones, and controlled grade measure they can use. A controlled grade allows for a very methodic removal of soil to allow the monitors to carefully assess what is being exposed.

3. Point of clarification. The CCC states in Special Condition 17(A)(3) that the "revised ARP does not authorize the excavation or any cultural deposits nor data recovery." Is the ARP only for "testing, cataloging, etc.," of the resources unearthed during their survey? What's the purpose of the revised ARP in reality? Our understanding from the document would have the ARP act as the resource for mitigation measures, implementation of measures and monitoring plans. With respect to the Banning Ranch property, California law supersedes federal law in the handling of Native American burials. **CCC should reference HS 7050.5 and PRC 5097.98 at the end of this section.**

4. We have concern regarding the determination of a tribal cultural resource's significance. Throughout Special Condition 17 it is the Executive Director who gets to make the determination as to whether a tribal cultural resource is "significant." Whenever the CCC states the above, like in Special Condition 17(B)(1), then it should qualify it by referencing Special Condition 17(E)(3) – the condition where it is stated that the recommendation to the ED regarding a tribal cultural resource's significance is based on their own experience and the input of the Native American monitors and MLD, if appropriate. And if there is a disagreement between the archaeologist and Native American monitor, then both perspectives shall be presented to the ED.

5. We have concern regarding Special Condition 17(C)(4) , the Native American Monitoring wheel. Our concern with this section is that it is void of direction. Who makes the "wheel" – literally and figuratively? More detail needs to be provided in this section and we would like clarification on the matter of who has responsibility for creating the Monitoring wheel.

6. We have concern regarding Special Condition 17(C)(10) – Discovery of human remains. As long as project's on private lands then: **Treatment of the remains needs to be done in strict accordance to HS 7050.5 (preserve in place until examination can be done) and PRC 5097.98 (protocol to be followed if remains are identified as Native American).**

7. We have concern with Special Condition 17(G). There are 3 comments on this condition. First, CCC keeps using the phrase, "documents ancestral ties to the area," when the new phrase is "traditionally and culturally affiliated." It would be good for CCC to adopt the more current and commonly used term "traditionally and culturally affiliated." Second, they are planning on having the "Native American groups" (which should be changed to California Native American Tribes, MLDs, and groups) "review and comment"

on the plans (archaeological testing, significance testing, etc). Our concern here is that being invited to review and comment, is not the same as being consulted in the drafting of the plans. We would have like to see the NAMs or the "Native American groups" to be consulted in the development and drafting of the plans, rather than be invited to review and comment, that's all. Third, we found it interesting that the SHPO (although they call it OHP) and the NAHC will be invited to review and comment on the plans as well. Our main concern here is that they have the wrong part of the OHP being contacted. We believe it is the SHPO who comments on these types of plans.

8. We have concern with Special Condition 17(H). These reports should also either be (1) sent to the California Native American Tribes, MLDs, and groups as well, or (2) be made available to them free of charge upon request.

Concerns with other Special Conditions

1. We have concerns regarding OSCA Special Condition 10(C)(2) – Irrevocable dedication of Open Space and/or Conservation Area. This is on page 132. The dedication can be made to a non-profit organization, including a Native American Land Trust with representatives from both the Gabrielino Tongva and Juaneno Acjachemen California Native American Tribes, or public agency. This **should be amended to include a California Native American tribe as well.** There can be no conflict of interest with the OSCA. There has to be "substantive consultation" with the tribal governments "with ties to the land." The Commission requires that the entity has to have "demonstrated experience in land conservation and habitat restoration." **Please amend this statement to say "***demonstrated experience in land conservation, habitat restoration, and working with California Native American Tribes*." Additionally, we would like clarification as to the status of "irrevocable" dedication.

It appeared that a portion of the **dedication may only be irrevocable for 20 years, see SC 10(c)(7).** This is not satisfactory to Native Nations – the open space must be required to remain protected as open space in perpetuity.

2. We have concerns regarding Special Condition 11 – Trails of the OSCA. Our concern is whether there are any trails near "known tribal cultural resources." Special Condition 11(B)(4)(e) allows for archaeological testing as an exception to prohibitions on the trails. Also, this Special Condition provides for management fees of the trails. Are there any known features within the trail system? If there are, there will need to be maintenance fees set aside for those resources care from vandalism, erosion, rehabilitative treatment, etc.

3. We have concerns regarding OSCA - Special Condition 10. All lands within the dedicated open space shall be vegetated in accordance with HMP SC 14. The plants are to be specific native plants.

The Commission has unfortunately not given consideration on this issue to requiring consultation with the California Native American Tribes, MLDs, and groups on the NAHC Contact List about types and/or placement of plants**. Please add this requirement as California Native American Tribes and Native people have cultivated valuable and**

unique knowledge about local native plants over the past several thousand years and this expertise should be utilized in the development of any plans for native plant and habitat restoration.

Both the Sacred Places Institute for Indigenous Peoples and the California Native Nations appreciation your consideration of our comments and concerns.

Sincerely,

Angela Mooney D'Arcy
Executive Director & Founder
Sacred Places Institute for Indigenous Peoples

From: Judy Morris
To: BanningRanchComments@Coastal
Subject: Agenda item 5-15-2097
Date: Saturday, September 03, 2016 3:45:40 PM

Dear Honorable Chair Kinsey, Commissioners and Staff,

I am writing you to state my opposition to development at Banning Ranch. Due to the overdevelopment which has stripped the Southern California coastline of much of its natural resources, Banning Ranch is now one of our last unprotected open spaces which contains vital diverse native wildlife habitat and is one of the few remaining pieces of the cultural landscape for the local Native Americans of this area. I urge you to uphold the Coastal Act and its protections for these natural and cultural resources at Banning Ranch and DENY the development proposal before you in its entirety.

The compromise produced by the landowners will still result in the destruction of environmentally sensitive habitat areas both directly and indirectly. This is a violation of the Coastal Act. The proposed restoration by developer led groups will not mitigate for the loss of intact and functioning habitat and open space.
At Bolsa Chica a similar compromise led to the desecration of a Native American cemetery and significant destruction within one of North America's most important archaeological sites, after the developer gave assurances to the Commission that this would not happen. Please do not make these same mistakes at Banning Ranch. Our last open spaces, our sensitive environment cannot withstand more loss due to compromise for development.

I urge you to uphold the Coastal Act and deny the proposal for development at Banning Ranch.

Sincerely,

Judy Morris

Sent from my iPhone

From: David Schulman
To: BanningRanchComments@Coastal
Subject: Agenda Item 5-15-2097
Date: Sunday, September 04, 2016 2:24:53 PM

Dear Honorable Chair Kinsey, Commissioners and Staff,

I am writing you to state my opposition to development at Banning Ranch. Due to the overdevelopment which has stripped the Southern California coastline of much of its natural resources, Banning Ranch is now one of our last unprotected open spaces which contains vital diverse native wildlife habitat and is one of the few remaining pieces of the cultural landscape for the local Native Americans of this area. I urge you to uphold the Coastal Act and its protections for these natural and cultural resources at Banning Ranch and DENY the development proposal before you in its entirety.

The compromise produced by the landowners will still result in the destruction of environmentally sensitive habitat areas both directly and indirectly. This is a violation of the Coastal Act. The proposed restoration by developer led groups will not mitigate for the loss of intact and functioning habitat and open space.

At Bolsa Chica a similar compromise led to the desecration of a Native American cemetery and significant destruction within one of North America's most important archaeological sites, after the developer gave assurances to the Commission that this would not happen. Please do not make these same mistakes at Banning Ranch. Our last open spaces, our sensitive environment cannot withstand more loss due to compromise for development.

I urge you to uphold the Coastal Act and deny the proposal for development at Banning Ranch.

Sincerely,

David Schulman, MD - resident of Huntington

RECEIVED
SEP 02 2016
CALIFORNIA
COASTAL COMMISSION

Ronald E. Frankiewicz
950 W. 19th St.
Costa Mesa, CA 92627

August 30, 2016

Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

Dear Honorable Chair Kinsey, Commissioners and Staff,

COASTAL COMMN PAGE 01

I really am not sure what the duties of the Coastal Commission are. As I see more massive developments along the coast (Newport Beach, Huntington Beach, etc.) I am concerned that we are losing our coast. Now Banning Ranch comes around to add a massive development to the last remaining Coastal stretch in Orange County. I am just an individual who will be impacted by the development, along with the wildlife habitat and local fauna. However I know it is hard to get the ear of you commissioners. It seems the developers have you ear but please listen to the silent majority of people that truly want to protect this last remaining bit of coastal property.

The massive scale of the project will increase air & water pollution, stretch our water supplies and release dangerous contaminates into the air.

I wish we could get the Nature Conservancy involved to help protect this land because I am in fear that you will let it be destroyed. Please do not allow this to happen.

Thank you.

Ron

Ron Frankiewicz
949-233-3656

RECEIVED
South Coast Region
SEP 06 2016
CALIFORNIA
COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CALIFORNIA 90802-4416
(562) 590-5071 FAX (562) 590-5084
WWW.COASTAL.CA.GOV

We don't Need more parking Lots and Construction. Roads produced making Smog, Noise, Crime, making Newport Beach into L.A. type environment - more Living + Body Cancer

Date: August 26, 2016

IMPORTANT PUBLIC HEARING NOTICE
COASTAL PERMIT APPLICATION

The peacefulness of Ocean waves will be taken over with music, Noise + Pollution Especially at Sunset + night.

PERMIT NUMBER 5-15-2097

APPLICANT(S) Newport Banning Ranch, LLC

PROJECT DESCRIPTION: No No No

Abandon oil operations and clean and remediate soil; subdivide the 401 acre site into residential, commercial, mixed use, open space, park, and public street lots; grade 2.8 million cu.yds. of soil and construct residential and commercial development including approximately 12 acres of roads, 37 acres of residential with 895 residential units, 45,100 sq.ft. of commercial use, a 75-room resort ~~and a~~ 20-bed hostel; create 5 acres of park, and construct public trails within the ~~329 acre~~ Natural Open Space Preserve, ~~with oil operations~~ to remain on 15 acres.

Yes To Natural + Nature

PROJECT LOCATION:

5100 Block of West Coast Highway, Newport Beach (Orange County)
(APN(s): 114-170-2, 114-170-4, 114-170-5, 114-170-7, 114-170-8, 114-200-0)

HEARING DATE AND LOCATION:

Ocean Views will be destroyed + fresh air a thing of the Past.

DATE	**Wednesday, September 7, 2016**	
TIME	**9:00AM**	**ITEM NO: W 14d**
PLACE	Newport Beach Civic Center, City Council Chambers 100 Civic Center Drive, Newport Beach, CA 92660	
PHONE	(415) 407-3211	

HEARING PROCEDURES:
This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date.

AVAILABILITY OF STAFF REPORT:
A copy of the staff report on this matter will be available no later than 10 days before the hearing on the Coastal Commission's website at http://www.coastal.ca.gov/mtgcurr.html. Alternatively, you may request a paper copy of the report from Amber Dobson, Coastal Program Analyst, at the South Coast District Office.

SUBMISSION OF WRITTEN MATERIALS:
If you wish to submit written materials for review by the Commission, please observe the following suggestions:

RE: Banning Ranch

SOS SAVE OPEN SPACE

September 4, 2016

Dear Coastal Commissioners:

Inconsistency with General Plans

Save Open Space/Santa Monica Mountains supports the land use for Banning Ranch as Open Space for this entire property. The well vetted established plans (attached) for the County of Orange are required by state law to be consistent with the Open Space Lands Act California Government Code. Removing this ecologically significant coastal property with its endangered species, wetlands, and ESHAs from its current open space land use designation requires thorough analysis which has not been done in this deficient staff report. . In addition, the primary use in City of Newport Beach's Open Space official plans designates this property as OS (RV) which is Open Space with active community parklands if acquired with public funding.

Inadequate analysis of removal of 401 acres from Open space Inventory

Attached portion of California Government Code (65560-65570) requires that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible. The analysis of the "the Most Environmentally Superior Alternative" which is preservation of all of Banning Ranch as an open space preserve is inadequate in this staff report. Also, the analysis fails to analyze the impact of removing this Open Space with the Open Space Land Use designation (OS) from the County of Orange General Plan.

"No Project" Alternative/"Most Environmentally Superior" Not Adequately analyzed

The court of appeals decision required consultation with the Coastal Commission to determine which wetlands and habitats would need to be preserved and restored. Analysis is missing on the fact that this entire property qualifies for the State Watershed Protection Bond to be purchased with funds from this bond in order to ensure protection of its significant ESHAs, wetlands, arroyos, and the Santa Ana River. This is a feasible alternative as purchase of this entire property pencils out against the huge cost for the grading and a stricter clean-up costs to residential levels verses recreational open space levels. Also, there will need to be required disclosure to any potential buyers of the past extensive oil field operations and the added potential costs of soil gas construction mitigations. Yearly soil gas testing will be required to protect public health and safety as there will be a huge unidentified volume of inert material (including but not limited to asphalt) which will be buried and has the future potential to get into the groundwater and/ or cause hazardous soil gas migration into residential units.

Alternative Analysis Inadequate

The Coastal Act requires in 30233 for analysis of the "least environmentally damaging alternative" (per 30233-upland areas shall be reserved for coastal recreation uses.) The 20 acres now identified as having the least constraints should have been analyzed as a reserve for free recreation uses for all income levels. CEQA has an informational goal of providing "a reasonable range of alternatives to the project." This would be consistent with the "primary use" in the current general plan of the City of Newport Beach for this property.

The very limited project alternatives blindly looked at only urban densities on this property. This Banning Ranch property has now been identified by the Coastal Commission staff as a coastal ecological treasure: Per recent LA Times article: "In 2007, the U.S. Fish and Wildlife Service designated all of Banning Ranch as critical habitat for the California gnatcatcher, listed as threatened under the Endangered Species Act. Endangered San Diego fairy shrimp hatch in some of the mesa's seasonal pools. Wetlands

bordering the mouth of the Santa Ana River attract the endangered least Bell's vireo. Burrowing owls overwinter on the bluffs. In a 2015 memo, Coastal Commission ecologist Jonna Engel described the site "as one of the only reasonably intact wetland-bluff ecosystems remaining along the coast of Southern California."

Coastal Act: Article 4 Section 30232:

This staff report is missing information for adequate review of this section of the Coastal Act. This staff report has not analyzed how the clean-up workers and future residents in the residential units "shall be protected in relation to any development" as in the potential exposure to hazardous substances in soil and soil gas. "Observation for bubbling" -as the old outdated studies stated- is not acceptable soil gas determination. The groundwater well testing done to date is concentrated in the lowland area which is not slated for development. (attached map) Soil and soil gas analysis (not just methane) for the various hazardous petroleum wastes (including but not limited to: TPH, benzenes, xylenes, vinyl and methylene chloride) using an EPA type grid should be done now on all areas considered for grading and residential development before remediation. The fact that recreational cleanup standards are considerably less stringent than residential should have been considered as a plus for keeping the entire property recreational open space.

Coastal Act: Article 6 Section 30253

The staff report is missing information of the volume of inert material which will be buried and volume of contaminated soil which will be removed. This report fails to minimize risks to life and property as a 50 foot buffer is not sufficient setback from the Newport Mesa Fault which is potentially active seismic area. There also needs to be analyses of this fault which has the potential to act as a conduit as hazardous active oil wells are still operating in the proposed development area. New groundwater testing wells need to be put in the area of this fault. No groundwater wells are here per historical well map. Also, missing is analysis of the environmental impacts on earth (including water and land) of all the grading in the different alternatives scenarios in contrast to leaving the entire property as critically needed recreational open space. Where is all the contaminated soil being transported to and what is the number of special hazardous carrying truck trips and routes for hazardous soil per the different staff alternatives?

Vote No!

Save Open Space supports the Environmentally Superior Alternative of leaving this ecological coastal treasure as recreational open space. A past Governor supported using state parkland bond money to purchase Ahmanson Ranch as Open Space Parkland, so it is feasible for Banning Ranch to be bought and preserved as Open Space parkland for all with the 2014 Watershed Bond funds.

Sincerely,

Mary Wiesbrock

Mary Wiesbrock, Chair and retired State of California Clinical Laboratory Scientist

Source: County of Orange 2005

County of Orange Land Use Designations

Newport Banning Ranch

N W E S

0 .25 .5 Mile

BonTerra

5-15-2097 EXHIBIT 7
Page 1 of 4

GOVERNMENT CODE
SECTION 65560-65570

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

65561. The Legislature finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of

the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.

(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.

(d) That in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands.

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.

65562. It is the intent of the Legislature in enacting this article:

(a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible.

(b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.

65562.5. On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.993 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

65563. On or before December 31, 1973, every city and county shall prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its

ALTERNATIVE: 20 acre = RECREATIONAL USE
REMAINDER = OPEN SPACE

Consistency with "Primary Use" Newport Beach City's General PLAN

Constraints on Banning Ranch

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

For Illustrative Purposes Only.
Source: Brooks-Street, Dudek, USACE, CDFW, ESRI, CCC.

0 250 500 1,000 Feet
0 75 150 300 Meters

ARTICLE 4
MARINE ENVIRONMENT

Section 30230 Marine resources; maintenance

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 Biological productivity; water quality

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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 Oil and hazardous substance spills

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

(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.

inadequate # of wells & absent soil gas testing

inadequate groundwater and soil testing

D:/Projects/Newport/J015/Graphics/Ex_Groundwater_Monitoring.ai

Source: Geosyntec Consultants 2011

Groundwater Monitoring Locations

Exhibit 4.4-5

Newport Banning Ranch EIR

(REV 082610 KFD) R:/Projects/Newport/J015/Graphics/EIR/Ex4.4-5_Groundwater_Monitoring.pdf

ARTICLE 6
DEVELOPMENT

Section 30250 Location; existing developed area

(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.

(Amended by Ch. 1090, Stats. 1979.)

Section 30251 Scenic and visual qualities

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.

Section 30252 Maintenance and enhancement of public access

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 nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of 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.

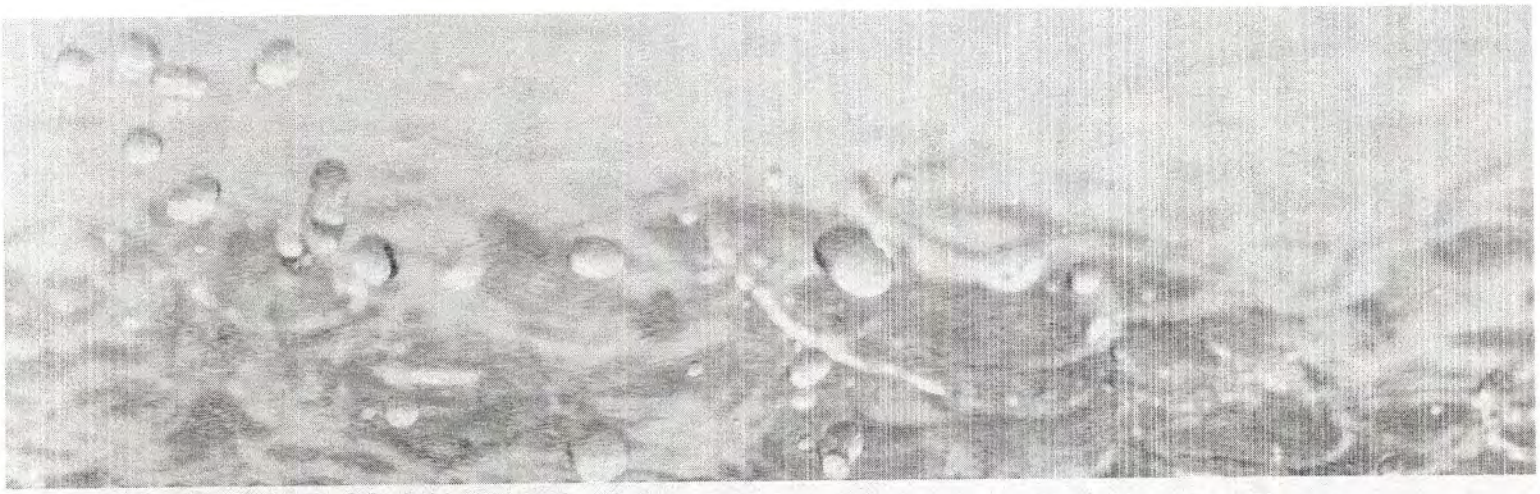
Section 30253 Minimization of adverse impacts

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.

WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014



Funding Summary

THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

September 2014

The Water Quality, Supply, and Infrastructure Improvement Act of 2014, is a $7.545 billion general obligation bond proposal that would provide funding to address water quality, supply, and infrastructure improvement issues in California. The bond is comprised of seven categories of funding:

$520 million	**Clean and Safe Drinking Water**
• $260 million	Wastewater treatment in small communities
• $260 million	Drinking water projects for disadvantaged communities
$1,495 million	**Watershed Restoration and Protection**
• $515 million	Watershed restoration in designated areas around the state
• $475 million	State commitments for environmental restoration
• $305 million	Statewide watershed restoration
• $200 million	Projects to increase water flowing in rivers and streams
$810 million	**Regional Water Security**
• $510 million	Integrated regional water management projects
• $100 million	Water conservation and water use efficiency plans, projects, and programs
• $200 million	Multi-benefit stormwater management projects
$2,700 million	**Statewide System Operation**
• $2,700 million	Public benefits associated with water storage projects
$725 million	**Water Recycling**
• $725 million	Water recycling and advanced treatment technology projects
$900 million	**Groundwater Sustainability**
• $800 million	Prevention and cleanup of groundwater pollution
• $100 million	Local plans and projects to manage groundwater
$395 million	**Flood Management**
• $295 million	Reduce the risk of levee failure and flooding in the Delta
• $100 million	Statewide flood management

Of the $7.545 billion identified above, the state's ten hydrologic regions, as identified in the California Water Plan (see map on page 2), are eligible for specific funding dedicated in the bond to the regions, as well as other funds dedicated in the bond to conservancies or activities within a particular region. The following describes the distribution of bond funding to each hydrologic region of the state, as well as the funding eligible for expenditure within the specific regions to help finance water management projects and programs with local, regional and statewide benefits.

This is a preliminary estimate by the California Department of Water Resources and may not represent exact availability of bond funding.

Global Headquarters
P.O. Box 6010
San Clemente, CA
USA 92674-6010
Phone: (949) 492 8170
Fax: (949) 492 8142

SURFRIDER FOUNDATION

September 1, 2016
California Coastal Commission
Re: Application No. 5-15-2097 Newport Banning Ranch Development

Dear California Coastal Commission,

On behalf of the Newport Beach Chapter of the Surfrider Foundation, we submit the following comments for the proposed Newport Banning Ranch project, Agenda Item W14d. The Surfrider Foundation (Surfrider) is a non-profit grassroots organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches through a powerful activist network. Surfrider has 84 chapters in the United States.

In a letter submitted October 2015 for the October Coastal Commission hearing agenda item regarding the proposal by Newport Banning Ranch LLC to (1) abandon oil operations; (2) clean and remediate soil; (3) construct housing and mixed-use development on a 401-acre site in Newport Beach, Surfrider Foundation called for denial of project due to a number of environmental concerns and apparent conflicts with several sections of the California Coastal Act. Our concerns included:

1. The soil remediation approach and the potential negative impacts to water quality in the bordering wetlands, Santa Ana River and nearshore ocean due to stockpiling of contaminated soils without adequate containment;

2. Concerns that the project would result in an increase in volume and/or pollutant concentrations in runoff from the property, violating the provisions of Coastal Act Section 30231;

3. The grading and development of identified environmentally sensitive habitat area (ESHA) in violation of Coastal Act Section 30240.

Since the October hearing, Surfrider has reviewed new and old project documentation, met with the project engineers and visited the project site. We note that with the improved water quality provisions of the project utilizing stormwater Best Management Practices (BMPs) and the redesign of the remediation plan, those aspects of the project proposal are now in apparent compliance with the Coastal Act. This is due to the use of multi-stage BMPs that will be implemented to manage runoff, which include hydrologic source control measures, stormwater harvest and reuse systems, and biotreatment areas, resulting in the post-project hydrology for

the overall site remaining similar to existing conditions. Additionally, the soil remediation process will include the use of berms, stormwater basins, sediment debris basins, a phased process to manage how much soil is being remediated at any point in time and management controls to suspend remediation work during rain events.

However, Surfrider Foundation remains concerned that the project development plan still includes development on, and destruction of, a considerable amount of acreage that has been designated by Coastal Commission Staff as Environmentally Sensitive Habitat Area (ESHA). Based on the provisions of Coastal Act Section 30107.5, which defines ESHA, and Coastal Act Section 30240, which describes the protective measures required for ESHA, we believe developing these areas would not be consistent with the Coastal Act. Coastal Act Section 30240 reads:

> *"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… 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."*

When reviewing this and other coastal development projects, Surfrider's main goal is to protect the ocean, waves and beaches. This includes supporting the requirements of the Coastal Act. We agree with the analysis of this issue by Coastal Commission staff in the latest staff report and the proposed conditions, which "… would result in a revised plan that avoids sensitive resources and identified site constraints by focusing the development into a smaller footprint and by limiting the circulation" (p. 7) and thus produce a project in compliance with Chapter 3 policies of the Coastal Act and CEQA by producing a least environmentally damaging alternative.

As stated in the staff report, "Only as conditioned can the project be found consistent with the Coastal Act." (P. 7) In this, we support Commission staff and ask that you – the Commissioners – vote in support of staff recommendations to make any potential development Coastal Act compliant.

Sincerely,

Darrel Ferguson
Vice Chair
Newport Beach Chapter of Surfrider

Jennifer Savage
CA Coastal Policy Manager
Surfrider Foundation

From: Maureen Hsu
To: BanningRanchComments@Coastal
Subject: Banning Ranch Permit Application Number: 5-15-2097; Position: In Opposition
Date: Sunday, September 04, 2016 9:08:07 AM

Maureen Hsu
1053 Regatta Run, Costa Mesa, CA
California Seabreeze Community

Permit Number: 5-15-2097

Hearing Date: 9/7/16, 9AM; Item # W 14d

Position: In Opposition

September 1, 2016

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
(562)590-5071; FAX (562) 590-5084

BanningRanchComments@coastal.ca.gov
RE: Permit Number: 5-15-2097, Item # W 14d

Dear South Coast, Coastal Commissioners,

I am a recent resident of California Seabreeze, a SFH community of homes built in 1991 that backs into the northwest corridor of the Banning Ranch location pertaining to this coastal permit application. I am in opposition to the project (5-15-2097) of Newport Banning Ranch to subdivide and develop residential, commercial, and mixed use of the land proposed.

There are nature preserves that include endangered species in which would be harmed and their current natural ecosystem would be disrupted. As a recent resident of the area, the primary reason for me moving to that location, was to be close to nature and the local preserved parks in the immediate area. This is one of the last and few preserve areas we have left in West Costa Mesa, and to be able to come home from a very difficult week to experience the local uninterrupted nature preserve brings the community the well-needed stress relief we all seek in living locally.

Please do not allow further commercialization to touch this very lush and protected nature preserve. The recent development of residential and commercialized property in Orange

County lends us with few areas such as these left where multi-communities and neighborhoods from Huntington Beach, Costa Mesa, and Newport Beach residents can share and enjoy the uninterrupted trails that the original property was intended for.

Thank you for your consideration and vote in opposition of this Coastal Permit Application.

Sincerely,

Maureen Hsu,

Proud Resident of Westside Costa Mesa

From: Barbara McCall
To: BanningRanchComments@Coastal
Subject: banning ranch
Date: Saturday, September 03, 2016 7:54:17 AM

Stop the banning ranch project and ruining our coast. There is no place left to enjoy our city. Look at the crap they are building on Placentia, Victoria and Pacific City. Where are all these kids going to go to school? They are already overcrowded !!!!

From: Charlotte Pirch
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Saturday, September 03, 2016 12:04:32 PM

Reference Issue: CDP Application 5-15-2097 - Banning Ranch

To the Members of the California Coastal Commission:

I live in Fountain Valley just off Brookhurst. I strongly object to the development of Banning Ranch for housing and oil drilling. The land should be left alone.

You are charged with protecting the California coast. You continue to ignore your charge to the peril of the citizens of California. Your allegiance should be to protecting the coast from developers NOT damaging the coast to protect developers.

California is in a drought. We need areas where any water that falls as precipitation or runoff needs to go through a process of cleansing. Thus we need watersheds. Also of concern is the clear fact that due to the drought there is insufficient water to in Orange County to supply to any new homes let alone many that would not address the lack of affordable housing in Orange County.

Our current infrastructure is barely sufficient to carry the load of housing and businesses that currently exist in that area and further development will over burden the existing infrastructure.

Brookhurst in particular is considered the most dangerous street in Orange County adding more traffic will only make it even more dangerous.

I urge you to fulfill your commission to save the California coast.

Charlotte Pirch

Fountain Valley, CA

dpirch@socal.rr.com

From: Greg cernok
To: BanningRanchComments@Coastal
Subject: Banning Ranch
Date: Tuesday, September 06, 2016 1:41:24 PM

I am writing to oppose the housing development on Banning Ranch and believe I can offer the commission a unique perspective as I live in a development adjacent to the Bolsa Chica Wetlands in Huntington Beach. What I have observed in the year I have lived in the development is that the **homeowner's interests and desires trump any rule or restriction put in place to protect the wetlands**. This same issue will be problematic if the Banning Ranch housing development is approved.

When I moved into the community I was given a notebook about the unique habitat and surrounding nature preserve. One of the items noted was that coyotes are a critical component of the ecosystem and Fish and Wildlife prohibits the extermination of them. As a result, the rules indicate that small pets should not be left unattended in backyards. Homeowners ignore the rule, leave pets in the back yard unattended and they are subsequently eaten by coyotes. Instead of the homeowner altering their behavior and recognizing that sacrifices need to be made in order to live in this unique environment they demonize the coyotes. The homeowners call them "dangerous and aggressive" when in reality they are just doing what coyotes have done for thousands of years in this area…hunt prey to survive. Despite this reality the coyotes are then hunted down and killed. I have personally observed a homeowner walking around with a club and a pellet gun in an attempt to destroy the coyote's den because a pet was left unattended and eaten.

During the 4th of July holiday homeowners launch mortar style (Disneyland type) fireworks into the adjacent space next to the wetlands. The explosions and concussions have an extremely negative impact on nearby nesting native birds and wildlife yet the behavior does not change.

Cars speed down the street through the community travelling an excess of 50 mph striking and killing squirrels, skunks, and rabbits.

Homeowners along the ridgeline are unwilling to make the smallest of sacrifices when it comes to protecting the birds that call the wetlands home. When the development first came in, glass walls were put in, and numerous birds were striking them and dying. A compromise was formed to place stickers on the glass so that birds could see the glass. Despite this easy remedy only a handful of the 61 homes on the ridge line have stickers on the glass walls separating their backyards from the wetlands.

Huge swaths of plants have been removed with no explanation from the Coastal Commission or the housing development. A simple sign reads "habitat restoration in progress" (I have attached photos depicting what has been removed).

There is no enforcement to the violations and the homeowner's interests and desires trump

any rule put in place to protect the wetland space.

I ask that you reject the plan to build additional housing in this scarce, unique habitat of Banning Ranch.

Sincerely,

Greg Cernok

STATE OF CALIFORNIA
NATIVE AMERICAN HERITAGE COMMISSION
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Fax (916) 373-5471
Email: nahc@nahc.ca.gov
Website: http://www.nahc.ca.gov
Twitter: @CA_NAHC

Edmund G. Brown Jr., Governor

September 6, 2016

Mr. Karl Schwing, District Manager
South Coast District Office
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Newport Banning Ranch Project, Orange County.

Dear Mr. Schwing:

The Native American Heritage Commission (NAHC) has reviewed the following documentation for the project referenced above and is concerned that Native American cultural sites will be severely impacted if the project continues as planned. The California Environmental Quality Act (CEQA)[1], specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.[2] If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.[3] In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of project effect (APE). The Banning Ranch developers initially prepared a draft EIR for this project. As this project involved the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, this project was subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18) and consultation with the culturally affiliated Juaneno and Gabrielino tribes was undertaken. Most tribes objected to the development. However, as there appeared to be some flaws in the collection and analysis of the data, the developers were asked to correct the flaws and resubmit the information. The project was then on hold. CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "**tribal cultural resources**"[4] and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.[5] Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.[6] This amendment now allows for tribal knowledge to have a place for discussion on the project. The Banning Ranch project has since been resurrected. This "new" project will definitely impact the environment and will certainly impact the areas that the Native American tribes hold as culturally important and as sacred tribal cultural resources and landscapes.

[1] Pub. Resources Code § 21000 et seq.
[2] Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)
[3] Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)
[4] Pub. Resources Code § 21074
[5] Pub. Resources Code § 21084.2
[6] Pub. Resources Code § 21084.3 (a)

Banning Ranch is a documented Native American habitation site that had been in use by both the Gabrielino and the Juaneno Native American tribes. This land is considered sacred by both tribes and is a tribal cultural resource. There are eleven (11) documented archaeological sites: CA-ORA-148, CA-ORA-839, CA-ORA-843, CA-ORA-844, CA-ORA-845, CA-ORA-906, CA-ORA-1599, CA-ORA-1600, CA-ORA-1601H, CA-ORA-1602H and CA-ORA-1610H. Eight (8) have been heavily disturbed or destroyed, due to scientific research or oil well development. Three sites, two located near the bluffs, still maintain site integrity, CA-ORA-839, CA-ORA-906 and CA-ORA-844 as being "significant" and potential placement on the National Register of Historic Places. There have been at least five (5) prior archaeological investigations ranging from Phase I, surface walk overs and, Phase II, shovel test pits and examination of found items to Phase III, which is controlled excavation, that usually destroys the site. An additional permit to allow for more testing has been approved. CEQA section 15355 "Cumulative Impacts" refers to two or more individual effects which, when considered together are considerable or which compound or increase other environmental impacts. The excessive testing will eventually destroy what is left of the three sites that still have cultural integrity. The site boundaries have not been determined and have been very difficult to delineate based on the observable surface distribution of cultural materials as well as topographical limitations. However it is very easy to forget that at one time, there were no fences or boundaries to separate tribal groups from their hunting, fishing or foraging areas. This site is adjacent to the Fairview Park, in which over 100 bodies of Native Americans were found and reburied. In close proximity to Fairview Park, lies possibly the large ancient village of Genga. The Banning Ranch area has also been called "Bolsa Genga" a cogstone milling site, in comparison to the another cogstone milling area, known as "Bolsa Chica", that has recently been preserved as a sacred site.

Reviewed Document Elements:

1. The original Draft Environmental Impact Report (DEIR), SCH #2009031061.
2. Archaeological Resources Assessment, completed in February 16, 2010.
3. NAHC ethno-historical information.
4. Prior correspondence with Developer, and Archaeological firms, SB 18 Consultation information and lists.
5. Internal documents, not subject to Public Records Act Requests.

The city of Newport Beach in their City Council Policy Manual Guidelines, (corrected in 3/22/99) requires that an impact to significant archaeological resources caused by any development be mitigated in accordance with CEQA. CEQA section 15370 "Mitigation" includes first and foremost, (a) "avoiding the impact altogether by taking a certain action or parts of an action", followed by (b)"minimizing impacts by limiting the degree or magnitude of the action and its implementation." the avoidance of a site. In various maps of the site and project plans, it appears that the three "intact" archaeological sites may also be impacted at some point with roads, or more subdivision development. The goal should be total avoidance, with the possibility of the area being placed into a conservation easement for perpetuity.

Much of the site has been an active oil field since the 1940's. There are approximately 200 producing and/or abandoned oil well sites, spread throughout the site as well as the related facility infrastructures, pipelines, storage tanks, machinery and roadways. The project description calls for a consolidation of all the oil field activities into a 15 acres space that

seemingly is located in the center of the open space. This area contains wetlands and vernal pools that are essential to the continuation of certain species of animal life, birdlife, and one of a kind flora and fauna. This could possibly eliminate the habitat of the burrowing owl, not to mention the various species of waterlife and their life cycle. There also does not appear to be any mention of how the developers are going to remediate the oily soil or dangerous chemical cleanup, nor how they intend to return the area to a natural open space. The vast removal of soil will definitely impact the sacredness of the site and will definitely require that culturally affiliated Native Americans to be involved in the process. It would not be unusual to find additional Native American habitation areas and possible human remains. The Health and Safety Code Section 7050.5 and the Public Resources Code Section 5097.98 are part of the laws, rules and regulations that have mandated procedures to follow in case of the inadvertent discovery of Native American remains. As an aside, there also does not appear to be any Section 106 component of the National Historic Preservation Act of 19667 and the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), which also have tribal consultation requirements.

Finally, the NAHC suggests that the remaining three archaeological sites, CA-ORA-839, CA-ORA-906 and CA-ORA-844 be avoided and protected, as this entire area is considered part of a larger Native American cultural landscape and habitation site. This area is the only large coastal open space remaining. It should be left alone and preserved. Nowhere else will you find the various plants, animals, birds, vernal pools, wetlands and cultural areas that have existed from prehistory to the present. Thank you for your consideration.

If you have any questions, please email me at Katy.Sanchez@nahc.ca.gov.

Respectfully,

Katy Sanchez

Katy Sanchez
Associate Environmental Planner

cc: Chairman Anthony Morales, Gabrieleno Tongva San Gabriel Band of Mission Indians
Chairman Andrew Salas, Gabrieleno Band of Mission Indians-Kizh Nation
Amber Dobson, California Coastal Commission
Julianne Polanco, State Historic Preservation Officer

ORANGE COUNTY COASTKEEPER
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.Coastkeeper.org

September 6, 2016

Amber Dobson
Coastal Program Analyst
California Coastal Commission
South Coast Office
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Comments on Banning Ranch Water Quality Management Plan

Dear Ms. Dobson,

Orange County Coastkeeper ("Coastkeeper") is a nonprofit clean water organization with the mission to protect and promote sustainable water resources that are swimmable, drinkable, fishable and sustainable. Coastkeeper does not take positions supporting or opposing development projects, so our comments on this project focus on the potential water quality impacts and the project Water Quality Management Plan. After meeting with the project engineers and reviewing the documents related to water quality for the Banning Ranch Coastal Development Permit, we have the following comments:

1. The proposed BMPs for the built areas of the development are appropriate. They eliminate dry weather runoff from the project and capture and treat storm water from a typical storm event. The reuse of stormwater for irrigation is an example of what should be required of all new projects in California.

2. We are concerned that the project does not treat run-on to the property at the Northern Arroyo and from the storm drain outlet from the adjacent condominium project. The run-on in these areas should be treated to reduce pollutant loads and erosion impacts on the Banning Ranch property. We suggest that the Commission require that applicant to make a good faith effort to partner with the City of Costa Mesa to develop an upstream stormwater BMPs such as a vault with a media filter. The city could apply for funding for this BMP through Orange County's Measure M Environmental Cleanup Program

3. During the oilfield remediation process, the project is proposing to use a detention basin built to contain a ten-year storm event for their main soil bioremediation and stockpiling area. Given the nature of the contaminated materials that the basin is meant to capture we think that is sized too small. We suggest that the Commission require a basin that can contain a twenty-year storm event at a minimum. Keep in mind that our typical rain events

can occur in the form of multiple 5-year storms over several days. A sized basin for a twenty-year rain event would provide better assurance the basin would not be overwhelmed with both storm water and sediment.

4. During the oilfield remediation process, the project is also proposing to stockpile contaminated soil at a location very near the ACOE wetlands area. We suggest that the Commission require that no soil is stockpiled in this area during the wet season to avoid contaminated soil being washed into the wetlands during storm events.

In closing we believe that the development proposes well designed BMPs for the built areas. The project needs to address the run on in the north part of the site and improve BMPs used for the oilfield remediation. Coastkeeper is always concerned with the accumulative impacts of development to a wetland. We ask the Commission to provide the maximum protection to these areas. Thank you for your consideration of our views.

Regards,

Garry Brown
Executive Director
Orange County Coastkeeper

From: Dana Michaels
To: BanningRanchComments@Coastal
Subject: Please STOP the Banning Ranch development
Date: Saturday, September 03, 2016 12:42:03 PM

Dear Commissioners:

Please vote NO on the proposed Banning Ranch development above Newport Beach, Sept 7, and stop developers from destroying more of California's precious open spaces.

Our state is overpopulated, and we don't have enough fresh, potable water for the 40 million people already living here (even when we have "normal" precipitation"). The last thing California needs is another subdivision that invites more people to move in.

State and local planners have already allowed most of southern California's coastal wetlands and upland wildlife habitat to be devastated, so migrating birds have few places to to rest, nest and feed. Other native wildlife need that land and what looks to us like useless scrub brush, too. It's not useless; it's part of southern California's natural ecosystem and has tremendous value as such.

PLEASE don't let another greedy corporation destroy what little is left of our natural resources. Please PROTECT what little open space remains along our coast. PLEASE don't let Banning Ranch, LLC take away even more of our natural heritage. STOP this unnecessary development and devastation of habitat!

Thank you,

Dana Michaels
7356 Marani Way
Sacramento, CA 95831

From:	Michael Mohler
To:	Ainsworth, John@Coastal; Sarb, Sherilyn@Coastal; Schwing, Karl@Coastal; Dobson, Amber@Coastal
Cc:	phillip@bochcomedia.com; Cox, Greg@Coastal Commission; Groom, Carole@Coastal Commission; erik@erikhowell.com; skwestmarin@yahoo.com; mmcclure@co.del-norte.ca.us; wendy@katzmitchell.com; Shallenberger, Mary@Coastal Commission; Effie.turnbull@lausd.net; mark@mark-vargas.com; Kram@contentllc.com; District7@longbeach.gov; Celina.luna@longbeach.gov; mluevanocoastal@gmail.com; April Winecki; Steven H. Kaufmann; George Basye; Chris Yelich; Rewdy Holstein; Johntommy Rosas; Andy Salas
Subject:	RE: NBR Email to Staff and Commissioners
Date:	Friday, September 02, 2016 7:39:05 PM

Dear Staff and Commissioners,

Attached please find a link to Newport Banning Ranch's response to the August 26, 2016 Staff Report for Item W 14d, Application No. 5-15-2097 - with the attachments and exhibits broken out.

https://www.dropbox.com/sh/i6tiqklsgnvfzs0/AAA-T39OoIyFn-j8p3yE9aaha?dl=0

Thank you.

Michael A. Mohler
Brooks Street
Newport Banning Ranch LLC
1300 Quail Street, Suite 100
Newport Beach, CA 92660
O – 949.833.0222
mohler@brooks-street.com

From: KnowWho Services
To: BanningRanchComments@Coastal
Subject: Reject Application 5-15-2097 to Develop Banning Ranch
Date: Saturday, September 03, 2016 6:21:54 PM

Dear CA Coastal Commission,

Dear Commissioners:

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

That land currently provides habitat to endangered and threatened animals and plant species, and contains many environmentally sensitive habitat areas (ESHA).
The California Coastal Act rightfully requires that ESHAs be protected.

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

Concerned and scared Orange County resident and teacher,

Bre Eagleson

Sincerely,

Breanne Eagleson
26881 Peraza Ln
Mission Viejo, CA 92691
breanne884@hotmail.com
9166014224

From: KnowWho Services
To: BanningRanchComments@Coastal
Subject: Reject Application 5-15-2097 to Develop Banning Ranch
Date: Monday, September 05, 2016 7:43:39 AM

Dear CA Coastal Commission,

Dear Commissioners:

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

That land currently provides habitat to endangered and threatened animals and plant species, and contains many environmentally sensitive habitat areas (ESHA).
The California Coastal Act rightfully requires that ESHAs be protected.

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

Sincerely,

Sharon Roberts
9 Parkcrest
Newport Coast, CA 92657
jump4joy@earthlink.net
9496800339

From:	Diane Bentley
To:	BanningRanchComments@Coastal
Subject:	Stop Development at Banning Ranch!
Date:	Monday, September 05, 2016 4:03:30 PM

As a Huntington Beach resident who is deeply concerned about overdevelopment of our beautiful coast, I strongly urge Coastal Commissioners to reject the plan to develop Banning Ranch. Our Orange County coastline is already heavily developed, and Banning Ranch provides open space and habitat that is sorely limited in our area. Please listen to the public regarding this important issue!

Diane Bentley
Huntington Beach, CA

From: Larry Tenney
To: BanningRanchComments@Coastal
Subject: Clean Up and Open Banning Ranch
Date: Tuesday, September 06, 2016 1:58:02 PM

Dear Commission:

Enough is enough! For more than a decade, the property owners/proposed developers of Newport Banning Ranch have been trying to get plans approved that would clean up the generations old oil field, deed most of the land over for the public good, and open up that resource to the public for generations to come.

Your role is to preserve and protect our precious costal resources and ensure public access to those resources. The plan you have been considering achieves those objectives and at no cost to taxpayers.

The time has come for you to complete negotiations on a win:win consensus for all those involved, get that property cleaned up and restored as soon as possible and ensure that me, my neighbors and all who live or visit California can experience this treasure.

The only people benefiting from this property now are the oil company and the handful of NIMBY people who live adjacent to the property.

Following the last public hearing on this project, we are confident you will agree and approve the plans.

Larry Tenney
Huntington Beach, CA
714.381.9129
Sent from my iPad

NEWPORT BEACH FIRE DEPARTMENT

100 CIVIC CENTER DRIVE, P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
PHONE (949) 644-3104 WEB: www.nbfd.net

SCOTT L. POSTER
Fire Chief

RECEIVED
South Coast Region
JUN 22 2016
CALIFORNIA
COASTAL COMMISSION

June 21, 2016

RECEIVED
South Coast Region
2016
CALIFORNIA
COASTAL COMMISSION

Ms. Sherilyn Sarb
Deputy Director
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

Re: Newport Banning Ranch CDP 5-15-2097

Dear Ms. Sarb:

The Newport Beach Fire Department currently has jurisdiction over approximately 40 acres of Newport Banning Ranch (NBR) that are within the City of Newport Beach (City). Upon completion of the CDP Process and Annexation, the balance of the site, currently in unincorporated Orange County will also be under jurisdiction of the Newport Beach Fire Department. By way of existing mutual aid agreements the entire site is primarily served by the Newport Beach Fire Department as a matter of practice.

Fire and the resulting products of combustion are a continual threat to the community. With appropriate planning, along with prudent and reasonable mitigation measures, buildings and surrounding areas can be made safer, regardless of the occupancy or other activities at and around the site. The primary focus of the requirements set forth in the fire code is public safety, such as preventing fire.

As the Fire Chief, I am authorized and duty bound to enforce the provisions of the City's Fire Code and have the authority to render interpretations of these codes, and to adopt policies, procedures, rules and regulations in order to clarify the application of provisions. The City of Newport Beach has adopted the California Fire Code 2013 Edition except such portions that have been deleted, added or amended, which is collectively known as the "Newport Beach Fire Code."

With respect to NBR, if Coastal Development Permit 5-15-2097 is approved for the NBR site - the site conditions will be modified. The plans indicate that oil operations will be confined to "remainder oil areas" and the majority of the site will be open space. The proposed Habitat Restoration plans indicate the lowlands will essentially be "wet" and

the balance of the open space will be restored and maintained to a native plant palette previously reviewed and approved by the City.

I understand that the NBR plan identifies a 10' wide non-combustible trail between the ESHA buffer and the development envelopes and an additional 20' of Zone A defensible space within the development envelopes adjacent to the trail noted above and the first habitable structure. It should be noted that the NBR property has been removed from the "high fire hazard zone" when the city last updated our fire maps.

Prior to the issuance of building permits the Newport Beach Fire Department will determine what, if any, additional fuel modification is necessary prior to the introduction of any combustible material in the area.

To be sure, the policies, procedures, rules and regulations that the City of Newport Beach has implemented for this area are in the best interests of the community. These policies meet, and will continue to meet, a reasonable level of life safety and property protection from the hazards of fire, and dangerous conditions in new and existing buildings, structures and premises consistent with local and state adopted fire, and health and safety codes.

As Fire Chief, I will continue to monitor site conditions and require flammable vegetation by code or regulation to be treated should it be determined that flammable vegetation exists on the site.

Sincerely,

Scott L. Poster
Fire Chief

SLP:cg

Attachments

Cc: Patrick Alford, CNB
Michael A. Mohler, NBR