

CITY OF COSTA MESA  
P. O. Box 1200  
Costa Mesa, CA 92628-1200

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APPLICATION FOR REVIEW, APPEAL OR REHEARING

2012 JUL 23 PM 4:47

Applicant Name Wendy Leece

CITY OF COSTA MESA  
BY \_\_\_\_\_

Address 77 Fair Dr.

Phone 949 645-8319 Representing\* \_\_\_\_\_

REQUEST FOR:  REVIEW\*\*  APPEAL  REHEARING

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) July 17, 2012 City Council Consent Calendar Item No. CC-5, Newport Banning Ranch Traffic Mitigation Agreement

Decision by: City Council

Reasons for requesting review, appeal or rehearing: See Attached

- Attachment 1 Reasons for Requesting a Rehearing.
- Attachment 2 DEIR, Traffic Mitigation
- Attachment 3 Mitigation Monitoring
- Attachment 4 Project Phasing
- Attachment 5 Noise Impacts

Date: 7/23/12 Signature: Wendy Leece

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SCHEDULED FOR THE CITY COUNCIUPLANNING COMMISSION MEETING OF:  
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

\* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.  
\*\* Review may be requested only by City Council or City Council Member  
Costa Mesa/Forms I/Application for Review-Appeal-Rehearing

# Reasons for Requesting a Rehearing:

Attachment 1

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Council Member Wendy Leece: Request for Rehearing July 17, 2012 City Council Consent  
Calendar Item No. CC-5, Newport Banning Ranch Traffic Mitigation Agreement  
2012 JUL 23 PM 4:47

## 1. **Newport Beach is already requiring Newport Banning Ranch to take responsibility for street improvements in Costa Mesa.**

At the July 17, 2012 City Council meeting, it was repeatedly asserted that the City of Costa Mesa must enter into an agreement before other approvals were granted, or Costa Mesa could lose the opportunity for any mitigation. However, Page 4.9-93 of the Draft Environmental Impact Report circulated by Newport Beach in September of 2011 (attached) includes the following Mitigation Measure requiring the applicant to either construct the needed improvements or pay fees to the City of Costa Mesa:

**MM 4.9-2** Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

Thus, the applicant would be required to work with the City of Costa as a condition of approval of the project.

This measure has also been included in the June 2012 Mitigation Monitoring Program for the project (pp. 49-51, attached).

This information was neither discussed nor presented to the City Council on July 17, 2012.

**Newport Beach is requiring Newport Banning Ranch to complete the street improvements or provide all funding to Costa Mesa within five years of project approval whereas the agreement allows more time.**

As stated in the above mitigation measure:

“The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies.”

Thus, the City of Costa Mesa would receive all fees within five years of project approval consistent with the DEIR and Mitigation Monitoring Program. By contrast, Section 4.0 of the agreement approved by the Costa Mesa City Council on July 17, 2012, provides that payments will be made over time, as each residential increment of the project is developed.

Section 2.5 of the agreement requires Costa Mesa to commence construction of the improvements early in the development process, when the developer pulls permits for the three hundredth dwelling unit. The City would then be paid back for the improvements as each increment is developed.

According to the DEIR (p. 3-37, attached), development of the project will be phased over nine years, depending on market conditions. Therefore, Costa Mesa would not receive final reimbursement for street improvements for as long as nine years after project approval, possibly longer depending on market conditions. Under the agreement, Costa Mesa would have to wait four or more years longer for full reimbursement than specific in the DEIR.

This information was neither discussed nor presented to the City Council on July 17, 2012.

**The street improvements listed in the agreement do not fully reflect the improvements identified in the DEIR.**

Section 2.3 of the agreement lists seven locations where street improvements will be needed. These reflect the locations listed in Table C of the DEIR (pp. 4.9-95 and 96). Improvements for several intersections, such as Pomona and 17th Street and Monrovia and 19th Street, are identical in the DEIR and in Section 2.3. However, the Section 2.3 lacks the full detail described in the DEIR:

Location	Agreement Section 2.3	DEIR Table C
Newport Blvd/19th	Addition of a southbound left turn lane	Provide a second southbound left-turn on Newport Boulevard.
Newport Blvd/ Harbor Blvd	Addition of a southbound through lane	Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.
Newport Blvd/18th St (Rochester St)	Addition of a southbound through lane	Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.
Newport Blvd/ 17th St	Addition of a southbound through lane	Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach.
Superior Ave/ 17th St	Addition of a westbound right-turn lane	Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation.
Pomona Ave/ 17th St	Install a traffic signal.	Install a traffic signal.
Monrovia Ave/19th St	Install a traffic signal.	Install a traffic signal.

The lack of full information regarding improvements could possibly allow less than the full improvements needed. For example, at Newport Blvd. and 17th Street, the DEIR (p. 4.9-96) calls for a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach, whereas Section 2.3 of the agreement specifies only the additional through lane, as shown in the table above.

This information was neither discussed nor presented to the City Council on July 17, 2012.

**Under the Coastal Act, projects must have adequate public services, including streets.**

In accordance with Section 30520 (a) of the Coastal Act, new development is to be located in areas within or near existing development "able to accommodate it" or where adequate public services exist. Coastal Act Section 30524 provides that where the capacity of public services is limited, coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. Thus, should Costa Mesa choose not to implement the road improvements listed above, coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses would have priority for use of remaining capacity on the existing street system. This would include the proposed hotel at Banning Ranch, which is a visitor-serving use. Houses would not be included.

This information was neither discussed nor presented to the City Council on July 17, 2012.

**The Agreement makes a false assertion.**

Section 5.1 of the agreement states that the DEIR does not identify any other adverse impacts on the City, environmental or otherwise. However, the DEIR (p. 4.12-23) states

Impact Summary: Thresholds 4.12-1 and 4.12-4: Significant and Unavoidable. With the implementation of MM 4.12-5, which provides funds to resurface 17th Street west of Monrovia Avenue and 15th Street west of Placentia Avenue with rubberized asphalt if required by an updated noise study. If mitigation is required, noise level increases to sensitive receptors adjacent to off-site roadways would be reduced to less than the significance criteria prescribed by the City of Newport Beach. Feasible mitigation has been identified to mitigate the noise impact to residences in the City of Costa Mesa to a less than significant level. However, because the City of Newport Beach does not have the authority to mandate the implementation of mitigation in the City of Costa Mesa, the impact is considered significant and unavoidable.

The agreement does not include the suggested mitigation measure for noise impacts in the City of Costa Mesa. Thus, as stated in the DEIR, significant and unavoidable impacts will occur in Costa Mesa, contrary to the statement in Section 5.1 of the agreement.

#### 4.9.15 MITIGATION PROGRAM

The proposed Mitigation Program consists of several measures, including road improvements that would be provided by contributions to the applicable jurisdiction's capital improvement program and funded through fees and/or other methods of financing. The Applicant shall contribute to the funding of these programs. This approach to mitigation is consistent with the direction set forth in Section 15130 of the State CEQA Guidelines. That provision requires that reasonable and feasible options be explored in order to mitigate a project's contribution to significant cumulative impacts that may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

##### Project Design Features

The following Project Design Features (PDFs) are applicable to transportation: PDF 4.9-1, PDF 4.9-2, PDF 4.9-3, PDF 4.8-2, PDF 4.8-3, PDF 4.10-1, PDF 4.10-2, and PDF 4.11-3.

##### Standard Conditions and Requirements

The following Standard Conditions are applicable: SC 4.9-1, SC 4.9-2, and SC 4.9-3.

##### Mitigation Measures

Where the Project causes a significant traffic-related impact, the Applicant would be responsible for the required mitigation. Where the Project contributes to a significant impact to an intersection, the Applicant would be required to participate in the funding of improvements at the significantly impacted intersection on a fair-share basis.

The City of Newport Beach has adopted a Fair Share Traffic Contribution Ordinance (Municipal Code Chapter 15.38). This Ordinance requires all developers to pay a fee that is their fair share of the cost to provide circulation system improvements needed to accommodate new development in the City.

Newport Beach General Plan Circulation Element Policy CE 8.1.7 requires the City to "periodically review the Fair Share Fee Ordinance, reassess the unfunded cost of required improvements, and adjust the required Fair Share Fees as appropriate". General Plan Implementation Program 16.3 states that "The City shall construct necessary improvements to street intersections to attain acceptable Levels of Service, as defined in the Circulation Element. These shall be implemented as needed based on the list of impacted intersections included in the General Plan EIR, and also in accordance with development project traffic impact studies. Intersections with improvements necessary for buildout conditions are delineated on Figure CE-3 of the Circulation Element".

To determine the Project's mitigation responsibility for improvements in the City of Newport Beach, the City of Newport Beach Traffic Phasing Ordinance (TPO) requires the determination of the "effective capacity increase" that would result from the proposed mitigation measure, and the "effective capacity decrease"<sup>10</sup> that would result from the addition of Project-related traffic.

<sup>10</sup> In determining the "effective capacity decrease" attributable to Project trips, first the ICU of the Primary Intersection shall be calculated with existing, committed, and regional trips, Project trips and the Improvement (Improved With Project ICU). The "effective capacity decrease" shall be calculated by subtracting the Improved Without Project ICU from the Improved With Project ICU.

The Project's fair-share TPO responsibility for the mitigation measure is calculated by dividing the "effective capacity decrease" by the "effective capacity increase".<sup>11</sup>

Funds generated by the fair share traffic impact fees are deposited into the City's Circulation and Transportation Fund account and are used only to construct circulation system improvements identified in the General Plan Circulation Element. These funds are programmed to be spent on specific improvements over a period of five years as identified in the Capital Improvement Program. The Capital Improvement Program guides the City's expenditure of fair share traffic impact fees but is also submitted to the OCTA to ensure that the City receives regional funding through the County's Measure M Program to construct improvements when planned. It is also important to recognize that the Fair Share Fee Ordinance allows for the dedication of right-of-way or the construction of appropriate arterial improvements in lieu of the payment of the fees.

Proposed improvements located outside the City of Newport Beach's jurisdiction require agreements with the affected jurisdictions regarding the timing, cost, and fair-share responsibility of the improvements.

**MM 4.9-1** Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

**MM 4.9-2** Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.

<sup>11</sup> To determine the "effective capacity increase" that would be achieved by implementing a recommended mitigation measure, the Improved without Project ICU is subtracted from the Future without Project ICU.

**TABLE A  
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed/Project's Percentage of Fair Share Improvements					
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
9	Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane. Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.	n/a	X (45.1%)	X (9.8%)	n/a	n/a	n/a

n/a: Mitigation measure is not required under this traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE B  
CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 9: Newport Boulevard/West Coast Highway</b>					
Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.93	E	0.88	D
2016 TPO, Phase 1	n/a	0.91	E	0.86	D
2016 Cumulative	AM	0.96	E	0.91	E
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

n/a: not applicable for the traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE C  
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed						
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout	
28	Monrovia Ave/ 19 <sup>th</sup> St	Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required	n/a	X	n/a	X	X	n/a
34	Newport Blvd/ 19th St	Provide a second southbound left-turn on Newport Boulevard. Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.	n/a	X	n/a	X	n/a	X
36	Newport Blvd/ Harbor Blvd	Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.	X	X	X	X	X	X
37	Newport Blvd/ 18 <sup>th</sup> St (Rochester St)	Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane. Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.	X	X	X	X	X	n/a
42	Pomona Ave/ 17 <sup>th</sup> St	Install a traffic signal. Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.	n/a	X	n/a	X	X	n/a

**TABLE C (Continued)**  
**CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS**

Location	Improvement	Scenario in which Improvements are Needed					
		Existing + Project	2016 TPO	2016 TPO, Phase 1	2016 Cumulative	2016 Cumulative, Phase 1	General Plan Buildout
43	Superior Ave/ 17 <sup>th</sup> St	X	X	n/a	X	X	n/a
Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation. Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.							
44	Newport Blvd/ 17 <sup>th</sup> St	n/a	X	n/a	X	X	n/a
Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach. Note: The proposed improvement in anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.							

n/a: Mitigation measure is not required under this traffic scenario.  
Source: Kimley-Horn 2011.

**TABLE D  
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 28: Monrovia Avenue/19<sup>th</sup> Street</b>					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	36.4	E	0.60	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	39.2	E	0.61	B
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 34: Newport Boulevard/19<sup>th</sup> Street</b>					
Assumes the addition of a second southbound left-turn lane on Newport Boulevard.					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	AM	0.91	E	0.85	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	AM	0.91	E	0.85	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	AM	1.01	F	0.99	E
<b>Intersection 36: Newport Boulevard/Harbor Boulevard</b>					
Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.					
Existing + Project	PM	1.05	F	0.87	D
2016 TPO	PM	1.14	F	1.01	F
2016 TPO, Phase 1	PM	1.07	F	0.90	D
2016 Cumulative	PM	1.15	F	0.95	E
2016 Cumulative, Phase 1	PM	1.07	F	0.90	D
General Plan Buildout	PM	1.12	F	0.92	E
<b>Intersection 37: Newport Boulevard/18<sup>th</sup> Street (Rochester Street)</b>					
Assumes the southbound right-turn lane is converted to a southbound shared through/right lane on Newport Blvd.					
Existing + Project	PM	1.05	F	0.88	D
2016 TPO	PM	1.15	F	0.97	E
2016 TPO, Phase 1	PM	1.09	F	0.91	E
2016 Cumulative	PM	1.16	F	0.98	E
2016 Cumulative, Phase 1	PM	1.09	F	0.91	E
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 42: Pomona Avenue/17<sup>th</sup> Street</b>					
Install traffic signal					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	46.3	E	0.54	A
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	53.3	E	0.56	A
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a

**TABLE D (Continued)  
CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS  
LEVEL OF SIGNIFICANCE**

Scenario	Peak Period	Without Mitigation		With Mitigation	
		ICU	LOS	ICU	LOS
<b>Intersection 43: Superior Avenue/17<sup>th</sup> Street</b>					
Assumes the westbound approach is converted to provide one left, one shared/left, one through, and one dedicated right-turn lane.					
Existing + Project	PM	0.91	F	0.81	D
2016 TPO	PM	0.98	E	0.87	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.98	E	0.88	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
<b>Intersection 44: Newport Boulevard/17<sup>th</sup> Street</b>					
Assumes fourth southbound through lane and one dedicated northbound right-turn lane					
Existing + Project	n/a	n/a	n/a	n/a	n/a
2016 TPO	PM	0.91	E	0.88	D
2016 TPO, Phase 1	n/a	n/a	n/a	n/a	n/a
2016 Cumulative	PM	0.92	E	0.89	D
2016 Cumulative, Phase 1	n/a	n/a	n/a	n/a	n/a
General Plan Buildout	n/a	n/a	n/a	n/a	n/a
n/a: not applicable to the traffic scenario					
Source: Kimley-Horn 2011.					

**Construction Traffic and Site Access**

**MM 4.9-3** Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments

**MM 4.9-4** Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the accessway meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.

**Parking**

**MM 4.9-5** Prior to the displacement of any private parking spaces associated with improvements to 15<sup>th</sup> Street, the Applicant shall be responsible for the construction of replacement parking on the Project site within the Community Park site or in a location immediately proximate to the existing parking lot.

#### 4.9.16 LEVEL OF SIGNIFICANCE AFTER MITIGATION

The following summarizes the level of significance after mitigation for each traffic scenario addressed in this EIR section.

##### Existing Plus Project

- **Less Than Significant Impact – City of Newport Beach Intersections:** No City of Newport Beach intersections would be significantly impacted under the *Existing Plus Project* scenario.
- **Significant and Unavoidable – City of Costa Mesa Intersections:** Under this scenario, the Project would significantly impact three intersections in Costa Mesa. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on or mandate the implementation of mitigation in another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. As previously noted, the *Existing Plus Project* traffic scenario does not accurately reflect the timing for development of the proposed Project.
- **Less than Significant Impact – Congestion Management Plan Intersection:** Under this scenario, the CMP intersection at Newport Boulevard and West Coast Highway is forecasted to operate at an acceptable level of service.

##### Year 2016 With Project TPO Analysis

- **Less Than Significant With Mitigation – City of Newport Beach Intersections:** Under this scenario, the Project would significantly impact the intersection of Newport Boulevard at West Coast Highway in Newport Beach. The impact can be mitigated to a level considered less than significant with the implementation of SC 4.9-3 and MM 4.9-1. Additionally, the PDFs 4.9-1 through 4.9-3 provide for circulation improvements to be implemented that would minimize the potential for impacts.
- **Significant and Unavoidable: City of Costa Mesa Intersections.** Under this scenario, the Project would significantly impact seven intersections in Costa Mesa. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.

##### Year 2016 With Phase 1 Project TPO Analysis

- **Less Than Significant With Mitigation – City of Newport Beach Intersections:** Under this scenario, the Project would significantly impact the intersection of Newport Boulevard at West Coast Highway in Newport Beach. The impact can be mitigated to a level considered less than significant with the implementation of SC 4.9-3 and MM 4.9-1. Additionally, the PDFs 4.9-1 through 4.9-3 provide for circulation improvements to be implemented that would minimize the potential for impacts.

- **Significant and Unavoidable – City of Costa Mesa Intersections.** Under this scenario, the Project would significantly impact two intersections in Costa Mesa. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.

#### Year 2016 Cumulative With Project

- **Less Than Significant With Mitigation – City of Newport Beach Intersections:** Under this scenario, the Project would significantly impact the intersection of Newport Boulevard at West Coast Highway in Newport Beach. The impact can be mitigated to a level considered less than significant with the implementation of SC 4.9-3 and MM 4.9-1.
- **Significant and Unavoidable – City of Costa Mesa Intersections.** Under this scenario, the Project would significantly impact seven intersections in Costa Mesa. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.
- **Less than Significant Impact – Congestion Management Plan Intersection:** Under this scenario, the proposed Project would not cause the intersection of Newport Boulevard at West Coast Highway to fall below the CMP level of service standards. Therefore, no significant impact would occur.
- **Significant and Unavoidable – State Highway Intersections:** Under this scenario, the Project would cause a significant impact to the intersection of Newport Boulevard at 17<sup>th</sup> Street. This is one of the seven impacted intersections located in the City of Costa Mesa. Implementation of MM 4.9-2 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa and Caltrans that would ensure that Project impacts occurring at this intersection would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable. Please refer to Section 4.9.16 for further discussion regarding proposed mitigation in Costa Mesa.
- **Less than Significant Impact – Freeway Mainline Segments:** Under this scenario, the Project would not significantly impact any freeway segments.

#### Year 2016 Cumulative With Phase 1 Project

- **Less Than Significant – City of Newport Beach Intersections:** Under this scenario, the Project would not significantly impact any intersections in Newport Beach.
- **Significant and Unavoidable – City of Costa Mesa Intersection.** Under this scenario, the Project would significantly impact two intersections in Costa Mesa: Newport Boulevard at Harbor Boulevard and Newport Boulevard at 18<sup>th</sup> Street/Rochester Street. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered

less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.

- **Less than Significant Impact – Congestion Management Plan Intersection:** The CMP intersection of Newport Boulevard at West Coast Highway would not be significantly impacted with the addition of Project-related traffic.
- **Less than Significant Impact – State Highway Intersections:** Because the proposed Project would not cause any State Highway intersection to operate at a deficient level of service, no significant Project impact would occur per Caltrans Guidelines.

### General Plan Buildout

- **Less than Significant Impact – City of Newport Beach Intersections.** Under this scenario, no Newport Beach intersections would be significantly impacted.
- **Significant and Unavoidable – City of Costa Mesa Intersections.** Under this scenario, the Project would significantly impact two intersections in Costa Mesa: Newport Boulevard at Harbor Boulevard and Newport Boulevard at 18<sup>th</sup> Street/Rochester Street. Implementation of MM 4.9-1 would mitigate the Project's impact to a level considered less than significant. However, the City of Newport Beach cannot impose mitigation on another jurisdiction. Therefore, if the Applicant is unable to reach an agreement with the City of Costa Mesa that would ensure that Project impacts occurring in Costa Mesa would be mitigated concurrent with or preceding the impact, for purposes of this EIR, the impacts to be mitigated by the improvements would remain significant and unavoidable.
- **Less than Significant Impact – Congestion Management Plan Intersection:** Under this scenario, the CMP intersection at Newport Boulevard and West Coast Highway is forecasted to operate at an acceptable level of service based on the CMP significance criteria.
- **Less than Significant Impact – State Highway Intersections:** Under this scenario, the Project would not significantly impact any Caltrans intersections per Caltrans Guidelines.

The Project's impact on intersections under the control of the City of Newport Beach can be mitigated to a level considered less than significant. The Project would not significantly impact intersections in the City of Huntington Beach.

To address those proposed improvements located outside the City of Newport Beach's jurisdiction, the Applicant will endeavor to enter into agreements with the affected jurisdiction regarding the timing, cost, and fair-share responsibility of the improvements. All measures in the City of Costa Mesa would be subject to the approval of Costa Mesa; all improvements to State facilities would require the approval of Caltrans. However, if the Applicant is unable to reach agreement with one or more of the jurisdictions, for purposes of this EIR, these impacts would be significant and unavoidable.



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BY \_\_\_\_\_

## MITIGATION MONITORING AND REPORTING PROGRAM

NEWPORT BANNING RANCH PROJECT  
CITY OF NEWPORT BEACH

STATE CLEARINGHOUSE NO. 2009031061

Prepared for | City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

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June 2012

**NEWPORT BANNING RANCH PROJECT (Continued)  
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures	Responsible for Approval/Monitoring/ Implementation	Completion							
			Date	Initials						
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	<p>MM 4.9-1 Table A identifies the City of Newport Beach (City) transportation improvement mitigation program for the Project as well as the Applicant's fair-share responsibility for the improvements. The resulting levels of service are identified in Table B. In accordance with the requirements of the Traffic Phasing Ordinance, the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.</p> <p style="text-align: center;"><b>TABLE A CITY OF NEWPORT BEACH TRAFFIC MITIGATION REQUIREMENTS</b></p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Location</th> <th style="width: 70%;">Improvement</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">9</td> <td style="text-align: center;">Newport Blvd/ West Coast Hwy</td> <td> <p>Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.</p> <p>Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</p> </td> </tr> </tbody> </table>		Location	Improvement	9	Newport Blvd/ West Coast Hwy	<p>Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.</p> <p>Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</p>	City Traffic Engineer; Community Development Director		
	Location	Improvement								
9	Newport Blvd/ West Coast Hwy	<p>Restripe the southbound approach on Newport Boulevard to provide one exclusive right-turn lane, one exclusive left-turn lane, and one shared right-/left-turn lane.</p> <p>Note: The proposed improvement is limited to restriping of the southbound approach. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.</p>								
Conditions of approval of Tentative Tract Map No. 17308 and subsequent subdivision maps for development purposes	<p>MM 4.9-2 Table C identifies the City of Costa Mesa transportation improvement mitigation program proposed for the Project. The resulting levels of service are identified in Table D. The Applicant shall be responsible for using its best efforts to negotiate in good faith to arrive at fair and responsible arrangements to either pay fees and/or construct the required improvements in lieu of the payment of fees to be negotiated with the City of Costa Mesa. The payment of fees and/or the completion of the improvements shall be completed during the 60 months immediately after approval. Approval refers to the receipt of all permits from the City of Newport Beach and applicable regulatory agencies. Concept plans depicting these recommended improvements are provided in Appendix F to the Newport Banning Ranch EIR.</p>	City of Costa Mesa; City Traffic Engineer								

**NEWPORT BANNING RANCH PROJECT (Continued)  
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures		Responsible for Approval/Monitoring/ Implementation	Completion	
				Date	Initials
	<b>TABLE C CITY OF COSTA MESA TRAFFIC MITIGATION REQUIREMENTS</b>				
	Location	Improvement			
	28 Monrovia Ave/ 19 <sup>th</sup> St	Install a traffic signal.  Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required			
	34 Newport Blvd/ 19 <sup>th</sup> St	Provide a second southbound left-turn on Newport Boulevard.  Note: The proposed improvement is anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.			
	36 Newport Blvd/ Harbor Blvd	Addition of a fourth southbound through lane on Newport Boulevard. Improve the southbound approach of Newport Boulevard to provide three through lanes and one shared through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.  Note: Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection. No existing structures or on-street parking would be impacted.			
	37 Newport Blvd/ 18 <sup>th</sup> St (Rochester St)	Convert the southbound right-turn lane (southbound approach) of Newport Boulevard to provide a through/right-turn lane and to improve the south leg to accommodate a fourth receiving lane.  Note: This improvement has been conditioned on the Hoag Health Center project. Direct physical impacts are anticipated to be limited to roadway components, including median hardscape and landscape improvements, and sidewalk modifications both to the north and south of the intersection.			

**NEWPORT BANNING RANCH PROJECT (Continued)  
MITIGATION MONITORING AND REPORTING PROGRAM**

Timing	Project Design Features/Conditions of Approval/ Mitigation Measures			Responsible for Approval/Monitoring/ Implementation	Completion	
					Date	Initials
	42	Pomona Ave/ 17 <sup>th</sup> St	Install a traffic signal.			
			Note: The improvement would be limited to the installation of the traffic signal. No physical changes to the roadway section are anticipated; no right-of-way is anticipated to be required.			
	43	Superior Ave/ 17 <sup>th</sup> St	Modify the westbound approach to provide one left, one shared through/left, one through, and one right-turn lane. This will require split phasing signal operation.			
Note: The proposed improvement is limited to signal operation modifications. No physical changes to the roadway section are anticipated to be necessary and no changes to the right-of-way should be required.						
	44	Newport Blvd/ 17 <sup>th</sup> St	Add a fourth through lane on the southbound approach and a dedicated right-turn lane on the northbound approach.			
			Note: The proposed improvement in anticipated to require modifications to the medians and incremental widening of the street on one or both sides of the roadway depending on the final design. Improvements may also require modifications to the frontage road along the easterly side of Newport Boulevard. Additional right-of-way may be required on one or both sides of Newport Boulevard. Direct physical impacts are anticipated to be limited to roadway components including median hardscape and landscape.			
Prior to issuance of first grading or demolition permit	MM 4.9-3 Prior to the introduction of combustible materials on the Project site, emergency fire access to the site shall be approved by the City of Newport Beach's Public Works and Fire Departments.			City Traffic Engineer; Fire Chief		
Prior to the issuance of first grading permit As part of subdivision improvement plans	MM 4.9-4 Prior to the start of grading, the Applicant shall demonstrate to the City of Newport Beach Fire Department that all existing and new access roads surrounding the Project site are designated as fire lanes, and no parking shall be permitted unless the access way meets minimum width requirements of the Public Works and Fire Departments. Parallel parking on one side may be permitted if the road is a minimum 32 feet in width.			City Traffic Engineer; Fire Chief		

**Habitat Mitigation and Restoration Areas:** In areas where habitat mitigation or restoration is proposed, minor grading to repair localized erosion features or compact loose soils is anticipated. It is expected that this work effort would be done by hand or with small equipment.

**Water Quality Basins:** Grading would be required to establish a water quality basin(s) in the Lowland. Grading is expected to require cuts of up to eight feet and fill of up to six feet in height. The constructed basin(s) would use native wetland habitat for treatment function within the limits of the basin. This basin would also require long-term "Safe Harbor" maintenance agreements with the Resource Agencies within the physical limits of the basin to ensure maintenance activities are performed on a routine basis to maximize water quality treatment and energy dissipation functions.

**Utility Infrastructure:** Soil disturbance would occur associated with the installation of utilities within the open space.

**Planting Buffers for Oil Consolidation Sites:** Limited soil disturbance would occur with allowed fencing and the planting of landscape to visually screen consolidated oil operations.

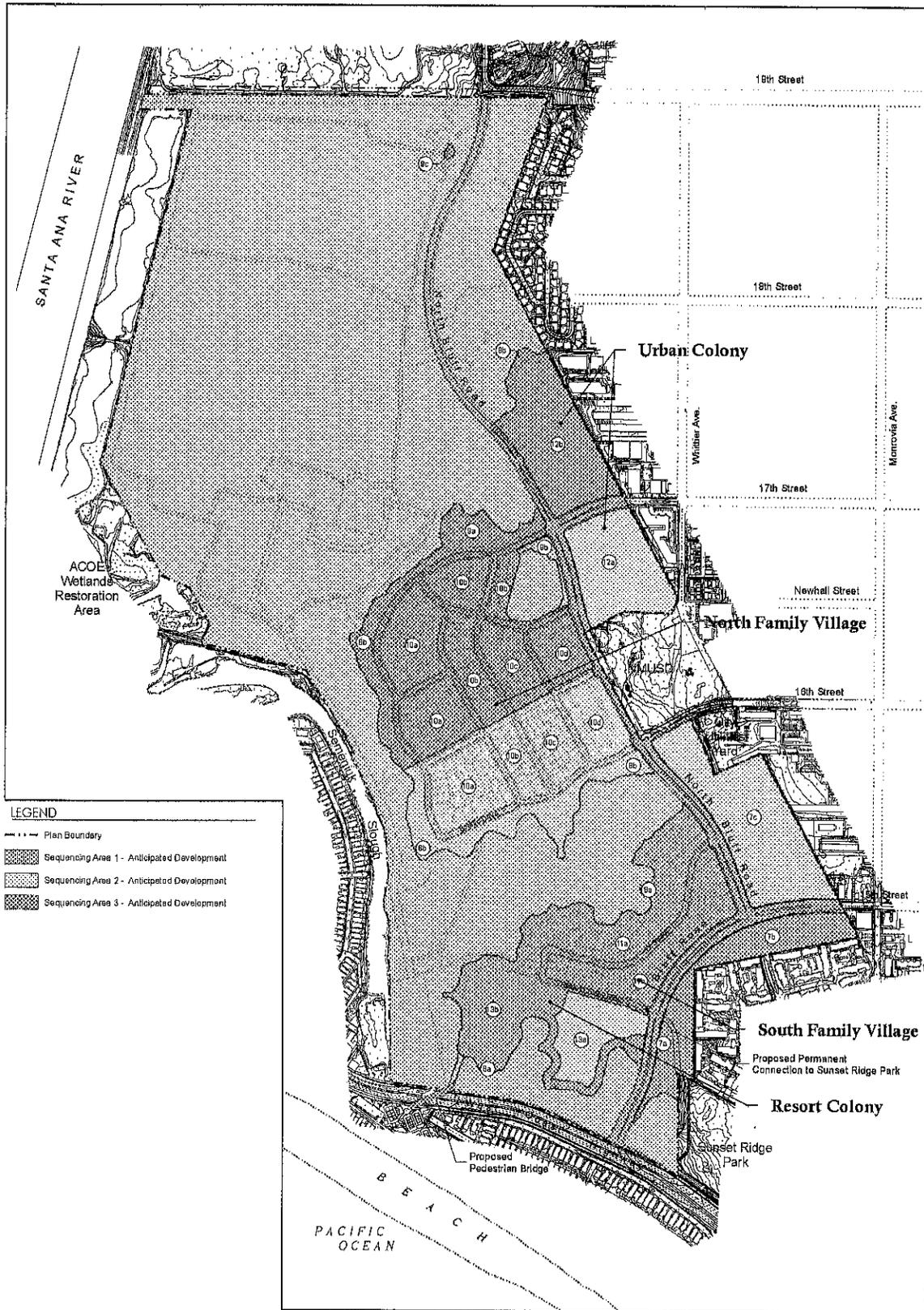
### 3.7 PROPOSED IMPLEMENTATION PLAN

The Project is proposed to be developed over a period of approximately nine years. The actual timing of development would be based on (1) attainment of required permits and approvals; (2) market demand for uses on the Project site; and (3) sequencing of environmental and public benefit activities. These activities include, but are not limited to, oil facility consolidation, clean-up and remediation; habitat protection; restoration and mitigation; roadway and infrastructure construction; development of residential, resort, and commercial uses; phased dedication and improvement of public parks, trails, interpretive areas; and other public rights-of-way consistent with the Pre-Annexation and Development Agreement (Development Agreement).

Although the Project is not a phased development (one component of the Project is not contingent to be completed before another component is started), it would be constructed over a period of years. Therefore, the Applicant's anticipated sequencing of Project implementation actions is identified in the Project Description and used for analysis of construction and operational impacts including air quality and noise. As shown in Exhibit 3-18, Proposed Implementation Plan, and as described in Table 3-3, development of the Project site is conceptually proposed to start in the southerly portion of the Project site and generally continue in a northerly direction and include site remediation; grading and construction of infrastructure; construction of homes and other facilities; and occupancy.

Development in one area may overlap with development in another area. Geographic areas could also be developed in a different sequence than described, provided that requirements and conditions related to oilfield abandonment and remediation, public infrastructure and facilities, open space dedications, Development Agreement obligations, and environmental mitigation continue to be satisfied.

Development implementation is designed to ensure efficient use of soil movement to balance landform grading and bluff/slope restoration and to make efficient use of existing infrastructure locations and connection points within and adjacent to the Project site. Development would be tied to corresponding requirements for public parks and Upland and Lowland habitat dedication and restoration, and would have functioning infrastructure.



Source: FORMA 2011

# Proposed Implementation Plan

Exhibit 3-18

Newport Banning Ranch EIR



**TABLE 3-3  
PROPOSED IMPLEMENTATION PLAN**

Land Use	Acres		Dwelling Units (du)	Commercial (sf)	Visitor-Serving (Rooms)
Low Density Residential	9.0 <sup>a</sup>		60	-	-
Medium Density Residential	10.2 <sup>a</sup>		81	-	-
Visitor-Serving Resort/ Residential	5.6 <sup>a</sup>		87	-	-
Bluff Park	7.3 <sup>a</sup>		-	-	-
Community Park	5.0 <sup>a</sup>		-	-	-
Upland Open Space	1.5 <sup>b</sup>		-	-	-
<b>Subtotal</b>	<b>38.6<sup>a</sup></b>		<b>228</b>	<b>-</b>	<b>-</b>
<b>Schedule</b>	<b>Start<sup>c</sup></b>	<b>Finish<sup>c</sup></b>			
Site Remediation	2/2015	Prior to Occupancy			
Grading and Improvements	8/2015	5/2016			
Construct Models and Homes	2/2016	9/2016			
Occupancy	10/2016	10/2018			
Low Density Residential	6.5 <sup>a</sup>		36	-	-
Low-Medium Density Residential	2.9 <sup>a</sup>		21	-	-
Medium Density Residential	9.5 <sup>a</sup>		113	-	-
Mixed-Use/Residential	9.8 <sup>a</sup>		365 <sup>b</sup>	37,500 sf	-
Visitor-Serving Resort/Residential	5.7 <sup>a</sup>		-	-	75 rooms
Bluff Park	8.9 <sup>a</sup>		-	-	-
Community Park	21.8 <sup>a</sup>		-	-	-
Interpretive Parks	1.4 <sup>a</sup>		-	-	-
<b>Subtotal</b>	<b>66.5<sup>a</sup></b>		<b>535<sup>b</sup></b>	<b>37,500 sf</b>	<b>75 rooms</b>
<b>Schedule</b>	<b>Start<sup>c</sup></b>	<b>Finish<sup>c</sup></b>			
Site Remediation	2/2015	Prior to Occupancy			
Grading and Improvements	8/2017	5/2018			
Construct Models and Homes	2/2018	9/2018			
Occupancy	10/2018	1/2021			
Low Density Residential	10.6 <sup>a</sup>	0-8	71	-	-
Low-Medium Density Residential	8.9 <sup>a</sup>	0-16	64	-	-
Medium Density Residential	7.6 <sup>a</sup>	0-24	112	-	-
Mixed-Use/Residential	11.1 <sup>a</sup>	-	365	37,500 sf	-
Bluff Park	4.7	-	-	-	-
Interpretive Parks	2.3	-	-	-	-
Upland Open Space	4.0 <sup>b</sup>	-	-	-	-
<b>Subtotal</b>	<b>49.2</b>	<b>-</b>	<b>612<sup>c</sup></b>	<b>37,500 sf</b>	<b>-</b>

**TABLE 3-3 (Continued)  
PROPOSED IMPLEMENTATION PLAN**

Land Use	Acres		Dwelling Units (du)	Commercial (sf)	Visitor-Serving (Rooms)
	Start <sup>c</sup>	Finish <sup>c</sup>			
<b>Schedule</b>	<b>Start<sup>c</sup></b>	<b>Finish<sup>c</sup></b>			
Site Remediation	Complete	Complete			
Improvements	8/2019	5/2020			
Construct Models and Homes	2/2020	9/2020			
Occupancy	10/2020	12/2024			
<b>Sub Total</b>	<b>154.3</b>		<b>1,375</b>	<b>75,000 sf</b>	<b>75 rooms</b>
Upland and Lowland Open Space Restoration/ Oil Operations Consolidation	<b>246.8</b>				
	2/2015	12/2024			
<b>Total</b>	<b>401.1</b>				
<p>Note: The information represented in the table is a conceptual estimate based upon historical absorption rates and projects with similar conditions and characteristics as the proposed Newport Banning Ranch Project.</p> <p><sup>a</sup> Acres are gross land use acres, and include arterial and collector roads, and local in-tract streets.</p> <p><sup>b</sup> Acreage shown for Open Space is only for arterial and collector roads through open space areas.</p> <p><sup>c</sup> Start and Finish dates are estimates, and may vary depending upon market and other conditions.</p>					

### 3.8 PROJECT DESIGN FEATURES

Project Design Features (PDFs) are specific design elements proposed by the Applicant that have been incorporated into the proposed Project to prevent the occurrence of or minimize the significance of potential environmental effects. Because PDFs have been incorporated into the Project, they do not constitute mitigation measures, as defined by Section 15126.4 of the State CEQA Guidelines (14 CCR). PDFs are included in the Mitigation Monitoring and Reporting Program (MMRP) to ensure their implementation as a part of the proposed Project. As with mitigation measures, if the Project is modified through the public hearing process in a manner that would require modifications to the PDFs, the Applicant may be permitted to modify the PDFs before they are included in the MMRP proposed for adoption.

The PDFs reflect specific components of the Project that have been identified and described in this section.

#### Land Use and Related Planning Programs

**PDF 4.1-1<sup>9</sup>** Through the implementation of the Master Development Plan, the Project permits a maximum of 1,375 residential dwelling units and a variety of residential housing types to provide opportunities for a range of lifestyles. Housing types include single-family detached, single-family attached, multi-family, and/or residential uses in a mixed-use configuration.

**PDF 4.1-2** The Master Development Plan designates areas for a diverse public park system to include active, passive, and interpretive recreation opportunities.

<sup>9</sup> PDF numbers correspond to the EIR's technical sections (e.g., Section 4.1, Land Use and Related Planning Programs).

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Noise

TABLE 4.12-11  
GENERAL PLAN BUILDOUT WITH AND WITHOUT PROJECT TRAFFIC  
NOISE LEVELS: OFF-SITE CONTRIBUTIONS

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CITY OF COSTA MESA

Roadway	Segment	CNEL at 50 ft (dBA)				
		GP Buildout Without Project	GP Buildout With Project	Allowable Increase	Project Contribution	Impact?
19 <sup>th</sup> St	West of Placentia Ave	70.9	70.8	1.0	-0.1	No
19 <sup>th</sup> St	Placentia Ave to Harbor Blvd	72.9	73.0	1.0	0.1	No
Hamilton Ave	West of Magnolia St	71.5	71.5	1.0	0.0	No
Hamilton Ave	Magnolia St to Bushard Ave	72.3	72.2	1.0	-0.1	No
Hamilton Ave	Bushard Ave to Brookhurst St	73.0	73.1	1.0	0.1	No
17 <sup>th</sup> St	West of Monrovia Ave: single-family residences	62.3	66.4	2.0	4.1	<b>Yes</b>
17 <sup>th</sup> St	West of Monrovia Ave: mobile homes <sup>a</sup>	57.3	61.4	3.0	4.1	<b>Yes</b>
15 <sup>th</sup> St	West of Placentia Ave	65.0	65.3	2.0	0.3	No
West Coast Hwy	Brookhurst St to Prospect St	72.4	72.4	1.0	0.0	No
West Coast Hwy	Prospect St to Superior Ave	72.6	72.5	1.0	-0.1	No
West Coast Hwy	Superior Ave to Newport Blvd	72.1	72.2	1.0	0.1	No
West Coast Hwy	East of Dover Dr	74.5	74.5	1.0	0.0	No
Brookhurst St	North of Hamilton Ave	73.8	74.0	1.0	0.2	No
Brookhurst St	Pacific Coast Hwy to Hamilton Ave	74.5	74.1	1.0	-0.4	No
Placentia Ave	North of Victoria St	70.5	70.4	1.0	-0.1	No
Placentia Ave	19 <sup>th</sup> St to 17 <sup>th</sup> St	70.9	70.3	1.0	-0.6	No
Placentia Ave	17 <sup>th</sup> St to Superior Ave	69.3	68.9	1.0	-0.4	No
Superior Ave	16 <sup>th</sup> St to Placentia Ave	71.3	71.8	1.0	0.5	No
Superior Ave	Placentia Ave to West Coast Hwy	71.4	70.8	1.0	-0.6	No
Superior Ave	South of West Coast Hwy	70.5	70.6	1.0	0.1	No
Magnolia St	North of Victoria St	70.3	70.5	1.0	0.2	No
Magnolia St	Hamilton Ave to Banning Ave	70.5	70.7	1.0	0.2	No
Magnolia St	Banning Ave to Pacific Coast Hwy	71.9	72.0	1.0	0.1	No

CNEL: community noise equivalent level; ft: feet; dBA: A-weighted decibels.  
Significant Project impacts are shown in bold.  
a. Noise levels are reduced at the mobile homes because of existing wall.

**Mitigation of Impacts.** The analysis above indicates potential significant noise impacts on 15<sup>th</sup> Street west of Placentia Avenue for the Existing Plus Project and the 2016 with Project scenarios, but not for the General Buildout Plus Project scenario. The analysis indicates potential significant noise impacts on 17<sup>th</sup> Street west of Monrovia Avenue for these scenarios. Mitigation applicable for all the scenarios is incorporated as MM 4.12-5 and is described below.

**17<sup>th</sup> Street west of Monrovia Avenue.** Noise sensitive uses adjacent to the 17<sup>th</sup> Street road segment west of Monrovia Avenue include a mobile home park and six single-family residences that have front yards and side yards facing 17<sup>th</sup> Street. The remaining uses are commercial and light industrial. Because the single-family residences front onto 17<sup>th</sup> Street and driveway access

from the streets to these homes is needed, the construction of sound walls would not be effective because a continuous wall is necessary for noise abatement. The Project would significantly impact the six residences along the segment of 17<sup>th</sup> Street west of Monrovia Avenue. With respect to the mobile homes, they are located behind an existing six-foot-high sound wall. A six-foot-high soundwall at street elevation provides a minimum of 5 dBA reduction. Although the proposed Project would create perceptible noise increases to these mobile homes, residents of the mobile home park would be exposed to future noise levels less than 65 CNEL, which is acceptable according to the City of Costa Mesa Noise Element. However, based on Newport Beach Policy N1.8, mitigation of the noise increase would be required.

The installation of rubberized asphalt pavement would reduce the anticipated noise increase to the sensitive receptors on this segment of 17<sup>th</sup> Street. MM 4.12-5 would require the City to have the Applicant to again evaluate the potential noise impact of the Project at the time of the issuance of the first occupancy permit based on the best available information at that time relative anticipated future factors for roadway surface and average traffic speed. If the noise study shows that Project traffic would increase noise above the limits stated in the Newport Beach General Plan Noise Element, the Applicant would provide funds to the City of Costa Mesa for the installation of rubberized asphalt pavement, which the City of Costa Mesa has indicated is used in Costa Mesa where feasible (Sethuraman 2010). The estimated 4 dBA noise reduction provided by the pavement would reduce the impact to a less than significant level. However, it should be noted that the City of Newport Beach can require the Applicant to provide funding for the mitigation but does not have the authority to mandate the implementation of mitigation in the City of Costa Mesa.

**15<sup>th</sup> Street west of Placentia Avenue.** Uses adjacent to 15<sup>th</sup> Street west of Placentia Avenue include the Seacliff Homes and the Newport Terrance mobile home parks, and the One Nautical Mile, the Seashore Apartments and the Brookview Newport multi-family residences. Project traffic noise could significantly impact several residential patios and balconies and apartment units along this road segment and would cause noise increases at exterior living areas of approximately 20 mobile homes facing 15<sup>th</sup> Street. The Seacliff Homes are located behind an existing four to five-foot-high sound wall that does not provide a substantial noise reduction.

MM 4.12-5 would require the City to have the Applicant to again evaluate the potential noise impact, as described above. If confirmed, the Applicant would provide funds to the City of Newport Beach for the installation of rubberized asphalt pavement. The estimated 4 dBA noise reduction provided by the pavement would reduce the impact to a less than significant level. Alternatively, a 7-foot-high noise barrier along 15<sup>th</sup> Street would provide an approximately 5 dBA noise reduction, reducing the noise levels at first floor patios and homes facades. However, a noise barrier would not be effective at the second floor patios and balconies at the apartments along 15<sup>th</sup> Street; these impacts would remain significant.

**Impact Summary: Thresholds 4.12-1 and 4.12-4: Significant and Unavoidable.** With the implementation of MM 4.12-5, which provides funds to resurface 17<sup>th</sup> Street west of Monrovia Avenue and 15<sup>th</sup> Street west of Placentia Avenue with rubberized asphalt if required by an updated noise study. If mitigation is required, noise level increases to sensitive receptors adjacent to off-site roadways would be reduced to less than the significance criteria prescribed by the City of Newport Beach. Feasible mitigation has been identified to mitigate the noise impact to residences in the City of Costa Mesa to a less than significant level. However, because the City of Newport Beach does not have the authority to mandate the

implementation of mitigation in the City of Costa Mesa, the impact is considered significant and unavoidable.

#### *Land Uses Adjacent to Project Roads*

This section evaluates the expected impacts due to traffic noise from the Project's proposed internal roads to off-site noise-sensitive uses in the vicinity of the Project site. The nearest off-site noise-sensitive receptors are (1) the Newport Crest Condominiums, (2) the California Seabreeze and Parkview Circle residential developments, and (3) the Carden Hall School. Due to topography, intervening structures, and distance, traffic noise on the Project's roads would not result in significant noise impacts to the Newport Shores, Lido Sands, Seawind Newport, Newport Terrace, or the Newport Knolls residential areas. No off-site noise sensitive receptors are located adjacent to the Project's proposed extensions of 16<sup>th</sup> Street and 17<sup>th</sup> Street onto the Project site.

Future forecasted noise levels for the Without Project and With Project scenarios were modeled at each of the sensitive receptor areas for General Plan Buildout conditions using the SOUND2000 model, as described in Section 4.12.4. The Without Project scenario assumes the construction of the on-site roadways identified on the General Plan and the use of the Project Site as Open Space, including significant active community parklands, as designated in the General Plan. Traffic speeds on Bluff Road, North Bluff Road, 15<sup>th</sup> Street, and 17<sup>th</sup> Street within the Project site were assumed to be 50 mph. The roadways were assumed to be paved with rubberized asphalt in accordance with SC 4.12-4. Pursuant to Policy N1.8 of the City of Newport Beach Noise Element, the direct Project noise impacts are evaluated in terms of increases over Without Project conditions, and the cumulative noise impacts are evaluated compared to existing conditions. Future noise levels are also compared to the noise-land use compatibility criteria to characterize the future noise environment.

**Newport Crest:** Future exterior noise levels from Bluff Road and 15<sup>th</sup> Street to the Newport Crest residences, without development of the proposed project would range from 57.3 to 64.5 dBA CNEL; see Table 4.12-12 for data and Exhibit 4.12-4 for noise model receptor locations. The threshold for significant impact is 2 or 3 dBA, depending on the Without Project noise level at each receptor. As shown in Table 4.12-12, noise levels with development of the proposed Project would range from 57.6 to 65.1 dBA CNEL. The noise increase attributable to Project traffic at all Newport Crest receptors would be up to 1.1 dBA and the direct impact would be less than significant.

Existing noise levels, based on measurements at locations 1 and 2 (Table 4.12-6 and Exhibit 4.12-1), range from 47.6 to 50.4 dBA CNEL. The future noise levels would exceed existing noise levels by 8.6 to 16.1 dBA at Newport Crest receptor locations (see Table 4.12-12). Because future cumulative noise levels would be 5 or more dBA greater than the existing noise levels, the cumulative impact would be significant, and mitigation would be required. A noise barrier, such as a wall or earth berm, would reduce noise from the roadway to the residences. The most effective barriers are located adjacent to the noise source or adjacent to the receptors. When the receptors are at a higher elevation than the roadway, then a barrier adjacent to the receptors is considerably more effective than a barrier adjacent to the roadway. Mitigated noise levels were modeled for a 12-foot-high noise wall adjacent to Bluff Road and for 6-foot-high and 8-foot-high noise walls at the rear of the Newport Crest property. Table 4.12-13 identifies the forecasted noise levels without and with the mitigation discussed above.



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: JULY 17, 2012

ITEM NUMBER:

CC-5

**SUBJECT: NEWPORT BANNING RANCH TRAFFIC MITIGATION AGREEMENT**

**DATE: JULY 5, 2012**

**FROM: PUBLIC SERVICES DEPARTMENT - TRANSPORTATION SERVICES DIVISION**

**PRESENTATION BY: RAJA SETHURAMAN, TRANSPORTATION SERVICES MANAGER**

**FOR FURTHER INFORMATION CONTACT: RAJA SETHURAMAN, TRANSPORTATION SERVICES MANAGER, (714) 754-5032**

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## **RECOMMENDATION:**

1. Approve the Traffic Mitigation Agreement between the City of Costa Mesa and Newport Banning Ranch, LLC for mitigation of traffic impacts associated with the proposed Newport Banning Ranch Project within the sphere of influence of the City of Newport Beach (Attachment 1).
2. Authorize the Mayor to execute the Traffic Mitigation Agreement.

## **BACKGROUND:**

Newport Banning Ranch, LLC is proposing the development of a mixed-use project in a portion of the Banning Ranch property, which is located largely in unincorporated County of Orange within the sphere of influence of the City of Newport Beach. The Banning Ranch area is at the western boundary of the Cities of Costa Mesa and Newport Beach and is generally bounded by the Santa Ana River to the west, West Coast Highway to the south, and the Talbert Nature Preserve to the north. The project site is currently an active oilfield with production facilities located throughout the 401-acre site. The proposed project will consolidate oil production operations into approximately 16.5 acres, develop approximately 149 acres into a variety of mixed uses, such as single and multi-family residential, neighborhood commercial, a boutique hotel, and a neighborhood park, and will reserve the remaining area for open space uses.

The proposed Banning Ranch land use development plan includes 1,375 single and multi-family residential units (comprised of 952 residential condominiums and townhouses and 423 single family residences), 75,000 square feet of neighborhood commercial, a 75-room resort hotel, and various park amenities. A significant concentration of this development, including over 700 multi-family units and 75,000 square feet of neighborhood commercial uses, is proposed in the eastern edge of the Banning Ranch property at the current terminus of 17<sup>th</sup> Street at the City of Costa Mesa's west boundary. The project also includes a north-south roadway connecting 19<sup>th</sup> Street and Pacific Coast Highway through the Banning Ranch property. Access points to the Banning Ranch property include Pacific Coast Highway, 15<sup>th</sup> Street, 16<sup>th</sup> Street, 17<sup>th</sup> Street, and 19<sup>th</sup> Street. The site plan for the proposed project is shown in Attachment 2.

The Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch project was released for public review and comment on September 9, 2011. The comment period closed on November 8, 2011. The City of Costa Mesa City Council conducted a joint public meeting

with the Planning Commission and Parks & Recreation Commission to solicit public input on the project on October 20, 2011. In addition, Costa Mesa City Council Members had several questions on the project. These questions, along with staff responses, are included in Attachment 3. The City's comment letter on the DEIR submitted to the City of Newport Beach is included in Attachment 4.

## **ANALYSIS:**

For the past two years, the cities of Costa Mesa and Newport Beach have worked on the background studies for the Draft Environmental Impact Report (DEIR). Given the close proximity of the Newport Banning Ranch development to the City of Costa Mesa, and its impact to the City's transportation system, a key concern of City staff was the traffic study for the project. The City of Costa Mesa provided the list of key intersections that needed to be included in the traffic analysis, participated in, and reviewed the various assumptions and inputs to the traffic study. Based on the City's comments, a significant portion of the traffic analysis within the City of Costa Mesa was revised prior to incorporation in the DEIR.

The proposed Newport Banning Ranch project is expected to generate 14,989 daily trips, with each trip representing a one-way vehicle movement, either to or from the project site. Of these, 906 trips are projected to be generated during the morning peak hour and 1,430 trips are projected to be generated during the evening peak hour. The City of Costa Mesa worked with City of Newport Beach staff in arriving at the above trip generation as well as the distribution of trips to the roadway network. It is projected that approximately 65% of project traffic would utilize the City of Costa Mesa's roadway system for access. The project-proposed connections to Costa Mesa are at 16<sup>th</sup> Street, 17<sup>th</sup> Street, and 19<sup>th</sup> Street, with 17<sup>th</sup> Street providing a major access gateway.

The traffic analysis for the DEIR included 13 intersections in Newport Beach, 9 intersections in Huntington Beach, and **31 intersections in Costa Mesa**. The DEIR identified impacts at seven (7) intersections within the City of Costa Mesa. The mitigation measures are required at the time of project buildout and not during the initial phases. While mitigation measures were identified at the impacted locations, the City of Newport Beach has limited authority to condition them on the development as they are outside of their jurisdiction.

The Banning Ranch development project was approved unanimously by the Newport Beach Planning Commission on June 21, 2012, and is scheduled for a Newport Beach City Council hearing on July 24, 2012. The project also requires approval from the California Coastal Commission, in addition to other state and federal agencies. However, **the Newport Banning Ranch project does not legally require approval from the City of Costa Mesa**. Consequently, Costa Mesa staff met with the developers of the Newport Banning Ranch project on numerous occasions to discuss the anticipated impacts to the City's transportation system and to maximize potential options for mitigation to these impacts.

The attached Traffic Mitigation Agreement was formulated on the City's understanding of the project, its traffic impacts, and resulting mitigations. Costa Mesa staff developed preliminary cost estimates for the improvements required to mitigate the identified impacts. Based on a detailed analysis, staff determined that the proposed traffic mitigation fee of \$4,388,483 is justified and commensurate with the traffic impacts expected from the Newport Banning Ranch development at buildout. This mitigation fee represents the Newport Banning Ranch development's share of the identified impacts which may be used by the City to leverage future transportation grants to implement the mitigations at the time they are needed.

This Agreement merely provides the City of Costa Mesa with the legal means to impose traffic mitigation fees for a development that is outside of the City's jurisdiction, which could not otherwise be collected. The agreement guarantees funding of \$4,388,483 to improve transportation infrastructure if the project as proposed is approved by all authorities and is

implemented by the developer. If there are any revisions to the project that substantially change the impacts, then a new agreement will be required.

**ALTERNATIVES CONSIDERED:**

The City Council may elect to not approve the attached Traffic Mitigation Agreement. This will potentially result in the Newport Banning Ranch development to occur without addressing the traffic impacts in Costa Mesa. However, this alternative will require the City to be responsible for implementation of improvement measures in the future using only City and grant revenues.

**FISCAL REVIEW:**

The Traffic Mitigation Agreement provides for \$4,388,483 in revenues to the City phased with the development of Newport Banning Ranch. These traffic mitigation funds will be used to implement mitigation measures identified in the Newport Banning Ranch DEIR for Costa Mesa as well as other improvements in the City's General Plan Circulation Element to improve overall transportation infrastructure to support anticipated traffic increases.

**LEGAL REVIEW:**

The City Attorney's office has reviewed the Traffic Mitigation Agreement and has provided comments, which have been incorporated. The City Attorney's office has approved the attached Agreement as to form.

**CONCLUSION:**

In late 2011, a draft Environmental Impact Report (DEIR) was completed for the Newport Banning Ranch project, which includes the development of 1,375 residential units, 75,000 square feet of neighborhood commercial uses, a 75-room resort hotel, and park amenities within the Newport Banning Ranch property. The DEIR identified traffic impacts at seven (7) intersections within the City of Costa Mesa. While this proposed project is outside Costa Mesa's legal jurisdiction, City of Costa Mesa staff met with the developer to review mitigation options. The attached Traffic Mitigation Agreement was prepared based on these discussions. The Agreement was also reviewed and approved by the City Attorney's office. According to the proposed Agreement, the developer will be responsible for contributing \$4,388,483 in traffic impact fees to the City of Costa Mesa based on the project's phasing. These funds represent the project's share of impacts on the Costa Mesa's transportation system and are determined to be reasonable. Staff requests City Council's approval of the Traffic Mitigation Agreement and authorization to the Mayor to execute the Agreement.



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**RAJA SETHURAMAN**

Transportation Services Manager



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**ERNESTO MUNOZ**

Public Services Director

- ATTACHMENTS:
- 1 Traffic Mitigation Agreement
  - 2 Newport Banning Ranch Project
  - 3 City Council Questions and Staff Responses from the Public Hearing of October 20, 2011
  - 4 City's Comment Letter

DISTRIBUTION: Chief Executive Officer  
Assistant Chief Executive Officer  
Director of Economic & Development/Deputy CEO  
City Attorney  
Finance/IT Director  
City Clerk Division

## TRAFFIC MITIGATION AGREEMENT

This **TRAFFIC MITIGATION AGREEMENT** (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2012, by and among the City of Costa Mesa (the “**City**”), and Newport Banning Ranch LLC, a California limited liability company, (“**NBR**”). The **City** and **NBR** are herein each a “**Party**” and collectively the “**Parties**.”

In consideration of mutual covenants and conditions contained in this **Agreement**, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the **Parties**, the **Parties** agree as follows:

### 1.0 DEFINITIONS

In addition to the foregoing defined terms, the following defined terms apply to this **Agreement**.

1.1 “**Effective Date**” is defined in Section 19.

1.2 “**Project**” is defined in Section 2.1

1.3 “**Property**” means the property comprising the Newport Banning Ranch Site as described in Exhibit “A.”

### 2.0 RECITALS

2.1 NBR proposes to improve the Property in accordance with the Project which is currently under consideration by the City of Newport Beach as follows: [insert detailed project description].

2.2 The City of Newport Beach has prepared a draft Environmental Impact Report in connection with its consideration of the Project (the “**DEIR**”).

2.3 The DEIR has identified certain traffic impacts that may occur within the City and has identified certain mitigation measures that would reduce these impacts to a less than significant level (the “**Mitigation Measures**”). These mitigation measures are as follows:

- (a) Newport Boulevard – 19<sup>th</sup> Street: Addition of a southbound left-turn lane;
- (b) Newport Boulevard – harbor Boulevard: Addition of a southbound through lane;
- (c) Newport Boulevard – 18<sup>th</sup> Street: Additional of a southbound through lane;
- (d) Newport Boulevard – 17<sup>th</sup> Street: Additional of a southbound through lane;

- (e) Superior Avenue – 17<sup>th</sup> Street: Addition of a westbound right-turn lane;
- (f) Pomona Avenue – 17<sup>th</sup> Street: Signalize intersection; and
- (g) Monrovia Avenue – 19<sup>th</sup> Street: Signalize intersection.

2.4 The City has adopted a fair share fee program applicable to projects within the City for the mitigation of project traffic impacts.

2.5 The Parties understand and agree that the DEIR Traffic Study indicates that initiation of mitigation measures related to the project must be implemented in Costa Mesa in conjunction with the construction of the 300<sup>th</sup> residential unit. Nevertheless, in advance of this 300<sup>th</sup> residential unit threshold, the project will, pursuant to Section 4.2 below, pay the Traffic Impact Fees, totaling \$384,900 prior to issuance of the 300<sup>th</sup> building permit.

2.6 Even though the Project is not within the City and would not be subject to the City fair share program, the City and NBR agree that the project will have significant, yet mitigatable impacts in Costa Mesa. In order to mitigate the potential traffic impacts of the Project within the City, the Parties have entered into this Agreement. This Agreement will provide for funding and phasing of the implementation of the Mitigation Measures and other improvements based on Project development phasing.

3.0 **Incorporation of Definitions and Recitals.** The foregoing Definitions and Recitals are incorporated into this Agreement.

4.0 **Traffic Mitigation Program.**

4.1 In order to address the impacts of the Project on the City, NBR agrees to fund the cost of the Mitigation Measures in the total amount of up to Four Million Three Hundred Eighty Thousand Four Hundred Eighty Three Dollars (\$4,388,483.00), depending on the level of residential development within the Project, as set forth in this Section (the "Traffic Mitigation Program").

4.2 NBR shall pay a traffic mitigation fee in the amount of One Thousand Two Hundred Eighty Three Dollars (\$1,283.00) per residential unit constructed within the project (the "Traffic Mitigation Fee"). The fee shall be paid prior to the issuance of a building permit for each unit.

4.3 In addition to the Traffic Mitigation Fee, NBR shall pay lump sum fees as certain milestones during the build-out of the Project (the "Milestone Fees") as follows:

- (a) Prior to Issuance of 301<sup>st</sup> residential building permit -- \$500,000
- (b) Prior to Issuance of 601<sup>st</sup> residential building permit -- \$500,000
- (c) Prior to Issuance of 901<sup>st</sup> residential building permit -- \$750,000
- (d) Prior to Issuance of 1,201<sup>st</sup> residential building permit -- \$875,000

4.4 Prior to applying for any residential building permit, NBR, or its successors and assigns pursuant to Section 9 below, shall submit a certified schedule to the City detailing the projected timing of the issuance of building permits by the City of Newport Beach and will remit the payment of the Traffic Mitigation Fees and Milestone Fees, then due, prior to the issuance of building permits. Prior to issuance of each applicable building permit by the City of Newport Beach, NBR shall obtain a certification from the City that all applicable fees under the Traffic Mitigation Program have been paid.

5.0 **Full and Complete Mitigation**

The City agrees that the payment of the Traffic Mitigation Fee and the Milestone Fees will result in full and complete mitigation of all of the Project traffic impacts within the City as identified in the DEIR. Notwithstanding the foregoing, the City agrees that new traffic impacts caused by modifications to the existing City Circulation Element or as a result of new projects requiring a General Plan amendment or new circulation improvements, shall not result in an increase in the mitigation provided for in this Agreement except as lawfully and reasonably required in connection with changes, modifications or amendments to the Project Approvals sought by Developer that significantly increase the traffic impact on the City and to mitigate traffic impacts of the Project which were not and reasonably could not, have been anticipated at the time the City entered into this Agreement.

5.1 The City further agrees and acknowledges that the Project will not create and DEIR does not identify any other adverse impacts on the City, environmental or otherwise.

6.0 **Non-Interference.** The City will not oppose the approval of the Project or initiate any litigation related to the Project Approvals, the Environmental Impact Report prepared in connection with the Project Approvals or any subsequent Project Approvals including but not limited to the issuance of Coastal Development Permits, use permits or building permits so long as they are consistent with the Project as described in Section 2.1 above.

7.0 **Changes to Projects.** The Parties recognize that the Project will be subject to various regulatory approvals that may result in changes in building types, development footprint, unit count, density, proposed uses and in other substantive ways, and that such changes will not change their respective obligations hereunder except to the extent that they result in increased traffic impacts in the City. The Parties agree to cooperate with one another in good faith should changes in the Project result in increased traffic impacts in the City and require modifications to the Traffic Mitigation Program in order to mitigate any increased traffic impacts. The parties agree that the approval of any such modifications to the Traffic Mitigation Program will not be unreasonably withheld.

8.0 **Permits.** NBR will obtain all appropriate permits and approvals necessary to proceed with the Projects.

8.1 NBR, or its agents or affiliates, are solely responsible for obtaining any Permits.

8.2 The City will not oppose, interfere with, or object to NBR's application for any permits.

9.0 **Default and Remedies.**

9.1 Notice And Opportunity To Cure. Before this Agreement may be terminated or action may be taken to obtain relief in a manner consistent with this Agreement, the Party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Section 9.1. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice ("**Default Notice**") to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Non-Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action to cure the default within twenty (20) days after the date of such Default Notice (for monetary defaults), within thirty (30) days after the date of such Default Notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following, then the Defaulting Party shall not be deemed in breach of this Agreement:

- (i) within twenty (20) days of the Default Notice, notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
- (ii) within twenty (20) days of the Default Notice, notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;
- (iii) promptly commences to cure the default within the thirty (30) day period;
- (iv) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (v) diligently prosecutes such cure to completion.

9.2 Remedies. In the event of a default, the Non-Defaulting Party, at its option, may institute an action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance (including injunctive relief), or pursue any other remedy otherwise available.

10.0 **Assignment.**

10.1 Right To Assign. NBR and its successors and assigns shall have the right to assign a portion or all of its rights under this Agreement to any person or entity that acquires an interest in said portion or all of the Property; provided that such person or entity assumes in writing all of the obligations of NBR under this Agreement applicable to the portion of the Property transferred and notifies City in writing of the same.

10.2 Assignee Subject To Terms Of Agreement. Following an assignment of this Agreement as provided in Section 9.1 above, the successor or assign shall be subject to the terms of this Agreement as it may apply to the portion of the Property transferred to the same extent as if the successor or assign were NBR. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

10.3 Release Upon Transfer. Upon an assignment as provided in Section 9.1 above, the NBR or a transferring successor shall be relieved of its legal duty to perform such future assigned obligations as may be applicable to the portion of the Property transferred, except to the extent NBR or a transferring successor is in default hereunder with respect to the particular assigned obligations prior to said transfer.

11.0 Attorneys' Fees. Each Party will bear its own attorneys' fees and costs incurred in connection with the negotiation, execution and implementation of its obligations under this Agreement. Should any lawsuit, action, or proceeding be brought to enforce, avoid, nullify, reform, rescind, or seek damages based on an alleged breach of this Agreement, or in any other way arising out of, related to or referencing this Agreement, then the prevailing party or parties in such a proceeding shall be entitled to be reimbursed by the other party or parties for all costs and expenses incurred as a result, whether or not ordinarily collectible, including but not limited to, reasonable attorneys' fees, expert witness fees and costs for the services rendered to such prevailing party or parties.

12.0 Entire Agreement. This Agreement embodies the entire understanding among the Parties and neither of the Parties shall be bound by any conditions, warranties, or representations other than as expressly stated in this Agreement.

13.0 Captions – Pronouns. Any titles, captions, or subheadings contained in this Agreement are for convenience only and shall not be deemed part of the context of this Agreement or considered in any interpretation or construction of this Agreement. Whenever the masculine, feminine or neuter genders are used herein, as required by the context or particular circumstance, they shall include each of the other genders as appropriate. Whenever the singular or plural numbers are used, they shall be deemed to be the other as required. Wherever the present or past tense is utilized in this Agreement and the context or circumstances require another interpretation, the present shall include the past and future, the future shall include the present, and the past shall include the present.

14.0 Consideration. The Parties hereby expressly acknowledge and agree that each and every term and condition of this Agreement is of the essence of this Agreement, constitutes a material part of the bargain for consideration without which this Agreement would not have been executed and is a material part of the Agreement.

15.0 Modifications. This Agreement may be amended or modified only in a writing executed by all of the Parties.

16.0 Counterparts. This Agreement shall be executed as two originals (one for each Party) and may be executed in several counterparts and all so executed shall constitute one

agreement which will be binding on all the Parties hereto notwithstanding that all of the Parties are not signatory to the same counterpart.

17.0 **Representations and Warranties.** Each Party represents and warrants to the other Parties as follows:

17.1 Such Party has received independent legal advice from attorneys of its choice with respect to the advisability of making this settlement and release and with respect to the advisability of executing this Agreement.

17.2 Except as is expressly stated in this Agreement, no Party has made any statement or representation to any other Party regarding any fact, which statement or representation is relied upon by such Party in entering into this Agreement. In connection with the execution of this Agreement or the making of the settlement and release provided for herein, such Party has not relied upon any statement, representation or promise of any other Party or their attorney not expressly contained herein.

17.3 The terms of this Agreement are contractual and are the result of negotiations among the Parties. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

17.4 This Agreement has been carefully read by such Party and the contents thereof are known and understood by such Party, and this Agreement is signed freely by such Party.

18.0 **Warranty of Authority.** Each person whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the Party on whose behalf his or her signature is affixed.

19.0 **Notices.** All notices shall be sent to the Parties at the following addresses:

To the City: City of Costa Mesa  
77 Fair Drive  
Post Office Box No. 1200  
Costa Mesa, California 92628-1200  
Attn: Peter Naghavi, Deputy Chief Executive  
Officer/Economic Development Director

With copy to: City of Costa Mesa  
77 Fair Drive  
Post Office Box No 1200  
Costa Mesa, California 92628-1200  
Attn: City Attorney

To Developer: Newport Banning Ranch LLC  
Attn: Michael A. Mohler  
1300 Quail Street, Suite 100

Newport Beach, CA 92660

With copy to: George L. Basye  
Aera Energy LLC  
3030 Saturn Street, Suite 101  
Brea, CA 92821

With copy to: Roger A. Grable  
Manatt, Phelps and Phillips LLP  
695 Town Center Drive, 14th Floor  
Cost Mesa, California 92626

20.0 **Effective Date.** This Agreement shall become effective upon the execution of this Agreement by both Parties.

21.0 **Severability.** In the event that any provision or any part of any provision of this Agreement shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force and effect; provided that no party would be deprived of a material consideration by operation of this section, the remaining provisions of this Agreement, will continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

22. **Applicable Law.** Any legal action pertaining to this Agreement and the obligations of the Parties shall be governed by the laws of the State of California. The parties agree that any legal action brought to enforce the provisions of this Agreement or otherwise, is subject to the jurisdiction of the Orange County Superior Court.

23. **Amendments and Waivers.** Any modification to this Agreement shall be in writing signed by both parties. Further, any waiver by either party of any obligation of the other party shall not limit a party's right to seek recourse for future violations of the other party.

24. **Statutory Inapplicability.** Developer acknowledges and agrees that Government Code Section 65864 et. seq. and Government Code Section 66000 et. seq. is not applicable to this Agreement.

*(Signature blocks begin on following page)*

Dated: \_\_\_\_\_, 2012

“NBR”

Newport Banning Ranch LLC, a California limited liability company

By: \_\_\_\_\_

Name: George L. Basye

Title: Manager

“City”

City of Costa Mesa

By: \_\_\_\_\_

Mayor

Attest:

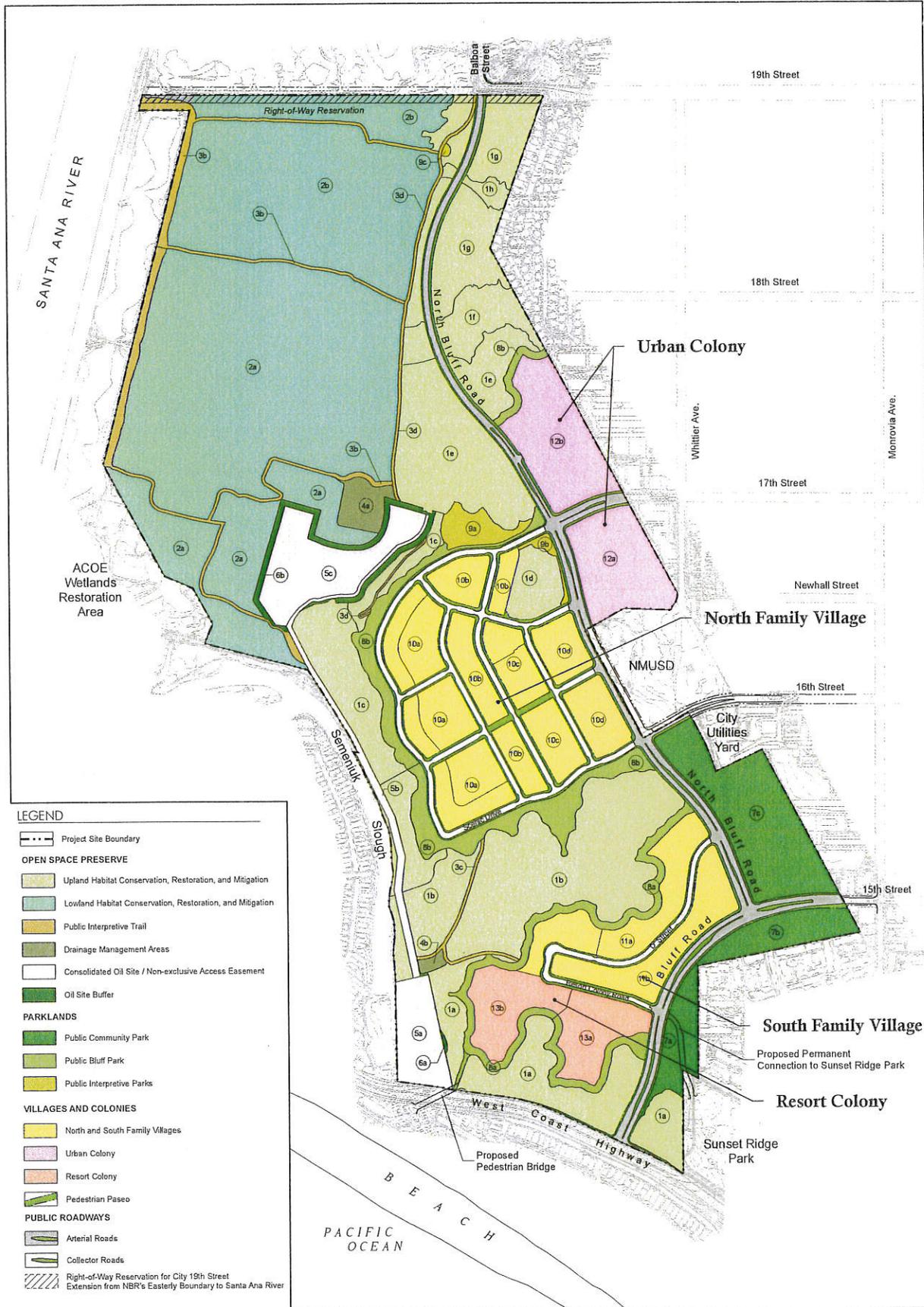
By: \_\_\_\_\_

City Clerk

Approved as to Form:

By: \_\_\_\_\_

City Attorney



**JOINT CITY COUNCIL, PLANNING COMMISSION AND PARKS & RECREATION  
COMMISSION MEETING ON BANNING RANCH**

**OCTOBER 20, 2011**

*Councilmember Eric Bever:*

*1. Does the Banning Ranch project consider all impacts on the City's General Plan?*

The Banning Ranch Draft Environmental Impact Report (DEIR) includes analysis of various traffic conditions. The analysis for the year 2016 conditions includes consideration of all projects approved by the City of Costa Mesa to date. The General Plan conditions assume the full buildout of General Plan and include land use as well as circulation improvements. The project analysis did not assume any improvements to the SR-55 Freeway.

*2. Will the cost for traffic mitigations be paid for by the project?*

At this point, there is no final agreement regarding the payment or implementation of traffic mitigations. The developers have indicated that they would work with the City in the implementation of the mitigation measures identified for the project.

*3. Can the Bluff Road be jogged so that it is not a through street from Coast highway to 19<sup>th</sup> Street?*

The Bluff Road, according to Orange County Transportation Authority's (OCTA) Master Plan of Arterial Highways (MPAH), extends from Victoria Street to Pacific Coast Highway in generally a straight north-south alignment. However, the Banning Ranch project is proposing a modification to this alignment. Between 19<sup>th</sup> Street and 15<sup>th</sup> Street, Bluff Road is proposed to be constructed in a north-south alignment. At 15<sup>th</sup> Street, a T-intersection is proposed and the Bluff Road alignment changed to east-west and then curved in the southwesterly direction to connect to West Coast Highway.

*4. The project should be more reflective of the densities that are being proposed on the Costa Mesa's westside. 40 units per acre appears to be too high.*

The density of the Urban Colony proposed as part of Banning Ranch project is approximately 40 units per acre, considering 730 units in 18.3 net acres. This part of the development is at the eastern boundary of the project on both sides of 17<sup>th</sup> Street.

Westside Costa Mesa primarily consists of industrially-zoned properties. With regard to select areas of residential development, Westside Costa Mesa is generally characterized by a mix of different residential densities, including low density residential development (about 7 dwelling units per acre), medium density residential (12 to 15 dwelling units per acre) and high density residential (20 dwelling units per acre). Immediately adjacent to the Banning Ranch property, between W. 18<sup>th</sup> and W. 19<sup>th</sup> Streets in the City's corporate limits, there are single-family homes

(R1 zone: single-family residential district) and the Seabreeze Residential Community (Planned Development Residential-High Density zone).

The 2000 Costa Mesa General Plan does not allow residential development at densities greater than 20 dwelling units per acre in the Westside without a General Plan amendment or rezone, as applicable. The mixed-use overlay zones in this area may allow residential development at densities of 13 dwelling units per acre for a purely residential project or densities greater than 20 units per acre for live/work development. A mixed-use project in the overlay zone could potentially feature high density live/work projects in the 20 to 30 unit per acre range.

***Councilmember Stephen Mensinger***

*1. What is the total cost of traffic mitigation in Costa Mesa?*

The total cost of traffic mitigation is projected to be several million dollars. The project's responsibility including contribution to the traffic impact fee program is projected to be approximately \$8 to \$10 million. This is based on a very preliminary review of traffic mitigations proposed for the project.

*2. Over what time frame would the traffic mitigations occur and at what point in the life cycle of the project*

The implementation of all the mitigations is required before the buildout of the project. The project is proposed to be completed in phases between 2016 and 2024. A phased implementation plan of mitigations that corresponds with actual project phasing will need to be developed.

*3. Provide additional information to gain a better understanding about the project's open space.*

According to the proposed plan, approximately 51 gross acres (42 net acres after accounting for public right-of-way) of land will be open space. Of this, approximately 16 acres are dedicated for active park space including athletic fields. The remaining 35 acres comprise of passive parks, interpretative trails, and other open space. According to the DEIR, the 16 acres of active park uses, between 15<sup>th</sup> and 16<sup>th</sup> Streets, is proposed to include 6 lighted tennis courts, 1 basketball court, 3 lighted soccer fields, 1 youth baseball field and 1 adult softball field overlaid on soccer fields, tot lots, picnic areas and restrooms. The fields and courts are proposed to be lit till 10:00 p.m.

*4. How will the project interact with Talbert and the county island issue? How will that be resolved?*

The DEIR does not address the Talbert Nature Preserve and County island issue.

*5. What are the impacts from the project to the 55 corridor? Is this going to have a huge impact on Newport Blvd. and the improvements the City just made?*

The project adds significant traffic to SR-55 Freeway. According to the traffic study in the DEIR, approximately 40 percent of Banning Ranch's project traffic would use Newport Boulevard and the SR-55 Freeway. This translates to approximately 6,000 vehicles per day. The DEIR identified impacts at all major intersections on Newport Boulevard between 19<sup>th</sup> Street and 17<sup>th</sup> Street. The project utilizes some of the increased capacity provided in the northbound direction with the recently completed improvement project. The project mitigations require improvements in the southbound direction of Newport Boulevard between 19<sup>th</sup> Street and 17<sup>th</sup> Street.

6. *How does the project mitigate the additional trips coming in and out of the city?*

Mitigation measures were identified at seven intersections within the City of Costa Mesa. In addition, with the project buildout, the City of Costa Mesa may need to implement General Plan Circulation Element improvements such as widening of 17<sup>th</sup> and 19<sup>th</sup> Streets.

7. *How will this project impact the flow to the eastside?*

Eastside Costa Mesa is not expected to be impacted with the project due to the project location as well as potential project distribution.

8. *How will this impact the flow to Newport Beach?*

The project impacts to Newport Boulevard are discussed in earlier paragraph.

**Mayor Gary Monahan**

1. *Taking into consideration the 55 freeway extension study that OCTA and the City is looking at, would the impacts increase or decrease if the Banning Ranch project were to go through?*

The SR-55 Access Study is analyzing long-term solutions for SR-55 Freeway/Newport Boulevard to address future traffic growth based on buildout of General Plan land uses in Costa Mesa, Newport Beach and other jurisdictions. The proposed Newport Banning Ranch development is within the buildout assumptions in the Newport Beach General Plan. The DEIR identified improvements in the Newport Boulevard corridor with the proposed Banning Ranch development. Even with the proposed improvements, the DEIR shows that several intersections would be operating at unacceptable levels requiring consideration of other alternatives as identified in the SR-55 Access Study.

2. *On Bluff Road, could it stop at 17<sup>th</sup> Street?*

The DEIR includes a Bluff Road Alternative that assumes Bluff Road will terminate just north of 17<sup>th</sup> Street. This alternative results in one less impact at Monrovia Avenue – 19<sup>th</sup> Street intersection.

3. *Can we get a picture of what the increase in pressure on 17<sup>th</sup> street would be? Would the 35 percent jump up if we stopped it from going to 19<sup>th</sup>?*

Additional traffic is forecasted on 17<sup>th</sup> Street as a result of this Bluff Road Alternative. The expected traffic on 17<sup>th</sup> Street would increase by about 5 percent or 750 vehicles per day as a result of this Bluff Road Alternative. The need for widening 17<sup>th</sup> Street to General Plan standards may increase with this Alternative.

***Mayor Pro Tem Jim Righeimer***

1. *Would there be any kind of cut though traffic through the Eastside? Does anything get drawn through Eastside?*

Eastside Costa Mesa is not expected to be impacted with the development of Banning Ranch due to the project location as well as its potential traffic distribution.

2. *How is the open space maintenance going to be funded? How is that going to work over - forever? How do you pick someone to do that? What's the process to go through to have someone who's in charge of doing that?*

The DEIR does not provide details on the future maintenance responsibilities, and funding of the proposed open space. The details will need to be provided by the developer.

3. *Regarding the large green space on the eastern side, are there plans for ball fields, play fields, or some kind of facilities the kids in Costa Mesa would be able to use? If so, how will the cost of those improvements funded?*

As mentioned in an earlier response, the project includes development of an active park between 15<sup>th</sup> and 16<sup>th</sup> Streets. The proposed facilities include 6 lighted tennis courts, 1 basketball court, 3 lighted soccer fields, 1 youth baseball field and 1 adult softball field overlaid on soccer fields, tot lots, picnic areas and restrooms. The fields and courts are proposed to be lit till 10:00 p.m. The DEIR does not provide specific details on the use of these facilities by Costa Mesa residents.



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

November 8, 2011

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

**SUBJECT: DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR NEWPORT BANNING RANCH**

Dear Mr. Alford:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) prepared for the Newport Banning Ranch Master Plan. Please consider the following comments:

## TRANSPORTATION

General comments:

- The report does not have graphics showing traffic volumes at intersections and Average Daily Traffic (ADT) on roadway segments. The City requests that these be provided in order to conduct a complete review of the results of various land use and circulation scenarios.
- At several occasions, the intersections at Newport Boulevard Frontage Road at Victoria and 22<sup>nd</sup> Street are referred to as State intersections. These intersections are in City of Costa Mesa jurisdiction and control.

Page 4.9-3: In the discussion of Master Plan of Arterial Highways (MPAH), the report incorrectly states that the Orange County Transportation Authority's (OCTA) MPAH defines "Orange County freeway, toll road and arterial circulation system." The MPAH map is limited to arterial highways only and the freeways and toll roads are included for information purposes only and reflect existing conditions. This is based on discussions with OCTA staff and also per the OCTA MPAH map itself, which mentions that the information on freeways, toll roads are provided for reference only.

Page 4.9-20: Standard condition SC 4.9-3 requires review and approval of the City of Newport Beach Traffic Engineer for issuance of a Haul Route permit. The report should include a condition requiring the approval of City of Costa Mesa Transportation Services Manager for use of any routes within the City of Costa Mesa jurisdiction for construction access.

Page 4.9-75: There are several incorrect statements in the discussion of SR-55 Freeway Extension. The report mentions that "The City of Costa Mesa Circulation Element depicts the extension of SR-55 as a freeway between 19<sup>th</sup> Street and Industrial Way. The Orange County

MPAH depicts the freeway portion of SR-55 ending at its current terminus at 19<sup>th</sup> Street in Costa Mesa." As mentioned in comment earlier, the OCTA MPAH is limited to arterials only. The SR-55 Freeway is under the jurisdiction of the State of California Department of Transportation (Caltrans). Caltrans has an adopted Route Concept Report (RCR) for SR-55 Freeway that shows the extension of SR-55 Freeway south to Industrial Way. There is no mention of Caltrans RCR in the discussion. As part of the proposed MPAH amendment study for the Banning Ranch project, the City requested that model run and analysis of project with SR-55 Freeway as currently proposed also be included.

Pages 4.9-81 and 4.9-82: The buildout analysis seems to yield significantly lower Intersection Capacity Utilization (ICU) values compared to 2016 conditions. The City requests that the future traffic volume projections at all intersections be provided for review.

Page 4.9-93: MM 4.9-2, Costa Mesa Mitigations – The City of Newport Beach should condition that the applicant mitigate the project impacts in Costa Mesa based on terms and conditions as agreed to by the applicant and the City of Costa Mesa.

Page 4.9-95: Newport Boulevard – 19<sup>th</sup> Street Intersection: The recent widening of Newport Boulevard at this location constructed a retaining wall along the west side. The primary access road to parking garage serving the large office building at 1901 Newport Boulevard is located immediately adjacent to this retaining wall. This access roadway will be impacted with any widening.

Newport Boulevard – 17<sup>th</sup> Street Intersection: The proposed mitigation at this location will require undergrounding the existing open channel along southbound Newport Boulevard south of 17<sup>th</sup> Street to accommodate the fourth through lane. This requires construction of a concrete box structure in the widened area south of 17<sup>th</sup> Street.

Page 4.9-96: Superior Avenue – 17<sup>th</sup> Street: The note incorrectly states that the improvement is limited to signal operation modifications. The project also includes a westbound right-turn lane, which will require right-of-way from the adjacent parcel. The improvement will also affect drive thru operations of fast food restaurant, which will need to be addressed.

Page 4.9-116: Table 4.9-34 shows projected increase in traffic due to project traffic. The project trip distribution exhibit stated that approximately 35% of project traffic uses 17<sup>th</sup> Street. Considering the project trip generation of approximately 15,000 vehicles per day, this translates to over 5,200 vehicles per day. However, the Table 4.9-34 shows only an increase of 3,912 vehicles. There should be an exhibit that shows clearly the level of redistribution of background traffic with the construction of Bluff Road. Even with the forecast as provided, the volume-to-capacity ratio is over 0.90 for 17<sup>th</sup> Street as well as 19<sup>th</sup> Street, resulting in a need for increased capacity on segments west of Placentia Avenue. The need for this widening and timing should be addressed in the DEIR.

Page 7-81: The traffic analysis should include graphics showing traffic volumes at intersections for all scenarios. In addition, graphics showing Average Daily Traffic (ADT) volumes for all scenarios should be included.

## LAND USE

### *Section 4.1.7- Environmental Impacts, Page 4.1-31*

The first paragraph refers that no development or grading is proposed for the open space between North Bluff Road and existing California Seabreeze residential community in Costa Mesa.

This area is within the project perimeter where abandoned oil wells exist. Given the significance of the Banning Ranch development and proximity of North Bluff Road to these residences, the City recommends that new grading and landscaping is installed in the area where the existing dirt berm is located. It is important that landscape restoration take into consideration any comments from the Seabreeze community and City of Costa Mesa staff. It is also suggested that any improvements be included with the initial phases of the project development so that these Costa Mesa residents could potentially benefit directly from the revitalized open space area to the fullest extent possible

Exhibit 3-9

The street cross section is only depicting the street and not the adjacent slope. It would be helpful to have additional information on the view impacts for the northern segment of Bluff Road adjacent to the Seabreeze community.

## **AESTHETICS**

The City recommends that this section address interim aesthetic impacts to Costa Mesa communities. To minimize construction impacts to the Seabreeze community, stock piles, construction staging and material storage shall be located away from the residential properties of Seabreeze and Parkview Circle. It would be important to offer a 24-hour hotline for residents to call with any concerns during construction.

## **NOISE**

*Section 4.12.1 (Page 4.12-8)*

The City recommends that the construction hours for the development be consistent with the City's regulations: Permitted Hours of Construction for City of Costa Mesa are from 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday; no construction is permitted on Sunday or federal holidays.

## **RECREATION AND TRAILS**

*Section 4.8.5 Community Parks (Page 4.8-10)*

The DEIR refers to North and South Community Parks with various amenities. The California Coastal Act notes that "lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." If there are any visitor fees or parking costs associated with proposed public recreational facilities and community parks, the City recommends that Costa Mesa residents be offered a discounted rate.

Sincerely,

  
KHANH NGUYEN  
Interim Development Services Director

cc: Chief Executive Officer  
Interim Assistant CEO  
City Attorney  
Interim Public Services Director  
Transportation Svs. Manager



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

November 8, 2011

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

**SUBJECT: PUBLIC COMMENTS - DRAFT ENVIRONMENTAL IMPACT REPORT  
(DEIR) FOR NEWPORT BANNING RANCH**

Dear Mr. Alford:

As you are aware, the City of Costa Mesa held a study session related to the Newport Banning Ranch DEIR on October 20<sup>th</sup>, 2011. Public comments received during the study session are attached for your information.

The questions and answers are also posted on the City of Costa Mesa's website and can be accessed by the following link:

<http://www.costamesaca.gov/docs/planning/2011-10-20-Special-Joint-Meeting-public-questions-and-answers.pdf>

Sincerely,



KHANH NGUYEN  
Acting Development Services Director

cc: Chief Executive Officer  
Interim Assistant CEO  
City Attorney  
Public Services Director  
Transportation Svs. Manager

**Special Joint Meeting regarding Banning Ranch  
Thursday, October 20, 2011**

**Question from the Members of the Public who did not speak:**

<p>Michelle Simpson, Costa Mesa <a href="mailto:michelle_simpson@TJX.com">michelle_simpson@TJX.com</a></p>	<p>I bought my home less than 3 years ago. Why was I not told of the plan to widen the street and take my home at worst or put a traffic signal on my corner?</p> <p>When will we know what the verdict will be on the 19<sup>th</sup> Street/Bluff Road to 19<sup>th</sup> Street? Will it be decided upon soon?</p>
<p>Bonnie Copeland, Costa Mesa <a href="mailto:Bonmail@pacbell.net">Bonmail@pacbell.net</a></p>	<p>What is the <u>Final Cost</u> to <u>taxpayers</u> in 2011 \$\$'s of ALL land acquisition, demolishing, road-building, resurfacing that will be the result of the Banning Ranch development AND the subsequent implementation of the O.C. Master Plan including resurfacing with sound-deadening asphalt, 19<sup>th</sup> Street to PCH, widening of 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup> and other streets <u>regardless</u> of whether paid through federal, county, city, state or other funding sources fueled by taxes?</p> <p>How many of the following: Homes, Businesses, Apartments, will be the <u>FINAL</u> Plan, including implementation of the county master roadway plan, require taking through eminent domain or other means?</p> <p>Will Costa Mesa make the relocation of <u>ALL</u> displaced Costa Mesa residents into the Banning Ranch Development at Newport Beach's expense a part of the deal?</p>
<p>Sandie Frankiewicz, Costa Mesa <a href="mailto:Sandie.frankiewicz@gmail.com">Sandie.frankiewicz@gmail.com</a></p>	<p>What will happen to our home and us when we are out of a home, (which) will be demolished in order to widen 19<sup>th</sup> Street to a four lane raceway?</p> <p>Have you factored in the road maintenance once all this traffic of thousands of cars gain access to Costa Mesa? Answer: Our broke city will pay! We can't afford not to pay attention, let alone take on the cost of road work/maintenance.</p>

<p>Gerry Grotenhuis, Costa Mesa</p>	<p>They speak of oil clean-ups if it is a favor to us. Why can't we require the companies that create the problem to clean it up without trading away our streets?</p> <p>What is going to be done to handle sewage? Huntington Beach allowed huge developments while their sewage plants were thousands of gallons a day short of capacity (illegible word). I see a lot of toilets planned here.</p> <p>Comment: Not only does this dump a huge bunch of traffic onto Costa Mesa streets, while giving us nothing, but it coincidentally goes through the poorest neighborhood in the city. This raises some clear questions of social equality.</p> <p>They allude to "Revitalizing" the West-side. I live on the west-side because I like it. We, the residents, are revitalizing the area the way we want to.</p> <p>There is a small gated community at the end of 18<sup>th</sup> Street. Go there some morning to get Banning Ranch in microcosm. A stream of BMW's and Mercedes accelerating to the maximum speed (unreadable word) able to still stop at each stop sign. Do it and report back to me.</p>
<p>Terry Koken, Costa Mesa <a href="mailto:Tkoken@att.net">Tkoken@att.net</a></p>	<p>The 1375 home/condos proposed: How much will they cost the prospective owners to buy?</p> <p>What is the "green edge" exactly?</p>
<p>Steve Lang, Costa Mesa</p>	<p>Please address cut through traffic volumes.</p> <p>In regards to the percentage of open land: How much is water? In acres please. If you've been there it is a large amount! I am worried the open land is minimal.</p> <p>We have a great neighborhood coming about in the freedom homes. Many young families and kids. Please help your residents preserve it. We're not all bums and illegals!!</p> <p>P.S. Who cares about soccer fields.</p>

<p>Casey Evans-Lang, Costa Mesa  <u>Evans_c@auhsd.us</u></p>	<p>How much of Banning Ranch is comprised of water? Would that water stay? Is that water considered as part of the <u>Open Space</u>?</p> <p>Who pays for all the mitigation costs for the traffic, infrastructure, signals, and up keep of?</p> <p>Why are we helping Newport Beach with all their traffic needs to support <u>their</u> development?</p> <p>All those homes (1375) and residents of would be the users of the proposed parks and ball fields – how would Costa Mesa residents be guaranteed use of such fields? Sounds like bait and switch!</p> <p>Only supporters of seem to be business owners? Statistics?</p>
<p>Sue Chambers, Costa Mesa  <u>schambers@ca.rr.com</u></p>	<p>What schools would Banning Ranch residents to go in the Newport/Costa Mesa school system? Example – could (illegible word) school improve?</p> <p>I live on the corner of 19<sup>th</sup> and Parkcrest (house backs onto 19<sup>th</sup>). How will noise from traffic be controlled?</p> <p>Also will the project and additional traffic affect my property value?</p> <p>What will the New housing project price points be? What's the range?</p> <p>P.S. I think the project sounds great!</p>
<p>Deborah Koken, Costa Mesa  <u>dkoken@hmausa.com</u></p>	<p>Is it legitimate for the developer to claim credit for preserving ¾ of Banning Ranch as open space, when in fact most of this is the wetlands and environmentally sensitive habitat areas which they are legally required to maintain as open space?</p> <p>These areas will remain undeveloped no matter what happens to the rest of the property, so the developer can't claim it as a gift to the public.</p>
<p>Richard Robertson, Costa Mesa  <u>trobert@uci.edu</u></p>	<p>What is the value to Costa Mesa of the Banning Ranch development?</p>

<p>Terry Powell, Costa Mesa  <a href="mailto:terrydavitt@gmail.com">terrydavitt@gmail.com</a></p>	<p>I have heard that there are plans for Westside Costa Mesa to “improve”, “revitalize the area”, “boost the economy.” I hear that increased traffic on our roads (19<sup>th</sup>, 17<sup>th</sup>, etc) will help achieve this goal.</p> <p>What exactly is going to happen?  What do these terms mean? Building? Bulldozing? Be specific please.</p>
<p>Michael Grofick, Costa Mesa  <a href="mailto:Michael@michaelsg.com">Michael@michaelsg.com</a></p>	<p>What is Eminent Domain?</p> <p>Traffic impact to 17<sup>th</sup> and 19<sup>th</sup> Street Costa Mesa?</p> <p>How will Costa Mesa acquire the property on 17<sup>th</sup> Street and 19<sup>th</sup> Street to provide roads for Banning Ranch?</p>



District Mission:  
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our Community's  
Water Needs

November 2, 2011

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

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WILES & GIANNONE**  
Legal Counsel

Subject: Summarized Response Letter for the Draft Environmental Impact Report (EIR)  
(State Clearinghouse No. 2009031061) for the proposed Newport Banning  
Ranch Project

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed the Draft Environmental Impact Report for the proposed Newport Banning Ranch project (SCH# 2009031061). We thank you for the opportunity to review the Draft EIR and appreciate your consideration of our comments as they relate to the proposed water supply for the project. We offer the following comments at this time and look forward to your response:

**Project Description:**

We understand that the proposed project site consists of approximately 401 acres of land. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, and approximately 361 acres are in unincorporated Orange County within the City's Sphere of Influence. The entire site is within the Coastal Zone, as established by the California Coastal Act.

As proposed, the project would involve the development of the approximately 401-acre site with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) would be retained in permanent open space. The project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned/re-abandoned, remediated for development, and/or remediated and restored as natural open space.

As stated in the Draft EIR (see page 4.15-9), water service in the City of Newport Beach (City) is provided by three purveyors: the City, the Irvine Ranch Water District, and Mesa Water. The project site historically received water service from Mesa Water. The project site is located near the water service areas of the City and Mesa Water. Water supply and service for the Newport Banning Ranch project is proposed to be provided by the City (i.e., a LAFCO service reorganization will be required), which relies greatly on imported water.



Mr. Patrick J. Alford, Planning Manager  
October 31, 2011  
Page 2 of 3

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**General Comments:**

The following comments are provided based on our review of the information provided in the Draft EIR regarding the proposed water supply for the project and the associated environmental impacts with the use of imported water as currently proposed. The Draft EIR's analysis is currently inadequate as it does not consider a feasible alternative or mitigation measure (in fact completely ignores) in the form of the provision of water to the project through Mesa Water, which can provide the water supply to the project through 100% local water sources. The provision of local water to the proposed project via Mesa Water, as opposed to through imported water sources via the City as is proposed under the project, would reduce significant environmental impacts associated with the proposed project. Substantial revisions and recirculation of the Draft EIR is required to correct these deficiencies.

Use of imported water by the proposed project would create an unnecessary consumption of energy (see CEQA Guidelines Appendix F), which exacerbates the state and region's air quality emissions and production of greenhouse gas emissions, which in turn exacerbates global warming and associated environmental impacts. Additionally, provision of imported water would also continue to contribute to the general degradation of the Bay Delta area, in which southern California relies on imported water through the State Water Project.

**Conclusion:**

In conclusion, the Draft EIR is deficient in that it does not include in its analysis, the potential reduction of energy and other corresponding impact reductions associated with annexation into the Mesa Water for water service, which can serve the project with 100% groundwater resources. Use of local water supplies would: 1) reduce energy demand/consumption of the project (reference CEQA Guidelines Appendix F); 2) the reduced energy consumption would reduce state and region-wide air quality and greenhouse gas emissions; 3) reduction in GHG would reduce potential impacts associated with global warming; and, 4) local water supplies would reduce impacts to the Bay Delta associated with the use of imported water through the State Water Project. Recirculation of the Draft EIR is required in order to provide a thorough analysis of these issues as it relates to the provision of water to the project. This is clearly stated in CEQA Guideline 15088.5(a) which states:

*"A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification."*

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Mr. Patrick J. Alford, Planning Manager  
October 31, 2011  
Page 3 of 3

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Pursuant to CEQA Guideline 15088.5(a)(3), significant new information includes:

***"A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt it.."***

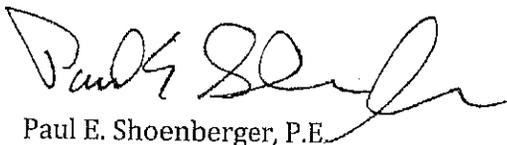
In order to reduce the Project's cumulatively considerable contribution to the global GHG inventory, and its significant and unavoidable GHG emissions impact, the following feasible mitigation should be included in the EIR (Section 4.11.8 Mitigation Program):

**MM 4.11.6** To reduce energy consumption and related greenhouse emissions, the City shall assure that domestic water service to the Project is provided to the greatest extent feasible from locally-produced groundwater sources rather than imported water supplies.

Mesa Water encourages you to consider inclusion in the EIR analysis Costa Mesa Sanitary District's annexation to the project area. Costa Mesa Sanitary District promotes zero waste strategies to comply with SB 1016 and innovative wastewater technologies and solutions to protect the environment.

We thank you for the consideration of our comments and look forward to review of the Recirculated Draft EIR addressing these issues.

Sincerely,



Paul E. Shoenberger, P.E.  
General Manager

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