



*Sea &  
Sage Audubon*

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November 7, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915

RE: DEIR Newport Banning Ranch Project No 2009031061

Mr. Alford:

Please accept these comments on behalf of the Sea and Sage Audubon Society in response to Draft Environmental Impact Report (DEIR), for the Newport Banning Ranch Project No 2009031061. Sea & Sage Audubon Society is an Orange County chapter of National Audubon Society with nearly 3,000 local members dedicated to the protection and appreciation of birds, other wildlife, and their habitats through education, conservation, scientific research, and volunteer opportunities. We appreciate the opportunity to respond to the DEIR.

We found the DEIR to be insufficient and fails to identify all of the impacts related to the proposed project, especially to wildlife. Additionally we find the language used to describe habitats and impacts to habitats, to be unfairly bias towards the project and therefore does not provide the reader with a full understanding of the project and/or its impacts as required by CEQA. The DEIR under rates the value of the property to existing wildlife features, especially birds.

We agree with inadequacies pointed out in responses to the DEIR from Robert Hamilton, Barry Nerhus, and Terry Welsh. Examples of our concerns are as follows

### **Resident and Wintering Raptors**

The bird list in section 4-6-20 fails to recognize raptors as year round residents. This can only be explained by a lack of adequate surveys and investigation during the breeding season.

Raptors common to the area as residents that are known to nest regularly in adjacent properties to the Banning Ranch include Red-tailed Hawks, Red-shouldered Hawks, and White-tailed Kites. In fact all three can be observed and heard vocalizing over the Banning Ranch Property during the nesting season in most years. A Red-tailed Hawk nest was visible for several years in the willows, which are observable from the 16<sup>th</sup> Street terminus area. There is no reason to suspect that these and other raptors are not residents on the property and would be impacted by the proposal.

Because of the lack of knowledge about the density and frequency of raptors nesting on the property, some of which may be special status species, but all protected, the DEIR cannot adequately access the impacts.

The DEIR routinely down grades the importance of wintering raptors such as Burrowing Owls. However, the coastal areas of southern California are very important to wintering birds and have become rare and irreplaceable. As a local resource impacts to wintering and rare raptors should be considered significant.

The DEIR needs to identify the densities and frequencies of nesting, foraging, and wintering hawks, kites, and owls on the property.

### **Fairy Shrimp**

In Section 4-6-3 the DEIR states that San Diego fairy Shrimp were discovered, but that the pool was not adequate to support this species. This is contradictory, obviously because the species was detected. There is no explanation given in the DEIR to support any other reason for the shrimp to be in the pool other than it is supported by the habitat.

Fairy shrimp populations, of almost any species, are very difficult to access because so many factors, that are often poorly understood, influence which years they will be present as adults in a particular vernal pool. Fairy shrimp cysts can survive for many years, in some cases for decades and longer, and will only hatch under very specific conditions including specific temperature regimes, ph and other pond conditions, as well as rain levels.

And, just because the pool was not full for 14 days in relatively wet years, as stated in the DEIR, does not preclude the possibility that it could be full for 14 or more days in years where the rains comes in very short time periods, but very heavily in flood conditions. The pool may only fill properly in very odd years but still support the San Diego Fairy Shrimp, as it must since the species was detected

The DEIR should recognize and clearly state that vernal pools found to contain any fairy shrimp species are viable pools, and that it is likely, given the proximity to each other that all viable pools may contain more species than have been identified.

## **CCS Restoration and Birds.**

The DEIR employs a common strategy of separating each and every parcel of CSS into disparate communities of CSS, such as disturbed Encelia Scrub and Disturbed Mulefat Scrub. And while these are legitimate designations, it is very important to understand the context in which the habitats are described. It would be equally legitimate to describe habitats as mixed, a mosaic, or a diverse CSS mix. The continued and frequent use of the term “disturbed” in the DEIR unnecessarily presents a negative view. This results in a bias towards the need to restore or fix a problem that does not necessarily exist

To assess the impacts of the project, the DEIR should more adequately recognize that the habitat on the Banning Ranch currently supports a healthy population of CSS obligate species, such as Coastal Cactus Wrens, that often prefer habitats with mosaics or some open areas, and can conversely struggle in very dense CSS.

The DEIR does not clearly identify the risks of failure of CSS restoration for CSS obligate birds, especially Coastal Cactus Wrens. And the DEIR should clearly recognize that restoration attempts for one species will likely impact other species.

For instance; most raptors, such as red-tailed hawks, red-shouldered hawks, and white-tailed kites, forage well in the “disturbed” habitats that exist currently on the property. Raptors are present in large numbers on the Banning Ranch, and similar nearby coastal habitats, because the mosaic of habitats, including non-native grasses and open areas that provide for the best possible foraging opportunities. “Restoring” these habitats to dense CSS will limit foraging opportunities and impact the local populations.

Converting mixed CSS, non-native grasslands, and open areas to dense CSS in an attempt to mitigate for impacts to CSS obligate birds will result in reduced habitats for other species such as raptors, and should be fully identified in the DEIR.

The DEIR must recognize that due to the loss of acreage and the lack of nearby, off-site opportunities, the project cannot simultaneously mitigate for California Gnatcatchers, Cactus Wrens, and raptor species. Given the status of the CSS birds, the DEIR must recognize that it would result in an unavoidable impact to raptors.

And, the DEIR must clearly state that the mitigation efforts for California Gnatcatchers and Coastal Cactus Wrens are only projections and may fail to meet expectations

## **Conclusion**

The DEIR failed to fully investigate all of the biological resources on the Newport Banning Ranch property and fails to identify all of the impacts from the proposal.

Thank you for your consideration,

A handwritten signature in blue ink, appearing to read "Scott Thomas". The signature is fluid and cursive, with the first name "Scott" and the last name "Thomas" clearly distinguishable.

Scott Thomas  
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