

Alford, Patrick

From: Patricia Barnes [mezzohiker@msn.com]
Sent: Monday, November 07, 2011 10:10 PM
To: Alford, Patrick
Subject: Newport Banning Ranch DEIR Comments to be Included in the Official Record

City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663
Attention: Patrick Alford

RE: Newport Banning Ranch DEIR

Dear Mr. Alford,

Thank you for the opportunity to comment on the Newport Banning Ranch Draft Environmental Impact Report (DEIR). Please include the following comments into the official record.

CEQA Guideline Section 15121(a) states that (an) "EIR is an informational document which will inform the public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency." In light of this section of the CEQA guideline, it is readily apparent that the Newport Banning Ranch DEIR has not met the conditions of adequately informing public agency decision-makers and the public of the Coastal Commission's discoveries regarding ESHA as specified in the Coastal Commission Consent Cease and Desist Order CCC-11-RO-02 and the Coastal Commission Consent Restoration Order CCC-11-RO-02. There exists a significant amount of data from these Orders that is not included in the DEIR, including ESHA existing in what is described as the NW and SE polygons. CEQA Guideline 15121(a) also stipulates the inclusion of information and data regarding ESHA contained in the 1) Planned Community Development Plan for Banning Ranch and Technical Appendices; 2) Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 and attachments; 3) Orange County Transportation Authority (OCTA) Measure M Environmental Oversight Committee (EOC) reports; and 4) information contained within the City's own Letter dated 4/15/09, originating from the Newport Beach City Council in support of the application for Measure M funds to be used towards the purchase of the entire Banning Ranch (information that was included in determining Newport Banning Ranch's compliance with CEQA) and 5) information within the City's General Plan.

ESHA protection provisions are also contained within the City of Newport Beach's Coastal Land Use Plan. Section 4.1.1. within the Coastal Land Use Plan (CLUP) asserts the following policies regarding Environmentally Sensitive Habitat (ESHA):

Policies 4.1.1-1. Define any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:

A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.

B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society....."

According to the City's CLUP Policies ESHA is entitled to such protections as:

"4.1.1-4. Protect ESHAs against any significant disruption of habitat values.

4.1.1-6. Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.

4.1.1-7. Limit uses within ESHAs to only those uses that are dependent on such resources.

4.1.1-9. Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation."

The City of Newport Beach's CLUP also states:

"Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or edge habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species that is designated threatened under the Federal Endangered Species Act."

Another species which depends extensively on CSS is the California Coastal Cactus Wren, a native species that is a California Species of Special Concern. Significant populations of these birds have been found existing on the Banning Ranch project site. The preservation of CSS in coastal salt marsh areas such as that on the Banning Ranch site is especially significant in that large numbers of Cactus Wren were displaced from other areas within Orange County because of the loss of habitat resulting from wildfires that recently occurred in those areas.

It is therefore clear that the Newport Banning Ranch DEIR is also in violation of the City of Newport Beach's own Coastal Land Use Plan in it's omission of a significant amount of data pertaining to Environmentally Sensitive Habitat and species such as the California gnatcatcher and the Coastal Cactus Wren, both of which are known to exist within and depend upon habitat found on the Banning Ranch project site.

I respectfully request that the Newport Banning Ranch DEIR be extensively revised to conform to the CEQA guidelines cited above as well as to the policies asserted in the City's own Coastal Land Use Plan.

Thank you.

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