

April 6, 2017

NEWPORT BANNING RANCH

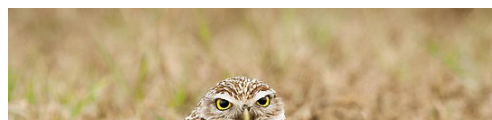
BY RAYANN HOUGHLIN

In sunny southern California there sits a 401 acre parcel of land that has been a subject of controversy for at least four years. This parcel of land is prime waterfront real estate near West Newport Beach that served as an active oilfield for some time. This tract of land also plays host to Native American archeological sites, and serves as a habitat for several rare and sensitive animals species, including the burrowing owl, the California Gnatcatcher, and the endangered San Diego Fairy shrimp. The parcel is now considered an ‘eye sore’ on the coastline, and recent development proposals may be slated to change this – if the plans can ever get approval.

The most recent development proposal was slated to include 895 homes, a seventy-five room hotel, a twenty bed hostel, and just over 45,000 square feet of retail space on just sixty-two acres of the property’s 401 total acres.[i] This plan was rejected by the California Coastal Commission at its September 2016 meeting, and that decision was procedurally affirmed at the February 2017 meeting.[ii] As a result of the rejection in September, the developer sued the Commission.[iii] As a part of this lawsuit, Newport Banning Ranch LLC is seeking monetary damages of at least \$490 million.[iv]

The California Coastal Commission (Commission) “plans and regulates the use of land and water in the coastal zone”.[v] The twelve-member Commission functions as a quasi-judicial agency that is tasked with protecting coastal resources, which includes maximizing public access and recreation, protecting wetlands, habitats, and scenic rural areas.[vi] The Commission also provides for coastal agriculture and other coastal-related activities, and does the above through careful planning and regulation of development in conjunction with local governments along the California coastline.[vii] As a result, before the project development could move forward, the plan had to receive approval from the Commission.

Proponents of the development plan argue that the repeated denial of the plan dooms the Ranch to a fate of an “industrial brownfield”.[viii] In early March of this year, regulators from the state of California found almost 150 violations in regard to the property’s current oil operations.[ix] These violations ranged from leaky oil well heads to discarded concrete rubble, as well as oil drums and pipes covering land that should have been cleared.[x] These violations had to be corrected by the end of March or the operators will be fined.[xi] The current oil operations on the property are associated with two companies who are not involved with the proposed development plan.[xii] Some supporters feel that development is the only option left to clean up the property.[xiii]





The state of the property currently does neither party, nor the community at large, any good. The fenced off oilfield is an eye sore, and while protecting the habitats of endangered and at risk species is paramount, California is in the midst of a housing crisis and a compromise between the two values is necessary. There is some evidence in biological surveys of the property that indicate the burrowing owl does not use the land for breeding most years, and that only one burrowing owl forages there.[xiv] However, there has been concern that the Commission has become more 'pro-development' within the last year.[xv] The denials and controversy surrounding the plan, as well as some of the controversy surrounding the Commission itself recently, could mean that the Commission has chosen this issue as a sort of 'battleground' issue on which to assert itself, even though it is apparent some development and rehabilitation must occur. Coastal Commission staff (essentially the administrative arm of the agency) even recommended approval of the most recent development plan.[xvi]

This matter went before the California Supreme Court in January. A decision on the matter is expected sometime in April. Another suit brought by Banning Ranch sued the city of Newport Beach in their respective handling of the development proposal. If the development team wishes to submit a new development proposal to the Commission, they may do so as early as this month. Regardless of the outcome, this is an issue that won't see an end anytime soon.

UPDATE: On March 30th, the California Supreme Court handed down a unanimous decision ruling that the City of Newport Beach erred in their approval of the Banning Ranch project. In light of this ruling, the Newport Banning Ranch project will likely be delayed for at least a year, and may impact whether the lawsuit against the California Coastal Commission may proceed, since as a result of this ruling, the developers no longer have an approved project to defend.

[i] Bradley Zint, *Coastal Commission affirms denial of Banning Ranch project; developer vows to continue fight*, L.A. Times (February 10, 2017, 5:50 PM), <http://www.latimes.com/local/lanow/la-me-ln-banning-ranch-20170210-story.html> (<http://www.latimes.com/local/lanow/la-me-ln-banning-ranch-20170210-story.html>).

[ii] *Id.*

[iii] Hannah Fry, *Developer sues over Coastal Commission's rejection of Banning Ranch project*, L.A. Times (November 7, 2016, 11:40 AM), <http://www.latimes.com/local/lanow/la-me-banning-ranch-lawsuit-20161107-story.html> (<http://www.latimes.com/local/lanow/la-me-banning-ranch-lawsuit-20161107-story.html>).

[iv] *Id.*

[v] *Our Mission*, Cal. Coastal Comm'n., <https://www.coastal.ca.gov/whoware.html> (<https://www.coastal.ca.gov/whoware.html>) (last visited Mar. 26, 2017)

[vi] *Id.*

[vii] *Id.*

[viii] *See* Zint, *supra*, note i.

[ix] Lauren Williams, *State: Dozens of oil violations on Banning Ranch*, Orange Cty. Register (March 3, 2017, 11:57 PM), <http://www.ocregister.com/articles/banning-745613-oil-ranch.html> (<http://www.ocregister.com/articles/banning-745613-oil-ranch.html>).

[x] *Id.*

[xi] *Id.*

[xii] *Id.*

[xiii] *Id.*

[xiv] *See Fry, supra*, note iii.

[xv] Bettina Boxall, *The upcoming vote on a Banning Ranch development will set the Coastal Commission's direction*, L.A. Times (September 6, 2016, 4:00 AM), <http://www.latimes.com/local/lanow/la-me-banning-ranch-coastal-commission-20160906-snap-story.html> (<http://www.latimes.com/local/lanow/la-me-banning-ranch-coastal-commission-20160906-snap-story.html>).

[xvi] *Id.*

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