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Subject: Newport Banning Ranch DEIR (State Clearinghouse No. 2009031061)

Dear Mr. Alford:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project (State Clearinghouse No. 2009031061) located partially within the City of Newport Beach and partially in an unincorporated area of Orange County within the City of Newport Beach Sphere of Influence. These comments are submitted on behalf of the Banning Ranch Conservancy, Stop Polluting Our Newport, and myself.

The project's location immediately to the east of the Army Corps of Engineers' saltwater marsh restoration project and immediately to the south of Talbert Nature Reserve renders impacts to the site more serious than if occurring at many other locations elsewhere in Orange County. Banning Ranch provides just a portion of an approximately one thousand-acre system of habitats along the Santa Ana River including the ACE marsh project, Talbert, Fairview Park, and wetlands in Huntington Beach adjacent to the river. Habitats range from saltwater wetlands at the mouth of the Santa Ana river; to freshwater wetlands to upland habitats. Elimination of habitat on the project site would create a break in the chain of habitats from ocean to upland.

The project would permit the construction of up to 1,375 dwelling units, a resort hotel with related commercial facilities, an additional 75,000 square feet of commercial development, public parks, and other open space. Circulation improvement include the construction of Bluff Road between West Coast Highway and 19<sup>th</sup> Street, the extension of 15<sup>th</sup> Street, 16<sup>th</sup> Street, and 17<sup>th</sup> Street into the project site, and construction of local roadways internal to the site. A system of pedestrian and bicycle trails will also be constructed.

Oil production facilities are planned to be consolidated in two areas of the site near Semeniuk Slough and Newport Shores. Pollution at existing oil production sites will be cleaned up in accordance with State and Federal law.

The project will involve the following discretionary approvals from the City of Newport Beach:

- General Plan Circulation Element Amendment
- General Plan Figure I2, Sphere of Influence
- Zoning Code Amendment
- Pre-Annexation Zone Change
- Newport Banning Ranch Planned Community Zoning
- Newport Banning Ranch Master Development Plan
- Tentative Tract Map
- Affordable Housing Implementation Plan (AHIP)
- Pre-Annexation and Development Agreement
- Traffic Phasing Ordinance Approval

The DEIR is thus somewhat of a hybrid between a project specific EIR addressing a tract map which includes establishment of individual residential lots in some areas and a Master or Program EIR addressing a general plan or master plan, with additional environmental documents potentially prepared for specific development in the future.

Approvals needed from other agencies as part of the project include:

- U.S. Fish and Wildlife Service - Section 7 Consultation and Biological Opinion.
- U.S. Army Corps of Engineers- Section 404 permit for impacts to “Waters of the U.S.”.
- California Department of Fish and Game - Section 1600 Streambed Alteration Agreement.
- Santa Ana Regional Water Quality Control Board – Section 401 Water Quality Certification; Waste Discharge Requirements for the fill or alteration of “Waters of the State”; approval of the final Remedial Action Plan for the oil well/facility abandonment and site remediation.
- California Coastal Commission – Coastal Development Permit.
- State of California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR)- abandonment of oil and gas wells.
- California Department of Transportation - Encroachment Permit for widening and improvements to West Coast Highway, modifying the existing culvert in West Coast Highway, and constructing a pedestrian/bicycle bridge over West Coast Highway.
- Orange County Health Care Agency - Approval of the final RAP for the oil well/facility abandonment and site remediation.
- Local Agency Formation Commission - Annexation of the project site into the City of Newport Beach and change in water service district boundaries.
- Orange County Transportation Authority - Amendment to the Orange County Master Plan of Arterial Highways to redesignate proposed North Bluff Road between 17<sup>th</sup> Street and 19<sup>th</sup> Street from a Major (six-lane divided) to a Primary (four-lane divided) and deleting the connection from 17<sup>th</sup> Street westerly to West Coast Highway from the MPAH.
- Newport-Mesa Unified School District - Encroachment permit for the construction of the extension of 16<sup>th</sup> Street and North Bluff Road on the School District’s property.

The EIR is intended to provide environmental information to the above responsible agencies, trustee agencies, and other public agencies which may be required to grant approvals and permits (DEIR p. 3-51)

### **Project Description**

A vague or incomplete project description will render all further analyses and determinations ineffectual. As stated in *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (202 Cal.App.3d 1136, 1143; 249 Cal.Rptr. 439), “An accurate project description is necessary for an intelligent evaluation of potential environmental effects of a proposed activity”.

In setting aside the approval of an EIR by the City of Los Angeles for water development facilities in Inyo County, the court stated: “An accurate, stable and finite project description is the sine qua non of an information and legally sufficient EIR” (*County of Inyo v. City of Los Angeles* (71 Cal.App.3d 193) [139 Cal.Rptr. 401]). A stable, complete, and accurate project description is the most basic and important factor in preparing a lawful EIR. It is the denominator of the document and, thus, of the public’s and decision-maker’s review.

The DEIR explains generally what is planned for the site, but certain important information is lacking or ambiguous. This is particularly problematic regarding oil production consolidation, landform alteration, and commercial uses at the boutique hotel.

While the DEIR repeatedly indicates that oil field operations will be consolidated in specific locations, little information is provided as to what that will entail. Will new oil wells be drilled at the consolidation locations? What activities and equipment would be involved? Will new buildings be constructed? As shown on Exhibit 4.5-1, maintenance shops, storage, offices, changing rooms, an air compressor plant and other functions currently occur outside the proposed consolidation areas. Will all of those functions be provided on-site in the consolidation areas? Where specifically?

The details of the consolidation process could have significant implications for impacts on homes in Newport Shores. The DEIR must provide complete information as to what consolidation entails and fully examine the associated impacts, including, but not limited to noise, vibration, air emissions, visual impacts and traffic. Particular consideration must be given to impacts on Newport Shores and Semeniuk Slough both as to impacts of consolidation and ongoing impacts due to activities at the consolidation sites.

Various documents for the project provide conflicting information as to when consolidation of oil production activities might occur. On the one hand, the Master Development Plan (Section 3.4.5; p. 3-18) states:

Upon receiving all public agency approvals required to implement the Project, the Developer shall initiate the abandonment and remediation of existing surface oil operations within the Open Space Preserve areas described above in Sections a-d

and consolidate the existing surface oil operations into the two Consolidated Oils Sites described below.

Thus, one would conclude that oil operations would quickly be consolidated.

Strangely, though, the Newport Banning Ranch Planned Community Development Plan specifies in various locations (Table 3-3, p. 3-28; Table 3-4, p. 3-31) that structures in various development areas would be set back from active oil well heads at least 100 feet. If all oil production facilities were consolidated at the two locations shown, this policy would appear to be unnecessary.

The Newport Banning Ranch Planned Community Development Plan (Section 3.2.1, p. 3-1) also states:

All surface oil production facilities located in areas outside of the OF District in existence after the effective date of the NBR-PC shall be legal non-conforming structures and subject to NBMC Chapter 20.38, "Nonconforming Uses and Structures," and subject solely to the provisions of NBMC Sections 20.38.010 through 20.38.050 of Chapter 20.38.

Under the provisions of Chapter 20.38, existing oil production facilities could continue to operate indefinitely, unless the Planning Commission adopted specific findings pursuant to Section 20.38.100 D which would then allow up to ten years for removal. Thus, cleanup and restoration of open space areas could be postponed indefinitely.

The DEIR does not clarify this apparent inconsistency which must be resolved. Conditions of approval must identify a reasonable time certain within which oil operations will be consolidated and associated cleanup will be completed. This must be related to issuance of occupancy permits for development on the site.

The Project Description indicates that 2.5 million cubic yards of materials will be excavated on the subject property (p. 3-34), but no grading plan is included in the DEIR. The DEIR generally shows areas subject to cut and areas subject to fill (Figure 3-17), but fails to illustrate how the landform will be changed.

It is only when Figure 3-17 is magnified several times that some sense of what appear to be ultimate ground contours is provided. Unfortunately, the resolution of the map is such that details are lacking and one has no way of knowing how much site topography will be altered at a given location. Further, the contours shown are not consistent with those in Figure 4.3-6, Bluff Restoration Plan, which shows only a portion of the site. The Bluff and Slope Restoration Plan in the Master Development Plan (Exhibit 7-3) likewise fails to show the entire site and fails to include significant areas shown to be subject to cut and fill in DEIR Exhibit 3-17. The Master Grading Plan (Exhibit 7-1, Master Development Plan) shows finished contours, but not existing landforms.

Based on comparisons of various maps and exhibits, it appears that the upper portion of the Southern Arroyo will be subject to fill, an arroyo branching off from the Southern Arroyo in a northerly direction, the "Central Arroyo", will be filled, and an east west trending arroyo/canyon northerly of Newport Shores will be filled. This must be addressed in the DEIR. Cross sections must be provided showing both the most extreme cases as well as representative cases.

The DEIR repeatedly indicates (Table 3-1, p. 3-12; Table 3-2, p. 3-27) that commercial development will be limited to 75,000 square feet, and further indicates that any commercial development in any of the residential areas would be included in the 75,000 square feet. Indeed Objective 5 (p. 3-8) has as an objective "Development of up to 75,000 square feet of retail commercial uses oriented to serve the needs of local residents and **visitors utilizing the resort inn** [emphasis added] and the coastal recreational opportunities provided as part of the Project."

In actuality, the Resort Colony would include a 75-room hotel and additional ancillary commercial uses (p. 3-16) not included in the 75,000 square feet. As described in the Planned Community Development Plan (Section 3.14-2, p. 3-34):

Commercial uses constructed as part of a resort inn facility as allowed within the VSR/R Land Use District which may include restaurants, bars, full-service spas, fitness centers, specialty shops, banquet and meeting facilities, and similar uses which are customarily developed as part of or in conjunction with a resort inn use shall not be counted as part of the maximum permitted 75,000 square feet of commercial development

It would be unlikely that the guests of the seventy-five hotel rooms or even guests of the hotel combined with residents of the eighty-seven resort residential units, would be adequate to support the range of activities described, i.e. restaurants, bars, full-service spas, fitness centers, and specialty shops. Indeed, the project objectives include allowing ancillary facilities to be open to the public, though this is not clear from the project description, and the DEIR's calculation of traffic generation for the proposed project (Table 4.9-7, p. 4.9-24) includes no trips generated due to use of resort commercial facilities by off-site users.

The Planned Community (Table 3.5, p. 3-36) allows a floor area ratio of up to 1.5 in the Visitor Serving Resort area and basic height limit of fifty feet. This would allow over 360,000 square feet of structures in the 5.7-acre resort area. Assuming a generous 2,000 square feet per guest room, that would still leave approximately 200,000 square feet of additional commercial development allowed.

Ancillary commercial development must be further defined and strictly limited to minor uses needed to serve the resort itself. As currently provided, massive amounts of additional commercial development could be provided on-site absent a comprehensive examination of the impacts of such development within the context of the entire Banning Ranch development.

It is noted that the Planned Community text indicates that the same uses would be included in the 75,000 square feet limit if constructed independently of a resort inn, whether or not those uses were located in the Resort Colony area. The impact of these 75,000 square feet has been address

in some detail in the DEIR. The impact of potentially hundreds of thousands of square feet of commercial development must be similarly examined.

In addition, the following questions and comments must be addressed:

1. p. 3-1. What is the maximum square footage of visitor serving commercial uses that will be permitted at the resort inn?
2. p. 3-1. Will any of the commercial uses at the resort inn be restricted to those staying/residing at the resort, or will they all be available to the general public?
3. p. 3-1. Would guests in only seventy-five rooms or seventy-five rooms combined with eighty- seven resort residential units be adequate to support the proposed commercial uses?
4. p. 3-1. Will visitor serving commercial uses include one or more restaurants? Will these all be available to the general public? Will these all be marketed to the general public?
5. p. 3-1. Will the resort include a health club/spa? Will this be available to the general public? Will this be marketed to the general public?
6. p. 3-1. What constitutes "limited" meeting facilities? What is the maximum square footage anticipated?
7. p. 3-1. Will use of meeting rooms be limited to those staying/residing at the resort inn, or will the meeting rooms be available for events sponsored by and/or attended by others?
8. p. 3-1. Will the meeting rooms be marketed to the general public or to events coordinators staging events for the general public?
9. p. 3-2. Would all oil production activities be consolidated, or only those currently occurring in areas slated for development?
10. p. 3-2. Would consolidation of all facilities be required as a condition of approval?
11. p. 3-4. It should be noted that Talbert Nature Reserve is a part of the Nature Reserve of Orange County, established as part of the Orange County Central/Coastal NCCP process. Although a parking lot, tot lot, and grass area have been established at Canyon Park, the bulk of the park is in a semi-natural state, and primarily utilized for passive activities such as hiking, picnicking, bird-watching, etc. Thus, the Banning Ranch property is part of a larger system of contiguous relatively natural open space.
12. p. 3-5. What is the agreed upon time period for public site acquisition?
13. p. 3-6. What are the terms agreed upon for public acquisition?
14. p. 3-5. When were the agreed upon time period and terms adopted?
15. p. 3-5. Where would one find a copy of the agreement?
16. p. 3-5, 6. If the time allowed for acquisition and terms have not been publicly agreed upon and identified, how may the property owner then pursue entitlement ... "during the time allowed for acquisition as open space"?
17. p. 3-8, 9. Project objectives will be used as the basis for evaluation of project alternatives. Thus objectives must not be so narrow as to exclude otherwise reasonable alternatives. Specific numerical objectives regarding future use, i.e. 75 overnight hotel accommodations, 75,000 square feet of commercial development are so specific they tend to work against an even handed evaluation of alternatives. The project objective

- would more appropriately state a goal of providing for commercial uses needed to serve residents and visitors of the proposed development.
18. p. 3-9. Objective 9 must be revised to include compatibility with existing off-site development such as the homes in Newport Shores.
  19. p. 3-10. The project site is currently strewn with debris including what appear to be inert materials like piles of cement as well as oil production waste. Will all debris be removed, or only that requiring remediation under the law?
  20. p. 3-10. After oil production ceases at the consolidated site currently utilized by the City of Newport Beach, how will responsibility for cleanup be assigned? Will the city be fully responsible? Partly responsible?
  21. p. 3-10. Gas has long been burned off in flares in the West Newport area. How is it that methane gas is not an issue here?
  22. pp. 3-11 to 14. Will public restrooms be provided in both the lowland and upland open space? Will statues be permitted?
  23. p. 3-15. Has the owner of the 15<sup>th</sup> Street office building agreed to the proposed re-allocation of parking?
  24. p. 3-15. Who would be responsible for maintenance of the shared parking area? How would conflicts be resolved?
  25. pp. 3-18 to 20. Will all roadways be public? Development at the allowable residential densities in the proposed alley areas is usually accessed off of a street, not an alley. Aren't the proposed private alleys just substandard, private streets?
  26. p. 3-19. Why are pedestrian walkways planned for the inland side of Resort Colony roads and the Scenic Drive rather than the outer, scenic side? This appears to conflict with the goal of providing public access to coastal resources, i.e. views. Will alternate trails or walkways be provided separately on the outer, more scenic side of the roadway?
  27. p. 3-20. How much NMUSD land would be needed for the proposed street improvements?
  28. p. 3-21. Would a fee be charged for parking at the resort inn and associated commercial development?
  29. p. 3-24. The Coastal Act makes no provision for a "Master Coastal Development Permit". Local agencies may only approve Coastal Development Permits upon certification of a Local Coastal Program. Is the City asserting that it may assume responsibilities for CDPs without a certified LCP for the subject property? Or is the City asserting that the proposed development would somehow be covered under Coastal Act Section 30610?
  30. p. 3-24. If the city somehow managed to assume the authority sought under the "Master Coastal Development Permit" how could the action be appealed to the Coastal Commission, which normally considers appeals based on conformance with the certified LCP?
  31. pp. 3-24 to 26, Exhibit 3-15. A graphic of the actual anticipated uses, including densities/intensities must be provided. The supposed "plan" merely provides a key to the "village" areas described on Table 3-2. Thus, one cannot easily determine what density and use will be allowed where from the "plan". An easily read graphic mapping proposed uses must be provided.

32. p. 3-27. Fairview Park is not called "Fairview Regional Park" but is a City of Costa Mesa facility and is considered a community park.
33. p. 3-30. How will it be ensured that future private development, including individual homes, makes use of permeable surfaces and other water quality measures?
34. p. 3-30. Existing wetlands must not be utilized for treatment of polluted runoff.
35. p. 3-35. Where will cuts reach as much as 25 feet in height? All such areas must be clearly identified.
36. p. 3-35. Where will fill reach as much as 60 feet in height? All areas subject to 20 feet of fill or more must be clearly identified.
37. p. 3-35, 36. Haul routes for earth materials and other building materials must be identified and impacts along the routes must be addressed and mitigated.
38. p. 3-36. Will on-site soils be treated in place or relocated elsewhere on-site for treatment?
39. p. 3-36. If soils are not fully remediated at the time construction of the North Village is contemplated, where will the treated soils be placed?
40. p. 3-36. Will consolidation of oil production facilities involve drilling new wells?
41. p. 3-37. Development Agreement obligations must be briefly summarized.
42. p. 3-44. Why would air conditioning units be needed this close to the coast?
43. p. 3-47, 48. As noted above the Coastal Act makes no provision for a Master Coastal Development Permit.
44. p. 3-48. Where would units to be provided with in lieu fees be provided?

### **Land Use and Related Planning Programs**

This section must examine the potential to divide an established community due to increased cut-through traffic. Areas of particular concern are the residential areas along 19<sup>th</sup> Street and along 16<sup>th</sup> Street.

The DEIR provides numerous cross sections of the interface between development on the project site and the surrounding community (Exhibits 4.1-2 a through j) However, the exhibits fail to inform one as to the impact that would occur. For example, the sections showing Newport Crest and Bluff Road (Exhibit 4.1-2 g) do not include the fifteen foot tall noise barrier recommended to mitigate noise from Bluff Road. The project's interface with California Seabreeze shows only the open space interface, not the interface with the Urban Colony to the south.

Neither of the interfaces with the Urban Colony (Exhibit 4.1-2 c and d) show the maximum height permitted under the Planned Community and Master Plan under consideration. Section 4.1-2 d shows only a two story building in an area where structures up to a basic height of 60 feet would be permitted with additional elements up to 72 feet. Section 4.1-2 c shows only a car on the adjoining lot, not the existing structure which would form a better basis for comparison. In addition, Section 4.1-2 c shows a structure that appears to be five stories in height, but based on the scale provided in the lower right hand corner would be only about 45 feet at the plate line, less than 55 feet at the roof peak and less than 60 feet at the top of the ornamental cupola. At the same time, based on the same scale, the person shown next to the



building would be well over six feet tall. Sections must show the maximum height, including additional elements providing up to twelve additional feet in height and all elements, including people and vehicles, must be based on the same scale.

Impacts must be gauged based on existing conditions. Thus, sections must show the existing and projected context of the interface, including existing ground elevations. Finally, it would have been helpful if the interface labels had corresponded with the exhibit labels in alphabetical order instead of scrambled, with Interface K shown in 2b, Interface G in 2 e, Interface B in 2j, and so forth.

In addition, the following questions and comments must be addressed:

1. p. 4.1-6. In addition to the policies cited, the certified CLUP includes the following:

2.2.4-3. The Coastal Commission shall retain permit jurisdiction in all deferred certification areas.

The proposal for the City to assume authority over all discretionary permits following approval of what is being called the “Master Coastal Development Permit” appears to be at odds with this policy.

2. p. 4.1-6. The Coastal Act also protects other coastal resources such as coastal views and landforms. In that regard, the following language in the certified CLUP must be addressed:

p. 2-25.

Banning Ranch consists of 505 acres located north of the Semeniuk Slough and Coast Highway West and east of the Santa Ana River. Nearly all of Banning Ranch (454 acres) is located within the City’s sphere of influence in unincorporated Orange County. Oil and gas operations are conducted throughout the County portion of the property ... The property contains a number of sensitive habitat types, including southern coastal bluff scrub, alkali meadow, southern coastal salt marsh, southern black willow forest, coastal brackish marsh, and vernal pools. The property also contains steep coastal bluffs along the southern and western edges of the mesa.

pp. 4-76,77

The bluffs, cliffs, hillsides, canyons, and other significant natural landforms are an important part of the scenic and visual qualities of the coastal zone and are to be protected as a resource of public importance... Coastal bluffs are a prominent landform in Newport Beach. ... There are also coastal bluffs facing the wetlands of Upper Newport Bay, Semeniuk Slough, and the degraded wetlands of the Banning Ranch property. Finally, there are coastal bluffs surrounding Lower Newport Bay. These can be seen along Coast Highway from the Semeniuk Slough to Dover Drive and in Corona del Mar above the Harbor Entrance....

3. p. 4.1-9. What is the agreed upon time period for public site acquisition? What are the terms agreed upon for public acquisition? When were the agreed upon time period and terms adopted? If the time allowed for acquisition and terms have not been publicly agreed upon and identified, how may the property owner then pursue entitlement ... “during the time allowed for acquisition as open space”? Wouldn’t that be inconsistent with the provisions of the adopted General Plan?
4. p. 4.1-14. As noted above, cut-through traffic generated by the proposed project has the potential to divide an established community.
5. p. 4.1-20. Which of the “established, traditional neighborhoods of Newport Beach” is the Urban Colony intended to reflect?
6. p. 4.1-22 to 26. From where would height be measured? Existing grade? Approved finished grade? This must be defined.
7. p. 4.1-22. What sort of Community Park structure would reach a building height of 36 feet?
8. p. 4.1-23. What sort of Bluff Park structure would reach a building height of 18 feet?
9. p. 4.1-23. What sort of Interpretive Park structure would reach a building height of 36 feet?
10. p. 4.1-22-26. The DEIR repeatedly states a maximum height for each use, with a tiny superscript reference to a small footnote on a different page. The EIR must make it clear that while the basic height limit for an area is the number stated, e.g. 60 feet in the Urban Colony, the actual maximum is twelve feet taller, e.g. 72 feet in the Urban Colony.
11. p. 4.1-27. What type of lighting is currently utilized for oil production operations?
12. p. 4.1-29. California Seabreeze is located almost due north of the proposed Urban Colony, not just to the west.
13. p. 4.1-33. How will lighting from individual residential units be controlled in the completed project? Were dwellings in the upper levels of the Urban Colony to have outdoor balconies, lighting from such balconies could result in significant impacts to the surrounding area. This must be examined in the EIR.
14. p. 4.1-39. When would the Lowlands Interpretive Trail be implemented? Could this be implemented prior to abandonment of all oil production operations at Banning Ranch, including the consolidated operation with connecting road?
15. p. 4.1-45. If light is to be directed downward, won’t that just direct lighting into the lowlands, potentially affecting wildlife in those areas?
16. p. 4.1-47. Consistency with the Coastal Act requires preservation of coastal resources, including habitat, landforms, and views. As determined by the Fourth District Appellate Court in *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4<sup>th</sup> 493, resources must be preserved at their current location. As noted by the courts, the Coastal Act does not allow “a process by which the habitat values of an ESHA can be isolated and then recreated in another location ... the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development”. Thus, habitat must be preserved in situ. Preservation also requires the provision of adequate buffers.
17. Based on the November 2, 2011 Coastal Commission hearing for Sunset Ridge Park and access road, it does not appear that the Commission finds the proposed primary access for the site to be consistent with the Coastal Act. It is requested that the staff report for that

item (W 16a, <http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf>) be incorporated by reference into this EIR.

### **Aesthetics and Visual Resources**

This section must examine shade and shadow generated by the proposed development based on maximum building envelope. This must include impacts on existing residential uses to the north and west, such as California Seabreeze, which is almost due north of the sixty to seventy-two foot tall Urban Colony.

This section must address landform alteration. The EIR must include a clear delineation of existing topography and cross sections of areas to be altered along with structures built on the altered landform. Coastal Act policies regarding landform alteration must be addressed and Newport Beach Local Coastal Program Land Use Plan policies regarding views and landform preservation must also be discussed, although Banning Ranch is an area of deferred certification. Alteration of views from Newport Crest and other residential areas due to landform alteration must be addressed.

In accordance with Section 15126.4(a)(1)(D) of the Guidelines for the implementation of the California Environmental Quality Act (CEQA), if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. Thus, this section must address aesthetic impacts of any sound walls or sound barriers, including impacts to Newport Crest.

In addition, the following questions and comments must be addressed:

1. p. 4.2-11. Stating maximum building heights twelve feet lower than actual height and use of a footnote to indicate true maximum height of structures obscures the true height and minimizes potential impacts. All analyses must address the actual maximum.
2. pp. 4.2-11 through 15. The DEIR must indicate not only the height of the proposed structures in each area, but how high the roof of the structures and additional features will be above existing grade. It is the structure and the fill taken together that will affect views of the site, not just the structures. Absent information regarding existing grade and changes in grade at specific locations, one cannot evaluate the impact of the project on existing environmental conditions.
3. p. 4.2-11. Page 4.1-23 indicates that structures in the Bluff Park district would reach a maximum of 18 feet, whereas p. 4.2-11 indicates that structures would be 36 feet and up to 48 feet for ten percent of the roof area. This must be reconciled.
4. p. 4.2-11. Footnote 5, regarding building height in the VSR/R District pertains to fences, not building height. This illustrates the problems caused by failure to be fully candid regarding building height in the text itself.
5. p. 4.2-11. Will existing power poles on the site be removed? The power poles have been observed to provide perches for raptors on the site.

6. p. 4.2-11. Will power poles in the Interim Oil Facilities district be removed after oil production ceases?
7. p. 4.2-16. Areas where sound walls will exceed six feet in height must be identified and mapped in order that the visual impact may be evaluated.
8. p. 4.2-17. Glass or other transparent materials must not be utilized for walls. Use of transparent walls at the Brightwater project adjacent to the Bolsa Chica Ecological Reserve has resulted in significant numbers of bird deaths. Decals placed on what has become known as the “Wall of Death” have not remained in place and the carnage continues. Potential impacts due to transparent walls must be addressed and fully mitigated.
9. 4.2-28, 29. How will lighting from upper floors of residential structures be controlled, including lighting from balconies?

### Geology and Soils

1. p. 4.3-7. Approximately how many acres of the site are in the not inactive fault zones and setback areas?
2. p. 4.3-9. Approximately how many acres of the site are subject to liquefaction and lateral spreading?
3. p. 4.3-10. How many cubic yards of unengineered fill will be removed and/or recompacted?
4. p. 4.3-10. How many cubic yards of colluvial soils would be excavated?
5. p. 4.3-10. Inasmuch as colluvial soils are in ravines and washed, impacts of excavation on biological resources must be examined.
6. p. 4.3-12. If the bluff is currently retreating at about 2 feet per year with a variation of 0.6 to 4.2 feet (p.4.3-11), isn't a bluff setback of 60 feet as required by PDF 4.3-1 rather paltry? Bluff setbacks must be designed to anticipate erosion for at least seventy-five years.
7. p. 4.3-13. Would any off-site grading be needed for the project, as addressed by SC 4.3-2? If so, where?
8. p. 4.3-16. Shouldn't fault zones data be updated and setback limits refined in compliance with existing State standards *before* the project is approved???
9. p. 4.3-16. It appears that the proposed Bluff Road may cross the mapped not inactive faults. If so, the implications for emergency access must be addressed.
10. p. 4.3-17, 21. What is meant by “bluff restoration”? Is the goal to restore bluffs to some former state in the past? If so, the EIR must identify the specific past bluff configuration being sought. A more realistic goal would be bluff stabilization.
11. 4.3-18. Where, specifically, on the site will localized cuts reach 25 feet? Cross sections must be provided in the EIR.
12. p. 4.3-18. Where, specifically, on the site will fill reach 30 feet and even 60 feet? Cross section must be provided in the EIR.
13. p. 4.3-20. Surface drainage and bluff slope erosion control plans must be developed now and included for analysis in the EIR, so that decision makers and the public generally may be informed as to what the plans entail, their anticipated effectiveness at erosion control and any potential impacts.
14. p. 4.3-21. There is no Exhibit 3.22 in the DEIR as represented here.

15. p. 4.3-21. What, briefly, does Appendix Chapter A33 require?
16. p. 4.3-22. What sort of “adaptive management practices” might be needed to mitigate bluff instability? Is some sort of armature contemplated? If additional measures would be required, wouldn’t it make more sense to maintain a larger bluff setback to begin with?
17. p. 4.3-22. Shouldn’t additional trenching to further refine fault mapping be completed before the project is approved? Isn’t exposure of people to earthquake hazards an issue to be examined and resolved under CEQA?
18. p. 4.3-23. Evidence in the record does not support the assertion that the project is consistent with the Coastal Act in light of the landform alteration contemplated.

### Hydrology and Water Quality

1. p. 4.4-12. While the USACE-restored salt marsh basin “can be viewed as available storage capacity for local runoff”, it shouldn’t be. The marsh was designed to provide saltwater habitat in return for habitat removed elsewhere. To treat the basin as just another flood control facility is not consistent with its primary, required purpose of habitat mitigation.
2. p. 4.4-12. How would flooding of lowlands affect interim oil production facilities? Would petroleum residues or other materials associated with oil production be carried elsewhere in the watershed?
3. p. 4.4-13. Oil production facilities would be concentrated near Semeniuk Slough. How would the slough be protected from spills or other release of toxic/hazardous materials?
4. p. 4.4-21. Thresholds of significance must include alteration of the hydrologic regimen of a wetland or riparian area in a manner that reduces water available for the wetland or riparian area thereby reducing the continued viability of the wetland or riparian area. The proposed drainage facilities must be examined in the light of potential impacts on biological resources in existing drainage ways.
5. p. 4.4-23. What is the capacity of the Caltrans RCB storm drain under West Coast Highway? Does the storm drain have the capacity to accommodate additional flows?
6. p. 4.4-23. It appears that the various storm drains would divert flows from existing arroyos for release in the lowlands. The EIR must address how the diversion would affect biological resources in existing drainage areas. This must be fully mitigated.
7. p. 4.4-26. Rather than identify beneficial uses not provided by the tidal prism of the Santa Ana River and Newport [sic] Slough, the EIR must discuss beneficial uses that are provided. These include wildlife habitat, marine habitat and rare, threatened, or endangered species.
8. p. 4.4-26. Rain Event Action Plans must be prepared as a part of project review and included for examination in the EIR.
9. p. 4.4-30. The Risk Assessment, Stormwater Pollution Prevention Plan and treatment system design must be prepared as a part of project review and included for examination in the EIR.
10. p. 4.4-33. Where on the site would materials be stockpiled? Stockpiles must be located out of drainage ways and away from residential uses.

11. p. 4.4-35. How would use of pesticides, herbicides, fertilizers and other chemicals be controlled in single family housing areas? Strict limits must be included in CC &Rs, and highlighted at time of sale.
12. p. 4.4-38. Who would be responsible for maintaining the transitional area LID features? How will maintenance be assured?
13. p. 4.4-38. What will be the retention time for landscape biocells? What has been the demonstrated efficiency of the proposed system for specific pollutants based on that retention time? Information must be provided for heavy metals, oil residues and other pollutants.
14. p. 4.4-40. How will minimization of use of impervious surfaces be assured after homes are sold?
15. p. 4.4-41. What will happen if a property owners' association is NOT formed?
16. p. 4.4-41. The Water Quality Management Plan must be prepared as a part of project review and included for examination in the EIR.
17. p. 4.4-41. In accordance with CEQA Guidelines Section 15097, when mitigation measures are adopted in order to reduce impacts, a Mitigation Monitoring Program (MMP) must be prepared which identifies responsibility for implementing each mitigation measure. Thus, responsibility for implementing nonstructural BMPs and maintenance of structural BMPs must be identified in the MMP.
18. p. 4.4-42. The Spill Contingency Plan must be prepared as a part of project review and included for examination in the EIR.
19. p. 4.4-47. Isn't the entire first flush storm event supposed to be retained or treated, not just "almost all"?
20. p. 4.4-47. What "nourishment" would be released into the lowlands? Would this potentially result in eutrophication of lowland wetlands? Is "nourishment benefit" just another way of describing fertilizer pollutants?
21. p. 4.4-49. Who will inspect the site twice a year to observe facility integrity? Who will absorb the cost?
22. p. 4.4-49. Who will inspect for health of vegetation, ponded water, and excess debris quarterly? Who will absorb the cost?
23. p. 4.4-49. Who will be responsible for ensuring implementation of all the LID features listed?
24. p. 4.4-53. Would vegetation in the upper arroyos receive less water? What would be the effect of the diversion?
25. p. 4.4-56. Would storm flows in the storm drain in West Coast Highway be increased?
26. p. 4.4-62. Would oil production facilities be within the 100-year flood plain currently or taking into consideration sea level rise over the anticipated life of the facilities? If so, protective measures must be taken so that oil residues are not carried elsewhere in the watershed or to the ocean.

### **Hazards and Hazardous Materials**

This section must address impacts to Newport Shores due to consolidation of all oil production facilities in the Newport Shores area, operation of the consolidated facilities, and remediation. It

must also address hazards due to previously capped wells. In the past, wells improperly capped years before have resulted in oil seeping up into local living rooms.

In addition, the following questions and comments must be addressed:

1. p. 4.5-7. Will flaring of excess gases continue to be necessary?
2. p. 4.5-10 to 12. What is the schedule for cleanup for each of the sites listed in Table 4.5-3? It appears that some of the sites requiring the largest amount of cleanup will be included in the consolidated oil production area. Will polluted soils remain for the next several decades then?
3. p. 4.5-13. Will old sewer pipes, and old trucks, drill rigs and equipment located across the project site which are considered de minimis conditions be removed from the site? If so, when?
4. p. 4.5-19. When will relocation of oil production and remediation occur on portions of the site that would not be developed? What assurances exist that those areas will be included in the consolidation and remediation program?
5. p. 4.5-20. What would occur if tested materials did not meet required criteria?
6. p. 4.5-21. To where are gases vented and with what impact?
7. p. 4.5-21. Are any habitable structures planned to be located within an area as close as 100 feet to an active oil well head? If so, where?
8. p. 4.5-21. Will real estate disclosure documents identify the location of abandoned well heads so that the 10 foot separation can be maintained?
9. p. 4.5-24. Do the soil remediation methods result in emissions of materials into the air? If so, what materials are released and n what concentrations?
10. p. 4.5-24, 25. What does thermal treatment entail? Is the heavy hydrocarbon burned off?
11. p. 4.5-25. How would "impacted soils" be identified during grading? Would a hazardous materials expert monitor grading activities?
12. p. 4.5-26. What would be the haul route for materials removal? What sensitive uses are located along the route? The EIR must examine impacts on sensitive uses along the haul routes.

### **Biological Resources**

This section appears to contemplate removal of habitat at some locations and re-establishment of habitat elsewhere. Much of the habitat appears to fit criteria for Environmentally Sensitive Habitat Area (ESHA), for example coastal sage scrub supporting California gnatcatchers, or riparian areas which support special status wildlife species. All ESHA must be preserved in place. Consistent with the *Bolsa Chica* decision, ESHA cannot be relocated. Any plans to do so must be abandoned.

Based on the November 2, 2011 Coastal Commission hearing on Sunset Ridge Park and the related access road, it appears that the Coastal Commission has identified ESHA at Banning Ranch where the City had not. Habitat mapping must be revised to reflect and observations and the standards of the Coastal Commission.

The DEIR must address impacts on the site in light of the system of habitats provided along the Santa Ana River moving in from the ocean. This ranges from saltwater wetlands at the river mouth; to freshwater wetlands in the lowlands and drainage ways of the project site, Talbert Nature Reserve, and Fairview Park; to upland habitat at Fairview Park, Talbert Park, and the project site. Elimination of habitat on the project site would create a break in the staircase of habitats from ocean to upland.

This DEIR must examine potential impacts on habitat due to changes in site drainage. Any diversion of drainage away from riparian areas must be avoided to the extent feasible.

In addition, the following questions and comments must be addressed:

1. p. 4.6-6. It appears that the delineation of wetlands and habitat was conducted near the end of a three year drought, when both water and related vegetation would be long gone. Was a comprehensive survey of the site conducted subsequently?
2. p. 4.6-6. When the surveys were repeated in 2008 due to drought conditions in 2007, were conditions any better?
3. p. 4.6-14. What percent of normal precipitation occurred in the year preceding the 2009 survey?
4. p. 4.6-21. Were any surveys performed to determine the presence of bats?
5. p. 4.6-28, 34. Western spadefoot has been observed in nearby Fairview Park and could potentially exist on the project site.
6. p. 4.6-30, 38. Western snowy plovers were present in substantial numbers in Talbert Nature Reserve just north of the subject property a few years ago.
7. p. 4.6-44. Habitat restoration areas must be monitored for five years after apparent success is achieved not just five years after the restoration is initially pursued.
8. p. 4.6-44. Certain habitats are quite difficult to establish. What steps would be taken if a restoration project is not clearly successful at the end of five years?
9. p. 4.6-44. What would be the criteria for success that would be monitored?
10. p. 4.6-44. If light is directed downward, won't that direct light into the lowlands?
11. p. 4.6-47. How many acres of the site will be in fuel management zones?
12. p. 4.6-53. Coastal Sage Scrub identified as providing gnatcatcher habitat must be preserved in situ.
13. p. 4.6-54, 55. Will drainage facilities direct less water to the riparian habitat than currently occurs? With what impact?
14. p. 4.6-65. Use of invasive species must be prohibited in all areas of the site. This must be included in CC&Rs with buyers provided a list of unacceptable species.
15. p. 4.6-66. 19<sup>th</sup> Street stubs out at the edge of the project site, so is not a source of light in the area.
16. p. 4.6-66. Control of predation by domestic cats is extremely difficult unless cats are kept indoors at all times. Is there any instance where providing a brochure to residents has reduced this impact to an insignificant level? If so, where? Mitigation measures without demonstrated results cannot be counted upon to reduce impacts to an insignificant level.
17. p. 4.6-69. Where is it proposed that replacement riparian habitat be established?



18. p. 4.6-71. The existing fencing provides little impediment to the movement of wildlife. Some fly over; some jump over; some crawl under; and some wriggle through.
19. p. 4.6-73. Development must be phased with mitigation so that habitat removal for later phases is not permitted to proceed until habitat restoration for previous phases has been demonstrated to be successful.
20. p. 4.6-75. Annual monitoring reports must continue for five years after the apparent success of the restoration.
21. p. 4.6-75, 76. Both grading and brush removal must be prohibited in the nesting season in areas potentially utilized by high interest avifauna. In no case shall any flushing be permitted during the nesting season.
22. p. 4.6-82. Sites must be monitored for five years after success criteria have been met to ensure against loss of marginally successful restored habitat and loss due to conditions not anticipated in the restoration program.
23. p. 4.6-90. No invasive landscape species must be permitted anywhere on-site. This must be included in project CC&Rs.
24. p. 4.6-90. The wildlands interface brochure and disclosure materials must identify appropriate coyote controls, i.e. securely covering trash, keeping pet food indoors, keeping pets in and/or supervised. Potential homebuyers must be informed that coyotes will be expected in the area, are an important part of the natural food chain, and eradication would not be successful and only pursued against individual coyotes in cases of imminent danger.
25. p. 4.6-90. The contingency measures included in the Habitat Restoration Plan (p. 4-18) must be included as mitigation measures.

### **Population, Housing and Employment**

This section must address jobs housing balance in light of anticipated housing costs and the anticipated employee profile of future project employees by income group, including extremely low, very low, low, median, and moderate income.

In accordance with Newport Beach Municipals Code Section 19.54.080A an Affordable Housing Implementation Plan must include the following:

1. A description of the residential subdivision project, how the affordable housing requirements will be met by the applicant, and whether the affordable units will be rented or owner-occupied;
2. The number, size, and location of each affordable unit;
3. Incentives provided by the City (if any) for density bonus;
4. Limits on income, rent and sales price of affordable units;
5. Procedures for tenant selection and the process for qualifying prospective households for income eligibility;
6. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal for owner-occupied units, or restrictions for rental units;
7. Provisions for monitoring the ongoing affordability of the units;

8. Performance guarantees (e.g., a cash deposit, bond, or letter of credit) as required by the review authority; and
9. Provisions for the enforcement and penalties for violation of the agreement.

The AHIP provided on-line and dated August 2011 fails to include most of these items. This must be addressed in the EIR. An adequate AHIP in full conformance with Section 19.54.080 must be prepared.

In addition, the following questions and comments must be addressed.

1. The regulatory setting also includes the provision of Government Code Section 65590. This must be addressed in the EIR.
2. The AHIP indicates an understanding that provision of the full number of required affordable units would not be feasible on-site. What evidence in the record supports that?
3. The AHIP indicates an understanding that provision only of moderate income dwelling units would be feasible on-site. What evidence in the record supports that?
4. p. 4.7-16. The project would generate 247 retail jobs and 175 jobs at the resort inn. Jobs in retail and the hospitality industry are typically low paying. Where are these employees expected to live?
5. p. 4.7-16. How would the additional employees affect the demand for lower income housing in the subregion?

### **Recreation and Trails**

The EIR must address how trails would be phased with development and with consolidation and eventual removal of oil production operations. Would lowland trails be available for use in the area set aside for oil production and the connecting roadway?

### **Traffic and Circulation**

1. p. 4.9-1. The regulatory setting also includes Caltrans authority over West Coast Highway.
2. p. 4.9-17. The levels of service in Table 4.9-5 appear to be much better than those shown for many intersections in Table 4.9-4 and much better than is normally experienced at such intersection as Newport and Harbor; Newport and Rochester, and Newport and 17<sup>th</sup>. How is it that the alternate methodology gives such different results? Results not born out by experience!
3. p. 4.9-24. Table 4.9-7 shows no trip generation for commercial uses developed in conjunction with the resort inn. Due to the small size of the hotel, additional customers would be needed from elsewhere to support the potential restaurants, bars, and shops. Trips generated by these uses must be included.
4. p. 4.9-24. Is the reduction for internal capture in Table 4.9-7 realistic considering the large size of the project site and the sloping terrain which would discourage shoppers

from walking to commercial areas in the Urban Colony from other areas of Banning Ranch?

5. p. 4.9-24. To what extent would pass by trips be generated by traffic originating or ending at Banning Ranch? Wouldn't those be included as internal capture and potentially be double-dipping trip reductions?
6. p. 4.9-25. Did the analysis include trips diverted from Coast Highway onto Bluff Road, going on to 19<sup>th</sup> Street to Irvine/Mariners? How would that affect the residential neighborhood along East 19<sup>th</sup>?
7. p. 4.9-27. The EIR must address how the proposed project would increase cumulative demand for the 19<sup>th</sup> Street Banning Avenue Bridge.
8. p. 4.9-32. The future condition included in Table 4.9-8 shows Bluff Road as extended to Victoria in Costa Mesa. There are currently no plans to construct the road, and the roadway would run through an area enrolled in the NCCP program. Thus it is highly unlikely that the roadway would be built by the time the project is full operational, if ever. Traffic analyses must be revised to reflect no further extension of Bluff Road.
9. p. 4.9-87. The EIR must examine effects of construction activities on emergency access.
10. The EIR must also examine the effect of project traffic on emergency access. Already fire trucks are observed waiting to get across Newport Boulevard to respond to emergencies in East Costa Mesa. The EIR must examine how project traffic would exacerbate the problem.
11. p. 4.9-93. What efforts have been made to reach an agreement with Costa Mesa whereby the applicant would take full responsibility for mitigating project impacts?
12. p. 4.9-95. Where additional right of way would be required, what efforts has the applicant made to induce the owners to sell on the open market?
13. p. 4.9-95. Would any businesses or homes be lost due to the need to acquire additional rights of way?
14. p. 4.9-95. Why hasn't Improvement No. 37 at Newport and 18<sup>th</sup> been completed yet?
15. p. 4.9-114 to 132. The analysis of Special Study Issues was helpful, though discouraging.

### Air Quality

This section must examine impacts of TACs, particulates and other emissions on nearby residents and other sensitive receptors due to consolidation of oil operations in the Newport Shores area and ongoing operation of the consolidated facilities. Impacts due to remediation and construction on adjacent off-site uses must also be examined.

Construction impacts must include equipment involved in the consolidation of oil production in addition to standard equipment utilized for residential and commercial construction.

In addition, the following questions and comments must be addressed:

1. p. 4.10-9. Cancer is not the only adverse health effect of air contaminants. Other impacts include asthma, emphysema, miscarriage, birth defects, reduced lung capacity and other

chronic and acute problems. Impacts must not be considered solely on the basis of cancer cases.

2. p. 4.10-14. To what extent will the consolidation of oil operations near Newport Shores concentrate emission of the substances identified in Table 4.10-5? How will this affect residents of Newport Shores?
3. p. 4.10-15. Instead of providing solar ready roofs, why not provide the solar panels installed as original equipment?
4. p. 4.10-28. What year is represented by the traffic volumes shown in Table 4.10.6?
5. p. 4.10-32. Would hydrogen sulfide be released during project construction?

### Greenhouse Gases

Would greenhouse gases be released due to remediation? This must be addressed in the EIR.

### Noise

This section must analyze noise and vibration from consolidation and operation of oil production facilities in the Newport Shores area and the impact on residents due to the consolidated facilities. Operation of both consolidated facilities must be addressed along with heavy trucks traversing the connecting road. Analyses must include noise and vibration at the northerly end of Newport Shores as well as the more southerly area where noise readings were taken.

In addition, the following questions and comments must be addressed:

1. p. 4.12-15. Is the list of equipment provided in Table 4.12-8 typical of the equipment needed to consolidate oil operations, or would additional equipment be needed?
2. p. 4.12-14 to 17. The EIR must examine construction generated vibration as well as noise.
3. p. 4.12-17. On what basis is it concluded that up to twenty truck trips per day by a vehicle generating noise up to 84 dBA (Table 4.12-8) would not be significant in an otherwise quiet environment? Haul routes have not been identified but could potentially travel past homes, schools, or other sensitive uses. An 84 dBA noise every half hour or so would be more than significant for those experiencing the noise.
4. p. 4.12-27. It appears that planning for Bluff Road will have to be adjusted due to habitat concerns demonstrated by the Coastal Commission on November 2, 2011. Alignment of the road at a location further from Newport Crest must be considered at the same time.
5. p. 4.12-27. Combination of noise barriers with a Bluff Road located further from homes must be utilized to fully mitigate impacts on Newport Crest.
6. p. 4.12-32. Loading docks must not be located on the side of the project nearest existing residences at California Seabreeze.
7. p. 4.12-33. Why are air conditioning units being proposed at a location this close to the ocean? This is not consistent with a "green" approach.
8. p. 4.12-33. Outdoor eating establishment with amplified music must not be located on the northerly side of the building facing residences at California Seabreeze.

9. p. 4.12-41. What is the useful life of a rubberized asphalt surface? What is the cost compared to ordinary asphalt? Will the City of Costa Mesa be faced with ongoing costs to maintain the rubberized asphalt? If so, funds must be deposited by the applicant to cover any future costs.
10. p. 4.12-42. The EIR must examine the aesthetic impact of any noise barrier, including blocked views.

### **Cultural Resources**

Even though the site is highly disturbed, it is disappointing that richer resources weren't found, especially considering resources identified at the Castaways site, Fairview Park, Newporter North and other coastal sites. It is still very important for all grading to be monitored by an archaeologist with the authority to stop work if resources are found.

In addition, the following questions and comments must be addressed:

1. p. 4.13-9. Why are only Juaneno/Acjachmen on the contact list? Weren't any Gabrieleno/Tongva contacted? If not, they must be contacted pursuant to SB 18.
2. p. 4.13-21. How old is the ranch house on the site? Is it old rancho structure, or merely a structure typical of the post World War II era.
3. p. 4.13-25. To the extent feasible, avoidance must be utilized as a strategy for reducing impacts.
4. p. 4.13-25. The paleontology survey must be conducted as a part of this environmental review so that decision makers and the public generally may clearly assess potential impacts.
5. p. 4.13-26 to 31. All grading must be monitored by a qualified archaeologist. Not just grading in areas on previously identified resources.

### **Public Services and Facilities**

This section must analyze the effect of the proposed project on emergency response times in both Newport Beach and Costa Mesa. This must include both operational and construction impacts on-site and off-site for construction of roadway mitigation.

Costa Mesa fire trucks have been observed waiting to cross Newport Boulevard at Rochester and at 19<sup>th</sup> Street. Emergency personnel have expressed frustration about traffic impeding their ability to respond. This is a truly critical for East Side residents in Costa Mesa.

In addition, the following questions and comments must be addressed:

1. p. 4.14-7. What will happen if plantings are changed in fuel modification areas?
2. p. 4.14-7 Maintenance in sensitive areas must not be conducted during the nesting/breeding season for sensitive wildlife.
3. p. 4.14-12. Where would a temporary fire station be located?

4. p. 4.14-13. Will the applicant contribute to funding for fire station replacement?
5. p. 4.14-15. The EIR must examine the potential for increased police response times due to operational and construction traffic generated by the proposed project.
6. p. 4.14-21 to 23. Inasmuch as several schools are operating at or near capacity and existing facilities are aging, why is no new school proposed?
7. p. 4.14-29. Will multi-family and commercial developments be provided areas for deposit of recyclables?

### Utilities

1. p. 4.15-9. Why is the water analysis in the appendix to the EIR based on the 1999 and 2005 UWMPs, when a new UWMP was adopted five months ago?
2. p. 4.15-9. What additional growth not included in the UWMP would occur in the Newport Beach water service area?
3. p. 4.15-9. The water analysis in Appendix L identifies several issues facing water suppliers, such as reduced delta pumping, and then concludes that addressing the issue was beyond the scope of the analysis so the project analysis would rely on the old outdated, unrealistic UWMP. An updated analysis relying on the updated plan must be provided and the updated plan must be provided as part of this EIR, supplementing the old, outdated plan.
4. p. 4.15-10, 16. It should be noted that the Orange County Groundwater Basin has long experienced saltwater intrusion due to groundwater overdrafts. Future planning must be based on realistic calculation of sustainable pumping levels.
5. p. 4.15-14. In evaluating water supplies by a new Delta conveyance, was it assumed that a new State water bond would pass? If not, how is the conveyance to be financed?
6. p. 4.15-17. The project must be designed so that recycled water could be used if lines were extended to the project area.
7. p. 4.15-21. Are existing off-site water lines large enough to provide adequate fire flows?
8. p. 4.15-21. Would any off-site water facility improvements be needed to serve the project site?
9. p. 4.15-24. On what basis are MWDOC supplies anticipated to increase above the normal dry year level in the future? Where will the water come from, and how much new development will be competing to use it?
10. p. 4.15-28. Why has it not been investigated whether a wastewater pump station would be needed or not?
11. p. 4.15-28. Where would the lift station be located?
12. p. 4.15-28, 29. Do project analyses of factors such as noise, energy use, and air emissions take into account the lift station? If not, analyses must be revised to include the lift station.
13. p. 4.15-29. Do off-site sanitary sewer lines have the capacity to serve the proposed project? What lines exist? What are current peak flows? What capacity remains?
14. p. 4.15-35. SC 4.10-1 addresses dust control. How does it relate to energy?
15. p. 4.15-36. SC 4.12-1 addresses construction noise. How does it relate to energy?

## **Cumulative Impacts**

The thoughtful approach to analysis of cumulative projects and cumulative impacts by topic is appreciated. However, the inclusion only of projects that have been previously subject to an environmental document in some areas will tend to minimize impacts. The city is reminded that “environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. quoting Selmi’s *Judicial Development of CEQA*)

As stated in *San Franciscans For Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61:

It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them. ... A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision-maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval. (*San Franciscans for Reasonable Growth v. City and County of San Francisco*, (1984) 151 Cal.App.3d 61, 80, 198 Cal.Rptr. 634.)

Thus even projects which do not result in significant impacts individually may create more than de minimis impacts which, when considered together, result in “havoc in virtually every aspect of the urban environment.” (*San Franciscans for Reasonable Growth*)

## **Growth Inducing Impacts**

The EIR must examine how Bluff Road would induce growth by removing a barrier to growth. In addition, the EIR must address the cumulative increase in pressure to construct the 19<sup>th</sup> Street/Banning Avenue Bridge and extend Bluff Road to Victoria due to the proposed project along with other past, present, and reasonably anticipated probable future projects.

## **Conclusion**

As currently presented, the DEIR is inadequate to fulfill the purposes of CEQA. The document must be revised and re-circulated in accordance with Guidelines Section 15088.5(a) (4) in order that the public and decision makers may be fully informed of the impacts of the proposed project. A key failing is the lack of a clear, complete, unambiguous project description. However, each of the issues discussed above is itself so basic that each must be addressed in order for the EIR to be considered legally adequate and to provide decision makers and the public with the information needed to evaluate the proposed project and its impacts.

Thank you for the opportunity to provide these comments. Please keep me informed regarding the progress of this project, including but not limited to any hearings or release of additional documentation.

Yours truly,

A handwritten signature in black ink, appearing to read 'Sandra L. Genis', with a stylized flourish at the end.

Sandra L. Genis