

**CALIFORNIA COASTAL COMMISSION**

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Staff: A. Willis-LB  
Staff Report: February 27, 2015  
Hearing Date: March 12, 2015

## **STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR ISSUANCE OF SETTLEMENT AGREEMENT AND SETTLEMENT CEASE AND DESIST AND SETTLEMENT RESTORATION ORDERS**

**Settlement Cease and Desist Order No.:** CCC-15-CD-01

**Settlement Restoration Order No.:** CCC-15-RO-01

**Related Violation File:** V-5-11-005

**Location of Properties:** Properties collectively known as Banning Ranch, located adjacent to the 5100 block of West Coast Highway, unincorporated Orange County, Orange County Assessor's Parcel Numbers 114-170-24, 114-170-43, 114-170-49, 114-170-50, 114-170-52, 114-170-72, 114-170-75, 114-170-77, 114-170-79, 114-170-80, 114-170-83, and 424-041-04.

**Owners of the Properties:** Aera Energy LLC and Cherokee Newport Beach, LLC

**Description of Alleged Violations:** Unpermitted development and development in non-compliance the terms of a previously-issued permit, in the form of: drilling and operation of new wells; removal of major vegetation; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of any dredged material or any liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land.

**Persons Subject to these Orders:**

1. Newport Banning Ranch LLC (“NBR”)<sup>1</sup>
2. Aera Energy LLC
3. Cherokee Newport Beach, LLC

**Substantive File Documents:**

1. Public documents in the Cease and Desist and Restoration Order files No. CCC-15-CD-01 and CCC-15-RO-01 including the records associated with Resolution of Exemption E-7-27-73-144.
2. Exhibits 1 through 11 and Appendix A of this staff report.

**CEQA Status:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

## **SUMMARY OF STAFF RECOMMENDATION**

The settlement agreement described herein is a result of the efforts of the parties to this settlement agreement to work diligently to find an amicable solution to address and resolve the various issues at the site. Staff appreciates the efforts of NBR to reach this agreement and recommends that the Commission approve of the proposed settlement agreement described in more detail herein.

This matter concerns property in unincorporated Orange County, adjacent to the City of Newport Beach, known as Banning Ranch. Banning Ranch (hereinafter referred to as the “Properties”)(**Exhibit 1**) was used as an oil field for many years prior to the 1970s. After the passage of Proposition 20, the predecessor to the Coastal Act, in 1972, the Banning Ranch oil field operators applied to the predecessor to the Coastal Commission for the applicable area – the South Coast Regional Coastal Zone Conservation Commission (“Regional Commission”) – for an exemption from the new permit requirements of Proposition 20, based on the claim that they had obtained a vested right to continue their operations. The Regional Commission agreed that the operators had obtained a vested right to conduct certain activities, and in 1973, it memorialized that determination via adoption of Resolution of Exemption No. E-7-27-73-144 (the “Resolution”)(**Exhibit 2**). The issues regarding the history of this site and the Commission actions taken are more fully discussed in section V of this report, *infra*.

The activities at the heart of this disagreement involve development located in and adjacent to wetlands and environmentally sensitive habitat areas that Staff believes is both inconsistent with a previously issued coastal development permit (“CDP”) and beyond the scope of the Resolution, and which was undertaken without a CDP. The specific activities that are the subject of these

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<sup>1</sup> Newport Banning Ranch, LLC, manages planning and entitlement of the “Banning Ranch” surface rights for the property owners, Cherokee Newport Beach, LLC and Aera Energy, LLC. Hereinafter, all references to Newport Banning Ranch, LLC, (or “NBR”) are to Newport Banning Ranch, LLC, Cherokee Newport Beach, LLC, and Aera Energy, LLC, jointly, unless specific reference is made to an individual entity.

proceedings include drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land (hereinafter referred to collectively as “Subject Activities”) (**Exhibit 3**).

There are a number of entities involved in the Properties. The surface of the Properties is owned by Aera Energy LLC and Cherokee Newport Beach, LLC. According to documents provided to staff by Newport Banning Ranch, LLC, Aera Energy LLC purchased their 50% share of the Properties in 1997 and Cherokee Newport Beach, LLC purchased their half in 2005. Newport Banning Ranch, LLC manages planning and entitlement of the Banning Ranch surface rights for Cherokee Newport Beach, LLC and Aera Energy LLC and asserts that it holds the right to seek entitlements for development of the Properties. The ongoing oil operations on the Properties have been conducted by West Newport Oil Company (“WNOC”), the operator of the oil field, on behalf of various mineral rights owners since 1983. Horizontal Development LLC is the current owner of the mineral rights, which it acquired in 1999.

Over the last few years, disagreements arose between Coastal Commission staff (“Staff”) and NBR regarding the interpretation of the scope and application of the Resolution.<sup>2</sup> The proposed Settlement Agreement provides a mutually-agreeable resolution of that dispute and clarifies obligations for activities at the site going forward, without requiring either party to concede its position<sup>3</sup>. By entering into Settlement Agreement and Settlement Cease and Desist Order No. CCC-15-CD-01 and Settlement Restoration Order No. CCC-15-RO-01, which are attached to this staff report as Appendix A (hereinafter collectively referred to as the “Settlement Agreement”), NBR, although not admitting to any wrongdoing or liability under the Coastal Act, has agreed to remove allegedly unpermitted oil wells; restore many acres affected by the disputed activities and restore additional acres as mitigation; deed restrict 24.6-acres of the Properties for open space and restoration; and limit its future activities, including vegetation removal on the site, insofar as NBR is involved in mowing of the Properties, unless it obtains a permit for additional activities.

This Settlement Agreement is a result of a collaborative effort of NBR and Commission staff to reach a consensual resolution focused on the restoration and protection of coastal resources. Under the proposed Settlement Agreement, NBR will restore, create, and/or enhance native habitat on 18.45 acres of the Properties (See Figure 2 of **Exhibit 9**). In addition to the active restoration that NBR will undertake, pursuant to this Settlement Agreement NBR also agrees not to engage in the large-scale mowing activities previously undertaken by the oilfield operator that spanned much of the upland areas of the Properties that have resulted in impacts to native habitats (**Exhibit 4**).

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<sup>2</sup> The entity that has been operating the oil field, West Newport Oil Company, has also been involved in discussions regarding this issue, and it has taken a similar position to that taken by NBR. Staff attempted to settle with both parties, but Staff has so far been unable to reach resolution with West Newport Oil Company.

<sup>3</sup> The positions of the parties leading up to this Settlement Agreement are briefly summarized in Recital section 2 of the agreement.

Commission staff has worked closely with NBR to reach this agreement to resolve the Commission's claims against NBR for the alleged Coastal Act violations described herein. NBR, through this Settlement Agreement, has agreed to resolve its liability for all Coastal Act violation matters addressed herein, including resolving civil liability under Coastal Act Sections 30820 and 30822. This Settlement Agreement does not resolve the Commission's claims against the oil field operator, WNOC, for the alleged Coastal Act violations described herein. Commission staff has continued working with WNOC in an effort to reach a full resolution, but if those efforts are not fruitful, Staff will have to evaluate future options to address WNOC, including the possibility of scheduling hearings for a Cease and Desist Order and a Restoration Order to address WNOC's liability under the Coastal Act at an upcoming meeting.

On the last day before production of this staff report, negotiations continued with WNOC, and some progress was evident; but as of then, Staff and WNOC had not reached agreement. Due to the late-breaking nature of these negotiations, it was not possible to complete a full review of the staff report to update points that might be outdated. If WNOC and Staff reach an agreement on a proposed settlement of WNOC's liabilities, that agreement will be attached to this staff report as an addendum.

Staff recommends that the Commission issue the Settlement Agreement to address the alleged violations described above. Through the execution of this Settlement Agreement, NBR has agreed to: (1) cease and desist from undertaking any development on the Properties not authorized pursuant to the Coastal Act; (2) cease and desist from maintaining unpermitted development on the Properties; (3) remove certain allegedly unpermitted wells and either apply for after-the-fact authorization or remove other allegedly unpermitted wells, such that all allegedly unpermitted wells located outside of two areas of the site under WNOC's control, i.e. the "Oil Remainder Areas" (See Exhibit 1 of Appendix A), will be removed or addressed in an after-the-fact CDP application(s); (4) restore certain areas impacted by the Subject Activities, and surrounding areas, pursuant to an approved restoration plan; (5) mitigate for impacts to coastal resources; and (6) resolve its liability for civil penalties under Chapter 9 of the Coastal Act by deed restricting for open space and restoration 24.6 acres of the Properties, including the 18.45-acre restoration area described above and an additional 6.15 acres of wetlands.