

## APPENDIX A

### Substantive Files:

National Register's Traditional Cultural Properties:

<https://www.nps.gov/nr/publications/bulletins/nrb38/>

National Register's Archeological resources: <https://www.nps.gov/nr/publications/bulletins/arch/>

National Park Service, traditional cultural property:

<https://www.nps.gov/subjects/culturallandscapes/understand-cl.htm>.

Advisory Council on Historic Preservation, Traditional Cultural Landscape:

<http://www.achp.gov/natl-qa.pdf>

Office of Planning and Research, SB 18 (Chapter 905, Statutes of 2004) and OPR's Tribal

Consultation Guidelines (November 2005) : [https://www.opr.ca.gov/s\\_ab52.php](https://www.opr.ca.gov/s_ab52.php) and

[https://www.opr.ca.gov/s\\_localandtribalintergovernmentalconsultation.php](https://www.opr.ca.gov/s_localandtribalintergovernmentalconsultation.php)

Works Progress Administration Collection on Orange County, California, 1935-1939. MS-R 10. Special Collections and Archives, The UCI Libraries, Irvine, California.

Report to the Legislature by the Native American Heritage Commission on Protection of Native American Sacred Places in California. Native American Heritage Commission, Sacramento, CA. 1979.

## APPENDIX B

### Coastal Commission Permits, Enforcement Actions and Related

#### *Coastal Development Permit No. E-85-001*

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

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

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

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

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

#### *CDP No. 5-86-588*

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

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

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

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

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

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

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

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

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

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

*Litigation with WNOG*

On August 12, 2014, WNOG filed suit against the Commission, seeking declaratory relief to affirm its interpretation of the Exemption and confirm that “[a]ll wells and other development within the Oil Field occurring since 1973 for which a [CDP] has not been sought have been developed in a manner consistent with the vested rights . . . and the Resolution.” This litigation is active and pending, however, the parties have stipulated to stay the action until after the

Commission's hearing on this application. During that time period, WNOG has agreed not to undertake any new oilfield activities or undertake the large scale mowing operations previously conducted on the site, and staff is working with WNOG to review permitting options for the consolidation of its operations in the Oil Remainder Areas on the site. To that end, the oilfield operator and mineral rights owner - Horizontal Development LLC, for which WNOG undertakes oil production activities, has applied to the Commission for a coastal development permit (CDP No. 9-15-1649) to restrict its ongoing and future oil operations to two heavily developed industrial areas on the site known as the Oil Remainder Areas. Permit application no. 9-15-1649 is currently being reviewed and is expected to come before the Commission later this year.

**EX PARTE COMMUNICATION DISCLOSURE FORM**

Filed by Commissioner: Greg Cox

- 1) Name or description of project: Name or description of project:  
Newport Banning Ranch
- 2) Date and time of receipt of communication: April 6, 2016, 1:15 PM
- 5) Identity of person(s) on whose behalf communication was made:  
Horizontal Development LLC
- 6) Identity of persons(s) receiving communication:  
Greg Cox and Victor Avina
- 7) Identity of all person(s) present during the communication:  
Greg Cox, Victor Avina, Don Schmitz

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

I had an ex parte communication with Mr. Schmitz on April 6 at approximately 1:15 p.m. in my offices, along with my staff member, Victor Avina. Mr. Schmitz noted his client's project consisted of consolidating the oil production facilities currently spread out over the Banning Ranch property to two proposed Oil Remaining Areas (ORA's). He stated the proposed consolidation was consistent with Coastal Act policy 30262(a)2.

He explained Coastal Commission staff and the applicant are still working on the exact configuration of the oil operations within the ORA's. He relayed that Coastal Commission staff were concerned about setbacks from sensitive resources located outside of the ORA's and that the applicant will try and redesign the facility within the ORA to try and maximize setbacks but that the consolidation of a large oilfield into such a compact area was presenting challenges.

He stated that the consolidation would remove significant amounts of existing oil field development scattered around the Banning Ranch property in close proximity to other sensitive resources.

Finally, he clarified that his client, Horizontal Development LLC, was not a part of the application for the Banning Ranch project, but was a completely separate entity, and that their only interest was in a continuing, but consolidated, oil production operation.

4/15/16  
Date

Greg Cox  
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: Martha McClure

1) Name or description of project: Newport Banning Ranch

2) Date and time of receipt of communication: August 10, 2016 - 5 pm

3) Location of communication: Santa Cruz, CA

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

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

5) Identity of person(s) on whose behalf communication was made: Mohler, Chris  
Yelich, George Basye - NBR

6) Identity of persons(s) receiving communication: Martha McClure

7) Identity of all person(s) present during the communication: McClure, Mohler, Yelich,  
Basye, Dave Neish + Ky Maltbie, Katie Maltbie

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

Briefing on Thursday Item 5d - description of interface with Native American Tribes since June 10, 2016.

Briefing describing NBR Project changes since October 2015. Applicant awaiting CCC Staff Report.

Received at Commission Meeting

AUG 11 2016

From: \_\_\_\_\_

August 10, 2016  
Date

Martha McClure  
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.

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: 5/3/16

Location of communication: STEVE KINSEY, MARIN COUNTY CIVIC CENTER OFFICE  
(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: DAVE NEISH, GEORGE PATSE,  
MIKE MOHLER

Identity of person(s) receiving communication: STEVE KINSEY

Name or description of project: NEWPORT BANNING RANCH

Description of content of communication:

(If communication included written material, attach a copy of the complete text of  
the written material.)

APPLICANTS DISCUSSED RECENTLY RELEASED CCC STAFF  
REPORT AND THEIR CONCERNS ABOUT LIMITED DEVELOPMENT  
ENVELOPES, BUFFERS FOR FIRE CONTROL, SITE CIRCULATION,  
AND WETLAND DETERMINATIONS AT TWO PIPELINE REPAIR  
LOCATIONS.

5 / 3 / 16  
Date

  
Signature of Commissioner

RECEIVED

MAY 10 2016

CALIFORNIA  
COASTAL COMMISSION

**RECEIVED**

JUN 22 2016

CALIFORNIA  
COASTAL COMMISSION

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: 7/13/16 4:20-4:25 pm

Location of communication: phone conversation while driving to Santa Barbara  
(If communication was sent by mail or facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: Steve Kinsey

Identity of person(s) receiving communication: Mike Mohler

Name or description of project: Newport Banning Ranch

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.)

I contacted Mr. Mohler to give him advance notice that I would recuse myself from any further involvement with the Commission on the cited project following my public announcement at the upcoming Commission meeting.

7/13/16  
Date

Steve Kinsey  
Signature of Commissioner

**EX PARTE COMMUNICATION DISCLOSURE FORM** MAY 11 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: May 6, 2016 10:00 am

3) Location of communication: Pismo Beach/ Telephonic

(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 walked me through is Ten Reasons to Deny Development of Newport Banning Ranch. This document has been provided to staff.

05/11/16

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.

**RECEIVED**

**EX PARTE COMMUNICATION DISCLOSURE FORM**

**MAY 14 2016**

**Filed by Commissioner:**

Effie Turnbull Sanders

CALIFORNIA  
COASTAL COMMISSION

**1) Name or description of project:**

Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach).  
Agenda Item 11c for Thursday, 5/12/16;

**2) Date and time of receipt of communication:**

May 6, 2016 at 12:05pm

**3) Location of communication:**

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

Telephone Communication

**4) Identity of person(s) initiating communication:**

Terry Welsh, of Newport Banning Ranch Conservancy (NBRC)

**5) Identity of persons(s) receiving communication:**

Effie Turnbull Sanders

**6) Identity of all person(s) present during the communication:**

Effie Turnbull Sanders  
Terry Welsh

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

Mr. Welsh stated that the project as proposed had been scaled down slightly, but that Newport Banning Ranch Conservancy (NBRC) opposed the staff recommendation for the scaled down version of the project. Mr. Welsh went on to state that although there were many staff recommendations NBRC felt these were insufficient. Mr. Welsh stated that NBRC opposes the 90 acre footprint proposed by the developer and opposes the 55 acre footprint proposed by staff. Mr. Welsh believes that the appropriate development footprint should be the 11.5 acre footprint previously delineated by staff. He further stated that he believed that the habitat has not changed, but the standards for determining ESHA have changed resulting in an allowable footprint of 55 acres. Mr. Welsh went on to state that he believed that the area is sensitive habitat and habitat for rare species.

Mr. Welsh stated that in the October hearing, he believes the applicant made it seem like Banning Ranch (BR) was going to be taken over by invasive non-native plants and that he believed that invasive species is not the horrible crisis that the applicant makes it out to be.

Mr. Welsh also stated that the applicant tries to make it seem as if the vernal pools were man made, but he

believes that the area has always been a vernal pool complex even before it was an oil field. Mr. Welsh also stated that NBRC wants the site cleaned up and the oil field remediated, but feels this is the responsibility of the owners. Mr. Welsh stated that the developer should not be given credit of an offset for clean-up even if it occurs rapidly.

Mr. Welsh also stated that the applicant's oil field clean-up plan calls for a large area of the mesa to be damaged in the process. He believes that clean-up can occur in a way that is less intrusive and damaging to the environment and that NBRC will provide testimony to this point at the hearing with an expert witness.

Mr. Welsh went on to state that the burrowing owls are very rare and come to Southern California in the winter. He stated that one to here comes to BR every winter. He also stated that the burrowing owls need more space and grasslands and vernal pool complexes for foraging to make sure burrowing owls do not completely disappear from Southern California.

Mr. Welsh also stated that the cactus wren has been at BR and has not been seen there since 2009. He said he believes that the reason they left was because of illegal clearing by the owners. Mr. Welsh stated that they were gone now, but that we should preserve their habitat anyway in case they come back or we want to reintroduce them to the area.

Mr. Welsh stated that BR was a prehistoric Native American settlement of the Gabrielino-Tongva and he said representatives will come to speak at the hearing to discuss this.

Mr. Welsh went on to state that NBRC designed a small project of 108 units as an alternative, which NBRC would accept.

Mr. Welsh said that if the Commission did vote to approve the staff recommendation, that he requested that the staff conditions on that recommendation not be stricken.

Mr. Welsh went on to go over the 10 points outlined in the attached document, which he sent to me via email, entitled Top 10 Points on Banning Ranch. Mr. Welsh sent me a document entitled "Alternative Plan," which he stated is included in the staff report. Both documents are attached hereto collectively as Exhibit A.

Date: 5/11/16

Signature

*Elho Turbell Sanders*

**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.

Exhibit A

## TEN REASONS TO DENY DEVELOPMENT OF NEWPORT BANNING RANCH

- 1. The Banning Ranch Conservancy opposes the applicants' proposed development. Approval would require Commissioners to seriously violate the Coastal Act in numerous ways and is, simply, not defensible. The Conservancy also oppose the Commission staff's recommended project. It also requires violating the Coastal Act and is, again, not defensible.**

The staff has changed the long-standing and court-tested definitions of wetlands and ESHA in an attempt to expand any potential development footprint. Buffers are reduced or eliminated. Recognized unpermitted violations of the Coastal Act and their impacts are ignored in determining baseline resource conditions. The entire ecosystem must not be sacrificed in the guise of patches or segregated pieces of disjointed parcels.

- 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) – 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."

- 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 predated 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 buffers.

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 remediation or 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 project.

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

Gravel roads and abandoned 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 recommendation of 1 – 2 acres of ESHA in the October CCC staff report is totally inadequate. *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 an average of 12 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 possible 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 the 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.

**10. 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 has presented an environmentally superior alternative project recommendation to the Commission. It is protective of coastal resources, making it consistent with the Coastal Act (the only proposal before the Commission that is). It provides a reasonable return for the property owner (in addition to all the oil revenues realized from 70 years of oil production) and is not subject to any claim for "takings". And, finally, the Commission is required under the law to select the project alternative that is "most protective" of coastal resources; while the "No Project" alternative is preferred, the Conservancy Alternative is the most protective project that has been proposed.

*Banning Ranch Conservancy  
May, 2016*



April 28, 2016

Submitted via email 04-28-16

To: California Coastal Commission c/o Amber Dobson

CC: Newport Banning Ranch LLC c/o Michael Mohler

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

### **Alternative Plan**

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

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

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

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

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

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

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

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

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

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

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

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

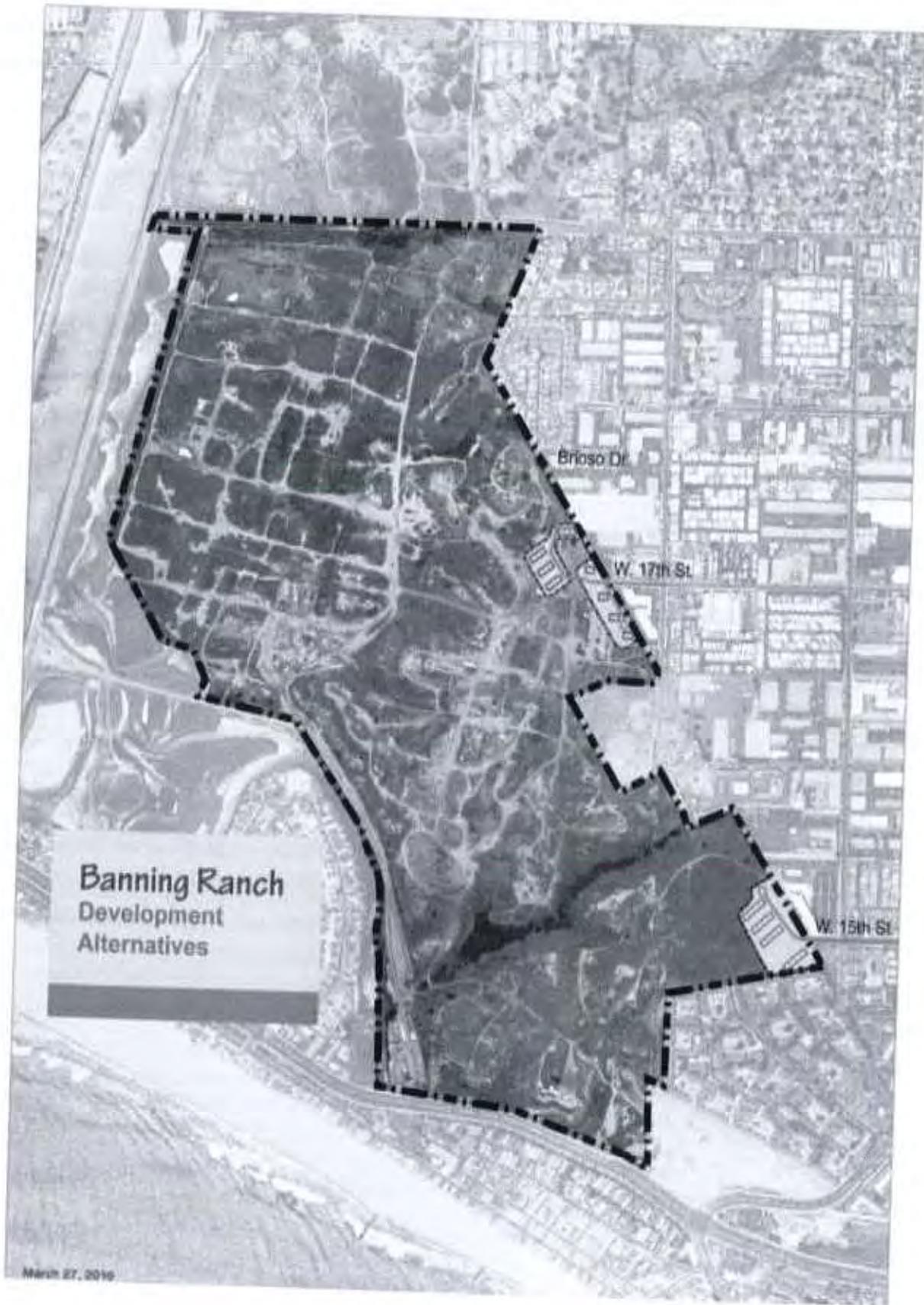
If timely, we ask that this submission be attached to the forthcoming staff report on the project for the Commission’s May hearing. Thank you.

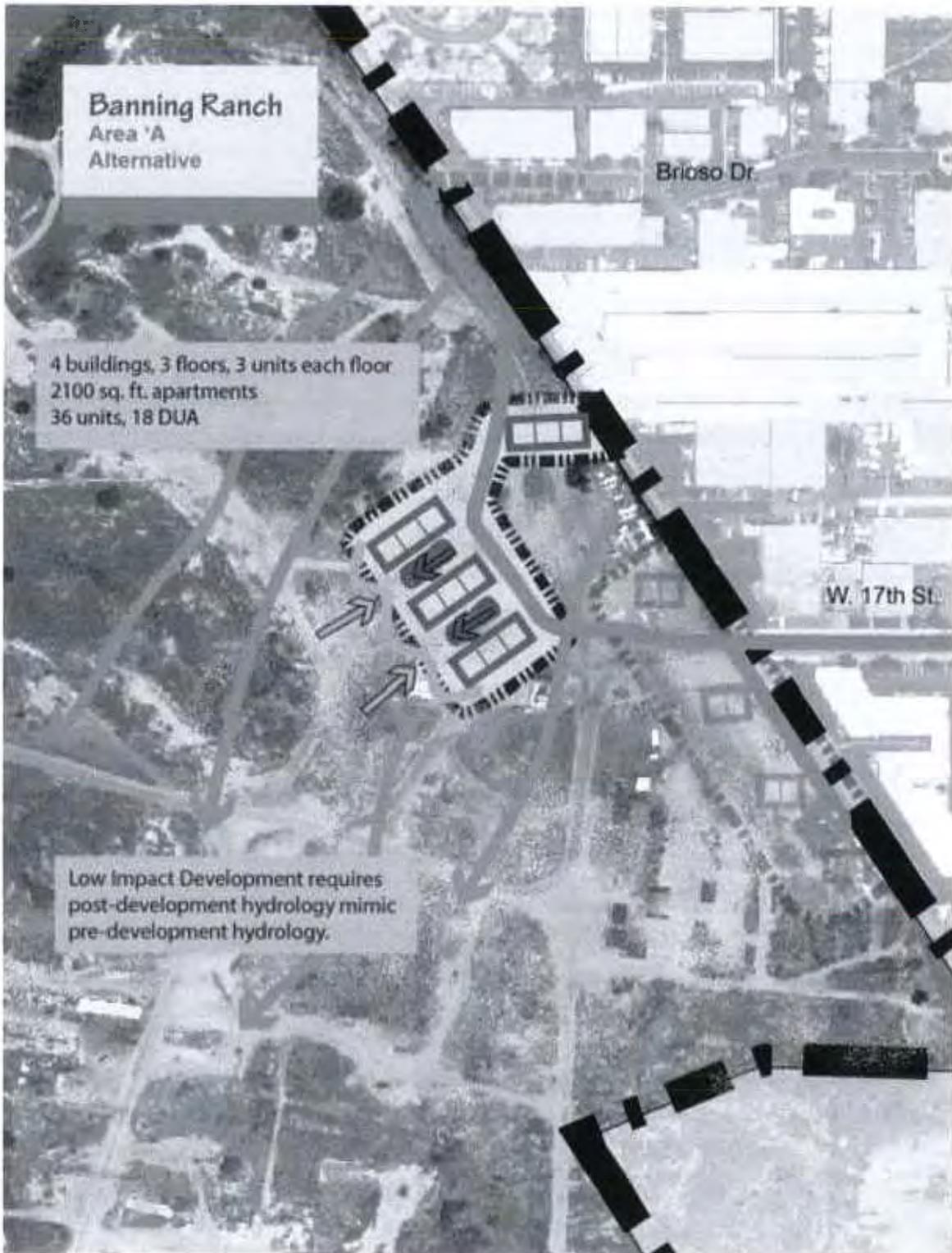
Sincerely,

Terry Welsh, President

Steve Ray, Executive Director

BANNING RANCH CONSERVANCY





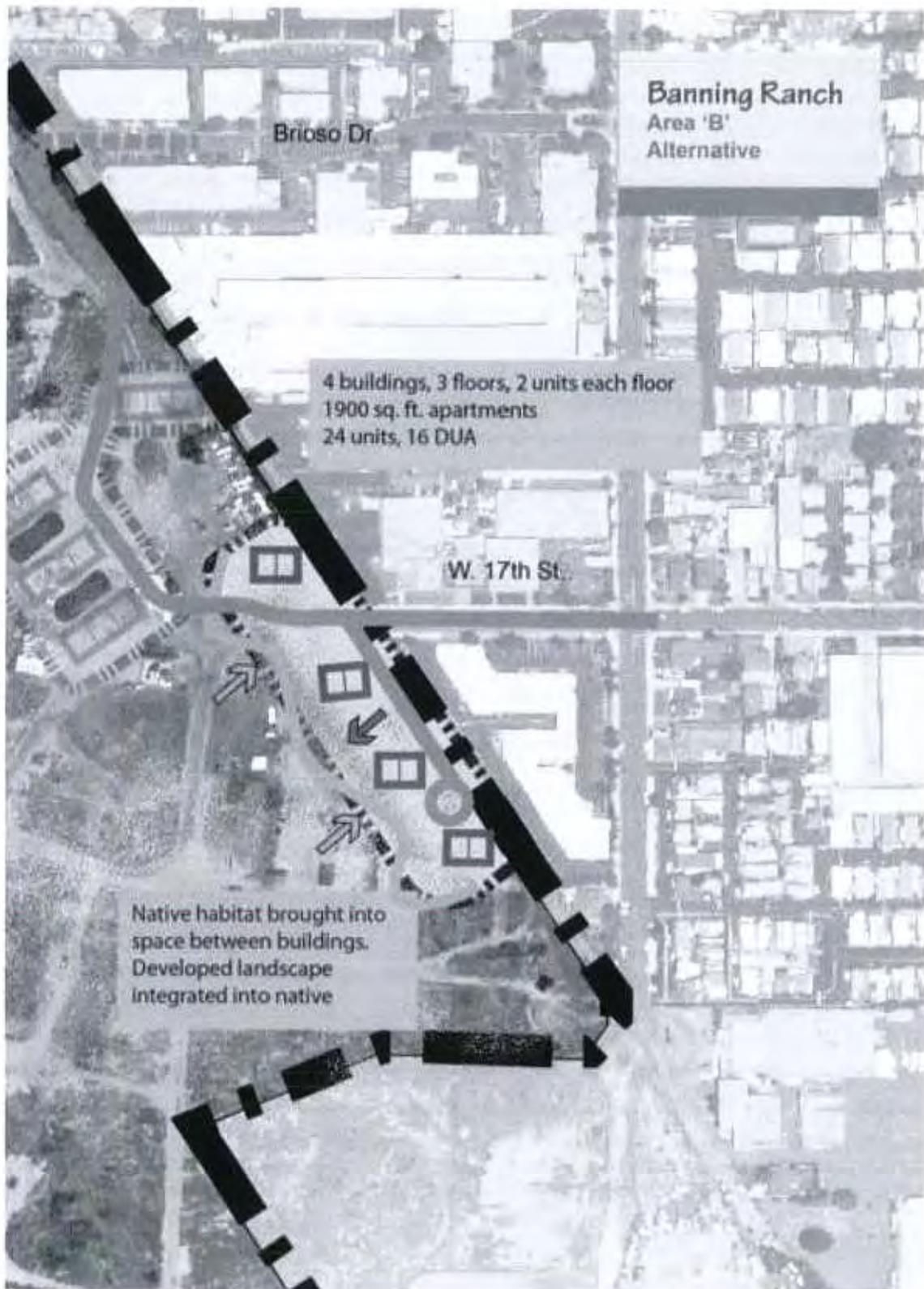
**Banning Ranch**  
Area 'A'  
Alternative

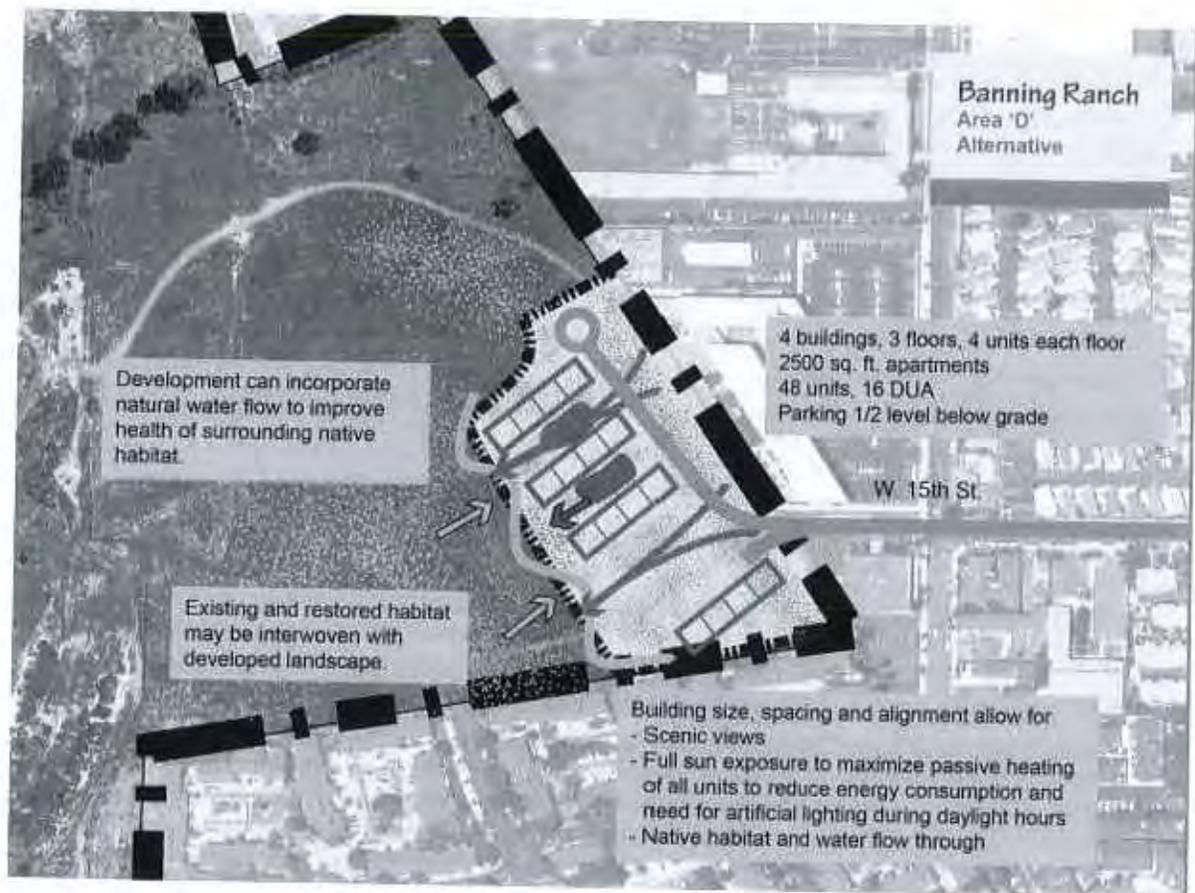
4 buildings, 3 floors, 3 units each floor  
2100 sq. ft. apartments  
36 units, 18 DUA

Low Impact Development requires  
post-development hydrology mimic  
pre-development hydrology.

Brioso Dr.

W. 17th St.





FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: Dec. 22, 2015 10AM-12PM

Location of communication: BANNING RANCH  
(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: GEORGE BAYSE, REWIND,  
ROBIN VENTRANO

Identity of person(s) receiving communication: STEVE KINSEY

Name or description of project: NEWPORT BANNING RANCH

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.) I VISITED THE SITE, BEGINNING W/ A TOUR OF THE PROJECT NURSERY, AFTERWARD, A COMBINED JEEP AND WALKING TOUR WAS TAKEN TO VISIT BOTH AREAS PROPOSED FOR DEVELOPMENT BY THE APPLICANT, AND AREAS IDENTIFIED AS ESHA BY COASTAL STAFF. WE REVIEWED A REVISED SITE PLAN THAT WAS MODIFIED FOLLOWING THE OCTOBER 2015 HEARING. WE ALSO VISITED A RESTORATION SITE IN THE NORTHEAST CORNER OF THE PROPERTY. FOLLOWING THE SITE VISIT, ON MY OWN I WALKED THROUGH TALBERT REGIONAL PARK AND FAIRVIEW PARK TO UNDERSTAND THE RELATIONSHIP TO ADJACENT OPEN SPACE.

Date 5/2/16

SK Kinsey  
Signature of Commissioner

**EX PARTE COMMUNICATION DISCLOSURE FORM**

<b>Filed by Commissioner:</b>	Mark Vargas
-------------------------------	-------------

**1) Name or description of project:**  
 Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach)

**2) Date and time of receipt of communication:**  
 1PM, Tuesday, April 26, 2016

**3) Location of communication:**  
**(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)**  
 Santa Ana, CA

**4) Identity of person(s) initiating communication:**  
 Chris Yelich

**5) Identity of persons(s) receiving communication:**  
 Mark Vargas

**6) Identity of all person(s) present during the communication:**  
 Chris Yelich and Mike Moehler

**7) Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):**  
 Received a briefing on the status of Staff/Community coordination and progress since October 2015 hearing. Brief description of updated lower intensity plan and comparison to prior. Brief description of updated social programming / social justice betterments to the plan.

May 3, 2016	
<b>Date</b>	<b>Signature</b>

**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.

RECEIVED

JUN 22 2016

CALIFORNIA  
COASTAL COMMISSION

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: Tues. June 6, 2016 4:30-5 pm

Location of communication: Phone conversation while driving to Santa Barbara  
(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: Steve Kinsay

Identity of person(s) receiving communication: Terry Welsh

Name or description of project: Newport Banning Ranch

Description of content of communication:

(If communication included written material, attach a copy of the complete text of  
the written material.)

I called Mr. Welsh, President of the Board of the ~~Newport~~  
Banning Ranch Conservancy. I explained that I would recuse myself  
from voting on the project, or being further involved after  
publicly announcing my decision at the upcoming Commission  
meeting. Mr. Welsh offered the Conservancy's position on the  
project and followed up with an e-mail including specific reasons  
why his organization opposes development of the site. He also  
sent an exhibit showing where limited development could occur.

7/13/16  
Date

Steve Kinsay  
Signature of Commissioner

## TEN REASONS TO DENY DEVELOPMENT OF NEWPORT BANNING RANCH

- 1. The Banning Ranch Conservancy opposes the applicants' proposed development. Approval would require Commissioners to seriously violate the Coastal Act in numerous ways and is, simply, not defensible. The Conservancy also oppose the Commission staff's recommended project. It also requires violating the Coastal Act and is, again, not defensible.**

The staff has changed the long-standing and court-tested definitions of wetlands and ESHA in an attempt to expand any potential development footprint. Buffers are reduced or eliminated. Recognized unpermitted violations of the Coastal Act and their impacts are ignored in determining baseline resource conditions. The entire ecosystem must not be sacrificed in the guise of patches or segregated pieces of disjointed parcels.

- 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) – 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."

- 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 predated 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 buffers.

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 remediation or 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 project.

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

Gravel roads and abandoned 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 recommendation of 1 – 2 acres of ESHA in the October CCC staff report is totally inadequate. *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 an average of 12 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 possible 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 the 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*.

- 10. 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 has presented an environmentally superior alternative project recommendation to the Commission. It is protective of coastal resources, making it consistent with the Coastal Act (the only proposal before the Commission that is). It provides a reasonable return for the property owner (in addition to all the oil revenues realized from 70 years of oil production) and is not subject to any claim for "takings". And, finally, the Commission is required under the law to select the project alternative that is "most protective" of coastal resources; while the "No Project" alternative is preferred, the Conservancy Alternative is the most protective project that has been proposed.

*Banning Ranch Conservancy  
May, 2016*

**Kinsey, Steven**

---

**From:** Terry Welsh <terrymwelsh@hotmail.com>  
**Sent:** Tuesday, June 07, 2016 10:12 PM  
**To:** Kinsey, Steven  
**Subject:** RE: Banning Ranch  
**Attachments:** Summary of BRC alt. plan .pdf; Top 10 points on Banning Ranch..docx

Steve,

Thanks for taking the time to speak with me. I hope you arrived safe and sound, and I hope the hearings go well.

Attached is a summary of the talking points I went over, and you are welcome to use these to prepare an ex parte disclosure form.

Also attached is a summary of our alternative plan. This is included in the staff report.

We subsequently submitted a more detailed 30-page plan that would have showed up in the addendum. Since, due to the postponement, no one ever saw the addendum, I don't know whether it is proper to share it with you yet. I can make it available if you think it is okay.

Terry

> From: [SKinsey@marincounty.org](mailto:SKinsey@marincounty.org)  
> To: [terrymwelsh@hotmail.com](mailto:terrymwelsh@hotmail.com)  
> Subject: Re: Banning Ranch  
> Date: Tue, 7 Jun 2016 13:36:05 +0000

>  
> Terry,

>  
> I'll try to call between 4:30-5PM. I would like to hear your personal priorities and answer questions you have about the NBR project.

>  
> Steve

>  
> Sent from my iPad

>  
> On Jun 6, 2016, at 5:56 PM, "Terry Welsh"  
<[terrymwelsh@hotmail.com](mailto:terrymwelsh@hotmail.com)<<mailto:terrymwelsh@hotmail.com>>> wrote:

> Steve, can you give me a rough idea on what time?

>

> I am usually here at work until 6 pm or so, but it slows down quite a bit after 4 pm, so 4 pm - 6 pm would work well. Otherwise, any time in the evening is fine.

>

>

> 

---

  
> From: SKinsey@marincounty.org<mailto:SKinsey@marincounty.org>

> To: terrymwelsh@hotmail.com<mailto:terrymwelsh@hotmail.com>

> Subject: RE: Banning Ranch

> Date: Mon, 6 Jun 2016 22:28:57 +0000

>

>

> Thanks; will do.

>

>

>

> SK

>

>

>

> From: Terry Welsh [mailto:terrymwelsh@hotmail.com]

> Sent: Monday, June 06, 2016 2:07 PM

> To: Kinsey, Steven

> Subject: RE: Banning Ranch

>

>

>

> Yes, Tuesday late afternoon or early evening should be fine.

>

> Call me at 714--719-2148

>

> Terry

>

>

>

>

> From: SKinsey@marincounty.org<mailto:SKinsey@marincounty.org>

> To: terrymwelsh@hotmail.com<mailto:terrymwelsh@hotmail.com>

> Subject: RE: Banning Ranch

> Date: Mon, 6 Jun 2016 18:37:08 +0000

>

>

>

>

>

> Terry,

>

>

>  
> I 知 wondering if I can schedule a brief phone call with you on Tuesday in the late afternoon or early evening  
I would be prepared to call you at 714-719-2148 if you are open to speaking about the NBR project. I am  
responding to your earlier request for an ex Parte on this matter.

>  
>  
>  
>  
> Steve Kinsey

>  
>  
>  
>  
> Email Disclaimer: <http://www.marincounty.org/main/disclaimers>

>  
> Email Disclaimer: <http://www.marincounty.org/main/disclaimers>

>  
> Email Disclaimer: <http://www.marincounty.org/main/disclaimers>



April 28, 2016

Submitted via email 04-28-16

To: California Coastal Commission c/o Amber Dobson

CC: Newport Banning Ranch LLC c/o Michael Mohler

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

### **Alternative Plan**

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

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

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

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

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

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

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

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

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

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

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

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

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

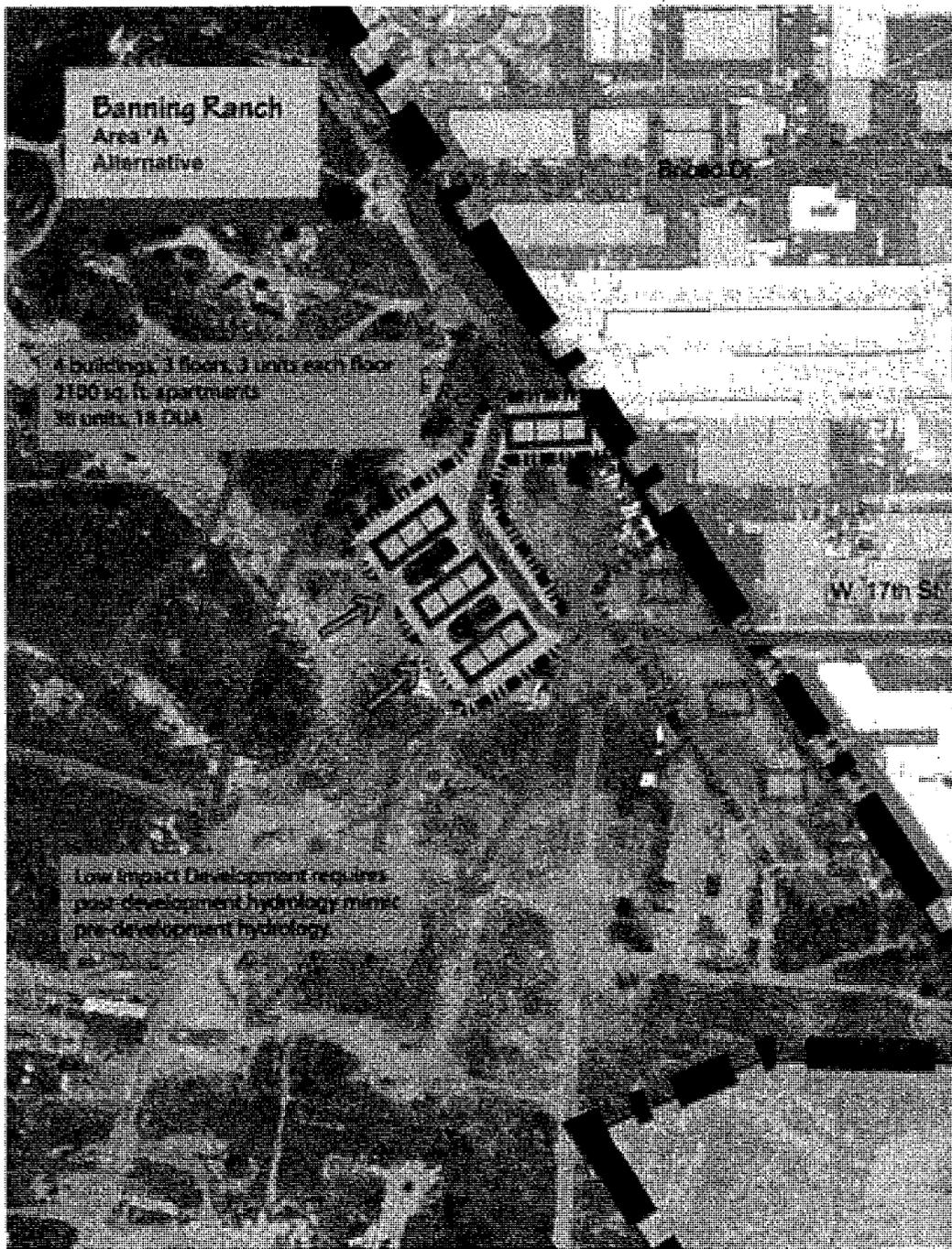
Sincerely,

Terry Welsh, President

Steve Ray, Executive Director

BANNING RANCH CONSERVANCY









## EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Roberto Uranga

- 1) Name or description of project: 5-15-2097
- 2) Date and time of receipt of communication: May 3, 2016 at 10:00am
- 3) Location of communication: Long Beach, CA  
(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:  
Banning Ranch Conservancy
- 6) Identity of persons(s) receiving communication:  
Roberto Uranga
- 7) Identity of all person(s) present during the communication:  
Roberto Uranga, Steve Ray, Terry Welsh, Celina Luna

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

I received a briefing from Steve Ray and Terry Welsh from the Banning Ranch Conservancy. They expressed their concerns with the proposed development and also presented 10 reasons to deny development of Newport Banning Ranch, which are attached to this ex-parte disclosure. Highlights include:

- 1) This development violates the Coastal Act in numerous ways and is simply, not defensible.
- 2) Banning Ranch has extensive ESHA and Wetlands.
- 3) There is no urgency for the invasive non-native vegetation on Banning Ranch
- 4) The Vernal pool complex on NBR predates the Oil Operations
- 5) Commission should demand full compliance with the Coastal Act for any remediation or any proposed development project on Banning Ranch
- 6) The abandonment and remediation of the oil field can occur in an environmentally conscious manner.
- 7) It is very important to maintain not only the burrows, but adequate foraging area, for the 1-3 Burrowing Owls that winter on NBR.
- 8) The historical nesting season use areas of Coastal Cactus Wren should be considered as ESHA
- 9) There is substantial and undeniable documented evidence that Banning Ranch was a pre-historic Native Nation settlement
- 10) Development of Banning Ranch can occur on a small footprint, consistent with the Coastal Act and is the required choice.

They also presented an alternative development plan that has been shared with Coastal Commission staff.

05/12/16

Date

  
Signature of Commissioner

Rec'd @ Mtg  
5/12/16  
Vlu



April 28, 2016

Submitted via email 04-28-16

To: California Coastal Commission c/o Amber Dobson

CC: Newport Banning Ranch LLC c/o Michael Mohler

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

### Alternative Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

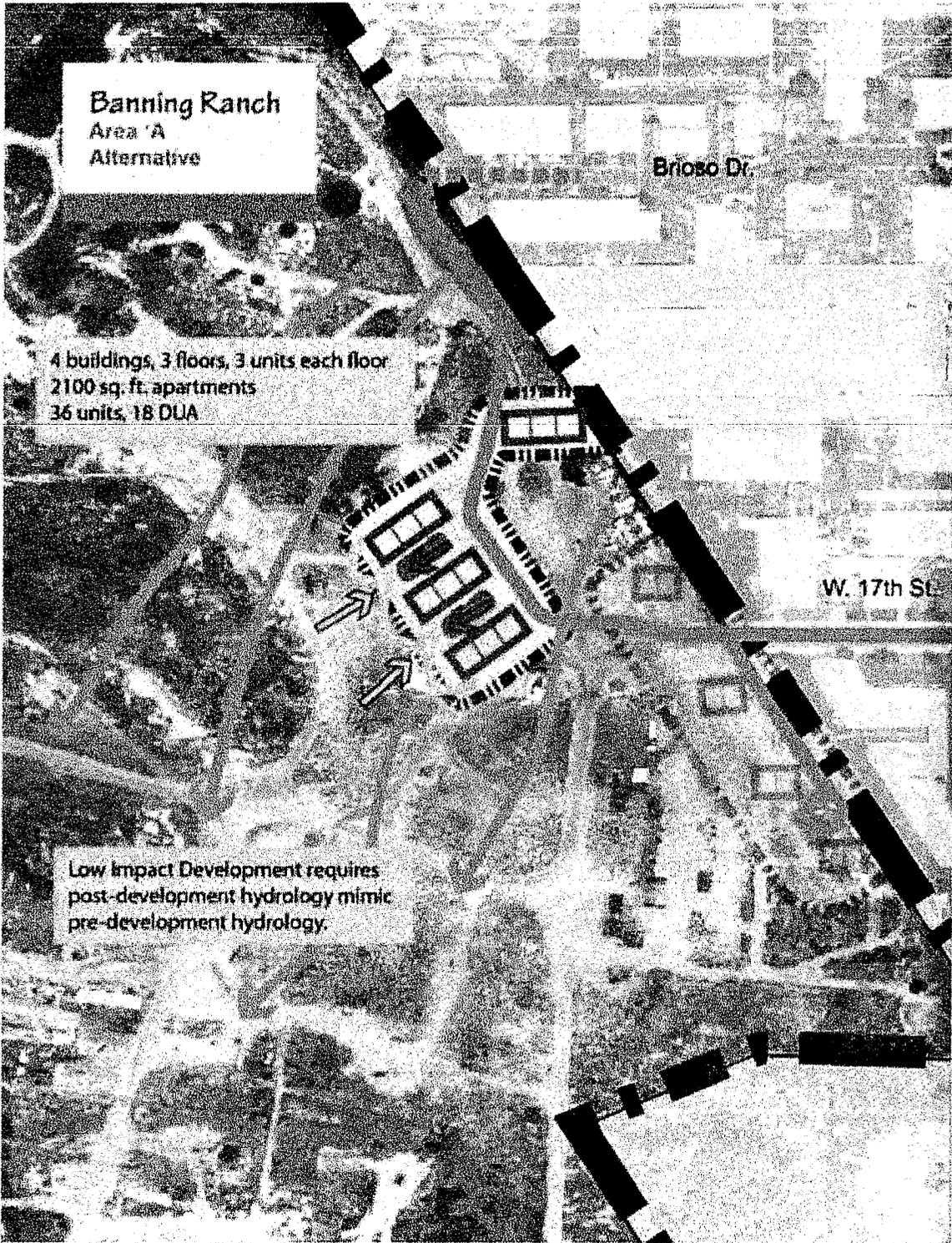
Terry Welsh, President

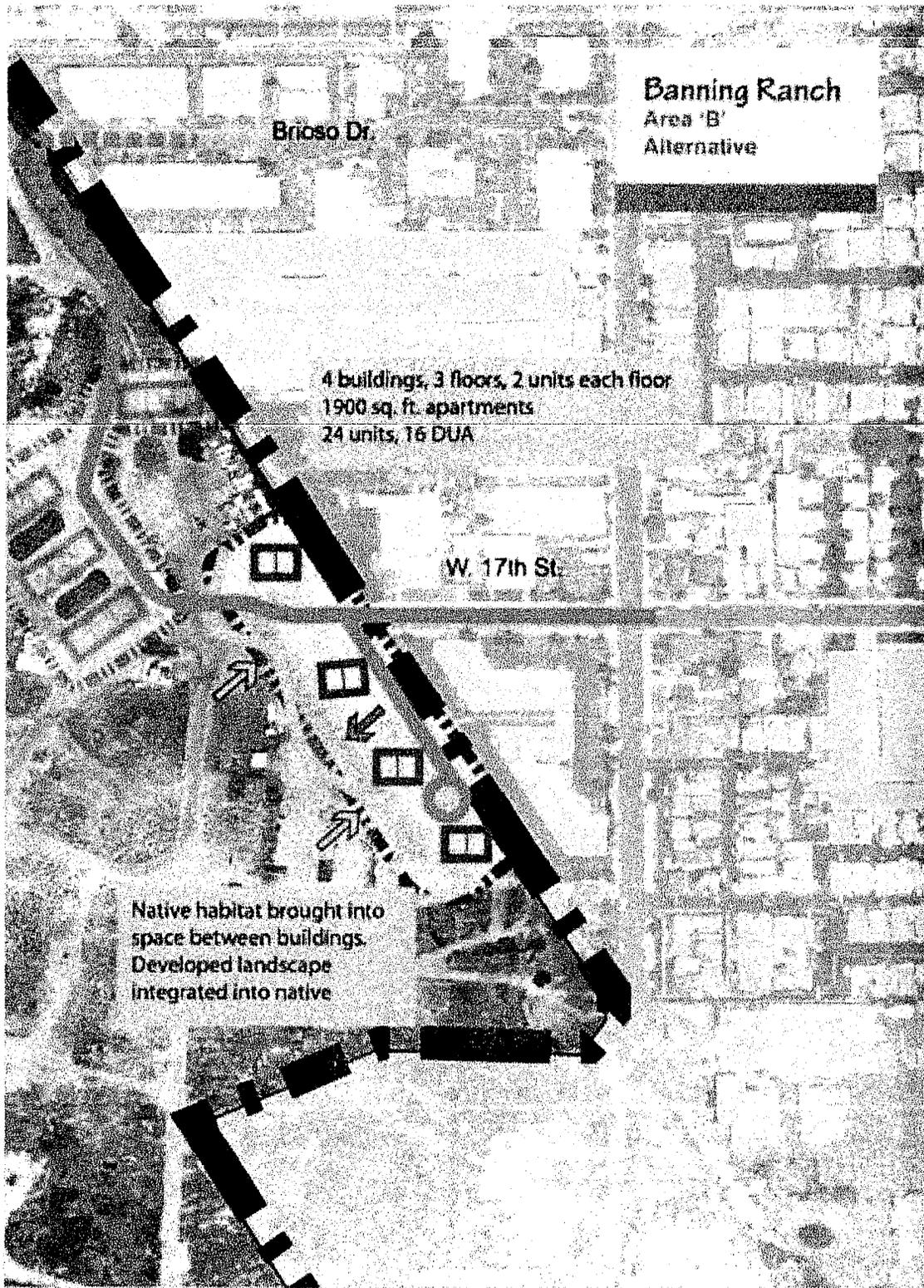
Steve Ray, Executive Director

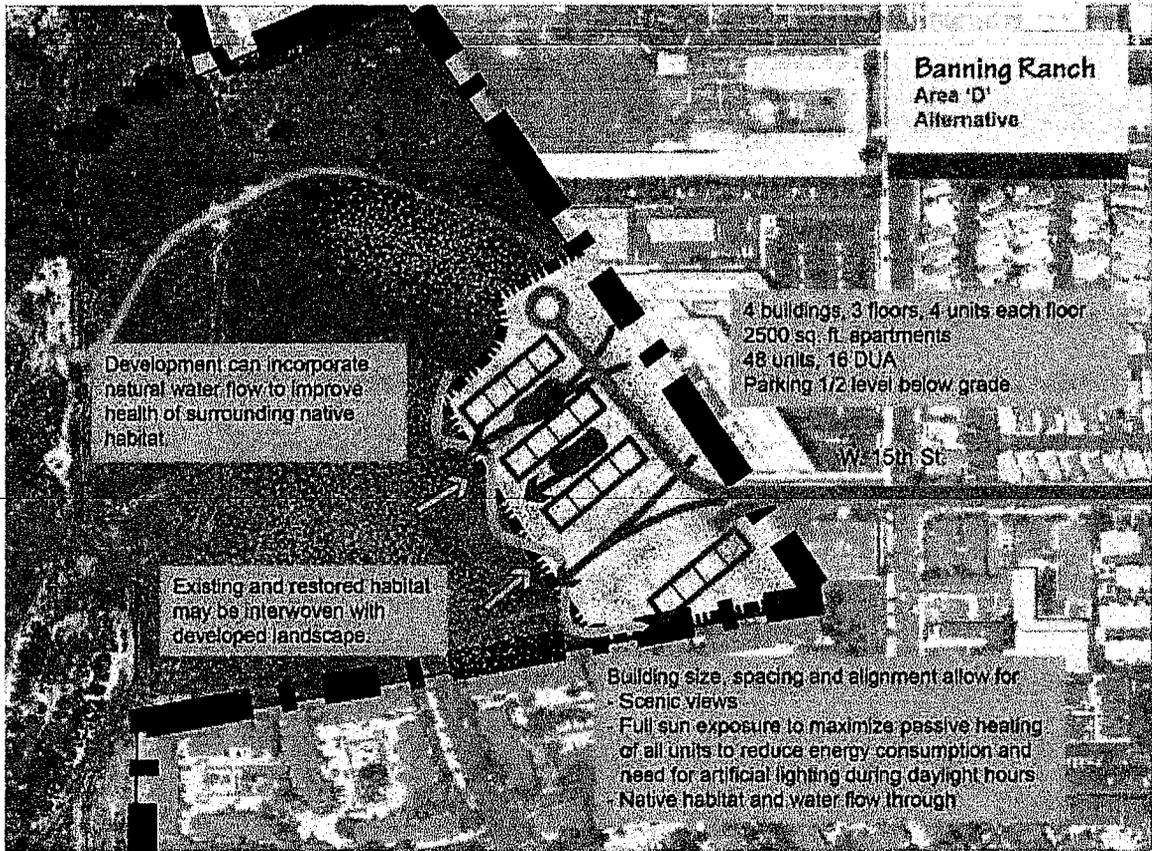
BANNING RANCH CONSERVANCY



March 27, 2010







**Banning Ranch  
Area 'D'  
Alternative**

4 buildings, 3 floors, 4 units each floor  
2500 sq. ft. apartments  
48 units, 16' DUA  
Parking 1/2 level below grade

W. 15th St.

Development can incorporate natural water flow to improve health of surrounding native habitat.

Existing and restored habitat may be interwoven with developed landscape.

Building size, spacing and alignment allow for  
- Scenic views  
Full sun exposure to maximize passive heating of all units to reduce energy consumption and need for artificial lighting during daylight hours  
Native habitat and water flow through

## TEN REASONS TO DENY DEVELOPMENT OF NEWPORT BANNING RANCH

- 1. The Banning Ranch Conservancy opposes the applicants' proposed development. Approval would require Commissioners to seriously violate the Coastal Act in numerous ways and is, simply, not defensible. The Conservancy also oppose the Commission staff's recommended project. It also requires violating the Coastal Act and is, again, not defensible.**

The staff has changed the long-standing and court-tested definitions of wetlands and ESHA in an attempt to expand any potential development footprint. Buffers are reduced or eliminated. Recognized unpermitted violations of the Coastal Act and their impacts are ignored in determining baseline resource conditions. The entire ecosystem must not be sacrificed in the guise of patches or segregated pieces of disjointed parcels.

- 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) – 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."

- 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 predated 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 buffers.

- 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 remediation or 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 project.

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

Gravel roads and abandoned 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 recommendation of 1 – 2 acres of ESHA in the October CCC staff report is totally inadequate. *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 an average of 12 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 possible 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 the 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*.

**10. 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 has presented an environmentally superior alternative project recommendation to the Commission. It is protective of coastal resources, making it consistent with the Coastal Act (the only proposal before the Commission that is). It provides a reasonable return for the property owner (in addition to all the oil revenues realized from 70 years of oil production) and is not subject to any claim for "takings". And, finally, the Commission is required under the law to select the project alternative that is "most protective" of coastal resources; while the "No Project" alternative is preferred, the Conservancy Alternative is the most protective project that has been proposed.

*Banning Ranch Conservancy  
May, 2016*

**EX PARTE COMMUNICATION DISCLOSURE FORM**

**Filed by Commissioner:** Mark Vargas

**RECEIVED**

AUG 22 2016

CALIFORNIA  
COASTAL COMMISSION

**1) Name or description of project:**

Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach)

**2) Date and time of receipt of communication:**

7PM, August 10, 2016

**3) Location of communication:**

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

Santa Cruz, CA

**4) Identity of person(s) initiating communication:**

Chris Yellich

**5) Identity of persons(s) receiving communication:**

Mark Vargas

**6) Identity of all person(s) present during the communication:**

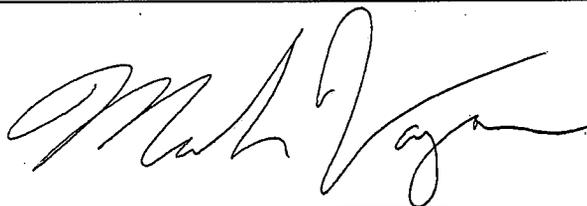
Mark Vargas, Chris Yellich, George Basye, Michael Moller

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

I received a status update from representatives of the NBR project. They stated that they have resolved most issues with staff, leading to a significant reduction in the footprint of their project. There are only a couple more issues left unresolved at that time, including the connection of an access road all the way through from 17<sup>th</sup> street to PCH and the designation of two specific areas as either vernal pools or wetlands.

August 10, 2016

**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.

**EX PARTE COMMUNICATION DISCLOSURE FORM**

**RECEIVED**

MAY 11 2016

Filed by Commissioner: Erik Howell

CALIFORNIA  
COASTAL COMMISSION

1) Name or description of project: Newport Banning Ranch

2) Date and time of receipt of communication: May 5, 2016, 3:00 pm

3) Location of communication: West Hollywood

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

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

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

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

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

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

Mr. Yelich outlined the scaled back proposal now before the Commission.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

01/27/16

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: Greg Cox

- 1) Name or description of project: Newport Banning Ranch
- 2) Date and time of receipt of communication: May 4, 2016, 4 p.m.
- 3) Location of communication: 1600 Pacific Highway, San Diego, CA 92101
- 4) Identity of person(s) initiating communication: David B. Neish
- 5) Identity of person(s) on whose behalf communication was made: Newport Banning Ranch, LLC
- 6) Identity of persons(s) receiving communication: Greg Cox and Victor Avina
- 7) Identity of all person(s) present during the communication:  
David B. Neish, David J. Neish, George Basye, Michael Mohler

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

On May 4, 2016 at 4 p.m. I had a meeting with the abovementioned group regarding the Newport Banning Ranch project. They shared that they had, after working with Coastal Commission staff, disagreed on three major threshold issues on the project: fuel modifications and buffers; the construction of a road that would go through the entire project; and site constraints, including the avoidance of Gnatcatcher use areas.

The group shared that, since October, the project had been revised to include an additional 43 acres of open space, a reduction of 279 dwelling units, added protection of the north/south arroyo and increased protection of bluff edges along the mesa.

Finally, the group described the Newport Banning Land Trust, which would maintain the trails in the designated open space, while an HOA would maintain the trails within the project. As currently proposed, the Land Trust would receive funding from a taxing project consisting of a Habitat Maintenance Assessment District and a transfer on home resales. The Land Trust would also provide educational programs for nearby schools and implement restoration, preservation, and maintenance of habitat.

May 10, 2016  
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.

FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS

Date and time of communication: 5/3/16, 5-5:45pm

Location of communication: Meeting in person, Marin County Civic Center  
(If communication was sent by mail or  
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: George Bayse, Mike Mehler, Dave Nish

Identity of person(s) receiving communication: Steve Kinsey

Name or description of project: Newport Banning Ranch

Description of content of communication:

(If communication included written material, attach a copy of the complete text of  
the written material.) (No documents were provided)

The applicant representatives presented concerns regarding the recently released staff report, including the impact of requiring all fuel modification zones to be within the developable envelopes, segmenting the site circulation instead of allowing connectivity between development envelopes, constraining development envelopes based on Gratzschler sitings from the 1990's instead of more current mapping, and the use of 100' buffers from sensitive habitats, when other Newport Beach projects are permitted to have lesser setbacks. The applicants also expressed the need to have the permit vesting period extended to allow for the numerous condition compliance issues to be addressed.

Date

5/3/16

Signature of Commissioner

SA Kinsey

**EX PARTE COMMUNICATION DISCLOSURE FORM**

**Filed by Commissioner:** Mark Vargas

**RECEIVED**

AUG 22 2016

CALIFORNIA  
COASTAL COMMISSION

**1) Name or description of project:**

Application No. 5-15-2097 (Newport Banning Ranch, LLC, Newport Beach)

**2) Date and time of receipt of communication:**

December 10, 2015, 4PM

**3) Location of communication:**

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

Monterrey, CA

**4) Identity of person(s) initiating communication:**

Terry Welsh

**5) Identity of persons(s) receiving communication:**

Mark Vargas

**6) Identity of all person(s) present during the communication:**

Steve Ray, Terry Welsh, Mark Vargas, Martha McClure, Wendy Mitchell, Mary Luevano

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

I received a status update from representatives of the Banning Ranch Conservancy. They are in agreement with staff's original recommendation of denial for the project. They do not believe that any project can be approved, given the amount of ESHA on the property. They believe they can raise the funds to purchase the property from the developer, although no money has been committed as of yet.

August 22, 2016

**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.